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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 21

[Docket No. FAA–2022–1726]

#### **Airworthiness Criteria: Special Class Airworthiness Criteria for the AgustaWestland Philadelphia Corporation Model AW609 Powered-Lift**

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

**ACTION:** Issuance of final airworthiness criteria.

**SUMMARY:** The FAA announces the special class airworthiness criteria for the AgustaWestland Philadelphia Corporation (AWPC) Model AW609 powered-lift. This document sets forth the airworthiness criteria the FAA finds to be appropriate and applicable for the powered-lift design.

**DATES:** These airworthiness criteria are effective December 2, 2024.

**FOR FURTHER INFORMATION CONTACT:** Richard C Snyder, Certification Coordination Section, AIR–613, Policy and Standards Division, Aircraft Certification Service, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone and fax 817–222–4486; email [richard.c.snyder@faa.gov](mailto:richard.c.snyder@faa.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

The AWPC Model AW609 is a two-engine powered-lift with a maximum weight of 17,500 lbs., and a capacity of two crew and nine passengers. The aircraft has two “proprotors” instead of propellers or rotors. The AW609 design is a direct descendant of the Bell Helicopter Model BA609 certification project, which had design origins from the experimental Bell XV–15 aircraft.

The FAA issued a notice of proposed airworthiness criteria for the AW609 powered-lift, which published in the

**Federal Register** on June 9, 2023 (88 FR 37805).

After several changes of applicants, on February 15, 2012, AgustaWestland Tilt-Rotor Company, now AWPC, applied for a type certificate for the Model AW609. Under 14 CFR 21.17(c), an application for type certification is effective for three years, unless the FAA approves a longer period. Section 21.17(d) provides that, where a type certificate has not been issued within the time limit established under § 21.17(c), the applicant may file for an extension and update the designated applicable regulations in the type certification basis. Since the project was not certificated within the established time limit, the FAA approved a series of requests for extension by AWPC with the most recent request submitted on February 22, 2024. If the application extension is approved, the date of the updated type certification basis will change from March 31, 2021, to March 31, 2024.

#### **Discussion**

Powered-lift are type certificated as special class aircraft because the FAA has not yet established powered-lift airworthiness standards as a separate part of subchapter C of 14 CFR. Under the procedures in § 21.17(b), the airworthiness requirements for special class aircraft are the portions of the requirements in parts 23, 25, 27, 29, 31, 33, and 35 found by the FAA to be appropriate and applicable to the specific type design and any other airworthiness criteria found by the FAA to provide an equivalent level of safety to the existing standards. These final airworthiness criteria announce the applicable regulations and other airworthiness criteria developed for type certification of the Model AW609 powered-lift under § 21.17(b).

The powered-lift has characteristics of both a rotorcraft and an airplane. It is designed to function as a helicopter for takeoff and landing, and as an airplane cruising at higher speeds than a helicopter during the enroute portion of flight operations. Accordingly, the Model AW609 certification basis contains standards from parts 23, 25, and 29, as well as other airworthiness criteria specific for a powered-lift.

This certification basis includes parts 23, 25, and 29 airworthiness standards. These are part 23 at amendment 23–62, part 25 at amendment 25–135 (except

§ 25.903(a) at amendment 25–140 and § 25.1517 at amendment 25–86), and part 29 at amendment 29–55 (except § 29.1353 at amendment 29–59). The certification basis incorporates by reference existing transport category airplane and rotorcraft standards, one normal category airplane standard, Category A rotorcraft standards, optional Category B rotorcraft standards, and criteria for operation under instrument flight rules. Flight into known icing conditions (FIKI) is not being sought with the current certification; however, FIKI is included in these airworthiness criteria for future certifications.

The certification basis also includes new criteria unique to the powered-lift design, designated as tiltrotor (TR) criteria. Many of these TR criteria consist of modified part 25 or 29 standards. Some include criteria that combine existing parts 23, 25, and 29 standards, as the maximum weight of the Model AW609 exceeds the weight for normal category rotorcraft and most part 23 category airplanes, but its passenger seating is less than that of a transport category airplane or a transport category rotorcraft. The FAA also developed TR criteria because no existing standard captures the powered-lift’s transitional flight modes (during flight, the powered-lift nacelle rotates the propotor system from providing vertical lift to horizontal propulsion). The TR criteria also contain definitions specific for the powered-lift, such as flight modes, configurations, speeds, and terminology (“flaperon” instead of “aileron” or “flap;” “propotor” instead of “rotor” or “propeller”).

For example, while existing parts 25 and 29 standards for passenger emergency exits include a size classification (types I, II, III, IV) depending on the passenger seating capacity and other factors, the certification basis has a TR with criteria for the specific type of passenger emergency exit that is part of the design of the Model AW609. Another example involves fatigue evaluation. Part 25 contains requirements such as a limit of validity (LOV) on airframe fatigue for pressurized fuselages, which are not in part 29. Instead, fatigue evaluation in part 29 includes a composite structures fatigue rule, due to the more extreme fatigue environment of rotorcraft. For small airplanes, part 23, amendment



23–48, added a composite airframe evaluation requirement for bonded joints, which is included in agency compliance guidance for parts 25 and 29 but not required by a specific regulation (the safety requirement is complied with through other broad existing regulations in those parts). Since the Model AW609 has a pressurized fuselage, the FAA developed TR criteria to include the LOV requirement. The certification basis incorporates by reference the part 29 composite rotorcraft structures fatigue rule, TR criteria to include the composite bonding requirements from part 23, as well as TR criteria to include fatigue requirements for elastomeric primary structural elements. The new requirements specific to the AWPC Model AW609 in the proposed airworthiness criteria used a “TR.xxxx” section-numbering scheme.

#### Summary of Changes From the Proposed Airworthiness Criteria

Based on comments received, these final airworthiness criteria reflect the following changes, in addition to others as explained in more detail in the Discussion of Comments section:

- Added § 29.1547 to the final airworthiness criteria for the case where a magnetic compass is installed.
- Revised these final airworthiness criteria to provide clarification on future certification for FIKI conditions.
- Clarified statements about TR.45 applicability.
- Revised proposed TR.575 to account for the unique nature and operating environment of elastomeric principle structural elements (PSEs).
- Updated § 25.775 to clarify that the reference to § 25.335(a) is replaced with TR.335(a) for the purposes of these airworthiness criteria.
- Did not include § 25.875 and updated TR.875 in these final airworthiness criteria to prevent confusion between the terms propeller and propotor, thereby combining proposed TR.875 and § 25.875, which call out requirements for buffeting, propotor (propeller), and other rotating components. Accordingly, TR.875 in these final airworthiness criteria addresses both proposed TR.875 and § 25.875.
- Revised the incorporation by reference of § 29.1521 to reflect that the reference to § 29.1509(c) is replaced with TR.1509(c) since § 29.1509 is not part of the type certification basis for the Model AW609.
- Specified the amendment level for § 25.1517 to be 25–86.
- Revised these airworthiness criteria to remove § 25.1353 and include § 29.1353 at amendment 29–59 for

electrical wiring protection due to recent amendments to part 29.

#### Addition of Position Light TRs

After the FAA issued the notice of proposed airworthiness criteria for public comment, AWPC presented a forward left and right position light design that would not meet the prescriptive regulatory requirements defined under §§ 29.1385–29.1395. In general terms, the existing requirements define the use of a single left and a single right forward-looking position light. Due to the AW609 configuration, AWPC proposed using multiple light sources for each forward position light providing lighting at a level comparable to the part 29 lighting requirements. The FAA developed TR.1385, TR.1387, TR.1389, TR.1391, TR.1393, and TR.1395 to establish the same level of safety to §§ 29.1385, 29.1387, 29.1389, 29.1391, 29.1393, and § 29.1395 to address the non-traditional configuration of the AW609 powered-lift’s position lights. These TRs modified the language in certain part 29 sections to allow for a group of forward position lights to be installed on each side of the aircraft.

#### Discussion of Comments

The FAA received responses from six commenters including: Overair, Inc (Overair), Parker Lord Corporation (Parker Lord), Advanced Air Mobility Institute, Transport Canada, and two individual commenters.

##### Subpart A—General

The FAA proposed criteria that adopted existing and developed definitions and abbreviations specifically for the Model AW609 powered-lift under subpart A. The FAA received and reviewed comments from Transport Canada and Overair regarding subpart A of the proposed airworthiness criteria.

Transport Canada requested the FAA revise TR.10(c) to use the phrase “flightdeck” instead of “cockpit” for consistency with TR.1322. The FAA concurs and has revised TR.10(c) to use the term “flightdeck.”

Transport Canada requested the FAA revise TR.11 by adding a statement that abbreviations in these criteria apply in addition to the abbreviations in 14 CFR 1.2. The FAA does not agree with Transport Canada’s request because 14 CFR part 1.2 abbreviations are applicable unless specifically addressed as not being applicable in the certification basis.

Overair stated that “V<sub>MIN</sub>” as defined in TR.11(c) and “minimum safe speed” as defined in other previously issued

powered-lift special class airworthiness criteria would cause confusion between the two terms. The FAA disagrees with Overair. The airworthiness criteria for the AW609 are a special class certification basis and as such, the requirements are specific for this aircraft rather than generally applicable. In addition, the development of the AW609 certification basis predates the use of performance-based rules, which is the approach generally used for other special class powered-lift or similar aircraft.

##### Subpart B—Flight

The FAA proposed criteria that adopted existing regulations from subpart B of parts 23, 25, and 29, as well as developed criteria specifically for the Model AW609 powered-lift. Subpart B covers a wide range of flight criteria including performance, controllability, trim, stability, and stalls.

The FAA received and reviewed comments from Overair regarding subpart B of the proposed airworthiness criteria.

Overair requested the FAA clarify the safety intent of TR.45 related to the hovering ceiling given the differences in airworthiness criteria proposed for different powered-lift types. The FAA acknowledges Overair’s request. TR.45 is general performance for Category A aircraft. The FAA developed these airworthiness criteria for the AW609 for guaranteed performance that would integrate all aircraft flight modes defined in TR.10 and HTR.45 including hover. TR Appendix H—Category B Performance defines Category B performance and HTR.45 addresses general performance determination.

Overair requested the FAA justify the climb performance identified in TR.67. Specifically, Overair requested the FAA explain why § 29.67(a)(1) was not adopted for the first takeoff segment and explain the rationale for adopting part 25 fixed-wing OEI minimum climb gradient criteria for this powered-lift special class aircraft. Finally, Overair inquired whether these performance requirements will provide the same level of safety when operating out of heliports and/or vertiports.

The FAA acknowledges Overair’s comment. The FAA determined § 29.67(a)(1), which establishes climb performance at 200 ft, was inappropriate for a transport category powered-lift such as the AW609. In addition, the FAA did not adopt part 25 fixed-wing OEI climb requirements for the AW609. Rather, the FAA established different takeoff flight paths for ground-level heliports under TR.59 and elevated heliports under TR.60 that do not exist

under part 25. The takeoff flight path under TR.59 and TR.69 utilizes the performance established under TR.67 to ensure positive engine out climb performance from the surface to 1500 ft above ground level, for different segments.

Overair requested the FAA clarify why a stall speed has been adopted for the AW609 as opposed to the “minimum safe speed” in other powered-lift special class airworthiness criteria. The FAA acknowledges Overair’s comment. The AW609 is a § 21.17(b) special class certification basis aircraft and the airworthiness criteria are specific to this aircraft. Unlike other § 21.17(b) powered-lift, the AW609 certification basis did not use performance-based criteria. There are differences between performance-based and prescriptive criteria. Conversion-mode minimum safe speed is covered elsewhere in the AW609 airworthiness criteria; in the AW609 airworthiness criteria, airplane-mode (wing-borne) minimum safe speed is covered in TR.103, 201, 203, and 207. Conversion-mode (Semi-thrust borne) minimum safe speed is covered in TR.38 and 143. While the airworthiness criteria for the AW609 may be different from the airworthiness criteria for other powered-lift, the safety intent is the same with regards to stall and minimum speeds.

Overair requested the FAA explain why the wind velocity requirement, from all azimuths, has been increased from “at least 17 knots” in § 29.143(c) to 20 knots. The FAA acknowledges Overair’s comment. The AW609, as a special class aircraft, is a transport category aircraft and its certification basis includes appropriate requirements from both parts 25 and 29. Section 25.237(a)(1) requires “a 90-degree cross component of wind velocity, demonstrated to be safe for takeoff and landing, . . . [that] must be at least 20 knots . . .” The FAA determined that § 29.143(c) and (d)’s requirements of at least 17 knots all azimuth capability could provide a controllability gap for the AW609 when attempting to land or takeoff; as such the FAA adopted 20 knots to maintain consistency with transport aircraft requirements for specific applicability to the AW609. This approach is consistent with the draft “Interim Airworthiness Criteria for Powered-Lift Transport Category Aircraft,” dated July 1988.

The FAA received several comments from Overair on the topics of flight performance and characteristics, and Overair requested an explanation as to why the FAA adopted older, non-performance-based criteria. The FAA establishes the minimum safety

standards without dictating designs. Manufacturers are free to choose the design strategy that suits their powered-lift, as long as these designs meet a minimum accepted safety standard.

The FAA received multiple comments from Overair regarding the stability criteria proposed in TR.173 (static longitudinal stability), TR.175 (demonstration of static longitudinal stability), and TR.177 (static lateral-directional stability). Overair asked for clarification as to why proposed TR.173, TR.175, and TR.177 include stability requirements from the 1960’s instead of using recent special conditions for part 25 aircraft equipped with a full-authority electronic flight control system. Overair requested the FAA incorporate more current airworthiness standards for fly-by-wire technology into the AW609 certification basis. The FAA does not concur with Overair’s request to revise TR.173, TR.175, and TR.177 to incorporate recent special conditions for fly-by-wire technology. The recent fly-by-wire special conditions were considered in TR.173, TR.175, and TR.177. The commenter’s assumption, that the recent special conditions were not considered for the TRs, is incorrect.

Overair also inquired as to why proposed TR.181(a)(1) and TR.181(a)(2) (free and fixed position dynamic stability criteria, respectively) were included in the airworthiness criteria for an aircraft equipped with an irreversible electronic flight control system. Overair requested the FAA not adopt proposed TR.181(a)(1) and TR.181(a)(2) in the final airworthiness criteria. The FAA does not concur with Overair’s request to not adopt proposed TR.181(a)(1) and TR.181(a)(2) in the final airworthiness criteria. The FAA determined that evaluation of free and fixed flight control characteristics is necessary even if an aircraft has an irreversible electronic flight control system.

#### *Subpart C—Structure and Strength*

The FAA proposed criteria that adopted existing regulations from subpart C of parts 25 and 29, as well as developed criteria specifically for the AW609. Subpart C covers a wide range of strength criteria including flight loads, control surface loads, emergency landing conditions, and fatigue evaluations. The FAA received and reviewed comments from Parker Lord and one individual commenter.

Parker Lord requested the FAA revise the definition of a Primary Structural Element (PSE). Parker Lord also recommended the FAA change the qualification and certification of

elastomeric PSEs from physical and static strength attributes to material functionality and the dynamic response within the design requirements of the rotor system. The FAA agrees with Parker Lord’s requests and has revised the language in final TR.575 to use the designed dynamic response of the material as compliance criteria instead of traditional static loading, deformation, and fatigue for compliance criteria.

An individual commenter suggested the AW609 may become unstable in a windmilling condition and may develop whirl flutter. The commenter stated the aircraft should be tested for stability in this situation and if necessary given procedures and limitations. The commenter also stated that if the system design prevents windmilling, there should be backup systems and procedures. FAA acknowledges the commenter’s concern. Windmilling impact on aircraft stability, including any impact on whirl flutter, is already evaluated under § 25.629 and TR.629, therefore, no additional changes are deemed necessary to those airworthiness criteria.

#### *Subpart D—Design and Construction*

The FAA proposed criteria that adopted existing regulations from subpart D of parts 25 and 29, as well as developed criteria specifically for the Model AW609 powered-lift. Subpart D covers a wide range of design and construction criteria including criteria covering rotors, control systems, landing gear, and personnel and cargo accommodations.

The FAA received and reviewed comments from Overair and Transport Canada regarding subpart D of the proposed airworthiness criteria.

Transport Canada requested the FAA specify which paragraphs of § 25.335 and TR.335 the FAA is referring to in the reference to § 25.775 in the proposed airworthiness criteria. The FAA has revised the reference to § 25.775 in the final airworthiness criteria to indicate that § 25.335(a) is replaced with TR.335(a).

Transport Canada requested the FAA add § 25.865 to the final airworthiness criteria because that regulation addresses fire protection requirements for the engine mounting structure and engine attachment points. The FAA does not agree with Transport Canada’s request. Section 29.861(a) is included in the final airworthiness criteria, and uses the term “structure,” which includes engine mounts as indicated by the example in the guidance material of AC 29.861. As a result, compliance with § 29.861(a) must also address engine

mounting structure and engine attachment points. Applying § 29.861(a) is sufficient for this powered-lift, and requiring compliance to § 25.865 is not necessary. AC 29–2C “Certification of Transport Category Rotorcraft” and AC 29.861 “Fire Protection of Structure, Controls, and Other Parts” provide guidance for engine mounts and fire protection requirements.

Transport Canada stated that § 25.867 does not define clearly what surfaces to consider as “rear of the nacelles” and requested the FAA clarify the intent with a figure to define the envelope and boundaries radially and axially. The FAA does not agree with Transport Canada’s request to provide a figure as this figure is defined in the project specific methods of compliance to § 25.867.

Transport Canada requested a rationalization of the FAA’s exception of § 25.869(a)(3) from the proposed airworthiness criteria and requested the FAA include § 25.869(a)(3) in the final airworthiness criteria. Additionally, the commenter provided wording for § 25.869(a)(3) from amendment 25–113 even though the current amendment is 25–123, which has different language. The FAA does not concur with Transport Canada’s request to include § 25.869(a)(3) at either amendment level in the final airworthiness criteria as the airworthiness criteria already contain criteria such as § 29.1301, TR.1309, and § 29.1353 that are intended to address the same requirements as those covered by the various part 25 wiring and EWIS requirements, including § 25.869(a)(3).

Overair commented that the inclusion of both § 25.675(a) and § 29.675(a) in the proposed airworthiness criteria was confusing and requested the FAA not make § 25.675(a) applicable to the AW609 because § 29.675(a) is also applicable. The FAA does not concur with this request. Both regulations need to be included in the final airworthiness criteria because the AW609 operates in both helicopter and airplane modes including the conversion mode. The AW609 aircraft control is affected by rotor collective and cyclic pitch, conventional airplane control surfaces (elevator, flaperons), and nacelle tilt; traditional helicopter-type pilot controls in the cockpit provide aircraft control in pitch, roll, and yaw axes.

Overair requested the FAA not adopt § 25.875 from the proposed airworthiness criteria and reword TR.875 to prevent confusion. The FAA concurs with this request and has revised the final airworthiness criteria to not adopt § 25.875 and reworded TR.875 to reflect the use of “proprotors”

instead and of propellers to reflect TR.10(o) terminology.

#### *Subpart E—Powerplant*

The FAA proposed criteria that adopted existing regulations from subpart E of parts 25 and 29, as well as developed criteria specifically for the Model AW609 powered-lift. Subpart E covers a wide range of powerplant criteria including rotor drive systems, fuel systems, oil systems, and cooling and exhaust systems. The FAA received and reviewed comments from Transport Canada and one individual commenter regarding subpart E of the proposed airworthiness criteria.

Transport Canada requested the FAA revise proposed TR.963 to remove the phrase “for compliance with” and replace it with “in addition to.” FAA does not concur with Transport Canada’s request. The requested change would increase the testing requirements for flexible fuel tank bladders in a way that is not intended.

Transport Canada requested the FAA rationalize the exception of § 25.1203(h) from the proposed airworthiness criteria and to include § 25.1203(h) in the final airworthiness criteria. The FAA does not concur with the request to include § 25.1203(h) in the final airworthiness criteria as the airworthiness criteria already contain criteria such as § 29.1301, TR.1309, and § 29.1353 that are intended to address similar requirements as those covered by the various part 25 EWIS requirements, including § 25.1203(h).

The FAA received several comments with no specific requested changes to the proposed airworthiness criteria from an individual on several aspects regarding FIKI, icing protection, and inadvertent icing encounters.

The commenter inquired as to whether the AW609 has any relief from the subpart E powerplant-related requirements of normal FIKI certification other than having no subpart B testing with ice shapes and the relief of limited exposure time. The commenter also inquired as to whether the flight manual limitation that “the pilot is prohibited from flight into known or forecast icing” reduces or eliminates any of the other subpart E requirements for the AW609 that are normally included in a FIKI certification. The FAA acknowledges the commenter’s questions: the powerplant icing requirements are applicable per TR.1093, regardless of the aircraft’s FIKI status.

#### *Subpart G—Operating Limitations and Information*

The FAA proposed criteria that adopted existing regulations from subpart G of parts 25 and 29, as well as developed criteria specifically for the Model AW609 powered-lift. Subpart G covers a wide range of operating limitations and information criteria including airspeed, markings and placards, indicators, and flight manuals. The FAA received and reviewed comments from Transport Canada regarding subpart G of the proposed airworthiness criteria.

Transport Canada requested the FAA revise the reference to § 25.1585(a)(8) in § 25.1517 to read “§ 25.1585(a)(3)” and explained that § 25.1585(a)(8) does not exist.” The FAA acknowledges Transport Canada’s request; however, the reference to § 25.1585(a)(8) is correct. The FAA revised the final airworthiness criteria to indicate that the criteria includes § 25.1517, Rough air speed,  $V_{RA}$  is at amendment 25–86, which contains (a)(8).

Transport Canada requested the FAA revise the reference to § 29.1509 and TR.1509 in § 29.1521 to include the appropriate paragraphs. The FAA concurs and revised the reference to § 29.1509 and TR.1509 to indicate that paragraph (c) is the appropriate paragraph.

Transport Canada requested the FAA add “§ 29.1547 Magnetic direction indicator. (a)–(d) [Applicable to AW609]” to the airworthiness criteria and, if the FAA agrees, then also add a reference to § 29.1547 in TR.1501(b). The FAA concurs with adding § 29.1547 to these final airworthiness criteria and notes that § 29.1327 is the requirement for a magnetic compass and § 29.1547 is the requirement for a calibration card if a compass is installed. In lieu of a magnetic compass, § 25.1303 and TR.1303 allow for direction indicators (gyroscopically stabilized, magnetic or non-magnetic).

#### *General Comments*

The FAA received comments on the proposed criteria that were not specific to any subpart from The Advanced Air Mobility Institute, Transport Canada, and one individual commenter.

Transport Canada made several comments concerning the structure and formatting of the airworthiness criteria document. Transport Canada further stated that the airworthiness criteria as written references many requirements instead of writing the actual text for the airworthiness criteria. Transport Canada suggested the FAA write the actual text for airworthiness criteria throughout the

document to make explicit the text agreed to when these airworthiness criteria are finalized. The FAA disagrees, because the 14 CFR regulations listed in the airworthiness criteria for the AW609 are incorporated into the criteria by referencing the existing rule.

Transport Canada stated that the formula in proposed TR.725 Limit drop test, paragraph (d), is incomplete. The FAA disagrees with Transport Canada. The formula is correctly stated in the proposed criteria, and matches the formula suggested by the commenter.

Transport Canada stated the heading for proposed TR.103 Stall SPEED is incorrect and that the term “SPEED” should be lower case and in bold text. The FAA agrees with Transport Canada and has corrected the heading in TR.103 in the final airworthiness criteria.

Transport Canada requested the FAA explain why §§ 25.1701–25.1733 for an EWIS were not included in the proposed airworthiness criteria and requested the FAA add §§ 25.1701–25.1733. The FAA does not concur with Transport Canada’s request to include §§ 25.170–25.1753 in the final airworthiness criteria as the FAA updated the final airworthiness criteria to replace § 25.1353 with § 29.1353 due to the recent addition of amendment 29–59 which introduced a part 29 safety target for electrical wiring. The final airworthiness criteria also contain § 29.1301, and TR.1309 which, in addition to § 29.1353, address similar requirements to those covered by the referenced part 25 EWIS and energy storage requirements.

Transport Canada requested the FAA clarify whether part 34, Fuel Venting and Exhaust Emission Requirements For Turbine Engine Powered Airplanes, is applicable to the AW609, either to the engine or aircraft, as fuel venting can be influenced by the engine’s installation effects. The FAA acknowledges Transport Canada’s concern. The AW609 uses the PT6C–67A, which is a turboshaft engine. Part 34 does not apply to turboshaft engines. As long as the AW609 continues to use a turboshaft engine, part 34 will not be applicable.

Transport Canada requested the FAA clarify whether part 38, Airplane Fuel Efficiency Certification is applicable to the AW609. The AW609 certification basis precedes the promulgation of 14 CFR part 38, and thus part 38 is not applicable to the AW609.

The Advanced Air Mobility Institute recommended the FAA update and expand the airworthiness criteria for the Model AW609 powered-lift to require the implementation of a mandatory safety management system (SMS),

designated as TR criteria. The FAA does acknowledge the value of implementation of a proactive SMS system. However, implementation of SMS is beyond the scope of this present effort to designate the applicable airworthiness criteria for this powered-lift.

#### Applicability

These airworthiness criteria, established under the provisions of § 21.17(b), are applicable to the AWPC Model AW609 powered-lift. Should AWPC apply at a later date for a change to the type certificate to include another model, these airworthiness criteria would apply to that model as well, provided the FAA finds them appropriate in accordance with the requirements of subpart D to part 21.

#### Conclusion

This action affects only certain airworthiness criteria for the AWPC Model AW609 powered-lift. It is not a standard of general applicability.

#### Authority Citation

The authority citation for these airworthiness criteria is as follows:

**Authority:** 49 U.S.C. 106(g), 40113, and 44701–44702, 44704.

#### Airworthiness Criteria

Pursuant to the authority delegated to me by the Administrator, the following airworthiness criteria are issued as part of the type certification basis for the AgustaWestland Philadelphia Corporation Model AW609 powered-lift. You may view the final airworthiness criteria on the internet at [www.regulations.gov](http://www.regulations.gov) in Docket No. FAA–2022–1726.

Issued in Kansas City, Missouri, on October 25, 2024.

**Patrick R. Mullen,**

*Manager, Technical Policy Branch, Policy and Standards Division, Aircraft Certification Service.*

[FR Doc. 2024–25238 Filed 10–30–24; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA–2024–1004; Project Identifier AD–2023–01058–R; Amendment 39–22866; AD 2024–20–07]

RIN 2120–AA64

#### Airworthiness Directives; Various Helicopters

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

**ACTION:** Final rule.

**SUMMARY:** The FAA is adopting a new airworthiness directive (AD) for various helicopters modified by certain supplemental type certificates (STCs) that approve the installation of an emergency float kit or an emergency float with a liferaft kit. This AD was prompted by the results of an accident investigation and subsequent reports of difficulty pulling the emergency float kit activation handle installed on the pilot cyclic. This AD requires repetitively inspecting the pull force on the float activation handle and for certain model helicopters, this AD also requires and replacing certain part-numbered float inflation reservoirs (reservoirs) and pull cable assemblies (cables) with other part-numbered reservoirs and cables. Finally, this AD prohibits installing certain part-numbered reservoirs and cables on specific helicopters. The FAA is issuing this AD to address the unsafe condition on these products.

**DATES:** This AD is effective December 5, 2024.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of December 5, 2024.

#### ADDRESSES:

**AD Docket:** You may examine the AD docket at [regulations.gov](http://regulations.gov) under Docket No. FAA–2024–1004; 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, any comments received, and other information. The address for Docket Operations 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.

**Material Incorporated by Reference:**

- For Dart Aerospace material identified in this AD, contact Dart Aerospace, LTD., 1270 Aberdeen Street, Hawkesbury, ON, K6A 1K7, Canada; phone: 1–613–632–5200; fax: 1–613–632–5246; website: [dartaero.com](http://dartaero.com).

• You may view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Parkway, Room 6N-321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call: (817) 222-5110.

**Other Related Service Information:** For additional Dart Aerospace material identified in this final rule, use the Dart Aerospace, LTD., contact information under *Material Incorporated by Reference* above.

**FOR FURTHER INFORMATION CONTACT:**

Johann Magana, Aviation Safety Engineer, FAA, 3960 Paramount Boulevard, Lakewood, CA 90712; phone: (562) 627-5322; email: [johann.magana@faa.gov](mailto:johann.magana@faa.gov).

**SUPPLEMENTARY INFORMATION:**

**Background**

The FAA received reports of an accident involving an Airbus Helicopters Model AS350B2 helicopter impacting a body of water during an autorotation. Both the left and right-hand emergency floats did not inflate symmetrically, and the helicopter subsequently capsized.

Accordingly, the FAA issued AD 2020-02-23, Amendment 39-21027 (85 FR 8150, February 13, 2020) (AD 2020-02-23), for Airbus Helicopters Model AS350B, AS350BA, AS350B1, AS350B2, AS350B3, AS350C, AS350D, and AS350D1 helicopters modified by STC SR00470LA, and Airbus Helicopters Model AS355E, AS355F, AS355F1, AS355F2, AS355N, and AS355NP helicopters modified by STC SR00645LA. AD 2020-02-23 requires repetitive inspections of the installation of the cables on the emergency float kits. After AD 2020-02-23 was issued, the National Transportation Safety Board (NTSB) reported that similar deficiencies may remain unresolved in other similar FAA-approved emergency flotation systems.<sup>1</sup>

Accordingly, the FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to various helicopters modified by certain STCs that approve the installation of an emergency float kit or an emergency float with a liferaft kit. The NPRM published in the **Federal Register** on April 25, 2024 (89 FR 31659). In the NPRM, the FAA proposed to require repetitively inspecting the

installation of the cables on certain emergency float systems and, depending on the results, repairing the cable installation or, deactivating and placarding the emergency float system as inoperative. For specific helicopters, the FAA also proposed to require removing from service and replacing certain part-numbered reservoirs and cables with other part-numbered reservoirs and cables. Additionally, the FAA proposed to prohibit installing certain part-numbered reservoirs and cables on certain helicopters. The FAA is issuing this AD to address the unsafe condition on these products.

**Discussion of Final Airworthiness Directive**

**Comments**

The FAA received a comment on the NPRM from the NTSB. The NTSB supported the NPRM without change.

**Conclusion**

The FAA reviewed the relevant data, considered the comment received, and determined that air safety requires adopting the AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on these products. Except for minor editorial changes, this AD is adopted as proposed in the NPRM.

**Material Incorporated by Reference Under 1 CFR Part 51**

The FAA reviewed Dart Aerospace Operation Instructional Manual for General Pull Cable Rigging and Testing Procedure, Revision B, dated May 12, 2023. This material specifies procedures for testing the pull cable rigging on the Dart Aerospace emergency float and liferaft systems using certain part-numbered pull cable test tools.

The FAA also reviewed Dart Aerospace Service Bulletin (SB) No. SB2020-09, Revision A, dated March 16, 2021, Dart Aerospace SB No. SB2021-01, Revision A, dated December 28, 2021, Dart Aerospace SB No. SB2021-02, dated April 30, 2021, Dart Aerospace SB No. SB2021-03, dated June 30, 2021, and Dart Aerospace SB No. SB2022-01, dated March 14, 2022. This material specifies procedures for inspecting the installation of the cable emergency float kits (e.g., inspecting for activation pull forces on the float activation handle), readjusting the cable rigging if improperly installed, and contacting Dart if readjusting the rigging is not successful. This material also specifies optional procedures for deactivating the emergency float system as inoperative and reporting compliance to Dart.

This material 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 Material**

The FAA reviewed Dart Aerospace SB No. SB 2022-03, dated May 12, 2023, for Model R44 and R44 II helicopters, which specifies procedures for removing and replacing certain part-numbered reservoirs and cables with new part-numbered reservoirs and cables. This material also specifies procedures for revising the rotorcraft flight manual and recording compliance with the material in the aircraft logbook.

**Differences Between This AD and the Related Material**

The related material specifies a one-time pull cable test, whereas this AD requires repetitively inspecting the pull force on the float activation handle.

Where the related material specifies contacting Dart, this AD requires actions in accordance with FAA-approved procedures.

Appendix A of the related material specifies to ty-wrap the pin into place on the pilot collective and to contact Dart customer service for a resolution, whereas this AD requires accomplishing corrective actions in accordance with FAA-approved procedures.

**Costs of Compliance**

The FAA estimates that this AD affects 1,150 emergency float kits or emergency float with liferaft kits installed on helicopters of U.S. registry. Labor costs are estimated at \$85 per work-hour. Based on these numbers, the FAA estimates the following costs to comply with this AD.

Inspecting the pull force on the float activation handle will take 1 work-hour with one test kit costing \$2,000 for an estimated cost of \$2,085 per helicopter and \$2,397,750 for the U.S. fleet, per inspection cycle.

Replacing a reservoir and cable (Model R44 and R44 II helicopters) will take 2 work-hours and parts will cost \$5,800 for an estimated cost of \$5,970 per helicopter.

The FAA has no way of determining what repairs may be required following the inspection required by this AD, the number of helicopters that may need repairs, or the costs to perform repairs. However, if required as a repair, replacing and adjusting an affected cable will take 8 work-hours and parts will cost \$255 for an estimated total cost of \$935 per helicopter.

<sup>1</sup> NTSB Investigation; Inadvertent Activation of the Fuel Shutoff Lever, Subsequent Loss of Engine Power, and Ditching on the East River, Liberty Helicopters Inc. This information may be viewed under 2.4.3 Certification Review Process, of Docket Item #79 NTSB—Adopted Board Report, which is available at <https://data.ntsb.gov/Docket/?NTSBNumber=ERA18MA099>.

## 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.

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

## Regulatory Findings

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) Will not affect intrastate aviation in Alaska, and
- (3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

## List of Subjects in 14 CFR Part 39

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

## The 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:

## 2024–20–07 Various Helicopters:

Amendment 39–22866; Docket No. FAA–2024–1004; Project Identifier AD–2023–01058–R.

### (a) Effective Date

This airworthiness directive (AD) is effective December 5, 2024.

### (b) Affected ADs

None.

### (c) Applicability

This AD applies to the helicopters identified in paragraphs (c)(1) through (8) of this AD, certificated in any category.

(1) Airbus Helicopters Model AS350B, AS350BA, AS350B1, AS350B2, AS350B3, AS350C, AS350D, AS350D1, AS355E, AS355F, AS355F1, AS355F2, and AS355N helicopters modified by Supplemental Type Certificate (STC) SR00831LA; Model EC120B helicopters modified by STC SR00780LA; and Model EC130B4 helicopters modified by STC SR01687LA.

**Note 1 to paragraph (c)(1):** Helicopters with an AS350B3e designation are Model AS350B3 helicopters.

(2) Airbus Helicopters Deutschland GmbH (AHD) Model BO–105A, BO–105C, BO–105S, and BO–105LS A–3 helicopters modified by STC SR00856LA; Model EC135P1, EC135P2, EC135P2+, EC135P3, EC135T1, EC135T2, EC135T2+, and EC135T3 helicopters modified by STC SR01855LA; and Model MBB–BK 117 C–2 and MBB–BK 117 D–2 helicopters modified by STC SR02244LA.

**Note 2 to paragraph (c)(2):** Helicopters with an EC135P3H designation are Model EC135P3 helicopters; helicopters with an EC135T3H designation are Model EC135T3 helicopters, and helicopters with an MBB–BK117 C–2e designation are Model MBB–BK117 C–2 helicopters.

(3) Bell Textron Inc., Model 210, 212, 412, 412CF, and 412EP helicopters modified by STC SR01779LA; and Model 412, 412CF, and 412EP helicopters modified by STC SR01459LA.

(4) Bell Textron Canada Limited Model 206A, 206B, 206L, 206L–1, 206L–3, 206L–4, and 407 helicopters modified by STC SR01535LA.

**Note 3 to paragraph (c)(4):** Helicopters with a 206B3 designation are Model 206B helicopters; helicopters with a 206L–1+ designation are Model 206L–1 helicopters; and helicopters with a 206L–3+ designation are Model 206L–3 helicopters.

(5) Leonardo S.p.a. Model AB412 and AB412 EP helicopters modified by STC SR01779LA.

(6) MD Helicopters, LLC, Model 369D, 369E, 369F, 369FF, 369HE, 369HM, 369HS, and 500N helicopters modified by STC SR00932LA.

(7) Robinson Helicopter Company Model R44 and R44 II helicopters modified by STC SR02049LA; and Model R66 helicopters modified by STC SR02484LA.

(8) Sikorsky Aircraft Corporation Model S–76A, S–76B, and S–76C helicopters modified by STC SR01902LA.

## (d) Subject

Joint Aircraft System Component (JASC) Code: 2560, Emergency Equipment; and 3212, Emergency Flotation Section.

## (e) Unsafe Condition

This AD was prompted by the results of an accident investigation and subsequent reports of difficulty pulling the emergency float kit float activation handle installed on the pilot cyclic. The FAA is issuing this AD to detect and address improperly installed cables, which can lead to difficulty deploying the float system from the float activation handle. The unsafe condition, if not addressed, could result in loss of the left-hand or right-hand float, causing the helicopter to roll to one side, or loss of both floats causing the helicopter to capsizewater.

## (f) Compliance

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

## (g) Required Actions

(1) Within 100 hours time-in-service (TIS) or 30 days after the effective date of this AD, whichever occurs first, and thereafter at intervals not to exceed six months, accomplish the actions required by paragraphs (g)(1)(i) through (vi) of this AD, as applicable to your model helicopter.

(i) For Airbus Helicopters Model EC130B4 helicopters identified in paragraph (c)(1) of this AD, accomplish the actions required by paragraphs (g)(1)(i)(A) or (B) of this AD, as applicable, and paragraph (g)(1)(i)(C) of this AD, as applicable.

(A) Inspect the pull force on the float activation handle in accordance with section 2.0 (for pull cable test tool part-number (P/N) 606.7803), paragraphs 1 through 14 of DART Aerospace Operation Instructional Manual for General Pull Cable Rigging and Testing Procedure, Revision B, dated May 12, 2023 (DART OIM–11 Rev B), except if the inflation handle makes contact with the cyclic stick in paragraph 6, before further flight, perform cable rigging in accordance with FAA-approved procedures and, once the cable is properly rigged, continue with the actions required by this paragraph, and except the measurement in paragraph 8 must be 0.85 in (2.16 cm) or greater; or

(B) Inspect the pull force on the float activation handle in accordance with section 3.0 (for pull cable test tool P/N 607.1602), paragraphs 3 through 20 of DART OIM–11 Rev B, except in paragraph 3, where it states, "it is advised to mark these locations and verify the hole centers by removing the two set screws from the test tool and sliding the tool onto the shroud and aligning the tool with the marks," replace that text with "mark these locations and verify the hole centers by removing the two set screws from the test tool and sliding the tool onto the shroud and aligning the tool with the marks," and except the measurement in paragraph 13 must be 0.75 in (1.91 cm) or greater.

(C) If the pull force is greater than 25 lbf (111.2N) or exceeds the limits in the existing Installation Instructions or Instructions for Continued Airworthiness for your helicopter,

as applicable, before further flight, comply with paragraph (g)(2) of this AD, as applicable to your model helicopter.

(ii) For Airbus Helicopters Deutschland GmbH (AHD) Model MBB-BK 117 C-2 and MBB-BK 117 D-2 helicopters identified in paragraph (c)(2) of this AD, accomplish the actions required by paragraphs (g)(1)(ii)(A) and (B) of this AD, as applicable.

(A) Inspect the pull force on the float activation handle in accordance with section 2.0 (for pull cable test tool P/N 606.7803), paragraphs 1 through 14 of DART OIM-11 Rev B, except if the inflation handle makes contact with the cyclic stick in paragraph 6, before further flight, perform cable rigging in accordance with FAA-approved procedures, and except the measurement in paragraph 8 must be 0.85 in (2.16 cm) or greater.

(B) If the pull force is greater than 25 lbf (111.2N), or exceeds the limits in the existing Installation Instructions or Instructions for Continued Airworthiness for your helicopter, as applicable, before further flight, comply with paragraph (g)(2) of this AD, as applicable to your model helicopter.

(iii) For Bell Textron Inc., Model 210, 212, 412, 412CF, and 412EP helicopters identified in paragraph (c)(3) of this AD, accomplish the actions required by paragraphs (g)(1)(iii)(A) or (B) of this AD, as applicable, and paragraph (g)(1)(iii)(C) of this AD, as applicable.

(A) Inspect the pull force on the float activation handle in accordance with section 2.0 (for pull cable test tool P/N 606.7803), paragraphs 1 through 14 of DART OIM-11 Rev B, except if the inflation handle makes contact with the cyclic stick in paragraph 6, before further flight perform cable rigging in accordance with FAA-approved procedures, and except the measurement in paragraph 8 must be 0.85 in (2.16 cm) or greater; or

(B) Inspect the pull force on the float activation handle in accordance with section 3.0 (for pull cable test tool P/N 607.1602), paragraphs 3 through 20 of DART OIM-11 Rev B, except in paragraph 3, where it states, "it is advised to mark these locations and verify the hole centers by removing the two set screws from the test tool and sliding the tool onto the shroud and aligning the tool with the marks." replace that text with "mark these locations and verify the hole centers by removing the two set screws from the test tool and sliding the tool onto the shroud and aligning the tool with the marks," and except the measurement in paragraph 13 must be 0.75 in (1.91 cm) or greater.

(C) If the pull force is greater than 25 lbf (111.2N), or exceeds the limits in the existing Installation Instructions or Instructions for Continued Airworthiness for your helicopter, as applicable, before further flight, comply with paragraph (g)(2) of this AD, as applicable to your model helicopter.

(iv) For Bell Textron Canada Limited Model 206A, 206B, 206L, 206L-1, 206L-3, 206L-4, and 407 helicopters identified in paragraph (c)(4) of this AD, accomplish the actions required by paragraphs (g)(1)(iv)(A) and (B) of this AD, as applicable.

(A) Inspect the pull force on the float activation handle in accordance with section 2.0 (for pull cable test tool P/N 606.7803), paragraphs 1 through 14 of DART OIM-11

Rev B, except if the inflation handle makes contact with the cyclic stick in paragraph 6, before further flight perform cable rigging in accordance with FAA-approved procedures, and except the measurement in paragraph 8 must be 0.85 in (2.16 cm) or greater.

(B) If the pull force is greater than 25 lbf (111.2N), or exceeds the limits in the existing Installation Instructions or Instructions for Continued Airworthiness for your helicopter, as applicable, before further flight, comply with paragraph (g)(2) of this AD, as applicable to your model helicopter.

(v) For Robinson Helicopter Company Model R66 helicopters identified in paragraph (c)(7) of this AD, accomplish the actions required by paragraphs (g)(1)(v)(A) and (B) of this AD, as applicable.

(A) Inspect the pull force on the float activation handle in accordance with section 2.0 (for pull cable test tool P/N 607.7803), paragraphs 1 through 14 of DART OIM-11 Rev B, except if the inflation handle makes contact with the cyclic stick in paragraph 6, before further flight perform cable rigging in accordance with FAA-approved procedures, and except the measurement in paragraph 8 must be 0.85 in (2.16 cm) or greater.

(B) If the pull force is greater than 25 lbf (111.2N), or exceeds the limits in the existing Installation Instructions or Instructions for Continued Airworthiness for your helicopter, as applicable, before further flight, comply with paragraph (g)(2) of this AD, as applicable to your model helicopter.

(vi) For the helicopters identified in paragraphs (g)(1)(vi)(A) through (E) of this AD, inspect the pull force on the float activation handle in accordance with FAA-approved procedures. The threshold for this pull force inspection must not exceed 25 lbf (111.2N). If the float activation handle fails the test, (if the pull force is greater than 25 lbf (111.2N)), or exceeds the limits in the existing Installation Instructions or Instructions for Continued Airworthiness for your helicopter, as applicable, before further flight, comply with paragraph (g)(2) of this AD, as applicable to your model helicopter.

(A) Airbus Helicopters Model AS350B, AS350BA, AS350B1, AS350B2, AS350B3, AS350C, AS350D, AS350D1, AS355E, AS355F, AS355F1, AS355F2, AS355N, and EC120B helicopters identified in paragraph (c)(1) of this AD.

(B) Airbus Helicopters Deutschland GmbH (AHD) Model BO-105A, BO-105C, BO-105S, BO-105LS A-3, EC135P1, EC135P2, EC135 P2+, EC135P3, EC135T1, EC135T2, EC135T2+, and EC135T3 helicopters identified in paragraph (c)(2) of this AD.

(C) Leonardo S.p.A. Model AB412 and AB412 EP helicopters identified in paragraph (c)(5) of this AD.

(D) MD Helicopters, LLC, Model 369D, 369E, 369F, 369FF, 369HE, 369HM, 369HS, and 500N helicopters identified in paragraph (c)(6) of this AD.

(E) Sikorsky Aircraft Corporation Model S-76A, S-76B, and S-76C helicopters identified in paragraph (c)(8) of this AD.

(2) For the helicopters identified in paragraphs (g)(1)(i) through (v) of this AD, as a result of the actions required by paragraphs (g)(1)(i) through (v) of this AD, if the pull force is greater than 25 lbf (111.2N), or

exceeds the limits in the existing Installation Instructions or Instructions for Continued Airworthiness for your helicopter, as applicable, before further flight, comply with either paragraph (g)(2)(i) or (ii) of this AD.

(i) Repair the cable installation in accordance with FAA-approved procedures.

(ii) Deactivate and placard the emergency float system as inoperative in accordance with Appendix A of DART Aerospace Service Bulletin (SB) No. SB2020-09, Revision A, dated March 16, 2021, DART Aerospace SB No. SB2021-01, Revision A, dated December 28, 2021, DART Aerospace SB No. SB2021-02, dated April 30, 2021, DART Aerospace SB No. SB2021-03, dated June 30, 2021, or DART Aerospace SB No. SB2022-01, dated March 14, 2022, as applicable to your model helicopter, except where Appendix A specifies ty-wrapping the pin into place on the pilot collective, and where Appendix A specifies contacting DART customer service for a resolution, accomplish the deactivation and placarding in accordance with FAA-approved procedures. If the emergency float system is deactivated and placarded as inoperative, you are not required to accomplish the actions required by paragraph (g)(1) of this AD. This AD does not allow operation with an inoperative emergency float system unless the requirements of 14 CFR 91.205, 91.213, 135.183, and 136.11 have been met.

(3) For the helicopters identified in paragraphs (g)(1)(vi)(A) through (E) of this AD, as a result of the actions required by the introductory text of paragraph (g)(1)(vi) of this AD, if the pull force is greater than 25 lbf (111.2N), before further flight, repair the cable installation, or deactivate and placard the emergency float system as inoperative in accordance with FAA-approved procedures.

(4) For Robinson Helicopter Company Model R44 and R44 II helicopters identified in paragraph (c)(7) of this AD, within 36 months or at the next float inflation reservoir (reservoir) overhaul after the effective date of this AD, whichever occurs first, perform the requirements in paragraphs (g)(4)(i) and (ii) of this AD. Thereafter, within intervals not to exceed six months, repeat the actions required by paragraph (g)(4)(ii) of this AD.

(i) Remove cable P/N 644.7501 or P/N 644.7502 from service, as applicable, and replace with cable P/N 644.7503; and remove each reservoir P/N 644.7701 from service and replace with reservoir P/N 644.7702 or P/N 644.7703.

(ii) Inspect the pull force on the float activation handle in accordance with FAA-approved procedures. The threshold for this pull force inspection must not exceed 25 lbf (111.2N). If the pull cable installation fails the test (if the pull force is greater than 25 lbf (111.2N)), before further flight, repair the cable installation, or deactivate and placard the emergency float system as inoperative in accordance with FAA-approved procedures.

(5) As of the effective date of this AD, do not install reservoir P/N 644.7701 and cable P/N 644.7501 or reservoir P/N 644.7701 and cable P/N 644.7502 on any Robinson Helicopter Company Model R44 or R44 II helicopter.



**(h) Alternative Methods of Compliance (AMOCs)**

(1) The Manager, West Certification 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 West Certification Branch, send it to the attention of the person identified in paragraph (i) of this AD. Information may be emailed to: [AMOC@faa.gov](mailto:AMOC@faa.gov).

(2) 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.

**(i) Related Information**

For more information about this AD, contact Johann Magana, Aviation Safety Engineer, FAA, 3960 Paramount Boulevard, Lakewood, CA 90712; phone: (562) 627-5322; email: [johann.magana@faa.gov](mailto:johann.magana@faa.gov).

**(j) Material Incorporated by Reference**

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

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

(i) DART Aerospace Operation Instructional Manual for General Pull Cable Rigging and Testing Procedure, Revision B, dated May 12, 2023.

(ii) DART Aerospace Service Bulletin (SB) No. SB2020-09, Revision A, dated March 16, 2021.

(iii) DART Aerospace SB No. SB2021-01, Revision A, dated December 28, 2021.

(iv) DART Aerospace SB No. SB2021-02, dated April 30, 2021.

(v) DART Aerospace SB No. SB2021-03, dated June 30, 2021.

(vi) DART Aerospace SB No. SB2022-01, dated March 14, 2022.

(3) For material identified in this AD, contact Dart Aerospace, LTD., 1270 Aberdeen Street, Hawkesbury, ON, K6A 1K7, Canada; phone: 1-613-632-5200; fax: 1-613-632-5246; website: [dartaero.com](http://dartaero.com).

(4) You may view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Parkway, Room 6N-321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222-5110.

(5) You may view this material at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, visit [www.archives.gov/federal-register/cfr/ibr-locations](http://www.archives.gov/federal-register/cfr/ibr-locations) or email [fr.inspection@nara.gov](mailto:fr.inspection@nara.gov).

Issued on October 28, 2024.

**Victor Wicklund,**

*Deputy Director, Compliance & Airworthiness Division, Aircraft Certification Service.*

[FR Doc. 2024-25390 Filed 10-30-24; 8:45 am]

**BILLING CODE 4910-13-P**

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 39**

[Docket No. FAA-2024-1695; Project Identifier AD-2023-00783-E; Amendment 39-22869; AD 2024-21-02]

**RIN 2120-AA64**

**Airworthiness Directives; Lycoming Engines**

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

**ACTION:** Final rule.

**SUMMARY:** The FAA is adopting a new airworthiness directive (AD) for Lycoming Engines (Lycoming) model engines that have a certain connecting rod assemblies installed. This AD was prompted by several reports of connecting rod failures, which resulted in uncontained engine failure and in-flight shutdowns (IFSDs). This AD requires repetitive oil inspections for bronze metal particulates and, if found, additional inspections of the connecting rod bushings for damage, proper fit, movement, and wear, and replacement if necessary. As terminating action to the connecting rod bushing inspections, this AD requires replacement of the connecting rod bushings with parts eligible for installation. The FAA is issuing this AD to address the unsafe condition on these products.

**DATES:** This AD is effective December 5, 2024.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of December 5, 2024.

**ADDRESSES:**

**AD Docket:** You may examine the AD docket at [regulations.gov](http://regulations.gov) under Docket No. FAA-2024-1695; 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, any comments received, and other information. The address for Docket Operations 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.

**Material Incorporated by Reference:**

- For Lycoming material identified in this AD, contact Lycoming Engines, 652 Oliver Street, Williamsport, PA 17701; phone: (800) 258-3279; website: [lycoming.com/contact/knowledge-base/publications](http://lycoming.com/contact/knowledge-base/publications).

- You may view this material at the FAA, Airworthiness Products Section,

Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222-5110. It is also available at [regulations.gov](http://regulations.gov) under Docket No. FAA-2024-1695.

**FOR FURTHER INFORMATION CONTACT:**

James Delisio, Aviation Safety Engineer, FAA, 1701 Columbia Avenue, College Park, GA 30337; phone: (516) 228-7321; email: [james.delisio@faa.gov](mailto:james.delisio@faa.gov).

**SUPPLEMENTARY INFORMATION:****Background**

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to Lycoming model engines that have certain connecting rod assemblies installed. The NPRM published in the **Federal Register** on June 28, 2024 (89 FR 53911). The NPRM was prompted by several reports of connecting rod failures, which resulted in uncontained engine failure and IFSDs, and a manufacturer investigation where it was determined that affected connecting rod small end bushings may be installed on additional populations of Lycoming engines. The manufacturer also determined that degradation of the connecting rod small end bushings is detectable during oil change inspections. In the NPRM, the FAA proposed to require repetitive oil inspections for bronze metal particulates and, if found, additional inspections of the connecting rod bushings for damage (e.g. deterioration, missing metal), proper fit, movement, and wear, and replacement if necessary. As terminating action to the connecting rod bushing inspections, the NPRM also proposed to require replacement of the connecting rod bushings with parts eligible for installation. The FAA is issuing this AD to address the unsafe condition on these products.

**Discussion of Final Airworthiness Directive****Comments**

The FAA received one comment from Aeroclub de Columbia. The following presents the comment received on the NPRM and the FAA's response to the comment.

**Request To Clarify Scheduling of Inspections**

Aeroclub de Columbia requested that the FAA confirm whether the recurrent inspections required by paragraph (g) of the proposed AD should also be scheduled monthly for aircraft in 14 CFR part 91 (non-commercial) operations. Aeroclub de Columbia noted



that Lycoming Service Bulletin 480F suggests changing the oil every 50 hours or every 4 months, but several aircraft maintenance manuals specify oil replacement every 50 hours without a calendar time restriction.

To clarify, this AD does not define or mandate the frequency of oil changes after the initial oil change. Subsequent oil changes are part of the engine's regular maintenance program, therefore the recurring frequency is outside the scope of this AD. Although repetitive inspections are required during this regular maintenance interval, they are tied to the operator's oil change frequency and that frequency is not being defined by this AD. The FAA did not change this AD as a result of this comment.

**Conclusion**

The FAA reviewed the relevant data, considered any comments received, and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on these products. Except for minor editorial changes, and any other changes described previously, this AD is adopted as proposed in the NPRM. None of the changes will increase the economic burden on any operator.

**Material Incorporated by Reference Under 1 CFR Part 51**

The FAA reviewed Lycoming Mandatory Service Bulletin No. 630A, dated June 13, 2017, which specifies

procedures for inspection of the connecting rod bushings for damage, proper fit, movement, and wear. This material 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.

**Costs of Compliance**

The FAA estimates that this AD affects 16,000 engines installed on airplanes of U.S. registry.

The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS				
Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspect oil .....	2 work-hours × \$85 per hour = \$170 .....	\$65	\$235	\$3,760,000
Inspect connecting rod bushings .....	1 work-hour × \$85 per hour = \$85 .....	0	85	1,360,000
Replace connecting rod bushings (per bushing)	4.5 work-hours × \$85 per hour = \$382 .....	380	762	12,192,000

**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.

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

**Regulatory Findings**

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) Will not affect intrastate aviation in Alaska, and

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

**List of Subjects in 14 CFR Part 39**

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

**The 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:

**2024–21–02 Lycoming Engines:**  
Amendment 39–22869; Docket No. FAA–2024–1695; Project Identifier AD–2023–00783–E.

**(a) Effective Date**

This airworthiness directive (AD) is effective December 5, 2024.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to Lycoming Engines (Lycoming) model engines that have an affected part and part number (P/N) installed and are assembled within the ship date range, as specified in Table 1 to paragraph (c) of this AD.

TABLE 1 TO PARAGRAPH (C)—AFFECTED P/NS

P/N	Affected part	Ship date range
LW–13923 .....	Connecting Rod Bushing .....	01/30/2009–11/17/2015
LW–11750 .....	Connecting Rod Assembly .....	01/30/2009–11/19/2015
78030 .....	Connecting Rod Assembly .....	01/30/2009–03/31/2016
LW–19332 .....	Connecting Rod Assembly .....	01/30/2009–01/03/2016
LW–13865 .....	Connecting Rod Assembly .....	01/30/2009–02/14/2017

TABLE 1 TO PARAGRAPH (c)—AFFECTED P/NS—Continued

P/N	Affected part	Ship date range
77450 .....	Connecting Rod Assembly .....	01/30/2009–02/14/2017
LW-13422 .....	Connecting Rod Assembly .....	01/30/2009–02/14/2017
LW-13937 .....	Connecting Rod Assembly .....	01/30/2009–02/14/2017
LW-15288 .....	Connecting Rod Assembly .....	01/30/2009–02/14/2017

**Note 1 to paragraph (c):** The affected parts are known to be installed on Lycoming Model AEIO-320 series, AEIO-360 series, AEIO-390 series, AEIO-540 series, AEIO-580-B1A, AIO-320 series, AIO-360 series, HIO-360 series, HIO-390-A1A, HIO-540-A1A, HO-360 series, IO-320 series, IO-360 series, IO-390 series, IO-540 series, IVO-360-A1A, IVO-540-A1A, LHIO-360 series, LIO-320 series, LIO-360 series, LO-360 series, LTIO-540 series, LTO-360 series, O-233-A1, O-235 series, O-320 series, O-340 series, O-360 series, O-435 series, O-540 series, SO-580 series, TEO-540 series, TIGO-541 series, TIO-360 series, TIO-540 series, TIO-541 series, TIVO-540-A2A, TO-360 series, TVO-435 series, TVO-540-A1A, VO-360 series, VO-435 series, VO-540 series, and VSO-580-A1A engines.

**(d) Subject**

Joint Aircraft System Component (JASC) Code 8500, Engine (Reciprocating).

**(e) Unsafe Condition**

This AD was prompted by several reports of connecting rod failures resulting in uncontained engine failure and in-flight shutdowns (IFSDs). The FAA is issuing this AD to prevent connecting rod failure. The unsafe condition, if not addressed, could result in engine failure, an IFSD, and loss of control of the aircraft.

**(f) Compliance**

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

**(g) Required Actions**

(1) At the next oil change or within 4 months after the effective date of this AD, whichever occurs first, and thereafter at every oil change until the bushing replacement required by either paragraph (g)(3) or (4) of this AD is done, perform a visual inspection of the engine oil filter, oil pressure screen, and oil suction screen (depending on the engine configuration) for bronze metal particulates. The actions required by this paragraph may be performed by the owner/operator (pilot) holding at least a private pilot certificate and must be entered into the aircraft records showing compliance with this AD in accordance with 14 CFR 43.9(a) and 91.417(a)(2)(v). The record must be maintained as required by 14 CFR 91.417, 121.380, or 135.439.

**Note 2 to paragraph (g)(1):** Guidance for engine oil filter, oil pressure screen, and oil suction screen inspection instructions and identification of metallic solids may be found in Lycoming Mandatory Service Bulletin No. (MSB) 480F, dated May 25, 2017 (Lycoming MSB 480F).

(2) If, during any inspection required by paragraph (g)(1) of this AD, any bronze metal particulates are found and the source is identified as the connecting rod bushings, before further flight, inspect all affected connecting rod bushings for damage (e.g. deterioration, missing metal), proper fit, movement, and wear in accordance with “Connecting Rod Bushing Inspection,” of Lycoming MSB 630A, dated June 13, 2017.

**Note 3 to paragraph (g)(2):** Guidance for identifying the source of metallic contamination may be found in Table 3 of Lycoming MSB 480F.

(3) If the connecting rod bushings fail any inspection required by paragraph (g)(2) of this AD, before further flight, replace the connecting rod bushings with parts eligible for installation. This terminates the repetitive inspection required by paragraph (g)(1) of this AD.

(4) At the next engine overhaul, replace the connecting rod bushings with parts eligible for installation. This terminates the repetitive inspection required by paragraph (g)(1) of this AD.

**(h) Definition**

For the purpose of this AD, a “part eligible for installation” is any connecting rod bushing having P/N 01K28983.

**(i) Credit for Previous Actions**

You may take credit for the actions required by paragraph (g)(1) of this AD if you performed those actions before the effective date of this AD using Lycoming MSB 480F.

**(j) Alternative Methods of Compliance (AMOCs)**

(1) The Manager, East Certification 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 branch office, send it to the attention of the person identified in paragraph (k)(1) of this AD and email to: [9-avs-nyaco-cos@faa.gov](mailto:9-avs-nyaco-cos@faa.gov).

(2) 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.

**(k) Additional Information**

(1) For more information about this AD, contact James Delisio, Aviation Safety Engineer, FAA, 1701 Columbia Avenue, College Park, GA 30337; phone: (516) 228-7321; email: [james.delisio@faa.gov](mailto:james.delisio@faa.gov).

(2) Service information identified in this AD that is not incorporated by reference is

available at the address specified in paragraph (l)(3) of this AD.

**(l) Material Incorporated by Reference**

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

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

(i) Lycoming Engines Mandatory Service Bulletin No. 630A, dated June 13, 2017.

(ii) [Reserved]

(3) For Lycoming Engines material identified in this AD, contact Lycoming Engines, 652 Oliver Street, Williamsport, PA 17701; phone: (800) 258-3279; website: [lycoming.com/contact/knowledge-base/publications](http://lycoming.com/contact/knowledge-base/publications).

(4) You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222-5110.

(5) You may view this material at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, visit [www.archives.gov/federal-register/cfr/ibr-locations](http://www.archives.gov/federal-register/cfr/ibr-locations) or email [fr.inspection@nara.gov](mailto:fr.inspection@nara.gov).

Issued on October 28, 2024.

**Victor Wicklund,**

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**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 105**

[Docket No. USCG–2022–0052]

**RIN 1625–AC80**

**TWIC—Reader Requirements; Second Delay of Effective Date**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is further delaying the effective date for certain facilities affected by the final rule entitled “Transportation Worker Identification Credential (TWIC)—Reader Requirements,” published in the

**Federal Register** on August 23, 2016. On March 9, 2020, the Coast Guard published a rule, delaying the implementation date to May 8, 2023. In December 2022, Congress statutorily extended the earliest implementation to no sooner than May 8, 2026. With this final rule, we are delaying the implementation date for certain facilities to May 8, 2029. This rule will not affect facilities receiving vessels certificated to carry more than 1,000 passengers.

**DATES:** This final rule is effective December 2, 2024.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to [www.regulations.gov](http://www.regulations.gov), type USCG–2022–0052 in the search box and click “Search.” Next, in the Document Type column, select “Supporting & Related Material.”

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#### I. Abbreviations

- 2006 NPRM “Transportation Worker Identification Credential (TWIC) Implementation in the Maritime Sector; Hazardous Materials Endorsement for a Commercial Driver’s License” notice of proposed rulemaking published May 22, 2006
- 2007 final rule “Transportation Worker Identification Credential (TWIC) Implementation in the Maritime Sector; Hazardous Materials Endorsement for a

- Commercial Driver’s License” final rule published January 25, 2007
- 2016 TWIC Reader final rule
- “Transportation Worker Identification Credential (TWIC)-Reader Requirements” final rule published August 23, 2016
- 2020 TWIC Reader Delay final rule “TWIC-Reader Requirements; Delay of Effective Date” final rule published March 9, 2020
- 2022 Second Reader Delay NPRM
- “Transportation Worker Identification Credential (TWIC)-Reader Requirements; Second Delay of Effective Date” notice of proposed rulemaking, published Dec. 6, 2022
- 2023 Authorization Act James M. Inhofe National Defense Authorization Act for Fiscal Year 2023
- 2023 Conforming Amendment
- “Transportation Worker Identification Credential—Facility Reader Requirement; Conforming Amendment” final rule, conforming amendments published April 17, 2023
- 2023 TWIC Reader Delay rule “TWIC—Reader Requirements; Second Delay of Effective Date” final rule published October 31, 2024.
- ANPRM Advance notice of proposed rulemaking
- BEA U.S. Bureau of Economic Analysis
- BLS Bureau of Labor Statistics
- CAP Corrective Action Plan
- CDC Certain dangerous cargoes
- CFR Code of Federal Regulations
- DHS Department of Homeland Security
- FR Federal Register
- GDP Gross Domestic Product
- HSOAC Homeland Security Operational Analysis Center
- MSRAM Maritime Security Risk Analysis Model
- MTSA Maritime Transportation Security Act of 2002
- NIPA National Income and Product Accounts
- NPRM Notice of proposed rulemaking
- OMB Office of Management and Budget
- PIN Personal identification number
- Pre-CA Pre-Conforming Amendment
- RA Regulatory Analysis
- SAFE Port Act Security and Accountability for Every Port Act of 2006
- § Section
- TSA Transportation Security Administration
- TSI Transportation security incident
- TWIC Transportation Worker Identification Credential
- U.S.C. United States Code

#### II. Basis, Purpose, and Regulatory History

Pursuant to the Maritime Transportation Security Act of 2002 (MTSA),<sup>1</sup> and in accordance with the Security and Accountability for Every Port Act of 2006 (SAFE Port Act),<sup>2</sup> the electronic inspection of Transportation Worker Identification Credentials

(TWICs) is required inside secure areas on certain vessels and facilities in the United States. Specifically, the SAFE Port Act requires that the Secretary put into effect regulations that require the deployment of electronic transportation security card readers.<sup>3</sup> To implement this requirement in an effective manner, the Coast Guard initiated a series of regulatory actions, updating its facility and vessel plan requirements based on 46 U.S.C. 70103, to implement electronic TWIC inspections at certain high-risk vessels and facilities regulated under MTSA.<sup>4</sup>

On May 22, 2006, the Coast Guard and the Transportation Security Administration (TSA) jointly published a notice of proposed rulemaking (NPRM) titled “Transportation Worker Identification Credential (TWIC) Implementation in the Maritime Sector; Hazardous Materials Endorsement for a Commercial Driver’s License” (“2006 NPRM”).<sup>5</sup> After considering comments on the 2006 NPRM, the Coast Guard and TSA published the final rule on January 25, 2007, also titled “Transportation Worker Identification Credential (TWIC) Implementation in the Maritime Sector; Hazardous Materials Endorsement for a Commercial Driver’s License” (“2007 final rule”).<sup>6</sup> The 2007 final rule mandated that all persons allowed unescorted access to secure areas in MTSA-regulated vessels and facilities were required to possess a TWIC card. The rule did not mandate that a TWIC card be read with an electronic reader. The card could be verified by visual inspection alone, without making use of the electronic security features built into the card.

Although the 2006 NPRM proposed certain TWIC reader requirements, after reviewing the public comments, the Coast Guard and TSA decided not to include those proposed requirements in the 2007 final rule. Instead, we addressed them in a separate rulemaking, discussed below, and conducted a pilot program to address the feasibility of reader requirements before issuing another final rule. For a detailed discussion of the public comments to the 2006 NPRM, and our responses to them, please refer to the 2007 final rule.

On March 27, 2009, the Coast Guard published an advance notice of proposed rulemaking (ANPRM) on the topic of TWIC reader requirements, “Transportation Worker Identification

<sup>1</sup> See Sec. 102 of Public Law 107–295 (November 25, 2002), codified as 46 United States Code (U.S.C.) 70105.

<sup>2</sup> See Sec. 104 of Public Law 109–347 (October 13, 2006).

<sup>3</sup> See 46 U.S.C. 70105(k)(3).

<sup>4</sup> See Sec. 102 of Public Law 107–295 (November 25, 2002) (Maritime transportation security plans).

<sup>5</sup> 71 FR 29395.

<sup>6</sup> 72 FR 3491.

Credential (TWIC)-Reader Requirements.”<sup>7</sup> The ANPRM discussed dividing vessels and facilities into three “risk groups”—Risk Group A for high-risk vessels and facilities, Risk Group B for medium-risk vessels and facilities, and Risk Group C for low-risk vessels and facilities. The ANPRM also considered different electronic inspection requirements for Risk Groups A and B, and no electronic inspection requirements for Risk Group C.

On March 22, 2013, we published an NPRM, “Transportation Worker Identification Credential (TWIC)-Reader Requirements”<sup>8</sup> that proposed the three risk groups (A, B, and C), but limited the proposed electronic TWIC inspection requirements to Risk Group A vessels and facilities only.

On August 23, 2016, we published a final rule titled “Transportation Worker Identification Credential (TWIC)—Reader Requirements”<sup>9</sup> (“2016 TWIC Reader final rule”) that eliminated the three risk group structure and required that high-risk vessels and facilities (still referred to as Risk Group A) conduct electronic TWIC inspections for all personnel seeking unescorted access to secure areas of the vessel or facility. Risk Group A vessels and facilities are defined in title 33 of the Code of Federal Regulations (CFR), §§ 104.263, 105.253, and 106.258.

Congress also passed several laws that impacted implementation of the TWIC reader program. On December 16, 2016, the President signed the bill titled “Transportation Security Card Program Assessment.”<sup>10</sup> This law required the Secretary of the Department of Homeland Security (DHS) to commission a report reviewing the security value of the TWIC program by (1) evaluating the extent to which the TWIC program addresses known or likely security risks in the maritime and port environments; (2) evaluating the potential for a non-biometric credential alternative; (3) identifying the technology, business process, and operational impact of the TWIC card and readers in maritime and port environments; (4) assessing the costs and benefits of the TWIC program, as implemented; and (5) evaluating the extent to which DHS has addressed the deficiencies of the TWIC program previously identified by the Government Accountability Office and the DHS Office of the Inspector General.

On May 15, 2017, the Coast Guard received a petition for rulemaking

requesting that it revise the 2016 TWIC Reader final rule and impose electronic TWIC inspection requirements on only those vessels and facilities that engage in the maritime transfer of certain dangerous cargoes (CDC).<sup>11</sup>

On June 22, 2018, we published a second NPRM, “TWIC-Reader Requirements; Delay of Effective Date”<sup>12</sup> which proposed delaying the implementation of the 2016 TWIC Reader final rule until August 23, 2021, for two categories of facilities: (1) facilities that handle CDC in bulk, but do not transfer these cargoes from or to a vessel; and (2) facilities that receive vessels carrying CDC in bulk, but do not, during that vessel-to-facility interface, transfer these bulk cargoes from or to those vessels.

On August 2, 2018, the President signed the “Transportation Worker Identification Credential Accountability Act of 2018,”<sup>13</sup> which prohibited the Coast Guard from implementing the 2016 TWIC Reader final rule until at least 60 days after the Coast Guard submits the report on the security value of the TWIC program to Congress, as required by the 2016 bill, “Transportation Security Card Program Assessment.”<sup>14</sup>

On March 9, 2020, the Coast Guard published a final rule titled “TWIC-Reader Requirements; Delay of Effective Date”<sup>15</sup> (“2020 TWIC Reader Delay final rule”). The 2020 TWIC Reader Delay final rule extended the effective date of the 2016 TWIC Reader final rule, only for Risk Group A facilities that handle CDC in bulk, until May 8, 2023.<sup>16</sup> The implementation date for facilities designated as Risk Group A, because they receive vessels certificated to carry more than 1,000 passengers, remained unchanged. The 2016 TWIC Reader final rule was implemented on June 8, 2020. However, the Coast Guard delayed enforcing this regulation until January 1, 2022, because of the global COVID-19 pandemic.

<sup>11</sup> See docket number USCG–2017–0447, available at <https://www.regulations.gov> (last visited 04/28/2023).

<sup>12</sup> 83 FR 29067.

<sup>13</sup> See section 2 of Public Law 115–230, 132 Stat. 1631.

<sup>14</sup> Public Law 114–278, 130 Stat. 1410. The report was submitted in August 2019.

<sup>15</sup> 85 FR 13943.

<sup>16</sup> While the NPRM proposed limiting the delay only to those facilities that handle CDC in bulk, but do not transfer it from or to a vessel, and facilities that receive vessels that carry bulk CDC but do not transfer bulk CDC from or to the vessel, after consideration of public comments, the 2020 TWIC Reader Delay final rule delayed implementation for all facilities that handle bulk CDC and facilities that receive vessels carrying CDC, including facilities that transfer bulk CDC from or to a vessel.

In 2020, the Coast Guard commissioned the Homeland Security Operational Analysis Center (HSOAC)—operated by the RAND Corporation—to conduct an analysis. The purpose of the analysis was to (1) identify the population of facilities handling CDC impacted by the 2016 TWIC Reader final rule; (2) develop a risk-consequence analysis for these facilities; and (3) conduct a benefit-cost analysis based on the information collected and analyzed during this subsequent study. The Coast Guard received the RAND Corporation’s analysis on July 29, 2022, and is currently evaluating the options for implementing the 2016 TWIC Reader final rule. The 2022 RAND Corporation’s analysis is included in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

While we evaluate the HSOAC analysis, the Coast Guard is continuing to delay the original rule’s implementation with this final rule to avoid the 2016 TWIC Reader final rule going into effect. We are delaying that rule’s implementation for three categories of facilities: (1) facilities that handle CDC in bulk but do not transfer those cargoes from or to a vessel; (2) facilities that handle CDC in bulk and do transfer those cargoes from or to a vessel; and (3) facilities that receive vessels carrying CDC in bulk, but do not, during that vessel-to-facility interface, transfer those bulk cargoes from or to those vessels—to May 8, 2029, to avoid creating confusion and conflicts between the 2016 TWIC Reader final rule’s original requirements and the potential outcomes of the study. The 2016 TWIC Reader final rule remains in effect for facilities receiving vessels certificated to carry more than 1,000 passengers. This final rule does not affect those facilities.

On December 23, 2022, Congress enacted the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023 (“2023 Authorization Act”).<sup>17</sup> Section 11804 of the 2023 Authorization Act directs the Secretary of Homeland Security to not implement TWIC reader regulations for “covered facilities” before May 8, 2026. The 2023 Authorization Act identifies covered facilities as facilities that (1) handle CDC in bulk and transfer such cargoes from or to a vessel; (2) handle CDC in bulk but do not transfer it from or to a vessel; and (3) receive vessels carrying CDC in bulk but, during the vessel-to-facility interface, do not transfer it from or to the vessel. These three categories

<sup>7</sup> 74 FR 13360.

<sup>8</sup> 78 FR 17782.

<sup>9</sup> 81 FR 57652).

<sup>10</sup> Public Law 114–278, 130 Stat. 1410.

<sup>17</sup> Public Law 117–263, 136 Stat. 2395.

are identical to the facilities identified in 33 CFR 105.253(a)(2) through (4).

Two weeks before the 2023 Authorization Act was enacted, the Coast Guard published an NPRM titled “Transportation Worker Identification Credential (TWIC)-Reader Requirements; Second Delay of Effective Date.” (“2022 Second Reader Delay NPRM”)<sup>18</sup> In it, we proposed to change the implementation dates for the categories in § 105.253(a)(2) through (4) to May 8, 2026, and requested comments on whether we should extend the date as late as May 8, 2029.

On April 17, 2023, consistent with the 2023 Authorization Act, the Coast Guard published the “Transportation Worker Identification Credential—Facility Reader Requirement; Conforming Amendment” (“2023 Conforming Amendment”), which changed the implementation dates in 33 CFR 105.253(a)(2) through (4) from May 8, 2023, to May 8, 2026.<sup>19</sup> The 2023 Conforming Amendment aligned Coast Guard regulations with the Congressionally mandated minimum delay for implementation of TWIC readers for the covered facilities.

### III. Background

The 2016 TWIC Reader final rule established electronic TWIC reader regulations for certain high-risk vessels and MTSA-regulated facilities. Shortly after the 2016 TWIC Reader final rule was published, the chemical industry expressed concern that the final rule significantly expanded the scope of the 2013 NPRM for that rulemaking<sup>20</sup> and requested that the Coast Guard narrow the classes of chemical facilities that would be subject to the enhanced security requirements. An industry association representing terminal companies nationwide then sued DHS in 2017, claiming that the 2016 TWIC Reader final rule violated the Administrative Procedure Act.<sup>21</sup> The court dismissed the action, holding that the issue was not ripe for adjudication, because Congress passed legislation delaying the implementation of the final rule, and there was a likelihood that Congress or the Coast Guard might amend or replace the regulation.<sup>22</sup>

In June 2020, DHS published the Coast Guard’s corrective action plan (CAP) titled “Corrective Action Plan from the Assessment of the Risk Mitigation Value of the Transportation

Worker Identification Credential.”<sup>23</sup>

The CAP identified the need to conduct a risk analysis over the next 3 years to identify all facilities handling CDC and to analyze the need for TWIC readers.

In September 2020, the Coast Guard commissioned the HSOAC, operated by the RAND Corporation, to conduct an analysis to identify the population of facilities handling CDC impacted by the 2016 TWIC Reader final rule, develop a risk-consequence analysis for these facilities, and conduct a benefit-cost analysis.

In response to the 2023 Authorization Act mandate discussed previously, the Coast Guard published the 2023 Conforming Amendment on April 17, 2023, which changed the implementation dates in 33 CFR 105.253(a)(2) through (4) from May 8, 2023, to May 8, 2026.<sup>24</sup>

### IV. Discussion of Comments

In response to the 2022 Second Reader Delay NPRM, which proposed a delay of 3, 4, 5, or 6 years, the Coast Guard received five public comments, two of which were duplicate submissions.<sup>25</sup> All commenters supported the Coast Guard’s proposal to delay the implementation of the TWIC reader rule. Additionally, all commenters generally supported a delay of 6 years.

All comments the Coast Guard received mentioned the 2022 RAND Corporation’s HSOAC analysis, titled “Risk-Informed Analysis of Transportation Worker Identification Credential (TWIC) Reader Requirements,” and either raised concerns or agreed with the conclusions found in the analysis.

The Coast Guard acknowledges receipt of the HSOAC analysis and appreciates the work that was performed to assemble the report. However, at present, we are not able to comment on the analysis, as we continue to evaluate its findings and recommendations.

While all commenters generally supported a delay of up to 6 years, one commenter thought the current 3-year delay could potentially be sufficient for the Coast Guard to review the RAND study, receive additional stakeholder input, and promulgate a new TWIC rule consistent with the new data. That commenter raised concerns about the uncertainty that a lengthy delay may

cause for industry, particularly for vendors involved in the production and maintenance of TWIC readers. Two commenters also suggested areas for further study, including on the potential costs of implementing TWIC readers, and proposed several ways of amending the 2016 TWIC Reader final rule in light of the RAND study findings. While we recognize the industry’s need for regulatory certainty and clarity, we believe that the delay to May 8, 2029, although potentially lengthening a period of uncertainty, is for the valid purpose of providing time to determine the best course of action with regard to the 2016 TWIC Reader final rule.

### V. Discussion of the Rule To Delay the Effective Date

In this final rule (also referred to as the “2023 TWIC Reader Delay rule”), we delay the effective date for certain facilities to May 8, 2029. The 2016 TWIC Reader final rule remains in effect for facilities receiving vessels certificated to carry more than 1,000 passengers, as this final rule does not affect those facilities.

This final rule delays implementing TWIC readers for (1) facilities that handle CDC in bulk but do not transfer those cargoes from or to a vessel; (2) facilities that handle CDC in bulk and do transfer those cargoes from or to a vessel; and (3) facilities that receive vessels carrying CDC in bulk, but do not, during that vessel-to-facility interface, transfer those bulk cargoes from or to those vessels. This delay allows the Coast Guard to accurately determine the affected population through the 2022 RAND Corporation’s HSOAC analysis and have further time to analyze the potential effectiveness of the TWIC reader requirement for these facilities. The HSOAC analysis assesses potential risks of CDC, including the types of CDC, population density within a certain distance of the facility, and other risk and consequence aspects.

After the Coast Guard completes its review of the HSOAC analysis, its conclusions, and its recommendations, we will determine whether any future rulemaking regarding the effective date of the 2016 TWIC Reader final rule is necessary. If such a rulemaking begins, industry will be able to provide further input through notice and comment rulemaking.

### VI. Regulatory Analyses

This final rule further delays the effective date for three types of facilities affected by the 2016 TWIC Reader final rule. Specifically, these are (1) facilities that handle CDC in bulk, but do not transfer those cargoes from or to a

<sup>18</sup> 87 FR 74563 (Dec. 6, 2022).

<sup>19</sup> 88 FR 23349.

<sup>20</sup> 78 FR 17781.

<sup>21</sup> *Int’l Liquid Terminals Ass’n v. U.S. Dep’t of Homeland Sec.*, No. 1:18-cv-00467, 2018 WL 8667001, at \*1 (E.D. Va., Sept. 17, 2018).

<sup>22</sup> *Id.* at \*2.

<sup>23</sup> A copy of the study is available in the docket for this final rule. *Corrective Action Plan from the Assessment of the Risk Mitigation Value of the Transportation Worker Identification Credential*; Report to Congress, June 2020.

<sup>24</sup> 88 FR 23349.

<sup>25</sup> 87 FR 74563.

vessel; (2) facilities that handle CDC in bulk and do transfer those cargoes from or to a vessel; and (3) facilities that receive vessels carrying CDC in bulk, but do not, during that vessel-to-facility interface, transfer those bulk cargoes from or to those vessels. Currently, the effective date for these facilities is May 8, 2026.

Below, we provide an updated regulatory analysis of the 2020 TWIC Reader Delay final rule that presents the impacts of delaying the effective date of the final rule for the three types of Risk Group A facilities defined in the preceding paragraph. For this updated analysis, we estimated the costs of this 2023 final rule, the costs of the 2023 Conforming Amendment, and the 2020 TWIC Reader Delay final rule, utilizing a 13-year analysis period in order to compare them to derive the cost savings for our baselines.

#### A. Regulatory Planning and Review

Executive Orders 12866 (Regulatory Planning and Review), as amended by Executive Order 14094 (Modernizing Regulatory Review), and affirmed by Executive Order 13563 (Improving Regulation and Regulatory Review) direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory

approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying costs and benefits, reducing costs, harmonizing rules, and promoting flexibility.

This final rule is a significant regulatory action under section 3(f) of Executive Order 12866, as amended by Executive Order 14094, but it is not significant under section 3(f)(1). Accordingly, the Office of Management and Budget (OMB) has reviewed this final rule. A Regulatory Analysis (RA) follows.

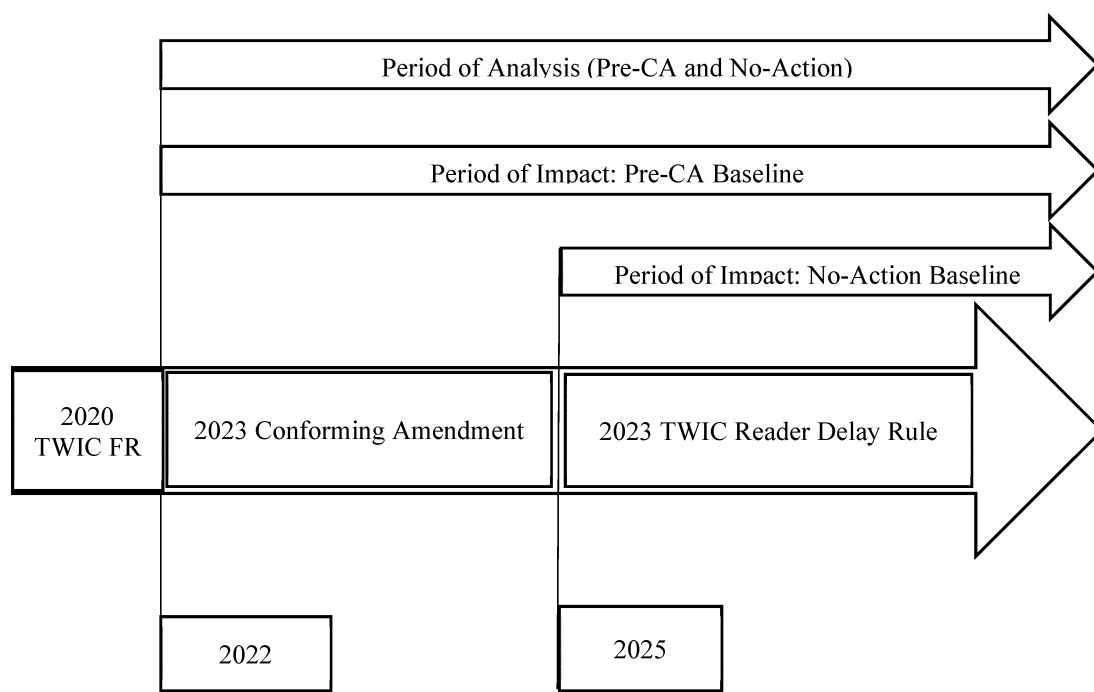
On the 17th of April 2023, the Coast Guard published the 2023 Conforming Amendment, altering the implementation date for TWIC readers in certain risk group A facilities from May 8, 2023, to May 8, 2026.<sup>26</sup> This final rule replaces the 2023 Conforming Amendment, which is currently in effect, and thus delays implementation until May 8, 2029. In order to provide a comprehensive estimate of the impacts of this rulemaking, the Coast Guard utilizes two baselines, a “Pre-Conforming Amendment” (“Pre-CA”) baseline and a “No Action” baseline.

The No Action baseline represents the current state without this rulemaking in

other words a world in which the requirements would go into effect in 2025. Quantifying costs against the No Action baseline includes only costs directly attributable to this rule and excludes any costs derived from the 2023 Conforming Amendment. The period of impact for costs for the No Action baseline is 2025 to 2034, and any change in cost or cost savings can be attributed to the difference between the expiration of the 2023 Conforming Amendment and this final rule.

The Pre-CA baseline captures costs across two different time horizons. First, it provides transparency regarding cost savings realized from 2022 to 2025 due to the 2023 Conforming Amendment. Second, it captures new cost savings between 2025 to 2034 that stem from this final rule. The entire period of impact for the Pre-CA baseline is 2022 to 2034. We compare the costs attributed to this baseline to the costs under the 2020 TWIC Reader Delay final rule, resulting in the outlined cost savings. We use an aligned period of analysis across both the No Action and Pre-CA baselines to provide a consistent comparison for our estimates. Therefore, the period of analysis for each baseline in our RA is 2022 to 2034. See Illustration 1 for a depiction of our baselines, periods of impact, and period of analysis.

**Illustration 1: Visual Depiction of Pre-CA and No Action Baselines**



<sup>26</sup> Document Citation: 88 FR 23349; Page: 23349–23350 (2 pages); CFR: 33 CFR 105; Agency/Docket

No. USCG–2023–0265 Document Number: 2023–08040; **Federal Register**: Transportation Worker

Identification Credential-Facility Reader Requirement; Conforming Amendment.

In accordance with OMB Circular A-4, we have prepared an accounting statement for each baseline showing the classification of impacts associated with both the Pre-CA and the No Action baselines. We have updated our dollar year to 2023. The No Action baseline can be seen in table 1A, while the Pre-CA baseline can be seen in table 1B.

TABLE 1A—OMB A-4 ACCOUNTING STATEMENT PERIOD OF ANALYSIS 2022–2034, 2023 TWIC READER DELAY RULE  
[No Action baseline]  
[2023 Dollars]

	Primary estimate		Source
Benefits			
Annualized monetized benefits .....	.....	7% 3%	RA.
Annualized quantified, but unmonetized, benefits .....	None.		RA.
Unquantifiable Benefits .....	For facilities with a delayed compliance, this final rule will postpone the benefits of electronic TWIC inspection.		RA.
Costs			
Annualized, monetized .....	.....	7% 3%	RA.
Costs (Dollars, Millions) .....	.....	3%	RA.
Annualized quantified, but unmonetized, costs .....	None.		RA.
Qualitative (un-quantified) cost savings .....	None.		RA.
Cost Savings			
Annualized monetized costs (Dollars, Millions) .....	(\$4.36)	7%	RA.
Annualized monetized costs (Dollars, Millions) .....	(\$3.14)	3%	RA.
Annualized quantified, but unmonetized, costs .....	None.		RA.
Qualitative (un-quantified) cost savings .....	This final rule delays the cost to retrieve or replace lost personal identification numbers (PINs) to use with TWICs for facilities with delayed implementation.		RA.
Transfers			
Annualized monetized transfers: “on budget” .....	Not calculated.		RA.
From whom to whom? .....			RA.
Annualized monetized transfers: “off-budget” .....	None.		
From whom to whom? .....	None.		
Miscellaneous Analyses/Category			
Effects on Tribal, State, and/or local governments .....	None.		
Effects on small businesses .....	This final rule does not have a significant economic impact on a substantial number of small entities.		RA.
Effects on wages .....	None.		
Effects on growth .....	No determination.		

TABLE 1B—OMB A-4 ACCOUNTING STATEMENT PERIOD OF ANALYSIS 2022–2034, 2023 TWIC READER DELAY RULE  
[Pre-CA baseline]  
[2023 Dollars]

	Primary estimate		Source
Benefits			
Annualized monetized benefits .....	.....	7% 3%	RA.
Annualized quantified, but unmonetized, benefits .....	None.		RA.
Unquantifiable Benefits .....	For facilities with a delayed compliance, this final rule will postpone the benefits of electronic TWIC inspection.		RA.
Costs			
Annualized, monetized .....	.....	7%	RA.
Costs (Dollars, Millions) .....	.....	3%	RA.
Annualized quantified, but unmonetized, costs .....	None.		RA.
Qualitative (un-quantified) cost savings .....	None.		RA.
Cost Savings			
Annualized monetized costs (Dollars, Millions) .....	(\$10.49)	7%	RA.
Annualized monetized costs (Dollars, Millions) .....	(\$7.55)	3%	RA.
Annualized quantified, but unmonetized, costs .....	None.		RA.
Qualitative (un-quantified) cost savings .....	This final rule delays the cost to retrieve or replace lost personal identification numbers (PINs) to use with TWICs for facilities with delayed implementation.		RA.
Transfers			
Annualized monetized transfers: “on budget” .....	Not calculated.		RA.
From whom to whom? .....			RA.
Annualized monetized transfers: “off-budget” .....	None.		
From whom to whom? .....	None.		
Miscellaneous Analyses/Category			
Effects on Tribal, State, and/or local governments .....	None.		
Effects on small businesses .....	This final rule does not have a significant economic impact on a substantial number of small entities.		RA.
Effects on wages .....	None.		
Effects on growth .....	No determination.		

This final rule further delays the effective date for certain facilities—that is, all facilities that handle CDC in bulk—affected by the 2016 TWIC Reader final rule. The current effective date of the 2016 TWIC Reader final rule for these facilities is May 8, 2026. This was established by the 2023 Conforming Amendment (88 FR 23349), which

changed the implementation dates in 33 CFR 105.253(a)(2) through (4) from May 8, 2023 to May 8, 2026. With this final rule, the 2023 TWIC Reader Delay rule, we are delaying the effective date for these facilities for 3 years, from the 2023 Conforming Amendment expiration date of May 8, 2026, to May 8, 2029.

This final rule delays the effective date of the 2020 TWIC Reader Delay final rule by an additional 3 years (until May 8, 2029) for (1) facilities that handle CDC in bulk but do not transfer it from or to a vessel; (2) facilities that handle CDC in bulk and do transfer those cargoes from or to a vessel; and (3) facilities that receive vessels carrying



bulk CDC, but, during that vessel-to-facility interface, do not transfer bulk CDC from or to those vessels. This final rule does not modify any of the regulatory requirements under the 2016 TWIC Reader final rule. We did not revise our fundamental methodologies for the calculation of the costs and cost savings from a delay in the final rule's effective date for certain facilities. Nor did we revise key assumptions from the 2016 TWIC Reader final rule's RA, as there were no comments from the public regarding the methodology during the NPRM for that rule.<sup>27</sup>

In the 2016 TWIC Reader final rule's RA, we estimated that 525 facilities and 1 vessel out of the MTSA-regulated entities (13,825 vessels and more than 3,270 facilities) would have to comply with that final rule's electronic TWIC inspection requirements, using the Maritime Security Risk Analysis Model's (MSRAM's) risk-based tiered approach.<sup>28</sup> Using data from MSRAM, we estimate that this final rule delays the implementation of the 2016 TWIC Reader final rule for 370 of the 525 affected Risk Group A facilities by 3 years, while the remaining 155 facilities and 1 vessel were required to implement the 2016 TWIC Reader final rule requirements by June 8, 2020. While the rule was implemented June 8, 2020, the Coast Guard delayed the enforcement of requirements until

January 1, 2022, due to the global COVID-19 pandemic. These 370 facilities are those that (1) handle bulk CDC, but do not transfer it from or to a vessel; (2) handle CDC in bulk and do transfer those cargoes from or to a vessel; and (3) receive vessels carrying bulk CDC but, during the vessel-to-facility interface, do not transfer the bulk CDC from or to those vessels. We did not include these facilities in our MSRAM risk analysis for the 2016 TWIC Reader final rule or in its RA, because we could not determine the number of those facilities at the time.

Varying estimates of the number of facilities that meet the criteria, and that fall into the covered population category, have been provided to the Coast Guard by the 2022 RAND Corporation's HSOAC analysis to improve the risk methodology and determine the new risk groups. The population numbers are currently under internal review while we assess an accurate final count of the population for future regulatory action. The final count of facilities will most likely be similar, but not identical to the cited 370 statistic. Therefore, the Coast Guard is using its discretion to delay the implementation of the 2016 TWIC Reader final rule on those facilities, pending a final facility count. Future regulatory analyses will update these estimates, once the Coast Guard has

assessed which CDC facilities fall within the level or risk that is deemed appropriate to require a TWIC reader. If such a rulemaking is begun, industry will be able to provide further input through notice and comment rulemaking.

We updated our final rule cost estimates in the NPRM preceding this final rule,<sup>29</sup> from 2012 to 2023, based on Gross Domestic Product (GDP) deflator data from the U.S. Bureau of Economic Analysis (BEA).<sup>30</sup> The GDP deflator is a measure of the change in price of domestic goods and services purchased by consumers, businesses, and the Government.

We do not anticipate any new costs to industry when this final rule is implemented, because this final rule does not change the applicability of the 2020 TWIC Reader Delay final rule or any subsequent amendments thereof. This final rule results in no other changes to the 2020 TWIC Reader Delay final rule. There is no impact to the 1 previously affected vessel and 155 MTSA facilities that complied with the 2020 TWIC Reader Delay final rule as of June 8, 2020. Total cost figures for each prior rule can be found in table 2A, which summarizes the costs of the 2020 TWIC Reader Delay final rule, the 2023 Conforming Amendment, and this final rule.

TABLE 2A—SUMMARY OF RULES  
[2023 Dollars]

Category	2020 TWIC Reader Delay final rule	2023 Conforming Amendment	2023 TWIC Reader Delay rule
Period of Impact & Analysis.	(X) Costs begin to be incurred by entities in 2022, and the analysis is from 2022–2034. Discounted costs diverge from the 2020 TWIC Reader Delay final rule due to modification of discounting schedule. Total costs differ due to extended period of analysis.	(Y) Costs begin to be incurred by entities in 2025, and the analysis is from 2022–2034.	(Z) Represents an additional delay of 3 years, effective post 2023 Conforming Amendment. Costs begin to be incurred by entities in 2028, and the analysis is from 2022–2034.

<sup>27</sup> The 2016 TWIC Reader final rule's RA is available in the docket; docket number USCG–2007–28915–0231.

<sup>28</sup> See table 2.8 on page 26 of the 2016 TWIC Reader final rule's regulatory analysis for the estimate of 525 facilities, and table 2.1 on page 23

for the estimate of 1 vessel (In the docket, number USCG–2007–28915–0231).

<sup>29</sup> 87 FR 74563.

<sup>30</sup> For consistency across regulatory analyses, we are using the annual Implicit Price Deflators for

Gross Domestic Product (the BEA's National Income and Product Accounts (NIPA) Table 1.1.9) values using 2023, accessed by the Coast Guard through the BEA's publicly available data sets. The NIPA tables can be found at [https://apps.bea.gov/iTable/index\\_nipa.cfm](https://apps.bea.gov/iTable/index_nipa.cfm) (last visited 04/28/2024).

TABLE 2A—SUMMARY OF RULES—Continued  
[2023 Dollars]

Category	2020 TWIC Reader Delay final rule	2023 Conforming Amendment	2023 TWIC Reader Delay rule
	(X)	(Y)	(Z)
Affected Population .....	370 facilities that handle bulk CDC, but do not transfer it from or to a vessel, and that handle bulk CDC and do transfer such cargoes from or to a vessel (to comply by May 8, 2023). The rule also applies to facilities that receive vessels carrying bulk CDC, but, during that vessel-to-facility interface, do not transfer bulk CDC from or to the vessel.	370 facilities that handle bulk CDC, but do not transfer it from or to a vessel, and that handle bulk CDC and do transfer such cargoes from or to a vessel (to comply by May 8, 2026). The rule also applies to facilities that receive vessels carrying bulk CDC, but, during that vessel-to-facility interface, do not transfer bulk CDC from or to the vessel.	370 facilities that handle bulk CDC, but do not transfer it from or to a vessel, and that handle bulk CDC and do transfer such cargoes from or to a vessel (to comply by May 8, 2029). The rule also applies to facilities that receive vessels carrying bulk CDC, but, during that vessel-to-facility interface, do not transfer bulk CDC from or to the vessel. However, the number of these facilities cannot be determined at this time. The number of these facilities is currently under review by the Coast Guard and, if warranted, will be published in a future NPRM, which would revise risk groups to comply by May 8, 2029.
Costs to Industry and Government (Dollars, millions, 7% discount rate). <i>Annualized.</i>	Industry: \$23.05 (annualized) ..... Government: \$0.008 (annualized) ..... Both: \$23.06 (annualized) .....	Industry: \$16.92 (annualized) ..... Government: \$0.008 (annualized) ..... Both: \$16.93 (annualized) .....	Industry: \$12.56 (annualized). Government: \$0.006 (annualized). Both: \$12.57 (annualized).
Costs to Industry and Government (Dollars, millions, 7% discount rate). <i>Over 13-year analysis period.</i>	Industry: \$192.63 (13-year) ..... Government: \$0.078 (13-year) ..... Both: \$192.71 (13-year) .....	Industry: \$141.42 (13-year) ..... Government: \$0.063 (13-year) ..... Both: \$141.48 (13-year) .....	Industry: \$104.98 (13-year). Government: \$0.052 (13-year). Both: \$105.03 (13-year).
Costs (Qualitative) .....	Time to retrieve or replace lost PINs for use with TWICs.	Delayed enhanced access control and security for the facilities with delayed implementation.	Delays enhanced access control and security for the facilities with delayed implementation.
Benefits (Qualitative) .....	Enhanced access control and security at U.S. maritime facilities and on board U.S.-flagged vessels.  Reduction of human error when checking identification and manning access points.	Time to retrieve or replace lost PINs for use with TWICs.  Reduction of human error when checking identification and manning access points.	This final rule delays the cost to retrieve or replace lost PINs for use with TWICs for facilities with delayed implementation.  Delays the reduction of human error when checking identification and manning access points for the facilities with delayed implementation.

This final rule results in cumulative cost savings to industry and to the Government of \$36.45 million (discounted at 7 percent) over a 13-year period of analysis (\$105.03 million–\$141.48 million). At a 7-percent

discount rate, we estimate the total annualized cost savings to be \$4.36 million (\$12.57 million–\$16.93 million). These numbers can be seen under the column for the No Action baseline in table 2B. Similarly, when accounting for

both the savings of the 2023 Conforming Amendment and this final rule, the total cost savings can be seen in the Pre-CA baseline in table 2B.

2B—SUMMARY OF COSTS (COST SAVINGS) FOR NO ACTION AND PRE-CA BASELINE

Total cost savings (2023 dollars, millions)	No Action baseline = Z – Y	Pre-CA baseline = Z – X
<i>Annualized (7% discount rate)</i> .....	Industry: (\$4.36) (annualized) Government: (\$0.001) (annualized) ..... Total: (\$4.36) (annualized) .....	Industry: (\$10.49) (annualized). Government: (\$0.003) (annualized). Total: (\$10.49) (annualized).
<i>13-Year (7% discount rate)</i> .....	Industry: (\$36.44) (13-year) Government: (\$0.01) (13-year) ..... Total: (\$36.45) (13-year) .....	Industry: (\$87.66) (13-year). Government: (\$0.02) (13-year). Total: (\$87.68) (13-year).
<i>Annualized (3% discount rate)</i> .....	Industry: (\$3.14) (annualized) Government: (\$0.001) (annualized) ..... Total: (\$3.14) (annualized) .....	Industry: (\$7.55) (annualized). Government: (\$0.001) (annualized). Total: (\$7.55) (annualized).
<i>13-Year (3% discount rate)</i> .....	Industry: (\$33.41) (13-year) Government: (\$0.01) (13-year) ..... Total: (\$33.41) (13-year) .....	Industry: (\$80.31) (13-year). Government: (\$0.01) (13-year). Total: (\$80.32) (13-year).

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

Methodology

Final Rule Costs Inflated to 2023 Dollars and Adjusted for Discounting

Although we have updated our analysis from the 2016 NPRM for this rulemaking to reflect newer inflation and population figures, we did not modify the methodology of our primary regulatory analyses.

We used an inflation factor from the annual GDP deflator data. We calculated the inflation factor of 1.312 by modifying the deflator base year to 2023 (GDP deflator = 100 at 2023 prices) and dividing the annual 2023 index number (100) by the annual 2012 index number (76.2). We then applied this inflation factor to the costs for vessels and additional costs, which include additional delay costs, travel costs, and the cost to replace TWIC readers that fail.

For facilities, we applied this inflation factor to the total cost-by-cost component, because this final rule applies to only some of these cost elements. Facility costs include capital costs, maintenance costs, and operational costs. Capital costs consist of the cost to purchase and install TWIC readers, as well as the cost to fully replace TWIC readers 5 years after the original installation. Maintenance costs account for the costs to maintain TWIC readers every year after the original installation. Operational costs include costs that occur only at the time of the TWIC reader installation, such as those for amending security plans, creating a recordkeeping system, and initial training. Operational costs also include ongoing costs, administrative duties, including downloading the canceled card list, and ongoing annual training.

For wages, we have updated rates used in the calculations of costs to the most recent available data for the labor category and industry. We obtained wages from the Bureau of Labor Statistics (BLS) Occupational Employment and Wage Estimates, and

then we calculated burdened wages (a wage's total cost to the employer) by utilizing the BLS Employer Costs of Employee Compensation multipliers relevant to the job type and industry.

Due to the extended timeframe of analysis, the total undiscounted costs for the 2023 TWIC Reader Delay rule have increased over those presented in the original publication. We have updated the discounting methodology for this rule, changing our base year for discounting to 2023; thus, the discounted totals presented for the 2020 TWIC Reader Delay final rule also diverge from the original publication.

Final Rule Costs

This final rule delays the effective date of the 2020 TWIC Reader delay final rule by an additional 3 years (until May 8, 2029) for 370 facilities that (1) handle bulk CDC but do not transfer it from or to a vessel; (2) facilities that handle CDC in bulk, and do transfer those cargoes from or to a vessel; and (3) an undetermined number of facilities that receive vessels carrying bulk CDC, but do not transfer it from or to the vessel during that vessel-to-facility interface. To allow for a consistent comparison between the baseline estimates and the costs of this rule, we maintain the assumption from the RA in the 2016 TWIC Reader final rule that 50 percent of facilities will comply for each of the 2 final years preceding the final implementation date. Therefore, for this final rule, we assume that 50 percent of facilities with a 3-year implementation delay will comply in May of Year 2028, and 50 percent of facilities with a 6-year implementation delay will comply in Year 2029. We maintain this assumption to provide a consistent comparison between the baseline cost estimates presented in the 2016 TWIC Reader final rule, and the costs of this final rule.

The costs are separated into three categories (undiscounted 2023 dollars):

(1) capital costs of which the initial average capital cost per facility will be \$322,410; (2) maintenance costs, of which the average annual cost incurred per facility for the first full year of operation following TWIC implementation, will be \$4,970; and (3) operational costs, which on average per facility is \$6,450 for the first year and, will be \$2,173 reoccurring from the second year on. The total undiscounted costs for the first year of operation, on average, per facility, will be the sum of the capital costs and operational costs totaling \$328,950. Ongoing annual costs for maintenance and operations will be \$7,143 (\$4,970 + \$2,173).

After the initial 5-year period of use, TWIC readers may need to be replaced. Our assumption is that all readers will need to be replaced at 5-year intervals, although it is likely that this will not be the case, and that only a percentage of readers will need replacement. The average cost per facility to replace its TWIC readers is \$5,248.

To estimate the capital costs in a given year, we multiplied the total input capital costs for all facilities by the percentage of facilities incurring costs each year. We estimated operational costs for periods after the first year in a similar manner, multiplying total operational costs by the percentage of facilities complying in a given year. Because maintenance costs are not incurred until the year after the TWIC readers are installed, we calculated the final rule maintenance costs each year by multiplying the total input costs for all facilities by the percentage of facilities complying in the previous year. For example, the first year of implementation costs (Year 2028 in table 3) are capital costs plus operational costs  $((\$322,410 + \$6,540) \times 185) = \$60,855,928$  (2023 dollars). Table 3 presents the total cost to facilities under this final rule, and the preceding rules.

TABLE 3—TOTAL COST FOR FACILITIES UNDER 2023 TWIC READER DELAY RULE 2023 CONFORMING AMENDMENT, AND 2020 TWIC READER DELAY FINAL RULE  
[Millions, 2023 dollars]

2023 TWIC Reader Delay Rule						
Year	Number of new facilities complying	Total number of facilities	Capital costs	Maintenance costs	Operational costs	Undiscounted total (A1)
2022 .....	0	0	\$0.00	\$0.00	\$0.00	\$0.00
2023 .....	0	0	0.00	0.00	0.00	0.00
2024 .....	0	0	0.00	0.00	0.00	0.00
2025 .....	0	0	0.00	0.00	0.00	0.00
2026 .....	0	0	0.00	0.00	0.00	0.00
2027 .....	0	0	0.00	0.00	0.00	0.00
2028 .....	185	185	59.65	0.00	1.21	60.86

TABLE 3—TOTAL COST FOR FACILITIES UNDER 2023 TWIC READER DELAY RULE 2023 CONFORMING AMENDMENT, AND 2020 TWIC READER DELAY FINAL RULE—Continued

[Millions, 2023 dollars]

Year						
2029 .....	185	370	59.65	0.92	1.61	62.18
2030 .....	0	370	0.00	1.84	0.80	2.64
2031 .....	0	370	0.00	1.84	0.80	2.64
2032 .....	0	370	0.00	1.84	0.80	2.64
2033 .....	0	370	9.19	1.84	0.80	11.84
2034 .....	0	370	9.19	1.84	0.80	11.84
<i>Total</i> .....			<i>137.68</i>	<i>10.11</i>	<i>6.84</i>	<i>154.64</i>

**2023 Conforming Amendment**

Year	Number of new facilities complying	Total number of facilities	Capital costs	Maintenance costs	Operational costs	Undiscounted total (A2)
2022 .....	0	0	\$0.00	\$0.00	\$0.00	\$0.00
2023 .....	0	0	0.00	0.00	0.00	0.00
2024 .....	0	0	0.00	0.00	0.00	0.00
2025 .....	185	185	59.65	0.00	1.21	60.86
2026 .....	185	370	59.65	0.92	1.61	62.18
2027 .....	0	370	0.00	1.84	0.80	2.64
2028 .....	0	370	0.00	1.84	0.80	2.64
2029 .....	0	370	0.00	1.84	0.80	2.64
2030 .....	0	370	9.19	1.84	0.80	11.84
2031 .....	0	370	9.19	1.84	0.80	11.84
2032 .....	0	370	0.00	1.84	0.80	2.64
2033 .....	0	370	0.00	1.84	0.80	2.64
2034 .....	0	370	0.00	1.84	0.80	2.64
<i>Total</i> .....			<i>137.68</i>	<i>15.63</i>	<i>9.25</i>	<i>162.57</i>

**2020 TWIC Reader Delay Final Rule \***

Year	Number of new facilities complying	Total number of facilities	Capital costs	Maintenance costs	Operational costs	Undiscounted total (A3)
2022 .....	185	185	59.65	0.00	1.21	60.86
2023 .....	185	370	59.65	0.92	1.61	62.18
2024 .....	0	370	0.00	1.84	0.80	2.64
2025 .....	0	370	0.00	1.84	0.80	2.64
2026 .....	0	370	0.00	1.84	0.80	2.64
2027 .....	0	370	9.19	1.84	0.80	11.84
2028 .....	0	370	9.19	1.84	0.80	11.84
2029 .....	0	370	0.00	1.84	0.80	2.64
2030 .....	0	370	0.00	1.84	0.80	2.64
2031 .....	0	370	0.00	1.84	0.80	2.64
2032 .....	0	370	9.19	1.84	0.80	11.84
2033 .....	0	370	9.19	1.84	0.80	11.84
2034 .....	0	370	0.00	1.84	0.80	2.64
<i>Total</i> .....			<i>156.07</i>	<i>21.15</i>	<i>11.67</i>	<i>188.88</i>

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

\* Discounted costs and cost savings totals of 2020 TWIC Reader delay final rule presented here diverge from numbers published in rule, due to discounting schedule change and analysis timeframe.

Table 4 summarizes the total costs to industry of this final rule in 2023 dollars. This final rule does not impact the compliance schedule for vessels; therefore, these costs remain

unchanged. We calculated the additional costs by multiplying the totals in table 3 by the percentage of facilities complying within a given year and phasing them in over 2 years. We

estimate the total costs to industry in this final rule to be \$104.98 million over 13 years, and for the annualized cost to industry to be \$12.56 million at a 7-percent discount rate.

TABLE 4—TOTAL INDUSTRY COST FOR 2023 TWIC READER DELAY RULE, 2023 CONFORMING AMENDMENT, AND 2020 TWIC READER DELAY FINAL RULE

[Millions, 2023 dollars]

Year	Facility (A1)	Vessel	Additional costs ~ (B1)	Undiscounted C1 = (A1 + B1)	7%	3%
<b>2023 TWIC Reader Delay Rule</b>						
2022 .....	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
2023 .....	0.00	0.00	0.00	0.00	0.00	0.00
2024 .....	0.00	0.00	0.00	0.00	0.00	0.00
2025 .....	0.00	0.00	0.00	0.00	0.00	0.00
2026 .....	0.00	0.00	0.00	0.00	0.00	0.00
2027 .....	0.00	0.00	0.00	0.00	0.00	0.00
2028 .....	60.86	0.00	2.78	63.63	39.63	51.74
2029 .....	62.18	0.00	5.56	67.73	39.42	53.47
2030 .....	2.64	0.00	5.56	8.20	4.46	6.28
2031 .....	2.64	0.00	5.56	8.20	4.17	6.10
2032 .....	2.64	0.00	5.56	8.20	3.90	5.92
2033 .....	11.84	0.00	3.77	15.61	6.93	10.95
2034 .....	11.84	0.00	3.77	15.61	6.48	10.63
<i>Total</i> .....	<i>154.64</i>	<i>0.00</i>	<i>32.54</i>	<i>187.18</i>	<i>104.98</i>	<i>145.09</i>
<i>Annualized</i> .....	.....	.....	.....	<i>14.40</i>	<i>12.56</i>	<i>13.64</i>
<b>2023 Conforming Amendment</b>						
Year	Facility (A2)	Vessel	Additional costs * (B2)	Undiscounted C2 = (A2 + B2)	7%	3%
2022 .....	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
2023 .....	0.00	0.00	0.00	0.00	0.00	\$0.00
2024 .....	0.00	0.00	0.00	0.00	0.00	0.00
2025 .....	60.86	0.00	2.78	63.63	48.55	56.54
2026 .....	62.18	0.00	5.56	67.73	48.29	58.43
2027 .....	2.64	0.00	5.56	8.20	5.46	6.87
2028 .....	2.64	0.00	5.56	8.20	5.11	6.67
2029 .....	2.64	0.00	5.56	8.20	4.77	6.47
2030 .....	11.84	0.00	5.56	17.39	9.46	13.33
2031 .....	11.84	0.00	5.56	17.39	8.84	12.94
2032 .....	2.64	0.00	5.56	8.20	3.90	5.92
2033 .....	2.64	0.00	5.56	8.20	3.64	5.75
2034 .....	2.64	0.00	5.56	8.20	3.40	5.58
<i>Total</i> .....	<i>162.57</i>	<i>0.00</i>	<i>52.78</i>	<i>215.35</i>	<i>141.42</i>	<i>178.50</i>
<i>Annualized</i> .....	.....	.....	.....	<i>16.57</i>	<i>16.92</i>	<i>16.78</i>
<b>2020 TWIC Reader Delay Final Rule *</b>						
Year	Facility (A3)	Vessel	Additional costs ~(B3)	Undiscounted C3 = (A3 + B3)	7%	3%
2022 .....	\$60.86	\$0.00	\$2.78	\$63.63	\$59.47	\$61.78
2023 .....	62.18	0.00	5.56	67.73	59.16	63.85
2024 .....	2.64	0.00	5.56	8.20	6.69	7.50
2025 .....	2.64	0.00	5.56	8.20	6.25	7.28
2026 .....	2.64	0.00	5.56	8.20	5.85	7.07
2027 .....	11.84	0.00	5.56	17.39	11.59	14.57
2028 .....	11.84	0.00	5.56	17.39	10.83	14.14
2029 .....	2.64	0.00	5.56	8.20	4.77	6.47
2030 .....	2.64	0.00	5.56	8.20	4.46	6.28
2031 .....	2.64	0.00	5.56	8.20	4.17	6.10
2032 .....	11.84	0.00	5.56	17.39	8.26	12.57
2033 .....	11.84	0.00	5.56	17.39	7.72	12.20
2034 .....	2.64	0.00	5.56	8.20	3.40	5.58
<i>Total</i> .....	<i>188.88</i>	<i>0.00</i>	<i>69.45</i>	<i>258.33</i>	<i>192.63</i>	<i>225.40</i>
<i>Annualized</i> .....	.....	.....	.....	<i>19.87</i>	<i>23.05</i>	<i>21.19</i>

\* These costs include additional delay, travel, and TWIC replacement costs due to TWIC failures.

~ Discounted costs and cost savings totals of 2020 TWIC Reader delay final rule presented here diverge from numbers published in rule, due to discounting schedule change and analysis timeframe.

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

Table 5A presents the estimated change in total costs to industry from this final rule further delaying the implementation of the 2020 TWIC Reader delay final rule by an additional 3 years (until May 8, 2029) for (1) facilities that handle bulk CDC but do not transfer it from or to a vessel; (2) facilities that handle CDC in bulk and

do transfer those cargoes from or to a vessel; and (3) facilities that receive vessels carrying bulk CDC, but do not transfer it from or to the vessel during that vessel-to-facility interface. The costs of this final rule have been compared to the costs displayed in tables 3 and 4 for the 2023 Conforming Amendment. The resulting difference is

what this final rule estimates as the cost savings to industry from this final rule's promulgation, represented by our No Action baseline. We estimate, at a 7-percent discount rate, that the annualized cost savings to industry to be \$4.36 million, and the total cost savings to be \$36.44 million over 13 years for our No Action baseline.

**TABLE 5A—TOTAL CHANGE TO INDUSTRY COSTS FROM THE 2023 TWIC READER DELAY RULE**

[No Action baseline]  
[Millions, 2023 dollars]

Year	Undiscounted (= C1 – C2)	7%	3%
<b>Change in Costs (No Action Baseline)</b>			
2022 .....	\$0.00	\$0.00	\$0.00
2023 .....	0.00	0.00	0.00
2024 .....	0.00	0.00	0.00
2025 .....	(63.63)	(48.55)	(56.54)
2026 .....	(67.73)	(48.29)	(58.43)
2027 .....	(8.20)	(5.46)	(6.87)
2028 .....	55.44	34.52	45.07
2029 .....	59.53	34.65	47.00
2030 .....	(9.19)	(5.00)	(7.05)
2031 .....	(9.19)	(4.67)	(6.84)
2032 .....	0.00	0.00	0.00
2033 .....	7.41	3.29	5.20
2034 .....	7.41	3.07	5.04
<i>Total</i> .....	(28.17)	(36.44)	(33.41)
<i>Annualized</i> .....		(4.36)	(3.14)

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

Table 5B presents the estimated change in total costs to industry between this final rule and the 2020 TWIC Reader Delay final rule, in addition to the already existing 3-year extension from the 2023 Conforming Amendment, for a total delay of 6 years.

The costs of this final rule have been compared to the updated values for the 2020 TWIC Reader Delay final rule, and the resulting difference is the cost saving estimates to industry from this final rule's promulgation. From the cumulative impacts of the 2023

Conforming Amendment and this final rule, we estimate an annualized cost savings to industry of \$10.49 million, for over 13 years at a 7-percent discount rate, for a total cost savings of \$87.66 million for our Pre-CA baseline.

**TABLE 5B—TOTAL CHANGE TO INDUSTRY COSTS FROM THE 2023 TWIC READER DELAY RULE**

[Pre-CA baseline]  
[Millions, 2023 dollars]

Year	Undiscounted (= C1 – C3)	7%	3%
<b>Change in Costs (Pre-CA Baseline)</b>			
2022 .....	(\$63.63)	(\$59.47)	(\$61.78)
2023 .....	(67.73)	(59.16)	(63.85)
2024 .....	(8.20)	(6.69)	(7.50)
2025 .....	(8.20)	(6.25)	(7.28)
2026 .....	(8.20)	(5.85)	(7.07)
2027 .....	(17.39)	(11.59)	(14.57)
2028 .....	46.24	28.80	37.60
2029 .....	59.53	34.65	47.00
2030 .....	0.00	0.00	0.00
2031 .....	0.00	0.00	0.00
2032 .....	(9.19)	(4.37)	(6.64)
2033 .....	(1.79)	(0.79)	(1.25)

TABLE 5B—TOTAL CHANGE TO INDUSTRY COSTS FROM THE 2023 TWIC READER DELAY RULE—Continued

[Pre-CA baseline]  
[Millions, 2023 dollars]

Year	Undiscounted (= C1 – C3)	7%	3%
2034 .....	7.41	3.07	5.04
<i>Total</i> .....	(71.15)	(87.66)	(80.31)
<i>Annualized</i> .....	.....	(10.49)	(7.55)

**Note:** Totals may not sum due to rounding.**Qualitative Costs**

We have provided a brief description of the qualitative costs in table 2A. This final rule delays the cost to retrieve or replace lost PINs for use with TWICs for the facilities with delayed implementation.

**Government Costs**

We expect that this final rule will generate a cost savings to the Government from delaying the review of the revised security plans for 370 Risk Group A facilities that (1) handle bulk CDC, but do not transfer it from or to a vessel; (2) handle CDC in bulk and do transfer those cargoes from or to a vessel; and (3) receive vessels carrying bulk CDC but, during the vessel-to-facility interface, do not transfer the bulk CDC from or to those vessels. There is no change in cost to the Government resulting from TWIC inspections, because inspections are already required under MTSA, and the TWIC reader

requirements do not modify these requirements. As such, there is no additional cost to the Government.

To estimate the cost to the Government, we followed the same approach as the industry cost analysis and adjusted the cost estimate presented in the 2016 TWIC Reader final rule's RA from 2012 dollars to 2023 dollars for non-wage inputs. For the Government analysis, we used the 2022 hourly standard in Government wage rate for an E-5 level staff member, \$58 per hour, from Commandant Instruction 7310.1W: Reimbursable Standard Rates, in place of the 2012 wage of \$49 per hour; these are the most current values that the Coast Guard has been cleared to use for the RA.<sup>31</sup> Due to the change in wage rates, we have included the changed values to the Government's cost schedules for all following tables. We followed the calculations outlined in the 2016 TWIC Reader final rule's RA to estimate an undiscounted cost to the

Government of \$42,920 in years 2028 and 2029 (\$58 × 4 hours per review × 185 plans), which would result from not extending the delay of the 2020 TWIC Reader delay final rule.

Table 6 presents the cost schedule under this final rule, the previous 2023 Conforming Amendment, and the 2020 TWIC Reader delay final rule. We estimated the annualized Government cost to be \$6,187 at a 7-percent discount rate, for a total of \$51,708 over 13 years, which can be seen under column group A. For each of these rules, costs accumulate over a 2-year period for an undiscounted cost of \$42,920, and, in the case of this final rule, occur for the years of 2028 and 2029. The undiscounted costs among all three estimates are the same, only differing in their discounting. To estimate Government costs in Year 2028 and Year 2029, we used the same approach as the above cost estimates.

TABLE 6—TOTAL GOVERNMENT COST UNDER THE 2023 TWIC READER DELAY RULE, 2023 CONFORMING AMENDMENT, AND 2020 TWIC READER DELAY FINAL RULE, FOR RISK GROUP A  
[2023 Dollars]

Year	2023 TWIC Reader Delay rule (A)			2023 Conforming Amendment (B)			2020 TWIC Reader Delay final rule * (C)		
	Total undiscounted (A1)	7%	3%	Total undiscounted (B1)	7%	3%	Total undiscounted (C1)	7%	3%
2022 .....	\$0	\$0	\$0	\$0	\$0	\$0	\$42,920	\$40,112	\$41,670
2023 .....	0	0	0	0	0	0	42,920	37,488	40,456
2024 .....	0	0	0	0	0	0	0	0	0
2025 .....	0	0	0	42,920	32,743	38,134	0	0	0
2026 .....	0	0	0	42,920	30,601	37,023	0	0	0
2027 .....	0	0	0	0	0	0	0	0	0
2028 .....	42,920	26,728	34,898	0	0	0	0	0	0
2029 .....	42,920	24,980	33,881	0	0	0	0	0	0
2030 .....	0	0	0	0	0	0	0	0	0
2031 .....	0	0	0	0	0	0	0	0	0
2032 .....	0	0	0	0	0	0	0	0	0
2033 .....	0	0	0	0	0	0	0	0	0
2034 .....	0	0	0	0	0	0	0	0	0
<i>Total</i> .....	85,840	51,708	68,779	85,840	63,345	75,157	85,840	77,600	82,126
<i>Annualized</i> .....	.....	6,187	6,467	.....	7,579	7,067	.....	9,285	7,722

\* Discounted costs and cost savings totals of 2020 TWIC Reader Delay final rule presented here diverge from numbers published previously in final rule, due to discounting schedule change and analysis timeframe.

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

<sup>31</sup> Because the Coast Guard is not delaying the implementation schedule for vessels, this final rule

has no impact on the costs associated with vessel security plans (having already gone into effect and

not included in this population); therefore, we did not include those costs in this RA.

Table 7 presents the estimated change in costs to the Government from delaying the implementation of the 2020 TWIC Reader Delay final rule by an additional 3 years (until May 8, 2029); this applies to (1) facilities that handle bulk CDC but do not transfer it from or to a vessel; (2) facilities that handle CDC

in bulk and do transfer those cargoes from or to a vessel; and (3) facilities that receive vessels carrying bulk CDC but do not transfer it from or to the vessel during that vessel-to-facility interface. The costs of this final rule have been compared to the costs under the 2023 Conforming Amendment. The resulting

difference is what we estimated as the cost savings to the Government from this final rule's promulgation. We estimated an annualized cost savings to the Government of \$1,392 and total cost savings of \$11,637, in 2023 dollars, at a 7-percent discount rate for our No Action baseline.

TABLE 7—TOTAL CHANGE (COST SAVINGS) TO GOVERNMENT COST FROM THE 2023 TWIC READER DELAY RULE  
[2023 Dollars]

Year	No Action baseline			Pre-CA baseline		
	Change in total undiscounted (= A1 – B1)	7%	3%	Change in total undiscounted (= A1 – C1)	7%	3%
<b>2023 TWIC Reader Delay Rule Change in Costs</b>						
2022 .....	\$0	\$0	\$0	(\$42,920)	(\$40,112)	(\$41,670)
2023 .....	0	0	0	(42,920)	(37,488)	(40,456)
2024 .....	0	0	0	0	0	0
2025 .....	(42,920)	(32,743)	(38,134)	0	0	0
2026 .....	(42,920)	(30,601)	(37,023)	0	0	0
2027 .....	0	0	0	0	0	0
2028 .....	42,920	26,728	34,898	42,920	26,728	34,898
2029 .....	42,920	24,980	33,881	42,920	24,980	33,881
2030 .....	0	0	0	0	0	0
2031 .....	0	0	0	0	0	0
2032 .....	0	0	0	0	0	0
2033 .....	0	0	0	0	0	0
2034 .....	0	0	0	0	0	0
<i>Total</i> .....	0	(11,637)	(6,378)	0	(25,892)	(13,347)
<i>Annualized</i> .....		(1,392)	(600)		(3,098)	(1,255)

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

#### Change in Benefits

As noted, this final rule delays the effective date of the 2016 TWIC Reader final rule requirement for three categories of facilities: (1) facilities that handle bulk CDC but do not transfer it from or to a vessel; (2) facilities that handle CDC and do transfer such cargoes from or to a vessel; and (3) facilities that receive vessels carrying bulk CDC but do not transfer bulk CDC from or to the vessel during that vessel-to-facility interface.

Facilities for which this final rule applies will not realize the enhanced benefits of electronic inspection, such as the increased protection against individuals who do not hold valid TWICs being granted unescorted access, enhanced verification of personal identity, and a reduction in potential vulnerabilities, until May 8, 2029.

In addition, this final rule delays the cost to retrieve or replace lost PINs for use with TWICs for the facilities with delayed implementation. This is an unquantified cost savings which would accrue to individual mariners and the Coast Guard.

#### Alternatives

(1) *Status quo*. One regulatory alternative to this final rule is for the Coast Guard to take no action. Taking no further action would result in the implementation on May 8, 2026, of the 2020 TWIC Reader delay final rule, since the 2023 Authorization Act's mandate and the 2023 Conforming Amendment have extended the compliance deadline. These entities would be required to implement the requirements for the electronic inspection of TWICs and would incur the costs we estimated in our 2016 TWIC Reader final rule's RA, unless the Coast Guard granted a waiver.

(2) *Waiver approach*. Another alternative the Coast Guard considered was a waiver approach. However, because we currently lack a comprehensive risk analysis on the level of individualized facilities, we do not believe this approach maximizes benefits. In the interim period before the Coast Guard's final assessment of the 2022 RAND Corporation's HSOAC analysis' comprehensive risk assessment, the Coast Guard might issue blanket waivers that include facilities that may, indeed, warrant the additional

security of electronic inspection. For example, consider two facilities with a 5,000-gallon tank of CDC each. The tank in the first facility is placed near enough to the perimeter fence in a populated area that, if the tank explodes, would kill enough people to cause a transportation security incident (TSI) and, therefore, should require electronic TWIC inspection. That same tank at the other facility is located away from the water in an isolated area within the MTSA footprint (not near a population). If this tank explodes, it would not cause a TSI and, therefore, the facility should not need to conduct electronic TWIC inspection. If the Coast Guard issued a blanket waiver for those facilities with a storage tank of CDC with 5,000 gallons or less, then we would not be properly implementing these requirements to mitigate the risks as intended, as we are currently unable to determine which facilities would pose valid risks of a TSI. Extending the implementation deadline to 2029 will give the Coast Guard sufficient time to analyze the risks these facilities represent, and, if sufficient risks are identified, whether the benefit of electronic TWIC



inspection warrants the cost of implementation.

We rejected both alternatives (“status quo” and “waiver approach”) because they do not address our need to conduct a comprehensive risk analysis at the individual facility level to analyze the reader requirement at these facilities. These alternatives also do not address our need to develop a consistent methodology that would form the rationale for the Coast Guard when issuing waivers for these facilities. Additionally, implementing a waiver system will cause facilities to incur additional expenses during the application and renewal process, and it will impose costs on the Coast Guard for reviewing and issuing those waivers. Issuing this final rule will not impose those costs on industry or Government, but will achieve the same functional result.

#### *B. Small Entities*

Under the Regulatory Flexibility Act, 5 United States Code (U.S.C.) 601–612, we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard is delaying the effective date of the 2016 TWIC Reader final rule from May 8, 2026, which was the implementation date at the start of this rulemaking, until May 8, 2029, for facilities that handle CDC in bulk. We estimate that, consistent with past and present analyses, 370 facilities will experience cost savings under our No Action baseline. We estimate that these facilities will experience an annualized cost savings of approximately \$11,784 (with a 7-percent discount rate), and that, on average, each entity owns two facilities and will save approximately \$23,567 under our No Action baseline. We calculate that approximately 2 percent of the small entities impacted by this final rule will have a cost savings that is greater than 1 percent but less than 3 percent of their annual revenue. The other 98 percent will have a cost savings that is less than 1 percent of their annual revenue.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities.

#### *C. Assistance for Small Entities*

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121, we offer to assist small entities in understanding this final rule so that they can better evaluate its effects on them and participate in the rulemaking. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

#### *D. Collection of Information*

This rule calls for no new or revised collection of information under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520.

#### *E. Federalism*

A rule has implications for federalism under Executive Order 13132 (Federalism) if it has a substantial direct effect on States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this final rule under Executive Order 13132 and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132. Our analysis follows.

This final rule delays the implementation of existing regulations that create a risk-based set of security measures for MTSA-regulated facilities. Based on this analysis, each facility is classified according to its risk level, which then determines whether the facility will be required to conduct electronic TWIC inspection. As this final rule does not impose any new requirements, but simply delays the implementation of existing requirements, it does not have a preemptive impact. Please refer to the Coast Guard’s federalism analysis in the 2016 TWIC Reader final rule (81 FR 57652, 57706, August 23, 2016) for additional information.

While it is well settled that States may not regulate in categories in which

Congress intended the Coast Guard to be the sole source of a vessel’s obligations, States and local governments have traditionally shared certain regulatory jurisdiction over waterfront facilities. MTSA standards contained in 33 CFR part 105 (Maritime security: Facilities) are not preemptive of State or local law or regulations that do not conflict with them (that is, they would either conflict or would frustrate an overriding Federal need for uniformity).

The Coast Guard recognizes the key role that State and local governments may have in making regulatory determinations. Additionally, for rules with federalism implications and preemptive effect, Executive Order 13132 specifically directs agencies to consult with State and local governments during the rulemaking process. If you believe this Final Rule has implications for federalism under Executive Order 13132, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

#### *F. Unfunded Mandates*

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

#### *G. Taking of Private Property*

This final rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630 (Governmental Actions and Interference with Constitutionally Protected Property Rights).

#### *H. Civil Justice Reform*

This final rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988 (Civil Justice Reform) to minimize litigation, eliminate ambiguity, and reduce burden.

#### *I. Protection of Children*

We have analyzed this final rule under Executive Order 13045 (Protection of Children from Environmental Health Risks and Safety Risks). This final rule is not an economically significant rule and will not create an environmental risk to

health or risk to safety that might disproportionately affect children.

#### *J. Indian Tribal Governments*

This final rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments), because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

#### *K. Energy Effects*

We have analyzed this final rule under Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use). We have determined that it is not a “significant energy action” under Executive Order 13211, because although it is a “significant regulatory action” under Executive Order 12866, it is not likely to have a significant adverse effect on the supply, distribution, or use of energy, and the Administrator of OMB’s Office of Information and Regulatory Affairs has not designated it as a significant energy action.

#### *L. Technical Standards*

The National Technology Transfer and Advancement Act, codified as a note to 15 U.S.C. 272, directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through OMB, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This final rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

#### *M. Environment*

We have analyzed this final rule under DHS Management Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a determination that this action is one of a category of actions that do not

individually or cumulatively have a significant effect on the human environment. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the ADDRESSES section of this preamble. This final rule is categorically excluded under paragraph L54 of Appendix A, Table 1 of DHS Instruction Manual 023–01(series). Paragraph L54 pertains to regulations that are editorial or procedural.

#### **List of Subjects in 33 CFR Part 105**

Maritime security, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons listed in the preamble, the Coast Guard amends 33 CFR part 105 as follows:

#### **PART 105—MARITIME SECURITY: FACILITIES**

■ 1. The authority citation for part 105 is revised to read as follows:

**Authority:** 46 U.S.C. 70034, 70103, 70116; sec. 811, Pub. L. 111–281, 124 Stat. 2905 (46 U.S.C. 70103 note); 33 CFR 1.05–1, 6.04–11, 6.14, 6.16, and 6.19; DHS Delegation No. 00170.1, Revision No. 01.4.

■ 2. In § 105.253, revise paragraphs (a)(2) through (4) to read as follows:

##### **§ 105.253 Risk Group classifications for facilities.**

(a) \* \* \*

(2) Beginning May 8, 2029: Facilities that handle Certain Dangerous Cargoes (CDC) in bulk and transfer such cargoes from or to a vessel.

(3) Beginning May 8, 2029: Facilities that handle CDC in bulk, but do not transfer it from or to a vessel.

(4) Beginning May 8, 2029: Facilities that receive vessels carrying CDC in bulk but, during the vessel-to-facility interface, do not transfer it from or to the vessel.

\* \* \* \* \*

Dated: October 17, 2024.

**Linda L. Fagan,**

*Admiral, U.S. Coast Guard, Commandant.*

[FR Doc. 2024–24780 Filed 10–30–24; 8:45 am]

**BILLING CODE 9110–04–P**

## **DEPARTMENT OF HOMELAND SECURITY**

### **Coast Guard**

#### **33 CFR Part 165**

[Docket Number USCG–2024–0967]

**RIN 1625–AA00**

#### **Safety Zone; Corpus Christi Ship Channel, Corpus Christi, TX**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone for certain navigable waters of the La Quinta Ship Channel. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by module loadout operations at Kiewit Offshore Services, between the Jewell Fulton Channel and La Quinta Channel Day Beacon 13. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port, Sector Corpus Christi, or a designated representative.

**DATES:** For the purposes of enforcement, actual notice will be used from 5 a.m. on October 28, 2024, through October 31, 2024. This rule is effective without actual notice from October 31, 2024 through 8 p.m. on November 4, 2024.

The rule will be subject to enforcement on only one day during the period, depending on weather, from 5 a.m. to 8 p.m. that day.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG–2024–0967 in the “SEARCH” box and click “SEARCH.” Click on Open Docket Folder on the line associated with this rule.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this rule, call or email Lieutenant Timothy Cardenas, Sector Corpus Christi Waterways Management Division, U.S. Coast Guard; telephone 361–939–5130, email [Timothy.J.Cardenas@uscg.mil](mailto:Timothy.J.Cardenas@uscg.mil).

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Table of Abbreviations**

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

## II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to 5 U.S.C. 553(b)(B). This statutory provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” The Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. This rule is intended to protect personnel, vessels, and the marine environment from potential hazards associated with the movement of large rigs. The Coast Guard was notified of this request October 16, 2024, and there is insufficient time to publish an NPRM before this operation because the safety zone must be established by October 28, 2024.

Also, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable because prompt action is needed to respond to potential safety hazards associated with the module loadout operations beginning October 28, 2024.

## III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The Captain of the Port, Sector Corpus Christi (COTP) has determined that hazards inherent in these module loadout operations necessitate provisions to protect personnel, vessels, and the marine environment while those activities are taking place. The activities giving rise to these hazards include the deployment of heavy equipment and the movement of large offshore rigs which will obstruct vessel traffic while module loadout operations are conducted.

## IV. Discussion of the Rule

This rule establishes a safety zone from October 28, 2024, through November 4, 2024. The rule is subject to enforcement from 5 a.m. to 8 p.m. each day it is in effect. We anticipate the rule will be enforced on one day during the period, which the Coast Guard will announce through Broadcast Notices to Mariners, Marine Safety Information Bulletins, and Channel 16 VHF-FM. The safety zone will cover all navigable waters in the La Quinta Ship Channel between the Jewell Fulton Channel and

La Quinta Channel Day Beacon 13, near module movement operations. No vessel or person will be permitted to enter the temporary safety zones during the period in which the rule is subject to enforcement without obtaining permission from the COTP or a designated representative, who may be contacted on Channel 16 VHF-FM (156.8 MHz) or by telephone at 1-800-874-2143. The Coast Guard will issue Broadcast Notices to Mariners and Safety Marine Information Broadcasts.

## V. Regulatory Analyses

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

### A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a “significant regulatory action,” under Executive Order 12866, as amended by Executive Order 14094 (Modernizing Regulatory Review). Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, location, and duration of the safety zone. The safety zone covers less than a one-square-mile area of the La Quinta Ship Channel. The temporary safety zone will be subject to enforcement for a period of fifteen consecutive hours each day of the effective period, from October 28, 2024, through November 4, 2024. However, we anticipate that it will only be enforced for one day.

### B. Impact on Small Entities

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

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the

reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

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

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

### C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

### D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have Tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

### E. Unfunded Mandates Reform Act

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

### F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01 and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f) and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves establishment of a temporary moving safety zone for navigable waters of the Corpus Christi and La Quinta Shipping Channel beginning at the sea buoy to Kiewit Offshore Services. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by module loadout operations. It is categorically excluded from further review under paragraph L60(a), in Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1.

### G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

**Authority:** 46 U.S.C. 70034, 70051, 70124; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

■ 2. Add § 165.T08–0967 to read as follows:

### § 165.T08–0967 Safety Zone; Corpus Christi Ship Channel, Corpus Christi, TX.

(a) *Location.* The following area is a safety zone: All navigable waters of the La Quinta Ship Channel, from the surface to bottom, between the Jewell Fulton Channel and La Quinta Channel Day Beacon 13, encompassed by a line connecting the following points beginning at Point 1: 27°51′31.7″ N, 97°14′28.4″ W, thence to Point 2: 27°51′24.0″ N, 97°14′43.6″ W, thence to Point 3: 27°50′28.9″ N, 97°14′12.7″ W, thence to Point 4: 27°50′42.2″ N, 97°13′47.6″ W. These coordinates are based on World Geodetic System (WGS) 84.

(b) *Enforcement period.* This section will be subject to enforcement from 5 a.m. to 8 p.m. each day in the period, from October 28, 2024, through November 4, 2024.

(c) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the Captain of the Port Corpus Christi (COTP) or the COTP's designated representative. They may be contacted on Channel 16 VHF–FM (156.8 MHz) or by telephone at 361–939–0450.

(2) If permission is granted, all persons and vessels must comply with all lawful orders and directions of the COTP or the COTP's designated representative.

(d) *Information broadcasts.* The COTP or a designated representative will inform the public of the enforcement times and date for this safety zone through Broadcast Notices to Mariners, Safety Marine Information Broadcasts, and Channel 16 VHF–FM.

(e) *Definitions.* As used in this section, *designated representative* means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the COTP Corpus Christi in the enforcement of the safety zone.

Dated: October 25, 2024.

**T.H. Bertheau,**

*Captain, U.S. Coast Guard, Captain of the Port, Sector Corpus Christi.*

[FR Doc. 2024–25364 Filed 10–30–24; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

[Docket Number USCG–2024–0923]

RIN 1625–AA00

### Safety Zone; Bahia de Ponce, Ponce, PR

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone on the navigable waters within Bahia de Ponce, Ponce, PR during the Discover the Caribbean Regatta event. The safety zone is necessary to ensure the safety of event participants and vessels during the event. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port (COTP) San Juan or a designated representative.

**DATES:** This rule is effective from 9 a.m. until 3 p.m. daily on November 1, 2024, through November 11, 2024.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG–2024–0923 in the search box and click “Search.” Next, in the Document Type column, select “Supporting & Related Material.”

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Lieutenant Commander Carlos M. Ortega-Perez, Sector San Juan, Waterways Management Division, U.S. Coast Guard; telephone 787–729–2380; email [Carlos.M.Ortega-Perez@uscg.mil](mailto:Carlos.M.Ortega-Perez@uscg.mil).

### SUPPLEMENTARY INFORMATION:

#### I. Table of Abbreviations

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

#### II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule under authority in 5 U.S.C. 553(b)(B). This statutory provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” The Coast Guard finds that

good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. The Coast Guard was recently notified that the number of expected participants in this event increased, raising the need for public safety to be mitigated with a safety zone for the event. We must establish the safety zone by November 01, 2024, and lack sufficient time to provide for a reasonable comment period and then consider those comments before issuing this rule.

Also, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be contrary to the public interest because immediate action is needed to ensure the safety of the participants and vessels during the regatta event.

### III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The Captain of the Port Sector San Juan (COTP) has determined that potential hazards associated with the anticipated increase of participants at the regatta event will be a safety concern for persons and vessels in the regulated area. This rule is needed to ensure the safety of the event participants, the general public, vessels and the marine environment in the navigable waters within the safety zone during the regatta event.

### IV. Discussion of the Rule

This rule establishes a safety zone on certain waters of Bahia de Ponce, PR from 9 a.m. until 3 p.m. daily on November 01, 2024, through November 11, 2024, during the regatta event. The safety zone will cover all navigable waters of the Bahia de Ponce within the following points beginning at Point 1 at 17°58'17.05" N, -66°37'28.42" W, thence north to Point 2 at 17°58'36.69" N, -66°37'25.53" W, thence west to Point 3 at 17°58'34.22" N, -66°39'6.06" W, thence southwest to Point 4 at 17°58'19.80" N, -66°39'16.43" W, and along the shoreline back to the beginning Point 1 for the Race Area 1. Race Area 2 encompass a 1,200 yards radius from 17°57'2.56" N, -66°36'56.99" W.

No person or vessel will be permitted to enter, transit through, anchor in, or remain within the safety zone without first obtaining permission from the COTP or a designated representative. If authorization to enter, transit through, anchor in, or remain within the safety zone is granted by the COTP or a

designated representative, all persons and vessels receiving such authorization must comply with the instructions of the COTP or a designated representative. The Coast Guard will provide notice of the safety zone by Broadcast Notice to Mariners, and/or by on-scene designated representatives.

### V. Regulatory Analyses

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

#### A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a "significant regulatory action," under section 3(f) of Executive Order 12866, as amended by Executive Order 14094 (Modernizing Regulatory Review). Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on following reasons: (1) The temporary safety zone will only be enforced for a total of 6 hours per day, for 10 consecutive days; (2) although persons and vessels may not enter, transit through, anchor in, or remain within the safety zone without authorization from the COTP or a designated representative, they may operate in the surrounding area during the enforcement period; (3) persons and vessels may still enter, transit through, anchor in, or remain within the areas during the enforcement period if authorized by the COTP or a designated representative.

#### B. Impact on Small Entities

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

While some owners or operators of vessels intending to transit the safety

zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

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

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

#### C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

#### D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have Tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

### E. Unfunded Mandates Reform Act

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

### F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone within Bahia de Ponce, Ponce, PR lasting the duration of the marine event, only 10 days, and thus limited in time and scope. This safety zone will prohibit entry while in effect. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

### G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR 165 as follows:

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

**Authority:** 46 U.S.C. 70034, 70051, 70124; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

■ 2. Add § 165.T07–0840 to read as follows:

### § 165.T07–0840 Safety Zone; Discover the Caribbean Regatta, Bahia de Ponce, Ponce, PR.

(a) *Location.* The following area is a safety zone: All waters of the Bahia de Ponce, from surface to bottom, encompassed within the following points beginning at Point 1 at 17°58′17.05″ N, –66°37′28.42″ W, thence north to Point 2 at 17°58′36.69″ N, –66°37′25.53″ W, thence west to Point 3 at 17°58′34.22″ N, –66°39′6.06″ W, thence southwest to Point 4 at 17°58′19.80″ N, –66°39′16.43″ W and along the shoreline back to the beginning Point 1 for the Race Area 1. Race Area 2 encompass a 1,200 yards radius from 17°57′2.56″ N, –66°36′56.99″ W.

(b) *Definitions.* As used in this section, the term “designated representative” means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port (COTP) San Juan in the enforcement of the safety zone.

(c) *Regulations.* (1) All persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area unless authorized by the COTP San Juan or a designated representative

(2) Persons and vessels desiring to enter, transit through, anchor in, or remain within the regulated area may contact the COTP San Juan by telephone at (787) 729–2380, or a designated representative via VHF–FM radio on channel 16 to request authorization. If authorization is granted, all persons and vessels receiving such authorization must comply with the instructions of the COTP San Juan or a designated representative.

(3) The Coast Guard will provide notice of the regulated area by Local Notice to Mariners, Broadcast Notice to Mariners via VHF–FM channel 16, or the COTP’s designated representative.

(d) *Enforcement period.* This section will be enforced from 9 a.m. until 3 p.m.

daily on November 1, 2024, through November 11, 2024.

**Luis J. Rodríguez,**  
*Captain, U. S. Coast Guard, Captain of the Port San Juan.*

[FR Doc. 2024–25367 Filed 10–30–24; 8:45 am]

**BILLING CODE 9110–04–P**

## ENVIRONMENTAL PROTECTION AGENCY

**40 CFR Part 1, 21, 59, 60, 61, 63, 65, 147, 374, 707, and 763**

**[EPA–R04–OAR–2023–0519; FRL–12260–01–R4]**

### Regional Office Address

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

**ACTION:** Final rule; technical amendments.

**SUMMARY:** The Environmental Protection Agency (EPA) is amending its regulations to reflect a change in address and organization names for EPA’s Region 4 office. This action is editorial in nature and is intended to provide accuracy and clarity to EPA’s regulations.

**DATES:** This final rule is effective October 31, 2024.

**ADDRESSES:** EPA Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960.

**FOR FURTHER INFORMATION CONTACT:** Sarah LaRocca, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. Ms. LaRocca can be reached via electronic mail at [larocca.sarah@epa.gov](mailto:larocca.sarah@epa.gov) or via telephone at (404) 562–8994.

### SUPPLEMENTARY INFORMATION:

#### I. Background and Purpose

EPA is amending its regulations in title 40 of the Code of Federal Regulations (CFR), parts 1, 21, 59, 60, 61, 63, 65, 147, 374, 707, and 763, to reflect a change in the mailing address for EPA’s Region 4 office. This technical amendment merely updates and corrects the address for the Region 4 office and does not otherwise impose or amend any requirements.<sup>1</sup>

Pursuant to 5 U.S.C. 553(b)(B) of the Administrative Procedure Act (APA),

<sup>1</sup> This amendment also updates and corrects the addresses for the Georgia Department of Natural Resources and North Carolina Department of Environmental Quality in 40 CFR 147.550(a) and 147.1700(a), respectively, because those rules also contain an incorrect address for EPA’s Region 4 office.

EPA has found that the public notice and comment provisions of the APA, found at 5 U.S.C. 553(b), do not apply to this rulemaking. Public notice and comment is unnecessary because this amendment to the regulations provides only technical changes to update addresses and organization names. EPA has also determined that there is good cause to waive the requirement of publication 30 days in advance of the rule's effective date pursuant to 5 U.S.C. 553(d)(3) in order to expedite the public's access to the correct address and organization names of EPA Region 4.

## II. Statutory and Executive Order Reviews

This final rule implements technical amendments to 40 CFR parts 1, 21, 59, 60, 61, 63, 65, 147, 374, 707, and 763 to reflect a change in address of EPA's Region 4 office. It does not otherwise impose or amend any requirements. For that reason, this 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 14094 (88 FR 21879, April 11, 2023);
- 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 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it does not concern an environmental health or safety risk;
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- 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 this technical correction does not involve technical standards.

In addition, this action does not have Tribal implications and will not impose substantial direct costs on Tribal governments or preempt Tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) directs Federal agencies to identify and address “disproportionately high and adverse human health or environmental effects” of their actions on communities with environmental justice (EJ) concerns to the greatest extent practicable and permitted by law. EPA defines EJ as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.” EPA further defines the term fair treatment to mean that “no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.” EPA did not perform an EJ analysis and did not consider EJ in this action. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving EJ for communities with EJ concerns.

This action is subject to the Congressional Review Act, and EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

## List of Subjects

### 40 CFR Part 1

Environmental protection, Organization and functions (Government agencies).

### 40 CFR Part 21

Small businesses.

### 40 CFR Part 59

Air pollution control, Reporting and recordkeeping requirements, Volatile organic compounds.

### 40 CFR Part 60

Administrative practice and procedure, Reporting and recordkeeping requirements.

### 40 CFR Part 61

Reporting and recordkeeping requirements.

### 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous

substances, Reporting and recordkeeping requirements.

### 40 CFR Part 65

Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

### 40 CFR Part 147

Environmental protection, Incorporation by reference.

### 40 CFR Part 374

Administrative practice and procedure, Hazardous substances, Hazardous waste, Superfund.

### 40 CFR Part 707

Environmental protection, Chemicals, Exports, Hazardous substances, Imports, Reporting and recordkeeping requirement.

### 40 CFR Part 763

Administrative practice and procedure, Asbestos, Intergovernmental relations, Reporting and recordkeeping requirements, Schools.

Dated: October 16, 2024.

**Jeananne Gettle,**

*Acting Regional Administrator, Region 4.*

Therefore, chapter I of title 40 of the Code of Federal Regulations is amended as follows:

## PART 1—STATEMENT OF ORGANIZATION AND GENERAL INFORMATION

- 1. The authority citation of part 1 continues to read as follows:

**Authority:** 5 U.S.C. 552; Reorganization Plan No. 3 of 1970, 84 Stat. 2086 (July 9, 1970).

## Subpart A—Introduction

- 2. Section 1.7 is amended by revising paragraph (b)(4) to read as follows:

### § 1.7 Location of principle offices.

\* \* \* \* \*

(b) \* \* \*

(4) Region IV, U.S. Environmental Protection Agency, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee.)

\* \* \* \* \*

## PART 21—SMALL BUSINESS

- 3. The authority for part 21 continues to read as follows:

**Authority:** 15 U.S.C. 636, as amended by Pub. L. 92–500.

- 4. Section 21.3 is amended in the table in paragraph (a) by revising entry “IV” to read as follows:

**§ 21.3 Submission of applications.**

(a) \* \* \*

Region	Address	State
IV .....	Regional Administrator, Region IV, EPA, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960.	Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee.

**PART 59—NATIONAL VOLATILE ORGANIC COMPOUND EMISSION STANDARDS FOR CONSUMER AND COMMERCIAL PRODUCTS**

■ 5. The authority citation for part 59 continues to read as follows:

**Authority:** 42 U.S.C. 7414 and 7511b(e).

**Subpart B—National Volatile Organic Compound Emission Standards for Automobile Refinish Coatings**

■ 6. Section 59.107 is revised and republished to read as follows:

**§ 59.107 Addresses of EPA Regional Offices.**

All requests, reports, submittals, and other communications to the

Administrator pursuant to this subpart shall be submitted to the Regional Office of the EPA which serves the State or territory in which the corporate headquarters of the regulated entity resides. These areas are indicated in the following table.

TABLE 1 TO § 59.107

Region	Address	State
I .....	Director, Enforcement and Compliance Assurance Division, U.S. EPA Region I, 5 Post Office Square—Suite 100 (04–2), Boston, MA 02109–3912, Attn: Air Compliance Clerk.	Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont.
II .....	Director, Division of Enforcement and Compliance Assistance, 290 Broadway, New York, NY 10007–1866.	New Jersey, New York, Puerto Rico, Virgin Islands.
III .....	Air Protection Division, 1650 Arch Street, Philadelphia, PA 19103.	Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia.
IV .....	Director, Air and Radiation Division, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960.	Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee.
V .....	Director, Air and Radiation Division, 77 West Jackson Blvd., Chicago, IL 60604–3507.	Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin.
VI .....	Director, Enforcement and Compliance Assurance Division, 1201 Elm Street, Suite 500, Dallas, Texas 75270–2102.	Arkansas, Louisiana, New Mexico, Oklahoma, Texas.
VII .....	Director, Air and Waste Management Division, 11201 Renner Boulevard, Lenexa, Kansas 66219.	Iowa, Kansas, Missouri, Nebraska.
VIII .....	Director, Air and Toxics Division, 999 18th Street, 1 Denver Place, Suite 500, Denver, Colorado 80202–2405.	Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming.
IX .....	Director, Air Division, 75 Hawthorne Street, San Francisco, CA 94105.	Arizona, California, Hawaii and Nevada; the territories of American Samoa and Guam; the Commonwealth of the Northern Mariana Islands; the territories of Baker Island, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, Midway Atoll, Palmyra Atoll, and Wake Islands; and certain U.S. Government activities in the freely associated states of the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.
X .....	Director, Air and Toxics Division, 1200 Sixth Avenue, Seattle, WA 98101.	Alaska, Oregon, Idaho, Washington.

**Subpart C—National Volatile Organic Compound Emission Standards for Consumer Products**

■ 7. Section 59.210 is revised and republished to read as follows:

**§ 59.210 Addresses of EPA Regional Offices.**

All requests, reports, submittals, and other communications to the Administrator pursuant to this subpart shall be submitted to the Regional Office

of the EPA which serves the State or territory in which the corporate headquarters of the regulated entity resides. These areas are indicated in the following table.

TABLE 1 TO § 59.210

Region	Address	State
I .....	Director, Enforcement and Compliance Assurance Division, U.S. EPA Region I, 5 Post Office Square—Suite 100 (04–2), Boston, MA 02109–3912, Attn: Air Compliance Clerk.	Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont.



TABLE 1 TO § 59.210—Continued

Region	Address	State
II .....	Director, Division of Environmental Planning and Protection, 290 Broadway, New York, NY 10007.	New Jersey, New York, Puerto Rico, Virgin Islands.
III .....	Director, Air, Radiation, and Toxics Division, 841 Chestnut Building, Philadelphia, PA 19107.	Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia.
IV .....	Director, Air and Radiation Division, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960.	Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee.
V .....	Director, Air and Radiation Division, 77 West Jackson Blvd., Chicago, IL 60604–3507.	Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin.
VI .....	Director, Enforcement and Compliance Assurance Division, 1201 Elm Street, Suite 500, Mail Code 6ECD, Dallas, Texas 75270–2102.	Arkansas, Louisiana, New Mexico, Oklahoma, Texas.
VII .....	Director, Air and Waste Management Division, 11201 Renner Boulevard, Lenexa, Kansas 66219.	Iowa, Kansas, Missouri, Nebraska.
VIII .....	Director, Office of Pollution Prevention, State, and Tribal Assistance, 999 18th Street, Suite 500, Denver, Colorado 80202–2466.	Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming.
IX .....	Director, Air Division, 75 Hawthorne Street, San Francisco, CA 94105.	Arizona, California, Hawaii and Nevada; the territories of American Samoa and Guam; the Commonwealth of the Northern Mariana Islands; the territories of Baker Island, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, Midway Atoll, Palmyra Atoll, and Wake Islands; and certain U.S. Government activities in the freely associated states of the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.
X .....	Director, Office of Air Quality, 1200 Sixth Avenue, Seattle, WA 98101.	Alaska, Oregon, Idaho, Washington.

**Subpart D—National Volatile Organic Compound Emission Standards for Architectural Coatings**

■ 8. Section 59.409 is amended by revising and republishing paragraph (a) to read as follows:

**§ 59.409 Addresses of EPA Offices.**

(a) Except for exceedance fee payments, each manufacturer and importer of any architectural coating subject to the provisions of this subpart shall submit all requests, reports, submittals, and other communications to the Administrator pursuant to this

subpart to the Regional Office of the U.S. Environmental Protection Agency that serves the State or Territory in which the corporate headquarters of the manufacturer or importer resides. These areas are indicated in the following table.

TABLE 1 TO PARAGRAPH (a)

Region	Address	State
I .....	Director, Enforcement and Compliance Assurance Division, U.S. EPA Region I, 5 Post Office Square—Suite 100 (04–2), Boston, MA 02109–3912, Attn: Air Compliance Clerk.	Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont.
II .....	Director, Division of Enforcement and Compliance Assistance, 290 Broadway, New York, NY 10007–1866.	New Jersey, New York, Puerto Rico, Virgin Islands.
III .....	Director, Air Protection Division, 1650 Arch Street, Philadelphia, PA 19103.	Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia.
IV .....	Director, Air and Radiation Division, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960.	Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee.
V .....	Director, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, IL 60604–3507.	Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin.
VI .....	Director, Enforcement and Compliance Assurance Division, 1201 Elm Street, Suite 500, Mail Code 6ECD, Dallas, Texas 75270–2102.	Arkansas, Louisiana, New Mexico, Oklahoma, Texas.
VII .....	Director, Air and Waste Management Division, 11201 Renner Boulevard, Lenexa, Kansas 66219.	Iowa, Kansas, Missouri, Nebraska.
VIII .....	Director, Office of Partnerships and Regulatory Assistance, 999 18th Street, Suite 500, Denver, Colorado 80202–2466.	Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming.
IX .....	Director, Air Division, 75 Hawthorne Street, San Francisco, CA 94105.	American Samoa, Arizona, California, Guam, Hawaii, Nevada.
X .....	Director, Office of Air Quality, 1200 Sixth Avenue, Seattle, WA 98101.	Alaska, Oregon, Idaho, Washington.

\* \* \* \* \*

**Subpart E—National Volatile Organic Compound Emission Standards for Aerosol Coatings**

■ 9. Section 59.512 is revised and republished to read as follows:

**§ 59.512 Addresses of EPA regional offices.**

All requests (including variance requests), reports, submittals, and other communications to the Administrator pursuant to this subpart shall be submitted to the Regional Office of the

EPA which serves the State or territory for the address that is listed on the aerosol coating product in question. These areas are indicated in the following table.

TABLE 1 TO § 59.512

Region	Address	State
I .....	Director, Enforcement and Compliance Assurance Division, U.S. EPA Region I, 5 Post Office Square—Suite 100 (04–2), Boston, MA 02109–3912, Attn: Air Compliance Clerk.	Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont.
II .....	Director, Division of Enforcement and Compliance Assistance, 290 Broadway, New York, NY 10007–1866.	New Jersey, New York, Puerto Rico, Virgin Islands.
III .....	Air Protection Division, 1650 Arch Street, Philadelphia, PA 19103.	Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia.
IV .....	Director, Air and Radiation Division, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960.	Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee.
V .....	Director, Air and Radiation Division, 77 West Jackson Blvd., Chicago, IL 60604–3507.	Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin.
VI .....	Director, Enforcement and Compliance Assurance Division, 1201 Elm Street, Suite 500, Mail Code 6ECD, Dallas, Texas 75270–2102.	Arkansas, Louisiana, New Mexico, Oklahoma, Texas.
VII .....	Director, Air and Waste Management Division, 11201 Renner Boulevard, Lenexa, Kansas 66219.	Iowa, Kansas, Missouri, Nebraska.
VIII .....	Director, Air and Toxics Division, 1595 Wynkoop Street, Denver, CO 80202–1129.	Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming.
IX .....	Director, Air Division, 75 Hawthorne Street, San Francisco, CA 94105.	American Samoa, Arizona, California, Guam, Hawaii, Nevada.
X .....	Director, Air and Toxics Division, 1200 Sixth Avenue, Seattle, WA 98101.	Alaska, Oregon, Idaho, Washington.

**PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES**

■ 10. The authority citation for part 60 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

**Subpart A—General Provisions**

■ 11. Section 60.4 is amended by revising and republishing paragraph (a) to read as follows:

**§ 60.4 Address.**

(a) All requests, reports, applications, submittals, and other communications

to the Administrator pursuant to this part shall be submitted in duplicate to the appropriate Regional Office of the U.S. Environmental Protection Agency to the attention of the Director of the Division indicated in the following table.

TABLE 1 TO PARAGRAPH (a)

Region	Address	State
I .....	Director, Enforcement and Compliance Assurance Division, U.S. EPA Region I, 5 Post Office Square—Suite 100 (04–2), Boston, MA 02109–3912, Attn: Air Compliance Clerk.	Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont.
II .....	Director, Air and Waste Management Division, U.S. Environmental Protection Agency, Federal Office Building, 26 Federal Plaza (Foley Square), New York, NY 10278.	New Jersey, New York, Puerto Rico, Virgin Islands.
III .....	Director, Air Protection Division, Mail Code 3AP00, 1650 Arch Street, Philadelphia, PA 19103–2029.	Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia.
IV .....	Director, Air and Radiation Division, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960.	Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee.
V .....	Director, Air and Radiation Division, U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, IL 60604–3590.	Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin.
VI .....	Director, Enforcement and Compliance Assurance Division; U.S. Environmental Protection Agency, 1201 Elm Street, Suite 500, Mail Code 6ECD, Dallas, Texas 75270–2102.	Arkansas, Louisiana, New Mexico, Oklahoma, Texas.
VII .....	Director, Air and Waste Management Division, 11201 Renner Boulevard, Lenexa, Kansas 66219.	Iowa, Kansas, Missouri, Nebraska.
VIII .....	Director, Air and Toxics Technical Enforcement Program, Office of Enforcement, Compliance and Environmental Justice, Mail Code 8ENF–AT, 1595 Wynkoop Street, Denver, CO 80202–1129.	Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming.

TABLE 1 TO PARAGRAPH (a)—Continued

Region	Address	State
IX .....	Director, Enforcement and Compliance Assurance Division (ENF 2-1), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105.	Arizona, California, Hawaii and Nevada; the territories of American Samoa and Guam; the Commonwealth of the Northern Mariana Islands; the territories of Baker Island, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, Midway Atoll, Palmyra Atoll, and Wake Islands; and certain U.S. Government activities in the freely associated states of the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.
X .....	Director, Air and Waste Management Division, U.S. Environmental Protection Agency, 1200 Sixth Avenue, Seattle, WA 98101.	Alaska, Oregon, Idaho, Washington.

\* \* \* \* \*

**PART 61—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS**

■ 13. The authority citation for part 61 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

**Subpart A—General Provisions**

■ 14. Section 61.04 is amended by revising and republishing paragraph (a) to read as follows:

**§ 61.04 Address.**

(a) All requests, reports, applications, submittals, and other communications

to the Administrator pursuant to this part shall be submitted in duplicate to the appropriate Regional Office of the U.S. Environmental Protection Agency to the attention of the Director of the Division indicated in the following table.

TABLE 1 TO PARAGRAPH (a)

Region	Address	State
I .....	Director, Enforcement and Compliance Assurance Division, U.S. EPA Region I, 5 Post Office Square—Suite 100 (04-2), Boston, MA 02109-3912, Attn: Air Compliance Clerk.	Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont.
II .....	Director, Air and Waste Management Division, U.S. Environmental Protection Agency, Federal Office Building, 26 Federal Plaza (Foley Square), New York, NY 10278.	New Jersey, New York, Puerto Rico, Virgin Islands.
III .....	Director, Air Protection Division, Mail Code 3AP00, 1650 Arch Street, Philadelphia, PA 19103-2029.	Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia.
IV .....	Director, Air and Radiation Division, 61 Forsyth Street SW, Atlanta, Georgia 30303-8960.	Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee.
V .....	Director, Air and Radiation Division, U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, IL 60604-3590.	Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin.
VI .....	Director, Enforcement and Compliance Assurance Division; U.S. Environmental Protection Agency, 1201 Elm Street, Suite 500, Mail Code 6ECD, Dallas, Texas 75270-2102.	Arkansas, Louisiana, New Mexico, Oklahoma, Texas.
VII .....	Director, Air and Waste Management Division, 11201 Renner Boulevard, Lenexa, Kansas 66219.	Iowa, Kansas, Missouri, Nebraska.
VIII .....	Director, Air and Toxics Technical Enforcement Program, Office of Enforcement, Compliance and Environmental Justice, Mail Code 8ENF-AT, 1595 Wynkoop Street, Denver, CO 80202-1129.	Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming.
IX .....	Director, Enforcement and Compliance Assurance Division (ENF 2-1), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105.	Arizona, California, Hawaii and Nevada; the territories of American Samoa and Guam; the Commonwealth of the Northern Mariana Islands; the territories of Baker Island, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, Midway Atoll, Palmyra Atoll, and Wake Islands; and certain U.S. Government activities in the freely associated states of the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.
X .....	Director, Office of Air Quality, U.S. Environmental Protection Agency, 1200 Sixth Avenue (OAQ-107), Seattle, WA 98101.	Alaska, Idaho, Oregon, Washington.

\* \* \* \* \*

**PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES**

■ 15. The authority citation for part 63 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

**Subpart A—General Provisions**

■ 16. Section 63.13 is amended by revising and republishing paragraph (a) to read as follows:

**§ 63.13 Addresses of State air pollution control agencies and EPA Regional Offices.**

(a) All requests, reports, applications, submittals, and other communications to the Administrator pursuant to this

part shall be submitted to the appropriate Regional Office of the U.S. Environmental Protection Agency indicated in the following table. If a request, report, application, submittal,

or other communication is required by this part to be submitted electronically via the EPA's CEDRI then such submission satisfies the requirements of this paragraph (a).

TABLE 1 TO PARAGRAPH (a)

Region	Address	State
I .....	Director, Enforcement and Compliance Assurance Division, U.S. EPA Region I, 5 Post Office Square—Suite 100 (04–2), Boston, MA 02109–3912, Attn: Air Compliance Clerk.	Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont.
II .....	Director, Air and Waste Management Division, 26 Federal Plaza, New York, NY 10278.	New Jersey, New York, Puerto Rico, Virgin Islands.
III .....	Director, Air Protection Division, 1650 Arch Street, Philadelphia, PA 19103.	Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia.
IV .....	Director, Air and Radiation Division, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960.	Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee.
V .....	Director, Air and Radiation Division, 77 West Jackson Blvd., Chicago, IL 60604–3507.	Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin.
VI .....	Director, Enforcement and Compliance Assurance Division; U.S. Environmental Protection Agency, 1201 Elm Street, Suite 500, Mail Code 6ECD, Dallas, Texas 75270–2102.	Arkansas, Louisiana, New Mexico, Oklahoma, Texas.
VII .....	Director, Air and Waste Management Division, 11201 Renner Boulevard, Lenexa, Kansas 66219.	Iowa, Kansas, Missouri, Nebraska.
VIII .....	Director, Air and Toxics Technical Enforcement Program, Office of Enforcement, Compliance and Environmental Justice, Mail Code 8ENF–AT, 1595 Wynkoop Street, Denver, CO 80202–1129.	Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming.
IX .....	Director, Air Division, 75 Hawthorne Street, San Francisco, CA 94105.	Arizona, California, Hawaii, Nevada; the territories of American Samoa and Guam; the Commonwealth of the Northern Mariana Islands; the territories of Baker Island, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, Midway Atoll, Palmyra Atoll, and Wake Islands; and certain U.S. Government activities in the freely associated states of the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.
X .....	Director, Office of Air Quality, 1200 Sixth Avenue (OAQ–107), Seattle, WA 98101.	Alaska, Idaho, Oregon, Washington.

\* \* \* \* \*

**PART 65—CONSOLIDATED FEDERAL AIR RULE**

■ 17. The authority citation for part 65 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

**Subpart A—General Provisions**

■ 18. Section 65.14 is amended by revising and republishing paragraph (a) to read as follows:

**§ 65.14 Addresses.**

(a) All requests, reports, applications, notifications, and other communications submitted pursuant to this part, except as specified under § 65.5(g)(1), shall be sent to the Administrator at the appropriate EPA Regional Office indicated in the following table:

TABLE 1 TO PARAGRAPH (a)

Region	Address	State
I .....	Director, Enforcement and Compliance Assurance Division, U.S. EPA Region I, 5 Post Office Square—Suite 100 (04–2), Boston, MA 02109–3912, Attn: Air Compliance Clerk.	Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont.
II .....	Director, Air and Waste Management Division, U.S. Environmental Protection Agency, 290 Broadway, New York, New York 10007.	New Jersey, New York, Puerto Rico, Virgin Islands.
III .....	Director, Air and Waste Management Division, U.S. Environmental Protection Agency, 841 Chestnut Building, Philadelphia, Pennsylvania 19107.	Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia.
IV .....	Director, Air and Radiation Division, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960.	Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee.
V .....	Director, Air Management Division, U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604–3507.	Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin.
VI .....	Director, Compliance Assurance and Enforcement Division; U.S. Environmental Protection Agency, 1201 Elm Street, Suite 500, Mail Code 6ECD, Dallas, Texas 75270–2102.	Arkansas, Louisiana, New Mexico, Oklahoma, Texas.

TABLE 1 TO PARAGRAPH (a)—Continued

Region	Address	State
VII .....	Director, Air and Waste Management Division, 11201 Renner Boulevard, Lenexa, Kansas 66219.	Iowa, Kansas, Missouri, Nebraska.
VIII .....	Director, Air and Waste Management Division, U.S. Environmental Protection Agency, 999 18th Street, Suite 500, Denver, Colorado 80295.	Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming.
IX .....	Director, Air Division, U.S. Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105.	Arizona, California, Hawaii, Nevada; the territories of American Samoa and Guam; the Commonwealth of the Northern Mariana Islands; the territories of Baker Island, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, Midway Atoll, Palmyra Atoll, and Wake Islands; and certain U.S. Government activities in the freely associated states of the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.
X .....	Director, Air and Waste Management Division, U.S. Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101.	Alaska, Oregon, Idaho, Washington.

\* \* \* \* \*

**PART 147—STATE, TRIBAL, AND EPA-ADMINISTERED UNDERGROUND INJECTION CONTROL PROGRAMS**

■ 19. The authority citation for part 147 continues to read as follows:

**Authority:** 42 U.S.C. 300f *et seq.*; and 42 U.S.C. 6901 *et seq.*

**Subpart L—Georgia**

■ 20. Section 147.550 is amended by revising paragraph (a) introductory text to read as follows:

**§ 147.550 State-administered program.**

\* \* \* \* \*

(a) Incorporation by reference. The requirements set forth in the State statutes and regulations cited in this paragraph (a) are hereby incorporated by reference and made a part of the applicable UIC program under the SDWA for the State of Georgia. This incorporation by reference was approved by the Director of the OFR in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained at the Georgia Department of Natural Resources, Environmental Protection

Division, 2 Martin Luther King Jr. Drive SE, East Tower—Suite 1456, Atlanta, Georgia 30334–9000. Copies may be inspected at the Environmental Protection Agency, Region IV, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, visit [www.archives.gov/federal-register/cfr/ibr-locations](http://www.archives.gov/federal-register/cfr/ibr-locations) or email [fr.inspection@nara.gov](mailto:fr.inspection@nara.gov).

\* \* \* \* \*

**Subpart II—North Carolina**

■ 21. Section 147.1700 is amended by revising paragraph (a) introductory text to read as follows:

**§ 147.1700 State-administered program.**

\* \* \* \* \*

(a) *Incorporation by reference.* The requirements set forth in the State statutes and regulations cited in this paragraph (a) are hereby incorporated by reference and made a part of the applicable UIC program under the SDWA for the State of North Carolina. This incorporation by reference was

approved by the Director of the OFR in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained at the North Carolina Department of Environmental Quality, Division of Water Resources, Attention UIC Program, 1636 Mail Service Center, Raleigh, North Carolina 27699. Copies may be inspected at the Environmental Protection Agency, Region IV, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, visit [www.archives.gov/federal-register/cfr/ibr-locations](http://www.archives.gov/federal-register/cfr/ibr-locations) or email [fr.inspection@nara.gov](mailto:fr.inspection@nara.gov).

\* \* \* \* \*

**PART 374—PRIOR NOTICE OF CITIZEN SUITS**

■ 24. The authority citation for part 374 continues to read as follows:

**Authority:** 42 U.S.C. 9659.

■ 25. Section 374.6 is revised and republished to read as follows:

**§ 374.6 Addresses.**

TABLE 1 TO § 374.6

Addressee	Address
Administrator .....	U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW (1101), Washington, DC 20460.
Regional Administrator, Region I ....	U.S. Environmental Protection Agency, 5 Post Office Square—Suite 100, Boston, MA 02109–3912.
Regional Administrator, Region II ...	U.S. Environmental Protection Agency, 26 Federal Plaza, Room 930, New York, NY 10278.
Regional Administrator, Region III ..	U.S. Environmental Protection Agency, 841 Chestnut Street, Philadelphia, PA 19107.
Regional Administrator, Region IV	U.S. Environmental Protection Agency, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960.
Regional Administrator, Region V ..	U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, IL 60604.
Regional Administrator, Region VI	U.S. Environmental Protection Agency, 1201 Elm Street, Suite 500, Dallas, Texas 75270–2102.
Regional Administrator, Region VII	U.S. Environmental Protection Agency, 11201 Renner Boulevard, Lenexa, Kansas 66219.
Regional Administrator, Region VIII	U.S. Environmental Protection Agency, 999 18th Street, Suite 500, Denver, CO 80202–2405.
Regional Administrator, Region IX	U.S. Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105.
Regional Administrator, Region X ..	U.S. Environmental Protection Agency, 1200 Sixth Avenue, Seattle, WA 98101.
Administrator .....	Agency for Toxic Substances and Disease Registry, Center for Disease Control, 200 Independence Avenue SW, Washington, DC 20201.

TABLE 1 TO § 374.6—Continued

Addressee	Address
Attorney General .....	United States Department of Justice, Tenth and Pennsylvania Avenues NW, Washington, DC 20530.

**PART 707—CHEMICAL IMPORTS AND EXPORTS**

■ 26. The authority citation for part 707 continues to read as follows:

**Authority:** 15 U.S.C. 2611(b) and 2612.

**Subpart B—General Import Requirements and Restrictions**

■ 27. Section 707.20 is amended by revising and republishing paragraph (c)(2)(ii) to read as follows:

**§ 707.20 Chemical substances import policy.**

\* \* \* \* \*

(c) \* \* \*

(2) \* \* \*

(ii) When EPA determines that a shipment should be detained, EPA will identify the reasons for the detention and the necessary actions for an importer to bring the shipment into compliance with TSCA. If EPA has given this information to Customs

before the district director issues the detention notice, the information will become part of the detention notice. The importer should contact one of the following EPA regional offices for guidance as to the proper procedures to correct any deficiencies in the shipment.

TABLE 1 TO PARAGRAPH (c)(2)(ii)

Region	Address
I .....	5 Post Office Square—Suite 100, Boston, MA 02109–3912 (617–918–1700).
II .....	26 Federal Plaza, New York, NY 10278 (201–321–6669).
III .....	Curtis Building, 6th and Walnut Streets, Philadelphia, PA 19106 (215–597–7668).
IV .....	61 Forsyth Street SW, Atlanta, Georgia 30303–8960 (404–562–9900).
V .....	77 West Jackson Boulevard, Chicago, IL 60604 (312–353–2291).
VI .....	1201 Elm Street, Suite 500, Dallas, Texas 75270–2102 (214–665–2760).
VII .....	11201 Renner Boulevard, AWMD/WEMM, Lenexa, Kansas 66219.
VIII .....	1860 Lincoln Street, Denver, CO 80295 (303–837–3926).
IX .....	75 Hawthorne Street, San Francisco, CA 94105 (415) 947–4402.
X .....	1200 Sixth Avenue, Seattle, WA 98101 (206–442–2871).

\* \* \* \* \*

**PART 763—ASBESTOS**

■ 28. The authority citation for part 763 continues to read as follows:

**Authority:** 15 U.S.C. 2605, 2607(c), 2643, and 2646.

■ 29. Appendix C to subpart E is amended under section II.C.3 by revising the listing for “EPA, Region IV” to read as follows:

**Appendix C to Subpart E of Part 763—Asbestos Model Accreditation Plan**

\* \* \* \* \*

II. \* \* \*

C. \* \* \*

3. \* \* \*

EPA, Region IV, Asbestos Coordinator, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960, (404) 562–9900.

\* \* \* \* \*

■ 30. Appendix D to subpart E is amended by revising the listing for “Region IV” to read as follows:

**Appendix D to Subpart E of Part 763—Transport and Disposal of Asbestos Waste**

\* \* \* \* \*

**Region IV**

Asbestos NESHAPs Contact, Enforcement and Compliance Assurance Division, USEPA, Region IV, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960, (404) 562–9900.

\* \* \* \* \*

[FR Doc. 2024–25014 Filed 10–30–24; 8:45 am]

**BILLING CODE 6560–50–P**

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 52**

[EPA–R04–OAR–2024–0186; FRL–12250–02–R4]

**Air Plan Approval; Mississippi; PSD and Air Quality Modeling Infrastructure Requirements for the 2015 8-Hour Ozone National Ambient Air Quality Standards**

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) submission provided by the State of Mississippi, through the Mississippi Department of

Environmental Quality (MDEQ), via a letter dated February 28, 2024. Specifically, EPA is finalizing approval of updates to the incorporation by reference of Federal prevention of significant deterioration (PSD) rules in the Mississippi SIP. EPA is also converting the previous conditional approval of Mississippi’s infrastructure SIP PSD and air quality modeling provisions for the 2015 Ozone National Ambient Air Quality Standards (NAAQS) to a full approval. EPA is also approving changes to public notice provisions for PSD permitting to provide for electronic notice (e-notice) and to remove the mandatory requirement to provide public notice in a newspaper, and other minor changes to the PSD rules. EPA is finalizing approval of these changes pursuant to the Clean Air Act (CAA or Act).

**DATES:** This rule is effective December 2, 2024.

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2024–0186. All documents in the docket are listed on the [regulations.gov](https://www.regulations.gov) website. Although listed in the index, some information may not be publicly available, *i.e.*, Confidential Business

Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Josue Ortiz Borrero, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960. The telephone number is (404) 562–8085. Mr. Ortiz Borrero can also be reached via electronic mail at [ortizborrero.josue@epa.gov](mailto:ortizborrero.josue@epa.gov).

#### **SUPPLEMENTARY INFORMATION:**

### **I. Background**

EPA is approving changes to Mississippi's SIP submitted by the State on February 28, 2024. The changes include revising the State's new source review (NSR) permitting regulations at 11 Mississippi Administrative Code (MAC), Part 2, Chapter 2, *Permit Regulations for the Construction and/or Operation of Air Emissions Equipment* (Chapter 2) and PSD permitting regulations at 11 MAC, Part 2, Chapter 5, *Regulations for the Prevention of Significant Deterioration of Air Quality* (Chapter 5) to adopt relevant federal permitting regulations into the SIP. The PSD permitting changes at Chapter 5 amend MDEQ's incorporate by reference (IBR) date of the federal PSD regulations at 40 CFR 51.166(f) and 40 CFR 52.21 to December 27, 2023. EPA's approval of the December 27, 2023, IBR date at Chapter 5, Rule 5.2 adopts into the SIP changes to 40 CFR 52.21 that EPA promulgated in several rulemakings since Mississippi's last IBR update of February 17, 2016. These rulemakings include: "Source Determination for Certain Emission Units in the Oil and Natural Gas Sector" 81 FR 35622 (June 3, 2016); "Rescission of Preconstruction Permits Issued under the Clean Air Act" 81 FR 78043 (November 7, 2016);

"Revisions to the Guideline on Air Quality Models: Enhancements to the AERMOD Dispersion Modeling System and Incorporation of Approaches to Address Ozone and Fine Particulate Matter" 82 FR 5182 (January 17, 2017) <sup>1</sup> at; "Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR): Project Emissions Accounting" 85 FR 74890 (November 24, 2020); and "New Source Review Errors Correction" 86 FR 37918 (July 19, 2021). The SIP revision also amends Mississippi's SIP-approved PSD rules to adopt public participation e-notice provisions consistent with EPA's October 5, 2016, rule "Revisions to Public Notice Provisions in Clean Air Act Permitting Programs".<sup>2</sup> The modeling updates at Chapter 2 and 5 respecting references to Appendix W in 40 CFR 52.21(l) support the state's request to convert EPA's March 1, 2023, conditional approval of the PSD requirements of elements 110(a)(2)(C), (D)(i)(II) (Prong 3), and (J), and the air quality modeling element under section 110(a)(2)(K), of Mississippi's 2015 8-hour ozone NAAQS infrastructure SIP (iSIP) <sup>3</sup> to a full approval.<sup>4</sup> The SIP

<sup>1</sup> The update to air quality modeling from the updated IBR date in 11 MAC, Part 2, Chapter 5, Rule 5.2, also updates modeling requirements at 11 MAC, Part 2, Chapter 2, Rule 2.5 because this Rule cross-references Rule 5.2 for purposes of air quality modeling.

<sup>2</sup> See 81 FR 71613.

<sup>3</sup> On October 1, 2015, EPA promulgated a revised primary and secondary NAAQS for ozone, revising the 8-hour ozone standards from 0.075 parts per million (ppm) to a new more protective level of 0.070 ppm. See 80 FR 65292 (October 26, 2015). Pursuant to section 110(a)(1) of the CAA, states are required to submit SIP revisions meeting the applicable requirements of section 110(a)(2) within three years after promulgation of a new or revised NAAQS or within such shorter period as EPA may prescribe. Section 110(a)(2) requires states to address basic SIP elements such as requirements for monitoring, basic program requirements, and legal authority that are designed to assure attainment and maintenance of the NAAQS. This particular type of SIP is commonly referred to as an "infrastructure SIP" or "iSIP." States were required to submit such SIP revisions for the 2015 8-hour ozone NAAQS to EPA no later than October 1, 2018.

<sup>4</sup> Mississippi submitted two SIP submissions on September 6, 2019, and January 25, 2021, to address their 110(a)(1) and (2) infrastructure obligations for the 2015 ozone standard. Through previous rulemakings, EPA approved most of the iSIP elements for the 2015 ozone NAAQS. See 87 FR 57832 (September 22, 2022), and 88 FR 9336 (February 13, 2023). On March 1, 2023, EPA finalized the conditional approval for the PSD infrastructure elements (i.e., section 110(a)(2)(C), (D)(i)(II) (prong 3) and (J)), and the air quality modeling element of section 110(a)(2)(K), portion of the January 25, 2021, infrastructure SIP submission, as supplemented on November 18, 2022.

The March 1, 2023, conditional approval of the PSD and air quality modeling iSIP provisions established a requirement for Mississippi to submit a final SIP submission that addresses the terms of the conditional approval commitment one year after EPA's conditional approval of these portions of

revision also includes minor changes to Mississippi's PSD regulations at Chapter 2 <sup>5</sup> and Chapter 5. The February 28, 2024, SIP submission provides additional changes to 11 MAC, Part 2, Chapter 2 to address NSR requirements, as well as minor grammatical errors which will be addressed in a separate rulemaking.

Through a notice of proposed rulemaking (NPRM) published on September 16, 2024 (89 FR 75517), EPA proposed to approve the changes to 11 MAC Part 2, Chapter 2, Rules 2.5B(1) and B(2), *Application Review*; 11 MAC, Part 2, Chapter 5, Rule 5.1, *Purpose of this regulation*; Rule 5.2, *Adoption of Federal Rules by Reference*; Rule 5.3, *Definition of term "Administrator"*; Rule 5.4, *Adoption of Federal Rules for Exclusions from Increment Consumption*; Rule 5.6 *Applicability*; and Rule 5.7, *Public Participation* into Mississippi's SIP and to convert the conditional approval of the portions of the 2015 8-hour ozone NAAQS iSIP that address the PSD related requirements of CAA sections 110(a)(2)(C), 110(a)(2)(D)(i)(II) (prong 3), and 110(a)(2)(J), and the modeling requirements of 110(a)(2)(K) to a full approval.<sup>6</sup> The contents of Mississippi's submission, EPA's rationale for approving the changes, and EPA's rationale for converting the conditional approval action to full approval, are described in more detail in the September 16, 2024, NPRM. Comments on the September 16, 2024, NPRM were due on or before October 16, 2024. EPA received one comment on the September 16, 2024, NPRM. The comment is available in the docket for this action.

### **II. Response to Comments**

EPA received one comment on the August 16, 2024, NPRM. EPA has

Mississippi's ozone iSIP or March 1, 2024. Accordingly, on February 28, 2024, Mississippi submitted a final SIP revision in response to the conditional approval commitment to address the outdated references to the federal guideline on air quality modeling, by revising Chapter 2 and Chapter 5 to require the use of the current version of 40 CFR part 51, Appendix W (Guideline on Air Quality Models).

<sup>6</sup> The IBR date change has the effect of incorporating PSD-related rule revisions EPA has promulgated since February 17, 2016, through December 27, 2023, which ensures that the most recent version of Appendix W will be used when considering air quality modeling for PSD purposes in Mississippi. Mississippi's February 28, 2024, SIP revision also revises 11 MAC, Part 2, Chapter 2, Rule 2.5(B) to reference the version of Appendix W approved in Chapter 5. Thus, by cross-referencing 11 MAC, Part 2, Chapter 5 for purposes of modeling ambient concentrations of air pollutants in 11 MAC, Part 2, Chapter 2, Rule 2.5(B), the State's regulation ensures that any required modeling of ambient air quality will use the most recent guidelines at Appendix W.

summarized and responded to the comment below.

**Comment:** The Commenter expressed support for the proposed changes to Mississippi's SIP-approved PSD permitting program to align with federal air pollution control guidelines, specifically those in Appendix W. The Commenter emphasized the importance of using the best tools available to monitor air quality and reduce pollutants like ozone. However, the Commenter expressed concerns about the potential financial strain these changes might impose on smaller business. The Commenter suggested that measures such as extending deadlines or providing financial support could help these businesses so they can comply without struggling.

**Response:** EPA appreciates the Commenter's support for this action. The Commenter also raised concerns about the potential burden the changes may place on smaller businesses, suggesting additional time for compliance or financial support so they can follow the rules without struggling. Due to the general nature of the Commenter's requests and suggestions, EPA is only able to provide general responses.

While EPA sets the NAAQS, states play a primary role in implementation. The CAA establishes a system of cooperative federalism that sets specific roles for EPA and the states. In this system, EPA provides national leadership and sets national standards for environmental protection, such as the NAAQS. Under CAA section 110, states have broad discretion to choose the mix of emission limitations and other control measures, means, or techniques that they will implement (or update) through a SIP to provide for attainment and maintenance of the NAAQS. EPA's role, with respect to a SIP revision, is focused on reviewing the submission to determine whether it meets the minimum criteria of the CAA, including a requirement to adopt a PSD program. Where a SIP revision meets the minimum CAA criteria, EPA must approve the submission. When approving a SIP revision, the Agency is not establishing its own requirements for the state to implement.

Regarding the Commenter's suggestion to allow small businesses additional time to meet the rules, as explained above, EPA's role is focused on reviewing the submission to determine whether it meets the minimum criteria of the CAA and must approve submissions that do. As such, EPA cannot unilaterally adopt a different deadline for compliance with the State's PSD rules if they conform to

the CAA requirements. As explained above and in the NPRM, Mississippi is updating its incorporation date for the federal PSD rules at 40 CFR 52.21 from February 17, 2016, to December 27, 2023.<sup>7</sup> The changes to the State's SIP are consistent with changes to the federal PSD rules that occurred between February 17, 2016, and December 27, 2023, and therefore conform to CAA PSD regulations.

The Commenter states that small businesses might have a hard time paying for the changes needed to follow these new rules, and suggests helping these businesses by offering financial support so they can follow the rules without struggling. As noted above, the CAA delegates to states the primary role in implementation through SIPs to attain and maintain each NAAQS. EPA appreciates the concerns the Commenter expressed regarding compliance by smaller businesses. EPA notes that the changes to Mississippi's PSD program do not change the universe of sources subject to preconstruction review under the program. EPA also notes that the PSD regulations have required the use of Appendix W modeling guidelines for decades, and that the Agency emphasized that air quality modeling should utilize the most advanced practical technology that is available at a reasonable cost to users when adopting the 2017 revisions to Appendix W. *See* 82 FR 5182, 5185 (January 17, 2017).

Therefore, while EPA has considered this feedback on the proposed rule, EPA has determined that the proposed SIP revision is consistent with the requirements of the CAA and is not altering its decision to proceed with the finalization of this action. Consequently, EPA is approving this revision to the Mississippi's SIP.

### III. Incorporation by Reference

In this document, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, and as discussed in Section I of this preamble, EPA is finalizing the incorporation by reference of Mississippi Rules 11 MAC, Part 2, Chapter 2, Rules 2.5B(1) and B(2), *Application Review*;<sup>8</sup> 11 MAC, Part 2,

<sup>7</sup> The federal rules at 40 CFR 52.21 implement PSD requirements for PSD programs administered by EPA and states with delegated authority. The requirements for state PSD programs in SIPs at found at 40 CFR 51.166.

<sup>8</sup> Except for Rules 2.5(A) and 2.5(C) through (E) which have a state effective date of 7/25/2013, Mississippi's February 28, 2024, SIP submission provides additional changes to 11 MAC, Part 2, Chapter 2 to address NSR requirements, as well as

Chapter 5, Rule 5.1, *Purpose of this regulation*; Rule 5.2, *Adoption of Federal Rules by Reference*;<sup>9</sup> Rule 5.3, *Definition of term "Administrator"*; Rule 5.4, *Adoption of Federal Rules for Exclusions from Increment Consumption*; Rule 5.6, *Applicability*; and Rule 5.7, *Public Participation*, all of which are State effective on March 24, 2024.<sup>10</sup> EPA has made, and will continue to make, these materials generally available through [www.regulations.gov](http://www.regulations.gov) and at the EPA Region 4 Office (please contact the person identified in the "For Further Information Contact" section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the State implementation plan, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.<sup>11</sup>

### IV. Final Action

EPA is approving the aforementioned changes to 11 MAC Part 2, Chapter 2, Rule 2.5B(1) and B(2), *Application Review*; 11 MAC, Part 2, Chapter 5, Rule 5.1, *Purpose of this regulation*; Rule 5.2, *Adoption of Federal Rules by Reference*; Rule 5.3, *Definition of term "Administrator"*; Rule 5.4, *Adoption of Federal Rules for Exclusions from Increment Consumption*; Rule 5.6, *Applicability*; and Rule 5.7, *Public Participation*. EPA is approving these changes because they are consistent with EPA's federal PSD permitting regulations and the CAA. In addition, EPA is converting the conditional approval portions of the 2015 8-hour ozone NAAQS iSIP that address the PSD related requirements of CAA sections 110(a)(2)(C), 110(a)(2)(D)(i)(II) (prong 3), and 110(a)(2)(J), and the modeling requirements of 110(a)(2)(K) to a full approval.

minor grammatical errors which will be addressed in a separate rulemaking.

<sup>9</sup> Rule 5.2 does not incorporate by reference the provisions at 52.21(b)(2)(v) and (b)(3)(iii)(c) that were stayed indefinitely by the Fugitive Emissions Interim Rule (76 FR 17548 (March 30, 2011)). EPA will retain the text in the explanation column for Rule 5.2 at 40 CFR 52.1270(c).

<sup>10</sup> Rules 5.3 through 5.6 were previously approved into the SIP but were inadvertently not added to the CFR table at 40 CFR 52.1270(c). This action corrects this oversight. Rule 5.5 was not changed through this SIP revision, so the table entry will reflect the state effective date of the version incorporated into the SIP.

<sup>11</sup> *See* 62 FR 27968 (May 22, 1997).



## V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA 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. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this 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 14094 (88 FR 21879, April 11, 2023);
- 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 (Pub. L. 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a state program;
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- 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.

In addition, 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 rulemaking does not have Tribal implications and will not impose substantial direct costs on Tribal governments or preempt Tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) directs Federal agencies to identify and address “disproportionately high and adverse human health or environmental effects” of their actions on communities with environmental justice (EJ) concerns to the greatest extent practicable and permitted by law. EPA defines EJ as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.” EPA further defines the term fair treatment to mean that “no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.”

Mississippi did not evaluate EJ considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA did not perform an EJ analysis and did not consider EJ in this action. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for communities with EJ concerns.

This action is subject to the Congressional Review Act, and EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 30, 2024. Filing a

petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

## List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: October 24, 2024.

**Jeaneanne Gettle,**

*Regional Administrator, Region 4.*

For the reasons stated in the preamble, EPA amends 40 CFR part 52 as follows:

## PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

- 1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

### Subpart Z—Mississippi

- 2. In § 52.1270(c), Table 1 to Paragraph (c) is amended:
  - a. Under the heading “11 MAC Part 2—Chapter 2 Permit Regulations for the Construction and/or Operation of Air Emissions Equipment” by revising the entry for “Rule 2.5”,
  - b. Under the heading “11 MAC Part 2—Chapter 5 Regulations for the Prevention of Significant Deterioration of Air Quality” by revising the entries for “Rule 5.1” and “Rule 5.2”, and adding entries for “Rule 5.3”, “Rule 5.4”, “Rule 5.5”, “Rule 5.6”, and “Rule 5.7”.

The revisions and additions read as follows:

### § 52.1270 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

TABLE 1 TO PARAGRAPH (C)—EPA-APPROVED MISSISSIPPI LAWS AND REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
*	*	*	*	*
<b>11 MAC Part 2—Chapter 2 Permit Regulations for the Construction and/or Operation of Air Emissions Equipment</b>				
*	*	*	*	*
Rule 2.5 .....	Application Review .....	3/24/2024	10/31/2024, [Insert first page of <b>Federal Register</b> citation].	Except for Rule 2.5(A) and 2.5(C) through (E) which have a state effective date of 7/25/2013.
*	*	*	*	*
<b>11 MAC Part 2—Chapter 5 Regulations for the Prevention of Significant Deterioration of Air Quality</b>				
Rule 5.1 .....	Purpose of this regulation.	3/24/2024	10/31/2024, [Insert first page of <b>Federal Register</b> citation].	The version of Rule 5.2 in the SIP does not incorporate the provisions at § 52.21(b)(2)(v) and (b)(3)(iii)(c) that were stayed indefinitely by the Fugitive Emissions Interim Rule (published in the <b>Federal Register</b> March 30, 2011).
Rule 5.2 .....	Adoption of Federal Rules by Reference.	3/24/2024	10/31/2024, [Insert first page of <b>Federal Register</b> citation].	
Rule 5.3 .....	Definition of term “Administrator”.	3/24/2024	10/31/2024, [Insert first page of <b>Federal Register</b> citation].	
Rule 5.4 .....	Adoption of Federal Rules for Exclusions from Increment Consumption.	3/24/2024	10/30/2024, [Insert first page of <b>Federal Register</b> citation].	
Rule 5.5 .....	Transmittal of Permit Applications to EPA Administrator.	7/25/2013	10/31/2024, [Insert first page of <b>Federal Register</b> citation].	
Rule 5.6 .....	Applicability .....	3/24/2024	10/31/2024, [Insert first page of <b>Federal Register</b> citation].	
Rule 5.7 .....	Public Participation .....	3/24/2024	10/31/2024, [Insert first page of <b>Federal Register</b> citation].	

\* \* \* \* \*

**§ 52.1276 [Removed and Reserved]**

## ■ 3. Remove and reserve § 52.1276.

[FR Doc. 2024–25243 Filed 10–30–24; 8:45 am]

BILLING CODE 6560–50–P

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 52**

[EPA–R04–OAR–2023–0466; FRL–12179–02–R4]

**Air Plan Approval; Forsyth County, North Carolina; Removal of Excess Emissions Provisions****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted by the North Carolina Division of Air Quality (NCDAQ) on behalf of the Forsyth County Office of Environmental Assistance and Protection (FCEAP or Forsyth County) on November 28, 2022. The revision was submitted in response to a finding of substantial inadequacy and SIP call published on June 12, 2015, concerning excess emissions during startup, shutdown, and malfunction (SSM) events. EPA is approving the SIP revision in accordance with requirements for SIP provisions under the Clean Air Act (CAA or Act) and finds that such SIP revision corrects the deficiencies identified in the Forsyth County portion of the North Carolina SIP in the June 12, 2015, SIP Call. EPA is also approving minor and administrative changes to certain

regulatory provisions that have been revised by the local agency since EPA's last approval of those provisions.

**DATES:** This rule is effective December 2, 2024.

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2023–0466. All documents in the docket are listed on the [regulations.gov](https://www.regulations.gov) website. Although listed in the index, some information may not be publicly available, *i.e.*, Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through [www.regulations.gov](https://www.regulations.gov) or in hard copy at the Multi-Air Pollutant Coordination

Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. EPA requests that you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Faith Goddard, Multi-Air Pollutant Coordination Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. The telephone number is (404) 562–8757. Ms. Goddard can also be reached via electronic mail at [goddard.faiith@epa.gov](mailto:goddard.faiith@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

In a September 12, 2024, notice of proposed rulemaking (NPRM), EPA proposed to approve the November 28, 2022, SIP revision submitted by NCDAQ on behalf of Forsyth County in response to a June 12, 2015, action titled “State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA’s SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown, and Malfunction” (“2015 SSM SIP Action”). See 80 FR 33840 (June 12, 2015). EPA’s rationale for the proposed approval and determination is explained in the September 12, 2024, NPRM.<sup>1</sup> See 89 FR 74171. The public comment period for EPA’s proposed approval and determination ended on October 3, 2024. EPA received one comment on the September 12, 2024, NPRM, but the comment is not relevant to this action. The comment is available in the docket for this action.

##### II. Incorporation by Reference

In this document, EPA is finalizing regulatory text that includes

<sup>1</sup> As discussed in the September 12, 2024, NPRM, the November 28, 2022, submission contains a revised cross-reference to source testing requirements not approved into the Forsyth County portion of the North Carolina SIP. EPA is not acting on that change in this rulemaking. On September 27, 2024, in a letter dated September 26, 2024, NCDAQ on behalf of FCEAP withdrew the portion of the November 28, 2022, SIP revision updating the aforementioned cross-reference and requested that the existing SIP-approved source testing requirements cross-reference be retained instead. See the September 26, 2024, partial withdrawal letter in the docket for this rulemaking.

incorporation by reference. In accordance with requirements of 1 CFR 51.5, and as discussed in Section I of this preamble, EPA is finalizing the incorporation by reference of Forsyth County Air Quality Control Ordinance and Technical Code Subchapter 3D, Section .0500, Rule 3D .0535, *Excess Emissions Reporting and Malfunctions*, locally effective July 14, 2022, with the following exceptions: EPA is not incorporating the last sentence of Rule 3D .0535(f), locally effective July 14, 2022,<sup>2</sup> and in Rule 3D .0535(c) and (g) is incorporating only the statements that each paragraph “is not included in Forsyth County’s portion of the State Implementation Plan.”<sup>3</sup> EPA has made, and will continue to make, these materials generally available through [www.regulations.gov](http://www.regulations.gov) and at the EPA Region 4 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA’s approval, and will be incorporated by reference in the next update to the SIP compilation.<sup>4</sup>

##### III. Final Action

EPA is approving Forsyth County’s November 28, 2022, SIP submission requesting changes to Rule 3D .0535, *Excess Emissions Reporting and Malfunctions*, except for the change to the cross-referenced rule in Rule 3D .0535(f), into the Forsyth County portion of the North Carolina SIP. Specifically, EPA is approving the removal of the substantive text of Rule 3D .0535(c) and (g) from the Forsyth County portion of the North Carolina SIP, the addition of statements clarifying that Rule 3D

<sup>2</sup> In lieu of the July 14, 2022, locally effective version of the last sentence of Rule 3D .0535(f), EPA is retaining the September 14, 1998, locally effective version of the sentence, consistent with EPA’s last approval on February 17, 2000. See 65 FR 8053. In this final action, the Agency is updating the SIP table at 40 CFR 52.1770(c) to reflect the retention of the September 14, 1998, version of the aforementioned sentence.

<sup>3</sup> Additionally, the existing substantive text of Rule 3D .0535(c) and (g) is being removed from the Forsyth County portion of the North Carolina SIP. With this final action, the SIP-approved version of Rule 3D .0535(c) reads, “(Paragraph (c) is not included in Forsyth County’s portion of the State Implementation Plan.)” and the SIP-approved version of .0535(g) reads, “(Paragraph (g) is not included in Forsyth County’s portion of the State Implementation Plan.)” In this final action, the Agency is updating the SIP table at 40 CFR 52.1770(c) accordingly.

<sup>4</sup> See 62 FR 27968 (May 22, 1997).

.0535(c) and (g) are not included in the Forsyth County portion of the North Carolina SIP,<sup>5</sup> and is otherwise approving the revised version of Rule 3D .0535 into the Forsyth County portion of the North Carolina SIP,<sup>6</sup> except for the last sentence of Rule 3D .0535(f), which contains a revised cross-reference that EPA is not acting on at this time. See 89 FR 74171. EPA is approving this SIP revision because the Agency has determined that it is consistent with the requirements for SIP provisions under the CAA.

##### IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA 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. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this 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 14094 (88 FR 21879, April 11, 2023);
- 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 (Pub. L. 104–4);

<sup>5</sup> Forsyth County is retaining the substantive text of Rule 3D .0535(c) and (g) for local-law purposes only. With this final action, emission limits incorporated into the Forsyth County portion of the North Carolina SIP apply at all times, and exemptions for emissions exceeding otherwise applicable SIP emission limitations during periods of SSM, as provided in the substantive text of Rule 3D .0535(c) and (g), apply to Forsyth County in its exercise of enforcement authority for local-law purposes only. Therefore, with this final action, citizens and EPA can seek injunctive relief or civil penalties for excess emissions.

<sup>6</sup> In this final action, EPA is also approving, as part of the November 28, 2022, SIP revision, certain changes to malfunction abatement plan, notification, and source testing requirements, as well as non-substantive administrative changes to the remaining Rule 3D .0535 regulatory text, as discussed in the September 12, 2024, NPRM.

- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a state program;

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and

- 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.

In addition, 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 rulemaking does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) directs Federal agencies to identify and address “disproportionately high and adverse human health or environmental effects” of their actions on communities with environmental justice (EJ) concerns to the greatest extent practicable and permitted by law. EPA defines EJ as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of

environmental laws, regulations, and policies.” EPA further defines the term fair treatment to mean that “no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.”

The FCEAP did not evaluate EJ considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA did not perform an EJ analysis and did not consider EJ in this action. Due to the nature of the action being taken here, this action is expected to have a neutral to positive impact on the air quality of the affected area. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving EJ for communities with EJ concerns.

This action is subject to the Congressional Review Act, and EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 30, 2024. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition

for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: October 28, 2024.

**Jeananne Gettle,**

*Acting Regional Administrator, Region 4.*

For the reasons stated in the preamble, EPA amends 40 CFR part 52 as follows:

#### PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

#### Subpart II—North Carolina

■ 2. In § 52.1770, in paragraph (c)(2), amend table EPA-Approved Forsyth County Regulations by revising the entry for “Rule .0535” to read as follows:

#### § 52.1770 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

#### (2) EPA-APPROVED FORSYTH COUNTY REGULATIONS

Citation	Title/subject	County effective date	EPA approval date	Explanation
*	*	*	*	*
Section .0500 Emission Control Standards				
Rule .0535	Excess Emissions Reporting and Malfunctions.	7/14/2022	10/31/2024, [Insert first page of <b>Federal Register</b> citation].	Except for the last sentence of paragraph (f), which is retained with a local effective date of September 14, 1998. Except for language providing exemptions for emissions exceeding otherwise applicable SIP emission limitations during startup and shutdown at paragraph (c) and malfunctions at paragraph (g); paragraph (c) reads only, “(Paragraph (c) is not included in Forsyth County’s portion of the State Implementation Plan.)” and paragraph (g) reads only, “(Paragraph (g) is not included in Forsyth County’s portion of the State Implementation Plan.)”
*	*	*	*	*

\* \* \* \* \*

[FR Doc. 2024–25392 Filed 10–30–24; 8:45 am]

BILLING CODE 6560–50–P

**ENVIRONMENTAL PROTECTION  
AGENCY****40 CFR Part 139**

[EPA–HQ–OW–2019–0482; FRL 7218–04–OW]

RIN 2040–AF92

**Vessel Incidental Discharge National  
Standards of Performance; Correction****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule; correction.

**SUMMARY:** The U.S. Environmental Protection Agency (EPA) is correcting an error found in the Vessel Incidental Discharge National Standards of Performance final rule. The final rule appeared in the **Federal Register** on October 9, 2024. This correction removes a footnote superscript number “1” that was included in error, as there is no accompanying footnote text.

**DATES:** This correction is effective on November 8, 2024.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA–HQ–OW–2019–0482. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through <https://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Jack Faulk, Oceans, Wetlands, and Communities Division, Office of Water (4504T), Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460; telephone number: (202) 564–0768; email address: [faulk.jack@epa.gov](mailto:faulk.jack@epa.gov).

**SUPPLEMENTARY INFORMATION:** EPA is correcting the final rule that published in the **Federal Register** of Wednesday, October 9, 2024, (89 FR 82074); FRL–7218–01–OW to address an inadvertent error made of including a footnote superscript number “1” to the subpart heading “Appendix A to Part 139—Federally-Protected Waters”.

**Correction**

In FR Doc. 2024–22013 appearing at 89 FR 82074 in the **Federal Register** of Wednesday, October 9, 2024, the following correction is made:

**Appendix A to Part 139—Federally-  
Protected Waters [Corrected]**

■ 1. On page 82145, in the second column, the subpart heading “Appendix A to Part 139—Federally-Protected Waters<sup>1</sup>” is corrected to read “Appendix A to Part 139—Federally-Protected Waters”.

**Bruno Pigott,***Principal Deputy Assistant Administrator.*

[FR Doc. 2024–25362 Filed 10–30–24; 8:45 am]

BILLING CODE 6560–50–P

**ENVIRONMENTAL PROTECTION  
AGENCY****40 CFR Part 262**

[EPA–HQ–OLEM–2021–0609; FRL–7308–04–OLEM]

RIN 2050–AH12

**Integrating e-Manifest With Hazardous  
Waste Exports and Other Manifest-  
Related Reports, PCB Manifest  
Amendments, and Technical  
Corrections; Correction****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule; correction.

**SUMMARY:** The Environmental Protection Agency (EPA) or (the Agency) is making four minor corrections to a final rule that appeared in the **Federal Register** on July 26, 2024. The final rule related to regulatory changes to incorporate export manifests and other manifest-related reports (i.e., Discrepancy, Exception, and Unmanifested Waste Reports) into e-Manifest as well as other changes related to manifests, including for polychlorinated biphenyls under the Toxic Substances Control Act.

**DATES:** This final rule is effective on January 22, 2025.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA–HQ–OLEM–2021–0609. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are

available electronically through <https://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:**

Bryan Groce, Program Implementation and Information Division, Office of Resource Conservation and Recovery, Environmental Protection Agency; (202) 566–0339; email address: [groce.bryan@epa.gov](mailto:groce.bryan@epa.gov) or David Graham, Program Implementation and Information Division, Office of Resource Conservation and Recovery, Environmental Protection Agency; (202) 566–2847; email address: [graham.david@epa.gov](mailto:graham.david@epa.gov). In addition, please refer to EPA’s e-Manifest web page for further information: [www.epa.gov/e-manifest](https://www.epa.gov/e-manifest).

**SUPPLEMENTARY INFORMATION:** This action corrects four minor errors to certain regulatory amendments established in the July 26, 2024, final rule (89 FR 60692) for 40 CFR 262.21, 262.42, and 262.83.

With respect to the regulatory amendments at § 262.21, the July 26 final rule established revised printing specification requirements at § 262.21(f)(6) and (7) for the new four-copy paper manifest (EPA Form 8700–22) and continuation sheet (EPA Form 8700–22A) forms. Section 262.21(f)(6) describes the revised copy distribution requirements to be printed on each copy of the new four-copy manifest (EPA–Form 8700–22) and continuation sheet (EPA Form 8700–22A). Section 262.21(f)(7) describes the revised printing specifications for printing the appropriate manifest instructions on the back of the form copies. Although, EPA finalized the manifest forms themselves by revising the wording of the distribution scheme in the bottom right margins of the forms and by moving the instructions on the reverse side of Page 2 (“Designated Facility to Generator” copy) to the reverse side of Page 1 (top copy) of the manifest forms, EPA inadvertently did not make these conforming changes in the regulatory text at § 262.21(f)(6) and (7). This includes adding two instances of “U.S.” to the Page 1 (top copy) text and making changes for use of capitalization in Pages 1–4. To correct these errors, this action revises paragraph § 262.21(f)(6) so that the words indicating copy distribution exactly match the words shown at the bottom right margin of each copy of the new four-copy manifest forms. Similarly, and in addition, this action corrects § 262.21(f)(7) to match the language on the new four-copy manifest form—i.e., to require that commercial printers authorized by EPA to produce the manifest forms print the instructions for designated facilities and

hazardous waste exporters on the reverse side of the top copy of the manifest forms instead of the reverse side of Page 2. This includes changing the title of the manifest instructions for the top copy of Manifest Form 8700–22 and 8700–22A from “Instructions for Treatment, Storage, and Disposal Facilities” to “Instructions for Exporters or Owners and Operators of Receiving Facilities Designated on the Manifest.”

With respect to the errors in §§ 262.42 and 262.83, this action corrects errors to certain instructions in part 262 which established regulatory revisions and additions, or both, to the hazardous waste exception reporting requirements at § 262.42 and to the requirements for export shipments of hazardous waste at § 262.83. The corrections to §§ 262.42 and 262.83 are necessary to ensure that certain regulatory amendments established in the July 26 final rule under part 262 are codified accurately and correctly in title 40 of the Code of Federal Regulations.

The EPA is not providing a public comment opportunity prior to promulgation of today’s technical corrections to §§ 262.21(f)(6) and (7), 262.42, and 262.83, nor is the EPA issuing a direct final rulemaking. That is because such public comment is unnecessary under 5 U.S.C. 553(b)(B) of the Administrative Procedure Act (APA). The corrections established in this action today are very minor and non-substantive technical corrections to regulations; thus, the corrections would not substantively alter the regulations established in the final rule in a way that would be of interest to the regulated community or the public. Therefore, pursuant to 5 U.S.C. 553(b)(B) of the Administrative Procedure Act (APA), the EPA finds good cause to promulgate these technical corrections without notice and comment because it would be unnecessary.

#### Corrections

In FR Doc. 2024–14694 appearing at 89 FR 60692 in the **Federal Register** of Friday, July 26, 2024, the following corrections are made:

##### § 262.21 [Corrected]

- 1. On page 60725, in the third column, in § 262.21:
  - a. Paragraph (f)(6)(i) is corrected to read: “(i) Page 1 (top copy): “U.S. Designated Facility or U.S. Exporter to the EPA’s e-Manifest System”.”;
  - b. Paragraph (f)(6)(ii) is corrected to read: “(ii) Page 2: “Designated Facility to Generator”.”;
  - c. Paragraph (f)(6)(iii), is corrected to read: “(iii) Page 3: “Transporter Copy”; and”;

- d. Paragraph (f)(6)(iv), is corrected to read: “(iv) Page 4 (bottom copy): “Generator’s Initial Copy”.”;

- e. Paragraph (f)(7)(i)(C) is corrected to read: “(C) The “Instructions for Exporters or Owners and Operators of Receiving Facilities Designated on the Manifest” on Top Copy (Page 1).”;

- f. Paragraph (f)(7)(ii)(C) is corrected to read: “(C) The “Instructions for Exporters or Owners and Operators of Receiving Facilities Designated on the Manifest” on Top Copy (Page 1).”.

##### § 262.42 [Corrected]

- 2. On page 60726, in the first column instruction 11.d. is corrected to read: “d. Revising paragraph (c)(2) and adding paragraph (d).”.

##### § 262.83 [Corrected]

- 3. On page 60726, in the second column, instruction 12.a. is corrected to read: “a. Revising the introductory text of paragraph (a)(6), paragraphs (b)(1)(i) through (iv), and (b)(3);”.

**Barry N. Breen,**

*Principal Deputy Assistant Administrator,  
Office of Land and Emergency Management.*

[FR Doc. 2024–25370 Filed 10–30–24; 8:45 am]

**BILLING CODE 6560–50–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### 45 CFR Parts 1301, 1302, 1303, 1304, and 1305

[Docket No. HHS\_FRDOC\_0001–0957]

**RIN 0970–AD01**

#### Supporting the Head Start Workforce and Consistent Quality Programming; Announcement and Correction

**AGENCY:** Office of Head Start, Administration for Children and Families, U.S. Department of Health and Human Services.

**ACTION:** Final rule; announcement and correcting amendment.

**SUMMARY:** The Department of Health and Human Services is correcting a final rule that appeared in the **Federal Register** on August 21, 2024. The effective date of that final rule was listed in the preamble as the date of publication, August 21, 2024, when it should have had the required 60-day delay to comply with the Congressional Review Act. The effective date should have been October 21, 2024. Additionally, the final rule inadvertently included an incorrect citation in the requirements for family partnership services, and failed to

include the compliance date for the requirements for staff benefits (August 1, 2028) in the regulatory text.

**DATES:** The corrections in this document are effective October 31, 2024.

#### FOR FURTHER INFORMATION CONTACT:

Jessica Bialecki, Office of Head Start, 202–240–3901 or [Jessica.Bialecki@acf.hhs.gov](mailto:Jessica.Bialecki@acf.hhs.gov).

**SUPPLEMENTARY INFORMATION:** On August 21, 2024, HHS published a final rule amending 45 CFR parts 1301, 1302, 1303, 1304, and 1305. We incorrectly established the effective date as August 21, 2024. The intention was for the rule to become effective on October 21, 2024. The earliest compliance date was correctly identified as October 21, 2024, in the final rule.

#### List of Subjects in 45 CFR Part 1302

Compensation, Early education, Grant programs, Head Start, Mental health, Quality improvement, Social programs, Workforce.

For reasons stated in the preamble, ACF corrects 45 CFR part 1302 by making the following correcting amendments:

#### PART 1302—PROGRAM OPERATIONS

- 1. The authority citation for part 1302 continues to read as follows:

**Authority:** 42 U.S.C. 9801 *et seq.*

- 2. Amend § 1302.52 by revising paragraph (d)(2)(i) to read as follows:

##### § 1302.52 Family partnership services.

\* \* \* \* \*

(i) When the responsible HHS official grants a waiver if the program can demonstrate staff competencies at § 1302.92(b)(5); program outcomes at paragraph (b) of this section; and reasonable staff workload as described in paragraph (d)(3) of this section.

- 3. Amend § 1302.90 by revising paragraphs (f)(1) through (4) to read as follows:

##### § 1302.90 Personnel policies.

\* \* \* \* \*

(f) *Staff benefits.* (1) By August 1, 2028, for each full-time staff member, defined as those working 30 or more hours per week with the Head Start program during the program year, a program must:

- (i) Provide or facilitate access to high-quality affordable health care coverage;
  - (ii) Offer paid leave; and,
  - (iii) Offer access to short-term, free, or minimal cost behavioral health services.
- (2) By August 1, 2028, for each part-time staff member, a program must facilitate access to high-quality, affordable health care coverage.

(3) By August 1, 2028, for each staff member, a program must facilitate access to available resources and information on child care, including connections to child care resource and referral agencies or other child care consumer education organizations and, for staff who meet eligibility guidelines, facilitate access to the child care subsidy program.

(4) By August 1, 2028, for each staff member who may be eligible, a program must facilitate access to the Public Service Loan Forgiveness (PSLF) program, or other applicable student loan debt relief programs, including timely certification of employment.

\* \* \* \* \*

Elizabeth J. Gramling,  
*Executive Secretary, Department of Health and Human Services.*

[FR Doc. 2024–23032 Filed 10–30–24; 8:45 am]

BILLING CODE P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 24–1080; MB Docket No. 24–193; RM–11986; FR ID 256360]

Radio Broadcasting Services; Huntley, Montana

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document amends the Table of FM Allotments, of the Federal Communications Commission’s

(Commission) rules, by allotting Channel 284A at Huntley, Montana, as the community’s first local service. To accommodate the allotment, we modify the license of KYSX, Billings, Montana to specify operation on Channel 286A in lieu of Channel 283C1. A staff engineering analysis reveals that Channel 284A can be allotted to Huntley, Montana, consistent with the minimum distance separation requirements of the Commission’s rules with a site restriction of 13.9 km (8.6 miles) north of the community.

DATES: Effective December 2, 2024.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2054, [Rolanda-Faye.Smith@fcc.gov](mailto:Rolanda-Faye.Smith@fcc.gov).

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission’s Report and Order, MB Docket No. 24–193, adopted October 17, 2024, and released October 17, 2024. The full text of this Commission decision is available online at <https://apps.fcc.gov/ecfs/>. The full text of this document can also be downloaded in Word or Portable Document Format (PDF) at <https://www.fcc.gov/edocs>. This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13.

The Commission will send a copy of the Report and Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Federal Communications Commission.  
Nazifa Sawez,  
*Assistant Chief, Audio Division, Media Bureau.*

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 155, 301, 303, 307, 309, 310, 334, 336, 339.

■ 2. In § 73.202, in paragraph (b), amend the Table of FM Allotments under Montana, by adding in alphabetical order an entry for “Huntley” to read as follows:

§ 73.202 Table of Allotments.

\* \* \* \* \*

(b) Table of FM Allotments.

TABLE 1 TO PARAGRAPH (b)	
U.S. States	Channel No.
Texas	
* * * * *	
Huntley .....	284A
* * * * *	

\* \* \* \* \*

[FR Doc. 2024–25345 Filed 10–30–24; 8:45 am]

BILLING CODE 6712–01–P

# Proposed Rules

Federal Register

Vol. 89, No. 211

Thursday, October 31, 2024

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 TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 71

[Docket No. FAA-2024-2055; Airspace Docket No. 22-AWP-56]

RIN 2120-AA66

#### Modification of Class D Airspace, Establishment of Class E Airspace; San Bernardino International Airport, San Bernardino, CA

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

**ACTION:** Notice of proposed rulemaking (NPRM); extension of comment period.

**SUMMARY:** This notice announces an extension of the comment period on an NPRM that proposes to modify Class D airspace and establish Class E airspace at San Bernardino International Airport, San Bernardino, CA. This action is being taken in response to interest by local airspace users in the San Bernardino area, a higher than usual amount of public comment since the initial publication of the NPRM, and the expectation of future comments.

**DATES:** Comments must be received on or before December 10, 2024.

**ADDRESSES:** Send comments identified by FAA Docket No. FAA-2024-2055 and Airspace Docket No. 22-AWP-56 using any of the following methods:

\* *Federal eRulemaking Portal:* Go to [www.regulations.gov](http://www.regulations.gov) and follow the online instructions for sending your comments electronically.

\* *Mail:* Send comments to Docket Operations, M-30; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12-140, West Building Ground Floor, Washington, DC 20590-0001.

\* *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

\* *Fax:* Fax comments to Docket Operations at (202) 493-2251.

*Docket:* Background documents or comments received may be read at [www.regulations.gov](http://www.regulations.gov) at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FAA Order JO 7400.11J, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at [www.faa.gov/air\\_traffic/publications/](http://www.faa.gov/air_traffic/publications/). You may also contact the Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267-8783.

**FOR FURTHER INFORMATION CONTACT:** Nathan A. Chaffman, Federal Aviation Administration, Western Service Center, Operations Support Group, 2200 S 216th Street, Des Moines, WA 98198; telephone (206) 231-3460.

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should submit only one time if comments are filed electronically, or commenters should send only one copy of written comments if comments are filed in writing.

The FAA will file in the docket all comments it receives, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments it receives on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. The FAA may change

this proposal in light of the comments it receives.

*Privacy:* 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](http://www.regulations.gov), as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at [www.dot.gov/privacy](http://www.dot.gov/privacy).

#### Availability of Rulemaking Documents

An electronic copy of this document may be downloaded through the internet at [www.regulations.gov](http://www.regulations.gov). Recently published rulemaking documents can also be accessed through the FAA's web page at [www.faa.gov/air\\_traffic/publications/airspace\\_amendments/](http://www.faa.gov/air_traffic/publications/airspace_amendments/).

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Operations office (see **ADDRESSES** section for address, phone number, and hours of operations). An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 2200 S 216th Street, Des Moines, WA 98198.

#### Background

Docket No. FAA 2024-2055; Airspace Docket No. 22-AWP-56, published on October 11, 2024 (89 FR 82538) proposes to modify Class D airspace and establish Class E airspace at San Bernardino International Airport, San Bernardino, CA. This action will extend the comment period closing date on that airspace docket from November 25, 2024, to December 10, 2024, to allow for an additional 15-day comment period.

#### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

#### Extension of Comment Period

The comment period closing date on Docket No. FAA 2024-2055; Airspace Docket No. 22-AWP-56 is hereby extended to December 10, 2024.

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



Issued in Des Moines, Washington, on October 25, 2024.

**B.G. Chew,**

*Group Manager, Operations Support Group,  
Western Service Center.*

[FR Doc. 2024–25339 Filed 10–30–24; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF COMMERCE

### Census Bureau

#### 15 CFR Part 30

[Docket Number: 241010–0268]

**RIN: 0607–AA62**

#### **Foreign Trade Regulations (FTR): Clarification of Filing Requirements Regarding In-Transit Shipments and Other FTR Provisions**

**AGENCY:** Census Bureau, Department of Commerce.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Bureau of the Census (Census Bureau) proposes to amend its regulations to clarify the requirements governing in-transit shipments from foreign countries through the United States that are subsequently exported to a foreign destination. This rulemaking proposes to clarify who is the U.S. Principal Party in Interest (USPPI) and revise the entry number description when goods are entered into the United States for consumption or warehousing, and then stored in a warehouse or storage facility or admitted into a Foreign Trade Zone (FTZ) before being exported. This rule also proposes to clarify that when a customs broker is the USPPI and they are requested to provide information from the customs entry for the filing of the Electronic Export Information (EEI), that they obtain consent from their client, as required in the customs regulations. Additionally, this proposed rule revises several sections, including definitions, mandatory filing requirements, responsibilities of parties to the export transaction, confidentiality, penalties, and voluntary self-disclosures to ensure clarity, accuracy, and consistency throughout the FTR.

**DATES:** Written comments must be received on or before December 30, 2024.

**ADDRESSES:** You may submit comments by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. The identification number for this rulemaking is identified by RIN number 0607–AA62; or
- By email directly to [gtmd.ftrnotices@census.gov](mailto:gtmd.ftrnotices@census.gov). Include

RIN number 0607–AA62 in the subject line.

All comments received are part of the public record. No comments will be posted to <http://www.regulations.gov> for public viewing until after the comment period has closed. Comments will generally be posted without change. All Personally Identifiable Information (for example, name and address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

**FOR FURTHER INFORMATION CONTACT:** Epa Uwimana, Chief, Economic Management Division, Census Bureau, 4600 Silver Hill Road, Washington, DC 20233–6010, by phone (301) 763–6064, by fax (301) 763–8835, or by email [epaphrodite.uwimana@census.gov](mailto:epaphrodite.uwimana@census.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

The Census Bureau, as delegated to it by the Secretary of Commerce, is responsible for collecting, compiling, and publishing import and export trade statistics for the United States under the provisions of Title 13, United States Code (U.S.C.), Chapter 9, Section 301(a). Under Title 13 U.S.C. 302, the Secretary of Commerce is authorized to promulgate regulations deemed by the Secretary to be necessary or appropriate and in such form or manner as the Secretary determines are necessary or proper to carry out the purposes of and prevent the circumvention of the requirements of Chapter 9 of Title 13. The Secretary also may promulgate regulations covering the confidentiality, publication, and disclosure of information collected under Chapter 9. The Secretary developed the Automated Export System (AES), consistent with Public Law 106–113 and considering the confidentiality requirements of Chapter 9 of Title 13, to collect EEI in concert with the export control and enforcement functions of U.S. Customs and Border Protection and Immigration and Customs Enforcement of the Department of Homeland Security, the Bureau of Industry and Security (BIS) of the Department of Commerce, and the Directorate of Defense Trade Controls of the Department of State. Public Law 107–228 directed the Secretary to publish regulations requiring exporters to file Shippers' Export Declarations, now referenced as EEI, in the AES. As a result, the Census Bureau is responsible for publishing the FTR that set the export reporting requirements for preparing and filing the EEI in the Automated Export System (AES). The

EEI is made up of mandatory, conditional, and optional data elements. The purpose of this rulemaking is to revise the FTR to define the USPPI and revise the description of the entry number when goods enter the United States for consumption or warehousing, and then stored in a warehouse or storage facility or admitted into a FTZ before being exported. The Census Bureau has experienced an increase in the number of inquiries regarding export transactions where a customs broker enters goods into the United States for consumption or warehousing, and then stored in a warehouse or storage facility or admitted into a FTZ before being exported.

In this proposed rule we are expanding the scenarios of the USPPI for goods that enter into the United States for consumption or warehousing, and then stored in a warehouse or storage facility or admitted into a FTZ before being exported. The current FTR 30.3(b)(2)(iv) and (v) allow the customs broker to be the USPPI when the customs broker or a foreign person is listed as the importer of record, respectively. However, this may no longer be practical when goods have been stored in warehouses, storage facilities, or FTZ for an extended period of time after entry. In many cases, additional parties other than the customs broker have knowledge and control of the goods for weeks, months or years and possess the goods in warehouses, storage facilities, or FTZs. Therefore, the Census Bureau is proposing the warehouse, storage facility or FTZ be considered the USPPI in these scenarios based on knowledge and control of the goods destined to be exported. Additionally, when the customs broker is the USPPI, it must obtain consent from its client to share information from the import entry that supports the preparation and filing of the EEI in the AES. The Census Bureau proposes to revise the conditional data element entry number description to require the entry number when foreign origin goods are entered into the United States for consumption or warehousing, and then stored in a warehouse or storage facility or admitted into a FTZ before being exported. The Census Bureau has evaluated the entry number on the EEI, as suggested in a comment from the trade community to the NPRM for the Country of Origin (COO) titled *Foreign Trade Regulations (FTR): New Filing Requirement and Clarifications to Current Requirements* (RIN: 0607–AA59), published December 15, 2021 and has determined that the entry number will provide the Census Bureau

with a linkage to the CBP entry data where the COO data can be obtained to achieve its statistical purposes. The Census Bureau also proposes to add one definition, remove one definition, and revise twelve other definitions in order to ensure that any revisions made to the FTR will allow for the continued collection of accurate trade statistics; revise the mandatory EEI filing requirements for exports subject to the Drug Enforcement Agency regulations; revise the list of information that a USPPI and an authorized agent provide in a routed export transaction; and clarify language regarding AES downtime, confidentiality, penalties, and Voluntary Self-Disclosures; and proposes to make grammatical and style changes in the FTR.

The Census Bureau is seeking public comments from data users, businesses, and others to assess these proposed changes. Below are considerations when providing feedback to this proposed rule; however, any pertinent feedback not captured by these considerations is welcome.

1. Describe the potential value of clarifying who is the USPPI when goods enter the United States for consumption or warehousing, and then stored in a warehouse or storage facility or admitted into a FTZ before being exported.

2. Describe the potential value to all other changes to the FTR.

3. How long would a company that utilizes or manages proprietary software need to make programming changes to potentially adapt to the changes in this proposed rule and interface to the AES?

4. Are there business practices that a company would need to implement to come into compliance with the changes in this proposed rule? If so, how long would a company need to implement new business practices?

Finally, the U.S. Department of Homeland Security and the U.S. Department of State concur with the revisions to the FTR as required by 13 U.S.C. 303, and Public Law 107–228, division B, title XIV, section 1404.

### Program Requirements

To comply with the requirements of the Foreign Relations Act, Public Law 107–228, the Census Bureau is amending relevant sections of the FTR to revise or clarify export reporting requirements. Therefore, the Census Bureau is correcting 15 CFR part 30 by making the following correcting amendments:

- Revise § 30.1(c) by amending the definitions for “Buyer”, “End user”, “Filer”, “Foreign port of unloading”, “Foreign Principal Party in Interest

(FPPI)”, “Forwarding agent”, “Intermediate consignee”, “Order party”, “Seller”, “Shipment”, “Ultimate consignee”, and “U.S. Principal Party in Interest (USPPI)”. Additionally, add the definition for “Conveyance” and remove the definition for “Consignee”.

- Revise § 30.2(a)(1)(iv)(D) by amending the Drug Enforcement Agency’s authorization to require EEI filing in the AES for all licenses and permits under 12 CFR 1309.

- Revise § 30.2(d)(1) by amending the language to clarify that EEI filing is excluded when goods are moving in-transit through the United States, Puerto Rico, or the U.S. Virgin Islands from one country or area to another where such goods do not enter the United States for consumption or warehousing.

- Revise § 30.2(d)(4) by removing the reference to the exemption § 30.39 as the exclusion overrides the exemption.

- Revise § 30.3 by adding an introductory paragraph that states international commercial terms, terms of sale, and industry or other agreements do not determine the type of or parties to the export transaction.

- Revise § 30.3(a) by replacing General requirements with General filer requirements to include specific paragraphs designated as (a)(1) that the filer is a USPPI or authorized agent, (a)(2) that the filer must be located physically in the U.S. when filing the EEI, and (a)(3) that the EEI must be filed completely, accurately, and timely.

- Revise § 30.3(b)(2) by removing the foreign entity as the USPPI because it has been added as a scenario in this section.

- Revise § 30.3(b)(2)(iv) by amending to combine the existing language in § 30.3(b)(2)(iv) and (v), add a time frame from when the customs broker clears goods into the United States for consumption or warehousing and clarify who is the USPPI in the scenario; and by adding a Note that requires the customs broker to obtain consent from its client when the information from the customs entry is used to prepare and file the EEI.

- Revise § 30.3(b)(2)(v) to identify the USPPI as a person who admits goods into a Foreign Trade Zone (FTZ) or the FTZ operator as the USPPI.

- Revise § 30.3(b)(2)(vi) to add a USPPI scenario when the foreign entity is in the United States when the goods are purchased or obtained for export.

- Revise § 30.3(d)(4) by adding postdeparture, downtime and exclusion to the list of citations.

- Revise § 30.3(e)(1) and § 30.3(e)(2) by removing the list and references to those list of data elements the USPPI provides to the authorized agent to

assist in the preparation and filing of the EEI, and the list of data elements the authorized agent must provide to the USPPI upon request, and replace with Appendix C.

- Revise § 30.4(b)(1) to remove references to the downtime procedures;

- Revise § 30.4(b)(4) by amending to replace with the existing language in § 30.4(b)(5) regarding EEI filing time frames for the export of used self-propelled vehicles;

- Remove § 30.4(b)(5);

- Revise § 30.4(c)(2) to replace the term “Consignee” with “Ultimate consignee”.

- Revise § 30.4(f) by adding the downtime procedures.

- Revise § 30.6(a)(1) to remove examples of the USPPI from the USPPI data element description, rename the “Address of the USPPI” to “Address of origin”, and revise the USPPI Address of origin example.

- Revise § 30.6(a)(3) to provide examples of the ultimate consignee based on knowledge at the time of export.

- Revise § 30.6(a)(4) by amending the U.S. state of origin example.

- Revise § 30.6(a)(11) to refer to 30.1 for detailed definitions of foreign and domestic goods.

- Revise § 30.6(b)(2) to clarify that the intermediate consignee must physically take possession of the goods.

- Revise § 30.6(b)(4) to clarify that the Foreign Port of Unloading is the location where the goods are removed from the exporting conveyance.

- Revise § 30.6(b)(6) to provide a reference to section 758.1(g) of the Export Administration Regulations to clarify the Export Control Classification Number reporting requirements.

- Revise § 30.6(b)(13) to clarify that the entry number is required when the export meets the scenarios of 30.3(b)(2)(iv) and (v) or the Domestic or foreign indicator is foreign, and the customs broker has received consent from its client to report or provide the entry number when goods were previously entered into the United States for consumption or warehousing before being exported.

- Revise § 30.18(c) to remove the reference to the Department of State website.

- Revise § 30.29(a)(1) and § 30.29(a)(2) to add a reference to § 30.53 to clarify the import reporting requirements for repairs.

- Revise § 30.60 (c)(1) to amend by combining the existing language in (c)(1) and (c)(2) to clarify that the EEI may not be used for tax purposes unless otherwise noted.

- Revise § 30.60(c)(2) to add language to prohibit the use of EEI for export

marketing and promotion unless otherwise noted.

- Revise 30.60(c)(4) to amend foreign entity to foreign person.
- Revise § 30.71(a)(2) by amending the language to add that deactivation of a filer's account may be a penalty if the filer furthers illegal activity.
- Revise § 30.74(b)(4) and (d) to clarify that foreign persons may not submit a Voluntary Self-Disclosure and to amend the Census Bureau's actions when responding to a Voluntary Self-Disclosure.
- Revise FTR Appendix B to Part 30—AES Filing Citation, Exemption and Exclusion Legends to replace X. with Miscellaneous Exclusion Statements and move Split Shipments to XI.
- Add FTR Appendix C to Part 30—Required Data Elements—Routed Export Transactions to include the data elements that the USPPi and authorized agent are responsible for in a routed export transaction.

## Rulemaking Requirements

### Regulatory Flexibility Act

The Chief Council for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy, Small Business Administration (SBA) that this proposed rule will not have a significant economic impact on a substantial number of small entities.

This action requires that USPPi or authorized agents in the United States file EEI in the AES for all shipments where an EEI record is required under the FTR. The SBA's table of size standards indicates that businesses that are the USPPi or authorized agent and file EEI are considered small businesses if they employ less than 500 people. Based on Exhibit 7a of A Profile of U.S. Importing and Exporting Companies, 2021–2022 the Census Bureau estimates that there are 271,391 USPPi that are considered small and medium sized exporters under the Small Business Act definition, and more than 73 percent of these USPPi use an authorized agent to file EEI. An estimate of the number of authorized agents is not known.

The majority of USPPi and authorized agents require the use of a computer to perform routine tasks, such as filing the EEI. These USPPi and authorized agents are unlikely to be significantly affected by these new requirements, as they already possess the necessary technology and equipment to submit the EEI. In addition, it is not necessary for small businesses to purchase software for this task because a free internet-based system is provided, *AESDirect*,

especially for small businesses to submit their export information electronically. The proposed new requirements will have minimal impact on response burden. For these reasons, the Census Bureau believes this rule will not have a significant economic impact on all companies including a substantial number of small entities.

### Executive Orders

This proposed rule has been determined to not be significant for purposes of Executive Order 12866. This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 13132.

### Paperwork Reduction Act

Notwithstanding any other provisions of law, no person is required to respond to, nor shall a person be subject to, a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a valid Office of Management and Budget (OMB) control number.

This proposed rule covers collections of information subject to the provisions of the PRA, which are cleared by OMB under OMB Control Number 0607–0152—AES Program.

This proposed rule will not impact the current reporting-hour burden requirements as approved under OMB Control Number 0607–0152 under provisions of the PRA. The proposed rule will not require any revisions to the information sought under OMB Control Number 0607–0152.

Robert L. Santos, Director, Census Bureau, approved the publication of this notification in the **Federal Register**.

### List of Subjects in 15 CFR Part 30

Economic statistics, Exports, Foreign trade, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, the Census Bureau is proposing to amend Title 15, CFR part 30, as follows:

## PART 30—FOREIGN TRADE REGULATIONS

- 1. The authority citation for 15 CFR part 30 continues to read as follows:

**Authority:** 5 U.S.C. 301; 13 U.S.C. 301–307; Reorganization plan No. 5 of 1990 (3 CFR 1949–1953 Comp., p. 1004); Department of Commerce Organization Order No. 35–2A, July 22, 1987, as amended, and No. 35–2B, December 20, 1996, as amended; Pub. L. 107–228, 116 Stat. 1350.

- 2. Amend § 30.1(c) by:

- a. Revising the definitions for “Buyer”, “Commerce Control List (CCL)”, “Country of ultimate destination”, “End user”, “Filer”, “Foreign port of unloading”, “Foreign Principal Party in Interest (FPPI)”, “Forwarding agent”, “Intermediate consignee”, “Order party”, “Person”, “Seller”, “Shipment”, “Shipping documents”, “Ultimate consignee”, “U.S. Principal Party in Interest (USPPi)”, “Voluntary Self-Disclosure (VSD)”;

- b. Removing the definition for “Consignee”; and

- c. Adding, in alphabetical order, the definition for “Conveyance”.

The revisions and additions read as follows:

### § 30.1 Purpose and definitions.

\* \* \* \* \*

(c) \* \* \*

*Buyer (purchaser).* The person located abroad in the export transaction that purchases the goods for delivery to the ultimate consignee. The buyer (purchaser) and ultimate consignee may be the same.

\* \* \* \* \*

*Commerce Control List (CCL).* A list of items found in Supplement No. 1 to Part 774 of the Export Administration Regulations (EAR). Supplement No. 2 to Part 774 of the EAR contains the General Technology and Software Notes relevant to entries contained in the CCL.

\* \* \* \* \*

*Conveyance.* The actual aircraft, vessel, railcar, truck, and other means of transport used to transport goods from one place to another. See § 30.6(a)(7).

\* \* \* \* \*

*Country of ultimate destination.* The country where the goods are to be consumed, further processed, stored, or manufactured, as known to the USPPi at the time of export. (See § 30.6(a)(5)).

\* \* \* \* \*

*End user.* The person located abroad who receives and ultimately uses the exported, reexported or transferred (in-country) items. The end user is not an authorized agent or intermediary but may be the FPPI or ultimate consignee.

\* \* \* \* \*

*Filer.* The USPPi or an authorized agent who is responsible for submitting the Electronic Export Information (EEI) in the Automated Export System (AES).

\* \* \* \* \*

*Foreign port of unloading.* The port in a foreign country where the goods are removed from the exporting conveyance. The foreign port does not have to be located in the country of destination. The foreign port of

unlading shall be reported in terms of the Schedule K, "Classification of CBP Foreign Ports by Geographic Trade Area and Country."

**Foreign Principal Party in Interest (FPPI).** The person located abroad who purchases the goods for export or to whom final delivery of the goods will be made. This party may be the ultimate consignee, buyer (purchaser), or end user.

\* \* \* \* \*

**Forwarding agent.** The person in the United States who is authorized by the principal party in interest to facilitate the movement of the cargo from the United States to the foreign destination.

\* \* \* \* \*

**Intermediate consignee.** The person located abroad who acts as an agent for the principal party in interest and takes possession of the goods for the purpose of effecting delivery of goods to the ultimate consignee. The intermediate consignee may be a forwarding agent or other person who acts as an agent for a principal party in interest.

\* \* \* \* \*

**Order party.** The person in the United States who conducts the direct negotiations or correspondence with the buyer (purchaser) or ultimate consignee and who, as a result of these negotiations, receives the order from the FPPI. The order party may be the USPPI. See § 30.3(b)(2)(iii) of the FTR.

\* \* \* \* \*

**Person.** Any natural person, corporation, partnership, or other legal entity of any kind, domestic or foreign.

\* \* \* \* \*

**Seller.** A person in the transaction, usually the manufacturer, producer, wholesaler, or distributor of the goods, that receives the monetary benefit or other consideration for the exported goods.

\* \* \* \* \*

**Shipment.** All goods being sent from one USPPI to one ultimate consignee located in a single country of destination on a single conveyance and departing from the United States on the same day. Except as noted in § 30.2(a)(1)(iv), the EEI shall be filed when the value of the goods is over \$2,500 per Schedule B or HTSUSA commodity classification code.

\* \* \* \* \*

**Shipping documents.** Documents that include but are not limited to commercial invoices, export shipping instructions, packing lists, bills of lading and air waybills.

\* \* \* \* \*

**Ultimate consignee.** The person located abroad who receives the export

shipment. The ultimate consignee is not a forwarding agent or other intermediary, but may be the FPPI, buyer (purchaser), or end user.

\* \* \* \* \*

**U.S. principal party in interest (USPPI).** The person in the United States that receives the primary benefit, monetary or otherwise, from the export transaction.

\* \* \* \* \*

**Voluntary Self-Disclosure (VSD).** A narrative account with supporting documentation that sufficiently describes suspected violations of the FTR. A VSD reflects due diligence in detecting and correcting potential violations when required information was not reported or when incorrect information was provided that violates the FTR.

\* \* \* \* \*

■ 3. Amend § 30.2 by revising (a)(1)(iv)(D), (a)(2), (d)(1), and (d)(4). The revisions read as follows:

(a) \* \* \*

(1) \* \* \*

(iv) \* \* \*

(D) Requiring a Department of Justice, Drug Enforcement Administration (DEA) export permit or declaration (21 CFR 1300 through 1399).

\* \* \* \* \*

(2) **Filing methods.** The USPPI has four means for filing EEI: use *AESDirect*; develop AES software using the *AESTIR* (see *AESTIR* Introduction and Guidelines | U.S. Customs and Border Protection (cbp.gov)); purchase software developed by certified vendors using the *AESTIR*; or use an authorized agent. An FPPI can only use an authorized agent in a routed transaction.

\* \* \* \* \*

(d) \* \* \*

(1) Goods moving in-transit through the United States, Puerto Rico, or the U.S. Virgin Islands from one foreign country or area to another where such goods do not enter the into the United States for consumption or warehousing.

\* \* \* \* \*

(4) Goods shipped to Guantanamo Bay Naval Base in Cuba from the United States, Puerto Rico, or the U.S. Virgin Islands and from Guantanamo Bay Naval Base to the United States, Puerto Rico, or the U.S. Virgin Islands.

\* \* \* \* \*

■ 4. Amend § 30.3 by:

■ a. Adding an introductory paragraph to § 30.3, and adding paragraphs (a)(1) through (3), (b)(2)(vi) and a Note to (b)(2);

■ b. Revising the section heading for paragraph (a);

■ c. revising paragraphs (b)(1) and (2), (b)(2)(i), (ii), (iv) and (v), (d)(4), (e)(1) and (2); and,

■ d. Removing (e)(1)(i) through (xii), removing the Note to paragraph (e)(1), removing paragraphs (e)(2)(i) through (xv), and removing the Note to paragraph (e)(2).

The revisions and additions read as follows:

**§ 30.3 Electronic Export Information filer requirements, parties to export transactions, and responsibilities of parties to export transactions**

All parties that participate in an export transaction subject to the FTR must comply with the FTR. There are two types of export transactions: standard and routed. International commercial terms, terms of sale, and industry or other agreements do not determine the type of or parties to the export transaction, as they have no regulatory basis. A standard export transaction is a transaction in which the USPPI facilitates the export of goods by arranging the physical movement of the goods from the United States. A routed export transaction is a transaction where the FPPI selects a U.S. forwarding or other agent to facilitate the export of goods from the United States, regardless of the terms of sale.

(a) **General filer requirements.** (1) The filer of EEI for export transactions is either the USPPI or the authorized agent. If a foreign entity is the USPPI, they are prohibited from filing the EEI and must authorize an agent to file on their behalf.

(2) The filer shall maintain a physical office or residence in the United States; be physically located in the United States at the time of preparing and filing the EEI; and have an EIN or DUNS and be certified to report in the AES. If the filer does not have an EIN or DUNS, the filer must obtain an EIN from the Internal Revenue Service.

(3) All EEI submitted to the AES shall be complete, accurate and timely. The filer is responsible for ensuring that the EEI is complete, accurate, and timely, except insofar as that party can demonstrate that it reasonably relied on information based on personal knowledge of the facts and information furnished by other responsible persons participating in the transaction. All parties involved in export transactions, including authorized agents, should be aware that invoices and other commercial documents may not necessarily contain all the information needed to prepare and file the EEI.

(b) \* \* \*

(1) Principal parties in interest. Those persons in a transaction that receive the

primary benefit, monetary or otherwise, are considered principal parties to the transaction. Generally, the principal parties in interest in a transaction are the seller and buyer. In most cases, the U.S. forwarding or other agent is not a principal party in interest.

(2) USPPI. For purposes of filing EEI, the USPPI is the person in the United States that receives the primary benefit, monetary or otherwise, from the transaction. Below are scenarios where the USPPI is identified:

(i) If a U.S. manufacturer sells the goods for export directly to a FPPI, the U.S. manufacturer shall be listed as the USPPI in the EEI.

(ii) If a U.S. manufacturer sells goods, as a domestic sale, to a U.S. buyer (wholesaler/distributor) and that U.S. buyer sells the goods for export to a FPPI, the U.S. buyer shall be listed as the USPPI in the EEI.

\* \* \* \* \*

(iv) If a customs broker or foreign person is listed as the importer of record when entering goods into the United States, the customs broker shall be listed as the USPPI in the EEI if the goods are being exported without change or enhancement in thirty (30) calendar days or less of import. After thirty (30) calendar days, the warehouse or storage facility in possession and with knowledge and control of the goods when the goods begin their journey to the port of export shall be the USPPI.

**Note to paragraph § 30.3(b)(2)(iv) of this section:** The U.S. Customs and Border Protection regulations (19 CFR 111.24) state that the import entry records pertaining to the business of the clients serviced by the customs broker are to be considered confidential. When the customs broker supports the preparation or filing of the EEI with information from the import entry, the customs broker must already have written authorization from the client to disclose confidential information to third parties or obtain such authorization in writing from the client.

(v) If a U.S. person admits goods into a Foreign Trade Zone (FTZ), then the U.S. person shall be the USPPI if the goods are subsequently exported without change or enhancement. If a foreign person admits goods into an FTZ, then the FTZ operator shall be the USPPI if the goods are subsequently exported without change or enhancement.

(vi) If the foreign entity is in the United States at the time the goods are purchased or obtained for export, the foreign entity shall be listed as the USPPI. The foreign entity is prohibited from filing the EEI; therefore, they must

authorize an agent to comply with the provisions of the FTR.

\* \* \* \* \*

(d) \* \* \*

\* \* \* \* \*

(4) Providing the exporting carrier with the proof of filing, postdeparture, downtime, exclusion, or exemption citations in accordance with provisions and requirements contained in this part.

\* \* \* \* \*

(e) \* \* \*

(1) USPPI responsibilities. In a routed export transaction, the FPPI may authorize or agree to allow the USPPI to prepare and file the EEI. If the FPPI agrees to allow the USPPI to file the EEI, the FPPI must provide a written authorization to the USPPI assuming the responsibility for filing. The USPPI may authorize an agent to file the EEI on its behalf. If the USPPI or its agent prepares and files the EEI, it shall retain documentation to support the EEI filed. If the FPPI agrees to allow the USPPI to file EEI, the filing of the export transaction shall be treated as a routed export transaction. If the FPPI authorizes an agent to prepare and file the EEI, the USPPI shall retain documentation to support the information provided to the agent for preparing the EEI as specified in § 30.10 and provide the agent with complete, accurate and timely export information necessary to prepare and file the EEI as set forth in Appendix C.

(2) Authorized agent responsibilities. In a routed export transaction, if an authorized agent is preparing and filing the EEI on behalf of the FPPI, the authorized agent must obtain a power of attorney or written authorization from the FPPI and shall be responsible for preparing and filing complete, accurate and timely EEI based on information obtained from the USPPI or other parties involved in the transaction. The authorized agent must file the EEI based on export information exactly as provided by the USPPI as set forth in Appendix C. The authorized agent shall retain documentation to support the export information reported to the AES, as specified in § 30.10 and upon request, provide the USPPI with a copy of the power of attorney or written authorization from the FPPI and the data elements filed that the USPPI provided as listed in Appendix C, along with the authorized agent name, authorized agent contact information, date of export and ITN.

\* \* \* \* \*

■ 5. Amend § 30.4 by revising paragraphs (b)(1) and (4) and (c)(2); removing paragraph (b)(5); and adding paragraph (f).

The revisions and additions read as follows:

**§ 30.4 Electronic Export Information filing procedures, deadlines, and certification statements.**

\* \* \* \* \*

(b) \* \* \*

(1) For USML shipments, refer to the ITAR (22 CFR 123.22(b)(1)) for specific requirements concerning predeparture filing time frames.

\* \* \* \* \*

(4) For used self-propelled vehicles as defined in 19 CFR 192.1 of U.S. Customs and Border Protection regulations, the USPPI or the authorized agent shall file the EEI as required by § 30.6 and provide the filing citation to the CBP at least 72 hours prior to export. The filer must also provide the carrier with the filing citation as required by paragraph (b) of this section.

(c) \* \* \*

(2) Pipeline Filing Procedures. USPPIs or authorized agents may file data elements required by § 30.6 no later than four (4) calendar days following the end of the month. The operator of a pipeline may transport goods to a foreign country without the prior filing of the proof of filing citation, exemption, or exclusion legend, on the condition that within four (4) calendar days following the end of each calendar month the operator will deliver to the CBP Port Director the proof of filing citation, exemption, or exclusion legend covering all exports through the pipeline to each ultimate consignee during the month.

\* \* \* \* \*

(f) Downtime Procedures. The Downtime policy becomes effective when the Census Bureau has officially notified filers electronically that the AES and/or AESDirect are not operating and cannot generate ITNs.

(1) If the filer's transmission method to the AES (*e.g.*, certified software) is unavailable, the filer must delay the export of the goods or find an available alternative filing method (*e.g.*, AESDirect, authorized agent).

(2) Except as noted in § 30.4(f)(3), if AES and/or AESDirect is unavailable, the goods may be exported and the filer must: (A) Provide the appropriate downtime citation as described in § 30.7(b) and appendix B; and (B) Report the EEI at the first opportunity AES or AESDirect is available.

(3) For export shipments noted in § 30.2(a)(1)(iv), if a filer is unable to acquire an ITN because the AES and/or AESDirect is not operating, the filer shall not export until the AES is operating and an ITN is acquired, and

the downtime filing citation shall not be used.

\* \* \* \* \*

■ 6. Amend § 30.5 by revising paragraphs (c)(3)(i)(E) and (F), and (d)(1) and (2). The revisions read as follows:

**§ 30.5 Electronic Export Information filing processes and standards.**

\* \* \* \* \*

(c) \* \* \*

(3) \* \* \*

(i) \* \* \*

(E) The USPPI has failed to comply with existing export regulations or has failed to pay any outstanding penalties assessed in connection with such noncompliance;

(F) The USPPI would pose a significant threat to national security interests such that its continued participation in postdeparture filing should be terminated; or

\* \* \* \* \*

(d) \* \* \*

(1) *AESDirect* usernames and passwords are to be kept secure by the account administrator and not disclosed to any unauthorized user or any persons outside the registered company.

(2) Registered companies are responsible for those persons having a username and password. If an employee with a username and password leaves the company or otherwise is no longer an authorized user, the company shall immediately deactivate that username in the system to ensure the integrity and confidentiality of Title 13 data.

\* \* \* \* \*

■ 7. Amend § 30.6 by revising (a)(1), (a)(1)(ii) and (iii), (a)(3) and (4), (a)(11) and (13), and (b)(2), (4), (6), and (13) to read as follows:

**§ 30.6 Electronic Export Information data elements.**

\* \* \* \* \*

(a) \* \* \*

(1) *USPPI*. The person in the United States that receives the primary benefit, monetary or otherwise, from the export transaction. See § 30.3(b)(2) for scenarios identifying the *USPPI*. The name, address of origin, identification number, and contact information of the *USPPI* shall be reported to the AES as follows:

\* \* \* \* \*

(ii) Address of origin. In all EEI filings, the *USPPI* shall report the address of origin (no post office box number) from which the goods actually begin the journey to the port of export even if the *USPPI* does not own/lease the facility. For example, the EEI covering goods stored in inventory at a warehouse in Georgia for transport to

Florida for loading onto a vessel for export to a foreign country shall show the address of origin of the warehouse in Georgia. For shipments of multi-addresses of origin, reported as a single shipment, report the address of origin of the commodity with the greatest value. If such information is not known, report the address of origin where the commodities are consolidated for export.

(iii) *USPPI* identification number. Report the Employer Identification Number (EIN) of the *USPPI*. If the *USPPI* has only one EIN, report that EIN. If the *USPPI* has more than one EIN, report the EIN that the *USPPI* uses to report employee wages and withholdings, and not the EIN used to report only company earnings or receipts. Use of another company's EIN is prohibited. If a *USPPI* reports a DUNS, the EIN is also required to be reported. If a foreign entity is in the United States at the time goods are purchased or obtained for export, the foreign entity is the *USPPI*. In such situations, when the foreign entity does not have an EIN, the authorized agent shall report a border crossing number, passport number, or any number assigned by U.S. Customs and Border Protection (CBP) on behalf of the foreign entity. The appropriate Party ID Type code shall be reported to the AES.

\* \* \* \* \*

(3) *Ultimate consignee*. The ultimate consignee is the person located abroad as known at the time of export who receives the export shipment. The name and address of the ultimate consignee, whether by sale in the United States or abroad or by consignment, shall be reported in the EEI. For example, when there is knowledge of an end user's name, address and when the end user will receive the goods, the end user is the ultimate consignee. When the foreign buyer is a reseller/distributor and the end user's name and address is unknown or there is no knowledge when the end user will receive the goods from the foreign buyer, e.g., the goods are stored in inventory, the foreign buyer is the ultimate consignee. For goods sold en route, report the appropriate "To be Sold En Route" indicator in the EEI, and report corrected information as soon as it is known (see § 30.9 for procedures on correcting AES information).

(4) *U.S. state of origin*. The U.S. state of origin is the 2-character postal code for the state in which the goods begin their journey to the port of export. For example, the EEI covering goods stored in inventory at a warehouse in Georgia for transport to Florida for loading onto

a vessel for export to a foreign country shall show Georgia as the state of origin. For shipments of multi-state origin, reported as a single shipment, report the U.S. state of the commodity with the greatest value. If such information is not known, report the state in which the commodities are consolidated for export.

\* \* \* \* \*

(11) *Domestic or foreign indicator*. Indicates if the goods exported are of domestic or foreign origin. Report foreign goods as a separate line item from domestic goods even if the commodity classification number is the same. See 30.1(c) for definitions of domestic and foreign goods.

\* \* \* \* \*

(13) *Commodity description*. Report the description of the goods shipped in English in sufficient detail to permit verification of the Schedule B or HTSUSA number. Clearly and fully state the name of the commodity in terms that can be identified or associated with the language used in Schedule B or HTSUSA (usually the commercial name of the commodity), and any characteristics of the commodity that distinguish it from commodities of the same name covered by other Schedule B or HTSUSA classifications. If the shipment requires a license, the description reported in the EEI shall conform with that shown on the license. If the shipment is eligible for a license exception or exemption, the description shall be sufficient to ensure compliance with that license exception or exemption. However, where the description on the license does not state all of the characteristics of the commodity that are needed to completely verify the commodity classification number, as described in this paragraph, report the missing characteristics, as well as the description shown on the license, in the commodity description field of the EEI.

\* \* \* \* \*

(b) \* \* \*

(2) *Intermediate consignee*. The name and address of the intermediate consignee (if any) shall be reported. The intermediate consignee is located abroad and acts as an agent for the principal party in interest or the ultimate consignee and takes possession of the goods for the purpose of effecting delivery of goods to the ultimate consignee. The intermediate consignee may be a forwarding agent or other person abroad who acts as an agent for a principal party in interest.

\* \* \* \* \*

(4) *Foreign port of unloading*. The foreign port of unloading is the foreign

port in the country where the goods are removed from the exporting conveyance. The foreign port does not have to be located in the country of destination. For exports by sea to foreign countries, not including Puerto Rico, the foreign port of unloading is the code in terms of Schedule K, Classification of Foreign Ports by Geographic Trade Area and Country. For exports by sea or air between the United States and Puerto Rico, the foreign port of unloading is the code in terms of Schedule D, Classification of CBP Districts and Ports. The foreign port of unloading is not required for exports by other modes of transportation, including rail, truck, mail, fixed (pipeline), or air (unless between the U.S. and Puerto Rico).

\* \* \* \* \*

(6) *Export Control Classification Number (ECCN)*. The number used to identify items on the CCL, Supplement No. 1 to Part 774 of the EAR. The ECCN consists of a set of digits and a letter. Items that are not classified under an ECCN are designated "EAR99". See § 758.1(g) of the EAR for ECCN reporting requirements.

\* \* \* \* \*

(13) *Entry number*. The entry number must be reported when the export meets the scenarios of 30.3(b)(2)(iv) and (v) or the Domestic or foreign indicator is foreign when goods of foreign origin enter the United States for consumption or warehousing, and then stored in a warehouse or storage facility or admitted into a FTZ before being exported. For goods that are exported from a FTZ where inbond types 67 (FTZ withdrawal for immediate exportation) and 68 (FTZ withdrawal for transportation and exportation) are selected, the entry number to be reported is the two-position year and control number derived from the Zone Admission Number documented on the 214/e214 associated with the withdrawal. For example, if the Zone Admission Number associated with the withdrawal is 0987654AB 22 12345678, then the entry number to be reported is 2212345678. If more than one Zone Admission Number is associated with the export, then report the entry number based off the Zone Admission Number with the greatest value. For all other scenarios where goods are exported after entering the United States for consumption, or warehousing (entry types 36 [warehouse withdrawal for immediate exportation] and 37 [warehouse withdrawal for transportation and exportation]), the 11-position entry number as identified on the CBP-7501 shall be reported. When

the importer of record on the import entry is the customs broker or foreign person, the customs broker shall provide the entry number to assist in the preparation of the EEI (See 15 CFR 30.3(b)(2) and the Note to paragraph § 30.3(b)(2)(iv)).

\* \* \* \* \*

■ 8. Amend § 30.8 by revising the introductory text.

The revision reads as follows:

**§ 30.8 Time and place for presenting proof of filing citations and exemption legends.**

The following conditions govern the time and place to present the proof of filing, postdeparture, downtime, exclusion, or exemption citations. The USPPI or the authorized agent is required to deliver the proof of filing, postdeparture, downtime, exclusion, or exemption citations required in § 30.7 to the exporting carrier. See *Appendix B* of this part for the properly formatted proof of filing, postdeparture, downtime, exclusion, or exemption citations. Failure of the USPPI or authorized agent to comply with these requirements constitutes a violation of the regulations in this part and renders such principal party or the authorized agent subject to the penalties provided for in *Subpart H* of this part.

\* \* \* \* \*

■ 9. Amend § 30.10 by revising paragraph (a) and adding a Note to paragraph (a).

The revision and addition read as follows:

**§ 30.10 Retention of export information and the authority to require production of documents.**

(a) Retention of export information. All parties to the export transaction (USPPIs, FPPIs, authorized agents, and/or owners and operators of export carriers) shall retain documents pertaining to the export shipment for five years from the date of export. If the Department of State or other regulatory agency has recordkeeping requirements for exports that exceed the retention period specified in this part, then those requirements prevail. The USPPI or the authorized agent may request a copy of the electronic record or submission from the Census Bureau as provided for in Subpart G of this part. The Census Bureau's retention and maintenance of AES records does not relieve filers from requirements in § 30.10.

**Note to paragraph (a) of this section:** As set forth in 30.60(c)(4), the USPPI, the authorized agent, or a representative of the USPPI shall not disclose the EEI for nonofficial purposes to a foreign person or foreign government, including the foreign entity as the USPPI or the FPPI. For items in

this section a foreign entity as the USPPI and the FPPI shall retain documents pertaining to the export shipment as a party to the export transaction; however, the EEI shall not be disclosed for "nonofficial purposes," either in whole or in part.

\* \* \* \* \*

■ 10. Amend § 30.17 by revising the introductory text.

The revision reads as follows:

**§ 30.17 Customs and Border Protection regulations.**

Refer to the DHS's CBP regulations, 19 CFR part 192, for information referencing the advanced electronic submission of cargo information on exports for screening and targeting purposes pursuant to the Trade Act of 2002. The regulations also prohibit postdeparture filing of export information for certain shipments and contain other regulatory provisions affecting the reporting of EEI.

**§ 30.18(c) [Removed]**

■ 11. Remove § 30.18(c).

■ 12. Amend § 30.26 by revising paragraph (b).

The revision reads as follows:

**§ 30.26 Reporting of vessels, aircraft, cargo vans, and other carriers and containers.**

\* \* \* \* \*

(b) The country of destination to be shown in the EEI for vessels exported for sale is the country of new ownership. The country for which the vessel clears, or the country of registry of the vessel, should not be reported as the country of destination in the EEI unless such country is the country of new ownership.

\* \* \* \* \*

■ 13. Amend § 30.29 by revising paragraphs (a)(1) and (2).

The revisions read as follows:

\* \* \* \* \*

(a) \* \* \*

(1) The return of goods not licensed by a U.S. Government agency and not subject to the ITAR, temporarily imported for repair and alteration, and declared as such on importation as described in § 30.53 shall have Schedule B number 9801.10.0000. The value shall only include parts and labor. The value of the original product shall not be included. If the value of the parts and labor is over \$2,500, then EEI must be filed.

(2) The return of goods licensed by a U.S. Government agency or subject to the ITAR, temporarily imported for repair or alteration, and declared as such on importation as described in § 30.53 shall have Schedule B number 9801.10.0000. In the value field, report



the value of the parts and labor. In the license value field, report the value designated on the export license that corresponds to the commodity being exported if required by the licensing agency. EEI must be filed regardless of value.

\* \* \* \* \*

■ 14. Amend § 30.37 by revising paragraph (a).

The revision reads as follows:

\* \* \* \* \*

(a) Exports of commodities where the value of the commodities shipped from one USPPI to one ultimate consignee on a single exporting conveyance, classified under an individual Schedule B number or HTSUSA commodity classification code is \$2,500 or less. This exemption applies to individual Schedule B numbers or HTSUSA commodity classification codes regardless of the total shipment value. In instances where a shipment contains a mixture of individual Schedule B numbers or HTSUSA commodity classification codes valued at \$2,500 or less and individual Schedule B numbers or HTSUSA commodity classification codes valued over \$2,500, only those Schedule B numbers or HTSUSA commodity classification codes valued over \$2,500 are required to be reported. If the filer reports multiple items of the same Schedule B number or HTSUSA commodity classification code, this exemption only applies if the total value of exports for the Schedule B number or HTSUSA commodity classification code is \$2,500 or less. Items of domestic and foreign origin under the same commodity classification number must be reported separately and EEI filing is required when either is over \$2,500. For the reporting of household goods see § 30.38.

\* \* \* \* \*

■ 15. Amend § 30.39 by revising the introductory text.

The revision reads as follows:

**§ 30.39 Special exemptions for shipments to the U.S. Armed Services.**

Except as noted in § 30.2(a)(1)(iv), filing of EEI is not required for any commodities, whether shipped commercially or through government channels, consigned to the U.S. Armed Services for their exclusive use, including shipments to armed services exchange systems. This exemption does not apply to articles that are on the USML and thus controlled by the ITAR and/or shipments that are not consigned to the U.S. Armed Services, regardless of whether they may be for their ultimate and exclusive use.

\* \* \* \* \*

■ 16. Amend § 30.51 by revising the introductory text.

The revision reads as follows:

**§ 30.51 Statistical information required for import entries.**

The information required for statistical purposes is, in most cases, also required by CBP regulations for other purposes. Refer to the CBP website at [cbp.gov](http://cbp.gov) to download “Instructions for Preparation of CBP-7501,” for completing the paper entry summary documentation (CBP-7501). Refer to the Customs and Trade Automated Interface Requirements for instructions on submitting an Automated Commercial Environment (ACE) Automated Broker Interface (ABI) electronic record, or instructions for completing CBP-226 for declaring any equipment, repair parts, materials purchased, or expense for repairs incurred outside of the United States.

■ 17. Amend § 30.52 by revising the introductory text.

The revision reads as follows:

**§ 30.52 Foreign Trade Zones (FTZ).**

When goods are withdrawn from a FTZ for export to a foreign country, the export shall be reported in accordance with § 30.2. Foreign goods admitted into FTZs shall be reported as a general import. Statistical requirements for zone admissions are provided to the Census Bureau via CBP’s ABI electronic 214 (e214) program or the CBP Form 214A Application for Foreign Trade Zone Admission and/or Status Designation. Refer to the CBP website at [cbp.gov](http://cbp.gov) to download the “Foreign Trade Zone Manual” that includes the CBP Form 214—Application for FTZ Admission (Appendix A) and Instructions for filling out the 214 (Appendix B). When goods are withdrawn for domestic consumption or entry into a bonded warehouse, the withdrawal shall be reported on CBP 7501 or through the ABI in accordance with CBP regulations. The instructions and definitions for completing the e214 are provided in 19 CFR 146. The following data items are required to be filed on the 214A, for statistical purposes:

\* \* \* \* \*

■ 18. Amend § 30.60 by revising paragraphs (b)(1)(vii), and (c)(1), (2), and (4).

The revisions read as follows:

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(vii) Analyzing the impact of proposed and implemented trade agreements and fulfilling U.S. obligations under such agreements; and

\* \* \* \* \*

(c) \* \* \*

(1) Any purpose related to the collection of domestic or foreign taxes, or other fees, except as related to paragraph (b)(1)(vi) of this section.

(2) For export promotion or similar types of marketing operations. This limitation does not preclude the use of the information to monitor compliance with agricultural marketing orders and export quality compliance programs.

\* \* \* \* \*

(4) To foreign persons or foreign governments for any purpose, including the foreign entity as the USPPI or the FPPI.

\* \* \* \* \*

■ 19. Amend § 30.61 by revising the introductory text, and paragraphs (a) and (b).

The revisions read as follows:

**§ 30.61 Statistical classification schedules.**

The following statistical classification schedules are referenced in this part. These schedules may be accessed through the Census Bureau’s website at <http://www.census.gov/trade>.

(a) *Schedule B—Statistical Classification for Domestic and Foreign Commodities Exported from the United States* shows the detailed commodity classification requirements and 10-digit statistical reporting numbers to be used in preparing EEI, as required by these regulations.

(b) *Harmonized Tariff Schedule of the United States* shows the 10-digit statistical reporting number to be used in preparing import entries and withdrawal forms.

\* \* \* \* \*

■ 20. Amend § 30.71 by revising paragraph (a)(2). The revision reads as follows:

**§ 30.71 False or fraudulent reporting on or misuse of the Automated Export System.**

(a) \* \* \*

(2) Furtherance of illegal activities. Any person, including USPPIs, authorized agents or carriers, who knowingly reports, directly or indirectly, to the U.S. Government any information through or otherwise uses the AES to further any illegal activity shall be subject to account deactivation, a fine not to exceed \$10,000, imprisonment for not more than five years, or any or all of these penalties, for each violation.

\* \* \* \* \*

■ 21. Amend § 30.74 by revising paragraphs (b)(4) and (d). The revisions read as follows:

(b) \* \* \*

(4) Any person, including USPPIs, authorized agents, or carriers, will not



be deemed to have made a voluntary self-disclosure under this section unless the individual making the disclosure did so with the full knowledge and authorization of senior management. The Census Bureau will not accept a voluntary self-disclosure from a FPPI or legal counsel or other party representing a FPPI.

\* \* \* \* \*

(d) Action by the Census Bureau. After the Census Bureau has been provided with the required narrative, it

may promptly notify CBP, ICE, and BIS's Office of Export Enforcement (OEE) of the voluntary disclosure, acknowledge the disclosure by letter, provide the person making the disclosure with a point of contact, and take whatever additional action, including further investigation, it deems appropriate. As quickly as the facts and circumstances of a given case permit, the Census Bureau may take any of the following actions: (1) Inform the person or company making the voluntary self-disclosure of the action to be taken. (2)

Issue a letter in response to the voluntary self-disclosure. (3) Refer the matter, if necessary, to the OEE for the appropriate action.

■ 22. Amend appendix B to part 30 by revising the entries for "X. Miscellaneous Exclusion Statements" and "XI. Split Shipments". The revisions read as follows:

**Appendix B to Part 30—AES Filing Citation, Exemption and Exclusion Legends**

\* \* \* \* \*

X. Miscellaneous Exclusion Statements are found in 15 CFR part 30 subpart A § 30.2(d) .....

XI. Split Shipments Split Shipments should be referenced as such on the manifest in accordance with provisions contained in § 30.28, Split Shipments. The notation should be easily identifiable on the manifest. It is preferable to include a reference to a split shipment in the exemption statements cited in the example, the notation SS should be included at the end of the appropriate exemption statement.

NOEEI § 30.2(d) (site corresponding number).  
AES ITN SS.  
Example: AES X20170101987654 SS.

■ 23. Add Appendix C to part 30 to include the data elements that the USPPI and authorized agent are

responsible for in a routed export transaction.

**Appendix C to Part 30—Required Data Elements—Routed Export Transactions**

Data elements provided by the USPPI 30.3(e)(1)	Data elements provided by the authorized agent 30.3(e)(2)
(A) Name, address of origin, contact name and contact phone of the USPPI [30.6(a)(1)].	(A) Date of export [30.6(a)(2)].
(B) USPPI identification number [30.6(a)(1)] .....	(B) Ultimate consignee [30.6(a)(3)].
(C) U.S. State of origin [30.6(a)(4)] .....	(C) Ultimate consignee type [30.6(a)(28)].
(D) Domestic or foreign indicator [30.6(a)(11)] .....	(D) Country of ultimate destination [30.6(a)(5)].
(E) Commodity classification number [30.6(a)(12)] .....	(E) Method of transportation [30.6(a)(6)].
(F) Commodity description [30.6(a)(13)] .....	(F) Conveyance name/carrier name [30.6(a)(7)].
(G) Primary unit of measure [30.6(a)(14)] .....	(G) Carrier identification [30.6(a)(8)].
(H) Primary quantity [30.6(a)(15)] .....	(H) Port of export [30.6(a)(9)].
(I) Value [30.6(a)(17)] .....	(I) Related party indicator [30.6(a)(10)].
(J) Export information code [30.6(a)(18)] .....	(J) Shipping weight [30.6(a)(16)].
(K) Hazardous material indicator [30.6(a)(21)] .....	(K) Shipment Reference Number [30.6(a)(19)].
(L) Inbond code [30.6(a)(22)] .....	(L) License code/license exemption code [30.6(a)(23)].
(M) License code/license exemption code [30.6(a)(23)] .....	(M) Routed export transaction indicator [30.6(a)(24)].
(N) FTZ identifier, if applicable. [30.6(b)(3)] .....	(N) Filing option indicator [30.6(a)(27)].
(O) Export license number/CFR citation/KPC number, if applicable. [30.6(b)(5)].	(O) Authorized agent and authorized agent identification [30.6(b)(1)].
(P) Export Control Classification Number (ECCN), if applicable. [30.6(b)(6)].	(P) Intermediate consignee, if applicable. [30.6(b)(2)].
(Q) Secondary units of measure, if applicable. [30.6(b)(7)] .....	(Q) Foreign port of unloading, if applicable. [30.6(b)(4)].
(R) Secondary quantity, if applicable. [30.6(b)(8)] .....	(R) Export license number/CFR citation/KPC number, if applicable. [30.6(b)(5)].
(S) Vehicle Identification Number (VIN)/Product ID, if applicable. [30.6(b)(9)].	(S) Transportation Reference Number, if applicable. [30.6(b)(14)].
(T) Vehicle ID qualifier, if applicable. [30.6(b)(10)] .....	(T) License value, if applicable. [30.6(b)(15)].
(U) Vehicle title number, if applicable. [30.6(b)(11)].	
(V) Vehicle title state code, if applicable. [30.6(b)(12)].	
(W) Entry number, if applicable. [30.6(b)(13)].	
(X) License value, if applicable. [30.6(b)(15)].	
(Y) Kimberley Process Certificate (KPC) number, if applicable. [30.6(b)(17)].	

**Note to Appendix C:** For the License code/license exemption code, Export license number/CFR citation/KPC number, Export Control Classification Number (ECCN), and License value where the FPPI has assumed responsibility for determining and obtaining license authority see requirements set forth in 15 CFR 758.3 of the EAR. When accessing routed export transactions reported on the

EEI in AES, the USPPI will be limited to only viewing in an AES report in ACE the data elements in Appendix C, Date of export, Filer ID, the ITN, and any approved system generated data elements.

\* \* \* \* \*

Dated: October 17, 2024.

**Shannon Wink,**

*Program Analyst, Policy Coordination Office,  
U.S. Census Bureau.*

[FR Doc. 2024–24482 Filed 10–30–24; 8:45 am]

**BILLING CODE 3510–07–P**

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 52****[EPA–R04–OAR–2023–0339; FRL–12355–01–R4]****Air Plan Approval; KY; Revisions to Jefferson County Control of Open Burning****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the Commonwealth of Kentucky, through the Kentucky Division for Air Quality (KDAQ) on behalf of the Louisville Metro Pollution Control District (Jefferson County or District) via a letter dated May 30, 2023. The purpose of the revision is to clarify that a fire for general agricultural production must be a controlled burn; to allow the use of District-approved accelerants to start certain fires; and to adjust paragraph numbering. EPA is proposing to approve the changes pursuant to the Clean Air Act (CAA or Act).

**DATES:** Comments must be received on or before December 2, 2024.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R04–OAR–2023–0339 at [regulations.gov](https://www.regulations.gov). Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](https://www.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 <https://www.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:**

Simone Jarvis, Air Regulatory Management Section, Air Planning and

Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. The telephone number is (404) 562–8393. Ms. Jarvis can also be reached via electronic mail at [Jarvis.Simone@epa.gov](mailto:Jarvis.Simone@epa.gov).

**SUPPLEMENTARY INFORMATION:****I. Background**

On May 30, 2023,<sup>1</sup> KDAQ, on behalf of the District, submitted changes to the Jefferson County portion of the Kentucky SIP for EPA approval.<sup>2</sup> In this proposed rulemaking, EPA is proposing to approve changes to Jefferson County Regulation 1.11, *Control of Open Burning*.<sup>3</sup>

**II. EPA's Analysis of Kentucky's SIP Revision**

Kentucky's May 30, 2023, SIP revision contains a version of Regulation 1.11, *Control of Open Burning*, that was adopted by the District on March 15, 2023 (referred to as "Version 11" by the District). The District requests that EPA incorporate Version 11 into the SIP and identifies three changes in Regulation 1.11 between Version 11 and Version 10, the version of the rule currently in the SIP.

The District's first proposed change adds the phrase "*i.e.*, a controlled burn" to Section 2.1.4 to clarify that "a fire for general agricultural production" must be a controlled burn.

The District's second proposed change adds an exception to Section 2.4. Section 2.4 prohibits the use of tires, used oil, heavy oil, gasoline, diesel fuel, kerosene, or similar accelerants to start or maintain combustion of any fire described in Section 2.1. The proposed exception would allow the use of District-approved liquid accelerants to start fires for general agricultural production for weed abatement, disease control, or pest prevention or for recognized silvicultural, range, native

grassland, or wildlife management practices that have been approved by the District pursuant to Section 2.1.4.

District-allowed accelerants are petroleum products, and these controlled burns are typically ignited by using two gallons of gasoline and five gallons of diesel fuel per 25 acres. In the past five years, the District has approved 32 fires for general agricultural production for weed abatement, disease control, or pest prevention or for recognized silvicultural, range, native grassland, or wildlife management practices. EPA preliminarily agrees with the District's determination that there are no significant increases or reductions in the estimated level of emissions due to this revision. Any change in emissions due to the use of liquid accelerants for initiating and maintaining controlled burns is expected to have a de minimis impact on the relevant criteria pollutants (*i.e.*, ozone and particulate matter) and is not expected to interfere with any applicable requirement concerning attainment of the national ambient air quality standards (NAAQS). This revision was requested by prescribed fire practitioners and is reflective of typical practices for controlled burns.

The District's third proposed change renumbers the paragraph breaks for subsections 2.1.8 and 2.1.9, and removes subsection 2.1.10. These numbering changes do not affect the language of the rule or otherwise have any substantive impact. Given the nature of this change and the other changes described above, EPA is proposing that the SIP revision will not interfere with any applicable requirement concerning attainment of the NAAQS, reasonable further progress, or any other applicable requirement of the CAA.<sup>4</sup>

**III. Incorporation by Reference**

In this document, 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, and as discussed in section II of this document, EPA is proposing to incorporate by reference Jefferson County Regulation 1.11, *Control of Open Burning*, Version 11, District-effective on March 15, 2023, which clarifies that a fire for general agricultural production must be a controlled burn; to allow the use of District-approved accelerants to start certain fires; and to adjust paragraph numbering. EPA has made, and will continue to make, these materials generally available through

<sup>1</sup> EPA received the May 30, 2023, submittal on May 31, 2023. For clarity, throughout this notice EPA will refer to the May 31, 2023, submission by its cover letter date of May 30, 2023.

<sup>2</sup> The May 30, 2023, submittal also contains changes to Jefferson County Regulation 1.02, *Definitions*, in the Jefferson County portion of the Kentucky SIP. EPA addressed those changes in a separate rulemaking. See 89 FR 41319 (May 13, 2024).

<sup>3</sup> In 2003, the City of Louisville and Jefferson County governments merged, and the "Jefferson County Air Pollution Control District" was renamed the "Louisville Metro Air Pollution Control District." However, to be consistent with the terminology used in the subheading in table 2 of 40 CFR 52.920(c), throughout this notice we refer to the District regulations contained in the Jefferson County portion of the Kentucky SIP as the "Jefferson County" regulations.

<sup>4</sup> See CAA section 110(l).

[www.regulations.gov](http://www.regulations.gov) and at the EPA Region 4 office (please contact the person identified in the “For Further Information Contact” section of this preamble for more information).

#### IV. Proposed Action

EPA is proposing to approve the changes to Regulation 1.11, *Control of Open Burning*, of the Jefferson County portion of the Kentucky SIP, submitted by the Commonwealth on May 30, 2023, for the reasons discussed above. The SIP revision updates the current SIP-approved version of Regulation 1.11 (Version 10) to Version 11.

#### V. Statutory and Executive Order Reviews

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. Accordingly, this proposed 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 14094 (88 FR 21879, April 11, 2023);
- 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 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a State program;
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- 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.

In addition, the SIP is not proposing 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 rulemaking does not have Tribal implications and will not impose substantial direct costs on Tribal governments or preempt Tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) directs Federal agencies to identify and address “disproportionately high and adverse human health or environmental effects” of their actions on communities with environmental justice (EJ) concerns to the greatest extent practicable and permitted by law. EPA defines EJ as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.” EPA further defines the term fair treatment to mean that “no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.”

The District did not evaluate EJ considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA did not perform an EJ analysis and did not consider EJ in this proposed action. Due to the nature of the action being proposed here, this proposed action is expected to have a neutral impact on the air quality of the affected area. Consideration of EJ is not required as part of this proposed action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving EJ for communities with EJ concerns.

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: October 24, 2024.

**Jeaneanne Gettle,**

*Acting Regional Administrator, Region 4.*

[FR Doc. 2024–25244 Filed 10–30–24; 8:45 am]

**BILLING CODE 6560–50–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Parts 300 and 679

[Docket No. 241025–0279]

**RIN 0648–BN18**

#### Fisheries of the Exclusive Economic Zone off Alaska; Pacific Halibut Recreational Quota Entity Program Fee Collection

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes regulations to require a charter halibut stamp (stamp) for charter vessel anglers, age 18 years or older, for each day and each trip they intend to catch and retain halibut on a charter vessel in International Pacific Halibut Commission (IPHC) regulatory area 2C (Southeast Alaska) and 3A (Southcentral Alaska). Persons who hold charter halibut permits (CHPs) would purchase stamps, which would be electronic, from NMFS. Charter vessel guides would be required to validate a stamp for each adult charter vessel angler intending to catch and retain halibut. NMFS would ultimately transfer the collected fees from the stamp purchases to the Recreational Quota Entity (RQE) to purchase halibut Quota Share (QS) issued in the Halibut and Sablefish Individual Fishing Quota (IFQ) Program on behalf of the charter halibut fishery. This proposed rule is necessary to promote stability and economic viability in the charter halibut fishery, and is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the Northern Pacific Halibut Act of 1982 (Halibut Act), and other applicable laws.

**DATES:** Submit comments on or before December 2, 2024.

**ADDRESSES:** A plain language summary of this proposed rule is available at <https://www.regulations.gov/docket/NOAA-NMFS-2024-0099>. You may submit comments on this document,

identified by NOAA–NMFS–2024–0099, by any of the following methods:

- **Electronic Submission:** Submit all electronic public comments via the Federal e-Rulemaking Portal. Visit <https://www.regulations.gov> and type NOAA–NMFS–2024–0099 in the Search box. Click on the “Comment” icon, complete the required fields, and enter or attach your comments.

- **Mail:** Submit written comments to Gretchen Harrington, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.

**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 <https://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 the required fields if you wish to remain anonymous).

Electronic copies of the Regulatory Impact Review (RIR), and the Categorical Exclusion prepared for this action are available from <https://www.regulations.gov> or from the NMFS Alaska Region website.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to NMFS at the above address and to <https://www.reginfo.gov/public/do/PRAMain>. Find this particular information collection by selecting “Currently under Review—Open for Public Comments” or by using the search function.

**FOR FURTHER INFORMATION CONTACT:** Kurt Iverson, 907–586–7228, [kurt.iverson@noaa.gov](mailto:kurt.iverson@noaa.gov).

#### SUPPLEMENTARY INFORMATION:

##### Authority for Action

In December 2022, through the Consolidation Appropriations Act of 2023 (Pub. L. 117–328), the U.S. Congress (Congress) enacted the Driftnet Modernization and Bycatch Reduction Act. Public Law 117–328, 136 Stat. 4459, 5260–61 (Dec. 29, 2022). Section 106 of the Act authorizes the North Pacific Fishery Management Council (Council) to recommend, and the Secretary of Commerce to approve, “regulations necessary for the collection

of fees from charter vessel operators who guide recreational anglers who harvest Pacific halibut in IPHC regulatory areas 2C and 3A.” Under the Act, any fees collected shall be available for (1) financing administrative costs of the RQE Program; (2) the purchase of halibut QS in areas 2C and 3A by the RQE; (3) halibut conservation and research; and (4) promotion of the halibut resource by the RQE. This proposed rule would implement section 106 of the Act.

The IPHC and NMFS manage fishing for Pacific halibut (halibut, *Hippoglossus stenolepis*) through regulations established under authority of the Halibut Act. The IPHC adopts regulations governing the halibut fishery under the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the North Pacific Ocean and Bering Sea (Convention), signed at Ottawa, Ontario, on March 2, 1953, as amended by a Protocol Amending the Convention (signed at Washington, DC, on March 29, 1979). For the United States, regulations developed by the IPHC are subject to acceptance by the Secretary of State with concurrence from the Secretary of Commerce. After acceptance by the Secretary of State and concurrence from the Secretary of Commerce, NMFS publishes notice of the efficacy of the IPHC regulations in the **Federal Register**. On March 18, 2024, NMFS published the IPHC regulations for the 2024 fishing year. IPHC regulations affecting sport fishing for halibut and vessels in the charter halibut fishery in IPHC regulatory areas 2C (Southeast Alaska) and 3A (South Central Alaska) may be found in that final rule (89 FR 19275, March 18, 2024).

Section 5 of the Halibut Act provide the Secretary of Commerce with general responsibility to carry out the Convention and the Halibut Act. In adopting regulations that may be necessary to carry out the purposes and objectives of the Convention and the Halibut Act, the Secretary of Commerce is directed to consult with the Secretary of the department in which the U.S. Coast Guard is operating, which is currently the Department of Homeland Security.

The Halibut Act at 16 U.S.C. 773(c) also provides the Council with authority to develop regulations for waters off Alaska, including limited access regulations that are in addition to, and not in conflict with, approved IPHC regulations. Regulations developed by the Council may be implemented by NMFS only after approval by the Secretary of Commerce. The Council

exercised this authority in the development of halibut fishery management measures, codified at 50 CFR 300.65 through 300.67 and part 600. The Council also developed the IFQ Program for the commercial halibut and sablefish fisheries, codified at 50 CFR part 679. Management of halibut in the IFQ Program is authorized under section 5 of the Halibut Act.

##### Background

###### *The Halibut Fisheries in Alaska*

The harvest of halibut in Alaska occurs in three fisheries—the commercial, sport, and subsistence fisheries. The commercial halibut fishery is managed under the IFQ Program that assigns catch shares to qualified persons as described at 50 CFR 300.65. Sport fishing for halibut in IPHC regulatory areas 2C and 3A are subject to different regulations, depending on whether those activities are guided (i.e., charter) or unguided. The subsistence halibut fishery is a non-commercial fishery that provides opportunities for customary and traditional use of halibut to Alaska rural residents and members of qualified Alaska Native Tribes, as described at 50 CFR 300.65.

The following sections of the preamble summarize charter halibut fishery management and aspects of the commercial halibut IFQ fishery that are relevant for the proposed RQE Program fee collection.

###### *Charter Halibut Fishery*

Charter fishing is subject to restrictions under Federal regulations that are generally more restrictive than the regulations applicable to unguided anglers. Charter fishery regulations apply if a charter vessel guide is providing sport fishing guide services for compensation or with the intent to receive compensation, to a person who is sport fishing, to take or attempt to take halibut by accompanying or physically directing the sport fisherman in sport fishing activities during any part of a charter vessel fishing trip. Throughout this preamble, the terms “charter fishery”, “charter vessel operator”, “charter vessel”, “charter vessel angler”, “sport fishing guide services” and “charter vessel guide” refer to the guided sport fishery for halibut in Alaska. Unguided anglers typically use their own vessels and equipment, or they may rent a vessel and fish with no assistance from a charter vessel guide.

Over the years, NMFS has developed specific management programs for the charter fishery to achieve allocation and conservation objectives. NMFS has

developed these programs with the intent of maintaining stability and economic viability in the charter fishery. The first major action was the Charter Halibut Limited Access Plan (CHLAP), which established limits on the number of charter vessel operators beginning in 2011. Three years later, NMFS implemented the halibut Catch Sharing Plan (CSP). The CSP established annual halibut allocations to the charter and commercial fisheries that vary with abundance. It also developed a process for determining annual management measures to limit charter harvest to the annual halibut allocations in IPHC areas 2C and 3A. The CHLAP and the CSP are summarized below.

#### *Charter Halibut Limited Access Program*

NMFS promulgated the CHLAP in January 2010 (75 FR 554, January 5, 2010). The CHLAP established Federal CHPs which have been required for charter vessel guides in the charter halibut fishery in IPHC regulatory areas 2C and 3A since 2011. The CHLAP is intended to provide stability in the charter fishery by limiting the number of charter vessels operating in areas 2C and 3A. The CHLAP also issues a limited number of community charter halibut permits to Community Quota Entities (CQE), which are non-profit corporations representing specified rural communities, and Military charter halibut permits to the U.S. Military Morale, Welfare, and Recreation (MWR) program for its service members. In total, for all types of CHPs, NMFS has issued 1,066 CHPs: 578 in for area 2C and 488 for area 3A.

Since implementation of the CHLAP, all charter vessel guides and charter vessel operators in areas 2C and 3A with charter vessel anglers on board must have an original, valid CHP on board during charter vessel fishing trips on which halibut are caught and retained. CHPs are endorsed for a specific IPHC regulatory area (area 2C or 3A) and the maximum number of charter vessel anglers that may catch and retain halibut on a charter vessel fishing trip. Charter vessel angler endorsements on CHPs range from 4 to 38 anglers.

CHPs were issued as either transferable or non-transferable permits, depending on the level of participation of the license applicant during the qualifying years for the specific IPHC regulatory area (area 2C or 3A). Non-transferable permits are intended to be phased out when the individual or entity that was issued the permit no longer participates in the charter fishery. Approximately 25 percent of the CHPs issued in the combined areas are non-transferable.

CHPs may be used by persons other than the permanent holder (*i.e.*, owner) of the CHP. Most commonly, this occurs when a CHP is used by a charter vessel guide who is an employee of the holder of the CHP. This is common at sport fishing lodges which use multiple boats, fishing guides, and CHPs. In other cases, a CHP may be temporarily leased, where the holder of the CHP is compensated by another party for the use of the permit. Due to this flexibility, and to ensure that non-transferable CHPs are correctly phased-out, a CHP holder must register their CHP(s) each calendar year to be valid.

Additional details on the development and rationale for the CHLAP can be found in the proposed rule for the CHLAP (74 FR 18178, April 21, 2009).

#### *Catch Sharing Plan for IPHC Regulatory Areas 2C and 3A*

NMFS implemented the CSP in January 2014 (78 FR 75844, December 12, 2013). The CSP replaced a Guideline Harvest Level that was in place from 2004 through 2013 for managing the charter fisheries in areas 2C and 3A. Under the CSP, a combined catch limit for areas 2C and 3A is divided into separate allocations for the commercial IFQ fisheries and the charter fisheries, pursuant to the CSP's allocation formulas. The CSP is intended to balance the differing needs of the commercial and charter fisheries over a wide range of halibut abundance. Additional detail on the development and rationale for the CSP can be found in the preamble for the CSP proposed rule (78 FR 39122, June 28, 2013), and in the final rule implementing the CSP (78 FR 75844, December 12, 2013).

#### *Commercial Individual Fishing Quota Fishery*

The commercial halibut fishery off Alaska is also commonly referred to as the "directed halibut fishery." Both the commercial halibut and sablefish fisheries off Alaska are managed under the IFQ Program, which was implemented in 1993 (58 FR 59375, November 9, 1993). The IFQ Program limits access to the commercial directed halibut fishery to those persons holding halibut QS in specific management areas. Halibut QS provides individual harvesting privileges that are allocated on an annual basis through the issuance of IFQ permits. Quota shares are classified by regulatory area and in one of four vessel size classes. Additionally, to constrain consolidation, QS were initially issued as either blocked or unblocked units. Persons received their QS in a block if their QS would have

resulted in less than 20,000 pounds of IFQ at initial allocation in 1994. Blocked QS must be sold as a unit, and cannot be separated. No person may hold more than three blocks of halibut QS in any IFQ regulatory area.

The specific amount of IFQ (in net pounds) is determined annually for each IFQ permit holder in a regulatory area by the number of QS units the person holds, the total number of QS units issued in the area, and the total pounds of halibut allocated to the directed commercial fishery. Therefore, if the abundance of halibut decreases, the catch limit will decrease and, subsequently, the number of pounds on a person's annual IFQ permit also will decrease.

Regulations allow QS to be transferred among initial recipients and to other individuals meeting specific eligibility requirements. When the initial RQE Program rules became effective in 2018 (83 FR 47819, September 21, 2018), the RQE became eligible to receive commercial halibut QS in IPHC regulatory area 2C or 3A by transfer.

#### *Process for Setting Annual Management Measures*

The CSP also describes a public process by which the Council develops recommendations to the IPHC for charter fishing regulations (annual management measures) that are intended to keep the charter fishery harvest within the allocations established for IPHC regulatory areas 2C and 3A.

Each October, the Council's Charter Halibut Management Committee (Charter Committee) reviews charter harvest in areas 2C and 3A during the current year in relation to the charter halibut catch limit. Staff from the Alaska Department of Fish and Game (ADF&G) provide an analysis and background information used to predict charter halibut harvest for the upcoming year under a range of alternative management measures. These measures may include those that would directly restrict the number or size of halibut that may be retained (*e.g.*, daily bag limits, trip limits, annual limits, and size limits), as well as measures that would indirectly restrict the number of halibut that may be retained (*e.g.*, day closures, limits on the number of charter vessel trips a charter vessel may make, or a prohibition on harvest by charter vessel operators, charter vessel guides, and crew members). After reviewing this analysis, the Charter Committee makes specific recommendations on possible management measures for areas 2C and 3A to be analyzed for the coming year.

Each December, the Charter Committee and the Council review the completed analysis. The Council considers the recommendations of the Charter Committee and also solicits public comments on the management measures. Ultimately, the Council selects management measures to recommend to the IPHC to keep charter harvests to within the charter fishery allocations in the respective regulatory areas.

At its annual meeting each January, the IPHC establishes coast wide and regulatory area mortality limits, which include mortality from all sources. This IPHC process also includes adopting allocation schemes for domestic catch sharing plans that have been developed by the respective contracting parties to the IPHC. Included in this process are the IPHC's consideration of the CSP commercial and charter allocations in areas 2C and 3A. Along with the CSP allocations, the IPHC also reviews the charter halibut management measures recommended by the Council for areas 2C and 3A, and adopts regulations designed to keep charter halibut harvests within their annual allocations in the respective areas. Once accepted by the Secretary of State, with the concurrence of the Secretary of Commerce, NMFS publishes in the **Federal Register** the charter halibut management measures for each area as part of its annual management measures.

#### *Examples of Charter Halibut Annual Management Measures*

As noted above, sport fishing for halibut in areas 2C and 3A is subject to different regulations, depending on whether those activities are guided (*i.e.*, charter) or unguided. Charter sport fishing regulations are generally more restrictive than the regulations for unguided anglers. While the unguided halibut daily bag limit regulations have remained unchanged for many years and allow two halibut of any size per day to be retained, the annual charter regulations are determined by an analysis of the performance of previous years' charter regulations combined with predictions of charter angling effort for the upcoming year. The Charter Committee seeks to balance effective harvest restrictions with mitigating economic harm, by recommending rules that reflect the differing halibut allocations for and angler effort in area 2C and area 3A, respectively, and that will be equitable across the many different charter business models in area 2C and area 3A.

For example, in area 2C, charter vessel anglers have been restricted to

harvesting a bag limit of one halibut per person, per day since 2009. A daily bag limit is the maximum number of halibut a person may retain in any calendar day. The initial implementation of a one-halibut daily bag limit was intended to keep charter fishery harvests to approximately the amount of the Guideline Harvest Level; then, after 2014, to stay within the allocations established under the CSP. Over the years, in addition to the one-fish daily bag limit, area 2C management measures have included limits on the maximum number of fishing lines that may be deployed from a charter vessel, day of the week closures, and reverse slot limits that allow charter vessel anglers to retain halibut that are either below or above a specific size range.

In area 3A, a 2-fish daily bag limit with no size limits was maintained during the Guideline Harvest Level years and has been maintained under the CSP. However, after the CSP became effective in 2014, the area 3A management measures have also employed other restrictions. These measures have included a maximum size limit on one of the two retained halibut, a 4-fish annual limit for each charter vessel angler, closures to halibut retention on specific days of the week, a limit of only 1 charter vessel fishing trip per day per charter vessel, and a limit of 1 charter vessel fishing trip in which halibut are caught and retained per day for a CHP.

As halibut abundance has decreased over the last 10 years, and management measures have generally become more restrictive in the charter halibut fishery, this has led to the development of four programs to allow interested CHP holders to harvest additional fish to meet their business needs. These four programs are discussed below.

#### *Guided Angler Fish Program*

As part of the 2014 CSP, NMFS implemented the Guided Angler Fish (GAF) Program to authorize limited annual transfers of commercial halibut IFQ as GAF to qualified CHP holders. Using GAF, qualified CHP holders who are issued a GAF permit may offer charter vessel anglers the opportunity to retain halibut up to the limit for unguided anglers when charter management measures limit charter vessel anglers to a more restrictive harvest limit. For example, if charter management regulations in area 2C restrict charter vessel anglers to a 1-halibut daily bag limit, a charter vessel angler could use GAF to retain a second halibut, bringing the angler's total retained amount to 2 halibut—the same

daily bag limit that applies to unguided anglers.

NMFS issues GAF in whole numbers of halibut based on a conversion factor from IFQ pounds. Conversion factors are based on the average net weights of GAF harvested in the applicable IPHC regulatory area (area 2C or 3A) during the previous year. Average weight is determined from data that charter vessel guides report directly to NMFS.

The GAF Program has three restrictions on GAF transfers. First, IFQ holders in area 2C are limited to transferring up to 1,500 pounds or 10 percent, whichever is greater, of their initially-issued halibut IFQ for use as GAF. In area 3A, IFQ holders may transfer up to 1,500 pounds or 15 percent, whichever is greater, of their initially-issued halibut IFQ for use as GAF. Second, no more than 400 GAF will be assigned during 1 year to a GAF permit assigned to a holder of a CHP that is endorsed for 6 or fewer anglers. Third, no more than a total of 600 GAF will be assigned during 1 year to a GAF permit assigned to a holder of a CHP endorsed for more than 6 anglers. The restrictions on transfers of GAF are intended to prevent a particular individual, corporation, or other entity from acquiring an excessive share of halibut fishing privileges as GAF.

The GAF Program is described in more detail in the proposed rule for the CSP (78 FR 39122, June 28, 2013).

#### *Community Quota Entity Program*

In 2004, the Council revised the IFQ Program to allow a distinct set of 46 remote Alaska coastal communities to form non-profit CQEs to purchase and hold catcher vessel halibut and sablefish QS in areas 2C, 3A, and 3B (69 FR 23681, April 30, 2004). That action was implemented to help promote access and sustained participation by those communities in the commercial halibut and sablefish fisheries. The IFQ resulting from the QS held by CQEs must be leased (*i.e.*, made available for fishing) to community residents annually. Currently, 28 communities have formed CQEs and have applied for and been approved to obtain QS by transfer. Of those 28 CQEs, four have purchased QS.

CQEs may also apply to NMFS to participate in the charter halibut fishery either by purchasing CHPs, or by being granted community charter halibut permits, which are similar to CHPs but are available only to CQEs. To date, NMFS has issued 48 community charter halibut permits for area 2C and 63 community charter halibut permits for area 3A to CQEs. Charter vessel anglers on vessels using community charter

halibut permits are subject to the same annual management measures and other regulations as other CHP holders.

#### *Military Morale, Welfare, and Recreation Program*

In addition to granting community charter halibut permits to CQEs, as noted above, the CHLAP also granted CHPs to charter vessels operated by any MWR program in Alaska. To operate a charter vessel, the MWR program must apply to NMFS to obtain a special military charter halibut permit. Each military charter halibut permit is non-transferable and valid only in the regulatory area designated on the permit. Currently the Alaska MWR program has been issued seven military charter halibut permits. Similar to the community charter halibut permits issued to CQEs, the military charter halibut permits are also subject to the same annual management measures and other regulations as other CHP holders.

#### *Recreational Quota Entity Program*

The RQE Program was established in 2018 as part of the IFQ Program in IPHC regulatory areas 2C and 3A. The program allows the RQE designated by NMFS to purchase and hold a limited amount of commercial halibut QS that would yield pounds of Recreational Fishing Quota (RFQ). RFQ is the pounds of halibut issued to a RQE on an annual basis to supplement the amount of halibut available for harvest in the charter halibut fishery (83 FR 47819, September 21, 2018). The RQE Program therefore provides a mechanism for compensated reallocation of a portion of commercial halibut QS to the charter fishery, which may result in less restrictive annual management measures for the charter fishery.

RQE regulations at § 679.42(f) establish limits on the amount of QS that the RQE can receive by transfer annually and hold in total. Additionally, the sum of QS held by the RQE, plus the QS associated with the charter halibut GAF program, may not exceed the total QS holding or use limits allowed in area 2C or 3A, respectively. RQE regulations at § 679.42(f) also limit the specific types of QS that the RQE may purchase. In general, the RQE is prohibited from purchasing smaller commercial holdings (*i.e.*, “blocks”) of commercial QS as well as QS that is assigned to smaller vessels (*e.g.*, QS assigned to vessel category D).

RQE regulations at § 679.40(c) call for a redistribution of QS under circumstances when the RQE might hold “excess” QS. If the RQE holds an amount of QS that allows charter vessel

anglers to harvest a daily limit of two halibut of any size in a regulatory area, then any poundage the RQE holds over that amount must be temporarily (for that fishing year) redistributed from the RQE back to the commercial fishery. Fifty percent of the redistributed poundage would be assigned to qualifying CQEs in the affected regulatory area (area 2C or area 3A), and the remaining 50 percent would be assigned to catcher vessel QS holders in the applicable area who hold relatively small amounts of QS; specifically, persons who hold not more than 32,333 QS units in area 2C, or 47,469 QS units in area 3A (the equivalent of 2,000 pounds of IFQ in the respective areas in 2015).

RQE regulations at § 679.41(g)(10)(iv) also allow the RQE to transfer its QS back to persons in the commercial halibut sector. This feature of the program requires that QS transferred to the RQE must retain its original vessel category and block designation.

The RQE is responsible for paying the IFQ fee liability for all RFQ issued to the RQE under regulations at § 679.45(a)(2). NMFS calculates the fee based on the RFQ pounds issued to the RQE and the IFQ standard ex-vessel value. To date, NMFS has not calculated an IFQ fee liability for the RQE because NMFS has not issued any RFQ.

RQE Program regulations at §§ 679.5 and 679.41(g) provide monitoring and transparency provisions. The RQE must maintain its non-profit and tax-exempt status and if the RQE entity does not do so, NMFS would not issue RFQ to the RQE. The RQE is also required to file an annual report with the Council by January 31 to provide details on its administration and business operations for each year it holds QS. This report allows the Council and NMFS to track the RQE’s development and activities to provide transparency and accountability. The RQE is required to include the following general information in its annual report: (1) any changes to the bylaws, board of directors, or other key management personnel of the RQE during the preceding year; (2) amounts and descriptions of the RQE’s annual administrative expenses; (3) amounts and descriptions of funds the RQE spent on conservation, research, and promotion of the halibut resource and a summary of the results of those expenditures; and (4) amounts and descriptions of all other RQE expenses. Additionally, the RQE is required to submit the following information in its report by regulatory area: (1) the total amount of halibut QS by vessel category and block held by the RQE at the start

of the calendar year, on October 1, and at the end of the calendar year; (2) a list of all transfers (purchases, sales, and any other transfers) of halibut QS, including transaction prices if applicable; and (3) the number of CHPs and associated charter vessel angler endorsements purchased and held by the RQE.

If the RQE holds QS in the previous year and has not submitted a timely and complete annual report by the January 31 deadline, NMFS would not approve any QS transfer nor issue any RFQ until the RQE submits the report. The RQE must submit the annual report to both the Council and to NMFS.

In March 2020, NMFS approved the application of the Catch Accounting Through Compensated Halibut (CATCH) Association to serve as the RQE. CATCH is currently eligible to purchase and permanently hold halibut QS, but to date, CATCH has not received any halibut QS transfers. More details on the RQE Program is provided in the RQE Program proposed (82 FR 46016, October 3, 2017) and final rules (83 FR 47819, September 21, 2018).

#### **Purpose and Need for This Proposed Rule**

During the development of the RQE Program, the Council did not recommend a specific means to fund the RQE’s purchase of commercial halibut QS or to pay for other RQE expenses because NMFS did not have the statutory authority to develop such rules. Under existing regulations, the RQE could administer its own means of generating funds to purchase commercial halibut QS. However, the RQE has not done so because the current regulations do not allow CHP holders or their charter vessel anglers who do not contribute to the RQE to be excluded from accessing the additional pounds of halibut available through RQE halibut QS holdings. Without an enforceable mechanism requiring all CHP holders to contribute money to the RQE, there would likely be charter fishing businesses that would benefit from, but not contribute to, the expenses of the RQE.

Based on the above findings, the Council agreed that a regulatory program would be necessary to establish a fee imposed on all CHP holders to fund RQE QS purchases. From 2019 through 2022, Congress considered legislation that would grant NMFS authority to establish such a program. As Congress developed this legislation, the Council simultaneously began the analytical process to examine the administrative requirements necessary



to implement an RQE Program fee collection.

As the Council analyzed alternatives for an RQE Program fee collection, the Council stated that its principal objective was to complete the development of the RQE Program so that it is fully functional. The Council indicated that would require the RQE to have access to sufficient funds to purchase meaningful amounts of commercial halibut QS and that enforceable rules would be necessary to establish a fee collection system that was fair and reasonable to all participants. A functioning RQE Program is intended to promote long-term efficiency in the use of the halibut resource by allowing compensated transfers of QS between commercial QS holders and the charter fishery, through the RQE, under a “willing buyer and willing seller” approach.

The Council, in April 2022, recommended to the Secretary a stamp program to fund the RQE as its preferred alternative. The program would require a stamp for anglers to sport fish from charter vessels, and the fees from selling the stamps would fund the RQE's purchase of halibut QS. Part of the Council's rationale for recommending a stamp as a funding mechanism for the RQE to the Secretary is that it would achieve equity among CHP holders (*i.e.*, charter fishing businesses would pay fees that are proportional to the number of charter vessel anglers that the business serves). Additionally, the Council noted that the stamp concept is used to access other fishing and hunting opportunities and should be familiar to sport fishing anglers, and therefore may increase acceptance of the fee.

As noted above, the Driftnet Modernization and Bycatch Reduction Act authorizes the Council to recommend, and the Secretary of Commerce to approve, regulations that would collect fees from CHP holders to provide funding to the RQE. NMFS developed these regulations and the necessary mechanisms to implement the RQE Program fee collection. In October 2024, the Council modified its recommendations from April 2022 to address NMFS' specific recommended revisions to the earlier motion to clarify a simple and secure method of fee collection and adopt a single fee for halibut stamps instead of a tiered fee approach. Both changes maintain the overall intent for the program. These October 2024 recommendations are incorporated into this proposed rule and are discussed further below.

## This Proposed Rule

### *Summary of the Proposed Rule*

NMFS proposes regulations that would require a stamp for all charter vessel anglers 18 years of age or older for each calendar day they intend to catch and retain halibut on a charter vessel in IPHC regulatory areas 2C and 3A. The proposed fee for the daily stamp would be \$20.00. The proposed regulations specify that the stamps would be obtained from NMFS and paid for by CHP holders who also hold a valid registration with ADF&G to provide sport fishing guide services in Alaska on saltwater. All CHP holders would be subject to these regulations, including CQEs and MWR programs holding any type of CHP. The stamps would be electronic. CHP holders would be able to log in to their CHP holder account to purchase stamps at any time and in any quantity. After the CHP holder purchases the stamps, they would be held in secure, individual CHP holder accounts that would be maintained by NMFS. Stamps would reside in the account indefinitely until they are debited by the stamp validation process discussed below.

NMFS proposes that charter vessel guides, as defined at § 300.61, would be responsible for the validation of the stamps. Stamp validation means the action of the charter vessel guide to record the number of stamps that are required for a particular charter vessel fishing trip in the ADF&G saltwater charter logbook (ADF&G logbook). Validation would occur on ADF&G logbooks before each charter vessel fishing trip begins. A charter vessel guide will need to validate one stamp for each angler on board the charter vessel who intends to catch and retain halibut on that day. Current ADF&G regulations require charter vessel guides to upload or otherwise send their completed ADF&G logbook information to ADF&G on a regular schedule. The stamp validation information uploaded from ADF&G logbooks would be shared with NMFS. NMFS would compare stamp validation information from the ADF&G logbook with the individual CHP holder accounts. In this way, CHP holder accounts would contain a record of stamp purchases and validations. For example, if a logbook indicated that a total of 5 charter halibut stamps were required for a given trip, NMFS would look to the CHP holder's account to verify that 5 stamps had been purchased to cover the stamps that were indicated as validated in the ADF&G logbook. CHP holders would be responsible for maintaining their accounts so that

stamp validations do not exceed stamp purchases at the end of a fishing year.

NMFS would transfer the collected stamp fees to a specific fund in the Federal Treasury, currently referred to as the RQE Fund, which has been created by Congress. From this account, Congress may make the money available to NMFS, to be used for the four purposes as specified in the Driftnet Modernization and Bycatch Reduction Act and described above. For the promotion of the halibut resource and the purchase of IFQ shares in IPHC areas 2C and 3A, NMFS intends to issue funds to the RQE through periodic grants. NMFS will also finance the administrative costs of the RQE program and support the halibut conservation and research with monies collected from the program and transferred from the RQE Fund to NMFS.

### *Charter Halibut Stamp Accounts*

Under these proposed regulations, NMFS would administer the fee collection and issue stamps to CHP holders through a NMFS-approved system. Currently, NMFS maintains an online platform, eFish, that is accessed by Alaska fishery participants for a variety of purposes, including the annual registration of CHPs, recording the harvest of GAF, and paying business fishery fees. This platform is secure. NMFS intends to use this platform to allow CHP holders to create online accounts for purchasing stamps. The stamps would not be year-specific. If they are not used in a given fishing year, they would carry over to the next fishing year. Post-season reimbursement of purchased stamps would not be authorized. Further discussion on this subject is provided below.

Each CHP holder, who holds one or more CHPs, would be responsible for creating an eFish online account and ensuring that fees are paid for the stamps. All CHPs held by a CHP holder would be added to a single eFish account, allowing stamps to be used freely across all CHPs on that account. For military charter halibut permits, the MWR would be considered the CHP holder. For community charter halibut permits, the CQE would be considered the CHP holder. Stamps would remain in the account until they are validated and debited from the account (*i.e.*, until they are used). If the CHP is sold, the CHP holders would be held responsible for stamp validations that occurred during their respective periods of ownership. CHP holders would also be responsible for ensuring that the number of validated stamps from charter vessels that used their CHP does not exceed the number of stamps that



have been purchased in a given fishing year. In situations where a person holds more than one CHP, the stamp purchases and validations would be pooled across all of the person's CHPs. If an uncorrected deficit of stamps exists from the previous fishing year for one or more CHPs, all other associated CHPs in that eFish account would be considered delinquent as well.

CHPs are commonly leased, and the charter vessel guide who leases, or otherwise uses, the CHP may not be the person who holds (*i.e.*, owns) the CHP. NMFS proposes that the CHP holder would be the person responsible for ensuring that an adequate number of stamps has been purchased to cover the number of stamp validations that are made by any person who leases, or otherwise uses, the CHP. This is consistent with other NMFS regulations, such as cost recovery fees, where fees are required to access fishing rights, and those rights may be leased to other persons. For example, IFQ lessees are not liable for IFQ program fees. The QS holder/lessor is responsible for fee payment.

If the number of stamp validations exceeds the number of stamps purchased on a CHP holder account, under these proposed regulations NMFS would notify the CHP holders and give them the opportunity to reconcile the account payments prior to the annual fee payment deadline. Should a CHP holder disagree that their account reflects a purchase and validation imbalance, they would have the right to request a hearing and at such a hearing to present evidence to support their position. If NMFS ultimately determines that an account purchase and validation imbalance has not been reconciled for the previous fishing year, NMFS may suspend the use and transfer of any CHPs associated with the CHP holder account and may refer the issue to proper authorities for collection.

#### *Charter Stamp Transferability*

As discussed above, once purchased, the stamps would be linked to the eFish account of the CHP holder who purchased them. Stamps would not expire and, if they have not been validated by the end of the fishing year, they would roll over into the next fishing year. If a CHP is revoked or invalidated, the stamps would remain linked to the account that held that CHP. Should another valid CHP be transferred to the person, or entity, associated with that eFish account, the stamps would be available for use by the valid CHP.

NMFS considered, but decided against, allowing for the transfer and

reimbursement of purchased stamps. Given the purchase-as-needed flexibility built into the RQE Program fee collection, NMFS determined that allowing stamp transfers and reimbursements would serve limited purposes and materially increase the complexity and administrative costs associated with fee collection without proportionate benefits. The proposed RQE Program fee collection allows CHP holders to purchase stamps at any time during the season, allowing CHP holders to maintain an operable amount of stamps without the need to stockpile stamps. Additionally, CHP holders could reconcile stamp deficits prior to the end of the fishing year without penalty. If a CHP holder is uncertain of how many stamps they may need to use, or how much longer a non-transferable CHP is valid, they would be able to monitor their eFish CHP holder account and purchase stamps in small increments throughout the fishing year as needed. A surplus of stamps associated with a CHP that will not be used by the CHP holder in the foreseeable future, the CHP holder could enter into private business agreements and lease their CHP to deplete previously purchased stamps prior to the formal transfer of the CHP to a new holder.

#### *Intention To Catch and Retain Halibut*

NMFS proposes that charter vessel anglers who intend to catch and retain halibut must have a stamp assigned to them by the charter vessel guide, and that the stamp must be validated before the charter vessel begins a charter vessel fishing trip on a fishing day. The charter vessel guide is responsible for ensuring that each angler intending to catch and retain halibut has a validated stamp. The individual angler is, in contrast, not responsible for purchasing, possessing, or validating the stamp that is otherwise associated with the angler's intention to catch and retain halibut.

When considering what defines intent to catch and retain halibut, the Council's motion aligns with the ADF&G king salmon stamp, which is a requirement for Alaska anglers "who fish for king salmon." NMFS understands there may be charter vessel fishing trips where charter vessel anglers do not intend to retain a halibut; for example, the anglers may decide to fish for other bottom fish on a day when halibut retention is not allowed. In that case, a stamp would not be required. There may be other occasions when a charter vessel angler catches a halibut unintentionally (*e.g.*, while fishing for salmon). Under these circumstances, if the charter vessel angler was assigned a

stamp on that day prior to departing on the charter vessel fishing trip, they would be allowed to retain the halibut; otherwise, the halibut would have to be released.

#### *Age Limit on Requirement for Charter Halibut Stamps*

NMFS proposes to exempt charter vessel guides from validating stamps for youth anglers, specifically minors under Alaska State law. The rationale for requiring stamps be validated only for anglers 18 years or older is consistent with analogous State of Alaska licensing requirements that require a king salmon stamp for all anglers 18 years or older.

#### *Charter Halibut Stamp Validation*

NMFS proposes, requiring that stamps be validated before each charter vessel fishing trip begins, and that charter vessel guides would be responsible for the validation of the stamps. For a given charter vessel fishing trip, a stamp would be valid from the time that it is validated, Alaska local time, through 2400 on the calendar day for which it was validated, Alaska local time, and would not be transferable between charter vessel anglers nor allowed to be used on any other charter vessel fishing trip. For the purposes of stamps, a charter vessel fishing trip that spans multiple days would treat each calendar day as an individual charter vessel fishing trip, meaning that a stamp would need to be validated for each angler on each calendar day. In the case of a charter vessel angler who goes on multiple charter vessel fishing trips in one calendar day, a stamp would be required to be validated for that angler for each charter fishing trip.

A charter vessel fishing trip, as defined at § 300.61, begins with the first deployment of fishing gear into the water from a charter vessel by a charter vessel angler. Federal regulations require charter vessel guides to enter the name and sport fishing license number of each charter vessel angler in the ADF&G logbooks their business was assigned before a trip begins. Charter vessel guides would use the ADF&G logbook to validate the number of stamps that are needed for that charter trip at that same time. Pre-trip validation would also be an enforcement feature in that it would prevent charter vessel guides from opportunistically validating stamps only when they anticipate being contacted by law enforcement. Currently, NOAA Office of Law Enforcement inspections of charter vessels routinely include an inspection of the charter vessel's ADF&G logbook. The presence or absence of validated stamps for each

charter vessel angler in the ADF&G logbooks would be an efficient, non-intrusive means to ensure compliance with stamp requirements.

#### *The Fee for Charter Halibut Stamps*

After soliciting comments in a public outreach process, and analyzing tiered fees more closely, NMFS and the Council recommended a single, \$20.00 fee. The \$20.00 fee would apply to each day that a stamp is required for a charter vessel angler who intends to catch and retain halibut. The \$20.00 fee is expected to provide the RQE Program with meaningful funding to benefit the entire charter halibut fishery and halibut resource while limiting the cost burden experienced by the individual CHP holders that would pay the fee. Section 3.5.1.2 of the RIR describes expected fee collections across a range of stamp prices (see **ADDRESSES**). It is uncommon for a charter vessel angler to undertake multiple charter halibut fishing trips in a single day. Including the ability for a charter vessel angler to use a single stamp across multiple charter vessel fishing trips in a single day would add significant cost and complexity to the administration and enforcement of stamps for a situation that does not occur often. As such, a stamp is required for each charter vessel angler intending to catch and retain halibut for each charter vessel fishing trip in a day.

The Council and NMFS considered, but did not select, a tiered fee structure for several reasons. The Council's original motion in April 2022 called for a tiered fee structure for stamps, which would provide a discount for stamps that are valid for multiple days of halibut fishing. The motion called for a \$20.00 daily fee for persons who fish one or two days, \$40.00 for persons who fish up to three days, and \$60.00 for persons who fish seven or more days. Although tiered fees are common among other State of Alaska stamps and licenses, all the State of Alaska tiered fees that were analyzed for this action are linked to a specific person and must be purchased by the actual license holder. Additionally, during the outreach process, CHP holders pointed to a lack of equity among fishing businesses if tiered fees were implemented. Operations that cater almost exclusively to one or two-day trips would be responsible for paying fees at the highest level, while other operations that log the same number of angler days, but whose guests tend to fish for three or more days, would contribute proportionately less to the RQE.

Finally, NMFS and the Council identified concerns with the cost and complexity of administering tiered fees, where electronic stamps and their respective validation dates would have to be tied to individual anglers over multiple days. The burden to issue unique stamps and track their use for individual anglers would likely be particularly difficult among large operations where guests commonly fish for varying numbers of days and move between boats during their stay, or to accommodate anglers who change their intentions for halibut fishing daily. Compared with a single-fee approach, this added administrative complexity would significantly undermine the Council's and NMFS's goal of enacting a simple, inexpensive fee collection strategy. Given the trade-offs of greater complexity, higher costs, information collection burdens, and equity in fee collections, the Council revised its recommendation to endorse a single \$20.00 fee and NMFS proposes a single-fee approach to issuing stamps.

#### *Changes to the Fee*

Under this proposed rule, the RQE could petition NMFS to increase, decrease, or suspend the fee for the stamp beginning in 2028. The fee for the stamp could not increase by more than 10 percent of the fee in the previous fishing year. After 2028, NMFS would provide the Council with an update on any fee increase requests and any fee increases would be implemented in regulations. The limitation on fee increases, including the limitation on changes to the fee prior to 2028, was recommended by the Council to protect the interests of CHP holders who might be concerned with significant, and immediate, fee increases.

NMFS also proposes regulations that would allow for suspension of the stamp requirement and fee collection, if necessary. As noted in this preamble, the RQE has limits on the amount of commercial halibut QS it may purchase. The proposed regulations would authorize NMFS to temporarily or permanently suspend fee collection if a petition from the RQE is received.

Additionally, NMFS proposes regulations that would allow the Regional Administrator to suspend the stamp requirement if the RQE is determined to be out of compliance with regulations, the RQE's own by-laws, or other applicable law; the Regional Administrator approves a petition by the RQE to suspend the RQE fee collection; or Congress no longer provides authorization for the Secretary of Commerce to collect and spend the fees.

NMFS also proposes regulations that would prohibit charter vessels from fishing for halibut in IPHC area 2C or 3A unless the charter vessel guide has validated a stamp for all charter vessel anglers 18 years or older who are on board the charter vessel and who intend to catch and retain halibut for each charter vessel fishing trip on that day. Additionally it would be prohibited to validate a stamp after the charter vessel fishing trip has begun, validate a stamp if the charter vessel guide does not have a valid CHP, or be a charter halibut permit holder and fail to purchase or hold a number of charter halibut stamps equal to or greater than the number of charter halibut stamp validations that were performed in a given fishing year.

#### **Classification**

The NMFS Assistant Administrator has determined that this proposed rule is consistent with section 106 of the Driftnet Modernization and Bycatch Reduction Act, the Magnuson-Stevens Act, the Halibut Act, and other applicable law, subject to further consideration of comments received during the public comment period.

This proposed rule has been determined to not be significant for the purposes of Executive Order 12866.

#### *Regulatory Impact Review (RIR)*

An RIR was prepared to assess costs and benefits of available regulatory alternatives. A copy of this analysis is available from NMFS (see **ADDRESSES**). NMFS recommends this proposed rule based on its assessment of the net benefits to the Nation of these measures. Specific aspects of the economic analysis are discussed below in the Initial Regulatory Flexibility Analysis (IRFA) section.

#### *Initial Regulatory Flexibility Analysis*

This IRFA was prepared for this proposed rule, as required by section 603 of the Regulatory Flexibility Act (RFA) (5 U.S.C. 603), to describe the economic impact this proposed rule, if adopted, would have on small entities. This IRFA describes the action; the reasons why this proposed rule is proposed; the objectives and legal basis for this proposed rule; the number and description of directly regulated small entities to which this proposed rule would apply; the recordkeeping, reporting, and other compliance requirements of this proposed rule; and the relevant Federal rules that may duplicate, overlap, or conflict with this proposed rule. This IRFA also describes significant alternatives to this proposed rule that would accomplish the stated objectives of the Magnuson-Stevens Act,

and any other applicable statutes, and that would minimize any significant economic impact of this proposed rule on small entities. The description of the proposed action, its purpose, and the legal basis are explained above in the **SUPPLEMENTARY INFORMATION** section of this proposed rule and are not repeated here.

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). The Small Business Administration has established a small business size standard applicable to charter fishing vessels (North American Industry Classification System (NAICS) code 487210; size standards effective 11.17.2022) of 14 million dollars.

#### *Number and Description of Small Entities Regulated by This Proposed Rule*

This action requires a charter halibut stamp for each charter vessel angler, 18 years of age or older, for each day and each charter vessel fishing trip on which the charter vessel angler intends to catch and retain halibut on a charter vessel in IPHC regulatory area 2C or 3A. Charter vessel guides, as defined at § 300.61, would be obligated to ensure that there are validated stamps for each charter vessel angler fishing for halibut on a charter vessel. CHP holders would be ultimately responsible for purchasing a sufficient quantity of stamps each fishing year.

Thus, for RFA purposes, those entities that are directly regulated by the action are operators of charter halibut businesses (*i.e.*, Sportfishing Guide Business Owners), charter vessel guides, CHP holders (including CHPs issued under the CQE and MWR programs), and the RQE. The thresholds applied to determine if an entity or group of entities is considered a “small” business under the RFA depends on the industry classification for the entity or entities.

The ADF&G logbook data shows that between 2017 and 2022 there were as many as 478 charter halibut businesses, with the low count of 342 occurring in 2021. The most recent data available shows 368 directly regulated charter halibut businesses in 2022. The count of directly regulated charter halibut guides was lowest in 2020, at 820 and highest in 2019 when 1,240 charter vessel guides participated in the affected fishery. Data for the most recent year, 2022, identified 1,037 directly regulated charter vessel guides. Guides that are employees of charter halibut businesses are not directly regulated entities under the RFA. However, guides that are

independent contractors are directly regulated by this action and would be considered directly regulated entities under the RFA.

There is no annual census data collection of gross revenues for charter businesses or guides with which to compare to the \$14 million threshold. A voluntary Alaska Saltwater Sport Fishing Charter Business Survey has been conducted by the Alaska Fisheries Science Center, which has gathered information on expenses, revenues, and business characteristics for the 2011, 2013, 2015, and 2017 fishing years. As demonstrated in the most recent Cost and Earnings Report, as detailed in the RIR for this action, the mean gross revenue for the population of charter businesses was between \$200,894 (in 2012) and \$302,609 (in 2013). These estimates are based on self-reported sales and revenues of charter trips (not necessarily charter vessel fishing trips for halibut) and include client referrals/booking commission revenue as well as revenue accrued by leasing a CHP. These estimates do not account for values derived from additional accommodations or food/beverage service.

Based on the difference between the Small Business Administration (SBA) threshold (\$14 million) and the mean revenue for charter businesses reported in the RIR, the available evidence indicates that all directly regulated businesses and associated charter halibut guides are considered “small.” If a business was large enough, potentially including lodging and multiple recreational activities, it is possible it could exceed the SBA threshold. However, there is no data to identify if or how many businesses may fit into this category, thus all businesses are considered “small.”

Moreover, there is no available data to determine the relationship charter guides have to the business (*e.g.*, owner/operator, hourly or salaried employee, contracted partnership, *etc.*). However, given the relative difference between estimated gross revenue at the business level and the \$14 million threshold, those guides that represent a separate entity are very likely still considered a small entity by SBA standards. Similarly, CQEs, MWRs and the RQE are considered to be small entities due to their relationship to the charter fishery. Analysis of the QS purchase limitations of one percent annually and ten percent total are estimated to produce total value of just over \$2 million in annual revenue by year ten in IPHC regulatory area 2C, and approximately \$5.6 million in total value annual value after ten years in IPHC regulatory area 3A. Thus,

the CQE and RQE entities are considered to be directly regulated small entities.

#### *Description of Significant Alternatives That Minimize Adverse Impacts on Small Entities*

The action alternative analyzed two options for funding the RQE. The first, and the basis of this action, is the stamp paid for by CHP holders with the stamp fees potentially passed on to individual charter vessel anglers. The second alternative is an annual CHP holder fee collection. Note that charter vessel anglers are considered individuals and not directly regulated small entities under the RFA definition. However, as demonstrated in this IRFA, based on the information that is available, all charter halibut businesses and charter vessel guides are considered to be directly regulated small entities. Charging an annual CHP holder-based fee that did not vary depending on the number of charter vessel anglers served may disproportionately impact some directly regulated small entities. The stamp method of fee collection would utilize a market-based approach to fund the RQE that is proportional to each CHP holder's use of the resource. There would be costs associated with this action; however, development of the administrative elements of this action selected options designed to maximize efficiency and benefits to the directly regulated entities. These choices include allowing holders of multiple CHPs to pool their stamps for use on any of those CHPs, rolling unused stamps over to the next fishing year, disallowing transfers of stamps, and utilizing preexisting electronic systems for purchasing stamps. Furthermore, this action was supported by charter halibut fishery stakeholders. The analysis of benefits of the stamp fee collection funding mechanism indicates that this is a generally beneficial action in that it provides individual charter vessel anglers with potential opportunities for eased restrictions on halibut retention and greater business opportunities for charter halibut businesses and charter vessel guides. Thus, based upon the best available scientific data, it appears that there are no significant alternatives to the action that have the potential to accomplish the stated objectives of the section 106 of the Driftnet Modernization and Bycatch Reduction Act, the Magnuson-Stevens Act, the Halibut Act, and any other statutes, and minimize any significant adverse economic impact of the action on small entities while preventing overfishing.

### *Duplicate, Overlapping, or Conflicting Federal Rules*

NMFS has not identified any duplication, overlap, or conflict between this proposed rule and existing Federal rules.

### *Recordkeeping, Reporting, and Other Compliance Requirements*

This proposed rule contains a collection-of-information requirement subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). This proposed rule revises the existing requirements for the collection of information for OMB Control Number 0648–0575 (Alaska Halibut Fisheries: Charter) by adding the purchase of charter halibut stamps, adding one new field to the existing ADF&G logbook to record the number of stamps validated on each charter vessel fishing trip, and adding appeals for an Initial Administrative Determination (IAD) received for incomplete payment of the charter halibut stamp fee liability. NMFS expects that every CHP holder would purchase stamps at least once per season, and likely at some periodic monthly or weekly interval. This proposed rule would not change the number of respondents or the responses for the ADF&G logbook. The ADF&G logbook is already completed for every charter vessel fishing trip, and the stamp validation field would be required to be completed for every charter vessel fishing trip that intends to catch and retain halibut. These information collections are necessary to collect fees, and administer, and enforce the RQE Program that was requested by the charter halibut fishery stakeholders. Public reporting burden is estimated to average 5 minutes to purchase charter halibut stamps; 5 minutes for the ADF&G logbook, which includes 1 minute for completing the additional field in the logbook; and 4 hours for appeals. The public reporting burden includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Public comment is sought regarding: whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated

collection techniques or other forms of information technology. Submit comments on these or any other aspects of the collection of information at <https://www.reginfo.gov/public/do/PRAMain>. Notwithstanding any other provisions 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.

### List of Subjects

#### 50 CFR Part 300

Administrative practice and procedure, Antarctica, Canada, Exports, Fish Fisheries, Fishing, Imports, Indians, Labeling, Marine resources, Reporting and recordkeeping requirements, Russian Federation, Transportation, Treaties, Wildlife.

#### 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: October 25, 2024.

**Samuel D. Rauch III,**  
Deputy Assistant Administrator for  
Regulatory Programs, National Marine  
Fisheries Service.

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR parts 300 and 679 as follows:

## **PART 300—INTERNATIONAL FISHERIES REGULATIONS**

### **Subpart E—Pacific Halibut Fisheries**

■ 1. The authority citation for part 300, subpart E, continues to read as follows:

**Authority:** 16 U.S.C. 773–773k.

■ 2. Amend § 300.61 by revising the definitions of “Charter halibut permit,” “Charter vessel,” “Charter vessel angler,” “Charter vessel fishing trip,” and “Charter vessel guide” to read as follows:

#### **§ 300.61 Definitions.**

\* \* \* \* \*

*Charter halibut permit* means a permit issued by the National Marine Fisheries Service pursuant to § 300.67, and subject to requirements in §§ 300.65, 300.66, and 300.67 and 50 CFR 679.7(q) and 679.46.

*Charter vessel*, for purposes of §§ 300.65, 300.66, and 300.67 and 50 CFR 679.7(q) and 679.46, means a vessel used while providing or receiving sport fishing guide services for halibut, and, for purposes of § 300.63, means a vessel used for hire in recreational (sport) fishing for Pacific halibut, but not

including a vessel without a hired operator.

*Charter vessel angler*, for purposes of §§ 300.65, 300.66, and 300.67 and 50 CFR 679.7(q) and 679.46, means a person, paying or non-paying, receiving sport fishing guide services for halibut.

*Charter vessel fishing trip*, for purposes of §§ 300.65, 300.66, and 300.67 and 50 CFR 679.7(q) and 679.46, means the time period between the first deployment of fishing gear into the water from a charter vessel by a charter vessel angler and the offloading of one or more charter vessel anglers or any halibut from that vessel.

*Charter vessel guide*, for purposes of §§ 300.65, 300.66, and 300.67 and 50 CFR 679.7(q) and 679.46, means a person who holds an annual sport fishing guide license or registration issued by the Alaska Department of Fish and Game, or a person who provides sport fishing guide services.

\* \* \* \* \*

■ 3. Amend § 300.65 by revising paragraphs (d)(1)(ii) and (d)(4)(ii)(B) introductory text and adding paragraph (d)(4)(ii)(B)(11) to read as follows:

#### **§ 300.65 Catch sharing plan and domestic management measures in waters in and off Alaska.**

\* \* \* \* \*

(d) \* \* \*

(1) \* \* \*

(ii) The charter vessel guide is responsible for complying with the reporting requirements of this paragraph (d) and 50 CFR 679.46. The person whose business was assigned an Alaska Department of Fish and Game Saltwater Sport Fishing Charter Trip Logbook is responsible for ensuring that the charter vessel guide complies with the reporting requirements of this paragraph (d) and 50 CFR 679.46.

\* \* \* \* \*

(4) \* \* \*

(ii) \* \* \*

(B) *Charter vessel guide requirements.* If halibut were caught and retained in Commission regulatory area 2C or 3A, the charter vessel guide must record the following information (see paragraphs (d)(4)(ii)(B)(1) through (10) of this section and 50 CFR 679.46) in the Alaska Department of Fish and Game Saltwater Charter Logbook:

\* \* \* \* \*

(11) *Validation of charter halibut stamps.* The charter vessel guide is responsible for complying with the charter halibut stamp validation requirements at 50 CFR 679.46.

\* \* \* \* \*

■ 4. Amend § 300.67 by revising paragraph (a)(1) to read as follows:

### § 300.67 Charter halibut limited access program.

\* \* \* \* \*

(a) \* \* \*

(1) *Requirements.* In addition to other applicable permit, licensing, or registration requirements, any charter vessel guide of a charter vessel during a charter vessel fishing trip with one or more charter vessel anglers catching and retaining Pacific halibut on board must have on board the vessel an original valid charter halibut permit or permits endorsed for the regulatory area in which the charter vessel is operating and endorsed for at least the number of charter vessel anglers who are catching and retaining Pacific halibut. Each charter halibut permit holder must ensure that the charter vessel operator and charter vessel guide of the charter vessel comply with all requirements of §§ 300.65 and 300.66, this section, and 50 CFR 679.46.

\* \* \* \* \*

### PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 5. The authority citation for part 679 continues to read as follows:

**Authority:** 16 U.S.C. 773 *et seq.*; 1801 *et seq.*; 3631 *et seq.*; Pub. L. 108–447; Pub. L. 111–281.

■ 6. Amend § 679.2 by adding in alphabetical order the definitions of “Charter halibut permit,” “Charter halibut permit holder,” “Charter halibut stamp,” “Charter halibut stamp validation,” “Charter vessel,” “Charter vessel angler,” “Charter vessel fishing trip,” “Charter vessel guide,” “Community charter halibut permit,” and “Military charter halibut permit” to read as follows:

#### § 679.2 Definitions.

\* \* \* \* \*

*Charter halibut permit* (see § 300.61 of this title).

*Charter halibut permit holder*, for purposes of § 300.67 of this title and § 679.46, means the person identified on a charter halibut permit, community charter halibut permit, or military charter halibut permit.

*Charter halibut stamp* means an electronic stamp that is required for each charter vessel angler, 18 years of age or older, for each day and each charter vessel fishing trip on which the charter vessel angler intends to catch and retain halibut on a charter vessel in International Pacific Halibut Commission (IPHC) regulatory area 2C or 3A.

*Charter halibut stamp validation* means, with respect to the Recreational Quota Entity Program fee collection, as

described at § 679.46, the charter vessel guide, as defined at § 300.61 of this title, recording the number of charter halibut stamps required for each charter vessel fishing trip the charter vessel guide provides sport fishing guide services, as defined at § 300.61, in the ADF&G saltwater charter logbook that is required by § 300.65(d) of this title.

*Charter vessel* (see § 300.61 of this title).

*Charter vessel angler* (see § 300.61 of this title).

*Charter vessel fishing trip* (see § 300.61 of this title).

*Charter vessel guide* (see § 300.61 of this title).

\* \* \* \* \*

*Community charter halibut permit* (see § 300.61 of this title).

\* \* \* \* \*

*Military charter halibut permit* (see § 300.61 of this title)

\* \* \* \* \*

■ 7. Amend § 679.4 by revising paragraphs (a)(1)(xv)(A) through (C) to read as follows:

#### § 679.4 Permits.

(a) \* \* \*

(1) \* \* \*

If program permit or card type is:	Permit is in effect from issue date through the end of:	For more information, see . . .
(xv) * * *	.....	.....
(A) Charter halibut permit .....	Until expiration date shown on permit .....	§ 300.67 of this title and § 679.46.
(B) Community charter halibut permit .....	Indefinite unless invalidated under § 679.46(a)(1)(vi)(D) .....	§ 300.67 of this title and § 679.46.
(C) Military charter halibut permit .....	Indefinite unless invalidated under § 679.46(a)(1)(vi)(D) .....	§ 300.67 of this title and § 679.46.
* * * * *	* * * * *	* * * * *

\* \* \* \* \*

■ 8. Amend § 679.7 by adding paragraph (q) to read as follows:

#### § 679.7 Prohibitions.

\* \* \* \* \*

(q) *Recreational Quota Entity Program.* (1) Be a charter vessel guide and use a charter vessel to fish for Pacific halibut in IPHC regulatory area 2C or 3A unless the charter vessel guide has completed a charter halibut stamp validation for each charter vessel angler who is 18 years or older on board the charter vessel and intends to catch and retain Pacific halibut for each charter vessel fishing trip on that day.

(2) Be a charter vessel guide and perform a charter halibut stamp

validation after the charter vessel fishing trip has begun.

(3) Be a charter halibut permit holder and fail to purchase or hold by the fee liability notice deadline specified in § 679.46(a)(1)(v) a number of charter halibut stamps equal to or greater than the number of charter halibut stamp validations that were performed in a given fishing year.

■ 9. Add § 679.46 to read as follows:

#### § 679.46 Recreational Quota Entity (RQE) Program fee collection.

(a) *Fee collection*—(1) *Charter halibut stamp.* A charter halibut stamp is required for charter vessel anglers, 18 years of age or older, for each day and each charter vessel fishing trip they

intend to catch and retain halibut on a charter vessel in IPHC regulatory area 2C or 3A. This includes charter vessel anglers on charter vessels operated under a charter halibut permit, community charter halibut permit, or military charter halibut permit issued pursuant to § 300.67 of this title. A charter halibut permit holder is responsible for purchasing the required number of charter halibut stamps and for complying with all other requirements of this section. The required number of charter halibut stamps is equal to or greater than the number of charter halibut stamp validations (as defined at § 679.2) performed in a given fishing year for each charter halibut permit(s),

community charter halibut permit(s), or military charter halibut permit(s).

(i) *Validation of stamps.* After determining the number of charter halibut stamps required under this paragraph (a)(1), the charter vessel guide must perform a charter halibut stamp validation as defined at § 679.2.

(ii) *Duration of validation.* The charter halibut stamp that has received a charter halibut stamp validation, as defined at § 679.2, is in effect from the time, A.l.t., that it is validated until 2400 hours, A.l.t., the same day. For the purposes of charter halibut stamp validation, if a charter vessel fishing trip lasts more than one calendar day, a charter halibut stamp is required for each charter vessel angler who is 18 years of age or older, for each calendar day that the charter vessel angler intends to catch and retain halibut.

(iii) *Non-transferability.* Charter halibut stamps are not transferable. This includes:

(A) After charter halibut stamp validation for an individual charter vessel angler, the charter halibut stamp may not be transferred to or used by any other person.

(B) Charter halibut stamps may only be used for associated charter halibut permits in a given NMFS-approved account and may not be transferred between approved accounts.

(iv) *Rollover.* A charter halibut stamp that has been purchased and has not received charter halibut permit validation does not expire. Such charter halibut stamps may be validated in a future fishing year.

(v) *Fee liability.* If, by 2400 A.l.t. on December 31 of a given fishing year, a charter halibut permit holder, for one or more associated charter halibut permits in a NMFS-approved account, has not purchased a number of charter halibut stamps equal to or greater than the number of charter halibut stamps validated under that account for that same fishing year, the Regional Administrator will send a fee liability notice to the charter halibut permit

holder. The fee liability notice will state the estimated fee liability, as determined by the number of charter halibut stamps validated for that fishing year in excess of the number of charter halibut stamps that have been purchased. A charter halibut permit holder has 30 days from the date of the notice to either pay the outstanding fee liability or demonstrate how the fee liability determination is in error.

(vi) *Underpayment of fee liability.* If a charter halibut permit holder does not pay the fee liability or demonstrate how the fee liability determination is erroneous within 30 days as outlined in this paragraph (a)(1)(vi), the Regional Administrator may:

(A) Issue an Initial Administrative Determination (IAD) upholding the fee liability determination;

(B) Disapprove any transfer application of the charter halibut permit, and all associated charter halibut permits in a NMFS approved account, GAF, IFQ, or QS to or from the charter halibut permit holder until the charter halibut stamp fee liability is paid, except that NMFS may return unused GAF to the charter halibut permit holder's account from which it was derived on or after the automatic GAF return date;

(C) Disapprove the annual registration application of a charter halibut permit, and all associated charter halibut permits in a NMFS-approved account, in accordance with § 300.67(a) of this title, until the charter halibut stamp fee liability is paid; and

(D) Invalidate a community charter halibut permit or military charter halibut permit until the charter halibut stamp fee liability is paid.

(vii) *Appeals.* A charter halibut permit holder who receives an IAD for incomplete payment of the charter halibut stamp fee liability may appeal the IAD pursuant to 15 CFR part 906.

(2) [Reserved]

(b) *Fee amount.* (1) The fee for a charter halibut stamp is \$20.

(2) The RQE may petition NMFS to increase, decrease, or suspend the fee

for a charter halibut stamp beginning on January 1, 2028. The fee for the charter halibut stamp may not increase by an amount more than 10 percent of the fee in the previous fishing year.

(c) *Fee payment to NMFS—(1) Obtaining charter halibut stamps.* Charter halibut stamps must be obtained and applicable fees paid by persons who:

(i) Have or are required to have a valid registration with ADF&G to provide sport fishing guide services (§ 300.61 of this title) in IPHC regulatory area 2C or 3A; and

(ii) Are a charter halibut permit holder.

(2) *Charter vessel guide responsibilities.* Before each charter vessel fishing trip begins, the charter vessel guide is responsible for ensuring there is a charter halibut stamp that has received charter halibut stamp validation for each charter vessel angler, 18 years of age or older, on board the charter vessel who intends to catch and retain halibut.

(3) *Fee payment.* Fee payment must occur prior to the end of the fishing year.

(d) *RQE fee collection suspension.* The Regional Administrator may suspend the RQE fee collection indefinitely, or until such a time that any identified RQE operational deficiencies are corrected, if:

(1) Through the issuance of an IAD and the opportunity to appeal the IAD under 15 CFR part 906, the Regional Administrator determines that the RQE is out of compliance with regulations in this title, the RQE's own by-laws, or other applicable law;

(2) The Regional Administrator approves a petition by the RQE to suspend the RQE fee collection; or

(3) Congress no longer provides authorization for the Secretary of Commerce to collect and spend fees.

[FR Doc. 2024–25229 Filed 10–30–24; 8:45 am]

BILLING CODE 3510–22–P

# Notices

Federal Register

Vol. 89, No. 211

Thursday, October 31, 2024

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 COMMERCE

### Foreign-Trade Zones Board

[B-55-2024]

#### Foreign-Trade Zone (FTZ) 59, Notification of Proposed Production Activity; Kawasaki Motors Manufacturing Corp., U.S.A.; (Four-Wheeled Personal Transportation Vehicles); Lincoln, Nebraska

Kawasaki Motors Manufacturing Corp., U.S.A. submitted a notification of proposed production activity to the FTZ Board (the Board) for its facility in Lincoln, Nebraska within Subzone 59A. The notification conforming to the requirements of the Board's regulations (15 CFR 400.22) was received on October 24, 2024.

Pursuant to 15 CFR 400.14(b), FTZ production activity would be limited to the specific foreign-status material(s)/component(s) and specific finished product(s) described in the submitted notification (summarized below) and subsequently authorized by the Board. The benefits that may stem from conducting production activity under FTZ procedures are explained in the background section of the Board's website—accessible via [www.trade.gov/ftz](http://www.trade.gov/ftz). The proposed finished product(s) and material(s)/component(s) would be added to the production authority that the Board previously approved for the operation, as reflected on the Board's website.

The proposed finished product is a four-wheeled, seated, open air, electric personal transportation vehicle (duty rate 2.5%).

The proposed foreign-status materials/components include oil seals for hub assemblies, RFID tags, and plastic seat armrests (duty rate ranges from duty-free to 3.9%). The request indicates that certain materials/components are subject to duties under section 301 of the Trade Act of 1974 (section 301), depending on the country

of origin. The applicable section 301 decisions require subject merchandise to be admitted to FTZs in privileged foreign status (19 CFR 146.41).

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary and sent to: [ftz@trade.gov](mailto:ftz@trade.gov). The closing period for their receipt is December 10, 2024.

A copy of the notification will be available for public inspection in the "Online FTZ Information System" section of the Board's website.

For further information, contact Juanita Chen at [juanita.chen@trade.gov](mailto:juanita.chen@trade.gov).

Dated: October 28, 2024.

Camille R. Evans,

Acting Executive Secretary.

[FR Doc. 2024-25398 Filed 10-30-24; 8:45 am]

BILLING CODE 3510-DS-P

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

[B-37-2024]

#### Foreign-Trade Zone (FTZ) 80; Authorization of Production Activity; Senior Operation LLC; (Expansion Joints and Clamshell Bellows); New Braunfels, Texas

On June 28, 2024, Senior Operation LLC submitted a notification of proposed production activity to the FTZ Board for its facility within FTZ 80, in New Braunfels, Texas.

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 (89 FR 55221, July 3, 2024). On October 28, 2024, 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: October 28, 2024.

Camille R. Evans,

Acting Executive Secretary.

[FR Doc. 2024-25371 Filed 10-30-24; 8:45 am]

BILLING CODE 3510-DS-P

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-423-808]

#### Stainless Steel Plate in Coils From Belgium: Final Results of Antidumping Duty Administrative Review; 2022-2023

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

**SUMMARY:** The U.S. Department of Commerce (Commerce) determines that Aperam Stainless Belgium N.V. (ASB) made sales of stainless steel plate in coils from Belgium at less than normal value during the period of review (POR) May 1, 2022, through April 30, 2023.

**DATES:** Applicable October 31, 2024.

**FOR FURTHER INFORMATION CONTACT:** Samuel Brummitt, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-7851.

#### SUPPLEMENTARY INFORMATION:

##### Background

On May 21, 1999, Commerce published the antidumping duty order on stainless steel plate in coils from Belgium.<sup>1</sup> Commerce initiated this administrative review with respect to four companies: ASB, ArcelorMittal Genk, Helaxa BVBA, and Industeel Belgium.<sup>2</sup> However, Commerce rescinded this review for three companies that did not have reviewable entries of subject merchandise during the POR.<sup>3</sup> As such, ASB is the only company subject to this administrative review. On June 6, 2024, Commerce published the preliminary results of this review in the **Federal Register** and

<sup>1</sup> See *Antidumping Duty Orders; Certain Stainless Steel Plate in Coils from Belgium, Canada, Italy, the Republic of Korea, South Africa, and Taiwan*, 64 FR 27756 (May 21, 1999) (Order).

<sup>2</sup> See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 88 FR 44262, 44263 (July 12, 2023); see also *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review and Join Annual Inquiry Service List*, 88 FR 27445, 27446 (May 2, 2023).

<sup>3</sup> See *Stainless Steel Plate in Coils from Belgium: Preliminary Results and Rescission, In Part, of Antidumping Duty Administrative Review; 2022-2023*, 89 FR 48384 (June 6, 2024) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.



invited interested parties to comment.<sup>4</sup> On July 22, 2024, Commerce tolled certain deadlines in this administrative proceeding by seven days.<sup>5</sup> On October 9, 2024, Commerce extended the deadline for these final results to October 25, 2024.<sup>6</sup>

For a complete summary of the events that have occurred since the *Preliminary Results*, as well as a full discussion of the issues raised by parties for these final results, see the Issues and Decision Memorandum.<sup>7</sup> Commerce conducted this review in accordance with section 751(a)(1)(B) of the Tariff Act of 1930, as amended (the Act).

### Scope of the Order

The merchandise covered by this Order is stainless steel plate in coils from Belgium. For a complete description of the scope of the Order, see the Issues and Decision Memorandum.<sup>8</sup>

### Analysis of the Comments Received

All issues raised in the case and rebuttal briefs are addressed in the Issues and Decision Memorandum, and are identified in the appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <https://access.trade.gov>. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at <https://access.trade.gov/public/FRNoticesListLayout.aspx>.

### Changes Since the Preliminary Results

Based on a review of the record and comments received from interested parties, we made certain adjustments to the margin calculations for these final results, as detailed in the Issues and Decision Memorandum.

### Final Results of the Review

Commerce determines that the following weighted-average dumping margin exists for the period May 1, 2022, through April 30, 2023:

Exporter/producer	Weighted-average dumping margin (percent)
Aperam Stainless Belgium N.V	0.78

### Disclosure

Commerce intends to disclose the calculations performed to interested parties for these final results within five days of the date of publication of this notice in the **Federal Register**, in accordance with 19 CFR 351.224(b).

### Assessment

Pursuant to section 751(a)(2)(C) of the Act and 19 CFR 351.212(b), Commerce has determined, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with these final results of review. Pursuant to 19 CFR 351.212(b)(1), where the respondent reported the entered value of its U.S. sales, we calculated importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of dumping calculated for the examined sales to the total entered value of the sales for which entered value was reported. Where the respondent's weighted-average dumping margin is zero or *de minimis* within the meaning of 19 CFR 351.106(c)(1), or an importer-specific assessment rate is zero or *de minimis*, we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

Commerce's "reseller policy" will apply to entries of subject merchandise during the POR produced by ASB for which the reviewed company did not know that the merchandise it sold to the intermediary (e.g., a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.<sup>9</sup>

Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (i.e.,

within 90 days of publication). The final results of this administrative review shall be the basis for the assessment of antidumping duties on entries of merchandise under review and for future cash deposits of estimated antidumping duties, where applicable.

### Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for ASB will be equal to the weighted-average dumping margin established in the final results of this administrative review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding in which the company participated; (3) if the exporter is not a firm covered in this review, a prior review, or in the less-than-fair-value investigation (LTFV) but the producer is, the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the producer of the merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be the all-others rate of 9.86 percent, the rate established in the LTFV investigation of this proceeding.<sup>10</sup> These cash deposit requirements, when imposed, shall remain in effect until further notice.

### Notification to Importers

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

### Administrative Protective Order (APO)

This notice also serves as a reminder to parties subject to an APO of their responsibility concerning the return or

<sup>4</sup> *Id.*

<sup>5</sup> See Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Proceedings," dated July 22, 2024.

<sup>6</sup> See Memorandum, "Extension of Deadline for Final Results of Antidumping Duty Administrative Review," dated October 9, 2024.

<sup>7</sup> See Memorandum, "Issues and Decision Memorandum for the Final Results of Antidumping Duty Administrative Review: Stainless Steel Plate in Coils from Belgium, 2022–2023," dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

<sup>8</sup> See Issues and Decision Memorandum at "Scope of the Order."

<sup>9</sup> For a full discussion of this practice, see *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

<sup>10</sup> See Order, 64 FR 27757.



destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

#### Notification to Interested Parties

We are issuing and publishing these final results in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213(h) and 19 CFR 351.221(b)(5).

Dated: October 25, 2024.

**Abdelali Elouaradia,**

*Deputy Assistant Secretary for Enforcement and Compliance.*

#### Appendix

##### List of Topics Discussed in the Issues and Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the *Order*
- IV. Changes Since the *Preliminary Results*
- V. Discussion of the Issues
  - Comment 1: Whether Commerce Should Match Sales by PRIMEH/U
  - Comment 2: Whether Commerce Should Revise the Date of Sale
  - Comment 3: Whether Commerce Should Revise the Importer of Record in the U.S. Customs and Border Protection (CBP) Liquidation Instructions
- VI. Recommendation

[FR Doc. 2024–25396 Filed 10–30–24; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

[C–533–839]

#### Carbazole Violet Pigment 23 From India: Final Results of Countervailing Duty New Shipper Review; 2022

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

**SUMMARY:** The U.S. Department of Commerce (Commerce) has conducted a new shipper review (NSR) of Sudarshan Chemical Industries Limited (Sudarshan) regarding the countervailing duty order on carbazole violet pigment 23 (CVP–23) from India. The period of review (POR) is January 1, 2022, through December 31, 2022. Based on our analysis, we continue to find that countervailable subsidies were provided to Sudarshan with the respect

to the production of CVP–23 from India during the POR.

**DATES:** Applicable October 31, 2024.

#### FOR FURTHER INFORMATION CONTACT:

Gene H. Calvert, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3586.

#### SUPPLEMENTARY INFORMATION:

##### Background

On May 28, 2024, Commerce published the *Preliminary Results* of this NSR.<sup>1</sup> On July 22, 2024, Commerce tolled certain deadlines in this administrative proceeding by seven days.<sup>2</sup> On August 16, we extended the deadline for these final results until October 16, 2024.<sup>3</sup> Between August 27 and 30, 2024, we conducted verification of Sudarshan's questionnaire responses that were submitted in this NSR.<sup>4</sup> On September 12, 2024, we established the deadline for the submission of case and rebuttal briefs.<sup>5</sup> On September 19, 2024, a case brief was timely submitted on behalf of Sudarshan.<sup>6</sup> No other interested party submitted a case or rebuttal brief. On October 16, 2024, we further extended the deadline for the final results for this NSR to its current deadline of October 24, 2024.<sup>7</sup> For a description of the events that occurred since the *Preliminary Results*, see the Issues and Decision Memorandum.<sup>8</sup>

<sup>1</sup> See *Carbazole Violet Pigment 23 from India: Preliminary Results of Countervailing Duty New Shipper Review*; 2022, 89 FR 46063 (May 28, 2024) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

<sup>2</sup> See Memorandum, “Tolling of Deadlines for Antidumping and Countervailing Duty Proceedings,” dated July 22, 2024.

<sup>3</sup> See Memorandum, “Extension of Deadline for Final Results of Countervailing Duty New Shipper Review,” dated August 16, 2024. This extension of deadline memorandum inadvertently references October 17, 2024, rather than October 16, 2024, as the extended deadline for the final results.

<sup>4</sup> See Memorandum, “Verification of Questionnaire Responses Submitted by Sudarshan Chemical Industries Limited,” dated September 12, 2024 (Sudarshan's Verification Report).

<sup>5</sup> See Memorandum, “Briefing Schedule,” dated September 12, 2024.

<sup>6</sup> See Sudarshan's Letter, “Case Brief,” dated September 19, 2024 (Sudarshan's Case Brief).

<sup>7</sup> See Memorandum, “Second Extension of Deadline for Final Results of Countervailing Duty New Shipper Review,” dated October 16, 2024.

<sup>8</sup> See Memorandum, “Issues and Decision Memorandum for the Final Results of New Shipper Review of the Countervailing Duty Order on Carbazole Violet Pigment 23 from India; 2022,” dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

#### Scope of the Order<sup>9</sup>

The product covered by the *Order* is CVP–23 from India. For a full description of the scope of the *Order*, see the Issues and Decision Memorandum.

#### Verification

Commerce conducted verification of Sudarshan's questionnaire responses between August 27 and 30, 2024.<sup>10</sup> We used standard verification procedures, including an examination of relevant accounting records and original source documents provided by Sudarshan.

#### Analysis of Comments Received

All issues raised in Sudarshan's Case Brief are addressed in the Issues and Decision Memorandum.<sup>11</sup> A list of the issues addressed is attached in the appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <https://access.trade.gov>. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at <https://access.trade.gov/public/FRNoticesListLayout.aspx>.

#### Changes Since the Preliminary Results

Based on record information, the results of Sudarshan's verification, and comments received from Sudarshan, we made certain changes to the *Preliminary Results* regarding Sudarshan's subsidy calculation. These changes are explained in the Issues and Decision Memorandum.

#### Methodology

Commerce conducted this NSR in accordance with section 751(a)(2)(B) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.214. For each subsidy program found to be countervailable, Commerce finds there is a subsidy, *i.e.*, a government-provided financial contribution that gives rise to a benefit to the recipient, and that the subsidy is specific.<sup>12</sup> For a full description of the methodology underlying Commerce's conclusions,

<sup>9</sup> See *Notice of Countervailing Duty Order: Carbazole Violet Pigment 23 from India*, 69 FR 77995 (December 29, 2004) (*Order*).

<sup>10</sup> See Sudarshan's Verification Report.

<sup>11</sup> As referenced above, Sudarshan was the only interested party that submitted a case or rebuttal brief.

<sup>12</sup> See sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

see the Issues and Decision Memorandum.

### Final Results of New Shipper Review

As a result of this NSR, Commerce determines that the following net countervailable subsidy rate exists for the period January 1, 2022, through December 31, 2022:

Producer/exporter	Subsidy rate (percent <i>ad valorem</i> )
Sudarshan Chemical Industries Limited .....	6.75

### Disclosure

Consistent with 19 CFR 351.224(b), Commerce intends to disclose to interested parties the calculations performed in connection with the final results of this NSR within five days of the date of publication of this notice in the **Federal Register**.

### Assessment Rates

Commerce has determined, and U.S. Customs and Border Protection (CBP) shall assess, countervailing duties on all appropriate entries of subject merchandise covered by this NSR.<sup>13</sup> Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of these final results in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.*, within 90 days of publication).

### Cash Deposit Requirements

In accordance with section 751(a)(2)(C) of the Act, Commerce also intends to instruct CBP to collect cash deposits of estimated countervailing duties in the amount shown above for Sudarshan on shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this NSR. These cash deposit requirements shall remain in effect until further notice.

### Administrative Protective Order (APO)

This notice also serves as a final reminder to parties subject to APO of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or

conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

### Notification to Interested Parties

Commerce is issuing the final results of this NSR and publishing this notice in accordance with sections 751(a)(2)(B) and 777(i)(1) of the Act, and 19 CFR 351.214.

Dated: October 24, 2024.

**Ryan Majerus,**

*Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.*

### Appendix

#### List of Topics Discussed in the Issues and Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the *Order*
- IV. Subsidies Valuation Information
- V. *Bona Fide* Analysis
- VI. Changes Since the *Preliminary Results*
- VII. Analysis of Programs
- VIII. Discussion of the Issues
  - Comment 1: Whether Commerce Should Revise its Preliminary Benefit Calculation Methodology for the Remission of Duties and Taxes on Export Products (RoDTEP) Program
  - Comment 2: Whether the Electricity Rebate on Excess Consumption Program Is Countervailable
  - Comment 3: Whether Commerce Should Revise its Preliminary Benefit Calculation Methodology for the Electricity Rebate on Excess Consumption Program
  - Comment 4: Whether Commerce Should Revise its Preliminary Subsidy Rate Calculation Methodology for the Advance Authorization Program
  - Comment 5: Whether Commerce Should Rely on Information Received at Verification To Calculate Sudarshan's Benefit for the Duty Drawback Program
  - Comment 6: Whether the Pre-Shipment Export Financing Program Is Countervailable
- IX. Recommendation

[FR Doc. 2024–25342 Filed 10–30–24; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A–122–863]

### Large Diameter Welded Pipe From Canada: Final Results of Antidumping Duty Administrative Review; 2022–2023

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

**SUMMARY:** The U.S. Department of Commerce (Commerce) determines that the sole producer/exporter subject to this administrative review, Pipe & Piling Supplies Ltd. (Pipe & Piling), made sales of the subject merchandise at less than normal value during the period of review May 1, 2022, through April 30, 2023.

**DATES:** Applicable October 31, 2024.

**FOR FURTHER INFORMATION CONTACT:** Anne Entz, AD/CVD Operations, Office IX, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3845.

### SUPPLEMENTARY INFORMATION:

#### Background

On May 21, 2024, Commerce published in the **Federal Register** the *Preliminary Results* of the aforementioned review.<sup>1</sup> On July 22, 2024, Commerce tolled certain deadlines in this administrative proceeding by seven days.<sup>2</sup> On August 27, 2024, we extended the deadline for the final results of this review to October 25, 2024.<sup>3</sup> Commerce conducted this review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).

#### Scope of the Order<sup>4</sup>

The product subject to the *Order* is large diameter welded pipe from Canada. A complete description of the scope of the *Order* is contained in the Issues Decision Memorandum.<sup>5</sup>

#### Analysis of the Comments Received

All issues raised in the case and rebuttal briefs submitted by interested parties in this review are addressed in the Issues and Decision Memorandum. A list of the issues addressed in the Issues and Decision Memorandum is attached as an appendix to this notice.

<sup>1</sup> See *Large Diameter Welded Pipe from Canada: Preliminary Results and Rescission, in Part, of Antidumping Duty Administrative Review; 2022–2023*, 89 FR 44635 (May 21, 2024) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

<sup>2</sup> See Memorandum, “Tolling of Deadlines for Antidumping and Countervailing Duty Proceedings,” dated July 22, 2024.

<sup>3</sup> See Memorandum, “Extension of Deadline for the Final Results of Antidumping Duty Administrative Review,” dated August 27, 2024.

<sup>4</sup> See *Large Diameter Welded Pipe from Canada: Antidumping Duty Order*, 84 FR 18775 (May 2, 2019) (*Order*).

<sup>5</sup> See Memorandum, “Issues and Decision Memorandum for the Final Results of the 2022–2023 Administrative Review of the Antidumping Duty Order on Large Diameter Welded Pipe from Canada,” dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

<sup>13</sup> See section 751(a)(2)(C) of the Act; and 19 CFR 351.212(b)(1).

Use of Adverse Facts Available (AFA)

As discussed in the Issues and Decision Memorandum, we continue to assign to the mandatory respondent in this administrative review, Pipe & Piling,<sup>6</sup> an estimated weighted-average dumping margin based on AFA, pursuant to sections 776(a) and (b) of Act.<sup>7</sup>

Final Results of Review

Commerce determines that the following estimated weighted-average dumping margin exists for the period May 1, 2022, through April 30, 2023:

Producer/exporter	Weighted-average dumping margin (percent)
Pipe & Piling Supplies Ltd.; 1045761 Ontario Ltd.; Spiralco Inc .....	50.89

Disclosure

Normally, Commerce will disclose to the parties in a proceeding the calculations performed in connection with a final results of review within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of the notice of final results in the **Federal Register**, in accordance with 19 CFR 351.224(b). However, because we have made no changes to the application of AFA to Pipe & Piling from the *Preliminary Results*, there are no calculations to disclose.

Assessment Rates

Pursuant to section 751(a)(2)(C) of the Act, and 19 CFR 351.212(b)(1), Commerce has determined, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review. Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.*, within 90 days of publication).

<sup>6</sup> In the *Preliminary Results*, we found that Pipe & Piling is affiliated with 1045761 Ontario Ltd. (Phoenix) and Spiralco Inc. (Spiralco) and that they should be collapsed and treated as a single entity. See *Preliminary Results* PDM at 1.

<sup>7</sup> *Id.* at 3–11.

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date in the **Federal Register** of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for Pipe & Piling will be equal to the dumping margin established in the final results of this review; (2) for previously reviewed or investigated companies not listed above, the cash deposit will continue to be the company-specific rate published for the most recently completed segment; (3) if the exporter is not a firm covered in this review or the less-than-fair-value (LTFV) investigation, but the producer is, then the cash deposit rate will be the rate established for the most recent segment for the producer of the merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 12.32 percent, the all-others rate established in the LTFV investigation.<sup>8</sup> These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in Commerce’s presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Administrative Protective Order

This notice serves as the only reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

<sup>8</sup> See *Order*, 85 FR 18776.

Notification to Interested Parties

This notice is issued and published in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: October 25, 2024.  
**Ryan Majerus**,  
*Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.*

Appendix

- List of Topics Discussed in the Issues and Decision Memorandum**
- I. Summary
  - II. Background
  - III. Scope of the *Order*
  - IV. Discussion of the Issues
    - Comment 1: Whether To Continue To Apply Adverse Facts Available (AFA) to Pipe & Piling Supplies Ltd. (Pipe & Piling)
    - Comment 2: Whether To Apply an AFA Rate to Pipe & Piling’s POR Entries
  - V. Recommendation
- [FR Doc. 2024–25397 Filed 10–30–24; 8:45 am]  
**BILLING CODE 3510–DS–P**

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XE435]

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 Mid-Atlantic Fishery Management Council (MAFMC) will hold a public workshop to collect input on the commercial Scup Gear Restricted Areas (GRA). This public workshop will be facilitated by the Cornell Cooperative Extension of Suffolk County-Marine Program to incorporate commercial fishing industry involvement in the MAFMC funded project, “Utilizing Collaborative Strategies to Assess and Adapt Scup Gear Restricted Areas (GRAs) in Response to Climate Change.”  
**DATES:** The meeting will be held on Wednesday, November 20, 2024, from 9:45 a.m. until 3 p.m., EDT. For agenda details, see **SUPPLEMENTARY INFORMATION**.

**ADDRESSES:** This meeting will be conducted in person at three venues simultaneously with a virtual option available.  
The meeting locations are:

- Superior Trawl Inc., 55 State Street, Narragansett, RI 02882, telephone: (401) 782-1171;

- Cornell Cooperative Extension, 423 Griffing Avenue, Riverhead, NY 11901, telephone: 631-727-7850; and

- Lunds Fisheries, 997 Ocean Drive, Cape May, NJ 08204, telephone: (609) 884-7600.

Webinar registration details will be posted to the calendar at [www.mafmc.org](http://www.mafmc.org) prior to the meeting.

*Council address:* Mid-Atlantic Fishery Management Council, 800 N State Street, Suite 201, Dover, DE 19901; telephone: (302) 674-2331; [www.mafmc.org](http://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 Mid-Atlantic Fishery Management Council in coordination with the Cornell Cooperative Extension of Suffolk County-Marine Program will sponsor this public meeting to collect public input on the current commercial Scup GRAs. Topics discussed at the meeting will include scup management history and stock status, industry input on socioeconomic impacts of GRAs, primary drivers of scup discards and modeling strategies using existing data sources. This public meeting is a deliverable to achieve the project's goal to develop and implement a comprehensive program to investigate potential modifications to the scup GRAs using fisheries and environmental data and industry input. Additional information, background documents, and instructions for providing written comments will be posted to the Council's website at: <https://www.mafmc.org/>.

**Special Accommodations**

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to Shelley Spedden, (302) 526-5251, at least 5 days prior to the meeting date.

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

Dated: October 28, 2024.

**Rey Israel Marquez,**

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

[FR Doc. 2024-25395 Filed 10-30-24; 8:45 am]

**BILLING CODE 3510-22-P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

[RTID 0648-XE393]

**Fisheries of the Gulf of Mexico; Southeast Data, Assessment, and Review (SEDAR); Public Meeting**

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

**ACTION:** Notice of SEDAR 87 Assessment Webinar III for Gulf of Mexico White, Pink, and Brown Shrimp.

**SUMMARY:** The SEDAR 87 assessment process of Gulf of Mexico white, pink, and brown shrimp will consist of a Data Workshop, and a series of assessment webinars, and a Review Workshop. See **SUPPLEMENTARY INFORMATION.**

**DATES:** The SEDAR 87 assessment webinar III will be held November 21, 2024, from 1 p.m. to 5 p.m., Eastern Time.

**ADDRESSES:**

*Meeting address:* The meeting will be held via webinar. The webinar is open to members of the public. Those interested in participating should contact Julie A. Neer at SEDAR (see **FOR FURTHER INFORMATION CONTACT**) to request an invitation providing webinar access information. Please request webinar invitations at least 24 hours in advance of each webinar.

*SEDAR address:* 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405.

**FOR FURTHER INFORMATION CONTACT:** Julie A. Neer, SEDAR Coordinator; (843) 571-4366; email: [Julie.neer@safmc.net](mailto:Julie.neer@safmc.net).

**SUPPLEMENTARY INFORMATION:** The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a multi-step process including: (1) Data Workshop, (2) a series of assessment webinars, and (3) A Review Workshop. The product of the Data Workshop is a report that compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The assessment webinars produce a report that describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions,

and recommends research and monitoring needs. The product of the Review Workshop is an Assessment Summary documenting panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, HMS Management Division, and Southeast Fisheries Science Center. Participants include data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and NGO's; International experts; and staff of Councils, Commissions, and State and Federal agencies.

The items of discussion during the Assessment webinar III are as follows:

Participants will review the assessment modeling work to date and provide recommendations to the analytic team.

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 this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

**Special Accommodations**

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) at least 5 business days prior to each workshop.

**Note:** The times and sequence specified in this agenda are subject to change.

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

Dated: October 28, 2024.

**Rey Israel Marquez,**

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

[FR Doc. 2024-25400 Filed 10-30-24; 8:45 am]

**BILLING CODE 3510-22-P**

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration**

[RTID 0648-XE437]

**New England Fishery Management Council; Public Meeting**

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

**ACTION:** Notice of public meeting.

**SUMMARY:** The New England Fishery Management Council (Council) is scheduling a public meeting of its Enforcement Committee to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). This meeting will be held in-person with a webinar option. 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 Monday, November 18, 2024, at 10 a.m.

**ADDRESSES:** This meeting will be held at the Four Points by Sheraton, One Audubon Road, Wakefield, MA 01880; telephone: (781) 245-9300.

*Council address:* New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

**FOR FURTHER INFORMATION CONTACT:** Cate O'Keefe, Executive Director, New England Fishery Management Council; telephone: (978) 465-0492.

**SUPPLEMENTARY INFORMATION:****Agenda**

The Enforcement Committee will meet to discuss and provide input to the On-Demand Fishing Gear Conflict Working Group as it continues developing recommendations alternative for gear marking in Federally managed fisheries and avoiding gear conflict with existing fisheries. Other business will be discussed, if necessary.

Although non-emergency issues not contained on the agenda may come before this Council for discussion, those issues may not be the subject of formal action during this meeting. Council 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. The public also should be aware that the meeting will be recorded. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request.

**Special Accommodations**

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Cate O'Keefe, Executive Director, at (978) 465-0492, at least 5 days prior to the meeting date.

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

Dated: October 28, 2024.

**Rey Israel Marquez,**

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

[FR Doc. 2024-25399 Filed 10-30-24; 8:45 am]

**BILLING CODE 3510-22-P**

**U.S. INTERNATIONAL DEVELOPMENT FINANCE CORPORATION****Notice of Public Hearing**

**AGENCY:** U.S. International Development Finance Corporation.

**ACTION:** Announcement of public hearing.

**SUMMARY:** The Board of Directors of U.S. International Development Finance Corporation (DFC), in accordance with the Better Utilization of Investments Leading to Development (BUILD) Act of 2018, will hold a public hearing to provide an opportunity for stakeholders to present their views. Those wishing to attend, present at, or submit a written statement to the Board prior to the public hearing must provide advance notice to the agency as detailed below.

**DATES:** 2 p.m. EST, Wednesday, December 4, 2024.

**ADDRESSES:** The public hearing will take place virtually. Access information will be provided at the time of attendee registration.

*Registration:* To attend, present at, or submit a written statement to the Board prior to the public hearing, individuals must notify DFC Corporate Secretary Daniel Woubishet at [corporate.secretary@dfc.gov](mailto:corporate.secretary@dfc.gov) by 5 p.m. EST, Thursday, November 28, 2024.

Notices of intent to attend or present at the public hearing must include the individual's name, title, organization, address, email address, phone number, and a concise summary of the subject matter to be presented. Oral presentations may not exceed five minutes and may be reduced proportionately, if necessary, to afford all participants an opportunity to be heard.

Written statements submitted to the Board prior to the public hearing must include the individual's name, title, organization, address, email address, and phone number. Statements must be

typewritten, double-spaced, and less than ten pages in length.

**Lisa Wischkaemper,**

*Administrative Counsel, Office of the General Counsel.*

[FR Doc. 2024-25359 Filed 10-30-24; 8:45 am]

**BILLING CODE P**

**DEPARTMENT OF ENERGY****Environmental Management Site-Specific Advisory Board, Savannah River Site; Correction**

**AGENCY:** Office of Environmental Management, Department of Energy.

**ACTION:** Notice of open meeting; correction.

**SUMMARY:** On October 23, 2024, the Department of Energy published a notice of open meeting announcing a meeting on November 18-19, 2024, of the Environmental Management Site-Specific Advisory Board (EM SSAB), Savannah River Site. This document makes a location correction to that notice resulting from the availability of the meeting location impacted by the recent hurricane.

**FOR FURTHER INFORMATION CONTACT:**

James Tanner, Office of External Affairs, U.S. Department of Energy (DOE), Savannah River Operations Office, P.O. Box A, Aiken, SC 29802; Phone: (803) 646-2167; or Email: [james.tanner@srs.gov](mailto:james.tanner@srs.gov).

**SUPPLEMENTARY INFORMATION:****Correction**

In the **Federal Register** of October 23, 2024, in FR Doc. 2024-24573, on page 84557, starting in the second column, correct the **ADDRESSES** caption to read:

**ADDRESSES:** Augusta Marriott at the Convention Center, 2 10th Street, Augusta, GA 30901. The meeting will also be streamed on YouTube, no registration is necessary; links for the livestream can be found on the following website: <https://cab.srs.gov/srs-cab.html>.

*Signing Authority:* This document of the Department of Energy was signed on October 25, 2024, by Alyssa Petit, Deputy Committee Management Officer, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of

the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on October 25, 2024.

**Jennifer Hartzell,**

*Alternate Federal Register Liaison Officer,  
U.S. Department of Energy.*

[FR Doc. 2024–25269 Filed 10–30–24; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### Privacy Act of 1974; System of Records

**AGENCY:** U.S. Department of Energy.

**ACTION:** Notice of a modified system of records.

**SUMMARY:** As required by the Privacy Act of 1974 and the Office of Management and Budget (OMB) Circulars A–108 and A–130, the Department of Energy (DOE or the Department) is publishing notice of a modification to an existing Privacy Act system of records. DOE proposes to amend System of Records DOE–11 Emergency Operations Notification Call List. This System of Records Notice (SORN) is being modified to align with new formatting requirements, published by the Office of Management and Budget, and to ensure appropriate Privacy Act coverage of business processes and Privacy Act information. **DATES:** This modified SORN will become applicable following the end of the public comment period on December 2, 2024 unless comments are received that result in a contrary determination.

**ADDRESSES:** Written comments should be sent to the DOE Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10102, 735 17th Street NW, Washington, DC 20503, and to Ken Hunt, Chief Privacy Officer, U.S. Department of Energy, 1000 Independence Avenue SW, Rm 8H–085, Washington, DC 20585, by facsimile at (202) 586–8151, or by email at [privacy@hq.doe.gov](mailto:privacy@hq.doe.gov).

**FOR FURTHER INFORMATION CONTACT:** Ken Hunt, Chief Privacy Officer, U.S. Department of Energy, 1000 Independence Avenue SW, Rm 8H–085, Washington, DC 20585, or by facsimile at (202) 586–8151, by email at [privacy@hq.doe.gov](mailto:privacy@hq.doe.gov), or by telephone at (240) 686–9485.

**SUPPLEMENTARY INFORMATION:** On January 9, 2009, DOE published a Compilation of its Privacy Act Systems

of Records, which included System of Records DOE–11 Emergency Operations Notification Call List. This notice proposes the following amendments. The National Nuclear Security Administration (NNSA) Headquarters and Naval Reactors Laboratory Field Office locations have been added as system locations. The following locations have been removed: Golden Field Office, Office of Naval Reactors, NNSA Nevada Site Office, Pittsburgh Naval Reactors, Schenectady Naval Reactors Office, and Office of Repository Development. The following addresses have been updated: John A. Gordon Albuquerque Complex, both Office of Science locations, Office of River Protection, Richland Operations Office, all National Energy Technology Laboratory locations, and Southwestern Power Administration. Language has been added to the “System Manager” section indicating the responsible parties at the Field offices. Minor revisions have been made to the “Purpose(s) of the System” and “Categories of Individuals Covered by the System” sections for clarity. Work location, title, and position have been added to “Categories of Records in the System.” In the “Routine Uses” section, this modified notice deletes a previous routine use concerning efforts responding to a suspected or confirmed loss of confidentiality of information as it appears in DOE’s compilation of its Privacy Act Systems of Records (January 9, 2009) and replaces it with one to assist DOE with responding to a suspected or confirmed breach of its records of Personally Identifiable Information (PII), modeled with language from OMB’s Memorandum M–17–12, “Preparing for and Responding to a Breach of Personally Identifiable Information” (January 3, 2017). Further, this notice adds one new routine use to ensure that DOE may assist another agency or entity in responding to the other agency’s or entity’s confirmed or suspected breach of PII, as appropriate, as aligned with OMB’s Memorandum M–17–12. The routine use formally number three is now number two. An administrative change required by the FOIA Improvement Act of 2016 extends the length of time a requestor is permitted to file an appeal under the Privacy Act from 30 to 90 days. Both the “System Locations” and “Administrative, Technical and Physical Safeguards” sections have been modified to reflect the Department’s usage of cloud-based services for records storage. Language throughout the SORN has been updated to align

with applicable Federal privacy laws, policies, procedures, and best practices.

#### SYSTEM NAME AND NUMBER:

DOE–11 Emergency Operations Notification Call List.

#### SECURITY CLASSIFICATION:

Unclassified.

#### SYSTEM LOCATION:

Systems leveraging this SORN may exist in multiple locations. All systems storing records in a cloud-based server are required to use government-approved cloud services and follow National Institute of Standards and Technology (NIST) security and privacy standards for access and data retention. Records maintained in a government-approved cloud server are accessed through secure data centers in the continental United States.

U.S. Department of Energy, Headquarters, 1000 Independence Avenue SW, Washington, DC 20585.

U.S. Department of Energy, National Nuclear Security Administration (NNSA) Headquarters, 1000 Independence Avenue SW, Washington, DC 20585.

U.S. Department of Energy, John A. Gordon Albuquerque Complex, 24600 20th Street SE, Albuquerque, NM 87116.

U.S. Department of Energy, Naval Reactors Laboratory Field Office, P.O. Box 109, West Mifflin, PA 15122–0109.

U.S. Department of Energy, Bonneville Power Administration, P.O. Box 3621, Portland, OR 97208.

U.S. Department of Energy, Office of Science, Chicago Office, Consolidated Service Center, 9800 South Cass Avenue, Lemont, IL 60439.

U.S. Department of Energy, Office of Science, Consolidated Service Center, P.O. Box 2001, Oak Ridge, TN 37831.

U.S. Department of Energy, Idaho Operations Office, 1955 Fremont Avenue, Idaho Falls, ID 83415.

U.S. Department of Energy, National Energy Technology Laboratory (Pittsburgh), 626 Cochran Mill Road, Pittsburgh, PA 15236.

U.S. Department of Energy, National Energy Technology Laboratory (Morgantown), 3610 Collins Ferry Road, Morgantown, WV 26505.

U.S. Department of Energy, National Energy Technology Laboratory (Albany), 1450 Queen Avenue SW, Albany, OR 97321.

U.S. Department of Energy, Hanford Field Office, P.O. Box 550, Richland, WA 99352.

U.S. Department of Energy, Savannah River Operations Office, P.O. Box A, Aiken, SC 29801.

U.S. Department of Energy, Southeastern Power Administration,

1166 Athens Tech Road, Elberton, GA 30635–6711.

U.S. Department of Energy, Southwestern Power Administration, One West Third Street, Suite 1500, Tulsa, OK 74103.

U.S. Department of Energy, Strategic Petroleum Reserve Project Management Office, 900 Commerce Road East, New Orleans, LA 70123.

U.S. Department of Energy, Western Area Power Administration, P.O. Box 281213, Lakewood, CO 80228–8213.

#### SYSTEM MANAGER(S):

Headquarters, Deputy Administrator for Defense Nuclear Nonproliferation in the National Nuclear Security Administration, U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585.

*Field Offices:* The Emergency Manager or Continuity Manager of the “System Locations” listed above are the system managers for their respective portions of this system.

#### AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 7101 *et seq.*; 50 U.S.C. 2401 *et seq.*; Homeland Security Act of 2002, Public Law 107–296; and Homeland Security Presidential Directive 5 (HSPD–5), “Management of Domestic Incidents.”

#### PURPOSE(S) OF THE SYSTEM:

Records in this system are maintained and used by DOE to create a list that will enable 24-hour contact with DOE personnel and contractors in the event of an emergency (including call-outs) in order to marshal a coordinated, unified response to emergency or catastrophic events that may impact DOE facilities or activities.

#### CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Department of Energy and National Nuclear Security Administration senior officials, office directors, managers, key support staff, and other employees and contractors involved in DOE emergency management and operations activities, Continuity of Government activities, and Continuity of Operations activities.

#### CATEGORIES OF RECORDS IN THE SYSTEM:

Name, office telephone number, home telephone number, home address, pager numbers, mobile phone numbers, email addresses, work location, title, and position.

#### RECORD SOURCE CATEGORIES:

The subject individual.

#### ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

1. A record from this system may be disclosed as a routine use to DOE contractors in performance of their contracts, and their officers and employees who have a need for the record in the performance of their duties. Those provided information under this routine use are subject to the same limitations applicable to Department officers and employees under the Privacy Act.

2. A record from this system may be disclosed as a routine use for the purpose of an investigation, settlement of claims, or the preparation and conduct of litigation to (1) persons representing the Department in the investigation, settlement or litigation, and to individuals assisting in such representation; (2) others involved in the investigation, settlement, and litigation, and their representatives and individuals assisting those representatives; (3) witnesses, potential witnesses, or their representatives and assistants; and (4) any other persons who possess information pertaining to the matter when it is relevant and necessary to obtain information or testimony relevant to the matter.

3. A record from this system may be disclosed as a routine use to appropriate agencies, entities, and persons when (1) the Department suspects or has confirmed that there has been a breach of the system of records; (2) the Department has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, DOE (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department’s efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

4. A record from this system may be disclosed as a routine use to another Federal agency or Federal entity, when the Department determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

#### POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records may be stored as paper records or electronic media.

#### POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrieved by name of the individual.

#### POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Retention and disposition of these records is in accordance with the National Archives and Records Administration-approved records disposition schedule with a retention of 3 years.

#### ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Electronic records may be secured and maintained on a cloud-based software server and operating system that resides in Federal Risk and Authorization Management Program (FedRAMP) and Federal Information Security Modernization Act (FISMA) hosting environment. Data located in the cloud-based server is firewalled and encrypted at rest and in transit. The security mechanisms for handling data at rest and in transit are in accordance with DOE encryption standards. Records are protected from unauthorized access through the following appropriate safeguards:

- *Administrative:* Access to all records is limited to lawful government purposes only, with access to electronic records based on role and either two-factor authentication or password protection. The system requires passwords to be complex and to be changed frequently. Users accessing system records undergo frequent training in Privacy Act and information security requirements. Security and privacy controls are reviewed on an ongoing basis.

- *Technical:* Computerized records systems are safeguarded on Departmental networks configured for role-based access based on job responsibilities and organizational affiliation. Privacy and security controls are in place for this system and are updated in accordance with applicable requirements as determined by NIST and DOE directives and guidance.

- *Physical:* Computer servers on which electronic records are stored are located in secured Department facilities, which are protected by security guards, identification badges, and cameras. Paper copies of all records are locked in file cabinets, file rooms, or offices and are under the control of authorized personnel. Access to these facilities is granted only to authorized personnel.



and each person granted access to the system must be an individual authorized to use or administer the system.

#### RECORD ACCESS PROCEDURES:

The Department follows the procedures outlined in title 10 CFR 1008.4. Valid identification of the individual making the request is required before information will be processed, given, access granted, or a correction considered, to ensure that information is processed, given, corrected, or records disclosed or corrected only at the request of the proper person.

#### CONTESTING RECORD PROCEDURES:

Any individual may submit a request to the System Manager and request a copy of any records relating to them. In accordance with 10 CFR 1008.11, any individual may appeal the denial of a request made by him or her for information about or for access to or correction or amendment of records. An appeal shall be filed within 90 calendar days after receipt of the denial. When an appeal is filed by mail, the postmark is conclusive as to timeliness. The appeal shall be in writing and must be signed by the individual. The words "PRIVACY ACT APPEAL" should appear in capital letters on the envelope and the letter. Appeals relating to DOE records shall be directed to the Director, Office of Hearings and Appeals (OHA), 1000 Independence Avenue SW, Washington, DC 20585.

#### NOTIFICATION PROCEDURES:

In accordance with the DOE regulation implementing the Privacy Act, 10 CFR part 1008, a request by an individual to determine if a system of records contains information about themselves should be directed to the U.S. Department of Energy, Headquarters, Privacy Act Officer. The request should include the requester's complete name and the time period for which records are sought.

#### EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

#### HISTORY:

This SORN was last published in the **Federal Register**, 74 FR 1011–1012, on January 9, 2009.

#### Signing Authority

This document of the Department of Energy was signed on October 28, 2024, by Ann Dunkin, Senior Agency Official for Privacy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by

DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on October 28, 2024.

**Jennifer Hartzell,**

*Alternate Federal Register Liaison Officer,  
U.S. Department of Energy.*

[FR Doc. 2024–25372 Filed 10–30–24; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

*Docket Numbers:* EC25–13–000.

*Applicants:* Horseshoe Bend Wind, LLC, North Hurlburt Wind, LLC, South Hurlburt Wind, LLC, SF Aggregator, LLC, Brookfield Infrastructure Income Fund FCP–RAIF, LIF Adonis Holdings, LLC, GCM IAF II Adonis Holdings, LLC, EWIF Adonis Holdings, LLC, GCM Adonis Holdings, L.P.

*Description:* Joint Application for Authorization Under Section 203 of the Federal Power Act of Horseshoe Bend Wind, LLC, et al.

*Filed Date:* 10/23/24.

*Accession Number:* 20241023–5203.

*Comment Date:* 5 p.m. ET 11/13/24.

*Docket Numbers:* EC25–14–000.

*Applicants:* Shell Energy North America (US), L.P., Rhode Island State Energy Center, LP.

*Description:* Joint Application for Authorization Under Section 203 of the Federal Power Act of Rhode Island State Energy Center, LP et al.

*Filed Date:* 10/24/24.

*Accession Number:* 20241024–5045.

*Comment Date:* 5 p.m. ET 11/14/24.

Take notice that the Commission received the following exempt wholesale generator filings:

*Docket Numbers:* EG25–19–000.

*Applicants:* Kuna BESS LLC.

*Description:* Kuna BESS LLC submits Notice of Self–Certification of Exempt Wholesale Generator Status.

*Filed Date:* 10/24/24.

*Accession Number:* 20241024–5036.

*Comment Date:* 5 p.m. ET 11/14/24.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER10–2854–004.

*Applicants:* ConocoPhillips Company.

*Description:* Notice of Change in Status of ConocoPhillips Company.

*Filed Date:* 10/22/24.

*Accession Number:* 20241022–5194.

*Comment Date:* 5 p.m. ET 11/12/24.

*Docket Numbers:* ER15–1905–018.

*Applicants:* AZ721 LLC.

*Description:* Notice of Change in Status of Amazon Energy LLC.

*Filed Date:* 10/24/24.

*Accession Number:* 20241024–5047.

*Comment Date:* 5 p.m. ET 11/14/24.

*Docket Numbers:* ER23–2759–001.

*Applicants:* Mammoth North LLC.

*Description:* Notice of Non-Material Change in Status of Mammoth North LLC.

*Filed Date:* 10/22/24.

*Accession Number:* 20241022–5193.

*Comment Date:* 5 p.m. ET 11/12/24.

*Docket Numbers:* ER24–2826–001.

*Applicants:* American Transmission Systems, Incorporated, PJM Interconnection, L.L.C.

*Description:* Tariff Amendment:

American Transmission Systems, Incorporated submits tariff filing per 35.17(b): ATSI submits Amendment to Pending Filing of Service Agreement No. 2853 to be effective 10/31/2024.

*Filed Date:* 10/24/24.

*Accession Number:* 20241024–5103.

*Comment Date:* 5 p.m. ET 10/31/24.

*Docket Numbers:* ER24–2920–000.

*Applicants:* Clearview Solar I, LLC.

*Description:* Supplement to 08/29/2024, Clearview Solar I, LLC tariff filing.

*Filed Date:* 10/24/24.

*Accession Number:* 20241024–5048.

*Comment Date:* 5 p.m. ET 11/4/24.

*Docket Numbers:* ER24–2937–000;

ER24–2938–000; ER24–2984–000;

ER24–3146–000; ER24–3148–000;

ER24–3149–000.

*Applicants:* Hoosier Line Energy, LLC, Blackford Wind Energy, LLC, Blackford Solar Energy, LLC, Ridgely Energy Farm, LLC, Sierra Pinta Energy Storage, LLC, Elisabeth Solar, LLC.

*Description:* Supplement to 08/30/2024, Elisabeth Solar, LLC tariff filing Market-Based Rate Application.

*Filed Date:* 10/18/24.

*Accession Number:* 20241018–5231.

*Comment Date:* 5 p.m. ET 10/28/24.

*Docket Numbers:* ER25–193–000.

*Applicants:* Blackout Power Trading Inc.

*Description:* Baseline eTariff Filing: Blackout Power Trading, LLC MBR Application Filing to be effective 12/7/2024.



*Filed Date:* 10/24/24.  
*Accession Number:* 20241024–5001.  
*Comment Date:* 5 p.m. ET 11/14/24.  
*Docket Numbers:* ER25–194–000.  
*Applicants:* Firefly Solar PA LLC.  
*Description:* Petition for Limited Waiver, Prospective Waiver of Firefly Solar PA LLC and Vesper Energy Development LLC.

*Filed Date:* 10/23/24.  
*Accession Number:* 20241023–5199.  
*Comment Date:* 5 p.m. ET 11/13/24.  
*Docket Numbers:* ER25–195–000.  
*Applicants:* Southwest Power Pool, Inc.

*Description:* 205(d) Rate Filing: 4022R2 Cheyenne Light, Fuel and Power Co WEIS Market Part. Agr to be effective 10/1/2024.

*Filed Date:* 10/24/24.  
*Accession Number:* 20241024–5024.  
*Comment Date:* 5 p.m. ET 11/14/24.  
*Docket Numbers:* ER25–196–000.  
*Applicants:* Midcontinent Independent System Operator, Inc., International Transmission Company.

*Description:* 205(d) Rate Filing: Midcontinent Independent System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii): 2024–10–24\_SA 4373 ITCTransmission-DTE Electric Company E&P (J2878) to be effective 10/4/2024.

*Filed Date:* 10/24/24.  
*Accession Number:* 20241024–5040.  
*Comment Date:* 5 p.m. ET 11/14/24.  
*Docket Numbers:* ER25–197–000.  
*Applicants:* Midcontinent Independent System Operator, Inc.

*Description:* 205(d) Rate Filing: 2024–10–24\_MISO–TVA Emergency Energy Agreement to be effective 12/24/2024.

*Filed Date:* 10/24/24.  
*Accession Number:* 20241024–5041.  
*Comment Date:* 5 p.m. ET 11/14/24.  
*Docket Numbers:* ER25–198–000.  
*Applicants:* Power Authority of the State of New York New York Independent System Operator, Inc.

*Description:* 205(d) Rate Filing: Power Authority of the State of New York submits tariff filing per 35.13(a)(2)(iii): NYPA 205: base rate of ROE modifications to be effective 11/1/2024.

*Filed Date:* 10/24/24.  
*Accession Number:* 20241024–5052.  
*Comment Date:* 5 p.m. ET 11/14/24.  
*Docket Numbers:* ER25–199–000.  
*Applicants:* Citizens Sycamore-Penasquitos Transmission LLC.

*Description:* 205(d) Rate Filing: Annual TRBAA 2024 to be effective 1/1/2025.

*Filed Date:* 10/24/24.  
*Accession Number:* 20241024–5056.  
*Comment Date:* 5 p.m. ET 11/14/24.  
*Docket Numbers:* ER25–200–000.  
*Applicants:* Niagara Mohawk Power Corporation, New York Independent System Operator, Inc.

*Description:* 205(d) Rate Filing: Niagara Mohawk Power Corporation submits tariff filing per 35.13(a)(2)(iii): NYISO-National Grid Joint 205: SGIA Somers Solar SA2857 to be effective 10/10/2024.

*Filed Date:* 10/24/24.  
*Accession Number:* 20241024–5057.  
*Comment Date:* 5 p.m. ET 11/14/24.  
*Docket Numbers:* ER25–201–000.  
*Applicants:* Citizens Sunrise Transmission LLC.

*Description:* 205(d) Rate Filing: Annual TRBAA 2024 to be effective 1/1/2025.

*Filed Date:* 10/24/24.  
*Accession Number:* 20241024–5058.  
*Comment Date:* 5 p.m. ET 11/14/24.  
*Docket Numbers:* ER25–202–000.  
*Applicants:* Vision Trading Company LLC.

*Description:* Baseline eTariff Filing: Baseline new to be effective 12/24/2024.

*Filed Date:* 10/24/24.  
*Accession Number:* 20241024–5077.  
*Comment Date:* 5 p.m. ET 11/14/24.  
*Docket Numbers:* ER25–203–000.  
*Applicants:* Alabama Power Company, Georgia Power Company, Mississippi Power Company.

*Description:* 205(d) Rate Filing: Alabama Power Company submits tariff filing per 35.13(a)(2)(iii): Sable Solar LGIA Filing to be effective 10/16/2024.

*Filed Date:* 10/24/24.  
*Accession Number:* 20241024–5078.  
*Comment Date:* 5 p.m. ET 11/14/24.  
*Docket Numbers:* ER25–204–000.  
*Applicants:* Alabama Power Company, Georgia Power Company, Mississippi Power Company.

*Description:* 205(d) Rate Filing: Alabama Power Company submits tariff filing per 35.13(a)(2)(iii): Hall Creek Solar LGIA Amendment Filing to be effective 10/14/2024.

*Filed Date:* 10/24/24.  
*Accession Number:* 20241024–5080.  
*Comment Date:* 5 p.m. ET 11/14/24.  
*Docket Numbers:* ER25–205–000.  
*Applicants:* Swiftwater Solar, LLC.

*Description:* Baseline eTariff Filing: Baseline new to be effective 10/25/2024.

*Filed Date:* 10/24/24.  
*Accession Number:* 20241024–5109.  
*Comment Date:* 5 p.m. ET 11/14/24.  
*Docket Numbers:* ER25–206–000.  
*Applicants:* Evergy Metro, Inc.

*Description:* Baseline eTariff Filing: Wholesale Distribution Access Tariff to be effective 1/1/2025.

*Filed Date:* 10/24/24.  
*Accession Number:* 20241024–5176.  
*Comment Date:* 5 p.m. ET 11/14/24.  
*Docket Numbers:* ER25–207–000.  
*Applicants:* Evergy Missouri West, Inc.

*Description:* Baseline eTariff Filing: Wholesale Distribution Access Tariff to be effective 1/1/2025.

*Filed Date:* 10/24/24.  
*Accession Number:* 20241024–5179.  
*Comment Date:* 5 p.m. ET 11/14/24.  
*Docket Numbers:* ER25–208–000.  
*Applicants:* Evergy Kansas Central, Inc.

*Description:* Baseline eTariff Filing: Wholesale Distribution Access Tariff to be effective 1/1/2025.

*Filed Date:* 10/24/24.  
*Accession Number:* 20241024–5187.  
*Comment Date:* 5 p.m. ET 11/14/24.

Take notice that the Commission received the following electric securities filings:

*Docket Numbers:* ES25–9–000.  
*Applicants:* Mississippi Power Company.

*Description:* Application Under Section 204 of the Federal Power Act for Authorization to Issue Securities of Mississippi Power Company.

*Filed Date:* 10/24/24.  
*Accession Number:* 20241024–5093.  
*Comment Date:* 5 p.m. ET 11/14/24.  
*Docket Numbers:* TX25–1–000.  
*Applicants:* CalPeak Power—Border LLC, Hermes BESS LLC.

*Description:* Application for Order Directing Transmission Service and Interconnection of Facilities of CalPeak Power-Border LLC.

*Filed Date:* 10/23/24.  
*Accession Number:* 20241023–5205.  
*Comment Date:* 5 p.m. ET 11/13/24.

The filings are accessible in the Commission's eLibrary system (<https://elibrary.ferc.gov/idmws/search/fercgensearch.asp>) by querying the docket number.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) 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.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice

communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502-6595 or *OPP@ferc.gov*.

Dated: October 24, 2024.

**Debbie-Anne A. Reese,**  
Secretary.

[FR Doc. 2024-25275 Filed 10-30-24; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Project No. 2614-042]

#### City of Hamilton, Ohio, American Municipal Power, Inc.: Notice of Reasonable Period of Time for Water Quality Certification Application

On October 23, 2024, the Ohio Environmental Protection Agency (Ohio EPA) submitted to the Federal Energy Regulatory Commission (Commission) notice that it received a complete application for a Clean Water Act section 401(a)(1) water quality certification, as defined in 40 CFR 121.5, from City of Hamilton, Ohio and American Municipal Power, Inc. in conjunction with the above captioned project on October 17, 2024. Pursuant to section 4.34(b)(5) of the Commission's regulations,<sup>1</sup> we hereby notify Ohio EPA of the following:

*Date of Receipt of the Certification Request:* October 17, 2024.

*Reasonable Period of Time to Act on the Certification Request:* One year (October 17, 2025).

If Ohio EPA fails or refuses to act on the water quality certification request on or before the above date, then the certifying authority is deemed waived pursuant to section 401(a)(1) of the Clean Water Act, 33 U.S.C. 1341(a)(1).

Dated: October 24, 2024.

**Debbie-Anne A. Reese,**  
Secretary.

[FR Doc. 2024-25271 Filed 10-30-24; 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:* RP25-88-000.

*Applicants:* WBI Energy

Transmission, Inc.

*Description:* 4(d) Rate Filing: 2024 Negotiated SA—ONEOK (FT-2051) to be effective 11/1/2024.

*Filed Date:* 10/23/24.

*Accession Number:* 20241023-5130.

*Comment Date:* 5 p.m. ET 11/4/24.

*Docket Numbers:* RP25-89-000.

*Applicants:* High Point Gas

Transmission, LLC.

*Description:* 4(d) Rate Filing: High Point Gas Housekeeping Filing to be effective 11/22/2024.

*Filed Date:* 10/23/24.

*Accession Number:* 20241023-5156.

*Comment Date:* 5 p.m. ET 11/4/24.

*Docket Numbers:* RP25-90-000.

*Applicants:* El Paso Natural Gas

Company, L.L.C.

*Description:* 4(d) Rate Filing: Negotiated Rate Agreement Update Metadata Correction to be effective 10/2/2024.

*Filed Date:* 10/23/24.

*Accession Number:* 20241023-5177.

*Comment Date:* 5 p.m. ET 11/4/24.

*Docket Numbers:* RP25-91-000.

*Applicants:* Algonquin Gas

Transmission, LLC.

*Description:* 4(d) Rate Filing: Negotiated Rates—Yankee Gas to Emera Energy eff 10-24-24 to be effective 10/24/2024.

*Filed Date:* 10/24/24.

*Accession Number:* 20241024-5018.

*Comment Date:* 5 p.m. ET 11/5/24.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) 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.

#### Filings in Existing Proceedings

*Docket Numbers:* PR16-73-002.

*Applicants:* Bridgeline Holdings, L.P.

*Description:* 284.123 Rate Filing: Compliance to 322 to be effective N/A.

*Filed Date:* 10/23/24.

*Accession Number:* 20241023-5143.

*Comment Date:* 5 p.m. ET 11/13/24.

*Docket Numbers:* PR21-27-001.

*Applicants:* Jefferson Island Storage & Hub, L.L.C.

*Description:* 284.123 Rate Filing:

Compliance to 7 to be effective N/A.

*Filed Date:* 10/24/24.

*Accession Number:* 20241024-5065.

*Comment Date:* 5 p.m. ET 11/14/24.

Any person desiring to protest in any of the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system (<https://elibrary.ferc.gov/idmws/search/fercgensearch.asp>) by querying the docket number.

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.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502-6595 or *OPP@ferc.gov*.

Dated: October 24, 2024.

**Debbie-Anne A. Reese,**  
Secretary.

[FR Doc. 2024-25274 Filed 10-30-24; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. AC25-6-000]

#### Wisconsin Electric Power Company; Notice of Filing

Take notice that on October 24, 2024, Wisconsin Electric Power Company requested from the Chief Accountant of the Federal Energy Regulatory Commission (Commission or FERC) approval of accounting entries related to its acquisition of an additional tenants-in-common interest in West Riverside Energy Center from Wisconsin Power and Light Company.

<sup>1</sup> 18 CFR 4.34(b)(5) (2024).

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 and 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. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (<http://www.ferc.gov>). From the Commission's Home Page on the internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

User assistance is available for eLibrary and the Commission's website during normal business hours from FERC Online Support at 202-502-6652 (toll free at 1-866-208-3676) or email at [ferconlinesupport@ferc.gov](mailto:ferconlinesupport@ferc.gov), or the Public Reference Room at (202) 502-8371, TTY (202) 502-8659. Email the Public Reference Room at [public.referenceroom@ferc.gov](mailto:public.referenceroom@ferc.gov).

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 may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice

communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502-6595 or [OPP@ferc.gov](mailto:OPP@ferc.gov).

*Comment Date:* 5:00 p.m. Eastern Time on November 14, 2024.

Dated: October 24, 2024.

**Debbie-Anne A. Reese,**

*Secretary.*

[FR Doc. 2024-25276 Filed 10-30-24; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. AC25-5-000]

#### Georgia Power Company; Notice of Filing

Take notice that on October 24, 2024, Georgia Power Company requested from the Chief Accountant of the Federal Energy Regulatory Commission (Commission or FERC) approval of accounting entries related to its sale of certain transmission assets to Georgia Transmission Corporation.

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 and 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. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

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Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

User assistance is available for eLibrary and the Commission's website during normal business hours from FERC Online Support at 202-502-6652 (toll free at 1-866-208-3676) or email at [ferconlinesupport@ferc.gov](mailto:ferconlinesupport@ferc.gov), or the Public Reference Room at (202) 502-8371, TTY (202) 502-8659. Email the Public Reference Room at [public.referenceroom@ferc.gov](mailto:public.referenceroom@ferc.gov).

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 may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502-6595 or [OPP@ferc.gov](mailto:OPP@ferc.gov).

*Comment Date:* 5:00 p.m. Eastern Time on November 14, 2024.

Dated: October 24, 2024.

**Debbie-Anne A. Reese,**

*Secretary.*

[FR Doc. 2024-25277 Filed 10-30-24; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. CP25-5-000]

#### Columbia Gas Transmission, LLC; Notice of Application and Establishing Intervention Deadline

Take notice that on October 10, 2024, Columbia Gas Transmission, LLC (Columbia), 700 Louisiana Street, Suite 1300, Houston, TX 77002-2700, filed an

application under section 7(b) of the Natural Gas Act (NGA), and Part 157 of the Commission's regulations requesting authorization for its Line 4010 Abandonment Project (Project). The Project consists of the abandonment of Line 4010 in its entirety, as well as all associated facilities, located in Clarion and Jefferson Counties, Pennsylvania. Columbia states that Line 4010 is a 13.74 mile, 6-inch-diameter pipeline originally constructed in 1926. The proposal will allow Columbia to comply with an order issued by the United States Department of Transportation Pipeline and Hazardous Materials Safety Administration (PHMSA) on April 22, 2022. The PHMSA order was in response to an adverse operating incident on Line 4010 that occurred in 2019. Due to the pipeline's age and deteriorating condition, along with the uneconomical cost of repair and/or replacement, Columbia has determined that abandoning Line 4010 is the most prudent response. Columbia estimates the total cost of this abandonment to be approximately \$9 million, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (<http://www.ferc.gov>). From the Commission's Home Page on the internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

User assistance is available for eLibrary and the Commission's website during normal business hours from FERC Online Support at (202) 502-6652 (toll free at 1-866-208-3676) or email at [ferconlinesupport@ferc.gov](mailto:ferconlinesupport@ferc.gov), or the Public Reference Room at (202) 502-8371, TTY (202) 502-8659. Email the Public Reference Room at [public.reference@ferc.gov](mailto:public.reference@ferc.gov).

Any questions regarding the proposed project should be directed to David A. Alonzo, Manager, Project Authorizations, Columbia Gas Transmission, LLC, 700 Louisiana Street, Suite 1300, Houston, Texas 77002-2700, by phone at 832-320-5477, or by email at [david\\_alonzo@tcenergy.com](mailto:david_alonzo@tcenergy.com).

Pursuant to section 157.9 of the Commission's Rules of Practice and Procedure,<sup>1</sup> within 90 days of this Notice the Commission staff will either: complete its environmental review 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 final environmental impact statement (FEIS) or environmental assessment (EA) for this proposal. The filing of an 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 FEIS or EA.

#### Public Participation

There are three ways to become involved in the Commission's review of this project: you can file comments on the project, you can protest the filing, and you can file a motion to intervene in the proceeding. There is no fee or cost for filing comments or intervening. The deadline for filing a motion to intervene is 5:00 p.m. Eastern Time on Thursday, November 14, 2024. How to file protests, motions to intervene, and comments is explained below.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202)502-6595 or [OPP@ferc.gov](mailto:OPP@ferc.gov).

#### Comments

Any person wishing to comment on the project may do so. Comments may include statements of support or objections, to the project as a whole or specific aspects of the project. The more specific your comments, the more useful they will be.

<sup>1</sup> 18 CFR 157.9.

#### Protests

Pursuant to sections 157.10(a)(4)<sup>2</sup> and 385.211<sup>3</sup> of the Commission's regulations under the NGA, any person<sup>4</sup> may file a protest to the application. Protests must comply with the requirements specified in section 385.2001<sup>5</sup> of the Commission's regulations. A protest may also serve as a motion to intervene so long as the protestor states it also seeks to be an intervenor.

To ensure that your comments or protests are timely and properly recorded, please submit your comments on or before Thursday, November 14, 2024.

There are three methods you can use to submit your comments or protests to the Commission. In all instances, please reference the Project docket number CP25-5-000 in your submission.

(1) You may file your comments electronically by using the eComment feature, which is located on the Commission's website at [www.ferc.gov](http://www.ferc.gov) under the link to Documents and Filings. Using eComment is an easy method for interested persons to submit brief, text-only comments on a project;

(2) You may file your comments or protests electronically by using the eFiling feature, which is located on the Commission's website ([www.ferc.gov](http://www.ferc.gov)) under the link to Documents and Filings. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on "eRegister." You will be asked to select the type of filing you are making; first select "General" and then select "Comment on a Filing"; or

(3) You can file a paper copy of your comments or protests by mailing them to the following address below. Your written comments must reference the Project docket number (CP25-5-000).

*To file via USPS:* Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

*To file via any other courier:* Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

The Commission encourages electronic filing of comments (options 1 and 2 above) and has eFiling staff

<sup>2</sup> 18 CFR 157.10(a)(4).

<sup>3</sup> 18 CFR 385.211.

<sup>4</sup> Persons include individuals, organizations, businesses, municipalities, and other entities. 18 CFR 385.102(d).

<sup>5</sup> 18 CFR 385.2001.

available to assist you at (202) 502–8258 or [FercOnlineSupport@ferc.gov](mailto:FercOnlineSupport@ferc.gov).

Persons who comment on the environmental review of this project will be placed on the Commission's environmental mailing list, and will receive notification when the environmental documents (EA or EIS) are issued for this project and will be notified of meetings associated with the Commission's environmental review process.

The Commission considers all comments received about the project in determining the appropriate action to be taken. However, the filing of a comment alone will not serve to make the filer a party to the proceeding. To become a party, you must intervene in the proceeding. For instructions on how to intervene, see below.

#### Interventions

Any person, which includes individuals, organizations, businesses, municipalities, and other entities,<sup>6</sup> has the option to file a motion to intervene in this proceeding. Only intervenors have the right to request rehearing of Commission orders issued in this proceeding and to subsequently challenge the Commission's orders in the U.S. Circuit Courts of Appeal.

To intervene, you must submit a motion to intervene to the Commission in accordance with Rule 214 of the Commission's Rules of Practice and Procedure<sup>7</sup> and the regulations under the NGA<sup>8</sup> by the intervention deadline for the project, which is Thursday, November 14, 2024. As described further in Rule 214, your motion to intervene must state, to the extent known, your position regarding the proceeding, as well as your interest in the proceeding. For an individual, this could include your status as a landowner, ratepayer, resident of an impacted community, or recreationist. You do not need to have property directly impacted by the project in order to intervene. For more information about motions to intervene, refer to the FERC website at <https://www.ferc.gov/resources/guides/how-to/intervene.asp>.

There are two ways to submit your motion to intervene. In both instances, please reference the Project docket number CP25–5–000 in your submission.

(1) You may file your motion to intervene by using the Commission's eFiling feature, which is located on the Commission's website ([www.ferc.gov](http://www.ferc.gov)) under the link to Documents and

Filings. New eFiling users must first create an account by clicking on "eRegister." You will be asked to select the type of filing you are making; first select "General" and then select "Intervention." The eFiling feature includes a document-less intervention option; for more information, visit <https://www.ferc.gov/docs-filing/efiling/document-less-intervention.pdf>; or

(2) You can file a paper copy of your motion to intervene, along with three copies, by mailing the documents to the address below. Your motion to intervene must reference the Project docket number CP25–5–000.

*To file via USPS:* Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

*To file via any other courier:* Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

The Commission encourages electronic filing of motions to intervene (option 1 above) and has eFiling staff available to assist you at (202) 502–8258 or [FercOnlineSupport@ferc.gov](mailto:FercOnlineSupport@ferc.gov).

Protests and motions to intervene must be served on the applicant either by mail at: David A. Alonzo, Manager, Project Authorizations, Columbia Gas Transmission, LLC, 700 Louisiana Street, Suite 1300, Houston, Texas 77002–2700, or by email (with a link to the document) at [david\\_alonzo@tcenergy.com](mailto:david_alonzo@tcenergy.com). Any subsequent submissions by an intervenor must be served on the applicant and all other parties to the proceeding. Contact information for parties can be downloaded from the service list at the eService link on FERC Online. Service can be via email with a link to the document.

All timely, unopposed<sup>9</sup> motions to intervene are automatically granted by operation of Rule 214(c)(1).<sup>10</sup> Motions to intervene that are filed after the intervention deadline are untimely, and may be denied. Any late-filed motion to intervene must show good cause for being late and must explain why the time limitation should be waived and provide justification by reference to factors set forth in Rule 214(d) of the Commission's Rules and Regulations.<sup>11</sup> A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies (paper or electronic)

<sup>9</sup> The applicant has 15 days from the submittal of a motion to intervene to file a written objection to the intervention.

<sup>10</sup> 18 CFR 385.214(c)(1).

<sup>11</sup> 18 CFR 385.214(b)(3) and (d).

of all documents filed by the applicant and by all other parties.

#### Tracking the Proceeding

Throughout the proceeding, additional information about the project will be available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at [www.ferc.gov](http://www.ferc.gov) using the "eLibrary" link as described above. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. For more information and to register, go to [www.ferc.gov/docs-filing/esubscription.asp](http://www.ferc.gov/docs-filing/esubscription.asp).

**Intervention Deadline:** 5:00 p.m. Eastern Time on Thursday, November 14, 2024.

Dated: October 24, 2024.

**Debbie-Anne A. Reese,**  
Secretary.

[FR Doc. 2024–25273 Filed 10–30–24; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Privacy Act of 1974; System of Records

**AGENCY:** Federal Energy Regulatory Commission (FERC), Department of Energy (DOE).

**ACTION:** Notice of a modified system of records.

**SUMMARY:** In accordance with the Privacy Act of 1974, all agencies are required to publish in the **Federal Register** a notice of their systems of records. Notice is hereby given that the Federal Energy Regulatory Commission (FERC) is publishing a notice of modifications to an existing FERC system of records titled "*Commission Parking Records (FERC–31)*."

**DATES:** Comments on this modified system of records must be received no later than 30 days after the date of publication in the **Federal Register**. If no public comment is received during this period or unless otherwise published in the **Federal Register** by FERC, the modified system of records

<sup>6</sup> 18 CFR 385.102(d).

<sup>7</sup> 18 CFR 385.214.

<sup>8</sup> 18 CFR 157.10.

will become effective a minimum of 30 days after the date of publication in the **Federal Register**. If FERC receives public comments, FERC shall review the comments to determine whether any changes to the notice are necessary.

**ADDRESSES:** Comments may be submitted in writing to Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426 or electronically to [privacy@ferc.gov](mailto:privacy@ferc.gov). Comments should indicate that they are submitted in response to “*Commission Parking Records (FERC-31)*.”

**FOR FURTHER INFORMATION CONTACT:** Mittal Desai, Chief Information Officer & Senior Agency Official for Privacy, Office of the Executive Director, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, [privacy@ferc.gov](mailto:privacy@ferc.gov), (202) 502-6432.

**SUPPLEMENTARY INFORMATION:** In accordance with the Privacy Act of 1974, FERC is updating this notice and republishing it in its entirety. This notice has two (2) new routine uses, routine use 10 and routine use 12. In addition, FERC is amending the following sections to reflect changes made since the publication of the last notice in the **Federal Register**: dates; addresses; purpose of the system; categories of individuals covered by the system; categories of records in the system; records source categories; policies and practices for storage of records; policies and practices for retention and disposal of records; administrative, technical, physical safeguards; records access procedures; contesting records procedures; notification procedures; and history.

**SYSTEM NAME AND NUMBER:**

*Commission Parking Records (FERC-31)*.

**SECURITY CLASSIFICATION:**

Unclassified.

**SYSTEM LOCATION:**

Federal Energy Regulatory Commission, Logistics Operations, Logistics Management Division, 888 First Street NE, Washington, DC 20426.

**SYSTEM MANAGER(S):**

Logistics Operations Branch Chief, Federal Energy Regulatory Commission, Logistics Operations, Logistics Management Division, 888 First Street NE, Washington, DC 20426.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

41 CFR 101-20.104.

**PURPOSE(S) OF THE SYSTEM:**

The purpose of the system is to support the overall management of

parking operations at the FERC Headquarters garage; to allow authorized users to electronically register their vehicles and to request a parking permit; to assign parking spaces; to monitor parking expenses and the program budget; to notify drivers of emergencies or parking violations; and to match employees in the same zip code area to existing or potential carpools. The information is also used for administrative purposes to ensure quality control, performance, and improving the management of the program.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

The categories of individuals covered by the system include FERC employees, contractors, vendors, and members of the public who park at the FERC Headquarters garage.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

The categories of records include full name, office address, office and home telephone number, vendor name, vehicle description, license plate number including the state of registration, transaction number, the pass's expiration date, and pass reference number.

**RECORD SOURCE CATEGORIES:**

Records are obtained from current employees, contractors, vendors, and members of the public seeking parking within the FERC Headquarters garage.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:**

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, information maintained in this system may be disclosed to authorized entities outside FERC for purposes determined to be relevant and necessary as a routine use pursuant to 5 U.S.C. 552a(b)(3) are as follows:

1. To appropriate agencies, entities, and persons when (a) FERC suspects or has confirmed that there has been a breach of the system of records; (b) FERC has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the Commission (including its information systems, programs, and operations), the Federal Government, or national security; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Commission's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

2. To another Federal agency or Federal entity, when FERC determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (a) responding to a suspected or confirmed breach or (b) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

3. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

4. To the Equal Employment Opportunity Commission (EEOC) when requested in connection with investigations of alleged or possible discriminatory practices, examination of Federal affirmative employment programs, or other functions of the Commission as authorized by law or regulation.

5. To the Federal Labor Relations Authority or its General Counsel when requested in connection with investigations of allegations of unfair labor practices or matters before the Federal Service Impasses Panel.

6. To disclose information to another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, where the record is relevant and necessary to proceeding and the Government is a party to the judicial or administrative proceeding. In those cases where the Government is not a party to the proceeding, records may be disclosed if a subpoena has been signed by a judge.

7. To the Department of Justice (DOJ) for its use in providing legal advice to FERC or in representing FERC in a proceeding before a court, adjudicative body, or other administrative body, where the use of such information by the DOJ is deemed by FERC to be relevant and necessary to the advice or proceeding, and such proceeding names as a party in interest: (a) FERC; (b) any employee of FERC in his or her official capacity; (c) any employee of FERC in his or her individual capacity where DOJ has agreed to represent the employee; or (d) the United States, where FERC determines that litigation is likely to affect FERC or any of its components.

8. To non-Federal Personnel, such as contractors, agents, or other authorized individuals performing work on a contract, service, cooperative agreement, job, or other activity on behalf of FERC or Federal Government and who have a

need to access the information in the performance of their duties or activities.

9. To the National Archives and Records Administration in records management inspections and its role as Archivist.

10. To the Merit Systems Protection Board or the Board's Office of the Special Counsel, when relevant information is requested in connection with appeals, special studies of the civil service and other merit systems, review of OPM rules and regulations, and investigations of alleged or possible prohibited personnel practices.

11. To appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the record indicates a violation or potential violation of civil or criminal law, rule, regulation, order.

12. To appropriate agencies, entities, and person(s) that are a party to a dispute, when FERC determines that information from this system of records is reasonably necessary for the recipient to assist with the resolution of the dispute; the name, address, telephone number, email address, and affiliation; of the agency, entity, and/or person(s) seeking and/or participating in dispute resolution services, where appropriate.

#### **POLICIES AND PRACTICES FOR STORAGE OF RECORDS:**

Records are stored electronically on a FedRAMP-authorized cloud service provider, and on a FedRAMP-authorized SharePoint site. FERC employees and contractors with authorized access have undergone a thorough background security investigation. Data access is restricted to agency personnel whose responsibilities require access. Access to electronic records is controlled by the organization's Single Sign-On and Multi-Factor Authentication Solution. Role based access is used to restrict data access and the organization employs the principle of least privilege, allowing only authorized users with access (or processes acting on behalf of users) necessary to accomplish assigned tasks in accordance with organizational missions and business functions.

#### **POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:**

Records may be retrieved by name or vehicle license plate number.

#### **POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:**

Records are retained in accordance with the applicable National Archives and Records Administration (NARA) approved schedules:

- General Records Schedule (GRS) 5.6: Security Management Records. Item 130: Disposition Authority: DAA-GRS-2021-0001-0006. Disposition: Temporary. Destroy upon immediate collection once the temporary credential or card is returned for potential reissuance due to nearing expiration or not to exceed 6 months from time of issuance or when individual no longer require access, whichever is sooner, but longer retention is authorized if required for business use.

- FERC Records Schedule VII, Administrative Program Records, Schedule Number N1-138-99-006, Item 1(d), Parking Applications and Support Files. Disposition: Temporary. Destroy after subsequent open season.

- FERC Records Schedule VII, Administrative Program Records, Schedule Number N1-138-99-006, Item 1(g), Automated Parking System. Disposition: Temporary. Destroy after subsequent open season.

#### **ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:**

See Policies and Practices for Storage of Records.

#### **RECORD ACCESS PROCEDURES:**

Individuals requesting access to the contents of records must submit a request through the Freedom of Information Act (FOIA) office. The FOIA website is located at: <https://www.ferc.gov/foia>. Requests may be submitted through the following portal: <https://www.ferc.gov/enforcement-legal/foia/electronic-foia-privacy-act-request-form>. Written requests for access to records should be directed to: Director, Office of External Affairs, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

#### **CONTESTING RECORD PROCEDURES:**

See Records Access Procedures.

#### **NOTIFICATION PROCEDURES:**

Generalized notice is provided by the publication of this notice. For specific notice, see Records Access Procedures, above.

#### **EXEMPTIONS PROMULGATED FOR THE SYSTEM:**

None.

#### **HISTORY:**

86 FR 72592 (December 22, 2021); 65 FR 21751 (April 24, 2000).

Dated: October 24, 2024.

**Debbie-Anne A. Reese,**  
Secretary.

[FR Doc. 2024-25278 Filed 10-30-24; 8:45 am]

**BILLING CODE 6717-01-P**

## **DEPARTMENT OF ENERGY**

### **Federal Energy Regulatory Commission**

[Project No. P-15331-001]

#### **Marlow Hydro LLC; Notice of Application Accepted for Filing And Soliciting Motions To Intervene and Protests**

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Original Minor License.

b. *Project No.:* 15331-001.

c. *Date filed:* July 31, 2024.

d. *Applicant:* Marlow Hydro, LLC (Marlow Hydro).

e. *Name of Project:* Nash Mill Dam Hydroelectric Project.

f. *Location:* On the Ashuelot River, in town of Marlow, Cheshire County, New Hampshire.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Anthony B. Rosario, Marlow Hydro, 139 Henniker St, Hillsborough, NH, 03244; Phone at (603) 494-1854; or email at [t-iem@tds.net](mailto:t-iem@tds.net).

i. *FERC Contact:* Prabha Madduri at 202-502-8017, or [prabharanjani.madduri@ferc.gov](mailto:prabharanjani.madduri@ferc.gov).

j. *Deadline for filing motions to intervene and protests:* December 23, 2024.

The Commission strongly encourages electronic filing. Please file motions to intervene and protests using the Commission's eFiling system at <http://www.ferc.gov/docs-filing/efiling.asp>. For assistance, please contact FERC Online Support at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), (866) 208-3676 (toll free), or (202) 502-8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Debbie-Anne Reese, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Debbie-Anne Reese, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. All filings must clearly identify the project name and docket number on the first page: Nash Mill Hydroelectric Project (P-15331-001).

The Commission's Rules of Practice and Procedures require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list



for the project. Further, if an intervenor 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.

k. This application has been accepted for filing but is not ready for environmental analysis at this time.

l. The Nash Mill Project consists of the following existing facilities: (1) a 57-foot-long, 9-foot-high, concrete gravity dam topped with 3-foot-high collapsible wooden flashboards with a crest elevation of 1,133.41 feet North American Vertical Datum 1988 (NAVD 88) at the top of the flashboards; (2) a 2-acre impoundment; (3) an intake structure on the north side of the dam equipped with a 10-foot-high by 10-foot-wide trash rack with 1-inch clear bar spacing; (4) a 4-foot-diameter, 1,525-foot-long, round steel penstock that trifurcates into two 2-foot-diameter penstocks and one 4-foot-diameter pipe; (5) a 31-foot-long by 18-foot-wide powerhouse that contains two vertical-shaft, fixed propeller turbine-generator units and one horizontal-shaft turbine-generator unit for a total installed capacity of 225 kilowatts; (6) a 600-foot-long tailrace; (7) a 1,800-foot-long bypassed reach; (8) a 0.48 kilovolt (kV), 75 kilo-volt-ampere transformer; (9) a 1,830-foot-long, 12.5-kV transmission line; and (10) appurtenant facilities.

Marlow Hydro currently operates the project in a run-of-river mode. The current license requires Marlow Hydro to release a continuous minimum flow of 23 cubic feet per second (cfs) from the project as measured downstream of the powerhouse, with a continuous flow of 5.2 cfs over the dam. From 2016 to 2020, average annual generation of the Nash Mill Project was 552 megawatt-hours.

m. A copy of the application is available for review via the internet through the Commission's Home Page (<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](mailto:FERCOnlineSupport@ferc.gov) or call toll free, (886) 208-3676 or TTY (202) 502-8659.

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, contact FERC Online Support.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help

members of the public, including landowners, environmental justice communities, Tribal members, and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202)502-6595, or [OPP@ferc.gov](mailto:OPP@ferc.gov).

n. Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified intervention deadline date, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified intervention deadline date. Applications for preliminary permits will not be accepted in response to this notice.

A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit a development application. A notice of intent must be served on the applicant(s) named in this public notice.

Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests 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 protests or motions to intervene must be received on or before the specified deadline date for the particular application.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All filings must (1) bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE," "NOTICE OF INTENT TO FILE COMPETING APPLICATION," or "COMPETING APPLICATION;" (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. 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.

o. Procedural schedule: The application will be processed according to the following schedule. Revisions to the schedule will be made as appropriate.

Issue Scoping Document 1 for comments.	January 2025.
Comments on Scoping Document 1.	March 2025.
Issue Scoping Document 2 (if necessary).	April 2025.
Issue Notice of Ready for Environmental Analysis.	April 2025.

Dated: October 24, 2024.

**Debbie-Anne A. Reese,**

*Secretary.*

[FR Doc. 2024-25272 Filed 10-30-24; 8:45 am]

**BILLING CODE 6717-01-P**

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-12349-01-OA]

### Notification of a Public Meeting of the Clean Air Scientific Advisory Committee Lead Panel

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

**ACTION:** Notice.

**SUMMARY:** The EPA Science Advisory Board (SAB) Staff Office announces a public meeting of the Clean Air Scientific Advisory Committee (CASAC) Lead Panel. A public meeting will be held for the CASAC Lead Panel to provide additional consultative advice on aspects of the approach for quantitative exposure and risk analyses as a follow-up to prior CASAC Lead Panel advice on the *Integrated Review Plan (IRP) for Review of the National Ambient Air Quality Standards for Lead, Volume 3: Planning for Quantitative Exposure/Risk Analyses (External Review Draft)*.

**DATES:** The public meeting will be held on Friday, November 22, 2024, from 1:00 p.m. to 5:00 p.m. Eastern Time.

**ADDRESSES:** The meeting will be conducted virtually. A live video webcast and teleconference line will be available for the public. The webcast link and teleconference information will be available on the CASAC website at <https://casac.epa.gov>.

**FOR FURTHER INFORMATION CONTACT:** Any member of the public wishing further information regarding this notice may contact Mr. Aaron Yeow, Designated



Federal Officer (DFO), SAB Staff Office, by telephone at (202) 564–2050 or via email at [yeow.aaron@epa.gov](mailto:yeow.aaron@epa.gov). General information concerning the CASAC, as well as any updates concerning the meetings announced in this notice can be found on the CASAC website: <https://casac.epa.gov>.

#### SUPPLEMENTARY INFORMATION:

**Background:** The CASAC was established pursuant to the Clean Air Act (CAA) Amendments of 1977, codified at 42 U.S.C. 7409(d)(2), to review air quality criteria and NAAQS and recommend to the EPA Administrator any new NAAQS and revisions of existing criteria and NAAQS as may be appropriate. The CASAC shall also: advise the EPA Administrator of areas in which additional knowledge is required to appraise the adequacy and basis of existing, new, or revised NAAQS; describe the research efforts necessary to provide the required information; advise the EPA Administrator on the relative contribution to air pollution concentrations of natural as well as anthropogenic activity; and advise the EPA Administrator of any adverse public health, welfare, social, economic, or energy effects which may result from various strategies for attainment and maintenance of such NAAQS. As amended, 5 U.S.C., App. section 109(d)(1) of the Clean Air Act (CAA) requires that EPA carry out a periodic review and revision, as appropriate, of the air quality criteria and the NAAQS for the six “criteria” air pollutants, including lead.

The CASAC is a Federal Advisory Committee chartered under the Federal Advisory Committee Act (FACA), 5 U.S.C., App. 2, and conducts business in accordance with FACA and related regulations. The CASAC and the CASAC Lead Panel will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies. Pursuant to FACA and EPA policy, notice is hereby given that the CASAC Lead Panel will hold a public meeting to provide additional consultative advice on aspects of the approach for quantitative exposure and risk analyses as a follow-up to prior CASAC Lead Panel advice on the *Integrated Review Plan (IRP) for Review of the National Ambient Air Quality Standards for Lead, Volume 3: Planning for Quantitative Exposure/Risk Analyses (External Review Draft)*.

**Technical Contacts:** Any technical questions concerning the quantitative exposure and risk analyses should be directed to Dr. Zachary Pekar

([pekar.zachary@epa.gov](mailto:pekar.zachary@epa.gov)) or Dr. Deirdre Murphy ([murphy.deirdre@epa.gov](mailto:murphy.deirdre@epa.gov)).

#### **Availability of Meeting Materials:**

Prior to the meeting, the review documents, agenda and other materials will be accessible on the CASAC website: <https://casac.epa.gov>.

#### **Procedures for Providing Public Input:**

Public comment for consideration by EPA’s federal advisory committees and panels has a different purpose from public comment provided to EPA program offices. Therefore, the process for submitting comments to a federal advisory committee is different from the process used to submit comments to an EPA program office. Federal advisory committees and panels, including scientific advisory committees, provide independent advice to EPA. Members of the public can submit relevant comments on the topic of this advisory activity, including the charge to the CASAC and the EPA review documents, and/or the group conducting the activity, for the CASAC to consider as it develops advice for EPA. Input from the public to the CASAC will have the most impact if it provides specific scientific or technical information or analysis for CASAC to consider or if it relates to the clarity or accuracy of the technical information. Members of the public wishing to provide comment should follow the instructions below to submit comments.

**Oral Statements:** Individuals or groups requesting an oral presentation during the public meeting will be limited to five minutes. Each person making an oral statement should consider providing written comments as well as their oral statement so that the points presented orally can be expanded upon in writing. Interested parties should contact Mr. Aaron Yeow, DFO, in writing (preferably via email) at the contact information noted above by November 15, 2024, to be placed on the list of public speakers.

**Written Statements:** Written statements will be accepted throughout the advisory process; however, for timely consideration by CASAC members, statements should be supplied to the DFO (preferably via email) at the contact information noted above by November 15, 2024. It is the SAB Staff Office general policy to post written comments on the web page for the advisory meeting or teleconference. Submitters are requested to provide an unsigned version of each document because the SAB Staff Office does not publish documents with signatures on its websites. Members of the public should be aware that their personal contact information, if included in any written comments, may be posted to the

CASAC website. Copyrighted material will not be posted without explicit permission of the copyright holder.

**Accessibility:** For information on access or services for individuals with disabilities, please contact Mr. Aaron Yeow at (202) 564–2050 or [yeow.aaron@epa.gov](mailto:yeow.aaron@epa.gov). To request accommodation of a disability, please contact the DFO, at the contact information noted above, preferably at least ten days prior to each meeting, to give EPA as much time as possible to process your request.

**V. Khanna Johnston,**

*Deputy Director, Science Advisory Board Staff Office.*

[FR Doc. 2024–25349 Filed 10–30–24; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

[EPA–R01–OW–2024–0492; FRL–12374–01–R1]

### **Notice of Preliminary Designation of Certain Stormwater Discharges in the Commonwealth of Massachusetts and Notice of Availability of Draft Permit Under the National Pollutant Discharge Elimination System of the Clean Water Act**

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

**ACTION:** Notice.

**SUMMARY:** The Regional Administrator of the Environmental Protection Agency Region 1 (“EPA”) is providing notice of two proposed actions today. The first action is the Preliminary Designation of certain stormwater discharges from commercial, industrial, and institutional properties with one acre or more of impervious surface in the Charles, Neponset, and Mystic River watersheds in Massachusetts for regulation under the Clean Water Act’s (“CWA”) National Pollutant Discharge Elimination System (“NPDES”) permitting program. Second, the Regional Administrator of the EPA Region 1 is concurrently providing notice of availability of a draft NPDES General Permit (“GP”) for Private Commercial Industrial, and Institutional (“CII”) Stormwater Discharges in the Charles, Mystic, and Neponset River Watersheds in Massachusetts (“Draft CII GP”). The Draft CII GP would regulate the identified stormwater discharges, as it is authorized to do under section 402 of the CWA, by requiring the implementation of Best Management Practices (“BMPs”) and meeting other limitations to meet water quality standards.

**DATES:** Comments on the Preliminary Designation and the Draft CII GP may be submitted as described in Section I.A of this notice. The public notice period for both the Preliminary Designation and the Draft CII GP will close January 29, 2025. EPA will hold virtual public meetings on January 7, 2025, at 7 p.m. Eastern Time and January 9, 2025, at 7 p.m. Eastern Time. EPA will hold virtual public hearings on January 22, 2025, at 7 p.m. Eastern Time and January 23, 2025, 7 p.m. Eastern Time. Please refer to the **SUPPLEMENTARY INFORMATION** section for registration instructions for the public meetings and hearings.

**ADDRESSES:** You may send comments on the Preliminary Designation and/or the Draft CII GP, identified by Docket ID No. EPA-R01-OW-2024-0492, by any of the following methods:

- Federal eRulemaking Portal:* <https://www.regulations.gov/> (our preferred method). Follow the online instructions for submitting comments.
- Email:* [R1.RDA@epa.gov](mailto:R1.RDA@epa.gov), and include “Comments on the Preliminary Designation and/or Draft CII GP” in the subject line.
- Mail:* U.S. EPA Region 1, Water Division, Attn: Laura Schifman, 5 Post Office Square, Suite 100, Mail Code 06-4, Boston, Massachusetts 02109-3912. If comments are submitted in hard copy form, please also email a copy to [R1.RDA@epa.gov](mailto:R1.RDA@epa.gov).

**FOR FURTHER INFORMATION CONTACT:** Laura Schifman, U.S. Environmental Protection Agency Region 1, Water Division, Stormwater Permits Section; telephone number: (617) 918-1015; email address: [schifman.laura@epa.gov](mailto:schifman.laura@epa.gov).

*Administrative Record:* The Preliminary Designation, the Draft CII GP, and other related documents in the administrative record are on file and may be inspected between 9 a.m. and 5 p.m., Monday through Friday, excluding legal holidays, at the following address: U.S. Environmental Protection Agency, EPA Region 1 Regional Office, Water Division, 5 Post Office Square, Boston, MA. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Public Participation**

###### *A. Written Comments*

Submit your comments as detailed in the **ADDRESSES** section. Do not submit to EPA any information you consider to be Confidential Business Information (“CBI”), Proprietary Business Information (“PBI”), 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).

###### *B. Public Meetings and Public Hearings*

EPA will begin pre-registering speakers for the hearings upon publication of this document in the **Federal Register**. To register to speak at the virtual hearing, please use the online registration form available at <https://www.epa.gov/npdes-permits/notice-preliminary-designation-certain-stormwater-discharges-commonwealth>. The last day to pre-register to speak at either the January 22 or 23, 2025 hearings is January 16, 2025. On January 17, 2025, EPA will post a general agenda for the hearing that will list pre-registered speakers in approximate order at: <https://www.epa.gov/npdes-permits/notice-preliminary-designation-certain-stormwater-discharges-commonwealth>.

##### **II. General Information**

###### *A. Does this action apply to me?*

Entities included in the Preliminary Designation and eligible for coverage under the Draft CII GP Permit include: commercial, industrial, and institutional properties with one acre or more of impervious surface in the Charles, Neponset, and Mystic River watersheds in Massachusetts. Commercial, industrial, and institutional properties are identified by reference to Massachusetts Property Type Classification Codes, identified in Draft CII GP Appendix H. The amount of impervious cover on a parcel can be determined either by verifying EPA’s impervious cover data or by determining the amount of impervious cover by a site plan or site survey, GIS analysis, or Google Earth. These methods are described in Draft CII GP Appendix E.

###### *B. Summary and Availability of Preliminary Designation Documents*

The Regional Administrator of EPA Region 1 has made a Preliminary Designation of stormwater discharges from certain commercial industrial, and institutional properties with one acre or more of impervious surface in the Charles, Neponset, and Mystic River watersheds in Massachusetts for regulation under the NPDES permitting

program pursuant to Clean Water Act sections 301, 402(p)(2)(E), and 402(p)(6) of the Clean Water Act and EPA’s implementing regulations at 40 CFR 122.26(a)(9)(i)(C)–(D) and 122.44. Those provisions authorize the Agency to regulate stormwater discharges that contribute to a water quality standard violation or that are a significant contributor of pollutants to waters of the United States, or where controls are needed based on wasteload allocations that are part of total maximum daily loads. This authority is often referred to as “residual designation authority” or RDA. EPA is providing notice of its Preliminary Designation for NPDES permitting of unregulated stormwater discharges from certain commercial industrial, and institutional properties with one acre or more of impervious surface in the Charles, Neponset, and Mystic River watersheds in Massachusetts.

The Preliminary Designation plus supplementary information relating to the Preliminary Designation are available on EPA Region 1’s web page at: <https://www.epa.gov/npdes-permits/notice-preliminary-designation-certain-stormwater-discharges-commonwealth> and at [www.regulations.gov](http://www.regulations.gov) by searching for Docket ID No. EPA-R01-OW-2024-0492. This information includes parcel analyses of the Neponset River watershed and the Mystic River watershed, and an updated parcel analysis for the Charles River watershed.

Please refer to EPA’s website or this action’s docket on [www.regulations.gov](http://www.regulations.gov) to review these materials and then follow the directions above in this Notice for submitting any comments. Note that stakeholders may submit comments on the Preliminary Designation to EPA until the end of the comment period and on the EPA NPDES general permit for these discharges. See 40 CFR 124.52(c). In this case, the public notice periods for the Preliminary Designation and Draft CII GP are simultaneous and will run for 90 days from the **Federal Register** publication of this Notice. Commenters may submit comments on the Preliminary Designation, the Draft CII GP, or on both actions.

###### *C. Summary and Availability of Draft CII GP Documents*

The Draft CII General Permit, appendices, and fact sheet are available at: <https://www.epa.gov/npdes-permits/notice-preliminary-designation-certain-stormwater-discharges-commonwealth> and at [www.regulations.gov](http://www.regulations.gov) by searching for Docket ID No. EPA-R01-OW-2024-0492.

This Draft CII General Permit is established pursuant to CWA sections 301, 402(a)(1), 402(p)(2)(E), and 402(p)(6).

#### 1. Technology-Based Requirements

This Draft CII General Permit would be available to authorize certain stormwater discharges, as it is authorized to do under CWA sections 301, 402(a)(1), 402(p)(2)(E) and 402(p)(6), by requiring the implementation of BMPs. The Draft CII Permit regulates Phosphorus, a non-conventional pollutant, as an indicator parameter for all regulated pollutants. As provided in section 402(a)(1) of the CWA, EPA established Technology-Based Effluent Limitations (TBELs) in this Draft Permit utilizing Best Professional Judgment (BPJ) to meet the “best available technology economically achievable” (BAT), “best conventional pollutant control technology” (BCT), and “best practicable control technology currently available” (BPT) standards described in section 304(b) of the CWA. TBELs in this Draft Permit are expressed as requirements for implementation of effective best management practices (BMPs). 40 CFR 122.44(k). Section 2.1.1 of the Draft CII GP requires all Permittees to develop and implement Stormwater Pollution Control Plans (SPCPs). The minimum BMPs specified in this CII GP represent common practices that can be implemented by most CII facilities. Dischargers have flexibility in designing their SPCP in accordance with Section 2.2 of this Draft CII GP.

#### 2. Water-Quality Based Requirements

Based on its scientific and technical judgment, EPA has determined that the following reductions of Phosphorus, as an indicator pollutant, from CII sites are necessary to meet water quality standards: Charles River watershed, 65%; Mystic River watershed, 62%; Neponset River watershed, 60%. Permittees’ development and implementation of SPCPs constitutes compliance with the Water-Quality Based Effluent Limitations (WQBELs) contained in this Draft CII GP, including the aforementioned reductions of Phosphorus.

#### D. Provisions on Which EPA Is Soliciting Comment

While EPA encourages the public to review and comment on all provisions in the Preliminary Determination and the Draft CII GP, EPA has included in the body of the Draft CII GP Fact Sheet several proposed provisions on which EPA specifically requests feedback. The following list summarizes these specific

requests for comment, and where they are included in the fact sheet. EPA notes that these are only summaries of the requests for comment. The Agency recommends that the public see the specific wording of each comment request within the body of the fact sheet.

1. *Multifamily housing/tax codes (Fact Sheet § 1.5)*: EPA is seeking comment on whether to include Multifamily Residential Properties in the final designation and in the final CII GP.

2. *Compliance schedule (Fact Sheet § 5.1.1)*: EPA is seeking comment on whether the proposed compliance schedule is appropriate.

3. *Multiple non-contiguous properties (Fact Sheet § 1.4)*: EPA is seeking comment on how the permitting process should work for owners with multiple non-contiguous properties that are subject to the CII GP.

4. *Owner-operator (Fact Sheet § 1.4)*: EPA is seeking comment on whether EPA should regulate the operator with control over a site instead of the owner, including sites where multiple operators may be tenants of a site (e.g., a shopping plaza with one owner and multiple tenants).

5. *Contiguous properties (Fact Sheet § 1.4)*: EPA is seeking comment on its regulation of contiguous sites, which reflect EPA’s interest in consolidating, to the greatest extent possible, responsibility for permit compliance.

6. *Historic Properties (Fact Sheet § 9.3)*: EPA is seeking comment on the Draft CII GP’s potential impact on historic properties.

#### E. Procedures for Reaching a Final Designation and Final Permit Decision

After the comment period closes, EPA intends to issue a final permit and final RDA determination. EPA will consider all significant comments and make appropriate changes before issuing this permit. EPA’s responses to public comments received will be included in the docket as part of the final permit issuance. Once the final permit becomes effective, eligible dischargers may seek authorization.

*Authority*: This action is being taken pursuant to Clean Water Act sections 301, 402(a)(1), 402(p)(2)(E), and 402(p)(6).

Dated: October 24, 2024.

**David W. Cash,**

*Administrator, EPA Region 1, Boston, MA.*

[FR Doc. 2024–25219 Filed 10–30–24; 8:45 am]

**BILLING CODE 6560–50–P**

## FEDERAL ELECTION COMMISSION

### Sunshine Act Meetings

**FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT:** 89 FR 85212.

**PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING:** Wednesday, October 30, 2024 at 10:00 a.m., Hybrid Meeting: 1050 First Street NE, Washington, DC (12th Floor) and virtual.

**CHANGES IN THE MEETING:** The October 30, 2024 Open Meeting has been canceled.

**CONTACT PERSON FOR MORE INFORMATION:** Judith Ingram, Press Officer, Telephone: (202) 694–1220.

(Authority: Government in the Sunshine Act, 5 U.S.C. 552b)

**Laura E. Sinram,**

*Secretary and Clerk of the Commission.*

[FR Doc. 2024–25498 Filed 10–29–24; 4:15 pm]

**BILLING CODE 6715–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Agency for Healthcare Research and Quality

#### Meeting on the Artificial Intelligence in Healthcare Safety Program

**AGENCY:** Agency for Healthcare Research and Quality (AHRQ), Department of Health and Human Services (HHS).

**ACTION:** Notice of public meeting.

**SUMMARY:** HHS is directed by Executive order (E.O.) to establish an Artificial Intelligence (AI) in Healthcare Safety Program in partnership with federally listed Patient Safety Organizations (PSOs). The purpose of this notice is to announce a meeting to discuss implementation of the Executive order to establish the AI in Healthcare Safety Program. This meeting is designed as an interactive forum where participants can provide input on the future of the program.

**DATES:** The meeting will be held from 12:30 to 4 p.m. eastern on Friday, November 15, 2024.

**ADDRESSES:** The meeting will be held virtually.

#### FOR FURTHER INFORMATION CONTACT:

Erofile Gripiotis, Program Analyst, Center for Quality Improvement and Patient Safety, AHRQ, 5600 Fishers Lane, Rockville, MD 20857; Telephone (toll free): (866) 403–3697; Telephone (local): (301) 427–1111; TTY (toll free): (866) 438–7231; TTY (local): (301) 427–1130; Email: [psa@ahrq.hhs.gov](mailto:psa@ahrq.hhs.gov).

**SUPPLEMENTARY INFORMATION:**

## Background

The Patient Safety and Quality Improvement Act of 2005, 42 U.S.C. 299b–21 to 299b–26 (Patient Safety Act), and the related Patient Safety and Quality Improvement Final Rule, 42 CFR part 3 (Patient Safety Rule), published in the **Federal Register** on November 21, 2008, 73 FR 70731–70814, provide for the Federal listing of Patient Safety Organizations (PSOs), which collect, aggregate, and analyze confidential information (patient safety work product) regarding the quality and safety of healthcare delivery.

The Patient Safety Act also authorizes the development of data standards, known as the Common Formats, to facilitate the aggregation and analysis of non-identifiable patient safety work product collected by PSOs and reported to the Network of Patient Safety Databases (NPSD). (42 U.S.C. 299b–23(b)). The Patient Safety Act and Patient Safety Rule can be accessed at: <http://www.pso.ahrq.gov/legislation/>.

Section 8(iv) of E.O. 14110 requires the Secretary of HHS, in consultation with the Secretaries of Defense and Veterans Affairs, to establish an AI safety program that, in partnership with PSOs, will:

- establish a common framework for approaches to identifying and capturing clinical errors resulting from AI deployed in healthcare settings as well as specifications for a central tracking repository for associated incidents that cause harm, including through bias or discrimination, to patients, caregivers, or other parties;
- analyze captured data and generated evidence to develop, wherever appropriate, recommendations, best practices, or other informal guidelines aimed at avoiding these harms; and
- disseminate those recommendations, best practices, or other informal guidelines to appropriate stakeholders, including healthcare providers.

## Agenda, Registration, and Other Information About the Meeting

AHRQ will be hosting this fully virtual meeting to discuss implementation of the AI in Healthcare Safety Program with members of the public, including PSOs and other interested parties. Agenda topics will include recent AI-related analyses from the NPSD, available program resources, and speakers from the Assistant Secretary for Technology Policy/Office of the National Coordinator for Health Information Technology and the Coalition for Health AI. Active

participation and discussion by meeting participants is encouraged, including through breakout sessions.

AHRQ requests that interested persons send an email to [SDMeetings@infinityconferences.com](mailto:SDMeetings@infinityconferences.com) for registration information. Before the meeting, an agenda and logistical information will be provided to registrants.

Dated: October 24, 2024.

**Marquita Cullom,**  
Associate Director.

[FR Doc. 2024–25140 Filed 10–30–24; 8:45 am]

**BILLING CODE 4160–90–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

[CDC–2024–0065; Docket Number NIOSH–352–A]

### Draft Hazard Review: Wildland Fire Smoke Exposure Among Farmworkers and Other Outdoor Workers

**AGENCY:** Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

**ACTION:** Extension of comment period and announcement of informational webinar.

**SUMMARY:** On September 13, 2024, NIOSH published a notice in the **Federal Register** announcing public comment and technical review on the draft Hazard Review: Wildland Fire Smoke Exposure Among Farmworkers and Other Outdoor Workers. Written comments were to be received by November 12, 2024. NIOSH is extending the public comment period to January 10, 2025. NIOSH will also convene an informational webinar to present an overview about the draft Hazard Review document, describe its content and purpose, and provide information about the public comment period. The webinar is scheduled to occur on Tuesday, December 3, 2024, at 1:00 p.m. Eastern Time (US and Canada). Attendees are requested to register in advance for this webinar.

**DATES:** Registration for the webinar must occur on or before the date of the webinar, December 3, 2024. The comment period for the draft Hazard Review: Wildland Fire Smoke Exposure Among Farmworkers and Other Outdoor Workers, published September 13, 2024 at 89 FR 74960, is extended. Electronic or written comments must be received by January 10, 2025, at 11:59 p.m.

**ADDRESSES:** Register in advance for the webinar at the following link.

Attendance for the webinar is limited to 3,000 participants: [https://cdc.zoomgov.com/webinar/register/WN\\_InOhz1wMTNyr\\_06z1hYgRw](https://cdc.zoomgov.com/webinar/register/WN_InOhz1wMTNyr_06z1hYgRw).

You may submit comments on the draft Hazard Review: Wildland Fire Smoke Exposure Among Farmworkers and Other Outdoor Workers, identified by CDC–2024–0065 and Docket Number NIOSH–352–A, by either of the following two methods:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments.

- **Mail:** National Institute for Occupational Safety and Health, NIOSH Docket Office, 1090 Tusculum Avenue, MS C–34, Cincinnati, Ohio 45226–1998.

**Instructions:** All information received in response to this notice must include the agency name and docket number (CDC–2024–0065; NIOSH–352–A). All relevant comments, including any personal information provided, will be posted without change to <https://www.regulations.gov>. Do not submit comments by email. CDC does not accept comments by email. For access to the docket to read the draft Hazard Review document or comments received, go to <https://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** R. Todd Niemeier, Ph.D., National Institute for Occupational Safety and Health, MS–C15, 1090 Tusculum Avenue, Cincinnati, OH 45226. Telephone: (513) 533–8166.

**SUPPLEMENTARY INFORMATION:** NIOSH is requesting public comment and technical review of the draft Hazard Review: Wildland Fire Smoke Exposure Among Farmworkers and Other Outdoor Workers, which is accessible in the docket (CDC–2024–0065; NIOSH–352–A). NIOSH is extending the public comment period to January 10, 2025. The comment period is being extended to provide an informational webinar and allow additional time for comment. Specific review questions to be considered are included in the initial **Federal Register** notice published on September 13, 2024 at 89 FR 74960.

The final document will be used as the scientific evidence base to inform the development of supplementary educational materials for workers, employers, and other relevant audiences to support the implementation of the recommendations. Therefore, comments that focus on the understandability, accessibility, and feasibility of the recommendations are requested.

The draft Hazard Review was developed to provide the scientific rationale for characterizing hazards of exposure to wildland fire smoke for

outdoor workers. The draft Hazard Review also provides recommendations and guidance for minimizing exposures and potential health effects associated with wildland fire smoke for outdoor workers.

After the comments received on the draft Hazard Review are considered and addressed, the final Hazard Review will be posted on the NIOSH website.

Dated: October 28, 2024.

**John J. Howard,**

*Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention, Department of Health and Human Services.*

[FR Doc. 2024–25356 Filed 10–30–24; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10137]

#### Agency Information Collection Activities: Submission for OMB Review; Comment Request

**AGENCY:** Centers for Medicare & Medicaid Services, Health and Human Services (HHS).

**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 (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 a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate 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 on the collection(s) of information must be received by the OMB desk officer by December 2, 2024.

**ADDRESSES:** Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain). Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, please access the CMS PRA website by copying and pasting the following web address into your web browser: <https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing>.

**FOR FURTHER INFORMATION CONTACT:** William Parham at (410) 786–4669.

**SUPPLEMENTARY INFORMATION:** Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. 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 (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-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 that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Solicitation for Applications for Medicare Prescription Drug Plan 2026 Contracts; *Use:* Coverage for the prescription drug benefit is provided through contracted prescription drug plans (PDPs) or through Medicare Advantage (MA) plans that offer integrated prescription drug and health care coverage (MA–PD plans). Cost Plans that are regulated under Section 1876 of the Social Security Act, and Employer Group Waiver Plans (EGWP) may also provide a Part D benefit. Organizations wishing to provide services under the Prescription Drug Benefit Program must complete an application, negotiate rates,

and receive final approval from CMS. Existing Part D Sponsors may also expand their contracted service area by completing the Service Area Expansion (SAE) application.

Collection of this information is mandated in Part D of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) in Subpart 3. The application requirements are codified in Subpart K of 42 CFR 423 entitled "Application Procedures and Contracts with PDP Sponsors." The information will be collected under the solicitation of proposals from PDP, MA–PD, Cost Plan, Program of All-Inclusive Care for the Elderly (PACE), and EGWP applicants. The collected information will be used by CMS to: (1) ensure that applicants meet CMS requirements for offering Part D plans (including network adequacy, contracting requirements, and compliance program requirements, as described in the application), (2) support the determination of contract awards. *Form Number:* CMS–10137 (OMB control number: 0938–0936); *Frequency:* Yearly; *Affected Public:* Private Sector, Business or other for-profits and Not for profits institution; *Number of Respondents:* 821; *Number of Responses:* 424; *Total Annual Hours:* 1,809. (For policy questions regarding this collection contact April Forsythe at 410–786–8493.)

**William N. Parham, III,**

*Director, Division of Information Collections and Regulatory Impacts, Office of Strategic Operations and Regulatory Affairs.*

[FR Doc. 2024–25380 Filed 10–30–24; 8:45 am]

**BILLING CODE 4120–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

[Document Identifier: CMS–379]

#### Agency Information Collection Activities: Submission for OMB Review; Comment Request

**AGENCY:** Centers for Medicare & Medicaid Services, Health and Human Services (HHS).

**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 (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 a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate 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 on the collection(s) of information must be received by the OMB desk officer by December 2, 2024.

**ADDRESSES:** Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain). Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, please access the CMS PRA website by copying and pasting the following web address into your web browser: <https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing>.

**FOR FURTHER INFORMATION CONTACT:** William Parham at (410) 786-4669.

**SUPPLEMENTARY INFORMATION:** Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501-3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. 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 (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-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 that summarizes

the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Financial Statement of Debtor; *Use:* When a Medicare Administrative Contractor (MAC) overpays a physician or supplier, the overpayment is associated with a single claim, and the amount of the overpayment is moderate. In these cases, the physician/supplier usually refunds the overpaid amount in a lump sum. Alternatively, the MAC may recoup the overpaid amount against future payments. A recoupment is the recovery by Medicare of any outstanding Medicare debt by reducing present or future Medicare payments and applying the amount withheld to the indebtedness. The recoupment can be made only if the physician/supplier accepts assignment since the MAC makes payment to the physician/supplier only on assigned claims.

The physician/supplier may be unable to refund a large overpaid amount in a single payment. The MAC cannot recover the overpayment by recoupment if the physician/supplier does not accept assignment of future claims or is not expected to file future claims because of going out of business, illness or death. In these unusual circumstances, the MAC has authority to approve or deny extended repayment schedules up to 12-months or may recommend to the Centers for Medicare and Medicaid Services (CMS) to approve up to 60 months. Before the MAC takes these actions, the MAC will require full documentation of the physician's/supplier's financial situation. Thus, the physician/supplier must complete the CMS-379, Financial Statement of Debtor.

Section 1893(f)(1) of the Social Security Act and 42 CFR 401.607 provides the authority for collection of this information. Section 42 CFR 405.607 requires that, CMS recover amounts of claims due from debtors including interest where appropriate by direct collections in lump sums or in installments. *Form Number:* CMS-379 (OMB control number: 0938-0270); *Frequency:* Yearly; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 500; *Total Annual Responses:* 500; *Total Annual Hours:* 1,000 hours. (For policy questions regarding this collection

contact Monica Thomas, at 410-786-4292.)

**William N. Parham, III,**  
*Director, Division of Information Collections and Regulatory Impacts, Office of Strategic Operations and Regulatory Affairs.*

[FR Doc. 2024-25331 Filed 10-30-24; 8:45 am]

**BILLING CODE 4120-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Community Living

#### Agency Information Collection Activities: Submission for OMB Review; Public Comment Request; for the State Annual Long-Term Care Ombudsman Report (OMB Control Number 0985-0005)

**AGENCY:** Administration for Community Living, HHS.

**ACTION:** Notice.

**SUMMARY:** The Administration for Community Living (ACL) is announcing that the proposed collection of information listed above has been submitted to the Office of Management and Budget (OMB) for review and clearance as required under section 506(c)(2)(A) of the Paperwork Reduction Act of 1995. This 30-day notice collects comments on the information collection requirements related to the proposed new information collection requirements relating to the State Annual Long-Term Care Ombudsman Report (OMB Control Number 0985-0005).

**DATES:** Comments on the collection of information must be submitted electronically by 11:59 p.m. (ET) or postmarked. December 2, 2024.

**ADDRESSES:** Submit written comments and recommendations for the proposed information collection within 30 days of publication of this notice to [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain).

Find the information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function. By mail to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW, Rm. 10235, Washington, DC 20503, Attention: OMB Desk Officer for ACL.

**FOR FURTHER INFORMATION CONTACT:** Beverly Laubert, [Beverly.Laubert@acl.hhs.gov](mailto:Beverly.Laubert@acl.hhs.gov), (202) 795-7364.

**SUPPLEMENTARY INFORMATION:** In compliance with 44 U.S.C. 3507, ACL has submitted the following proposed collection of information to OMB for review and clearance. The State Annual

Long-Term Care Ombudsman Report is needed to comply with Administration for Community Living/Administration on Aging reporting requirements in the Older Americans Act (OAA); and 45 CFR 1324.21(b) (1) and (b)(2)(v). The Long-Term Care Ombudsman Report is used to measure the services and strategies that are provided to assist residents in the protection of their health, safety, welfare, or rights; advocate at the state and federal levels for changes needed to improve the quality of life and care in long-term care facilities; and effectively manage the Long-Term Care Ombudsman Program at the state and federal level. The National Ombudsman Reporting System (NORS) was developed in response to these needs and directives. Section 712(c) of the OAA requires the state agency to establish a statewide uniform reporting system to:

(1) Collect and analyze data relating to resident complaints and conditions in long-term care facilities for the purpose of identifying and resolving significant problems.

and

(2) Submit the data on a regular basis to the state licensing/certifying agency, other state and federal entities that the Ombudsman determines to be appropriate, the Assistant Secretary for Aging, and the National Long-Term Care Ombudsman Resource Center.

#### Comments in Response to the 60-Day Federal Register Notice

In accordance with 5 CFR 1320.8(d), ACL published a 60-day Notice in the **Federal Register** on August 6, 2024, at 89 FR 63955–63956.

Please see public comments received during the 60-day notice and ACLs response to comments listed below.

ACL received comments from individuals and groups including the National Association of State Ombudsman Programs (NASOP); the National Association of Local Long-Term Care Ombudsmen (NALLTCO), the California Long-Term Care Ombudsman Association (CLTCOA), National Ombudsman Resource Center (NORC), and a gerontologist/researcher.

Commenters who addressed the utility of the data and burden estimates supported the continuation of the NORS collection. NALLTCO recommended that ACL conduct a future study of the documentation burden on local long-term care Ombudsmen.

NASOP recommended that changes in data elements be undertaken with ample time to adjust state systems and receive training before implementation, with a request for ACL grant funding for implementation costs. Both

recommendations were deferred for future consideration if funding is available. Regarding recommendations specific to adding or removing data elements, ACL opts to hold those suggestions for future revision after further consideration and analysis of impact of the changes; including the impact on State Ombudsman programs that would need to change their data collection systems. Comments that ACL accepted were changes to instructions and examples and reporting tips for clarity.

Most of the comments were requests to modify instructional examples and reporting tips. Some of the recommendations indicated misunderstandings that can be resolved with technical assistance, the below nine comments/recommendations were accepted.

*Comment 1:* One respondent requested clarification on how to code complaint disposition when a resident dies before an outcome of the complaint has been obtained.

*Response 1:* Reporting tips were changed to instruct the Ombudsman to report such instances as withdrawn when there is not a resident representative to determine resolution.

*Comment 2:* One respondent requested revision to complaint type F01—Accidents and falls to update language from describing a resident who self-propels to a resident who uses a wheelchair independently.

*Response 2:* The example was updated accordingly.

*Comment 3, 4:* Two respondents recommended changing how volunteer representatives are counted to include all volunteers who were representatives during the reporting year. Current instructions are to count volunteers as the number on September 30 of the fiscal year.

*Response 3,4:* The description was updated to ensure that all volunteer representatives are counted.

*Comment 5:* One respondent requested that ACL allow newsletters and other forms of media to be counted as community education.

*Response 5:* As use of social media and other electronic means of imparting information has increased, community education activities are under-reported within current instructions. A revision to the instructions was made to accommodate the request.

*Comment 6, 7:* Two respondents recommended a change to the description of complaint type I03—Supplies, storage, and furnishings to include facility failure to properly store hazardous chemicals and other hazards.

*Response 6, 7:* I03 is a complaint type about shortage of supplies. Instead, the examples and reporting tips for I01—Environment were revised to accommodate the comments.

*Comment 8:* One respondent suggested modifying the description of program activity elements S64 and S65—Resident council participation to include instances of training to resident groups that might not be formal resident councils.

*Response 8:* The modification was made to accommodate the suggestion. A corresponding change was made to S66 and S67—Family council participation.

*Comment 9:* One respondent requested that ACL remove the requirement to report expenditures in NORS or, in the alternative, specify that expenditures be reported as obligated.

*Response 9:* ACL has worked to reconcile multiple means of financial reporting. The NORS requirement will not be removed because NORS is the source of publicly reported information about Ombudsman program resources. However, the examples and reporting tips were modified to instruct states to report using consistent accounting methods.

ACL received the following comments and did not accept them for inclusion in NORS.

*Comment:* One respondent recommended including “fear” of retaliation in the complaint type where retaliation is reported and adding a complaint code for theft of medications.

*Response:* Because such problems can be captured within existing complaint codes, it is not necessary to add to the collection.

*Comment:* One respondent suggested adding to the definition of complainant to capture referrals from legislators.

*Response:* ACL will provide technical assistance about reporting entities that make referrals, which is different from complainants.

*Comment:* Two respondents suggested removing the verification data element because Ombudsman programs work to resolve all problems expressed by residents.

*Response:* Verification is key to the purpose of investigation and ACL will provide technical assistance if needed to supplement training provided by the NORC.

*Comment:* One respondent suggested changing language from “perpetrator” to “aggressor” when a complaint involves a resident living with dementia.

*Response:* In the example described in the comment, the use of the abuse complaint type could be incorrect; ACL and NORC will provide technical assistance on how to code complaints to



reflect resident experience rather than changing a term that is commonly used in abuse investigations by other entities.

*Comment:* Three respondents recommended modification to the psychological abuse complaint code to include social media posts and posting of photographs.

*Response:* The current reporting tips include oral, written, or gestured language and are sufficient to include social media posts. Photos are also included in the reporting tips.

*Comment:* Three respondents recommended adding language to complaint types in the category of autonomy, choice, and rights to address emergence of artificial intelligence to monitor residents.

*Response:* This issue requires further review and will be considered for future revisions.

*Comment:* One respondent suggested adding a reporting tip to complaint type F10- Rehabilitation services to instruct Ombudsmen how to report contractures as gross neglect.

*Response:* Further review is needed, and this suggestion will be considered for future revisions.

*Comment:* One respondent recommended that instruction be added to select staffing as a secondary complaint and to broaden the definition of staffing.

*Response:* The use of secondary complaint codes when a resident or complainant has not expressed staffing as a complaint would be a significant change in practice with potential unintended consequences. This requires further review and may be considered in future revisions. The existing definition of J03—Staffing is sufficiently inclusive of staffing vacancies.

*Comment:* Two respondents recommended adding language to the definition and examples for complaint type L01—Resident representative or family conflict to include other visitors with different types of relationships.

*Response:* The complaint type as currently defined is specific to the nature of the relationships of family members and individuals that residents choose to be their representative; adding others could dilute the meaning of the data element.

*Comment:* Two respondents requested the addition of a new complaint type for reporting resident-to-resident altercations that are not willful abuse.

*Response:* ACL is not adding or removing data elements with this renewal but will consider this recommendation in the future after analysis of impact and alternatives within the existing collection.

*Comment:* Three respondents recommended adding a new category of complaints and individual complaint types about discrimination.

*Response:* ACL is not adding or removing elements but will seek additional input and consider this change in the future after analysis of impact.

*Comment:* Two respondents suggested adding a new complaint category to allow for short-term collection of data for a special purpose.

*Response:* ACL is not adding or removing elements with this renewal but will consider the recommendation after analysis of impact and alternatives.

*Comment:* One respondent asserted that complaint/case terminology in data elements S01–S06 is confusing.

*Response:* The data elements are text fields and provide flexibility for the State Ombudsman to describe complaints as they determine best. Technical assistance will be provided.

*Comment:* One respondent requested clarification about reporting hours donated by volunteers when the volunteer receives travel reimbursement.

*Response:* The Older Americans Act allows for reimbursement and travel is included in the current examples and reporting tips.

*Comment:* One respondent requested clarification about removal or remediation of conflicts of interest.

*Response:* How conflicts of interest are addressed is a matter of rule (45 CFR 1324.21(b)) implementation and technical assistance will be provided as part of broader regulatory guidance.

*Comment:* One respondent suggested the addition of a code for a specific type of expenditure.

*Response:* ACL is not adding or removing data elements with this revision of NORS but will consider this change in the future.

*Comment:* One respondent suggested clarification of local funds expended.

*Response:* The instruction is written as intended and technical assistance will be provided.

*Comment:* Four respondents recommended changes to routine access visitation reporting.

*Response:* Routine access visits as defined are an important measure of resident access to their advocate separate from visits to handle complaints, as well as a measure of the impact of program funding. ACL will explore this request further and consider a change in the future; data elements are not being changed in this revision.

*Comment:* Three respondents commented that instructions are vague

about how to report the number of facilities and that closures have an impact on how routine access visits are measured on a quarterly basis.

*Response:* The examples and tips are specific that the count of facilities is as of the last day of the federal fiscal year. Routine access is based upon the count of facilities as of the last day of the fiscal year. The data element is defined as intended, routine access does not include facilities that open after the first quarter or close before the fourth quarter of the fiscal year. Technical assistance will be provided.

*Comment:* One respondent requested a new data element for reporting facility closures.

*Response:* At this time ACL is not adding or removing elements but will consider this change in the future after analysis of impact and alternatives.

*Comment:* Two respondents requested new Ombudsman program staffing data elements—statewide turnover rates, years of experience of Ombudsman representatives, and the staff-to-bed ratio of staff.

*Response:* At this time ACL is not adding or removing elements but will consider this change in the future after analysis of potential methods of collection.

### Estimated Program Burden

ACL estimates the burden of this collection of information as follows:

Fifty-two grantees report to ACL using NORS.

- a. Number of respondents—52
- b. Frequency of response—1
- c. Total annual responses—52
- d. Hours per response—214
- e. Total burden hours—11,153

Dated: October 28, 2024.

**Maura Calsyn,**

*Principal Deputy Administrator for the Administration for Community Living, performing the delegable duties of the Administrator and the Assistant Secretary for Aging.*

[FR Doc. 2024–25358 Filed 10–30–24; 8:45 am]

**BILLING CODE 4154–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. FDA–2023–D–0093]

### M13A Bioequivalence for Immediate-Release Solid Oral Dosage Forms; International Council for Harmonisation; Guidance for Industry; Availability

**AGENCY:** Food and Drug Administration, HHS.



**ACTION:** Notice of availability.

**SUMMARY:** The Food and Drug Administration (FDA or Agency) is announcing the availability of a final guidance for industry entitled “M13A Bioequivalence for Immediate-Release Solid Oral Dosage Forms” and the supplemental document entitled “M13A Bioequivalence for Immediate-Release Solid Oral Dosage Forms: Questions and Answers.” The guidance and supplemental questions and answers document were prepared under the auspices of the International Council for Harmonisation of Technical Requirements for Pharmaceuticals for Human Use (ICH). The guidance describes the scientific and technical aspects of study design and data analysis to support bioequivalence (BE) assessment of orally administered immediate-release solid oral dosage forms of pharmaceutical drugs, such as tablets, capsules, and granules/powders for oral suspension. The supplemental questions and answers document provides clarity to concepts covered in the guidance and rationales behind to facilitate implementation. The guidance is intended to provide globally harmonized scientific recommendations for conducting BE studies during both the development and postapproval phases of immediate-release solid oral dosage forms. The guidance replaces the draft guidance “M13A Bioequivalence for Immediate-Release Solid Oral Dosage Forms” issued on February 1, 2023.

**DATES:** The announcement of the guidance is published in the **Federal Register** on October 31, 2024.

**ADDRESSES:** You may submit either electronic or written comments on Agency guidances at any time as follows:

#### *Electronic Submissions*

Submit electronic comments in the following way:

- *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact

information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see “Written/Paper Submissions” and “Instructions”).

#### *Written/Paper Submissions*

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in “Instructions.”

*Instructions:* All submissions received must include the Docket No. FDA-2023-D-0093 for “M13A Bioequivalence for Immediate-Release Solid Oral Dosage Forms” and “M13A Bioequivalence for Immediate-Release Solid Oral Dosage Forms Questions and Answers.” Received comments will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240-402-7500.

- *Confidential Submissions*—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states “THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.” The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as “confidential.” Any information marked

as “confidential” will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

*Docket:* For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the “Search” box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240-402-7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of this guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993-0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

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

*Regarding the guidance:* Lei Zhang, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 75, Rm. 4724, Silver Spring, MD 20993-0002, [Leik.Zhang@fda.hhs.gov](mailto:Leik.Zhang@fda.hhs.gov).

*Regarding the ICH:* Jill Adleberg, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6364, Silver Spring, MD 20993-0002, 301-796-5259, [Jill.Adleberg@fda.hhs.gov](mailto:Jill.Adleberg@fda.hhs.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

FDA is announcing the availability of a final guidance for industry entitled “M13A Bioequivalence for Immediate-Release Solid Oral Dosage Forms” and the supplemental document entitled “M13A Bioequivalence for Immediate-Release Solid Oral Dosage Forms: Questions and Answers.” The guidance and supplemental questions and answers document were prepared under the auspices of ICH. ICH seeks to achieve greater regulatory harmonization worldwide to ensure that safe, effective, high-quality medicines are developed, registered, and

maintained in the most resource-efficient manner.

By harmonizing the regulatory requirements in regions around the world, ICH guidelines enhance global drug development, improve manufacturing standards, and increase the availability of medications. For example, ICH guidelines have substantially reduced duplicative clinical studies, prevented unnecessary animal studies, standardized the reporting of important safety information, and standardized marketing application submissions.

The six Founding Members of the ICH are the FDA; the Pharmaceutical Research and Manufacturers of America; the European Commission; the European Federation of Pharmaceutical Industries Associations; the Japanese Ministry of Health, Labour, and Welfare; and the Japanese Pharmaceutical Manufacturers Association. The Standing Members of the ICH Association include Health Canada and Swissmedic. ICH membership continues to expand to include other regulatory authorities and industry associations from around the world (refer to <https://www.ich.org/>).

ICH works by engaging global regulatory and industry experts in a detailed, science-based, and consensus-driven process that results in the development of ICH guidelines. The regulators around the world are committed to consistently adopting these consensus-based guidelines, realizing the benefits for patients and for industry.

As a Founding Regulatory Member of ICH, FDA plays a major role in the development of each of the ICH guidelines, which FDA then adopts and issues as guidance for industry. FDA's guidance documents do not establish legally enforceable responsibilities. Instead, they describe the Agency's current thinking on a topic and should be viewed only as recommendations, unless specific regulatory or statutory requirements are cited.

In the **Federal Register** of February 1, 2023 (88 FR 6750), FDA published a notice announcing the availability of a draft guidance entitled "M13A Bioequivalence for Immediate-Release Solid Oral Dosage Forms; International Council for Harmonisation." The notice gave interested persons an opportunity to submit comments by April 3, 2023.

After consideration of the comments received and revisions to the guideline, a final draft of the guideline was submitted to the ICH Assembly and endorsed by the regulatory agencies in July 2024.

This guidance finalizes the draft guidance issued on February 1, 2023. The final guidance includes clarification on the scientific and technical aspects of study design and data analysis to support BE assessment for orally administered immediate-release solid oral dosage forms. The supplemental questions and answers document provides further clarification and examples of the technical aspects of the main guidance in order to effectively implement the guidance. The internationally harmonized guidance and questions and answers document aim to increase the efficiency of drug development and accelerate the availability of safe and effective orally administered immediate-release solid oral dosage forms.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on "M13A Bioequivalence for Immediate-Release Solid Oral Dosage Forms". The guidance and supplemental questions and answers document do not establish any rights for any person and are not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

## II. Paperwork Reduction Act of 1995

While this guidance contains no collection of information, it does refer to previously approved FDA collections of information. The previously approved collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521). The collections of information in 21 CFR 314.94 for content and format for BE studies submitted under abbreviated new drug applications have been approved under OMB control number 0910–0001. The collections of information for the implementation of improved quality and integrity of the study data approaches pertaining to good clinical practice have been approved under OMB control number 0910–0014.

## III. Electronic Access

Persons with access to the internet may obtain the guidance at <https://www.regulations.gov>, <https://www.fda.gov/regulatory-information/search-fda-guidance-documents>, <https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs>, or <https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory>.

*information-biologics/biologics-guidances*.

Dated: October 23, 2024.

**Kimberlee Trzeciak,**

*Deputy Commissioner for Policy, Legislation, and International Affairs.*

[FR Doc. 2024–25355 Filed 10–30–24; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. FDA–2007–D–0369]

### Product-Specific Guidances; Revised Draft Guidances for Industry; Availability

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice of availability.

**SUMMARY:** The Food and Drug Administration (FDA or Agency) is announcing the availability of additional revised draft product-specific guidances. The draft guidances provide product-specific recommendations on, among other things, the design of bioequivalence (BE) studies to support abbreviated new drug applications (ANDAs). In the **Federal Register** of June 11, 2010, FDA announced the availability of a guidance for industry entitled "Bioequivalence Recommendations for Specific Products" that explained the process that would be used to make product-specific guidances available to the public on FDA's website. The draft guidances identified in this notice were developed using the process described in that guidance.

**DATES:** Submit either electronic or written comments on the draft guidance by December 30, 2024 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

**ADDRESSES:** You may submit comments on any guidance at any time as follows:

#### *Electronic Submissions*

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:**

<https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a

third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

#### Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

*Instructions:* All submissions received must include the Docket No. FDA-2007-D-0369 for "Product-Specific Guidances; Draft and Revised Draft Guidances for Industry." Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240-402-7500.

- *Confidential Submissions*—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management

Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

*Docket:* For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240-402-7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993-0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

#### FOR FURTHER INFORMATION CONTACT:

Joseph Kotsybar, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 75, Rm. 3623A, Silver Spring, MD 20993-0002, 240-402-1062, [PSG-Questions@fda.hhs.gov](mailto:PSG-Questions@fda.hhs.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

In the **Federal Register** of June 11, 2010 (75 FR 33311), FDA announced the availability of a guidance for industry entitled "Bioequivalence Recommendations for Specific Products" that explained the process that would be used to make product-specific guidances available to the public on FDA's website at <https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs>.

As described in that guidance, FDA adopted this process as a means to develop and disseminate product-specific guidances and provide a meaningful opportunity for the public to consider and comment on those guidances. Under that process, draft guidances are posted on FDA's website and announced periodically in the **Federal Register**. The public is encouraged to submit comments on those recommendations within 60 days of their announcement in the **Federal Register**. FDA considers any comments received and either publishes final guidances or publishes revised draft guidances for comment. Guidances were last announced in the **Federal Register** on August 23, 2024 (89 FR 68162).

This notice announces revised draft product-specific guidances that are being posted on FDA's website for a subset of immediate-release oral drug products to reflect FDA's current thinking and to align the bioequivalence recommendations with the recently adopted International Council for Harmonisation of Technical Requirements for Pharmaceuticals for Human Use M13A guideline titled "M13A Bioequivalence for Immediate-Release Solid Oral Dosage Forms" (October 2024). These revised product-specific guidances recommend that ANDA applicants conduct one bioequivalence study for products with a non-high risk of bioinequivalence due to food effect under either fasting or fed condition rather than conducting two bioequivalence studies: one BE study under fasting conditions, and one BE study under fed conditions. Other revisions, including revisions to align the recommendations in these PSGs with the recently adopted M13A guideline and editorial revisions, are incorporated as appropriate. FDA recommends that applicants consult the relevant product-specific guidance, in conjunction with general guidances on bioequivalence, when considering the design and conduct of studies supporting an evaluation of BE for immediate-release solid oral dosage forms.

##### II. Drug Products for Which Revised Draft Product-Specific Guidances Are Available

FDA is announcing the availability of revised draft product-specific guidances for industry for drug products containing the following active ingredients:

TABLE 1—REVISED DRAFT PRODUCT-SPECIFIC GUIDANCES FOR DRUG PRODUCTS

Active ingredient(s)
Abacavir sulfate
Abacavir sulfate; Dolutegravir sodium; Lamivudine (multiple reference listed drugs)
Abacavir sulfate; Lamivudine
Abacavir sulfate; Lamivudine; Zidovudine
Abemaciclib
Abrocitinib
Acalabrutinib
Acetaminophen; Aspirin; Caffeine
Acetaminophen; Benzhydrocodone hydrochloride
Acetaminophen; Butalbital; Caffeine; Codeine phosphate
Acetaminophen; Ibuprofen
Acetaminophen; Propoxyphene napsylate
Acetaminophen; Tramadol hydrochloride
Acetazolamide
Acetylcysteine
Acrivastine; Pseudoephedrine hydrochloride
Acyclovir (multiple reference listed drugs)
Adagrasib
Adefovir dipivoxil
Albuterol sulfate
Allopurinol; Lesinurad
Almotriptan malate
Alogliptin benzoate
Alogliptin benzoate; Metformin hydrochloride
Alogliptin benzoate; Pioglitazone hydrochloride
Alosetron hydrochloride
Alprazolam (multiple reference listed drugs)
Amantadine hydrochloride (multiple reference listed drugs)
Ambrisentan
Amifampridine phosphate
Amiloride hydrochloride
Aminocaproic acid
Amiodarone hydrochloride
Amitriptyline hydrochloride
Amitriptyline hydrochloride; Chlordiazepoxide
Amlodipine benzoate
Amlodipine besylate
Amlodipine besylate; Atorvastatin calcium
Amlodipine besylate; Benazepril hydrochloride
Amlodipine besylate; Celecoxib
Amlodipine besylate; Hydrochlorothiazide; Olmesartan medoxomil
Amlodipine besylate; Hydrochlorothiazide; Valsartan
Amlodipine besylate; Olmesartan medoxomil
Amlodipine besylate; Perindopril arginine
Amlodipine besylate; Valsartan
Amoxicillin (multiple reference listed drugs)
Amoxicillin; Clarithromycin; Vonoprazan fumarate
Amoxicillin; Clavulanate potassium (multiple reference listed drugs)
Amoxicillin; Vonoprazan fumarate
Amphetamine aspartate; Amphetamine sulfate; Dextroamphetamine saccharate; Dextroamphetamine sulfate
Anagrelide hydrochloride
Anastrozole
Apixaban
Apremilast
Aripiprazole (multiple reference listed drugs)
Armodafinil
Aspirin
Aspirin; Butalbital; Caffeine; Codeine phosphate
Atazanavir sulfate
Atazanavir sulfate; Cobicistat
Atenolol
Atenolol; Chlorthalidone
Atomoxetine hydrochloride
Atorvastatin calcium (multiple reference listed drugs)
Atorvastatin calcium; Ezetimibe
Atovaquone (multiple reference listed drugs)
Auranofin
Avanafil
Avatrombopag maleate
Axitinib
Azilsartan kamedoxomil
Azilsartan kamedoxomil; Chlorthalidone

TABLE 1—REVISED DRAFT PRODUCT-SPECIFIC GUIDANCES FOR DRUG PRODUCTS—Continued

Active ingredient(s)
Azithromycin (multiple reference listed drugs)
Baclofen (multiple reference listed drugs)
Baloxavir marboxil (multiple reference listed drugs)
Baricitinib
Bedaquiline fumarate
Belumosudil mesylate
Bempedoic acid
Bempedoic acid; Ezetimibe
Benazepril hydrochloride
Benazepril hydrochloride; Hydrochlorothiazide
Benznidazole
Berotralstat hydrochloride
Bexagliflozin
Bicalutamide
Binimetinib
Bisoprolol fumarate
Bisoprolol fumarate; Hydrochlorothiazide
Boceprevir
Bosentan (multiple reference listed drugs)
Bosutinib monohydrate
Brexiprazole
Brincidofovir
Brivaracetam
Bumetanide
Bupropion hydrochloride
Buspirone hydrochloride
Cabotegravir sodium
Calcium carbonate; Famotidine; Magnesium hydroxide
Canagliflozin
Canagliflozin; Metformin hydrochloride
Candesartan cilexetil
Candesartan cilexetil; Hydrochlorothiazide
Capmatinib hydrochloride
Carbidopa
Carbidopa; Entacapone; Levodopa
Carbidopa; Levodopa (multiple reference listed drugs)
Carglumic acid
Cariprazine hydrochloride
Carisoprodol
Carvedilol
Cefaclor
Cefadroxil/cefadroxil hemihydrate
Cefdinir (multiple reference listed drugs)
Cefditoren pivoxil
Cefixime (multiple reference listed drugs)
Cefpodoxime proxetil (multiple reference listed drugs)
Cefprozil (multiple reference listed drugs)
Cefuroxime axetil (multiple reference listed drugs)
Celecoxib; Tramadol hydrochloride
Cenobamate
Cephalexin (multiple reference listed drugs)
Ceritinib (multiple reference listed drugs)
Cetirizine hydrochloride (multiple reference listed drugs)
Cevimeline hydrochloride
Chenodiol
Chlordiazepoxide hydrochloride
Chlordiazepoxide hydrochloride; Clidinium bromide
Chlorothiazide
Chlorpheniramine maleate; Ibuprofen; Phenylephrine hydrochloride
Chlorpheniramine maleate; Ibuprofen; Pseudoephedrine hydrochloride
Chlorpromazine hydrochloride
Chlorthalidone (multiple reference listed drugs)
Chlorzoxazone
Cholic acid
Cimetidine
Cinacalcet hydrochloride
Ciprofloxacin
Ciprofloxacin hydrochloride
Citalopram hydrobromide (multiple reference listed drugs)
Clarithromycin (multiple reference listed drugs)
Clemastine fumarate (multiple reference listed drugs)
Clindamycin hydrochloride

TABLE 1—REVISED DRAFT PRODUCT-SPECIFIC GUIDANCES FOR DRUG PRODUCTS—Continued

Active ingredient(s)
Clobazam (multiple reference listed drugs)
Clomiphene citrate
Clomipramine hydrochloride
Clonazepam (multiple reference listed drugs)
Clonidine hydrochloride
Clopidogrel bisulfate
Clorazepate dipotassium
Cobicistat
Cobimetinib fumarate
Colchicine (multiple reference listed drugs)
Crizotinib
Cyclobenzaprine hydrochloride
Cycloserine
Daclatasvir dihydrochloride
Dacomitinib
Dantrolene sodium
Dapagliflozin
Dapagliflozin; Saxagliptin hydrochloride
Daprodustat
Dapsone
Darolutamide
Darunavir (multiple reference listed drugs)
Dasatinib
Deferiprone
Deflazacort (multiple reference listed drugs)
Delafloxacin meglumine
Delavirdine mesylate
Desipramine hydrochloride
Desloratadine (multiple reference listed drugs)
Desmopressin acetate
Desogestrel; Ethinyl estradiol (multiple reference listed drugs)
Dexamethasone
Dexmethylphenidate hydrochloride
Dexmethylphenidate hydrochloride; Serdexmethylphenidate chloride
Dextromethorphan hydrobromide; Quinidine sulfate
Diazepam
Diazoxide
Dichlorphenamide
Diclofenac
Diclofenac potassium (multiple reference listed drugs)
Dicyclomine hydrochloride (multiple reference listed drugs)
Dienogest; Estradiol valerate
Diflunisal
Diphenhydramine citrate; Ibuprofen
Diphenhydramine hydrochloride
Diphenhydramine hydrochloride; Ibuprofen
Diphenhydramine hydrochloride; Naproxen sodium
Dipyridamole
Disopyramide phosphate
Disulfiram
Dofetilide
Dolasetron mesylate
Dolutegravir sodium (multiple reference listed drugs)
Dolutegravir sodium; Lamivudine
Dolutegravir sodium; Rilpivirine hydrochloride
Donepezil hydrochloride (multiple reference listed drugs)
Doxazosin mesylate
Doxepin hydrochloride (multiple reference listed drugs)
Doxycycline (multiple reference listed drugs)
Doxycycline calcium
Doxycycline hyclate (multiple reference listed drugs)
Dronedarone hydrochloride
Drospirenone
Drospirenone; Estetrol
Drospirenone; Estradiol
Drospirenone; Ethinyl estradiol (multiple reference listed drugs)
Drospirenone; Ethinyl estradiol; Levomefolate calcium
Droxidopa
Duvelisib
Elacestrant dihydrochloride
Eletriptan hydrobromide
Eliglustat tartrate

TABLE 1—REVISED DRAFT PRODUCT-SPECIFIC GUIDANCES FOR DRUG PRODUCTS—Continued

Active ingredient(s)
Eltrombopag olamine (multiple reference listed drugs)
Eluxadolone
Empagliflozin
Empagliflozin; Linagliptin
Empagliflozin; Metformin hydrochloride
Emtricitabine
Emtricitabine; Rilpivirine hydrochloride; Tenofovir alafenamide fumarate
Emtricitabine; Rilpivirine hydrochloride; Tenofovir disoproxil fumarate
Emtricitabine; Tenofovir alafenamide fumarate
Emtricitabine; Tenofovir disoproxil fumarate
Enalapril maleate
Enasidenib mesylate
Entacapone
Eplerenone
Eprosartan mesylate
Eprosartan mesylate; Hydrochlorothiazide
Erdafitinib
Ertugliflozin; Metformin hydrochloride
Ertugliflozin; Sitagliptin phosphate
Erythromycin ethylsuccinate (multiple reference listed drugs)
Erythromycin ethylsuccinate; Sulfisoxazole acetyl
Escitalopram oxalate (multiple reference listed drugs)
Eslicarbazepine acetate
Estradiol
Estradiol; Norethindrone acetate
Estrogens, esterified
Eszopiclone
Ethacrynic acid
Ethambutol hydrochloride
Ethinyl estradiol; Ethynodiol diacetate
Ethinyl estradiol; Levonorgestrel (multiple reference listed drugs)
Ethinyl estradiol; Norethindrone (multiple reference listed drugs)
Ethinyl estradiol; Norethindrone acetate (multiple reference listed drugs)
Ethinyl estradiol; Norethindrone acetate; Ethinyl estradiol; Ferrous fumarate
Ethinyl estradiol; Norgestimate
Ethinyl estradiol; Norgestrel
Ethionamide
Ethosuximide
Etodolac (multiple reference listed drugs)
Exemestane
Ezetimibe
Ezetimibe; Simvastatin
Ezogabine
Famciclovir
Famotidine (multiple reference listed drugs)
Famotidine; Ibuprofen
Febuxostat
Fedratinib hydrochloride
Fenofibric acid
Fenoprofen calcium
Fexofenadine hydrochloride (multiple reference listed drugs)
Finasteride
Finerenone
Fingolimod hydrochloride
Fingolimod lauryl sulfate
Flavoxate hydrochloride
Flecainide acetate
Flibanserin
Fluconazole
Flucytosine
Fludrocortisone acetate
Fluoxetine hydrochloride (multiple reference listed drugs)
Fluoxetine hydrochloride; Olanzapine
Fluphenazine hydrochloride
Flutamide
Fluvastatin sodium
Fosamprenavir calcium
Fosinopril sodium
Fosinopril sodium; Hydrochlorothiazide
Frovatriptan succinate
Furosemide
Futibatinib

TABLE 1—REVISED DRAFT PRODUCT-SPECIFIC GUIDANCES FOR DRUG PRODUCTS—Continued

Active ingredient(s)
Gabapentin (multiple reference listed drugs)
Galantamine hydrobromide
Ganaxolone
Ganciclovir
Gefitinib
Gemifloxacin mesylate
Gilteritinib fumarate
Glasdegib maleate
Glimepiride
Glimepiride; Pioglitazone hydrochloride
Glimepiride; Rosiglitazone maleate
Glipizide
Glipizide; Metformin hydrochloride
Glyburide (multiple reference listed drugs)
Glyburide; Metformin hydrochloride
Granisetron hydrochloride
Griseofulvin, microcrystalline; Griseofulvin, microsize
Guanfacine hydrochloride
Haloperidol
Hydralazine hydrochloride; Isosorbide dinitrate
Hydrochlorothiazide (multiple reference listed drugs)
Hydrochlorothiazide; Irbesartan
Hydrochlorothiazide; Lisinopril
Hydrochlorothiazide; Losartan potassium
Hydrochlorothiazide; Metoprolol tartrate
Hydrochlorothiazide; Olmesartan medoxomil
Hydrochlorothiazide; Quinapril hydrochloride
Hydrochlorothiazide; Spironolactone
Hydrochlorothiazide; Triamterene (multiple reference listed drugs)
Hydrochlorothiazide; Valsartan
Hydrocodone bitartrate; Ibuprofen
Hydrocortisone
Hydromorphone hydrochloride
Hydroxychloroquine sulfate
Hydroxyzine pamoate (multiple reference listed drugs)
Ibexafungerp citrate
Ibrutinib (multiple reference listed drugs)
Ibuprofen (multiple reference listed drugs)
Ibuprofen sodium
Ibuprofen; Phenylephrine hydrochloride
Ibuprofen; Pseudoephedrine hydrochloride (multiple reference listed drugs)
Icosapent ethyl
Idelalisib
Iloperidone
Imipramine pamoate
Indapamide
Indinavir sulfate
Indomethacin (multiple reference listed drugs)
Irbesartan
Isavuconazonium sulfate
Isocarboxazid
Isosorbide dinitrate (multiple reference listed drugs)
Isradipine
Istradefylline
Ivabradine hydrochloride
Ketoconazole
Ketoprofen
Ketorolac tromethamine
Lacosamide
Lamivudine (multiple reference listed drugs)
Lamivudine; Tenofovir disoproxil fumarate (multiple reference listed drugs)
Lamivudine; Zidovudine
Lamotrigine (multiple reference listed drugs)
Larotrectinib sulfate
Lasmiditan succinate
Leflunomide
Lemborexant
Lenalidomide
Lesinurad
Letermovir
Letrozole
Letrozole; Ribociclib succinate



TABLE 1—REVISED DRAFT PRODUCT-SPECIFIC GUIDANCES FOR DRUG PRODUCTS—Continued

Active ingredient(s)
Leucovorin calcium
Levetiracetam (multiple reference listed drugs)
Levocarnitine
Levocetirizine dihydrochloride (multiple reference listed drugs)
Levofloxacin
Levonorgestrel
Levorphanol tartrate
Linagliptin
Linagliptin; Metformin hydrochloride
Linezolid (multiple reference listed drugs)
Lisdexamfetamine dimesylate (multiple reference listed drugs)
Lisinopril
Lofexidine hydrochloride
Loperamide hydrochloride (multiple reference listed drugs)
Loperamide hydrochloride; Simethicone
Loratadine (multiple reference listed drugs)
Lorazepam
Lumateperone tosylate
Lurasidone hydrochloride
Lusutrombopag
Macitentan
Maraviroc
Maribavir
Mavacamten
Mecamylamine hydrochloride
Medroxyprogesterone acetate
Mefenamic acid
Megestrol acetate
Meloxicam (multiple reference listed drugs)
Memantine hydrochloride
Mesna
Mestranol; Norethindrone
Metformin hydrochloride
Metformin hydrochloride; Pioglitazone hydrochloride
Metformin hydrochloride; Repaglinide
Metformin hydrochloride; Sitagliptin phosphate
Methazolamide
Methenamine hippurate
Methimazole
Methoxsalen (multiple reference listed drugs)
Methsuximide
Methylegonovine maleate
Methylphenidate hydrochloride (multiple reference listed drugs)
Methylprednisolone
Methyltestosterone
Metoclopramide hydrochloride (multiple reference listed drugs)
Metolazone
Metoprolol tartrate
Metyrosine
Mexiletine hydrochloride
Midodrine hydrochloride
Miglustat
Milnacipran hydrochloride
Minocycline hydrochloride (multiple reference listed drugs)
Minoxidil
Mirtazapine (multiple reference listed drugs)
Mitapivat sulfate
Mobocertinib succinate
Modafinil
Molindone hydrochloride
Montelukast sodium (multiple reference listed drugs)
Morphine sulfate
Moxidectin
Moxifloxacin hydrochloride
Mycophenolate mofetil (multiple reference listed drugs)
Nabumetone
Nadolol
Naldemedine tosylate
Naltrexone hydrochloride
Naproxen (multiple reference listed drugs)
Naproxen sodium (multiple reference listed drugs)
Naratriptan hydrochloride

TABLE 1—REVISED DRAFT PRODUCT-SPECIFIC GUIDANCES FOR DRUG PRODUCTS—Continued

Active ingredient(s)
Nateglinide
Nebivolol hydrochloride
Nebivolol hydrochloride; Valsartan
Neratinib maleate
Netupitant; Palonosetron hydrochloride
Nevirapine (multiple reference listed drugs)
Nicardipine hydrochloride
Nimodipine
Nitisinone (multiple reference listed drugs)
Nitrofurantoin
Nitrofurantoin, macrocrystalline
Nitrofurantoin; Nitrofurantoin, macrocrystalline
Norethindrone (multiple reference listed drugs)
Norethindrone acetate
Nortriptyline hydrochloride
Obeticholic acid
Olanzapine (multiple reference listed drugs)
Olanzapine; Samidorphan l-malate
Olmesartan medoxomil
Omaveloxolone
Omega-3-acid ethyl esters type a
Ondansetron
Ondansetron hydrochloride
Oseltamivir phosphate (multiple reference listed drugs)
Osilodrostat phosphate
Osimertinib mesylate
Ospemifene
Oteseconazole
Oxaprozin
Oxazepam
Oxcarbazepine (multiple reference listed drugs)
Oxybutynin chloride
Oxycodone hydrochloride (multiple reference listed drugs)
Oxymetholone
Ozanimod hydrochloride
Pacritinib citrate
Palbociclib
Palonosetron hydrochloride
Panobinostat lactate
Paroxetine hydrochloride
Paroxetine mesylate (multiple reference listed drugs)
Pemigatinib
Penbutolol sulfate
Penicillin v potassium
Perampanel (multiple reference listed drugs)
Perindopril erbumine
Perphenazine
Phenelzine sulfate
Phentermine hydrochloride
Pilocarpine hydrochloride
Pimavanserin tartrate (multiple reference listed drugs)
Pimozide
Pindolol
Pioglitazone hydrochloride
Pirfenidone (multiple reference listed drugs)
Piroxicam
Pitavastatin calcium
Pitavastatin magnesium
Pitavastatin sodium
Pitolisant hydrochloride
Pomalidomide
Ponesimod
Pramipexole dihydrochloride
Prasugrel hydrochloride
Pravastatin sodium
Praziquantel
Prazosin hydrochloride
Prednisolone
Prednisolone acetate
Prednisolone sodium phosphate
Pregabalin
Primaquine phosphate

TABLE 1—REVISED DRAFT PRODUCT-SPECIFIC GUIDANCES FOR DRUG PRODUCTS—Continued

Active ingredient(s)
Prochlorperazine maleate
Promethazine hydrochloride
Propafenone hydrochloride
Propranolol hydrochloride
Propylthiouracil
Protriptyline hydrochloride
Prucalopride succinate
Pyrazinamide
Pyridostigmine bromide
Pyrimethamine
Quetiapine fumarate
Quinapril hydrochloride
Raloxifene hydrochloride
Ramelteon
Ramipril (multiple reference listed drugs)
Ranitidine hydrochloride (multiple reference listed drugs)
Relugolix
Repaglinide
Reserpine
Ribavirin (multiple reference listed drugs)
Ribociclib succinate
Rifapentine
Rilpivirine hydrochloride
Rimegepant sulfate
Riociguat
Risperidone (multiple reference listed drugs)
Rivastigmine tartrate
Rizatriptan benzoate (multiple reference listed drugs)
Roflumilast
Rolapitant hydrochloride
Ropinirole hydrochloride
Rosiglitazone maleate
Rosuvastatin calcium
Rufinamide (multiple reference listed drugs)
Ruxolitinib phosphate
Sacubitril; Valsartan
Safinamide mesylate
Sapropterin dihydrochloride
Sarecycline hydrochloride
Saxagliptin hydrochloride
Selegiline hydrochloride (multiple reference listed drugs)
Selexipag
Selpercatinib
Sertraline hydrochloride (multiple reference listed drugs)
Sibutramine hydrochloride
Sildenafil citrate (multiple reference listed drugs)
Silodosin
Simvastatin (multiple reference listed drugs)
Simvastatin; Sitagliptin phosphate
Siponimod
Sitagliptin phosphate
Sodium phenylbutyrate (multiple reference listed drugs)
Sodium phenylbutyrate; Taurursodiol
Sofosbuvir
Solifenacin succinate
Solriamfetol hydrochloride
Sotalol hydrochloride (multiple reference listed drugs)
Sotorasib
Sparsentan
Spironolactone (multiple reference listed drugs)
Stavudine
Stiripentol (multiple reference listed drugs)
Succimer
Sulfadiazine
Sulfamethoxazole; Trimethoprim (multiple reference listed drugs)
Sumatriptan succinate
Tadalafil
Tafenoquine succinate (multiple reference listed drugs)
Tamoxifen citrate
Tapentadol hydrochloride
Tasimeleuton
Tecovirimat

TABLE 1—REVISED DRAFT PRODUCT-SPECIFIC GUIDANCES FOR DRUG PRODUCTS—Continued

Active ingredient(s)
Tedizolid phosphate
Telbivudine
Telithromycin
Telotristat etiprate
Temazepam
Tenofovir alafenamide fumarate
Tenofovir disoproxil fumarate (multiple reference listed drugs)
Tepotinib hydrochloride
Terazosin hydrochloride
Terbinafine hydrochloride (multiple reference listed drugs)
Terbutaline sulfate
Teriflunomide
Testosterone undecanoate
Tetrabenazine
Tetracycline hydrochloride
Thioridazine hydrochloride
Thiothixene
Tiagabine hydrochloride
Ticagrelor
Ticlopidine hydrochloride
Timolol maleate
Tivozanib hydrochloride
Tizanidine hydrochloride
Tofacitinib citrate
Tolcapone
Tolterodine tartrate
Topiramate (multiple reference listed drugs)
Toremifene citrate
Torsemide (multiple reference listed drugs)
Trandolapril
Tranylcypromine sulfate
Trazodone hydrochloride
Triamterene
Triazolam
Triclabendazole
Trimethoprim
Trimipramine maleate
Ubrogepant
Ulipristal acetate
Uridine triacetate
Ursodiol (multiple reference listed drugs)
Valacyclovir hydrochloride
Valbenazine tosylate
Valganciclovir hydrochloride
Valsartan
Vandetanib
Vardenafil hydrochloride (multiple reference listed drugs)
Varenicline tartrate
Vericiguat
Vibegron
Vilazodone hydrochloride
Vismodegib
Vorapaxar sulfate
Vortioxetine hydrobromide
Voxelotor (multiple reference listed drugs)
Zalcitabine
Zaleplon
Zidovudine (multiple reference listed drugs)
Zileuton
Ziprasidone hydrochloride (multiple reference listed drugs)
Zolmitriptan (multiple reference listed drugs)
Zolpidem tartrate
Zonisamide

For a complete history of previously published **Federal Register** notices related to product-specific guidances, go to <https://www.regulations.gov> and enter Docket No. FDA-2007-D-0369.

These draft guidances are being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). These draft guidances, when finalized, will represent the current

thinking of FDA on, among other things, the product-specific design of BE studies to support ANDAs. They do not establish any rights for any person and are not binding on FDA or the public.

You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

### III. Paperwork Reduction Act of 1995

While these guidances contain no collection of information, they do refer to previously approved FDA collections of information. The previously approved collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). The collections of information in 21 CFR part 312 for investigational new drugs have been approved under 0910–0014. The collections of information in 21 CFR part 314 for applications for FDA approval to market a new drug and in 21 CFR part 320 for bioavailability and bioequivalence requirements have been approved under OMB control number 0910–0001.

### IV. Electronic Access

Persons with access to the internet may obtain the draft guidance at <https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs>, <https://www.fda.gov/regulatory-information/search-fda-guidance-documents>, or <https://www.regulations.gov>.

Dated: October 24, 2024.

**Kimberlee Trzeciak,**

*Deputy Commissioner for Policy, Legislation, and International Affairs.*

[FR Doc. 2024–25391 Filed 10–30–24; 8:45 am]

BILLING CODE 4164–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

#### Agency Information Collection Activities: Proposed Collection: Public Comment Request; Information Collection Request Title: Maternal and Child Health Jurisdictional Survey Instrument for the Title V Maternal and Child Health Block Grant Program

**AGENCY:** Health Resources and Services Administration (HRSA), Department of Health and Human Services.

**ACTION:** Notice.

**SUMMARY:** In compliance with the requirement for opportunity for public comment on proposed data collection projects of the Paperwork Reduction Act of 1995, HRSA announces plans to submit an Information Collection Request (ICR), described below, to the Office of Management and Budget

(OMB). Prior to submitting the ICR to OMB, HRSA seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

**DATES:** Comments on this ICR should be received no later than December 30, 2024.

**ADDRESSES:** Submit your comments to [paperwork@hrsa.gov](mailto:paperwork@hrsa.gov) or mail the HRSA Information Collection Clearance Officer, Room 14NWH04, 5600 Fishers Lane, Rockville, Maryland 20857.

**FOR FURTHER INFORMATION CONTACT:** To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email [paperwork@hrsa.gov](mailto:paperwork@hrsa.gov) or call Joella Roland, the HRSA Information Collection Clearance Officer, at (301) 443–3983.

**SUPPLEMENTARY INFORMATION:** When submitting comments or requesting information, please include the ICR title for reference.

*Information Collection Request Title:* Maternal and Child Health (MCH) Jurisdictional Survey Instrument for the Title V MCH Block Grant Program, OMB No. 0906–0042—Revision

*Abstract:* The purpose of the Title V MCH Services Block Grant is to improve the health of the nation's mothers, infants, children, including children with special health care needs, and their families by creating Federal/State partnerships that provide each State/jurisdiction with needed flexibility to respond to its individual MCH population needs. Unique to the MCH Block Grant is a commitment to performance accountability, while assuring State flexibility. Utilizing a three-tiered national performance measure framework, which includes National Outcome Measures, National Performance Measures, and Evidence-Based and -Informed Strategy Measures, State MCH Block Grant programs report annually on their performance relative to the selected national performance and outcome measures. Such reporting enables the State and Federal program offices to assess the progress achieved in key MCH priority areas and to document MCH Block Grant program accomplishments.

By legislation (section 505(a) and 506(a) of title V of the Social Security Act), the MCH Block Grant Application/Annual Report must be developed by, or in consultation with, the State MCH health agency. In establishing State reporting requirements, HRSA considers the availability of national data from Federal agencies. Data for the National Performance and Outcome Measures are pre-populated for States in the Title V Information System. Such national data

sources often do not include data from the title V jurisdiction grantees, with the exception of the District of Columbia. As a result, the eight remaining jurisdictions (*i.e.*, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, the Republic of Palau, Puerto Rico, the Republic of the Marshall Islands, the Federated States of Micronesia, and U.S. Virgin Islands) have limited access to significant data and MCH indicators, with limited resources for collecting these data.

Sponsored by HRSA, the MCH Jurisdictional Survey is designed to produce data on the physical and emotional health of mothers and children under 18 years of age in the following eight jurisdictions—American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, the Republic of Palau, Puerto Rico, the Republic of the Marshall Islands, the Federated States of Micronesia, and U.S. Virgin Islands. More specifically, the MCH Jurisdictional Survey collects information on factors related to the well-being of children, including health status, visits to health care providers, health care costs, and health insurance coverage. In addition, the MCH Jurisdictional Survey collects information on factors related to the well-being of mothers, including health risk behaviors, health conditions, and preventive health practices. Collecting these data will enable the jurisdictions to meet Federal performance reporting requirements and demonstrate the impact of MCH Block Grant funding on MCH outcomes.

The MCH Jurisdictional Survey was designed based on information-gathering activities with title V leadership and program staff in the jurisdictions, Federal experts, and organizations with relevant data collection experience. Survey items are based on the National Survey of Children's Health; the Behavioral Risk Factor Surveillance System; the Youth Behavior Surveillance System; and selected other Federal studies. The Survey is designed as a core questionnaire to be administered across all jurisdictions with a supplemental set of survey questions customized to the needs of each jurisdiction.

The MCH Jurisdictional Survey has been conducted annually since 2019, with several modifications to address emerging issues and challenges related to survey questions and methods. The 2022 extension (ICR 202203–0906–002) enhanced the detail in collecting demographic data through race and ethnicity survey questions in response to jurisdictional feedback. Since the

2022 extension, two non-substantive change requests (ICRs: 202211–0906–001, and 202404–0906–002) allowed for adjustments, such as refining hurricane-related questions, to make them more general and increasing sample sizes.

**Need and Proposed Use of the Information:** There is an ongoing need for future data collections, as data from the MCH Jurisdictional Survey is used to measure progress on national performance and outcome measures under the Title V MCH Services Block Grant Program. This survey instrument is critical to collect information on factors related to the well-being of all mothers, children, and their families in the jurisdiction MCH Block Grant programs, which address their unique MCH needs.

This revision enables continued data collection for Federal reporting and to show the impact of MCH Block Grant funding on jurisdiction MCH priorities. The current request proposes further updates to survey questions to align with new Federal data standards,

including updated guidance from OMB on collecting information on race and ethnicity.<sup>1</sup> Updates also reflect program oversight and administration needs.

To continue improving the precision of the data in all jurisdictions, HRSA also seeks to increase the sample size. Given the varying populations of children in each jurisdiction, the increased sample size varies for each jurisdiction. While the target number of interviews for each jurisdiction may be limited by funding, the maximum number of completed interviews possible for each jurisdiction is as follows: American Samoa, 450; Guam, 450; Commonwealth of the Northern Mariana Islands, 500; Republic of Palau, 250; Puerto Rico, 1,250; Republic of the Marshall Islands, 300; Federated States of Micronesia, 450; and U.S. Virgin Islands, 350.

**Likely Respondents:** The respondent universe is women age 18 or older who live in one of the eight targeted jurisdictions (American Samoa, Guam, the Commonwealth of the Northern

Mariana Islands, the Republic of Palau, Puerto Rico, the Republic of the Marshall Islands, the Federated States of Micronesia, and U.S. Virgin Islands) and who are mothers or guardians of at least one child aged 0–17 years living in the same household.

**Burden Statement:** Burden in this context means the time expended by persons to generate, maintain, retain, disclose, or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Burden hours per form	Total burden hours <sup>2</sup>
Adults—Puerto Rico .....	Screener .....	5,205	1	5,205	0.03	156.15	1,093.65
	Core .....	1,250	1	1,250	0.75	937.50	
Adults—U.S. Virgin Islands .....	Screener .....	1,457	1	1,457	0.03	43.71	288.71
	Core .....	350	1	350	0.70	245	
Adults—Guam .....	Screener .....	1,334	1	1,334	0.03	40.02	337.02
	Core .....	450	1	450	0.66	297	
Adults—American Samoa .....	Screener .....	564	1	564	0.03	16.92	345.42
	Core .....	450	1	450	0.73	328.50	
Adults—Federated States of Micronesia .....	Screener .....	625	1	625	0.03	18.75	324.75
	Core .....	450	1	450	0.68	306.00	
Adults—Republic of the Marshall Islands .....	Screener .....	360	1	360	0.03	10.80	205.80
	Core .....	300	1	300	0.65	195.00	
Adults—Common-wealth of the Northern Mariana Islands .....	Screener .....	670	1	670	0.03	20.10	395.10
	Core .....	500	1	500	0.75	375	
Adults—Republic of Palau .....	Screener .....	285	1	285	0.03	8.55	183.55
	Core .....	250	1	250	0.70	175	
Total .....	Screener .....	10,500	1	10,500	0.03	315.00	3,155
	Core .....	4,000	1	4,000	0.71	2,840.00	

The table above shows a total annual burden of 3,155 hours, a decrease from the previously estimated 3,480.52 hours in ICR 202404–0906–002. Although the total number of interviews has increased, the burden hours have declined due to two factors: (1) survey timings have been adjusted to reflect actual survey times from the three completed rounds of data collection, rather than prior estimates, and (2) eligibility assumptions and response rates have been updated based on actual

results from the same three rounds of data collection experience.

HRSA specifically requests comments on (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information

technology to minimize the information collection burden.

**Maria G. Button,**

*Director, Executive Secretariat.*

[FR Doc. 2024–25246 Filed 10–30–24; 8:45 am]

**BILLING CODE 4165–15–P**

<sup>1</sup> Office of Management and Budget, “Revisions to OMB’s Statistical Policy Directive No. 15: Standards for Maintaining, Collecting, and Presenting Federal Data on Race and Ethnicity,” 89 FR 22182–22190

(March 29, 2024), <https://www.federalregister.gov/documents/2024/03/29/2024-06469/revisions-to-ombs-statistical-policy-directive-no-15-standards-for-maintaining-collecting-and/>.

<sup>2</sup> For the purposes of this table, numbers are rounded to the nearest hundredth decimal place.

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

#### National Vaccine Injury Compensation Program; List of Petitions Received

**AGENCY:** Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

**ACTION:** Notice.

**SUMMARY:** HRSA is publishing this notice of petitions received under the National Vaccine Injury Compensation Program (the Program), as required by the Public Health Service (PHS) Act, as amended. While the Secretary of HHS is named as the respondent in all proceedings brought by the filing of petitions for compensation under the Program, the United States Court of Federal Claims is charged by statute with responsibility for considering and acting upon the petitions.

**FOR FURTHER INFORMATION CONTACT:** For information about requirements for filing petitions, and the Program in general, contact Lisa L. Reyes, Clerk of Court, United States Court of Federal Claims, 717 Madison Place NW, Washington, DC 20005, (202) 357–6400. For information on HRSA's role in the Program, contact the Director, National Vaccine Injury Compensation Program, 5600 Fishers Lane, Room 8W–25A, Rockville, Maryland 20857; (301) 443–6593, or visit our website at: <http://www.hrsa.gov/vaccinecompensation/index.html>.

**SUPPLEMENTARY INFORMATION:** The Program provides a system of no-fault compensation for certain individuals who have been injured by specified childhood vaccines. Subtitle 2 of title XXI of the PHS Act, 42 U.S.C. 300aa–10 *et seq.*, provides that those seeking compensation are to file a petition with the United States Court of Federal Claims and to serve a copy of the petition to the Secretary of HHS, who is named as the respondent in each proceeding. The Secretary has delegated this responsibility under the Program to HRSA. The Court is directed by statute to appoint special masters who take evidence, conduct hearings as appropriate, and make initial decisions as to eligibility for, and amount of, compensation.

A petition may be filed with respect to injuries, disabilities, illnesses, conditions, and deaths resulting from vaccines described in the Vaccine Injury Table (the table) set forth at 42 CFR 100.3. This table lists for each covered childhood vaccine the conditions that

may lead to compensation and, for each condition, the time period for occurrence of the first symptom or manifestation of onset or of significant aggravation after vaccine administration. Compensation may also be awarded for conditions not listed in the table and for conditions that are manifested outside the time periods specified in the table, but only if the petitioner shows that the condition was caused by one of the listed vaccines.

Section 2112(b)(2) of the PHS Act, 42 U.S.C. 300aa–12(b)(2), requires that “[w]ithin 30 days after the Secretary receives service of any petition filed under section 2111 the Secretary shall publish notice of such petition in the **Federal Register**.” Set forth below is a list of petitions received by HRSA on September 1, 2024, through September 30, 2024. This list provides the name of the petitioner, city, and state of vaccination (if unknown then the city and state of the person or attorney filing the claim), and case number. In cases where the Court has redacted the name of a petitioner and/or the case number, the list reflects such redaction.

Section 2112(b)(2) also provides that the special master “shall afford all interested persons an opportunity to submit relevant, written information” relating to the following:

1. The existence of evidence “that there is not a preponderance of the evidence that the illness, disability, injury, condition, or death described in the petition is due to factors unrelated to the administration of the vaccine described in the petition,” and

2. Any allegation in a petition that the petitioner either:

a. “[S]ustained, or had significantly aggravated, any illness, disability, injury, or condition not set forth in the Vaccine Injury Table but which was caused by” one of the vaccines referred to in the table, or

b. “[S]ustained, or had significantly aggravated, any illness, disability, injury, or condition set forth in the Vaccine Injury Table the first symptom or manifestation of the onset or significant aggravation of which did not occur within the time period set forth in the table but which was caused by a vaccine” referred to in the table.

In accordance with section 2112(b)(2), all interested persons may submit written information relevant to the issues described above in the case of the petitions listed below. Any person choosing to do so should file an original and three (3) copies of the information with the Clerk of the United States Court of Federal Claims at the address listed above (under the heading **FOR FURTHER INFORMATION CONTACT**), with a

copy to HRSA addressed to Director, Division of Injury Compensation Programs, Health Systems Bureau, 5600 Fishers Lane, 8W–25A, Rockville, Maryland 20857. The Court's caption (*Petitioner's Name v. Secretary of HHS*) and the docket number assigned to the petition should be used as the caption for the written submission. Chapter 35 of Title 44, United States Code, related to paperwork reduction, does not apply to information required for purposes of carrying out the Program.

**Carole Johnson,**  
Administrator.

#### List of Petitions Filed

1. Kelly Decker, Woodridge, Illinois, Court of Federal Claims No: 14–1526V
2. Joseph Savio, Richmond, Vermont, Court of Federal Claims No: 24–1361V
3. Erin Reidelbach, Rochester, Minnesota, Court of Federal Claims No: 24–1366V
4. Lucille Logan, Laguna Niguel, California, Court of Federal Claims No: 24–1369V
5. Jacqueline Smith, Monroeville, Pennsylvania, Court of Federal Claims No: 24–1370V
6. Bryan Oden, Akron, Ohio, Court of Federal Claims No: 24–1371V
7. Maria Reynoso, Los Angeles, California, Court of Federal Claims No: 24–1374V
8. Joanne O'Malley, Princeton, New Jersey, Court of Federal Claims No: 24–1381V
9. Jedidiah Taft, Westbrook, Maine, Court of Federal Claims No: 24–1385V
10. Brandon Sciarretta, Vancouver, Washington, Court of Federal Claims No: 24–1387V
11. Carol Stromgren, Thief River Falls, Minnesota, Court of Federal Claims No: 24–1388V
12. Sara Petty, Larchmont, New York, Court of Federal Claims No: 24–1390V
13. John Moore, Henrico, Virginia, Court of Federal Claims No: 24–1392V
14. John Christopher Lavrador on behalf of R.K.L., Edison, New Jersey, Court of Federal Claims No: 24–1396V
15. John Thomason, Howell, Michigan, Court of Federal Claims No: 24–1397V
16. Meghan Lakata, Catonsville, Maryland, Court of Federal Claims No: 24–1399V
17. Barbara Burris, Jamestown, New York, Court of Federal Claims No: 24–1400V
18. William D. Leggett, Robersonville, North Carolina, Court of Federal Claims No: 24–1402V
19. Trissa Basey, North Charleston, South Carolina, Court of Federal Claims No: 24–1406V
20. Adelheid Jones, Louisville, Kentucky, Court of Federal Claims No: 24–1408V
21. Waleed Shahid, Peekskill, New York, Court of Federal Claims No: 24–1412V
22. Ilona Vaytusionok, Hollywood, Florida, Court of Federal Claims No: 24–1414V
23. Faith Elizabeth Neary, Catonsville, Maryland, Court of Federal Claims No: 24–1415V
24. Teresa Pizarro-Gordon, Richmond, Virginia, Court of Federal Claims No: 24–1416V
25. Amy Nichols, Boston, Massachusetts,

- Court of Federal Claims No: 24–1419V
26. Amy Scrivener, Burlington, Vermont, Court of Federal Claims No: 24–1420V
  27. Jonathan Theriault, Van Nuys, California, Court of Federal Claims No: 24–1421V
  28. Heather Donovan, Fitchburg, Wisconsin, Court of Federal Claims No: 24–1422V
  29. Emily Monforte, Los Angeles, California, Court of Federal Claims No: 24–1423V
  30. Sarah Walsh, Howell, Michigan, Court of Federal Claims No: 24–1427V
  31. Jasmyn Serrano, Atlantis, Florida, Court of Federal Claims No: 24–1428V
  32. Joyce Bohannon on behalf of Claude Bohannon, Jr., Deceased, Frankfort, Kentucky, Court of Federal Claims No: 24–1430V
  33. Jeffery Till, Brookwood, Alabama, Court of Federal Claims No: 24–1434V
  34. Stephanie Galindo, Kerrville, Texas, Court of Federal Claims No: 24–1435V
  35. Mona Ballard, Sandy, Utah, Court of Federal Claims No: 24–1439V
  36. Kristi Monette-Stevens, Bloomington, Minnesota, Court of Federal Claims No: 24–1442V
  37. Eric J. Cash, Leesburg, Virginia, Court of Federal Claims No: 24–1444V
  38. Hector Lopetegui, Miami, Florida, Court of Federal Claims No: 24–1445V
  39. Karen Collins, Olympia Fields, Illinois, Court of Federal Claims No: 24–1446V
  40. Susan Alban, Red Lion, Pennsylvania, Court of Federal Claims No: 24–1447V
  41. Arevik Dikranian, Boston, Massachusetts, Court of Federal Claims No: 24–1449V
  42. Debra Wanamaker, Oceanside, California, Court of Federal Claims No: 24–1450V
  43. Heather Margonari, Pittsburgh, Pennsylvania, Court of Federal Claims No: 24–1451V
  44. Noreen O'Connor, Camarillo, California, Court of Federal Claims No: 24–1452V
  45. Ranya Khdir, Greensboro, North Carolina, Court of Federal Claims No: 24–1453V
  46. Mary Bartok, North Olmsted, Ohio, Court of Federal Claims No: 24–1454V
  47. Brandon S. Wright, Jr., Black River Falls, Wisconsin, Court of Federal Claims No: 24–1455V
  48. Tyrone Lowe, Jr., New Lisbon, Wisconsin, Court of Federal Claims No: 24–1456V
  49. Colleen Fagan, Dover, New Hampshire, Court of Federal Claims No: 24–1457V
  50. Susan Administrator of the Estate of Kane on behalf of Robert Kane, Deceased, West Grove, Pennsylvania, Court of Federal Claims No: 24–1458V
  51. Julia Obermier, Los Angeles, California, Court of Federal Claims No: 24–1462V
  52. Christine Beyer, Lexington, South Carolina, Court of Federal Claims No: 24–1463V
  53. Timothy Richert, Winter Park, Florida, Court of Federal Claims No: 24–1464V
  54. Daniel Behar Calzado, Rochester, New York, Court of Federal Claims No: 24–1466V
  55. Sharon Nelson, Muskego, Wisconsin, Court of Federal Claims No: 24–1468V
  56. Justin Hines, Fort Meade, Maryland, Court of Federal Claims No: 24–1470V
  57. Tyrone Martin, Oshkosh, Wisconsin, Court of Federal Claims No: 24–1471V
  58. Jennifer Burandt on behalf of F.B., Chicago, Illinois, Court of Federal Claims No: 24–1472V
  59. Lashonne Eubanks, Oakland, California, Court of Federal Claims No: 24–1474V
  60. Daitina Brookins, Omaha, Nebraska, Court of Federal Claims No: 24–1475V
  61. Sophia Haslup, Milwaukee, Wisconsin, Court of Federal Claims No: 24–1477V
  62. Danna Christine Engel, Aurora, Colorado, Court of Federal Claims No: 24–1481V
  63. Charisse Rizzo, East Rutherford, New Jersey, Court of Federal Claims No: 24–1482V
  64. Tina Rice, Juneau, Alaska, Court of Federal Claims No: 24–1483V
  65. Suzelle Blanchard, Houston, Texas, Court of Federal Claims No: 24–1486V
  66. John A. Kowalczyk, Olathe, Kansas, Court of Federal Claims No: 24–1489V
  67. Debra Smith, Roanoke Rapids, North Carolina, Court of Federal Claims No: 24–1490V
  68. Gary Sohn, Delray Beach, Florida, Court of Federal Claims No: 24–1493V
  69. Jessie Vance, Marion, Virginia, Court of Federal Claims No: 24–1495V
  70. Katrina E. Canallatos, Clifton Park, New York, Court of Federal Claims No: 24–1497V
  71. Ruby Green, Coral Springs, Florida, Court of Federal Claims No: 24–1498V
  72. Mohammad Rahman, New York, New York, Court of Federal Claims No: 24–1500V
  73. Kenneth White, Woodland Hills, California, Court of Federal Claims No: 24–1501V
  74. Michael J. Hebbring, Jackson, Wisconsin, Court of Federal Claims No: 24–1502V
  75. Vivian Price, Dallas, Texas, Court of Federal Claims No: 24–1503V
  76. Mary Marron, Safety Harbor, Florida, Court of Federal Claims No: 24–1506V
  77. Craig Stanton, Port St. Lucie, Florida, Court of Federal Claims No: 24–1507V
  78. Michael Elliott, Boston, Massachusetts, Court of Federal Claims No: 24–1509V
  79. Linda Exec of Estate Padova on behalf of Girolomo Padova, Deceased, Sheffield, England, International Address, Court of Federal Claims No: 24–1510V
  80. Hyunkeun Joo, Baltimore, Maryland, Court of Federal Claims No: 24–1512V
  81. Michael Grigsby, Chandler, Arizona, Court of Federal Claims No: 24–1515V
  82. Lori Watson, Lawrence, Kansas, Court of Federal Claims No: 24–1516V
  83. Debra Barone, Rochester, New York, Court of Federal Claims No: 24–1517V
  84. Morris Ainsworth, Gulfport, Mississippi, Court of Federal Claims No: 24–1521V
  85. Kelly Decker, Napa, California, Court of Federal Claims No: 24–1526V
  86. Beverly Tonkin, Concord, New Hampshire, Court of Federal Claims No: 24–1527V
  87. Rosa Fierro, Dresher, Pennsylvania, Court of Federal Claims No: 24–1528V
  88. Stephanie Law, Virginia Beach, Virginia, Court of Federal Claims No: 24–1531V
  89. Maria Demelo, Boston, Massachusetts, Court of Federal Claims No: 24–1533V
  90. Rico Perez, Lafayette, Indiana, Court of Federal Claims No: 24–1534V
  91. Shaun Rocknak, Cheyenne, Wyoming, Court of Federal Claims No: 24–1535V
  92. Joel Pratt, Sarasota, Florida, Court of Federal Claims No: 24–1536V

[FR Doc. 2024–25360 Filed 10–30–24; 8:45 am]  
BILLING CODE 4165–15–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS 4040–0018]

### Agency Information Collection Request. 30-Day Public Comment Request

**AGENCY:** Office of the Secretary, Department of Health and Human Services (HHS).

**ACTION:** Notice.

**SUMMARY:** In compliance with the requirement of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment.

**DATES:** Comments on the ICR must be received on or before December 2, 2024.

**ADDRESSES:** Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain). Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

**FOR FURTHER INFORMATION CONTACT:** Narmada Dacherla, [Narmada.Dacherla@hhs.gov](mailto:Narmada.Dacherla@hhs.gov), or call (202) 430–1710. When submitting comments or requesting information, please include the document identifier 4040–0018–30D and project title for reference.

**SUPPLEMENTARY INFORMATION:** Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency’s functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

*Title of the Collections:* SF–428 Tangible Personal Property Report.

*Type of Collection:* Reinstatement of an Expired Collection.

*OMB No.* 4040–0018.

*Abstract:* Reporting on the status of Federally owned property, including



disposition, is necessitated in 2 CFR part 215, the “Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations”, and the “Uniform Administrative Requirements for Grants and Agreements with State and Local Governments”, Additionally, Public Law 106–107, the Federal Financial Assistance Management Improvement Act requires that agencies “simplify Federal financial assistance application

and reporting requirements.” 31 U.S.C. 6101, Section 3.

Agencies are currently using a variety of forms to account for both federally owned and grantee owned equipment and property. During the public consultation process mandated by Public Law 106–107, grant recipients requested a standard form to help them submit appropriate property information when required. The Public Law 106–107 Post Awards Subgroup developed a new standard form, the

Tangible Personal Property Report, for submission of the required data. The form consists of the cover sheet (SF–428), three attachments to be used as required: Annual Report, SF–428–A; Final Report, SF–428–B; Disposition Request/Report, SF–428–C and a Supplemental Sheet, SF–428S to provide detailed individual item information when required. The IC expires on 11/30/2024. We are seeking an extension of this information collection and a three-year clearance.

ESTIMATED ANNUALIZED BURDEN TABLE

Type of respondent	Number of respondents	Number responses per respondent	Average burden per response (in hours)	Total burden hours
Grant Applicants .....	1	2,000	1	2,000
Total .....	1	2,000	1	2,000

**Sherrette A. Funn,**  
*Paperwork Reduction Act Reports Clearance Officer, Office of the Secretary.*  
[FR Doc. 2024–25248 Filed 10–30–24; 8:45 am]  
BILLING CODE 4151–AE–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–0479]

Agency Information Collection Request 60-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.  
ACTION: Notice.

**SUMMARY:** In compliance with the requirement of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment.

**DATES:** Comments on the ICR must be received on or before December 30, 2024.

**ADDRESSES:** Submit your comments to [Sherrette.Funn@hhs.gov](mailto:Sherrette.Funn@hhs.gov) or by calling (202) 264–0041 and [PRA@HHS.GOV](mailto:PRA@HHS.GOV).

**FOR FURTHER INFORMATION CONTACT:** When submitting comments or requesting information, please include the document identifier 0990–0479–60D and project title for reference, to Sherrette A. Funn, email: [Sherrette.Funn@hhs.gov](mailto:Sherrette.Funn@hhs.gov), [PRA@HHS.GOV](mailto:PRA@HHS.GOV) or call (202) 264–0041 the Reports Clearance Officer.

**SUPPLEMENTARY INFORMATION:** Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of

information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency’s functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

*Title of the Collection:* Family Planning Annual Report 2.0.  
*Type of Collection:* Renewal.  
*OMB No.:* 0990–0479.

*Abstract:* The Office of Population Affairs (OPA), within the Office of the Assistant Secretary for Health, seeks approval for their encounter level data collection for the Family Planning Annual Report (FPAR). This was previously approved by OMB under OMB No. 0990–0479, (expiration February 28, 2025). Annual submission of the FPAR is required of all Title X Family Planning Services grantees for purposes of monitoring and reporting program performance. Additionally, the FPAR 2.0 system will collect clinic location and service data in the Family Planning Clinic Locator Database (CLDB) for the purpose of informing the community of the availability of services.

**Need and Proposed Use of the Information**

The Office of Population Affairs’ (OPA) Title X Family Planning Program is the only federal grant program dedicated solely to providing comprehensive family planning and related preventive health services. The FPAR is the only source of annual,

uniform reporting by all Title X services grantees funded under Section 300 of the Public Health Service Act. The FPAR 2.0 system provides consistent, national-level data on the Title X Family Planning program and its users. OPA will assemble and analyze comparable and relevant program data to answer questions about the characteristics of the population served, the provision and use of services, and the impact of the program on certain family planning outcomes. FPAR 2.0 will collect a standard set of data elements pertaining to users and encounters, such as user demographics, service delivery, family planning intentions and methods, and also data regarding clinic locations and services provided. Several external (federal and non-federal) websites link to the CLDB to provide quick access to Title X clinic locations.

Encounter level data collected through FPAR 2.0 will ultimately improve the quality of data reported to OPA and reduce reporting burden by grantees. Additionally, the more granular data collected with FPAR 2.0 will help contribute to a learning healthcare environment by greatly expanding the options for data analysis and reporting—for example, through interactive data dashboards and visualizations, customized tabulations and reports, and application of analytics and statistical analyses on the encounter-level data files.

Information from FPAR 2.0 is important to OPA for many reasons, and will be used to:

(1) Monitor compliance with statutory requirements, regulations, and operational guidance.

(2) Comply with accountability and federal performance requirements for Title X family planning funds.

(3) Guide strategic and financial planning, to monitor performance, to

respond to inquiries from policymakers and Congress about the program, and to estimate program impact.

*Type of respondent:* Annual reporting; respondents are all grantees that receive Title X funding from OPA.

#### ANNUALIZED BURDEN HOUR TABLE

Forms (if necessary)	Respondents (if necessary)	Number of respondents	Number of responses per respondents	Average burden per response	Total burden hours
FPAR 2.0 .....	Grantees .....	88	1	76.5	6732
Total .....	.....	.....	1	.....	6732

**Sherrette A. Funn,**

*Paperwork Reduction Act Reports Clearance  
Officer, Office of the Secretary.*

[FR Doc. 2024-25332 Filed 10-30-24; 8:45 am]

**BILLING CODE 4150-32-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Cancer Institute; Notice of Closed Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications/contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications/contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Cancer Institute Special Emphasis Panel; SBIR Concept Award A.

*Date:* December 5–6, 2024.

*Time:* 10:00 a.m. to 2:00 p.m.

*Agenda:* To review and evaluate contract proposals.

*Place:* National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W236, Rockville, Maryland 20850.

*Meeting Format:* Virtual Meeting.

*Contact Person:* Shuli Xia, Ph.D., Scientific Review Officer, Research Technology and Contract Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W236, Rockville, Maryland 20850, 240-276-5256, [shuli.xia@nih.gov](mailto:shuli.xia@nih.gov).

*Name of Committee:* National Cancer Institute Special Emphasis Panel; Cancer

Center Support Grant-UCLA Jonsson Comprehensive Cancer Center.

*Date:* December 12, 2024.

*Time:* 2:00 p.m. to 3:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W112, Rockville, Maryland 20850.

*Meeting Format:* Virtual Meeting.

*Contact Person:* Shari Williams Campbell, D.P.M., Scientific Review Officer, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W112, Rockville, Maryland 20850, 240-276-7381, [shari.campbell@nih.gov](mailto:shari.campbell@nih.gov).

*Name of Committee:* National Cancer Institute Special Emphasis Panel; SBIR Concept Award B.

*Date:* December 13, 2024.

*Time:* 10:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate contract proposals.

*Place:* National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W608, Rockville, Maryland 20850.

*Meeting Format:* Virtual Meeting.

*Contact Person:* Nadeem Khan, Ph.D., Scientific Review Officer, Research Technology and Contract Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W608, Rockville, Maryland 20850, 240-276-5856, [nadeem.khan@nih.gov](mailto:nadeem.khan@nih.gov).

*Name of Committee:* National Cancer Institute Special Emphasis Panel; The NCI Transition Career Development Awards and Institutional Research and Education Training Grants Meeting.

*Date:* January 22, 2025.

*Time:* 9:00 a.m. to 7:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W234, Rockville, Maryland 20850.

*Meeting Format:* Virtual Meeting.

*Contact Person:* Adriana Stoica, Ph.D., Scientific Review Officer, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W234, Rockville, Maryland 20850, 240-276-6368, [Stoica2@mail.nih.gov](mailto:Stoica2@mail.nih.gov).

*Name of Committee:* National Cancer Institute Special Emphasis Panel; NCI Program Project (P01) Review SEP-B.

*Date:* February 5–6, 2025.

*Time:* 9:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W618, Rockville, Maryland 20850.

*Meeting Format:* Virtual Meeting.

*Contact Person:* E. Tian, Ph.D., Scientific Review Officer, Research Program Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W618, Rockville, Maryland 20850, 240-276-6611, [tiane@mail.nih.gov](mailto:tiane@mail.nih.gov).

*Name of Committee:* National Cancer Institute Special Emphasis Panel; NCI SPORE (P50) Review SEP-I.

*Date:* February 6–7, 2025.

*Time:* 9:30 a.m. to 7:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W244, Rockville, Maryland 20850.

*Meeting Format:* Virtual Meeting.

*Contact Person:* John Paul Cairns, Ph.D., Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W244, Rockville, Maryland 20850, 240-276-5415, [paul.cairns@nih.gov](mailto:paul.cairns@nih.gov).

*Name of Committee:* National Cancer Institute Special Emphasis Panel; NCI Program Project (P01) Review SEP-D.

*Date:* February 11–12, 2025.

*Time:* 9:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Cancer Institute at Shady Grove, 9609 Medical Center Drive, Room 7W240, Rockville, Maryland 20850.

*Meeting Format:* Virtual Meeting.

*Contact Person:* Hasan Siddiqui, Ph.D., Scientific Review Officer, Special Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W240, Rockville, Maryland 20850, 240-276-5122, [hasan.siddiqui@nih.gov](mailto:hasan.siddiqui@nih.gov).

*Name of Committee:* National Cancer Institute Special Emphasis Panel; NCI Program Project (P01) Review SEP-C.

*Date:* February 19–20, 2025.

*Time:* 9:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W634, Rockville, Maryland 20850.

*Meeting Format:* Virtual Meeting.

*Contact Person:* Michael E. Lindquist, Ph.D., Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W634, Rockville, Maryland 20850, [mike.lindquist@nih.gov](mailto:mike.lindquist@nih.gov).

*Name of Committee:* National Cancer Institute Special Emphasis Panel; NCI SPORE (P50) Review SEP–II.

*Date:* February 19–20, 2025.

*Time:* 9:00 a.m. to 7:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W244, Rockville, Maryland 20850.

*Meeting Format:* Virtual Meeting.

*Contact Person:* Amr M. Ghaleb, Ph.D., Scientific Review Officer, Research Program Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W244, Rockville, Maryland 20850, 240–276–6611, [amr.ghaleb@nih.gov](mailto:amr.ghaleb@nih.gov).

*Name of Committee:* National Cancer Institute Special Emphasis Panel; NCI Program Project (P01) Review SEP–A.

*Date:* February 20–21, 2025.

*Time:* 9:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W120, Rockville, Maryland 20850.

*Meeting Format:* Virtual Meeting.

*Contact Person:* Majed M. Hamawy, Ph.D., Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W120, Rockville, Maryland 20850, 240–276–6457, [mh101v@nih.gov](mailto:mh101v@nih.gov).

*Name of Committee:* National Cancer Institute Special Emphasis Panel; NCI U54–SPORE–SEP–I.

*Date:* February 26–27, 2025.

*Time:* 9:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Cancer Institute at Shady Grove, 9609 Medical Center Drive, Room 7W126, Rockville, Maryland 20850.

*Meeting Format:* Virtual Meeting.

*Contact Person:* Mukesh Kumar, Ph.D., Scientific Review Officer, Research Program Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W126, Rockville, Maryland 20850, 240–276–6611, [mukesh.kumar3@nih.gov](mailto:mukesh.kumar3@nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support;

93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: October 25, 2024.

**David W. Freeman,**

*Supervisory Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2024–25336 Filed 10–30–24; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Library of Medicine; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Library of Medicine Special Emphasis Panel; Conflicted R01s and Multiple Programs.

*Date:* March 27, 2025.

*Time:* 11:00 a.m. to 4:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Library of Medicine, 6705 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Ali Sharma, Ph.D., Scientific Review Officer, Division of Extramural Programs, National Library of Medicine, NIH, 6705 Rockledge Drive, Suite 500, Bethesda, MD 20892–7968, [ali.sharma@nih.gov](mailto:ali.sharma@nih.gov).

(Catalogue of Federal Domestic Assistance Program No. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: October 28, 2024.

**Miguelina Perez,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2024–25384 Filed 10–30–24; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Library of Medicine; Notice of Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Board of Regents of the National Library of Medicine.

The meeting will be open to the public as indicated below. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The meeting will be held as a virtual meeting and will be open to the public as indicated below. Individuals who plan to view the virtual meeting and need special assistance or other reasonable accommodations to view the meeting, should notify the Contact Person listed below in advance of the meeting. The meeting can be accessed from the NIH Videocast website at the following link: <https://videocast.nih.gov/>.

*Name of Committee:* Board of Regents of the National Library of Medicine.

*Date:* February 4, 2025.

*Open:* February 4, 2025, 10:00 a.m. to 3:30 p.m.

*Agenda:* Program Discussion.

*Place:* National Library of Medicine, 8600 Rockville Pike, Bethesda, MD 20892 (Virtual Meeting).

*Closed:* February 4, 2025, 3:30 p.m. to 4:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Contact Person:* Christine Ireland, Committee Management Officer, Division of Extramural Programs, National Library of Medicine, Bethesda, MD 20892, 301–594–4929, [irelanc@mail.nih.gov](mailto:irelanc@mail.nih.gov).

Any member of the public may submit written comments no later than 15 days in advance of the meeting. Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address,

telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: [www.nlm.nih.gov/od/bor/bor.html](http://www.nlm.nih.gov/od/bor/bor.html) where additional information for the meeting will be posted when available. The open session will be videocast and can be accessed from the NIH Videocasting and Podcasting website (<http://videocast.nih.gov/>) on February 4, 2025.

(Catalogue of Federal Domestic Assistance Program No. 93.879, Medical Library Assistance, National Institutes of Health, HHS).

Dated: October 28, 2024.

**Miguelina Perez,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2024-25388 Filed 10-30-24; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Library of Medicine; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Library of Medicine Special Emphasis Panel; G08.

*Date:* March 13, 2025.

*Time:* 11:00 a.m. to 4:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Library of Medicine, 6705 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Ali Sharma, Ph.D., Scientific Review Officer, Division of Extramural Programs, National Library of Medicine, NIH, 6705 Rockledge Drive, Suite 500, Bethesda, MD 20892-7968, [ali.sharma@nih.gov](mailto:ali.sharma@nih.gov).

(Catalogue of Federal Domestic Assistance Program No. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: October 28, 2024.

**Miguelina Perez,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2024-25385 Filed 10-30-24; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Library of Medicine; Notice of Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Literature Selection Technical Review Committee.

The meeting will be open to the public as indicated below. Individuals who plan to attend as well as those who need special assistance, such as sign language interpretation or other reasonable accommodations, must notify the Contact Person listed below in advance of the meeting. The open session will be videocast and can be accessed from the NIH Videocasting and Podcasting website (<http://videocast.nih.gov/>).

The meeting is devoted to the review and evaluation of journals for potential indexing by the National Library of Medicine and will be closed to the public in accordance with the provisions set forth in section 552b(c)(9)(B), Title 5 U.S.C., as amended. Premature disclosure of the titles of the journals as potential titles to be indexed by the National Library of Medicine, the discussions, and the presence of individuals associated with these publications could significantly frustrate the review and evaluation of individual journals.

*Name of Committee:* Literature Selection Technical Review Committee.

*Date:* February 20-21, 2025.

*Closed:* February 20, 2025, 8:30 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate journals as potential titles to be indexed by the National Library of Medicine.

*Place:* National Library of Medicine, Building 38A, Room 4S412, 8600 Rockville Pike, Bethesda, MD 20892 (Virtual Meeting).

*Closed:* February 21, 2025, 8:30 a.m. to 10:00 a.m.

*Agenda:* To review and evaluate journals as potential titles to be indexed by the National Library of Medicine.

*Place:* National Library of Medicine, Building 38A, Room 4S412, 8600 Rockville Pike, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Dianne Babski, Director, User Services and Collection Division, National Library of Medicine, 8600 Rockville

Pike, Bethesda, MD 20894, 301-827-4279, [dianne.babski@mail.nih.gov](mailto:dianne.babski@mail.nih.gov).

*Open:* February 21, 2025, 10:00 a.m. to 10:30 a.m.

*Agenda:* NLM Directors' Report.

*Place:* National Library of Medicine, Building 38A, Room 4S412, 8600 Rockville Pike, Bethesda, MD 20892 (Virtual Meeting).

*Closed:* February 21, 2025, 10:30 a.m. to 3:00 p.m.

*Agenda:* To review and evaluate journals as potential titles to be indexed by the National Library of Medicine.

*Place:* National Library of Medicine, Building 38A, Room 4S412, 8600 Rockville Pike, Bethesda, MD 20892 (Virtual Meeting).

In addition, any interested person may file written comments with the committee by forwarding their statement to the Contact Person listed on this notice at least 10 days in advance of the meeting.

Information is also available on the Institute's/Center's home page: [https://www.nlm.nih.gov/medline/medline\\_about Istrc.html](https://www.nlm.nih.gov/medline/medline_about Istrc.html), where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program No. 93.879, Medical Library Assistance, National Institutes of Health, HHS).

Dated: October 28, 2024.

**Miguelina Perez,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2024-25389 Filed 10-30-24; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Mechanisms of Cancer Therapeutics.

*Date:* November 21, 2024.

*Time:* 1:00 p.m. to 3:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Address:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

*Meeting Format:* Virtual Meeting.

*Contact Person:* Maria Dolores Arjona Mayor, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 806D, Bethesda, MD 20892, (301) 827-8578, [dolores.arjonamayor@nih.gov](mailto:dolores.arjonamayor@nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; RFA Panel: Investigation of Co-Occurring Conditions Across the Lifespan to Understand Down Syndrome.

*Date:* November 22, 2024.

*Time:* 9:00 a.m. to 8:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Address:* National Institutes of Health Rockledge II 6701 Rockledge Drive Bethesda, MD 20892.

*Meeting Format:* Virtual Meeting.

*Contact Person:* Katherine M Malinda, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4140, MSC 7814, Bethesda, MD 20892, (301) 435-0912, [malindakm@csr.nih.gov](mailto:malindakm@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; PAR-23-199: ClinGen Genomic Curation Expert Panels (U24).

*Date:* November 25, 2024.

*Time:* 10:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Address:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive Bethesda, MD 20892.

*Meeting Format:* Virtual Meeting.

*Contact Person:* Altaf Ahmad Dar, Ph.D., Scientific Review Officer, Center for Scientific Review, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 827-2680, [altaf.dar@nih.gov](mailto:altaf.dar@nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Neurotoxicology and Alcohol.

*Date:* November 25, 2024.

*Time:* 11:00 a.m. to 2:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Address:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

*Meeting Format:* Virtual Meeting.

*Contact Person:* Alexei Kondratyev, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5200, MSC 7846, Bethesda, MD 20892, 301-435-1785, [kondratyevad@csr.nih.gov](mailto:kondratyevad@csr.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393-93.396, 93.837-93.844, 93.846-93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 25, 2024.

**David W. Freeman,**

*Supervisory Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2024-25335 Filed 10-30-24; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute of Neurological Disorders and Stroke, Interagency Pain Research Coordinating Committee Call for Committee Membership Nominations

**AGENCY:** National Institutes of Health, HHS.

**ACTION:** Notice.

**SUMMARY:** The Department of Health and Human Services (HHS) (Department) has created the Interagency Pain Research Coordinating Committee (IPRCC) and is seeking nominations for this committee.

**DATES:** Nominations are due by 5:00 p.m. ET on December 17, 2024.

**ADDRESSES:** Nominations must be submitted through the webform on the IPRCC website: <https://www.surveymonkey.com/r/IPRCC-nomination-form>.

#### FOR FURTHER INFORMATION CONTACT:

Leah Pogorzala, [leah.pogorzala@nih.gov](mailto:leah.pogorzala@nih.gov) or 301-496-4228.

**SUPPLEMENTARY INFORMATION:** As specified in Public Law 111-148 ("Patient Protection and Affordable Care Act") the Committee will:

(A) develop a summary of advances in pain care research supported or conducted by the Federal agencies relevant to the diagnosis, prevention, and treatment of pain and diseases and disorders associated with pain;

(B) identify critical gaps in basic and clinical research on the symptoms and causes of pain;

(C) make recommendations to ensure that the activities of the National Institutes of Health and other Federal agencies are free of unnecessary duplication of effort;

(D) make recommendations on how best to disseminate information on pain care; and (e) make recommendations on how to expand partnerships between public entities and private entities to expand collaborative, cross-cutting research.

Membership on the committee will include six (6) non-Federal members from among scientists, physicians, and other health professionals and six (6) non-Federal members of the general public who are representatives of leading research, advocacy, and service organizations for individuals with pain-related conditions. Members will serve overlapping three year terms. It is anticipated that the committee will meet at least once a year.

The Department strives to ensure that the membership of HHS Federal advisory committees is fairly balanced in terms of points of view represented and the committee's function. Every effort is made to ensure that the views of diverse ethnic and racial groups and people with disabilities are represented on HHS Federal advisory committees, and the Department therefore, encourages nominations of qualified candidates from these groups. The Department also encourages geographic diversity in the composition of the Committee. Appointment to this Committee shall be made without discrimination on the basis of age, race, ethnicity, gender, sexual orientation, disability, and cultural, religious, or socioeconomic status.

The Department is soliciting nominations for non-federal members from among scientists, physicians, and other health professionals and for non-federal members of the public who represent a leading research, advocacy, or service organization for people with pain-related conditions. These candidates will be considered to fill positions opened through completion of current member terms. Nominations are due by 5:00 p.m. ET on December 17, 2024, using the IPRCC nomination webform: <https://www.surveymonkey.com/r/IPRCC-nomination-form>

Dated: October 25, 2024.

**Walter J. Koroshetz,**

*Director, National Institute of Neurological Disorders and Stroke, National Institutes of Health.*

[FR Doc. 2024-25241 Filed 10-30-24; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which

would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Neurotoxicology and Alcohol.

*Date:* November 25, 2024.

*Time:* 11:30 a.m. to 2:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Address:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

*Meeting Format:* Virtual Meeting.

*Contact Person:* Eileen Marie Moore, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 594-8928, [eileen.moore@nih.gov](mailto:eileen.moore@nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393-93.396, 93.837-93.844, 93.846-93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 28, 2024.

**Lauren A. Fleck,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2024-25386 Filed 10-30-24; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel; NIAAA Member Conflict Applications.

*Date:* November 15, 2024.

*Time:* 1:00 p.m. to 3:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Address:* National Institute of Health, National Institute on Alcohol Abuse and Alcoholism, 6700B Rockledge Drive, Bethesda, MD 20892.

*Meeting Format:* Virtual Meeting.

*Contact Person:* Ranga V. Srinivas, Ph.D., Chief, Extramural Project Review Branch, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, 6700B Rockledge Drive, Room 2114, MSC 6902, Bethesda, MD 20892, (301) 451-2067, [srinivar@mail.nih.gov](mailto:srinivar@mail.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.273, Alcohol Research Programs, National Institutes of Health, HHS)

Dated: October 25, 2024.

**David W. Freeman,**

*Supervisory Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2024-25334 Filed 10-30-24; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel; NIAAA Special Emphasis Panel for Member Conflict Applications.

*Date:* November 19, 2024.

*Time:* 1:00 p.m. to 4:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Address:* National Institute of Health, National Institute on Alcohol Abuse and Alcoholism, 6700B Rockledge Drive, Bethesda, MD 20892.

*Meeting Format:* Virtual Meeting.

*Contact Person:* Luis Espinoza, Ph.D., Scientific Review Officer, Extramural Project Review Branch, Office of Extramural Activities, National Institute on Alcohol Abuse and Alcoholism, 6700B Rockledge Drive, Room 2109, Bethesda, MD 20892, (301) 443-8599, [espinozala@mail.nih.gov](mailto:espinozala@mail.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.273, Alcohol Research Programs, National Institutes of Health, HHS)

Dated: October 25, 2024.

**David W. Freeman,**

*Supervisory Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2024-25333 Filed 10-30-24; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

[Docket No. USCG-2024-0437]

#### Information Collection Request to Office of Management and Budget; OMB Control Number: 1625-0058

**AGENCY:** Coast Guard, DHS.

**ACTION:** Sixty-day notice requesting comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to submit an Information Collection Request (ICR) to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting an extension of its approval for the following collection of information: 1625-0058, Application for Permit to Transport Municipal and Commercial Waste; without change. Our ICR describes the information we seek to collect from the public. Before submitting this ICR to OIRA, the Coast Guard is inviting comments as described below.

**DATES:** Comments must reach the Coast Guard on or before December 30, 2024.

**ADDRESSES:** You may submit comments identified by Coast Guard docket number [USCG-2024-0437] to the Coast Guard using the Federal eRulemaking Portal at <https://www.regulations.gov>. See the "Public participation and request for comments" portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

A copy of the ICR is available through the docket on the internet at <https://www.regulations.gov>. Additionally, copies are available from: Commandant (CG-6P), Attn: Paperwork Reduction Act Manager, U.S. Coast Guard, 2703 Martin Luther King Jr. Ave. SE, Stop 7710, Washington, DC 20593-7710.

**FOR FURTHER INFORMATION CONTACT:** A.L. Craig, Office of Privacy Management, telephone 202-475-3528, fax 202-372-8405, or email [hqs-dg-m-cg-61-pii@uscg.mil](mailto:hqs-dg-m-cg-61-pii@uscg.mil) for questions on these documents.

**SUPPLEMENTARY INFORMATION:**

### Public Participation and Request for Comments

This notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. 3501 *et seq.*, chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) the practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology.

In response to your comments, we may revise this ICR or decide not to seek an extension of approval for the Collection. We will consider all comments and material received during the comment period.

We encourage you to respond to this request by submitting comments and related materials. Comments must contain the OMB Control Number of the ICR and the docket number of this request, USCG–2024–0437 and must be received by December 30, 2024.

### Submitting Comments

We encourage you to submit comments through the Federal eRulemaking Portal at <https://www.regulations.gov>. If your material cannot be submitted using <https://www.regulations.gov>, contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at <https://www.regulations.gov> and can be viewed by following that website's instructions. We review all comments received, but we may choose not to post off-topic, inappropriate, or duplicate comments that we receive. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

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

### Information Collection Request

**Title:** Application for Permit to Transport Municipal and Commercial Waste.

**OMB Control Number:** 1625–0058.

**Summary:** This information collection provides the basis for issuing or denying a permit, required under 33 U.S.C. 2601 and 33 CFR 151.1009, for the transportation of municipal or commercial waste in the coastal waters of the United States.

**Need:** In accordance with 33 U.S.C. 2601, the U.S. Coast Guard issued regulations requiring an owner or operator of a vessel to apply for a permit to transport municipal or commercial waste in the United States and to display an identification number or other marking on their vessel.

**Forms:** None.

**Respondents:** Owners and operators of vessels.

**Frequency:** Every 18 months.

**Hour Burden Estimate:** The estimated burden has decreased from 4 hours to 2 hours a year, due to a decrease in the estimated annual number of responses.

**Authority:** The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended.

Dated: October 25, 2024.

**Kathleen Claffie,**

Chief, Office of Privacy Management, U.S. Coast Guard.

[FR Doc. 2024–25374 Filed 10–30–24; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

[Docket No. USCG–2024–0436]

### Information Collection Request to Office of Management and Budget; OMB Control Number: 1625–0029

**AGENCY:** Coast Guard, DHS.

**ACTION:** Sixty-day notice requesting comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to submit an Information Collection Request (ICR) to the Office of Management and Budget (OMB), Office of Information and

Regulatory Affairs (OIRA), requesting an extension of its approval for the following collection of information: 1625–0029, Self-propelled Liquefied Gas Vessels; without change. Our ICR describes the information we seek to collect from the public. Before submitting this ICR to OIRA, the Coast Guard is inviting comments as described below.

**DATES:** Comments must reach the Coast Guard on or before December 30, 2024.

**ADDRESSES:** You may submit comments identified by Coast Guard docket number [USCG–2024–0436] to the Coast Guard using the Federal eRulemaking Portal at <https://www.regulations.gov>. See the “Public participation and request for comments” portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

A copy of the ICR is available through the docket on the internet at <https://www.regulations.gov>. Additionally, copies are available from: Commandant (CG–6P), Attn: Paperwork Reduction Act Manager, U.S. Coast Guard, 2703 Martin Luther King Jr. Ave. SE, Stop 7710, Washington, DC 20593–7710.

**FOR FURTHER INFORMATION CONTACT:** A.L. Craig, Office of Privacy Management, telephone 202–475–3528, fax 202–372–8405, or email [hqs-dg-m-cg-61-pii@uscg.mil](mailto:hqs-dg-m-cg-61-pii@uscg.mil) for questions on these documents.

### SUPPLEMENTARY INFORMATION:

#### Public Participation and Request for Comments

This notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. 3501 *et seq.*, chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) the practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents,



including the use of automated collection techniques or other forms of information technology.

In response to your comments, we may revise this ICR or decide not to seek an extension of approval for the Collection. We will consider all comments and material received during the comment period.

We encourage you to respond to this request by submitting comments and related materials. Comments must contain the OMB Control Number of the ICR and the docket number of this request, USCG–2024–0436, and must be received by December 30, 2024.

### Submitting Comments

We encourage you to submit comments through the Federal eRulemaking Portal at <https://www.regulations.gov>. If your material cannot be submitted using <https://www.regulations.gov>, contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at <https://www.regulations.gov> and can be viewed by following that website's instructions. We review all comments received, but we may choose not to post off-topic, inappropriate, or duplicate comments that we receive. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

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

### Information Collection Request

**Title:** Self-propelled Liquefied Gas Vessels.

**OMB Control Number:** 1625–0029.

**Summary:** The information is needed to ensure compliance with our rules for the design and operation of liquefied gas carriers.

**Need:** 46 U.S.C. 3703 and 9101 authorizes the Coast Guard to establish regulations to protect life, property, and the environment from the hazards associated with the carriage of dangerous liquid cargo in bulk. 46 CFR part 154 prescribes the rules for the carriage of liquefied gases in bulk on self-propelled vessels by governing the design, construction, equipment, and operation of these vessels and the safety of personnel aboard them.

**Forms:** None.

**Respondents:** Owners and operators of self-propelled vessels carrying liquefied gas.

**Frequency:** On occasion.

**Hour Burden Estimate:** The estimated burden has increased from 14,781 hours to 21,377 hours a year, due to an increase in the estimated number of respondents.

**Authority:** The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended.

Dated: October 25, 2024.

**Kathleen Claffie,**

Chief, Office of Privacy Management, U.S. Coast Guard.

[FR Doc. 2024–25373 Filed 10–30–24; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

[Docket No. USCG–2024–0438]

### Information Collection Request to Office of Management and Budget; OMB Control Number: 1625–0088

**AGENCY:** Coast Guard, DHS.

**ACTION:** Sixty-day notice requesting comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to submit an Information Collection Request (ICR) to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting an extension of its approval for the following collection of information: 1625–0088, Voyage Planning for Tank Barge Transits in the Northeast United States; without change. Our ICR describes the information we seek to collect from the public. Before submitting this ICR to OIRA, the Coast Guard is inviting comments as described below.

**DATES:** Comments must reach the Coast Guard on or before December 30, 2024.

**ADDRESSES:** You may submit comments identified by Coast Guard docket number [USCG–2024–0438] to the Coast Guard using the Federal eRulemaking Portal at <https://www.regulations.gov>. See the “Public participation and request for comments” portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

A copy of the ICR is available through the docket on the internet at <https://www.regulations.gov>. Additionally, copies are available from: COMMANDANT (CG–6P), Attn:

Paperwork Reduction Act Manager, U.S. Coast Guard, 2703 Martin Luther King Jr. Ave. SE, Stop 7710, Washington, DC 20593–7710.

**FOR FURTHER INFORMATION CONTACT:** A.L. Craig, Office of Privacy Management, telephone 202–475–3528, fax 202–372–8405, or email [hqs-dg-m-cg-61-pii@uscg.mil](mailto:hqs-dg-m-cg-61-pii@uscg.mil) for questions on these documents.

### SUPPLEMENTARY INFORMATION:

#### Public Participation and Request for Comments

This notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. 3501 *et seq.*, chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) the practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology.

In response to your comments, we may revise this ICR or decide not to seek an extension of approval for the Collection. We will consider all comments and material received during the comment period.

We encourage you to respond to this request by submitting comments and related materials. Comments must contain the OMB Control Number of the ICR and the docket number of this request, USCG–2024–0438, and must be received by December 30, 2024.

### Submitting Comments

We encourage you to submit comments through the Federal eRulemaking Portal at <https://www.regulations.gov>. If your material cannot be submitted using <https://www.regulations.gov>, contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for



alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at <https://www.regulations.gov> and can be viewed by following that website's instructions. We review all comments received, but we may choose not to post off-topic, inappropriate, or duplicate comments that we receive. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

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

### Information Collection Request

*Title:* Voyage Planning for Tank Barge Transits in the Northeast United States.

*OMB Control Number:* 1625-0088.

*Summary:* The information collection requirement for a voyage plan serves as a preventive measure and assists in ensuring the successful execution and completion of a voyage in the First Coast Guard District. This rule (33 CFR 165.100) applies to primary towing vessels engaged in towing tank barges carrying petroleum oil in bulk as cargo.

*Need:* Section 311 of the Coast Guard Authorization Act of 1998, Public Law 105-383, 46 U.S.C. 70034 (previously 33 U.S.C. 1231) authorizes the Coast Guard to promulgate regulations for towing vessel and barge safety for the waters of the Northeast subject to the jurisdiction of the First Coast Guard District. This regulation is contained in 33 CFR 165.100. The information for a voyage plan will provide a mechanism for assisting vessels towing tank barges to identify those specific risks, potential equipment failures, or human errors that may lead to accidents.

*Forms:* None.

*Respondents:* Owners and operators of towing vessels.

*Frequency:* On occasion.

*Hour Burden Estimate:* The estimated burden has increased from 937 hours to 1,544 hours a year, due to an increase in the estimated annual number of respondents.

*Authority:* The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended.

Dated: October 25, 2024.

**Kathleen Claffie,**

Chief, Office of Privacy Management, U.S. Coast Guard.

[FR Doc. 2024-25375 Filed 10-30-24; 8:45 am]

BILLING CODE 9110-04-P

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

[Docket ID FEMA-2014-0022]

### Technical Mapping Advisory Council; Meeting; Correction

**AGENCY:** Federal Emergency Management Agency, Department of Homeland Security.

**ACTION:** Notice of open Federal Advisory Committee meeting; correction.

**SUMMARY:** On August 28, 2024, FEMA published in the **Federal Register** a notice announcing that the Technical Mapping Advisory Council (TMAC) will hold a virtual meeting on Tuesday, November 19, 2024, that will be open to the public via a Microsoft Teams Video Communications link. This document provides a correction to information provided in that notice.

**DATES:** The TMAC will meet on Tuesday, November 19, 2024, from 8 a.m. to 5 p.m. Eastern Time (ET). Please note that the meeting will close early if the TMAC has completed its business.

**ADDRESSES:** The meeting will be held virtually using the following Microsoft Teams Video Communications link (<https://tinyurl.com/2c5qxkps>). Members of the public who wish to attend the virtual meeting must register in advance by sending an email to [FEMA-TMAC@fema.dhs.gov](mailto:FEMA-TMAC@fema.dhs.gov) (Attn: Brian Koper) by 5 p.m. ET on Thursday, November 14, 2024.

To facilitate public participation, members of the public are invited to provide written comments on the issues to be considered by the TMAC.

Associated meeting materials will be available upon request on Friday, November 15, 2024. To receive a copy of any relevant materials, please send the request to: [FEMA-TMAC@fema.dhs.gov](mailto:FEMA-TMAC@fema.dhs.gov) (Attn: Brian Koper).

Written comments to be considered by the committee at the time of the meeting must be submitted and received by Thursday, November 14, 2024, 5 p.m. ET identified by Docket ID FEMA-2014-0022, and submitted by the following methods:

- *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for submitting comments.

- *Email:* Address the email to [FEMA-TMAC@fema.dhs.gov](mailto:FEMA-TMAC@fema.dhs.gov). Include the docket number in the subject line of the message. Include name and contact information in the body of the email.

*Instructions:* All submissions received must include the words "Federal

Emergency Management Agency" and the docket number for this action. Comments received will be posted without alteration at <http://www.regulations.gov>, including any personal information provided. You may wish to review the Privacy and Security Notice via a link on the homepage of <http://www.regulations.gov>.

*Docket:* For docket access to read background documents or comments received by the TMAC, go to <https://www.regulations.gov> and search for the Docket ID FEMA-2014-0022.

A public comment period will be held on Tuesday, November 19, 2024, from 3:30 p.m. to 4 p.m. ET. The public comment period will not exceed 30 minutes. Please note that the public comment period may end before the time indicated, following the last call for comments. Contact the individual listed below to register as a speaker by Thursday, November 14, 2024, 5 p.m. ET. Please be prepared to submit a written version of your public comment by Monday, November 18, 2024, 5 p.m. ET.

FEMA is committed to ensuring all participants have equal access regardless of disability status. If you require reasonable accommodation to fully participate due to a disability, please contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** caption as soon as possible.

**FOR FURTHER INFORMATION CONTACT:** Brian Koper, Designated Federal Officer for the TMAC, FEMA, 400 C St. SW, Washington, DC 20472, telephone 202-646-3085, and email [brian.koper@fema.dhs.gov](mailto:brian.koper@fema.dhs.gov). The TMAC website is: <https://www.fema.gov/flood-maps/guidance-partners/technical-mapping-advisory-council>.

### SUPPLEMENTARY INFORMATION:

#### Correction

In FR Doc. 2024-19296, beginning on page 68918 in the **Federal Register** of Wednesday, August 28, 2024, the following correction is made:

On page 68918, in the third column, in the first paragraph under **ADDRESSES**, the Microsoft Teams Video Communications link "<https://tinyurl.com/44k78fd5>" is corrected to read "<https://tinyurl.com/2c5qxkps>".

**Nicholas A. Shufro,**

Assistant Administrator (Acting), Risk Analysis, Planning & Information Directorate Resilience, FEMA.

[FR Doc. 2024-25206 Filed 10-30-24; 8:45 am]

BILLING CODE 9110-12-P

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

[Docket No. FR-7086-N-28]

**60-Day Notice of Proposed Information Collection: Budget-Based Rent Adjustment Requests and Appeals; OMB Control No.: 2502-0324**

**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:* December 30, 2024.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Written comments and recommendations for the proposed information collection can be sent within 60 days of publication of this notice to [www.regulations.gov](http://www.regulations.gov).

Interested persons are also invited to submit comments regarding this proposal by name and/or OMB Control Number and can be sent to: Colette Pollard, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Room 8210, Washington, DC 20410-5000; telephone (202) 402-3400 (this is not a toll-free number) or email at [Colette.Pollard@hud.gov](mailto:Colette.Pollard@hud.gov), for a copy of the proposed forms or other available information.

**FOR FURTHER INFORMATION CONTACT:** Colette Pollard, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email [Colette.Pollard@hud.gov](mailto:Colette.Pollard@hud.gov) or telephone (202) 402-3400. This is not a toll-free number. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech and communication disabilities. To learn more about how to make an accessible telephone call, please visit <https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs>. 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:* Budget Based Rent Adjustment Request and Appeals.

*OMB Approval Number:* 2502-0324.

*Type of Request:* Extension of a currently approved collection.

*Form Number:* HUD-92457-A.

*Description of the need for the information and proposed use:* Budget worksheet will be used by HUD Field staff, along with other information submitted by owners, as a tool for determining the reasonableness of rent increases. The purposes of the worksheet and the collection of budgetary information are to allow owners to plan for expected increases in expenditures. Owners are able to appeal denial decisions of their requests.

*Respondents:* Not-for-profit institutions; Owners and project managers of HUD subsidized properties.

*Estimated Number of Respondents:* 974.

*Estimated Number of Responses:* 1,074.

*Frequency of Response:* Annual.

*Average Hours per Response:* 5 hours 20 minutes.

*Total Estimated Burdens:* 5,347.

**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.

Jeffrey D. Little,

*General Deputy Assistant Secretary, Office of Housing.*

[FR Doc. 2024-25383 Filed 10-30-24; 8:45 am]

BILLING CODE 4210-67-P

**DEPARTMENT OF THE INTERIOR****Bureau of Safety and Environmental Enforcement**

[Docket ID BSEE-2024-0002; EEEE500000 254E1700D2 ET1SF0000.EAQ000; OMB Control Number 1014-0017]

**Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Safety and Environmental Management Systems**

**AGENCY:** Bureau of Safety and Environmental Enforcement, Interior.

**ACTION:** Notice of information collection; request for comment.

**SUMMARY:** In accordance with the Paperwork Reduction Act (PRA) of 1995, the Bureau of Safety and Environmental Enforcement (BSEE) proposes to renew an information collection.

**DATES:** Interested persons are invited to submit comments on or before December 2, 2024.

**ADDRESSES:** Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain). Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function. Please provide a copy of your comments to Nikki Mason, BSEE ICCO, 45600 Woodland Road, Sterling, VA 20166; or by email to [nikki.mason@bsee.gov](mailto:nikki.mason@bsee.gov). Please reference OMB Control Number 1014-0017 in the subject line of your comments.

**FOR FURTHER INFORMATION CONTACT:** To request additional information about this ICR, contact Nikki Mason by email at [nikki.mason@bsee.gov](mailto:nikki.mason@bsee.gov) or telephone number (703) 787-1607. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered

within their country to make international calls to the point-of-contact in the United States. You may also view the ICR at <https://www.reginfo.gov/public/do/PRAMain>.

**SUPPLEMENTARY INFORMATION:** In accordance with the PRA and 5 CFR 1320.8(d)(1), 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 July 16, 2024 (89 FR 57939). No comments were received.

As part of our continuing effort to reduce paperwork and respondent burdens, we are again soliciting comments from the public and other Federal agencies on the proposed ICR that is described below. We are especially interested in public comment addressing the following:

- (1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;
- (2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;
- (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

- (4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

**Abstract:** Regulations governing Safety and Environmental Management Systems (SEMS) are covered in 30 CFR 250, Subpart S and are the subject of this collection. This request also covers any related Notices to Lessees and Operators (NLTs) that BSEE issues to clarify, supplement, or provide additional guidance on some aspects of our regulations.

We consider the information to be critical for us to monitor industry's operations record of safety and environmental management on the OCS. The Subpart S regulations hold the operator accountable for the overall safety of the offshore facility, including ensuring that all employees, contractors, and subcontractors have safety policies and procedures in place that support the implementation of the operator's SEMS program and align with the principles of managing safety. An operator's SEMS program must describe management's commitment to safety and the environment, as well as policies and procedures to assure safety and environmental protection while conducting OCS operations (including those operations conducted by all personnel on the facility). BSEE will use the information obtained by submittals and observed via SEMS audits to ensure that operations on the OCS are conducted safely, as they pertain to both human and environmental factors, and in accordance with BSEE regulations, including industry practices incorporated by reference within the regulations. Job Safety Analyses (JSA's) and other recordkeeping required by the SEMS regulation will be reviewed diligently by BSEE during inspections and other oversight activities and by SEMS auditors during regulatory required audits, to ensure that industry is using the documentation required by the SEMS regulation to manage their safety and environmental risks.

Information on Form BSEE-0131, which the SEMS regulation requires to be submitted to BSEE annually, includes company identification, number of company/contractor injuries and/or illnesses suffered, company/contractor hours worked, EPA National Pollutant Discharge Elimination System (NPDES) permit non-compliances, and oil spill volumes for spills less than 1 barrel. Such information is reported on a calendar year basis, with data broken out by calendar quarter. The information is used to develop industry average incident rates that help to describe how well the offshore oil and gas industry is performing. Operators use these incident rates to benchmark against their own performance, and to focus on areas that need improvement.

Using the produced data allows BSEE to better focus our regulatory and research programs on areas where the performance measures indicate that operators are having difficulty meeting our expectations. BSEE will be more effective in leveraging resources by redirecting research efforts, promoting appropriate regulatory initiatives, and shifting inspection and Directed Audit program emphasis based on performance results.

**Title of Collection:** 30 CFR part 250, subpart S, Safety and Environmental Management Systems (SEMS).

**OMB Control Number:** 1014-0017.

**Form Number:** BSEE-0131, Performance Measures Data.

**Type of Review:** Extension of a currently approved collection.

**Respondents/Affected Public:** Potential respondents include Federal OCS oil, gas, and sulfur lessees and/or operators and holders of pipeline rights-of-way and/or third-party personnel or organization.

**Total Estimated Number of Annual Respondents:** Currently there are approximately 555 Federal OCS oil, gas, and sulfur lessees and holders of pipeline rights-of-way. Not all the potential respondents will submit information in any given year, and some may submit multiple times.

**Total Estimated Number of Annual Responses:** 686.

**Estimated Completion Time per Response:** Varies from 39 hours to 11,926 hours, depending on activity.

**Total Estimated Number of Annual Burden Hours:** 1,487,634.

**Respondent's Obligation:** Responses are mandatory.

**Frequency of Collection:** Submissions are on occasion.

**Total Estimated Annual Nonhour Burden Cost:** \$3,259,727.

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.*).

**Kirk Malstrom,**

*Chief, Regulations and Standards Branch.*

[FR Doc. 2024-25073 Filed 10-30-24; 8:45 am]

**BILLING CODE 4310-VH-P**

**INTERNATIONAL TRADE COMMISSION****[Investigation No. 337-TA-1383]****Certain Electronic Eyewear Products and Components Thereof; Notice of Commission Decision Not To Review an Initial Determination Terminating the Investigation as to the Remaining Respondent Based on Settlement; Termination of the Investigation****AGENCY:** U.S. International Trade Commission.**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (“ID”) (Order No. 71) of the presiding Administrative Law Judge (“ALJ”) granting an unopposed motion to terminate the investigation as to the remaining respondent Magic Leap, Inc. of Plantation, Florida (“Settling Respondent”) based on settlement, thereby terminating the investigation in its entirety. The investigation is terminated.

**FOR FURTHER INFORMATION CONTACT:** Houda Morad, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 708-4716. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email [EDIS3Help@usitc.gov](mailto:EDIS3Help@usitc.gov). General information concerning the Commission may also be obtained by accessing its internet server at <https://www.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal on (202) 205-1810.

**SUPPLEMENTARY INFORMATION:** On December 27, 2023, the Commission instituted this investigation under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (“section 337”), based on a complaint filed by Ingeniospec, LLC (“Ingeniospec”) of San Jose, California. *See* 88 FR 89465–66 (Dec. 27, 2023). The complaint alleges a violation of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain electronic eyewear products and components thereof by reason of the infringement of certain claims of U.S. Patent Nos. 8,770,742; 10,310,296; 11,762,224 (“the ‘224 patent”); and

11,803,069 (“the ‘069 patent”). *See id.* In addition to the Settling Respondents, the notice of investigation names the following respondents: Ampere LLC, Ampere Technologies, and GGTR LLC, all of Dover, Delaware; Gogotoro LLC of Brooklyn, New York; Zhuhai Wicue Technology Co., Ltd. of Zhuhai, China; Bose Corporation of Framingham, Massachusetts; Epson America, Inc. of Los Alamitos, California; Seiko Epson Corporation of Nagano, Japan; Everysight Ltd. of Haifa, Israel; Everysight US Inc. of New York, New York; Quanta Computer Incorporated of Taoyuan City, Taiwan; Lenovo (United States), Inc. of Morrisville, North Carolina; Lenovo Group Limited of Hong Kong, China; Lenovo Information Products (Shenzhen) Co., Ltd. of Shenzhen, China; Lucyd Ltd. of London, United Kingdom; Innovative Eyewear, Inc. of North Miami, Florida; Luxottica Group S.p.A. of Milan, Italy; Luxottica of America, Inc. of Mason, Ohio; Razer Inc. and Razer USA Ltd., both of Irvine, California; TCL Technology Group Corporation of Huizhou, China; TCL Electronics Holdings Limited of Hong Kong, China; Falcon Innovation Technology, (Shenzhen) Co., Ltd. of Shenzhen, China; ThirdEye Gen, Inc. of Princeton, New Jersey; Vuzix Corporation of West Henrietta, New York; XREAL, Inc. of Sunnyvale, California; EXREAL Technology Limited of Hong Kong, China; and Matrixed Reality Technology Co., Ltd. of Wuxi, China. *Id.* The Office of Unfair Import Investigations is not a party to the investigation. *Id.*

The Commission previously terminated all respondents other than the Settling Respondent. *See* Order No. 17 (Jan. 31, 2024), *unreviewed by* Comm’n Notice (Feb. 29, 2024); Order No. 18 (Feb. 2, 2024), *unreviewed by* Comm’n Notice (Mar. 4, 2024); Order No. 24 (Feb. 27, 2024), *unreviewed by* Comm’n Notice (Mar. 21, 2024); Order No. 28 (Mar. 4, 2024), *unreviewed by* Comm’n Notice (Mar. 21, 2024); Order No. 35 (Mar. 20, 2024), *unreviewed by* Comm’n Notice (Apr. 17, 2024); Order No. 37 (Mar. 21, 2024), *unreviewed by* Comm’n Notice (Apr. 17, 2024); Order No. 39 (Apr. 1, 2024), *unreviewed by* Comm’n Notice (Apr. 26, 2024); Order No. 47 (May 10, 2024), *unreviewed by* Comm’n Notice (May 22, 2024); Order No. 56 (June 20, 2024), *unreviewed by* Comm’n Notice (July 8, 2024); Order No. 57 (June 20, 2024), *unreviewed by* Comm’n Notice (July 8, 2024); Order No. 69 (Sept. 19, 2024), *unreviewed by* Comm’n Notice (Oct. 8, 2024).

On July 8, 2024, the Commission terminated the investigation as to the ‘069 patent in its entirety, as well as

claims 29, 30, 32, 40–42, and 48 of the ‘224 patent, based on partial withdrawal of the complaint. *See* Order No. 57 (June 20, 2024), *unreviewed by* Comm’n Notice (July 8, 2024).

On September 27, 2024, complainant Ingeniospec and the Settling Respondent filed a joint motion (“Motion”) to terminate the investigation as to the Settling Respondent based on settlement, to stay the procedural deadlines as to the Settling Respondent, and to limit service of the settlement agreement.

On October 9, 2024, the ALJ issued the subject ID (Order No. 71) granting the Motion. Pursuant to Commission Rule 210.21(b) (19 CFR 210.21(b)), the ID notes that “public and confidential versions of the settlement agreement between Ingeniospec and [the Settling Respondent] were attached to the motion.” ID at 2. The ID also notes that “the motion contains a statement that there are no other agreements, written or oral, express or implied between the parties concerning the subject matter of the investigation.” *Id.* The ID further finds, pursuant to Commission Rule 210.50(b)(2) (19 CFR 210.50(b)(2)), that termination of the Settling Respondent from the investigation will not adversely affect the public interest. *See id.* The ALJ further granted the request to limit service of the confidential version of the settlement agreement. *See id.* Because the Settling Respondent is the last remaining respondent in the investigation, the ID also terminates the investigation in its entirety. *See id.* at 3.

No petition for review of the subject ID was filed.

The Commission has determined not to review the subject ID. The investigation is terminated as to the Settling Respondent and in its entirety.

The Commission’s vote for this determination took place on October 28, 2024.

The authority for the Commission’s determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission’s Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: October 28, 2024.

**Lisa Barton,**

*Secretary to the Commission.*

[FR Doc. 2024-25379 Filed 10-30-24; 8:45 am]

**BILLING CODE 7020-02-P**

## INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1389]

### Certain Computing Devices Utilizing Indexed Search Systems and Components Thereof; Notice of Commission Determination To Review and, on Review, To Affirm an Initial Determination Granting in Part Respondents' Motion for Summary Determination of Noninfringement

**AGENCY:** International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined to review and, on review, to affirm with modified and supplemental reasoning the presiding administrative law judge's ("ALJ") initial determination ("ID") (Order No. 18) granting in part the respondents' motion for summary determination of noninfringement with respect to U.S. Patent No. 8,498,977 ("the '977 patent"). The '977 patent is terminated from the investigation.

**FOR FURTHER INFORMATION CONTACT:** Lynde Herzbach, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205-3228. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email [EDIS3Help@usitc.gov](mailto:EDIS3Help@usitc.gov). General information concerning the Commission may also be obtained by accessing its internet server at <https://www.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

**SUPPLEMENTARY INFORMATION:** On January 29, 2024, the Commission instituted this investigation under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, based on a complaint filed by X1 Discovery, Inc. of Pasadena, California ("Complainant"). See 89 FR 5574-75 (Jan. 29, 2024). The complaint, as amended, alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain computing devices utilizing indexed search systems and components thereof by reason of the infringement of certain claims of the '977 patent and U.S. Patent No.

8,856,093 ("the '093 patent"). *Id.* The complaint also alleges that a domestic industry exists. *Id.* The notice of investigation names seven respondents, including: ASUSTeK Computer Inc. of Taipei City, Taiwan; ASUS Computer International of Fremont, California; Acer Inc. of Xizhi, Taiwan; Acer America Corporation of San Jose, California; Dell Technologies Inc. and Dell Products, both of Round Rock, Texas; and Dell (Chengdu) Company Limited of Sichuan, China ("Dell Chengdu"). *Id.* The Office of Unfair Import Investigations is not participating in this investigation.

The Commission previously terminated respondent Dell Chengdu based on partial withdrawal of the complaint. Order No. 8 (May 6, 2024), *unreviewed by Comm'n Notice* (May 22, 2024).

The Commission also previously terminated the investigation as to claims 5, 8-11, 13, 15-16, and 20 of the '977 patent and claims 1-7, 11-12, 14-17, and 19 of the '093 patent based on partial withdrawal of the complaint. Order No. 15 (Aug. 27, 2024), *unreviewed by Comm'n Notice* (Sept. 23, 2024).

On August 5, 2024, respondents Acer Inc., Acer America Corporation, ASUSTek Computer Inc., ASUS Computer International, Dell Technologies Inc. and Dell Products L.P. (collectively, "Respondents") moved for summary determination of noninfringement as to all remaining asserted patent claims. On August 15, 2024, Complainant filed an opposition to the motion.

On August 23, 2024, Respondents filed a motion to strike a portion of Complainant's opposition as being based on an untimely infringement theory. On September 3, 2024, the ALJ granted the motion to strike in part. Order No. 17 (Sept. 3, 2024).

On September 3, 2024, the ALJ issued the subject ID granting in part Respondents' motion for summary determination of noninfringement. Specifically, the ID finds that, based on the proper construction of the claim limitation "non-adjacent in at least one of the identified documents," there is no material issue of fact that the accused products do not infringe the asserted claims of the '977 patent. The ALJ's denial of summary determination of noninfringement as to the '093 patent does not constitute an initial determination and is not before the Commission. See 19 CFR 210.18(f) (stating that only a grant of summary determination shall constitute and initial determination).

On September 9, 2024, Complainant filed a motion for partial reconsideration of the ID. On September 13, 2024, Respondents filed an opposition to the motion for reconsideration.

On September 10, 2024, Complainant filed a petition for review of the subject ID. Complainant contends that the ID errs in its construction of the term "non-adjacent in at least one of the identified documents." Specifically, Complainant asserts that the ALJ incorrectly based the construction on prosecution disclaimer in a patent Complainant argues is "indirectly related" to the Asserted Patents. On September 17, 2024, Respondents filed a response arguing that the ID correctly construes the disputed term and Complainant has no infringement arguments under that proper construction.

On September 16, 2024, the ALJ denied Complainant's motion for partial reconsideration of the ID because the ID is before the Commission and the ALJ lacks authority to reconsider it. Order No. 21 (Sept. 16, 2024).

Having reviewed the record, including the subject ID and the parties' petitions and responses thereto, the Commission has determined to review the subject ID (Order No. 18) and, on review, to affirm the ID with modified and supplemental reasoning as detailed in the concurrently issued Commission opinion. The '977 patent is terminated from the investigation with a finding of noninfringement.

The Commission vote for this determination took place on October 25, 2024.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: October 25, 2024.

**Susan Orndoff,**

*Supervisory Attorney.*

[FR Doc. 2024-25327 Filed 10-30-24; 8:45 am]

**BILLING CODE 7020-02-P**

**DEPARTMENT OF LABOR****Mine Safety and Health Administration****[OMB Control No. 1219–0051]****Proposed Extension of Information Collection; Escape and Evacuation Plans for Surface Coal Mines, Surface Facilities and Surface Work Areas of Underground Coal Mines****AGENCY:** Mine Safety and Health Administration, Labor.**ACTION:** Request for public comments.

**SUMMARY:** The Department of Labor (DOL), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed collections of information, in accordance with the Paperwork Reduction Act of 1995. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Mine Safety and Health Administration (MSHA) is soliciting comments on the information collection entitled Escape and Evacuation Plans for Surface Coal Mines, Surface Facilities and Surface Work Areas of Underground Coal Mines.

**DATES:** All comments must be received on or before December 30, 2024.

**ADDRESSES:** Comments concerning the information collection requirements of this notice may be sent by any of the methods listed below. Please note that late comments received after the deadline will not be considered.

- *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the on-line instructions for submitting comments for docket number MSHA–2024–0033.

- *Mail/Hand Delivery:* DOL–MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, 4th Floor West, Arlington, VA 22202–5452. Before visiting MSHA in person, call 202–693–9455 to make an appointment.

- MSHA will post all comments as well as any attachments, except for information submitted and marked as confidential, in the docket at <https://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** S. Aromie Noe, Director, Office of Standards, Regulations, and Variances, MSHA, at [MSHA.information.collections@dol.gov](mailto:MSHA.information.collections@dol.gov)

(email); (202) 693–9440 (voice); or (202) 693–9441 (facsimile). These are not toll-free numbers.

**SUPPLEMENTARY INFORMATION:****I. Background***A. Legal Authority*

Section 103(h) of the Federal Mine Safety and Health Act of 1977 (Mine Act) as amended, 30 U.S.C. 813(h), authorizes the Mine Safety and Health Administration (MSHA) to collect information necessary to carry out its duty in protecting the safety and health of miners. Further, section 101(a) of the Mine Act, 30 U.S.C. 811(a), authorizes the Secretary of Labor (Secretary) to develop, promulgate, and revise, as may be appropriate, improved mandatory health or safety standards for the protection of life and prevention of injuries in coal, metal, and nonmetal mines.

*B. Information Collection*

In order to fulfill the statutory mandates to promote miners' health and safety, MSHA requires the collection of information under the information collection request entitled Escape and Evacuation Plans for Surface Coal Mines, Surface Facilities and Surface Work Areas of Underground Coal Mines. The information collection is intended to train persons working at surface installations on how to safely escape and evacuate these sites in case of a fire hazard.

Individuals working at surface installations are at risk if a fire breaks out at a mine. To protect workers' safety and health in mines or at surface installations at mines, mine operators must keep escape, and evacuation plans up to date. Under 30 CFR 77.1101(a), each operator of a mine must establish and keep current a specific escape and evacuation plan to be followed in the event of a fire. Under 30 CFR 77.1101(b), each operator must instruct all their employees in current escape and evacuation plans, fire alarm signals, and applicable procedures to be followed in case of fire. Under 30 CFR 77.1101(c), plans for escape and evacuation plans must include the designation and proper maintenance of adequate means for exit from all areas where persons are required to work or travel, including buildings, equipment, and areas where persons normally congregate during the work shift.

Fire protection requirements for underground coal mines is covered by OMB Control Number 1219–0054.

**II. Desired Focus of Comments**

MSHA is soliciting comments concerning the proposed information collection related to Escape and Evacuation Plans for Surface Coal Mines, Surface Facilities and Surface Work Areas of Underground Coal Mines. MSHA is particularly interested in comments that:

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information has practical utility;
- Evaluate the accuracy of MSHA's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- Suggest methods to enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

The information collection request will be available on <https://www.regulations.gov>. MSHA cautions the commenter against providing any information in the submission that should not be publicly disclosed. Full comments, including personal information provided, will be made available on <https://www.regulations.gov> and <https://www.reginfo.gov>.

The public may also examine publicly available documents at DOL–MSHA, Office of Standards, Regulations and Variances, 201 12th Street South, 4th Floor West, Arlington, VA 22202–5452. Sign in at the receptionist's desk on the 4th Floor via the West elevator. Before visiting MSHA in person, call 202–693–9455 to make an appointment.

Questions about the information collection requirements may be directed to the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

**III. Current Actions**

This information collection request concerns provisions for Escape and Evacuation Plans for Surface Coal Mines, Surface Facilities and Surface Work Areas of Underground Coal Mines. MSHA has updated the data with respect to the number of respondents, responses, time burden, and burden costs supporting this information collection request from the previous information collection request.

*Type of Review:* Extension, without change, of a currently approved collection.

*Agency:* Mine Safety and Health Administration.

*OMB Number:* 1219-0051.

*Affected Public:* Business or other for-profit.

*Number of Annual Respondents:* 31.

*Frequency:* On occasion.

*Number of Annual Responses:* 62.

*Annual Time Burden:* 130 hours.

*Annual Other Burden Costs:* \$0.

Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval of the proposed information collection request; they will become a matter of public record and be available at <https://www.reginfo.gov>.

**Song-ae Aromie Noe,**

*Certifying Officer, Mine Safety and Health Administration.*

[FR Doc. 2024-25235 Filed 10-30-24; 8:45 am]

**BILLING CODE 4510-43-P**

## DEPARTMENT OF LABOR

### Mine Safety and Health Administration

[OMB Control No. 1219-0082]

#### **Proposed Extension of Information Collection; Records of Preshift and Onshift Inspections of Slope and Shaft Areas at Coal Mines**

**AGENCY:** Mine Safety and Health Administration, Labor.

**ACTION:** Request for public comments.

**SUMMARY:** The Department of Labor (DOL), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed collections of information, in accordance with the Paperwork Reduction Act of 1995. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Mine Safety and Health Administration (MSHA) is soliciting comments on the information collection entitled Records of Preshift and Onshift Inspections of Slope and Shaft Areas at Coal Mines.

**DATES:** All comments must be received on or before December 30, 2024.

**ADDRESSES:** Comments concerning the information collection requirements of

this notice may be sent by any of the methods listed below. Please note that late comments received after the deadline will not be considered.

• **Federal E-Rulemaking Portal:**

<https://www.regulations.gov>. Follow the on-line instructions for submitting comments for docket number MSHA-2024-0027.

• **Mail/Hand Delivery:** DOL-MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, 4th Floor West, Arlington, VA 22202-5452. Before visiting MSHA in person, call 202-693-9455 to make an appointment.

• **MSHA will post all comments as well as any attachments, except for information submitted and marked as confidential, in the docket at <https://www.regulations.gov>.**

**FOR FURTHER INFORMATION CONTACT:** S. Aromie Noe, Director, Office of Standards, Regulations, and Variances, MSHA, at [MSHA.information.collections@dol.gov](mailto:MSHA.information.collections@dol.gov) (email); (202) 693-9440 (voice); or (202) 693-9441 (facsimile). These are not toll-free numbers.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

###### *A. Legal Authority*

Section 103(h) of the Federal Mine Safety and Health Act of 1977 (Mine Act) as amended, 30 U.S.C. 813(h), authorizes the Mine Safety and Health Administration (MSHA) to collect information necessary to carry out its duty in protecting the safety and health of miners. Further, section 101(a) of the Mine Act, 30 U.S.C. 811(a), authorizes the Secretary of Labor (Secretary) to develop, promulgate, and revise, as may be appropriate, improved mandatory health or safety standards for the protection of life and prevention of injuries in coal, metal and nonmetal mines.

###### *B. Information Collection*

In order to fulfill the statutory mandates to promote miners' health and safety, MSHA requires the collection of information under the information collection request entitled Records of Preshift and Onshift Inspections of Slope and Shaft Areas at Coal Mines. The information collection is intended to assist slope and shaft supervisors and employees, State mine inspectors, and Federal mine inspectors in making decisions that will ultimately affect the safety and health of slope and shaft sinking employees based on the records that show the examinations and tests that were conducted.

The working environment is typically a confined area in close proximity to

moving equipment. The sinking of slopes and shafts is a particularly hazardous operation where conditions change drastically in short periods of time. Explosive methane and other harmful gases can be expected to infiltrate the work environment at any time. Preshift and onshift inspections, as well as inspections before and after blasting, are fundamental to ensuring that no changes have occurred, and that the working environment is in a condition that is optimal for miner health and safety.

##### **1. Preshift and Onshift Inspections**

Preshift inspections need to be completed close to the beginning of shifts to ensure that there is little time for conditions to change, and during shifts to ensure that conditions are stable. Under 30 CFR 77.1901, slope and shaft areas must be examined by a certified person for hazardous conditions, including tests for methane and oxygen deficiency, within 90 minutes before each shift, at least once during each shift when employees are inside any slope or shaft during development, and before and after blasting. The surface area surrounding each slope and shaft is also required to be inspected by a certified person for hazards and all hazards in the vicinity must be corrected before miners are permitted to enter the excavation.

It is also important to keep records of these conditions and any corrective actions upon the discovery of hazardous conditions. Under 30 CFR 77.1901(f), operators must keep records of the results of the inspections. The record includes a description of any hazardous condition found and the corrective action taken to abate it. The record is necessary to ensure that the inspections and tests are conducted in a timely fashion and that corrective action is taken when hazardous conditions are identified, thereby ensuring a safe working environment for the slope and shaft sinking employees. The record is maintained at the mine site for the duration of the operation.

##### **II. Desired Focus of Comments**

MSHA is soliciting comments concerning the proposed information collection related to Records of Preshift and Onshift Inspections of Slope and Shaft Areas at Coal Mines. MSHA is particularly interested in comments that:

• Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information has practical utility;



- Evaluate the accuracy of MSHA's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- Suggest methods to enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

The information collection request will be available on <https://www.regulations.gov>. MSHA cautions the commenter against providing any information in the submission that should not be publicly disclosed. Full comments, including personal information provided, will be made available on <https://www.regulations.gov> and <https://www.reginfo.gov>.

The public may also examine publicly available documents at DOL-MSHA, Office of Standards, Regulations and Variances, 201 12th Street South, 4th Floor West, Arlington, VA 22202-5452. Sign in at the receptionist's desk on the 4th Floor via the West elevator. Before visiting MSHA in person, call 202-693-9455 to make an appointment.

Questions about the information collection requirements may be directed to the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

### III. Current Actions

This information collection request concerns provisions for Records of Preshift and Onshift Inspections of Slope and Shaft Areas at Coal Mines. MSHA has updated the data with respect to the number of respondents, responses, time burden, and burden costs supporting this information collection request from the previous information collection request.

*Type of Review:* Extension, without change, of a currently approved collection.

*Agency:* Mine Safety and Health Administration.

*OMB Number:* 1219-0082.

*Affected Public:* Business or other for-profit.

*Number of Annual Respondents:* 15.

*Frequency:* On occasion.

*Number of Annual Responses:* 6,600.

*Annual Time Burden:* 8,250 hours.

*Annual Other Burden Costs:* \$0.

Comments submitted in response to this notice will be summarized and included in the request for Office of

Management and Budget approval of the proposed information collection request; they will become a matter of public record and be available at <https://www.reginfo.gov>.

Song-ae Aromie Noe,

*Certifying Officer, Mine Safety and Health Administration.*

[FR Doc. 2024-25237 Filed 10-30-24; 8:45 am]

BILLING CODE 4510-43-P

## DEPARTMENT OF LABOR

### Office of Workers' Compensation Programs

[OMB Control No. 1240-NEW]

#### Proposed Information Collection; OWCP Provider ACH Form (OWCP-3881)

**AGENCY:** Office of Workers' Compensation Programs, Labor.

**ACTION:** Request for public comments.

**SUMMARY:** The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance request for comment to provide the general public and Federal agencies with an opportunity to comment on proposed collections of information in accordance with the Paperwork Reduction Act of 1995. This request helps to ensure that: requested data can be provided in the desired format; reporting burden (time and financial resources) is minimized; collection instruments are clearly understood; and the impact of collection requirements on respondents can be properly assessed. Currently, the Office of Workers' Compensation Programs (OWCP) is soliciting comments on the information collection for OWCP Provider ACH Form (SF-3881).

**DATES:** All comments must be received on or before December 30, 2024.

**ADDRESSES:** You may submit comment as follows. Please note that late, untimely filed comments will not be considered.

*Written/Paper Submissions:* Submit written/paper submissions in the following way:

- Mail or visit DOL-OWCP (Hand-Delivery), Office of Workers' Compensation Programs, U.S. Department of Labor, 200 Constitution Avenue NW, Room S3524, Washington, DC 20210.

- OWCP will post your comment as well as any attachments, except for information submitted and marked as confidential, in the docket at <https://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Anjanette Suggs, Office of Workers' Compensation Programs, at [suggs.anjanette@dol.gov](mailto:suggs.anjanette@dol.gov) (email) or (202) 354-9660 (voice).

### SUPPLEMENTARY INFORMATION:

#### I. Background

The Office of Workers' Compensation Programs (OWCP) is the agency responsible for administration of the Federal Employees' Compensation Act (FECA), 5 U.S.C. 8101 *et seq.*, the Black Lung Benefits Act (BLBA), 30 U.S.C. 901 *et seq.*, the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA), 42 U.S.C. 7384 *et seq.*, and the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. 901 *et seq.* These statutes require OWCP to pay for appropriate medical and vocational rehabilitation services provided to beneficiaries. In order for OWCP's bill processing contractor to pay providers for these services with its bill processing system, providers must complete and submit an ACH Vendor payment system form. This form is required under the provision of 31 U.S.C. 3322 and 31 CFR 210. The information reported on the form will be used by the Treasury Department to transmit payment data by electronic means to a vendor's financial institution for payment of medical services rendered to OWCP's claimants.

If this information is not obtained, when a provider submits their bill for payment, the bill payment process is substantially prolonged and increases the burden on providers to obtain payment for services rendered. The regulations implementing the above statutes that OWCP administers permit the collection of information necessary to allow its billing contractor to process and pay bills submitted by providers of medical and vocational rehabilitation services. (20 CFR 10.801, 30.701, 725.704, 725.705 and 725.714).

#### II. Desired Focus of Comments

OWCP is soliciting comments concerning the proposed information collection related to the OWCP ACH Vendor Payment Enrollment Form.

The OWCP is particularly interested in comments that:

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information has practical utility;

- Evaluate the accuracy of OWCP's estimate of the burden related to the information collection, including the validity of the methodology and assumptions used in the estimate;



- Suggest methods to enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the information collection 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.

Background documents related to this information collection request are available at <https://regulations.gov> and at DOL–OWCP located at 200 Constitution Avenue NW, Room S–3524, Washington, DC 20210. Questions about the information collection requirements may be directed to the person listed in the **FOR FURTHER INFORMATION** section of this notice.

### III. Current Actions

This information collection request concerns ACH Vendor Payment Enrollment Form. OWCP has updated the data with respect to the number of respondents, responses, burden hours, and burden costs supporting this information from the previous information collection request.

*Type of Review:* New collection without an OMB Control Number.

*Agency:* Office of Workers' Compensation Programs.

*OMB Number:* 1240–0NEW.

*Affected Public:* Private Sector.

*Number of Respondents:* 35,424.

*Frequency:* On Occasion.

*Number of Responses:* 35,424.

*Annual Burden Hours:* 1,772 hours.

*Annual Respondent or Recordkeeper*

*Cost:* \$216.96.

*OWCP Forms:* OWCP Form [OWCP–3881], [OWCP Provider Enrollment ACH Form].

Comments submitted in response to this notice will be summarized in the request for Office of Management and Budget approval of the proposed information collection request; they will become a matter of public record and will be available at <https://www.reginfo.gov>.

Anjanette C. Suggs,  
Certifying Officer.

[FR Doc. 2024–25236 Filed 10–30–24; 8:45 am]

BILLING CODE 4510–CR–P

### OFFICE OF MANAGEMENT AND BUDGET

#### Designation of Databases to the Do Not Pay Working System

**AGENCY:** Office of Management and Budget.

**ACTION:** Notice of designation.

The Payment Integrity Information Act of 2019 (PIIA) authorizes the Office of Management and Budget (OMB) to designate databases for inclusion in the Department of the Treasury (Treasury) Do Not Pay Working System under the Do Not Pay Initiative. PIIA requires OMB to provide public notice and an opportunity for comment prior to designating databases. In fulfillment of this requirement, OMB published a Notice of Proposed Designation on Aug. 29, 2024 (89 FR 70208) for Treasury's Account Verification Services and Treasury's Death Notification Entries. OMB received no comments on these proposed designations during the 30-day comment period. Effective immediately, OMB designates Treasury's Account Verification Services and Treasury's Death Notification Entries to the Do Not Pay Working System.

**FOR FURTHER INFORMATION CONTACT:** Rebecca Rowe, Policy Analyst, Office of Federal Financial Management, (telephone: 202–395–3993 OMB email: [PaymentIntegrity@omb.eop.gov](mailto:PaymentIntegrity@omb.eop.gov)).

Shalanda Young,

Director, Office of Management & Budget.

[FR Doc. 2024–25234 Filed 10–30–24; 8:45 am]

BILLING CODE 3110–01–P

### NATIONAL SCIENCE FOUNDATION

#### Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978

**AGENCY:** National Science Foundation.

**ACTION:** Notice of permit applications received.

**SUMMARY:** The National Science Foundation (NSF) is required to publish a notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act in the Code of Federal Regulations. This is the required notice of permit applications received.

**DATES:** Interested parties are invited to submit written data, comments, or views with respect to this permit application by December 2, 2024. This application may be inspected by interested parties at the Permit Office, address below.

**ADDRESSES:** Comments should be addressed to Permit Office, Office of Polar Programs, National Science Foundation, 2415 Eisenhower Avenue,

Alexandria, Virginia 22314 or [ACApermits@nsf.gov](mailto:ACApermits@nsf.gov).

**FOR FURTHER INFORMATION CONTACT:** Andrew Titmus, ACA Permit Officer, at the above address, 703–292–4479.

**SUPPLEMENTARY INFORMATION:** The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541, 45 CFR 670), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

### Application Details

*Permit Application:* 2025–019

1. *Applicant:* Ari Friedlaender, UC Santa Cruz, Institute of Marine Sciences, 115 McAllister Way, Santa Cruz, CA 96050.

*Activity for Which Permit is Requested:* Type, description of activity. Take, Harmful Interference, Import into USA. The applicant proposes to continue research activities to understand the population demography, health, behavior, and ecology of cetaceans in the Antarctic Peninsula region. To study these species, the applicant and agents would assess body condition, health, behavior, and distribution using remotely piloted aircraft systems (RPAS). Population demography and growth rates of cetaceans would be evaluated from remote biopsy samples that would be imported to the U.S. for analysis. Behavior and ecology of individual whales would be studied using multi-sensor suction cup tags that collect high-resolution behavioral information for 1–2 days, dart/barb tags that collect spatial and dive data for up to one month, and implantable tags that collect movement and behavioral data on individual whales for months. The applicant and agents would biopsy, tag, and operate RPAS over humpback whales, Antarctic minke whales, blue whales, fin whales, sei whales, southern right whales, killer whales, and Arnoux's beaked whales. The proposed research focusing on cetaceans requires a permit under the Marine Mammal Protection Act which is currently pending.

*Location:* Antarctic Peninsula Region.

*Dates of Permitted Activities:*  
December 1, 2024–November 30, 2029.

**Alina Pavao,**

*Administrative Assistant, Office of Polar Programs.*

[FR Doc. 2024–25351 Filed 10–30–24; 8:45 am]

**BILLING CODE 7555–01–P**

## NATIONAL SCIENCE FOUNDATION

### Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978

**AGENCY:** National Science Foundation.

**ACTION:** Notice of permit applications received.

**SUMMARY:** The National Science Foundation (NSF) is required to publish a notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act in the Code of Federal Regulations. This is the required notice of permit applications received.

**DATES:** Interested parties are invited to submit written data, comments, or views with respect to this permit application by December 2, 2024. This application may be inspected by interested parties at the Permit Office, address below.

**ADDRESSES:** Comments should be addressed to Permit Office, Office of Polar Programs, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, Virginia 22314 or [ACApermits@nsf.gov](mailto:ACApermits@nsf.gov).

**FOR FURTHER INFORMATION CONTACT:** Andrew Titmus, ACA Permit Officer, at the above address, 703–292–4479.

**SUPPLEMENTARY INFORMATION:** The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541, 45 CFR 671), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

### Application Details

*Permit Application: 2025–021*

1. *Applicant:* Sujatha Bagal, National Geographic Society, 1145 17th Street NW, Washington, DC 20036

*Activity for Which Permit is Requested:* Waste Management. The

applicant seeks an Antarctic Conservation Act permit in association with Waste Management activities in Antarctica. The applicant proposes to conduct a multidisciplinary research project in the Weddell Sea involving the use of a Remotely Piloted Aircraft System (RPAS), a Remotely Operated Vehicle (ROV), and a benthic camera (drop cam). For RPAS use, flights will only occur under fair weather conditions and be operated by an experienced pilot. No flights would occur in the vicinity of wildlife, and no flights would occur over Antarctic Specially Protected Areas or Historic Sites and Monuments. The dropcam would be deployed to a max depth of 3,500 m for up to four hours. A biodegradable anchor would be released to the environment with each camera deployment. All visits ashore would follow Visitor Site Guidelines where applicable.

*Location:* Weddell Sea, Antarctica.

*Dates of Permitted Activities:*  
December 14, 2024–January 4, 2025.

*Permit Application: 2025–020*

2. *Applicant:* Ari S. Friedlaender, Institute for Marine Sciences, UC Santa Cruz, 115 McAllister Way, Santa Cruz, CA 95003.

*Activity for Which Permit is Requested:* Waste Management. The applicant proposes to conduct research around the Antarctic Peninsula to determine the ecological role of cetaceans. Sensor tags would be used to collect data on the underwater movement and behavior of the whales. The applicant would collect skin and blubber biopsy samples to gain a better understanding of the identity, population structure, and health of the whales. The applicant would operate Remotely Piloted Aircraft Systems (RPAS) to collect photographs of individual whales for health assessment purposes. The applicant would collaborate with Antarctic tour operators that would provide platforms to the applicant's research team in order to gather data during time periods that are undersampled. The applicant is seeking a waste permit to cover any accidental releases that may occur if the biopsy darts, tags, and/or remotely piloted aircraft are lost. The research teams would be comprised of experienced researchers and RPAS pilots. The applicant would minimize the risk of generating waste and losing any equipment due to human error. The applicant would also conduct activities under conditions (weather, sea state, etc.) allowing the applicant and team to maintain visual contact with instrumentation and equipment as well

as aid in retrieval as needed. Multi-sensor, suction cup tags would be attached to whales. When they are shed, they float and are retrieved using radio telemetry tracking tools. While tag failure is rare, a lost tag would constitute waste in the form of 300 grams of syntactic foam, 100 grams of electronics and 20 grams of silicon suction cups. Biopsy sampling is done with a crossbow firing a floating dart, made of aluminum and carbon fiber, that bounces off the whale's body after extracting a tiny plug of tissue. The biopsy bolt tips are a 40 mm stainless steel barrel and the bolts also contain a 5x2cm foam float that is used to aid in dart retrieval. The bolts are highly visible and remain at the surface for retrieval. An observer would maintain visual contact with the bolt until retrieval. The successful retrieval rate is very high (only 3 bolts lost in over 500 sampling events). The UAS/RPAS would be operated by experienced pilots according to protocols designed to ensure safe operations and to minimize the risk of loss. The commercial, off-the-shelf aircraft are powered by lithium polymer batteries and do not require any fuels. Loss of aircraft would result in a minor amount of plastic and metal waste from the frame and camera as well as non-toxic (no lead or cadmium) lithium polymer batteries.

*Location:* Antarctic Peninsula Region.

*Dates of Permitted Activities:*  
December 1, 2024–November 30, 2029.

**Alina Pavao,**

*Administrative Assistant, Office of Polar Programs.*

[FR Doc. 2024–25350 Filed 10–30–24; 8:45 am]

**BILLING CODE 7555–01–P**

## POSTAL REGULATORY COMMISSION

[Docket Nos. MC2025–151 and K2025–149; MC2025–152 and K2025–150; MC2025–153 and K2025–151; MC2025–154 and K2025–152; MC2025–155 and K2025–153; MC2025–156 and K2025–154; MC2025–157 and K2025–155; MC2025–158 and K2025–156]

### New Postal Products

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

**DATES:** *Comments are due:* November 1, 2024.

**ADDRESSES:** Submit comments electronically via the Commission's Filing Online system at <http://www.prc.gov>. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

**FOR FURTHER INFORMATION CONTACT:** David A. Trissell, General Counsel, at 202-789-6820.

#### **SUPPLEMENTARY INFORMATION:**

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

- I. Introduction
- II. Public Proceeding(s)
- III. Summary Proceeding(s)

##### **I. Introduction**

Pursuant to 39 CFR 3041.405, the Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to Competitive negotiated service agreement(s). The request(s) may propose the addition of a negotiated service agreement from the Competitive product list or the modification of an existing product currently appearing on the Competitive product list.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (<http://www.prc.gov>). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.<sup>1</sup>

Section II identifies the docket number(s) associated with each Postal Service request, if any, that will be reviewed in a public proceeding as defined by 39 CFR 3010.101(p), the title of each such request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each such request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 and 39 CFR 3000.114 (Public Representative). Section II also establishes comment deadline(s) pertaining to each such request.

The Commission invites comments on whether the Postal Service's request(s) identified in Section II, if any, are consistent with the policies of title 39. Applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3041.

Comment deadline(s) for each such request, if any, appear in Section II.

Section III identifies the docket number(s) associated with each Postal Service request, if any, to add a standardized distinct product to the Competitive product list or to amend a standardized distinct product, the title of each such request, the request's acceptance date, and the authority cited by the Postal Service for each request. Standardized distinct products are negotiated service agreements that are variations of one or more Competitive products, and for which financial models, minimum rates, and classification criteria have undergone advance Commission review. *See* 39 CFR 3041.110(n); 39 CFR 3041.205(a). Such requests are reviewed in summary proceedings pursuant to 39 CFR 3041.325(c)(2) and 39 CFR 3041.505(f)(1). Pursuant to 39 CFR 3041.405(c)–(d), the Commission does not appoint a Public Representative or request public comment in proceedings to review such requests.

##### **II. Public Proceeding(s)**

1. *Docket No(s)*: MC2025–151 and K2025–149; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 529 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: October 24, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Elsie Lee-Robbins; *Comments Due*: November 1, 2024.

2. *Docket No(s)*: MC2025–152 and K2025–150; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 530 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: October 24, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Maxine Bradley; *Comments Due*: November 1, 2024.

3. *Docket No(s)*: MC2025–153 and K2025–151; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 531 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: October 24, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Jennaca Upperman; *Comments Due*: November 1, 2024.

4. *Docket No(s)*: MC2025–154 and K2025–152; *Filing Title*: USPS Request to Add Priority Mail & USPS Ground Advantage Contract 408 to the

Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: October 24, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Katalin Clendenin; *Comments Due*: November 1, 2024.

5. *Docket No(s)*: MC2025–155 and K2025–153; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 532 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: October 24, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Katalin Clendenin; *Comments Due*: November 1, 2024.

6. *Docket No(s)*: MC2025–156 and K2025–154; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 533 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: October 24, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Gregory Stanton; *Comments Due*: November 1, 2024.

7. *Docket No(s)*: MC2025–157 and K2025–155; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 534 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: October 24, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Gregory Stanton; *Comments Due*: November 1, 2024.

8. *Docket No(s)*: MC2025–158 and K2025–156; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 535 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: October 24, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Gregory Stanton; *Comments Due*: November 1, 2024.

##### **III. Summary Proceeding(s)**

None. *See* Section II for public proceedings.

This Notice will be published in the **Federal Register**.

Jennie L. Jbara,

Primary Certifying Official.

[FR Doc. 2024–25330 Filed 10–30–24; 8:45 am]

**BILLING CODE 7710-FW-P**

<sup>1</sup> *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

**POSTAL REGULATORY COMMISSION****[Docket No. RM2024–9; Order No. 7817]****RIN 3211–AA39****Service Performance Measurement Systems for Market Dominant Products****AGENCY:** Postal Regulatory Commission.**ACTION:** Notice.

**SUMMARY:** This document acknowledges that the Commission will be conducting one or more off-the-record technical conferences to attain information that the Commission requires to effectively review the Postal Service's Service Performance Measurement (SPM) system.

**DATES:** *Technical Conference:* January 15, 2025, at 11:00 a.m., Eastern Time, Virtual.

**FOR FURTHER INFORMATION CONTACT:** David A. Trissell, General Counsel, at 202–789–6820.

**SUPPLEMENTARY INFORMATION:** Docket No. RM2024–9 was initiated by the Commission to review the accuracy, reliability, and representativeness of the Postal Service's SPM system. SPM produces composite service performance results that are generated using several different data sources and data processing methods. The service performance results produced by SPM are an amalgamation of granular and siloed evaluations of performance for the individual segments of mail collection (First Mile), mail processing (Processing Duration), and mail delivery (Last Mile). Given recent changes in operations and mail mix, the Commission has concerns about the continued validity of the design and implementation of each of these three systems, as well as how the systems function collectively as a whole.

Commission Information Request No. 3 sought to obtain, *inter alia*, the programming code associated with SPM, as well as a real-world example of the relevant SPM calculations being performed. The Postal Service moved for reconsideration, arguing that providing the information requested would be burdensome, would raise security concerns, and might not be technically feasible. The Postal Service requested a technical conference to discuss these issues, which the Commission found good cause to grant.

By the Commission.

**Jennie L. Jbara,**

*Primary Certifying Official.*

[FR Doc. 2024–25326 Filed 10–30–24; 8:45 am]

**BILLING CODE 7710–FW–P**

**POSTAL REGULATORY COMMISSION**

**[Docket Nos. MC2025–151 and K2025–149; MC2025–152 and K2025–150; MC2025–153 and K2025–151; MC2025–154 and K2025–152; MC2025–155 and K2025–153; MC2025–156 and K2025–154; MC2025–157 and K2025–155; MC2025–158 and K2025–156]**

**New Postal Products****AGENCY:** Postal Regulatory Commission.**ACTION:** Notice.

**SUMMARY:** The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

**DATES:** *Comments are due:* November 1, 2024.

**ADDRESSES:** Submit comments electronically via the Commission's Filing Online system at <http://www.prc.gov>. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

**FOR FURTHER INFORMATION CONTACT:** David A. Trissell, General Counsel, at 202–789–6820.

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The public portions of the Postal Service's request(s) can be accessed via the Commission's website (<http://www.prc.gov>). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.<sup>1</sup>

Section II identifies the docket number(s) associated with each Postal Service request, if any, that will be

<sup>1</sup> See Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

reviewed in a public proceeding as defined by 39 CFR 3010.101(p), the title of each such request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each such request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 and 39 CFR 3000.114 (Public Representative). Section II also establishes comment deadline(s) pertaining to each such request.

The Commission invites comments on whether the Postal Service's request(s) identified in Section II, if any, are consistent with the policies of title 39. Applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3041. Comment deadline(s) for each such request, if any, appear in Section II.

Section III identifies the docket number(s) associated with each Postal Service request, if any, to add a standardized distinct product to the Competitive product list or to amend a standardized distinct product, the title of each such request, the request's acceptance date, and the authority cited by the Postal Service for each request. Standardized distinct products are negotiated service agreements that are variations of one or more Competitive products, and for which financial models, minimum rates, and classification criteria have undergone advance Commission review. See 39 CFR 3041.110(n); 39 CFR 3041.205(a). Such requests are reviewed in summary proceedings pursuant to 39 CFR 3041.325(c)(2) and 39 CFR 3041.505(f)(1). Pursuant to 39 CFR 3041.405(c)–(d), the Commission does not appoint a Public Representative or request public comment in proceedings to review such requests.

**II. Public Proceeding(s)**

1. *Docket No(s):* MC2025–151 and K2025–149; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 529 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* October 24, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Elsie Lee-Robbins; *Comments Due:* November 1, 2024.

2. *Docket No(s):* MC2025–152 and K2025–150; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 530 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:*

October 24, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Maxine Bradley; *Comments Due*: November 1, 2024.

3. *Docket No(s)*: MC2025–153 and K2025–151; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 531 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: October 24, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Jennaca Upperman; *Comments Due*: November 1, 2024.

4. *Docket No(s)*: MC2025–154 and K2025–152; *Filing Title*: USPS Request to Add Priority Mail & USPS Ground Advantage Contract 408 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: October 24, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Katalin Clendenin; *Comments Due*: November 1, 2024.

5. *Docket No(s)*: MC2025–155 and K2025–153; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 532 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: October 24, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Katalin Clendenin; *Comments Due*: November 1, 2024.

6. *Docket No(s)*: MC2025–156 and K2025–154; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 533 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: October 24, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Gregory Stanton; *Comments Due*: November 1, 2024.

7. *Docket No(s)*: MC2025–157 and K2025–155; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 534 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: October 24, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Gregory Stanton; *Comments Due*: November 1, 2024.

8. *Docket No(s)*: MC2025–158 and K2025–156; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 535 to the Competitive Product

List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: October 24, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Gregory Stanton; *Comments Due*: November 1, 2024.

### III. Summary Proceeding(s)

None. See Section II for public proceedings.

This Notice will be published in the **Federal Register**.

Jennie L. Jbara,

Primary Certifying Official.

[FR Doc. 2024–25329 Filed 10–30–24; 8:45 am]

BILLING CODE 7710–FW–P

## POSTAL SERVICE

### Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

**DATES:** *Date of required notice:* October 31, 2024.

**FOR FURTHER INFORMATION CONTACT:** Sean C. Robinson, 202–268–8405.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 22, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 508 to Competitive Product List*. Documents are available at [www.prc.gov](http://www.prc.gov), Docket Nos. MC2025–125, K2025–123.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–25261 Filed 10–30–24; 8:45 am]

BILLING CODE 7710–12–P

## POSTAL SERVICE

### Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

**DATES:** *Date of required notice:* October 31, 2024.

**FOR FURTHER INFORMATION CONTACT:**

Sean C. Robinson, 202–268–8405.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 22, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 515 to Competitive Product List*. Documents are available at [www.prc.gov](http://www.prc.gov), Docket Nos. MC2025–136, K2025–134.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–25268 Filed 10–30–24; 8:45 am]

BILLING CODE 7710–12–P

## POSTAL SERVICE

### Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

**DATES:** *Date of required notice:* October 31, 2024.

**FOR FURTHER INFORMATION CONTACT:**

Sean C. Robinson, 202–268–8405.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 24, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 531 to Competitive Product List*. Documents are available at [www.prc.gov](http://www.prc.gov), Docket Nos. MC2025–153, K2025–151.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–25303 Filed 10–30–24; 8:45 am]

BILLING CODE 7710–12–P

**POSTAL SERVICE****Product Change—Priority Mail and USPS Ground Advantage® Negotiated Service Agreement****AGENCY:** Postal Service™.**ACTION:** Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

**DATES:** *Date of required notice:* October 31, 2024.

**FOR FURTHER INFORMATION CONTACT:** Sean Robinson, 202–268–8405.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 22, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 405 to Competitive Product List*. Documents are available at [www.prc.gov](http://www.prc.gov), Docket Nos. MC2025–131, K2025–129.

**Sean Robinson,**  
*Attorney, Corporate and Postal Business Law.*  
[FR Doc. 2024–25295 Filed 10–30–24; 8:45 am]

**BILLING CODE 7710–12–P****POSTAL SERVICE****Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement****AGENCY:** Postal Service™.**ACTION:** Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

**DATES:** *Date of required notice:* October 31, 2024.

**FOR FURTHER INFORMATION CONTACT:** Sean C. Robinson, 202–268–8405.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 21, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 506 to Competitive Product List*. Documents

are available at [www.prc.gov](http://www.prc.gov), Docket Nos. MC2025–123, K2025–121.

**Sean C. Robinson,**  
*Attorney, Corporate and Postal Business Law.*  
[FR Doc. 2024–25259 Filed 10–30–24; 8:45 am]

**BILLING CODE 7710–12–P****POSTAL SERVICE****Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement****AGENCY:** Postal Service™.**ACTION:** Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

**DATES:** *Date of required notice:* October 31, 2024.

**FOR FURTHER INFORMATION CONTACT:** Sean C. Robinson, 202–268–8405.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 22, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 514 to Competitive Product List*. Documents are available at [www.prc.gov](http://www.prc.gov), Docket Nos. MC2025–135, K2025–133.

**Sean C. Robinson,**  
*Attorney, Corporate and Postal Business Law.*  
[FR Doc. 2024–25267 Filed 10–30–24; 8:45 am]

**BILLING CODE 7710–12–P****POSTAL SERVICE****Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement****AGENCY:** Postal Service™.**ACTION:** Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

**DATES:** *Date of required notice:* October 31, 2024.

**FOR FURTHER INFORMATION CONTACT:** Sean C. Robinson, 202–268–8405.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 25, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 542 to Competitive Product List*. Documents are available at [www.prc.gov](http://www.prc.gov), Docket Nos. MC2025–165, K2025–163.

**Sean C. Robinson,**  
*Attorney, Corporate and Postal Business Law.*  
[FR Doc. 2024–25314 Filed 10–30–24; 8:45 am]

**BILLING CODE 7710–12–P****POSTAL SERVICE****Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement****AGENCY:** Postal Service™.**ACTION:** Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

**DATES:** *Date of required notice:* October 31, 2024.

**FOR FURTHER INFORMATION CONTACT:** Sean C. Robinson, 202–268–8405.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 23, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 521 to Competitive Product List*. Documents are available at [www.prc.gov](http://www.prc.gov), Docket Nos. MC2025–143, K2025–141.

**Sean C. Robinson,**  
*Attorney, Corporate and Postal Business Law.*  
[FR Doc. 2024–25285 Filed 10–30–24; 8:45 am]

**BILLING CODE 7710–12–P****POSTAL SERVICE****Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement****AGENCY:** Postal Service™.**ACTION:** Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a

domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

**DATES:** *Date of required notice:* October 31, 2024.

**FOR FURTHER INFORMATION CONTACT:** Sean C. Robinson, 202-268-8405.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 24, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 533 to Competitive Product List*. Documents are available at [www.prc.gov](http://www.prc.gov), Docket Nos. MC2025-156, K2025-154.

**Sean C. Robinson,**  
*Attorney, Corporate and Postal Business Law.*  
[FR Doc. 2024-25305 Filed 10-30-24; 8:45 am]  
**BILLING CODE 7710-12-P**

## POSTAL SERVICE

### Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

**AGENCY:** Postal Service™.

**ACTION:** Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

**DATES:** *Date of required notice:* October 31, 2024.

**FOR FURTHER INFORMATION CONTACT:** Sean C. Robinson, 202-268-8405.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 21, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 507 to Competitive Product List*. Documents are available at [www.prc.gov](http://www.prc.gov), Docket Nos. MC2025-124, K2025-122.

**Sean C. Robinson,**  
*Attorney, Corporate and Postal Business Law.*  
[FR Doc. 2024-25260 Filed 10-30-24; 8:45 am]  
**BILLING CODE 7710-12-P**

## POSTAL SERVICE

### Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

**AGENCY:** Postal Service™.

**ACTION:** Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

**DATES:** *Date of required notice:* October 31, 2024.

**FOR FURTHER INFORMATION CONTACT:** Sean C. Robinson, 202-268-8405.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 18, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 497 to Competitive Product List*. Documents are available at [www.prc.gov](http://www.prc.gov), Docket Nos. MC2025-114, K2025-112.

**Sean C. Robinson,**  
*Attorney, Corporate and Postal Business Law.*  
[FR Doc. 2024-25250 Filed 10-30-24; 8:45 am]  
**BILLING CODE 7710-12-P**

## POSTAL SERVICE

### Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

**AGENCY:** Postal Service™.

**ACTION:** Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

**DATES:** *Date of required notice:* October 31, 2024.

**FOR FURTHER INFORMATION CONTACT:** Sean C. Robinson, 202-268-8405.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 24, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 535 to Competitive Product List*. Documents

are available at [www.prc.gov](http://www.prc.gov), Docket Nos. MC2025-158, K2025-156.

**Sean C. Robinson,**  
*Attorney, Corporate and Postal Business Law.*  
[FR Doc. 2024-25307 Filed 10-30-24; 8:45 am]  
**BILLING CODE 7710-12-P**

## POSTAL SERVICE

### Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

**AGENCY:** Postal Service™.

**ACTION:** Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

**DATES:** *Date of required notice:* October 31, 2024.

**FOR FURTHER INFORMATION CONTACT:** Sean C. Robinson, 202-268-8405.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 21, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 502 to Competitive Product List*. Documents are available at [www.prc.gov](http://www.prc.gov), Docket Nos. MC2025-119, K2025-117.

**Sean C. Robinson,**  
*Attorney, Corporate and Postal Business Law.*  
[FR Doc. 2024-25255 Filed 10-30-24; 8:45 am]  
**BILLING CODE 7710-12-P**

## POSTAL SERVICE

### Product Change—Priority Mail and USPS Ground Advantage® Negotiated Service Agreement

**AGENCY:** Postal Service™.

**ACTION:** Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

**DATES:** *Date of required notice:* October 31, 2024.

**FOR FURTHER INFORMATION CONTACT:** Sean Robinson, 202-268-8405.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby



gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 25, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 409 to Competitive Product List*. Documents are available at [www.prc.gov](http://www.prc.gov), Docket Nos. MC2025–166, K2025–164.

**Sean Robinson,**  
*Attorney, Corporate and Postal Business Law.*  
[FR Doc. 2024–25300 Filed 10–30–24; 8:45 am]  
**BILLING CODE 7710–12–P**

## POSTAL SERVICE

### Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

**AGENCY:** Postal Service™.  
**ACTION:** Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.  
**DATES:** *Date of required notice:* October 31, 2024.

**FOR FURTHER INFORMATION CONTACT:**  
Sean C. Robinson, 202–268–8405.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 23, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 526 to Competitive Product List*. Documents are available at [www.prc.gov](http://www.prc.gov), Docket Nos. MC2025–148, K2025–146.

**Sean C. Robinson,**  
*Attorney, Corporate and Postal Business Law.*  
[FR Doc. 2024–25290 Filed 10–30–24; 8:45 am]  
**BILLING CODE 7710–12–P**

## POSTAL SERVICE

### Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

**AGENCY:** Postal Service™.  
**ACTION:** Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service

Agreements in the Mail Classification Schedule's Competitive Products List.

**DATES:** *Date of required notice:* October 31, 2024.

**FOR FURTHER INFORMATION CONTACT:**  
Sean C. Robinson, 202–268–8405.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 22, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 511 to Competitive Product List*. Documents are available at [www.prc.gov](http://www.prc.gov), Docket Nos. MC2025–128, K2025–126.

**Sean C. Robinson,**  
*Attorney, Corporate and Postal Business Law.*  
[FR Doc. 2024–25264 Filed 10–30–24; 8:45 am]  
**BILLING CODE 7710–12–P**

## POSTAL SERVICE

### Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

**AGENCY:** Postal Service™.  
**ACTION:** Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

**DATES:** *Date of required notice:* October 31, 2024.

**FOR FURTHER INFORMATION CONTACT:**  
Sean C. Robinson, 202–268–8405.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 22, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 512 to Competitive Product List*. Documents are available at [www.prc.gov](http://www.prc.gov), Docket Nos. MC2025–129, K2025–127.

**Sean C. Robinson,**  
*Attorney, Corporate and Postal Business Law.*  
[FR Doc. 2024–25265 Filed 10–30–24; 8:45 am]  
**BILLING CODE 7710–12–P**

## POSTAL SERVICE

### Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

**AGENCY:** Postal Service™.  
**ACTION:** Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.  
**DATES:** *Date of required notice:* October 31, 2024.

**FOR FURTHER INFORMATION CONTACT:**  
Sean C. Robinson, 202–268–8405.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 24, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 530 to Competitive Product List*. Documents are available at [www.prc.gov](http://www.prc.gov), Docket Nos. MC2025–152, K2025–150.

**Sean C. Robinson,**  
*Attorney, Corporate and Postal Business Law.*  
[FR Doc. 2024–25302 Filed 10–30–24; 8:45 am]  
**BILLING CODE 7710–12–P**

## POSTAL SERVICE

### Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

**AGENCY:** Postal Service™.  
**ACTION:** Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.  
**DATES:** *Date of required notice:* October 31, 2024.

**FOR FURTHER INFORMATION CONTACT:**  
Sean C. Robinson, 202–268–8405.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 24, 2024, it filed with the Postal Regulatory Commission a *USPS Request To Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 529 to Competitive Product List*. Documents



are available at [www.prc.gov](http://www.prc.gov), Docket Nos. MC2025–151, K2025–149.

**Sean C. Robinson,**  
*Attorney, Corporate and Postal Business Law.*  
[FR Doc. 2024–25293 Filed 10–30–24; 8:45 am]

**BILLING CODE 7710–12–P**

## POSTAL SERVICE

### **Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement**

**AGENCY:** Postal Service™.

**ACTION:** Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

**DATES:** *Date of required notice:* October 31, 2024.

**FOR FURTHER INFORMATION CONTACT:** Sean C. Robinson, 202–268–8405.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 23, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 523 to Competitive Product List*. Documents are available at [www.prc.gov](http://www.prc.gov), Docket Nos. MC2025–145, K2025–143.

**Sean C. Robinson,**  
*Attorney, Corporate and Postal Business Law.*  
[FR Doc. 2024–25287 Filed 10–30–24; 8:45 am]  
**BILLING CODE 7710–12–P**

## POSTAL SERVICE

### **Product Change—Priority Mail and USPS Ground Advantage® Negotiated Service Agreement**

**AGENCY:** Postal Service™.

**ACTION:** Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

**DATES:** *Date of required notice:* October 31, 2024.

**FOR FURTHER INFORMATION CONTACT:** Sean Robinson, 202–268–8405.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby

gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 22, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 403 to Competitive Product List*. Documents are available at [www.prc.gov](http://www.prc.gov), Docket Nos. MC2025–130, K2025–128.

**Sean Robinson,**  
*Attorney, Corporate and Postal Business Law.*  
[FR Doc. 2024–25294 Filed 10–30–24; 8:45 am]  
**BILLING CODE 7710–12–P**

## POSTAL SERVICE

### **Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement**

**AGENCY:** Postal Service™.

**ACTION:** Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

**DATES:** *Date of required notice:* October 31, 2024.

**FOR FURTHER INFORMATION CONTACT:** Sean C. Robinson, 202–268–8405.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 21, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 501 to Competitive Product List*. Documents are available at [www.prc.gov](http://www.prc.gov), Docket Nos. MC2025–118, K2025–116.

**Sean C. Robinson,**  
*Attorney, Corporate and Postal Business Law.*  
[FR Doc. 2024–25254 Filed 10–30–24; 8:45 am]  
**BILLING CODE 7710–12–P**

## POSTAL SERVICE

### **Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement**

**AGENCY:** Postal Service™.

**ACTION:** Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service

Agreements in the Mail Classification Schedule's Competitive Products List.

**DATES:** *Date of required notice:* October 31, 2024.

**FOR FURTHER INFORMATION CONTACT:**

Sean C. Robinson, 202–268–8405.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 18, 2024, it filed with the Postal Regulatory Commission a *USPS Request To Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 496 to Competitive Product List*. Documents are available at [www.prc.gov](http://www.prc.gov), Docket Nos. MC2025–113, K2025–111.

**Sean C. Robinson,**  
*Attorney, Corporate and Postal Business Law.*  
[FR Doc. 2024–25249 Filed 10–30–24; 8:45 am]  
**BILLING CODE 7710–12–P**

## POSTAL SERVICE

### **Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement**

**AGENCY:** Postal Service™.

**ACTION:** Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

**DATES:** *Date of required notice:* October 31, 2024.

**FOR FURTHER INFORMATION CONTACT:** Sean C. Robinson, 202–268–8405.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 22, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 516 to Competitive Product List*. Documents are available at [www.prc.gov](http://www.prc.gov), Docket Nos. MC2025–137, K2025–135.

**Sean C. Robinson,**  
*Attorney, Corporate and Postal Business Law.*  
[FR Doc. 2024–25280 Filed 10–30–24; 8:45 am]  
**BILLING CODE 7710–12–P**

**POSTAL SERVICE****Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement****AGENCY:** Postal Service™.**ACTION:** Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

**DATES:** *Date of required notice:* October 31, 2024.

**FOR FURTHER INFORMATION CONTACT:** Sean C. Robinson, 202–268–8405.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 21, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 500 to Competitive Product List*. Documents are available at [www.prc.gov](http://www.prc.gov), Docket Nos. MC2025–117, K2025–115.

**Sean C. Robinson,**  
*Attorney, Corporate and Postal Business Law.*  
[FR Doc. 2024–25253 Filed 10–30–24; 8:45 am]  
**BILLING CODE 7710–12–P**

**POSTAL SERVICE****Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement****AGENCY:** Postal Service™.**ACTION:** Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

**DATES:** *Date of required notice:* October 31, 2024.

**FOR FURTHER INFORMATION CONTACT:** Sean C. Robinson, 202–268–8405.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 25, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 541 to Competitive Product List*. Documents

are available at [www.prc.gov](http://www.prc.gov), Docket Nos. MC2025–164, K2025–162.

**Sean C. Robinson,**  
*Attorney, Corporate and Postal Business Law.*  
[FR Doc. 2024–25313 Filed 10–30–24; 8:45 am]  
**BILLING CODE 7710–12–P**

**POSTAL SERVICE****Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement****AGENCY:** Postal Service™.**ACTION:** Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

**DATES:** *Date of required notice:* October 31, 2024.

**FOR FURTHER INFORMATION CONTACT:** Sean C. Robinson, 202–268–8405.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 25, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 537 to Competitive Product List*. Documents are available at [www.prc.gov](http://www.prc.gov), Docket Nos. MC2025–160, K2025–158.

**Sean C. Robinson,**  
*Attorney, Corporate and Postal Business Law.*  
[FR Doc. 2024–25309 Filed 10–30–24; 8:45 am]  
**BILLING CODE 7710–12–P**

**POSTAL SERVICE****Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement****AGENCY:** Postal Service™.**ACTION:** Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

**DATES:** *Date of required notice:* October 31, 2024.

**FOR FURTHER INFORMATION CONTACT:** Sean C. Robinson, 202–268–8405.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 22, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 510 to Competitive Product List*. Documents are available at [www.prc.gov](http://www.prc.gov), Docket Nos. MC2025–127, K2025–125.

**Sean C. Robinson,**  
*Attorney, Corporate and Postal Business Law.*  
[FR Doc. 2024–25263 Filed 10–30–24; 8:45 am]  
**BILLING CODE 7710–12–P**

**POSTAL SERVICE****Product Change—Priority Mail and USPS Ground Advantage® Negotiated Service Agreement****AGENCY:** Postal Service™.**ACTION:** Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

**DATES:** *Date of required notice:* October 31, 2024.

**FOR FURTHER INFORMATION CONTACT:** Sean Robinson, 202–268–8405.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 25, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 410 to Competitive Product List*. Documents are available at [www.prc.gov](http://www.prc.gov), Docket Nos. MC2025–167, K2025–165.

**Sean Robinson,**  
*Attorney, Corporate and Postal Business Law.*  
[FR Doc. 2024–25301 Filed 10–30–24; 8:45 am]  
**BILLING CODE 7710–12–P**

**POSTAL SERVICE****Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement****AGENCY:** Postal Service™.**ACTION:** Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to

the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

**DATES:** *Date of required notice:* October 31, 2024.

**FOR FURTHER INFORMATION CONTACT:**  
Sean C. Robinson, 202-268-8405.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 23, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 520 to Competitive Product List*. Documents are available at [www.prc.gov](http://www.prc.gov), Docket Nos. MC2025-142, K2025-140.

**Sean C. Robinson,**  
*Attorney, Corporate and Postal Business Law.*  
[FR Doc. 2024-25284 Filed 10-30-24; 8:45 am]  
**BILLING CODE 7710-12-P**

## POSTAL SERVICE

### Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

**AGENCY:** Postal Service™.

**ACTION:** Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

**DATES:** *Date of required notice:* October 31, 2024.

**FOR FURTHER INFORMATION CONTACT:**  
Sean C. Robinson, 202-268-8405.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 25, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 540 to Competitive Product List*. Documents are available at [www.prc.gov](http://www.prc.gov), Docket Nos. MC2025-163, K2025-161.

**Sean C. Robinson,**  
*Attorney, Corporate and Postal Business Law.*  
[FR Doc. 2024-25312 Filed 10-30-24; 8:45 am]  
**BILLING CODE 7710-12-P**

## POSTAL SERVICE

### Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

**AGENCY:** Postal Service™.  
**ACTION:** Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

**DATES:** *Date of required notice:* October 31, 2024.

**FOR FURTHER INFORMATION CONTACT:**  
Sean C. Robinson, 202-268-8405.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 23, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 522 to Competitive Product List*. Documents are available at [www.prc.gov](http://www.prc.gov), Docket Nos. MC2025-144, K2025-142.

**Sean C. Robinson,**  
*Attorney, Corporate and Postal Business Law.*  
[FR Doc. 2024-25286 Filed 10-30-24; 8:45 am]  
**BILLING CODE 7710-12-P**

## POSTAL SERVICE

### Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

**AGENCY:** Postal Service™.  
**ACTION:** Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

**DATES:** *Date of required notice:* October 31, 2024.

**FOR FURTHER INFORMATION CONTACT:**  
Sean C. Robinson, 202-268-8405.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 23, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 519 to Competitive Product List*. Documents

are available at [www.prc.gov](http://www.prc.gov), Docket Nos. MC2025-141, K2025-139.

**Sean C. Robinson,**  
*Attorney, Corporate and Postal Business Law.*  
[FR Doc. 2024-25283 Filed 10-30-24; 8:45 am]  
**BILLING CODE 7710-12-P**

## POSTAL SERVICE

### Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

**AGENCY:** Postal Service™.  
**ACTION:** Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

**DATES:** *Date of required notice:* October 31, 2024.

**FOR FURTHER INFORMATION CONTACT:**  
Sean C. Robinson, 202-268-8405.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 18, 2024, it filed with the Postal Regulatory Commission a *USPS Request To Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 499 to Competitive Product List*. Documents are available at [www.prc.gov](http://www.prc.gov), Docket Nos. MC2025-116, K2025-114.

**Sean C. Robinson,**  
*Attorney, Corporate and Postal Business Law.*  
[FR Doc. 2024-25252 Filed 10-30-24; 8:45 am]  
**BILLING CODE 7710-12-P**

## POSTAL SERVICE

### Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

**AGENCY:** Postal Service™.  
**ACTION:** Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

**DATES:** *Date of required notice:* October 31, 2024.

**FOR FURTHER INFORMATION CONTACT:**  
Sean C. Robinson, 202-268-8405.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 23, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 527 to Competitive Product List*. Documents are available at [www.prc.gov](http://www.prc.gov), Docket Nos. MC2025–149, K2025–147.

**Sean C. Robinson,**  
*Attorney, Corporate and Postal Business Law.*  
[FR Doc. 2024–25291 Filed 10–30–24; 8:45 am]

**BILLING CODE 7710–12–P**

## POSTAL SERVICE

### Product Change—Priority Mail and USPS Ground Advantage® Negotiated Service Agreement

**AGENCY:** Postal Service™.  
**ACTION:** Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.  
**DATES:** *Date of required notice:* October 31, 2024.

**FOR FURTHER INFORMATION CONTACT:**  
Sean Robinson, 202–268–8405.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 22, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 407 to Competitive Product List*. Documents are available at [www.prc.gov](http://www.prc.gov), Docket Nos. MC2025–138, K2025–136.

**Sean Robinson,**  
*Attorney, Corporate and Postal Business Law.*  
[FR Doc. 2024–25298 Filed 10–30–24; 8:45 am]  
**BILLING CODE 7710–12–P**

## POSTAL SERVICE

### Product Change—Priority Mail and USPS Ground Advantage® Negotiated Service Agreement

**AGENCY:** Postal Service™.  
**ACTION:** Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service

Agreements in the Mail Classification Schedule's Competitive Products List.

**DATES:** *Date of required notice:* October 31, 2024.

**FOR FURTHER INFORMATION CONTACT:**  
Sean Robinson, 202–268–8405.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 22, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 405 to Competitive Product List*. Documents are available at [www.prc.gov](http://www.prc.gov), Docket Nos. MC2025–133, K2025–131.

**Sean Robinson,**  
*Attorney, Corporate and Postal Business Law.*  
[FR Doc. 2024–25296 Filed 10–30–24; 8:45 am]  
**BILLING CODE 7710–12–P**

## POSTAL SERVICE

### Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

**AGENCY:** Postal Service™.  
**ACTION:** Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

**DATES:** *Date of required notice:* October 31, 2024.

**FOR FURTHER INFORMATION CONTACT:**  
Sean C. Robinson, 202–268–8405.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 22, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 513 to Competitive Product List*. Documents are available at [www.prc.gov](http://www.prc.gov), Docket Nos. MC2025–132, K2025–130.

**Sean C. Robinson,**  
*Attorney, Corporate and Postal Business Law.*  
[FR Doc. 2024–25266 Filed 10–30–24; 8:45 am]  
**BILLING CODE 7710–12–P**

## POSTAL SERVICE

### Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

**AGENCY:** Postal Service™.  
**ACTION:** Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.  
**DATES:** *Date of required notice:* October 31, 2024.

**FOR FURTHER INFORMATION CONTACT:**  
Sean C. Robinson, 202–268–8405.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 23, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 524 to Competitive Product List*. Documents are available at [www.prc.gov](http://www.prc.gov), Docket Nos. MC2025–146, K2025–144.

**Sean C. Robinson,**  
*Attorney, Corporate and Postal Business Law.*  
[FR Doc. 2024–25288 Filed 10–30–24; 8:45 am]  
**BILLING CODE 7710–12–P**

## POSTAL SERVICE

### Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

**AGENCY:** Postal Service™.  
**ACTION:** Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.  
**DATES:** *Date of required notice:* October 31, 2024.

**FOR FURTHER INFORMATION CONTACT:**  
Sean C. Robinson, 202–268–8405.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 21, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 498 to Competitive Product List*. Documents

are available at [www.prc.gov](http://www.prc.gov), Docket Nos. MC2025–115, K2025–113.

**Sean C. Robinson,**  
*Attorney, Corporate and Postal Business Law.*  
[FR Doc. 2024–25251 Filed 10–30–24; 8:45 am]  
**BILLING CODE 7710–12–P**

## POSTAL SERVICE

### Product Change—Priority Mail and USPS Ground Advantage® Negotiated Service Agreement

**AGENCY:** Postal Service™.  
**ACTION:** Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

**DATES:** *Date of required notice:* October 31, 2024.

**FOR FURTHER INFORMATION CONTACT:** Sean Robinson, 202–268–8405.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 22, 2024, it filed with the Postal Regulatory Commission a *USPS Request To Add Priority Mail & USPS Ground Advantage® Contract 406 to Competitive Product List*. Documents are available at [www.prc.gov](http://www.prc.gov), Docket Nos. MC2025–134, K2025–132.

**Sean Robinson,**  
*Attorney, Corporate and Postal Business Law.*  
[FR Doc. 2024–25297 Filed 10–30–24; 8:45 am]  
**BILLING CODE 7710–12–P**

## POSTAL SERVICE

### Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

**AGENCY:** Postal Service™.  
**ACTION:** Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

**DATES:** *Date of required notice:* October 31, 2024.

**FOR FURTHER INFORMATION CONTACT:** Sean C. Robinson, 202–268–8405.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby

gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 23, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 525 to Competitive Product List*. Documents are available at [www.prc.gov](http://www.prc.gov), Docket Nos. MC2025–147, K2025–145.

**Sean C. Robinson,**  
*Attorney, Corporate and Postal Business Law.*  
[FR Doc. 2024–25289 Filed 10–30–24; 8:45 am]  
**BILLING CODE 7710–12–P**

## POSTAL SERVICE

### Product Change—Priority Mail and USPS Ground Advantage® Negotiated Service Agreement

**AGENCY:** Postal Service™.  
**ACTION:** Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

**DATES:** *Date of required notice:* October 31, 2024.

**FOR FURTHER INFORMATION CONTACT:** Sean Robinson, 202–268–8405.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 24, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 408 to Competitive Product List*. Documents are available at [www.prc.gov](http://www.prc.gov), Docket Nos. MC2025–154, K2025–152.

**Sean Robinson,**  
*Attorney, Corporate and Postal Business Law.*  
[FR Doc. 2024–25299 Filed 10–30–24; 8:45 am]  
**BILLING CODE 7710–12–P**

## POSTAL SERVICE

### Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

**AGENCY:** Postal Service™.  
**ACTION:** Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

**DATES:** *Date of required notice:* October 31, 2024.

**FOR FURTHER INFORMATION CONTACT:** Sean C. Robinson, 202–268–8405.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 25, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 539 to Competitive Product List*. Documents are available at [www.prc.gov](http://www.prc.gov), Docket Nos. MC2025–162, K2025–160.

**Sean C. Robinson,**  
*Attorney, Corporate and Postal Business Law.*  
[FR Doc. 2024–25311 Filed 10–30–24; 8:45 am]  
**BILLING CODE 7710–12–P**

## POSTAL SERVICE

### Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

**AGENCY:** Postal Service™.  
**ACTION:** Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

**DATES:** *Date of required notice:* October 31, 2024.

**FOR FURTHER INFORMATION CONTACT:** Sean C. Robinson, 202–268–8405.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 21, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 505 to Competitive Product List*. Documents are available at [www.prc.gov](http://www.prc.gov), Docket Nos. MC2025–122, K2025–120.

**Sean C. Robinson,**  
*Attorney, Corporate and Postal Business Law.*  
[FR Doc. 2024–25258 Filed 10–30–24; 8:45 am]  
**BILLING CODE 7710–12–P**

## POSTAL SERVICE

### Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

**AGENCY:** Postal Service™.

**ACTION:** Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

**DATES:** *Date of required notice:* October 31, 2024.

**FOR FURTHER INFORMATION CONTACT:** Sean C. Robinson, 202-268-8405.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 23, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 517 to Competitive Product List*. Documents are available at [www.prc.gov](http://www.prc.gov), Docket Nos. MC2025-139, K2025-137.

**Sean Robinson,**

*Attorney, Corporate and Postal Business Law.*

[FR Doc. 2024-25281 Filed 10-30-24; 8:45 am]

**BILLING CODE 7710-12-P**

**POSTAL SERVICE****Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement**

**AGENCY:** Postal Service™.

**ACTION:** Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

**DATES:** *Date of required notice:* October 31, 2024.

**FOR FURTHER INFORMATION CONTACT:** Sean C. Robinson, 202-268-8405.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 21, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 503 to Competitive Product List*. Documents are available at [www.prc.gov](http://www.prc.gov), Docket Nos. MC2025-120, K2025-118.

**Sean C. Robinson,**

*Attorney, Corporate and Postal Business Law.*

[FR Doc. 2024-25256 Filed 10-30-24; 8:45 am]

**BILLING CODE 7710-12-P**

**POSTAL SERVICE****Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement**

**AGENCY:** Postal Service™.

**ACTION:** Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

**DATES:** *Date of required notice:* October 31, 2024.

**FOR FURTHER INFORMATION CONTACT:** Sean C. Robinson, 202-268-8405.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 21, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 504 to Competitive Product List*. Documents are available at [www.prc.gov](http://www.prc.gov), Docket Nos. MC2025-121, K2025-119.

**Sean C. Robinson,**

*Attorney, Corporate and Postal Business Law.*

[FR Doc. 2024-25257 Filed 10-30-24; 8:45 am]

**BILLING CODE 7710-12-P**

**POSTAL SERVICE****Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement**

**AGENCY:** Postal Service™.

**ACTION:** Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

**DATES:** *Date of required notice:* October 31, 2024.

**FOR FURTHER INFORMATION CONTACT:** Sean C. Robinson, 202-268-8405.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 23, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 528 to Competitive Product List*. Documents

are available at [www.prc.gov](http://www.prc.gov), Docket Nos. MC2025-150, K2025-148.

**Sean C. Robinson,**

*Attorney, Corporate and Postal Business Law.*

[FR Doc. 2024-25292 Filed 10-30-24; 8:45 am]

**BILLING CODE 7710-12-P**

**POSTAL SERVICE****Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement**

**AGENCY:** Postal Service™.

**ACTION:** Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

**DATES:** *Date of required notice:* October 31, 2024.

**FOR FURTHER INFORMATION CONTACT:** Sean C. Robinson, 202-268-8405.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 25, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 538 to Competitive Product List*. Documents are available at [www.prc.gov](http://www.prc.gov), Docket Nos. MC2025-161, K2025-159.

**Sean Robinson,**

*Attorney, Corporate and Postal Business Law.*

[FR Doc. 2024-25310 Filed 10-30-24; 8:45 am]

**BILLING CODE 7710-12-P**

**POSTAL SERVICE****Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement**

**AGENCY:** Postal Service™.

**ACTION:** Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

**DATES:** *Date of required notice:* October 31, 2024.

**FOR FURTHER INFORMATION CONTACT:** Sean C. Robinson, 202-268-8405.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 23, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 518 to Competitive Product List*. Documents are available at [www.prc.gov](http://www.prc.gov), Docket Nos. MC2025–140, K2025–138.

**Sean C. Robinson,**  
*Attorney, Corporate and Postal Business Law.*  
[FR Doc. 2024–25282 Filed 10–30–24; 8:45 am]

**BILLING CODE 7710–12–P**

## POSTAL SERVICE

### Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

**AGENCY:** Postal Service™.

**ACTION:** Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

**DATES:** *Date of required notice:* October 31, 2024.

**FOR FURTHER INFORMATION CONTACT:**  
Sean C. Robinson, 202–268–8405.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 24, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 532 to Competitive Product List*. Documents are available at [www.prc.gov](http://www.prc.gov), Docket Nos. MC2025–155, K2025–153.

**Sean C. Robinson,**  
*Attorney, Corporate and Postal Business Law.*  
[FR Doc. 2024–25304 Filed 10–30–24; 8:45 am]

**BILLING CODE 7710–12–P**

## POSTAL SERVICE

### Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

**AGENCY:** Postal Service™.

**ACTION:** Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a

domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

**DATES:** *Date of required notice:* October 31, 2024.

**FOR FURTHER INFORMATION CONTACT:**  
Sean C. Robinson, 202–268–8405.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 22, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 509 to Competitive Product List*. Documents are available at [www.prc.gov](http://www.prc.gov), Docket Nos. MC2025–126, K2025–124.

**Sean C. Robinson,**  
*Attorney, Corporate and Postal Business Law.*  
[FR Doc. 2024–25262 Filed 10–30–24; 8:45 am]

**BILLING CODE 7710–12–P**

## POSTAL SERVICE

### Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

**AGENCY:** Postal Service™.

**ACTION:** Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

**DATES:** *Date of required notice:* October 31, 2024.

**FOR FURTHER INFORMATION CONTACT:**  
Sean C. Robinson, 202–268–8405.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 24, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 534 to Competitive Product List*. Documents are available at [www.prc.gov](http://www.prc.gov), Docket Nos. MC2025–157, K2025–155.

**Sean C. Robinson,**  
*Attorney, Corporate and Postal Business Law.*  
[FR Doc. 2024–25306 Filed 10–30–24; 8:45 am]

**BILLING CODE 7710–12–P**

## POSTAL SERVICE

### Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

**AGENCY:** Postal Service™.

**ACTION:** Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

**DATES:** *Date of required notice:* October 31, 2024.

**FOR FURTHER INFORMATION CONTACT:**  
Sean C. Robinson, 202–268–8405.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 24, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 536 to Competitive Product List*. Documents are available at [www.prc.gov](http://www.prc.gov), Docket Nos. MC2025–159, K2025–157.

**Sean C. Robinson,**  
*Attorney, Corporate and Postal Business Law.*  
[FR Doc. 2024–25308 Filed 10–30–24; 8:45 am]

**BILLING CODE 7710–12–P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–101434; File No. SR–CboeEDGX–2024–067]

### Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt New Functionality Relating to the Processing of Auction Responses

October 25, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b–4 thereunder,<sup>2</sup> notice is hereby given that on October 16, 2024, Cboe EDGX Exchange, Inc. (the “Exchange” or “EDGX”) 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

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b–4.



the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder.<sup>4</sup> 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 EDGX Exchange, Inc. (the "Exchange" or "EDGX") proposes to adopt new functionality relating to the processing of auction responses. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website ([http://markets.cboe.com/us/options/regulation/rule\\_filings/edgx/](http://markets.cboe.com/us/options/regulation/rule_filings/edgx/)), 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**

The Exchange currently offers a variety of auction mechanisms which provide price improvement opportunities for eligible orders. Particularly, the Exchange offers the following auction mechanisms: Complex Order Auction ("COA"),<sup>5</sup> Step Up Mechanism ("SUM"),<sup>6</sup> Automated Improvement Mechanism ("AIM"),<sup>7</sup> Complex AIM ("C-AIM"),<sup>8</sup> Solicitation Auction Mechanism ("SAM"),<sup>9</sup> and Complex SAM ("C-SAM").<sup>10</sup> The Exchange notes that eligible orders ("auctioned order") are electronically exposed for an Exchange-determined

period (collectively referred to herein as "auction response period") in accordance with the applicable Exchange Rule, during which time Users may submit responses (collectively referred to herein as "auction responses" or "auction response messages") to an auction message. An auction response may only execute in the applicable auction and is cancelled if it does not execute during an auction. If an auction response is unable to be processed by the System during the auction response period, that auction response is unable to receive any execution opportunity or provide liquidity (and possible price improvement) on the Exchange.<sup>11</sup>

By way of further background, Members may submit auction responses via logical port connectivity.<sup>12</sup> Each logical port corresponds to a single running order handler application.<sup>13</sup> Each order handler application processes the messages it receives from the connected Member. This processing includes determining whether the message contains the required information to enter the System and where to send that message within the System (*i.e.*, to which matching engine). Messages are sent from an order handler application to a matching engine via User Datagram Protocol ("UDP"). The Exchange has multiple matching engines, each of which controls the book for one or more classes of options listed for trading on the Exchange. The Exchange may run multiple matching engine applications on a single server. Once at a matching engine, the message is received at a server Network Interface Card ("NIC"), which timestamps each message upon arrival and places it in a queue. Currently, each matching engine processes all messages it receives from a single queue from the NIC and prioritizes the processing of all message traffic, including auction responses, in

the order in which the NIC received each message (*i.e.*, in time priority).

Auction response messages historically have waited in the same queue as all other order and quote message traffic. As such, if an auction response is submitted at a time where there is a deep queue of other message traffic such as mass cancellation messages or other orders and quotes, it is possible that the auction response may not be "processed" by the System in sufficient time (*i.e.*, prior to the end of the auction response period).<sup>14</sup> Particularly, the queued auction response may not be able to participate in the applicable auction mechanism because the System had unprocessed (queued) messages at the time of the auction execution despite the fact that the User submitted the auction response prior to the end of the auction response period. Auctioned orders may therefore be missing out on potential price improvement that may have otherwise resulted if queued timely auction response(s) were able to participate in the auction.

The Exchange proposes to adopt new functionality under Rule 21.14, new subparagraph (e), which would apply across all of its auction mechanisms to increase the likelihood that timely submitted auction responses may participate in the applicable auction, even during periods of high message traffic.<sup>15</sup> Under the proposed functionality, at the time an auction response period ends, the System will continue to process its inbound queue for any messages that were received by the System before the end of the auction period (including auction messages) for up to an Exchange-determined period of time, not to exceed 100 milliseconds (which the Exchange may determine on a class-by-class basis which would apply to all auction mechanisms and which would be announced with reasonable advanced notice via Exchange Notice). That is, any auction responses that were in the queue before the conclusion of the auction (as identified by the NIC timestamp on the message) would be processed as long as

<sup>11</sup> The Exchange notes that its review of auction responses during August 2024 indicated that approximately 4.25% of auction responses had no opportunity to execute in their respective auctions, notwithstanding being submitted within the auction response period.

<sup>12</sup> A User connects to the Exchange using a logical port available through an API, such as the industry-standard FIX or BOE protocol. Logical ports represent a technical port established by the Exchange within the Exchange's trading system for the delivery and/or receipt of trading messages, including orders, cancels, and auction responses.

<sup>13</sup> The Exchange has numerous order handlers and uses an algorithm to determine at random which ports connect to which order handlers. This algorithm attempts to spread out a single Member's ports across order handlers as well as balance the number of ports that connect to a single order handler.

<sup>14</sup> For example, it currently takes the Exchange's system an approximate average of 12 microseconds to process a single order/quote or auction response message and, on average, approximately 79 microseconds to process a mass cancel message. As such, under the current system, an auction response that is entered after a mass cancel message is more likely to be detrimentally delayed as compared to a mass cancel message that is entered after an auction response (*i.e.*, a 79 microsecond "wait time" versus a 12 microsecond "wait time").

<sup>15</sup> Particularly, the proposed functionality would apply to the following Exchange auction mechanisms: COA, SUM, AIM, C-AIM, SAM, and C-SAM.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

<sup>5</sup> See Rule 21.20(d).

<sup>6</sup> See Rule 21.18.

<sup>7</sup> See Rule 21.19.

<sup>8</sup> See Rule 21.22.

<sup>9</sup> See Rule 21.21.

<sup>10</sup> See Rule 21.23.



the Exchange-determined time on a class-by-class basis (not to exceed 100 milliseconds) is not exceeded. Only auction messages received prior to the execution of the applicable auction are eligible to be processed for that auction. The applicable auction will execute once all messages, including auction responses, received before the end time of the auction response period have been processed or the Exchange-determined maximum time limit of up to 100 milliseconds has elapsed, whichever occurs first. This continuation of processing the queue for an additional amount of time for messages that were received before the end of the auction allows for auction responses that would otherwise have been canceled due to the conclusion of the auction response period to still have an opportunity to participate in the auction. This provides such responses with increased opportunities to participate in the auction, even during periods of high message traffic, thereby potentially providing customers with additional opportunities for price improvement, while still providing a processing cut off time to ensure auction executions aren't unduly delayed.

By way of an example, if an auction with an auction response period set to 100 milliseconds were to start at 9:00:00 a.m., only auction responses that were able to be processed by the System by the conclusion of the auction at 9:00:100 would participate in the auction. Accordingly, if, for example, an auction response that was submitted at 9:00:090 (within the auction time response period), is still in the message queue at 9:00:100, that response under the current System functionality would be canceled and not eligible to participate in the auction. Under the proposal, at 9:00:100, because the System continues to process all messages timestamped before 9:00:100, that same auction response submitted at 9:00:090 would not automatically be canceled but rather included in the auction as long as it was able to be processed within an additional 50 milliseconds, which is the additional processing time set by the Exchange and announced to market participants with reasonable advance notice via Exchange Notice for that class in this example. Once that auction response is up for processing (because the System processes messages sequentially in time order sequence), the response will be able to participate in the auction so long as it's processed by 9:00:150, notwithstanding such processing would occur after the 100-millisecond auction response period has concluded. Any auction responses for

the pending auction that are still pending after the execution of the auction would be canceled.<sup>16</sup> The Exchange notes that using the same example, if an auction response was submitted at 9:00:120, it would not be eligible for processing because the timestamp would identify it as being submitted outside the auction response period which was otherwise set to conclude at 9:00:100.

The Exchange believes the proposed rule change will result in increased execution opportunities for liquidity providers that submit auction responses and enhance the potential for price improvement for orders submitted to each mechanism to the benefit of investors and public interest. Indeed, the Exchange believes the proposed functionality will increase the possibility that timely submitted auction responses are processed by the Exchange and have an opportunity for execution in the applicable auction mechanism, even if there is a deep pending message queue. The Exchange believes the proposed maximum amount of additional time for processing (*i.e.*, 100 milliseconds) is both an adequate amount of time to provide pending auction responses with such execution opportunity, but also an amount minimal enough that impact to other message traffic, if any, would be de minimis. The Exchange also notes that it previously discussed the proposed maximum amount with market participants who indicated that 100 milliseconds was acceptable to them. The Exchange anticipates that in the vast majority of cases, the additional time needed after the conclusion of auction response period, if any, to process all pending auction responses will be shorter than the maximum 100 milliseconds. To the extent the Exchange determines a lesser amount of time would be sufficient, the Exchange could implement an additional amount of time for processing auction responses that is less than 100 milliseconds, which time would be announced with reasonable advance notice to market participants via Exchange Notice. Additionally, all message traffic (including auction responses) will continue to be processed in time-priority.

The Exchange also believes the proposal will continue to allow the Exchange to set each auction response period to an amount of time that

<sup>16</sup> If, for example, the System processed all messages received before 9:00:100 by 9:00:110, then the auction would execute at 9:00:110 (*i.e.*, the System does not need to wait until 9:00:150 to execute an auction if all messages submitted prior to the end time of the auction have been processed).

provides Members submitting responses with sufficient time to respond to, compete for, and provide price improvement for orders, but also continues to provide auctioned orders with quick executions that may reduce market and execution risk. Further, the Exchange believes some market participants choose to submit auction responses towards the end of an auction response period to better ensure the response is at a price that the market participant is willing to trade given the market at the time the auction response period concludes. As such, merely extending the auction response period in each auction would not itself prevent auction responses from continuing to miss the auction notwithstanding being timely submitted.

Moreover, the Exchange notes that it recently adopted the same functionality on its affiliated exchange, Cboe Exchange, Inc. ("Cboe Options").<sup>17</sup>

## Implementation

The Exchange will announce via Exchange Notice the implementation date of implement the proposed rule change, which shall be no later than 60 days after the operative date of this rule filing.

## 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.<sup>18</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>19</sup> 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)<sup>20</sup> requirement that

<sup>17</sup> See Securities Exchange Act Release No. 97738 (June 15, 2023) 88 FR 40878 (June 22, 2023) (SR-CBOE-2022-051) (Order Granting Accelerated Approval of Proposed Rule Change as Modified by Amendment Nos. 1 and 2 Relating to the Processing of Auction Responses).

<sup>18</sup> 15 U.S.C. 78f(b).

<sup>19</sup> 15 U.S.C. 78f(b)(5).

<sup>20</sup> *Id.*

the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes modifying its System to allow it to potentially process more, if not all, timely submitted auction responses may provide further opportunities for auctioned orders to receive price improvement, which removes impediments to a free and open market and ultimately protects and benefits investors. In particular, the proposed rule change will continue to provide investors with timely processing of their options quote and order messages, while providing investors who submit auction orders with additional auction liquidity. Indeed, the proposed rule change may allow more investors additional opportunities to receive price improvement through an auction mechanism. Additionally, because the proposed functionality may provide liquidity providers that submit auction responses with additional execution opportunities in auctions, the Exchange believes they may be further encouraged to submit more auction responses, which may contribute to a deeper, more liquid auction process that provides investors with additional price improvement opportunities.

The Exchange believes the proposed rule change will result in increased execution opportunities for liquidity providers that submit auction responses and enhance the potential for price improvement for orders submitted to each mechanism to the benefit of investors and public interest. As described above, the Exchange believes the proposed functionality will increase the possibility that timely submitted auction responses are processed by the Exchange and have an opportunity for execution in the applicable auction mechanism, even if there is a deep pending message queue. The Exchange believes the proposed maximum amount of additional time for processing (*i.e.*, 100 milliseconds) is both an adequate amount of time to provide pending auction responses with such execution opportunity, but also an amount minimal enough that impact to other message traffic, if any, would be de minimis. The Exchange also discussed the proposed maximum amount of time with market participants who indicated that 100 milliseconds was acceptable to them. As represented above, the Exchange anticipates that in the vast majority of cases, the additional time needed after the conclusion of auction response period, if any, to process all pending auction responses will be shorter than the maximum 100 milliseconds. To the extent the

Exchange determines a lesser amount of time would be sufficient, the Exchange could implement an additional amount of time for processing auction responses that is less than 100 milliseconds, which time would be announced with reasonable advance notice to market participants via Exchange Notice. Additionally, all message traffic (including auction responses) will continue to be processed in time-priority.

While the Exchange may increase the length of auction response periods to accommodate more auction responses, the Exchange believes the proposed functionality better addresses the issue of missed auction responses. Particularly, the Exchange believes the proposed rule change will accommodate more auction responses while also mitigating market risk that may accompany a longer auction period by setting the length of an auction response period to a timeframe that allows an adequate amount of time for Members to respond to an auction message and provides the auctioned order with fast executions. Additionally, the Exchange believes Members may wait until the end of an auction response period regardless of how long the Exchange sets it to in order to ensure they are comfortable with the price the response may execute at the conclusion of such auction. As such, extending the auction response period in each auction would not itself prevent auction responses from continuing to miss the auction notwithstanding being timely submitted.

The Exchange believes adopting the proposed functionality for auction responses would also better provide customers with additional opportunities for price improvements with little to no impact to non-auction response message traffic. Currently, auction responses account for an incredibly small fraction of message traffic submitted to the Exchange. Indeed, based on the Exchange's analysis in August 2024, auction response messages accounted for a mere 0.01% of all message traffic submitted to the Exchange. The Exchange believe the processing of such a small amount of message traffic, even after the conclusion of an auction response period, would therefore have de minimis, if any, impact on the processing of non-auction response messages waiting in the queue. The Exchange also notes that all messages are currently processed one at a time by the System. Therefore, the System still needs to "process" all pending auction responses, regardless of whether that processing involves canceling the pending auction response because it

wasn't processed in time to participate in the auction or actually processing the response to participate in the auction. Either way, the non-auction response messages will still have to wait for processing of any pending responses ahead of it. Conversely, the current system may cause investors to miss out on opportunities to receive price improvement through the Exchange's auction mechanisms as the System is configured to cancel pending auction responses that "miss" the auction execution, even if such responses were timely submitted but not processed due to the System being otherwise occupied processing messages in queue ahead of it. The Exchange therefore believes its proposal will make it more likely that the System processes timely submitted auction responses and includes them in applicable auctions, thus providing them with more opportunities to execute against auctioned orders, even during periods of high message traffic.

The Exchange believes the proposed rule change is not designed to permit unfair discrimination between market participants as all market participants are allowed to submit auction responses. Additionally, the Exchange believes it's reasonable to adopt the proposed functionality for auction responses as compared to other messages because auction responses are submitted only for the purpose of executing (and possibly providing price improvement) in auctions with short durations, whereas other messages are generally submitted to rest in or execute against the book (and generally not used to submit liquidity into auctions). As discussed above, the Exchange believes the benefits that result from the adoption of the proposed functionality for auction responses would outweigh any potential negative impact to other message traffic, including customer orders, which have an incredibly low chance of being affected by the proposed change as discussed above and which continue to receive priority allocation in any event.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed changes will impose any burden on intra-market competition that is not necessary or appropriate in furtherance of the purposes of the Act, as the proposed rule change would apply equally to all Members that submit auction responses. As noted

above, all market participants are able to submit auction responses. Additionally, the Exchange believes the adoption of the proposed functionality for auction responses would have little to no impact on non-auction response message traffic. As discussed, auction response messages account for an incredibly small fraction of message traffic submitted to the Exchange. The Exchange therefore believes the processing of such a small amount of message traffic by using the functionality would have a de minimis, if any, impact on the processing of non-auction response messages. Moreover, the Exchange believes it's reasonable to adopt the proposed functionality for auction responses as compared to other messages because auction responses are submitted only for the purpose of executing (and possibly providing price improvement) in auctions with short durations, whereas other messages are generally submitted to rest in or execute against the book (and generally not used to submit liquidity into auctions). Lastly, the Exchange does not believe the proposed rule change will impose any burden on inter-market competition that is not necessary or appropriate in furtherance of the purposes of the Act, as the proposed change affects how the System processes auction responses that may only participate in auctions that occur on the Exchange.

*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**

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>21</sup> and Rule 19b-4(f)(6) thereunder.<sup>22</sup> 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 prior to 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<sup>23</sup> and Rule 19b-4(f)(6)(iii) thereunder.<sup>24</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>25</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>26</sup> 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. As discussed above, the Exchange states that this proposed rule change provides substantively identical functionality as a rule previously approved by the Commission from the Exchange's affiliate, Cboe Options.<sup>27</sup> The Exchange believes that the waiver of the operative delay will protect investors by allowing the Exchange to implement the proposed functionality as soon as possible, which will benefit investors as the System will potentially process more, if not all, timely submitted auction responses. The Commission believes that the waiver of the operative delay is consistent with the protection of investors and the public interest because it may permit the Exchange to provide further opportunities for auctioned orders to receive price improvement, which may in turn remove impediments to a free and open market and benefit investors. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.<sup>28</sup>

At any time within 60 days of the filing of this 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)<sup>29</sup> 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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include file number SR-CboeEDGX-2024-067 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-CboeEDGX-2024-067. 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 (<https://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. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-CboeEDGX-2024-067 and should be

<sup>21</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>22</sup> 17 CFR 240.19b-4(f)(6).

<sup>23</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>24</sup> 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.

<sup>25</sup> 17 CFR 240.19b-4(f)(6).

<sup>26</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>27</sup> See *supra* note 17.

<sup>28</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>29</sup> 15 U.S.C. 78s(b)(2)(B).

submitted on or before November 21, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>30</sup>

**J. Matthew DeLesDernier,**  
Deputy Secretary.

[FR Doc. 2024–25320 Filed 10–30–24; 8:45 am]

BILLING CODE 8011–01–P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–101443; File No. SR–NASDAQ–2024–060]

### Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Fees for Connectivity and Co-Location Services

October 25, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b–4 thereunder,<sup>2</sup> notice is hereby given that on October 11, 2024, The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”) 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 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 the Exchange’s fees for connectivity and co-location services, as described further below.

The text of the proposed rule change is available on the Exchange’s website at <https://listingcenter.nasdaq.com/rulebook/nasdaq/rules>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

#### II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The

Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

#### A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

The purpose of the proposed rule change is to amend the Exchange’s fees relating to connectivity and co-location services.<sup>3</sup> Specifically, the Exchange proposes a one-time adjustment to raise its fees for connectivity and co-location services in General 8, fees assessed for remote multi-cast ITCH (“MITCH”) Wave Ports in Equity 7, Section 115, and certain fees related to Nasdaq Testing Facilities in Equity 7, Section 130 by 10%, with certain exceptions.

General 8, Section 1 includes the Exchange’s fees that relate to connectivity, including fees for cabinets, external telco/inter-cabinet connectivity fees, fees for connectivity to the Exchange, fees for connectivity to third party services, fees for market data connectivity, fees for cabinet power install, and fees for additional charges and services. General 8, Section 2 includes the Exchange’s fees for direct connectivity services, including fees for direct circuit connection to the Exchange, fees for direct circuit connection to third party services, and fees for point of presence connectivity. With the exceptions of the Exchange’s GPS Antenna fees and the Cabinet Proximity Option Fee for cabinets with power density >10kW,<sup>4</sup> the Exchange

proposes to increase its fees throughout General 8 by 10%.

In addition to increasing fees in General 8, the Exchange also proposes to increase certain fees in Equity 7. First, the Exchange proposes to increase the installation and recurring monthly fees assessed for remote MITCH Wave Ports<sup>5</sup> in Equity 7, Section 115(g)(1) by 10%. In addition, the Exchange proposes to increase certain fees in Section 130(d), which relate to the Nasdaq Testing Facility. Equity 7, Section 130(d)(1)(C) provides that subscribers to the Nasdaq Testing Facility (“NTF”) located in Carteret, New Jersey shall pay a fee of \$1,000 per hand-off, per month for connection to the NTF. The hand-off fee includes either a 1Gb or 10Gb switch port and a cross connect to the NTF. In addition, Equity 7, Section 130(d)(1)(C) provides that subscribers shall also pay a one-time installation fee of \$1,000 per hand-off. The Exchange proposes to increase these aforementioned fees by 10% to require that subscribers to the NTF shall pay a fee of \$1,100 per hand-off, per month for connection to the NTF and a one-time installation fee of \$1,100 per hand-off.

The proposed increases in fees would enable the Exchange to maintain and improve its market technology and services to remain competitive with its peers. Over the years, customer demand for more sophisticated, higher-throughput, lower-latency, and higher-power connectivity solutions has increased. The Exchange continues to invest in maintaining, improving, and enhancing its connectivity and co-location products, services, and facilities—for the benefit and often at the behest of its customers. Such enhancements include refreshing hardware and expanding Nasdaq’s existing co-location facility to offer customers additional space and power. Nevertheless, and with the exception of fees that were established as part of a new service in 2017 (and have remained unchanged since their adoption), the Exchange has not increased any of the fees included in the proposal since prior to 2017, and many of the fees date back to between 2010 and 2014 (where inflation has been between roughly 15–17%, as measured using the metric described below). Nevertheless, the Exchange proposes to increase its fees only with respect to inflation that has occurred since 2017.

<sup>5</sup> Remote MITCH Wave Ports are for clients co-located at other third-party data centers, through which NASDAQ TotalView ITCH market data is distributed after delivery to those data centers via wireless network.

<sup>3</sup> The Exchange initially filed the proposed pricing change on March 1, 2024 (SR–NASDAQ–2024–008). On April 29, 2024, the Exchange withdrew that filing and submitted SR–NASDAQ–2024–020. The Exchange withdrew SR–NASDAQ–2024–020 on June 27, 2024 and replaced it with SR–NASDAQ–2024–032. The Exchange withdrew SR–NASDAQ–2024–032 and replaced it with SR–NASDAQ–2024–053 on September 10, 2024. The instant filing replaces SR–NASDAQ–2024–053.

<sup>4</sup> The Exchange proposes to exclude the GPS Antenna fees from the proposed fee increase because, unlike the other fees in General 8, the Exchange recently increased its GPS Antenna fees. See Securities Exchange Act Release No. 34–99126 (December 8, 2023), 88 FR 86712 (December 14, 2023) (SR–NASDAQ–2023–052). The Exchange also proposes to exclude the Cabinet Proximity Option Fee for cabinets with power density >10kW from the proposed fee increase because the Exchange recently established such fee. See Securities Exchange Act Release No. 34–99796 (March 20, 2024), 89 FR 21088 (March 26, 2024) (SR–NASDAQ–2024–013). Similarly, the Exchange proposes to exclude from the proposed fee increase those fees that the Exchange recently established for services in its new NY11–4 expansion facility. See Securities Exchange Act Release No. 34–101267 (October 7, 2024), 89 FR 82666 (October 11, 2024) (SR–NASDAQ–2024–056).

<sup>30</sup> 17 CFR 200.30–3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b–4.

As discussed below, the Exchange proposes to adjust its fees by an industry- and product-specific inflationary measure. It is reasonable and consistent with the Act for the Exchange to recoup its investments, at least in part, by adjusting its fees. Continuing to operate at fees frozen at 2010–2017 levels impacts the Exchange's ability to enhance its offerings and the interests of market participants and investors.

The fee increases the Exchange proposes are based on an industry-specific Producer Price Index ("PPI"), which is a tailored measure of inflation.<sup>6</sup> As a general matter, the Producer Price Index is a family of indexes that measures the average change over time in selling prices received by domestic producers of goods and services. PPI measures price change from the perspective of the seller. This contrasts with other metrics, such as the Consumer Price Index ("CPI"), that measure price change from the purchaser's perspective.<sup>7</sup> About 10,000 PPIs for individual products and groups of products are tracked and released each month.<sup>8</sup> PPIs are available for the output of nearly all industries in the goods-producing sectors of the U.S. economy—mining, manufacturing, agriculture, fishing, and forestry—as well as natural gas, electricity, and construction, among others. The PPI program covers approximately 69 percent of the service sector's output, as measured by revenue reported in the 2017 Economic Census.

For purposes of this proposal, the relevant industry-specific PPI is the Data Processing and Related Services PPI ("Data PPI"), which is an industry net-output PPI that measures the average change in selling prices received by companies that provide data processing services.

The Data PPI was introduced in January 2002 by the Bureau of Labor Statistics ("BLS") as part of an ongoing effort to expand Producer Price Index coverage of the services sector of the U.S. economy and is identified as NAICS—518210 in the North American Industry Classification System.<sup>9</sup> According to the BLS "[t]he primary output of NAICS 518210 is the provision of electronic data processing services. In the broadest sense, computer services companies help their customers efficiently use technology.

The processing services market consists of vendors who use their own computer systems—often utilizing proprietary software—to process customers' transactions and data. Companies that offer processing services collect, organize, and store a customer's transactions and other data for record-keeping purposes. Price movements for the NAICS 518210 index are based on changes in the revenue received by companies that provide data processing services. Each month, companies provide net transaction prices for a specified service. The transaction is an actual contract selected by probability, where the price-determining characteristics are held constant while the service is repriced. The prices used in index calculation are the actual prices billed for the selected service contract."<sup>10</sup>

The Exchange believes the Data PPI is an appropriate measure to be considered in the context of the proposed rule change to modify the fee for its connectivity products because the Exchange uses its "own computer systems" and "proprietary software," *i.e.*, its own data center and proprietary matching engine software, respectively, to collect, organize, store and report customers' transactions in U.S. equity securities on the Exchange's proprietary trading platform. In other words, the Exchange is in the business of data processing and related services.

For purposes of this proposed rule change, the Exchange examined the Data PPI value for the period from January 2017 to August 2024. The Data PPI had a starting value of 105.6 in January 2017 and an ending value of 116.022 in August 2024, a 10.422% increase. This indicates that companies who are also in the data storage and processing business have generally increased prices for a specified service covered under NAICS 518210 by an average of 10.422% during this period. Based on that percentage change, the Exchange proposes to make a one-time fee increase of only 10%, which reflects an increase covering roughly the entire period since the last price adjustments to these fees were made.

The Exchange further believes the Data PPI is an appropriate measure for purposes of the proposed rule change on the basis that it is a stable metric with limited volatility, unlike other consumer-side inflation metrics. In fact, the Data PPI has not experienced a greater than 2.16% increase for any one calendar year period since Data PPI was

introduced into the PPI in January 2002. The average calendar year change from January 2002 to December 2023 was .62%, with a cumulative increase of 15.67% over this 21-year period. The Exchange believes the Data PPI is considerably less volatile than other inflation metrics such as CPI, which has had individual calendar-year increases of more than 6.5%, and a cumulative increase of over 73% over the same period.<sup>11</sup>

The Exchange believes the Data PPI, and significant investments into, and enhanced performance of, the Exchange support the reasonableness of the proposed fee increases.<sup>12</sup>

These proposed fee increases will be immediately effective upon filing. However, going forward and until December 1, 2024, the Exchange will waive all fees set forth herein to the extent that such fees exceed the levels that would have been charged for the same products and services purchased during that time period, had such fees been calculated at the rates set forth in SR–NASDAQ–2024–053. This waiver is reasonable, equitable, and not unfairly discriminatory because it will afford all customers in excess of the 30-day prior notice period for fee changes set forth in the Exchange's service terms.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>13</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>14</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

This belief is based on two factors. First, the current fees do not properly reflect the quality of the services and products, as fees for the services and products in question have been static in nominal terms, and therefore falling in real terms due to inflation. Second, the Exchange believes that investments

<sup>11</sup> See <https://www.usinflationcalculator.com/inflation/consumer-price-index-and-annual-percent-changes-from-1913-to-2008/>.

<sup>12</sup> See *supra* discussion of connectivity product and facility improvements. Additionally, other exchanges have filed for increases in certain fees, based in part on comparisons to inflation. See, *e.g.*, Securities Exchange Act Release Nos. 34–100004 (April 22, 2024), 89 FR 32465 (April 26, 2024) (SR–CboeBYX–2024–012); and 34–100398 (June 21, 2024), 89 FR 53676 (June 27, 2024) (SR–BOX–2024–16); Securities Exchange Act Release No. 34–100994 (September 10, 2024), 89 FR 75612 (September 16, 2024) (SR–NYSEARCA–2024–79).

<sup>13</sup> 15 U.S.C. 78f(b).

<sup>14</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>6</sup> See <https://fred.stlouisfed.org/series/PCU51825182#0>.

<sup>7</sup> See <https://www.bls.gov/ppi/overview.htm>.

<sup>8</sup> See *Id.*

<sup>9</sup> NAICS appears in table 5 of the PPI Detailed Report and is available at <https://data.bls.gov/timeseries/PCU518210518210>.

<sup>10</sup> See <https://www.bls.gov/ppi/factsheets/producer-price-index-for-the-data-processing-and-related-servicesindustry-naics-518210.htm>.

made in enhancing the capacity and speed of Exchange systems increase the performance of the services and products.

#### The Proposed Rule Change Is Reasonable

As noted above, the Exchange has not increased any of the fees included in the proposal since 2017 or earlier. However, in the years following the last fee increases, the Exchange has made significant investments in upgrades to its connectivity products, services, and facilities, enhancing the quality of its services, as measured by, among other things, increased throughput and increased power and space capacity. In other words, Exchange customers have greatly benefited, while the Exchange's ability to recoup its investments has been hampered. Between 2017 and 2024, the inflation rate is 3.64% per year, on average, producing a cumulative inflation rate of 28.43%.<sup>15</sup> Using the more targeted inflation number of Data PPI, the cumulative inflation rate was 10.422%. The exchange believes the Data PPI is a reasonable metric to base this fee increase on because it is targeted to producer-side increases in the data processing industry, which based on the definition adopted by BLS would include the Exchange's market data products.

Notwithstanding inflation, as noted above, the Exchange has not increased its fees at all for over seven years for the subject services. The proposed fee changes represent a modest increase from the current fees. The Exchange believes the proposed fee increase is reasonable in light of the Exchange's continued expenditure in maintaining a robust technology ecosystem. Furthermore, the Exchange continues to invest in maintaining and enhancing its connectivity products—for the benefit and often at the behest of its customers and global investors. Such enhancements include refreshing all aspects of the technology ecosystem including software, hardware, and network while introducing new and innovative products and expanded and modernized facilities.<sup>16</sup> The goal of the enhancements discussed above, among other things, is to provide faster, higher-capacity, and more modern connectivity products and services. Accordingly, the

Exchange continues to expend resources to innovate and modernize technology so that it may benefit its members in offering its connectivity products and services.

#### The Proposed Fees Are Equitably Allocated and Not Unfairly Discriminatory

The Exchange believes that the proposed fee increases are equitably allocated and not unfairly discriminatory because they would apply to all market participants that choose to purchase connectivity products and services from the Exchange. Any participant that chooses to purchase the Exchange's connectivity products and services would be subject to the same Fee Schedule, regardless of what type of business they operate or the use they plan to make use of the products and services. Additionally, the fee increase would be applied uniformly to market participants without regard to Exchange membership status or the extent of any other business with the Exchange or affiliated entities. The Exchange also believes that the proposal represents an equitable allocation of reasonable dues, fees and other charges because Exchange fees have fallen in real terms during the relevant period. Finally, the Exchange believes that the proposed fee changes are not unfairly discriminatory because the fees would be assessed uniformly across all market participants, in the same manner they are today, that voluntarily purchase the Exchange's connectivity products and services, which would remain available for purchase by all market participants.

These proposed fee increases will be immediately effective upon filing. However, going forward and until December 1, 2024, the Exchange will waive all fees set forth herein to the extent that such fees exceed the levels that would have been charged for the same products and services purchased during that time period, had such fees been calculated at the rates set forth in SR-NASDAQ-2024-053. This waiver is reasonable, equitable, and not unfairly discriminatory because it will afford all customers in excess of the 30-day prior notice period for fee changes set forth in the Exchange's service terms.

#### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed fees will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

#### Intramarket Competition

The Exchange believes that the proposed fees do not put any market participants at a relative disadvantage compared to other market participants. As noted above, the fee schedule would continue to apply to all purchasers of the Exchange's connectivity products and services in the same manner as it does today albeit at inflation-adjusted rates for certain fees, and customers may choose whether to purchase these products and services at all. The Exchange also believes that the level of the proposed fees neither favor nor penalize one or more categories of market participants in a manner that would impose an undue burden on competition. Likewise, the proposed fee waiver described above will apply to all purchasers of the Exchange's connectivity products and services in the same manner and therefore will not burden competition among them.

#### Intermarket Competition

The Exchange believes that the proposed fees do not impose a burden on competition or on other SROs that is not necessary or appropriate. In determining the proposed fees, the Exchange utilized an objective and stable metric with limited volatility. Utilizing Data PPI over a specified period of time is a reasonable means of recouping the Exchange's investment in maintaining and enhancing its connectivity products, services, and facilities. The Exchange believes utilizing Data PPI, a tailored measure of inflation, to increase certain fees for connectivity products and services to recoup the Exchange's investment in maintaining and enhancing such products, services, and its facilities would not impose a burden on competition.

#### 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 foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.<sup>17</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in

<sup>15</sup> See <https://www.officialdata.org/us/inflation/2017?amount=1>.

<sup>16</sup> See, e.g., Securities Exchange Act Release No. 34-101078 (September 18, 2024), 89 FR 77937 (September 2024, 2024) (SR-NASDAQ-2024-054 (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Expand [the Exchange's] Co-Location Services)).

<sup>17</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### *Electronic Comments*

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include file number SR-NASDAQ-2024-060 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-NASDAQ-2024-060. 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 (<https://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. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-NASDAQ-2024-060 and should be

submitted on or before November 21, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>18</sup>

**J. Matthew DeLesDernier,**  
*Deputy Secretary.*

[FR Doc. 2024-25324 Filed 10-30-24; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-101433; File No. SR-BX-2024-042]

### Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Fees for Connectivity and Co-location Services

October 25, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on October 11, 2024, Nasdaq BX, Inc. ("BX" or "Exchange") 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 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 the Exchange's fees for connectivity and co-location services, as described further below.

The text of the proposed rule change is available on the Exchange's website at <https://listingcenter.nasdaq.com/rulebook/bx/rules>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set

forth in sections A, B, and C below, of the most significant aspects of such statements.

#### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

The purpose of the proposed rule change is to amend the Exchange's fees relating to connectivity and co-location services.<sup>3</sup> Specifically, the Exchange proposes a one-time adjustment to raise its fees for connectivity and co-location services in General 8, fees assessed for remote multi-cast ITCH ("MITCH") Wave Ports in Equity 7, Section 115, and certain fees related to Nasdaq Testing Facilities in Equity 7, Section 130 by 10%, with certain exceptions.

General 8, Section 1 includes the Exchange's fees that relate to connectivity, including fees for cabinets, external telco/inter-cabinet connectivity fees, fees for connectivity to the Exchange, fees for connectivity to third party services, fees for market data connectivity, fees for cabinet power install, and fees for additional charges and services. General 8, Section 2 includes the Exchange's fees for direct connectivity services, including fees for direct circuit connection to the Exchange, fees for direct circuit connection to third party services, and fees for point of presence connectivity. With the exceptions of the Exchange's GPS Antenna fees and the Cabinet Proximity Option Fee for cabinets with power density >10kW,<sup>4</sup> the Exchange proposes to increase its fees throughout General 8 by 10%.

<sup>3</sup> The Exchange initially filed the proposed pricing change on March 1, 2024 (SR-BX-2024-008). On April 29, 2024, the Exchange withdrew that filing and submitted SR-BX-2024-014. The Exchange withdrew BX-2024-14 and replaced it with SR-BX-2024-20. The Exchange withdrew SR-BX-2024-020 and replaced it with SR-BX-2024-033 on September 10, 2024. The instant filing replaces SR-BX-2024-033.

<sup>4</sup> The Exchange proposes to exclude the GPS Antenna fees from the proposed fee increase because, unlike the other fees in General 8, the Exchange recently increased its GPS Antenna fees. See Securities Exchange Act Release No. 34-99124 (December 8, 2023), 88 FR 86715 (December 14, 2023) (SR-BX-2023-033). The Exchange also proposes to exclude the Cabinet Proximity Option Fee for cabinets with power density >10kW from the proposed fee increase because the Exchange recently established such fee. See Securities Exchange Act Release No. 34-100195 (May 21, 2024), 89 FR 46180 (May 28, 2024) (SR-BX-2024-017). Similarly, the Exchange proposes to exclude from the proposed fee increase those fees that the Exchange recently established for services in its new NY11-4 expansion facility. See Securities Exchange Act Release No. 34-101265 (October 7, 2024), 89 FR 82663 (October 11, 2024) (SR-BX-2024-037).

<sup>18</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.



In addition to increasing fees in General 8, the Exchange also proposes to increase certain fees in Equity 7. First, the Exchange proposes to increase the installation and recurring monthly fees assessed for remote MITCH Wave Ports<sup>5</sup> in Equity 7, Section 115(g)(1) by 10%. In addition, the Exchange proposes to increase certain fees in Section 130(d), which relate to the Nasdaq Testing Facility. Equity 7, Section 130(d)(1)(C) provides that subscribers to the Nasdaq Testing Facility (“NTF”) located in Carteret, New Jersey shall pay a fee of \$1,000 per hand-off, per month for connection to the NTF. The hand-off fee includes either a 1Gb or 10Gb switch port and a cross connect to the NTF. In addition, Equity 7, Section 130(d)(1)(C) provides that subscribers shall also pay a one-time installation fee of \$1,000 per hand-off. The Exchange proposes to increase these aforementioned fees by 10% to require that subscribers to the NTF shall pay a fee of \$1,100 per hand-off, per month for connection to the NTF and a one-time installation fee of \$1,100 per hand-off.

The proposed increases in fees would enable the Exchange to maintain and improve its market technology and services to remain competitive with its peers. Over the years, customer demand for more sophisticated, higher-throughput, lower-latency, and higher-power connectivity solutions has increased. The Exchange continues to invest in maintaining, improving, and enhancing its connectivity and co-location products, services, and facilities—for the benefit and often at the behest of its customers. Such enhancements include refreshing hardware and expanding Nasdaq’s existing co-location facility to offer customers additional space and power. Nevertheless, and with the exception of fees that were established as part of a new service in 2017 (and have remained unchanged since their adoption), the Exchange has not increased any of the fees included in the proposal since prior to 2017, and many of the fees date back to between 2010 and 2014 (where inflation has been between roughly 15–17%, as measured using the metric described below). Nevertheless, the Exchange proposes to increase its fees only with respect to inflation that has occurred since 2017.

As discussed below, the Exchange proposes to adjust its fees by an industry- and product-specific

inflationary measure. It is reasonable and consistent with the Act for the Exchange to recoup its investments, at least in part, by adjusting its fees. Continuing to operate at fees frozen at 2010–2017 levels impacts the Exchange’s ability to enhance its offerings and the interests of market participants and investors.

The fee increases the Exchange proposes are based on an industry-specific Producer Price Index (“PPI”), which is a tailored measure of inflation.<sup>6</sup> As a general matter, the Producer Price Index is a family of indexes that measures the average change over time in selling prices received by domestic producers of goods and services. PPI measures price change from the perspective of the seller. This contrasts with other metrics, such as the Consumer Price Index (“CPI”), that measure price change from the purchaser’s perspective.<sup>7</sup> About 10,000 PPIs for individual products and groups of products are tracked and released each month.<sup>8</sup> PPIs are available for the output of nearly all industries in the goods-producing sectors of the U.S. economy—mining, manufacturing, agriculture, fishing, and forestry—as well as natural gas, electricity, and construction, among others. The PPI program covers approximately 69 percent of the service sector’s output, as measured by revenue reported in the 2017 Economic Census.

For purposes of this proposal, the relevant industry-specific PPI is the Data Processing and Related Services PPI (“Data PPI”), which is an industry net-output PPI that measures the average change in selling prices received by companies that provide data processing services.

The Data PPI was introduced in January 2002 by the Bureau of Labor Statistics (“BLS”) as part of an ongoing effort to expand Producer Price Index coverage of the services sector of the U.S. economy and is identified as NAICS—518210 in the North American Industry Classification System.<sup>9</sup> According to the BLS “[t]he primary output of NAICS 518210 is the provision of electronic data processing services. In the broadest sense, computer services companies help their customers efficiently use technology. The processing services market consists of vendors who use their own computer systems—often utilizing proprietary

software—to process customers’ transactions and data. Companies that offer processing services collect, organize, and store a customer’s transactions and other data for record-keeping purposes. Price movements for the NAICS 518210 index are based on changes in the revenue received by companies that provide data processing services. Each month, companies provide net transaction prices for a specified service. The transaction is an actual contract selected by probability, where the price-determining characteristics are held constant while the service is repriced. The prices used in index calculation are the actual prices billed for the selected service contract.”<sup>10</sup>

The Exchange believes the Data PPI is an appropriate measure to be considered in the context of the proposed rule change to modify the fee for its connectivity products because the Exchange uses its “own computer systems” and “proprietary software,” *i.e.*, its own data center and proprietary matching engine software, respectively, to collect, organize, store and report customers’ transactions in U.S. equity securities on the Exchange’s proprietary trading platform. In other words, the Exchange is in the business of data processing and related services.

For purposes of this proposed rule change, the Exchange examined the Data PPI value for the period from January 2017 to August 2024. The Data PPI had a starting value of 105.6 in January 2017 and an ending value of 116.022 in August 2024, a 10.422% increase. This indicates that companies who are also in the data storage and processing business have generally increased prices for a specified service covered under NAICS 518210 by an average of 10.422% during this period. Based on that percentage change, the Exchange proposes to make a one-time fee increase of only 10%, which reflects an increase covering roughly the entire period since the last price adjustments to these fees were made.

The Exchange further believes the Data PPI is an appropriate measure for purposes of the proposed rule change on the basis that it is a stable metric with limited volatility, unlike other consumer-side inflation metrics. In fact, the Data PPI has not experienced a greater than 2.16% increase for any one calendar year period since Data PPI was introduced into the PPI in January 2002. The average calendar year change from January 2002 to December 2023 was

<sup>6</sup> See <https://fred.stlouisfed.org/series/PCU51825182#0>.

<sup>7</sup> See <https://www.bls.gov/ppi/overview.htm>.

<sup>8</sup> See *Id.*

<sup>9</sup> NAICS appears in table 5 of the PPI Detailed Report and is available at <https://data.bls.gov/timeseries/PCU518210518210>.

<sup>10</sup> See <https://www.bls.gov/ppi/factsheets/producer-price-index-for-the-data-processing-and-related-servicesindustry-naics-518210.htm>.

<sup>5</sup> Remote MITCH Wave Ports are for clients co-located at other third-party data centers, through which NASDAQ TotalView ITCH market data is distributed after delivery to those data centers via wireless network.



.62%, with a cumulative increase of 15.67% over this 21-year period. The Exchange believes the Data PPI is considerably less volatile than other inflation metrics such as CPI, which has had individual calendar-year increases of more than 6.5%, and a cumulative increase of over 73% over the same period.<sup>11</sup>

The Exchange believes the Data PPI, and significant investments into, and enhanced performance of, the Exchange support the reasonableness of the proposed fee increases.<sup>12</sup>

These proposed fee increases will be immediately effective upon filing. However, going forward and until December 1, 2024, the Exchange will waive all fees set forth herein to the extent that such fees exceed the levels that would have been charged for the same products and services purchased during that time period, had such fees been calculated at the rates set forth in SR-BX-2024-033. This waiver is reasonable, equitable, and not unfairly discriminatory because it will afford all customers in excess of the 30-day prior notice period for fee changes set forth in the Exchange's service terms.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>13</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>14</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

This belief is based on two factors. First, the current fees do not properly reflect the quality of the services and products, as fees for the services and products in question have been static in nominal terms, and therefore falling in real terms due to inflation. Second, the Exchange believes that investments made in enhancing the capacity and speed of Exchange systems increase the

performance of the services and products.

### The Proposed Rule Change Is Reasonable

As noted above, the Exchange has not increased any of the fees included in the proposal since 2017 or earlier. However, in the years following the last fee increases, the Exchange has made significant investments in upgrades to its connectivity products, services, and facilities, enhancing the quality of its services, as measured by, among other things, increased throughput and increased power and space capacity. In other words, Exchange customers have greatly benefitted, while the Exchange's ability to recoup its investments has been hampered. Between 2017 and 2024, the inflation rate is 3.64% per year, on average, producing a cumulative inflation rate of 28.43%.<sup>15</sup> Using the more targeted inflation number of Data PPI, the cumulative inflation rate was 10.422%. The exchange believes the Data PPI is a reasonable metric to base this fee increase on because it is targeted to producer-side increases in the data processing industry, which based on the definition adopted by BLS would include the Exchange's market data products.

Notwithstanding inflation, as noted above, the Exchange has not increased its fees at all for over seven years for the subject services. The proposed fee changes represent a modest increase from the current fees. The Exchange believes the proposed fee increase is reasonable in light of the Exchange's continued expenditure in maintaining a robust technology ecosystem.

Furthermore, the Exchange continues to invest in maintaining and enhancing its connectivity products—for the benefit and often at the behest of its customers and global investors. Such enhancements include refreshing all aspects of the technology ecosystem including software, hardware, and network while introducing new and innovative products and expanded and modernized facilities.<sup>16</sup> The goal of the enhancements discussed above, among other things, is to provide faster, higher-capacity, and more modern connectivity products and services. Accordingly, the Exchange continues to expend resources to innovate and modernize technology

so that it may benefit its members in offering its connectivity products and services.

### The Proposed Fees Are Equitably Allocated and Not Unfairly Discriminatory

The Exchange believes that the proposed fee increases are equitably allocated and not unfairly discriminatory because they would apply to all market participants that choose to purchase connectivity products and services from the Exchange. Any participant that chooses to purchase the Exchange's connectivity products and services would be subject to the same Fee Schedule, regardless of what type of business they operate or the use they plan to make of the products and services. Additionally, the fee increase would be applied uniformly to market participants without regard to Exchange membership status or the extent of any other business with the Exchange or affiliated entities. The Exchange also believes that the proposal represents an equitable allocation of reasonable dues, fees and other charges because Exchange fees have fallen in real terms during the relevant period. Finally, the Exchange believes that the proposed fee changes are not unfairly discriminatory because the fees would be assessed uniformly across all market participants, in the same manner they are today, that voluntarily purchase the Exchange's connectivity products and services, which would remain available for purchase by all market participants.

These proposed fee increases will be immediately effective upon filing. However, going forward and until December 1, 2024, the Exchange will waive all fees set forth herein to the extent that such fees exceed the levels that would have been charged for the same products and services purchased during that time period, had such fees been calculated at the rates set forth in SR-BX-2024-033. This waiver is reasonable, equitable, and not unfairly discriminatory because it will afford all customers in excess of the 30-day prior notice period for fee changes set forth in the Exchange's service terms.

### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed fees will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

### Intramarket Competition

The Exchange believes that the proposed fees do not put any market participants at a relative disadvantage

<sup>11</sup> See <https://www.usinflationcalculator.com/inflation/consumer-price-index-and-annual-percent-changesfrom-1913-to-2008/>.

<sup>12</sup> See *supra* discussion of connectivity product and facility improvements. Additionally, other exchanges have filed for increases in certain fees, based in part on comparisons to inflation. See, e.g., Securities Exchange Act Release Nos. 34–100004 (April 22, 2024), 89 FR 32465 (April 26, 2024) (SR-CboeBYX–2024–012); and 34–100398 (June 21, 2024), 89 FR 53676 (June 27, 2024) (SR-BOX–2024–16); Securities Exchange Act Release No. 34–100994 (September 10, 2024), 89 FR 75612 (September 16, 2024) (SR-NYSEARCA–2024–79).

<sup>13</sup> 15 U.S.C. 78f(b).

<sup>14</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>15</sup> See <https://www.officialdata.org/us/inflation/2017?amount=1>.

<sup>16</sup> See, e.g., Securities Exchange Act Release No. 34–101073 (September 18, 2024), 89 FR 77926 (September 24, 2024) (SR-BX–2024–035 (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Expand [the Exchange's] Co-Location Services)).

compared to other market participants. As noted above, the fee schedule would continue to apply to all purchasers of the Exchange's connectivity products and services in the same manner as it does today albeit at inflation-adjusted rates for certain fees, and customers may choose whether to purchase these products and services at all. The Exchange also believes that the level of the proposed fees neither favor nor penalize one or more categories of market participants in a manner that would impose an undue burden on competition. Likewise, the proposed fee waiver described above will apply to all purchasers of the Exchange's connectivity products and services in the same manner and therefore will not burden competition among them.

#### Intermarket Competition

The Exchange believes that the proposed fees do not impose a burden on competition or on other SROs that is not necessary or appropriate. In determining the proposed fees, the Exchange utilized an objective and stable metric with limited volatility. Utilizing Data PPI over a specified period of time is a reasonable means of recouping the Exchange's investment in maintaining and enhancing its connectivity products, services, and facilities. The Exchange believes utilizing Data PPI, a tailored measure of inflation, to increase certain fees for connectivity products and services to recoup the Exchange's investment in maintaining and enhancing such products, services, and its facilities would not impose a burden on competition.

#### 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 foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.<sup>17</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the

Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

#### Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include file number SR-BX-2024-042 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-2024-042. 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 (<https://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. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-BX-2024-042 and should be submitted on or before November 21, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>18</sup>

**J. Matthew DeLesDernier,**

*Deputy Secretary.*

[FR Doc. 2024-25319 Filed 10-30-24; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-101440; File No. SR-ICC-2024-005]

### Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Designation of Longer Period for Commission Action on Proposed Rule Change Relating to ICC's Treasury Operations Policies and Procedures

October 25, 2024.

On August 22, 2024, pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Exchange Act")<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder, ICE Clear Credit LLC ("ICC"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change SR-ICC-2024-005 to make changes to the ICC Treasury Operations Policies and Procedures (the "Proposed Rule Change"). The Proposed Rule Change was published for public comment in the **Federal Register** on September 11, 2024.<sup>3</sup> The Commission has not received comments regarding the proposal described in the Proposed Rule Change.

Section 19(b)(2) of the Exchange Act<sup>4</sup> provides that, within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding, or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the Notice is October 26, 2024. The Commission is extending this 45-day time period.

In order to provide the Commission with sufficient time to consider the

<sup>18</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing of Proposed Rule Change Relating to ICC's Treasury Operations Policies and Procedures, Exchange Act Release No. 34-100935 (Sept. 5, 2024); 89 FR 73734 (Sept. 11, 2024) (SR-ICC-2024-005) ("Notice").

<sup>4</sup> 15 U.S.C. 78s(b)(2).

<sup>17</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

Proposed Rule Change, the Commission finds that it is appropriate to designate a longer period within which to take action on the Proposed Rule Change.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Exchange Act,<sup>5</sup> designates December 10, 2024, as the date by which the Commission shall either approve, disapprove, or institute proceedings to determine whether to disapprove proposed rule change SR-ICC-2024-005.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>6</sup>

**J. Matthew DeLesDernier,**  
Deputy Secretary.

[FR Doc. 2024-25323 Filed 10-30-24; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-101444; File No. SR-OCC-2024-015]

### Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change Concerning Modifications to Its Governance Documents To Align With Recently Adopted SEC Governance Rules

October 25, 2024

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act” or “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on October 21, 2024, The Options Clearing Corporation (“OCC” or “Corporation”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by OCC. 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

This proposed rule change would make modifications to its governance documents, including OCC’s charters, Fitness Standards, and Third-Party Risk Management Framework, as part of an effort to achieve compliance with the recently adopted governance

requirements<sup>3</sup> by the Commission for clearing agencies registered with the Commission (“registered clearing agencies”) that became effective on February 5, 2024. Registered clearing agencies, like OCC, must comply with most of the governance requirements by December 5, 2024. However, the governance requirement for independent directors, as described in further detail below, has a compliance date of December 5, 2025.

In addition to the proposed modifications that OCC believes are necessary to comply with the recently adopted governance requirements, OCC is also including proposed modifications to its governance documents that reflect changes identified during OCC’s annual review process. The proposed changes related to the governance requirements and the proposed changes related to OCC’s annual review process are differentiated throughout this filing and described in further detail below. For clarification, OCC’s Board of Directors Charter and Corporate Governance Principles (“Board Charter”), Governance and Nominating Committee (“GNC”) Charter, Risk Committee Charter, Technology Committee Charter, Compensation and Performance Committee (“CPC”) Charter, Regulatory Committee Charter, Audit Committee Charter, Fitness Standards, Third-Party Risk Management Framework, and Article III of OCC’s By-Laws are collectively referred to in this proposed rule change as OCC’s “governance documents.”

The proposed changes to OCC’s governance documents are contained in Exhibits 5A through 5J, respectively, to File No. SR-OCC-2024-015. Material proposed to be added is marked by underlining and material proposed to be deleted is marked with strikethrough text.

All terms with initial capitalization that are not otherwise defined herein have the same meaning as set forth in the OCC By-Laws and Rules.<sup>4</sup>

#### II. Clearing Agency’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC 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. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

#### (A) Clearing Agency’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

OCC is the sole clearing agency registered with the Commission for standardized equity options listed on national securities exchanges. OCC operates under the jurisdiction of both the Commission and the Commodity Futures Trading Commission (“CFTC”). OCC also clears and settles certain stock loan transactions and transactions in futures and options on futures. In connection with its clearance and settlement of transactions in securities, OCC is a “covered clearing agency”<sup>5</sup> regulated by the Commission. In connection with its clearance and settlement activities for transactions in futures and options on futures, OCC is a derivatives clearing organization (“DCO”) regulated by the CFTC. OCC is also designated as a systemically important financial market utility (“SIFMU”) by the Financial Stability Oversight Council pursuant to Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (“Dodd-Frank Act”).

As an SEC registered clearing agency and a CFTC registered DCO, OCC is already subject to regulations that impose requirements on its governance structure. For example, the Exchange Act requires OCC’s rules to assure a fair representation of its shareholders and Clearing Members in the selection of its directors and the administration of its affairs.<sup>6</sup> In addition, SEC rules, among other things, require OCC to have governance arrangements that are clear and transparent and that provide risk management and internal audit personnel with a direct reporting line to, and oversight by, a risk management committee and an independent audit committee of the Board.<sup>7</sup> In July of 2023, the CFTC also finalized new governance requirements for DCOs.<sup>8</sup> Those requirements, among other

<sup>3</sup> See Securities Exchange Act Release No. 98959 (Dec. 5, 2023), 88 FR 84454 (Dec. 5, 2023) (File No. S7-21-22) (“SEC Adopting Release”), <https://www.govinfo.gov/content/pkg/FR-2023-12-05/pdf/2023-25807.pdf>.

<sup>4</sup> OCC’s By-Laws and Rules can be found on OCC’s public website: <https://www.theocc.com/Company-Information/Documents-and-Archives/By-Laws-and-Rules>.

<sup>5</sup> The term “covered clearing agency” is defined in Exchange Act Rule 17Ad-22(a)(5) to mean “a registered clearing agency that provides the services of a central counterparty or central securities depository.” 17 CFR 240.17Ad-22(a)(5).

<sup>6</sup> 17 U.S.C. 78q-1(b)(3)(C).

<sup>7</sup> 17 CFR 240.17Ad-22(e)(2)(i) and (3)(iv).

<sup>8</sup> See 88 FR 44675 (July 13, 2023) (“CFTC Adopting Release”), <https://www.govinfo.gov/content/pkg/FR-2023-07-13/pdf/2023-14361.pdf>.

<sup>5</sup> *Id.*

<sup>6</sup> 17 CFR 200.30-3(a)(31).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

things, require the establishment of one or more market participant risk advisory working groups as a forum to seek risk-based input from a broad array of market participants. OCC previously filed a proposed rule change with the SEC to implement changes to address these requirements.<sup>9</sup>

OCC currently maintains a robust governance structure that is designed to comply with existing requirements of the Commission and CFTC. Recently, the Commission adopted new regulations regarding governance requirements for registered clearing agencies (“SEC Governance Rules”) that supplement the existing governance requirements applicable to OCC as a registered clearing agency.<sup>10</sup> The SEC Governance Rules require, among other things, that registered clearing agencies:

(i) Establish requirements that a majority of the members of the board of directors of the registered clearing agency be independent directors, as defined in 17Ad-25(a), and that each registered clearing agency consider all the relevant facts and circumstances to affirmatively determine that a director does not have a material relationship with the registered clearing agency or an affiliate of the registered clearing agency that would preclude services as an independent director.<sup>11</sup>

(ii) Establish a nominating committee and a written evaluation process whereby such committee evaluates nominees for service as directors and evaluating the independence of nominees and directors,<sup>12</sup> and require that a majority of the directors on the nominating committee be independent directors, including the chair of the nominating committee.<sup>13</sup> The fitness standards for service as a director must be specified by the nominating committee, documented in writing and approved by the board of directors.<sup>14</sup> The nominating committee must also document the outcome of the written evaluation process consistent with the fitness standards required in 17Ad-25(c)(3).<sup>15</sup>

(iii) Establish a risk management committee or committees of the board to assist the board of directors in overseeing the risk management of the registered clearing agency, and the membership of each risk management committee must be re-evaluated

annually and at all times include representatives from the owners and participants of the registered clearing agency.<sup>16</sup> The risk management committee must be able to provide a risk-based, independent, and informed opinion on all matters presented to the committee for consideration in a manner that supports the overall risk management, safety and efficiency of the registered clearing agency.<sup>17</sup>

(iv) Establish composition requirements for committees that have authority to act on behalf of the board of directors, such that the composition of that committee must have at least the same percentage of independent directors as is required for the board of directors.<sup>18</sup>

(v) Maintain policies and procedures to identify and document existing or potential conflicts of interest in the decision-making process of the clearing agency involving directors or senior managers of the registered clearing agency and mitigate or eliminate and document the mitigation or elimination of such conflicts of interest.<sup>19</sup>

(vi) Maintain policies and procedures reasonably designed to require a director to document and inform the registered clearing agency promptly of the existence of any relationship or interest that reasonably could affect the independent judgment or decision-making of the director.<sup>20</sup>

(vii) Maintain policies and procedures reasonably designed to: (1) require senior management to evaluate and document the risks related to an agreement with a service provider for core services, including under changes to circumstances and potential disruptions, and whether the risks can be managed in a manner consistent with the clearing agency’s risk management framework; (2) require senior management to submit to the board of directors for review and approval any agreement that would establish a relationship with a service provider for core services, along with the risk evaluation; (3) require senior management to be responsible for establishing the policies and procedures that govern relationships and manage risks related to such agreements with service providers for core services and require the board of directors to be responsible for reviewing and approving such policies and procedures; and (4) require senior management to perform ongoing monitoring of the relationship,

and report to the board of directors for its evaluation of any action taken by senior management to remedy significant deterioration in performance or address changing risks or material issues identified through such monitoring; or if the risks or issues cannot be remedied, require senior management to assess and document weaknesses or deficiencies in the relationship with the service provider for submission to the board of directors.<sup>21</sup>

(viii) Maintain policies and procedures for the board to solicit, consider, and document its consideration of the views of participants and other relevant stakeholders of the registered clearing agency regarding material developments in the registered clearing agency’s risk management and operations.<sup>22</sup>

OCC already maintains risk and nominating committees of the Board, fitness standards for directors, and written procedures for directors to identify and disclose conflicts of interest. However, to implement a compliant approach with those requirements for which OCC believes changes will be necessary, OCC is proposing to revise its governance documents such that the documents set clear and transparent governance standards and provide a framework for compliance. OCC’s proposed changes to its governance documents establish requirements that provide: (i) OCC’s Board be comprised of a majority of independent directors; (ii) each Board-level committee that has delegated authority from the Board be comprised of a majority of independent directors; (iii) OCC’s existing Risk Committee and GNC align with the related requirements in the SEC Governance Rules regarding the responsibilities and composition of the committees; (iv) OCC’s Fitness Standards align with the related requirements in the SEC Governance Rules for directors; and (v) OCC’s Board Charter and Third-Party Risk Management Framework incorporate the requirements in the SEC Governance Rules regarding review, approval, and monitoring of agreements with service providers for core services. OCC also plans to revise other internal policies and procedures to align with the remaining requirements in the SEC Governance Rules that include, among other things, the identification and analysis of directors for independence, and the management of risks from relationships with service providers for

<sup>9</sup> See Securities Exchange Act Release No. 100194 (May 21, 2024), 89 FR 46205 (May 28, 2024) (SR-OCC-2024-005).

<sup>10</sup> See SEC Adopting Release, 88 FR 84454.

<sup>11</sup> 17 CFR 240.17Ad-25(b)(1), (2).

<sup>12</sup> 17 CFR 240.17Ad-25(c)(1).

<sup>13</sup> 17 CFR 240.17Ad-25(c)(2).

<sup>14</sup> 17 CFR 240.17Ad-25(c)(3).

<sup>15</sup> 17 CFR 240.17Ad-25(c)(4).

<sup>16</sup> 17 CFR 240.17Ad-25(d)(1).

<sup>17</sup> 17 CFR 240.17Ad-25(d)(2).

<sup>18</sup> 17 CFR 240.17Ad-25(e).

<sup>19</sup> 17 CFR 240.17Ad-25(g)(1)(2).

<sup>20</sup> 17 CFR 240.17Ad-25(h).

<sup>21</sup> 17 CFR 240.17Ad-25(i)(1)–(4).

<sup>22</sup> 17 CFR 240.17Ad-25(j).

core services.<sup>23</sup> OCC believes that the proposed changes will allow OCC to appropriately comply with the SEC Governance Rules by including the proposed provisions in OCC's governance documents.

#### 1. Purpose

The purpose of this proposed rule change by OCC is to modify its governance documents to implement changes that are designed to comply with requirements in the SEC Governance Rules, which are found in 17 CFR 240.17Ad-25 ("Rule 17Ad-25").<sup>24</sup> In the Commission's adopting release, the Commission clarifies that it is adopting new rules to improve the governance of registered clearing agencies by reducing the likelihood that conflicts of interest may influence a board of directors or equivalent governing body of a registered clearing agency.<sup>25</sup> In addition, the SEC Governance Rules identify certain responsibilities of a clearing agency board, increase transparency into board governance, and, more generally, improve the alignment of incentives among owners and participants of a registered clearing agency.<sup>26</sup>

In addition to the proposed rule changes necessary to comply with the SEC Governance Rules, OCC proposes a series of rule changes identified during OCC's annual review process. While these proposed changes to OCC's governance documents are described in further detail below, thematically, they consist of the following:

i. Proposed changes in effort to achieve compliance with the SEC Governance Rules:

- Revisions to OCC's Board Charter to specify: (i) a majority of OCC's Board be comprised of independent directors (ii) that each Board-level committee established by the Board and that has delegated authority from the Board be comprised of a majority of independent directors, and (iii) the Board's oversight role of senior management as it relates to management of risks from relationships with service providers for core services.

- Revisions to the charters for OCC's six Board-level committees that have delegated authority from the Board of Directors, including the GNC Charter, Risk Committee Charter, Technology Committee Charter, CPC Charter, Regulatory Committee Charter, and Audit Committee Charter, to specify that

each committee be comprised of a majority of directors who are independent.

- Revisions to OCC's GNC Charter to specify the responsibilities of the GNC, including that: (i) the GNC specify fitness standards for serving as a director that are documented in writing and approved by the Board; (ii) the GNC maintain a written evaluation process to evaluate all nominees for potential service as directors and evaluate the independence of nominees and directors for consistency with regulatory requirements; and (iii) the outcome of that evaluation process be documented consistent with regulatory requirements.

- Revisions to OCC's Risk Committee Charter to specify that in making their nominations for the Risk Committee, the GNC and the Board will take into consideration the ability of the Risk Committee to provide a risk-based, independent, and informed opinion on all matters presented to the Risk Committee for consideration.

- Revisions to OCC's Fitness Standards to include the consideration of: (i) whether the nominee would help demonstrate that the Board, taken as a whole, has a diversity of skills, knowledge, experience, and perspectives, and (ii) the views of other stakeholders, aside from owners and participants, who may be affected by decisions of OCC's Board.

- Revisions to OCC's Third-Party Risk Management Framework to incorporate the requirements in the SEC Governance Rules related to management of risks from relationships with service providers for core services. This includes requiring senior management to: (i) evaluate and document risks related to an agreement with a service provider for core services; (ii) submit to the Board for review and approval any agreement establishing a relationship with a service provider for core services along with a risk evaluation; and (iii) perform ongoing monitoring of service providers for core services and report to the Board any action taken by senior management to remedy significant deterioration in performance, address material issues, and assess and document weaknesses or deficiencies that cannot be remedied.

ii. Proposed changes identified during OCC's annual review process:

- Revisions to OCC's Board Charter to provide specific requirements used to determine what constitutes a Public Director.

- Revisions to Article III, Section 6A of OCC's By-Laws to incorporate the proposed changes to OCC's definition of a Public Director.

- Revisions to OCC's Fitness Standards to incorporate the proposed changes to OCC's definition of a Public Director.

- Revisions to OCC's CPC Charter to expand the description of the role of the CPC as it relates to oversight of the development and administration of OCC's Human Resources programs.

- Revisions to OCC's Regulatory Charter to incorporate minor grammatical updates.

- Revisions to OCC's Third-Party Risk Management Framework to: (i) define "Exchange Relationship" as it relates to risks arising from third-party relationships; (ii) update the description of "Information Technology and Security risks" and "Legal and Regulatory risks" to align with current practice; (iii) update the name and abbreviation of OCC's working group to reflect the combination of two pre-existing working groups; and (iv) provide additional clarifying information on how OCC engages and manages vendor relationships.

#### OCC's Existing Governance Structure

Currently, OCC's Board of Directors is composed of Public Directors,<sup>27</sup> Exchange Directors,<sup>28</sup> Member Directors,<sup>29</sup> and a Management Director.<sup>30</sup> OCC's current Board is comprised of up to twenty-one directors total, including nine Member Directors, up to six Public Directors, five Exchange Directors, and one Management Director. In this way, the directors that serve on the Board represent a range of different stakeholders from the markets that OCC serves. OCC's Board already reviews the independence of each director through its Director Questionnaire, which is used to facilitate the analysis of whether a director appropriately can be considered independent, as defined by the Board, and to identify and document any potential conflicts of interest. OCC's current processes require, among other

<sup>27</sup> Terms regarding service by Public Directors are set forth in OCC's By-Laws and in OCC's Fitness Standards. See e.g., OCC By-Laws Article III, Section 6A; Fitness Standards at "Additional Criteria for the Public Directors." See *supra* note 4.

<sup>28</sup> Terms regarding service by Exchange Directors are set forth in OCC's By-Laws and in OCC's Fitness Standards. See e.g., OCC By-Laws Article III, Section 6; Fitness Standards at "Additional Criteria for Exchange Directors" *Id.*

<sup>29</sup> Terms regarding service by Member Directors are set forth in OCC's By-Laws and in OCC's Fitness Standards. See e.g., OCC By-Laws Article III, Section 2; Fitness Standards at "Additional Criteria for Member Directors" *Id.*

<sup>30</sup> Terms regarding service by the Management Director are set forth in OCC's By-Laws. For example, the Management Director must be an OCC employee. See e.g., OCC By-Laws Article III, Section 7 *Id.*

<sup>23</sup> OCC has included as confidential Exhibits 3A through 3E to File No SR-OCC-2024-015 the other internal policies and procedures referenced here.

<sup>24</sup> 17 CFR 240.17Ad-25.

<sup>25</sup> See SEC Adopting Release at 84454.

<sup>26</sup> *Id.*

things, an annual attestation of the information included in the Director Questionnaire. OCC also maintains a Code of Conduct for OCC Directors that requires that directors update the necessary documents and information if there are any changes.

OCC also already maintains a Board-level Risk Committee and GNC, as required by the SEC Governance Rules. In addition to the Risk Committee and GNC, OCC's Board oversees four other Board-level committees that are comprised of certain Board directors and that assist the Board in carrying out its supervisory role. The other committees include the Regulatory Committee, the Technology Committee, the Audit Committee, and the CPC. In connection with OCC's existing Board and Board committee structure, OCC maintains charters for the Board and all Board-level committees, and Fitness Standards for Directors, Clearing Members and Others ("Fitness Standards"). The charters, Fitness Standards, and Code of Conduct are all publicly available on OCC's website.<sup>31</sup>

In addition to maintaining a Board-level Risk Committee, OCC also maintains a non-Board-level risk management committee. This non-Board-level risk management committee is a subset of OCC's existing Financial Risk Advisory Council ("FRAC") and is comprised of clearing members and customers of clearing members. As required by the recently adopted CFTC governance rules,<sup>32</sup> OCC consults with this non-Board-level risk committee on all matters that could materially affect the risk profile of OCC.<sup>33</sup> As such, OCC believes this also satisfies the SEC Governance Rules requirement for the board of directors to solicit and consider viewpoints of participants and other relevant stakeholders regarding material developments in its risk management and operations.<sup>34</sup>

Lastly, OCC already maintains a Third-Party Risk Management Framework that is reviewed and approved at least annually by OCC's Risk Committee and Board. OCC's Third-Party Risk Management Framework outlines OCC's approach to identify, measure, monitor, and manage

risks arising from third-party relationships, consistent with certain requirements in the SEC Governance Rules that require senior management to be responsible for establishing policies and procedures that govern relationships and manage risks related to agreements with service providers for core services, and that require the board of directors to review and approve such policies and procedures.<sup>35</sup>

#### Proposed Changes to OCC's Board Charter

##### The Mission of the Board

The SEC Governance Rules require the Board to be comprised of a majority of "independent directors" as that term is defined in the SEC Governance Rules.<sup>36</sup> To align with this requirement, OCC proposes to modify its Board Charter to clarify that a majority of directors, rather than a substantial portion of directors, be independent directors, as defined by the SEC Governance Rules<sup>37</sup> and the judgement of the Board. Specifically, OCC's proposed changes to the Board Charter would provide that as part of the Board's mission, the Board fulfills its oversight role by ensuring that at least a majority of the directors on the Board are independent as determined by the Board and in accordance with Securities and Exchange Commission Rule 17Ad-25(b) adopted on December 5, 2023.<sup>38</sup> OCC's proposed changes expand the requirement that all Board-level committees, not just the Audit Committee, be comprised of independent directors. Specifically, OCC's proposed changes eliminate the reference that only the Audit Committee of the Board be comprised of independent directors and provide that at least a majority of the directors on each Board-level committee be comprised of independent directors.

The SEC Governance Rules also require OCC to have written policies and procedures designed to address certain aspects of risk management in connection with relationships with service providers for core clearing agency services, and require senior management to be responsible for establishing the policies and procedures and the Board to be responsible for reviewing and approving such policies and procedures.<sup>39</sup> The SEC Governance Rules also require senior management to perform ongoing monitoring of the relationship with a service provider for

core services and report to the Board for its evaluation of any action taken by senior management to remedy significant deterioration in performance or address changing risks or material issues identified through such monitoring.<sup>40</sup> If the risks or issues cannot be remedied, the SEC Governance Rules require that senior management assess and document weaknesses or deficiencies in the relationship with the service provider for submission to the Board.<sup>41</sup> To align with these requirements, OCC's proposed changes to the Board Charter would provide that as part of the Board's mission, the Board fulfills its oversight role by overseeing service providers that provide core services for OCC, including reviews of risk assessments for current vendors and approving terms for new vendors that will provide core services for OCC. OCC's proposed changes would also provide that the Board fulfills its oversight role by overseeing senior management's review and approval of an agreement that establishes a relationship with a service provider for core services, and overseeing senior management's risk assessment for such agreements. In addition, OCC's proposed changes provide that the Board review and approve policies and procedures established by senior management that govern relationships and manage risks related to agreements with service providers for core services. Lastly, OCC's proposed changes provide that the Board evaluate any action taken by senior management to remedy significant deterioration in performance or address changing risks or material issues identified through senior management's monitoring of relationships with a service provider for core services, and oversee senior management's assessment and document of weaknesses or deficiencies with the service provider if such risks or issues cannot be remedied.

#### Board Issues—Size of Board; Composition

The SEC Governance Rules define independent director as "a director of the registered clearing agency who has no material relationship with the registered clearing agency or any affiliate thereof."<sup>42</sup> The SEC Governance Rules require that the Committee affirmatively determine and document whether a nominee or director is appropriately categorized as an independent director, as defined in

<sup>31</sup> See Board Charters, Board Committee Charters and Other Governance Documents, available at <https://www.theocc.com/company-information/documents-and-archives/board-charters>.

<sup>32</sup> See 88 FR 44675 (July 13, 2023) ("CFTC Adopting Release"), <https://www.govinfo.gov/content/pkg/FR-2023-07-13/pdf/2023-14361.pdf>.

<sup>33</sup> OCC's FRAC Guiding Principles is included as confidential Exhibit 3F to File No. SR-OCC-2024-015, and provides more information on the responsibilities and composition of the non-Board-level risk management committee.

<sup>34</sup> 17 CFR 240.17Ad-25(j).

<sup>35</sup> 17 CFR 240.17Ad-25(i)(3).

<sup>36</sup> 17 CFR 240.17Ad-25(a).

<sup>37</sup> 17 CFR 240.17Ad-25(b).

<sup>38</sup> *Id.*

<sup>39</sup> 17 CFR 240.17Ad-25(i)(2),(3).

<sup>40</sup> 17 CFR 240.17Ad-25(i)(4).

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

<sup>42</sup> 17 CFR 240.17Ad-25(a).

the SEC Governance Rules.<sup>43</sup> To align with this requirement, OCC proposes to modify its Director Questionnaire to align OCC's analysis of potential conflicts with the applicable regulatory requirements in the SEC Governance Rules and facilitate the analysis of whether a nominee or director appropriately can be considered independent.

Furthermore, to reflect the definition of independent director as defined by the SEC Governance Rules,<sup>44</sup> OCC's proposed changes to the Board Charter would also state that it is the policy of the Board that the Board at all times reflect that a majority, rather than a substantial portion, of directors be "independent" as defined by the SEC Governance Rules and the judgment of the Board. OCC's proposed changes remove the reference that a substantial portion of directors must be independent "of OCC and OCC's management." OCC believes these proposed changes to the Board composition section of the Board Charter will satisfy the independent director requirement, as defined in the SEC Governance Rules.

#### Board Issues—Selection of Exchange Directors

As described in more detail below, the SEC Governance Rules contain several requirements related to the responsibilities of a nominating committee.<sup>45</sup> Currently, all OCC directors are subject to a standard criterion outlined in OCC's existing Fitness Standards that is applicable to all directors and used when determining the nomination of a director. The SEC Governance Rules require that the nominating committee must have a written evaluation process whereby the nominating committee shall evaluate nominees under consideration for a directorship and evaluate the independence of nominees and directors. OCC's proposed changes to the Board Charter clarify this requirement and the role of the GNC when describing the selection of Exchange Directors. OCC's proposed changes state that as provided in the By-Laws, each Exchange Director shall, after evaluation by the Governance and Nominating Committee, be elected by the Equity Exchange entitled to vote for such Exchange Director at each annual meeting of stockholders.

#### Committees—Board Committees

As noted above, OCC maintains six Board-level committees including the GNC, the Risk Committee, Technology Committee, CPC, Regulatory Committee and Audit Committee. Subject to the direction of the Board, all six committees are empowered to act on behalf of the Board with respect to any matter necessary or appropriate to the accomplishment of the purpose and responsibilities set forth in the committee charters. The SEC Governance Rules specify that any Board committee that has the authority to act on behalf of the Board must have at least the same percentage of independent directors as the Board itself as identified in paragraph (b)(1) of Rule 17Ad-25.<sup>46</sup> To reflect this requirement, OCC's proposed changes to its Board Charter provide that each committee established by the Board must be comprised of a majority of directors who are deemed independent by the Board and in accordance with the SEC Governance Rules.

#### Committees—Independence for Audit Committee Service

For clarity and consistency, OCC also proposes to add the word "additional" prior to the word "independence" when describing the independence criteria for the Audit Committee service. This helps to clarify that OCC maintains separate independence requirements for the Audit Committee, which are also consistent with listed company Audit Committee standards<sup>47</sup> and are in addition to the requirements outlined in the SEC Governance Rules.

#### Proposed Changes to OCC's Board Charter and By-Laws Identified During OCC's Annual Review Process

As part of OCC's annual review of its Board Charter, OCC is proposing changes to its Board Charter and Article III of the By-Laws to provide specific requirements used to determine whether an individual director meets the definition of a Public Director. As outlined in Article III of OCC's current By-Laws, OCC's existing Board of Directors must be composed of nine Member Directors, up to five Exchange directors, no less than five Public Directors, and may include one Management Director.<sup>48</sup> To account for changes in regulatory requirements, OCC's proposed changes to the Board Charter provide that OCC's Board must

be comprised of no less than five directors who are not an associated person or employee of (i) an entity that is registered or exempt from registration with the Securities and Exchange Commission or Commodity Futures Trading Commission or (ii) affiliate of such an entity described in (i). OCC proposes to remove reference to the language that the director must not be affiliated with any national securities exchange, national securities association, designated contract market, futures commission merchant, or broker or dealer in securities.

To incorporate these proposed changes in the definition of a Public Director as described in OCC's Board Charter, OCC also proposes to modify Article III, Section 6A of the By-Laws.<sup>49</sup> OCC's proposed changes to Article III, Section 6A of the By-Laws provide that prior to each annual meeting of stockholders at which one or more Public Directors are to be elected, the GNC shall, for each directorship among the Public Directors to be filled at such annual meeting, nominate one person who is not an associated person or employee of an: (i) entity that is registered or exempt from registration with the Commission or CFTC; or (ii) affiliate of such an entity described in (i) and submit a list of its nominations in writing to the Board of Directors. To remain consistent with the proposed changes in OCC's Board Charter and provide specific requirements for Public Directors, OCC proposes to eliminate reference to the language that the person must not be affiliated with any national securities exchange, national securities association, designated contract market, futures commission merchant, or broker or dealer in securities.

OCC believes these proposed changes to its Board Charter and By-Laws identified during the annual review process provide specific requirements for how OCC determines whether a director is affiliated in the industry and the requirements applicable to a Public Director.

#### Proposed Changes to OCC's GNC Charter

##### Purpose

The SEC Governance Rules require, among other things, that registered clearing agencies establish a nominating committee and a written evaluation process for evaluating board nominees and the independence of nominees and directors and specify requirements with respect to its composition, director fitness standards, and documentation of

<sup>43</sup> 17 CFR 240.17Ad-25(b)(2).

<sup>44</sup> 17 CFR 240.17Ad-25(a).

<sup>45</sup> 17 CFR 240.17Ad-25(c).

<sup>46</sup> 17 CFR 240.17Ad-25(e).

<sup>47</sup> See Nasdaq Listing Rule 5605(c)(2) and Section 303A.06 of NYSE Listed Company Manual.

<sup>48</sup> See *supra* note 4, Article III, Section I of the By-Laws.

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



the outcome of the written evaluation process.<sup>50</sup> As noted above, OCC already maintains a GNC, and maintenance of OCC's existing GNC is consistent with the requirement in the SEC Governance Rules that OCC must have a nominating committee. OCC's existing GNC Charter provides that the purpose of the GNC is to assist the Board in overseeing OCC's corporate governance processes, including assessing that OCC's governance arrangements are clear and transparent, establishing the qualifications necessary for Board service to ensure that the Board is able to discharge its duties and responsibilities, identifying and recommending to the Board candidates eligible for service as Public Directors and Member Directors, and resolving certain conflicts of interest. To clarify the role of the GNC and more closely align with the language in the SEC Governance Rules requirement that the nominating committee evaluate board nominees, OCC's proposed changes to the GNC Charter provide that the GNC is to assist the Board in overseeing OCC's corporate governance processes, including evaluating candidates for Board service.

#### Membership and Organization

The SEC Governance Rules require a majority of directors serving on the nominating committee be independent directors, and the chair of the nominating committee be an independent director.<sup>51</sup> To reflect this requirement, OCC's proposed changes to the GNC Charter provide that at least a majority of the Committee must be comprised of directors who are independent directors, consistent with the Securities and Exchange Commission Rule 17Ad-25(c)(2) and the judgment of the Board. OCC's proposed changes also specify that the Chair must be a Public Director, who is also an independent director as defined in accordance with Securities and Exchange Commission Rule 17Ad-25(c)(2).<sup>52</sup> OCC believes these proposed changes align with the SEC Governance Rules requirements related to composition requirements for a nominating committee.

#### Functions and Responsibilities

The SEC Governance Rules also contain several other requirements related to the responsibilities of a nominating committee. These requirements provide that: (i) the nominating committee must have a

written evaluation process that includes the evaluation of all nominees, no matter the source of nomination, and an evaluation of all nominees and directors regarding status as independent directors;<sup>53</sup> and (ii) the nominating committee must document the outcome of its written evaluation processes, including identification of whether each nominee or director meets the definition of independent director, as defined in the SEC Governance Rules.<sup>54</sup> To align with these responsibilities, OCC's proposed changes to the GNC Charter provide that the GNC must maintain a written evaluation process, which will be documented in meeting materials and minutes, to evaluate all nominees for potential service as directors and evaluate the independence of nominees and directors for consistency with regulatory requirements. As part of OCC's written evaluation process that will be documented in meeting materials and minutes, the GNC will review a packet of materials that contains background information for all Board candidates as well as any other documentation that describes other relevant information and criteria for Board candidates. Additionally, OCC maintains various written documents that would guide the GNC's evaluation of director candidates (*e.g.*, Fitness Standards, director questionnaire). These documents provide the requirements for director candidates and articulate what the GNC must consider when evaluating prospective Board members. OCC's proposed changes also specify that the outcome of the written evaluation process must be documented consistent with applicable regulatory requirements. OCC's existing GNC Charter provides that the GNC identifies, screens and reviews individuals qualified to be elected or appointed as Member Directors or Public Directors. The nomination of Exchange Directors is separately the responsibility, under the By-Laws, of each OCC stockholder exchange.<sup>55</sup> To reflect the requirements outlined in the SEC Governance Rules, OCC's proposed changes provide that the GNC must identify, screen, and review individuals qualified to be elected or appointed, as the case may be, to serve as Directors. Here, OCC's proposed changes eliminate the specific terms "Member Directors" and "Public Directors" and generally use the term "Directors" because the SEC Governance Rules require that the GNC perform the same evaluation

process for all nominees for potential service as directors.

An additional requirement of the nominating committee that is outlined in the SEC Governance Rules is that the fitness standards for serving as a director must be specified by the nominating committee, documented in writing, and approved by the Board.<sup>56</sup> Although OCC already maintains fitness standards for directors, OCC's proposed changes to the GNC Charter state that the GNC must specify fitness standards for serving as a director that are documented in writing and approved by the Board in order to comply with Rule 17Ad-25(c)(3).

The SEC Governance Rules also require that the nominating committee document the outcome of the written evaluation process consistent with the fitness standards such that the process demonstrate that the nominating committee considered the views of other stakeholders who may be affected by the decisions of the registered clearing agency.<sup>57</sup> To align with this requirement, OCC's proposed changes in the GNC Charter provide that the Committee shall, in its evaluation of nominees for serving as directors, consider the views of other stakeholders who may be affected by the decisions of the Board of Directors, other than owners of the Corporation and Clearing Members.

To align with the process of evaluation for determining an independent director as described by the SEC Governance Rules and the requirement for the nominating committee to evaluate the independence of nominees and directors,<sup>58</sup> OCC's proposed changes provide that the GNC must review and advise the Board with regard to whether directors are independent directors in accordance with Securities and Exchange Commission Rule 17Ad-25(c)(1).

OCC's GNC Charter provides that the GNC advises the Board with respect to committee structure, operations and charters, including recommending to the Board for its approval the appointment of directors to Board committees and assignment of committee Chairs, in each case after consultation with the Chairman. To incorporate the requirement that the membership of each risk management committee be re-evaluated annually as defined by 17Ad-25(d)(1),<sup>59</sup> OCC's proposed changes to the GNC Charter include the requirement that each

<sup>50</sup> 17 CFR 240.17Ad-25(c).

<sup>51</sup> 17 CFR 240.17Ad-25(c)(2).

<sup>52</sup> *Id.*

<sup>53</sup> 17 CFR 240.17Ad-25(c)(1).

<sup>54</sup> 17 CFR 240.17Ad-25(c)(4)(iv).

<sup>55</sup> See *supra* note 4.

<sup>56</sup> 17 CFR 240.17Ad-25(c)(3).

<sup>57</sup> 17 CFR 240.17Ad-25(c)(4)(iii).

<sup>58</sup> 17 CFR 240.17Ad-25(c)(1).

<sup>59</sup> 17 CFR 240.17Ad-25(d)(1).



calendar year, the GNC must recommend to the Board for its approval the appointment of directors to Board committees and assignment of committee Chairs, in each case after consultation with the Chairman.

#### Proposed Changes to OCC's Risk Committee Charter

##### Membership and Organization

The SEC Governance Rules require, among other things, the establishment of a risk management committee of the Board to assist the Board in overseeing the risk management of the clearing agency.<sup>60</sup> As noted above, OCC already satisfies this requirement through the maintenance of its Risk Committee of the Board. In the performance of its duties, the SEC Governance Rules require the Risk Committee to be able to provide a risk-based, independent, and informed opinion on all matters presented to the committee for consideration in a manner that supports the overall risk management, safety, and efficiency of the registered clearing agency.<sup>61</sup> To promote clear consistency with these requirements, OCC's proposed changes to the Risk Committee Charter provide that in making their nominations, the GNC and the Board take into consideration the desire to obtain input from a broad array of market participants on risk management issues and the ability of the Committee to provide a risk-based, independent, and informed opinion on all matters presented to it for consideration.

The SEC Governance Rules also require that any Board committee with the authority to act on behalf of the Board must have at least the same percentage of independent directors as the Board itself.<sup>62</sup> Because the Risk Committee, subject to the direction of the Board, is empowered to act on behalf of the Board, with respect to any matter necessary or appropriate to the accomplishment of the purpose and responsibilities set forth in the Risk Committee Charter, OCC's proposed changes to the Risk Committee Charter provide that at least a majority of the Committee must be composed of directors who are independent directors, consistent with Securities and Exchange Commission Rule 17Ad-25(e) and the judgment of the Board.

##### Functions and Responsibilities

The SEC Governance Rules require, among other things, that a clearing agency address the management of risks from relationships with service

providers for core services, as defined by the SEC Governance Rules.<sup>63</sup> These requirements include that each registered clearing agency must establish, implement, maintain, and enforce written policies and procedures reasonably designed to require senior management to evaluate and document the risks related to an agreement with a service provider for core services.<sup>64</sup> OCC's existing Risk Committee Charter provides that the Committee shall receive a quarterly report from management that provides information on the effectiveness of OCC's management of third-party risks, including key linked and vendor relationships. To incorporate the SEC Governance Rules requirements that senior management must evaluate and document the risks related to an agreement with a service provider for core services, OCC's proposed changes to the Risk Committee Charter provide that the Committee shall also provide risk assessments to the Board for any service providers providing core services to OCC, consistent with the SEC Governance Rules.<sup>65</sup>

#### Proposed Changes to OCC's Technology Committee Charter

##### Membership and Organization

The SEC Governance Rules require that any Board committee with the authority to act on behalf of the Board must have at least the same percentage of independent directors as the Board itself.<sup>66</sup> Because the Technology Committee, subject to the direction of the Board, is empowered to act on behalf of the Board, with respect to any matter necessary or appropriate to the accomplishment of the purpose and responsibilities set forth in the Technology Committee Charter, OCC's proposed changes to the Technology Committee Charter provide that at least a majority of the Committee must be composed of directors who are independent directors, consistent with the Securities and Exchange Commission Rule 17Ad-25(e) and the judgment of the Board.

#### Proposed Changes to OCC's CPC Charter

##### Membership and Organization

The SEC Governance Rules require that any Board committee with the authority to act on behalf of the Board must have at least the same percentage of independent directors as the Board itself.<sup>67</sup> Because the CPC, subject to the

direction of the Board, is empowered to act on behalf of the Board with respect to any matter necessary or appropriate to the accomplishment of the purpose and responsibilities set forth in the CPC Charter, OCC's proposed changes to the CPC Charter provide that at least a majority of the Committee must be composed of directors who are independent directors, consistent with Securities and Exchange Commission Rule 17Ad-25(e) and the judgment of the Board.

#### Proposed Changes to OCC's CPC Charter Identified During OCC's Annual Review Process

As part of OCC's annual review of the CPC Charter, OCC also proposes to make updates to the CPC Charter to expand the description of the role of the CPC as it relates to oversight of the development and administration of OCC's Human Resources programs. OCC's proposed changes provide that the CPC must oversee the development and administration of OCC's Human Resources programs and policies, including talent acquisition, compensation performance management, diversity, equity, and inclusion programs, training and development, benefits, and succession planning for critical roles. The purpose of these proposed changes to the CPC Charter is to more closely align with OCC's existing Human Resources programs and policies.

#### Proposed Changes to OCC's Regulatory Committee Charter

##### Membership and Organization

The SEC Governance Rules require that any Board committee with the authority to act on behalf of the Board must have at least the same percentage of independent directors as the Board itself.<sup>68</sup> Because the Regulatory Committee, subject to the direction of the Board, is empowered to act on behalf of the Board, with respect to any matter necessary or appropriate to the accomplishment of the purpose and responsibilities set forth in the Regulatory Committee Charter, OCC's proposed changes to the Regulatory Charter provide that at least a majority of the Committee must be composed of directors who are independent directors, consistent with Securities and Exchange Commission Rule 17Ad-25(e) and the judgment of the Board.

<sup>60</sup> 17 CFR 240.17Ad-25(d)(1).

<sup>61</sup> 17 CFR 240.17Ad-25(d)(2).

<sup>62</sup> 17 CFR 240.17Ad-25(e).

<sup>63</sup> 17 CFR 240.17Ad-25(i).

<sup>64</sup> 17 CFR 240.17Ad-25(i)(1).

<sup>65</sup> *Id.*

<sup>66</sup> 17 CFR 240.17Ad-25(e).

<sup>67</sup> *Id.*

<sup>68</sup> 17 CFR 240.17Ad-25(e).

#### Proposed Changes to OCC's Regulatory Committee Charter Identified During OCC's Annual Review Process

As part of OCC's annual review process, OCC also proposes to make one minor grammatical update to the Regulatory Committee Charter by replacing the word "in" with the word "is" where needed in a sentence under section II subpart B of the document.

#### Proposed Changes to OCC's Audit Committee Charter

##### Membership and Organization

The SEC Governance Rules require that any Board committee with the authority to act on behalf of the Board must have at least the same percentage of independent directors as the Board itself.<sup>69</sup> Because the Audit Committee, subject to the direction of the Board, is empowered to act on behalf of the Board, with respect to any matter necessary or appropriate to the accomplishment of the purpose and responsibilities set forth in the Audit Committee Charter, OCC's proposed changes to the Audit Committee Charter provide that at least a majority of the Committee must be composed of directors who are independent directors, consistent with Securities and Exchange Commission Rule 17Ad-25(e) and the judgment of the Board.

#### Proposed Changes to OCC's Fitness Standards

##### Criteria Applicable to all Directors

As described above, OCC already maintains Fitness Standards for directors. In addition to the requirement that the GNC specify the Fitness Standards and that the Fitness Standards be approved by the Board, the SEC Governance Rules also require that the GNC's written evaluation process in regards to the Fitness Standards consider: (i) the nominee's expertise, availability, and integrity, and demonstrate that the Board, taken as a whole, has a diversity of skills, knowledge experience and perspectives; (ii) the views of other stakeholders who may be affected by OCC's decisions; and (iii) whether each nominee or director would meet the definition of independent director in the SEC Governance Rules and whether each nominee or director has a known material relationship with OCC or other specified persons.<sup>70</sup> To align with these requirements more closely, OCC's proposed changes to the Fitness Standards provide that in considering nominees for election or appointment to

the Board, the GNC must consider whether the individual would help demonstrate that the Board, taken as a whole, has a diversity of skills, knowledge, experience, and perspectives and whether the individual understands and is able to consider the general position and views of other stakeholders who may be affected by the decisions of the Board of Directors, other than the owners of OCC and Clearing Members.

#### Proposed Changes to OCC's Fitness Standards Identified During OCC's Annual Review Process

To incorporate the proposed changes identified during OCC's annual review process as it relates to the description of a Public Director, OCC also proposes changes to the criteria for Public Directors as outlined in the Fitness Standards. To align with the proposed changes in OCC's Board Charter and By-Laws, OCC's proposed changes to the Fitness Standards remove language that states the director must not have an affiliation with any national securities exchange, national securities association, designated contract market, futures commission merchant, or broker-dealer in securities, and replaces that with the additional criterion that the director must not be an associated person or employee of an: (i) entity that is registered or exempt from registration with the Securities and Exchange Commission or Commodity Futures Trading Commission; or (ii) affiliate of such an entity described in (i). OCC's proposed changes also provide that for the avoidance of doubt, this criterion will not preclude a person from service as a Public Director solely based on some other relationship with an entity described in (i) or (ii) above that does not involve being an associated person or employee of the entity, such as might be the case, depending on the circumstances, in connection with serving as a director. OCC believes these proposed changes more closely align with the requirements under the SEC Governance Rules.

#### Proposed Changes to OCC's Third-Party Risk Management Framework

The SEC Governance Rules require OCC to have written policies and procedures designed to address certain aspects of risk management in connection with relationships with service providers for core clearing agency services and require senior management to be responsible for establishing and the Board to be responsible for reviewing and approving

such policies and procedures.<sup>71</sup> More specifically, the SEC Governance Rules require, among other things, that senior management: (i) evaluate and document risks related to an agreement with a service provider for core services, as defined by the SEC Governance Rules; (ii) submit to the Board for review and approval any agreement establishing a relationship with a service provider for core services along with a risk evaluation; (iii) be responsible for establishing the policies and procedures that govern relationships and manage risks related to such agreements with service providers for core services and require the Board to be responsible for review and approving such policies and procedures; and (iv) perform ongoing monitoring of service providers for core services and to report to the Board any action taken by senior management to remedy significant deterioration in performance, to address material issues, or to assess and document deficiencies that cannot be remedied.<sup>72</sup>

OCC's existing Third-Party Risk Management Framework already meets certain requirements in the SEC Governance Rules.<sup>73</sup> OCC's Third-Party Risk Management Framework outlines OCC's approach to identify, measure, monitor, and manage risks arising from third-party relationships including, but not limited to, those relationships with Clearing Members, Clearing Banks, custodians, liquidity providers, financial institutions, financial market utilities, exchanges, and vendors. In addition, OCC's Third-Party Risk Management Framework is reviewed and approved by OCC's Risk Committee and Board pursuant to OCC's internal policies and procedures.<sup>74</sup>

To incorporate the remaining requirements of the SEC Governance Rules regarding review, approval, and monitoring of agreements with service providers for core services, OCC proposes several updates to section III of the Third-Party Risk Management Framework.<sup>75</sup> First, OCC's proposed changes revise the header in section III to include the words "Third-Party" before "Relationship Lifecycle" to provide further clarity and remain consistent with other headers throughout the document.

In addition, OCC's proposed changes to the Third-Party Risk Management

<sup>71</sup> 17 CFR 240.17Ad-25(i).

<sup>72</sup> 17 CFR 240.17Ad-25(i)(1)-(4).

<sup>73</sup> 17 CFR 240.17Ad-25(i)(3).

<sup>74</sup> OCC has included its Policy Governance Policy, which requires Board review and approval of the Third-Party Risk Management Framework, as confidential Exhibit 3G to File No SR-OCC-2024-015.

<sup>75</sup> 17 CFR 240.17Ad-25(i).

<sup>69</sup> *Id.*

<sup>70</sup> 17 CFR 240.17Ad-25(c)(4)(i), (iii), (iv).

Framework provide that certain third-parties may constitute service providers for core services and are subject to enhanced lifecycle management by OCC's management and Board. OCC's proposed changes specify that this enhanced management applies at the initial on-boarding stage and on an ongoing basis. Consistent with the requirements in the SEC Governance Rules,<sup>76</sup> OCC's proposed changes provide that during the on-boarding stage and prior to entering into an agreement with a service provider for core services, OCC's Management Committee will evaluate and document the risks related to the agreement, including under changes to circumstances and potential disruptions, and assess whether the risks can be managed in a manner consistent with the Third-Party Risk Management Framework (the "Risk Analysis"). OCC's proposed changes also clarify that prior to entering agreements establishing a relationship with a service provider for core services, OCC's Management Committee will submit the agreement, as well as its Risk Analysis, to the Board for review and approval, in compliance with the requirements in the SEC Governance Rules.<sup>77</sup>

Furthermore, OCC's proposed changes state that service providers for core services will be monitored on an ongoing basis. OCC's proposed changes provide that OCC's Management Committee evaluates performance of service providers for core services and either: (i) remedies significant deterioration in performance of the service provider for core services; (ii) addresses changing risks or material issues with the service provider for core services identified through such monitoring; or (iii) if such risks or material issues cannot be remedied, assesses and documents weaknesses or deficiencies with the service provider for core services. In addition, OCC's proposed changes provide that OCC's Management Committee will report to the Board for its evaluation any action taken by the Management Committee to remedy significant deterioration in performance of the service provider for core services or address changing risks or material issues with the service provider for core services. OCC's proposed changes will clarify that if the risks or issues with the service provider for core services cannot be remedied, OCC's Management Committee will assess and document the weaknesses and deficiencies and submit to the

Board the documented weaknesses or deficiencies in the relationship with the service provider for core services.

OCC's existing Third-Party Risk Management Framework states that risks identified throughout the relationship lifecycle are reported and escalated through associated working groups. OCC's proposed changes provide that each working group has a chair and designated Management Committee member who are responsible for identifying the matters to be escalated to the Management Committee, "in accordance with this Framework." By including the reference "in accordance with this Framework," OCC believes this language aligns more closely with the requirements in the SEC Governance Rules.<sup>78</sup>

To align with the defined terms in the SEC Governance Rules,<sup>79</sup> OCC's proposed changes to the Third-Party Risk Management Framework include the definition of "Service Provider for Core Services." OCC's proposed changes define service provider for core services as any person that, through a written services provider agreement for services provided to or on behalf of OCC, on an ongoing basis, directly supports the delivery of clearance or settlement functionality or any other purposes material to the business of OCC. OCC believes these proposed changes to the Third-Party Risk Management Framework satisfy the requirements outlined in the SEC Governance Rules.<sup>80</sup>

#### Proposed Changes to OCC's Third Party Risk Management Framework Identified During OCC's Annual Review Process

OCC also proposes to incorporate additional edits to the Third-Party Risk Management Framework, as outlined below, to reflect the proposed changes determined through OCC's annual review process.

Under section I, Executive Summary, OCC proposes to expand the description of risks arising from "Exchanges" to risks arising from "Exchange Relationships." This proposed change, which is also reflected in section IV, Third-Party Relationship Management, and throughout the remainder of the document, encompasses risks arising from third-party relationships including options exchanges, futures markets, OTC trade sources or loan markets. OCC believes this proposed change more clearly describes the current risk management activities related to third-party relationships including exchanges and those relationships that are not

registered exchanges. OCC's proposed changes also relocate the definition of Exchange Relationships from footnote 2 to section V, Definitions, to promote clarity and consistency throughout the document.

Under section II, Risk Identification, OCC proposes to expand the description of (i) Information Technology and Security risks and (ii) Legal and Regulatory risks. For Information Technology and Security risks, the current description acknowledges that risks arise when third-parties are unable to safeguard OCC data or maintain capabilities to support OCC's operations. While the current description is accurate, it does not encompass the full scope of the current third-parties' obligations required by OCC. OCC proposes to include that Information Technology and Security risks also arise when third-parties are unable to safeguard OCC's systems, in addition to OCC data. OCC also proposes to incorporate the language "in accordance with OCC's service standards" into the description to clearly outline the enforcement of responsibilities. OCC believes this change will better define Information Technology and Security risks from relationships with third-parties related to OCC. For Legal and Regulatory risks, OCC's proposed changes provide that Legal and Regulatory risks arise when a third-party fails to fulfill its obligations to OCC or when OCC fails to fulfill its obligations to a third-party. OCC's proposed changes provide that Legal and Regulatory risks also arise when a third-party fails to comply with regulatory standards and protocols agreed to with OCC. OCC believes these proposed changes more clearly define Legal and Regulatory risks that arise from relationships with third-parties. OCC also proposes to make minor, non-substantive changes to section II, such as decapitalizing the words "clearing fund" when needed.

Under section III, Relationship Lifecycle, OCC proposes to revise specific language related to off-boarding of third-parties. The off-boarding section currently provides that OCC finalizes its third-party relationship lifecycle by completing "any operational tasks necessary to off-board the relationship." OCC proposes to include the language "in compliance with agreement terms" to clarify current risk management expectations and responsibilities relating to third-party off-boarding. This revision would be consistent with OCC's current operations and off-boarding processes. OCC also proposes to make several minor, non-substantive changes to this section, including

<sup>76</sup> 17 CFR 240.17Ad-25(i)(1).

<sup>77</sup> 17 CFR 240.17Ad-25(i)(2).

<sup>78</sup> 17 CFR 240.17Ad-25(i)(1).

<sup>79</sup> 17 CFR 240.17Ad-25(a).

<sup>80</sup> 17 CFR 240.17Ad-25(i).

changing language from “determination to terminate” to “termination of,” and replacing the word “relationship” with “engagement” when describing third-party arrangements with OCC to promote additional clarity. In addition, to provide additional clarity, OCC proposes to replace the word “defined” with “specified” when explaining the decision-making authority, functions and responsibilities in the working group procedure.

Under section IV, Third-Party Relationship Management, OCC proposes to revise the header from “Exchanges” to “Exchange Relationships” to reflect the proposed changes in section I. OCC’s proposed changes update the On-Boarding section under “Exchange Relationships” by revising the distribution methods of the summary activities of exchange relationship. The current description states that summaries of due diligence and on-boarding activities are presented to the Board of Directors for approval to launch. OCC proposes to clarify the reporting requirements by specifying where they should be reported. OCC’s proposed changes would direct the reporting of due diligence and on-boarding activities to the Management Committee. Further, the proposed revisions would direct summaries of legal documents and requirements to the Board of Directors. These proposed revisions would update and clarify the description of OCC’s current approach to on-boarding third-parties without impacting current OCC operations. Also under section IV, Third-Party Relationship Management, OCC proposes to make changes to the Ongoing Monitoring sub-section by removing reference of legal risk related to Exchange Relationships, and including the language “and escalate identified legal risks to OCC’s Legal Department.” This proposed change clarifies the responsibilities of OCC’s business operations and TPRM teams. Legal risks related to Exchange Relationships are monitored by OCC legal, but if legal risks are identified by business operations or TPRM during the ongoing monitoring process, these legal risks should be escalated. OCC believes the proposed change will better describe current risk management activities related to ongoing monitoring of third-party relationships with exchanges. OCC also proposes to update language in the Off-Boarding sub-section by eliminating the specific language that states “such as limiting connectivity with the Exchange” when referencing the immediate actions OCC can take upon the termination of an Exchange

Relationship. OCC proposes to remove this language to provide further clarification that limiting connectivity with an Exchange is not specific only to off-boarding situations; OCC’s action of limiting connectivity with an Exchange can occur in other situations as well. OCC believes the elimination of this language better aligns with OCC’s overall responsibility related to off-boarding and provides for greater flexibility related to OCC’s immediate actions. Finally, OCC proposes several non-substantive, grammatical changes to the Ongoing Monitoring sub-section such as replacing the word “communicate” with “communication of” and “seek” with “solicitation of.”

Also under section IV, Third-Party Relationship Management, OCC proposes to make changes to the Vendors sub-section of the document. OCC’s proposed changes provide that prior to commencing on-boarding of a new technology vendor, implementing new capabilities, or services to existing technology, Information Technology reviews the request to identify solutions and analyze requirements to verify that they are in line with enterprise strategic requirements. OCC believes these proposed changes more clearly assign ownership and accountability for expectations around risk management for new vendors throughout OCC. In addition, in the On-Boarding section under Vendors, OCC’s proposed changes state that an agreement that addresses control and business requirements is then negotiated with the vendor and executed by authorized signatories designated through the process outlined in the Legal Services Policy. OCC’s proposed changes revise the language that “authorized signatories” rather than an “OCC officer” will be responsible for executing agreements that address control and business requirements. OCC believes the revised text more closely aligns with current practices. Furthermore, this revision would encourage OCC’s longstanding practices to update internal policies, directing staff towards correct procedures and personnel requirements.

OCC’s Third-Party Risk Management Framework also states that vendor relationship managers (“VRMs”) and Third-Party Risk Management (“TPRM”) monitor vendors to assess whether they are delivering services as required by applicable agreements. To align with current OCC business practice and promote clear accountability, OCC’s proposed changes eliminate reference to “TPRM” because it is the VRMs who are responsible for monitoring vendors, while TPRM

gathers information and escalates if necessary.

Under section V, Definitions, OCC’s proposed changes in the Watch Level section include the addition of “risk management” in its list of deteriorations which signal a risk response. OCC believes this revision would better describe the current risk management methods related to watch level monitoring and would not substantively alter existing processes.

Lastly, OCC’s proposed changes to the Third-Party Risk Management Framework reflect the name change as a result of the combination of two working groups. OCC’s Exchange Working Group and Vendor Risk Working Group will be combined to form the Exchange and Vendor Working Group, therefore OCC’s proposed changes throughout the Third-Party Risk Management Framework reflect the merger of these two groups. OCC’s proposed changes also reflect the change in the acronym of the new combined working group’s name.

## 2. Statutory Basis

OCC believes the proposed rule change is consistent with Section 17A of the Exchange Act.<sup>81</sup> Section 17A(b)(3)(F) of the Act<sup>82</sup> requires, among other things, that the rules of a clearing agency must be designed to promote the prompt and accurate clearance and settlement of securities transactions, safeguard securities and funds in its custody or control or for which it is responsible, and to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions.<sup>83</sup> OCC believes that the proposed rule changes are consistent with these requirements because the proposed changes are designed to, among other things, modify OCC’s governance documents such that: (i) OCC’s Board and Board-level committees are composed of independent directors, as defined by the SEC Governance Rules, (ii) OCC’s policies and procedures identify, mitigate or eliminate and document the identification, mitigation, or elimination of conflicts of interest, and (iii) OCC’s policies and procedures address certain aspects of risk management in connection with relationships with service providers for core clearing agency services.

OCC believes the proposed changes to incorporate the independent director requirement help to promote the ability of the Board to perform its oversight of

<sup>81</sup> 15 U.S.C. 78q–1.

<sup>82</sup> 15 U.S.C. 78q–1(b)(3)(F).

<sup>83</sup> *Id.*

management function, support a plurality of viewpoints voiced at the Board level, ensure a balance between stakeholders with divergent views, and reduce the likelihood that conflicts of interest may influence the Board. OCC believes that establishing requirements that the Board be comprised of a majority of directors who do not have a material relationship with the registered clearing agency or affiliate thereof helps to promote the integrity of OCC's risk management function, and therefore helps to promote prompt and accurate clearance and settlement of securities transactions and safeguard the securities and funds which are in the custody or control of OCC or for which OCC is responsible, consistent with Section 17A(b)(3)(F).

OCC believes the proposed changes regarding the Board's oversight role of senior management as it relates to management of risks from relationships with service providers for core services also help to promote the prompt and accurate clearance and settlement of securities transactions and safeguard securities and funds in its custody or control or for which OCC is responsible, consistent with Section 17A(b)(3)(F). The potential failure of a service provider for core services to perform its obligations could pose a significant operational risk to OCC and impact the ability for OCC to facilitate prompt and accurate clearance and settlement. Therefore, by requiring that senior management establish policies and procedures that govern relationships with service providers for core services, manage risks related to those relationships, and perform ongoing monitoring of those relationships, OCC believes these proposed changes help to promote the prompt and accurate clearance and settlement of securities transactions and safeguard securities and funds which are in the custody or control of OCC or for which OCC is responsible, consistent with Section 17A(b)(3)(F).

OCC's proposed changes to its governance documents establish policies and procedures to identify, mitigate or eliminate and document the identification, mitigation, or elimination of conflicts of interest in the decision-making process involving directors or senior managers of OCC. OCC believes these proposed changes assist in promoting the integrity of OCC's governance arrangements by helping to ensure that potential conflicts of interests are identified when they arise, and that such conflicts are subject to a transparent and uniform process of review, mitigation or elimination and documentation. By incorporating the

proposed changes intended to address conflicts of interest related to directors and senior managers, OCC believes this will help to reduce conflicts that could undermine the decision-making process or interfere with fair representation and equitable treatment of clearing members or market participants. Therefore, OCC believes the proposed changes help to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions, consistent with Section 17A(b)(3)(F).

Finally, OCC also believes the proposed changes are consistent with Rule 17Ad-22(e)(2). Rule 17Ad-22(e)(2) requires OCC to, among other things, provide for governance arrangements that are clear and transparent, establish that the board of directors and senior management have appropriate experience and skills to discharge their duties and responsibilities, and specify clear and direct lines of responsibility.<sup>84</sup> Modifying OCC's governance documents through the proposed changes described in Item III above would be consistent with these requirements because the changes would document in a clear, direct, and transparent way the independent director composition of the Board and Board-level committees, the responsibilities of the Board and Board-level committees as it relates to management of conflicts of interest, Board oversight, and management of risks for service providers for core services. In addition, OCC's proposed changes clearly specify the Fitness Standards for serving as a director and the criteria applicable to all directors, which includes the consideration of whether the director nominee would help demonstrate that the Board, taken as a whole, has a diversity of skills, knowledge, experience and perspectives consistent with Rule 17Ad-22(e)(2)(iv).

#### *(B) Clearing Agency's Statement on Burden on Competition*

Section 17A(b)(3)(I) of the Act<sup>85</sup> requires that the rules of a clearing agency not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. OCC does not believe that the proposed rule changes to modify OCC's governance documents would impact or impose any burden on competition. The proposed changes would promote OCC's compliance with the SEC Governance Rules that OCC must comply with by December 5, 2024 and December 5, 2025. The proposed

changes to OCC's governance documents are designed to clearly articulate the newly established requirements of the SEC Governance Rules including, but not limited to, the Board and committee composition, independent directors, management of conflicts of interest, board oversight, and management of risks from relationships with service providers for core services. The proposed changes to OCC's governance documents also aim to, among other things, increase transparency into board governance and improve the alignment of incentives among owners and participants of OCC by ensuring that a majority of Board members and Board-level committee members be independent directors, as defined by the SEC Governance Rules, and that functions and responsibilities of the Board and Board-level committees are clearly outlined. In addition, the proposed changes to OCC's governance documents help to reduce the likelihood that conflicts of interest may influence the Board. These changes to OCC's governance documents would apply to all Equity Exchanges and Clearing Members equally and would not disadvantage or favor any particular user in relation to another user. Therefore, OCC believes that the proposed changes would not impose any burden on competition.

#### *(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

Written comments were not and are not intended to be solicited with respect to the proposed change and none have been received.

### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 45 days of the date of publication of this notice in the **Federal Register** or 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 selfregulatory 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.

The proposal shall not take effect until all regulatory actions required with respect to the proposal are completed.

<sup>84</sup> 17 CFR 240.17Ad-22(e)(2)(i),(iv),(v).

<sup>85</sup> 15 U.S.C. 78q-(b)(3)(I).

#### 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 (<https://www.sec.gov/rules-regulations/self-regulatory-organization-rulemaking>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include file number SR-OCC-2024-015 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Vanessa Countryman, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to file number SR-OCC-2024-015. 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 (<https://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 OCC and on OCC's website at <https://www.theocc.com/Company-Information/Documents-and-Archives/By-Laws-and-Rules>.

Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-OCC-2024-015 and should be submitted on or before November 21, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>86</sup>

**J. Matthew DeLesDernier,**

*Deputy Secretary.*

[FR Doc. 2024-25322 Filed 10-30-24; 8:45 am]

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-101441; File No. SR-ISE-2024-50]

#### **Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Fees for Connectivity and Co-Location Services**

October 25, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on October 11, 2024, Nasdaq ISE, LLC ("ISE" or "Exchange") 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 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 the Exchange's fees for connectivity and co-location services, as described further below.

The text of the proposed rule change is available on the Exchange's website at <https://listingcenter.nasdaq.com/rulebook/ise/rules>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

#### **II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of

the most significant aspects of such statements.

#### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

##### **1. Purpose**

The purpose of the proposed rule change is to amend the Exchange's fees relating to connectivity and co-location services.<sup>3</sup> Specifically, the Exchange proposes to raise its fees for connectivity and co-location services in General 8 as well as certain fees related to its Testing Facilities in Options 7, Section 8 by 10%, with certain exceptions.

General 8, Section 1 includes the Exchange's fees that relate to connectivity, including fees for cabinets, external telco/inter-cabinet connectivity fees, fees for connectivity to the Exchange, fees for connectivity to third party services, fees for market data connectivity, fees for cabinet power install, and fees for additional charges and services. General 8, Section 2 includes the Exchange's fees for direct connectivity services, including fees for direct circuit connection to the Exchange, fees for direct circuit connection to third party services, and fees for point of presence connectivity. With the exception of the Exchange's GPS Antenna fees and the Cabinet Proximity Option Fee for cabinets with power density >10kW,<sup>4</sup> the Exchange proposes to increase its fees throughout General 8 by 10%.

In addition to increasing fees in General 8, the Exchange also proposes to increase certain fees in Options 7, Section 8, which relate to the Testing

<sup>3</sup> The Exchange initially filed the proposed pricing change on March 1, 2024 (SR-ISE-2024-09). On April 29, 2024, the Exchange withdrew that filing and submitted SR-ISE-2024-16. The Exchange withdrew that filing on June 27, 2024 and replaced it with SR-ISE-2024-23. The Exchange withdrew SR-ISE-2024-23 and replaced it with SR-ISE-2024-44 on September 10, 2024. The instant filing replaces SR-ISE-2024-44.

<sup>4</sup> The Exchange proposes to exclude the GPS Antenna fees from the proposed fee increase because, unlike the other fees in General 8, the Exchange recently increased its GPS Antenna fees. See Securities Exchange Act Release No. 34-99131 (December 11, 2023), 88 FR 86979 (December 15, 2023) (SR-ISE-2023-33). The Exchange also proposes to exclude the Cabinet Proximity Option Fee for cabinets with power density >10kW from the proposed fee increase because the Exchange recently established such fee. See Securities Exchange Act Release No. 34-100209 (May 22, 2024), 89 FR 46512 (May 29, 2024) (SR-ISE-2024-19). Similarly, the Exchange proposes to exclude from the proposed fee increase those fees that the Exchange recently established for services in its new NY11-4 expansion facility. See Securities Exchange Act Release No. 34-101266 (October 7, 2024), 89 FR 82654 (October 11, 2024) (SR-ISE-2024-47).

<sup>86</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

Facility. Options 7, Section 8(I) provides that subscribers to the Testing Facility located in Carteret, New Jersey shall pay a fee of \$1,000 per hand-off, per month for connection to the Testing Facility. The hand-off fee includes either a 1Gb or 10Gb switch port and a cross connect to the Testing Facility. In addition, Options 7, Section 8(I) provides that subscribers shall also pay a one-time installation fee of \$1,000 per hand-off. The Exchange proposes to increase these aforementioned fees by 10% to require that subscribers to the Testing Facility shall pay a fee of \$1,100 per hand-off, per month for connection to the Testing Facility and a one-time installation fee of \$1,100 per hand-off.

The proposed increases in fees would enable the Exchange to maintain and improve its market technology and services to remain competitive with its peers. Over the years, customer demand for more sophisticated, higher-throughput, lower-latency, and higher-power connectivity solutions has increased. The Exchange continues to invest in maintaining, improving, and enhancing its connectivity and co-location products, services, and facilities—for the benefit and often at the behest of its customers. Such enhancements include refreshing hardware and expanding Nasdaq's existing co-location facility to offer customers additional space and power. Nevertheless, and with the exception of fees that were established as part of a new service in 2017 (and have remained unchanged since their adoption), the Exchange has not increased any of the fees included in the proposal since prior to 2017, and many of the fees date back to between 2010 and 2014 (where inflation has been between roughly 15–17%, as measured using the metric described below). Nevertheless, the Exchange proposes to increase its fees only with respect to inflation that has occurred since 2017.

As discussed below, the Exchange proposes to adjust its fees by an industry- and product-specific inflationary measure. It is reasonable and consistent with the Act for the Exchange to recoup its investments, at least in part, by adjusting its fees. Continuing to operate at fees frozen at 2010–2017 levels impacts the Exchange's ability to enhance its offerings and the interests of market participants and investors.

The fee increases the Exchange proposes are based on an industry-specific Producer Price Index (“PPI”), which is a tailored measure of

inflation.<sup>5</sup> As a general matter, the Producer Price Index is a family of indexes that measures the average change over time in selling prices received by domestic producers of goods and services. PPI measures price change from the perspective of the seller. This contrasts with other metrics, such as the Consumer Price Index (“CPI”), that measure price change from the purchaser's perspective.<sup>6</sup> About 10,000 PPIs for individual products and groups of products are tracked and released each month.<sup>7</sup> PPIs are available for the output of nearly all industries in the goods-producing sectors of the U.S. economy—mining, manufacturing, agriculture, fishing, and forestry—as well as natural gas, electricity, and construction, among others. The PPI program covers approximately 69 percent of the service sector's output, as measured by revenue reported in the 2017 Economic Census.

For purposes of this proposal, the relevant industry-specific PPI is the Data Processing and Related Services PPI (“Data PPI”), which is an industry net-output PPI that measures the average change in selling prices received by companies that provide data processing services.

The Data PPI was introduced in January 2002 by the Bureau of Labor Statistics (“BLS”) as part of an ongoing effort to expand Producer Price Index coverage of the services sector of the U.S. economy and is identified as NAICS—518210 in the North American Industry Classification System.<sup>8</sup> According to the BLS “[t]he primary output of NAICS 518210 is the provision of electronic data processing services. In the broadest sense, computer services companies help their customers efficiently use technology. The processing services market consists of vendors who use their own computer systems—often utilizing proprietary software—to process customers' transactions and data. Companies that offer processing services collect, organize, and store a customer's transactions and other data for record-keeping purposes. Price movements for the NAICS 518210 index are based on changes in the revenue received by companies that provide data processing services. Each month, companies provide net transaction prices for a specified service. The transaction is an actual contract selected by probability,

where the price-determining characteristics are held constant while the service is repriced. The prices used in index calculation are the actual prices billed for the selected service contract.”<sup>9</sup>

The Exchange believes the Data PPI is an appropriate measure to be considered in the context of the proposed rule change to modify the fee for its connectivity products because the Exchange uses its “own computer systems” and “proprietary software,” *i.e.*, its own data center and proprietary matching engine software, respectively, to collect, organize, store and report customers' transactions in U.S. equity securities on the Exchange's proprietary trading platform. In other words, the Exchange is in the business of data processing and related services.

For purposes of this proposed rule change, the Exchange examined the Data PPI value for the period from January 2017 to August 2024. The Data PPI had a starting value of 105.6 in January 2017 and an ending value of 116.022 in August 2024, a 10.422% increase. This indicates that companies who are also in the data storage and processing business have generally increased prices for a specified service covered under NAICS 518210 by an average of 10.422% during this period. Based on that percentage change, the Exchange proposes to make a one-time fee increase of only 10%, which reflects an increase covering roughly the entire period since the last price adjustments to these fees were made.

The Exchange further believes the Data PPI is an appropriate measure for purposes of the proposed rule change on the basis that it is a stable metric with limited volatility, unlike other consumer-side inflation metrics. In fact, the Data PPI has not experienced a greater than 2.16% increase for any one calendar year period since Data PPI was introduced into the PPI in January 2002. The average calendar year change from January 2002 to December 2023 was .62%, with a cumulative increase of 15.67% over this 21-year period. The Exchange believes the Data PPI is considerably less volatile than other inflation metrics such as CPI, which has had individual calendar-year increases of more than 6.5%, and a cumulative increase of over 73% over the same period.<sup>10</sup>

The Exchange believes the Data PPI, and significant investments into, and

<sup>5</sup> See <https://fred.stlouisfed.org/series/PCU51825182#0>.

<sup>6</sup> See <https://www.bls.gov/ppi/overview.htm>.

<sup>7</sup> See *Id.*

<sup>8</sup> NAICS appears in table 5 of the PPI Detailed Report and is available at <https://data.bls.gov/timeseries/PCU518210518210>.

<sup>9</sup> See <https://www.bls.gov/ppi/factsheets/producer-price-index-for-the-data-processing-and-related-servicesindustry-naics-518210.htm>.

<sup>10</sup> See <https://www.usinflationcalculator.com/inflation/consumer-price-index-and-annual-percent-changesfrom-1913-to-2008/>.



enhanced performance of, the Exchange support the reasonableness of the proposed fee increases.<sup>11</sup>

These proposed fee increases will be immediately effective upon filing. However, going forward and until December 1, 2024, the Exchange will waive all fees set forth herein to the extent that such fees exceed the levels that would have been charged for the same products and services purchased during that time period, had such fees been calculated at the rates set forth in SR-ISE-2024-44. This waiver is reasonable, equitable, and not unfairly discriminatory because it will afford all customers in excess of the 30-day prior notice period for fee changes set forth in the Exchange's service terms.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>12</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>13</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

This belief is based on two factors. First, the current fees do not properly reflect the quality of the services and products, as fees for the services and products in question have been static in nominal terms, and therefore falling in real terms due to inflation. Second, the Exchange believes that investments made in enhancing the capacity and speed of Exchange systems increase the performance of the services and products.

### The Proposed Rule Change Is Reasonable

As noted above, the Exchange has not increased any of the fees included in the proposal since 2017 or earlier. However, in the years following the last fee increases, the Exchange has made significant investments in upgrades to its connectivity products, services, and facilities, enhancing the quality of its services, as measured by, among other

things, increased throughput and increased power and space capacity. In other words, Exchange customers have greatly benefitted, while the Exchange's ability to recoup its investments has been hampered. Between 2017 and 2024, the inflation rate is 3.64% per year, on average, producing a cumulative inflation rate of 28.43%.<sup>14</sup> Using the more targeted inflation number of Data PPI, the cumulative inflation rate was 10.422%. The exchange believes the Data PPI is a reasonable metric to base this fee increase on because it is targeted to producer-side increases in the data processing industry, which based on the definition adopted by BLS would include the Exchange's market data products.

Notwithstanding inflation, as noted above, the Exchange has not increased its fees at all for over seven years for the subject services. The proposed fee changes represent a modest increase from the current fees. The Exchange believes the proposed fee increase is reasonable in light of the Exchange's continued expenditure in maintaining a robust technology ecosystem. Furthermore, the Exchange continues to invest in maintaining and enhancing its connectivity products—for the benefit and often at the behest of its customers and global investors. Such enhancements include refreshing all aspects of the technology ecosystem including software, hardware, and network while introducing new and innovative products and expanded and modernized facilities.<sup>15</sup> The goal of the enhancements discussed above, among other things, is to provide faster, higher-capacity, and more modern connectivity products and services. Accordingly, the Exchange continues to expend resources to innovate and modernize technology so that it may benefit its members in offering its connectivity products and services.

### The Proposed Fees Are Equitably Allocated and Not Unfairly Discriminatory

The Exchange believes that the proposed fee increases are equitably allocated and not unfairly discriminatory because they would apply to all market participants that choose to purchase connectivity products and services from the

Exchange. Any participant that chooses to purchase the Exchange's connectivity products and services would be subject to the same Fee Schedule, regardless of what type of business they operate or the use they plan to make use of the products and services. Additionally, the fee increase would be applied uniformly to market participants without regard to Exchange membership status or the extent of any other business with the Exchange or affiliated entities. The Exchange also believes that the proposal represents an equitable allocation of reasonable dues, fees and other charges because Exchange fees have fallen in real terms during the relevant period. Finally, the Exchange believes that the proposed fee changes are not unfairly discriminatory because the fees would be assessed uniformly across all market participants, in the same manner they are today, that voluntarily purchase the Exchange's connectivity products and services, which would remain available for purchase by all market participants.

These proposed fee increases will be immediately effective upon filing. However, going forward and until December 1, 2024, the Exchange will waive all fees set forth herein to the extent that such fees exceed the levels that would have been charged for the same products and services purchased during that time period, had such fees been calculated at the rates set forth in SR-ISE-2024-44. This waiver is reasonable, equitable, and not unfairly discriminatory because it will afford all customers in excess of the 30-day prior notice period for fee changes set forth in the Exchange's service terms.

### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed fees will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

### Intramarket Competition

The Exchange believes that the proposed fees do not put any market participants at a relative disadvantage compared to other market participants. As noted above, the fee schedule would continue to apply to all purchasers of the Exchange's connectivity products and services in the same manner as it does today albeit at inflation-adjusted rates for certain fees, and customers may choose whether to purchase these products and services at all. The Exchange also believes that the level of the proposed fees neither favor nor penalize one or more categories of market participants in a manner that would impose an undue burden on

<sup>11</sup> See *supra* discussion of connectivity product and facility improvements. Additionally, other exchanges have filed for increases in certain fees, based in part on comparisons to inflation. See, e.g., Securities Exchange Act Release Nos. 34-100004 (April 22, 2024), 89 FR 32465 (April 26, 2024) (SR-CboeBYX-2024-012); and 34-100398 (June 21, 2024), 89 FR 53676 (June 27, 2024) (SR-BOX-2024-16); Securities Exchange Act Release No. 34-100994 (September 10, 2024), 89 FR 75612 (September 16, 2024) (SR-NYSEARCA-2024-79).

<sup>12</sup> 15 U.S.C. 78f(b).

<sup>13</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>14</sup> See <https://www.officialdata.org/us/inflation/2017?amount=1>.

<sup>15</sup> See, e.g., Securities Exchange Act Release No. 34-101076 (September 18, 2024), 89 FR 77951 (September 24, 2024) (SR-ISE-2024-45 (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Expand [the Exchange's] Co-Location Services)).



competition. Likewise, the proposed fee waiver described above will apply to all purchasers of the Exchange's connectivity products and services in the same manner and therefore will not burden competition among them.

#### Intermarket Competition

The Exchange believes that the proposed fees do not impose a burden on competition or on other SROs that is not necessary or appropriate. In determining the proposed fees, the Exchange utilized an objective and stable metric with limited volatility. Utilizing Data PPI over a specified period of time is a reasonable means of recouping the Exchange's investment in maintaining and enhancing its connectivity products, services, and facilities. The Exchange believes utilizing Data PPI, a tailored measure of inflation, to increase certain fees for connectivity products and services to recoup the Exchange's investment in maintaining and enhancing such products, services, and its facilities would not impose a burden on competition.

#### *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 foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.<sup>16</sup> At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

#### *Electronic Comments*

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include file number SR-ISE-2024-50 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-2024-50. 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 (<https://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. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-ISE-2024-50 and should be submitted on or before November 21, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

**J. Matthew DeLesDernier,**

*Deputy Secretary.*

[FR Doc. 2024-25316 Filed 10-30-24; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-101442; File No. SR-MRX-2024-41]

### Self-Regulatory Organizations; Nasdaq MRX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Fees for Connectivity and Co-Location Services

October 25, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on October 11, 2024, Nasdaq MRX, LLC ("MRX" or "Exchange") 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 by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange's fees for connectivity and co-location services, as described further below.

The text of the proposed rule change is available on the Exchange's website at <https://listingcenter.nasdaq.com/rulebook/mrx/rules>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

##### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

##### 1. Purpose

The purpose of the proposed rule change is to amend the Exchange's fees

<sup>16</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>17</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

relating to connectivity and co-location services.<sup>3</sup> Specifically, the Exchange proposes to raise its fees for connectivity and co-location services in General 8 as well as certain fees related to its Testing Facilities in Options 7, Section 7 by 10%, with certain exceptions.

General 8, Section 1 includes the Exchange's fees that relate to connectivity, including fees for cabinets, external telco/inter-cabinet connectivity fees, fees for connectivity to the Exchange, fees for connectivity to third party services, fees for market data connectivity, fees for cabinet power install, and fees for additional charges and services. General 8, Section 2 includes the Exchange's fees for direct connectivity services, including fees for direct circuit connection to the Exchange, fees for direct circuit connection to third party services, and fees for point of presence connectivity. With the exception of the Exchange's GPS Antenna fees and the Cabinet Proximity Option Fee for cabinets with power density >10kW,<sup>4</sup> the Exchange proposes to increase its fees throughout General 8 by 10%.

In addition to increasing fees in General 8, the Exchange also proposes to increase certain fees in Options 7, Section 7, which relate to the Testing Facility. Options 7, Section 7 provides that subscribers to the Testing Facility located in Carteret, New Jersey shall pay a fee of \$1,000 per hand-off, per month for connection to the Testing Facility. The hand-off fee includes either a 1Gb or 10Gb switch port and a cross connect to the Testing Facility. In addition, Options 7, Section 7 provides that subscribers shall also pay a one-time

installation fee of \$1,000 per hand-off. The Exchange proposes to increase these aforementioned fees by 10% to require that subscribers to the Testing Facility shall pay a fee of \$1,100 per hand-off, per month for connection to the Testing Facility and a one-time installation fee of \$1,100 per hand-off.

The proposed increases in fees would enable the Exchange to maintain and improve its market technology and services to remain competitive with its peers. Over the years, customer demand for more sophisticated, higher-throughput, lower-latency, and higher-power connectivity solutions has increased. The Exchange continues to invest in maintaining, improving, and enhancing its connectivity and co-location products, services, and facilities—for the benefit and often at the behest of its customers. Such enhancements include refreshing hardware and expanding Nasdaq's existing co-location facility to offer customers additional space and power. Nevertheless, and with the exception of fees that were established as part of a new service in 2017 (and have remained unchanged since their adoption), the Exchange has not increased any of the fees included in the proposal since prior to 2017, and many of the fees date back to between 2010 and 2014 (where inflation has been between roughly 15–17%, as measured using the metric described below). Nevertheless, the Exchange proposes to increase its fees only with respect to inflation that has occurred since 2017.

As discussed below, the Exchange proposes to adjust its fees by an industry- and product-specific inflationary measure. It is reasonable and consistent with the Act for the Exchange to recoup its investments, at least in part, by adjusting its fees. Continuing to operate at fees frozen at 2010–2017 levels impacts the Exchange's ability to enhance its offerings and the interests of market participants and investors.

The fee increases the Exchange proposes are based on an industry-specific Producer Price Index (“PPI”), which is a tailored measure of inflation.<sup>5</sup> As a general matter, the Producer Price Index is a family of indexes that measures the average change over time in selling prices received by domestic producers of goods and services. PPI measures price change from the perspective of the seller. This contrasts with other metrics, such as the Consumer Price Index (“CPI”), that measure price change from

the purchaser's perspective.<sup>6</sup> About 10,000 PPIs for individual products and groups of products are tracked and released each month.<sup>7</sup> PPIs are available for the output of nearly all industries in the goods-producing sectors of the U.S. economy—mining, manufacturing, agriculture, fishing, and forestry—as well as natural gas, electricity, and construction, among others. The PPI program covers approximately 69 percent of the service sector's output, as measured by revenue reported in the 2017 Economic Census.

For purposes of this proposal, the relevant industry-specific PPI is the Data Processing and Related Services PPI (“Data PPI”), which is an industry net-output PPI that measures the average change in selling prices received by companies that provide data processing services.

The Data PPI was introduced in January 2002 by the Bureau of Labor Statistics (“BLS”) as part of an ongoing effort to expand Producer Price Index coverage of the services sector of the U.S. economy and is identified as NAICS—518210 in the North American Industry Classification System.<sup>8</sup> According to the BLS “[t]he primary output of NAICS 518210 is the provision of electronic data processing services. In the broadest sense, computer services companies help their customers efficiently use technology. The processing services market consists of vendors who use their own computer systems—often utilizing proprietary software—to process customers' transactions and data. Companies that offer processing services collect, organize, and store a customer's transactions and other data for record-keeping purposes. Price movements for the NAICS 518210 index are based on changes in the revenue received by companies that provide data processing services. Each month, companies provide net transaction prices for a specified service. The transaction is an actual contract selected by probability, where the price-determining characteristics are held constant while the service is repriced. The prices used in index calculation are the actual prices billed for the selected service contract.”<sup>9</sup>

The Exchange believes the Data PPI is an appropriate measure to be considered in the context of the proposed rule

<sup>6</sup> See <https://www.bls.gov/ppi/overview.htm>.

<sup>7</sup> See *Id.*

<sup>8</sup> NAICS appears in table 5 of the PPI Detailed Report and is available at <https://data.bls.gov/timeseries/PCU518210518210>.

<sup>9</sup> See <https://www.bls.gov/ppi/factsheets/producer-price-index-for-the-data-processing-and-related-servicesindustry-naics-518210.htm>.

<sup>3</sup> The Exchange initially filed the proposed pricing change on March 1, 2024 (SR-MRX-2024-04). On April 29, 2024, the Exchange withdrew that filing and submitted SR-MRX-2024-10. On June 27, 2024, the Exchange withdrew SR-MRX-2024-10 and submitted SR-MRX-2024-18. The Exchange withdrew SR-MRX-2024-18 and replaced it with SR-MRX-2024-34 on September 10, 2024. The instant filing replaces SR-MRX-2024-34.

<sup>4</sup> The Exchange proposes to exclude the GPS Antenna fees from the proposed fee increase because, unlike the other fees in General 8, the Exchange recently increased its GPS Antenna fees. See Securities Exchange Act Release No. 34-99130 (December 11, 2023), 88 FR 87009 (December 15, 2023) (SR-MRX-2023-24). The Exchange also proposes to exclude the Cabinet Proximity Option Fee for cabinets with power density >10kW from the proposed fee increase because the Exchange recently established such fee. See Securities Exchange Act Release No. 34-100200 (May 21, 2024), 89 FR 46183 (May 28, 2024) (SR-MRX-2024-12). Similarly, the Exchange proposes to exclude from the proposed fee increase those fees that the Exchange recently established for services in its new NY11-4 expansion facility. See Securities Exchange Act Release No. 34-101269 (October 7, 2024), 89 FR 82657 (October 11, 2024) (SR-MRX-2024-37).

<sup>5</sup> See <https://fred.stlouisfed.org/series/PCU51825182#0>.

change to modify the fee for its connectivity products because the Exchange uses its “own computer systems” and “proprietary software,” *i.e.*, its own data center and proprietary matching engine software, respectively, to collect, organize, store and report customers’ transactions in U.S. equity securities on the Exchange’s proprietary trading platform. In other words, the Exchange is in the business of data processing and related services.

For purposes of this proposed rule change, the Exchange examined the Data PPI value for the period from January 2017 to August 2024. The Data PPI had a starting value of 105.6 in January 2017 and an ending value of 116.022 in August 2024, a 10.422% increase. This indicates that companies who are also in the data storage and processing business have generally increased prices for a specified service covered under NAICS 518210 by an average of 10.422% during this period. Based on that percentage change, the Exchange proposes to make a one-time fee increase of only 10%, which reflects an increase covering roughly the entire period since the last price adjustments to these fees were made.

The Exchange further believes the Data PPI is an appropriate measure for purposes of the proposed rule change on the basis that it is a stable metric with limited volatility, unlike other consumer-side inflation metrics. In fact, the Data PPI has not experienced a greater than 2.16% increase for any one calendar year period since Data PPI was introduced into the PPI in January 2002. The average calendar year change from January 2002 to December 2023 was .62%, with a cumulative increase of 15.67% over this 21-year period. The Exchange believes the Data PPI is considerably less volatile than other inflation metrics such as CPI, which has had individual calendar-year increases of more than 6.5%, and a cumulative increase of over 73% over the same period.<sup>10</sup>

The Exchange believes the Data PPI, and significant investments into, and enhanced performance of, the Exchange support the reasonableness of the proposed fee increases.<sup>11</sup>

<sup>10</sup> See <https://www.usinflationcalculator.com/inflation/consumer-price-index-and-annual-percent-changesfrom-1913-to-2008/>.

<sup>11</sup> See *supra* discussion of connectivity product and facility improvements. Additionally, other exchanges have filed for increases in certain fees, based in part on comparisons to inflation. See, *e.g.*, Securities Exchange Act Release Nos. 34–100004 (April 22, 2024), 89 FR 32465 (April 26, 2024) (SR–CboeBYX–2024–012); and 34–100398 (June 21, 2024), 89 FR 53676 (June 27, 2024) (SR–BOX–2024–16); Securities Exchange Act Release No. 34–

These proposed fee increases will be immediately effective upon filing. However, going forward and until December 1, 2024, the Exchange will waive all fees set forth herein to the extent that such fees exceed the levels that would have been charged for the same products and services purchased during that time period, had such fees been calculated at the rates set forth in SR–MRX–2024–34. This waiver is reasonable, equitable, and not unfairly discriminatory because it will afford all customers in excess of the 30-day prior notice period for fee changes set forth in the Exchange’s service terms.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>12</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>13</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

This belief is based on two factors. First, the current fees do not properly reflect the quality of the services and products, as fees for the services and products in question have been static in nominal terms, and therefore falling in real terms due to inflation. Second, the Exchange believes that investments made in enhancing the capacity and speed of Exchange systems increase the performance of the services and products.

## The Proposed Rule Change Is Reasonable

As noted above, the Exchange has not increased any of the fees included in the proposal since 2017 or earlier. However, in the years following the last fee increases, the Exchange has made significant investments in upgrades to its connectivity products, services, and facilities, enhancing the quality of its services, as measured by, among other things, increased throughput and increased power and space capacity. In other words, Exchange customers have greatly benefitted, while the Exchange’s ability to recoup its investments has been hampered. Between 2017 and 2024, the inflation rate is 3.64% per year, on average, producing a cumulative inflation rate of 28.43%.<sup>14</sup>

100994 (September 10, 2024), 89 FR 75612 (September 16, 2024) (SR–NYSEARCA–2024–79).

<sup>12</sup> 15 U.S.C. 78f(b).

<sup>13</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>14</sup> See <https://www.officialdata.org/us/inflation/2017?amount=1>.

Using the more targeted inflation number of Data PPI, the cumulative inflation rate was 10.422%. The exchange believes the Data PPI is a reasonable metric to base this fee increase on because it is targeted to producer-side increases in the data processing industry, which based on the definition adopted by BLS would include the Exchange’s market data products.

Notwithstanding inflation, as noted above, the Exchange has not increased its fees at all for over seven years for the subject services. The proposed fee changes represent a modest increase from the current fees. The Exchange believes the proposed fee increase is reasonable in light of the Exchange’s continued expenditure in maintaining a robust technology ecosystem. Furthermore, the Exchange continues to invest in maintaining and enhancing its connectivity products—for the benefit and often at the behest of its customers and global investors. Such enhancements include refreshing all aspects of the technology ecosystem including software, hardware, and network while introducing new and innovative products and expanded and modernized facilities.<sup>15</sup> The goal of the enhancements discussed above, among other things, is to provide faster, higher-capacity, and more modern connectivity products and services. Accordingly, the Exchange continues to expend resources to innovate and modernize technology so that it may benefit its members in offering its connectivity products and services.

## The Proposed Fees Are Equitably Allocated and Not Unfairly Discriminatory

The Exchange believes that the proposed fee increases are equitably allocated and not unfairly discriminatory because they would apply to all market participants that choose to purchase connectivity products and services from the Exchange. Any participant that chooses to purchase the Exchange’s connectivity products and services would be subject to the same Fee Schedule, regardless of what type of business they operate or the use they plan to make use of the products and services. Additionally, the fee increase would be applied uniformly to market participants without regard to Exchange membership status or the extent of any other business with the

<sup>15</sup> See, *e.g.*, Securities Exchange Act Release No. 34–101077 (September 18, 2024), 89 FR 77904 (September 24, 2024) (SR–MRX–2024–36 (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Expand [the Exchange’s] Co-Location Services)).

Exchange or affiliated entities. The Exchange also believes that the proposal represents an equitable allocation of reasonable dues, fees and other charges because Exchange fees have fallen in real terms during the relevant period. Finally, the Exchange believes that the proposed fee changes are not unfairly discriminatory because the fees would be assessed uniformly across all market participants, in the same manner they are today, that voluntarily purchase the Exchange's connectivity products and services, which would remain available for purchase by all market participants.

These proposed fee increases will be immediately effective upon filing. However, going forward and until December 1, 2024, the Exchange will waive all fees set forth herein to the extent that such fees exceed the levels that would have been charged for the same products and services purchased during that time period, had such fees been calculated at the rates set forth in SR-MRX-2024-34. This waiver is reasonable, equitable, and not unfairly discriminatory because it will afford all customers in excess of the 30-day prior notice period for fee changes set forth in the Exchange's service terms.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed fees will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

#### *Intramarket Competition*

The Exchange believes that the proposed fees do not put any market participants at a relative disadvantage compared to other market participants. As noted above, the fee schedule would continue to apply to all purchasers of the Exchange's connectivity products and services in the same manner as it does today albeit at inflation-adjusted rates for certain fees, and customers may choose whether to purchase these products and services at all. The Exchange also believes that the level of the proposed fees neither favor nor penalize one or more categories of market participants in a manner that would impose an undue burden on competition. Likewise, the proposed fee waiver described above will apply to all purchasers of the Exchange's connectivity products and services in the same manner and therefore will not burden competition among them.

#### *Intermarket Competition*

The Exchange believes that the proposed fees do not impose a burden on competition or on other SROs that is

not necessary or appropriate. In determining the proposed fees, the Exchange utilized an objective and stable metric with limited volatility. Utilizing Data PPI over a specified period of time is a reasonable means of recouping the Exchange's investment in maintaining and enhancing its connectivity products, services, and facilities. The Exchange believes utilizing Data PPI, a tailored measure of inflation, to increase certain fees for connectivity products and services to recoup the Exchange's investment in maintaining and enhancing such products, services, and its facilities would not impose a burden on competition.

#### *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 foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.<sup>16</sup> At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

#### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### *Electronic Comments*

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include file number SR-MRX-2024-41 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-MRX-2024-41. 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 (<https://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. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-MRX-2024-41 and should be submitted on or before November 21, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

**J. Matthew DeLesDernier,**  
Deputy Secretary.

[FR Doc. 2024-25317 Filed 10-30-24; 8:45 am]

BILLING CODE 8011-01-P

#### **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-101447; File No. SR-C2-2024-017]

#### **Self-Regulatory Organizations; Cboe C2 Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fees Schedule**

October 25, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the

<sup>16</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>17</sup> 17 CFR 200.30-3(a)(12).

“Act”),<sup>1</sup> and Rule 19b–4 thereunder,<sup>2</sup> notice is hereby given that on October 10, 2024, Cboe C2 Exchange, Inc. (the “Exchange” or “C2”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the 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**

Cboe C2 Exchange, Inc. (the “Exchange” or “C2 Options”) proposes to amend its Fee Schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange’s website ([http://markets.cboe.com/us/options/regulation/rule\\_filings/ctwo/](http://markets.cboe.com/us/options/regulation/rule_filings/ctwo/)), 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**

The Exchange proposes to update its Fee Schedule to provide a temporary 20% discount on fees assessed to Exchange Trading Permit Holders and non-Trading Permit Holders that purchase \$20,000 or more of ad hoc purchases of historical Open-Close Data, effective October 10, 2024 through December 31, 2024.

By way of background, the Exchange currently offers End-of-Day (“EOD”) and Intraday Open-Close Data (collectively, “Open-Close Data”). EOD Open-Close Data is an end-of-day volume summary of trading activity on the Exchange at

the option level by origin (customer, professional customer, broker-dealer, and market maker), side of the market (buy or sell), price, and transaction type (opening or closing). The customer and professional customer volume is further broken down into trade size buckets (less than 100 contracts, 100–199 contracts, greater than 199 contracts). The EOD Open-Close Data is proprietary Exchange trade data and does not include trade data from any other exchange. It is also a historical data product and not a real-time data feed. The Exchange also offers Intraday Open-Close Data, which provides similar information to that of EOD Open-Close Data but is produced and updated every 10 minutes during the trading day. Data is captured in “snapshots” taken every 10 minutes throughout the trading day and is available to subscribers within five minutes of the conclusion of each 10-minute period.<sup>3</sup> The Intraday Open-Close Data provides a volume summary of trading activity on the Exchange at the option level by origin (customer, professional customer, broker-dealer, and market maker), side of the market (buy or sell), and transaction type (opening or closing). The customer and professional customer volume are further broken down into trade size buckets (less than 100 contracts, 100–199 contracts, greater than 199 contracts). The Intraday Open-Close Data is proprietary Exchange trade data and does not include trade data from any other exchange. All Open-Close Data products are completely voluntary products, in that the Exchange is not required by any rule or regulation to make this data available and that potential customers may purchase it on an ad-hoc basis only if they voluntarily choose to do so.

Cboe LiveVol, LLC (“LiveVol”), a wholly owned subsidiary of the Exchange’s parent company, Cboe Global Markets, Inc., makes the Open-Close Data available for purchase to Trading Permit Holders or non-Trading Permit Holders on the LiveVol DataShop website ([datashop.cboe.com](http://datashop.cboe.com)). Customers may currently purchase Open-Close Data on a subscription basis (monthly or annually) or by ad hoc request for a specified month (historical file, e.g., request for Intraday Open-

Close Data for month of June 2023 or End-of-Day Open-Close Data for month of June 2023). An ad-hoc request can be for any number of months for which the data is available.

Open-Close Data is subject to direct competition from similar end-of-day and intraday options trading summaries offered by several other options exchanges.<sup>4</sup> All of these exchanges offer essentially the same end-of-day and intraday options trading summary information.

The Exchange proposes to provide a temporary pricing incentive program in which Trading Permit Holders and non-Trading Permit Holders that purchase historical Open-Close Data will receive a percentage fee discount where specific purchase thresholds are met. Specifically, the Exchange proposes to provide a temporary 20% discount for ad-hoc purchases of historical Open-Close Data of \$20,000 or more.<sup>5</sup> The proposed program will apply to all market participants irrespective of whether the market participant is a new or current purchaser; however, the discount cannot be combined with any other discounts offered by the Exchange, including the academic discount provided for Qualifying Academic Purchasers of historical Open-Close Data. The Exchange intends to introduce the discount program beginning October 10, 2024, with the program remaining in effect through December 31, 2024. The Exchange also notes that it previously adopted the same temporary discount program and proposes to update the Fees Schedule with the new program dates accordingly.<sup>6</sup>

##### **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

<sup>4</sup> These substitute products are: Nasdaq PHLX Options Trade Outline, Nasdaq Options Trade Outline, ISE Profile, GEMX Trade Profile data; open-close data from Cboe Options, EDGX, and BZX; Open Close Reports from MIAX Options, Pearl, and Emerald; and NYSE Options Open-Close Volume Summary.

<sup>5</sup> The discount will apply on an order-by-order basis. To qualify for the discount, an order must contain End-of-Day Ad-hoc Requests (historical data) and/or Intraday Ad-hoc Requests (historical data) and must total \$20,000 or more; the Exchange will not aggregate purchases made throughout a billing cycle for purposes of the incentive program. The discount will apply to the total purchase price, once the \$20,000 minimum purchase is satisfied (for example, a qualifying order of \$25,000 would be discounted to \$20,000, i.e., receive a 20% discount of \$5,000).

<sup>6</sup> See Securities Exchange Act Release No. 99025 (November 28, 2023), 88 FR 84007 (December 1, 2023) (SR–C2–2023–023) and Securities Exchange Act Release No. 100427 (June 25, 2023 [sic]), 89 FR 54552 (June 25, 2023 [sic]) (SR–C2–2024–012).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b–4.

<sup>3</sup> For example, subscribers to the intraday product will receive the first calculation of intraday data by approximately 9:42 a.m. ET, which represents data captured from 9:30 a.m. to 9:40 a.m. Subscribers will receive the next update at 9:52 a.m., representing the data previously provided together with data captured from 9:40 a.m. through 9:50 a.m., and so forth. Each update will represent the aggregate data captured from the current “snapshot” and all previous “snapshots.”

thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>7</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>8</sup> 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)<sup>9</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In adopting Regulation NMS, the Commission granted self-regulatory organizations (“SROs”) and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data. The Exchange believes the proposed fee changes will further broaden the availability of U.S. option market data to investors consistent with the principles of Regulation NMS. Open-Close Data is designed to help investors understand underlying market trends to improve the quality of investment decisions. Indeed, purchasers of the data may be able to enhance their ability to analyze option trade and volume data and create and test trading models and analytical strategies. The Exchange believes Open-Close Data provides a valuable tool that purchasers can use to gain comprehensive insight into the trading activity in a particular series, but also emphasizes such data is not necessary for trading and as noted above, is entirely optional. Moreover, several other exchanges offer a similar data product which offer same type of data content through end-of-day or intraday reports.<sup>10</sup>

The Exchange also operates in a highly competitive environment. Indeed, there are currently 17 registered options exchanges that trade options.

Based on publicly available information, no single options exchange has more than 18% of the market share.<sup>11</sup> The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Particularly, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”<sup>12</sup> Making similar data products available to market participants fosters competition in the marketplace, and constrains the ability of exchanges to charge supracompetitive fees. In the event that a market participant views one exchange’s data product as more or less attractive than the competition they can and do switch between similar products. The proposed fees are a result of the competitive environment, as the Exchange seeks to adopt fees to attract purchasers of historical Open-Close Data.

The Exchange believes that the proposed incentive program for any Trading Permit Holder or non-Trading Permit Holder who purchases historical Open-Close Data is reasonable because such purchasers would receive a 20% discount for purchasing \$20,000 or more worth of historical Open-Close Data. The Exchange believes the proposed discount is reasonable as it will give purchasers the ability to use and test the historical Open-Close Data at a discounted rate, prior to purchasing additional months or a monthly subscription, and will therefore encourage and promote users to purchase the historical Open-Close Data. Further, the proposed discount is intended to promote increased use of the Exchange’s historical Open-Close Data by defraying some of the costs a purchaser would ordinarily have to expend before using the data product. The Exchange believes that the proposed discount is equitable and not unfairly discriminatory because it will apply equally to all Trading Permit Holders and non-Trading Permit Holders who purchase historical Open-Close Data. Lastly, the purchase of this data product is discretionary and not

compulsory. Indeed, no market participant is required to purchase the historical Open-Close Data, and the Exchange is not required to make the historical Open-Close Data available to all investors. Potential purchasers may request the data at any time if they believe it to be valuable or may decline to purchase such data. As noted above, the Exchange has previously adopted this discount program at other times.<sup>13</sup>

#### *B. Self-Regulatory Organization’s Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange operates in a highly competitive environment in which the Exchange must continually adjust its fees to remain competitive. Because competitors are free to modify their own fees in response, including the adoption of similar discounts to those fees, the Exchange believes that the degree to which fee changes (including discounts and rebates) in this market may impose any burden on competition is extremely limited. As discussed above, Open-Close Data is subject to direct competition from several other options exchanges that offer substitutes to Open-Close Data. Moreover, purchase of Open-Close Data is optional. It is designed to help investors understand underlying market trends to improve the quality of investment decisions, but is not necessary to execute a trade.

The proposed rule changes are grounded in the Exchange’s efforts to compete more effectively. In this competitive environment, potential purchasers are free to choose which, if any, similar product to purchase to satisfy their need for market information. As a result, the Exchange believes this proposed rule change permits fair competition among national securities exchanges. Further, the Exchange believes that these changes will not cause any unnecessary or inappropriate burden on intermarket competition, as the proposed incentive program applies uniformly to any purchaser of historical Open-Close Data.

<sup>11</sup> See Cboe Global Markets U.S. Options Market Month-to-Date Volume Summary (September 30, 2024), available at [https://markets.cboe.com/us/options/market\\_statistics/](https://markets.cboe.com/us/options/market_statistics/).

<sup>12</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

<sup>13</sup> See Securities Exchange Act Release No. 99025 (November 28, 2023), 88 FR 84007 (December 1, 2023) (SR-C2-2023-023) and Securities Exchange Act Release No. 100427 (June 25, 2023 [sic]), 89 FR 54552 (June 25, 2023 [sic]) (SR-C2-2024-012).

<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

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

<sup>10</sup> See *supra* note 4.

*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**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>14</sup> and paragraph (f) of Rule 19b-4<sup>15</sup> thereunder. 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 will institute proceedings 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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include file number SR-C2-2024-017 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-C2-2024-017. 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 (<https://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. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-C2-2024-017 and should be submitted on or before November 21, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

**J. Matthew DeLesDernier,**

*Deputy Secretary.*

[FR Doc. 2024-25340 Filed 10-30-24; 8:45 am]

**BILLING CODE 8011-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-101445; File No. SR-PHLX-2024-52]**

**Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Fees for Connectivity and Co-Location Services**

October 25, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on October 11, 2024, Nasdaq PHLX LLC ("Phlx" or "Exchange") 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 by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

<sup>16</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to amend the Exchange's fees for connectivity and co-location services, as described further below.

The text of the proposed rule change is available on the Exchange's website at <https://listingcenter.nasdaq.com/rulebook/phlx/rules>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

**1. Purpose**

The purpose of the proposed rule change is to amend the Exchange's fees relating to connectivity and co-location services.<sup>3</sup> Specifically, the Exchange proposes to raise its fees for connectivity and co-location services in General 8 as well as certain fees related to its Testing Facilities in Equity 7, Section 3 by 10%, with certain exceptions.

General 8, Section 1 includes the Exchange's fees that relate to connectivity, including fees for cabinets, external telco/inter-cabinet connectivity fees, fees for connectivity to the Exchange, fees for connectivity to third party services, fees for market data connectivity, fees for cabinet power install, and fees for additional charges and services. General 8, Section 2 includes the Exchange's fees for direct connectivity services, including fees for

<sup>3</sup> The Exchange initially filed the proposed pricing change on March 1, 2024 (SR-PHLX-2024-08). On April 29, 2024, the Exchange withdrew that filing and submitted SR-PHLX-2024-019. The Exchange withdrew SR-PHLX-2024-019 and replaced it with SR-PHLX-2024-27. The instant filing replaces SR-PHLX-2024-027, which was withdrawn on August 23, 2024. The Exchange withdrew SR-PHLX-2024-07 and replaced it with SR-PHLX-2024-45 on September 10, 2024. The instant filing replaces SR-PHLX-2024-45.

<sup>14</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>15</sup> 17 CFR 240.19b-4(f).



direct circuit connection to the Exchange, fees for direct circuit connection to third party services, and fees for point of presence connectivity. With the exception of the Exchange's GPS Antenna fees and the Cabinet Proximity Option Fee for cabinets with power density >10kW,<sup>4</sup> the Exchange proposes to increase its fees throughout General 8 by 10%.

In addition to increasing fees in General 8, the Exchange also proposes to increase certain fees in Equity 7, Section 3, which relate to the Testing Facility. Equity 7, Section 3 provides that subscribers to the Testing Facility located in Carteret, New Jersey shall pay a fee of \$1,000 per hand-off, per month for connection to the Testing Facility. The hand-off fee includes either a 1Gb or 10Gb switch port and a cross connect to the Testing Facility. In addition, Equity 7, Section 3 provides that subscribers shall also pay a one-time installation fee of \$1,000 per hand-off. The Exchange proposes to increase these aforementioned fees by 10% to require that subscribers to the Testing Facility shall pay a fee of \$1,100 per hand-off, per month for connection to the Testing Facility and a one-time installation fee of \$1,100 per hand-off.

The proposed increases in fees would enable the Exchange to maintain and improve its market technology and services to remain competitive with its peers. Over the years, customer demand for more sophisticated, higher-throughput, lower-latency, and higher-power connectivity solutions has increased. The Exchange continues to invest in maintaining, improving, and enhancing its connectivity and co-location products, services, and facilities—for the benefit and often at the behest of its customers. Such enhancements include refreshing hardware and expanding Nasdaq's existing co-location facility to offer customers additional space and power. Nevertheless, and with the exception of fees that were established as part of a

new service in 2017 (and have remained unchanged since their adoption), the Exchange has not increased any of the fees included in the proposal since prior to 2017, and many of the fees date back to between 2010 and 2014 (where inflation has been between roughly 15–17%, as measured using the metric described below). Nevertheless, the Exchange proposes to increase its fees only with respect to inflation that has occurred since 2017.

As discussed below, the Exchange proposes to adjust its fees by an industry- and product-specific inflationary measure. It is reasonable and consistent with the Act for the Exchange to recoup its investments, at least in part, by adjusting its fees. Continuing to operate at fees frozen at 2010–2017 levels impacts the Exchange's ability to enhance its offerings and the interests of market participants and investors.

The fee increases the Exchange proposes are based on an industry-specific Producer Price Index (“PPI”), which is a tailored measure of inflation.<sup>5</sup> As a general matter, the Producer Price Index is a family of indexes that measures the average change over time in selling prices received by domestic producers of goods and services. PPI measures price change from the perspective of the seller. This contrasts with other metrics, such as the Consumer Price Index (“CPI”), that measure price change from the purchaser's perspective.<sup>6</sup> About 10,000 PPIs for individual products and groups of products are tracked and released each month.<sup>7</sup> PPIs are available for the output of nearly all industries in the goods-producing sectors of the U.S. economy—mining, manufacturing, agriculture, fishing, and forestry—as well as natural gas, electricity, and construction, among others. The PPI program covers approximately 69 percent of the service sector's output, as measured by revenue reported in the 2017 Economic Census.

For purposes of this proposal, the relevant industry-specific PPI is the Data Processing and Related Services PPI (“Data PPI”), which is an industry net-output PPI that measures the average change in selling prices received by companies that provide data processing services.

The Data PPI was introduced in January 2002 by the Bureau of Labor Statistics (“BLS”) as part of an ongoing effort to expand Producer Price Index

coverage of the services sector of the U.S. economy and is identified as NAICS—518210 in the North American Industry Classification System.<sup>8</sup> According to the BLS “[t]he primary output of NAICS 518210 is the provision of electronic data processing services. In the broadest sense, computer services companies help their customers efficiently use technology. The processing services market consists of vendors who use their own computer systems—often utilizing proprietary software—to process customers' transactions and data. Companies that offer processing services collect, organize, and store a customer's transactions and other data for record-keeping purposes. Price movements for the NAICS 518210 index are based on changes in the revenue received by companies that provide data processing services. Each month, companies provide net transaction prices for a specified service. The transaction is an actual contract selected by probability, where the price-determining characteristics are held constant while the service is repriced. The prices used in index calculation are the actual prices billed for the selected service contract.”<sup>9</sup>

The Exchange believes the Data PPI is an appropriate measure to be considered in the context of the proposed rule change to modify the fee for its connectivity products because the Exchange uses its “own computer systems” and “proprietary software,” *i.e.*, its own data center and proprietary matching engine software, respectively, to collect, organize, store and report customers' transactions in U.S. equity securities on the Exchange's proprietary trading platform. In other words, the Exchange is in the business of data processing and related services.

For purposes of this proposed rule change, the Exchange examined the Data PPI value for the period from January 2017 to August 2024. The Data PPI had a starting value of 105.6 in January 2017 and an ending value of 116.022 in August 2024, a 10.422% increase. This indicates that companies who are also in the data storage and processing business have generally increased prices for a specified service covered under NAICS 518210 by an average of 10.422% during this period. Based on that percentage change, the Exchange proposes to make a one-time fee increase of only 10%, which reflects

<sup>4</sup> The Exchange proposes to exclude the GPS Antenna fees from the proposed fee increase because, unlike the other fees in General 8, the Exchange recently increased its GPS Antenna fees. See Securities Exchange Act Release No. 34–99125 (December 8, 2023), 88 FR 86705 (December 14, 2023) (SR-PHLX–2023–53). The Exchange also proposes to exclude the Cabinet Proximity Option Fee for cabinets with power density >10kW from the proposed fee increase because the Exchange recently established such fee. See Securities Exchange Act Release No. 34–100197 (May 21, 2024), 89 FR 46185 (May 28, 2024) (SR-PHLX–2024–23). Similarly, the Exchange proposes to exclude from the proposed fee increase those fees that the Exchange recently established for services in its new NY11–4 expansion facility. See Securities Exchange Act Release No. 34–101268 (October 7, 2024), 89 FR 82661 (October 11, 2024) (SR-PHLX–2024–49).

<sup>5</sup> See <https://fred.stlouisfed.org/series/PCU51825182#0>.

<sup>6</sup> See <https://www.bls.gov/ppi/overview.htm>.

<sup>7</sup> See *Id.*

<sup>8</sup> NAICS appears in table 5 of the PPI Detailed Report and is available at <https://data.bls.gov/timeseries/PCU518210518210>.

<sup>9</sup> See <https://www.bls.gov/ppi/factsheets/producer-price-index-for-the-data-processing-and-related-servicesindustry-naics-518210.htm>.



an increase covering roughly the entire period since the last price adjustments to these fees were made.

The Exchange further believes the Data PPI is an appropriate measure for purposes of the proposed rule change on the basis that it is a stable metric with limited volatility, unlike other consumer-side inflation metrics. In fact, the Data PPI has not experienced a greater than 2.16% increase for any one calendar year period since Data PPI was introduced into the PPI in January 2002. The average calendar year change from January 2002 to December 2023 was .62%, with a cumulative increase of 15.67% over this 21-year period. The Exchange believes the Data PPI is considerably less volatile than other inflation metrics such as CPI, which has had individual calendar-year increases of more than 6.5%, and a cumulative increase of over 73% over the same period.<sup>10</sup>

The Exchange believes the Data PPI, and significant investments into, and enhanced performance of, the Exchange support the reasonableness of the proposed fee increases.<sup>11</sup>

These proposed fee increases will be immediately effective upon filing. However, going forward and until December 1, 2024, the Exchange will waive all fees set forth herein to the extent that such fees exceed the levels that would have been charged for the same products and services purchased during that time period, had such fees been calculated at the rates set forth in SR-PHLX-2024-45. This waiver is reasonable, equitable, and not unfairly discriminatory because it will afford all customers in excess of the 30-day prior notice period for fee changes set forth in the Exchange's service terms.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>12</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>13</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other

persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

This belief is based on two factors. First, the current fees do not properly reflect the quality of the services and products, as fees for the services and products in question have been static in nominal terms, and therefore falling in real terms due to inflation. Second, the Exchange believes that investments made in enhancing the capacity and speed of Exchange systems increase the performance of the services and products.

### The Proposed Rule Change Is Reasonable

As noted above, the Exchange has not increased any of the fees included in the proposal since 2017 or earlier. However, in the years following the last fee increases, the Exchange has made significant investments in upgrades to its connectivity products, services, and facilities, enhancing the quality of its services, as measured by, among other things, increased throughput and increased power and space capacity. In other words, Exchange customers have greatly benefitted, while the Exchange's ability to recoup its investments has been hampered. Between 2017 and 2024, the inflation rate is 3.64% per year, on average, producing a cumulative inflation rate of 28.43%.<sup>14</sup> Using the more targeted inflation number of Data PPI, the cumulative inflation rate was 10.422%. The exchange believes the Data PPI is a reasonable metric to base this fee increase on because it is targeted to producer-side increases in the data processing industry, which based on the definition adopted by BLS would include the Exchange's market data products.

Notwithstanding inflation, as noted above, the Exchange has not increased its fees at all for over seven years for the subject services. The proposed fee changes represent a modest increase from the current fees. The Exchange believes the proposed fee increase is reasonable in light of the Exchange's continued expenditure in maintaining a robust technology ecosystem. Furthermore, the Exchange continues to invest in maintaining and enhancing its connectivity products—for the benefit and often at the behest of its customers and global investors. Such enhancements include refreshing all aspects of the technology ecosystem including software, hardware, and

network while introducing new and innovative products and expanded and modernized facilities.<sup>15</sup> The goal of the enhancements discussed above, among other things, is to provide faster, higher-capacity, and more modern connectivity products and services. Accordingly, the Exchange continues to expend resources to innovate and modernize technology so that it may benefit its members in offering its connectivity products and services.

### The Proposed Fees Are Equitably Allocated and Not Unfairly Discriminatory

The Exchange believes that the proposed fee increases are equitably allocated and not unfairly discriminatory because they would apply to all market participants that choose to purchase connectivity products and services from the Exchange. Any participant that chooses to purchase the Exchange's connectivity products and services would be subject to the same Fee Schedule, regardless of what type of business they operate or the use they plan to make use of the products and services. Additionally, the fee increase would be applied uniformly to market participants without regard to Exchange membership status or the extent of any other business with the Exchange or affiliated entities. The Exchange also believes that the proposal represents an equitable allocation of reasonable dues, fees and other charges because Exchange fees have fallen in real terms during the relevant period. Finally, the Exchange believes that the proposed fee changes are not unfairly discriminatory because the fees would be assessed uniformly across all market participants, in the same manner they are today, that voluntarily purchase the Exchange's connectivity products and services, which would remain available for purchase by all market participants.

These proposed fee increases will be immediately effective upon filing. However, going forward and until December 1, 2024, the Exchange will waive all fees set forth herein to the extent that such fees exceed the levels that would have been charged for the same products and services purchased during that time period, had such fees been calculated at the rates set forth in SR-PHLX-2024-45. This waiver is reasonable, equitable, and not unfairly discriminatory because it will afford all customers in excess of the 30-day prior

<sup>10</sup> See <https://www.usinflationcalculator.com/inflation/consumer-price-index-and-annual-percent-changesfrom-1913-to-2008/>.

<sup>11</sup> See *supra* discussion of connectivity product and facility improvements. Additionally, other exchanges have filed for increases in certain fees, based in part on comparisons to inflation. See, e.g., Securities Exchange Act Release Nos. 34-100004 (April 22, 2024), 89 FR 32465 (April 26, 2024) (SR-CboeBYX-2024-012); and 34-100398 (June 21, 2024), 89 FR 53676 (June 27, 2024) (SR-BOX-2024-16); Securities Exchange Act Release No. 34-100994 (September 10, 2024), 89 FR 75612 (September 16, 2024) (SR-NYSEARCA-2024-79).

<sup>12</sup> 15 U.S.C. 78f(b).

<sup>13</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>14</sup> See <https://www.officialdata.org/us/inflation/2017?amount=1>.

<sup>15</sup> See, e.g., Securities Exchange Act Release No. 34-101079 (September 18, 2024), 89 FR 77931 (September 24, 2024) (SR-PHLX-2024-47 (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Expand [the Exchange's] Co-Location Services)).

notice period for fee changes set forth in the Exchange's service terms.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed fees will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

#### *Intramarket Competition*

The Exchange believes that the proposed fees do not put any market participants at a relative disadvantage compared to other market participants. As noted above, the fee schedule would continue to apply to all purchasers of the Exchange's connectivity products and services in the same manner as it does today albeit at inflation-adjusted rates for certain fees, and customers may choose whether to purchase these products and services at all. The Exchange also believes that the level of the proposed fees neither favor nor penalize one or more categories of market participants in a manner that would impose an undue burden on competition. Likewise, the proposed fee waiver described above will apply to all purchasers of the Exchange's connectivity products and services in the same manner and therefore will not burden competition among them.

#### *Intermarket Competition*

The Exchange believes that the proposed fees do not impose a burden on competition or on other SROs that is not necessary or appropriate. In determining the proposed fees, the Exchange utilized an objective and stable metric with limited volatility. Utilizing Data PPI over a specified period of time is a reasonable means of recouping the Exchange's investment in maintaining and enhancing its connectivity products, services, and facilities. The Exchange believes utilizing Data PPI, a tailored measure of inflation, to increase certain fees for connectivity products and services to recoup the Exchange's investment in maintaining and enhancing such products, services, and its facilities would not impose a burden on competition.

#### *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 foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.<sup>16</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

#### *Electronic Comments*

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include file number SR-Phlx-2024-52 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-2024-52. 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 (<https://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. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-Phlx-2024-52 and should be submitted on or before November 21, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

**J. Matthew DeLesDernier,**  
*Deputy Secretary.*

[FR Doc. 2024-25325 Filed 10-30-24; 8:45 am]

BILLING CODE 8011-01-P

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-101448; File No. SR-CboeEDGX-2024-065]

### **Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule**

October 25, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on October 10, 2024, Cboe EDGX Exchange, Inc. (the "Exchange" or "EDGX") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the 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**

Cboe EDGX Exchange, Inc. (the "Exchange" or "EDGX Options") proposes to amend its Fee Schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (<http://markets.cboe.com/us/>

<sup>17</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>16</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

options/regulation/rule\_filings/edgx/), 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

The Exchange proposes to update its Fee Schedule to provide a temporary 20% discount on fees assessed to Exchange Members<sup>3</sup> and non-Members that purchase \$20,000 or more of ad hoc purchases of historical Open-Close Data, effective October 10, 2024 through December 31, 2024.

By way of background, the Exchange currently offers End-of-Day ("EOD") and Intraday Open-Close Data (collectively, "Open-Close Data"). EOD Open-Close Data is an end-of-day volume summary of trading activity on the Exchange at the option level by origin (customer, professional customer, broker-dealer, and market maker), side of the market (buy or sell), price, and transaction type (opening or closing). The customer and professional customer volume is further broken down into trade size buckets (less than 100 contracts, 100–199 contracts, greater than 199 contracts). The EOD Open-Close Data is proprietary Exchange trade data and does not include trade data from any other exchange. It is also a historical data product and not a real-time data feed. The Exchange also offers Intraday Open-Close Data, which provides similar information to that of EOD Open-Close

Data but is produced and updated every 10 minutes during the trading day. Data is captured in "snapshots" taken every 10 minutes throughout the trading day and is available to subscribers within five minutes of the conclusion of each 10-minute period.<sup>4</sup> The Intraday Open-Close Data provides a volume summary of trading activity on the Exchange at the option level by origin (customer, professional customer, broker-dealer, and market maker), side of the market (buy or sell), and transaction type (opening or closing). The customer and professional customer volume are further broken down into trade size buckets (less than 100 contracts, 100–199 contracts, greater than 199 contracts). The Intraday Open-Close Data is proprietary Exchange trade data and does not include trade data from any other exchange. All Open-Close Data products are completely voluntary products, in that the Exchange is not required by any rule or regulation to make this data available and that potential customers may purchase it on an ad-hoc basis only if they voluntarily choose to do so.

Cboe LiveVol, LLC ("LiveVol"), a wholly owned subsidiary of the Exchange's parent company, Cboe Global Markets, Inc., makes the Open-Close Data available for purchase to Members and non-Members on the LiveVol DataShop website ([datashop.cboe.com](https://datashop.cboe.com)). Customers may currently purchase Open-Close Data on a subscription basis (monthly or annually) or by ad hoc request for a specified month (historical file, e.g., request for Intraday Open-Close Data for month of December 2023 or End-of-Day Open-Close Data for month of December 2023). An ad-hoc request can be for any number of months for which the data is available.

Open-Close Data is subject to direct competition from similar end-of-day and intraday options trading summaries offered by several other options exchanges.<sup>5</sup> All of these exchanges offer essentially the same end-of-day and

intraday options trading summary information.

The Exchange proposes to provide a temporary pricing incentive program in which Members or Non-Members that purchase historical Open-Close Data will receive a percentage fee discount where specific purchase thresholds are met. Specifically, the Exchange proposes to provide a temporary 20% discount for ad-hoc purchases of historical Open-Close Data of \$20,000 or more.<sup>6</sup> The proposed program will apply to all market participants irrespective of whether the market participant is a new or current purchaser; however, the discount cannot be combined with any other discounts offered by the Exchange, including the academic discount provided for Qualifying Academic Purchasers of historical Open-Close Data. The Exchange intends to introduce the discount program beginning October 10, 2024, with the program remaining in effect through December 31, 2024. The Exchange also notes that it previously adopted the same temporary discount program and proposes to update the Fees Schedule with the new program dates accordingly.<sup>7</sup>

#### 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.<sup>8</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>9</sup> 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

<sup>6</sup> The discount will apply on an order-by-order basis. To qualify for the discount, an order must contain End-of-Day Ad-hoc Requests (historical data) and/or Intraday Ad-hoc Requests (historical data) and must total \$20,000 or more; the Exchange will not aggregate purchases made throughout a billing cycle for purposes of the incentive program. The discount will apply to the total purchase price, once the \$20,000 minimum purchase is satisfied (for example, a qualifying order of \$25,000 would be discounted to \$20,000, i.e. receive a 20% discount of \$5,000).

<sup>7</sup> See Securities Exchange Act Release No. 99026 (November 28, 2023), 88 FR 84023 (December 1, 2023) (SR-CboeEDGX-2023-070) and Securities Exchange Act Release No. 100352 (June 17, 2024), 89 FR 52521 (June 24, 2024) (SR-CboeEDGX-2024-033).

<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

<sup>3</sup> See Rule 1.5(n) ("Member"). The term "Member" shall mean any registered broker or dealer that has been admitted to membership in the Exchange. A Member will have the status of a "member" of the Exchange as that term is defined in Section 3(a)(3) of the Act. Membership may be granted to a sole proprietor, partnership, corporation, limited liability company or other organization which is a registered broker or dealer pursuant to Section 15 of the Act, and which has been approved by the Exchange.

<sup>4</sup> For example, subscribers to the intraday product will receive the first calculation of intraday data by approximately 9:42 a.m. ET, which represents data captured from 9:30 a.m. to 9:40 a.m. Subscribers will receive the next update at 9:52 a.m., representing the data previously provided together with data captured from 9:40 a.m. through 9:50 a.m., and so forth. Each update will represent the aggregate data captured from the current "snapshot" and all previous "snapshots."

<sup>5</sup> These substitute products are: Nasdaq PHLX Options Trade Outline, Nasdaq Options Trade Outline, ISE Profile, GEMX Trade Profile data; open-close data from C2, Cboe Options, and BZX; Open Close Reports from MIAAX Options, Pearl, and Emerald; and NYSE Options Open-Close Volume Summary.

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)<sup>10</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In adopting Regulation NMS, the Commission granted self-regulatory organizations (“SROs”) and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data. The Exchange believes the proposed fee changes will further broaden the availability of U.S. option market data to investors consistent with the principles of Regulation NMS. Open-Close Data is designed to help investors understand underlying market trends to improve the quality of investment decisions. Indeed, purchasers of the data may be able to enhance their ability to analyze option trade and volume data and create and test trading models and analytical strategies. The Exchange believes Open-Close Data provides a valuable tool that purchasers can use to gain comprehensive insight into the trading activity in a particular series, but also emphasizes such data is not necessary for trading and as noted above, is entirely optional. Moreover, several other exchanges offer a similar data product which offer same type of data content through end-of-day or intraday reports.<sup>11</sup>

The Exchange also operates in a highly competitive environment. Indeed, there are currently 17 registered options exchanges that trade options. Based on publicly available information, no single options exchange has more than 18% of the market share.<sup>12</sup> The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Particularly, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system

“has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”<sup>13</sup> Making similar data products available to market participants fosters competition in the marketplace, and constrains the ability of exchanges to charge supracompetitive fees. In the event that a market participant views one exchange’s data product as more or less attractive than the competition they can and do switch between similar products. The proposed fees are a result of the competitive environment, as the Exchange seeks to adopt fees to attract purchasers of historical Open-Close Data.

The Exchange believes that the proposed incentive program for any Member or non-Member who purchases historical Open-Close Data is reasonable because such purchasers would receive a 20% discount for purchasing \$20,000 or more worth of historical Open-Close Data. The Exchange believes the proposed discount is reasonable as it will give purchasers the ability to use and test the historical Open-Close Data at a discounted rate, prior to purchasing additional months or a monthly subscription, and will therefore encourage and promote users to purchase the historical Open-Close Data. Further, the proposed discount is intended to promote increased use of the Exchange’s historical Open-Close Data by defraying some of the costs a purchaser would ordinarily have to expend before using the data product. The Exchange believes that the proposed discount is equitable and not unfairly discriminatory because it will apply equally to all Members and non-Members who purchase historical Open-Close Data. Lastly, the purchase of this data product is discretionary and not compulsory. Indeed, no market participant is required to purchase the historical Open-Close Data, and the Exchange is not required to make the historical Open-Close Data available to all investors. Potential purchasers may request the data at any time if they believe it to be valuable or may decline to purchase such data. As noted above, the Exchange has previously adopted the same temporary discount program.<sup>14</sup>

<sup>13</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

<sup>14</sup> See Securities Exchange Act Release No. 99026 (November 28, 2023), 88 FR 84023 (December 1, 2023) (SR-CboeEDGX-2023-070) and Securities Exchange Act Release No. 100352 (June 17, 2024), 89 FR 52521 (June 24, 2024) (SR-CboeEDGX-2024-033).

### *B. Self-Regulatory Organization’s Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange operates in a highly competitive environment in which the Exchange must continually adjust its fees to remain competitive. Because competitors are free to modify their own fees in response, including the adoption of similar discounts to those fees, the Exchange believes that the degree to which fee changes (including discounts and rebates) in this market may impose any burden on competition is extremely limited. As discussed above, Open-Close Data is subject to direct competition from several other options exchanges that offer substitutes to Open-Close Data. Moreover, purchase of Open-Close Data is optional. It is designed to help investors understand underlying market trends to improve the quality of investment decisions, but is not necessary to execute a trade.

The proposed rule changes are grounded in the Exchange’s efforts to compete more effectively. In this competitive environment, potential purchasers are free to choose which, if any, similar product to purchase to satisfy their need for market information. As a result, the Exchange believes this proposed rule change permits fair competition among national securities exchanges. Further, the Exchange believes that these changes will not cause any unnecessary or inappropriate burden on intermarket competition, as the proposed incentive program applies uniformly to any purchaser of historical Open-Close Data.

### *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**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>15</sup> and paragraph (f) of Rule 19b-4<sup>16</sup> thereunder. 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

<sup>15</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>16</sup> 17 CFR 240.19b-4(f).

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

<sup>11</sup> See supra note 4.

<sup>12</sup> See Cboe Global Markets U.S. Options Market Month-to-Date Volume Summary (September 30, 2024), available at [https://markets.cboe.com/us/options/market\\_statistics/](https://markets.cboe.com/us/options/market_statistics/).

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 will institute proceedings 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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include file number SR-CboeEDGX-2024-065 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-CboeEDGX-2024-065. 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 (<https://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. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All

submissions should refer to file number SR-CboeEDGX-2024-065 and should be submitted on or before November 21, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

**J. Matthew DeLesDernier,**

*Deputy Secretary.*

[FR Doc. 2024-25337 Filed 10-30-24; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-101439; File No. SR-GEMX-2024-38]

### Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Fees for Connectivity and Co-Location Services

October 25, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on October 11, 2024, Nasdaq GEMX, LLC ("GEMX" or "Exchange") 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 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 the Exchange's fees for connectivity and co-location services, as described further below.

The text of the proposed rule change is available on the Exchange's website at <https://listingcenter.nasdaq.com/rulebook/gemx/rules>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the

places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

#### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

The purpose of the proposed rule change is to amend the Exchange's fees relating to connectivity and co-location services.<sup>3</sup> Specifically, the Exchange proposes to raise its fees for connectivity and co-location services in General 8 as well as certain fees related to its Testing Facilities in Options 7, Section 6 by 10%, with certain exceptions.

General 8, Section 1 includes the Exchange's fees that relate to connectivity, including fees for cabinets, external telco/inter-cabinet connectivity fees, fees for connectivity to the Exchange, fees for connectivity to third party services, fees for market data connectivity, fees for cabinet power install, and fees for additional charges and services. General 8, Section 2 includes the Exchange's fees for direct connectivity services, including fees for direct circuit connection to the Exchange, fees for direct circuit connection to third party services, and fees for point of presence connectivity. With the exception of the Exchange's GPS Antenna fees and the Cabinet Proximity Option Fee for cabinets with power density >10kW,<sup>4</sup> the Exchange

<sup>3</sup> The Exchange initially filed the proposed pricing change on March 1, 2024 (SR-GEMX-2024-05). On April 29, 2024, the Exchange withdrew that filing and submitted SR-GEMX-2024-09. On June 27, 2024, the Exchange withdrew SR-GEMX-2024-09 and submitted SR-GEMX-2024-15. The Exchange withdrew SR-GEMX-2024-15 and replaced it with SR-GEMX-2024-33 on September 10, 2024. The instant filing replaces SR-GEMX-2024-33.

<sup>4</sup> The Exchange proposes to exclude the GPS Antenna fees from the proposed fee increase because, unlike the other fees in General 8, the Exchange recently increased its GPS Antenna fees. See Securities Exchange Act Release No. 34-99129 (December 11, 2023), 88 FR 87017 (December 15, 2023) (SR-GEMX-2023-17). The Exchange also proposes to exclude the Cabinet Proximity Option Fee for cabinets with power density >10kW from the proposed fee increase because the Exchange recently established such fee. See Securities Exchange Act Release No. 34-100210 (May 22, 2024), 89 FR 46476 (May 29, 2024) (SR-GEMX-2024-11). Similarly, the Exchange proposes to exclude from the proposed fee increase those fees that the Exchange recently established for services in its new NY11-4 expansion facility. See Securities Exchange Act Release No. 34-101262 (October 7, 2024), 89 FR 82649 (October 11, 2024) (SR-GEMX-2024-36).

<sup>17</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

proposes to increase its fees throughout General 8 by 10%.

In addition to increasing fees in General 8, the Exchange also proposes to increase certain fees in Options 7, Section 6, which relate to the Testing Facility. Options 7, Section 6(H) provides that subscribers to the Testing Facility located in Carteret, New Jersey shall pay a fee of \$1,000 per hand-off, per month for connection to the Testing Facility. The hand-off fee includes either a 1Gb or 10Gb switch port and a cross connect to the Testing Facility. In addition, Options 7, Section 6(H) provides that subscribers shall also pay a one-time installation fee of \$1,000 per hand-off. The Exchange proposes to increase these aforementioned fees by 10% to require that subscribers to the Testing Facility shall pay a fee of \$1,100 per hand-off, per month for connection to the Testing Facility and a one-time installation fee of \$1,100 per hand-off.

The proposed increases in fees would enable the Exchange to maintain and improve its market technology and services to remain competitive with its peers. Over the years, customer demand for more sophisticated, higher-throughput, lower-latency, and higher-power connectivity solutions has increased. The Exchange continues to invest in maintaining, improving, and enhancing its connectivity and co-location products, services, and facilities—for the benefit and often at the behest of its customers. Such enhancements include refreshing hardware and expanding Nasdaq's existing co-location facility to offer customers additional space and power. Nevertheless, and with the exception of fees that were established as part of a new service in 2017 (and have remained unchanged since their adoption), the Exchange has not increased any of the fees included in the proposal since prior to 2017, and many of the fees date back to between 2010 and 2014 (where inflation has been between roughly 15–17%, as measured using the metric described below). Nevertheless, the Exchange proposes to increase its fees only with respect to inflation that has occurred since 2017.

As discussed below, the Exchange proposes to adjust its fees by an industry- and product-specific inflationary measure. It is reasonable and consistent with the Act for the Exchange to recoup its investments, at least in part, by adjusting its fees. Continuing to operate at fees frozen at 2010–2017 levels impacts the Exchange's ability to enhance its offerings and the interests of market participants and investors.

The fee increases the Exchange proposes are based on an industry-specific Producer Price Index (“PPI”), which is a tailored measure of inflation.<sup>5</sup> As a general matter, the Producer Price Index is a family of indexes that measures the average change over time in selling prices received by domestic producers of goods and services. PPI measures price change from the perspective of the seller. This contrasts with other metrics, such as the Consumer Price Index (“CPI”), that measure price change from the purchaser's perspective.<sup>6</sup> About 10,000 PPIs for individual products and groups of products are tracked and released each month.<sup>7</sup> PPIs are available for the output of nearly all industries in the goods-producing sectors of the U.S. economy—mining, manufacturing, agriculture, fishing, and forestry—as well as natural gas, electricity, and construction, among others. The PPI program covers approximately 69 percent of the service sector's output, as measured by revenue reported in the 2017 Economic Census.

For purposes of this proposal, the relevant industry-specific PPI is the Data Processing and Related Services PPI (“Data PPI”), which is an industry net-output PPI that measures the average change in selling prices received by companies that provide data processing services.

The Data PPI was introduced in January 2002 by the Bureau of Labor Statistics (“BLS”) as part of an ongoing effort to expand Producer Price Index coverage of the services sector of the U.S. economy and is identified as NAICS—518210 in the North American Industry Classification System.<sup>8</sup> According to the BLS “[t]he primary output of NAICS 518210 is the provision of electronic data processing services. In the broadest sense, computer services companies help their customers efficiently use technology. The processing services market consists of vendors who use their own computer systems—often utilizing proprietary software—to process customers' transactions and data. Companies that offer processing services collect, organize, and store a customer's transactions and other data for record-keeping purposes. Price movements for the NAICS 518210 index are based on changes in the revenue received by companies that provide data processing

services. Each month, companies provide net transaction prices for a specified service. The transaction is an actual contract selected by probability, where the price-determining characteristics are held constant while the service is repriced. The prices used in index calculation are the actual prices billed for the selected service contract.”<sup>9</sup>

The Exchange believes the Data PPI is an appropriate measure to be considered in the context of the proposed rule change to modify the fee for its connectivity products because the Exchange uses its “own computer systems” and “proprietary software,” i.e., its own data center and proprietary matching engine software, respectively, to collect, organize, store and report customers' transactions in U.S. equity securities on the Exchange's proprietary trading platform. In other words, the Exchange is in the business of data processing and related services.

For purposes of this proposed rule change, the Exchange examined the Data PPI value for the period from January 2017 to August 2024. The Data PPI had a starting value of 105.6 in January 2017 and an ending value of 116.022 in August 2024, a 10.422% increase. This indicates that companies who are also in the data storage and processing business have generally increased prices for a specified service covered under NAICS 518210 by an average of 10.422% during this period. Based on that percentage change, the Exchange proposes to make a one-time fee increase of only 10%, which reflects an increase covering roughly the entire period since the last price adjustments to these fees were made.

The Exchange further believes the Data PPI is an appropriate measure for purposes of the proposed rule change on the basis that it is a stable metric with limited volatility, unlike other consumer-side inflation metrics. In fact, the Data PPI has not experienced a greater than 2.16% increase for any one calendar year period since Data PPI was introduced into the PPI in January 2002. The average calendar year change from January 2002 to December 2023 was .62%, with a cumulative increase of 15.67% over this 21-year period. The Exchange believes the Data PPI is considerably less volatile than other inflation metrics such as CPI, which has had individual calendar-year increases of more than 6.5%, and a cumulative

<sup>5</sup> See <https://fred.stlouisfed.org/series/PCU51825182#0>.

<sup>6</sup> See <https://www.bls.gov/ppi/overview.htm>.

<sup>7</sup> See *Id.*

<sup>8</sup> NAICS appears in table 5 of the PPI Detailed Report and is available at <https://data.bls.gov/timeseries/PCU518210518210>.

<sup>9</sup> See <https://www.bls.gov/ppi/factsheets/producer-price-index-for-the-data-processing-and-related-servicesindustry-naics-518210.htm>.

increase of over 73% over the same period.<sup>10</sup>

The Exchange believes the Data PPI, and significant investments into, and enhanced performance of, the Exchange support the reasonableness of the proposed fee increases.<sup>11</sup>

These proposed fee increases will be immediately effective upon filing. However, going forward and until December 1, 2024, the Exchange will waive all fees set forth herein to the extent that such fees exceed the levels that would have been charged for the same products and services purchased during that time period, had such fees been calculated at the rates set forth in SR-GEMX-2024-33. This waiver is reasonable, equitable, and not unfairly discriminatory because it will afford all customers in excess of the 30-day prior notice period for fee changes set forth in the Exchange's service terms.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>12</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>13</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

This belief is based on two factors. First, the current fees do not properly reflect the quality of the services and products, as fees for the services and products in question have been static in nominal terms, and therefore falling in real terms due to inflation. Second, the Exchange believes that investments made in enhancing the capacity and speed of Exchange systems increase the performance of the services and products.

### The Proposed Rule Change Is Reasonable

As noted above, the Exchange has not increased any of the fees included in the proposal since 2017 or earlier. However,

in the years following the last fee increases, the Exchange has made significant investments in upgrades to its connectivity products, services, and facilities, enhancing the quality of its services, as measured by, among other things, increased throughput and increased power and space capacity. In other words, Exchange customers have greatly benefitted, while the Exchange's ability to recoup its investments has been hampered. Between 2017 and 2024, the inflation rate is 3.64% per year, on average, producing a cumulative inflation rate of 28.43%.<sup>14</sup> Using the more targeted inflation number of Data PPI, the cumulative inflation rate was 10.422%. The exchange believes the Data PPI is a reasonable metric to base this fee increase on because it is targeted to producer-side increases in the data processing industry, which based on the definition adopted by BLS would include the Exchange's market data products.

Notwithstanding inflation, as noted above, the Exchange has not increased its fees at all for over seven years for the subject services. The proposed fee changes represent a modest increase from the current fees. The Exchange believes the proposed fee increase is reasonable in light of the Exchange's continued expenditure in maintaining a robust technology ecosystem. Furthermore, the Exchange continues to invest in maintaining and enhancing its connectivity products—for the benefit and often at the behest of its customers and global investors. Such enhancements include refreshing all aspects of the technology ecosystem including software, hardware, and network while introducing new and innovative products and expanded and modernized facilities.<sup>15</sup> The goal of the enhancements discussed above, among other things, is to provide faster, higher-capacity, and more modern connectivity products and services. Accordingly, the Exchange continues to expend resources to innovate and modernize technology so that it may benefit its members in offering its connectivity products and services.

### The Proposed Fees Are Equitably Allocated and Not Unfairly Discriminatory

The Exchange believes that the proposed fee increases are equitably allocated and not unfairly discriminatory because they would apply to all market participants that choose to purchase connectivity products and services from the Exchange. Any participant that chooses to purchase the Exchange's connectivity products and services would be subject to the same Fee Schedule, regardless of what type of business they operate or the use they plan to make use of the products and services. Additionally, the fee increase would be applied uniformly to market participants without regard to Exchange membership status or the extent of any other business with the Exchange or affiliated entities. The Exchange also believes that the proposal represents an equitable allocation of reasonable dues, fees and other charges because Exchange fees have fallen in real terms during the relevant period. Finally, the Exchange believes that the proposed fee changes are not unfairly discriminatory because the fees would be assessed uniformly across all market participants, in the same manner they are today, that voluntarily purchase the Exchange's connectivity products and services, which would remain available for purchase by all market participants.

These proposed fee increases will be immediately effective upon filing. However, going forward and until December 1, 2024, the Exchange will waive all fees set forth herein to the extent that such fees exceed the levels that would have been charged for the same products and services purchased during that time period, had such fees been calculated at the rates set forth in SR-GEMX-2024-33. This waiver is reasonable, equitable, and not unfairly discriminatory because it will afford all customers in excess of the 30-day prior notice period for fee changes set forth in the Exchange's service terms.

### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed fees will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

### Intramarket Competition

The Exchange believes that the proposed fees do not put any market participants at a relative disadvantage compared to other market participants. As noted above, the fee schedule would continue to apply to all purchasers of

<sup>10</sup> See <https://www.usinflationcalculator.com/inflation/consumer-price-index-and-annual-percent-changesfrom-1913-to-2008/>.

<sup>11</sup> See *supra* discussion of connectivity product and facility improvements. Additionally, other exchanges have filed for increases in certain fees, based in part on comparisons to inflation. See, e.g., Securities Exchange Act Release Nos. 34-100004 (April 22, 2024), 89 FR 32465 (April 26, 2024) (SR-CboeBYX-2024-012); and 34-100398 (June 21, 2024), 89 FR 53676 (June 27, 2024) (SR-BOX-2024-16); Securities Exchange Act Release No. 34-100994 (September 10, 2024), 89 FR 75612 (September 16, 2024) (SR-NYSEARCA-2024-79).

<sup>12</sup> 15 U.S.C. 78f(b).

<sup>13</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>14</sup> See <https://www.officialdata.org/us/inflation/2017?amount=1>.

<sup>15</sup> See, e.g., Securities Exchange Act Release No. 34-101074 (September 18, 2024), 89 FR 77920 (September 24, 2024) (SR-GEMX-2024-34) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Expand [the Exchange's] Co-Location Services).



the Exchange's connectivity products and services in the same manner as it does today albeit at inflation-adjusted rates for certain fees, and customers may choose whether to purchase these products and services at all. The Exchange also believes that the level of the proposed fees neither favor nor penalize one or more categories of market participants in a manner that would impose an undue burden on competition. Likewise, the proposed fee waiver described above will apply to all purchasers of the Exchange's connectivity products and services in the same manner and therefore will not burden competition among them.

#### Intermarket Competition

The Exchange believes that the proposed fees do not impose a burden on competition or on other SROs that is not necessary or appropriate. In determining the proposed fees, the Exchange utilized an objective and stable metric with limited volatility. Utilizing Data PPI over a specified period of time is a reasonable means of recouping the Exchange's investment in maintaining and enhancing its connectivity products, services, and facilities. The Exchange believes utilizing Data PPI, a tailored measure of inflation, to increase certain fees for connectivity products and services to recoup the Exchange's investment in maintaining and enhancing such products, services, and its facilities would not impose a burden on competition.

#### 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 foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.<sup>16</sup> At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings

to determine whether the proposed rule should be approved or disapproved.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include file number SR-GEMX-2024-38 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-GEMX-2024-38. 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 (<https://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. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-GEMX-2024-38 and should be submitted on or before November 21, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

**J. Matthew DeLesDernier,**  
Deputy Secretary.

[FR Doc. 2024-25321 Filed 10-30-24; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-101432; File No. SR-NYSEARCA-2024-86]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the NYSE Arca Equities Fees and Charges Regarding the Gross FOCUS Fee Charged to ETP Holders

October 25, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on October 10, 2024, NYSE Arca, Inc. ("NYSE Arca" or the "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE Arca Equities Fees and Charges ("Fee Schedule") regarding the gross FOCUS fee charged to ETP Holders ("Gross FOCUS Fee"), effective October 10, 2024.<sup>3</sup> The proposed rule change is available on the Exchange's website at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission's Public Reference Room.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> The Exchange previously filed to amend the Fee Schedule on October 1, 2024 (SR-NYSEARCA-2024-83) and withdrew such filing on October 10, 2024.

<sup>16</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>17</sup> 17 CFR 200.30-3(a)(12).



the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend its Fee Schedule to (1) provide for a temporary waiver of the Gross FOCUS fee from October 1, 2024 through February 28, 2025 (the "Waiver Period"), and (2) delete a reference to a superseded fee.

The Exchange proposes to implement the fee changes effective October 10, 2024.

Background

Generally, the Exchange may only use regulatory fees "to fund the legal, regulatory and surveillance operations" of the Exchange.<sup>4</sup> Consistent with the foregoing, the Exchange currently charges each ETP Holder a monthly regulatory fee of \$0.069 per \$1,000 of gross revenue reported on its FOCUS Report ("Gross FOCUS Fee").<sup>5</sup>

The revenue collected pursuant to the Gross FOCUS Fee funds the performance of the Exchange's regulatory activities with respect to ETP Holders, including surveillance operations expenses. More specifically, the revenue generated by the Gross FOCUS Fee funds a material portion, but not all, of the Exchange's expenses related to its regulatory program, including legal expenses associated with regulation, the costs related to in-house staff, third-party service providers, and technology that facilitates regulatory functions such as surveillance, investigation, examinations, and enforcement. Gross FOCUS Fee funds may also be used for indirect expenses such as human resources and other administrative costs (collectively, "Regulatory Costs").

The Exchange monitors the amount of revenue collected from the Gross FOCUS Fee to ensure that these funds, in combination with its other regulatory fees and fines, do not exceed Regulatory Costs. The Exchange monitors Regulatory Costs and revenues on an annual basis, at a minimum. If the

Exchange determines that regulatory revenues exceed or are projected to exceed Regulatory Costs, the Exchange will adjust the Gross FOCUS Fee downward or seek a partial waiver of the fee by submitting a filing to the Commission. As described below, the Exchange has determined that continued collection of Gross FOCUS Fees at the current rate for the proposed Waiver Period would exceed a material portion of the Exchange's anticipated Regulatory Costs (as noted above), justifying the proposed waiver of the Gross FOCUS Fee for ETP Holders through the end of February 2025.

Proposed Rule Change

Based on the Exchange's recent review of current and anticipated Regulatory Costs and Gross FOCUS Fee revenue, the Exchange proposes to waive the Gross FOCUS Fee from October 1, 2024 through February 28, 2025 in order to help ensure that the amounts collected from the Gross FOCUS Fee, in combination with other regulatory fees and fines, do not exceed the Exchange's total projected Regulatory Costs. The Exchange proposes to reduce the Gross FOCUS Fee because it believes that if the fee is not adjusted, Gross FOCUS Fee revenue to the Exchange year-over-year could exceed a material portion of the Exchange's Regulatory Costs. The Exchange's position is based on its periodic analysis of actual and anticipated costs to fund its regulatory program and revenue to offset those costs, including the Gross FOCUS Fee, and takes into consideration both that the last Gross FOCUS Fee adjustment was more than three years ago, and the projected regulatory spending landscape going forward. Moreover, the Exchange believes that a five-month waiver rather than adjusting the fee would most efficiently accomplish the goal of reasonably ensuring that Gross FOCUS Fee collection does not exceed anticipated Regulatory Costs, and allow for further consideration of the appropriate Gross FOCUS Fee rate going forward.

The Exchange would announce the proposed waiver of the Gross FOCUS Fee by Trader Update.

Finally, as noted above, the Exchange adopted the current Gross FOCUS Fee of \$0.069 per \$1,000 Gross FOCUS Revenue in October 2020, effective January 1, 2021. Given that the new rate was not proposed to be implemented until January 1, 2021, both rates were reflected in the Fee Schedule. The Exchange proposes to delete as obsolete the old rate, replace it with the current

rate, and delete the language that reads "\$0.069 as of as of January 1, 2021."

The proposed change is not otherwise intended to address other issues, and the Exchange is not aware of any significant problems that market participants would have in complying with the proposed changes.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b)<sup>6</sup> of the Act, in general, and Section 6(b)(4) and (5)<sup>7</sup> of the Act, in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers, or dealers.

The Proposal Is Reasonable

The Exchange believes the proposed fee change is reasonable because it would help ensure that revenue collected from the Gross FOCUS Fee does not exceed a material portion of the Exchange's projected Regulatory Costs. The Exchange has targeted the Gross FOCUS Fee to generate revenues that would be less than or equal to the Exchange's regulatory costs, which is consistent with both Rule 129 and the Commission's view that regulatory fees be used for regulatory purposes. As noted above, the principle that the Exchange may only use regulatory fees "to fund the legal, regulatory, and surveillance operations" of the Exchange is reflected in the Exchange's operating agreement.<sup>8</sup> In this regard, the Gross FOCUS Fee has been calculated to recover a material portion, but not all, of the Exchange's Regulatory Costs. As also noted above, based on the Exchange's recent review of current and projected regulatory costs and Gross FOCUS Fee collections, a five-month waiver of the Gross FOCUS Fee, which was last adjusted more than three years ago, would be the most efficient way to lessen the potential for generating excess funds that may otherwise occur using the current rate and allow for further consideration of the appropriate Gross FOCUS Fee rate going forward. The Exchange thus believes that the proposed waiver would be a fair and reasonable method for ensuring that the amounts collected from the Gross FOCUS Fee, in combination with other regulatory fees and fines, do not potentially exceed Regulatory Costs. The Exchange further believes that

<sup>4</sup> See NYSE Arca, Inc. Bylaws, Art. II, Sec. 2.03 (Dividends; Regulatory Fees and Penalties).

<sup>5</sup> FOCUS is an acronym for Financial and Operational Combined Uniform Single Report. FOCUS Reports are filed periodically with the Securities and Exchange Commission (the "Commission" or "SEC") as SEC Form X-17A-5 pursuant to Rule 17a-5 under the Act.

<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>8</sup> See note 4, *supra*.

resuming the current rate as of March 1, 2025 would be reasonable because it would permit the Exchange to resume assessing the Gross FOCUS Fee in a way that is designed to recover a material portion, but not all, of the Exchange's projected Regulatory Costs. The Exchange would continue monitoring Regulatory Costs in advance of the fee resumption next year and, if the Exchange determines that the rate should be further modified to help ensure that Gross FOCUS Fee collections would not exceed a material portion of Regulatory Costs, would make an appropriate rule filing with the Commission.

The Exchange further believes that the proposed deletion of references to a superseded Gross FOCUS Fee would increase the clarity and transparency of the Exchange's rules and remove impediments to and perfect the mechanism of a free and open market by ensuring that persons subject to the Exchange's jurisdiction, regulators, and the investing public could more easily navigate and understand the Exchange rules. The Exchange further believes that the proposed change would not be inconsistent with the public interest and the protection of investors because investors will not be harmed and in fact would benefit from increased clarity, thereby reducing potential confusion.

#### The Proposal Is an Equitable Allocation of Fees

The Exchange believes its proposal is an equitable allocation of fees among its market participants. The Exchange further believes that the proposed Gross FOCUS Fee waiver would benefit all ETP Holders because all ETP Holders would be eligible for the waiver, and would benefit from the waiver, on full and equal terms. For the same reasons, the proposed waiver neither targets nor will it have a disparate impact on any particular category of market participant. All ETP Holders would qualify for the waiver of the Gross FOCUS Fee on an equal and non-discriminatory basis. The Exchange also believes that recommencing the Gross FOCUS Fee effective March 1, 2025, at the current rate, unless the Exchange determines it would be necessary to further adjust the fee, is equitable because the Gross FOCUS Fee would resume applying to all ETP Holders on an equal basis.

The Exchange further believes the proposed change supports an equitable allocation of fees and credits among its market participants because it would eliminate obsolete text from the Fee Schedule describing pricing that is no longer applicable to any market

participants. Accordingly, the Exchange believes the proposal would impact all similarly situated ETP Holders on an equal basis. The Exchange also believes that the proposed change would promote investor protection and the public interest because the deletion of superseded fees from the Fee Schedule would enhance the clarity of the Fee Schedule and reduce confusion regarding fees and credits currently applicable to market participants who transact on the Exchange.

#### The Proposed Fee Is Not Unfairly Discriminatory

The Exchange believes that the proposal is not unfairly discriminatory. The proposed waiver of the Gross FOCUS Fee would benefit all similarly-situated market participants on an equal and non-discriminatory basis. Moreover, the proposal neither targets nor will it have a disparate impact on any particular category of market participant. The proposed fee change is designed to pause collection of a fee that applies to ETP Holders on an equal and non-discriminatory basis, waiver of which would apply to and benefit all ETP Holders equally. The Exchange also believes that recommencing the Gross FOCUS Fee on March 1, 2025 at the current rate, unless the Exchange determines it would be necessary to further adjust the rate to ensure that collections do not exceed a material portion of its Regulatory Costs, is not unfairly discriminatory because the resumed fee would apply equally to all ETP Holders.

In addition, the proposed elimination of obsolete pricing would affect all market participants on an equal and non-discriminatory basis, as the fee with which such pricing is associated is no longer available to any market participants. The Exchange also believes that the proposed change would protect investors and the public interest because the deletion of superseded pricing programs would facilitate market participants' understanding of the pricing currently applicable on the Exchange.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

#### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change will impose any burden on competition that is not

necessary or appropriate in furtherance of the purposes of the Act.

*Intramarket Competition.* The Exchange believes the proposed fee change would not impose an undue burden on competition as the fee waiver would apply to all ETP Holders on an equal and non-discriminatory basis. The Exchange believes that the proposed waiver would also not place certain market participants at an unfair disadvantage because all ETP Holders would be eligible for the same waiver. For the same reasons, the proposed fee waiver neither targets nor will it have a disparate impact on any particular category of market participant. All similarly-situated ETP Holders would be eligible for the proposed waiver. The Exchange also believes recommencing the Gross FOCUS Fee on March 1, 2025 at the same current rate (unless the Exchange determines it necessary at that time to adjust the fee to ensure that collections do not exceed a material portion of its Regulatory Costs) would not impose an undue burden on competition because the proposed rate would apply equally to all ETP Holders subject to the Gross FOCUS Fee and would permit the Exchange to resume assessing a fee that is designed to recover a material portion, but not all, of the Exchange's projected Regulatory Costs.

*Intermarket Competition.* The proposed fee change is not designed to address any competitive issues. Rather, the proposed change is designed to help the Exchange adequately fund its regulatory activities while seeking to ensure that total collections from regulatory fees do not exceed total Regulatory Costs.

Finally, that portion of the proposal that relates to elimination of a reference to a superseded fee would not have any impact on intra- or inter-market competition because the proposed change is solely designed to enhance the clarity and transparency of the Fee Schedule and alleviate possible customer confusion that may arise from inclusion of a reference to a superseded fee.

#### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to Section 19(b)(3)(A)(ii) of the Act,<sup>9</sup> and Rule 19b-4(f)(2) thereunder<sup>10</sup> the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing. 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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include file number SR-NYSEARCA-2024-86 on the subject line.

#### Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090. All submissions should refer to file number SR-NYSEARCA-2024-86. 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 (<https://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. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-NYSEARCA-2024-86, and should be submitted on or before November 21, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

**J. Matthew DeLesDernier,**  
*Deputy Secretary.*

[FR Doc. 2024-25318 Filed 10-30-24; 8:45 am]

**BILLING CODE 8011-01-P**

### SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #20718 and #20719; TENNESSEE Disaster Number TN-20017]**

#### Presidential Declaration Amendment of a Major Disaster for the State of Tennessee

**AGENCY:** Small Business Administration.  
**ACTION:** Amendment 1.

**SUMMARY:** This is an amendment of the Presidential declaration of a major disaster for the State of Tennessee (FEMA-4832-DR), dated October 10, 2024.

*Incident:* Tropical Storm Helene.

**DATES:** Issued on October 24, 2024.

*Incident Period:* September 26, 2024 through September 30, 2024.

*Physical Loan Application Deadline Date:* December 2, 2024.

*Economic Injury (EIDL) Loan Application Deadline Date:* July 2, 2025.

**ADDRESSES:** Visit the MySBA Loan Portal at <https://lending.sba.gov> to apply for a disaster assistance loan.

**FOR FURTHER INFORMATION CONTACT:** Alan Escobar, Office of Disaster Recovery & Resilience, 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 Tennessee,

dated October 2, 2024, is hereby amended to update the incident period for this disaster as beginning September 26, 2024 and continuing through September 30, 2024.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

**Rafaela Monchek,**  
*Deputy Associate Administrator, Office of Disaster Recovery & Resilience.*

[FR Doc. 2024-25347 Filed 10-30-24; 8:45 am]

**BILLING CODE 8026-09-P**

### SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #20778 and #20779; FLORIDA Disaster Number FL-20016]**

#### Presidential Declaration Amendment of a Major Disaster for Public Assistance Only for the State of Florida

**AGENCY:** 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 FLORIDA (FEMA-4834-DR), dated October 16, 2024.

*Incident:* Hurricane Milton.

**DATES:** Issued on October 23, 2024.

*Incident Period:* October 5, 2024, and continuing.

*Physical Loan Application Deadline Date:* December 16, 2024.

*Economic Injury (EIDL) Loan Application Deadline Date:* July 16, 2025.

**ADDRESSES:** Visit the MySBA Loan Portal at <https://lending.sba.gov> to apply for a disaster assistance loan.

**FOR FURTHER INFORMATION CONTACT:** Alan Escobar, Office of Disaster Recovery & Resilience, 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 Florida, dated October 16, 2024, is hereby amended to include the following areas as adversely affected by the disaster.

*Primary Counties:*

Duval, Nassau, St. Johns.

All other information in the original declaration remains unchanged.

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>10</sup> 17 CFR 240.19b-4.

<sup>11</sup> 17 CFR 200.30-3(a)(12).

(Catalog of Federal Domestic Assistance Number 59008)

**Rafaela Monchek,**

*Deputy Associate Administrator, Office of Disaster Recovery & Resilience.*

[FR Doc. 2024–25346 Filed 10–30–24; 8:45 am]

**BILLING CODE 8026–09–P**

## **SMALL BUSINESS ADMINISTRATION**

**[Disaster Declaration #20751 and #20752; TENNESSEE Disaster Number TN–20019]**

### **Presidential Declaration Amendment of a Major Disaster for Public Assistance Only for the State of Tennessee**

**AGENCY:** 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 Tennessee (FEMA–4832–DR), dated October 9, 2024.

*Incident:* Tropical Storm Helene.

**DATES:** Issued on October 24, 2024.

*Incident Period:* September 26, 2024 through September 30, 2024.

*Physical Loan Application Deadline Date:* December 9, 2024.

*Economic Injury (EIDL) Loan Application Deadline Date:* July 9, 2025.

**ADDRESSES:** Visit the MySBA Loan Portal at <https://lending.sba.gov> to apply for a disaster assistance loan.

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

Alan Escobar, Office of Disaster Recovery & Resilience, 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 Tennessee, dated October 9, 2024 is hereby amended to update the incident period for this disaster as beginning September 26, 2024 through September 30, 2024.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

**Rafaela Monchek,**

*Deputy Associate Administrator, Office of Disaster Recovery & Resilience.*

[FR Doc. 2024–25352 Filed 10–30–24; 8:45 am]

**BILLING CODE 8026–09–P**

## **SMALL BUSINESS ADMINISTRATION**

**[License No. 01/01–0426]**

### **Long River Ventures III, L.P.; Surrender of License of Small Business Investment Company**

Pursuant to the authority granted to the United States Small Business Administration under the Small Business Investment Act of 1958, as amended, under section 309 of the Act and section 107.1900 of the Small Business Administration Rules and Regulations (13 CFR 107.1900) to function as a small business investment company under the Small Business Investment Company License No. 01/01–0426 issued to Long River Ventures III, L.P., said license is hereby declared null and void.

**Thomas Morris,**

*Director, Patient Capital Investments, Office of Investment and Innovation, United States Small Business Administration.*

[FR Doc. 2024–25344 Filed 10–30–24; 8:45 am]

**BILLING CODE P**

## **SMALL BUSINESS ADMINISTRATION**

**[Disaster Declaration #20815 and #20816; NEW YORK Disaster Number NY–20020]**

### **Presidential Declaration of a Major Disaster for Public Assistance Only for the State of New York**

**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 New York (FEMA–4839–DR), dated October 21, 2024.

*Incident:* Severe Storm and Flooding.  
*Incident Period:* August 18, 2024 through August 19, 2024.

**DATES:** Issued on October 21, 2024.

*Physical Loan Application Deadline Date:* December 20, 2024.

*Economic Injury (EIDL) Loan Application Deadline Date:* July 21, 2025.

**ADDRESSES:** Visit the MySBA Loan Portal at <https://lending.sba.gov> to apply for a disaster assistance loan.

**FOR FURTHER INFORMATION CONTACT:** Vanessa Morgan, Office of Disaster Recovery & Resilience, 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

October 21, 2024, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications online using the MySBA Loan Portal <https://lending.sba.gov> or other locally announced locations. Please contact the SBA disaster assistance customer service center by email at [disastercustomerservice@sba.gov](mailto:disastercustomerservice@sba.gov) or by phone at 1–800–659–2955 for further assistance.

The following areas have been determined to be adversely affected by the disaster:

*Primary Counties:*

Lewis, Oswego, Suffolk.

The Interest Rates are:

	Percent
<i>For Physical Damage:</i>	
Non-Profit Organizations with Credit Available Elsewhere ...	3.250
Non-Profit Organizations without Credit Available Elsewhere .....	3.250
<i>For Economic Injury:</i>	
Non-Profit Organizations without Credit Available Elsewhere .....	3.250

The number assigned to this disaster for physical damage is 208156 and for economic injury is 208160.

(Catalog of Federal Domestic Assistance Number 59008)

**Rafaela Monchek,**

*Deputy Associate Administrator, Office of Disaster Recovery & Resilience.*

[FR Doc. 2024–25381 Filed 10–30–24; 8:45 am]

**BILLING CODE 8026–09–P**

## **SMALL BUSINESS ADMINISTRATION**

**[Disaster Declaration #20670 and #20671; NEBRASKA Disaster Number NE–20005]**

### **Presidential Declaration Amendment of a Major Disaster for Public Assistance Only for the State of Nebraska**

**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 Nebraska (FEMA–4822–DR), dated September 24, 2024.

*Incident:* Severe Storms, Straight-line Winds, Tornadoes, and Flooding.

**DATES:** Issued on October 23, 2024.

*Incident Period:* June 19, 2024 through July 8, 2024.

*Physical Loan Application Deadline Date:* November 25, 2024.

*Economic Injury (EIDL) Loan Application Deadline Date:* June 24, 2025.

**ADDRESSES:** Visit the MySBA Loan Portal at <https://lending.sba.gov> to apply for a disaster assistance loan.

**FOR FURTHER INFORMATION CONTACT:** Vanessa Morgan, Office of Disaster Recovery & Resilience, 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 Nebraska, dated September 24, 2024, is hereby amended to update the incident period as beginning June 19, 2024 and continuing through July 8, 2024. The notice is also amended to include the following areas as adversely affected by the disaster.

*Primary Counties:* Richardson.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

**Rafaela Monchek,**

*Deputy Associate Administrator, Office of Disaster Recovery & Resilience.*

[FR Doc. 2024-25378 Filed 10-30-24; 8:45 am]

**BILLING CODE 8026-09-P**

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration # 20703 and # 20704; SOUTH CAROLINA Disaster Number SC-20012]**

### Presidential Declaration Amendment of a Major Disaster for the State of South Carolina

**AGENCY:** Small Business Administration.

**ACTION:** Amendment 8.

**SUMMARY:** This is an amendment of the Presidential declaration of a major disaster for the State of South Carolina (FEMA-4829-DR), dated September 29, 2024.

*Incident:* Hurricane Helene.

**DATES:** Issued on October 23, 2024.

*Incident Period:* September 25, 2024 through October 7, 2024.

*Physical Loan Application Deadline Date:* November 29, 2024.

*Economic Injury (EIDL) Loan Application Deadline Date:* June 30, 2025.

**ADDRESSES:** Visit the MySBA Loan Portal at <https://lending.sba.gov> to apply for a disaster assistance loan.

**FOR FURTHER INFORMATION CONTACT:** Vanessa Morgan, Office of Disaster

Recovery & Resilience, 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 South Carolina, dated September 29, 2024, is hereby amended to update the incident period for this disaster as beginning September 25, 2024 and continuing through October 7, 2024.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

**Rafaela Monchek,**

*Deputy Associate Administrator, Office of Disaster Recovery & Resilience.*

[FR Doc. 2024-25354 Filed 10-30-24; 8:45 am]

**BILLING CODE 8026-09-P**

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #20734 and #20735; SOUTH CAROLINA Disaster Number SC-20013]**

### Presidential Declaration Amendment of a Major Disaster for Public Assistance Only for the State of South Carolina

**AGENCY:** Small Business Administration.

**ACTION:** Amendment 3.

**SUMMARY:** This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of South Carolina (FEMA-4829-DR), dated October 6, 2024.

*Incident:* Hurricane Helene.

**DATES:** Issued on October 23, 2024.

*Incident Period:* September 25, 2024 through October 7, 2024.

*Physical Loan Application Deadline Date:* December 5, 2024.

*Economic Injury (EIDL) Loan Application Deadline Date:* July 7, 2025.

**ADDRESSES:** Visit the MySBA Loan Portal at <https://lending.sba.gov> to apply for a disaster assistance loan.

**FOR FURTHER INFORMATION CONTACT:** Vanessa Morgan, Office of Disaster Recovery & Resilience, 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 South Carolina, dated October 6, 2024, is hereby amended to update the incident period for this disaster as beginning September 25, 2024 and continuing through October 7, 2024.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

**Rafaela Monchek,**

*Deputy Associate Administrator, Office of Disaster Recovery & Resilience.*

[FR Doc. 2024-25353 Filed 10-30-24; 8:45 am]

**BILLING CODE 8026-09-P**

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #20734 and #20735; SOUTH CAROLINA Disaster Number SC-20013]**

### Presidential Declaration Amendment of a Major Disaster for Public Assistance Only for the State of South Carolina

**AGENCY:** 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 South Carolina (FEMA-4829-DR), dated October 6, 2024.

*Incident:* Hurricane Helene.

**DATES:** Issued on October 24, 2024.

*Incident Period:* September 25, 2024, and continuing.

*Physical Loan Application Deadline Date:* December 5, 2024.

*Economic Injury (EIDL) Loan Application Deadline Date:* July 7, 2025.

**ADDRESSES:** Visit the MySBA Loan Portal at <https://lending.sba.gov> to apply for a disaster assistance loan.

**FOR FURTHER INFORMATION CONTACT:**

Alan Escobar, Office of Disaster Recovery & Resilience, 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 South Carolina, dated October 6, 2024, is hereby amended to include the following areas as adversely affected by the disaster.

*Primary Counties:*

Kershaw, Lancaster.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

**Rafaela Monchek,**

*Deputy Associate Administrator, Office of Disaster Recovery & Resilience.*

[FR Doc. 2024-25348 Filed 10-30-24; 8:45 am]

**BILLING CODE 8026-09-P**

**SMALL BUSINESS ADMINISTRATION**

[Disaster Declaration #20674 and #20675;  
NEW YORK Disaster Number NY-20018]

**Presidential Declaration Amendment of  
a Major Disaster for Public Assistance  
Only for the State of New York**

**AGENCY:** 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 New York (FEMA-4825-DR), dated September 24, 2024.

*Incident:* Remnants of Tropical Storm Debby.

**DATES:** Issued on October 23, 2024.

*Incident Period:* August 8, 2024 through August 10, 2024.

*Physical Loan Application Deadline Date:* November 25, 2024.

*Economic Injury (EIDL) Loan Application Deadline Date:* June 24, 2025.

**ADDRESSES:** Visit the MySBA Loan Portal at <https://lending.sba.gov> to apply for a disaster assistance loan.

**FOR FURTHER INFORMATION CONTACT:**

Alan Escobar, Office of Disaster Recovery & Resilience, 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 New York, dated September 24, 2024, is hereby amended to include the following area as adversely affected by the disaster.

*Primary County:*

Chenango.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

**Rafaela Monchek,**

*Deputy Associate Administrator, Office of Disaster Recovery & Resilience.*

[FR Doc. 2024-25343 Filed 10-30-24; 8:45 am]

**BILLING CODE 8026-09-P**

**DEPARTMENT OF STATE**

[Public Notice 12575]

**30-Day Notice of Proposed Information  
Collection: Qualtrics Survey Platform**

**ACTION:** Notice of request for public comment and submission to OMB of proposed collection of information.

**SUMMARY:** The Department of State has submitted the information collection

described below to the Office of Management and Budget (OMB) for approval. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this notice is to allow 30 days for public comment preceding submission of the collection to OMB.

**DATES:** Submit comments up to December 2, 2024.

**ADDRESSES:** Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain). Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

**FOR FURTHER INFORMATION CONTACT:**

Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, may be sent to Natalie Donahue, Chief of the MELI Unit, Bureau of Educational and Cultural Affairs (ECA), 2200 C Street NW, Washington, DC 20037 who may be reached at 771-204-5218 or [ecaevaluation@state.gov](mailto:ecaevaluation@state.gov).

**SUPPLEMENTARY INFORMATION:**

- *Title of Information Collection:* Qualtrics Survey Platform.
- *OMB Control Number:* None.
- *Type of Request:* New Collection.
- *Originating Office:* Bureau of Educational and Cultural Affairs (ECA/ P/MELI).
- *Form Number:* DS-7101.
- *Respondents:* Implementing partners of ECA grants and cooperative agreements.
- *Estimated Number of Respondents:* 100.
- *Estimated Number of Responses:* 250 per year (most respondents will have 1–2 cohorts per calendar year; though there are some that will survey more frequently).
- *Average Time per Response:* 3.5 hours.
- *Total Estimated Burden Time:* 875 hours.
- *Frequency:* Estimated 1–2 times per year.
- *Obligation to Respond:* Mandatory. We are soliciting public comments to permit the Department to:
  - Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
  - Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the

validity of the methodology and assumptions used.

- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

**Abstract of Proposed Collection**

The U.S. State Department is required to collect periodic program performance reports. As a part of these reporting requirements, ECA requires implementing partners to provide performance monitoring data in the form of a post-program survey. The Qualtrics survey platform will be utilized by ECA and implementing partners to standardize post-program survey data collection, aggregation, and reporting both internally and externally. The Qualtrics platform will consolidate data from all ECA programs onto a single survey platform, streamlining the survey creation process, ensuring the reliability of data, and automatically aggregating and visualizing program performance data.

**Methodology**

ECA will be responsible for providing the username and login information for each implementing partner who will use the Qualtrics platform for the post-program surveys required to meet the performance monitoring reporting requirements outlined in the award. ECA will also be responsible for providing the suite of survey questions within Qualtrics to ease the burden of setup for the implementing partners. The implementing partners will be responsible for selecting the required survey questions, inserting any custom survey questions they would like to ask, creating the mailing list of respondents, and launching the survey.

**Sheila Casey,**

*Managing Director, Policy, Bureau of Educational and Cultural Affairs, Department of State.*

[FR Doc. 2024-25338 Filed 10-30-24; 8:45 am]

**BILLING CODE 4710-05-P**

**DEPARTMENT OF STATE****[Public Notice: 12572]****Diversity Visa Instructions for DV–2026; Correction****ACTION:** Notice of Diversity Visa Program for Fiscal Year 2026; Correction.

**SUMMARY:** This document contains a correction to Public Notice 12558 published in the **Federal Register** on October 1, 2024. The public notice contained an error on the start and end dates for the DV–2026 entry period.

**DATES:** The notice was effective on October 1, 2024.

**SUPPLEMENTARY INFORMATION:****Correction**

1. In the public notice published on October 1, 2024, 89 FR 79997, page 79998 of the Entry Period paragraph of **SUPPLEMENTARY INFORMATION** section lists October 4, 2023, as the start date and November 7, 2023, as the end date of the DV–2026 entry period. These dates are incorrect. The entry period for the DV–2026 Program begins on October 2, 2024, and ends on November 7, 2024. This section is corrected to read as follows:

**Entry Period**

Applicants must submit entries for the DV–2026 program electronically at [dvprogram.state.gov](https://dvprogram.state.gov) between 12:00 p.m. (noon), Eastern Daylight Time (EDT) (GMT–4), Wednesday, October 2, 2024, and 12:00 p.m. (noon), Eastern Standard Time (EST) (GMT–5), Thursday, November 7, 2024. Do not wait until the last week of the registration period to enter as heavy demand may result in website delays. No late entries or paper entries will be accepted. The law allows only one entry per person during each entry period. The Department of State uses sophisticated technology to detect multiple entries. Submission of more than one entry for a person will disqualify all entries for that person.

2. The entry period dates listed on page 80001 in question 9 of the Frequently Asked Questions portion of the **SUPPLEMENTARY INFORMATION** section incorrectly reflect the start and end dates of the DV–2026 entry period as Wednesday, October 4, 2023, and Tuesday, November 7, 2023. The correct dates are Wednesday, October 2, 2024, and Thursday, November 7, 2024. Question Nine is corrected to read as follows:

9. When can I submit my entry?

The DV–2026 entry period will run from 12:00 p.m. (noon), Eastern Daylight Time (EDT) (GMT–4), Wednesday, October 2, 2024, until 12:00 p.m. (noon), Eastern Standard Time (EST) (GMT–5), Thursday, November 7,

2024. Each year, millions of people submit entries. Restricting the entry period to these dates ensures selectees receive notification in a timely manner and gives both the visa applicants and our embassies and consulates time to prepare and complete cases for visa issuance.

We strongly encourage you to enter early during the registration period. Excessive demand at end of the registration period may slow the processing system. We cannot accept entries after noon EST on Thursday, November 7, 2024.

3. The entry period dates listed on page 80002 in question 19 of the Frequently Asked Questions portion of the **SUPPLEMENTARY INFORMATION** section incorrectly reflect the end date of the DV–2026 entry period as November 7, 2023. The correct date is November 7, 2024. Question Nineteen is corrected to read as follows:

19. If the E–DV system rejects my entry, can I resubmit my entry?

Yes, you can resubmit your entry as long as your submission is completed by 12:00 p.m. (noon) Eastern Standard Time (EST) (GMT–5) on Thursday, November 7, 2024. You will not be penalized for submitting a duplicate entry if the E–DV system rejects your initial entry. Given the unpredictable nature of the internet, you may not receive the rejection notice immediately. You can try to submit an application as many times as is necessary until a complete application is received and the confirmation notice sent. Once you receive a confirmation notice, your entry is complete, and you should NOT submit any additional entries.

**Julie M. Stuftt,**

*Deputy Assistant Secretary, Bureau of Consular Affairs, Department of State.*

[FR Doc. 2024–25240 Filed 10–30–24; 8:45 am]

**BILLING CODE 4710–06–P**

**TENNESSEE VALLEY AUTHORITY****Meeting of the Regional Resource Stewardship Council**

**AGENCY:** Tennessee Valley Authority (TVA).

**ACTION:** Notice of Federal advisory committee act meeting.

**SUMMARY:** The TVA Regional Resource Stewardship Council (RRSC) will hold a meeting on November 18 and 19, 2024, regarding TVA’s natural resources and stewardship matters in the Tennessee Valley.

**DATES:** The meeting will be held in Young Harris, Georgia at Brasstown Valley, Monday, November 18, 2023, from 12:00 p.m. to 5:15 p.m. E.T. and Tuesday, November 19, 2023, from 8:30 p.m. to 12:30 p.m. E.T. RRSC council members are invited to attend the

meeting in person. The public is invited to view the meeting virtually or to attend in-person. A one hour virtual or in-person public listening session will be held November 18, at 4:15 p.m. E.T. A link and instructions to view the meeting will be posted on TVA’s RRSC website at [www.tva.gov/rrsc](http://www.tva.gov/rrsc) at least one week prior to the scheduled meeting.

**ADDRESSES:** The public is invited to view the meeting virtually or attend in person. The in-person meeting will be held at the Brasstown Valley at 6321 Hwy. 76, Young Harris, GA 30582. Members of the public are also invited to speak either virtually or in person during a public listening session.

**FOR FURTHER INFORMATION CONTACT:** Bekim Haliti, [bhaliti@tva.gov](mailto:bhaliti@tva.gov), 931–349–1894.

**SUPPLEMENTARY INFORMATION:** The RRSC is a discretionary advisory committee established under the authority of the Tennessee Valley Authority (TVA) in accordance with the provisions of the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C., App. 2.

The meeting agenda includes the following:

**Day 1—November 18**

1. Welcome and Introductions
2. RRSC and TVA Meeting Update
3. TVA and ORNL Climate Change Study
4. Integrated Resource Plan (IRP) Update
5. Public Listening Session

**Day 2—November 19**

6. Welcome and Review of Day 1
7. Update on TVA’s River Management, Natural Resources, and Cultural Resources
8. Finalize Advice Statement

The RRSC will hear views of the public by providing a 1-hour public comment session starting November 18 at 4:15 p.m. E.T. Persons who wish to speak virtually must preregister by 5:00 p.m. E.T. Thursday, November 14, 2024, by emailing [bhaliti@tva.gov](mailto:bhaliti@tva.gov). Persons wishing to speak in person are requested to register either at the door between 12:00 p.m. and 3:00 p.m. ET on Monday, November 18, 2024, or in advance by emailing [bhaliti@tva.gov](mailto:bhaliti@tva.gov). Persons registered will be called on during the public listening session to share their views for up to five minutes, depending on number of registrants. Written comments are also invited and may be emailed to [bhaliti@tva.gov](mailto:bhaliti@tva.gov). Anyone needing special accommodations should let the contact below know at least one week in advance.



Dated: October 28, 2024.

**Melanie Farrell,**

*Vice President, Valley Engagement & Strategy,  
Tennessee Valley Authority.*

[FR Doc. 2024–25357 Filed 10–30–24; 8:45 am]

BILLING CODE 8120–08–P

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

#### Buy America Waiver Notification

**AGENCY:** Federal Highway Administration (FHWA), U.S. Department of Transportation (DOT).

**ACTION:** Notice.

**SUMMARY:** This notice supersedes a previously published notice on this topic. This notice provides information regarding FHWA's finding that it is appropriate to grant a non-availability Buy America waiver to the Utah Department of Transportation (UDOT) for procurement and installation of 16 suspended explosive charge remote avalanche control systems (RACS), which contain non-domestic iron and steel components, along Mount Superior overlooking SR–210 in Little Cottonwood Canyon, Utah. The waiver relates specifically to iron and steel components that are part of the tower, deployment box, and charges of the RACS.

**DATES:** The effective date of the waiver is October 23, 2024.

**FOR FURTHER INFORMATION CONTACT:** For questions about this notice, please contact Mr. Brian Hogge, FHWA Office of Infrastructure, (202) 366–1562, or via email at [Brian.Hogge@dot.gov](mailto:Brian.Hogge@dot.gov). For legal questions, please contact Mr. David Serody, FHWA Office of the Chief Counsel, (202) 366–1345, or via email at [David.Serody@dot.gov](mailto:David.Serody@dot.gov). Office hours for FHWA are from 8:00 a.m. to 4:30 p.m., E.T., Monday through Friday, except Federal holidays.

#### SUPPLEMENTARY INFORMATION:

##### Electronic Access

An electronic copy of this document may be downloaded from the **Federal Register's** home page at: [www.FederalRegister.gov](http://www.FederalRegister.gov) and the U.S. Government Publishing Office's database at: [www.GovInfo.gov](http://www.GovInfo.gov).

##### Background

The FHWA's Buy America requirements for steel and iron are set forth at 23 U.S.C. 313 and 23 CFR 635.410 and require that all steel and iron that are permanently incorporated into a Federal-aid project must be produced in the United States unless a

waiver is granted, including predominantly steel and iron components of a manufactured product.<sup>1</sup> Under these requirements, all manufacturing processes, including the application of a coating, must occur in the United States.<sup>2</sup>

Under 23 U.S.C. 313(b)(2) and 23 CFR 635.410(c)(1)(ii), FHWA may waive the application of its Buy America requirement for steel and iron when products are not produced in the United States in sufficient and reasonably available quantities of a satisfactory quality. This notice provides information regarding FHWA's finding that it is appropriate to grant UDOT a non-availability Buy America waiver for procurement of 16 suspended explosive charge RACS, which include non-domestic iron and steel components, for installation along Mount Superior overlooking SR–210 in Little Cottonwood Canyon, Utah. For each of the 16 RACS, this waiver will cover only: (i) the tower; (ii) the deployment box; and (iii) the charges (collectively “waiver items”). This waiver does not apply to the reinforced foundation of the RACS, which consists of anchor kits and a base plate; such foundation must be domestically sourced and compliant with FHWA's Buy America requirements. This notice supersedes the notice previously published on October 22, 2024, at 89 FR 84435.

**Background on the Project:** In 2020, the U.S. Army asked all members of the Avalanche Artillery Users of North America Committee to submit an exit plan for their use of military artillery. Currently, UDOT leases a P-Ridge howitzer from the U.S. Army to fire live artillery ammunition for avalanche control in Little Cottonwood Canyon.

<sup>1</sup> Under 23 U.S.C. 313, FHWA has a Buy America requirement for manufactured products; however, FHWA has a standing waiver under 23 U.S.C. 313(b), known as the Manufactured Products General Waiver, which covers manufactured products that are not predominantly steel and iron. See 48 FR 53099 (Nov. 25, 1983).

<sup>2</sup> While the Build America, Buy America Act (BABA), included in the Infrastructure Investment and Jobs Act (also known as the “Bipartisan Infrastructure Law” (BIL)) (Pub. L. 117–58), sets out Buy America preferences for steel, iron, manufactured products, and construction materials, these preferences only apply to the extent that a domestic content procurement preference, as described in section 70914 of BABA, does not already apply to iron, steel, manufactured products, and construction materials. BIL section 70917(a)–(b). As FHWA has existing domestic content preferences for steel, iron, and manufactured products at 23 U.S.C. 313, the requirements under 23 U.S.C. 313 apply to steel, iron, and manufactured products instead of the requirements under BABA. As FHWA's existing Buy America requirement does not specifically cover construction materials, the Buy America preference under section 70914 of BABA applies for construction materials.

This is the only location in North America where live artillery is fired over inhabited buildings. The UDOT has committed to ending the use of the howitzer by 2025 and replacing it with RACS, which use remotely detonated explosives to mitigate avalanches and save lives. This project is to install 16 RACS using suspended explosive charges along SR–210 in Little Cottonwood Canyon to minimize safety concerns from the overhead fire of live artillery over inhabited structures.

**Background on Waiver Request:** The UDOT is part of the Transportation Avalanche Research Pool, which has identified three main types of RACS used in the United States: gas-delivered explosives, propelled explosive charges, and suspended explosive charges. The UDOT believes that the most appropriate products for this project based on the unique terrain in the deployment area are RACS that utilize suspended explosive charges. Prior to submitting a waiver request, UDOT identified only one domestic supplier of any type of RACS; however, that company uses gas-delivered explosives, and such a system is not viable for this project due to the extreme terrain, excessive rockfall, and extensive distance of the required gas line that would be needed to operate the system. The UDOT also used the National Institute of Standards and Technology's Manufacturing Extension Partnership Supplier Scouting service to seek out any domestic manufacturers of RACS, but no domestic alternatives were identified.

The UDOT thus requested a waiver for the tower, deployment box, and charges that are part of the RACS for 16 systems that will use suspended explosive charges.

In accordance with section 122 of Division F of the Consolidated Appropriations Act, 2024 (Pub. L. 118–42), section 117 of the SAFETEA–LU Technical Corrections Act of 2008 (Pub. L. 110–244), and 23 U.S.C. 313(g), FHWA posted a notice of the waiver request on its website on April 10, 2024, soliciting public comment on the intent to issue a waiver of the waiver items for a 15-day period.<sup>3</sup>

#### Waiver Justification Summary

**Comments to the Notice of Waiver Request:** The FHWA received five comments in response to the notice of the waiver request. One commenter stated that FHWA's Buy America requirements are outdated and indicated that FHWA should grant the waiver.

<sup>3</sup> <https://www.fhwa.dot.gov/construction/contracts/waivers.cfm?id=175>.



Another stated that FHWA should grant the waiver and argued that FHWA should not apply its Buy America requirements to predominantly steel and iron components.

Two other commenters provided information not relevant to the waiver request. One questioned the environmental impacts of RACS, which is not an issue within the scope of this waiver request.

Another commenter stated that the Office of Management and Budget (OMB) policy eliminated the need for the waiver request because OMB requirements apply to manufactured products, not just iron and steel. The FHWA's Buy America requirements with respect to manufactured products, however, differ from requirements applicable to other Federal Agencies under BABA, which was included as part of the BIL (Pub. L. 117–58). The FHWA has waived its statutory Buy America requirements as to all manufactured products that are not predominantly steel and iron; however, FHWA applies its Buy America requirements to predominantly iron and steel components of manufactured products, and such components must comply with FHWA's requirements that all iron and steel must be domestically manufactured. Although BABA requires that manufactured products be manufactured in the United States and the cost of the manufactured product's components that are mined, produced, or manufactured in the United States must be greater than 55 percent of the total cost of all components of the manufactured product, BABA does not specifically mandate that iron and steel components in particular must be domestically manufactured.<sup>4</sup> See BIL section 70912(6)(B).

In other words, FHWA applies its own Buy America requirements to steel, iron, and manufactured products used on FHWA funded projects, not the standards for steel, iron, and manufactured products under BABA. See BIL section 70917(a)–(b). Accordingly, manufactured products used on FHWA funded projects are only compliant with Buy America if all of their predominantly steel and iron components are domestically

manufactured. Manufactured products that meet BABA's standards, being manufactured in the United States and having 55 percent of the components, by cost, be mined, produced, or manufactured in the United States, are not inherently compliant with FHWA's Buy America and may not necessarily be permanently incorporated into FHWA-funded projects.

Finally, the fifth commenter, representing the domestic supplier identified by UDOT as using gas-delivered explosives noted above, stated that the company was not consulted on the viability of its product to work in the project terrain and contested the statement from UDOT that its products are not a viable alternative for the project. When determining whether steel and iron materials or products are not produced in the United States in sufficient and reasonably available quantities which are of a satisfactory quality pursuant to 23 U.S.C. 313(b)(2) and 23 CFR 635.410(c)(1)(ii), FHWA considers whether the recipient has used appropriate due diligence to identify domestic products or domestically available alternative products that meet the recipient's specifications. A comparable product that performs a similar function is not necessarily a domestic alternative; the product must also meet the recipient's specific requirements that are deemed necessary in order to achieve the performance objectives of the project. The FHWA's statutory requirements do not require recipients to change product specifications in order to utilize domestic products that do not meet the recipient's original specifications. Accordingly, as FHWA views this fifth commenter as arguing UDOT should modify their original specifications to accommodate their domestic product, FHWA does not believe that this commenter has demonstrated that they have a suitable domestic alternative.

In sum, no commenter provided information on potential domestic manufacturers of suspended explosive charge RACS. Thus, UDOT did not receive any new information indicating that the waiver items could be produced by domestic manufacturers from any of the commenters.

The FHWA believes that UDOT has made substantial efforts to find suitable Buy America-compliant waiver items that will safely and effectively serve the purpose of this project but that such products are unavailable.

*Timing and Need for a Waiver:* The waiver items are essential to achieving the goal of replacing the current use of live artillery with a safer remote-

activated system that can provide highway avalanche mitigation.

While UDOT did not request a waiver for the reinforced foundation of the RACS, as such foundation can be domestically manufactured, the waiver items are engineered to work together as a single system, and exchanging parts of the system would reduce the reliability and safety of the system. Accordingly, the waiver items at issue must be purchased and installed as a single system, and UDOT has not located any domestic manufacturers for the waiver items meeting the project's specifications, nor has any domestic manufacturer identified the ability to produce Buy America-compliant waiver items through the public comment process.

*Executive Order 14005:* Executive Order (E.O.) 14005, entitled "Ensuring the Future is Made in All of America by All of America's Workers," provides that Federal Agencies should, consistent with applicable law, maximize the use of goods, products, and materials produced in, and services offered in, the United States. 86 FR 7475 (Jan. 28, 2021). Based on the information contained in the waiver request from UDOT and the lack of responsive comments to the notice of waiver request, FHWA concludes that issuing a waiver is not inconsistent with E.O. 14005.

#### Finding and Request for Comments

Based on all the information available to the Agency, FHWA concludes that there are no Buy America-compliant waiver items meeting the project's specifications and is waiving its Buy America requirements for steel and iron set forth at 23 U.S.C. 313 and 23 CFR 635.410 for recipient purchases of 16 RACS using suspended explosive charges for avalanche highway mitigation in Little Cottonwood Canyon. For each RACS, this waiver will cover only: (i) the tower; (ii) the deployment box; and (iii) the charges (collectively "waiver items"). This waiver does not apply to other components of the RACS, such as reinforced foundations, which must be compliant with FHWA's Buy America requirements. In addition, this waiver does not cover additional charges purchased for the RACS.

The waiver is limited to applicable purchases by UDOT, UDOT's contractors, or subcontractors (of whatever tier) of the waiver items for the above mentioned project. The waiver does not apply to purchases for any other products or projects. This waiver would be effective from the effective date of the final waiver through the period of performance and closeout

<sup>4</sup> To meet the requirement that 55 percent of components, by cost, be mined, produced, or manufactured in the United States for a manufactured product containing predominantly iron or steel components, a manufacturer may choose to domestically produce those components. This is different from FHWA's Buy America requirements, which mandate that all predominantly steel or iron components be domestically produced, regardless of the percent, by cost, of which they make up the manufactured product.

of FHWA's financial assistance for the project, which is estimated to be December 31, 2025.

The UDOT and its contractors and subcontractors involved in the procurement of the relevant components are reminded of the need to comply with the Cargo Preference Act in 46 CFR part 38, if applicable.

In accordance with the provisions of section 117 of the SAFETEA-LU Technical Corrections Act of 2008, FHWA is providing this notice as its finding that a waiver of its Buy America requirements for steel and iron is appropriate. The FHWA invites public comment on this finding for an additional five days following the effective date of the finding. Comments may be submitted to FHWA's website via the link provided to the waiver page noted above.

**Authority:** 23 U.S.C. 313; Pub. L. 110–161; 23 CFR 635.410.

**Kristin R. White,**

*Acting Administrator, Federal Highway Administration.*

[FR Doc. 2024–25387 Filed 10–30–24; 8:45 am]

**BILLING CODE 4910–22–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Transit Administration

[Docket No. FTA–2024–0013]

#### National Transit Database: Proposed Reporting Changes and Clarifications for Report Years 2025 and 2026

**AGENCY:** Federal Transit Administration (FTA), Department of Transportation (DOT).

**ACTION:** Notice, request for comments.

**SUMMARY:** This notice provides information on proposed changes and clarifications to the National Transit Database (NTD) reporting requirements. Some of the proposed NTD changes would take effect beginning in NTD report year (RY) 2025, while others would take effect in RY 2026.

**DATES:** Comments should be filed by December 30, 2024. FTA will consider comments received after that date to the extent practicable.

**ADDRESSES:** You may send comments, identified by docket number FTA–2024–0013, by any of the following methods:

- **Federal eRulemaking Portal:** Go to <https://www.regulations.gov> and follow the online instructions for submitting comments.

- **Mail:** Send comments to 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 or Courier:** West Building Ground Floor, Room W12–140, 1200 New Jersey Ave. SE, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

- **Fax:** Fax comments to Docket Management Facility, U.S. Department of Transportation, at (202) 493–2251.

**Instructions:** You must include the agency name (Federal Transit Administration) and Docket Number (FTA–2024–0013) for this notice, at the beginning of your comments. If sent by mail, submit two copies of your comments.

**Electronic Access and Filing:** This document and all comments received may be viewed online through the Federal eRulemaking portal at <https://www.regulations.gov> or at the street address listed above. Electronic submission, retrieval help, and guidelines are available on the Federal eRulemaking portal website. The website is available 24 hours each day, 365 days a year. Please follow the instructions. An electronic copy of this document may also be downloaded from the Office of the Federal Register's home page at <https://www.federalregister.gov>.

**Privacy Act:** Except as provided below, all comments received into the docket will be made public in their entirety. The comments will be searchable by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.) You should not include information in your comment that you do not want to be made public. You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or at <https://www.transportation.gov/privacy>.

**FOR FURTHER INFORMATION CONTACT:** Chelsea Champlin, National Transit Database Program Manager, FTA Office of Budget and Policy, 202–366–1651, [Chelsea.champlin@dot.gov](mailto:Chelsea.champlin@dot.gov).

#### SUPPLEMENTARY INFORMATION:

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#### A. Background and Overview

The National Transit Database (NTD) was established by Congress to be the Nation's primary source for information and statistics on the transit systems of the United States. Recipients and beneficiaries of Federal Transit Administration (FTA) grants under either the Urbanized Area Formula Program (49 U.S.C. 5307) or Rural Area Formula Program (49 U.S.C. 5311) are required by law to report to the NTD. FTA funding recipients that own, operate, or manage public transportation capital assets are required to provide more limited reports to the NTD regarding Transit Asset Management.

Pursuant to 49 U.S.C. 5334(k), FTA seeks public comment on seven (7) proposed NTD reporting changes and clarifications. These proposals are based on input from the transportation industry and FTA's assessment of geospatial data needs following the NTD's first annual data collection since implementing reporting changes required by the Bipartisan Infrastructure Law, enacted as the Infrastructure Investment and Jobs Act (Pub. L. 117–58). The information below describes anticipated reporting impacts from each proposed change or clarification and the proposed effective date of each change. FTA seeks comments on the proposed changes and clarifications described below. All impacts or changes described below are proposed and subject to finalization in a future notice.

#### B. Additional Data Within Publicly Hosted General Transit Feed Specification (GTFS) Datasets

The Infrastructure Investment and Jobs Act amended 49 U.S.C. 5335(a) to require FTA to collect “geographic service area coverage” data through the NTD. As of Report Year (RY) 2023, FTA requires that reporters with fixed route modes create and maintain a public domain GTFS dataset that reflects their fixed route service. These changes were finalized through a **Federal Register** notice published on March 3, 2023 (88 FR 13497). Specifically, FTA requires agencies that operate fixed route service to maintain a GTFS feed and submit to the NTD a corresponding link or file containing their GTFS dataset. FTA requires that the GTFS file contain six underlying text files at a minimum, including trips.txt and stops.txt. A seventh set of files (shapes.txt and feed\_info.txt) is optional under current requirements. GTFS ensures data consistency by establishing minimum

requirements within each file; some fields are noted as “optional.” FTA recommends reporting some optional fields (as described below) to improve the usefulness of the datasets for data users. However, these fields currently are not required.

In this notice, FTA proposes to further improve the utility of the GTFS data it collects by collecting additional data according to the GTFS specification.

#### *Align agency\_id and NTD ID Within GTFS File*

The *agency\_id* field in GTFS is a unique, numeric identifier that is used to identify a transit agency or specific service. FTA adopted GTFS standards using the May 9, 2022 version of GTFS, including the current definition of “*agency\_id*”, which is published here: <https://gtfs.org/reference/static#field-definitions>. This definition does not specify a naming convention for the *agency\_id* field or a requirement to use this field in all GTFS text files.

To improve the usefulness of the datasets, FTA proposes two changes to the *agency\_id* data field. First, FTA proposes to require agencies to align the *agency\_id* field to the agency’s National Transit Database Identification Number (NTDID). FTA assigns each reporter a unique five-digit NTDID number, which is used in all NTD reports and correspondence. Please note that rural subrecipient reporters should not include the four-digit ID associated with the State.

Second, FTA proposes to make the *agency\_id* data field a non-conditional requirement—that is, a required field for *all* GTFS submissions—in *agency.txt*, *routes.txt*, *fare\_attributes.txt* (if used), and *attributions.txt* (if used). Currently, this field is conditionally required in the *agency.txt*, *route.txt*, and *fare\_attributes.txt* files when multiple agencies are defined in the *agency.txt* file. While this change primarily affects agencies with only one reportable service in their GTFS feed, FTA would like to reiterate the existing policy when a GTFS feed contains multiple services. In the case where multiple NTD reporting agencies share a single GTFS feed, the *routes.txt* file must reflect the respective NTDID associated with each route. For example, if a reporter uses one URL for Agency X and Agency Y, each route that is operated by Agency X must have Agency X’s NTDID in the *agency\_id* field, and likewise for Agency Y. In the event that the GTFS feed includes non-reportable service (such as intercity bus service), the agency may leave the *agency\_id* field blank for those routes or may assign whatever *agency\_id*

is convenient, provided it is not a five-digit number.

FTA proposes that these new requirements apply to all agencies that must already supply a GTFS feed: Full Reporters, Reduced Reporters, Tribal Reporters, and Rural Reporters. The requirement would apply only to reporters that operate a fixed route mode. The requirement would take effect beginning in NTD Report Year 2025.

#### *Shapes.txt File (Geospatial Drawing of Routes) as Part of GTFS Submission*

FTA proposes to collect the *shapes.txt* file as part of the GTFS submission for each mode. This file is optional in the existing GTFS specification. Under this proposal, NTD reporters operating one or more fixed route modes would be required to include in their static GTFS zip (*i.e.*, the file hosted by the agency) a *shapes.txt* file for each route. The purpose of this file is to provide shapes, which, according to the GTFS specification, “describe the path that a vehicle travels along a route alignment” which may also be “associated with trips (the data from the presently required *trips.txt* file).” These shapes “consist of a sequence of points through which the vehicle passes in order.”

FTA proposes that the requirement become effective upon the original submission of the annual report in RY 2025 for Full Reporters and in RY 2026 for Reduced, Rural, and Tribal Reporters. FTA estimates that over one-third of all reporters already maintain the *shapes.txt* file. Collecting the data included in *shapes.txt* would benefit transit users by allowing for improved trip planning. In addition, this collection would improve future FTA performance measures and strategic planning.

The National Rural Transit Assistance Program (RTAP) provides resources to help transit agencies generate GTFS data. A resource guide for creating a GTFS dataset is available at <https://www.nationalrtap.org/Technology-Tools/GTFS-Builder>. This includes Excel templates that will allow users to build GTFS data from existing transit schedules and stop information with little-to-no additional technical expertise. The *shapes.txt* file can be generated using the GTFS builder approach described in the guide linked above (see the “14. Optional—Complete shapes Tab”).

#### **C. Changes to Passenger Stations and Maintenance Facilities Reporting**

Historically, FTA has collected information on passenger stations on two forms in the NTD Asset Module: the

A–10 (Stations and Maintenance Facilities) form and the A–15 (Transit Asset Management Facilities Inventory) form. However, due to differences in how the two forms define a “station,” there have been discrepancies between the count of stations as reported in the A–10 and the count of stations in the A–15.

The current A–10 form captures data for both passenger stations and maintenance facilities, regardless of capital responsibility. Agencies currently must report the following information for passenger stations and maintenance facilities, separated by mode and Type of Service (Directly Operated (DO) and Purchased Transportation (PT)):

1. The number of passenger stations, both accessible and inaccessible, in accordance with the Americans with Disabilities Act of 1990 (ADA) and USDOT’s implementing regulations at 49 CFR part 37.

2. The number of elevators and escalators within passenger stations.

3. The number of maintenance facilities, tallied by size and ownership categories.

To improve and standardize the reporting of passenger stations and facilities in the NTD asset module, FTA proposes to eliminate the A–10 Stations and Maintenance Facilities form, which currently collects a count of ADA-accessible and non-accessible stations. All station information would be reported through a single, consolidated Transit Asset Management Facilities (A–15) form. This form would contain all data collection related to accessibility that is currently captured on the A–10 form. Agencies must indicate which stations are ADA accessible and inaccessible. For ADA accessibility requirements, please reference 49 CFR part 37.

In addition to passenger stations, FTA proposes that agencies inventory all maintenance facilities on the expanded A–15 form, regardless of capital responsibility. Under current A–15 reporting requirements, agencies only inventory administrative and maintenance facilities if the agency has capital responsibility for the facility and the transit use is greater than incidental. With the new consolidated form, FTA proposes to include facilities without capital responsibility, but maintain the exception for incidental use. Maintenance facilities with less than full capital responsibility, which previously would have been reportable on the A–10 and *not* the A–15, would be reportable on the new, consolidated A–15 form. Facilities whose transit use is incidental would not be reportable,

consistent with existing requirements. Use is considered incidental when 50 percent or less of the facility's physical space is dedicated to the provision of public transportation service.

The intent of this change is both to (a) standardize reporting of transit passenger stations and facilities across forms, and (b) lessen the burden on reporters. By combining these forms into a single form, FTA intends to capture station information through a single source and reduce the effort needed to complete the annual NTD asset module reporting.

All facilities that are currently reportable on the A-15 would continue to be reported on the new consolidated form. In addition to facilities already collected, the expanded A-15 data collection would include the following:

1. Each passenger station's accessibility, expressed as either "ADA accessible" or "ADA inaccessible," in accordance with 49 CFR part 37. An accessible station complies with part 37 and is fully accessible to individuals with disabilities, including individuals who use wheelchairs. Inaccessible

stations do not meet the requirements of part 37.

2. The number of elevators and escalators within passenger stations for each applicable station.

3. The number of passenger facilities (for fixed-route modes) and maintenance facilities (for all modes and types of service other than Taxi (TX) or Transportation Network Company (TN)) by size and ownership categories. Data on maintenance facilities would be collected in a manner similar to the chart below.

Facility type	Owned	Leased from another public agency	Leased from a private entity	Total
General Maintenance Facilities < 200 Vehicles).				
General Maintenance Facilities with 200–300 Vehicles.				
General Maintenance Facilities > 300 Vehicles.				
Heavy Maintenance Facilities .....				
Total .....	<i>(This total will be the count of facilities with &gt; 0 percent capital replacement responsibility).</i>			

FTA is also seeking feedback on the definition of a "passenger station" for the purpose of uniform inventorying on the expanded A-15 form. On the expanded form, FTA proposes to retain all facilities that are currently reported to the NTD as passenger stations, which means that agencies should continue to inventory all passenger stations as defined in the NTD reporting manual (2024 NTD Reporting Policy Manual, <https://www.transit.dot.gov/ntd/2024-ntd-reporting-policy-manual>, page 160).

FTA proposes to retain the current guidance that for any station that operates in mixed traffic, a significant structure must be present. This does not include bus shelters. Significant structures are structures that are enclosed or, if partially enclosed, have a minimum roof square footage of 150 feet. Examples may include larger canopies or coverings to serve passengers.

In previous report years, reporters have expressed some confusion as to whether certain facilities, particularly those with multiple platforms, should be reported as a single facility or as two separate facilities. To address this concern and clarify facility reporting, FTA proposes that passenger stations serving rail modes and bus rapid transit modes that span both sides of the right-of-way must be inventoried as a single facility if all of the following criteria are met.

a. Condition assessments are conducted comprehensively, where all subcomponents are assessed in the same procedure/assessment,

b. Passengers can access the facility on both sides of the right-of-way without leaving the facility or designated pedestrian crossing areas, and

c. The ownership, size, and other attributes reported on the expanded A-15 form are the same across the facility. These changes would take effect for all asset module reporting beginning in NTD Report Year (RY) 2025.

#### D. A-20 NTD/TERM Alignment

FTA seeks to improve data collection categories on the A-20 Transit Way Mileage Form to align with FTA's Transit Economics Requirement Model (TERM) categories. (For more information on TERM, please see: <https://www.transit.dot.gov/regulations-and-programs/asset-management/transit-economic-requirements-models-term-federal-user>.) The goal of this proposed change is to create consistency between NTD data collection and the TERM model, both of which are used in the Department of Transportation's Conditions and Performance report to Congress. The proposed changes include three new categories on the A-20 Form: "Track—Turntable," "Power and Signal—Pump Rooms," and "Power and Signal—Fan Plants." For each of

these new categories, agencies would report a count of each applicable asset, similar to existing data collection categories on the form.

FTA proposes that under the "Track" section of the A-20 form, agencies would report the count of turntables by mode under the "Special Track" section. A turntable is a track element used to turn train cars in a different direction. This count should include turntables located in rail yards or other locations. To be consistent with other special track categories, agencies would report the Expected Service Years When New, Percent Agency Capital Responsibility, Decade Built, and Agency with Shared Responsibility (when applicable).

FTA proposes that the "Power and Signal" section would include a count of Pump Rooms and Fan Plants by mode. Pump Rooms are assets throughout rail operations that help control water in underground systems. Fan Plants refer to assets that assist with ventilation in underground systems. Similar to existing "Power and Signal" elements on the A-20 form, agencies would provide the Expected Service Years When New, Percent Agency Capital Responsibility, and Agency with Shared Responsibility (when applicable) for these new categories. Agencies also would report the decade of original construction or rebuild (when rebuilt as new). For further detail on these

existing fields, please refer to the latest NTD reporting manual.

In addition to these new categories, FTA aims to clarify the data collected for all assets on the “Construction” section on the A-20 form. Currently, the form collects the decade of construction for a specific asset category. While this information is accurate to the original build date, it fails to capture when transit assets are fully rebuilt, which significantly extends the useful life of the asset. Similar to other data collected related to asset age, FTA is proposing that the decade of construction should reflect the original construction date, or the decade rebuilt as new, if applicable. If an element is reconstructed as new or has been renovated to the degree that its expected useful life is equivalent to the condition and useful life of a new element, the agency should report the decade in which this renovation was completed. This information would allow for more accurate modelling of the expected life and condition of the asset, which in turn would generate more accurate estimates of the state of good repair needs of these assets in TERM.

FTA proposes that these changes would take effect beginning in NTD Report Year (RY) 2025.

#### **E. Safety and Security—Cyber Security Event Reporting**

FTA seeks to update cyber security NTD reporting requirements. Under current FTA guidance, reportable cyber security events may not capture the prevalence or risks posed by cyber events. For purposes of NTD reporting, a cyber event is “an event that targets transit facilities, personnel, information, or computer or telecommunications systems associated with transit agencies.” (“System Security Event Details Key Descriptions” in the National Transit Database Safety & Security Policy Manual, page 69, [https://www.transit.dot.gov/sites/fta.dot.gov/files/2024-02/2024-Safety-and-Security-Policy-Manual\\_1-0.pdf](https://www.transit.dot.gov/sites/fta.dot.gov/files/2024-02/2024-Safety-and-Security-Policy-Manual_1-0.pdf)). Cyber security events are reportable to the NTD if they meet a major event threshold; the most common threshold met is property damage. Between 2014 and June 2024, there have been four cybersecurity events reported to NTD; however, based on an analysis of media coverage, FTA has reason to believe that there have been dozens of breaches, ransomware, and other cyber events on transit agencies during the same period.

To address this issue, FTA proposes clarifications to cyber security event reporting applicable to Full Reporters (reporting via the S&S-40 major event form). Specifically, FTA proposes clarifications in the following areas:

1. Reporting Threshold and IT as Infrastructure
2. Selecting a Mode when Reporting Cyber Security Events
3. Substantial Damage for Rail Modes

The proposed clarifications would give reporters clear guidance on cyber event reporting and would improve data collection, strengthening FTA’s policy development, safety oversight, and safety risk mitigation programs, and providing NTD data users (such as transit agencies and other Federal agencies concerned with cyber security) greater insight into cyber security events within public transit.

#### **Reporting Threshold and IT as Infrastructure**

A cyber security event is an event that targets transit facilities, personnel, information, or computer or telecommunications systems associated with transit agencies. (National Transit Database Safety and Security Reporting Manual, [https://www.transit.dot.gov/sites/fta.dot.gov/files/2024-02/2024-Safety-and-Security-Policy-Manual\\_1-0.pdf](https://www.transit.dot.gov/sites/fta.dot.gov/files/2024-02/2024-Safety-and-Security-Policy-Manual_1-0.pdf)). Cyber security events include:

- Denial or disruption of computer or telecommunications services, especially train control systems,
- Unauthorized monitoring of computer or telecommunications systems,
- Unauthorized disclosure of proprietary or classified information stored within or communicated through computer or telecommunications systems,
- Unauthorized modification or destruction of computer programming codes, computer network databases, stored information, or computer capabilities; or
- Manipulation of computer or telecommunications services resulting from fraud, financial loss, or other criminal violations.

(See National Transit Database Glossary, <https://www.transit.dot.gov/ntd/national-transit-database-ntd-glossary>).

In many cases, a cyber security event would be reportable as a major event. Under current NTD reporting requirements, an event is reportable as a major event when any major event threshold is met and the event:

- Occurs at a transit revenue facility, maintenance facility, or rail yard;
- Occurs on transit right-of-way or infrastructure (the underlying framework or structures that support a public transportation system);
- Occurs during a transit-related maintenance activity; or
- Involves a transit revenue vehicle.

(See “When to Report a Major Event” in the National Transit Database Safety & Security Policy Manual, page 20. [https://www.transit.dot.gov/sites/fta.dot.gov/files/2024-02/2024-Safety-and-Security-Policy-Manual\\_1-0.pdf](https://www.transit.dot.gov/sites/fta.dot.gov/files/2024-02/2024-Safety-and-Security-Policy-Manual_1-0.pdf)).

FTA historically has interpreted “infrastructure” to include only physical assets for both cyber security and other safety and security events. However, FTA believes this interpretation does not adequately encompass impacts to transit IT infrastructure, particularly as it pertains to cyber security events. To address this issue, FTA proposes that “infrastructure” also should include information, computer, and telecommunications systems that exist in any transit facilities (*i.e.*, in the facilities reported on annual form A-15). In addition to providing clarity for cyber security event reporting, FTA’s clarification with regards to ‘infrastructure’ would apply to other system security events, such as sabotage or vandalism, provided they meet all other major event thresholds. Similarly, because they involve ‘disruptions to telecommunications services’, major power failures which result in damage to these systems would be reportable if they meet a major event threshold. Thus, cyber security events occurring on this type of infrastructure that meet an NTD major event reporting threshold would be reportable to the NTD on the S&S-40 form.

#### **Selecting a Mode When Reporting Cyber Security Events**

Reportable cyber security events are by definition system events that affect “a transit system as a whole.” (“System Security Events” in the National Transit Database Safety & Security Policy Manual, page 68. [https://www.transit.dot.gov/sites/fta.dot.gov/files/2024-02/2024-Safety-and-Security-Policy-Manual\\_1-0.pdf](https://www.transit.dot.gov/sites/fta.dot.gov/files/2024-02/2024-Safety-and-Security-Policy-Manual_1-0.pdf)). For this reason, FTA proposes that agencies would consistently select a single designated mode for reporting cyber security events in their system, regardless of the specific infrastructure that is targeted. FTA currently uses the Appian system to collect major events, and a user may select only one mode on the safety and security major event form (S&S-40). Because of this constraint, it is not possible to file an S&S-40 report for multiple modes simultaneously. This results in reporters filing multiple S&S-40 reports for different modes arising from the same cyber event. For this reason, and given the nature of cyber security events as system events, FTA is proposing a hierarchy for S&S-40 cyber security events where reporters would

select a single designated mode as detailed below. Among other benefits, this approach would result in reduced reporting burden due to the elimination of multiple (duplicative) reports resulting from a single cyber security event.

FTA proposes that all Rail Transit Agencies (RTAs) (any entity that provides services on a rail fixed guideway public transportation system) would select a rail mode for reporting all cyber security events, regardless of the specific infrastructure that is targeted. If an agency operates more than one rail mode—for example, Heavy Rail (HR) and Light Rail (LR)—they would follow the Predominant Use Rule to determine the appropriate mode to associate with the event.

Agencies that operate fixed route bus modes, but do not operate fixed guideway rail, would select a bus mode for reporting all cyber security events. If an agency operates more than one bus mode—for example, Motorbus (MB) and Bus Rapid Transit (RB)—they would follow the Predominant Use Rule to determine the appropriate mode to associate with the event.

Agencies that operate demand response service and do not operate fixed guideway rail nor fixed route bus would select the demand response mode for reporting all cyber security events.

Agencies that operate only ferryboat service would select the ferryboat mode for reporting all cyber security events.

FTA proposes that this clarification would take effect for Full Reporters in calendar year 2025 as soon as practicable following publication of the **Federal Register** notice finalizing the NTD reporting changes.

#### Substantial Damage for Rail Modes

One of the major event thresholds on the S&S-40 form for rail modes is “substantial damage.” While FTA is proposing changes to this reporting threshold for safety and personal security events in this **Federal Register** notice (see below), the threshold would remain unchanged for system security events, which includes cyber security events. Per the current NTD S&S reporting requirements, the definition of “substantial damage” for rail modes includes damage to any involved vehicles, facilities, equipment, rolling stock, or infrastructure that: (1) disrupts the operations of the rail transit agency and (2) adversely affects the structural strength, performance, or operating characteristics of the asset, such that it requires towing, rescue, on-site maintenance, or immediate removal prior to safe operation. (See “Exhibit 5:

Reporting Thresholds” in the National Transit Database Safety & Security Policy Manual, page 22. [https://www.transit.dot.gov/sites/fta.dot.gov/files/2024-02/2024-Safety-and-Security-Policy-Manual\\_1-0.pdf](https://www.transit.dot.gov/sites/fta.dot.gov/files/2024-02/2024-Safety-and-Security-Policy-Manual_1-0.pdf)).

FTA proposes to clarify how to apply the substantial damage threshold to cyber security events. Regarding the “disruption of operations” element of the threshold, FTA proposes that for cyber security events, disruption of operations would include the disruptions of the normal operations of transit facilities, personnel, information, or computer or telecommunications systems associated with transit agencies. Examples include (this is not an exhaustive list):

- Ransomware, if it disrupts operations
- Denial of service attack if it disrupts operations
- Communications disruption (e.g., phone lines, website, digital signs, applications)
- Shutting down systems to protect personal data
- Severing connections to other systems
- Inability to collect fares
- Inability to assign routes or make pull-out

The “disruption of operations” element would not be met for events where an actor did not target transit facilities, personnel, information, or computer or telecommunications systems associated with transit agencies, such as (this is not an exhaustive list):

- A user installing an unapproved software utility to perform maintenance activities or updates to fix a bug or deploy enhancements;
- Deployed software or logic changes that are not malicious;
- Accidents that do not involve malicious actors.

Regarding the second element of the “substantial damage” threshold, FTA proposes that a cyber security event automatically would be presumed to adversely affect the operating characteristics of the asset or infrastructure that is targeted such that it would require maintenance to remedy. This is based on FTA’s analysis of cyber events and research, which indicates that cyber events disrupting operations adversely affect performance or operations such that they require maintenance to remedy while services are assessed, modified, or halted before being reestablished. (See e.g., National Institute of Standards and Technology (NIST), U.S. Department of Commerce, <https://www.nist.gov/cyberframework/recover>) In effect, this means that cyber security events only need to meet the first element of the “substantial damage” threshold.

FTA clarifies that events are reportable as cyber security events when they are caused by the actions of a third party. If the actions are caused by a transit employee, the event would be reported as sabotage.

The proposed changes would take effect for safety and security reporting beginning in calendar year 2025 following the publication of the final notice.

#### F. Safety and Security—Disabling Damage

Section 5329 of Title 49, United States Code, requires FTA to establish a comprehensive public transportation safety program, the elements of which include a National Public Transportation Safety Plan; a safety training and certification program for Federal, State, and local transportation agency employees with safety responsibilities; Public Transportation Agency Safety Plans; and a strengthened State Safety Oversight Program. Pursuant to that authority, in on October 16, 2024, FTA published a final rule (89 FR 83956) updating the State Safety Oversight (SSO) requirements at 49 CFR part 674. This final rule includes a new safety event category titled “disabling damage” for purposes of the SSO notification and investigation thresholds in 49 CFR 674.33 and 674.35. The final rule defines “disabling damage” as “damage to a rail transit vehicle resulting from a collision and preventing the vehicle from operating under its own power.” 49 CFR 674.7.

As discussed in Section E above, at present, one of the major event reporting thresholds for rail modes on the NTD Safety and Security Major Event (S&S-40) form is “substantial damage.” Substantial damage is defined as follows:

“Substantial damage is damage to any involved vehicles, facilities, equipment, rolling stock, or infrastructure that:

- Disrupts the operations of the rail transit agency, and
- Adversely affects the structural strength, performance, or operating characteristics of the asset, such that it requires towing, rescue, on-site maintenance, or immediate removal prior to safe operation.”

(National Transit Database Safety and Security Reporting Manual, [https://www.transit.dot.gov/sites/fta.dot.gov/files/2024-02/2024-Safety-and-Security-Policy-Manual\\_1-0.pdf](https://www.transit.dot.gov/sites/fta.dot.gov/files/2024-02/2024-Safety-and-Security-Policy-Manual_1-0.pdf))

Because the substantial damage and disabling damage thresholds capture different information, FTA is proposing to revise the NTD major event reporting requirements to capture the new

“disabling damage” event category defined in the SSO final rule.

FTA is seeking comments on two proposed alternatives to collect this new information. The first option is a wholesale replacement of the substantial damage major event threshold with a disabling damage threshold for safety events. The second option is to maintain the substantial damage threshold and include disabling damage events as a subset of substantial damage events.

Substantial damage is currently a reporting threshold on the S&S–40 form, which is only completed by NTD Full Reporters, and this reporting threshold pertains only to rail modes. As such, either proposed alternative only would affect Full Reporters who operate rail fixed guideway modes. For all other reporters, there would be no impact to safety and security reporting. The changes discussed below would apply only to NTD reporting of major events on the S&S–40 form, and would not alter other program requirements, including the two-hour notification or investigation requirements under 49 CFR part 674.

FTA proposes that under either alternative, FTA would begin collecting disabling damage information in calendar year 2025 as soon as practicable following publication of the **Federal Register** notice finalizing the NTD reporting changes. Each alternative is described below, including impacts to data collection and data users.

#### 1. Replacing “Substantial Damage” Threshold With “Disabling Damage” for Major Safety Events

The first alternative that FTA is considering is to eliminate the “substantial damage” major event threshold for safety events and personal security events and replace it with a “disabling damage” threshold. Under this alternative, only property damage events which result in disabling damage (*i.e.*, damage to a rail transit vehicle resulting from a collision and preventing the vehicle from operating under its own power) or that meet another major event threshold would be reportable on the S&S–40 for rail modes. This would eliminate major event reporting requirements for events that meet the current substantial damage threshold but do not meet the definition of disabling damage or another major event threshold. All other reporting thresholds, such as injuries, fatalities, and evacuations, would be unchanged. In addition, the substantial damage threshold would be retained for system security events.

Under this proposed revision, for all rail collision safety and security events, the National Transit Database would ask reporters to indicate if the event meets the threshold of “disabling damage” (as defined in part 674). Safety and personal security events that do not meet the disabling damage threshold (or another threshold such as injury, fatality, or evacuation) no longer would be reportable on the S&S–40 form, even if they would have been reportable as substantial damage previously. System security events still would be reportable if they meet the substantial damage threshold, including cyber security events as discussed in this notice. The breakdown by event type is summarized below.

This alternative would reduce burden by reducing the number of reportable major safety and personal security events. For example, electrical malfunctions that disrupt operations but do not involve a collision, injury, fatality, or evacuation no longer would be reportable on the S&S–40. FTA believes that the number of events that result in substantial damage but not disabling damage, and which do not meet another threshold, is minimal compared to the overall number of safety and security events reported to the NTD.

In 2023, the NTD recorded 398 events that were classified as involving “substantial damage” (see NTD Major Safety Events file, at <https://data.transportation.gov/Public-Transit/Major-Safety-Events/9ivb-8ae9/explore>). Of these, 22 events would not meet the definition of disabling damage and did not meet another major event threshold (injury, fatality, etc.)—such as events where a pantograph was damaged, disrupting service but not damaging the rail transit vehicle. Under this proposal, these events would not be reportable on the S&S–40.

For clarity, the following are all safety and security event types currently in the NTD reporting system, and how they would be affected by this proposed reporting change:

- *Collision*: substantial damage question removed and replaced with disabling damage.
- *Derailment (including yard derailments and non-revenue vehicles)*: Substantial damage question removed entirely. Because derailment is a separate reporting threshold, the number of reportable events would be unchanged.
- *Fire*: Substantial damage question removed entirely. If an injury, fatality, or evacuation occurs, the fire would still be reportable. Based on 2023 NTD safety reports, there were no events which met

the substantial damage threshold that did not meet another threshold.

- *Hazardous material spill*: Substantial damage question removed entirely. If an injury, fatality, or evacuation occurs, the hazardous material spill would still be reportable. Based on 2023 NTD safety reports, there were no events which met the substantial damage threshold that did not meet another threshold.

- *An earthquake/flood/hurricane/tornado/other high winds/snowstorm/ice storm, etc. (Act of God)*: Substantial damage question removed entirely. If an injury, fatality, or evacuation occurs, the event would still be reportable. However, damage resulting from Act of God events that do not meet one of these other thresholds would no longer be reportable.

- *System Security Event: bomb threat/bombing/chemical/biological/nuclear/radiological/arson/hijacking/sabotage/burglary/vandalism/suspicious package/cyber security event/other system security event*: Substantial damage question would be maintained. This includes cyber security events.

- *Personal Security Event: assault/robbery/rape/suicide/attempted suicide/larceny or theft (including vehicle theft from a parking lot)/homicide/other personal security event*: Substantial damage question removed entirely. If an injury, fatality, or evacuation occurs, the event would still be reportable. However, personal security events where no other thresholds are met would no longer be reportable.

- *Other Safety Event (e.g., fall, electric shock, smoke, slip/fall, power failure, runaway train, other)*: Substantial damage question removed entirely. If an injury, fatality, or evacuation occurs, the safety event would still be reportable. However, other safety events where no other thresholds are met would no longer be reportable.

FTA recognizes that the data on substantial damage may be useful to NTD data users. FTA welcomes public comments on existing and future use cases using substantial damage events that do not involve disabling damage and do not meet another S&S–40 reporting threshold (*e.g.*, no injuries, no fatalities, and where only agency equipment, other than a rail transit vehicle, or other property experience substantial damage).

#### 2. Adding Disabling Damage as a Subset of Substantial Damage Collision Events

The second alternative that FTA is considering is adding a question to the S&S–40 form to allow agencies to report events that cause disabling damage as a



distinct subset of events that cause substantial damage. One of the reasons for proposing a new category of disabling damage is to allow FTA to identify collision events involving a rail transit vehicle more easily that prevent the vehicle from operating under its own power. This proposed option would allow FTA's systems to identify such events more accurately (e.g., sub setting substantial damage events to the State Safety Oversight Reporting (SSOR) system if they involve disabling damage). Moreover, it would preserve the broader set of data FTA collects involving substantial damage events that do not involve disabling damage for FTA data analysis and other NTD data users.

This change would apply to the roughly 320 collision events annually that are reported as substantial damage. FTA anticipates that nearly all of the events reported as substantial damage would be marked "Yes" for disabling damage; only a small number would be marked as "No." Examples of events that are substantial but not disabling include events where rail rolling stock strikes a personal vehicle, with no disabling damage to the rail rolling stock, but the personal vehicle is rendered inoperable. Other examples include events where rail transit property other than a rail transit vehicle experiences substantial damage (e.g., equipment is struck by an object and is substantially damaged), and there is a disruption to service.

Under this proposed option, FTA would retain substantial damage as a reporting threshold. All of the events described above therefore would require major event reports, given that substantial damage occurred. Disabling damage would be recorded as a *subset* of substantial damage.

FTA would operationalize this requirement by adding a question to the S&S-40 Report. NTD reporters would be first asked to indicate if the collision event caused substantial damage—consistent with current reporting requirements. If the reporter indicates that the event caused substantial damage, the system would prompt the reporter to indicate if the event resulted in disabling damage. If the event did not result in disabling damage, the reporter would simply indicate that no disabling damage occurred.

This option would not expand the set of events that are currently reported. However, it would increase the data collected for each rail collision event involving substantial damage. In calendar year 2023, there were 398 such events—if FTA implements this change, each of these events would require this

additional field to establish whether or not the event involved disabling damage.

FTA seeks comment on both proposed alternatives. The proposed changes would take effect in calendar year 2025, approximately three months after the publication of the final notice.

#### **G. Reduced Reporter Exemption for Operators Predominantly Serving Rural Areas**

FTA recognizes that there are unique rural operators who provide service over large geographic regions in the United States that partially contain one or more small urbanized areas (UZAs). Although these operators predominantly serve rural areas, they currently report to the NTD as Full Reporters if they operate more than 30 vehicles in maximum service. FTA believes that data reporting requirements should be reduced for these operators to align with the Rural Module reporting requirements of the NTD. This proposal stems from changes to urbanized zone areas from the 2020 Census, which resulted in many agencies that had traditionally been rural reporters suddenly becoming urban reporters, some of whom still predominantly serve rural areas. As a result of this Census change, some transit agencies have requested a waiver from full reporting requirements. In the interest of reducing reporting burden and given that these reporters still *predominantly* serve rural areas, FTA is proposing to extend waivers to this set of reporters whose service contributes a small proportion towards urban transit service.

Accordingly, FTA proposes a waiver process in which reporters that predominantly serve rural areas may request an exemption from filing as a Full Reporter. Effectively, this would mean that operators receiving the waiver would report as Reduced Reporters instead.

Under this proposal, FTA would grant the waiver if the agency predominantly serves a rural area, as determined by the following criteria:

- Receives funding under 49 U.S.C. 5311,
- Reports one or more primary or secondary UZAs on their Federal Funding Allocation form (FFA-10),
- Operates more than 30 Vehicles Operated in Maximum Service (VOMS),
- Operates fewer total VOMS in urbanized areas (UZAs) than rural (non-UZA) areas, and
- Allocates more total Vehicle Revenue Miles (VRM) to non-UZAs than UZAs.

FTA believes these criteria would positively identify reporters who

predominantly serve rural areas without carving out too broad an exemption. Upon publication of the final notice, FTA would review and validate NTD data to assess the above criteria. FTA proposes to use data from the most recent year's validated and accepted data to evaluate eligibility for this waiver, and FTA would grant the waiver if each of the above criteria are met. Based on current available data, FTA estimates that approximately 10–15 agencies would be eligible for this waiver.

FTA would automatically identify agencies that qualify for this waiver based on the prior year's validated and accepted data submitted to the NTD. All eligible reporters then would be presented with the option to request the waiver annually during the Report Year Kick-Off (RYKO) process, which confirms an agency's basic information and operational data listed above that would affect reporter type selection. This process would use the ratio of Section 5307 to total Federal funding expended to estimate VOMS in urbanized areas versus rural areas, because these data are not directly collected on the Federal Funding Allocation form (FFA-10).

If an agency is reporting to the NTD for the first time and wishes to request this waiver, they would be prompted to provide the relevant information for determining eligibility as a part of the "New ID Request" process.

FTA proposes that agencies granted this waiver would certify that they continue to meet the eligibility requirements each year. This certification would be verified through FTA's normal validation of an agency's annual RYKO. However, if an agency's operations change significantly and they no longer meet eligibility requirements, agencies could request a one-year extension of the waiver to allow the agency time to implement data collection changes that would facilitate a Full Reporter submission the following year.

FTA notes that agencies that receive this waiver would report as Reduced Reporters going forward. They therefore would no longer submit Passenger Miles Traveled (PMT) data to the NTD. FTA uses PMT data as part of the calculation of Urbanized Area formula apportionments under 49 U.S.C. 5307 (Section 5307). Agencies considering this waiver would coordinate with the local planning agency in the UZA in which they operate, and the State DOT receiving Section 5311 funding which may impact apportionment to the UZA. These data would otherwise be used in



the incentive tier of the Section 5307 formula apportionment.

Under this proposal, FTA would continue to automatically grant a Full Reporting waiver for agencies that report that they operate in a primary or secondary UZA and report 30 or fewer VOMS in the NTD annual report (assuming all figures have been validated). Agencies that neither operate in a UZA nor receive or benefit from Section 5307 funding would not need to apply for this waiver.

FTA proposes that this waiver would be available beginning in NTD Report Year (RY) 2025.

#### H. Voluntary Reporter Tag

Recipients and beneficiaries of FTA funding under either the Urbanized Area Formula Program (49 U.S.C. 5307) or Rural Area Formula Program (49 U.S.C. 5311) are required by law to report to the NTD. FTA funding recipients that own, operate, or manage public transportation capital assets are required to provide more limited reports to the NTD regarding Transit Asset Management. However, while most transit agencies report to the NTD because they are required to do so by Federal statute, some transit agencies do not receive or benefit from FTA funds but submit NTD reports on a voluntary basis. The service reported by these agencies generate funding for the state or urbanized area(s) where they report their service. The term “transit agency” refers to an entity providing public transportation as defined in 49 U.S.C. 5302.

The term “Voluntary Reporter” refers to public or private transit agencies that are not obligated by Federal statute to report to the NTD, but voluntarily comply with all NTD reporting requirements under the NTD regulation (49 CFR part 630) and the Uniform System of Accounts (USOA). Voluntary Reporters might report data to the NTD with the intention of future inclusion in FTA’s Federal funding awards.

Currently, FTA does not collect data that specifically designates an agency’s “required” versus “voluntary” reporting status in the NTD reporting system. While an agency’s reported financial and revenue vehicle inventory data can indicate their reporting obligations, FTA does not require agencies to directly attest to their reporting status each report year.

To improve data collection from transit agencies, FTA proposes an update to the annual reporting system that would require agencies to identify whether they are Voluntary Reporters. Adding this signifier to the NTD platform would streamline and simplify

the process of identifying required versus Voluntary Reporters through a single question, which agencies would answer each report year.

Under this proposal, each unique, active NTD ID would answer a question on the “Identification” (B–10) form in their annual NTD report packages that would ask them to attest to their Voluntary Reporter status. Agencies would respond to the question by selecting “Yes” or “No” in the report form. Agencies that are Section 5307 or 5311 recipients or beneficiaries, or that have continuing grant requirements under either of these programs, would select “No” to indicate they are not Voluntary Reporters and are required to report to the NTD. Agencies who have no Federal requirement to report to the NTD, including not being held to the continuing grant requirements described above, would select “Yes” to indicate that they are Voluntary Reporters.

FTA is proposing that this requirement apply to all reporter types, including Full and Reduced Urban Reporters, Tribes, State DOTs, Rural General Public Transit Reporters, and Capital Asset Reporters. In cases where it is evident and uncontestable that the reporter is a recipient of FTA funding—for instance, a rural subrecipient of a State—this field could be automatically populated for them.

Under this proposal, transit agencies must recertify their voluntary reporting status each report year. This would allow agencies to either verify that their previous reporting status is accurate in the current reporting period or update their reporting status if it has changed. The question would reset at the beginning of each report year so that agencies could select their responses for that particular year. For example, if an agency was a Voluntary Reporter in Report Year (RY) 2024, but received Section 5307 funds in RY 2025, the agency would no longer be considered a Voluntary Reporter, and must answer “No” to the Voluntary Reporter question in the B–10 form in RY 2025.

FTA would verify reporters’ responses in the B–10 form through the NTD data validation process. For example, if an agency answers that they are voluntarily reporting in a given report year, FTA would not expect that agency to report Section 5307 or 5311 funds expended on operations or capital in their annual NTD report. FTA also would not expect the agency to report revenue vehicles with the Urbanized Area Formula Program or Rural Area Formula Program funding codes on the Revenue Vehicle Inventory (A–30) forms; if an agency has existing revenue vehicles with either of these funding types already in their

report, the agency’s validation analyst would ask the agency to confirm whether the vehicle(s) are still within their useful life periods. This verification ensures that the Voluntary Reporter status is consistent with the rest of the report and accurate in the NTD annual data publications.

Please note that this change would not affect existing reporting requirements for mandatory reporters, nor affect the timing of when agencies become subject to mandatory reporting requirements. Agencies are required to report to the National Transit Database if they receive Federal funding, are applying for Federal funding in the coming year, or maintain capital assets purchased with Federal funds. This is unchanged from prior policy. For more information, please consult the NTD Reporting Manuals at <https://www.transit.dot.gov/ntd/manuals>.

FTA proposes that this change would take effect beginning in NTD Report Year (RY) 2025.

**Veronica Vanterpool,**  
*Deputy Administrator.*

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**BILLING CODE 4910–57–P**

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### Recruitment Notice for the Taxpayer Advocacy Panel

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice.

**SUMMARY:** Notice of open season for recruitment of IRS Taxpayer Advocacy Panel (TAP) Members.

**DATES:** October 24, 2024, through November 14, 2024.

**FOR FURTHER INFORMATION CONTACT:** Fred N. Smith, Jr. at 202–317–3087 (not a toll-free call).

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that the Department of the Treasury and the Internal Revenue Service (IRS) are inviting individuals to help improve the nation’s tax agency by applying to be members of the Taxpayer Advocacy Panel (TAP). The mission of the TAP is to listen to taxpayers, identify issues that affect taxpayers, and make suggestions for improving IRS service and customer satisfaction. The TAP serves as an advisory body to the Secretary of the Treasury, the Commissioner of Internal Revenue, and the National Taxpayer Advocate. TAP members will participate in subcommittees that channel their

feedback to the IRS through the Panel's parent committee.

The IRS is seeking applicants who have an interest in good government, a personal commitment to volunteer approximately 200 to 300 hours a year, and a desire to help improve IRS customer service. As a Federal advisory committee, TAP is required to have a fairly balanced membership in terms of the points of view represented. Thus, TAP membership represents a cross-section of the taxpaying public with at least one member from Arkansas, Iowa, Kansas, Kentucky, Maine, Minnesota, Missouri, North Carolina, North Dakota, Nebraska, Oklahoma, Puerto Rico, Vermont, Wisconsin, Wyoming. Potential candidates must be U.S. citizens, not a current employee of any Bureau of the Treasury Department or have worked for any Bureau of the Treasury Department within the three years of December 1 of the current year and must pass a Federal tax compliance check and a Federal Bureau of Investigation criminal background investigation. Applicants who practice before the IRS must be in good standing with the IRS (meaning not currently under suspension or disbarment). Federally-registered lobbyists cannot be members of the TAP. The IRS is seeking members or alternates in the following locations: Arkansas, Iowa, Kansas, Kentucky, Maine, Minnesota, Missouri, North Carolina, North Dakota, Nebraska, Oklahoma, Puerto Rico, Vermont, Wisconsin, Wyoming. TAP members are a diverse group of citizens who represent the interests of taxpayers, from their respective geographic locations as well as taxpayers overall. Members provide feedback from a taxpayer's perspective on ways to improve IRS customer service and administration of the Federal tax system, by identifying grassroots taxpayer issues. Members should have good communication skills and be able to speak to taxpayers about TAP and its activities, while clearly distinguishing between TAP positions and their personal viewpoints.

Interested applicants should visit the TAP website at [www.improveirs.org](http://www.improveirs.org) for more information about TAP. Applications may be submitted online at [www.usajobs.gov](http://www.usajobs.gov). For questions about TAP membership, call the TAP toll-free number, 1-888-912-1227 and select prompt 5. Callers who are outside of the U.S. should call 202-317-3087 (not a toll-free call).

The opening date for submitting applications is October 24, 2024, and the deadline for submitting applications is November 14, 2024. Interviews will be held. The Department of the Treasury

will review the recommended candidates and make final selections. New TAP members will serve a three-year term starting in December 2024. (Note: highly ranked applicants not selected as members may be placed on a roster of alternates who will be eligible to fill future vacancies that may occur on the Panel.)

Questions regarding the selection of TAP members may be directed to Fred N. Smith, Jr., Taxpayer Advocacy Panel, Internal Revenue Service, 1111 Constitution Avenue NW, TA:TAP Room 1509, Washington, DC 20224, or 202-317-3087 (not a toll-free call).

Dated: October 25, 2024.

**Shawn Collins,**

*Director, Taxpayer Advocacy Panel.*

[FR Doc. 2024-25245 Filed 10-30-24; 8:45 am]

**BILLING CODE 4830-01-P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### ETAAC Notice of Public Meeting: Correction

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Correction notice.

**SUMMARY:** This document contains a correction to a meeting announcement for a Public Meeting of the Electronic Tax Administration Advisory Committee (ETAAC). The meeting will be held Thursday, November 14, at 12:30. The prior notice, that was published in the **Federal Register** was published on October 24, 2024, incorrectly stated November 14 was a Wednesday.

**FOR FURTHER INFORMATION CONTACT:** Alec S. Johnston at 202-307-4299 (not a toll-free number).

#### SUPPLEMENTARY INFORMATION:

##### Background

ETAAC is a federal advisory committee operating pursuant to the Federal Advisory Committee Act (FACA). As a FACA Committee, the ETAAC is required to hold public meetings to inform the public of the committee's activities. This notice is an announcement of one of the committee's public meetings.

##### Correction of Publication

Accordingly, FR Doc. 2024-24718, Notice of Meeting of the ETAAC, appearing on page 85009 in the **Federal Register** on Thursday, October 24, 2024, is corrected to reflect the correct meeting day to be "Thursday, November 14, at 12:30 p.m. EDT" and not

"Wednesday, November 14, at 12:30 p.m. EDT".

Dated: October 25, 2024.

**John A. Lipold,**

*Designated Federal Official, Office of National Public Liaison, Internal Revenue Service.*

[FR Doc. 2024-25270 Filed 10-30-24; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF THE TREASURY

### Agency Information Collection Activities; Submission for OMB Review; Comment Request; Capital Magnet Fund Performance Report and Environmental Review Form

**AGENCY:** Departmental Offices, Department of the Treasury.

**ACTION:** Notice of information collection; request for comment.

**SUMMARY:** The Department of the Treasury will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. The public is invited to submit comments on this request.

**DATES:** Comments should be received on or before December 2, 2024 to be assured of consideration.

**ADDRESSES:** Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain). Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

**FOR FURTHER INFORMATION CONTACT:** Copies of the submissions may be obtained from Spencer W. Clark by emailing [PRA@treasury.gov](mailto:PRA@treasury.gov), calling (202) 927-5331, or viewing the entire information collection request at [www.reginfo.gov](http://www.reginfo.gov).

#### SUPPLEMENTARY INFORMATION:

##### Community Development Financial Institutions Fund (CDFI Fund)

*Title:* Capital Magnet Fund Performance Report and Environmental Review Form.

*OMB Control Number:* 1559-NEW.  
*Type of Review:* Request for a New OMB Control Number.

*Description:* The Capital Magnet Fund (CMF) was established through the Housing and Economic Recovery Act of 2008 (HERA; Pub. L. 110-289), as a

competitive grant program administered by the Community Development Financial Institutions Fund (CDFI Fund). Through CMF, the CDFI Fund provides federal financial assistance to Certified Community Development Financial Institutions (CDFIs) and qualified Nonprofit Organizations that have the development or management of Affordable Housing, as defined in 12 CFR 1807, as amended (effective June 25, 2024), as one of their principal purposes. CMF Awards must be used to attract private financing for and increase investment in: (i) the Development, Preservation, Rehabilitation, and Purchase of Affordable Housing for primarily Extremely Low-, Very Low-, and Low-Income Families; and (ii) Economic Development Activities which, in conjunction with Affordable Housing Activities, will implement a Concerted Strategy to stabilize or revitalize a Low-Income Area or an Underserved Rural Area.

CMF Award Recipients enter into Assistance Agreements with the CDFI Fund that set forth required terms and conditions of the Award, including reporting and data collection requirements. The Assistance Agreement requires the submission of an annual CMF Performance Report, and if applicable, the submission of an Environmental Review Form 180 days prior to issuing a Commitment for a project.

*Form:* CMF Performance Report, CMF Environmental Review.

*Affected Public:* Certified Community Development Financial Institutions (CDFIs) and qualified Nonprofit Organizations.

*Estimated Number of Respondents:* 386.

*Frequency of Response:* Annually.

*Estimated Total Number of Annual Responses:* 391.

*Estimated Time per Response:* 20 hours for the Performance Report and 30

minutes for the Environmental Review Form.

*Estimated Total Annual Burden Hours:* 7,723.

*Authority:* 44 U.S.C. 3501 et seq.

**Spencer W. Clark,**

*Treasury PRA Clearance Officer.*

[FR Doc. 2024–25328 Filed 10–30–24; 8:45 am]

**BILLING CODE 4810–70–P**

## DEPARTMENT OF THE TREASURY

### United States Mint

#### Notification of Citizens Coinage Advisory Committee Public Meeting—November 19, 2024

##### **ACTION:** Notice of meeting.

Pursuant to United States Code, title 31, section 5135(b)(8)(C), the United States Mint announces the Citizens Coinage Advisory Committee (CCAC) public meeting scheduled for November 19, 2024.

*Date:* November 19, 2024.

*Time:* 1 p.m. to 4 p.m. (ET).

*Location:* Remote via Videoconference.

*Subject:* Review and approval of the Fiscal Year 2024 Annual Report; review and discussion of the candidate designs for the 2025 Comic Art Super Hero Coin and Medal Program—Batman and Wonder Woman; review and discussion of the candidate designs for the Emmett Till and Mamie Till-Mobley Congressional Gold Medal; and possible review and discussion of candidate designs for Semiquincentennial related products.

Interested members of the public may watch the meeting via live stream on the United States Mint's YouTube Channel at <https://www.youtube.com/user/usmint>. To watch the meeting live, members of the public may click on the

“November 19, 2024” icons under the Live Tab on the specific day.

*The public should call the CCAC HOTLINE at (202) 354–7502 for the latest updates on meeting time and access information.*

The CCAC advises the Secretary of the Treasury on any theme or design proposals relating to circulating coinage, bullion coinage, Congressional Gold Medals, and national and other medals; advises the Secretary of the Treasury with regard to the events, persons, or places to be commemorated by the issuance of commemorative coins in each of the five calendar years succeeding the year in which a commemorative coin designation is made; and makes recommendations with respect to the mintage level for any commemorative coin recommended.

For members of the public interested in watching on-line, this is a reminder that the remote access is for observation purposes only. Members of the public may submit matters for the CCAC's consideration by email to [info@ccac.gov](mailto:info@ccac.gov).

*For Accommodation Request:* If you require an accommodation to watch the CCAC meeting, please contact the Office of Equal Employment Opportunity by November 13, 2024. You may submit an email request to [Reasonable.Accommodations@usmint.treas.gov](mailto:Reasonable.Accommodations@usmint.treas.gov) or call 202–354–7260 or 1–888–646–8369 (TTY).

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

Jennifer Warren, United States Mint Liaison to the CCAC; 801 9th Street NW, Washington, DC 20220; or call 202–354–7208.

(Authority: 31 U.S.C. 5135(b)(8)(C))

**Eric Anderson,**

*Executive Secretary, United States Mint.*

[FR Doc. 2024–25394 Filed 10–30–24; 8:45 am]

**BILLING CODE 4810–37–P**



# FEDERAL REGISTER

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Vol. 89

Thursday,

No. 211

October 31, 2024

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## Part II

### Nuclear Regulatory Commission

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10 CFR Parts 1, 2, 10, et al.

Risk-Informed, Technology-Inclusive Regulatory Framework for Advanced Reactors; Proposed Rule

## NUCLEAR REGULATORY COMMISSION

10 CFR Parts 1, 2, 10, 11, 19, 20, 21, 25, 26, 30, 40, 50, 51, 53, 70, 72, 73, 74, 75, 95, 140, 150, 170, and 171

[NRC-2019-0062]

RIN 3150-AK31

### Risk-Informed, Technology-Inclusive Regulatory Framework for Advanced Reactors

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is proposing to revise the NRC's regulations by adding a risk-informed, performance-based, and technology-inclusive regulatory framework for commercial nuclear plants in response to the Nuclear Energy Innovation and Modernization Act (NEIMA). The NRC plans to hold a public meeting to promote full understanding of the proposed rule and facilitate public comments.

**DATES:** Submit comments by December 30, 2024. 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 before this date.

**ADDRESSES:** You may submit comments by any of the following methods however, the NRC encourages electronic comment submission through the Federal rulemaking website:

- *Federal Rulemaking website:* Go to <https://www.regulations.gov> and search for Docket ID NRC-2019-0062. Address questions about NRC dockets to Helen Chang; telephone: 301-415-3228; email: [Helen.Chang@nrc.gov](mailto:Helen.Chang@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](mailto: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.

You can read a plain language description of this proposed rule at

<https://www.regulations.gov/docket/NRC-2019-0062>. 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:

Robert Beall, Office of Nuclear Material Safety and Safeguards, telephone: 301-415-3874; email: [Robert.Beall@nrc.gov](mailto:Robert.Beall@nrc.gov); or Anders Gilbertson, Office of Nuclear Reactor Regulation, telephone: 301-415-1541; email: [Anders.Gilbertson@nrc.gov](mailto:Anders.Gilbertson@nrc.gov). Both are staff of the U.S. NRC, Washington, DC 20555-0001.

#### SUPPLEMENTARY INFORMATION:

##### Executive Summary

##### A. Need for the Regulatory Action

On January 14, 2019, the President signed the Nuclear Energy Innovation and Modernization Act (NEIMA) into law (Pub. L. 115-439). NEIMA section 103(a)(4) directs the NRC to "complete a rulemaking to establish a technology-inclusive, regulatory framework for optional use by commercial advanced nuclear reactor applicants for new reactor license applications." NEIMA defines a "technology-inclusive regulatory framework" as one that is "developed using methods of evaluation that are flexible and practicable for application to a variety of reactor technologies, including, where appropriate, the use of risk-informed and performance-based techniques." NEIMA, as further amended by the Accelerating Deployment of Versatile, Advanced Nuclear for Clean Energy Act of 2024 (ADVANCE Act), defines the term "advanced nuclear reactor" as "a nuclear fission reactor or fusion machine, including a prototype plant (as defined in sections 50.2 and 52.1 of title 10, *Code of Federal Regulations* (as in effect on the date of enactment of [NEIMA])), with significant improvements compared to commercial nuclear reactors under construction as of the date of enactment of [NEIMA]."

The NRC initially considered establishing the scope of proposed part 53, "Risk-Informed, Technology-Inclusive Regulatory Framework for Commercial Nuclear Plants," of title 10 of the *Code of Federal Regulations* (10 CFR) as being for "advanced nuclear plants" consisting of one or more "advanced nuclear reactors" as defined in NEIMA. Based on public discussions on the use of the term, the NRC determined that the NEIMA definition, although broad, did not define "significant improvements" with enough specificity to implement in NRC regulations. Additionally, a number of

stakeholders suggested that the descriptor, "advanced," implied enhanced safety, while the NEIMA definition includes "significant improvements" in areas other than safety enhancements. In response to this feedback, and to be technology inclusive, the NRC determined that the broader term "commercial nuclear plant" would be preferable.

The current application and licensing requirements in 10 CFR part 50, "Domestic Licensing of Production and Utilization Facilities," and 10 CFR part 52, "Licenses, Certifications, and Approvals for Nuclear Power Plants," were primarily developed to address license requests concerning water-cooled reactors, and to address operational requirements for those types of reactors. This proposed rule responds to NEIMA by creating an alternative regulatory framework for licensing future commercial nuclear plants. The new alternative requirements and implementing guidance would adopt technology-inclusive approaches and use risk-informed and performance-based techniques to ensure an equivalent level of safety to that of operating commercial nuclear plants while providing flexibility for licensing and regulating a variety of technologies and designs for commercial nuclear reactors.

##### B. Major Provisions

Major provisions of this proposed rule, supported by accompanying guidance, include the following:

- A new alternative technology-inclusive, risk-informed, performance-based framework that includes requirements for licensing and regulating nuclear plants during the various stages of their life cycles.
- A new alternative technology-inclusive, risk-informed, and performance-based framework in 10 CFR part 26, "Fitness for Duty Programs," developed from existing requirements in subpart K, "FFD Programs for Construction," of part 26.
- A new alternative technology-inclusive and performance-based security framework in 10 CFR part 73, "Physical Protection of Plants and Materials," that includes requirements for protection of licensed activities at commercial nuclear plants.

##### C. Costs and Benefits

The NRC prepared a draft regulatory analysis to determine the expected quantitative costs and benefits of this proposed rule and associated guidance as well as qualitative factors to be considered in the NRC's rulemaking decision. The conclusion from the

analysis is that this proposed rule and associated guidance would result in net averted costs to the industry and the NRC ranging from \$53.6 million using a 7-percent discount rate to \$68.2 million using a 3-percent discount rate, using an assumption of one applicant under 10 CFR part 53. As the number of applicants increases, so do the estimated averted costs.

The draft regulatory analysis also considers qualitative factors, such as greater regulatory stability, predictability, and clarity to the licensing process. These benefits would result from incorporating advances in probabilistic risk assessment (PRA) and other risk-informed analyses and codifying regulatory enhancements that currently exist in regulatory guides (RGs). Another qualitative factor is promoting a performance-based regulatory framework that specifies requirements to be met and provides flexibility to an applicant or licensee regarding the information or approach needed to satisfy those requirements.

For more information, please see the draft regulatory analysis (available in the NRC's Agencywide Documents Access and Management System (ADAMS) Accession No. ML21165A112).

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## I. Obtaining Information and Submitting Comments

### A. Obtaining Information

Please refer to Docket ID NRC–2019–0062 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking Website*: Go to <https://www.regulations.gov> and search for Docket ID NRC–2019–0062.
- *NRC's Agencywide Documents Access and Management System (ADAMS)*: You may obtain publicly available documents online in the ADAMS Public Documents collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, at 301–415–4737, or by email to [PDR.Resource@nrc.gov](mailto: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*: The PDR, where you may examine and order copies of publicly available documents, is open by appointment. To make an appointment to visit the PDR, please send an email to [PDR.Resource@nrc.gov](mailto:PDR.Resource@nrc.gov) or call 1–800–397–4209 or 301–415–4737, between 8 a.m. and 4 p.m. eastern time, Monday through Friday, except Federal holidays.

### B. Submitting Comments

The NRC encourages electronic comment submission through the Federal rulemaking website (<https://www.regulations.gov>). Please include Docket ID NRC–2019–0062 in your comment submission. To facilitate NRC review, please distinguish between comments on the proposed rule and comments on the proposed guidance.

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 <https://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

### A. NRC Advanced Reactor Readiness

In its "Policy Statement on the Regulation of Advanced Nuclear Power Plants," dated July 8, 1986, the Commission stated that it considered the term "advanced" to apply to reactors that are significantly different from current (*i.e.*, current in 1986) generation light-water reactors (LWRs) then under construction or in operation, and that "advanced" includes reactors that provide enhanced margins of safety or utilize simplified inherent or other innovative means to accomplish their safety functions. At the time, certain high temperature gas-cooled reactors, liquid metal reactors, and LWRs of innovative design were considered to be "advanced." The 1986 policy statement

provided the Commission's policy regarding the review of, and desired characteristics associated with, advanced reactors. The NRC updated this statement in the "Policy Statement on the Regulation of Advanced Reactors," dated October 14, 2008 (Advanced Reactor Policy Statement).

The agency has undertaken many activities related to advanced reactors, including issuing an advance notice of proposed rulemaking titled, "Approaches to Risk-Informed and Performance-Based Requirements for Nuclear Power Reactors," dated May 4, 2006 (71 FR 26267). These efforts were often done in parallel, and sometimes interwoven, with the NRC's efforts to improve risk-informed and performance-based approaches within the agency (e.g., the Commission's policy statement, "Use of Probabilistic Risk Assessment Methods in Nuclear Regulatory Activities," dated August 16, 1995 (PRA Policy Statement)).

In 2016, the NRC issued "NRC Vision and Strategy: Safely Achieving Effective and Efficient Non-Light-Water Mission Readiness" (Advanced Reactor Vision and Strategy Document), in response to increasing interest in advanced reactor designs. The NRC considered the Department of Energy's (DOE's) advanced reactor deployment goals in developing the Advanced Reactor Vision and Strategy Document. Since publication of the document, the NRC continues to manage its activities to support the DOE's deployment goals. The Advanced Reactor Vision and Strategy Document identified initiating and developing a new risk-informed and performance-based regulatory framework as a possible long-term goal. However, the NRC staff's initial efforts were focused on resolving policy issues and developing guidance for licensing non-LWR technologies under the existing regulatory frameworks (parts 50 and 52). The NRC staff issues annual Commission papers on the status and progress of the NRC staff's activities related to advanced reactors (e.g., SECY-24-0020, "Advanced Reactor Program Status," dated February 27, 2024). These Commission papers provide status updates for advanced reactor activities undertaken both prior to and after initiation of this rulemaking.

In 2017, the NRC staff prioritized activities to support the development of technology-inclusive, risk-informed, and performance-based licensing approaches that could be implemented under the existing regulatory framework in parts 50 and 52. One key element of these efforts was the Licensing Modernization Project (LMP), a cost-

shared initiative led by nuclear utilities and supported by DOE. The LMP is a technology-inclusive, risk-informed, and performance-based methodology developed for non-LWR designs. The LMP provides a systematic and reproducible process for licensing-basis event (LBE) selection and evaluation; classification of structures, systems, and components (SSCs); and assessment of defense in depth. The LMP refined the DOE's Next Generation Nuclear Plant Program methodologies to reflect interactions with the NRC, to address feedback from industry, and to broaden the scope of the approach to ensure applicability to various non-LWR technologies. The LMP activities led to the publication and submittal of Nuclear Energy Institute (NEI) 18-04, Revision 1, "Risk-Informed Performance-Based Technology Inclusive Guidance for Non-Light Water Reactor Licensing Basis Development," issued August 2019. The document indicates that controlling the frequencies and potential consequences of a wide spectrum of events is the primary focus of the LMP approach.

The NRC endorsed the principles and methodology in NEI 18-04, with clarifications, in RG 1.233, "Guidance for a Technology-Inclusive, Risk-Informed, and Performance-Based Methodology to Inform the Licensing Basis and Content of Applications for Licenses, Certifications, and Approvals for Non-Light-Water Reactors." The NRC staff sought Commission approval of the use of LMP and NEI-18-04 in SECY-19-0117, "Technology-Inclusive, Risk-Informed, and Performance-Based Methodology to Inform the Licensing Basis and Content of Applications for Licenses, Certifications, and Approvals for Non-Light-Water Reactors," dated December 2, 2019. In that paper, the staff described the relationship between the LMP and NEI-18-04 and previous relevant Commission decisions, including those described in SECY-93-092, "Issues Pertaining to the Advanced Reactor (PRISM, MHTGR, and PIUS) and CANDU 3 Designs and their Relationship to Current Regulatory Requirements," dated April 8, 1993. The Commission approved the use of the LMP methodology and NEI-18-04 as a reasonable approach for establishing key parts of the licensing basis and content of applications for licenses, certifications, and approvals for non-LWRs in Staff Requirements Memorandum (SRM) SRM-SECY-19-0117, dated May 26, 2020. Although the LMP approach is technology-inclusive, the industry and NRC staff initially focused the LMP's applicability on non-LWRs, both for efficiency and to support

near-term non-LWR applications under the existing regulatory framework, such as the Advanced Reactor Demonstration Projects supported by DOE.

As stated in the part 53 rulemaking plan, SECY-20-0032, the NRC staff developed part 53 by building upon recent and ongoing activities such as the LMP approach described in SECY-19-0117. Such an approach supports implementing the NEIMA requirement to use, where appropriate, risk-informed and performance-based techniques, and it also capitalizes on previous initiatives by the industry, DOE, and the NRC, including the LMP. This approach highlights the role of PRA in risk-informed and performance-based approaches to identifying enhanced safety margins that can be used to justify operational flexibilities. The proposed framework is largely based on the methodology described in SECY-19-0117 and includes a prominent role for PRA.

As discussed in section II.B, "Stakeholder Views on Part 53 Preliminary Proposed Rule Language," of this document, the NRC conducted extensive public outreach on early versions of the proposed rule text. Early versions of the draft proposed rule included two alternative regulatory frameworks. One framework (called "Framework A") offered a licensing approach centered largely on risk analysis and the other framework (called "Framework B") largely replicated the existing licensing approach in parts 50 and 52 but modified it to be technology neutral. In its SRM to SECY-23-0021, "Proposed Rule: Risk-Informed, Technology-Inclusive Regulatory Framework for Advanced Reactors (RIN 3150-AK31)," the Commission disapproved the inclusion of Framework B in this proposed rule and directed the staff to provide them within one year an options paper for possible future use of the Framework B methodology.

#### *B. Stakeholder Views on Part 53 Preliminary Proposed Rule Language*

In SRM-SECY-20-0032, the Commission directed the NRC staff to prepare and release preliminary proposed rule language, followed by public outreach and dialogue, and then further revise the language until the NRC staff had established the rudiments of its proposed rule for Commission consideration. To implement the Commission's direction, the NRC staff undertook an unprecedented program of stakeholder engagement, recognizing the importance of this rulemaking to the advanced reactor community and

interested stakeholders from a broad range of backgrounds and organizations.

On November 6, 2020, the NRC published a notification in the **Federal Register** (85 FR 71002) describing plans for the periodic release of preliminary proposed rule language, meetings with stakeholders, and the ability of stakeholders to provide input during the development of this proposed rule. Sections of the preliminary proposed rule language were subsequently released, and the NRC held numerous public meetings to discuss the preliminary proposed rule language and obtain input from stakeholders. On December 10, 2021, the NRC published a second notification in the **Federal Register** (86 FR 70423) announcing that the development of the proposed rule and related interactions with stakeholders were being extended until August 31, 2022.

By the close of the public stakeholder interactions on August 31, 2022, the NRC staff had held 24 public meetings since September 2020. The NRC staff also met with the Advisory Committee on Reactor Safeguards (ACRS) in 16 public meetings during this period. By the close of the public engagement period on the preliminary proposed rule language, 126 letters were received on the preliminary proposed rule language. Of these 126 letters, 21 were from non-governmental organizations, 31 were from the public, one was from Congress, and the remaining 73 letters were from NRC licensees, the NEI, and other industry groups. In addition, the ACRS wrote four interim letter reports to the Chair on this rulemaking and issued its final letter report on November 22, 2022. The letters from stakeholders provided various points of view and suggestions for clarifications, additions, and deletions to the preliminary proposed rule language. Copies of these letters may be viewed and downloaded from the Federal rulemaking website <https://www.regulations.gov>, under docket number NRC–2019–0062. The inputs received were considered in the development of this proposed rule. However, as described during the various public interactions related to this rulemaking and in supporting documents, the NRC will not formally disposition the questions and suggestions related to the preliminary proposed rule language as it will for public comments received following the publication of this proposed rule.

### III. Discussion

#### A. Objective and Applicability

The NRC is proposing to add a new, alternative part to its regulations that

would set out a risk-informed, technology-inclusive framework for the licensing and regulation of commercial nuclear plants. This new approach would achieve the following: (1) continue to provide reasonable assurance of adequate protection of public health and safety and the common defense and security; (2) promote regulatory stability, predictability, and clarity; (3) reduce requests for exemptions from the current requirements in parts 50 and 52; (4) establish new requirements to address non-LWR technologies; (5) recognize technological advancements in reactor design; and (6) credit the possible response of some designs of commercial nuclear plants to postulated accidents, including slower transient response times and relatively small and slow release of fission products. This proposed rule would add 10 CFR part 53; subpart M, “Fitness for Duty Programs for Facilities Licensed Under 10 CFR Part 53,” to Part 26; § 73.100, “Technology-inclusive requirements for physical protection of licensed activities at commercial nuclear plants against radiological sabotage,” § 73.110, “Technology-inclusive requirements for protection of digital computer and communication systems and networks,” and § 73.120, “Access authorization program for commercial nuclear plants,” as well as make conforming changes throughout 10 CFR chapter I, “Nuclear Regulatory Commission.”

#### B. Need for Changes to the Existing Regulatory Framework

The NRC has long recognized that the licensing and regulation of a variety of nuclear reactor technologies would present challenges because the existing regulatory framework has evolved primarily to address the LWR designs that compose the current operating fleet (widely referred to as Generation II reactors). The NRC has had many interactions with designers of various reactor technologies under development, sometimes collectively referred to as advanced reactors (widely referred to as Generation III/III+ (*i.e.*, evolutionary light-water) and Generation IV (*i.e.*, non-light-water) reactors). The interactions have informed the development of policies and guidance to support the potential licensing of new and different types of reactor facilities, some of which may not utilize LWR designs. The NRC issued its Advanced Reactor Policy Statement to provide all interested parties, including the public, with the Commission’s views concerning the desired characteristics of advanced reactor designs. The NRC further described its

early efforts to establish a technology-inclusive approach to the regulation of nuclear reactors in the advance notice of proposed rulemaking published in 2006. The NRC acknowledged in its “Report to Congress: Advanced Reactor Licensing,” issued August 2012, that while the safety philosophy inherent in the current regulations applies to all reactor technologies, the specific and prescriptive aspects of those regulations clearly focus on the current fleet of LWR facilities.

Congress similarly recognized the potential benefits of developing a regulatory infrastructure to support the development and commercialization of advanced nuclear reactors. Consequently, Congress passed NEIMA in late 2018, and the President signed it into law in January 2019. NEIMA directed the NRC to undertake a rulemaking to establish a technology-inclusive regulatory framework for optional use by applicants for new commercial advanced nuclear reactor licenses. In addition, on July 9, 2024, the President signed into law the Accelerating Deployment of Versatile, Advanced Nuclear for Clean Energy Act of 2024, also referred to as the ADVANCE Act. The NRC is evaluating its plans for implementing the ADVANCE Act, including how its regulations, as well as the proposed part 53 or future revisions to it, could be used to address provisions in the ADVANCE Act. The ADVANCE Act contains provisions on a variety of nuclear-related topics, such as micro reactors, nuclear reactor license application reviews, and nuclear fuel. In Section VI, “Specific Requests for Comments,” the NRC is requesting public input on how part 53 could be revised to better enable its potential use to implement the ADVANCE Act.

The requirements in part 53 would support a wide variety of potential commercial nuclear reactor technologies. As noted in this discussion, the current regulatory framework in parts 50 and 52 evolved in the context of the current operating reactor fleet dominated by LWRs and as a result includes provisions specific to LWR technologies. While the NRC can license other reactor technologies under the current framework by using existing regulatory flexibilities and the exemption process, there is significant interest in developing a regulatory framework that is flexible enough to accommodate multiple technologies and robust enough to ensure a level of safety equivalent to parts 50 and 52, consistent with the Commission’s Advanced Reactor Policy Statement. The Commission reiterated its safety



expectations for new reactors in the SRM for SECY-10-0121, “Modifying the Risk-Informed Regulatory Guidance for New Reactors,” dated March 2, 2011:

Because new plant designs incorporate operating experience from current generation reactors, severe accident research, and risk insights from design probabilistic risk assessments, the Commission expects that the advanced technologies incorporated in new reactors will result in enhanced margins of safety. However, the Commission continues to expect (consistent with the 2008 Advanced Reactor Policy Statement), as a minimum, at least the same degree of protection of the public and the environment that is required for current-generation light-water reactors. New reactors with these enhanced margins and safety features should have greater operational flexibility than current reactors.

However, developing a regulatory framework that can accommodate a wide range of technologies while maintaining an acceptable level of safety presents significant regulatory challenges. The existing regulations have been developed over the course of decades and reflect changes to address events discovered through operating experience. In contrast, part 53 is being developed to accommodate technologies that, in some cases, lack significant operating experience. To address these challenges, the NRC drew on well-developed approaches to licensing to produce a technology-neutral and robust regulatory framework. The proposed regulatory framework would use PRAs to assess risks, help establish technical requirements, and manage operations. The framework builds on the LMP, which is a technology-inclusive approach to licensing that leverages insights from a detailed PRA to provide applicants with significant design and operation flexibilities.

#### C. 10 CFR Part 53: Framework

This proposed rule consists of several major components, including a new part 53, to be added to 10 CFR chapter I, revisions for part 26, part 50, and part 73, and conforming changes throughout 10 CFR chapter I.

Part 53 is comprised of subparts A through M. These provisions are organized to provide high-level performance criteria and to specify requirements to demonstrate compliance with those performance criteria throughout major stages of the life cycle of commercial nuclear plants. This organization reflects a systems-engineering style approach to the design, licensing, operation, and ultimately decommissioning of future commercial nuclear plants. Organizing requirements in this manner also supports performance-based

approaches. Required programs (e.g., radiation protection) and monitoring (e.g., technical specification (TS) surveillance) during the operations phase that are similar to those required by part 50 would complement the design and analysis requirements in subpart C. The performance-based approach proposed in part 53 also includes regulatory requirements that would allow applicants to use a flexible and graded approach to the performance of safety functions based on the role of a particular SSC, human action, or program in limiting the overall risks to the public below accepted standards through balanced measures to prevent and mitigate possible events.

Proposed subpart M of part 26 would be new and would be largely consistent with the objective-based fitness for duty (FFD) requirements in current subpart K, “FFD Programs for Construction,” of part 26 supplemented by select requirements from subparts A through I, N, and O of part 26. These requirements are designed to ensure program effectiveness, maintain protections afforded to individuals subject to the FFD program, and align with FFD program implementation by parts 50 and 52 licensees. The proposed requirements are not entirely equivalent because current subpart K of part 26 only applies during construction of the commercial nuclear plant, whereas proposed subpart M of part 26 would apply during construction, operation, and decommissioning. Furthermore, proposed subpart M of part 26 would allow the use of a variety of biological specimens for drug testing as well as innovative technologies for drug and alcohol screening and testing that are not described or allowed by the requirements in subparts A through K, N, and O of part 26, except under limited conditions.

Proposed revisions to part 73 would establish a new technology-inclusive consequence-based approach for a range of security areas, including physical security, cybersecurity, and access authorization (AA) for commercial nuclear reactors. The NRC used operating experience to include additional regulatory flexibility for a part 53 licensee’s implementation of security requirements.

In addition, this proposed rule would make conforming changes throughout 10 CFR chapter I, by adding “and part 53” where appropriate to account for the addition of the proposed part 53.

## IV. Part 53: Framework

### Subpart A—General Provisions

Subpart A would provide the general provisions applicable to all applicants and licensees that would be established in part 53 for the issuance, amendment, and termination of licenses, permits, certifications, and approvals for commercial nuclear plants licensed under Section 103 of the Atomic Energy Act of 1954, as amended (the Act) and title II of the Energy Reorganization Act of 1974 (88 Stat. 1242). Subpart A would include purpose, scope, definitions, written communications, employee protections, completeness and accuracy of information, exemptions, standards for review, jurisdictional limits, consideration of attacks and destructive acts by enemies of the United States, and information collection requirements.

The requirements in subpart A would be largely equivalent to the general requirements in part 50 that are applicable to all part 50 applicants and licensees (specifically, §§ 50.1 through 50.13) but would reference the corresponding regulations in part 53 in place of references to part 50.

#### A. Discussion of Definitions in Proposed Part 53

This proposed rule would include a definition section in § 53.020. The definitions of most terms in § 53.020 would be equivalent to the corresponding terms defined in: (1) §§ 50.2, 52.1, and other NRC regulations; (2) NEI 18-04, as endorsed by RG 1.233; or (3) American Society of Mechanical Engineers (ASME)/American Nuclear Society Risk Assessment Standard (RA-S)-1.4-2021, as endorsed for trial use by RG 1.247, “Acceptability of Probabilistic Risk Assessment Results for Non-Light-Water Reactor Risk-Informed Activities.” This is intended to provide clarity and consistency in terminology where possible and to utilize past and ongoing NRC initiatives to support the licensing of new reactors. Specific deviations from existing definitions are further explained in the following paragraphs.

Regarding the definition of “Commercial nuclear plant” and “Commercial nuclear reactor” in proposed § 53.020, as noted previously, the NRC initially considered establishing the scope of part 53 as being for “advanced nuclear plants.” The preliminary proposed rule language defined “advanced nuclear plant” as “a utilization facility consisting of one or more advanced nuclear reactors” as defined in NEIMA. NEIMA defines the term “advanced nuclear reactor” as “a

nuclear fission reactor or fusion machine, including a prototype plant (as defined in sections 50.2 and 52.1 of title 10, *Code of Federal Regulations* (as in effect on the date of enactment of this Act)), with significant improvements compared to commercial nuclear reactors under construction as of the date of enactment of this Act, including improvements such as—(A) additional inherent safety features; (B) significantly lower levelized cost of electricity; (C) lower waste yields; (D) greater fuel utilization; (E) enhanced reliability; (F) increased proliferation resistance; (G) increased thermal efficiency; or (H) ability to integrate into electric and nonelectric applications.”

Based on public discussions on the use of the term, the NRC determined that the NEIMA definition, although broad, did not define “significant improvements” with enough specificity to implement in NRC regulations. Additionally, a number of stakeholders suggested that the descriptor, “advanced,” implied enhanced safety, while the NEIMA definition includes “significant improvements” in areas other than safety enhancements. In response to this feedback, and to be technology inclusive, the NRC determined that the broader term “commercial nuclear plant” would be preferable. The NEIMA definition of advanced nuclear reactor also includes fusion technologies. Fusion energy systems have not been included in the scope of part 53 but are the subject of a separate rulemaking activity, “Regulatory Framework for Fusion Systems.” See NRC docket ID NRC–2023–0017 on the Federal rulemaking website <http://www.regulations.gov>.

The NRC proposes to allow use of part 53 by any “commercial nuclear plant.” The use of the term “plant” versus “reactor,” as used in existing regulations (*i.e.*, § 50.2), recognizes that co-located support facilities and radionuclide sources need to be considered in the licensing of a facility. The phrase “commercial purposes,” as used in the definition of “commercial nuclear plant,” includes purposes such as providing process heat for a variety of industrial applications (*e.g.*, desalination, oil refining, hydrogen production). The NRC has not compiled a complete list of such commercial purposes. The definition of “Commercial nuclear plant” refers to a “Commercial nuclear reactor,” which is defined based on the definition of “Nuclear reactor” in § 50.2. However, the phrase “in a self-supporting chain reaction” was removed from the definition to enable applying part 53 to accelerator driven systems that use

special nuclear material (SNM) but that do not involve self-sustaining chain reactions. Relatedly, “Utilization facility” is also defined in § 53.020 based on the definition of that term in § 50.2 but is also revised to refer to a “Commercial nuclear plant” as defined in § 53.020.

The NRC proposes to include a definition of “Consensus code or standard” in part 53 that is based on the use of these terms in the National Technology Transfer and Advancement Act of 1995 (NTTAA) (Pub. L. 104–113) and the Office of Management and Budget (OMB) Circular No. A–119, “Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities.” As required by NTTAA, the NRC undertakes the following activities: (i) consults with voluntary consensus standards bodies; (ii) participates with voluntary consensus bodies in the development of consensus standards; and (iii) uses consensus standards as a means to carry out the NRC’s policy objectives. In part 53, the NRC is not proposing to incorporate by reference specific codes and standards as is done under the existing regulations in § 50.55a, “Codes and standards,” because some codes and standards are LWR-specific. Part 53 would require that design features must be designed using generally accepted consensus codes and standards but would not incorporate the specific code or standard into the NRC’s regulations. During public meetings, significant discussions with stakeholders indicated that future reactor designers were interested in the use of international consensus standards that have not yet been endorsed by the NRC. The definition proposed in part 53 would allow for the use of international codes and standards not previously used in NRC licensing but recognizes that the use of any consensus code or standard would ultimately need to be found acceptable by the NRC, either through generic efforts to endorse a code or standard or on an application-specific basis during an individual licensing review.

The proposed definition of “Construction” is slightly different than the definition in § 50.10—it would cover the same concept but be applied to a slightly different scope of activities based on how SSCs are classified under part 53. In part 53, the definition of “Construction” is based on the definition in § 50.10 but modified to apply to safety-related (SR) and non-safety-related but safety-significant (NSRSS) SSCs identified by the design and analysis requirements in subparts B

and C to ensure the safety criteria are met.

Section 53.020 would also add definitions for terms related to event selection (LBEs, design-basis accidents (DBAs), anticipated event sequences, unlikely event sequences, and very unlikely event sequences); equipment classifications (SR, NSRSS, and non-safety-significant SSCs); performance metrics (*e.g.*, safety criteria and functional design criteria); and special treatment.

The regulation would define “Safety criteria” in terms of the plant-level performance-based metrics that would be provided in §§ 53.210 and 53.220. The term “Functional design criteria” would be defined as metrics for the performance of specific SSCs that are determined from the role of the SSC in meeting the safety criteria. These are new terms that have not previously been defined or used in NRC regulation.

The term “Safety-related SSCs” would refer to those SSCs needed to meet the safety criteria in § 53.210. The term “Non-safety-related but safety-significant SSCs” would mean those SSCs that are not SR because they are not relied upon to perform any function necessary to demonstrate compliance with § 53.210 but warrant special treatment because they are relied on to achieve adequate defense in depth or perform risk-significant functions. The term “Special treatment” would be defined as requirements, such as quality assurance and programmatic controls, identified for each design feature to ensure that the safety criteria are satisfied and the safety functions are fulfilled. These requirements would also ensure that SR and NSRSS SSCs will provide defense in depth, or perform risk-significant functions, under service conditions and with SSC reliabilities that are consistent with the analysis required in proposed subpart C. Structures, systems, and components designated as SR would also contribute to defense in depth and risk-significant functions and may warrant special treatments beyond those defined for the SR functions needed for compliance with § 53.210. The term “Non-safety-significant SSCs” would mean those SSCs that are not SR or NSRSS.

The terms “Design-basis accidents,” “Anticipated event sequences,” “Unlikely event sequences,” and “Very unlikely event sequences” would be defined to be different types of “Licensing-basis events” and would also be largely equivalent to the LMP’s definitions of DBAs, anticipated operational occurrences (AOOs), design-basis events (DBEs), and beyond-design-basis events, respectively. The term

“*Design-basis accidents*” would be defined as postulated event sequences that are used to set functional design criteria and performance objectives for the design of SR SSCs through deterministic analyses. Design-basis accidents would be derived from the unlikely event sequences from the PRA and then analyzed in a conservative approach by prescriptively assuming that only SR SSCs are available to mitigate postulated accident scenarios. Within the LMP methodology, event sequences with mean frequencies of  $1 \times 10^{-2}$ /plant-year and greater would be classified as anticipated event sequences. Within the LMP methodology, infrequent event sequences with mean frequencies of  $1 \times 10^{-4}$ /plant-year to  $1 \times 10^{-2}$ /plant-year would be classified as unlikely event sequences. “*Very unlikely event sequences*” would be less likely to occur than unlikely event sequences. Within the LMP methodology, rare event sequences with frequencies of  $5 \times 10^{-7}$ /plant-year to  $1 \times 10^{-4}$ /plant-year would be classified as very unlikely event sequences. While the proposed terminology for these event sequences would create some differences between part 53 and the LMP, part 53 would use new terms for these event sequences specifically to avoid conflicts with terms already used within part 50 and part 52 to represent different concepts. Further, because some stakeholder comments demonstrated confusion related to the history of beyond-design-basis accidents terminology, these definitions seek to clarify the event categories in part 53. The sections of this preamble related to subparts B and C provide additional discussion of LBEs.

#### B. Other General Provisions

Section 53.040 would govern written communications and how applications and other required information must be submitted to the NRC. These requirements would be equivalent to those in § 50.4.

Section 53.050 would establish requirements for enforcement action to which a licensee, an applicant, or a licensee’s or applicant’s contractor or subcontractor, or an employee of any of them may be subject for engaging in deliberate misconduct. These requirements would be equivalent to those in § 50.5.

Section 53.060 would prohibit discrimination against an employee of a holder or applicant for an NRC license, permit, design certification (DC), or design approval, or a contractor or subcontractor of a holder or applicant for an NRC license, permit, DC, or

design approval for engaging in certain protected activities. Section 53.060 also would prescribe a procedure for seeking a remedy for employees who believe they have been discriminated against for engaging in such protected activities. These requirements would be equivalent to those in §§ 50.7 and 52.5.

Section 53.070 would govern the completeness and accuracy of information provided to the NRC. These requirements would be equivalent to those in §§ 50.9 and 52.6.

Section 53.080 would govern exemptions from the requirements of the regulations in part 53. These requirements would be equivalent to those in §§ 50.12 and 52.7.

Paragraphs (a) through (d) of § 50.90 would establish requirements for standards that the NRC would consider in determining whether a construction permit (CP), operating license (OL), early site permit (ESP), combined license, or manufacturing license (ML) under part 53 would be issued to an applicant. These requirements would be equivalent to those in §§ 50.40, 50.42, 50.43 and 50.22, respectively. Requirements equivalent to those in §§ 50.41 and 50.21 would not be included in part 53 because they apply to Class 104 licenses, and part 53 would not apply to those licenses.

Section 53.100 would require that no license issued under part 53 would cover activities which are not under or within the jurisdiction of the United States. These requirements would be equivalent to those in § 50.53.

Section 53.110 would state that licensees and applicants would not be required to provide design features or other measures for the specific purpose of protection against the effects of attacks and destructive acts by enemies of the United States directed against the facility or deployment of weapons incident to U.S. defense activities. These requirements would be equivalent to those in § 50.13.

Section 53.115 would establish requirements for rights related to SNM. These requirements would be equivalent to those in § 50.54(b) and (c).

Section 53.117 would establish requirements for license suspension and rights of recapture of the material or control of the facility in a state of war or national emergency declared by Congress. These requirements would be equivalent to those in § 50.54(d).

Section 53.120 would establish requirements for information collection requirements and OMB approval. These requirements would be equivalent to those in § 50.8.

#### Subpart B—Technology-Inclusive Safety Requirements

Proposed subpart B, “Technology-Inclusive Safety Requirements,” would provide technology-inclusive safety criteria that would serve as performance standards for the subsequent performance-based requirements used throughout part 53. Subsequent subparts would define how specific activities during various stages of the life cycle of a commercial nuclear plant contribute to satisfying these high-level performance standards. The performance standards in subpart B would also establish a means to determine appropriate regulatory controls for SSCs, human actions, and programs in the following subparts. For example, the classification of SR SSCs would be built upon the proposed safety criteria in § 53.210, “Safety criteria for design-basis accidents.” The more detailed requirements for those SSCs would then be further defined in the design and analysis requirements in subpart C, “Design and Analysis Requirements.” The activities for manufacturing, constructing, and maintaining the SR SSCs would be governed by subpart E, “Construction and Manufacturing Requirements,” and subpart F, “Requirements for Operation.”

Requirements for NSRSS SSCs warranting special treatment would likewise be determined under § 53.220, “Safety criteria for licensing-basis events other than design-basis accidents,” in subpart B and § 53.460, “Safety categorization and special treatment,” in subpart C. Regulatory requirements related to the NSRSS SSCs would be distinguished from the regulatory requirements for SR SSCs throughout part 53. Part 53 would afford more flexibility to applicants and licensees regarding how NSRSS SSCs would be used in the design and maintained during plant operations, as compared to SR SSCs.

The collective set of performance-based requirements in part 53 would be sufficient, if met, for the NRC to make the findings required to grant an application for a utilization facility under Section 182 of the Act that the utilization of SNM will be in accord with the common defense and security and will provide adequate protection to the health and safety of the public. This construct would be similar to existing NRC regulations, which the Commission has said on many occasions do not specifically define “adequate protection.” However, compliance with NRC regulations may be presumed to assure adequate protection at a

minimum. The requirements throughout part 53 that support demonstrating compliance with § 53.220 would be similar to current regulations that both contribute to assuring adequate protection of public health and safety and are desirable to promote the common defense and security or to protect health or to minimize danger to life or property under Section 161 of the Act.

Consistent with historical practice, Sections 182 and 161 of the Act are cited as authorizing legislation within this proposed rule. However, specific language from the Act would not be incorporated into the safety objectives or safety criteria in part 53. This is because, again consistent with historical practice, the NRC would not be defining “adequate protection” through the individual safety requirements in part 53. Rather, part 53 would enable the NRC to make its required findings under the Act by providing sufficient performance standards, safety criteria, and related requirements on how applicants must demonstrate compliance with subpart B and other subparts.

Section 53.210 would provide safety criteria for DBAs that would be required to be identified under § 53.240 and analyzed under § 53.450(f) in subpart C of part 53. Subsequent sections in part 53 would require that the SSCs relied upon to demonstrate compliance with the criteria in § 53.210 be classified as SR. The use of SR SSCs and the 25 rem reference values for potential radiological consequences would align with traditional deterministic approaches for LWRs from §§ 50.34, 52.79, and 100.11 for evaluating the effectiveness of plant design features with respect to postulated reactor accidents. A footnote similar to that included in § 50.34(a)(1)(ii)(D)(1) and § 52.79(a)(1)(vi)(A) would be included in § 53.210 to explain that the use of the 25 rem value would not be intended to imply that this number constitutes an acceptable limit for an emergency dose to the public under accident conditions. Rather, this dose value has been set forth in this proposed section as a reference value that would be used in the evaluation of plant design features with respect to DBAs to verify that the proposed designs would provide assurance of low risk of public exposure to radiation in the event of an accident. The inclusion of the safety criteria for DBAs in subpart B would provide a logical structure supporting the identification and treatment of SR SSCs and establishing the corresponding functional design criteria for those SSCs.

Section 53.220 would provide safety criteria for LBEs other than DBAs that would be required to be identified under § 53.240 and analyzed under § 53.450(e) in subpart C. Whereas § 53.210 and the related requirements for SR SSCs would provide that a defined success path exists for DBAs, the safety criteria for LBEs other than DBAs would establish the connections between SSC design, human actions, and programmatic controls and a broader set of potential internal and external hazards. These safety criteria would also address defense-in-depth matters such as a balanced consideration of prevention and mitigation.

The safety criterion in § 53.220(b) would include a requirement to use a comprehensive risk metric or set of metrics and associated risk performance objectives against which calculated values of the risk metrics are compared. The comprehensive risk metrics or set of metrics and associated risk performance objectives would support a performance-based approach to developing an appropriate combination of design features and programmatic controls to prevent or mitigate LBEs other than DBAs. The applicant must propose the comprehensive risk metric or set of metrics and associated risk performance objectives, and the comprehensive risk metric or set of metrics and associated risk performance objectives must provide an appropriate level of safety. Comprehensive risk metrics should consist of a proposed plant risk metric or set of proposed risk metrics that approximate the total, overall risk from the facility and that address the range of possible plant configurations and associated internal and external hazards to the extent practicable. The associated risk performance objectives are preestablished, indicative values of the comprehensive risk metrics that are used as part of risk-informed decision-making. The methodology for developing and using proposed comprehensive risk metrics and associated risk performance objectives is defined by the proposed requirements for analyses in § 53.450. Therefore, the application must include a description of that methodology and, among other things, should explain the initial conditions, boundary conditions, and key assumptions used to develop and calculate the risk metrics. Screening tools and bounding or simplified methods may be used for any mode or hazard, provided that the applicant provides an acceptable technical basis. As with all risk-informed

methodologies, treatment of uncertainties must be addressed.

The risk performance objectives established under this methodology are likely to involve assessing and averaging the risks over a period of time (*e.g.*, plant year) and would not constitute a real-time requirement that must be continuously demonstrated by the licensee. The use of a comprehensive risk metric or set of risk metrics and risk performance objectives that reflect an average risk to establish performance goals for SR and NSRSS SSCs is consistent with current practices that use other risk assessment techniques to address short-term plant configurations during plant maintenance activities.

It is worth noting that the evaluation of plant risks, as represented by a comparison of analysis results to acceptable risk performance objectives for comprehensive risk metrics, would be one of several performance standards used in subpart B. The proposed use of multiple performance standards, including deterministic criteria and defense-in-depth measures, reflects an integrated decision-making process similar to that described in RG 1.174, “An Approach for Using Probabilistic Risk Assessment in Risk-Informed Decisions on Plant-Specific Changes to the Licensing Basis,” Revision 3. The NRC’s approval of using a comprehensive risk metric or set of metrics with associated risk performance objectives is not, by itself, an indicator of adequate protection. Rather, the comparison of comprehensive risk metrics to associated risk performance objectives that are acceptable to the NRC is part of a suite of regulatory requirements that, when considered holistically, form the basis for the NRC’s decision-making. This is analogous to the approach used for plants licensed under part 50 and part 52, where no single regulatory requirement governs whether a plant is “safe enough.”

The RG 1.233, “Guidance for a Technology-Inclusive, Risk-Informed, and Performance-Based Methodology to Inform the Licensing Basis and Content of Applications for Licenses, Certifications, and Approvals for Non-Light-Water Reactors,” describes an example of an acceptable approach for identifying and analyzing LBEs under part 50 and part 52, including the use of the quantitative health objectives (QHOs) stated in the NRC’s policy statement, “Safety Goals for Nuclear Power Plant Operation,” dated August 4, 1986 (51 FR 28044), as corrected and republished August 21, 1986 (51 FR 30028) (Safety Goals Policy Statement), as acceptable performance objectives for

comprehensive risk metrics. The use of comprehensive risk metrics, such as the individual early fatality risk (IEFR) and the individual latent cancer fatality risk (ILCFR), and associated risk performance objectives, such as the QHOs, from the Safety Goals Policy Statement, could form the basis for one approach to meet § 53.220(b). The requirement for comprehensive risk metrics, in combination with the other proposed requirements in subparts B and C, would bring the approach endorsed in RG 1.233 for parts 50 and 52 into part 53. Additionally, the use of comprehensive risk metrics and associated risk performance objectives would provide a logical performance objective to support the risk management approaches in the various subparts comprising proposed part 53.

The Commission stated in the introduction of the Safety Goals Policy Statement that improvements to then-current regulatory practices could lead to a more coherent and consistent regulation of nuclear power plants, a more predictable regulatory process, a better public understanding of the regulatory criteria that the NRC applies, and public confidence in the safety of operating plants. Accordingly, the Commission announced the safety goals with a focus on the risks to the public from nuclear power plant operation. Following the issuance of the Safety Goals Policy Statement, the NRC has used the comprehensive risk metrics and performance objectives provided in the safety goals within the criteria for many decisions involving safety judgments during the licensing and regulation of operating reactors and proposed nuclear reactor designs. Consistent with NUREG-0880, the proposed comprehensive risk metrics and associated risk performance objectives required under § 53.220(b) could be expressed in terms of a biologically average individual in terms of age and other risk factors. Although some comprehensive risk objectives such as the IEFR and ILCFR are defined in terms of fatality risks, the Commission continues to make clear that no death attributable to nuclear power plant operation will ever be “acceptable” in the sense that the Commission would regard it as a routine or permissible event. Comprehensive risk metrics and associated risk performance objectives as used in this proposed rule would establish acceptable risks, not acceptable deaths.

Applicants under the proposed part 53 may choose to develop and seek NRC approval of comprehensive risk metrics or sets of risk metrics and associated risk performance objectives beyond

those discussed above, including the use of surrogate measures for use in specific analyses to satisfy the proposed requirements in § 53.220(b). Such surrogate measures for comprehensive risk metrics and associated risk performance objectives could be used in a manner similar to the use of core damage frequency and conditional containment failure probability for LWRs within the safety goal evaluation process in NUREG/BR-0058, “Regulatory Analysis Guidelines of the U.S. Nuclear Regulatory Commission,” and other assessments of LWRs using the NRC’s safety goals. The NRC would, as appropriate, review novel approaches for comprehensive metrics and associated risk performance goals proposed by applicants, industry organizations, or standard development organizations and would engage stakeholders during the development of the related regulatory guidance or specific licensing actions.

Section 53.230 would require safety functions needed to ensure that the safety criteria under §§ 53.210 and 53.220 can be met if an assumed LBE were to occur at a commercial nuclear plant. Section 53.230 would specify that limiting the release of radioactive materials from the facility is the primary safety function, and therefore, limiting potential offsite consequences (*i.e.*, dose to a hypothetical individual) would be used as the primary performance metric throughout part 53. The additional or subsidiary safety functions needed to limit the release of radionuclides may include, without limitation, controlling processes related to reactivity, heat generation, heat removal, and chemical interactions. This proposed rule provides flexibility to applicants and licensees in identifying, implementing, and maintaining the safety functions supporting retention of radionuclides for commercial nuclear plants of varying sizes and technologies.

Proposed § 53.240 would require applicants to identify and address LBEs. LBEs are unplanned events, resulting from both internal and external hazards, that are used in the design and analyses required under part 53 for licensing commercial nuclear plants. This ensures estimates of offsite consequences from analyses performed under proposed § 53.450 are below the safety criteria identified under proposed §§ 53.210 and 53.220 and that SSCs, personnel, and programs address the safety functions from proposed § 53.230. Including a high-level performance requirement related to the identification and analysis of LBEs in subpart B would reflect the historical and continuing importance of evaluating unplanned events as part of

the licensing of commercial nuclear plants. Proposed § 53.240 would require identification and analysis of LBEs under § 53.450, which would require a PRA. Examples of acceptable methods of using PRAs to identify and assess LBEs would be the methodology in RG 1.233, as discussed in Draft Regulatory Guide (DG)-1413, “Technology-Inclusive Identification of Licensing Events for Commercial Nuclear Plants.”

Section 53.250 would establish defense-in-depth requirements based on the longstanding philosophy of providing defense in depth to address uncertainties about the design, operation, and performance of commercial nuclear plants. For example, parts 50 and 52 address defense in depth through layered prescriptive technical requirements (*e.g.*, fuel performance, cladding integrity, reactor coolant system integrity, containment performance) for LWRs. In contrast, the flexibility afforded to applicants in how they propose to demonstrate compliance with the high-level safety criteria within part 53 would necessitate this specific requirement to ensure defense in depth is provided. The requirements in this section would state that no single engineered design feature, human action, or programmatic control, no matter how robust, should be exclusively relied upon to address LBEs other than DBAs. The phrase “engineered design feature” would not preclude the possible crediting of inherent characteristics within the design and analysis for commercial nuclear reactors. While defense in depth would only be assessed for LBEs other than DBAs, the need to ensure dedicated success paths for DBAs would contribute to the overall defense in depth for each commercial nuclear plant under part 53.

Section 53.260 would govern normal operations and would establish a level of safety based on current requirements in 10 CFR part 20, “Standards for Protection Against Radiation,” which limits doses to members of the public and dose rates in unrestricted areas.

Section 53.270 would provide for the protection of plant workers and would establish a level of safety based on current requirements in 10 CFR part 20 which limits occupational dose.

#### *Subpart C—Design and Analysis Requirements*

This subpart would provide requirements for the design of commercial nuclear plants and the supporting analyses, including the analyses of LBEs, to demonstrate that the performance standards in proposed

subpart B can be satisfied. The sections within subpart C would reflect the overall hierarchy throughout part 53, which would cover: (1) plant-level safety criteria (§§ 53.210, 53.220, and 53.470); (2) safety functions (§ 53.230) needed to demonstrate compliance with the safety criteria; (3) design features (§ 53.400), human actions, and programmatic controls needed to fulfill the safety functions; and (4) functional design criteria (§§ 53.410 and 53.420) that must be defined for each design feature relied on to demonstrate the safety criteria (§§ 53.210, 53.220, and 53.470) are met. Subpart C would also contribute to the logic and structure of part 53 by distinguishing between SR SSCs and NSRSS SSCs and licensee-controlled programs that address LBEs other than DBAs. Specifically, SR SSCs, human actions, and programmatic controls needed to protect against DBAs are used to satisfy the safety criteria in § 53.210. Non-safety-related but safety-significant SSCs, human actions, and licensee-controlled programs that address LBEs other than DBAs generally contribute to the appropriate measures considering potential risks to public health and safety.

Section 53.400 would establish a requirement that design features be provided for each commercial nuclear plant to satisfy the safety criteria and fulfill safety functions from proposed subpart B during LBEs. Other sections in subpart C would, in turn, further address the necessary capabilities and reliabilities for SSCs by establishing functional design criteria, fulfilling design requirements, performing analyses of LBEs, performing other supporting analyses, and categorizing SSCs based on their roles in preventing or mitigating LBEs.

Section 53.410 would require that functional design criteria be defined for design features relied upon to demonstrate that the consequences from DBAs would be below the criteria in § 53.210 through analyses performed under § 53.450(f), which includes insights from both PRAs and deterministic analyses. Other sections within part 53 would establish appropriate controls on these design features (*e.g.*, safety classification, protection from external hazards, quality assurance, and TS) to ensure the functional design criteria are satisfied. The performance requirements for the SSCs needed to address DBAs and the corresponding human actions and programmatic controls would contribute to ensuring that a commercial nuclear plant licensed under part 53 would meet the safety criteria in § 53.210.

Section 53.415 would require that SR SSCs be protected against or designed to withstand the effects of natural phenomena (*e.g.*, earthquakes, tornadoes, hurricanes, floods, tsunamis, and seiches) and constructed hazards (*e.g.*, from dams, transportation routes, and military or industrial facilities). Specifically, § 53.415 would require that SR SSCs remain capable of performing the safety functions stated in § 53.230 for which they are credited up to the design-basis external hazard levels as determined under § 53.510. As used in § 53.415 and subpart D of part 53, a hazard level would refer to such things as the magnitude and recurrence rate of an earthquake and the resultant ground motions, the height of a flood, the force of hurricane winds, or the concentrations of chemicals resulting from a release from a nearby facility. These requirements would support either traditional deterministic approaches for determining and protecting against external hazards or probabilistic approaches that are being developed for seismic and some other external hazards.

Section 53.420 would require that functional design criteria be defined for design features that play a significant role in demonstrating that the safety criteria for LBEs other than DBAs are satisfied. The analyses required for this demonstration would be described in proposed § 53.450(e), which would require that those events be identified and assessed using a PRA methodology in combination with other generally accepted approaches for systematically evaluating engineered systems. The SSCs determined to be safety significant (*i.e.*, either SR or NSRSS) would have associated special treatment requirements as specified in § 53.460. Special treatment would be defined in subpart A of part 53 and generally refers to measures (*e.g.*, quality assurance, testing, monitoring) taken beyond the procurement and installation of commercial grade products to provide confidence that the SSC will comply with the applicable functional design criteria. The inclusion of a systematic approach to identifying the functional design criteria for SSCs and tailoring the special treatments to specific LBEs and safety functions is an important contributor to satisfy the proposed safety criteria in subpart B. Therefore, designers and licensees for commercial nuclear plants would be provided flexibility on how LBEs other than DBAs are either prevented or mitigated and how the calculated comprehensive plant risks satisfy the safety criterion established under § 53.220(b).

Section 53.425 would establish requirements for design features and related functional design criteria limiting doses to members of the public during normal operations to satisfy the criteria in part 20. Section 53.430 would provide similar requirements for design features and related functional design criteria for protection of plant workers to meet the safety criteria in part 20. Similar to existing regulations, the NRC considers that licensees would generally comply with the requirements of part 20 to keep doses as low as reasonably achievable by meeting a design objective of keeping doses to the public from routine plant effluents less than 10 millirem per year. This goal is similar to that provided by appendix I to part 50 and would assist designers, applicants, and licensees in performing the evaluations of possible reductions in public dose from routine effluents when considering costs and other factors. As emphasized in existing regulations in part 50, the design objective of keeping doses to the public from routine plant effluents less than 10 millirem per year should not be construed as a radiation protection standard. The NRC anticipates that future guidance will continue to reflect this performance goal.

The proposed requirements in §§ 53.425 and 53.430 for design features and functional design criteria to support radiation protection activities have parallels in existing regulations such as § 50.34(a) and (b)(3), which require in part that the means be provided for meeting the requirements of part 20 and General Design Criterion 60, 61, 63, and 64 in appendix A to part 50, which provide radiation protection related design criteria.

Section 53.440 would address various design requirements that warrant specific mention to ensure that the design features required by § 53.400 comply with the functional design criteria required by §§ 53.410 and 53.420. These requirements would be met through design practices, consideration of testing and operating experience, and various assessments of LBEs and other potential challenges to commercial nuclear plants. Discussions of some of the key design requirements included in this section follow.

- § 53.440(a): An essential element to ensuring a proposed design can comply with the performance criteria in proposed part 53 would be that the abilities of design features to fulfill their safety functions are demonstrated by a combination of analyses, test programs, prototype testing, and operating experience. This requirement closely aligns with the language in § 50.43(e)

and is proposed in part 53 as the same foundational requirement. In addition, the proposed § 53.440(a) would require the design processes for SSCs under this section to include administrative procedures for evaluating operating, design, and construction experience for considering applicable important industry experiences in the design of those SSCs. This proposed requirement corresponds to the existing requirement under § 50.34(f)(3)(i) that was developed in response to the 1979 accident at Three Mile Island Nuclear Generating Station.

- § 53.440(b): The design and licensing of commercial nuclear plants should use generally accepted consensus codes and standards. Such codes and standards ensure sufficient testing and qualification of materials and equipment and provide defined processes, specifications, and acceptance criteria for use by designers and suppliers. The NRC would indicate acceptance of consensus codes and standards used in the design and licensing of a specific commercial nuclear plant either through the NRC's generic endorsement of a code or standard (*i.e.*, through regulatory guidance), including any limitations or conditions, that can be referenced within an application, or through the review of a referenced code or standard as part of the review of a specific application.

- § 53.440(c): The design requirements in subpart C would require the materials used for SR and NSRSS SSCs to be qualified for their service conditions over the design life of the SSC.

- § 53.440(d): The requirements in § 53.440 would include the need to consider possible degradation mechanisms for materials and equipment to inform both the design process and the development of integrity assessment programs to be executed during plant operations in accordance with subpart F of part 53. The inclusion of requirements related to designing and monitoring for possible degradation mechanisms reflects important lessons learned from the history of LWRs as well as operating experience with structures and systems in countless other engineering endeavors.

- § 53.440(e) and (f): The design requirements in subpart C would state specific design requirements similar to existing requirements in parts 50, 52, and 73 for protections against fires and explosions and consideration of safety and security together in the design process.

- § 53.440(g) and (h): Specific design requirements are proposed to ensure that commercial nuclear reactors under part 53 have the capability to achieve and maintain subcriticality and long-term cooling. The requirements would be included to address the potential that some reactor designs may be able to achieve a stable end state for the purpose of event analyses but might need further actions to completely shut down and service the facility.

- § 53.440(i): The design, analysis, and development of programmatic controls under part 53 would consider the number of reactor units and other significant inventories of radioactive materials contributing to the risks to public health and safety. This would reflect the definition of "*Commercial nuclear plant*" in subpart A and reinforce that the evaluation of LBEs is performed on a plant-wide basis. This aspect of part 53 would be different from parts 50 and 52, which generally define safety requirements on the assumption of events involving only individual reactor units.

- § 53.440(j): A design requirement is proposed to provide a technology-inclusive requirement that would be equivalent to the requirements in § 50.150 to address the possible impact of a large commercial aircraft.

- § 53.440(k): The inclusion of a specific proposed requirement to address the risks to public health from potential chemical hazards of licensed material is appropriate given the diversity of reactor technologies and designs that might be licensed under part 53. The requirement in part 53 would be similar to the existing requirements in 10 CFR part 70, "Domestic Licensing of Special Nuclear Material," that address both potential radiological and chemical hazards for licensed materials at fuel cycle facilities.

- § 53.440(l): Provisions are proposed to require that measures be taken during the design of commercial nuclear plants to minimize contamination of the facility and the environment, facilitate eventual decommissioning, and minimize the generation of radioactive waste in accordance with § 20.1406.

- § 53.440(m): A design requirement is proposed to provide a technology-inclusive equivalent to the requirements in § 50.68 by including options for commercial nuclear plants to either have a monitoring system capable of detecting a criticality as described in § 70.24 or to have restrictions on SNM handling and storage that would prevent inadvertent criticality events.

- § 53.440(n): The design would need to reflect state-of-the-art human factors principles for safe and reliable

performance in all settings that human activities are expected for performing or supporting the continued availability of plant safety or emergency response functions.

Section 53.450 would establish analysis requirements and would center upon the use of a PRA in combination with other generally accepted approaches for systematically evaluating engineered systems. The reliance on PRAs as a key component in the proposed analysis requirements for part 53 would reflect the decades of improvements in PRA methodologies and the increasing use of PRA techniques in the design, licensing, and oversight of both operating and future nuclear reactors. Part of the Commission's PRA Policy Statement is that the use of PRA technology should be increased in all regulatory matters to the extent supported by the state of the art in PRA methods and data and in a manner that complements the NRC's deterministic approach and supports the NRC's traditional defense-in-depth philosophy. The need to supplement PRA insights with other engineering approaches and judgments reflects the NRC's longstanding policy described in the SRM to SECY-98-144, "Staff Requirements—SECY-98-144—White Paper on Risk-Informed and Performance-Based Regulations," dated February 24, 1999, for regulatory decision-making to be risk-informed but not solely based on numerical results of a risk assessment (*i.e.*, not a risk-based approach). Part 53 would maintain a role for NRC's traditional deterministic approaches (particularly for DBAs) and defense-in-depth philosophy by including specific requirements utilizing these regulatory tools in subparts B and C.

PRA would be used in combination with other techniques in part 53 to identify and categorize LBEs, classify SSCs, and evaluate defense in depth. This increased role for the PRA necessitates that it would be developed, performed, and maintained in accordance with NRC-approved standards and practices (see § 53.450(c) and (d)). The computer codes used to model the plant response and the behavior of the barriers to the release of radionuclides would need to be qualified for the range of conditions being simulated across a wide range of unplanned events. These analyses would need to use realistic approaches and address uncertainties associated with states of knowledge, modeling, and performance of SSCs.

While industry consensus PRA standards and peer review processes endorsed in RGs 1.200 and 1.247 remain



acceptable for developing a PRA, they are not regulatory requirements and an application under part 53 need not follow every aspect of the applicable consensus PRA standard. Existing processes for defining the scope and capability of a PRA supporting an application offer flexibility in determining the degree to which the PRA needs to be developed and may be informed by other factors such as design complexity and the needed degree of realism and level of detail, consistent with the use of the PRA and substance of the application. Such processes are currently available for appropriately defining the scope of the PRA and determining applicability of supporting requirements in consensus PRA standards needed to satisfy the proposed regulatory requirements for the specific uses of analyses under § 53.450(b). Likewise, NRC determinations of the acceptability of such PRAs would include consideration of the appropriateness of the applicant-defined scope as part of determining the applicability of and conformance to consensus PRA standard supporting requirements consistent with the current state of practice. In addition, these determinations would include consideration of other aspects of the development of the PRA, such as PRA peer reviews. An NRC determination of the acceptability of a PRA includes but is not limited to assessing the initial and boundary conditions and key assumptions used in the analysis, treatment of uncertainties, and the use of screening tools and bounding or simplified methods for any mode or hazard, provided the use of those tools and methods is justified by an acceptable technical basis. In that regard, the consensus PRA standards would not be applied by the NRC as a strict checklist of requirements for part 53 PRA acceptability determinations.

The proposed § 53.450(c) would require periodic maintenance and upgrading of the PRA to maintain an alignment between the supporting analyses and the design and performance of plant equipment, programs and procedures, and other factors associated with meeting the safety criteria of the proposed § 53.220 and the evaluation criteria of proposed § 53.450(e)(2). The periodic maintenance of the PRA would also be a means to consider new or revised information related to external hazards, industry operating experience, performance issues with or degradation of SSCs, and other contributors to the frequency and potential consequences of various event sequences. The

periodic assessments performed by licensees to support the maintenance of the PRA and other requirements in the proposed part 53 would be complemented by NRC inspections and programs to assess new or revised information related to topics such as natural hazards, operating experience, and potential generic safety issues.

The categories of LBEs used in part 53 would include anticipated event sequences, unlikely event sequences, and very unlikely event sequences. The unlikely event sequences would include those events with estimated frequencies well below the frequency of events expected to occur during the lifetime of a commercial nuclear plant. An important aspect of the analysis requirements is that, under proposed § 53.450(e), the analyses of LBEs other than DBAs would not only be used to show the performance criteria of § 53.220 are satisfied but to also show that evaluation criteria defined for each LBE or category of LBEs would also be satisfied. Such evaluation criteria for specific LBEs or categories of LBEs would be defined in terms of limits on the release of radionuclides or maintaining the integrity of one or more barriers used to limit the release of radionuclides and reflect a graded approach of allowing lesser potential consequences from more frequent events. An example of such evaluation criteria for a range of LBEs that could likely be expanded for part 53 is provided in RG 1.233. Another proposed requirement for the proposed § 53.450(e) analyses is that the methodology would need to include a means to identify event sequences deemed risk-significant such that those event sequences can be given special attention within other sections of part 53.

Part 53 would maintain an important role for a deterministic analysis of DBAs in the performance criteria of § 53.210 and the related analytical requirements in § 53.450(f). The analysis of DBAs would be required to address event sequences drawn from those with estimated frequencies below the expected lifetime of a generation of reactors (e.g., event sequences with frequencies as low as one in ten thousand years). As proposed in this section, DBAs would need to be analyzed using deterministic methods and ensure a safe, stable end state with reliance upon only SR SSCs and human actions, if needed, to be performed by operators licensed under the provisions of §§ 53.760 through 53.795.

While the DBAs analyzed under part 53 would be similar to the traditional DBAs analyzed under parts 50 and 52,

there are important distinctions between the overall role of DBA analyses in part 50 and proposed part 53. In part 53, the role of the DBA analysis would be more narrowly focused on selecting SR SSCs and determining functional design criteria for those SSCs to ensure the commercial nuclear plant meets the safety criteria in § 53.210. The overall control of risks posed by commercial nuclear plants under part 53 would be provided by the analyses of and measures taken for both DBAs and other LBEs, including very unlikely event sequences. This would contrast with the traditional deterministic approach in part 50 wherein the analyses of DBEs such as DBAs were used to provide bounding assessments, incorporate standard design rules such as assumptions related to single failures, and to define conservative performance requirements for SR SSCs. Limitations related to the traditional deterministic approach were addressed in part 50 through case-by-case assessments and specific actions for beyond-design-basis events such as anticipated transients without scram and station blackout.

Section 53.450 would also include provisions to ensure that analyses are performed to support the design requirements of § 53.440(e) on fire protection, § 53.440(j) on aircraft impact assessments, and § 53.425 on using design features and plant programs to control doses to members of the public from routine effluents and direct radiation from contained sources. The proposed analysis requirements related to fire protection would support either a traditional, deterministic approach or a more risk-informed approach where the risks from fires are addressed within the identification and analyses of LBEs.

Section 53.460 would establish criteria for the safety classification of SSCs and determination of appropriate special treatments. As noted in subpart A, the term “*Special treatments*” would be defined to mean those items, such as measures taken to satisfy functional design criteria, quality assurance, and programmatic controls, which provide assurance that certain SSCs will provide defense in depth or perform risk-significant functions. These requirements would also provide confidence that the SSCs will perform under the service conditions and with the reliability credited in the analysis performed in accordance with § 53.450 to satisfy the safety criteria in §§ 53.210 and 53.220. The terminology used in part 53 would include the following categories for SSC classification: (1) SR; (2) NSRSS; and (3) non-safety significant. Requirements for SR SSCs would be defined in other sections of



part 53 and would include using TSs for controls during operation and the application of quality assurance requirements from appendix B of part 50.

Requirements for NSRSS SSCs would include the need to identify necessary special treatments such as performance measures on reliability. Licensees would generally be afforded flexibility in maintaining and changing special treatments for SSCs categorized as NSRSS. Non-safety-significant SSCs would be addressed under normal licensee programs for commercial grade equipment and typical industry practices for general plant design and maintenance. Safety-related SSCs would also contribute to defense in depth and risk-significant functions and may warrant special treatments beyond those defined for their SR functions to reflect their role in meeting the safety criteria in § 53.220 and the evaluation criteria in § 53.450(e).

Section 53.470 would allow an applicant or licensee to seek operational flexibilities by adopting more restrictive criteria than those provided in § 53.220 and that might otherwise be used in the analysis of LBEs under § 53.450(e). Such an approach might be taken to ensure sufficient safety margins to gain operational flexibilities in areas such as justifying siting in relation to population centers or staffing levels. As an example, an applicant or licensee could propose to justify siting proposals by adopting alternate criteria for very unlikely event sequences. Such alternate criteria could require calculated consequences for an individual at the exclusion area boundary to be less than one rem total effective dose equivalent (TEDE). This section would establish requirements to ensure that, if more restrictive evaluation criteria than those required by a methodology were used to justify operational flexibilities, then the analysis, design features, and programmatic controls would be established and maintained accordingly.

Section 53.480 would establish seismic design considerations. This proposed section would relate to the safety criteria in subpart B, the analytical requirements related to external hazards in § 53.450, and subpart D, "Siting Requirements." For licenses issued under part 53, this section in subpart C would support a variety of approaches to seismic design. For example, a design for a commercial nuclear plant could show that SSCs are able to withstand the effects of earthquakes by adopting an approach similar to that in appendix S to part 50. Alternatively, an applicant could follow

the more recent risk-informed alternatives afforded by standards development organizations (e.g., American Society of Civil Engineers (ASCE)/Structural Engineering Institute (SEI) 43–19, "Seismic Design Criteria for Structures, Systems, and Components in Nuclear Facilities.") Because the agency has not endorsed ASCE/SEI–43–19, an applicant can propose to use ASCE/SEI 43–19 on an application specific basis to meet § 53.480 and the NRC would evaluate the adequacy of the standard as applied in that application. The design could also be done with the full integration of seismic PRAs into the design and licensing of a particular commercial nuclear plant. This section has been developed to accommodate a variety of potential risk-informed, performance-based seismic design approaches. The analyses required by § 53.450 would need to address seismic hazards as well as other external hazards. The expected responses of SSCs to a range of seismic events would be included in the analyses when ensuring that the safety criteria defined under § 53.220 would be met. The potential SSC responses to seismic hazards could be addressed in the analyses using a fragility model (conditional probability of its failure at a given hazard input level), a high confidence of low probability of failure value, or other method endorsed or otherwise found acceptable by the NRC.

#### *Subpart D—Siting Requirements*

Proposed subpart D in part 53 would state requirements for the siting of commercial nuclear plants and would serve the role provided by 10 CFR part 100, "Reactor Site Criteria," for nuclear reactors licensed under parts 50 and 52. As reflected in proposed § 53.500, the reason for establishing siting requirements would remain the same as it has been historically, which is to ensure that licensees and applicants assess what impact the site environs may have on a commercial nuclear plant (e.g., external hazards) and, conversely, what potential adverse health and safety impacts a commercial nuclear plant may have on nearby populations in view of the site characteristics.

Proposed § 53.510 would require that design-basis external hazard levels be identified and characterized based on site-specific assessments of natural and constructed hazards with the potential to adversely affect plant functions. The site-specific assessments would be used in the proposed § 53.415, which would require that SR SSCs be designed to withstand the effects of natural phenomena and constructed hazards of levels or severities up to design-basis

external hazard levels. The design-basis levels for external hazards relevant to a site would need to account for uncertainties and variabilities in data, models, and methods used to characterize those hazards. Existing approaches could be used to demonstrate compliance with this requirement. The historical importance of assessing seismic events as risks to commercial nuclear plants and the associated development of risk-informed approaches to address seismic events would be reflected in proposed § 53.480, "Earthquake engineering," and specific requirements in subpart C. The NRC is developing a graded approach for seismic design by grouping SSCs into different seismic design categories (SDCs) based on their risk significance. While the agency has not endorsed ASCE/SEI–43–19, an applicant can propose to use ASCE/SEI 43–19 on an application-specific basis to meet § 53.480 and the NRC will evaluate the adequacy of the standard as applied in that application. The NRC staff will continue to review ASCE/SEI–43–19 as part of its efforts to further develop guidance in this area. The approach described in RG 1.208, "A Performance-Based Approach to Define the Site-Specific Earthquake Ground Motion," would be an acceptable way to develop site-specific ground motion response spectra for SSCs under appendix S to part 50, which corresponds to SSCs that are categorized as the highest SDC (SDC–5) in ASCE/SEI 43–19.

The evaluation of seismic hazards under subpart D would need to be sufficient to inform a site-specific design (e.g., a CP or custom COL) or confirm the use of a standard design for a commercial nuclear plant under § 53.480 and other sections of subpart C. A risk-informed approach could use several design-basis ground motions (DBGMs) to assess SSCs in various SDCs (i.e., one DBGM per SDC). Section 53.510(d) would state that geologic and seismic siting factors must also include related hazards such as seismically induced flooding and volcanic activity that may affect the design and operation of a proposed commercial nuclear plant for the proposed site.

Section 53.520 would require applicants to identify and assess site characteristics related to topics which might include meteorology, geology, hydrology, or other areas in the design and analyses required under subpart C.

Proposed section 53.530 would set requirements for population-related considerations and maintain requirements and definitions similar to those currently in part 100 for an exclusion area, low population zone,

and population center distance. The NRC recognizes that some applicants may propose to essentially collapse the exclusion area and low population zone to the site boundary. This approach would rest on a demonstration that the calculated consequences of DBAs remain below the proposed dose guidelines used in § 53.210, which are the same as those in the existing regulations in parts 50, 52, and 100. The proposed definitions in § 53.020 would allow such configurations, assuming they were justified by the design and analyses from subpart C. This approach should provide flexibility to justify alternative exclusion areas and low population zones without foreclosing the option for an applicant to define more conventional exclusion areas and low population zones outside of a defined site boundary. The NRC's long-standing preference for siting reactors in areas of low population density would be maintained in part 53 by using the current language from part 100 in proposed § 53.530(c). The NRC revised guidance related to population densities surrounding a commercial nuclear plant in Revision 4 to RG 4.7, "General Site Suitability Criteria for Nuclear Power Stations" to reflect Commission direction in SRM-SECY-20-0045, "Population Related Siting Considerations for Advanced Reactors." Site-related requirements in part 20 (restricted area) and part 73 (protected and owner-controlled areas) would remain applicable to commercial nuclear plants licensed under part 53.

Proposed section 53.540 would require that site characteristics be appropriately considered in other activities such as the design and analysis performed under proposed subpart D and the emergency planning and security programs under proposed subpart F.

#### *Subpart E—Construction and Manufacturing Requirements*

The proposed part 53 language would establish construction and manufacturing requirements in subpart E. The proposed language for construction-related activities would largely reflect current requirements in part 50 without any fundamental changes. Limited changes would be made in several places, as described in the following paragraphs, to be technology-neutral and for consistency with the organization and language of part 53. The proposed language for requirements for manufacturing activities would largely mirror those for construction-related activities. However, the proposed manufacturing requirements have been updated from

the current requirements in subpart F of part 52 to better accommodate the possible factory fabrication of manufactured reactors. The manufacturing of specific components outside the scope of an ML would not be addressed by these proposed subparts.

Section 53.600 would establish the overall construction and manufacturing requirements for CPs, OLs, COLs, MLs, and limited work authorizations (LWAs). This section would connect the construction and manufacturing requirements to the safety criteria, quality assurance requirements, and other requirements located in other subparts. These requirements would require that construction and manufacturing activities be managed and conducted such that when combined with associated design features and programmatic controls, the constructed plant would satisfy the relevant requirements in subpart B.

Section 53.605 would establish requirements for the reporting of defects and instances of noncompliance during construction. This section would provide equivalent requirements to those in § 50.55(e).

Section 53.610(a) would establish the requirement to have in place a well-defined command and control structure to manage construction activities. The requirements would generally reflect current requirements, with an emphasis on the quality assurance programs for complying with the requirements in appendix B to part 50. The proposed § 53.610(a)(6) would require programmatic controls for implementing special treatment for NSRSS SSCs to align with requirements in other subparts in part 53. The section would also refer to other NRC regulations to address matters such as requirements to have a FFD program, a radiation protection program if radioactive materials are brought onto the site, and security programs to protect sensitive information and protect against cyber threats.

Section 53.610(b) would provide requirements governing construction activities, including the equivalent of the requirement in § 50.10(e) that prohibits starting construction until the NRC has authorized the activities by issuing a CP, COL, ESP, or LWA. Section 53.610(b)(1)(iii) would require procedures to be in place prior to beginning construction to ensure that construction-related activities do not undermine important features such as slope stability and that construction-related activities such as backfilling of excavated portions of the site appropriately address potential pre-

construction activities such as the emplacement of retaining walls or drainage systems. Other requirements in these paragraphs would be equivalent to requirements in parts 50 and 52 with appropriate references to other parts for items such as possession of byproduct material or SNM, protecting operating units from construction activities for commercial nuclear plants with multiple reactor units, and having a redress plan in case LWA activities are terminated.

Section 53.610(c) would address inspection and acceptance activities by including requirements in part 53 equivalent to specific quality assurance criteria in appendix B to part 50 and inspections, tests, analyses, and acceptance criteria (ITAAC) in part 52 for COLs.

Section 53.620(a) would include proposed requirements covering the activities performed under an ML issued under part 53. Provisions related to MLs were first adopted by the NRC in 1973 through the addition of appendix M to part 50. The regulation supported the manufacture of a nuclear power reactor to be incorporated into a commercial nuclear plant under a CP and operated under an OL at a different location from the place of manufacture.<sup>1</sup> The regulations and processes for MLs were changed substantially in the part 52 rulemaking in 2007 (72 FR 49352). The most important shift in the ML concept in that rulemaking was that a final reactor design, which would be equivalent to that required for a standard DC under part 52 or an OL under part 50, must be submitted and approved before issuance of an ML. The rationale for that change was that approval of a final design ensures early consideration and resolution of technical matters before there is any substantial commitment of resources associated with the actual manufacture of the reactor, which greatly enhances regulatory stability and predictability.

The proposed part 53 sections in subpart E for manufacturing and in subpart H for licensing matters would maintain requirements equivalent to those in part 52 for MLs. The NRC approval of a standard design and related manufacturing processes, coupled with a stable workforce and established procedures, has the potential for maintaining and even improving the quality and consistency of manufacturing, as compared to the traditional method of constructing

<sup>1</sup> On December 17, 1982, the NRC issued "Manufacturing License ML-1 to Offshore Power Systems for the manufacture of a maximum of eight floating nuclear plants," dated September 30, 1982, but the project was subsequently canceled.

reactors onsite by a variety of contractors and subcontractors.

Subpart E would include requirements that would apply to portions of a manufactured reactor in recognition that some activities covered by an ML may occur at different fabrication facilities. As with the preceding sections on construction, § 53.620 would establish the requirements to have in place programs, procedures, and a well-defined command and control structure to manage manufacturing-related activities.

Section 53.620(b) in subpart E would propose requirements for executing the manufacturing activities following receipt of an ML under part 53. Information about the design and manufacturing processes should be provided by the applicant. The importance of the ML is reflected in several of the proposed requirements in § 53.620(b) that would refer to complying with the ML, including conducting manufacturing processes within facilities for which the license holder can control activities. The essential role of post-manufacturing inspections would also be incorporated into this proposed section by requiring the holder of the ML to perform inspections and have acceptance processes for manufactured reactors or portions of a manufactured reactor.

Section 53.620(c) would provide proposed requirements for the control of radioactive materials if the holder of an ML plans to possess and use source, byproduct, or SNM as part of the manufacturing process. By and large, the proposed subpart E would refer to NRC regulations in 10 CFR part 30, “Rules of General Applicability to Domestic Licensing of Byproduct Material,” 10 CFR part 40, “Domestic Licensing of Source Material,” and part 70 for the requirements on controlling radioactive materials. Several specific requirements to address the potential hazards of radioactive materials are proposed in areas such as having a fire protection program, an emergency plan, training programs, and procedures to minimize contamination.

The most significant change proposed for MLs in part 53 as compared to MLs under part 52 relates to § 53.620(d) in subpart E and the associated licensing provisions in subpart H. These provisions would allow and establish requirements for the loading of fuel into a manufactured reactor at the manufacturing site for subsequent transport to a commercial nuclear facility that will operate pursuant to a COL. The first requirement in the proposed § 53.620(d) would establish

limitations on when a license under part 70 would authorize the loading of fuel into a reactor manufactured under an ML. The proposed regulation would require the manufactured reactor to include at least two independent physical mechanisms that will each prevent criticality should conditions most favorable to critical operation be introduced (e.g., optimum neutron moderation and reflection). This requirement would contribute to the NRC’s longstanding practice of requiring defense in depth for preventing accidents in any facility dealing with SNM, including requirements in § 70.64 for certain part 70 licensees to adhere to the “double contingency principle.”

The requirements to have in place mechanisms to prevent criticality could likewise support meeting other provisions in subpart H to part 70, such as those related to having a safety program and integrated safety assessment. The mechanisms to preclude criticality in the proposed requirements would reasonably ensure that a manufactured reactor would not become critical assuming optimum neutron moderation, and optimum neutron reflection conditions. With the proposed requirements for mechanisms to prevent criticality and all criticality safety controls required by 10 CFR part 70 in place, the presence of fuel in the manufactured reactor would not create a nuclear hazard different than the hazard from the presence of the same fuel in a storage location or container licensed under 10 CFR part 70. Collectively, the proposed measures would reasonably ensure that the manufactured reactor would not be capable of operations, thereby obviating the need for a COL under §§ 53.1416 and 53.1440 to authorize fuel loading. Additionally, this approach would focus the ML application and its review on the design, manufacture, and deployment of the manufactured reactor.

The activities involving SNM within the manufacturing facility, including the loading of fuel, would be regulated primarily under the part 70 license. The reference to the requirements in subpart H of part 70 in section 53.620(d) assures that the activities involving the receipt, storage, and loading of a variety of possible fuel forms and enrichments at the manufacturing facility will be analyzed in a systematic manner and appropriate protection will be provided against equipment malfunctions, human errors, external hazards, and other adverse conditions. The regulations in part 51 provide a flexible approach for environmental review to address the range of regulated activities under part

70. The flexibility in part 51 will enable the NRC to determine the appropriate type of environmental review based on the circumstances associated with the loading of fuel into a specific manufactured reactor.

The proposed § 53.620(d) cites the requirements in parts 70, 71, and 73 to ensure important features and programs are in place prior to the receipt of SNM. The features and programs required to be in place prior to receipt of SNM include (1) radiation monitoring instrumentation and alarms; (2) measures to detect potential criticality accidents; (3) appropriate procedures, equipment, and personnel qualified for the fuel loading; (4) programs for physical security and cybersecurity; and (5) material control and accounting (MC&A) programs. Section 53.620(d)(2)(i) proposes requirements to address security programs for any ML authorizing possession of a manufactured reactor into which fuel has been loaded at the manufacturing facility. Currently, for category II SNM, security measures may be required in addition to requirements included in § 73.67, “Licensee fixed site and in-transit requirements for the physical protection of special nuclear material of moderate and low strategic significance,” on a case-by-case basis. Including appropriate security measures in the proposed part 53 regulations will provide additional openness and transparency for applicants applying for an ML who seek to load fuel into manufactured reactors at a manufacturing site.

Currently, § 73.67 only requires a security plan for licensees who possess, use, transport, or deliver to a carrier for transport SNM of moderate strategic significance, or 10 kg or more of SNM of low strategic significance. However, the proposed physical security program for fueled manufactured reactors would require a security plan for any ML authorizing possession of a manufactured reactor into which fuel has been loaded at the manufacturing facility, regardless of fuel type, enrichment, and quantity. This is consistent with other controls for MLs, including reactivity and criticality controls.

The proposed requirements would also require a holder of an ML and part 70 license to address cybersecurity to ensure a cyberattack would not adversely impact the functions performed by digital assets used by the licensee for physical security, radiation monitoring, or criticality prevention.

The proposed regulations in part 53 covering the activities related to the storage, movement, and loading of fresh

fuel into a manufactured reactor in the manufacturing facility would likewise refer to the applicable regulations in part 70. The proposed § 53.620(d) would also require the loading or unloading of unirradiated fuel into or from a manufactured reactor and any changes to the configuration of reactivity-related systems to be performed by a certified fuel handler meeting the requirements in subpart F. The NRC is aware of proposals to introduce reprocessing of existing or future spent nuclear fuel into the fuel cycle for some potential commercial nuclear plants. This proposed rule does not address the loading of spent nuclear fuel or fuel resulting from reprocessing of spent nuclear fuel into a manufactured reactor.

Section 53.620(e) would limit the transport and delivery of a manufactured reactor or portions of a manufactured reactor only to a site for which the Commission has issued a COL authorizing the construction of a commercial nuclear plant using a manufactured reactor under the specific ML. This proposed requirement is similar to the limitations in § 52.153, with the difference being that part 53 would allow the installation of a manufactured reactor at the site of a COL but would not include provisions for installation at a site under a CP. The possible combination of a manufactured reactor and the licensing option of CP and OL seems unlikely and would require the introduction of ITAAC into the licensing provisions for a CP and OL. An additional proposed paragraph in § 53.620(e) would provide requirements for protecting fueled manufactured reactors during transport to the site of the commercial nuclear plant by referencing the transportation and security requirements in 10 CFR part 71, “Packaging and Transportation of Radioactive Material,” and part 73.

Section 53.620(f) would include proposed requirements for the acceptance and installation of a manufactured reactor at the site of a commercial nuclear plant. The proposed requirements would reference the construction requirements in § 53.610 to govern the integration of the manufactured reactor into the construction of a commercial nuclear plant. Other proposed requirements in the section would address required receipt inspections and verification that interface requirements between the manufactured reactor and the balance of the commercial nuclear plant have been met.

#### *Subpart F—Requirements for Operation*

Proposed subpart F would provide the requirements for the operations phase of a commercial nuclear plant to ensure that the safety criteria in subpart B are satisfied throughout the plant's lifetime and during all modes of normal operation and unplanned events. Section 53.700 would provide the overall objectives and general organization of subpart F, which would be to establish requirements during operations for: (1) plant SSCs; (2) plant personnel; and (3) plant programs.

Proposed § 53.710 would provide the requirements for maintaining capabilities, availability, and reliability of SSCs to demonstrate compliance with the safety criteria and design requirements for unplanned events that are described in proposed subparts B and C. The basic structure of this proposed section would be that controls for SR SSCs are provided by TS and controls for NSRSS SSCs are required to be addressed with licensee-controlled documents and procedures.

The general content and control of TS under the proposed part 53 would be similar to the requirements in part 50. The proposed requirements for TS would include limits on the inventories of radioactive materials, plant operating limits, and specific requirements for each SR SSC, including limiting conditions for operation (LCO) and required surveillances. The proposed requirements for TS would also include a section on important design elements, which is similar to design features in § 50.36, and a section for administrative controls. A provision addressing the development and submittal of TS to address decommissioning activities would also be included in the proposed subpart G.

The proposed requirements for TS under part 53 would not carry over safety limits or associated limiting safety system settings from § 50.36, which contains TS requirements for operating reactors under parts 50 and 52. As discussed in SECY-18-0096, systematic assessments and more mechanistic approaches to evaluating source terms support an alternative approach to establishing barrier-based safety limits. An example provided in that paper is a comparison of: (1) the traditional specified acceptable fuel design limits (SAFDL) that support protecting a specific barrier from potential failure mechanisms (e.g., departure from nucleate boiling to protect fuel cladding); and (2) the specified acceptable system radionuclide release design limit (SARRDL) concept, which limits the

possible increase in circulating radionuclide inventory during normal operations or an AOO as part of an integrated or “functional containment” approach. Additional discussion of the use of SARRDL in the design and licensing of advanced reactors is provided in RG 1.232. The SARRDL could be addressed as an operating limit within this proposed construct of requirements for TS. In cases, such as LWRs, where a SAFDL approach might be used as part of a mechanistic approach to meeting the design and analysis requirements in subpart C, the associated functional design criteria proposed in § 53.410 and TS under the proposed § 53.710(a) would define similar requirements as those provided by the safety limit and limiting safety system setting requirements in § 50.36.

The proposed requirements for TS under part 53 would not include specific criteria for identifying when LCOs must be established (i.e., would not include an equivalent to § 50.36(c)(2)(ii)). Instead, consistent with subparts B and C, the TS requirements in subpart F of part 53 would define TS LCOs as providing limits on SR SSCs. The SR SSCs protect against DBAs to demonstrate compliance with the safety criteria in the proposed § 53.210. In the proposed construct for part 53, risk-significant SSCs would be addressed through a combination of TS for the SR SSCs and establishment and monitoring of performance standards for NSRSS SSCs.

In addition to addressing TS for SR SSCs, proposed § 53.710 would require appropriate controls be developed and implemented for NSRSS SSCs. Examples include appropriate surveillances and controls established through reliability assurance programs. Configuration management and other special treatments would provide that the capabilities, availabilities, and reliabilities of NSRSS SSCs are maintained consistent with the underlying risk assessments while providing flexibility to licensees through maintaining the management functions within licensee-controlled programs. Controls on NSRSS SSCs are appropriate as part of the overall performance-based approach within proposed part 53. Special treatments beyond those defined for their SR functions may also be warranted for SR SSCs to reflect their role in meeting the safety criteria in § 53.220 and the evaluation criteria in § 53.450(e). The performance objectives for NSRSS SSCs would reflect that the comprehensive risk metrics and related risk performance objectives established under § 53.220 may involve assessing

and averaging the risks over a defined period (e.g., plant year) and would not constitute a real-time requirement that must be continuously demonstrated by the licensee. The controls under § 53.710(b) justify proposed changes in part 53 from the traditional or deterministic approaches in parts 50 and 52 in areas such as replacing the single-failure criterion with a probabilistic reliability criterion (see SRM-SECY-03-0047, “Policy Issues Related to Licensing Non-Light-Water Reactor Designs,” dated June 26, 2003). This approach could also support the incorporation of risk insights and analytical margins to gain operational flexibilities in areas such as siting and staffing requirements described in subsequent sections of proposed subpart F.

Proposed § 53.715 would provide the requirements for developing and implementing a program to do the following: (1) control maintenance activities; (2) take appropriate corrective action when performance issues are identified; (3) conduct routine evaluations of effectiveness; and (4) assess and manage risks resulting from maintenance activities. These proposed requirements are similar to those included in § 50.65 (maintenance rule), including the need to assess and manage the increase in risk that may result from the proposed maintenance activities. While, for the maintenance rule, specific criteria must be developed to capture both SR and non-SR but otherwise important SSCs, the proposed § 53.715 would cover SR SSCs and NSRSS consistent with other subparts in part 53.

Proposed § 53.720 would provide the requirements for responding to a seismic event during the operating phase of the life cycle of a commercial nuclear plant and would be equivalent to the requirements in paragraph IV(a)(3) of appendix S, “Earthquake Engineering Criteria for Nuclear Power Plants,” to part 50.

The proposed part 53 would include provisions to address staffing, training, personnel qualifications, and human factors engineering (HFE) in a manner that is risk informed, technology inclusive, performance based, and flexible in nature. During the development of part 53, the staff prepared a draft white paper on “Risk Informed and Performance Based Human-System Considerations for Advanced Reactors,” to support interactions with stakeholders and the ACRS. Key considerations include the recognition that staffing, operator qualifications, and HFE are interconnected areas that must be

approached in an integrated manner and, furthermore, that safety functions, including the means by which they are fulfilled, provide an effective method for informing technology-inclusive requirements.

The requirements associated with this approach would be in §§ 53.725 through 53.830. Section 53.725 discusses applicability and defines specific terms. Some definitions draw from those in § 55.4. Several new definitions would be introduced for use within the context of subpart F. These new definitions would be the following: “*Automation*,” “*Auxiliary operator*,” “*Generally licensed reactor operator*,” “*Interaction-dependent-mitigation facility*,” “*Load following*,” “*Self-reliant-mitigation facility*.”

Sections 53.725 through 53.830 would be divided into four portions that would cover general operational requirements, operator and senior operator licensing requirements, generally licensed reactor operator (GLRO) requirements, and general training requirements for plant staff. The NRC intends to provide guidance addressing the review of operator staffing plans; the review of operator, senior operator, and GLRO examination programs; and the implementation of scalable HFE reviews. Licensees would be required to use GLROs upon demonstrating compliance with the criteria in § 53.800.

Certain routine communications are necessary to facilitate the operator licensing process. The NRC is proposing to adapt the requirements of §§ 55.5 and 50.74 to § 53.726 to accomplish this.

Specific information must be collected in order to facilitate the initial issuance of operator licenses, as well as to allow for license renewals and required updates thereafter. Such information collection activities must also be approved by the OMB. The NRC is proposing to adapt the requirements of § 55.8, to include any needed updates in OMB approval information, to § 53.120 to accomplish this.

The information used within the regulatory processes of the NRC must be free from omissions and inaccuracies to facilitate effective regulation. Consistent with this, the NRC is proposing to adapt the requirements of § 55.9 to § 53.728 to require the completeness and accuracy of material information provided by individual applicants and license holders.

Section 53.730 would provide performance-based and technology-inclusive requirements for assessing the role of personnel in facility safety, applying human-system considerations within facility design, and incorporating operational approaches that are

consistent with design-specific safety considerations. Most of these requirements would be adapted from portions of §§ 50.34(f) and 50.54 and 10 CFR part 55, “Operators’ Licenses,” with considerable modification in order to reflect the introduction of new technologies and possible changes in the roles of personnel in preventing and mitigating events. The NRC is proposing that these technical requirements would, together, serve as a component of the required content of applications for OLs and COLs under part 53. Additionally, the NRC proposes that the specific technical requirements associated with HFE, human-system interface design, concept of operations, functional requirements analysis, and function allocation would serve as a component of the required content of applications for standard DCs, standard design approvals, MLs, and CPs, as well.

Human factors engineering is essential to facilitate the role of personnel in facility safety in a manner that is both effective and reliable. The NRC proposes to adapt § 53.730(a) from the HFE design requirements of § 50.34(f)(2)(iii). A key difference would be that the requirement would now be focused on settings where personnel fulfill their safety or emergency response roles wherever they may occur. The NRC additionally proposes to include within the scope of this requirement activities for assuring the continued availability of plant equipment that is needed for safety, and envisions that this may encompass relevant maintenance, inspections, and testing as well. The NRC intends that this requirement would be associated with staff guidance for conducting scalable reviews of HFE that is planned to accompany part 53.

Human-system interfaces provide vital information to operators across a spectrum of operating conditions that can range from normal operations through severe accident conditions. The specific types of information that must be available to support operations staff during such conditions include, in part, those associated with safety function parameters, safety system status, possible core damage states, barrier integrity, and radioactive leakage. Due to the importance of such information, the NRC proposes under § 53.730(b) to require such human-system interface design features for all facilities, irrespective of other flexibilities proposed under part 53. Therefore, the NRC proposes to adapt specific post-Three Mile Island requirements of § 50.34(f) in a technology-inclusive manner as detailed in the following:

- Paragraph (b)(1) would be adapted from § 50.34(f)(2)(iv).
- Paragraph (b)(2) would be adapted from § 50.34(f)(2)(v).
- Paragraph (b)(3) would be adapted from § 50.34(f)(2)(xi), 50.34(f)(2)(xii), and 50.34(f)(2)(xxi).
- Paragraph (b)(4) would be adapted from § 50.34(f)(2)(xvii), 50.34(f)(2)(xviii), 50.34(f)(2)(xix), and 50.34(f)(2)(xxiv).
- Paragraph (b)(5) would be adapted from § 50.34(f)(2)(xxvi).
- Paragraph (b)(6) would be adapted from § 50.34(f)(2)(xxvii).

In addition to the requirements of § 53.730(b)(1) through (6), a further set of human-system interface design requirements applicable only to those facilities that will be staffed by GLROs would be provided under § 53.730(b)(7). This prescriptive set of design requirements for those facilities which demonstrate compliance with the criteria of § 53.800 would recognize that the application of HFE under § 53.730(a) is anticipated to be significantly reduced at such facilities in the absence of an expected operator role for the fulfillment of safety functions. However, it should be noted that the capability for an immediately initiated, manual reactor shutdown would be conservatively mandated irrespective of any other design considerations.

The NRC proposes § 53.730(c) to require the submittal of a concept of operations that is of sufficient scope and detail to appropriately inform the staff. The development of a concept of operations can facilitate a clear understanding on the part of the NRC for potential novel operating concepts. Additionally, such information is likely to reduce the degree of resources and interactions needed for the NRC to obtain the understanding necessary to enable flexible requirements in areas such as staffing, operator qualifications, and HFE.

The NRC proposes § 53.730(d) to require the submittal of both a Functional Requirements Analysis and a Function Allocation. The identification of design-specific safety functions and how they are fulfilled serves as a primary means for achieving technology-inclusive requirements within areas such as staffing, operator qualifications, and HFE. The Functional Requirements Analysis and Function Allocation processes (which are both HFE methods derived from systems engineering principles), provide an effective means to identify both how safety functions will be satisfied and how to characterize any associated operator role in doing so. A Functional Requirements Analysis shows what features, systems, and human actions

are relied upon to demonstrate safety (*i.e.*, fulfill safety functions). A Function Allocation then describes how safety functions are assigned to both personnel and automatic systems. However, an important adaptation of the Function Allocation for use under the proposed rule would be the further need to not only describe allocations of safety functions to human action and automation, but also to identify allocations made to active safety features, passive safety features, or inherent safety characteristics as well.

Operating experience provides an important source of information by which to inform various aspects of facility design and operations. Accordingly, the NRC proposes in § 53.730(e) to adapt the requirements of § 50.34(f)(3)(i) for requiring an operating experience program.

New technologies may involve concepts of operations that are more conducive to customizable licensed operator staffing requirements than the prescriptive requirements of § 50.54(m). Analyses and assessments that are based on HFE principles provide a performance-based means of determining licensed operator and senior operator staffing needed to support safe operations. In contrast, for those facilities required to be staffed by GLROs, the NRC anticipates that the operator staffing plans will reflect a simpler approach of showing that a continuity of responsibility will be maintained for facility operations throughout the operating phase, with at least one GLRO providing continuous oversight and remaining immediately available when any units are fueled. Additionally, a revised approach to the traditional position of the shift technical advisor that focuses on the availability of engineering expertise as a means of addressing uncertainties and abnormal circumstances is more suitable within the context of part 53 and is intended to be applicable to all facilities, irrespective of other design and staffing considerations.

Consistent with this approach, the NRC proposes under § 53.730(f) to require the submittal of a staffing plan that details operations staffing, how engineering expertise will be provided, and what staffing will be available to provide other needed support functions. The NRC intends that this requirement would be associated with staff guidance for reviewing operations staffing plans that is planned to accompany part 53 and that, following NRC approval of the OL or COL, the staffing plan would become a condition of the facility license. The NRC intends that, at a minimum, the approved licensed

operator and senior operator (or, if applicable, GLRO) staffing, positions, and personnel locations will be incorporated into corresponding requirements within the facility TS and that a license amendment would thus be required for any subsequent changes.

Operator training and qualification programs provide an essential component of supporting human performance in implementing tasks with safety implications. Such programs must include components that cover the stages of initial training, examination, and continuing training. Additionally, recognizing the potential for varying concepts of operations to affect traditional, prescriptive approaches to operator proficiency, the NRC proposes under part 53 to allow facilities to develop operator proficiency programs based on facility-specific considerations.

Therefore, the NRC proposes in § 53.730(g)(1) to require approval as part of its approval of the OL or COL, of the programs that will be used for the initial training, initial examination, requalification training and examination, and proficiency of both licensed operators and senior operators. In a corresponding manner, the NRC proposes in § 53.730(g)(2) to require approval of the programs that will be used for the GLRO equivalents of each of these programs for facilities with such staffing. The NRC intends that examination program requirements would be associated with staff guidance for the review of tailored examination processes that are planned to accompany part 53. Following the completion of an initial training program, continuing training programs provide an important means of sustaining the knowledge and abilities of individuals. The NRC is proposing to adapt the requirements of § 50.54(i-1) in § 53.730(g)(3) to require that operator continuing training programs be in effect to support operator performance. Under part 53, the NRC proposes to require these programs to be in effect concurrent with when the initial operator examinations first commence, in effect putting the programs in place only when they are needed. This represents a modification of the comparable requirement of § 50.54(i-1), which links the commencement of these programs to a timeline driven by the licensing of the facility.

The authorization to manipulate controls of the facility that directly affect reactivity or power level is restricted to individuals who are either licensed operators, licensed senior operators, or GLROs. However, for practical purposes, situations in which

an individual is participating in an approved training program or reestablishing proficiency may also call for them to operate the controls of the facility under the cognizance of a licensed individual. The NRC is proposing to adapt the requirements of § 55.13 in § 53.735 to accomplish this, with a notable difference being the incorporation of GLROs.

Section 53.740 would provide requirements for OL and COL holders under part 53. Portions of § 53.740 would be adapted from the conditions of § 50.54. In general, the conditions for operations staffing under part 53 would reflect considerations for potential technological differences and varying concepts of operation that are expected among part 53 facility licensees. Additionally, certain requirements would be specific to the operating phase while others would remain in effect following the permanent cessation of facility operations during the decommissioning phase.

All commercial nuclear plants licensed under part 53 would require some form of licensed operator staffing, whether it be by specifically or generally licensed operators. Consistent with this, the NRC is proposing under § 53.740(a) to require facility licensees to demonstrate compliance with the programmatic requirements for either specifically licensed operators and senior operators or for GLROs, as applicable to the facility.

The NRC recognizes that technology-inclusive facility staffing will need to account for a potentially wide range of concepts of operations; for this reason, flexible and performance-based approaches for establishing required facility staffing are appropriate. However, once the appropriate facility staffing has been determined and approved by the NRC, such staffing must be maintained to ensure that the appropriately qualified individuals will be available when needed to support the safe operation of the facility. Therefore, the NRC is proposing under § 53.740(b) to require that the staffing described within the approved facility staffing plan be maintained as a condition of the facility license as opposed to prescriptive staffing requirements like those of § 50.54(k) and (m).

Because operation of facility controls directly affects reactivity or power level, only those individuals who possess appropriate levels of qualification and authorization are permitted to operate those controls. The NRC is proposing to adapt the requirements of § 50.54(i) in § 53.740(c) to require that only specifically licensed operators and senior operators or, alternatively,

GLROs, may operate facility controls, with allowance for specified exceptions for the purposes of operator training or proficiency.

Senior operators, by virtue of their license level, are qualified and authorized both to perform certain important responsibilities and to direct the licensed activities of licensed operators. Therefore, facilities that are required to be staffed by specifically licensed operators must also include senior operators within their staffing. In contrast, facilities staffed with GLROs only have a single license level available and, therefore, there is no equivalent provision for such facilities. The NRC is proposing to adapt the requirements of § 50.54(l) in § 53.740(d) to require the licensing and designation of senior operators at facilities staffed by specifically licensed operators.

In contrast with control manipulations that directly affect reactor power and reactivity (e.g., control rod movement, control drum rotation, recirculation pump speed adjustment, reactor coolant system boration or dilution, etc.) and are therefore restricted to performance only by licensed operators, other types of plant operations that may result in reactor power and reactivity changes via means that are indirect in nature (e.g., electrical generation changes, turbine bypass valve operation, steam usage by process heat applications, etc.) may be implemented by non-licensed personnel. However, due to the potential influence of such operations on reactor power and reactivity, the continuous oversight of reactor parameters by a licensed operator is necessary during these operations. The NRC is therefore proposing to adapt the requirements of § 50.54(j) in § 53.740(e) to require appropriate oversight of operations, other than those associated with the controls themselves, that may affect reactivity or power level.

Load following where plant output automatically changes in response to externally originated instructions or signals is not permitted under the existing regulations of § 50.54. However, new technological considerations and concepts of operation may justify such an operational approach under appropriate circumstances. The NRC recognizes that, beyond electrical power generation, load following may also affect other applications of plant output, such as hydrogen production, desalination, or district heating. For load following to be permissible, measures must be in place to provide assurance that plant output considerations are not permitted to lead to challenges to safe reactor operations.

These measures may consist of automated control systems, automatic protective features, or the continuous oversight and immediate intervention capability of an appropriately qualified and authorized individual. Section 53.740(f) would allow for load following, provided that appropriate measures are in place. In considering the acceptability of the measures associated with load following, the NRC expects that any automatic protection relied upon would be separate from that credited for reactor protection purposes and would employ setpoints that are set so as to prevent actuation of the reactor protection system while accomplishing its functions to the extent practical.

Core alterations such as refueling are associated with specific considerations that warrant limiting the oversight of such operations to appropriately qualified and authorized individuals. Unlike other types of fuel handling operations, core alterations occur within the confines of a reactor vessel that is specifically designed to support and sustain nuclear criticality, thereby justifying the imposition of higher qualification levels within such contexts. The NRC is proposing to adapt the requirements of § 50.54(m)(2)(iv) in § 53.740(g) to require the supervision of core alterations by either a specifically licensed senior operator, a specifically licensed senior operator whose license is limited to fuel handling, or by a GLRO, as applicable to the facility. Because certain commercial reactor designs may be capable of refueling while at power and, in any event, overall facility oversight would already be required by either a specifically licensed senior operator or by a GLRO, the NRC proposes to omit this requirement as redundant during periods where core alterations occur while the plant is operating.

It is impossible to predict every possible scenario that a commercial nuclear plant might potentially encounter. Therefore, it is prudent to grant the authority for appropriately qualified individuals to depart from facility license conditions when emergency circumstances dictate that doing so is in the interest of public health and safety. The NRC is proposing to adapt the requirements of § 50.54(x) and (y) in § 53.740(h) to permit specific individuals to authorize departures from facility license conditions or TSs when emergency conditions warrant doing so for the protection of the public health and safety. Recognizing that certain facilities licensed under part 53 may be staffed by GLROs in lieu of specifically licensed senior operators, the NRC proposes to extend this authority to



GLROs. While it is not anticipated that GLROs will have a role in the fulfillment of safety functions at self-reliant-mitigation facilities and, furthermore, that operators at such facilities would not be in a position by which to significantly influence radiological safety outcomes, the very nature of the § 50.54(x) and (y) and the proposed § 53.740(h) provisions concern situations that are unanticipated and, therefore, unforeseeable. Thus, it is appropriate to grant GLROs a comparable authority to that of senior licensed operators and certified fuel handlers as it relates to invoking this provision under emergency conditions as a means of accounting for such possibilities.

Due to the unique authorities and responsibilities of both specifically and generally licensed reactor operators, it is essential that any individual fulfilling such a role demonstrate compliance with the regulatory requirements for operator licensing. Section 107 of the Act authorizes the Commission to prescribe conditions for the licensing of operators and to issue licenses consistent with those conditions. The NRC is proposing to adapt the requirements of § 55.3 in § 53.745 to require that any person performing the function of an operator, senior operator, or GLRO must be authorized by a license issued by the Commission.

The NRC proposes to license individuals as operators under both specific and general licensing frameworks. Specific licenses would be for licensed operators (*i.e.*, reactor operators) and senior operators (*i.e.*, senior reactor operators) and would be issued to a named person upon approval by the Commission of an application for that named person. In contrast, GLROs would perform duties under the provisions of a general license that would be effective without the filing of an application with the Commission or the issuance of licensing documents to a particular person. The NRC proposes requirements for the use of a specific licensing process for licensed operators and senior operators under §§ 53.760 through 53.795, with § 53.760 addressing applicability.

Medical fitness is an important component of the overall process of specifically licensing operators because it provides assurance that operators will be able to carry out important duties without being precluded from doing so by health-related issues. Medical fitness also provides assurance that such issues will not adversely affect the performance of assigned job duties or cause operational errors that endanger public health and safety. In addition to

a requirement for medical fitness, a medical examination by a physician to confirm compliance with this requirement is necessary. The NRC is proposing to adapt the requirements of §§ 55.21, 55.23, and 55.27 under § 53.765 to require medical fitness, examinations by physicians, and medical certification for specifically licensed operators and senior operators. In recognition of the fact that GLROs are not expected to have a role in the fulfillment of safety functions at the facilities at which they are licensed, the NRC proposes to not extend a comparable medical requirement to GLROs.

The NRC is also proposing to adapt the requirements of §§ 55.25 and 50.74(c) in § 53.770 to require that timely notifications be made to the NRC if a specifically licensed operator or senior operator develops a permanent physical or mental condition that adversely affects the performance of assigned operator job duties or could cause operational errors endangering public health and safety. Notwithstanding this requirement related to permanent medical conditions, the NRC continues to recognize that it is appropriate for facility licenses to impose administrative restrictions and conditions upon specifically licensed operators and senior operators in response to temporary medical conditions.

The process of specifically licensing individuals as licensed operators or senior operators requires the submittal of applications to the NRC for review. These applications must detail certain elements associated with licensing, including the demonstration of compliance with examination, experience, and medical requirements. The NRC is proposing to adapt the requirements of §§ 55.31 through 55.35 in § 53.775 to include requirements for the applications associated with the specific licensing of licensed operators and senior operators at commercial nuclear plants licensed under part 53. In contrast with the part 55 requirements, the NRC proposes to provide additional flexibility by locating certain details associated with the preparation and submittal of these applications within guidance in lieu of placement within this proposed rule itself.

The NRC proposes overall programmatic requirements for specifically licensed operator and senior operator training, examination, and proficiency in § 53.780. In general, the proposed requirements are adapted from those in part 55, with several additional flexibilities being incorporated to better

account for potential variations in reactor technologies and concepts of operations. The requirements proposed in § 53.780 cover, in part, the initial training, initial examination, requalification training, requalification examination, and proficiency of specifically licensed operators and senior operators.

The initial training process provides individuals with the knowledge and abilities needed to subsequently fulfill assigned duties as licensed operators or senior operators in a safe and reliable manner. The use of a systems approach to training (SAT) ensures that the training program is based upon job requirements in a manner that can be adapted to account for differences in plant technology, concepts of operations, and operator roles in the fulfillment of design-specific safety functions. The NRC is proposing under § 53.780(a) to require facility licensees to implement a SAT-based training program for the initial training of licensed operator and senior operator applicants. The program must be adequate to ensure that applicants will be capable of performing the duties necessary both to protect public health and safety and to maintain plant safety functions. The NRC further proposes that such programs be subject to NRC approval and subsequent change control processes of an appropriate nature.

Examinations provide a means of assessing that individuals have achieved a degree of knowledge and ability that is sufficient to carry out assigned duties as licensed operators or senior operators in a manner that is safe and reliable. The NRC is proposing to adapt the requirements of §§ 55.40, 55.41, 55.43, and 55.45 in § 53.780(b) to require that facilities establish and implement an initial examination program. However, a key difference from the comparable requirements of part 55 would be that facilities have the flexibility to propose, subject to NRC approval, the examination methods and criteria to be used in assessing satisfactory applicant performance. Such examination programs (including those used within the scope of requalification training) would need to provide for acceptable levels of both test validity and test reliability in order to be considered acceptable. The NRC intends that staff guidance would be available to facilitate the review of licensing examination programs that are proposed by facility licensees and that, following NRC approval, initial examination programs would be subject to an appropriate change control process. Furthermore, the NRC proposes that holders of licenses to operate commercial nuclear



plants under part 53 be provided the alternative of administering their own approved licensing examinations. The NRC would continue to exercise appropriate oversight of the program, make operator licensing decisions based upon the examination results, and reserve the right to administer the examinations in lieu of permitting the facility to do so. However, irrespective of the provided flexibilities in examination format and structure, at a minimum, topics from the following general categories of knowledge and abilities should be sampled in such examinations:

- Reactor Theory, Thermodynamics, and Chemical Interactions
- Plant Systems and Components
- Reactivity Management and Manipulations
- Radiation Control and Safety
- Emergency, Abnormal, and Normal Operations
- Administrative Requirements and Conditions of the Facility License

Requalification training programs provide for the continuing training and examination of specifically licensed operators and senior operators to ensure that they maintain the knowledge and abilities needed to support the safe and reliable performance of job duties following the completion of an initial training and examination program. The NRC is proposing to adapt the requirements of § 55.59 in § 53.780(c) to require that facilities implement both a SAT-based requalification training program and a biennial requalification examination program. However, a notable difference from the biennial requalification examinations required under part 55 would be that distinct annual operating test and biennial written examination components would not be mandated, with the facility licensee instead proposing the examination methods and criteria to be used in assessing satisfactory performance. The NRC intends that guidance would be available to facilitate the review of the requalification examination programs that are proposed by facility licensees and that, following NRC approval, requalification examination programs would be subject to an appropriate change control process.

For examinations to provide for valid assessments of the knowledge and abilities of individuals, the examinations must remain free from compromises that could affect their underlying integrity. The NRC is proposing to adapt the requirements of § 55.49 in § 53.780(d) to require that examinations and related activities

remain free from any compromise that might affect the integrity of the examination process.

Simulators provide a valuable means of training and evaluating plant operators, and the NRC is specifically authorized under the Nuclear Waste Policy Act of 1982, as amended (NWPA), section 306 (42 U.S.C. 10226) to establish regulations for the use of simulators within such context. The NRC is proposing to adapt the requirements of § 55.46 in § 53.780(e) to address the use of simulation facilities for training, examinations, and applicant experience requirements, as well as to address the maintenance of simulator fidelity. However, the proposed requirements of part 53 would not mandate that full scope, plant-referenced simulators be used and would allow the use of alternative simulation facilities consisting of, for example, partial scope simulators or the plant itself, provided that all associated requirements can be demonstrated to be met using alternative approaches and methods. Additionally, in allowing for the possibility that an applicant or licensee might demonstrate compliance with training, examination, or experience requirements using the plant itself, the NRC is not allowing the initiation of transients on the actual plant. Consistent with this, aside from controlled reactivity manipulations that are conducted for the purposes of demonstrating compliance with experience requirements, actual plant components may not be operated for these purposes. Rather, the NRC perspective is that the use of the plant for training and examination purposes should be restricted to techniques such as walkthroughs, job performance measures, simulated tasks, use of augmented reality technology, and similar approaches that provide training and examination value while avoiding the operation of actual plant components.

There may be situations in which applicants for operator or senior operator licenses have previous training and experience that justifies waiving some, or all, of the initial examination requirements. The NRC is proposing to adapt the requirements of § 55.47 in § 53.780(f) to allow for consideration of requests for waivers of examinations requirements. In contrast with the part 55 requirements, the NRC proposes to locate certain details associated with such waiver requests within guidance documentation in lieu of placement within the rule itself.

For licensed operators and senior operators to perform their assigned duties safely and reliably, it is essential

that they perform those duties frequently enough so as to maintain a sufficient degree of proficiency. The NRC is proposing to adapt the requirements of § 55.53(e) and (f) in § 53.780(g) to require that specifically licensed operators and senior operators maintain proficiency and, if proficiency is not maintained, regain proficiency prior to resuming licensed duties. However, in recognition of the fact that varying concepts of operations are possible for advanced reactor facilities, the NRC is proposing, in contrast with the requirements of part 55, to allow facility licensees to establish their own programs for operator proficiency, subject to NRC approval.

As the holders of specific licenses, licensed operators and senior operators must be subject to license conditions on an individual basis to ensure that the basis upon which the licenses were issued remains valid. The NRC is proposing to adapt the requirements of § 55.53 in § 53.785 to require appropriate conditions of licenses for specifically licensed operators and senior operators. However, in contrast with the requirements of § 55.53(e) and (f), the NRC is proposing to allow certain aspects of operator proficiency to be addressed by an NRC-approved facility proficiency program.

Licenses for specifically licensed operators and senior operators are issued by the NRC and must remain subject to modification or revocation. The NRC is proposing to adapt the requirements of §§ 55.51 and 55.61 in § 53.790 to address the issuance, modification, and revocation of licenses issued to specifically licensed operators and senior operators.

The licenses issued to specifically licensed operators and senior operators are valid for a period of six years, after which they expire, unless otherwise renewed. The NRC is proposing to adapt the requirements of §§ 55.55 and 55.57 in § 53.795 to address the expiration and renewal of licenses issued to specifically licensed operators and senior operators.

In developing this proposed rule, the NRC has discussed with stakeholders the considerations that might justify the omission of the specifically licensed operators and senior operators. However, even for an inherently safe reactor with autonomous operation features, certain important administrative functions (e.g., compliance with TS, operability determinations, NRC notifications, emergency declarations, risk assessment, maintenance oversight, and radiological release limit compliance) would still need to be accomplished by

appropriately qualified and authorized individuals. Additionally, the NRC recognized that manual manipulations of facility reactivity controls must only be performed by individuals who have been appropriately licensed by the Commission. The NRC therefore proposes under § 53.800 to establish a new class of facility (defined as a self-reliant-mitigation facility), according to the criteria contained in § 53.800 for part 53. These facilities would employ GLROs rather than specifically licensed operators and senior operators. The GLRO regulations offer enhanced flexibilities and targeted relaxations in a manner that is commensurate with the modified role of such operators to ensure the safe operation of the associated facilities. In contrast, those facilities not meeting the criteria of § 53.800 would instead be considered interaction-dependent-mitigation facilities and would require staffing by specifically licensed operators and senior operators. The terminology used to designate these facility types reflects differences in how operators are anticipated to need to interact with their plant systems in mitigating events and achieving safe outcomes; such systems may either need operators to interact with them in some manner (*i.e.*, be interaction-dependent) or may instead be able to rely fully upon their own capabilities independent of operator interaction (*i.e.*, be self-reliant).

Generally licensed reactor operators would differ from specifically licensed operators because the latter would be directly and independently evaluated by the NRC as part of their licensing process. This direct and independent evaluation remains appropriate when operators may reasonably be expected to exert a significant influence on public health and safety outcomes. Therefore, a key determinant as to whether generally licensed reactor operators can be utilized in facility staffing is the assessment of the operator's role in maintaining and fulfilling safety functions at the facility, such as through the performance of credited actions for the mitigation of plant events.

The criteria proposed in § 53.800 would designate self-reliant-mitigation facilities. These criteria are derived from the following set of considerations:

- no human action needed to satisfy radiological consequence criteria;
- no human action needed to address LBEs;
- safety functions not allocated to human action;
- reliance upon robust and highly reliable safety features; and
- adequate defense in depth achieved without reliance on human action.

It should be noted that those facilities not meeting the criteria proposed in § 53.800 would instead be classified as interaction-dependent-mitigation facilities and would require staffing by specifically licensed operators and senior operators instead.

Generally licensed reactor operators would perform duties under the provisions of a general license that would be effective without the filing of an application with the Commission or the issuance of licensing documents to a particular person. The NRC proposes requirements for the general licensing process for GLROs under §§ 53.805 through 53.820. The requirements for GLROs would parallel those for senior operators in regard to their comparable administrative responsibilities. Nonetheless, the requirements for GLROs would be relaxed and incorporate greater flexibilities compared to the requirements for specifically licensed operators in a manner that is consistent with the GLRO's role in safety at self-reliant-mitigation facilities.

In order to use GLROs in lieu of specifically licensed operators and senior operators, a OL/COL applicant would need to demonstrate that its proposed facility is a self-reliant-mitigation facility, *i.e.*, that it will comply with the following requirements on an ongoing basis: maintaining GLRO qualifications for the performance of important functions and tasks; incorporating relevant programmatic controls into TS; administering the related programs for training, examination, and proficiency; and ensuring that the relevant provisions of parts 26 and 73 are met. Additionally, to provide for an accurate accounting of what individuals are licensed under the general license, facility licensees would be required to report the identities of all generally licensed reactor operators to the NRC on an annual basis. Furthermore, a facility licensee must ensure that the facility design and performance continue to meet the technological criteria to be classified as a self-reliant-mitigation facility (*i.e.*, the criteria of § 53.800) on a continual basis during the operating phase, as the relaxations afforded to such facilities in the areas of operator licensing, staffing, and HFE would be predicated on this assumption. The NRC therefore proposes under § 53.805 to establish requirements for facility licensees that address issues such as these. Finally, the failure of a self-reliant-mitigation facility to subsequently meet the criteria of § 53.800 after the issuance of an OL or COL would constitute a reportable event (*i.e.*, an unanalyzed condition that

significantly degrades plant safety) under the provisions of § 53.1630.

The NRC proposes the general license for GLROs under § 53.810. GLROs would be licensed as a class of individuals under the provision of § 53.810(a) and would be subject to the conditions specified in § 53.810(b) through (g). Portions of these conditions are adapted from § 55.53 and from those conditions currently included in the licenses issued to specifically licensed operators and senior operators. The NRC would retain the ability to suspend or prohibit individuals from operating under the general license should such action be warranted.

The NRC proposes overall programmatic requirements for GLRO training, examination, and proficiency under § 53.815. In general, these proposed requirements are adapted from those of part 55 and parallel those also proposed for specifically licensed senior operators in § 53.780. These requirements include increased flexibilities and several targeted relaxations that reflect the limited role of GLROs in facility safety. The requirements proposed under § 53.815 cover, in part, the initial training, initial examination, continuing training, requalification examination, and proficiency of GLROs. Section 53.805 would require the facility licensee to develop, implement, and maintain these programs. Section 53.810, in turn, would prescribe that the requirements of § 53.805 would need to be met as a requirement of the general license. The implication of this structure is that the facility licensee would need to implement these programs for training, examination, and proficiency, and GLROs would need to participate in these programs to demonstrate compliance with the requirements of the general license.

The initial training process provides GLROs with the knowledge and abilities needed to fulfill assigned duties as GLROs. The use of a SAT serves to ensure that the training program is based upon job requirements in a manner that can be adapted to account for differences in plant technology and concepts of operations. The NRC is proposing under § 53.815(b) to require facility licensees to implement a SAT-based training program for the initial training of GLROs that is adequate to ensure that they have the necessary knowledge, skills, and abilities to perform their duties. The NRC further proposes that such programs would be subject to NRC approval, oversight, and appropriate change control processes. The training program must ensure that

GLROs maintain the necessary knowledge, skills, and abilities.

Examinations provide a means of assessing that individuals have achieved a degree of knowledge and ability that will be sufficient to enable them to carry out assigned duties as GLROs in a manner that is both safe and reliable. The NRC proposes to adapt the requirements of §§ 55.40, 55.41, 55.43, and 55.45 in § 53.815(b) to require that facility licensees establish and implement an initial examination program. A key difference from the comparable requirements of part 55 would be that facility licensees would be afforded the flexibility to propose, subject to NRC approval, the examination methods and criteria to be used in assessing satisfactory individual performance. Such examination programs (including those used within the scope of continuing training) would need to provide for acceptable levels of both test validity and test reliability in order to be considered acceptable. The NRC intends that staff guidance would be available to facilitate the review of initial examination programs that are proposed by facility licensees and that approved initial examination programs would be subject to an appropriate change control process. In contrast with both the requirements of part 55 and the proposed requirements of § 53.780, the NRC does not intend to administer or evaluate these initial examinations. However, the examination processes themselves will continue to be subject to ongoing NRC oversight. Irrespective of the provided flexibilities in examination format and structure, topics from the following general categories of knowledge and abilities should be sampled in such examinations:

- Reactor Theory, Thermodynamics, and Chemical Interactions
- Plant Systems and Components
- Reactivity Management and Manipulations
- Radiation Control and Safety
- Emergency, Abnormal, and Normal Operations
- Administrative Requirements and Conditions of the Facility License

Continuing training programs provide the ongoing training and examination of GLROs to ensure that they maintain the knowledge and abilities needed to support the safe and reliable performance of job duties following the completion of an initial training and examination program. The NRC is proposing to adapt the requirements of § 55.59 in § 53.815(b) to require that facility licensees implement both a SAT-based continuing training program

and a requalification examination program. However, a notable difference from the examinations required under part 55 would be that distinct annual operating test and biennial written examination components would not be mandated. The facility licensee would instead propose examination methods and criteria to be used in assessing satisfactory performance. Furthermore, unlike the comparable requirements of part 55 and those proposed for specifically licensed operators and senior operators, a biennial periodicity for requalification examinations would not be prescribed. However, adequate justification for the proposed periodicity of requalification examinations would be required. The NRC intends that staff guidance would be available to facilitate the review of the requalification examination programs that are proposed by facility licensees. Approved requalification examination programs would be subject to an appropriate change control process.

For examinations to provide for valid assessments of the knowledge and abilities of individuals, the examinations must remain free from compromises that could affect their underlying integrity. The NRC is proposing to adapt the requirements of § 55.49 in § 53.815(d) to require that examinations and related activities remain free from any compromise that might affect the integrity of the examination process.

Simulators provide a valuable means of training and evaluating plant operators and the NRC is specifically authorized under the NHPA, section 306 (42 U.S.C. 10226) to establish regulations for the use of simulators within such context. The NRC is proposing to adapt the requirements of § 55.46 in § 53.815(e) to address the use of simulation facilities for training and examinations, as well as to address the maintenance of simulator fidelity. The use of full scope, plant-referenced simulators would not be mandated. The potential use of alternative simulation facilities consisting of, for example, partial scope simulators or the plant itself, would be allowed provided that all associated requirements could be demonstrated to be met using alternative approaches and methods. Additionally, in allowing for the possibility that an applicant or licensee might demonstrate compliance with training and examination requirements using the plant itself, the NRC is not allowing the initiation of transients on the actual plant. Consistent with this, aside from controlled reactivity manipulations that are conducted for

the purposes of demonstrating compliance with experience requirements, actual plant components may not be operated for these purposes. Rather, the use of the plant for training and examination purposes should be restricted to techniques such as walkthroughs, job performance measures, simulated tasks, use of augmented reality technology, and similar approaches that provide training and examination value while avoiding the operation of actual plant components.

There may be situations in which GLROs have previous training and experience that justifies waiving some, or all, of the initial examination. Therefore, the NRC is proposing under § 53.815(f) to allow facility licensees to waive some, or all, portions of initial examinations provided that such waivers are consistent with a program that has been approved by the NRC.

For GLROs to safely and reliably perform their assigned duties, it is essential that they perform those duties frequently enough so as to maintain a sufficient degree of proficiency. However, the NRC recognizes that facilities that utilize GLROs may have concepts of operation that warrant unique proficiency considerations. Therefore, the NRC is proposing in § 53.815(g) to require that facility licensees develop, implement, and maintain programs to maintain and reestablish, if needed, the proficiency of GLROs. This could occur, for example, if an individual's extended absence from watch standing has rendered proficiency requirements unmet.

The general license should remain in effect for an individual only while that individual remains employed in a position that may call for the individual to manipulate the reactivity controls of the facility. The NRC proposes under § 53.820 to require that the general license would cease to be applicable on an individual basis when an individual's employment status becomes such that this is no longer the case. However, the NRC recognizes that for some types of self-reliant-mitigation facilities, very long periods may elapse between circumstances that necessitate manual manipulation of reactivity controls. Therefore, the general license remains in effect for an individual as long as the individual's current position could potentially require that individual to manipulate reactivity controls at some point within the course of the individual's assigned job duties.

The NHPA, section 306 (42 U.S.C. 10226) authorizes and directs the NRC to, in part, issue regulations and guidance that address the training and

qualifications of civilian nuclear power plant operators, supervisors, technicians, and other appropriate operating personnel. The NRC implements this in part 50 through the requirements of § 50.120, "Training and qualification of nuclear power plant personnel." The NRC is proposing under § 53.830 to adapt, with modifications, the requirements of § 50.120 for use in part 53 to provide more flexible personnel training and qualification requirements than those in § 50.120 and better reflect diverse concepts of operations.

The NRC recognizes that the categories of nuclear power plant personnel in § 50.120 may not be needed for the diverse concepts of operations, staffing models, and non-traditional personnel roles and responsibilities anticipated under proposed part 53; conversely, and for the same reasons, additional categories of plant personnel may need to be covered by part 53. The NRC also recognizes that the timeframe prescribed in § 50.120 for the establishment of training programs may not be aligned with the schedules associated with the startup of certain types of commercial nuclear plant facilities. However, the NRC also recognizes that the SAT-based training required under § 50.120 remains an appropriate means by which training programs should continue to be developed and implemented. Therefore, the approach taken by the NRC in addressing the training of certain plant staff under the proposed part 53 reflects greater flexibilities in personnel categories and programmatic timeframes, while still retaining the requirement that such training programs be based on SAT.

The NRC is proposing under § 53.830 to require SAT-based training programs with the timeframe for when such programs are required being based upon when the associated personnel are needed to support facility-specific needs. The training programs would cover the training and qualification of plant personnel in the general categories of supervisors, technicians, and other appropriate operating personnel. The licensee would not be required to seek NRC approval of a training program prior to usage. However, the licensee is required to accommodate NRC inspection of the training program. The NRC intends to develop guidance to facilitate the inspection of these training programs but does not intend for such guidance to preclude the potential for the training programs to be maintained by a separate, NRC-approved accreditation process.

The proposed § 53.845 would require programs to be developed, implemented, and maintained to help ensure that design features and human actions have the capabilities and reliabilities necessary to demonstrate compliance with the safety criteria in subpart B throughout the operating life of each commercial nuclear plant. The proposed programmatic requirements in subpart F would also address areas such as radiation protection needed to control routine effluents during normal operations. The proposed §§ 53.850 through 53.910 would require programs to support specific activities needed to ensure the prevention or mitigation of unplanned events or to support normal operations for any reactor design. However, each holder of an OL or COL would be required to assess whether additional programs are needed for the specific reactor design and location of the commercial nuclear plant. Licensees would be able to combine, separate, and otherwise organize programs and related documents as appropriate for the technologies and organizations associated with the commercial nuclear plant.

Proposed § 53.850 would require a radiation protection program associated with the requirements in subparts B and C for public doses resulting from normal operations and the protection of plant workers. The proposed requirements related to doses from normal operations, including routine effluents, would be similar to those specified in § 50.36a, "Technical specifications on effluents from nuclear power reactors," and related requirements in standard TS for offsite dose calculation manuals. While the proposed section would include requirements that are technically and programmatically similar to part 50, proposed § 53.850 would not include a requirement for effluent-related TS as is required in § 50.36a. A proposed requirement similar to that found in the administrative controls section of TS for operating reactors licensed under parts 50 and 52 would be included for programmatic controls of solid wastes to complement the design requirements in proposed § 53.425.

Proposed § 53.855 would require an emergency response plan that demonstrates compliance with the requirements in appendix E to part 50 and § 50.47(b) or § 50.160. The regulations in § 50.47 stating that the NRC will not issue certain licenses unless it finds that there is reasonable assurance that adequate protective measures can and will be taken to protect public health and safety in the event of a radiological emergency apply equally to applications under part 53

complying with the applicable standards set forth in either § 50.160 or the requirements in appendix E to part 50 and § 50.47(b).

In its 2008 Advanced Reactor Policy Statement, the Commission stated their expectation that "the safety features of advanced reactor designs will be complemented by the operational program for Emergency Planning (EP). This EP operational program, in turn, must be demonstrated by inspections, tests, analyses, and acceptance criteria to ensure effective implementation of established measures." Consistent with this policy statement, emergency plans and emergency planning zones are not safety features in the design. In SECY-97-020, "Results of Evaluation of Emergency Planning for Evolutionary and Advanced Reactors," dated January 27, 1997, the staff indicated that the rationale upon which EP for current reactor designs is based, that is, potential consequences from a spectrum of accidents, is appropriate for use as the basis for EP for evolutionary and passive advanced LWR designs and is consistent with the Commission's defense-in-depth safety philosophy. Also, in its Safety Goals Policy Statement the Commission stated that: "A defense-in-depth approach has been mandated in order to prevent accidents from happening and to mitigate their consequences. Siting in less populated areas is emphasized. Furthermore, emergency response capabilities are mandated to provide additional defense-in-depth protection to the surrounding population." Consistent with this policy statement, proposed § 53.855 contributes an additional independent layer of defense in depth for commercial nuclear plants. Therefore, the emergency plans and emergency planning zones under proposed § 53.855 are not used to demonstrate compliance with subpart B and subpart C of this part. Rather, compliance with the requirements in proposed § 53.855 would provide reasonable assurance that adequate protective measures can and will be taken to protect public health and safety in the event of a radiological emergency.

Proposed § 53.860 would identify the applicable regulations for part 53 applicants related to the programs for physical security, cybersecurity, FFD, AA, and information security. These programs are discussed in more detail in section V, "Changes to Other Parts of 10 CFR," of this document.

Proposed § 53.860(a) would establish the physical protection program and present a graded approach to physical protection requirements. If a licensee can meet the proposed criterion in

§ 53.860(a)(2)(i), then the requirement to protect against the design-basis threat (DBT) of radiological sabotage would not be applicable. The criterion in § 53.860(a)(2)(i) would require a licensee to show that potential consequences resulting from a DBT initiated event would result in offsite doses below the values in § 53.210 even if licensee mitigation and recovery actions, including any operator action, are unavailable or ineffective. Where the criterion is met, the resulting physical protection requirements would be those for protection of SNM and Category 1 and Category 2 radioactive material, if applicable. This proposal would apply a new regulatory approach for certain commercial nuclear plants in which the DBT of radiological sabotage would not be applicable.

For those licensees able to meet the criterion in § 53.860(a)(2), the NRC would not conduct Force-On-Force (FOF) exercise inspections. Section 170D.a of the Act permits the Commission to determine which licensed facilities are part of a class of licensed facilities where NRC-conducted FOF exercises are appropriate to assess the ability of a private security force of a licensed facility to defend against any applicable DBT. For the class of licensees that meet the criterion of § 53.860(a)(2), it would not be appropriate to conduct FOF exercises to evaluate performance at commercial nuclear plants where the DBT of radiological sabotage is not applicable and the facility poses a lower risk to public health and safety from potential radiation exposure. These facilities would still have tailored security requirements and oversight consistent with their relatively low risk.

For those licensees not able to meet the criterion in § 53.860(a)(2), proposed § 53.860(a) would permit the licensee to choose one of two paths to provide physical protection: (1) the current set of requirements in § 73.55, which would include any changes resulting from the ongoing proposed rulemaking on Alternative Physical Security Requirements for Advanced Reactors<sup>2</sup> that provides pre-determined physical security alternatives; or (2) the performance-based requirements in proposed § 73.100. In either case, the licensee would be subject to NRC-conducted FOF inspections.

Proposed § 53.860(b) would require licensees to establish, implement, and maintain an FFD program under part 26. Section 53.860(c) would require

licensees to establish, implement, and maintain an AA program in accordance with either § 73.56 or proposed § 73.120, as appropriate. Section 53.860(d) would require licensees to establish, implement, and maintain a cybersecurity program in accordance with either § 73.54 or proposed § 73.110. Section 53.860(e) would require licensees to establish, implement, and maintain an information protection system that complies with the requirements of §§ 73.21, 73.22, and 73.23, as applicable.

Proposed § 53.865 would establish requirements for quality assurance and refer to appendix B of part 50 for the part 53 requirements for SR design features. Proposed requirements related to evaluating and reporting changes to the quality assurance program would be included in proposed subpart I and would be equivalent to those found in § 50.54.

The proposed § 53.870 would require licensees to actively assess possible degradation of SSCs from the effects of aging, fatigue, and environmental conditions. The proposed inclusion of requirements related to designing and monitoring for possible degradation mechanisms reflects important lessons learned from the history of LWRs and the likely introduction of new design features and materials in future commercial nuclear plants. The allowable combinations of design features, operating experience, testing, and monitoring during operations would support performance-based approaches to the initial licensing of new technologies. The proposed performance-based approach to integrity assessment programs would also allow for the subsequent consideration of operating experience and appropriate corrective actions or allowable relaxations for ensuring that design features comply with the proposed functional design criteria of §§ 53.410 and 53.420. The proposed program would be based upon a comprehensive and integrated evaluation of the aging and other degradation mechanisms applicable to the design; identification of the affected SSCs; the allowances provided in the design of the SSCs for degradation; and schedules and procedures for determining if and at what rate degradation is occurring, as well as its cause. Risk insights could be used to prioritize the monitoring, evaluation, and management of degradation based upon the importance of the SSC to safety and the time frame for when the effects of degradation could be of concern.

Proposed § 53.875 would establish requirements for a fire protection

program supporting operations similar to § 50.48. The proposed fire protection program during operations would work in concert with specific fire protection requirements proposed in subpart C for design and analyses and in proposed subpart E for construction and manufacturing.

Proposed § 53.880 would establish requirements for an inservice inspection (ISI) and inservice testing (IST) program, which are historically important activities conducted in accordance with ASME codes and regulations in § 50.55a. While the proposed part 53 would not incorporate specific consensus codes and standards into the regulations, § 53.880 allows for the use of generally accepted codes and standards. The proposed requirement for an ISI and IST program would reinforce the need to develop monitoring programs to be conducted during a plant's operations phase to complement the design process and address inherent uncertainties. The NRC encourages the continued use of consensus codes and standards supporting design, testing, and inspections to support integrated and performance-based approaches in demonstrating compliance with the proposed requirements in part 53.

Proposed § 53.910 would establish requirements for developing, implementing, and maintaining procedures (*e.g.*, operations and emergency operating procedures) and guidelines (*e.g.*, accident management guidelines). The programmatic requirements for many of the procedures listed in this proposed section would be similar to the requirements found in the administrative controls section of TS for plants licensed under parts 50 and 52. The proposed inclusion, where appropriate, of accident management guidelines in these requirements is intended to ensure that an integrated set of procedures and guidelines would be established by licensees to ensure command and control across the spectrum of possible event sequences. The proposed required procedures would also include those needed to complement the design requirements in proposed § 53.440(m) related to criticality alarms and the equivalent of the procedures required in § 50.54(hh) to address notifications of potential aircraft threats.

#### *Subpart G—Decommissioning Requirements*

The proposed subpart G would provide the regulatory requirements for the decommissioning phase of the life cycle of a commercial nuclear plant.

<sup>2</sup> SECY-22-0072, "Proposed Rule: Alternative Physical Security Requirements for Advanced Reactors," dated August 2, 2022.

The requirements being proposed in subpart G for the decommissioning of a commercial nuclear plant are adapted from the current regulations in § 50.75, “Reporting and recordkeeping for decommissioning planning,” § 50.82, “Termination of license,” and § 50.83, “Release of part of a power reactor facility or site for unrestricted use.” Although the requirements from those sections of part 50 have been copied into proposed subpart G with relatively few changes, the requirements are reorganized to fit within the part 53 structure. The few changes made were primarily to make the proposed requirements more technology inclusive by adding alternatives within sections, whereas some requirements in part 50 were developed specifically for LWRs.

As an example, § 50.75 provides minimum amounts of decommissioning funds required to demonstrate reasonable assurance of funds for decommissioning LWRs. Such generic amounts have not been developed for all reactor technologies that may be licensed under part 53. Therefore, the Commission proposes in § 53.1020, “Cost estimates for decommissioning,” that site-specific cost estimates for decommissioning must be developed considering costs in such areas as engineering, labor, and waste disposal. The derivation of the generic cost estimates for LWRs in § 50.75 is provided in NUREG/CR–5884, “Revised Analyses of Decommissioning for the Reference Pressurized Water Reactor Power Station,” and NUREG/CR–6187, “Revised Analyses of Decommissioning for the Reference Boiling Water Reactor Power Station.” Similar to part 50, a provision for an annual adjustment of decommissioning cost estimates would be included in proposed § 53.1030.

The NRC is currently pursuing another rulemaking, “Regulatory Improvements for Production and Utilization Facilities Transitioning to Decommissioning,” which was published as a proposed rule for public comment on March 3, 2022 (87 FR 12254). As these rulemakings progress, the NRC will consider revisions to part 53 to align the two rulemaking efforts. For example, the proposed § 53.1075 could be expanded to include or reference requirements for decommissioning in areas such as EP and security in addition to the proposed decommissioning fire protection plans that would provide an equivalent to § 50.48(f).

#### *Subpart H—Licenses, Certifications, and Approvals*

Proposed subpart H would provide requirements related to applications

under part 53 for NRC licenses, certifications, or approvals for commercial nuclear plants.

Proposed subpart H would specify requirements applicable to all part 53 applications as well as requirements specific to part 53 applications for LWAs, ESPs, standard design approvals, standard DCs, MLs, CPs, OLs, and COLs. Proposed subpart H would be equivalent to and include all existing licensing, certification, and approval processes currently covered under parts 50 and 52, with the exception of the process for early review of site suitability issues. Interactions with external stakeholders during the development of the proposed rule did not identify significant interest in or need for including the process for early review of site suitability issues in part 53.

Much of the proposed subpart H regulatory text is identical to the corresponding language in parts 50 and 52, with minor changes to account for cross references in part 53, to make language technology neutral, or to reflect the unique analytical approach in part 53. In these instances, this preamble discussion will describe the language as “equivalent” to the existing corresponding requirement in part 50 or part 52 and will describe any deviations, where applicable.

Because part 53 carries over the majority of the licensing options from parts 50 and 52, there are several sections in proposed subpart H that are similar to existing regulations in parts 50 and 52. Proposed § 53.1100 would address filing of applications for licenses, certifications, or approvals under oath or affirmation and is equivalent to § 50.30. The proposed § 53.1100 does not include the current requirement in § 50.30(a)(2) that the applicant maintain the capability to generate additional copies, because it is unnecessary in the age of electronic submissions. In addition, the existing requirement on applications for OLs in § 50.30(d) is included in proposed § 53.1124(g)(2), “Relationship between sections,” covering OLs, rather than in proposed § 53.1100.

Proposed § 53.1101 would lay out activities requiring an NRC license and is equivalent to § 50.10(b). Proposed § 53.1103 would address combining applications and is equivalent to §§ 50.31, 50.52, and 52.8. Proposed § 53.1103(b) would continue the Commission’s practice of combining multiple authorizations for a facility under parts 30, 40, 50, 52, and 70 into one license based on the Commission’s authority under Section 161h. of the Act to combine NRC licenses. Proposed

§ 53.1106 would address elimination of repetition and is equivalent to § 50.32.

Proposed § 53.1109 would provide general information requirements for the content of applications submitted to the NRC under part 53 and is equivalent to § 50.33, with the exception of § 50.33(f) on financial qualifications, which is covered in proposed subpart J, and § 50.33(h) on earliest and latest dates for completion of construction, which is covered in § 53.1306 of this subpart. Each application would need to include information to address the items in proposed § 53.1109 as cited in the appropriate section of this subpart for the application type.

One change from current requirements can be found in proposed § 53.1109(i), which is not limited to electricity generation as it is currently in part 50. Some prospective NRC applicants are considering development of nuclear plants for other commercial ventures, such as process heat generation or hydrogen production. In addition, § 53.1109(j), which requires applications containing classified information to separate that information from the unclassified information in the application, refers to “Restricted Data or classified National Security Information” instead of the term used in the corresponding provision in § 50.33(j), “Restricted Data or other defense information.” This change was made to use the defined term in part 95 rather than “defense information” as used in § 50.33(j). The usage in § 50.33(j) dates back to the Atomic Energy Commission amendment of that section on January 19, 1956 (21 FR 355, 357) and was not changed with the issuance of part 95 (45 FR 14476; March 5, 1980) after the establishment of the NRC and the 1975 reissuance of the former Atomic Energy Commission regulations. The revised terminology also aligns with its usage in § 53.1115.

Proposed § 53.1112 would address environmental conditions and is equivalent to § 50.36b. Proposed § 53.1115 would address requirements for agreements limiting access to classified information and is equivalent to § 50.37. Proposed § 53.1118 would address ineligibility of certain applicants and is equivalent to § 50.38. Proposed § 53.1120 would address exceptions and exemptions from licensing requirements for Department of Defense and DOE facilities and is equivalent to § 50.11. Proposed § 53.1121 would address public inspection of applications and is equivalent to § 50.39.

Proposed § 53.1124 would address the relationship between the various licenses, certifications, and approvals

provided in this subpart, and the requirements are equivalent to a number of similar provisions in parts 50 and 52 including §§ 50.10, 52.13, 52.43, 52.73, 52.133, and 52.153. New provisions are provided in § 53.1124(c) and (d), that would allow an application for either a standard design approval or a standard DC under part 53 to reference applicable licensing-basis information that supported issuance of an OL or COL under part 53. These provisions are being proposed to offer additional flexibility beyond what is currently allowed under parts 50 or 52 for an applicant who may wish to license a first-of-a-kind reactor for operation prior to seeking generic approval or certification of the standard design.

Proposed § 53.1124(e) would address the limitations that a manufactured reactor may only be transported to a site with a COL and is equivalent to § 52.153. Proposed § 53.1130 would address LWAs and is equivalent to § 50.10.

Proposed §§ 53.1140 through 53.1188 would govern the content of ESP applications. Proposed § 53.1140 is equivalent to § 52.12. Proposed § 53.1143 would address filing of applications and is equivalent to § 52.15. Proposed § 53.1144 would address general information requirements for the content of applications and is equivalent to § 52.16.

Proposed § 53.1146 would specify requirements for the technical contents of applications and is equivalent to § 52.17. Proposed § 53.1146(b)(2) provides applicants for ESPs a regulatory option to propose major features of the emergency plans or complete and integrated emergency plans in accordance with either the requirements in § 50.160 of this chapter, or the requirements in appendix E to part 50 of this chapter and § 50.47(b) of this chapter, as applicable.

Proposed § 53.1149 would address standards for review of ESP applications and administrative review of applications, including hearings, and is equivalent to §§ 52.18 and 52.21. Proposed § 53.1155 would address referral to the ACRS and is equivalent to § 52.23. Proposed § 53.1158 would address issuance of ESPs and is equivalent to § 52.24. Proposed § 53.1161 would address the extent of activities permitted and is equivalent to § 52.25. Proposed § 53.1164 would address the duration of an ESP and is equivalent to § 52.26. Proposed § 53.1167 would address provisions for requesting a LWA after issuance of an ESP and is equivalent to § 52.27. Proposed § 53.1170 would address

transfers of ESPs and is equivalent to § 52.28. Proposed § 53.1173 would address applications for ESP renewals and is equivalent to § 52.29. Proposed § 53.1176 would address criteria for renewal of an ESP and is equivalent to § 52.31. Proposed § 53.1179 would address the duration of an ESP renewal and is equivalent to § 52.33. Proposed § 53.1182 would address the use of a site for purposes other than those described in the permit and is equivalent to § 52.35. Proposed § 53.1188 would address finality of ESP determinations and is equivalent to § 52.39.

Proposed §§ 53.1200 through 53.1221 would govern the contents of standard design approval applications. Proposed § 53.1200 is equivalent to § 52.131. Proposed § 53.1203 would address filing of applications and is equivalent to § 52.135. Proposed § 53.1206 would address general information requirements for the content of applications and is equivalent to § 52.136.

Proposed § 53.1209 would address requirements for the technical content of applications and is largely equivalent to § 52.137. In proposed § 53.1209(a), the NRC proposes text that expands the discussion of “major portion” standard design approvals. Additional discussion regarding standard design approvals for a major portion of a standard design can be found in the NRC’s “A Regulatory Review Roadmap for Non-Light Water Reactors,” which considers the Nuclear Innovation Alliance report “Clarifying ‘Major Portions’ of a Reactor Design in Support of a Standard Design Approval.” Proposed § 53.1209(b) outlines the required content of the Final Safety Analysis Report (FSAR). Proposed requirements in § 53.1209(b)(2) for portions of the application addressing design information state that the application must include design information equivalent to that required for a standard DC. This reference to the pertinent DC requirements (specifically, those in proposed § 53.1239(a)(2) through (27)) is an efficiency that would prevent the need to repeat many of the same requirements for the content of a standard design approval application.

Proposed § 53.1210 would address requirements for the content of a standard design approval application other than the FSAR. Proposed § 53.1210(a) would require the inclusion of a description of availability controls that are not included in the FSAR.

Proposed § 53.1212 would address standards for review of applications and is equivalent to § 52.139. Proposed § 53.1215 would address referral to the

ACRS and is equivalent to § 52.141. Proposed § 53.1218 would address staff approval of designs and duration of design approvals and is equivalent to §§ 52.143 and 52.147. Proposed § 53.1221 would address finality of standard design approvals and information requests and is equivalent to § 52.145 with the exception that it extends such finality to a standard approval referenced in a DC application. Standard design approvals issued to date under part 52 have been issued during the NRC’s review of the standard DC application and have relied on the same application content. However, a future scenario could arise where the DC application is not submitted until after a design approval has been granted. The NRC would apply the same finality provisions in this situation as in the situation where a standard design approval is referenced in a COL application.

There is no equivalent to proposed § 53.1221(d) in part 52 for standard design approvals. This provision would state that the Commission will require, before granting a CP, COL, OL, or ML which references a standard design approval, that engineering documents be completed and available for audit. A similar provision is included in part 52 in relation to a standard DC; and the NRC would require that design and analysis information needed for the Commission to make its safety determination be complete and available for any application the NRC is reviewing. Making this explicit provides increased clarity to future standard design approval applicants under part 53.

Proposed §§ 53.1230 through 53.1263 would address standard DCs. Proposed § 53.1230 would address general provisions for standard DCs and is equivalent to § 52.41. Proposed § 53.1233 would address filing of applications and is equivalent to § 52.45. Proposed § 53.1236 would address general information requirements for the content of applications and is equivalent to § 52.46. Proposed § 53.1239 would address requirements for the technical content of applications and is equivalent to § 52.47(a). The requirements in proposed § 53.1239 have been modified from the analogous requirements in § 52.47(a) to align with the technical requirements in proposed part 53.

Proposed § 53.1241 would address requirements for the content of a standard DC application other than the FSAR and is equivalent to § 52.47(b) and (d).



Proposed § 53.1242 would address review of applications and is equivalent to §§ 52.48 and 52.51. Proposed § 53.1242(c) would include a provision that would allow a DC applicant to reference applicable licensing-basis information for an OL or COL issued under part 53. As explained previously, this provision is being proposed to explicitly allow flexibility for an applicant who may wish to license a first-of-a-kind reactor for operation prior to seeking certification of the generic reactor design. For NRC findings on a reactor design in an OL or COL proceeding, this proposal would provide finality in a subsequent DC application that references information on the OL or COL proceeding's docket. This finality accorded to the OL or COL findings would bind the NRC staff and the ACRS but would not bind members of the public or the Commission. (To the extent an Atomic Safety and Licensing Board (ASLB) might have a role in a DC rulemaking, the OL or COL findings would not bind the ASLB either.) Specifically, members of the public would have the opportunity to comment on a proposed DC rule under well-established NRC practice. The rationale for binding the NRC staff and ACRS is similar to the rationale for a COL applicant referencing a standard design approval under part 52.

Proposed § 53.1245 would address referral to the ACRS and is equivalent to § 52.53. Proposed § 53.1248 would address issuance of standard DCs and is equivalent to § 52.54. Proposed § 53.1251 would address duration of certifications and is equivalent to § 52.55(c). Proposed § 53.1254 would address application for renewal and is equivalent to § 52.57. Proposed § 53.1257 would address criteria for renewal and is equivalent to § 52.59. Proposed § 53.1260 would address duration of renewals and is equivalent to § 52.61. Proposed § 53.1263 would address finality of standard DCs and is equivalent to § 52.63.

Proposed §§ 53.1270 through 53.1291 would address MLs covering manufacturing activities at one or more licensee facilities. Proposed § 53.1270 would address the scope of these sections and is equivalent to § 52.151.

Proposed § 53.1273 would address filing of applications for an ML and is equivalent to § 52.155(a).

Proposed § 53.1276 would address general information requirements for the content of ML applications and is equivalent to § 52.156, with one exception. Proposed § 53.1276 would require each application for an ML to also include the information required by § 53.1109(e). This information includes

the type of license applied for, the use to which the facility will be put, the period of time for which the license is sought, and a list of other licenses, except operator's licenses, issued or applied for in connection with the proposed facility to address the potential variations in how MLs might be formulated under the proposed part 53.

Proposed § 53.1279 would address requirements for the technical content of applications for MLs to be included in the FSAR and is equivalent to § 52.157. In addition, the requirements in proposed § 53.1279(a) and (b) have been modified from the analogous requirements in § 52.157 to align with the technical requirements in proposed part 53. Proposed § 53.1279(a)(2) outlines the required content of the application addressing design information and states that the application must include design information equivalent to that required for a standard DC. This reference to the pertinent DC requirements is an efficiency that would prevent the need to repeat the same requirements for the content of an ML application.

Proposed § 53.1279(c) would provide application requirements related to the deployment of the completed manufactured reactor. Proposed § 53.1279(c)(1) would require inclusion of information related to the procedures governing the preparation of the manufactured reactor for shipping to the site where it is to be operated, the conduct of shipping, and the verification of the condition of the shipped items upon receipt at the site. Proposed § 53.1279(c)(2) would require that the application include information on the interaction of the design, manufacture, and installation of a manufactured reactor within the applicant's organization and the manner by which the applicant will ensure close integration between the designer, contractors, and any licensee of a facility in which the manufactured reactor is to be installed. Finally, proposed § 53.1279(c)(3) would require that the application include a description of the measures used for the control of interfaces between the holder of the ML and the holder of the COL for the commercial nuclear plant at which the manufactured reactor is to be installed. This information is necessary for the NRC to determine whether the applicant would have appropriate controls in place to ensure coordination between parties involved in the design, manufacture, and eventual operation of any reactor manufactured under an ML.

Proposed § 53.1279(d) would include additional requirements for application

content for applicants seeking an ML for manufactured reactors that will be fueled at the factory under a 10 CFR part 70 license, consistent with the requirements in § 53.620(d). These provisions would require the application to include information related to loading fuel and the required independent physical mechanisms to prevent criticality and to otherwise provide assurance that the fueled manufactured reactor can be successfully transported, installed, and operated at a site for which the Commission has issued a COL that authorizes construction and operation of a commercial nuclear plant using the manufactured reactor.

Proposed § 53.1282 would provide requirements for other application content for MLs and is equivalent to § 52.158. Proposed § 53.1282(a)(1) would provide requirements to include in the ML application the ITAAC within the scope of the ML that the COL holder referencing the ML must satisfy. Proposed § 53.1282(a)(2) would require that the ITAAC from a referenced standard design apply to the portions of the ML design within the scope of the referenced standard design. Proposed § 53.1282(a)(3) would state that the COL application may include a notification that required referenced standard DC ITAAC have been satisfied at the manufacturing facility.

Proposed § 53.1282(b) would require an ML application to include an environmental report and, consistent with existing requirements, proposed § 53.1282(b)(2) would note that if the ML application references a standard DC, the environmental report need not contain a discussion of severe accident mitigation design alternatives for the manufactured reactor as used in a commercial nuclear plant.

Proposed § 53.1285 would provide standards for review of applications and administrative review of applications for MLs, including hearings, and is equivalent to §§ 52.159 and 52.163.

Proposed § 53.1286 would address referral of applications to the ACRS and is equivalent to § 52.165. Proposed § 53.1287 would address issuance of an ML and is equivalent to § 52.167.

Proposed § 53.1288 would address finality of MLs and is equivalent to § 52.171. Proposed § 53.1291 would address the duration of MLs and is equivalent to § 52.173. Proposed § 53.1293 would address the transfer of MLs and is equivalent to § 52.175. Proposed § 53.1295 would address the renewal of MLs and is equivalent to §§ 52.177, 52.179 and 52.181, with a minor exception. Proposed § 53.1295(a)(3) would state that an ML



for which a timely application for renewal has been filed remains in effect until the Commission has made a final determination on the renewal application, provided, however, that the holder of an ML may not begin manufacture of a manufactured reactor less than six months before the expiration of the license. The proposed 6-month time frame for this provision is changed from the 3-year period in the equivalent provision in part 52 because future reactor applicants may present smaller, simpler designs, to include micro-reactor designs, in ML applications than those that were envisioned when the existing requirements were written. A 6-month time frame for this provision would provide greater flexibility for ML holders related to manufactured reactors being produced when the ML expires.

Proposed §§ 53.1300 through 53.1348 would address licensing requirements for CPs. Proposed § 53.1300 would set out general requirements for CPs and is equivalent to § 50.23. Proposed § 53.1306 would address the general information requirements for the content of applications for CPs and is equivalent to § 50.33(f) and (h).

Proposed § 53.1309 would address requirements for the technical content of applications for CPs and includes the requirement to submit a Preliminary Safety Analysis Report (PSAR) that describes the facility and presents a preliminary safety analysis of the facility as a whole. This is in contrast to an OL application which is required to include an FSAR that describes the facility and presents a final safety analysis of the facility as a whole. Proposed § 53.1309 is equivalent to § 52.17(a)(1)(iv) through (a)(1)(x) and 52.17(b), with two exceptions. First, proposed § 53.1309 would replace the analysis of the dose criteria required by § 52.17(a)(1)(ix) with analysis to demonstrate compliance with the safety criteria defined in §§ 53.210 and 53.220. Second, proposed § 53.1309(a)(2) would add a requirement for a CP application to include several categories of detailed design information, although § 53.1309(a)(2)(ii) would allow certain relaxations of this requirement in view of aspects of a design that may not yet be fully developed. Section 53.1309 would reference the requirements for the content of an ESP application to address application requirements related to siting and would reference the requirements for the content of a DC application to address application requirements related to design of the commercial nuclear plant. Proposed § 53.1309(a)(2)(ii) would address the treatment of preliminary design

information and notes that information provided in the application may include some aspects of the design that are not fully developed. This provision would require that the completed design, including any changes during construction, be described in the FSAR in an application for an OL. This would include the requirement for a description of the PRA required by § 53.450(a) and its results. Probabilistic risk assessments developed for commercial nuclear plants prior to construction would be based on the design and other information available at the time of the CP application. PRAs performed in early design stages or prior to construction may be inherently less detailed and may include projected information that will be subsequently verified or revised when the plant is built. Proposed § 53.1309(a)(4) would address preliminary description of the plans for coping with emergencies.

Proposed § 53.1312 would address other application content for CPs. Proposed § 53.1312(a)(1) is equivalent to § 52.80(b) but is adapted for a CP application. Proposed § 53.1312(a)(2) is equivalent to § 52.80(c) but is adapted for a CP application. Proposed § 53.1312(b)(1) is equivalent to § 52.79(b), (c), and (d) but is adapted for a CP application. Section 53.1312(b)(2) is equivalent to portions of §§ 52.63(b)(1), 52.79(b)(1) through (b)(3), (c), and (d)(1) and (d)(3), 52.80, and 52.93(b), but is adapted for a CP application. Guidance for equivalent requirements in parts 50 and 52 is also addressed in RG 1.206, "Applications for Nuclear Power Plants," Revision 1, section C.1.7.

Proposed § 53.1315 would address standards for review of applications and administrative review of applications, including hearings, and is equivalent to §§ 52.81 and 52.85, but is adapted for a CP application.

Proposed § 53.1318 would address finality of NRC approvals, licenses, and certifications referenced in a CP application and is equivalent to § 52.83(a) but is adapted for a CP application.

Proposed § 53.1324 would address referral to the ACRS and is equivalent to § 50.58(a) and to § 52.87 but is adapted for a CP application.

Proposed § 53.1327 would address authorization to conduct LWA activities and is equivalent to § 52.91 but is adapted for a CP application. Proposed § 53.1327(a) is equivalent to § 52.91(a) but is adapted for a CP application. Proposed § 53.1327(b) is equivalent to § 52.91(b) but is adapted for a CP application. Proposed § 53.1330 would

address exemptions, departures, and variances for CP applicants.

Proposed § 53.1333 would address issuance of CPs. Proposed § 53.1333(a) is equivalent to § 50.35(a). Proposed § 53.1333(b) is equivalent to § 50.35(b) and to § 52.97(c) but is adapted for a CP application. Proposed § 53.1336 would address the effect of CPs and is equivalent to § 50.35(b). Proposed § 53.1342 would address the duration of CPs. Proposed § 53.1342(a) is equivalent to § 50.55(a). Proposed § 53.1342(b) is equivalent to § 50.55(b). Proposed § 53.1345 would address the transfer, assignment, and disposal of CPs and is equivalent to § 50.80. Proposed § 53.1348 would address the termination of CPs and is equivalent to §§ 52.3(b)(8) and 52.110(a)(1) but is adapted for a CP application.

Proposed §§ 53.1360 through 53.1405 address requirements for OLs.

Proposed § 53.1366 would address requirements for the general content of applications for OLs. It would refer to general content requirements in proposed § 53.1109 and would require supplemental information. Proposed § 53.1366(a) is equivalent to § 50.33(f). Proposed § 53.1366(b) is equivalent to § 50.33(k).

Proposed § 53.1369 would provide requirements for the technical content of applications for OLs to be included in the FSAR and is equivalent to § 50.34(b) but has been modified to align with the technical requirements in part 53. It would require that the FSAR include and, as needed, update information provided in the PSAR that was submitted and reviewed to support the associated CP application.

Similar to the proposed requirements for the content of CP applications, proposed § 53.1369(a) would reference the requirements for the content of an ESP application to address application requirements related to the site. Section 53.1369(b) would reference the requirements for the content of a DC application to address some of the application requirements related to design of the commercial nuclear plant.

Proposed § 53.1369(c) is equivalent to § 50.34(b)(7). Proposed § 53.1369(d) would require a description of the Integrity Assessment Program that would be required by proposed § 53.870. Proposed § 53.1369(e) is equivalent to § 50.34(e). Proposed § 53.1369(g) would provide requirements for OL application content to support proposed § 53.730 related to the role of personnel in the operation of the commercial nuclear plant and is adapted from requirements in part 55 and § 50.34(f). Likewise, proposed § 53.1369(h) would provide

requirements for OL application content related to training programs to support proposed §§ 53.730(g) and 53.830 and includes requirements equivalent to § 50.34(b)(8), § 52.79(a)(33), and part 55. Proposed § 53.1369(i) would provide requirements for OL application content related to emergency plans to support proposed § 53.855 and is equivalent to § 50.34(b)(6)(v).

Proposed § 53.1369(j) would provide requirements for OL application content related to the applicant's organizational structure and is equivalent to § 50.34(b)(6)(i). Proposed § 53.1369(k) would provide requirements for OL application content related to the applicant's proposed maintenance program to support proposed § 53.715 and is equivalent to § 50.34(b)(6)(iv). Proposed § 53.1369(l) would provide requirements for OL application content related to the applicant's quality assurance program to support proposed § 53.865 and is equivalent to § 50.34(b)(6)(ii). Proposed § 53.1369(m) would provide requirements for OL application content related to the applicant's proposed radiation protection program to support proposed § 53.850 and is equivalent to § 50.34(b)(3).

Proposed § 53.1369(n) through (p) would provide requirements for OL application content related to the applicant's proposed physical security program to support proposed § 53.860(a) and are equivalent to § 50.34(c) and (d). Proposed § 53.1369(q) would provide requirements for OL application content related to the applicant's proposed cybersecurity plan to support proposed § 53.860(d) and is equivalent to §§ 52.79(a)(36)(iv) and 73.54. Proposed § 53.1369(r) would provide requirements for OL application content related to the implementation of proposed security, safeguards, and cybersecurity plans to support proposed § 53.860 and is equivalent to § 52.79(a)(35)(ii) and 52.79(a)(36)(iv) and (v).

Proposed § 53.1369(s) would provide requirements for OL application content related to the applicant's proposed fire protection program to support proposed § 53.875 and is equivalent to § 52.79(a)(40). Proposed § 53.1369(t) would provide requirements for OL application content related to the applicant's proposed ISI and IST program to support proposed § 53.880 and is equivalent to part of § 52.79(a)(11). Proposed § 53.1369(w) would provide requirements for OL application content related to the applicant's general employee training program to support proposed § 53.830 and is equivalent to § 52.79(a)(33).

Proposed § 53.1369(x) would provide requirements for OL application content related to the applicant's FFD program to support part 26 and is equivalent to § 52.79(a)(44). Proposed § 53.1369(y) would provide requirements for OL applicant's programs to demonstrate that any safety questions identified at the CP stage have been resolved and is equivalent to § 50.34(b)(5). Proposed § 53.1369(z) would provide requirements for OL applicants to describe how the performance of each safety design feature has been demonstrated capable of fulfilling functional design criteria considering interdependent effects through either analysis, appropriate test programs, prototype testing, operating experience, or a combination thereof to support proposed § 53.440(a). It is largely equivalent to §§ 50.34(b)(5) and 50.43(e). Proposed § 53.1369(aa) would provide requirements for OL application content related to the applicant's proposed TS to support proposed § 53.710(a) and is equivalent to § 50.34(b)(6)(vi).

Proposed § 53.1372 would address requirements for the content of OL applications other than the FSAR. Proposed § 53.1372(a) would require submission of an environmental report and is equivalent to § 50.30(f) and § 51.53(b). Proposed § 53.1372(b) does not have a direct parallel in parts 50 and 52 and would require the inclusion of a description of availability controls that are not included in the FSAR to support proposed § 53.710(b).

Proposed § 53.1375 would address standards for review of OL applications and the administrative review of applications, including hearings, and is equivalent to §§ 52.81 and 52.85, except that the NRC has omitted 10 CFR part 54, "Requirements for Renewal of Operating Licenses for Nuclear Power Plants," from the list of standards in the proposed § 53.1375(a). Proposed part 53 does not include detailed requirements related to renewal of licenses, although a general provision and possible placeholder for future requirements has been included as proposed § 53.1595. The NRC will decide after the part 53 final rule is published whether this future section will be retained in part 53 to address license renewal or whether the agency will take another approach to address license renewal for part 53 licensees, such as amending part 54 to address part 53 licensees.

Proposed § 53.1381 would address referral to the ACRS and is equivalent to §§ 50.58 and 52.87. Proposed § 53.1384 would address exemptions, departures, and variances for OL applicants. Section 53.1384(a) is

equivalent to § 52.93 but is adapted for OLs. Proposed § 53.1384(b) is equivalent to §§ 52.39(d) (with respect to ESPs) and 52.93 but is adapted for OLs.

Proposed § 53.1387 would address issuance of OLs. The proposed introductory paragraph is equivalent to § 50.56. Proposed § 53.1387(a)(1)(i) is equivalent to §§ 50.50 and 50.57(a)(1). Proposed § 53.1387(a)(1)(ii) is equivalent to § 50.50. Proposed § 53.1387(a)(1)(iii) is equivalent to § 50.57(a)(2). Section 53.1387(a)(1)(iv) is equivalent to § 50.57(a)(3). Proposed § 53.1387(a)(1)(v) is equivalent to § 50.57(a)(4). Proposed § 53.1387(a)(1)(vi) is equivalent to § 50.57(a)(6). Proposed § 53.1387(a)(1)(vii) is equivalent to § 50.57(a)(5). Proposed § 53.1387(a)(1)(viii) is equivalent to § 52.97(a)(1)(vi) but is adapted for OLs. Proposed § 53.1387(c) is equivalent to § 50.57(b). Proposed § 53.1387(d) is equivalent to §§ 50.36(b) and 50.50.

Proposed § 53.1390 would address backfitting of OLs and is equivalent to § 52.98(a) but adapted for an OL application. Proposed § 53.1396 would address duration of an OL and is equivalent to § 50.51(a) and § 52.104. Proposed § 53.1399 would address transfer, assignment, and other disposition of an OL and is equivalent to § 50.80. Proposed § 53.1402 would address applications for renewal of an OL and refers to proposed § 53.1595. Proposed § 53.1405 would address continuation of an OL and is equivalent to § 52.109 but is adapted to address an OL.

Proposed §§ 53.1410 through 53.1461 would address requirements for COLs. Proposed § 53.1410 is equivalent to § 52.71. Proposed § 53.1413 would address general information requirements for the content of applications for COLs and is equivalent to § 52.77, which references § 50.33. Most of the provisions from § 50.33 are restated in proposed § 53.1109. Some requirements in § 50.33 related to financial qualifications and construction timelines are addressed in other sections of part 53.

Proposed § 53.1416 would address the technical content to be included in an FSAR for an application for a COL and is equivalent to § 52.79 except as modified to reflect the technical requirements in part 53 and with one addition. Proposed § 53.1416 includes the statement that the Commission will require, before issuance of a COL, that engineering documents, such as analyses, drawings, procurement specifications, or construction and installation specifications, be completed and available for audit if the more

detailed information is necessary for the Commission to verify the information in the application and make its safety determination. This statement is equivalent to DC application requirements in § 52.47 and is included in proposed § 53.1416 for clarity.

Similar to the proposed requirements for the content of OL applications, proposed § 53.1416(a)(1) would reference the requirements for the content of an ESP application to address application requirements related to siting. Section 53.1416(a)(2) would reference the requirements for the content of a DC application to address some of the application requirements related to design of the commercial nuclear plant. The remaining items under proposed § 53.1416(a) are likewise similar to the required content for OL applications under proposed § 53.1369(a). Proposed § 53.1416(b) would require COL applicants to provide a report documenting the resolution of any safety questions for SSCs for which research and development was necessary to confirm the adequacy of their design and is equivalent to § 50.34(b)(5). Proposed § 53.1416(c) would provide requirements for COL applicants to describe how the performance of each safety design feature has been demonstrated capable of fulfilling functional design criteria considering interdependent effects through either analysis, appropriate test programs, prototype testing, operating experience, or a combination thereof to support proposed § 53.440(a). It is largely equivalent to §§ 52.79(a)(24) and 50.43(e). Proposed § 53.1416(d) would address the content of COL applications referencing an ESP. Proposed § 53.1416(e) would address the content of COL applications referencing a standard design approval. Proposed § 53.1416(f) would address the content of COL applications referencing a standard DC. Proposed § 53.1416(g) would address the content of COL applications referencing an ML.

Proposed § 53.1419 would address other application content for COLs and is equivalent to § 52.80. Proposed § 53.1419(a)(2) is new and would require the inclusion of a description of availability controls that are not required to be included in the FSAR.

Proposed § 53.1422 would address standards for review of applications and the administrative review of applications, including hearings, and is equivalent to §§ 52.81 and 52.85. The NRC has removed part 54 from the list of standards in proposed § 53.1422(a). Proposed part 53 does not include requirements related to renewal of

licenses, in relation to proposed §§ 53.1422 and 53.1595.

Proposed § 53.1425 would address the finality of NRC approvals referenced in a COL application and is equivalent to § 52.83(a). Proposed § 53.1431 would address the referral of COL applications to the ACRS for review and is equivalent to § 52.87. Proposed § 53.1434 would address the authorization to conduct LWA activities and is equivalent to § 52.91. Proposed § 53.1437 would address exemptions, departures, and variances and is equivalent to § 52.93. Proposed § 53.1440 would address issuance of COLs and is equivalent to § 52.97. Proposed § 53.1443 would address finality of COLs and is equivalent to § 52.98.

Proposed § 53.1449 would address inspection during construction and is equivalent to § 52.99. Proposed § 53.1452 would address operation under a COL and is equivalent to § 52.103. Paragraph (a) of proposed § 53.1452 would include footnotes to provide that, for licensees installing fueled manufactured reactors under a COL, (1) the COL holder would notify the NRC of its scheduled date for initiating the physical removal of any one of the independent physical mechanisms to prevent criticality required under § 53.620(d)(1) rather than its scheduled date for the initial loading of fuel, and (2) the NRC would time its publication of the notice of intended operation based on the COL holder's schedule for initiating the physical removal of any one of the independent physical mechanisms to prevent criticality required under § 53.620(d)(1) rather than the COL holder's scheduled date for the initial loading of fuel. These footnotes are consistent with the provisions of proposed § 53.620(d)(1)(iv), which would state that, upon initiating the physical removal of any one of the independent physical mechanisms to prevent criticality in the manufactured reactor's place of operation, the fueled manufactured reactor has commenced operation. For reactors without the independent physical mechanisms to preclude criticality under proposed § 53.620(d)(1), operation begins with initial fuel load. In both cases, removal of the physical features to prevent criticality (for reactors with such features) and initial fuel load (for reactors without such features) put a fully constructed utilization facility in a position to sustain a nuclear chain reaction, and in both cases, the utilization facility cannot sustain a nuclear chain reaction (for lack of sufficient reactivity) until the action

takes place. Therefore, the NRC proposes that initiating the physical removal of any one of the independent physical mechanisms to prevent criticality is the best analogue to initial loading of fuel for reactors without such features.

The proposed footnote in § 53.1452(a) regarding timing of the notice of intended operation for fueled manufactured reactors with independent physical mechanisms to prevent criticality also addresses the requirements of Section 189a.(1)(B)(i) of the Act. This section requires, in part, that "[n]ot less than 180 days before the date scheduled for initial loading of fuel into a plant by a licensee that has been issued a combined construction permit and operating license under section 185b., the Commission shall publish in the **Federal Register** notice of intended operation." That section further requires that this notice provide a 60-day period in which to request a hearing "on whether the facility as constructed complies, or on completion will comply, with the acceptance criteria of the license." In the case where a fueled manufactured reactor arrives at the site where it is to be operated by a COL holder, the manufacturer would have loaded fuel at the factory under its part 70 license. Therefore, at the site of operation, there would not be "initial loading of fuel into a plant *by a licensee that has been issued a combined construction permit and operating license*" (emphasis added). Under a literal reading of the entry condition in Act Section 189a.(1)(B)(i), this situation would not trigger its requirements. However, the purpose of the provision is to offer the hearing opportunity at least 180 days prior to when the fuel is loaded and ready for use at its authorized location. It would be contrary to that purpose if, in this situation, the Commission did not publish the notice of intended operation and opportunity for the public to request a hearing on conformance with the acceptance criteria in the COL for the site of operation. To fulfill the underlying purpose of the law, the NRC proposes to time the notice of intended operation based on the COL holder's schedule for initiating the physical removal of any one of the independent physical mechanisms to prevent criticality required under § 53.620(d)(1). This action by the COL holder would be the best analogue to initial fuel load by the COL holder for the reasons stated previously. This analogue is adopted in other sections of the proposed part 53 and related sections in parts 50 and 73 that use initial fuel loading to identify

a transition point for the applicability of regulatory requirements. To address the possible loading of fuel into a manufactured reactor for subsequent transport to and use at a commercial nuclear plant, multiple sections that determine the applicability of regulations have been drafted or revised to allow for either initial fuel load or initiating the physical removal of any one of the independent physical mechanisms to prevent criticality required under § 53.620(d)(1) for a fueled manufactured reactor to determine the applicability of the requirement, as appropriate.

Proposed § 53.1455 would address duration of COL and is equivalent to § 52.104. Proposed § 53.1456 would address the transfer of a COL and is equivalent to § 52.105. Proposed § 53.1458 would address application for renewal and is equivalent to § 52.107. Proposed § 53.1461 would address continuation of COL and is equivalent to § 52.109.

Proposed § 53.1470 would address standardization of commercial nuclear plant designs and licenses to construct and operate commercial power reactors of identical design at multiple sites and is equivalent to appendix N of part 52. This section would set out the particular requirements and provisions applicable to situations in which applications for CPs and subsequent OLs, or COLs, under this part are filed by one or more applicants for licenses to construct and operate nuclear power reactors of identical design (“common design”) to be located at multiple sites. Additional information related to this proposed section is provided in the final rule to revise part 52 (72 FR 49352; August 28, 2007).

#### *Subpart I—Maintaining and Revising Licensing-Basis Information*

Part 53 would establish requirements for the maintenance of licensing-basis information in subpart I.

Section 53.1500 would describe the purpose of the subpart in terms of the definition of licensing-basis information in subpart A. Subpart I would be closely tied to the requirements in subpart H, which would provide the requirements for contents of applications for the various types of licenses issued under part 53. Subpart I would generally be organized into sections dealing with: (1) licensing-basis information that licensees are not authorized to change without NRC approval (e.g., licenses, regulations); and (2) licensing-basis documents that licensees may change provided specified criteria are satisfied (e.g., FSAR, program descriptions). The subpart would also capture certain

general conditions on licenses and changes to the licenses related to the transfer and termination of licenses.

Section 53.1502 would define specific terms and conditions of licenses. These terms and conditions would be equivalent to the regulations in: (1) § 50.54(h) stating that each license is subject to the provisions of the Act and requirements issued by the Commission; (2) § 50.54(s) stating the actions the Commission would take if it makes a finding that there is not reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency; (3) § 50.54(aa) stating that each license is subject to the specified sections of the Federal Water Pollution Control Act; and (4) § 50.54(dd) stating that a holder of an OL or COL may take reasonable actions that depart from the license in a national security emergency.

Section 53.1505(a) would serve as an introduction to and overview of the sections that follow on changes to licensing-basis information requiring prior NRC approval, namely the elements of licensing-basis information defined by licenses, orders, and regulations. The related sections within these subparts would primarily deal with the process of how a licensee requests and the NRC issues an amendment to a license or issues an order that modifies a license. Another important element of licensing-basis information that a part 53 licensee would not be able to change or deviate from without NRC approval would be the NRC regulations themselves. Section 53.1505(b) would refer to § 53.080 in subpart A that would provide the criteria for a licensee or other party to satisfy when requesting an exemption from NRC regulations.

Section 53.1510 would be equivalent to § 50.90 and would require that a licensee submit an application to request an amendment to a license. The required assessments that would be included within an application to amend a license under part 53 would need to address the safety criteria and analysis requirements of subparts B and C. As with parts 50 and 52, licensees would be required to include in their applications to amend a license an analysis of whether the amendment involves no significant hazards consideration using the standards in § 53.1520, which would be equivalent to the standards in § 50.92. Although this rulemaking provided an opportunity to revise the terminology related to no significant hazards consideration determinations, which dates to the early 1960s when applications were supported by final hazard summary

reports, the NRC is proposing to maintain the same terminology used in part 50 to minimize the need for associated changes in other regulations, guidance, and public notices.

Section 53.1515 would establish requirements for public notices and state consultations associated with the NRC’s processing of a license amendment request. This section would be equivalent to § 50.91 for the NRC’s processes related to applications to amend an OL or COL. Section 50.91(b) stipulates that the Commission will make available to the licensee the name of the appropriate State official designated to receive such amendments. While the Commission intends to continue following this practice, the Commission has not included this administrative matter in proposed part 53. Proposed § 53.1515(b)(3) contains some modifications compared to § 50.91(b)(3) for clarity; these revisions are not intended to revise the substance of the provisions in part 53 compared to part 50.

Section 53.1520 would be based on § 50.92. The section would continue to use the criteria in § 50.92 for determining that a proposed amendment involves no significant hazards consideration. Although more specific terms such as event sequence are used throughout part 53, § 53.1520 would use the term “accident” to maintain consistency with the long history of making no significant hazards consideration determinations under part 50.

Section 53.1525 would provide requirements for holders of an OL or COL requesting to revise information from a DC rule that was referenced in the initial license application and included in or incorporated by reference into the facility FSAR. In keeping with the current requirements in part 52, the portion of the part 53 facility licensing-basis information obtained from the certified design would be divided into two categories. The most significant design information and the ITAAC would be certified by rule and designated as “certification information.” The remaining information, which makes up the majority of the design information approved as part of the DC, would not be certified by rule and is not considered “certification information.” Part 52 refers to these categories of information as Tier 1 and Tier 2 information, respectively, and refers to a change made to that information on a plant-specific basis as a departure. Under part 52, a departure from Tier 1 information requires an exemption and,

for information incorporated into the license, a license amendment.

Part 53 would dispense with the Tier 1 and Tier 2 terminology. Rather, § 53.1525 would use the term “certification information” in place of Tier 1, and a plant-specific departure from the certification information would require both a request for an exemption from the associated DC rule and, for information such as ITAAC incorporated into the license, a license amendment. However, as would be provided in § 53.1525(c), a plant-specific departure from the information approved by the NRC as part of the DC rule but which is not certification information (*i.e.*, Tier 2 information under part 52) would be assessed using the process and criteria defined in § 53.1550 for changes to a FSAR. An applicant or licensee would need to identify such a change as a departure from the referenced standard design in the updated FSAR. The process for making a generic change to a certified design would be described in the associated section in subpart H.

Section 53.1530 would not allow the holder of an ML or the holder of a COL using a manufactured reactor to make changes to the design of the manufactured reactor without requesting a license amendment from the NRC. This section would provide the equivalent requirements as those in §§ 52.98 and 52.171.

Section 53.1535 would establish requirements for license amendments during construction. The section would provide the equivalent options and requirements for the holders of a CP as those in § 50.35(b). The regulations would allow but do not require the holder of a CP or LWA to request an amendment under § 53.1510 if the licensee desires to obtain NRC approval of a specific design feature or specification. The requirements for obtaining an amendment to a COL to address changes during construction would also be provided in § 53.1535. The proposed process would differ from the current requirements in part 52 by adopting a requirement that would explicitly support a change process like that described in RG 1.237, “Guidance for Changes During Construction for New Nuclear Power Plants Being Constructed Under a Combined License Referencing a Certified Design Under 10 CFR part 52.”

The proposed regulation would allow the holder of a COL to proceed at its own risk in making a change during the construction process and would require that licensee to submit a license amendment request no later than 45 days from the date the licensee begins

to implement the change or departure requiring NRC approval.

Section 53.1540 would serve as an introduction to the sections that follow on changes to licensing-basis information that are primarily under the control of a licensee but for which evaluations are made to determine if a submittal to the NRC requesting approval would be required. The section would also include definitions that would be applicable when using the processes in §§ 53.1545 through 53.1565. The definitions would be largely equivalent to those in § 50.59(a) but include some revision to reflect the structure and terminology in other subparts in part 53. For example, the definition of “*Change*” in § 53.1540(b) would address a “design feature or related functional design criteria” rather than a “design function,” because the former are defined terms in part 53. Similarly, in § 53.1540(b), the phrase “design basis” from § 50.59(a)(2) would be replaced with functional design criteria for SR SSCs.

Section 53.1545 would provide the proposed requirements for updating of FSARs. While the process-related requirements proposed under § 53.1545 would be largely the same as those in § 50.71, the specifics of information to be updated would differ due to the role of PRA in satisfying the requirements in subparts B and C. Additionally, the use of the risk-informed approach in subpart C would result in some but not all PRA information being in the FSAR or another licensing basis document and therefore a separate PRA update requirement similar to § 50.71(h) is not included in proposed subpart I.

Proposed § 53.1239(a)(18) in subpart H and the related references to this proposed requirement for the holders of OLs and COLs would require a description of the PRA required by § 53.450(a) and its results to be included in FSARs. However, guidance documents are planned to clarify the division of PRA-related information that would need to be in the FSAR, in other possible licensing basis documents, and controlled as plant records subject to inspections and audits. At a minimum, the information from the PRA that would be needed to show compliance with subpart C would be included in the FSAR (*e.g.*, PRA summary and analytical results for LBEs). The submittal of voluminous PRA information was initially required under part 52, but that proved to be impractical and was revised in the 2007 revision of part 52. Guidance is being developed to ensure sufficient information is submitted to the NRC to support the licensing process and the

NRC’s regulatory findings under part 53 or similar applications using the LMP under parts 50 or 52.

The NRC has posed a question in section VI, “Specific Requests for Comments,” of this document that asks about the appropriate level of detail for PRA-related information in an FSAR and whether other licensing basis documents might be more appropriate to both provide information to the NRC and ensure the PRA is maintained and updated as proposed in subpart C. The program document would provide more detail than the summaries in the FSAR but still be a much-condensed source of information in comparison to the documentation of the PRA.

Section 53.1545(a)(3) and (4) would be based on the inclusion of at least a summary of PRA results and the related margins to safety criteria in the FSAR and would require updates to that information. The routine reporting of these margins would also inform application of the criteria for allowing changes without an amendment in the following section (§ 53.1550) in subpart I.

Section 53.1550 would establish requirements for evaluating changes to a facility as described in its FSAR. This proposed section would provide the equivalent of the requirements in § 50.59 for evaluating changes to an FSAR (as updated) and determining if a license amendment is required to implement a change to a facility or procedures. The evaluation criteria proposed in § 53.1550 would reflect the role of the PRA in the safety analyses under part 53 and would include several measures related to the changes in plant risk resulting from a change in the plant design or plant procedures. Examples would include criteria that rely on the identification of risk-significant event sequences in accordance with the analysis requirements of § 53.450; exceeding the LBE evaluation criteria as defined in § 53.450; the consideration of potential reductions in margin between the estimated comprehensive risk metrics and associated risk performance objectives in the safety criteria in § 53.220; changes to the safety classification of SSCs; and consideration of reductions in defense in depth.

Section 53.1550 would include a criterion related to a departure from a method of evaluation used in the safety analyses. The NRC has not yet developed draft guidance for use in applying proposed § 53.1550 but anticipates that the NRC and stakeholders will assess the potential need for such guidance and that such guidance would, if needed, be

developed as part of ongoing or future activities.

Section 53.1550 would include certain concepts taken from existing guidance for § 50.59 in the proposed criteria related to DBAs. Specifically, criterion (iv) for changes made to a method of evaluation of DBAs under § 53.450(f) would be equivalent to a change in a method of evaluation under § 50.59, and criterion (viii) on assessing if a change creates a possibility for an accident of a different type than previously analyzed in the FSAR would be similar to the § 50.59 criterion (v). Guidance documents will be prepared to address the content of applications for PRA-related information under proposed part 53, and this guidance will also influence how potential changes in the evaluation of LBEs other than DBAs analyzed under § 53.450(e) are evaluated and reported under the proposed criterion (iv).

Section 53.1550(a)(2)(x) would require evaluating plant changes to ensure they would not prevent satisfying the design requirements in § 53.440(j) related to the impact of a large commercial aircraft. The inclusion of a proposed requirement under § 53.1550 related to design features for protecting against aircraft impact would reflect the proposed design requirement in subpart C and related proposed requirements in subpart H to address the proposed design requirement in FSARs.

Sections 53.1560 through 53.1565 in subpart I would define the processes for a licensee to evaluate changes to the program documents included in the licensing-basis information submitted to the NRC and to modify such programs without NRC prior approval.

Section 53.1560 would include the proposed requirements for updating program documents included in licensing-basis information and would provide the equivalent of FSAR updates for key program documents. The proposed requirements in these sections would provide a uniform approach for updating program documents, which correspond to the programs required under subpart F.

The proposed § 53.1565 would provide a process for licensees to make changes to program documents included in licensing-basis information without obtaining prior NRC approval. The proposed requirements would include several generic criteria that, if not satisfied, would prompt the need for NRC approval of a change to a program document. These generic criteria would include whether a change would comply with TS and NRC regulations. Another proposed criterion for

evaluating changes to program documents would be conforming with program-specific requirements, including NRC-approved program documents with more specific criteria for a particular program, regulations, administrative controls sections of TS, and NRC-approved program documents.

Proposed § 53.1565(d) would include specific criteria for evaluating changes to several program documents that have well established change processes and guidance for licensees under parts 50 and 52. The program documents specifically addressed in the proposed section would include quality assurance programs that would be equivalent to § 50.54(a), an emergency preparedness program that would be equivalent to § 50.54(q), and the security program that would be equivalent to § 50.54(p).

The proposed § 53.1570 would establish requirements for the transfer of commercial nuclear plant licenses by providing the equivalent requirements of § 50.80 for the possible transfer of an ESP, CP, OL, or COL. Likewise, the proposed § 53.1575 would establish requirements for the termination of an OL or COL by providing the equivalent requirements of § 50.82. Other proposed requirements related to decommissioning and license termination would be included in subpart G.

Section 53.1580 would establish requirements for information requests the NRC could send to the various types of licensees and would provide requirements that would be equivalent to requirements in § 50.54(f). The proposed § 53.1585 would provide the requirements that would be equivalent to requirements in § 50.100 to address revocation, suspension, modification of licenses, and approvals for cause. Section 53.1590 would propose to address backfitting requirements by providing requirements that would be equivalent to those in § 50.109.

Proposed § 53.1595 would address license renewals under part 53 with simple statements that licenses may be renewed. This section would be expanded through future rulemakings to more fully describe or reference the processes related to requesting and processing applications to renew ESPs, OLs, and COLs issued under part 53 (if finalized).

#### *Subpart J—Reporting and Other Administrative Requirements*

Part 53 would address various reporting and administrative requirements in subpart J.

Section 53.1600 would explain the organization of the various sections within the subpart related to providing

unfettered access to NRC inspectors; maintaining certain records and reporting specified events or conditions; demonstrating compliance with financial qualification requirements and providing specified financial reports; and maintaining financial protections to address potential accidents.

Section 53.1610 would establish requirements for the provision of facilities and unfettered access for inspections. These requirements would be equivalent to § 50.70 with only minor changes proposed to provide additional flexibilities and address possible differences related to reactors licensed under part 53 and the possibility that some commercial nuclear plants may not be assigned resident inspectors.

Section 53.1620 would provide for maintenance of records and the making of various reports to the NRC. These requirements would be largely equivalent to § 50.71. This section is not intended to reflect all provisions in § 50.71; several important requirements in § 50.71 would be captured in other sections of part 53. For example, § 53.1545 within subpart I would provide requirements that would be equivalent to § 50.71(e), updating FSARs, and § 53.1680, “Annual financial reports,” would provide the equivalent of § 50.71(b), which covers financial reports. A reporting requirement related to completion of power ascension testing would be added to § 53.1620 to support the assessment of annual fees under 10 CFR part 171, “Annual Fees for Reactor Licenses and Materials Licenses, Including Holders of Certificates of Compliance, Registrations, and Quality Assurance Program Approvals and Government Agencies Licensed by the NRC,” which normally commence upon completion of those testing activities.

Section 53.1630 would establish requirements for immediate notification requirements for operating commercial nuclear plants. These requirements would be equivalent to § 50.72 with minor changes proposed to make the reporting criteria technology inclusive. In addition, a new version of NRC Form 361 (NRC Form 361S) would be created for use by part 53 licensees, but without LWR-specific terminology to ensure technology inclusiveness. A separate rulemaking activity, “Reporting Requirements for Nonemergency Events at Nuclear Power Plants,” has been initiated to consider possible changes to the requirements in § 50.72. At a future date, the NRC may consider reconciling future changes to § 50.72 with the requirements proposed in part 53, which have been taken or derived from the current reporting requirements.

Section 53.1640 would address the licensee event report system. These requirements would be equivalent to § 50.73 with minor changes proposed to make the requirements inclusive of various reactor technologies and to reflect appropriate internal references to other sections in part 53. In addition, NRC Forms 366, 366A, and 366B would be revised to include corresponding check boxes for part 53 licensees.

Section 53.1645 would require periodic reporting of the quantity of radionuclides released to unrestricted areas in liquid and gaseous effluents, doses to members of the public, and the results of environmental monitoring. These reporting requirements in the proposed part 53 would be largely equivalent to those in the TSs required by § 50.36a, “Technical specifications on effluents from nuclear power reactors.” The only difference would be that a § 50.36a requirement to specifically address conditions where the dose to the maximally exposed individual could be significantly above design objectives would refer to a design objective of 10 mrem/year total effective dose equivalent, instead of referring to the design objectives in appendix I to part 50. The proposed section would also include an equivalent to the reporting requirement in section IV of appendix I to part 50 if the radiation exposure to a member of the public in any calendar quarter exceeds one-half of the annual ALARA design objective.

Section 53.1650 would include a reporting requirement to support safeguards agreements between the United States and the International Atomic Energy Agency (IAEA) and would be equivalent to § 50.78.

Section 53.1660 through 53.1700 would address financial requirements and would be largely similar to existing regulations in parts 50 and 52. Section 53.1670 would be entitled “Financial qualifications” and would require applicants other than electric utilities to possess or have reasonable assurance of obtaining funds for the activities for which the license is being sought. The NRC is seeking feedback on these sections and their ramifications for merchant plants<sup>3</sup> in section VI, “Specific Requests for Comments,” of this document. The remaining financial reports in part 53 would be equivalent to § 50.71(b) for annual financial reports, § 50.76 for a change of status, § 50.54(cc) for the filing of a petition for

bankruptcy, and § 50.81 for creditor regulations.

Sections 53.1710 through 53.1730 would address financial protection requirements. Section 53.1720 would require insurance to stabilize and decontaminate a plant following an accident. These requirements would be taken from § 50.54(w) with the only notable change being the addition of a provision allowing plant-specific estimates of costs to stabilize and decontaminate a plant as an alternative to the \$1.06 billion minimum coverage in § 50.54(w). Section 53.1730 is equivalent to § 50.57(a)(5) and would refer to the requirements in 10 CFR part 140, “Financial Protection Requirements and Indemnity,” related to financial protection requirements and indemnity agreements, including the financial protection requirements of the Price-Anderson Act.

#### *Subpart M—Enforcement*

Subpart M would contain two provisions, § 53.9000 and § 53.9010, which are analogous to provisions contained in other parts of 10 CFR Chapter I imposing requirements on regulated entities. Section 53.9000 would provide notice of the Commission’s authority under the Act to obtain injunctions or other court orders for the enumerated violations. Paragraph (a) of § 53.9010 would provide notice to all persons and entities subject to part 53 that they are subject to criminal sanctions for willful violations, attempted violations, or conspiracy to violate certain regulations under part 53. Criminal sanctions would not apply to the regulations listed in paragraph (b). The regulations for which criminal penalties would apply are limited to those that establish either a regulatory obligation or prohibition.

### **V. Changes to Other Parts of 10 CFR Chapter I**

#### *10 CFR Part 26*

##### *A. Introduction*

The NRC is proposing a technology-inclusive, risk-informed, and performance-based approach for the application of drug and alcohol testing and fatigue management requirements for facilities licensed under part 53. The proposed requirements applicable to these applicants, licensees, and other entities would be commensurate with the radiological consequences presented by the applicants’ facilities and the operation of these facilities.<sup>4</sup> The

proposed FFD framework would consist of a two-tiered graded approach similar to that currently in part 26 and an optional third tier for part 53 commercial nuclear plants that perform an analysis that demonstrates the facility and its operation would satisfy the criterion in proposed § 26.603(c), which refers to § 53.860(a). This proposed FFD framework would be established in subpart M, “Fitness for Duty Programs for Facilities Licensed Under Part 53,” of part 26.

The NRC used operating experience to provide regulatory flexibility in the proposed subpart M of part 26 framework to help support a licensee’s or other entity’s response to changes in societal drug use, drug testing technologies and processes, and FFD program performance. The flexibility would also help in FFD program implementation because of the wide variety of staff sizes anticipated at commercial nuclear plants licensed under part 53 and the geographically remote locations in which commercial nuclear plants may be sited.

The proposed first-tier FFD program requirements would apply to part 53 licensees and other entities of commercial nuclear plants under construction who satisfy the criterion in § 26.603(c) but elect not to implement proposed § 26.604, “FFD program requirements for facilities that satisfy the § 26.603(c) criterion,” or who do not satisfy the criterion in § 26.603(c), and to holders of MLs who are assembling or testing manufactured reactors. These requirements would be provided in proposed § 26.605(a) and would be essentially equivalent to those requirements in subpart K, “FFD Program for Construction,” of part 26 as supplemented by select requirements from subparts E, “Collecting Specimens for Testing,” and I, “Managing Fatigue,” of part 26, and the requirements in subparts A, “Administrative Provisions,” and O, “Inspection, Violations, and Penalties,” of part 26. The first-tier requirements would involve policies, procedures, behavioral observation, fatigue management, drug and alcohol testing, determinations of fitness, appeals, training, sanctions, auditing, change control, performance monitoring, recordkeeping, and reporting. These requirements would help deter individuals subject to this section from illicit drug and/or alcohol use and from being impaired from any cause including fatigue. These proposed requirements would also help licensees

<sup>3</sup> A “merchant plant” is a plant licensed to a non-rate-regulated entity (e.g., a nonutility) that engages in the business of production, manufacturing, generating, buying, aggregating, marketing, or brokering electricity for sale at wholesale or for retail sale to the public.

<sup>4</sup> The NRC uses the term “operation” in its part 26 discussion to focus on human performance, namely the necessity of individuals to operate,

maintain, surveil, and protect the facility and respond to operational transients and unlikely event sequences.



and other entities identify individuals as users of impairing substances and demonstrate compliance with § 26.23, “Performance objectives.”

The proposed second tier would include all the proposed first-tier requirements, plus the more comprehensive set of FFD program requirements in current subparts C, “Granting and Maintaining Authorization,” D, “Management Actions and Sanctions to be Imposed,” H, “Determining Fitness-for-Duty Policy Violations and Determining Fitness,” and N, “Recordkeeping and Reporting Requirements,” of part 26. These requirements would be provided in proposed § 26.605(b) and would be applicable to licensees and other entities satisfying the § 26.603(c) criterion, at their discretion. These requirements would also apply to licensees or other entities not satisfying the § 26.603(c) criterion that implement an FFD program under subpart M of part 26, before the loading of fuel onsite into a reactor vessel; before receiving a manufactured reactor; or before operating, testing, performing maintenance of, or directing the maintenance or surveillance of security-related equipment or equipment that a risk-informed evaluation process has shown to be significant to public health and safety.

The second-tier requirements are based on the additional risk presented by nuclear reactor assembly, testing, fueling, and operation and the necessity for human actions in certain event sequences. The inclusion of the current part 26 requirements would align proposed part 53 FFD and AA program requirements with the current FFD and AA programs required for facilities licensed under parts 50 and 52. This approach would ensure effective and consistent AA and FFD program implementation across the commercial nuclear power industry, thereby ensuring uniform requirements for individuals who may perform roles and responsibilities for multiple facilities regardless of facility licensure.

Proposed § 26.604 would offer an alternate option for an applicant implementing an FFD program under subpart M of part 26. If the applicant demonstrates that the criterion in proposed § 26.603(c) is met, then the applicant (and the subsequent licensee or other entity) must still implement an FFD program described in subpart M of part 26; however, drug and alcohol testing would not be required unless FFD performance declines or the applicant, licensee, or other entity elects to implement drug and alcohol testing. The proposed § 26.604 requirements are

equivalent to those proposed in § 26.605(a) except for required drug and alcohol testing. This proposed framework would focus on the human performance of individuals while they are performing those duties and responsibilities that make them subject to the FFD program. This performance would be verified through behavioral observation, evaluation of any FFD concerns, performance monitoring, fatigue management, and determinations of fitness. Applicants that do not satisfy the criterion in proposed § 26.603(c), or elect not to perform the analysis required to demonstrate that the criterion in § 26.603(c) is met, would be subject to an FFD program described in § 26.605, “FFD program requirements for facilities that do not implement § 26.604,” or an FFD program that implements all part 26 requirements, except for those requirements in subparts K and M of part 26.

In establishing the minimum FFD program requirements in § 26.604, the NRC reviewed current advanced reactor designs against that of a non-power production or utilization facility (NPUF) that is not required to implement an FFD program for those individuals who have unescorted access to the controlled access area (and vital area for some facilities), including NRC-licensed operators.<sup>5</sup> This review was performed because commercial nuclear plants licensed under part 53 could be designed with similar power levels and radiological consequences as the currently licensed NPUFs. From this review, three principal considerations supported the minimum set of requirements for the § 26.604 FFD program.

First, the radiological consequences presented by a part 53 licensed facility and its operation that satisfy the criterion in § 26.603(c) may present a greater potential radiological consequence to workers and the public in the vicinity of the facility than does an NPUF. Second, the operating characteristics of a part 53 licensed facility are unlike that of an NPUF because there may be a higher reliance on individuals at the part 53 site to safely and competently operate, maintain, surveil, and secure SSCs that may not be required at an NPUF, such as systems that provide secondary heat transfer, reactor coolant flow, pressure control, and at-power core refueling. Differences in operating characteristics could include, for example: long-term, full power operation with automated

reactivity control systems for load-following; active and passive safety and security systems; innovative non-light-water heat transfer systems; and energy storage and hazardous chemical systems. The individuals at part 53 facilities may also be required to communicate to individuals both onsite and offsite, such as electrical load dispatchers, any conditions adverse to safety, security, or quality. Third, part 53 licensed facilities may be sited in geographically remote locations that may not have a physically available administrative or corporate support team to provide face-to-face oversight, engineering expertise, and maintenance support like that at NPUFs. This places a higher reliance on those individuals required at a part 53 facility being fit for duty and trustworthy and reliable because a replacement individual may not be readily available.

The NRC proposes to exclude drug and alcohol testing from the proposed § 26.604 framework for five reasons: (1) the § 26.23 performance objectives can be met through effective implementation of the defense-in-depth regulatory framework established by behavioral observation, reporting of legal actions, the proposed performance monitoring and review program (PMRP), FFD training, and requirements from the physical protection, AA, cyber protection, and licensed operator programs; (2) the PMRP would require the licensee or other entity to monitor its FFD program performance (both qualitatively and quantitatively) against its historical site performance, fleet-level performance, if applicable, and industry performance. The licensee or other entity would be required to implement corrective actions if site FFD performance meets a licensee- or other entity-established threshold or to resolve a finding resulting from a qualitative review or audit in a manner that restores performance and corrects root causes, contributing causes, or both; (3) the requirements in proposed § 26.609, “Behavioral observation,” are more robust than those in § 26.407, “Behavioral observation,” of subpart K of part 26 and are proposed to synchronize with and reinforce the AA behavioral observation requirements in § 73.56, “Personnel access authorization requirements for nuclear power plants,” or the proposed requirements under § 73.120, “Access authorization program for commercial nuclear plants”; (4) a part 53 commercial nuclear plant that satisfies the § 26.603(c) criterion will be designed, operated, and secured with a radiological risk profile that is lower than that described in § 53.860(a)(2) and

<sup>5</sup> Controlled access area and vital area are defined in § 73.2, “Definitions.”



perhaps will approach the radiological risk profile of an NPUF (which does not implement an FFD program); and (5) the NRC is aware that a part 53 commercial nuclear plant could be designed and constructed in such a manner to reduce reliance on an onsite security force to protect SSCs, NRC-licensed materials, and sensitive information, with enhanced capabilities for the detection, assessment, and delay of a DBT adversary.

Regarding fatigue management requirements, work hour controls would be required for personnel at utilization and manufacturing facilities in accordance with the existing scoping criteria in § 26.4, “FFD program applicability to categories of individuals,” as revised in this proposed rule. The amended § 26.4 also would be used to determine whether an individual would be subject to drug and alcohol testing. The applicability of these scoping criteria for certain individuals (such as operators and maintenance personnel) would be determined by the licensee or other entity through its risk-informed evaluation process performed to assess the risk significance of the SSC upon which work is being performed or directed by the individual. These requirements also would be scaled based on the potential radiological consequences presented by the facility. However, fatigue management would be applied to all individuals subject to the FFD program, similar to FFD program implementation by the current fleet of commercial nuclear plants because fatigue management is a proactive requirement designed to help prevent on-shift impairment through work hour scheduling and time off. The behavioral observation program (BOP) would be the principal requirement to provide reasonable assurance that individuals on shift are not mentally or physically impaired due to fatigue, which in any way could adversely affect their ability to safely and competently perform their duties.

The NRC is proposing subpart M of part 26 for facilities licensed under part 53, in lieu of subjecting all part 53 licensees to the same part 26 requirements that apply to facilities licensed under part 50 or 52, for four principal reasons. First, subpart M of part 26 would apply FFD requirements in a risk-informed manner commensurate with the radiological consequences presented by facilities licensed under part 53. This regulatory strategy is consistent with the current part 26, which provides a comprehensive set of deterministic requirements for licensees and other

entities at facilities that are operating. This approach is also consistent with the current subpart K of part 26, which provides a more flexible framework for nuclear power reactors under construction, where the probabilities of serious radiological accidents are lower and consequences from such accidents are less severe than at operating plants.

Second, subpart M of part 26 would enable a part 53 licensee or other entity to implement innovative drug testing technologies and behavior observation techniques while continuing to demonstrate compliance with the part 26 performance objective in § 26.23(b) of providing reasonable assurance that individuals are not under the influence of any substance or mentally or physically impaired from any cause, which in any way adversely affects their ability to safely and competently perform assigned duties. These technologies include drug and alcohol testing using oral fluid, urine, and hair specimens; screening using point of collection testing and assessment (POCTA) devices; and monitoring using passive drug and alcohol detection instrumentation. Part of the basis to enable the use of innovative drug and alcohol testing technologies is to maintain FFD program effectiveness should the staff size at a part 53 commercial nuclear plant be small and challenge the effective implementation of the behavioral observation and drug and alcohol testing programs. Also, a commercial nuclear plant that is sited at a geographically remote location may present additional challenges to behavioral observation and drug and alcohol testing that are not presented by traditional LWR facilities licensed under part 50 or 52, such as: efficiency of postal services for shipping and controlling biological specimens; proximity to drug and alcohol collection facilities that are reasonably equivalent to that described in subpart E of part 26; availability of internet and cellular services to enable same-time discussions among the Medical Review Officer (MRO), donor, and laboratory; accessibility to substance abuse treatment services described in subpart H of part 26; and proximity to an MRO (or management and clinical staff) to evaluate potential impairment caused by fatigue and/or substance use or abuse, for-cause and post-event occurrences, and the individual’s potential to return to duty.

A part 53 commercial nuclear plant that is sited in a geographically remote location and has a small staff size may present implementation challenges and the potential for small group dynamics to impact FFD program effectiveness.

Particularly in isolated environments, psychological phenomena known as “groupthink” may take effect and could impact the effectiveness of BOPs and the ability to effectively manage safety culture. For example, in circumstances where small staffs are drawn from the same small town and thereby have a potentially narrow experience base, it could be challenging to maintain a safety conscious work environment in which personnel feel free to raise safety concerns without fear of retaliation, intimidation, harassment, or discrimination, and organizations may resultingly experience groupthink-like effects. Groupthink is particularly prevalent among cohesive and insulated groups that experience high levels of decisional stress.<sup>6</sup> Small staffs at part 53 commercial nuclear plants may therefore be more susceptible to groupthink if they are working in an isolated environment where decision-making pressures may be high.

Groupthink could have adverse effects on workplace safety culture, as studies show that individuals will be more hesitant to speak out against practices they deem unsafe for fear of deviating from group norms.<sup>7</sup> Individuals may also be unaware of systematic biases in the group decision-making process and may then be less likely to scrutinize the potential risks of the group’s decision or sufficiently contemplate alternative paths of action.<sup>8</sup> Furthermore, the literature indicates that groups make riskier decisions than individuals acting alone due to the diffusion of responsibility among group members.<sup>9</sup>

<sup>6</sup> See e.g., Irene Wærø, Ragnar Rosness, and Stine Skaufel Kilska, “Human performance and safety in Arctic environments,” SINTEF (2018).

<sup>7</sup> See e.g., Russell Mannion and Carl Thompson, “Systematic biases in group decision-making: implications for patient safety,” *International Journal for Quality in Health Care*, Vol. 26, No. 6 (2014): 606–612 (arguing that small group dynamics in healthcare teams produce systematic biases in group decision-making because healthcare professionals may be reticent to vocalize concerns they have about quality of care).

<sup>8</sup> See e.g., Wærø, Rosness, and Kilska (arguing that groupthink leads teams to “develop shared rationalizations that bolster a proposed choice, rather than examining alternative options and identifying the risks associated with the proposed choice”). See also David Hofmann and Adam Stetzer, “A Cross-Level Investigation of Factors Influencing Unsafe Behaviors and Accidents,” *Personnel Psychology*, Vol. 49 (1996) (finding that in a study of fatal accidents involving offshore oil rigs, in the absence of standard operating procedures, workers “equated normal work methods (i.e. what everyone else does) with safe and/or ideal work methods,” revealing that the groupthink phenomena will further cement modes of work that do not reflect safety protocols in small groups that lack strong norms around workplace safety and tacitly reward short-cuts that prioritize efficiency over safety).

<sup>9</sup> Mannion and Thompson, “Systematic biases in group decision-making: implications for patient

This phenomenon, known as “the risky shift,” also runs counter to a safety culture. Accordingly, “groupthink” and “the risky shift” may lead to group behaviors that render behavioral observation less effective. As such, alternative approaches to behavior observation programs, such as the utilization of video-based surveillance by individuals separate from the onsite work unit, could serve to mitigate potential issues associated with groupthink. The incorporation of remote observation, performed by individuals physically separate from the site, could help to bring in independent and objective perspectives and help to break patterns of thought and communication that may result in groupthink.

Even without the influence of small group dynamics, there are other practical constraints to implementing FFD requirements, such as random drug and alcohol testing, among small staffs. Random testing is less effective when applied to small staff sizes because it may be easier for staff to communicate and predict when individuals will be subject to drug and alcohol testing. Furthermore, if a facility is sited in a remote location, program implementation could be challenged by the following factors: limited mail services to laboratories certified by the U.S. Department of Health and Human Services (HHS), availability of local clinical or medical options for treatment and determinations of fitness by an MRO or Substance Abuse Expert, and use of offsite drug and alcohol collection facilities.

The increased potential for small staff sizes to impact FFD policy compliance warrants an approach to FFD that emphasizes performance over prescriptive requirements that may be ineffective or infeasible at these facilities. Therefore, the NRC proposes the subpart M of part 26 framework to provide a performance-based approach to FFD. For example, proposed § 26.603(d) would use existing part 26 auditing requirements and the reporting requirement in § 26.717, “Fitness-for-duty program performance data,” and clarify how FFD performance data would be used to maintain or improve, if necessary, FFD program effectiveness. Specifically, § 26.603(d) would require each licensee and other entity that elects to implement subpart M of part 26 to monitor and assess their site-specific performance against the preceding year’s site performance, the licensee’s most recent fleet-level performance, and the most recent industry performance.

Licensees and other entities would use these datapoints to develop performance measures, which would be qualitative descriptions of the specific FFD program elements, and threshold values for each performance measure that, if exceeded, would indicate a performance deficiency. Each licensee and other entity would compare its site’s current performance data against the performance measures and, if a threshold is exceeded, the licensee or other entity would be required to take corrective actions to restore performance. Also, the NRC proposes a change control requirement to allow a licensee or other entity to change its subpart M of part 26 FFD program while ensuring that FFD program effectiveness is maintained.

Lastly, subpart M of part 26 would consolidate the applicable FFD requirements by placing in one subpart all proposed part 26 requirements (either new requirements or cross-references to existing part 26 requirements) for part 53 licensees and other entities. This should help licensees and other entities implement the requirements because it would enable easy cross-reference to similar requirements in other subparts that are being implemented by non-part 53 licensees and entities subject to part 26. Understanding how other licensees or other entities implement similar FFD requirements may facilitate the sharing of operating experience in program implementation.

The use of innovative technologies and a risk-informed performance-based framework parallels the considerations presented in the Advanced Reactor Policy Statement. As stated in the policy statement, “[S]implified systems should facilitate operator comprehension, reliable system function, and more straightforward engineering analysis.” Furthermore, these same attributes may reduce potential radiation exposures, help prevent the theft of nuclear materials, and use technology and design innovations. Should these components and systems be designed, implemented, and maintained to minimize reliance on human actions and leverage technology and innovation, then the robust and prescriptive FFD requirements in, for example, subparts B, “Program Elements,” and E of part 26 could be scaled to the part 53-licensed facility and its operation. This strategy would be implemented in the subpart M of part 26 framework.

Even though current subpart K of part 26, provides for FFD requirements commensurate with the radiological consequences presented by a nuclear power plant construction site, proposed

subpart M of part 26 would not allow part 53 licensees and other entities to implement the requirements in subpart K. The principal reasons are that (without significant changes to subpart K that would be outside the scope of this rulemaking): (1) subpart K does not apply to holders of MLs who assemble or test a reactor; (2) subpart K only applies during construction, whereas subpart M would apply during construction, operation, and decommissioning through implementation of the insider mitigation program (IMP) required by § 73.55 or proposed § 73.100; (3) subpart K does not address training, authorization as defined in § 26.5, and MRO performance; (4) subpart K does not expressly authorize the use of innovative drug and alcohol testing technologies; (5) subpart K does not describe the use of time-dependent alcohol limits or special analysis testing of dilute urine specimens; and (6) subpart K has less rigor in the protection of worker rights and sensitive information than that proposed in subpart M.

Despite the differences between subparts K and M of part 26, the requirements in subpart M would be essentially equivalent to many in subpart K that were implemented by the licensees of Vogtle Nuclear Station and V.C. Summer Nuclear Station when they were constructing four commercial nuclear power reactors and NRC inspection and operating experience evaluation determined that the use of subpart K contributed to adequately protecting the public health and safety and the common defense and security. Further, given the risk profile posed by facilities licensed under part 53 and the proposed additional requirements in subpart M of part 26 that were developed from operating experience and other part 26 subparts (but are not included in subpart K of part 26), the NRC concludes that if licensees and other entities effectively implement the proposed requirements in subpart M of part 26, then individuals subject to the rule should be fit for duty and trustworthy and reliable.

#### *B. Proposed Changes to Part 26, Subparts A Through E and I*

Section 26.3(d) is the applicability paragraph for contractor/vendors (C/Vs) who implement FFD programs or program elements, to the extent that the licensees and other entities specified in § 26.3(a) through (c) rely on those C/V FFD programs or program elements to meet the requirements of part 26. Section 26.3(d) would be amended to

address part 53 licensees and other entities in proposed § 26.3(f).

Proposed § 26.3(f) would place part 53 licensees or other entities within the scope of part 26. For licensees and other entities of a part 53 commercial nuclear plant, except a holder of an ML, the FFD program would be required to be implemented no later than the start of construction activities. The holder of an ML would need to implement its FFD program before commencing activities that assemble a reactor.

Current § 26.4 describes FFD program applicability to categories of individuals. These categories are based on the duties, responsibilities, and the types of access an individual may possess. The NRC proposes to amend § 26.4 to include licensees and other entities described in § 26.3(f). The NRC expects that not all categories of individuals described in current § 26.4 would be applicable to all part 53 facilities. The NRC is proposing regulatory guidance in DG–5073, “Fitness-of-Duty Programs for Commercial Nuclear Plants and Manufacturing Facilities Licensed Under 10 CFR part 53,” and DG–5078, “Fatigue Management for Nuclear Power Plant Personnel at Commercial Nuclear Plants Licensed Under 10 CFR part 53,” to help address program applicability to certain individuals.

Section 26.4(a)(1) and (a)(4) would be amended to account for the possibility that certain individuals may perform or direct the performance of operational and maintenance activities from a remote facility (for example, a remote-control station) for licensees or other entities licensed under part 53.

The framework of the current part 26 does not account for individuals who perform operating and maintenance duties at remote facilities. Although current § 26.4(a)(1) does not limit the operating of applicable SSCs to onsite operating, § 26.5 limits the definition of “Maintenance,” for the purposes of § 26.4(a)(4), to include only “onsite maintenance activities.” In the 2008 part 26 final rule preamble, the NRC explained that the work hour requirements apply to those individuals who perform maintenance activities within the licensee’s owner-controlled area. Furthermore, regarding the direction of applicable operations and maintenance activities, current § 26.4(a)(1) and (4) address only individuals who perform “onsite direction.”

Under the proposed amendments to part 26, the limitation of “onsite” activities to those performed within the owner-controlled area would still apply to facilities licensed under part 50 or 52.

However, for licensees and other entities described in § 26.3(f), the NRC would remove the “onsite” limitation to include activities performed both within the owner-controlled area as well as operations and maintenance duties performed at remote facilities where safety-significant systems and components are expected to be operated within the design basis of the commercial nuclear plant.

In the 2008 part 26 final rule, the purpose of limiting “directing” activities to those “directing” activities that are conducted onsite was to avoid requiring work hour controls for individuals performing incidental duties, consistent with § 26.205(b)(5), from an offsite location in instances where those duties might be considered to be “directive” in nature. Under the proposed amendments to part 26, the exclusion of incidental duties while calculating work hours would still be applicable for licensees and other entities licensed under part 53. However, for these licensees and other entities, beyond instances of incidental duties, the direction of operations and maintenance activities associated with safety-significant SSCs, when performed at remote facilities, would be considered in an equivalent fashion as direction performed at non-remote facilities, for the purposes of administering work hour controls.

Proposed § 26.4(b) would include in an FFD program individuals who are granted unescorted access to the protected area of a facility licensed under part 53 and do not perform or direct the performance of the duties described in § 26.4(a). This requirement would contribute to the defense-in-depth regulatory framework that helps provide that individuals who have unescorted access are fit for duty, trustworthy, and reliable. For example, the NRC is proposing amendments to part 73 to require a part 53 licensee to subject individuals to a series of reviews to help determine whether those individuals are trustworthy and reliable before granting them unescorted access to the facility’s protected area.

The NRC would amend § 26.4(c) to include in an FFD program individuals who are assigned to physically report to the part 53 licensee’s emergency response facility (or facilities) or participate remotely in emergency response activities, and individuals without unescorted access to the part 53 facility who, remotely or otherwise, make decisions and/or direct actions regarding plant safety or security. Part 53 commercial nuclear plants may be licensed for and rely upon offsite facilities to fulfill the role of a Technical

Support Center or Emergency Operations Facility. Therefore, the proposed rule would account for such offsite facilities or remotely performed activities. Further, the use of personnel to operate systems and components, maintain and surveil SSCs, and respond to plant conditions and security events may be different than those included in the Technical Support Center or Emergency Operations Facility team for power reactors currently licensed under part 50 or part 52.

For the individuals whose duties for the licensees and other entities in § 26.3(c) require the individuals to have the types of access or perform the activities listed in § 26.4(e)(1) through (6) at the location where the commercial nuclear plant will be constructed and operated, current § 26.4(e) requires them to be subject to an FFD program that satisfies all the requirements of part 26 except subparts I and K. The NRC would amend § 26.4(e) to except subpart M as well as subparts I and K. The NRC would also amend § 26.4(e) to include in an FFD program the individuals whose duties for the licensees and other entities in § 26.3(f) require the individuals to have the types of access or perform the activities listed in § 26.4(e)(1) through (6) or perform construction activities as defined in § 26.5.

Section 26.4(e)(4) would be revised to include in an FFD program individuals who witness or determine inspections, tests, and analyses certifications required under part 53 because current § 26.4(e)(4) includes the individuals who perform the same duties under part 52.

The proposed rule would amend § 26.4(f) to require individuals who construct or direct the construction of safety- or security-related SSCs at facilities licensed under part 53 to be subject to an FFD program under subpart M of part 26 or an FFD program that demonstrates compliance with all of the requirements of part 26 except for subparts I, K, and M of part 26.

Section 26.4(g) is the applicability paragraph for FFD program personnel (e.g., the FFD manager, MRO, and technicians) and persons who perform AA determinations (e.g., the licensee- or other entity-designated Reviewing Official). This section would be amended to address part 53 licensed facilities. Specifically, a part 53 licensee or other entity would use FFD program personnel to implement its FFD program as well as other assigned individuals who are not involved in the day-to-day operations of the program to implement specific elements of its FFD program, such as the collection of a

specimen for drug or alcohol testing. These individuals would be held accountable for program implementation, including consistent implementation of protections afforded to all individuals subject to the FFD program.

Section 26.4(h) would be amended to include subpart M of part 26.

The NRC proposes to include several new definitions in § 26.5, “Definitions,” and amend some existing definitions. The NRC is proposing to add a definition for “*Biological marker*.” The proposed definition would be consistent with “*Biomarker*” defined by the HHS in its Mandatory Guidelines for Federal Workplace Drug Testing (HHS Guidelines) using oral fluid as the biological specimen to be tested (84 FR 57554; October 25, 2019). However, the proposed definition for § 26.5 would add that the endogenous substance used to validate that the biological specimen “was produced by the donor” because subpart M of part 26 proposes to have the MRO evaluate any discrepant biological marker identified in a biological specimen collected from a donor.

The NRC is proposing a definition for the word “*Change*” as used in the proposed § 26.603(e), “FFD program change control,” process. The proposed definition would be consistent with the definition of “*Change*” for a part 50 or 52 licensee’s emergency plans in § 50.54(q)(1)(i).

The NRC proposes to revise the definition of “*Constructing or construction activities*” to clarify that for licensees or other entities in § 26.3(f), the definition of “*Construction*” would be that as proposed in § 53.020.

The definitions of “*Contractor/vendor*” (C/V) and “*Other entity*” would be revised to make them applicable to part 53 licensees. A holder of an ML under part 53 could be a C/V under the proposed C/V definition.

The NRC is proposing a definition for “*Illicit substance*” because this phrase is used in subpart M of part 26 and would address substances that cause impairment and possible addiction but are not an “illegal drug” as defined in § 26.5. This proposal is based on operating experience where individuals have admitted to using common household, non-drug substances to achieve a high or satisfy an addiction. These common household items include, but are not limited to nitrous oxide, butane, propane, glue, paint vapors, lighter fluid, nail polish remover, degreasers, permanent markers, and methyl alcohol (which is

found in hand sanitizer and mouthwash).

The definition of “*Questionable validity*” would be revised to make it applicable to an FFD program implemented under subpart M of part 26, which would include all biological specimens.

The NRC is proposing a definition for “*Reduction in FFD program effectiveness*” because this phrase, similar to the proposed definition for “*Change*,” is used in proposed § 26.603(e). The proposed definition is generally consistent with the definition of “*Reduction in effectiveness*” provided for emergency plans in § 50.54(q)(1)(iv).

The proposed rule would make the current definition of “*Reviewing official*” applicable to those licenses and other entities in § 26.3(f).

The current part 26 definition of “*Safety-related structures, systems, and components*” would be amended to use the NRC’s proposed definition in § 53.020 for the part 53 licensees and other entities described in § 26.3(d) and (f).

The NRC would amend the definition of “*Security-related SSCs*” in § 26.5 to make it applicable to a licensee or other entity described in § 26.3(d) and (f).

The NRC proposes a definition for “*Special Nuclear Material*” that would refer to the definition in § 70.4, “Definitions,” of part 70 to ensure consistency.

The NRC is proposing a revision of the definition of “*Unit outage*” to account for the potential use of commercial nuclear plants for purposes other than electricity generation.

Section 26.21, an applicability statement for part 26 FFD programs, would be amended to include licensees and other entities described in § 26.3(f) that choose to implement an FFD program that implements all part 26 requirements, except those in subparts K and M of part 26.

Section 26.51, “Applicability,” would be amended to apply to licensees and other entities described § 26.3(f) that elect not to implement the requirements in subpart M of part 26 for the categories of individuals in § 26.4 and those licensees and other entities that elect to implement the requirements in § 26.605.

Section 26.53(e), (e)(1) and (3), and (g) through (i), which are general provisions for granting and maintaining authorization, would be amended to apply to licensees and other entities described § 26.3(f).

Section 26.63(d), a suitable inquiry requirement, would be amended to apply to licensees and other entities described § 26.3(f).

Section 26.73, the applicability statement for subpart D of part 26, would be amended to apply to licensees and other entities described § 26.3(f) that elect not to implement the requirements in subpart M of part 26 for the categories of individuals in § 26.4 and those licensees and other entities that elect to implement the requirements in § 26.605(b).

Section 26.81, the purpose and applicability statement for subpart E of part 26, would be amended to apply to licensees and other entities described in § 26.3(f) that elect not to implement the requirements in subpart M of part 26 for the categories of individuals in § 26.4 and those licensees and other entities that implement proposed § 26.605(a) or (b). The subpart E requirements to be implemented are listed in proposed § 26.607(c)(2)(i) and (c)(2)(ii) and (c)(3).

Section 26.201, the applicability statement for subpart I of part 26 would be amended to apply to licensees and other entities described in § 26.3(f). Also, the applicability statement would be divided into two paragraphs for clarity.

The NRC proposes to add § 26.202, “General provisions for facilities licensed under part 53,” for licensees or other entities described in proposed § 26.3(f) that elect to implement the requirements in subpart I of part 26 in accordance with § 26.604 and § 26.605. Section 26.202 would establish requirements equivalent to those in current § 26.203, “General provisions,” which is applicable to part 50 and 52 licensees. The NRC would add the separate § 26.202 because § 26.203 refers to various requirements under subpart B of part 26, which would not be applicable to facilities licensed under part 53 that implement subpart M of part 26.

Additionally, § 26.202(c), “Training and assessments,” unlike § 26.203(c), “Training and examinations,” would not include a comprehensive examination requirement because trainee assessment is conducted as part of a SAT that would be required as proposed under the FFD program training requirements in § 26.608.

Proposed changes in §§ 26.205, 26.207, and 26.211 would add references to new requirements in subparts I and M of part 26 that would be applicable specifically to licensees and other entities in § 26.3(f). The NRC would not change the specific provisions for work hour requirements in current § 26.205(d). However, as addressed in the discussion of proposed changes to § 26.4(a), whether a licensee or other entity under part 26 would need to implement work hour controls

for certain individuals or groups would be dependent, in part, on determinations reached by that licensee's risk-informed evaluation process.

Proposed changes to §§ 26.207(a)(1)(ii) and 26.211(b) would allow licensees and other entities in § 26.3(f) to perform face-to-face assessments to support the approval of work hour control waivers and the conduct of fatigue assessments, respectively, using electronic communications. These proposals would allow supervisors to conduct such assessments from a remote location under appropriate circumstances. Such remotely conducted assessments would need to be supported by someone who is present in-person with the individual being assessed and who is trained in accordance with the requirements of either § 26.29 and § 26.203(c) or § 26.608 and § 26.202(c). The reasoning for these proposals and the associated need for in-person support to augment electronic communications is addressed further in the preamble discussion of proposed § 26.619.

#### *C. Proposed Requirements for Part 26, Subpart M*

The proposed rule would add a new subpart M to part 26 that would provide alternative FFD requirements for part 53 licensees and other entities.

Proposed § 26.601 would make subpart M of part 26 applicable to part 53 licensees and other entities, at their discretion. If a licensee or other entity in § 26.3(f) does not elect to implement an FFD program that demonstrates compliance with the requirements of subpart M, then the individuals specified in § 26.4 would be subject to an FFD program that demonstrates compliance with all part 26 requirements, except for those requirements in subparts K and M.

Proposed § 26.603(a) would require an applicant to provide a description of its FFD program and its implementation within its application for a license. This requirement is equivalent to the existing requirements in §§ 26.401(b) and 52.79(a)(44). The entities that would be required to submit these FFD program descriptions are certain applicants that would comply with the part 53 application requirements in subpart H. In subpart H, § 53.1309(a)(6) would require an applicant for a CP to provide a description of its FFD program in its PSAR. Under §§ 53.1279(b)(4), 53.1369(x), and 53.1416(a)(24), an applicant for an ML, OL, and COL, respectively, would be required to provide a description of its FFD program in its FSAR.

Unlike an application for a license, a description of an FFD program does not receive NRC review for possible approval. The applicant provides the NRC with information about the applicant's proposed FFD program to inform the NRC's inspection program and to demonstrate that the FFD program will be effectively implemented before a licensee or other entity commences any activity making individuals at the NRC-licensed facility subject to the FFD program.

Proposed § 26.603(a)(1) would require a summary description of the analysis described in § 26.603(c), if performed. The analysis should describe the operation of the facility. This would include informing the Commission of: (1) the principal individuals assigned by job title (work category) and a summary description of the human actions (e.g., monitoring, operating, responding, surveillance, oversight, etc.) that they perform to maintain the facility in a safe operating or shutdown condition; (2) the principal individuals by job title and a summarized description of the human actions to secure and protect the facility (without providing sensitive information); (3) the estimated total population of individuals subject to the FFD program and per shift by job description; and (4) references to supporting documentation. The purpose of these descriptions is to enable an NRC assessment of the licensee's or other entity's analysis and the required human actions to operate, monitor, surveil, maintain, and secure the facility within its design and licensing basis so that if an operational or security-related event were to occur, the facility would respond as designed and licensed and the calculated radiological dose consequences would not exceed the consequences described in § 53.860(a)(2). This is important because facilities that implement § 26.604 are expected to have very small staff sizes and may be sited in geographically remote locations, both of which could challenge effective implementation of the FFD program.

Proposed § 26.603(a)(2) would require the applicant to state what FFD program it plans to implement.

Proposed § 26.603(a)(3) would require a discussion that informs the NRC of the applicability of the applicant's FFD program to individuals who perform safety- or security-significant activities. This description should summarize any key differences between the staff at the site and any remote facility and the categories of individuals in § 26.4. The principal purpose of providing this description would be to inform the NRC of any substantial differences in the

applicability of the FFD program to the categories of individuals in § 26.4.

Proposed § 26.603(a)(4) would require a description of the drug and alcohol testing and fitness determination process to be implemented through the licensee's or other entity's procedures, including the collection and testing facilities to be used, biological specimens to be collected, and sanctions to be imposed upon a confirmed FFD policy violation. This process includes how individuals who test positive for a drug or alcohol will be evaluated before being afforded unescorted access to the protected area to perform or direct those duties or responsibilities making them subject to the FFD program. The principal purpose of describing this return-to-duty process is to inform the NRC of the behavioral observation strategy (for those facilities that implement § 26.604) and/or drug screening and testing strategy.

Proposed § 26.603(a)(5) would require a summary description of the applicant's planned PMRP. This description must provide the performance measures and thresholds that the applicant intends to use.

Proposed § 26.603(b) would establish when the FFD program must be implemented and the longevity of the FFD program. This proposal is equivalent to the current § 26.3, which states, in part, when licensees and other entities must begin implementing their FFD programs. Unlike the current part 26 regulations, proposed § 26.603(b) would expressly state that an FFD program would not be applicable during decommissioning of a part 53 facility for licensees and other entities specified in § 26.3(f). However, licensees of facilities licensed to operate a reactor should be aware that the physical protection program under § 73.55, "Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage," and under proposed § 73.100 include a requirement for the implementation of an IMP, even during decommissioning.

Proposed § 26.603(b) would also require the holder of an ML to implement its FFD program no later than the start of activities that assemble a reactor. The holder of the ML should establish in its procedures when reactor assembly commences and what constitutes assembly. For example, the FFD program would not need to be implemented for the receipt, storage, inspection, and staging of components and systems used to assemble (i.e., build or fabricate) the reactor because this is not a current requirement for LWR facilities licensed under part 50 or 52. Furthermore, the NRC currently does

not require that an FFD program be applied to the assembly or manufacturing of components (or basic components as defined in § 21.3), or systems that were fabricated or assembled outside the footprint of a commercial power reactor, and this regulatory position would also apply to a manufacturing facility.

Proposed § 26.603(c) would require the applicant, licensee, or other entity seeking to implement an FFD program under § 26.604 to perform a site-specific analysis to determine whether the facility and its operation satisfy the criterion in § 53.860(a)(2). If the analysis is performed and demonstrates that the radiological consequences presented by the facility and its operation satisfy the criterion, then the licensee or other entity could implement the FFD program detailed in § 26.604. If the analysis does not demonstrate that the facility and its operation satisfy the criterion, then the licensee or other entity must implement the FFD program described in either § 26.605 or subparts A through I, N, and O of part 26.

Proposed § 26.603(c) would also require licensees and other entities that implement proposed § 26.604 to update the technical analysis used to justify compliance with the criterion in § 53.860(a)(2). This analysis would be updated to reflect changes made to the staffing, FFD programs, or offsite support resources described in the analysis to show that the facility and its operation continue to satisfy the criterion. This is important because facility, operation, or staffing changes outside FFD program implementation (e.g., changes in the facility safety analysis, physical protection strategies, or the security plan, implementing procedures, or contingency response strategies) could adversely impact the licensee's or other entity's documented analysis demonstrating that the facility and its operation satisfy the criterion if event sequences require human action.

Proposed § 26.603(d) would require the establishment of a PMRP. The concept of a PMRP is not new. This requirement would consolidate for part 53 the requirements in current §§ 26.41, "Audits and corrective actions"; 26.415, "Audits"; 26.717, "Fitness-for-duty program performance data"; and 26.183(c), which describes MRO responsibilities. The proposal would state that the licensee or other entity must monitor the effectiveness of its FFD program by comparing performance data against performance measures and thresholds. The development of quantitative thresholds would be new, but this is born from licensees and other entities with facilities licensed under

parts 50 or 52 already collecting, reviewing, and reporting FFD performance data. Additionally, the benefit of quantitatively measuring FFD program performance against established thresholds benefits a licensee's and other entity's determination of whether they are maintaining FFD program performance in a manner that demonstrates compliance with the performance objectives in § 26.23.

The NRC is proposing the PMRP because the subpart M of part 26 requirements would enable a high degree of flexibility in FFD program implementation (e.g., drug testing). A licensee or other entity would not only have options in the type of FFD program they may implement under part 26, but they would have options in the types of biological specimens they may test for drugs, where to collect the biological specimens (e.g., at the NRC-licensed facility or offsite at a local hospital or clinic), and the use of collection and assessment devices to screen individuals for drugs and alcohol. These FFD program flexibilities could cause FFD programs under subpart M of part 26 to become very site-specific, necessitating performance measures to enable the licensee or other entity to maintain the effectiveness of its FFD program.

Fitness-for-duty program effectiveness would be determined by comparing actual performance against the performance measures and thresholds. The result of that comparison would inform licensee or other entity decisions whether to change FFD program elements to address a performance deficiency. Also, the thresholds would have sufficient margin, based on operating experience, before conditions adverse to safety and security may occur should an individual be identified as impaired or not trustworthy and reliable. The potential of a human-related failure causing a condition adverse to safety and security is dependent on the duties and responsibilities of the individual and the defense-in-depth designed to prevent or mitigate an adverse consequence. The PMRP would account for this by requiring the review of FFD performance data, in part, by work category, C/V, and individuals employed by the licensee who are not a C/V as defined in § 26.5 (i.e., a licensee employee).

Proposed § 26.603(d)(1) would require the licensee or other entity to document and maintain its PMRP. Proposed § 26.603(d)(1)(i) would require that the performance measures be identified and designed to monitor FFD program

performance. Proposed § 26.603(d)(1)(i)(A) would require the FFD program of a licensee or other entity subject to the requirements of § 26.604 to include monitoring of the BOP. The purpose of this monitoring is to help ensure that individuals subject to the FFD program are observing the behaviors of others, are being observed themselves, and are reporting FFD concerns to licensee- or other entity-designated individuals. The other performance measures would include occurrence of FFD policy violations evaluated by licensee employee, C/V, and labor category, and occurrence of individuals with potentially disqualifying information or who possessed an FFD prohibited item.

Proposed § 26.603(d)(1)(i)(B) would require the FFD program of a licensee or other entity that is either subject to the requirements of § 26.604 and has implemented a drug testing program at its discretion, or is subject to the requirements of § 26.605, to include the performance measures identified in § 26.603(d)(1)(i)(A) and those necessary to monitor the effectiveness of the drug and alcohol testing program. The drug and alcohol measures would include the monitoring of FFD performance data for pre-access and random testing and subversion attempts by the categories of licensee employee, C/V, and labor category.

Proposed § 26.603(d)(1)(ii) would require the licensee or other entity to establish thresholds for each performance measure. Initial thresholds must be based on FFD performance data from comparable facilities subject to part 26, the licensee's or other entity's fleet-level program performance if applicable, and industry FFD performance data. This provision introduces the requirement to "maintain FFD program effectiveness." This terminology describes a performance-based regulatory strategy in which the licensee or other entity must initially establish a level of performance that is representative of other facilities in the licensee's fleet of facilities subject to part 26, if applicable, and the FFD performance of comparable facilities subject to part 26.

Proposed § 26.603(d)(1)(iii) would require that the licensee or other entity evaluate FFD data as it is received to determine whether a threshold has been exceeded. Historical FFD performance data for the current LWR fleet indicates that, for particular work categories and employment types, few FFD policy violations occur per year. Therefore, for work categories that may be significant to worker safety (e.g., radiation protection technicians), physical

protection (*i.e.*, security personnel), or safety (*i.e.*, NRC-licensed operators and individuals who perform or direct the performance of activities that a risk-informed evaluation process has shown to be significant to public health and safety), a single FFD policy violation could be a significant occurrence and warrant corrective actions. Based on licensee-submitted FFD-related reports under §§ 26.417, 26.419, 26.717, and 26.719, licensees and other entities with facilities licensed under parts 50 or 52 implement some form of corrective action that is typically scaled to the significance of the violation. These corrective actions have included counseling, follow-up drug and/or alcohol testing, remedial training, generic announcements to the workforce, and reviews of recently performed or directed work by the individual suspected of being impaired. Proposed § 26.603(d)(1)(iii) would require that the PMRP include a year-to-year comparison of FFD performance data to help provide assurance that an adverse trend in FFD program performance would be identified if occurring. This proposed requirement was developed from the annual FFD performance data reporting requirements in §§ 26.417(b)(2) and 26.717. In particular, the proposed year-to-year comparison of FFD performance data is equivalent to § 26.717(c), which requires, in part, licensees and other entities to analyze their performance data at least annually and take appropriate actions to correct any identified program weaknesses.

Proposed § 26.603(d)(1)(iv) would require the licensee or other entity to perform and document quantitative and qualitative reviews. These reviews would be performed in three program areas: protections afforded to individuals subject to the FFD program, laboratory test results and MRO performance, and change control. The purpose of these reviews would be to specifically target performance within the three program areas to assess whether the outcomes resulting from the implementation of procedure requirements are contributing to FFD program effectiveness. The proposed reviews would not require the establishment of measures and thresholds because the reviews are expected to result in qualitative findings regarding program effectiveness. Qualitative findings and observations could still result in the consideration of corrective actions in the targeted program areas.

Proposed § 26.603(d)(1)(iv)(A) would require the licensee or other entity to monitor whether its FFD program is

affording appropriate protections to individuals subject to the FFD program. The review of these protections would include, in part, assessing the licensee's or other entity's protection of the following: privacy during the specimen collection process; specimen integrity, custody, and control; information gathered from FFD program implementation; and due process during appeals of FFD policy violations.

Proposed § 26.603(d)(1)(iv)(B) would require, in part, a review of laboratory test results and MRO performance. Effective performance by the laboratory (*e.g.*, obtaining and communicating accurate test results) and MRO (*e.g.*, correct evaluation of the laboratory test results based on § 26.185 or HHS Guidelines) would result in three significant outcomes: (1) protection of the donor from an inaccurate FFD policy violation determination; (2) protection of the donor, other individuals, and the facility from potential harm should the donor be impaired or not trustworthy and reliable; and (3) a performance-based assessment of both the laboratory and MRO. This last outcome could facilitate actions to improve laboratory performance, MRO training under § 26.607(m), or both. Proposed § 26.603(d)(1)(iv)(B) would also require a comparative analysis between the POCTA screening result(s) and the corresponding specimen test results obtained from the HHS-certified laboratory if the POCTA indicated a positive, adulterated, substituted, or invalid screening result or discrepant biological marker, to assess the effectiveness of the POCTA and to inform MRO decisions under § 26.185 or § 26.607(m)(6). The results of this biennial review could also inform the conduct of laboratory audits.

Proposed § 26.603(d)(1)(iv)(C) would require that the change control requirement in proposed § 26.603(e) be included in the biennial program review to help ensure that changes implemented over the life of the facility do not result in a reduction in program effectiveness even if a mitigating action was implemented for the specific change. This requirement was developed from §§ 26.137(f) and 26.713(d). This part of the review would require an assessment of all changes since the last review and their potential aggregated impact on FFD program effectiveness. For example, if last year the licensee elected to contract with a different MRO and this year the licensee implemented a new type of POCTA device, each of those program changes probably would not have resulted in a recognizable reduction in FFD program

effectiveness. But, if the drug testing positivity rate (or FFD policy violations) for C/Vs decreased markedly during a future maintenance outage that required many C/Vs, then the reduction could indicate, for example, that the POCTA device was not as effective as determined by a forensic toxicologist review under §§ 26.603(e) and 26.607(h) or that the new MRO was improperly crediting prescription medication for laboratory-confirmed positive test results.

Proposed § 26.603(d)(2) would state when the licensee or other entity must implement corrective actions. This requirement would be equivalent to the requirement in current § 26.415(b) and was developed from requirements contained in §§ 26.41(a) and (f), 26.127(e), 26.129(b)(1)(i), 26.137(f)(3) through (5), 26.155(a)(6), 26.157(e), 26.159(b)(1)(i), and 26.203(e)(2). Corrective actions must be implemented to correct root causes, contributing causes, or both. There is margin built into the FFD performance thresholds and qualitative factors (*e.g.*, to account for potential changes in drug and alcohol testing performance data when there is a large influx of C/Vs to perform maintenance) that may influence a licensee or other entity's causal determination for an occurrence. Thus, generalized or qualitative corrective actions may be implemented like informing management and placing a sufficiently descriptive summary of the occurrence in a corrective action program for future monitoring to assess recurrence.

However, should the occurrence challenge safety or security or significantly exceed a performance threshold even when considering qualitative factors and margin, the licensee or other entity should implement more robust corrective actions to resolve the cause. An example of a challenge to safety or security would be the situation when an NRC-licensed operator or maintenance professional had operated, surveilled, or maintained safety-significant SSCs and was determined to have been impaired by behavioral observation or potentially under the influence of a narcotic as determined by an alcohol or drug test or screening result. Immediate corrective actions could include, but would not be limited to, a licensee or other entity assessment of the duties and responsibilities recently performed by the individual. Operating experience within the LWR operating reactor community demonstrates few FFD policy violations per year per site have been caused by individuals who perform or direct the performance of



safety or security-significant activities. Therefore, any such violations of the FFD policy in a particular work category in one year could be a significant performance deficiency. These violations could be even more significant at part 53 facilities that have a very small workforce subject to part 26.

Proposed § 26.603(d)(3) would require the licensee or other entity to biennially assess and document its FFD performance monitoring program; this requirement was developed from § 26.41(b). This documented review would demonstrate that the performance measures and thresholds are appropriate based on site- and licensee's fleet-level program performance, if applicable, and industry performance and adjusted to maintain FFD program effectiveness. Also, as a result of this effort, the licensee or other entity would be in possession of lessons learned from fleet-level performance, if applicable, and industry performance that could contribute to their own performance assessment to maintain program effectiveness.

Under proposed § 26.603(d)(3)(i), the identified program weaknesses and corrective actions resulting from the biennial review would be required to be summarized in the licensee's or other entity's annual report to the NRC in compliance with either § 26.417(b)(2) or § 26.717, as applicable. This information would inform the NRC of FFD program weaknesses to facilitate regulatory oversight and enable the NRC to aggregate industry data for use in a licensee or other entity PMRP.

Proposed § 26.603(d)(3)(ii) would establish when the biennial PMRP review must be completed and when corrective actions from the review must be implemented. The NRC selected the May 15th date of odd-numbered years to help ensure that all FFD programs will maintain their previously determined performance measures and thresholds or reset them based on FFD program performance early in the year in which the biennial review was conducted. This would assist in obtaining quality FFD performance data over two annual reporting cycles and evaluating whether previous corrective actions were effective.

In proposed § 26.603(e), the NRC proposes a change control requirement for subpart M of part 26 FFD programs. Requiring licensees and other entities to demonstrate compliance with certain requirements before implementing changes to their FFD programs would be necessary for two primary reasons. First, proposed changes to a licensee's or other entity's FFD program could affect

the analysis performed by the licensee or other entity under proposed § 26.603(c), which helps determine the FFD program requirements that must be implemented. If this analysis changes, then the licensee's or other entity's FFD program requirements might change. Second, the requirements in subpart M of part 26 are performance based. Therefore, FFD program implementation may change periodically in response to societal changes in substance abuse or from PMRP implementation. Change control therefore relies on the licensee or other entity maintaining its procedures in a manner that details how its FFD program is to be implemented while incorporating changes, with documentation that justifies the changes to support the PMRP, audits, and NRC inspection.

Proposed § 26.603(e)(1) would permit the licensee or other entity to implement changes to its FFD program if it performs and retains an analysis demonstrating that the change does not reduce the effectiveness of the FFD program or the change was necessitated or justified by a change to part 26, laboratory processes, or guidance issued by the HHS or NRC. The proposed change control requirement would enable flexibility in program implementation should the NRC or HHS change its drug testing procedures (as implemented by the licensee or other entity through its procedures) in response to changes in societal substance abuse or drug testing technologies.

The proposed change control requirement was developed from the change control requirements in § 50.54(p) and (q)—the change control requirements for security and emergency plans, respectively. However, unlike these two requirements, the NRC does not review and approve a licensee's or other entity's FFD program or its implementing procedures, and the FFD program is not licensing-basis information as described in § 53.1300.

Proposed § 26.603(e)(2) would require that if a change reduces FFD program effectiveness, then the licensee must implement a mitigating strategy so the FFD program, as revised, will continue to demonstrate compliance with the performance objectives in § 26.23 and not result in a reduction in program effectiveness.

Proposed § 26.603(e)(3) would prohibit, with one exception, the use of the change control process to reduce the minimum panel of drugs to be tested and would reference the drugs listed in proposed § 26.607(c)(1). Proposed § 26.607(c)(1) would reference current

§ 26.31(d)(1), which states that, at a minimum, licensees and other entities shall test for marijuana metabolite, cocaine metabolite, opioids (codeine, morphine, 6-acetylmorphine, hydrocodone, hydromorphone, oxycodone, and oxymorphone), amphetamines (amphetamine, methamphetamine, methylenedioxymethamphetamine, and methylenedioxyamphetamine), phencyclidine, and alcohol. The testing of these drugs and drug metabolites, except phencyclidine, and alcohol is necessary for the FFD program to remain effective. Also, there is no proposed subpart M of part 26 requirement stating that this panel of drugs and drug metabolites needs to consist of only scheduled drugs.<sup>10</sup> This flexibility would account for the situation where an impairing substance becomes prevalent in society and a licensee or other entity elects to add the substance to their panel of substances to be tested prior to it being scheduled by the Drug Enforcement Administration.

The exception in proposed § 26.603(e)(3) would be that, should HHS elect to remove phencyclidine from the panel of drugs and drug metabolites to be tested, a licensee or other entity could make this change in its FFD program without resulting in a reduction in FFD program effectiveness. This outcome would be justified based on the very infrequent occurrence rate of FFD policy violations due to phencyclidine use since 2010. However, if HHS proposes to remove a class of drugs from the panel of drugs to be tested that is listed in § 26.31(d)(1), except for phencyclidine, then a licensee or other entity may not make a similar change to its panel of drugs to be tested, because this change would be a reduction in FFD program effectiveness even with a mitigative strategy implemented.

Changes in the HHS panel of drugs and drug metabolites to be tested may also shift from one metabolite to a

<sup>10</sup> The Drug Enforcement Administration classifies drugs, substances, and certain chemicals used to make drugs into five (5) distinct categories, depending upon the drug's acceptable medical use and the drug's abuse or dependency potential. These categories appear as Schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812). Schedule I drugs have a high potential for abuse, have no currently accepted medical uses in treatment in the United States, and lack accepted safety for use under medical supervision. At the other end of the classification scheme, Schedule V drugs have the least potential for abuse among the five categories of drugs, have a currently accepted medical use in treatment in the United States, and abuse of the drug may lead to limited physical dependence or psychological dependence. For more information, see <https://www.dea.gov/drug-information/drug-scheduling>.



different metabolite for the same drug class (e.g., amphetamines, opioids) to be tested. Should HHS issue such a change to its panel, this would not be expected to result in a reduction in FFD program effectiveness because HHS would be targeting a more prevalent or effective metabolite in its drug testing program. This situation could occur as HHS gathers more operating experience from Federal Government implementation of its HHS Guidelines, or data generated by drug testing laboratories and federally mandated drug testing programs required by Federal agencies such as the NRC and U.S. Departments of Transportation, Energy, and Defense.

Proposed § 26.603(e)(4) would require that change control records be maintained for a 5-year record retention period based on the current NRC practice to conduct triennial inspections of licensees' and other entities' FFD programs. This would afford the NRC an opportunity to review the licensee's or other entity's determination that FFD program changes have not reduced the effectiveness of their FFD program. Licensees and other entities would also be required to summarize each change made under proposed § 26.603(e) in their annual FFD performance reports required by § 26.617(b)(2) or § 26.717, as applicable.

Proposed § 26.604 would establish the minimum set of FFD program requirements for licensees and other entities who have a documented analysis that demonstrates that the facility and its operation satisfy the criterion in § 53.860(a)(2). For these licensees, compliance with the performance objectives in § 26.23 would be ensured through the BOP; defense-in-depth measures proposed in subpart M of part 26 like the PMRP, change control, and audits; and other requirements, such as those for AA, physical protection, and licensed operators. The adequacy of these measures in satisfying the performance objectives is supported by operating experience, which demonstrates margin between an FFD-related occurrence and a condition adverse to safety or security, as illustrated by for-cause, post-event, and random testing data. A facility that satisfies the criterion in proposed § 53.860(a)(2) would present a smaller potential radiological consequence than a facility that does not satisfy the criterion, so the requirements in proposed § 26.604 are scaled to the lower risk presented consistent with the Commission's Advanced Reactor Policy Statement.

The disadvantages of implementing the FFD program described in proposed § 26.604 would be few. Since drug and

alcohol testing would not be required, behavioral observation would be the keystone requirement in this performance-based framework to provide that individuals are fit for duty, trustworthy, and reliable, and can safely and competently perform the duties and responsibilities making them subject to the FFD program. If not, the individuals would be assessed in accordance with the licensee's or other entity's procedures similar in manner to that required by subpart K of part 26, and the proposed PMRP would require corrective actions should a threshold be exceeded.

If a licensee or other entity elects not to perform the analysis in proposed § 26.603(c) to determine whether it satisfies the criterion in proposed § 53.860(a)(2); performs the analysis and finds that the facility and its operation does not satisfy the criterion in proposed § 26.603(c); or is a holder of an ML, the licensee or other entity could not implement the FFD program described in § 26.604. Instead, the licensee or other entity would implement either the program described in proposed § 26.605 or an FFD program that demonstrates compliance with all the requirements in current subparts A through I, N, and O of part 26.

Proposed § 26.605 would establish requirements in a graded manner similar to the regulatory framework established by the requirements in subparts A through I, N, O, and K of part 26. This existing graded approach consists of an FFD program for construction of a commercial nuclear plant and a more robust program that must be implemented before reactor operation. The former is the FFD program in proposed § 26.605(a), and the latter is proposed § 26.605(b). Like that for an FFD program under § 26.604, the FFD program under § 26.605 would include FFD program elements similar to those in subpart B of part 26, but the proposed requirements are less prescriptive, enabling more flexibility in program implementation like that offered in subpart K of part 26. For example, the requirements in subpart B of part 26 are explicit requirements for, in part, the collection and analysis of urine specimens. Subpart B of part 26 does not enable the use of oral fluid for drug testing or screening, except under very limited situations as described in subpart E of part 26, or the use of hair specimens, unlike proposed § 26.605. Proposed § 26.605 would require drug and alcohol testing based on either the requirements in part 26 or the HHS Guidelines. The principal benefit of the proposed § 26.605 FFD program is that it would provide a regulatory framework

that is consistent with the radiological consequences for a facility that does not satisfy the criterion in proposed § 53.860(a)(2) while affording flexibilities in the conduct of drug and alcohol testing.

Proposed § 26.605(a) would apply to licensees and other entities who perform the § 26.603(c) analysis and satisfy the criterion in § 53.860(a)(2) but decide not to implement the FFD program described in proposed § 26.604, licensees and other entities who do not perform the § 26.603(c) analysis, and licensees and other entities who perform the analysis but their analysis does not demonstrate that their facility and its operation satisfy the criterion in § 53.860(a)(2). These entities must establish, implement, and maintain an FFD program under § 26.605(a) either during construction activities as defined in § 26.5, or during activities performed under an ML that allows the assembly, testing, or both, of a manufactured reactor. This FFD program implements all the FFD program requirements in § 26.604 plus drug and alcohol testing.

The timing element of the proposed applicability statement of § 26.605(a) is equivalent to that for an LWR licensee or other entity who is performing those same activities at a facility licensed under part 50 or 52 and helps provide assurance that those individuals who assemble, test, or perform construction activities as defined in § 26.5 or direct these activities are fit for duty and trustworthy and reliable. This is important because assembly and testing a manufactured reactor and the construction and testing of SSCs required for facility operation require, in part, adherence to procedures, possible implementation of unique and precise assembly techniques, and quality assurance and controls. Additionally, SSCs within a manufactured reactor may not be accessible, testable, or available for quality assurance and verification after the reactor is assembled. This requirement is also proposed to address solo-assembly activities that may cause latent failures and passive SSCs located internal to a reactor (for example, a fusible link designed to melt at a particular temperature to trigger an actuation mechanism) that are relied upon for safe operation but cannot be inspected or tested for proper installation, configuration, or operation after installation. A § 26.605(a) FFD program for these types of activities is equivalent to the FFD program applicable to the assembly of the reactor vessel internals and testing of the SSCs internal to the reactor at an LWR licensed under part 50 or 52.

Proposed § 26.605(b) would apply to the same licensees and other entities as in proposed § 26.605(a) but before the loading of fuel onsite into a reactor vessel; before receiving a manufactured reactor; or before individuals subject to part 26 operate, test, perform maintenance of, or direct the maintenance or surveillance of security-related equipment or equipment that a risk-informed evaluation process has shown to be significant to public health and safety. These entities must establish, implement, and maintain an FFD program that implements all the requirements in § 26.605(a), except proposed §§ 26.610, “Sanctions”; 26.617, “Recordkeeping and reporting”; and 26.619, “Suitability and fitness determinations”; plus additional requirements due to the increased radiological consequences presented by a part 53 commercial nuclear plant as the licensee readies it for operation. These additional requirements include those in subparts C, D, H, and N of part 26, some of which would replace §§ 26.610, 26.617, and 26.619.

Proposed § 26.605(b) would also enable the licensee or other entity to better integrate its facility into the LWR fleet and Category I fuel cycle facilities because subparts C, D, and H of part 26 would be required. These subparts would be required, in part, because it is expected that: (1) individuals will be able to work at any part 50, 52, or 53 commercial nuclear plant and will possess a nuclear safety culture and desirable qualifications, skills, expertise, or services; and (2) licensees and other entities of facilities licensed under parts 50, 52, and 70 may venture to construct or operate a facility licensed under part 53. Therefore, the implementation of these subparts would help ensure that all individuals subject to part 26, except those individuals subject to an FFD program under § 26.604, § 26.605(a), or subpart K of part 26, would be subject to FFD programs that provide reasonable assurance that the individuals are fit for duty, trustworthy, and reliable.

Proposed § 26.606, “Written policy and procedures,” would require licensees and other entities to implement and maintain an FFD policy and procedures for their FFD programs. This section would establish requirements equivalent to those in current § 26.403, “Written policy and procedures,” of subpart K. However, a principal difference is that proposed § 26.606 is written to enable the use of urine, oral fluid, and hair for drug testing and screening.

Proposed § 26.606(a)(1) would require each licensee and other entity to

provide a written FFD policy statement to individuals subject to the FFD program before the individuals are subjected to behavioral observation and any FFD program drug and alcohol test. This would be a protection measure afforded to individuals subject to the FFD program to help ensure that they know what is expected of them before being subject to the FFD program and potential consequences should they violate the FFD policy or procedures. This requirement would also contribute to safety and security because understanding FFD program responsibilities may enhance an individual’s safety culture or the individual may self-select out of the licensee’s or other entity’s hiring process.

Proposed § 26.606(a)(2) would require that the FFD policy statement describe the performance objectives in § 26.23, which are the same FFD program performance objectives required for facilities licensed under parts 50, 52, or 70. Having a standard performance outcome based on a licensee or other entity satisfying the § 26.23 performance objectives would enhance consistency in FFD program implementation across all entities subject to part 26. It would also generate confidence that individuals subject to part 26 will safely and competently perform their duties and responsibilities and use NRC-licensed materials in a manner that will protect the public health and safety and common defense and security.

Proposed § 26.606(a)(3) would require that the FFD policy statement describe the minimum days off requirements in § 26.205(d)(3) or maximum average work hours requirements in § 26.205(d)(7).

Proposed § 26.606(a)(4) would require the FFD policy statement be written in sufficient detail to provide affected individuals with information on what is expected of them and what consequences may result from a lack of adherence to the policy, including those elements described in § 26.603(b), part 26-required sanctions, and required medical/clinical treatment and follow-up testing for FFD policy violations. This requirement is equivalent to § 26.403(a) of subpart K but includes an additional description of what the policy statement must include. For example, the policy would describe the NRC-required sanctions to help deter substance abuse and required medical/clinical treatment and follow-up testing for FFD policy violations. This provision would provide a protection measure by helping the individual get the assistance they need and help

ensure that the individual refrains from substance abuse.

Proposed § 26.606(a)(5) would require that the FFD policy statement describes the individual’s responsibilities to report for work in a physiological and psychological condition that enables the safe and competent performance of assigned duties and responsibilities and inform a licensee- or other entity-designated representative when the individual determines that this cannot be accomplished.

Proposed § 26.606(b) would require licensees and other entities implementing a FFD program in accordance with subpart M of part 26 to establish, implement, and maintain written procedures for their FFD programs. This requirement would be equivalent to that in § 26.403(b) of subpart K.

Proposed § 26.606(b)(1) would establish requirements for a subpart M of part 26 FFD program in which the licensee or other entity implements a drug and alcohol testing program. This provision would be equivalent to the requirements in current § 26.403(b)(1) of subpart K, but § 26.606(b)(1)(i) through (iv) proposes additional clarity and specificity that licensees and other entities must detail in their procedures to address new testing methods in subpart M of part 26 that are not permitted under the current part 26 framework. Clarity and specificity in procedural instructions would support consistent program implementation, which protects all individuals subject to the program.

Proposed § 26.606(b)(1)(iv) would require that if the licensee or other entity elects to use the HHS Guidelines for the conduct of drug testing, the FFD program procedures must include the name of the specific HHS Guideline and revision being implemented by the licensee or other entity and a description of the specific sections in the guideline that are being implemented, including specimen collections, drug testing, laboratory procedures, and evaluation of test results. This requirement would help ensure the following: the validity and accuracy of drug testing because the specimens would be subject to laboratory testing that has been certified by the HHS; protection of worker rights equivalent to the privacy, information, and due process protections afforded to Federal workers under the HHS Guidelines because the HHS Guidelines are used in the Federally mandated drug testing programs; consistency in program implementation because all individuals subject to the FFD program would be subject to the same collection,

testing, and evaluation processes; and FFD program effectiveness because the effectiveness of the HHS Guidelines have been verified by HHS's National Laboratory Certification Program (NLCP). Detailed procedures would enhance MRO and FFD program personnel reviews of individual test results because instructions would be provided for, in part, the evaluation of specific test results (*e.g.*, positive, negative, biological markers), the conduct of additional testing for invalid or dilute specimens, and the assessment of subversion attempts (*e.g.*, adulterated or substituted). This would benefit FFD program effectiveness and help prevent misunderstanding of program requirements and processes.

Proposed § 26.606(b)(2) would require licensees and other entities to include in their written procedures the immediate and follow-up actions that would be taken, and the procedures that would be used, in certain situations specified in proposed § 26.606(b)(2)(i) through (vi). Proposed § 26.606(b)(2) would be equivalent to the requirements in current § 26.403(b)(2), which provides the same requirement under an FFD program for construction for part 50 or 52 licensees and other entities. This would help ensure the effectiveness of the FFD program and its consistent implementation, because part 53 licensed facilities would be implementing procedures to address the same requirements and with individuals who would understand what is expected of them no matter what part 53 facility they were assigned.

The situation specified in proposed § 26.606(b)(2)(i) would arise when individuals subject to the FFD program have been involved in the use, sale, or possession of illegal substances, illegal drugs, or illicit substances. This provision would be equivalent to current § 26.403(b)(2)(i), except that the phrase "illegal drugs" would be replaced with "illegal substances, illegal drugs, or illicit substances." Illegal substances would include legal substances used in a manner inconsistent with Federal or State law.

The situation specified in proposed § 26.606(b)(2)(ii) would arise when individuals who are subject to the FFD program are impaired by any substance or the consumption of alcohol as determined by behavioral observation or a test that measures blood alcohol concentration, as defined in § 26.5. Except for a few differences, this provision would be equivalent to current § 26.403(b)(2)(ii) of subpart K. The NRC would not include the phrases "to excess" and "accurately" in proposed § 26.606(b)(2)(ii). Subpart M of

part 26 is a performance-based framework that focuses on impaired human performance, and for alcohol, impairment is determined by behavioral observation or by blood alcohol concentrations exceeding the limits in § 26.103, "Determining a confirmed positive test result for alcohol," using an evidentiary breath testing (EBT) device for alcohol (not whether an individual drank "to excess"). If impairment is determined by an individual's behavior, it must be based on physiological indications of alcohol impairment. These indications are well established in medical, clinical, and law enforcement organizations, and could be used by the licensee or other entity through its procedures and training.<sup>11</sup>

The NRC would include the phrase "illegal substances, illegal drugs, and illicit substances" in proposed § 26.606(b)(2)(ii) based on operating experience and the terminology in current § 26.23(b). There are far more substances that may cause impairment than just drugs, drug metabolites, and alcohol. The phrase "before or while constructing or directing construction of safety- or security-related SSCs" in current § 26.403(b)(2)(ii) would not be included in proposed § 26.606(b)(2)(ii) because proposed § 26.606 would apply during construction, operation, and decommissioning, if applicable. The NRC would include the term "behavioral observation" in proposed § 26.606(b)(2)(ii) because impairment can be visibly or audibly observed in an individual, and individuals subject to subpart M of part 26 would be trained in behavioral observation under proposed § 26.608.

The situation specified in proposed § 26.606(b)(2)(iii) would arise when individuals who are subject to an FFD program that includes drug and alcohol testing attempt to subvert the testing process by adulterating or diluting specimens (*in vivo* or *in vitro*), substituting specimens, or by any other means. Except for one difference, this provision would be equivalent to current § 26.403(b)(2)(iii). The NRC would include the phrase "if drug and alcohol testing is conducted" to address the licensee or other entity who implements § 26.604, which does not require drug and alcohol testing. The purpose underlying this requirement has increased in significance since issuance of the 2008 part 26 final rule

<sup>11</sup> By "well established" the NRC means that there are Federal, State, and non-governmental organizations with reputable and scientifically based resources available for a licensee or other entity to use in its procedures or training to inform individuals of the physiological indications of alcohol impairment or intoxication.

because subversion attempts have accounted for about one-third of all FFD policy violations every year since 2016.

The situation specified in proposed § 26.606(b)(2)(iv) would arise when individuals, who are subject to an FFD program that includes drug and alcohol testing, refuse to provide a specimen for analysis or refuse to follow instructions provided by FFD program personnel. Except for two differences, this provision would be equivalent to current § 26.403(b)(2)(iv). As with proposed § 26.606(b)(2)(iii), the NRC would include the phrase, "if drug or alcohol testing is conducted," to account for an FFD program implemented under § 26.604. The NRC would include the phrase "or follow the instructions provided by FFD program personnel" based on an existing requirement in § 26.89(c) that the collector must inform the donor that if the donor refuses to cooperate in the specimen collection process, then such refusal will be considered a refusal to test and sanctions for subverting the testing process will be imposed.

The situation specified in proposed § 26.606(b)(2)(v) would arise when individuals who are subject to an FFD program had legal action taken relating to drug or alcohol use. This requirement would be equivalent to current § 26.403(b)(2)(v).

The situation specified in proposed § 26.606(b)(2)(vi) would be when individuals subject to an FFD program demonstrated character or actions indicating that the individual cannot be trusted or relied upon to perform those duties and responsibilities or maintain access to NRC-licensed facilities, SNM, or sensitive information. This includes character traits beyond those attributed to drug or alcohol use. This proposal would help ensure that the licensee or other entity will implement an FFD program designed to demonstrate compliance with the § 26.23(c) performance objective that FFD programs must provide "reasonable measures for the early detection of individuals who are not fit to perform the duties that require them to be subject to the FFD program." An individual who is not trustworthy and reliable is not fit to perform or direct the performance of those duties and responsibilities or be afforded those types of access that make the individual subject to an FFD program.

This proposed requirement also would help to align the subpart M of part 26 BOP with the BOP implemented under § 73.56(f) and proposed § 73.120 and the purpose of the IMP as described in § 73.55(b)(9) and proposed

§ 73.100(b)(9).<sup>12</sup> The demonstrated character and actions of an individual can indicate whether the individual can be trusted and relied upon to safely and competently perform assigned duties and responsibilities or be afforded those types of access making the individual subject to the FFD program. This holds true for any demonstrated adverse character indication or action on- or offsite.

The phrase “character or actions” would be used in proposed § 26.606(b)(2)(vi) to focus on observed examples that indicate an individual subject to subpart M of part 26 may not be fit for duty or trustworthy and reliable. Character traits include but are not limited to personality, temperament, honesty, carelessness, apathy, psychosis, and commitment to safety culture. Assessment of an individual’s character should consider the potential for changes in these traits when compared to a previous baseline. Actions would include a physical or verbal demonstration of a character trait that could call into question an individual’s fitness, trustworthiness, or reliability. For example, the individual does something physically, verbally, or in writing (e.g., falsifying records, driving while impaired, or harming or threatening to harm oneself, others, or property) that compels another individual to conclude that the observed individual cannot be trusted or relied upon. Unlike the background investigation and reviews of “character and reputation” in § 73.56(d)(6) and (k)(1)(v) and proposed § 73.120, which are principally retrospective reviews of an individual and may be based on third-party information (*i.e.*, information from individuals not subject to NRC requirements), the “character or action” focus of proposed § 26.606(b)(2)(vi) would be a present observation of an individual subject to the FFD program and performed by an individual who is also subject to the FFD program. Whether the information would be received from an individual subject to the FFD program or someone who is not subject to the FFD program, the licensee or other entity would need to review this information (*i.e.*, determine if the information and its source are credible) to determine whether the individual should maintain authorization.

Proposed § 26.606(b)(3) would require licensees and other entities to address in their procedures the process, including the duties and responsibilities of FFD program personnel, to be followed if an individual’s behavior or condition raises an FFD concern. This provision would also require a process to be conducted when credible information is received by the licensee or other entity that the individual is not fit for duty, trustworthy, and reliable.

With a few exceptions, proposed § 26.606(b)(3) would be equivalent to current § 26.403(b)(3). Instead of the phrase “while constructing or directing the construction of safety- or security-related SSCs” in current § 26.403(b)(3), the NRC would use “on the NRC-licensed facility” in proposed § 26.606(b)(3) because this provision would apply during commercial nuclear plant construction, operation, and decommissioning, if applicable, in addition to holders of an ML as described in § 26.3(f). The requirement that the roles and responsibilities of FFD program personnel be described was developed from current §§ 26.4(g) and 26.31(b) and operating experience, which has demonstrated that clear job descriptions help ensure that individuals know who is designated by the licensee or other entity to make decisions regarding FFD program implementation and who can be approached when physiological or psychological help is needed. This is principally a protection consideration afforded to individuals subject to the FFD program.

The proposed requirement would also include two conditions not found in current § 26.403(b) that would clarify the initiation of the fitness determination process should an individual’s behavior or condition raise an FFD concern. The phrase, “impairment from any cause that in any way could adversely affect the individual’s ability to safely and competently perform the individual’s duties,” would reflect the § 26.23(b) performance objective. The condition, “the receipt of credible information indicating that the individual cannot be trusted or relied on to perform those duties and responsibilities making the individual subject to this part,” would reflect the § 26.23(a) performance objective. In either case, as required by § 26.23(c), the FFD program must provide reasonable measures for the early detection of individuals who are not fit to perform the duties that require them to be subject to the FFD program.

Proposed § 26.606(b)(4) would require licensees and other entities to have written procedures that address the

operation and oversight of an onsite or offsite collection facility. This requirement would be equivalent to current §§ 26.403(b) and 26.405(e) and is developed from § 26.41(b), which states that each licensee and other entity who is subject to subpart B of part 26, shall ensure that the entire FFD program is audited, which is part of a licensee’s or other entity’s oversight of the facility, and § 26.87(a), which states that each FFD program must have one or more designated collection sites that have all necessary personnel, materials, equipment, facilities, and supervision to collect specimens for drug testing and to perform alcohol testing. Having procedures for the operation and oversight of the onsite or offsite collection facility would enhance consistency in program implementation, protect individuals subject to testing, and account for the flexibilities afforded in the types of biological specimens than may be collected under an FFD program subject to subpart M of part 26. Section 26.606(b)(4), when used with the PMRP described in § 26.603(d) and the proposed audit requirement in § 26.605(a), would help maintain FFD program effectiveness and prevent subversion attempts at facilities that may not be under the direct day-to-day oversight of FFD program personnel.

Proposed § 26.606(b)(5) would require licensees and other entities to have written procedures that address the fatigue management requirements in § 26.202(b), “Procedures,” and either § 26.205(d)(3) or (d)(7).

Proposed § 26.606(b)(6) would require licensees and other entities to have written procedures that provide measures to prevent subversion of drug and alcohol tests conducted onsite and offsite. This proposal was developed from § 26.27(c)(1).

Proposed § 26.607, “Drug and alcohol testing,” would establish drug and alcohol testing requirements for licensees and other entities implementing proposed § 26.604, at their discretion, and licensees and other entities implementing proposed § 26.605. Except for a few differences, proposed § 26.607 would be equivalent to current § 26.405, which requires licensees and other entities implementing an FFD program under subpart K of part 26 to have a drug and alcohol testing program that demonstrates compliance with the requirements in § 26.405(b) through (g). The differences are commensurate with the risk consequences presented by a part 53-licensed facility as compared to a part 50 or 52 nuclear power plant. These proposed requirements would improve flexibility in the conduct of

<sup>12</sup> The IMP must monitor the initial and continuing trustworthiness and reliability of individuals granted or retaining unescorted AA to a protected or vital area and implement defense-in-depth methodologies to minimize the potential for an insider to adversely affect, either directly or indirectly, the licensee’s capability to protect against radiological sabotage.

drug and alcohol testing while maintaining protections afforded to individuals subject to the FFD program.

Proposed § 26.607(a) would require licensees and other entities to obtain a split specimen for all drug tests using oral fluid or urine for all test conditions in § 26.607(b), (h) and (j). Neither current subpart K nor current subparts B or E of part 26 require a split specimen. However, the majority of the LWR fleet uses split specimens for drug testing and commercially available drug screening products use a split specimen technique. Since publication of the 2008 part 26 final rule, the HHS has issued guidelines for urine and oral fluid that require split specimens, and the draft proposed HHS Guidelines for hair requires split specimens, as well.

The required use of a split specimen process would protect the individual because, upon a donor-alleged discrepant or questionable test result, the donor may provide permission to test the split specimen (specimen B) in an effort to refute the laboratory test results for specimen A. The requirement also would enable the MRO to direct laboratory testing of specimen B if specimen A were invalid; though the NRC expects specimens becoming invalid at the laboratory to be a rare occurrence as testing would be conducted in HHS-certified laboratories with trained collectors. In the event that a specimen is determined to be invalid, then the occurrence would likely warrant further investigation by the MRO and laboratory to identify the cause. This protocol would be equivalent to the special analysis testing in current § 26.163(a)(2) for dilute specimens in that additional laboratory analysis is performed because of a questionable test result.

If a split specimen is tested by an HHS-certified laboratory, then the test result from specimen B must be used as part of the determination for an FFD policy violation as required by § 26.185(n), "Evaluating results from a second laboratory." However, this is not to say that the test results from specimen A should be discarded. Since the HHS-certified laboratory should report all test results from all specimens tested to the MRO, like the information described in § 26.169, "Reporting results," test result differences between specimens A and B can be used to inform the MRO as to what should be reported to the licensee or other entity to either facilitate medical or clinical assistance for the individual, inform an FFD-policy violation determination, or both.

The proposed § 26.607(a) requirement would also state that if the licensee or

other entity elects to use a POCTA device for screening during random testing or portal area monitoring (e.g., pre-access screening), a split specimen would not need to be taken. The reason for this exception would be that the requirements in § 26.607(h)(4) establish the process to be implemented when a screening test indicates a presumptive positive, adulterant, or a discrepant biological marker, if applicable. This process includes collecting and testing a specimen for analysis at an HHS-certified laboratory.

Proposed § 26.607(b) would require the licensee or other entity to subject individuals identified in § 26.202 to drug and alcohol testing under the five conditions listed in § 26.607(b)(1) through (5). Proposed § 26.607(b) would be equivalent to current § 26.405(c).

Proposed § 26.607(b)(1) would require pre-access testing similar to current § 26.405(c)(1), which requires testing before assignment to construct or direct the construction of safety- or security-related SSCs. Unlike current § 26.405(c)(1), the proposed requirement would not include the phrase, "construct or direct the construction of safety- or security-related SSCs," because, for licensees or other entities under part 53, the pre-access test condition applies to construction, operation, and decommissioning, if applicable, to help inform a licensee's or other entity's authorization determination. The proposal also would use "pre-access" instead of "pre-assignment," which is used in current § 26.405(c)(1).

A pre-access test would require the collection of an oral fluid or a urine specimen no more than 14 days before the individual is granted unescorted access. Although this change has roots in the 2008 part 26 final rule, which reduced the period within which pre-access testing must be performed from 60 days to 30 days or less, the 14-day proposal is based on three lessons learned from operating experience.

First, the 14-day period would be a large enough window of time to collect the specimen and evaluate test results because licensees or other entities typically receive laboratory test results within 5 business days of laboratory receipt of the biological specimen. At the same time, the 14-day period would be small enough to help ensure that the test results are representative of the individual's forensic toxicology before being granted authorization.

Second, the 14-day window would enable the licensee or other entity to conduct an unannounced pre-access drug and alcohol screening using a hair specimen or a POCTA. This would help

prevent an individual from attempting to subvert the drug and alcohol test by temporarily abstaining from drug or alcohol abuse or adulterating or substituting their specimen to obtain a non-positive test result.

Third, the NRC does not expect licensees and other entities licensed under part 53 to have the large and periodic influxes of individuals (either licensee employees or C/Vs) that LWRs have to support facility operation, maintenance, engineering design changes, or nuclear refueling. Therefore, these licensees or other entities would not be periodically challenged to in-take a large workforce within the proposed 14-day pre-access testing window.

Proposed § 26.607(b)(2) would require the licensee or other entity to conduct random drug and alcohol testing of all individuals subject to the FFD program. With one exception, this proposed requirement would be equivalent to current § 26.405(b). Section 26.405(b) gives licensees and other entities that implement an FFD program subject to subpart K of part 26 the option to impose random drug and alcohol testing. Proposed § 26.607(b)(2) would not offer that option because subpart M of part 26, unlike subpart K, would not allow a licensee or other entity to implement a fitness monitoring program under current § 26.406 instead of a random testing program. The principal reasons for not allowing this flexibility would be that no licensee or other entity has ever implemented a fitness monitoring program (*i.e.*, there is no operating or regulatory experience on which to judge the effectiveness of a fitness monitoring program) and the proposed subpart M framework already uses behavioral observation to help ensure FFD program effectiveness. Supplementing the proposed § 26.609 BOP with an additional observation technique (*i.e.*, the fitness monitoring program) would not result in a level of deterrence or detection equivalent to that which would be obtained through behavioral observation and random drug and alcohol testing.

Proposed § 26.607(b)(2)(i) through (v) would provide specific requirements for the conduct of a random testing program. These paragraphs would be equivalent to § 26.405(b)(1) through (4), although with a few differences. The similar provisions would be proposed in § 26.607(b)(2)(i), (b)(2)(iii), and (b)(2)(iv).

The differing provisions would include proposed § 26.607(b)(2)(ii), which would refer to an "FFD program procedure" instead of the reference to an "FFD program policy" in § 26.405(b)(2) because procedures

contain the instructions that implement FFD program requirements, but the FFD policy need not contain specific instructions. Section 26.607(b)(2)(ii) would also require individuals who are selected for random testing to report to the onsite collection site, as opposed to the collection site in § 26.405(b)(2) because alcohol metabolism necessitates a relatively timely alcohol test. This change is also proposed because the NRC expects that part 53 licensees and other entities may use a combination of onsite (for random, for-cause, and post-event testing) and offsite (for pre-access, post-event, and follow-up testing) collection facilities for drug and alcohol testing and may have to afford reasonable accommodation to certain individuals, which would add complexity in the licensee's or other entity's procedurally determined time period in which an individual must report to the collection facility.

Another difference from § 26.405(b) would be proposed § 26.607(b)(2)(v), which would establish the random testing rate for the population of individuals subject to testing. Subpart K of part 26 does not establish a random testing rate. The proposed requirement would be equivalent to current § 26.31(d)(2)(vii), which requires that the sampling process used to select individuals for random testing provides that the number of random tests performed annually is equal to at least 50 percent of the population that is subject to the FFD program. The NRC would revise that slightly for proposed § 26.607(b)(2)(v) to require a 50 percent random testing rate for the licensee employee population and a 50 percent random testing rate for the C/V population. The NRC proposes this change for two reasons.

First, although operating experience has demonstrated that § 26.31(d)(2)(vii) helps provide reasonable assurance that individuals are fit for duty and trustworthy and reliable through the detection and deterrence of substance abuse, this same operating experience demonstrates that, on many occasions, the C/V population has been tested at a rate lower than 50 percent, even though this population results in the majority of all FFD policy violations. This bias occurs because C/Vs are available for testing only during short periods of time or periodically throughout the year, whereas licensee employees are essentially always available for a test.

A second reason why the NRC is proposing a different 50 percent random testing protocol than in the current part 26 requirements is that the flexibilities afforded to part 53 licensees or other entities in subpart M of part 26 are not

afforded to licensees or other entities that must implement an FFD program under subparts A through I, N, and O of part 26. These flexibilities include enabling the use of a POCTA device to screen individuals during the random testing process and the use of offsite collection facilities for pre-access testing. The potential reduction in FFD program effectiveness caused by licensee or other entity implementation of these options would be offset by subpart M requirements that mitigate possible challenges to the FFD program, such as the 50 percent random testing rate for the licensee employee population and 50 percent random testing rate for the C/V population.

Proposed § 26.607(b)(3) would require for-cause testing equivalent to that used in current FFD programs implementing § 26.405(c)(2). The NRC would require for-cause testing, like random testing, to be conducted onsite to ensure that the test is conducted as soon as reasonably practicable. This is an important consideration when for-cause testing for alcohol or using oral fluid for drug screening or testing because human metabolism continually lowers the concentrations of the drugs, drug metabolites, and alcohol perhaps to concentrations lower than the initial or confirmatory testing cutoffs. Additionally, for facilities that are sited in geographically remote locations, an offsite collection facility might be too far away or not readily accessible.

Proposed § 26.607(b)(4) would require post-event testing in a manner equivalent to current § 26.405(c)(3) with a few adjustments. For part 53 licensees or other entities, the NRC proposes post-event testing under two conditions: events involving human errors that may have caused or contributed to the events (proposed § 26.607(b)(4)(i)), and events not involving human error that result in adverse health consequences or damage to any safety- or security-related SSC (proposed § 26.607(b)(4)(ii)). The word "significant" would not be used in § 26.607(b)(4)(ii)(A) to describe the "illness or personal injury" as used in § 26.405(c)(3)(i) because § 26.607(b)(4)(ii)(A) would describe which illnesses or injuries are covered. Proposed § 26.607(b)(4)(ii)(B), unlike § 26.405(c)(3)(ii), would not use the word "significant" to describe the damage to safety- or security-related SSCs because any damage to safety- or security-related SSCs would require testing within four hours of the event unless immediate medical intervention precludes the conduct of the test on the individual(s) who caused or contributed to the event. Proposed § 26.607(b)(4)(ii)(B) also would not use

the word "construction" as in § 26.405(c)(3)(ii) because § 26.607(b)(4) would apply to construction, operation, and decommissioning, if applicable.

Proposed § 26.607(b)(4)(i) would require the licensee or other entity to define in its procedures the terms "human error" and "event." These terms may take on various meanings and they are not defined in the current or proposed rule, so the licensee or other entity would be required to describe or define these terms to help ensure consistent implementation of subpart M of part 26 and that the post-event test condition would be consistently applied to all individuals subject to the FFD program. The § 26.405(c)(3)(i) requirement that "the event is recordable under the Department of Labor standards contained in 29 CFR 1904.7, and subsequent amendments thereto," would not be carried over to proposed § 26.607(b)(4). Instead, the NRC proposes to prescribe the post-event test conditions in § 26.607(b)(4), in part so they would not change unless the NRC amends the requirement.

Proposed § 26.607(b)(5) would require follow-up testing. This requirement would be equivalent to current § 26.405(c)(4), although the proposed § 26.607(b)(5) would further describe follow-up testing. The NRC proposes to describe follow-up testing as part of a series of tests for drugs, alcohol, or both, which are performed after an individual subject to part 26 has violated the FFD policy on substance use or abuse, or the sale, use, or possession of illegal drugs. Follow-up testing would be used to verify an individual's continued abstinence from substance abuse. The NRC would not include a reference to a follow-up plan as in § 26.405(c)(4) because the intent of a follow-up plan is to conduct a series of drug tests, alcohol tests, or both, to verify continuing abstinence from substance abuse. Nevertheless, individuals who violate an FFD policy on substance use or abuse, or the sale, use, or possession of illegal drugs, should have a follow-up plan that includes a definition of "abstinence" from the medical professional prescribing the plan.

Proposed § 26.607(c) would provide additional testing requirements. This proposed requirement would be equivalent to § 26.405(d) and would require implementation of select requirements from current subpart E of part 26. The proposed requirements would govern directly observed collections, shy bladder situations, special analysis testing, and alcohol testing. These requirements would be necessary to maintain FFD program

effectiveness equivalent to that currently implemented by the LWR fleet.

Proposed § 26.607(c)(1) would require validity testing and establish the minimum panel of drugs and drug metabolites to be tested. This panel would be the same as those in §§ 26.31(d)(1) and 26.405(d) because, based on operating experience from LWR FFD program implementation, this panel has been determined to contribute to a licensee or other entity satisfying the FFD performance objectives in § 26.23(a) through (d).

Proposed § 26.607(c)(1) would differ from § 26.405(d) because it would require testing of oral fluid and urine specimens for validity, including at least one biological marker (developed from an HHS Guidelines provision) and one adulterant (equivalent to current validity testing for urine specimens in part 26). Section 26.405(d) requires that urine specimens collected for drug testing be subject to validity testing. The addition of oral fluid validity testing is important because, just as there are publicly available kits to subvert a urine drug test, kits that may be used to subvert a drug test that uses oral fluid as a biological specimen are also readily available.

Proposed § 26.607(c)(2) would include requirements that already exist in the part 26 framework that provide protections for individuals subject to the FFD program and contribute to testing effectiveness when collecting and assessing a urine specimen. Specifically, current § 26.115, “Collecting a urine specimen under direct observation,” describes the exclusive grounds for performing a directly observed collection and the process to be followed to protect the privacy of the individual. Section 26.119, “Determining ‘shy’ bladder,” establishes the process to be followed when a donor is not able to produce a sufficient amount of urine for testing, and § 26.163(a)(2) requires special analysis testing when a specimen is dilute to help prevent a subversion attempt.

Proposed § 26.607(c)(3) would require implementation of all the current alcohol testing requirements in § 26.91, “Acceptable devices for conducting initial and confirmatory tests for alcohol and methods of use,” through § 26.103, “Determining a confirmed positive test result for alcohol.” Using the same alcohol testing framework for parts 50, 52, 70, and 53 licensees and other entities would provide for regulatory consistency, protections for individuals subject to the FFD program (e.g., the quality controls and verification applied to the EBT device), and FFD program

effectiveness (e.g., accuracy of test results). For alcohol testing, unlike drug testing, there is a preponderance of evidence that correlates blood alcohol concentrations to impairment and intoxication. Furthermore, FFD performance data has demonstrated that the time-dependent alcohol cutoffs in § 26.103 have increased the detection of individuals who are under the influence of alcohol. For these reasons, the current alcohol requirements in part 26 are proposed for FFD programs under subpart M.

Proposed § 26.607(c)(4) would establish additional testing requirements. This proposal would be equivalent to current § 26.405(f) for facilities licensed under part 53 for the conduct of drug testing. Unlike § 26.405(f), proposed § 26.607(c)(4) would not reference validity screening and initial drug and validity tests at licensee testing facilities as this would be required in proposed § 26.607(c)(1). Another minor difference between § 26.405(f) and proposed § 26.607(c)(4) would reflect the requirement in subpart M of part 26 to use an HHS-certified laboratory for all biological specimens collected and not just for urine specimens.

Consistent with § 26.405(f), proposed § 26.607(c)(4) would require the use of an HHS-certified laboratory for all test conditions listed in § 26.607(b), MRO-directed tests, and the testing of a split specimen. Further, HHS-certified laboratory test results using urine or oral fluid would be required for the issuance of an FFD policy violation and part 26-required sanction.

All drug testing would need to be performed at an HHS-certified laboratory to help ensure FFD program effectiveness and to protect the donor from a false positive test result and an unwarranted FFD policy violation. The donor would be protected because laboratory procedures for specimen accessioning, testing, custody and control, and evaluation of test results and the training and qualification of laboratory personnel are evaluated by HHS as part of the NLCP. This provides assurance that the drug testing results are accurate and attributed to the donor. Urine, oral fluid, and hair specimens may also be screened and tested for drugs and alcohol as described in § 26.607. Drug and alcohol screening results obtained from urine and oral fluid specimens collected and analyzed using a POCTA device and screening results obtained from a hair specimen or a portal monitor may only be used as potentially disqualifying information for a licensee’s or other entity’s authorization determination (*i.e.*, used

to assess the fitness, trustworthiness, and reliability of the individual). These screening results may not be used for the administration of an FFD policy violation and sanction, except as proposed §§ 26.607(i)(3) and 26.610 for subversions, as defined in § 26.5, of the drug and alcohol screening process.

There are three phrases or requirements in § 26.405(f) that the NRC does not propose to use in § 26.607(c)(4). The first is the phrase, “consistent with its standards and procedures for certification,” regarding the operation of an HHS-certified laboratory, because the laboratory would not be HHS-certified if it were not following “its standards and procedures for certification.” The second is the requirement that urine specimens that yield positive, adulterated, substituted, or invalid initial validity or drug test results must be subject to confirmatory testing by the HHS-certified laboratory, except for invalid specimens that cannot be tested. This requirement would not be used because, under subpart M of part 26, licensees or other entities would be required to use an HHS-certified laboratory. For a laboratory to be HHS-certified, it must follow the HHS Guidelines and include procedures that describe when a specimen cannot be tested. Lastly, the § 26.405(f) requirement that other specimens that yield positive initial drug test results must be subject to confirmatory testing by a laboratory that demonstrates compliance with stringent quality control requirements that are comparable to those required for certification by the HHS, would not be used because subpart M of part 26 would require the use of an HHS-certified laboratory.

Proposed § 26.607(c)(4) would require the licensee or other entity to contract with a primary and backup HHS-certified laboratory. This provision would help ensure that specimens are processed and tested to maintain FFD program effectiveness should the primary laboratory be unable to perform specimen testing. This would help maintain protections afforded to individuals subject to the FFD program (e.g., should the donor or MRO request testing of the split specimen, a different laboratory could be used). This requirement also would state that the primary and backup laboratories must have a different certifying scientist. Having a back-up HHS-certified laboratory and a different certifying scientist would benefit the program and donor because the drug testing instruments, technicians, and certifying scientist would be independent of the



primary laboratory testing and review process. The back-up HHS-certified laboratory may be of the same corporate entity as the primary laboratory.

Proposed § 26.607(c)(4) would also state that the laboratory would be subject to inspection or audit by the licensee or other entity and that records and documents must be provided and/or able to be photocopied and removed from the premises to support the inspection or audit. This requirement would be equivalent to current § 26.41(d) except that laboratories would not be able to limit the use and dissemination of documents copied or taken from the laboratory by a licensee or other entity. This is necessary to ensure the continuing effectiveness of FFD programs, because NLCP findings and audit results could adversely impact FFD program effectiveness. Pertinent information includes and should not be limited to NLCP-identified weaknesses (*e.g.*, custody and control, accessioning, instrumentation, procedures, training, supervision, review of test results, and resolution of previously identified corrective actions) that may impact the effectiveness of FFD programs.

Proposed § 26.607(d) would help protect the donor from mistakes made during the drug and alcohol testing processes and help ensure FFD program effectiveness. The rule would require the licensee or other entity to protect the individual's privacy and the integrity of the specimen and to implement quality controls to ensure that test results are valid and attributable to the correct individual. This requirement would be equivalent to the first sentence of current § 26.405(e), except that the word "stringent" was removed from the phrase "stringent quality controls," because the word "stringent" is not defined.

Proposed § 26.607(e) would describe the requirements for licensees and other entities that use offsite collection facilities. Consistent with current § 26.405(e), a licensee or other entity would be able to conduct specimen collections and alcohol testing at a local hospital or other facility. Unlike § 26.405(e), proposed § 26.607(e) would not restrict licensees and other entities to use hospitals and other facilities that meet the requirements in 49 CFR part 40, "Procedures for Transportation Workplace Drug and Alcohol Testing Programs," because subpart M of part 26 is intended to provide flexibilities beyond those in the current part 26 framework. Licensees and other entities may use these Department of Transportation requirements to inform their procedures under § 26.606(b)(1) as

long as the procedures do not conflict with the requirements in part 26 or the HHS Guidelines.

Proposed § 26.607(e) would also require licensees and other entities to audit offsite collection facilities before their use and biennially to confirm that the facility procedures are comparable to those described in subpart E of part 26 or the HHS Guidelines for urine and oral fluid. This proposed requirement is based on current § 26.41(a) and (b). The § 26.607(e) audit requirement would be a program effectiveness consideration because offsite collection facilities may not require vigilance of their collectors (*e.g.*, identification of subversion attempts), diligence in the protection of worker rights (*e.g.*, privacy and specimen custody and control), or procedural compliance.

The offsite facility used by a licensee or other entity under proposed § 26.607(e) would have to be licensed to conduct specimen collections and perform alcohol testing, and be audited, by the State or a State-designated entity. This requirement would help provide assurance of adequate collection facility performance and may help reduce the burden on the licensee or other entity and the collection facility. Crediting a State audit (or State licensure, oversight, or regulation) is established in §§ 26.4(i)(4) and (j), 26.91(e)(5), 26.153(f)(1), and 26.183(a).

Proposed § 26.607(f) would provide the requirements for initial drug testing. This provision would be equivalent to § 26.405(f) except to account for the alternative biological specimens that may be tested under subpart M of part 26. For the testing of all biological specimens, the licensee or other entity under part 53 would be required to use a device that employs an immunoassay screening technique, or an alternative technology that the licensee or other entity has incorporated into its FFD program through the § 26.603(e) change control process, that demonstrates compliance with the requirements of the U.S. Food and Drug Administration (FDA) for commercial distribution. Examples of alternative technologies include liquid or gas chromatography and mass spectrometry. Licensees and other entities would use the § 26.603(e) change control process to evaluate and document a change to their collection and analysis procedures to enable the use of a better or perhaps more cost-effective collection and/or testing technology. Another difference from § 26.405(f) would be changing the word "urine" in § 26.405(f) to "biological specimens" in § 26.607(f). Lastly, proposed § 26.607(f) would include the phrase "discrepant biological marker"

as a drug screening result that must be analyzed by an HHS-certified laboratory and evaluated by the MRO to help inform the MRO's determination of a subversion attempt.

Proposed § 26.607(g) would enable a part 53 licensee to use oral fluid as a biological specimen for testing. This requirement would be equivalent to § 26.31(d)(5), which enables the MRO to conduct drug and alcohol testing using alternative methods, and § 26.405, which does not preclude the use of oral fluid specimens for FFD programs that implement subpart K of part 26 requirements. In order to provide assurance that drug testing is effective and protects the worker, § 26.607(g) would require that the licensee's or other entity's procedures incorporate the HHS Guidelines or the requirements in part 26 for the conduct of urine or oral fluid testing.

The proposed § 26.607(g) requires that the oral fluid collection device must have received premarket approval from the FDA and must not expire before laboratory testing. Also, the drugs, drug metabolites, initial and confirmatory testing cutoffs, and biological markers, if applicable, must be those established by HHS for oral fluid drug testing and the alcohol cutoffs in part 26. If they are not established by HHS or the NRC for the paneled drugs and drug metabolites, then they would be determined and documented by a forensic toxicologist review. This forensic toxicologist review would help ensure that the device accurately tests for the drug, drug metabolite, biological markers, adulterants, and/or alcohol and that the results from the device are comparable to those established in the HHS Guidelines for oral fluid testing.

Proposed § 26.607(h)(1) and (2) would enable the use of a POCTA device during the random and pre-access testing processes. These requirements are adopted from § 26.97, "Collecting oral fluid specimens for alcohol and drug testing," and § 26.405(f), which does not preclude the use of oral fluid testing. To use a POCTA device for urine, oral fluid, or other biological indicators (breath, sweat, etc.), a forensic toxicology review would be required to ensure that the device is forensically effective. If the POCTA device is forensically effective, then the donor would be reasonably protected from a false positive test result, the licensee or other entity would be reasonably protected from false negative test results, and the FFD program would remain effective. For a POCTA device to be forensically effective, the forensic toxicologist would need to document an evaluation that the performance of the



POCTA device must be comparable to the requirements in § 26.161(b) for a urine specimen or the procedures in the HHS Guidelines for urine or oral fluid, as implemented by the licensee or other entity through its procedures.

The use of POCTA for oral fluid and urine specimens for the pre-access and random testing processes would be acceptable because individuals in the pre-access process would be subject to an oral fluid or urine specimen collection and possible drug screening using a hair specimen, which are both required to be sent to an HHS-certified laboratory. For random testing, the individual would have also been granted authorization under the AA and FFD requirements and have been subject to behavioral observation and physical protection screening (e.g., verification of identity, and screening for explosives and contraband).

Proposed § 26.607(h)(3) would require that procedures be developed that ensure the effectiveness of the POCTA collection process, assessment of the screening results, and prevention of subversion attempts. This requirement would be equivalent to current § 26.403(b)(1) and would help ensure protections afforded to individuals subject to the FFD program and program effectiveness. The subpart M of part 26 framework enables the use of POCTA for random screening of individuals for any part 53 facility, so the licensee or other entity should exercise due diligence and implement risk management strategies to ensure the efficacy of random screening and its contribution to an effective FFD program.

Proposed § 26.607(h)(4) would provide that an individual donor who screens positive (or whose specimen is invalid or indicates a discrepant biological marker or adulterant) is removed from all duties and responsibilities making the donor subject to subpart M of part 26. Under proposed § 26.607(h)(4)(i), the donor then would be immediately subject to a drug and alcohol test that provides quantified confirmatory test results from which an FFD policy violation may be issued. Similar to other requirements for specimen collections, except for biological specimens analyzed by a passive detection system, the licensee or other entity would be required to implement procedures that ensure that all specimens collected are uniquely assigned to the donor (*i.e.*, procedures that provide for custody and control of the specimen). If the individual shows signs of impairment during the POCTA process, proposed § 26.607(h)(4)(ii) would require the temporary removal of

the individual's authorization until the MRO reviews the laboratory test result(s), and interviews the individual, and a determination of fitness finds that authorization may be restored. Section 26.607(h)(4) is equivalent to § 26.77(b) and was informed by the requirements in §§ 26.419, 26.75(c) and (d), and 26.185(c).

Proposed § 26.607(i) would enable the collection of hair specimens for drug testing to supplement pre-access testing that uses urine or oral fluid specimens. Hair testing would be a new feature in the part 26 framework. The NRC proposes to permit the use of hair testing for only Schedule I or II drugs or their metabolites to inform a licensee's or other entity's determination whether the individual is trustworthy and reliable. For example, if an individual stated no prior use of illegal drugs or potentially addictive habits, a hair screening test could be performed during the pre-access process to ascertain the validity of the individual's statement. However, if the HHS-certified laboratory communicates a laboratory-confirmed positive test result, an FFD policy violation may not be administered. This laboratory information must be treated as potentially disqualifying FFD information, unless the individual subverts the screening process, in which case a permanent denial of authorization must be issued under proposed § 26.610. To provide assurance of testing effectiveness and protections afforded to individuals subject to the FFD program, proposed § 26.607(i) would require that an HHS-certified laboratory must be used to analyze the hair specimen, a forensic toxicologist must review the licensee's or other entity's hair screening process, the test kit must be cleared by the FDA, and hair screening must be conducted in accordance with the HHS Guidelines. The forensic toxicologist review would be necessary if the panel of drug or drug metabolites to be tested and their cutoffs are not established by HHS or the NRC for hair.

Proposed § 26.607(j) would allow the use of portal area screening for drugs, alcohol, or both. This provision would result in a substantial contribution to a licensee or other entity satisfying the § 26.23 performance objectives by helping ensure that 100 percent of all individuals who arrive at the NRC-licensed facility to perform or direct those duties and responsibilities or maintain those types of access making them subject to the FFD program are fit for duty and deterred from arriving onsite in a physiological condition that may be adverse to safety and security.

Additionally, screening could be conducted when an individual exits the NRC-licensed facility to provide assurance that substance abuse had not occurred on the site (see § 26.23(d)). The screening device could be electronically linked to temporarily prevent ingress or egress and could automatically inform licensee- or other entity-designated officials of the portal area alarm. The proposed requirement would enable the licensee or other entity to use innovative technologies to maintain FFD program effectiveness when their PMRP compels the licensee or other entity to implement mitigative strategies to maintain program effectiveness. The use of portal screening technologies may also represent cost savings because, for NRC-licensed facilities that have small staff sizes or are geographically remote, passive drug and alcohol screening technologies could be an innovative alternative to a random testing program, although the license or other entity would need to request and receive an exemption.

Proposed § 26.607(j) would also provide that if the portal area screening instrument detects a substance that exceeds the instrument's established setpoint, the individual would be tested with either a collection kit that must be analyzed by an HHS-certified laboratory or a POCTA. This situational screening would be equivalent to a for-cause test. The requirements would not allow an individual to be rescreened by the portal area screening instrument following an initial screening detection that exceeded an established setpoint in order to prevent a subversion attempt. Similar to other drug and alcohol testing technologies enabled for use by subpart M of part 26, a forensic toxicology review would be required before using passive screening technology to help ensure the effectiveness of the instrument by protecting against false positive or negative screening results, which would place an unwarranted burden on the individual, licensee, or other entity. These instruments and alcohol screening devices, already in the marketplace, may also be used to determine true identity to facilitate implementation of the FFD BOP, which may be very practicable at facilities that operate with small staff sizes.

Proposed § 26.607(k) would enable the use of a blood specimen for drug, alcohol, or other testing for certain medical conditions as determined by the licensee- or other entity-designated MRO. This requirement would be equivalent to current § 26.31(d)(5). The use of a licensee- or other entity-designated MRO and not one designated by a third party, such as an MRO

employed by an offsite specimen collection facility, is important because the MRO must be familiar with the subpart M of part 26 requirements. To help ensure testing effectiveness and protect the worker, the blood test would need to be conducted by a laboratory that demonstrates compliance with quality control requirements that are comparable to those required for certification by the HHS, such as a hospital or clinic certified by the State, Commonwealth, or territory.

Proposed § 26.607(l) would require licensee and other entities to use a Federal custody-and-control form (CCF) approved by the OMB for the collection and packaging of a hair, oral fluid, or urine specimen. This proposed requirement is based on the CCF documentation requirements in current subpart E of part 26 because subpart K of part 26 does not require the use of a CCF under § 26.117(e). Additionally, when using a POCTA device, the licensee or other entity would be required to implement a licensee- or other entity-approved and -maintained procedure that ensures the reliability of the tracking, handling, and storage of a specimen from the point of specimen collection to final disposition of the specimen and the reliability of an identification system to uniquely assign the specimen to the donor. Both requirements would help protect the worker by helping ensure chain of custody and by contributing to program effectiveness.

Proposed § 26.607(m) would establish requirements for the licensee- or other entity-designated MRO. Section 26.607(m)(1) would be equivalent to § 26.405(g), however, the word “designated” would be added to the first sentence to clarify that the MRO would be designated by the licensee or other entity, and not by a third party. As stated with regard to proposed § 26.607(k), this change would clarify that it is the licensee’s or other entity’s responsibility, through their designated MRO, to determine whether an individual is fit for duty and trustworthy and reliable. This would be consistent with the description of FFD program personnel in current § 26.31(b) and help provide FFD program effectiveness and protections to individuals subject to the FFD program. The paragraph was also modified from § 26.405(g) to address the determinations of FFD policy violations and fitness required by subpart H for a part 53 licensee or other entity that implements the FFD program described in § 26.605(b).

Proposed § 26.607(m)(2) would help ensure that MRO reviews are consistent

with those MRO reviews conducted at other NRC-licensed facilities subject to part 26 and that the MRO maintains knowledge of drug collection, testing processes and procedures, and evaluation of testing results.

The NRC also proposes that if an MRO performed the duties and responsibilities in §§ 26.185 and 26.187 for at least three continuous years in the last 10 years prior to being hired or contracted by the licensee or other entity, then the MRO would not need to repeat the initial training and examination requirements. The basis for 3 years is that the MRO would have experienced three annual cycles of evaluating drug and alcohol test results, contributed to the FFD annual report to the NRC, experienced a refueling or maintenance outage, understood the duties and responsibilities of individuals subject to the FFD program to make informed determinations of fitness, demonstrated a safety culture that helps ensure FFD program effectiveness, and been subject to NRC inspection. The basis for 10 years is the relatively long periods between significant changes to part 26 and the HHS Guidelines.

Proposed § 26.607(m)(3) would require that the MRO attend a medical- or clinical-based training session on a triennial basis. This proposal was developed from Section 13.1 of the HHS Guidelines for urine and oral fluid with two substantial differences: the HHS Guidelines state that “requalification training,” including an exam, must be conducted “at least every 5 years from initial certification,” whereas the proposed § 26.607(m)(3) would require a training session every three years. The proposed requirements are justified because changes in societal drug use or forensic toxicology could occur more frequently than every 5 years, which could compel MROs to attend training in areas of forensic toxicology, determinations of fitness, or other part 26 technical areas on a more frequent periodicity than every 5 years to improve their knowledge and expertise.

Proposed § 26.607(m)(4) would require the MRO to evaluate drug testing results by implementing the requirements in § 26.185 or the HHS Guidelines through the licensee’s or other entity’s procedures. This requirement would help ensure FFD program effectiveness and enhance consistency across the commercial nuclear industry for the evaluation of drug testing results. This also would help protect individuals because they would be subject to the same evaluation criteria. If § 26.185 provides insufficient information for an MRO to make a

determination on a drug testing result (including adulterant and discrepant biological markers), the guidance issued by a State agency in the state in which the NRC-licensed facility is located, Federal agency, or nationally recognized MRO training and certification organization may be used to inform an MRO determination. This provision would ensure that the MRO has the flexibility to inform their evaluation of the drug testing results and fitness determination, if necessary, considering the drug- and alcohol-related flexibilities afforded in subpart M of part 26.

The proposed requirement would also state that an MRO need not review a confirmed alcohol positive test result determined by an EBT device under § 26.607(c)(3)(vi) and (vii), which are equivalent to the current requirements in §§ 26.101 and 26.103, respectively. The results of an EBT device are precise and accurate enough to support the issuance of an FFD policy violation without an MRO review of an EBT test result if the instrument demonstrates compliance with the requirements in § 26.91. The NRC acknowledges that there are physiological conditions that may cause an abnormally high blood alcohol concentration, such as diabetes, acid reflux, gastroesophageal reflux disease, and perhaps certain diets (high protein and low carbohydrates). However, operating experience has not demonstrated a compelling need to require an MRO review of all EBT test results. For consistency, a licensee or other entity may elect to require its MRO to review all EBT test results when a donor communicates a testing concern or physiological condition. If the donor has a testing concern, the occurrence could be appealed under the proposed § 26.613. If the donor presents a physical condition to the MRO that may have caused an elevated EBT test result, the MRO may direct an alternative testing process (see § 26.607(m)(5)) should it be medically necessary.

Proposed § 26.607(m)(5) would require the licensee- or other entity-designated MRO to determine and approve the use of oral fluid or urine as an alternative biological specimen when the donor cannot provide a requested specimen for testing. This proposed requirement is equivalent to § 26.31(d)(5), which enables the use of an alternative specimen collection if a medical condition makes the collection of the biological specimen difficult. This determination and the retest must be completed as soon as reasonably practicable and documented to support recordkeeping, auditing, and NRC inspection.

Proposed § 26.607(m)(6) would require that the MRO review all specimens screened or tested associated with a drug-related FFD policy violation. This includes POCTA, split specimens, and all specimens taken to resolve a discrepant condition, such as a possible subversion attempt, impairment without a known cause, or a donor-requested or MRO-directed retest. To resolve a discrepant condition, the MRO is authorized to test a specimen for a biological marker, adulterants, or additional drugs. The broad scope of this MRO evaluation would be necessary because of the variety of different screening and testing methods that may have been associated with the FFD policy violation. All information learned from the conduct of part 26 drug and alcohol screening and testing should be used in the evaluation of an individual's trustworthiness and reliability, issuance of a sanction, and development of a follow-up treatment and testing plan, if administered.

Proposed § 26.607(n) is equivalent to current § 26.31(d)(6) and would establish limits on the screening and testing of biological specimens. This is a protection consideration afforded to individuals subject to the FFD program and was not provided in subpart K of part 26. This requirement states that specimens collected under NRC regulations may only be designated or approved for screening and testing as described in this part and may not be used to conduct any other analysis or test without the written permission of the donor. Analyses and tests that may not be conducted include, but are not limited to, deoxyribonucleic acid (*i.e.*, DNA) testing, serological typing, or any other medical or genetic test used for diagnostic or specimen identification purposes.

The NRC proposes to require that no biological specimens may be passively sampled and analyzed in a manner different than described in subpart M of part 26 to ensure workers are protected from non-consensual passive screening. The subpart M framework enables passive detection of drugs and alcohol, whereas passive detection is not afforded in subparts A through I, N, and O of part 26.

Proposed § 26.607(o) is equivalent to current §§ 26.31(b)(1)(iii)(A) and 26.89 and would require that all specimen collections be conducted by a licensee or other entity-designated and -trained individual. For subpart M of part 26, this would include onsite specimen collections, except a collection by a portal area screening instrument in § 26.607(j).

Proposed § 26.608 would require licensees and other entities to provide FFD program training to individuals subject to the FFD program. The proposed performance-based § 26.608 requirement was developed from the prescriptive training requirements in current § 26.29 and modeled on current § 50.120 and the proposed requirements in §§ 53.725 and 53.830 because there is no training requirement in subpart K of part 26.

Proposed § 26.608(a)(1) would require an FFD training program that includes the licensee's or other entity's FFD policies and procedures, including fatigue management, and the individuals' FFD program responsibilities. Individuals who collect specimens for testing or screening must also be trained in specimen collector duties and responsibilities, including, at a minimum, specimen collection, custody and control, identification and response to subversion attempts, and privacy. The fatigue management training must include the knowledge and abilities described in § 26.202(c). For individuals specified in § 26.4, a licensee or other entity of a commercial nuclear plant would be required to use a SAT as defined in proposed in § 53.725. These requirements are based on requirements in § 26.29(a)(2), (3), (9), and (10).

Proposed § 26.608(a)(2) would require training on the BOP. This requirement would be based on §§ 26.29(a)(8), (9), and (10) and 26.33. The proposal would require individuals to be trained in the detection of behaviors or conditions related to not only illegal drugs, as in the current § 26.33 BOP requirements, but also illicit drugs and substance abuse onsite and offsite. Also, in reference to impairment from fatigue or any cause if left unattended, the phrase in § 26.33, "may constitute a risk to public health and safety or the common defense and security," would be replaced in § 26.608(a)(2)(iii) with "could result in inattentiveness or human errors," because subpart M of part 26 is focused, in part, on ensuring individuals are fit for duty to safely and competently perform or direct the performance of assigned duties and responsibilities.

Proposed § 26.608(a)(2)(iv) focuses on training to inform individuals that they are responsible for their own conduct, as well as observing others. Specifically, individuals would be trained to recognize when they feel unable to safely and competently perform assigned duties and responsibilities or act in a trustworthy and reliable manner. The proposed training requirement and the proposed reporting

requirement in § 26.606(a)(5) are in the interest of safety and security because the individual is proactively announcing that assistance may be necessary. This would be consistent with the performance objectives in § 26.23(b) and (c) where certain behavior or stress conditions may be indicative of an individual not being fit for duty, trustworthy, and reliable.

Proposed § 26.608(a)(3) would help ensure that individuals subject to the FFD program understand that FFD policy violations would result in an FFD program sanction and that program information learned or generated by FFD program implementation would be used to aide licensee or other entity authorization determinations and be shared, as requested, with other licensees or other entities subject to parts 26, 53, and 73. This proposed requirement is equivalent to § 26.29(a)(1). Proposed § 26.608(a)(3) would be a protection measure afforded to individuals subject to the FFD program because they would understand that licensees and other entities subject to parts 26, 53, and 73 would be informed of, in part, an individual's character, reputation, and ability to follow policies, procedures, and instructions to safely and competently perform assigned duties and responsibilities in a trustworthy and reliable manner. Fitness-for-duty-related information would include drug and alcohol testing results (not quantitative testing values), issuance of any sanctions, FFD-determinations regarding trustworthiness and reliability, testing programs, treatment, and other remedial or corrective action.

Proposed § 26.608(b) would require individuals be trained and receive a trainee assessment before pre-access testing and that refresher training and trainee assessments be conducted periodically thereafter. These requirements would be equivalent to § 26.29(c)(1). However, § 26.608(b) was developed from the SAT-based training requirements in § 50.120 and training elements from the annual training requirements in § 26.29(c)(2). The term "systems approach to training" would have the meaning in proposed § 53.725(c). A trainee assessment would be the same as in currently required SAT-based training programs.

Proposed § 26.608(c) would require licensees and other entities to periodically evaluate their FFD training programs and revise them as appropriate. This training focus is not required by subpart K of part 26 or § 26.29 but is proposed to address the flexibilities afforded in subpart M of

part 26. This section would be equivalent to § 50.120(b)(3).

Proposed § 26.609 would require the implementation of a BOP. The proposed requirement would be equivalent to that in §§ 26.33 and 26.407, “Behavioral observation,” and would apply during construction, operation, and decommissioning, if applicable. Because subpart M of part 26 would apply during decommissioning through a licensee’s IMP, proposed § 26.609(a) and (b) were developed, in part, from proposed § 73.100(b)(9) and current §§ 73.55(b)(9) and 73.56(f) to help ensure consistency in the conduct of behavioral observation whether conducted for FFD or security purposes.

Under the FFD program, the purpose of the BOP would be to help ensure that individuals subject to the FFD program are fit for duty and trustworthy and reliable to perform or direct those duties and responsibilities and maintain those types of access that make the individual subject to the FFD program. This assurance is accomplished by requiring each individual subject to subpart M of part 26 to be subject to behavioral observation, and by requiring all individuals to perform behavioral observation of others and report FFD concerns to the licensee- or other entity-designated representative(s). The intent of the BOP requirement is not to require that all individuals be observed at all times by others; NRC-licensed operators, maintenance professionals, security officers, and others routinely perform solo operations periodically throughout the day. However, individuals must be subject to observation while they are performing or directing the performance of duties and responsibilities or maintaining the types of access making them subject to the FFD program. Observing behavior only at the beginning of a work shift is not sufficient to ascertain whether an individual is fit for duty, trustworthy, and reliable. Controlled substances may have a delayed effect between use (*e.g.*, ingestion) and the onset of physiological or psychological effects, and fatigue accumulates with time. Behavior must be continually observed throughout the work shift to detect any changes from baseline human performance characteristics, including mental or physical health and mannerisms, or any activities that may indicate that the individual is not trustworthy and reliable.

Proposed § 26.609(a) would differ from §§ 26.33 and 26.407 in that it would place the responsibility for performing behavioral observation on “all individuals subject to this subpart,” rather than only those “individuals

specified in § 26.4(f) [who] are constructing or directing the construction of safety- or security-related SSCs” in § 26.407 or “individuals who are trained under § 26.29 to detect behaviors” in § 26.33 to improve clarity.

Proposed § 26.609(b) would require all individuals subject to the FFD program to report to the licensee- or other entity-designated representative any onsite or offsite behaviors or activities by individuals subject to this part that may constitute an unreasonable risk to the safety or security of the NRC-licensed facility or SNM or may cause harm to others. The NRC proposes this description of reportable conduct because an individual’s activities (*e.g.*, use of illegal substances) and communications (*e.g.*, hate speech or threats of violence) offsite are a direct indication of the individual’s fitness, trustworthiness, and reliability and must be evaluated as to whether authorization should be granted or maintained. Proposed § 26.609(b) would include a description of this conduct instead of the § 26.33 undefined phrase, “FFD concerns,” to enhance the clarity of the requirement. This proposed BOP reporting requirement would include any information relating to character or reputation of the individual indicating that the individual cannot be trusted or relied upon to perform those duties and responsibilities or maintain access to NRC-licensed facilities, SNM, or sensitive information. This would better align with the proposed § 73.120 BOP requirement, which states that each person subject to behavioral observation must communicate to the licensee or applicant observed behaviors or activities of individuals that may constitute an unreasonable risk to the health and safety of the public and common defense and security. Proposed § 26.609(a) and (b) were written broadly to include offsite conduct that the reporting individual considers serious enough to call into question the character or reputation of the subject individual.

Proposed § 26.609(c) would require that licensees and other entities perform behavioral observation visually, in-person, and, when necessary, remotely by live video and audible streaming and capture. This requirement was developed from the security observation requirements in § 73.55(e)(7)(i)(B) and (C), (h)(2)(v), and (i)(2) and (i)(5)(ii). Conducting an in-person observation of another individual is the preferred method to ascertain whether the observed individual can safely and competently perform assigned duties

and responsibilities. When in-person observations are not feasible (*e.g.*, during solo operations), the proposed requirement would enable the use of video monitoring. This is addressed, for example, in proposed § 26.609(d) regarding NRC-licensed operator manipulation of reactor controls. Additionally, certain duties (such as maintenance activities performed by a single worker outside of a control room) may not present an opportunity for video monitoring; in these situations, behavioral observation should be conducted on a sampling basis (*i.e.*, a planned observation of the work activity) as outlined in a licensee’s or other entity’s FFD program.

In situations involving small staff sizes, facilities sited in geographically remote locations, or both, additional observers would enhance the effectiveness of a BOP. Technological developments in automated safety and security systems may enable licensees or other entities to reduce staff sizes to 10 to 40 percent of the staff size of an LWR facility licensed under part 50 or 52. Smaller staff sizes may translate into more solo operations, less teamwork, fewer peer checks, or infrequent management oversight of field activities, leading to fewer behavioral observations. Therefore, a licensee or other entity would have fewer opportunities to observe whether individuals are fit for duty. Enabling video and audible streaming and capture to enhance the BOP would be consistent with the security-related behavioral observation requirement in proposed § 73.120(c)(2)(ii), which would also enable video conferencing or other acceptable electronic means promoting face-to-face interaction for those individuals working remotely.

Proposed § 26.609(d) would require that licensees or other entities perform behavioral observation of NRC-licensed operators who manipulate the controls of any commercial nuclear plant licensed under part 53, remotely by live video and audible streaming capture for those part 53 facilities where individual task loading does not allow for the effective conduct of behavior observation in addition to assigned operational tasks. The purpose of this paragraph would be similar to that of proposed § 26.609(c), where the possibility of in-person observation is significantly diminished because of solo operations or because the facility may only require a minimum staff size onsite.

Proposed § 26.610 would be equivalent to § 26.409, “Sanctions,” and would require the licensee or other entity to establish sanctions for FFD

policy violations that, at a minimum, prohibit the individuals specified in § 26.4 from being assigned to perform or direct those duties and responsibilities or maintaining authorization making them subject to subpart M of part 26. To be consistent with § 26.75, “Sanctions,” the severity of the sanction as described in § 26.610 would escalate with the number of occurrences and severity of the FFD policy violation. The sanction would be long enough to help deter future FFD policy violations and facilitate counseling and treatment before the licensee reinstates the individual’s access to the facility. The NRC proposes this requirement because the 14-day denial described in § 26.75 may not allow sufficient time for counseling and treatment based on the particular FFD policy violation.

Equivalent to § 26.75(c), proposed § 26.610 would also require a minimum 5-year denial of access to the NRC-licensed facility for certain violations of the FFD policy within the protected area of a commercial nuclear plant and by an individual or individuals who are the operators of the conveyance to transport or use formula quantities of strategic SNM. Equivalent to § 26.75(b), proposed § 26.610 would require a permanent denial of authorization be issued for any subversion attempt.

Proposed § 26.611 would protect information collected from FFD program implementation and would be equivalent to current § 26.411, “Protection of information.” The protected information would include, but not be limited to, privacy and medical information. Section 26.611 would not include the § 26.411 requirement that FFD programs must maintain and use the personal information with the highest regard for individual privacy because such a requirement would be unnecessary in light of the proposed § 26.611(a) requirement that licensees and other entities must establish and maintain a system of files and procedures to prevent unauthorized disclosure.

Proposed § 26.611(b), although equivalent to § 26.411(b), would require licensees and other entities to have all individuals sign a consent to be subject to the FFD program before subjecting the individual to the FFD program (*e.g.*, before being subject to a pre-access test in § 26.607(b)(1), unlike § 26.411(b)). The purpose of this proposal would be to enhance protections afforded to individuals subject to the FFD program and their knowledge of, in part, why they are subject to drug and alcohol testing, behavioral observation, information collection, MRO reviews, and other FFD program elements. Like

the consent required by § 26.411(b), the consent would authorize disclosure of the collected information. Consent would not be needed for disclosures to the individuals and entities specified in § 26.37(b)(1) through (b)(6), (b)(8), and persons deciding matters under review in proposed § 26.613, “Appeals process.”

Proposed § 26.613 would be equivalent to § 26.413, “Review process.” The proposed title was changed to an appeal process to clarify that § 26.613 would be the process implemented when an individual elects to appeal a licensee or other entity determination that the individual had violated the FFD policy. The proposal would also require that the process include a schedule for the completion of the review of the determination that the individual had violated the FFD policy. The NRC proposes this requirement because operating experience demonstrates that workers may not be protected from a continuous review process that does not result in an outcome.

Proposed § 26.615 would require licensees and other entities to perform audits of the FFD program. The proposed section would be equivalent to § 26.415, “Audits.” Under proposed § 26.615(a), audits would be performed at a frequency that ensures the FFD program’s continuing effectiveness. This would be particularly important for FFD program elements that are not part of the FFD PMRP required by § 26.603(d). Corrective actions would be taken as soon as reasonably practicable to resolve any problems identified and preclude recurrence. Proposed § 26.615(b) would require the subject matter, scope, and frequency of audits be revised as necessary to improve or maintain program performance based on findings resulting from licensee or other entity implementation of its FFD PMRP. These requirements were developed from appendix B to part 50, “Quality Assurance Criteria for Nuclear Power Plants and Fuel Reprocessing Plants”; criterion X, “Inspection”; and criterion XVIII, “Audits.”

Proposed § 26.615(c) would be equivalent to § 26.415(b) and would enable licensees and other entities to conduct joint audits or accept audits of C/Vs so long as the audit addresses the relevant services of the C/Vs.

Proposed § 26.615(d) would be equivalent to § 26.415(c) by establishing requirements for the auditing of HHS-certified laboratories. Unlike § 26.415(c), the proposal would not contain a reference to the Department of Transportation drug and alcohol testing requirements. This would broaden the

regulatory flexibility afforded to a licensee or other entity in that they may use an offsite collection or testing facility that does not meet the Department of Transportation requirements.

Proposed § 26.615(d) would state that licensees and other entities need not audit an HHS-certified laboratory if the licensee’s or other entity’s panel of drugs and drug metabolites to be tested is equivalent to the panel by which the laboratory is certified by HHS or is subject to the standards and procedures for drug testing and evaluation used by the laboratory under the HHS Guidelines. The NRC would afford this flexibility because the NRC is aware that HHS desires to streamline changes in its guidelines to its panel of drugs and drug metabolites to be tested. Therefore, if a licensee or other entity elects to implement the HHS Guidelines in its procedures and maintains the minimum panel of drugs and drug metabolites to be tested as required by subpart M of part 26, a licensee or other entity may still use (and not audit) the HHS-certified laboratory because the § 26.603(e) change control process would maintain FFD program effectiveness.

To help ensure FFD program effectiveness, § 26.615(d) would also require that collection facility procedures are comparable to those required in subpart E of part 26, including a proposed requirement that the offsite facility’s specimen collection and testing procedures are audited on a biennial basis, which is also a protection consideration afforded to individuals subject to the FFD program. Conducting this audit on a biennial basis would be equivalent to that required in § 26.41(b) and would help ensure that the specimen collection process at the facility remains effective.

Proposed § 26.617 would establish recordkeeping and reporting requirements equivalent to those in current § 26.417. However, § 26.617 would require retention of records pertaining to administration of the FFD program and FFD performance data required by § 26.717 until license termination, which is based on current § 26.711(a) because § 26.417 does not provide for a retention period.

Proposed § 26.617(b)(1) would be identical to the reporting requirements in § 26.417(b)(1) regarding the licensee’s or other entity’s FFD program.

Proposed § 26.617(b)(2) would require the reporting of annual (*i.e.*, January through December) program performance information to the NRC before March 1 of the following year. This reporting would be equivalent to

the annual program performance requirement in § 26.417(b)(1), and the March 1 due date is based on the reporting deadline in § 26.717(e). Licensees and other entities would be required to report FFD performance information using new NRC Forms 893, “Single FFD Policy Violation Form,” and 894, “10 CFR part 26, subpart M, Annual Reporting Form for FFD Performance Information.”

Proposed § 26.617(c) would require that FFD-related information be shared within the commercial nuclear industry when requested to support authorization determinations. This requirement would help individuals seeking employment by another NRC-licensed facility subject to subpart C of part 26, complete their NRC-required sanctions and licensee-administered or -directed drug and/or alcohol abuse treatment plans before the restoration of authorization by a licensee or other entity. Information sharing may also enhance FFD program effectiveness because FFD-related lessons learned from, for example, substance testing, subversion attempts, and laboratory and MRO performance must be shared when requested.

Proposed § 26.619 would require licensees or other entities to establish a process to evaluate individuals when their fitness or trustworthiness and reliability are in question. Section 26.619 would be equivalent to § 26.419, “Suitability and fitness determinations,” but, unlike § 26.419, would apply during the construction and operation phases. Also, proposed § 26.619 would require that a suitability or fitness determination conducted for cause be conducted face-to-face. This proposed requirement is based on current § 26.189(c); however, unlike § 26.189(c), proposed § 26.619 would not prohibit augmenting determinations via electronic means of communication. Instead, § 26.619 would explicitly permit determinations to be performed via electronic means, so long as those determinations are supported by an appropriately trained individual who is present in-person with the individual being assessed.

In considering the current restriction on the use of electronic means of communication for determinations of fitness conducted for cause, the NRC finds that since publication of the 2008 part 26 final rule, there have been developments in using electronic means of communication (*i.e.*, “videoconferencing”) as an alternative to conducting face-to-face interactions. To address these considerations, the NRC contracted the Pacific Northwest National Laboratory (PNNL), DOE, to

study whether a medical and mental health assessment via electronic communication could be an acceptable alternative to an in-person, face-to-face assessment.<sup>13</sup> Based on this study, if electronic means were to be used to conduct a face-to-face assessment, an in-person element would still be integral to the assessment process. However, under certain circumstances, face-to-face determinations and assessments conducted as part of an FFD program for an entity licensed under part 53 (*i.e.*, those determinations and assessments performed in accordance with § 26.619, § 26.207, or § 26.211) may be augmented via electronic communications. Such remotely conducted determinations and assessments would be required to be conducted with someone who is present in-person with the individual being assessed and who is trained in accordance with the requirements of either § 26.29 and § 26.203(c) or § 26.608 and § 26.202(c). Permitting the use of electronic communications would help ensure FFD program effectiveness, especially in instances where the part 53 commercial nuclear plant is sited in a geographically remote location or when the facility has a small staff size.

#### *D. Proposed Changes to Part 26, Subpart N*

Proposed § 26.709 would make the recordkeeping and reporting requirements in subpart N of part 26 applicable to licensees and other entities of facilities licensed under part 53 that elect not to implement the requirements in subpart M of part 26 or elect to implement the requirements in § 26.605(b).

Proposed § 26.711(c) and (d) would be amended to make these requirements applicable to licensees or other entities described in § 26.3(f). Section 26.711(c) provides protection to individuals subject to part 26 by enabling an individual's right to review FFD-related information and correct any inaccurate or incomplete information. Section 26.711(d) requires, in part, that any FFD-related information shared with other licensees or other entities is correct and complete.

#### *E. Proposed Changes to Part 26, Subpart O*

The vast majority of the proposed changes to part 26 would be new or revised substantive provisions that would establish a regulatory obligation or prohibition or would be conforming edits to reflect the addition of part 53.

<sup>13</sup> PNNL, Technical Letter Report, “The Use of Electronic Communications to Perform Determinations of Fitness,” dated August 2017.

The only new provision that would not be substantive, such that violation of it would not result in a criminal penalty, would be proposed § 26.601. Therefore, the NRC proposes to add § 26.601 to the list of regulations in § 26.825(b) to which criminal sanctions do not apply.

#### *10 CFR Part 50*

##### *A. Section 50.160: Emergency Preparedness for Small Modular Reactors, Non-Light-Water Reactors, and Non-Power Production or Utilization Facilities*

This proposed rule would revise § 50.160(b)(3) and (c)(2) to make that section applicable to applicants and licensees under part 53. Section 50.160 provides an alternative to other part 50 emergency preparedness requirements focused on large light-water reactors to provide an optional emergency preparedness framework specifically for small modular reactors (SMRs) and other new technologies. These alternative emergency preparedness requirements adopt a performance-based, technology-inclusive, risk-informed, and consequence-oriented approach. Commercial nuclear reactor applicants complying with § 50.160 would be required to submit as part of the application the analysis used to determine whether the criteria in § 53.1109(g)(2)(i)(A) and (B) are met and, if they are met, the size of the plume exposure pathway emergency planning zone (EPZ). An EPZ bounds the area surrounding a facility within which detailed planning is needed to implement predetermined, prompt protective actions. The criterion in proposed § 53.1109(g)(2)(i)(A) is that public dose, as defined in § 20.1003, is projected to exceed 10 mSv (1 rem) TEDE over 96 hours from the release of radioactive materials from the facility considering accident likelihood and source term, timing of the accident sequence, and meteorology. The criterion in proposed § 53.1109(g)(2)(i)(B) is that predetermined, prompt protective measures are necessary. These are the same criteria that are in § 50.33(g)(2)(i)(A) and (B) and are used to assess the need for and size of an EPZ in applications under parts 50 and 52.

Applicants choosing to comply with § 50.160 must determine the radiological releases from the facility that are evaluated in the determination of the plume exposure pathway EPZ. Consistent with other Federal guidelines such as the Federal Emergency Management Agency “Radiological Emergency Preparedness Program Manual,” issued in 2023, and the

Environmental Protection Agency “PAG Manual: Protective Action Guides and Planning Guidance for Radiological Incidents,” issued in 2017, applicants should consider quantitative and qualitative information on the potential radiological releases that make up the spectrum of accidents used to develop the basis for the applicant’s site-specific EPZ. This information is derived from the licensing basis. The NRC plans to update the risk-informed approach in RG 1.242 for part 53 while maintaining its flexibility for using information already developed and available in licensing basis documents, including PRA results, deterministic dose quantities, accident timing, target set analyses, mitigation capabilities, and site-specific factors such as meteorology.

In its safety analysis report, the applicant would describe the LBEs relevant to the facility and would consider these LBEs as candidates for the spectrum of accidents used to develop the site-specific EPZ. The LBEs assessed include a wide range of events that are appropriate for considering in the facility’s emergency preparedness and response planning. In addition, § 50.160(b)(1)(iv)(A)(2) requires licensees to be capable of implementing their approved emergency response plan in conjunction with their safeguards contingency plan. Radiological sabotage events are typically factored into EPZ determinations by considering consequences to be bounded by LBEs and by crediting protection against the DBT in reducing the likelihood of a release.

The provisions in proposed § 53.860(a) provide an alternative to applicants and licensees by not requiring them to protect against the DBT of radiological sabotage in accordance with §§ 73.55 and 73.100 if they can demonstrate that the consequences from unmitigated radiological sabotage events are below the safety criteria in proposed § 53.210. The deployment of some commercial nuclear plants under part 53 may involve new scenarios where the source terms and consequences of sabotage-related events are not bounded by the consequences of the unlikely and very unlikely event sequences analyzed under subpart C. Accordingly, the NRC plans to develop guidance for part 53 applicants and licensees choosing to comply with the alternative emergency preparedness requirements in § 50.160 to address this new class of reactors. In Section VI of this document, the NRC is asking for stakeholder feedback on the clarity of the regulations and guidance for various scenarios that might arise in

implementing graded approaches for security and emergency planning for some commercial nuclear plant designs.

*B. Appendix B to Part 50: Quality Assurance Criteria for Nuclear Power Plants and Fuel Reprocessing Plants*

Appendix B to part 50 would be amended to make it applicable to applicants and licensees under part 53. This results in the need for some revisions to recognize differences in terminology between parts 50 and 53. Namely, the term “design bases,” which is defined in § 50.2, is not used in part 53. For this reason, text is added in both Section III, “Design Control,” and Section IV, “Procurement Document Control,” to refer to “functional design criteria, as defined in § 53.020,” as the part 53 equivalent of the term “design bases.”

*10 CFR Part 73*

*A. Section 73.100: Technology-Inclusive Requirements for Physical Protection of Licensed Activities at Commercial Nuclear Plants Against Radiological Sabotage*

Proposed § 73.100 would provide a performance-based regulatory framework for the design, implementation, and maintenance of a physical protection program and security organization for certain commercial nuclear plants licensed under part 53. The current § 73.55 physical security requirements for nuclear power reactors licensed under part 50 and part 52 use a combination of performance criteria (e.g., § 73.55(b)(1) through (3)) and numerous prescriptive requirements developed to achieve performance objectives (e.g., § 73.55(k)(5)(ii)). By contrast, in the proposed performance-based approach to physical security for part 53, performance objectives and requirements would be the primary bases for regulatory decision-making, giving the licensee the flexibility to determine how to demonstrate compliance with the established performance criteria for an effective physical protection program. This proposed physical protection program would provide an optional pathway for licensees that elect not to demonstrate compliance with the provisions in § 73.55 and do not satisfy the criterion as described in proposed § 53.860(a)(2). This proposed physical protection program would provide that activities involving SNM are not inimical to the common defense and security and do not constitute an unreasonable risk to the public health and safety.

Section 73.100(a) would require each part 53 licensee that elects to demonstrate compliance with this section rather than § 73.55 to implement the requirements therein through its physical security plan, training and qualification plan, safeguards contingency plan, and cybersecurity plan (referred to collectively hereafter as “security plans”) prior to initial fuel load into the reactor (or, for a fueled manufactured reactor, before initiating the physical removal of any one of the independent physical mechanisms to prevent criticality required under § 53.620(d)(1)). The security plans would need to identify, describe, and account for site-specific conditions that affect the licensee’s capability to satisfy the requirements of § 73.100. Based on experience from recent new reactor licensing reviews, the NRC recognizes that licensees may seek to receive unirradiated fuel onsite before carrying out the security requirements in § 73.100. However, these security requirements would have to be implemented at some point before reactor operation to address the increased risk arising from irradiated fuel onsite. This proposed rule would make clear that part 53 applicants and licensees using § 73.100 may bring unirradiated nuclear fuel onsite and protect it in accordance with the NRC’s requirements for physical protection of SNM of moderate and low strategic significance under § 73.67 until initial fuel load into the reactor (or, for a fueled manufactured reactor, until initiating the physical removal of any one of the independent physical mechanisms to prevent criticality required under § 53.620(d)(1)).

Section 73.100(b) would outline the general performance objective and design requirements of the licensee physical protection program. A licensee’s program would be required to provide protection against any deliberate act within the DBT of radiological sabotage, including spent fuel sabotage, which could directly or indirectly endanger the public health and safety by exposure to radiation. The physical protection program is supported by the AA program, cybersecurity program, and IMP to demonstrate compliance with the general performance objective of § 73.100(b).

Section 73.100(b)(2) was developed, in part, from § 73.55(b)(3). To satisfy the general performance objective of § 73.100(b)(1), the physical protection program would need to protect against the DBT of radiological sabotage. The existing fleet of LWR satisfies this objective by preventing significant core



damage and spent fuel sabotage. Some non-LWR reactor licensees' physical protection programs may be designed to prevent a significant release of radionuclides from any source. Therefore, the proposed performance objective would focus on radiological sabotage in general, rather than a specific focus on core damage or spent fuel sabotage, to be technology inclusive and allow for flexibility for different reactor technologies.

Under the proposed § 73.100(b)(2)(ii), licensees must provide defense in depth in achieving performance requirements through the integration of engineered systems, administrative controls, and management measures. This requirement would apply defense-in-depth concepts as part of the physical protection program to ensure the capability to demonstrate compliance with the performance objective of the proposed § 73.100(b)(1) is maintained in the changing threat environment. The defense-in-depth philosophy applies to measures against intentional acts as required by § 73.100(b), and the designs of physical security systems should employ defense in depth through systems diversity, independence, and separation under § 73.100(b)(2). The most common defense-in-depth measures apply concepts of redundancy, diversity, independence, and safety margin to ensure systems reliability and availability. The defense-in-depth philosophy applies to the design of a physical protection program, which integrates engineered controls and administrative controls, to provide protection against the DBT for radiological sabotage.

Section 73.100(b)(3) would require the physical protection program to be designed and implemented to achieve and maintain the reliability and availability of SSCs required for demonstrating compliance with specified performance requirements. These physical protection performance requirements were informed by § 73.55(b) and the Commission's Advanced Reactor Policy Statement.

The performance objective of protecting against the DBT of radiological sabotage is achieved by the design and implementation of the physical protection program, maintained at all times, with the following required performance capabilities proposed in the provisions in § 73.100(b)(3): intrusion detection, intrusion assessment, security communication, security response, protecting against land and waterborne vehicle bomb assaults, and access control portals. The physical protection program must maintain the reliability

and availability of SSCs relied upon for demonstrating compliance with the performance requirements. The terms "reliability and availability" are intended to describe defense in depth in a performance-based manner and would be critical elements for demonstrating compliance with the proposed requirement for protection against the DBT of radiological sabotage as described in the proposed § 73.100(b)(2).

The first element, "intrusion detection," would be provided through the use of detection equipment, patrols, access controls, and other program elements and would provide notification to the licensee that a potential threat is present and where the threat is located.

The second element, "intrusion assessment," would provide a mechanism through which the licensee would identify the nature of the threat detected. This would be accomplished through the use of video equipment, patrols, and other program elements that would provide the licensee with timely information about the threat for use in determining how to respond.

The third element, "security communication," would provide a mechanism through which the licensee would communicate the necessary information to the response force to ensure effectiveness of the physical protection program. This would be accomplished through the redundant, independent, and diverse design of physical security and/or plant SSCs relied on for onsite and offsite security communications. The continuity and integrity of communications should account for the DBT's ability to affect the reliability and availability of communications.

The fourth element, "security response," would provide a mechanism through which the licensee would be capable of timely security response to interdict and neutralize threats up to and including the DBT of radiological sabotage. The security response may include the use of onsite armed responders, law enforcement responders (local, State, or Federal), or other offsite armed responders (e.g., licensee proprietary or contract security personnel who are positioned offsite), or a combination thereof, as appropriate.<sup>14</sup>

<sup>14</sup> The NRC's security regulations for commercial nuclear power reactors have historically considered onsite armed responders to be the only acceptable method for interdicting and neutralizing threats up to and including the DBT of radiological sabotage. The proposed rule would permit advanced power reactor licensees to use any interdiction and neutralization method, which would be an extension of the Commission's position in SRM-

The licensee must provide protection against any element of the DBT, to include those that do not rise to the full capability of the DBT. Structures, systems, and components relied on to provide delay functions must be designed to provide for timely response to adversary attacks with adequate defense in depth. Delay would allow the licensee to take necessary actions to counter any attempt by the threat to advance towards the protected target or target set element. The overall response objective would be to place the threat in a condition from which the threat no longer has the potential for, or capability of, doing harm to the protected target.

The fifth element, "protecting against land and waterborne vehicle bomb assaults," would provide a mechanism through which the licensee would be capable of protecting the plant against the DBT vehicle bomb assault. The methods that are relied on to protect against a DBT land vehicle and waterborne vehicle bomb assault must be designed to protect the reactor building, structures containing safety or security related systems, and components from explosive effects.

The sixth element, "access control portals," would provide a mechanism through which the licensee would be capable of detecting and denying unauthorized access to persons and pass-through of contraband materials (e.g., weapons, incendiaries, explosives) to protected areas. Integrity of the access control system is maintained through licensee oversight and ensures that attempts to circumvent or bypass the established process will be detected and access denied.

The proposed performance requirements would permit the applicant or licensee to determine how to design the physical protection program to protect the plant against the DBT of radiological sabotage without

SECY-17-0100, "Security Baseline Inspection Program Assessment Results and Recommendations for Program Efficiencies," dated October 8, 2018, and SRM-SECY-20-0070, "Technical Evaluation of the Security Bounding Time Concept for Operating Nuclear Power Plants," dated June 6, 2024. Under the proposed rule, a licensee would retain the responsibility to detect, assess, interdict, and neutralize threats up to and including the DBT of radiological sabotage, but would be able to rely on law enforcement or other offsite armed responders as a method for fulfilling the required interdiction and neutralization capabilities. For licensees that choose to rely on law enforcement to fulfill these capabilities, the proposed rule would not create any NRC regulatory jurisdiction over, or requirements for, law enforcement. In SRM-SECY-23-0021, "Proposed Rule: Risk-Informed, Technology-Inclusive Regulatory Framework for Advanced Reactors (RIN 3150-AK31)," dated March 4, 2024, the Commission approved a similar approach to defend against radiological sabotage.

prescriptive requirements such as those currently found in § 73.55. DG-5076, “Guidance for Technology Inclusive Requirements for Physical Protection of Licensed Activities at Commercial Nuclear Plants,” has been developed by the NRC to describe one acceptable approach to demonstrate compliance with requirements proposed in § 73.100.

Section 73.100(b)(4) would require the licensee to identify target sets in accordance with § 73.55(f). For non-LWR and SMRs, target sets would be defined in DG-5071, “Target Set Identification and Development for Nuclear Power Plants,” as the minimum combination of equipment, operator actions, and/or structures that, if all are prevented from performing their intended safety function or prevented from being accomplished, barring extraordinary actions by plant operations, would likely result in a significant release of radionuclides from any source (e.g., a release to the environment exceeding that analyzed in the DBA licensing basis).

Section 73.100(b)(5) would require that each licensee perform a site-specific analysis for the purpose of identifying and analyzing site-specific conditions that affect the design of the onsite physical protection program.

Section 73.100(b)(6) would require licensees to implement a performance evaluation program, which would ensure that a licensee will periodically test and evaluate the effectiveness of the physical protection program to protect against the DBT. This program would ensure that licensees are able to demonstrate that the physical protection program satisfies the response requirements of § 73.100 and that the site’s protective strategy effectively protects against the DBT. Licensee performance evaluations would include methods to assess, test, and challenge the integration of the physical protection programs functions and demonstrate the effectiveness of security plans, licensee protective strategy, and implementing procedures in accordance with § 73.100(g).

Section 73.100(b)(7) would require licensees to implement an AA program in accordance with § 73.56. Section 73.100(b)(8) would require licensees to establish, maintain, and implement protection against a cyberattack based on either the proposed cybersecurity program described in § 73.110 or the program described in existing § 73.54.

Section 73.100(b)(9) would require an IMP that monitors the initial and continuing trustworthiness and reliability of individuals granted or retaining unescorted access or unescorted AA to a protected or vital

area. The IMP must also implement defense-in-depth methodologies to minimize the potential for an insider (active, passive, or both) to adversely affect the licensee’s capability to protect against radiological sabotage. Because no one element of the AA program, FFD program, cybersecurity program, or physical protection program, would, by itself, provide the level of protection against the insider necessary to demonstrate compliance with the performance objective of the proposed § 73.100(b), the effective integration of these programs is a necessary requirement to achieve defense in depth against the potential insider.

Section 73.100(b)(10) would require that the licensee have the capability to track, trend, correct, and prevent recurrence of failures and deficiencies in the implementation of the requirements of this section. Section 73.100(b)(11) would require the coordination of the security plans and associated procedures with other onsite plans to manage the safety and security interface during normal or emergency operations.

Section 73.100(c) was developed from § 73.55(c)(7), “Security implementing procedures,” and § 73.55(d), “Security organization,” and would outline the requirements for the composition, equipping, and training of the security organization. The purpose of the security organization is to effectively implement the physical protection program. Individuals assigned to perform physical protection or contingency response duties must be trained, equipped, and qualified to perform assigned duties and responsibilities.

Section 73.100(d) would establish a performance requirement for searches of personnel, vehicles, and materials for the protection against radiological sabotage. The requirement describes broad categories of material (explosives, firearms, incendiary devices, etc.) to be detected and prevented from entry into the protected area; specific items that will be prohibited would not be prescribed in the regulation but will be stated in the licensee security plans with detailed descriptions being identified in implementation procedures.

Section 73.100(e) would require a training and qualification program, described in the training and qualification plan, that ensures personnel are able to effectively perform their assigned security-related job duties. This high-level requirement would allow flexibility in how the licensee chooses to train its security personnel. One method for

accomplishing this requirement would be to provide a training and qualification program that would be equivalent to appendix B to part 73.

Section 73.100(f) would require periodic security reviews of the physical protection program to ensure effective implementation of the program by independent individuals. The evaluation process would provide a systematized approach for assessing the physical protection program as a basis for further development and improvement. Program reviews should be designed to ensure that the physical protection program maintains effectiveness and demonstrates compliance with NRC requirements. Section 73.100(f)(1) was developed from § 73.55(m) and would require review of each element of the physical protection program. Section 73.100(f)(2) would require licensees to perform self-assessments of physical protection program functions to ensure that the capability to detect, assess, interdict, and neutralize the DBT of radiological sabotage is maintained. Section 73.100(f)(3) would require an audit of the effectiveness of the physical protection program; security plans; implementing procedures; cybersecurity programs; management of the safety/security interface activities; the testing, maintenance, and calibration program; and response commitments by local, State, and Federal law enforcement authorities. Section 73.100(f)(4) would require that results and recommendations, management findings, and any actions taken be documented and maintained to be available for inspection by the NRC. These reviews are independent of the ongoing performance evaluations described in § 73.100(b)(6) and (g).

Section 73.100(g) would require that licensee performance evaluations, described in § 73.100(b)(6), include methods appropriate and necessary to assess, test, and challenge the integration of the physical protection program’s functions to protect against the DBT. The performance evaluations must also address the licensee’s measures to protect against cyberattacks, in accordance with the required cybersecurity plan, and engineered systems designed to protect against the DBT standalone ground vehicle bomb attack.

Section 73.100(h) would establish performance requirements for maintaining security SSCs relied on to perform security functions to protect against the DBT. It would require that corrective actions and compensatory measures be taken by a licensee in response to a degradation of security

equipment or failure of the equipment to perform its intended functions. The licensee would be required to maintain the SSCs described in its design and licensing basis to ensure that they are reliable and available.

Section 73.100(i) would establish requirements for the suspension of security measures in response to emergency and extraordinary conditions. The requirements of this paragraph, which were developed from § 73.55(p), would be intended to provide flexibility to a licensee for taking reasonable actions that depart from a security plan in an emergency when such actions are immediately needed to protect the public health and safety and no action consistent with license conditions and TS that can provide adequate or equivalent protection is immediately apparent in accordance with proposed § 53.740(h).

Section 73.100(j) would establish requirements regarding the inspection, retention and maintenance of records required to be kept by the NRC regulations, orders, or license conditions. These proposed requirements are developed from § 73.55(q).

#### *B. Section 73.110: Technology-Inclusive Requirements for Protection of Digital Computer and Communication Systems and Networks*

Section 53.860 would require that a licensee establish, implement, and maintain a cybersecurity program in accordance with § 73.54 or § 73.110. Section 73.110 would establish requirements for the development and maintenance of a cybersecurity program for commercial nuclear plants licensed under part 53. This proposed section would implement a graded approach to determine the level of cybersecurity protection required for digital computers, communication systems, and networks. The proposed new section is informed by: (1) the operating experience from power reactors and fuel cycle facilities; and (2) the existing § 73.54 framework, which addresses some of the basic issues for cybersecurity regardless of the type of reactor. Differences between the § 73.54 requirements and those proposed in § 73.110 are primarily based on the implementation of a consequence-based approach to cybersecurity that provides flexibility to accommodate the wide range of reactor technologies to be assessed by the NRC. A graded approach based on consequences is intended to account for the differing risk levels among reactor technologies. Specifically, the proposed new section would require licensees to demonstrate

protection against cyberattacks in a manner that is commensurate with the potential consequences from those attacks.

Under proposed § 73.110(a), licensees would need to ensure that digital computer and communications systems are adequately protected against a potential cyberattack that would result in: (1) a scenario where the cyberattack leads to offsite radiation doses that would endanger public health and safety (*i.e.*, the resulting consequence exceeds the reference dose values in § 53.210); or (2) a scenario where the cyberattack adversely impacts the physical security digital assets used by the licensee to prevent unauthorized removal of material or radiological sabotage. Security digital assets would include those used for nuclear MC&A.

The proposed § 73.110(b) would require licensees to protect the communication system and networks associated with the functions described in § 73.110(a)(1) and (a)(2) from cyberattacks. To accomplish this, the licensee would establish, implement, and maintain a cybersecurity program for protecting digital assets within the scope of § 73.110 that would make use of risk insights, including threat information, and would consider the resulting level of consequences of the threats. If the outcome of the assessment by the licensee under § 73.110(b)(1) revealed that a potential cyberattack would not compromise any digital assets that support safety and security functions, and thus would not result in the consequences listed in § 73.110(a) (*e.g.*, would not exceed the reference dose values), then only a narrow set of the cybersecurity program requirements in § 73.110(d) and (e) would apply. For example, the licensee would only need to develop a cybersecurity program that implements the requirements dealing with:

- Analyzing modifications of any asset before implementation to see if they demonstrate compliance with the potential consequences in § 73.110(a);
- Ensuring employees and contractors are aware of cybersecurity requirements and have some level of cybersecurity training;
- Evaluating and managing cybersecurity risks to the plant;
- Reviewing the cybersecurity plan for any required changes; and,
- Retaining records of the cybersecurity plan along with any plan changes.

Section 73.110(c) through (e) were developed from § 73.54(a)(2), and (c) through (h), respectively.

The proposed requirements would address the need for the licensee to

develop a cybersecurity program that implements a defense-in-depth protective strategy as required by proposed section § 73.110(d)(2). A defense-in-depth protective strategy for cybersecurity is represented by collections of complementary and redundant security controls that establish multiple layers of protection to safeguard critical digital assets. Under a defense-in-depth protective strategy, the failure of a single protective strategy or security control should not result in the compromise of safety and security functions.

#### *C. Section 73.120: Access Authorization Program for Commercial Nuclear Plants*

Section 73.120 would address AA for certain commercial nuclear plants licensed under part 53. The proposed language in § 73.120 would provide an alternate approach to the existing framework for AA under §§ 73.55, 73.56, and 73.57, commensurate with risk and consequences to public health and safety. It would be available to part 53 applicants and licensees who demonstrate in an analysis that the offsite consequences of a DBE satisfy the criterion defined in § 53.860(a)(2)(i) (*i.e.*, would not exceed the offsite dose values in § 53.210(b)). The proposed requirements in § 73.120 would be similar to the existing AA program elements for those NRC licensed facilities issued additional security measures (ASMs) orders and for materials licensees under § 37.21. Applicants not satisfying the criterion would need to establish, implement, and maintain a full AA program, including an IMP, in accordance with § 73.56.

Proposed § 73.120(a) would be based on an applicant satisfying the eligibility criterion in § 53.860(a)(2)(i). Section 73.120(b) would identify the categories of individuals who would be subject to an AA program in accordance with this section. The applicability statement in § 73.120(b)(1)(i) would encompass individuals whom the licensee intends to grant unescorted access to the facilities' most sensitive areas, consistent with § 73.56(b)(1)(i) for power reactors and the ASM orders and license conditions issued to any NRC licensed facility or material licensee. Sections 73.120(b)(1)(ii) through (iv) would be consistent with § 73.56(b)(1)(ii) through (iv), respectively. The program would include individuals who may be onsite or offsite (*e.g.*, remote operators or information technology staff) and have virtual access to important plant operational and communication systems based upon assigned duties and

responsibilities. An individual who has remote access to plant equipment and communication systems may have trusted privileges greater than the personnel at the plant site. Section 73.120(b)(1)(iii) would state that offsite law enforcement personnel on official duty would not be subject to the licensee AA program.

Section 73.120(c) would provide general performance objectives and requirements largely consistent with the AA program requirements for nuclear power reactors under § 73.56 and would provide licensees and applicants the flexibility in establishing their AA program to demonstrate compliance with various performance objectives.

Section 73.120(c)(1) would include background investigation requirements consistent with § 37.25, as well as ASMs and license conditions that are applied to non-power reactor licensees. Background investigations include important elements to establish the trustworthiness and reliability of an individual, such that they do not constitute an unreasonable risk to public health and safety or the common defense and security. These include the following: (1) personal history disclosure, (2) verification of true identity, (3) employment history evaluation, (4) unemployment/military service/education, (5) credit history evaluation, (6) character and reputation evaluation, and (7) Federal Bureau of Investigation criminal history record check.

Section § 73.120(c)(2) would establish behavioral observation requirements, which are an awareness initiative for recognizing behaviors adverse to the safe operation and security of the facility through observing the behavior of others in the workplace and reporting aberrant behavior or changes in behavior that might reflect negatively on an individual's trustworthiness or reliability. Maintaining behavioral observation would assist and/or improve worker safety and reduce the risk of an insider threat. This proposed requirement in § 73.120(c)(2) would be a scaled version of the full BOP required under § 73.56(f).

Section § 73.120(c)(2) would provide licensees greater flexibility to implement behavioral observation options for individuals granted unescorted access to the commercial nuclear plant's protected area. Such options on reporting questionable behavior may include a program similar to the Department of Homeland Security's program, "If you see something, say something," or to a corporate behavioral awareness program. Commensurate with the

potential lower safety and security risks of a commercial nuclear plant that meets the criterion in § 53.860(a)(2)(i), § 73.120(c)(2) would not require the establishment of a comprehensive training program for behavioral observation (*i.e.*, initial and refresher training including knowledge checks) as required for power reactors under § 73.56 and part 26. Under § 73.120(c)(2)(ii), behavioral observation would be able to be performed in-person or remotely by video, and identified behavior of concern would need to be reported to plant supervision. The remote access alternative to face-to-face interactions provides substantial flexibility for licensees and applicants. Any video conferencing or other acceptable electronic means promoting face-to-face interaction for those individuals working remotely would demonstrate compliance with this regulation.

Section 73.120(c)(3) captures and maintains the self-reporting of legal actions as an essential performance element to enhance the licensee's behavioral observation initiative similar to the current requirements under § 73.56(g), assuring that personnel who are granted and who maintain unescorted access are trustworthy and reliable.

Section 73.120(c)(4) would provide a scalable approach for granting and maintaining unescorted access. One component not included from § 73.56 is the need for a psychological assessment and reassessment under § 73.56(e) for granting unescorted access and § 73.56(i)(v)(B) for individuals who perform one or more of the job functions described in § 73.120(b)(1)(ii) for maintaining unescorted access. Moreover, the requirement would permit criminal history updates to be completed within 10 years of the last review, compared to the three- or five-year reinvestigation periodicity for personnel at an operating commercial nuclear plant. In addition, no credit check re-evaluation would be required for these individuals.

The continued need to maintain unescorted access would be evaluated on an annual basis by the reviewing official. Guidance in DG-5074, "Access Authorization Program for Commercial Nuclear Plants," would specify that this evaluation should be based on a compilation of personnel interactions as described in the licensee's or applicant's policy and procedures for behavioral observation and the maintenance of an approved AA list.

Section 73.120(c)(5) would require licensees and applicants to determine when a person no longer requires the

need for unescorted access or no longer satisfies the AA requirement found within this section. Guidance in DG-5074 would further explain that licensees have the flexibility to terminate unescorted access to specific areas of the site if individuals lack the continued need for that access to perform their duties and responsibilities.

Section 73.120(c)(6) would be consistent with the purpose of § 37.23(e) and would include the individual's right to correct and complete information as required under § 37.23(g). The section would include a requirement for designating a reviewing official. The language would provide clarity regarding the roles and responsibility of a reviewing official, who would be the only individual authorized to make unescorted access determinations.

Section 73.120(c)(7) would align with the corresponding requirements under § 37.23(f), and § 73.120(c)(8) would align with the corresponding requirements under § 37.31. These requirements would encompass the roles and responsibilities for licensees, applicants, and if applicable, the contractor/vendors to establish, implement, and maintain a system of files and records to ensure personal information is not disclosed to unauthorized persons.

Section 73.120(c)(9) would align with the requirements of § 37.33. Section 73.120(c)(10) would require licensees, applicants, and contractors or vendors to maintain the records that are required by the regulations in this section and retain them for a period of 3 years after the record is superseded or no longer needed. The record retention period of three years would be consistent with § 37.23(h), contrasting with the five-year retention period under § 73.56(o). Records maintained in any database(s) would need to be available for NRC review, consistent with the requirements found under § 73.56(o)(6)(ii).

## VI. Specific Requests for Comments

The NRC is seeking advice and recommendations from the public on this proposed rule. We are particularly interested in comments and supporting rationale from the public on the following:

### *Part 26—Fitness for Duty Program*

1. The proposed rule under § 26.603(c) would enable a licensee or other entity to implement an FFD program under proposed § 26.604, "FFD program requirements for facilities that satisfy the § 26.603(c) criterion," if the

licensee or other entity performs a site-specific analysis to demonstrate that the facility and its operation satisfy the criterion in § 53.860(a)(2).

Should the NRC consider replacing its proposed § 26.603(c) criterion referencing § 53.860(a)(2) with an alternative requirement that if the commercial nuclear plant is of the class described in § 53.800, “Facility licensees for self-reliant-mitigation facilities,” and either § 53.800(a)(1) or (2) is satisfied, then drug and alcohol testing would not be required? This proposal would align the § 26.603(c) criterion with that proposed in the NRC-licensed operator regulatory framework of part 53. Please provide your considerations and rationale for your recommendation.

Should the NRC also consider making a conforming change to the proposed § 73.120 criterion used for the AA program? Please provide your considerations and rationale for your recommendation.

*Part 26—Technology-Inclusive Approaches to Fatigue Management Requirements Applicable to Unit Outages*

In establishing the outage minimum days off requirement of § 26.205(d)(4), the NRC’s objective was to ensure that individuals performing the duties described in § 26.4(a)(1) through (a)(4) have sufficient periodic long-duration breaks to prevent cumulative fatigue from degrading their ability to safely and competently perform their duties. In addition to the science of fatigue management, the NRC considered several factors in establishing the existing requirements. These additional factors were practical and safety considerations associated with the management of refueling outages for large LWRs, including the following: (1) the typical duration and frequency of outages; (2) the availability of contract personnel to perform the work; (3) the risk presented by the outage work while the reactor is shut down; and (4) the controls applied to the work that may limit the potential for latent errors to challenge reactor safety when the reactor is returned to power. The details of such considerations may differ for new reactor technologies or designs. Such considerations may not be relevant for some reactor designs (e.g., reactors capable of on-line refueling) and there may be additional, more pertinent factors to consider for other designs.

The NRC is seeking stakeholder input on whether alternative fatigue management requirements applicable to outages should be adopted to support technology-inclusive approaches that

would be appropriate to support the licensing and regulation of future commercial nuclear plants. Please provide your considerations and rationale for your recommendation.

*Part 26—Draft Regulatory Guidance Approach for Fatigue Management*

In support of this proposed rule, the NRC has issued DG–5078, “Fatigue Management for Nuclear Power Plant Personnel at Commercial Nuclear Plants Licensed Under 10 CFR part 53.” This DG describes methods the NRC staff considers acceptable for addressing certain aspects of FFD programs at commercial nuclear facilities licensed under part 53.

The NRC staff also intends to eventually transition this draft guide into an update to RG 5.73, “Fatigue Management for Nuclear Power Plant Personnel,” or the development of a new RG. At this point, NRC staff is considering four options for future RG development:

- *Option 1: Amend the existing RG.* The NRC may develop an updated version of RG 5.73 that continues to endorse (with clarifications, additions, and exceptions) the guidance contained in NEI 06–11, “Managing Personnel Fatigue at Nuclear Power Reactor Sites,” Revision 1, and incorporates the topics discussed within DG–5078 as new NRC staff positions in section C of RG 5.73.

- *Option 2: Issue a new RG specific to part 53 licensees.* The NRC may develop an entirely new RG applicable specifically to facilities licensed under part 53. This new RG would capture the guidance contained in DG–5078 and incorporate existing guidance (e.g., selected guidance in RG 5.73 and NEI 06–11) that is considered to be technology inclusive in nature. The existing guidance (i.e., RG 5.73) would remain in place as the guidance for facilities licensed under parts 50 and 52.

- *Option 3: Review and potentially endorse new or revised industry-developed guidance.* The NRC may engage with the industry regarding a potential update to industry guidance document NEI 06–11 or the development of new, separate industry-developed guidance specific to facilities licensed under part 53. The NRC would then review the new or revised industry-developed guidance within the NRC’s RG process, which includes opportunities for public participation. New or revised industry-developed guidance could incorporate DG–5078 or propose alternatives for the NRC to consider.

- *Option 4: Develop a comprehensive revision of the existing RG.* The NRC may develop a more comprehensive

revision of RG 5.73 that would explicitly detail all NRC positions reflected in the existing RG (including those endorsed positions currently contained in NEI 06–11, Revision 1), along with the guidance of DG–5078. Such a revision would thereby be a “stand-alone” document, without reference to or explicit endorsement of separate, industry-developed guidance.

The NRC is seeking stakeholder input regarding which of the four options listed above would be optimal (or whether there are other options that the NRC should consider). Please provide your considerations and rationale for your recommendation.

*Part 53—Overall Organization*

Part 53 is structured as one framework with subparts providing technical, licensing, and administrative requirements for the various stages of the life cycle of a commercial nuclear plant. The organization of part 53 in this manner puts a complete set of requirements for each stage of the life cycle in a separate subpart with additional subparts for licensing and administrative requirements.

The NRC is seeking comment on the proposed organization of the requirements in part 53 and possible improvements to how specific requirements (e.g., examples of which specific sections) could be consolidated or otherwise reorganized to make the rule clearer or more concise.

There are numerous references in proposed part 53 to other NRC regulations. Examples of such references include those in proposed § 53.610 to NRC regulations related to radiation protection (part 20), FFD (part 26), physical security (part 73), and MC&A (10 CFR part 74, “Material Control and Accounting of Special Nuclear Material”) for facilities receiving byproduct or SNMs.

The NRC is seeking comment on whether such references to other regulations in various sections in the proposed part 53 provide benefits to applicants and licensees, or to other stakeholders seeking to understand the regulatory framework under part 53, or whether such references could be removed to reduce the length of part 53.

*Part 53, Subpart B—Comprehensive Risk Metrics*

The NRC is proposing to require the use of comprehensive risk metrics and associated risk performance objectives as one of several performance standards in part 53. Comprehensive risk metrics could include a risk metric or set of risk metrics that approximate the total overall risk from the facility to the

extent practicable. Associated risk performance objectives are preestablished values indicative of the comprehensive risk metrics that are used during risk-informed decision-making to gauge plant safety. Specifically, comprehensive risk metrics and associated risk performance objectives would provide one element of the safety criteria for LBEs other than DBAs in the proposed § 53.220. Comprehensive risk metrics, in the form of the IEFr and the ILCFR, and associated risk performance objectives, in the form of the QHOs of  $5 \times 10^{-7}$  per year and  $2 \times 10^{-6}$  per year, respectively, were similarly used in the LMP methodology to ensure that other evaluation criteria were conservatively defined and as a tool for focusing attention on matters important to managing the risks posed by nuclear power plants. The use of such comprehensive risk metrics and associated risk performance objectives in an integrated risk-informed decision-making process is similar to that used in RG 1.174, "An Approach for Using Probabilistic Risk Assessment in Risk-Informed Decisions on Plant-Specific Changes to the Licensing Basis," Revision 3.

The NRC is seeking comment on the use of comprehensive risk metrics and associated risk performance objectives in part 53 as one of several performance standards. The IEFr and ILCFR and the QHOs represent comprehensive risk metrics and associated risk performance objectives that the NRC has used for decades in a variety of capacities. What other performance standards could be used to address the comprehensive risks posed by proposed commercial nuclear plants? Please provide your considerations and rationale for your recommendation.

If an applicant proposes a novel approach to comprehensive plant risk and the NRC approves the approach, should the resulting NRC-approved comprehensive plant risk metrics and associated risk performance objectives be codified or otherwise memorialized over time and, if so, how?

#### *Part 53, Subpart B—Defense in Depth*

Proposed § 53.250 would establish requirements based on the longstanding NRC philosophy of providing defense in depth to address uncertainties concerning the design, operation, and performance of commercial nuclear plants during LBEs.

The NRC is seeking comment on the inclusion of the proposed requirements to assess and provide defense in depth. The NRC is also seeking comment on whether to include specific provisions

in § 53.250 and subpart B to more explicitly address the possible role of inherent characteristics of some SSCs in preventing or mitigating unplanned events. The proposed § 53.250 is worded to preclude relying on a single engineered design feature to address the range of LBEs other than DBAs, which could possibly allow crediting inherent characteristics without further lines of defense. How could possible inherent characteristics of SSCs be considered in the proposed requirements in § 53.250 or in any alternative requirements for defense in depth provided in response to this item? Please provide your considerations and rationale for your recommendation.

#### *Part 53, Subpart C—Probabilistic Risk Assessment*

Current consensus PRA standards provide processes for appropriately defining the scope of a PRA and determining applicability of supporting requirements to suit the specific needs of a given applicant under proposed part 53. In addition to assessing other aspects of PRA acceptability such as PRA peer reviews, NRC determinations of the acceptability of such PRAs would assess the appropriateness of the applicant-defined scope as part of determining the applicability of a consensus PRA standard supporting an application. This approach is consistent with the current state of practice and offers appropriate flexibility for PRAs to be developed and assessed based on the application they are used to support, which includes consideration of how PRA results and insights are relied upon, together with factors such as safety margin, simplicity of design, and treatment of uncertainty.

The NRC is seeking comment on what additional guidance, if any, is needed regarding PRA acceptability for Part 53 applicants and licensees.

#### *Part 53, Subparts C and D—Earthquake Engineering*

Proposed § 53.480 would establish requirements related to seismic design considerations. This proposed section is intended to provide a clear connection between siting activities and seismic design activities and to support various approaches to presenting seismic hazards and addressing those hazards in designs. The proposed requirements are intended to provide sufficient flexibility to allow approaches like those currently in parts 50 and 100 or approaches that might be endorsed by the NRC in the future that could incorporate more risk insights from PRAs.

The NRC is seeking comment on whether the proposed requirements for

earthquake engineering provide appropriate flexibility in addressing seismic risks while also ensuring that the regulations continue to adequately address seismic hazards. Please provide your considerations and rationale for your recommendation.

#### *Part 53, Subpart E—Construction and Manufacturing*

1. Proposed § 53.610(b)(1)(iii) would require procedures that describe how construction will be controlled so as not to impact other features important to the design (e.g., dewatering, slope stability, backfill, compaction, and seepage).

The NRC is seeking comment on whether such specific requirements are useful or whether these requirements could be met through other requirements proposed in part 53 or already present in other relevant regulations (e.g., quality assurance requirements in appendix B to part 50).

#### *Part 53, Subparts E and H—Manufacturing Licenses*

1. The proposed requirements governing manufacturing are set forth in subpart E, and the proposed requirements governing the licensing processes are contained in subpart H. Some of the proposed requirements, including provisions related to the loading of unirradiated fuel into a manufactured reactor, are intended to cover a factory-fabrication model that has been suggested for some micro-reactor designs. However, as written, the proposed provisions are not limited to any size or type of reactor.

The NRC is seeking comment on whether the proposed regulations are sufficient to govern various scenarios for the possible manufacturing and deployment of manufactured reactors.

If a comment indicates that the proposed regulations are not sufficient, please describe the reasons why, including, if applicable, any plausible scenario for which the commenter believes the proposed regulations are not sufficient.

2. The proposed regulations in subpart H allow holders of or applicants for a COL to reference an ML but do not include such a provision for the holder of or applicant for a CP or OL. This proposed change from the current relationship between subparts in part 52 and the part 50 licensing process was made to simplify the provisions in the proposed part 53 for licensing and deploying manufactured reactors.

The NRC seeks comment on whether part 53 should include provisions for an applicant for or a holder of a CP or an OL to reference an ML and, if so, how this should be done.

3. Proposed § 53.1295 states that the holder of an ML could not begin manufacture of a manufactured reactor less than 6 months before the expiration of the license. This limitation is similar to the current restriction in § 52.177, which states that the manufacture of a reactor cannot begin less than 3 years before the expiration of the license. The restriction was revised from 3 years in part 52 to 6 months in the proposed part 53 in recognition of the likely use of MLs for a factory-fabrication model for micro-reactors.

The NRC seeks comment on whether it is necessary or appropriate to revise the 3-year restriction in part 52 on when manufacturing activities could begin in relation to license expiration and, if so, what that restriction should be.

4. Proposed § 53.1288 provides the finality provisions for MLs and includes, as does existing § 52.171, limitations on the NRC's imposition of new requirements on either the design or the requirements for the manufacture of a manufactured reactor. No MLs have been issued under part 52 and there is no practical experience with the proposed finality sections. While the implications of the finality provisions related to the design of a manufactured reactor can reasonably be inferred from experience with DCs and COLs, there is no experience or available guidance regarding finality for "requirements for the manufacture of the manufactured reactor."

The NRC is seeking comment on the proposed finality provisions for MLs and specifically if and how finality for manufacturing processes might be requested and used.

5. The NRC is seeking comment on the proposed regulations for the loading of fresh (unirradiated) fuel into a manufactured reactor for subsequent transport to a site for which the Commission has issued a COL that authorizes construction and operation of a commercial nuclear plant using the manufactured reactor. The proposed regulation includes provisions for loading of fuel into manufactured reactors at a manufacturing facility prior to transporting the fueled reactor to its deployment site, as suggested by some stakeholders. The NRC has historically viewed reactor operation as including fuel load, and existing NRC regulations reflect this view. While the Act authorizes the NRC to issue licenses to manufacture production or utilization facilities, it does not contain specific provisions on fueling or operating facilities licensed under an ML, and existing ML regulations under part 52 do not include provisions for fuel load.

The proposed rule addresses this matter by allowing an applicant to combine an ML with a part 70 license, which would authorize possession of a manufactured reactor in which the licensee has loaded unirradiated fuel provided at least two independent criticality prevention mechanisms are in place, each of which is sufficient to prevent criticality assuming optimum neutron moderation and neutron reflection conditions. This requirement would limit the possibility of creating fission products and allow the control of SNM, so that the loading of the fuel into a manufactured reactor could be governed primarily via a part 70 license and associated regulations (including those in subpart H of part 70).

A specific topic on which the NRC is seeking comment is on the potential benefits of and issues with including the requirements of subpart H of part 70 within the proposed regulations for loading fuel into manufactured reactors at the manufacturing facility. For example, should the NRC include a threshold for including the requirements of subpart H of part 70 and, if so, what factors and decision criteria should be considered in such a threshold? If a comment indicates that the proposed regulations are not sufficient, please describe the reasons why, including the plausible scenarios for which the proposed regulations would not work or could be made to work better.

6. Section 170, "Indemnification and Limitation of Liability," of the Act states that each license under section 103 shall have as a condition of the license a requirement that the licensee have and maintain financial protection of such type and in such amounts as the NRC shall require.

The NRC is seeking comment on whether the proposed regulations should include amounts of required financial protections for MLs for fueled manufactured reactors, and, if so, what would be appropriate amounts of required financial protection.

7. Some stakeholders have suggested that a fueled manufactured reactor with appropriate protections against criticality should not be categorized as a utilization facility under NRC regulations or Section 11cc. of the Act.

The NRC is seeking comment on possible approaches where the NRC could find that a fueled manufactured reactor would not be a utilization facility, the basis for such a finding, and the potential benefits of and potential issues with such a finding.

8. Proposed requirement § 53.620(d)(2)(i) would require a security program, including a physical

security plan, for any ML authorizing possession of a manufactured reactor into which fuel has been loaded at the manufacturing facility. Currently, requirements in § 73.67(c)(1) only require that a physical security plan be submitted for those licensees who possess, use, transport, or deliver to a carrier for transport SNM of moderate strategic significance, or 10 kg or more of SNM of low strategic significance.

The NRC is seeking comment on whether the proposed requirement: (1) should be specific to the facility type (*i.e.*, manufacturing facility) or be specific to the category of material being used at the facility; (2) should apply to all manufacturing plants, including those at which licensees may only possess SNM of low strategic significance (*i.e.*, category III), or only those facilities for which an applicant must submit a physical security plan per § 73.67(c)(1); or (3) should include more specific requirements on the supplemental security measures that may be needed for licensees possessing SNM of moderate strategic significance (*i.e.*, category II)?

9. Proposed requirement § 53.620(d)(2)(i) would require a cybersecurity program. The proposed general cybersecurity performance requirements would be to provide reasonable assurance that a cyberattack could not adversely impact the functions performed by digital assets used by the licensee for implementing the physical security, radiation monitoring, and criticality requirements.

The NRC is seeking comment on the following: (1) to what extent stakeholders envision physical security controls, radiation monitoring, and criticality controls at a manufacturing facility being digital; (2) to what extent should the ML holder be required to protect digital computer and communications systems that impact safety and security functions from a cyberattack at a manufacturing facility authorized to load fuel; and (3) whether the rule provides sufficient clarity on the cybersecurity measures needed for license issuance or if additional detail should be included either in the rule or in guidance?

10. Proposed requirement § 53.620(d)(2)(i)(B) would require that the physical security program be designed to prevent unintended and uncontrolled criticality events. This would include criticality events that are initiated maliciously.

The NRC is seeking comment on whether the ML holder should be required to design its security program to protect against radiological sabotage



(i.e., an unintended criticality event leading to unacceptable radiological consequences), in addition to theft and diversion. For example, should the NRC establish security requirements to prevent an adversary, including an insider, from tampering with the reactor at a manufacturing facility or during transport in such a way as to cause an inadvertent criticality event? If so, should the NRC consider factors such as the category of fuel and the number of reactors at a factory that can simultaneously be loaded with fuel in establishing the security requirements?

11. Proposed requirement § 53.620(d)(2)(i) would require an ML holder to meet the performance objectives in § 73.67. Requirements § 73.67(e) and § 73.67(g) include provisions for security of category II and category III quantities of SNM, respectively, during transportation.

The NRC is seeking comment on the extent to which the ML should require ASMs (i.e., security measures above those required by § 73.67(e) and § 73.67(g)) for transportation of a fueled reactor to its place of operation. What should those measures be?

12. Proposed requirement § 53.620(d)(2)(i) would require an ML holder to meet the performance objectives of § 73.67. For licensees utilizing a category II quantity of SNM, the requirement in § 73.67(d)(4) would have the ML holder conduct a screening to confirm the identity of an individual prior to granting unescorted access to the controlled access area where the material is used or stored. The purpose of this requirement is to both confirm the identity of the individual and support a determination that the individual is trustworthy and reliable.

The NRC is seeking comment on whether the ML requirements should include ASMs (i.e., measures beyond those required by § 73.67(d)(4)) in order to provide reasonable assurance of identity confirmation and trustworthiness and reliability.

13. The NRC is seeking comment on whether provisions regulating the testing of fueled manufactured reactors in the manufacturing facility should be included in part 53 and, if so, what would be practical for the holder of an ML while also providing adequate protection of public health and safety. One possibility could be COLs that would be issued to the holders of an ML to cover low power (e.g., <5% rated thermal power) nuclear physics testing of fueled manufactured reactors within the manufacturing facility prior to the manufactured reactors being transported to and incorporated into a commercial nuclear plant for the purpose of energy

production. The NRC recognizes configuration changes are needed to perform nuclear physics testing and is seeking comment on what requirements should apply to the manufactured reactors and the manufacturing facility during such testing (e.g., limiting power levels). If a comment indicates that the regulations should address limited operations at manufacturing facilities, please describe the likely scenarios that would need to be addressed and suggest what would be appropriate requirements for such scenarios.

While an ML holder could accomplish nuclear physics testing by applying for a COL under the proposed subpart H of part 53, stakeholders have indicated that many of the requirements would likely be unnecessary, given the reduced risk profile posed by such activities. Therefore, the NRC is seeking comment on what requirements in subpart H of part 53 should apply to applicants for a COL who would perform testing of fueled manufactured reactors at the manufacturing plant. Examples of proposed requirements that might be relaxed or modified for applications for low power testing at manufacturing plants include those related to selection of LBEs to reflect limited inventory of radionuclides and decay heat, aircraft impact assessments, and earthquake engineering.

Additionally, the NRC is seeking comment on whether several other requirements in part 53 could be modified for applications for a low power testing COL at a manufacturing facility. For example, the NRC is seeking comment on how portions of the ML facility used to support testing should fall within the requirements for construction activities under § 53.610; whether §§ 53.710 and 53.715 (SSC configuration control) must be implemented to ensure portions of the ML facility relied on to limit potential radiological consequences from LBEs are available to perform their safety functions; and whether the requirements of § 53.730 could be modified to reflect the conditions of low power physics testing. If a comment indicates that some design and analysis requirements and related application requirements in subpart H of the proposed part 53 are not needed for the testing of fueled manufactured reactors, please provide a rationale supporting your comment and, if applicable, what alternate requirements would be appropriate.

Moreover, the licensing mechanism for the facility could present unique challenges. One option could be to issue a low power testing COL for each fueled manufactured reactor to be tested. This

would comport with the agency's practice of issuing one license per reactor but could prove prohibitive from a cost standpoint and may provide very little safety benefit if all manufactured reactors are the same. Alternatively, one low power testing COL could be issued for the portions of the ML facility used to test the fueled manufactured reactors and allow multiple fueled manufactured reactors to be completed and tested over the course of the ML. Under this approach, any ITAAC related to testing of the fueled manufactured reactors would need to be closed after they were manufactured but prior to testing, and the NRC would issue a notice of intended operation and provide the public an opportunity to request a hearing on whether each fueled manufactured reactor as constructed complies, or on completion will comply, with the acceptance criteria of the license. The NRC is seeking comment on the potential benefits and issues with having a COL for each fueled manufactured reactor to be tested versus having a COL cover the testing of multiple fueled manufactured reactors. If a comment indicates a preference for a particular approach, please provide a rationale supporting the comment and describe the specific scenarios that the regulations need to address.

#### *Part 53, Subpart F—Staffing and Generally Licensed Reactor Operators*

Under the Act Sections 106 and 107, the NRC is proposing to group commercial reactors into classes upon the basis of the similarity of operating and technical characteristics of the facilities, and then to prescribe uniform conditions for licensing individuals as operators of any of the various classes; determine the qualifications of such individuals; and, for certain classes of commercial reactors, issue general licenses (i.e., licenses for which no application is needed) to such individuals allowing the individuals to operate the commercial reactor.

1. *Categories of Individuals Who May Manipulate Facility Controls:* The NRC is proposing requirements that would allow the manipulation of the controls of certain facilities by GLROs in lieu of specifically licensed reactor operators and senior reactor operators. Reactor operators and senior reactor operators are the only categories of individuals currently allowed to be licensed to manipulate the controls of utilization facilities under part 55.

The NRC is interested in public perspectives on this proposed addition of the GLRO category, particularly in light of new reactor technologies and concepts of operations.

2. *Criteria for GLRO Staffing:* The NRC is proposing criteria under which facilities would be staffed by GLROs in lieu of specifically licensed reactor operators and senior reactor operators. These criteria establish a new class of self-reliant-mitigation facilities, as defined in part 53, for which distinct GLRO licensing and staffing requirements would apply.

The NRC is soliciting public feedback regarding whether these proposed criteria are appropriate and what, if any, alternative criteria should be considered. Please provide your considerations and rationale for your answer.

3. *Medical Requirements for GLROs:* Based on the proposed criteria that a self-reliant-mitigation facility, as defined in part 53, must meet, the NRC is proposing not to subject GLROs to requirements for medical fitness and medical examination. This is in contrast with the proposed requirements associated with specifically licensed reactor operators and senior reactor operators, as well as the existing requirements for reactor operators and senior reactor operators under part 55.

The NRC is soliciting public feedback regarding whether GLROs should be subject to medical fitness and/or medical examination requirements like reactor operators and senior reactor operators. Please provide your considerations and rationale for your answer.

4. *Onshift Engineering Expertise:* The NRC is proposing to require that engineering expertise be accounted for within facility staffing plans. This proposed requirement would be in lieu of the traditional position of the Shift Technical Advisor. The NRC is further proposing that individuals providing such engineering expertise would need, among other things, to possess either a qualifying 4-year degree or licensure as a Professional Engineer.

The NRC is interested in feedback from the public regarding the appropriateness of this requirement, including any alternatives that should be considered. Please provide your considerations and rationale for your answer.

5. *Use of Simulation Facilities as HFE Testbeds:* The NRC is proposing to establish regulations pertaining to the use of simulation facilities within the context of the licensing programs both for specifically licensed reactor operators and senior reactor operators as well as for GLROs. However, these regulations, as currently proposed, do not address the use of simulation facilities within the context of serving as testbeds for HFE-related analyses and

assessments. Rather, the NRC currently envisions that the use of simulation facilities as HFE testbeds is more appropriately addressed via guidance documents.

The NRC is soliciting public feedback regarding whether simulation facility requirements should also address the use of simulation facilities as HFE testbeds. Please provide your considerations and rationale for your answer.

#### *Part 53, Subpart F—Emergency Preparedness and Security Programs*

1. The proposed framework for part 53 would incorporate the changes to NRC regulations from the final rulemaking on “Emergency Preparedness for Small Modular Reactors and Other New Technologies” (the EP for SMR/ONT rule) by including references to § 50.160, “Emergency preparedness for small modular reactors, non-light-water reactors, and non-power production or utilization facilities,” and by making conforming changes within § 50.160. The proposed framework for part 53 would also introduce a graded approach to physical protection requirements that includes the criterion in § 53.860(a)(2)(i) to establish a class of licensees that would not be required to protect against the design-basis threat (DBT) of radiological sabotage. The NRC is soliciting public comment relating to these topics, which could include ways that graded approaches for both emergency preparedness and security programs might be assessed and considered during the licensing process.

The NRC is seeking comment on the sufficiency and clarity of requirements in proposed part 53 related to the assessments needed to support graded emergency planning and security. If a comment indicates that there is an issue with the sufficiency or clarity of the proposed regulations, please describe the reasons why, including, if applicable, any scenario for which the proposed regulations are not sufficient and possible ways to clarify the requirements. The NRC is specifically seeking comment on possible challenges arising from the interactions between the proposed regulations and related assessments for grading the requirements for emergency planning and security.

2. The NRC is preparing various guidance documents to support this rulemaking and other ongoing or recently completed rulemakings related to emergency preparedness and security. DG–5076, “Guidance for Technology-Inclusive Requirements for Physical Protection of Licensed

Activities at Commercial Nuclear Plants,” has been issued along with this proposed rulemaking and public comments are requested via this notice on that draft guidance. The NRC is also planning to issue a draft revision of RG 1.242, “Performance-Based Emergency Preparedness for Small Modular Reactors, Non-Light-Water Reactors, and Non-Power Production or Utilization Facilities,” for public comment. The planned revision to RG 1.242 would add guidance for part 53 applicants and licensees.

In the staff requirements memorandum to SECY–23–0021, the Commission directed the NRC staff to address the consideration of security-related events for an advanced reactor that addresses security through design and engineered safety features when it harmonizes this rulemaking with the EP for SMR/ONT rule. In the EP for SMR/ONT rule, the NRC established an alternative performance-based and risk-informed approach for emergency planning, including determining the need for and size of an emergency planning zone (EPZ) to support predetermined, prompt protective actions. The NRC has incorporated the relevant rule language from the EP for SMR/ONT rule into this proposed rule and is seeking stakeholder feedback as to whether additional rule language changes or additional guidance would be beneficial.

In light of the Commission direction and the above considerations, the NRC is assessing how best to address the treatment of security-related events in emergency planning, including in the determination of EPZ size, for reactors licensed under part 53. Part 53 is introducing an alternative approach to meeting security regulations that should be taken into consideration under § 50.160. Stakeholders are encouraged to take a holistic view of the various activities and opportunities to provide comments on this rulemaking and related guidance supporting this rulemaking (e.g., DG–5076 on physical protection requirements, future revisions to RG 1.242). In developing comments, the NRC urges stakeholders to consider various scenarios that might arise when implementing graded approaches for security and emergency planning for various reactor designs. Scenarios could include the following:

- the potential consequences from security events up to and including the DBT of radiological sabotage are bounded by unlikely and very unlikely event sequences such that security events do not need separate analyses in the EPZ size determination;

- the potential consequences from security events up to and including the DBT are not bounded by unlikely and very unlikely event sequences but could otherwise support a reduced EPZ size consistent with considerations discussed in RG 1.242 and NUREG-0396, “Planning Basis for the Development of State and Local Government Radiological Emergency Response Plans in Support of Light Water Nuclear Power Plants”; or

- the potential consequences from security events up to and including the DBT are not bounded by unlikely and very unlikely event sequences and warrant consideration of increasing the size of the EPZ.

The NRC is interested in comments on the need for additional rule language or guidance to address graded approaches for emergency planning and security programs under the scenarios described above for part 53 applicants and licensees. Please address within the comments any technical, policy, or legal issues that are associated with your suggestions.

#### *Part 53, Subpart F—Integrity Assessment Program Requirements*

Decades of operating experience with LWRs suggests that phenomena such as environmentally assisted fatigue and chemical interactions could impact certain SSCs during the life of a commercial nuclear plant. Under the existing regulatory framework, historically, some of these phenomena were not addressed during early licensing reviews but were identified and addressed later when significant safety issues arose (e.g., see numerous generic letters, bulletins, orders, and development and implementation of vessel integrity and materials reliability programs) or a licensee voluntarily pursued renewal of an OL under part 54. The NRC is proposing to include a new set of programmatic requirements for an Integrity Assessment Program that would ensure these phenomena are addressed early in the life of a commercial nuclear plant licensed under part 53. The requirements would be provided in § 53.870.

The NRC is seeking comment on whether the proposed requirements under the Integrity Assessment Program appropriately complement design requirements to address concerns regarding aging, cyclic or transient load limits, and degradation mechanisms related to chemical interactions, operating temperatures, effects of irradiation, and other environmental factors. In addition, the NRC is interested in views on whether, and if

so how, degradation mechanisms are or could be addressed in other programs.

#### *Part 53, Subpart G—Decommissioning*

1. On March 3, 2022, the NRC published the proposed rule entitled “Regulatory Improvements for Production and Utilization Facilities Transitioning to Decommissioning” (87 FR 12254). This rulemaking would amend the NRC’s current regulations to provide an appropriate regulatory framework for nuclear power reactors transitioning from operations to decommissioning. The rulemaking would address lessons learned from licensees that have completed or are currently in the decommissioning process. The NRC staff sent a draft final rule to the Commission for its consideration on January 31, 2024, in SECY-24-0011, “Final Rule: Regulatory Improvements for Production and Utilization Facilities Transitioning to Decommissioning (3150-AJ59; NRC-2015-0070).”

What aspects of this draft final rule, if any, should be incorporated in a part 53 final rule and why?

2. Proposed § 53.1060(b) in subpart G would require that, “No later than 30 days after the Commission publishes notice in the **Federal Register** under § 53.1452(a), the licensee must submit a report containing a certification that financial assurance for decommissioning is being provided in an amount specified in the licensee’s most recent updated certification, including a copy of the financial instrument obtained to satisfy § 53.1040.” This is similar to the current requirement in § 50.75(e)(3) for part 52 COL holders. The NRC is seeking comment on whether commercial nuclear plant COL holders under part 53 should have the same requirement as COL holders under part 52 to demonstrate that they have financial assurance in place no later than 30 days after the Commission issues the notice of intended operation under § 53.1452. Please provide your considerations and rationale for your answer.

#### *Part 53, Subpart H—Licenses To Construct and Operate Commercial Nuclear Plants of Identical Design at Multiple Sites*

In addition to including provisions in part 53, subpart H, for referencing ESPs, standard design approvals, and design certifications in applications for commercial nuclear plants, the proposed § 53.1470 provides optional requirements related to the submittal and NRC review of CP, OL, and COL applications to construct and operate commercial nuclear plants of identical

design at multiple sites, similar to requirements found in appendix N in both 10 CFR parts 50 and 52. This section would set out the particular requirements and provisions applicable to situations in which applications for CPs and subsequent OLs, or COLs, under this part, are filed by one or more applicants for licenses to construct and operate nuclear power reactors of identical design (“common design”) to be located at multiple sites. Hearings for applications filed under appendix N in both parts 50 and 52 are governed by subpart D of part 2, as would be the case for future part 53 applications under proposed § 53.1470.

Under the proposed requirements in this section, each application is to be treated as a separate application, with the exception of the common design, and so would require separate applications, separate determinations of sufficiency for docketing, separate notices of docketing, and so forth. Proposed § 53.1470 would also require that each application list all the applications that are to be treated together to ensure that the NRC is clearly informed of the intentions of all applicants. Ordinarily, the NRC would publish in the **Federal Register** a separate notification of docketing for each application, so that delays in the docketing of one application would not delay the docketing and subsequent technical review of other applications. However, if circumstances allow (e.g., sufficiency review for multiple applications are completed simultaneously), the NRC could publish a single notice of docketing for multiple applications.

With regard to how the NRC would fulfill its obligations under the National Environmental Policy Act of 1969, as amended, the NRC staff would prepare a separate environmental document for each application, but the NRC could conduct joint scoping on environmental issues related to the common design. If the applications reference a standard design certification or the use of a manufactured reactor, then the environmental document would need to incorporate by reference the environmental assessment (EA) prepared for either the design certification or the ML, as applicable. In addition, § 53.1470 would require the ACRS to report on each of the applications, as would be required by provisions in subpart H of part 53. Each ACRS report would be limited to the safety matters which are not relevant to the common design. In addition, the ACRS would need to issue a report on the safety of the common design—except for those matters relevant to the

safety of a referenced design certification or manufactured reactor.

Given this synopsis of how the requirements in proposed § 53.1470 would be implemented as currently written, the NRC is seeking comment on whether there are opportunities to allow added flexibility for applicants under these provisions. This could include consideration of whether applications for which the “common design” is not completely identical could be evaluated under this provision and, if so, what the process would be for determining the appropriateness of a common review. In addition, the NRC is interested in feedback about the pros and cons of requiring that applications under these proposed provisions be submitted at the same time versus allowing them to be submitted on a staggered basis.

*Part 53, Subparts H and I—Probabilistic Risk Assessment Information*

Proposed § 53.1239(a)(18) in subpart H and the related references to this proposed requirement for the holders of OLs and COLs would require a description of the PRA required by § 53.450(a), and its results to be included in FSARs. However, guidance documents may further clarify the division of PRA-related information needed to be in the FSAR, in other possible licensing basis documents, and controlled as plant records subject to inspections and audits. For example, a possible approach could be to include a summary of the PRA results in the FSAR and control that information under § 53.1545 and create a separate document related to the broader PRA analyses and related processes as a program document under § 53.1560. The program document would provide more detail than the summaries in the FSAR but still be a much-condensed source of information in comparison to the documentation of the PRA. This possible approach would reflect the role of the PRA in the licensing process under part 53 and in maintaining margins to the safety and evaluation criteria in subparts B and C but may allow a more appropriate evaluation process to address the particulars and complexities of the PRA-related documents.

The NRC is seeking comment on the appropriate placement of PRA-related information among various licensing basis documents and plant records. In addition to the placement of PRA-related information, the NRC is seeking comment on the appropriate control of that information and on the routine submittal of updates to the NRC. Please provide your considerations and rationale for your answer.

*Part 53, Subparts H and I—Changes to Manufacturing Licenses*

Proposed § 53.1530 would not allow the holder of an ML or the holder of a COL using a manufactured reactor to make changes to the design of the manufactured reactor without requesting a license amendment from the NRC. The proposed requirements do not include a specific mention of the manufacturing processes for which the NRC could possibly provide finality under proposed § 53.1288.

The NRC is seeking comment on the appropriate change control provisions for MLs, including whether criteria could be developed to determine when a license amendment request would not be required and whether those criteria should address changes in manufacturing processes as well as changes in the design. Please provide your considerations and rationale for your recommendation.

*Financial Qualifications*

Utility new reactor applicants are exempt under § 50.33(f) from financial qualification reviews because they are generically presumed to be financially qualified for operations. In contrast, merchant power plant new reactor applicants are required under § 50.33(f)(2) to submit information that demonstrates they possess or have reasonable assurance of obtaining the funds necessary to cover estimated construction and operating costs for the period of the license. A “merchant power plant new reactor applicant” is a non-rate-regulated entity (e.g., a nonutility) that engages in the business of production, manufacturing, generating, buying, aggregating, marketing, or brokering electricity for sale at wholesale or for retail sale to the public. Over the past decade, the agency has heard some concerns about the challenges that merchant power plant applicants face in demonstrating compliance with the current financial qualification requirements.

Does this standard continue to pose challenges for merchant power plant applicants? If so, please provide a detailed explanation of these challenges.

Should part 53 have the same financial qualification requirements as parts 50 and 52? Why or why not?

Are there categories of merchant new reactor applicants for which a part 70 “appears to be financially qualified” standard would be more appropriate?<sup>15</sup> If so, please explain what types of applicants should be able to use the part 70 financial qualification standard and

what distinguishes these applicants from ones that should not be able to use this standard.

If a part 70 financial qualification standard were to apply to a category of merchant new reactor applicants, should it also apply to pre-construction license transfer applications for these reactors? Why or why not?

Is there another standard the agency should consider for financial qualification of merchant new reactor applicants? Commenters are encouraged to provide specific suggestions and the basis for those suggestions.

*Part 73, Section 73.100—Physical Security*

The proposed § 73.100 would identify the proposed performance-based physical security requirements with which future commercial power reactor applicants or licensees’ physical protection programs would need to demonstrate compliance, without prescribing the specific methods that must be used to satisfy them. Applicants and licensees would have increased flexibility regarding the modern technologies and methods that they could use. Implementing guidance in DG-5076 (proposed RG 5.97), “Guidance for Technology Inclusive Requirements for Physical Protection of Licensed Activities at Commercial Nuclear Plants,” would be available to assist applicants and licensees. For example, DG-5076 provides detailed guidance, including performance standard recommendations, on the probability of detection and alternative sources of power for exterior intrusion detection systems (subsection 4.1.1.1.A), interior intrusion detection (subsection 4.1.1.1.B), intrusion assessment (subsection 4.1.1.2.A), security response/neutralization subsection (4.1.1.4.A), security communication (subsection 4.1.1.3.A), and security delay (subsection 4.1.1.4.C).

Does the NRC’s proposed approach in § 73.100 provide a sufficient level of detail to be readily understood and easily applied to the licensing and oversight of new and advanced power reactors, or should the NRC consider moving some objective and measurable security performance standard recommendations from the draft implementing guidance in DG-5076 into proposed § 73.100? If so, which objective and measurable security performance standard recommendations should be moved from DG-5076 to § 73.100? Please provide the basis for your response.

<sup>15</sup> Section 70.23(a)(5).

*Part 73, Section 73.110—Cybersecurity*

The proposed § 73.110 would require licensees to demonstrate protection against cyberattacks in a manner that is commensurate with the potential consequences from those attacks, without prescribing the specific methods that must be used to demonstrate protection. Under proposed § 73.110(a), licensees would need to ensure that digital computer and communications systems are adequately protected against a potential cyberattack that would, for example, result in adverse impacts to the physical security digital assets used by the licensee to prevent unauthorized removal of material per § 53.860(a). Protecting against such a potential cyberattack would involve requiring cybersecurity for SNM at a commercial nuclear reactor licensed under part 53. Applicants and licensees would have increased flexibility regarding the modern technologies and methods that they could use for protecting against such a potential cyberattack. Detailed implementing guidance in DG-5075 (proposed RG 5.96), “Establishing Cybersecurity Programs for Commercial Nuclear Plants licensed under 10 CFR part 53,” would be available to assist applicants and licensees. For example, DG-5075 provides guidance on the implementation of security by design features (e.g., facility design) for negating the potential consequences from such a potential cyberattack.

If a cyberattack were to compromise the availability, integrity, or confidentiality of data or systems associated with security systems/measures for the protection of SNM at a commercial nuclear reactor licensed under part 53, do the potential consequences warrant requiring cybersecurity for such material? Please provide the basis for your response including a detailed explanation of challenges, if any, posed by requiring cybersecurity for SNM at a commercial nuclear reactor licensed under part 53.

*Recent Legislation*

On July 9, 2024, the President signed into law the Accelerating Deployment of Versatile, Advanced Nuclear for Clean Energy Act of 2024, also referred to as the ADVANCE Act. Section 203, “Licensing Considerations Relating to Use of Nuclear Energy for Nonelectric Applications,” and Section 208, “Regulatory Requirements for Micro-Reactors,” of the ADVANCE Act specifically mention the technology-inclusive regulatory framework to be established under section 103(a)(4) of NEIMA as a potential vehicle to be

considered for the report to Congress required under section 203 and a potential vehicle to implement strategies and guidance for the licensing and regulation of micro-reactors required under section 208. This proposed rulemaking is, in part, how the NRC is implementing section 103(a)(4) of NEIMA.

The NRC is seeking comment on how part 53 could be revised to better enable its potential use to implement the ADVANCE Act. Specifically, Section 208 of the ADVANCE Act requires the NRC to develop and implement “risk-informed and performance-based strategies and guidance” in several areas for the licensing and regulation of micro-reactors, including with respect to “licensing mobile deployment.” The ADVANCE Act requires the NRC to consider “the unique characteristics of micro-reactors,” including physical size, design simplicity, and source term; opportunities to incorporate specific improvements related to streamlining the review process; and other policy and licensing issues. With regard to implementation, the ADVANCE Act provides the NRC with three options. The NRC may implement the developed strategies and guidance, as appropriate, via (1) the existing regulatory framework, (2) the Part 53 rulemaking, or (3) a pending or new rulemaking. Given the language included in Section 208, the NRC is seeking comment on how part 53 could be revised to better address the ADVANCE Act’s requirements related to strategies and guidance for micro-reactors.

**VII. Section-by-Section Analysis**

The following paragraphs describe the specific changes proposed by this rulemaking.

*§ 1.43 Office of Nuclear Reactor Regulation*

This proposed rule would revise § 1.43(a)(2) to extend the authority of the Office of Nuclear Reactor Regulation to regulate source, byproduct, and SNM at facilities licensed under part 53.

*§ 2.1 Scope*

This proposed rule would revise § 2.1(e) to apply to standard design approvals under part 53.

*§ 2.4 Definitions*

This proposed rule would revise § 2.4 to update the definition of “*Contested proceeding*” to include NRC enforcement actions against applicants for a standard DC under part 53. It would also update the definition of “*Facility*” to encompass utilization facilities as defined in § 53.020 (there

are no production facilities under part 53).

*§ 2.100 Scope of Subpart*

This proposed rule would revise § 2.100 to extend the scope of subpart A to licenses and standard design approvals issued under §§ 53.1200 through 53.1221.

*§ 2.101 Filing of Application*

This proposed rule would revise § 2.101 to be applicable to part 53 applicants in addition to part 50 and 52 applicants by adding references to part 53 in paragraphs (a)(3)(i), (a)(5), and (a)(9).

*§ 2.104 Notice of Hearing*

This proposed rule would extend the hearing notice requirement in § 2.104(a) to applications concerning facilities covered under part 53. Footnote 1 to § 2.104 would be revised in a corresponding manner.

*§ 2.105 Notice of Proposed Action*

This proposed rule would revise § 2.105 to extend the requirement in § 2.104 to publish a notice of intended operation or a notice of proposed action, as applicable, to part 53 applicants in addition to part 50 and 52 applicants by adding corresponding references to part 53 in paragraphs (a), (a)(4), (a)(10), (a)(12), (a)(13), and (b)(3).

*§ 2.106 Notice of Issuance*

This proposed rule would revise § 2.106 to extend the issuance notice requirement to applications concerning facilities covered under part 53 through updated references in paragraphs (a)(2) and (3), and (b)(2).

*§ 2.109 Effect of Timely Renewal Application*

This proposed rule would revise § 2.109 to add references to part 53 in paragraphs (b), (c), and (d) regarding the timing of license renewal applications.

*§ 2.110 Filing and Administrative Action on Submittals for Standard Design Approval or Early Review of Site Suitability Issues*

This proposed rule would revise § 2.110 to include references to part 53 in paragraphs (a)(1) and (b).

*§ 2.202 Orders*

This proposed rule would revise § 2.202(e) to add references to part 53 regarding the requirements to be followed for orders involving the modification of a license, COL, ESP, standard DC rule, standard design approval, or ML.

**§ 2.309 Hearing Requests, Petitions To Intervene, Requirements for Standing, and Contentions**

This proposed rule would revise § 2.309 to include references to part 53 in paragraphs (a), (f)(1)(i), (f)(1)(vi) and (vii), (g), (h)(2), (i)(2), and (j) regarding a request for hearing under § 53.1452.

**§ 2.310 Selection of Hearing Procedures**

This proposed rule would revise § 2.310 by revising paragraph (a), the introductory text for paragraph (h), and paragraphs (i) and (j) to incorporate references to part 53 regarding hearing procedures.

**§ 2.329 Prehearing Conference**

This proposed rule would revise § 2.329(a) to extend the timing requirements for prehearing conferences involving CPs and licenses under part 53.

**§ 2.339 Expedited Decision-Making Procedure**

This proposed rule would revise § 2.339(d) to include references to part 53 regarding expedited decision-making procedures.

**§ 2.340 Initial Decision in Certain Contested Proceedings; Immediate Effectiveness of Initial Decisions; Issuance of Authorizations, Permits and Licenses**

This proposed rule would revise § 2.340 regarding initial decisions of a presiding officer in certain contested proceedings, the effective date of those decisions, and the issuance of authorizations, permits, and licenses, by incorporating references to part 53 in paragraphs (b), (c), (d), (f), (i), and (j).

**§ 2.341 Review of Decisions and Actions of a Presiding Officer**

This proposed rule would revise § 2.341(a)(1) to include an updated reference to part 53 regarding the allowance of a period of interim operation.

**§ 2.400 Scope of Subpart**

This proposed rule would revise § 2.400 to extend the scope of subpart D of part 2 to include part 53 applicants for licenses to construct or operate nuclear power reactors of identical design at multiple sites.

**§ 2.401 Notice of Hearing on Construction Permit or Combined License Applications Pursuant to Appendix N of 10 CFR Parts 50, 52, or 53**

This proposed rule would revise the section heading and § 2.401 to extend

the hearing notice requirement to applications concerning facilities covered under part 53.

**§ 2.402 Separate Hearings on Separate Issues; Consolidation of Proceedings**

This proposed rule would revise § 2.402(a) to apply provisions regarding separate hearings and the consolidation of proceedings to part 53 applicants.

**§ 2.403 Notice of Proposed Action on Applications for Operating Licenses Pursuant To Appendix N of 10 CFR Part 50**

This proposed rule would revise § 2.403 to require the Commission to publish a notification of proposed action in the **Federal Register** after applications under part 53 are docketed.

**§ 2.404 Hearings on Applications for Operating Licenses Pursuant to Appendix N of 10 CFR Part 50**

This proposed rule would revise § 2.404 to apply to applications for an OL under part 53.

**§ 2.405 Initial Decisions in Consolidated Hearings**

This proposed rule would revise § 2.405 to be applicable to CPs, full-power OLs, and COLs under part 53.

**§ 2.406 Finality of Decisions on Separate Issues**

This proposed rule would revise § 2.406 to be applicable to proceedings conducted pursuant to part 53.

**§ 2.500 Scope of Subpart**

This proposed rule would revise § 2.500 to extend the provisions of subpart E of part 2 to include applications for a license to manufacture nuclear power reactors under part 53.

**§ 2.501 Notice of Hearing on Application Under Subpart F of 10 CFR Part 52 or 53 for a License To Manufacture Nuclear Power Reactors**

This proposed rule would revise the section heading and § 2.501(a) by extending its provisions to applications for a license to manufacture nuclear power reactors under part 53.

**§ 2.643 Acceptance and Docketing of Application for Limited Work Authorization**

This proposed rule would revise § 2.643(b) regarding the acceptance and docketing of an application for a CP for a utilization facility of the type specified in part 53.

**§ 2.645 Notice of Hearing**

This proposed rule would revise § 2.645(a) to incorporate a reference to part 53.

**§ 2.649 Partial Decisions on Limited Work Authorization**

This proposed rule would revise § 2.649 to extend its provisions to LWAs issued under part 53.

**§ 2.800 Scope and Applicability**

This proposed rule would revise § 2.800 by revising paragraphs (c) and (d) to incorporate references to part 53 regarding the scope and applicability of the rulemaking procedures contained in this subpart.

**§ 2.801 Initiation of Rulemaking**

This proposed rule would revise § 2.801 to include a reference to part 53.

**§ 2.813 Written Communications**

This proposed rule would revise § 2.813(a) to apply general requirements for correspondence with the Commission to communications concerning part 53, in addition to parts 50, 52, and 100.

**§ 2.1103 Scope of Subpart K**

This proposed rule would revise the first sentence of § 2.1103 to extend the provisions of subpart K of part 2 to licenses under part 53 to expand the spent fuel capacity at the site of a civilian nuclear power plant.

**§ 2.1202 Authority and Role of NRC Staff**

This proposed rule would amend § 2.1202 by revising paragraphs (a)(1) through (3), and (a)(6) to include references to part 53.

**§ 2.1301 Public Notice of Receipt of a License Transfer Application**

This proposed rule would revise § 2.1301(b) to include a corresponding reference to license transfers under part 53 in addition to parts 50 and 52.

**§ 2.1403 Authority and Role of the NRC Staff**

This proposed rule would update § 2.1403 to specify that “significant hazards considerations” has the same meaning as defined in part 53.

**§ 2.1500 Purpose and Scope**

This proposed rule would revise § 2.1500 to extend the scope of subpart O of part 2 to DC rulemaking hearings under part 53.

**§ 2.1502 Commission Decision To Hold Legislative Hearing**

This proposed rule would revise § 2.1502, paragraphs (a) and (b)(1) to

incorporate references to part 53 regarding the Commission's decision to hold a DC rulemaking.

#### **§ 10.1 Purpose**

This proposed rule would revise § 10.1(a)(3) to include a reference to part 53.

#### **§ 10.2 Scope**

This proposed rule would revise § 10.2(b) to extend the scope of subpart A to applicants and holders of licenses, certificates, and standard design approvals under part 53 in addition to part 52.

#### **§ 11.7 Definitions**

This proposed rule would revise § 11.7 such that terms defined in part 53 have the same meaning when used in part 11.

#### **§ 19.2 Scope**

This proposed rule would revise § 19.2(a) to include references to part 53.

#### **§ 19.3 Definitions**

This proposed rule would revise the definitions of "License" and "Regulated entities" in § 19.3 to incorporate references to part 53.

#### **§ 19.11 Posting of Notices to Workers**

This proposed rule would amend § 19.11 by revising paragraphs (a), (b), and (e)(1) to apply to applicants and holders of licenses, permits, standard design approvals, and standard DCs under part 53 in addition to part 52.

#### **§ 19.14 Presence of Representatives of Licensees and Regulated Entities, and Workers During Inspections**

This proposed rule would revise § 19.14(a) to apply to applicants and holders of a license, standard design approval, ESP, or standard DC under part 53 in addition to part 52.

#### **§ 19.20 Employee Protection**

This proposed rule would revise § 19.20 to include a reference to protected activities under part 53.

#### **§ 20.1002 Scope**

This proposed rule would revise the first sentence of 10 CFR part 20, "Standards for Protection Against Radiation," § 20.1002 to extend the scope of part 20 to apply to persons licensed by the Commission to receive, use, transfer, or dispose of byproduct, source, or SNM or to operate a production or utilization facility under part 53.

#### **§ 20.1003 Definitions**

This proposed rule would revise § 20.1003 to update the definition of

"License" to include those issued under part 53.

#### **§ 20.1101 Radiation Protection Programs**

This proposed rule would revise § 20.1101(d) to exclude licensees subject to § 53.260 from its requirements.

#### **§ 20.1401 General Provisions and Scope**

This proposed rule would revise § 20.1401, paragraphs (a) and (c) to extend the scope of subpart E of part 20 to apply to the decommissioning of facilities licensed under part 53 and the release of part of a facility or site for unrestricted use in accordance with § 53.1080.

#### **§ 20.1403 Criteria for License Termination Under Restricted Conditions**

This proposed rule would revise § 20.1403(d) to include decommissioning plans under part 53.

#### **§ 20.1404 Alternate Criteria for License Termination**

This proposed rule would revise § 20.1404(a)(4) to include a reference to part 53 regarding alternate criteria for license termination.

#### **§ 20.1406 Minimization of Contamination**

This proposed rule would revise § 20.1406(a) to include references to applicants for licenses other than ESPs or MLs under part 53. It would also revise § 20.1406(b) to include references to standard DCs and standard design approvals under part 53 in addition to part 52.

#### **§ 20.1501 General**

This proposed rule would revise § 20.1501(b) regarding the requirement for retention of records from surveys describing the location and amount of subsurface residual radioactivity at a site to include a reference to the retention requirements under part 53.

#### **§ 20.1905 Exemptions to Labeling Requirements**

This proposed rule would revise § 20.1905(g) to apply to facilities licensed under part 53 in addition to parts 50 and 52 regarding exemptions to labeling requirements.

#### **§ 20.2004 Treatment or Disposal by Incineration**

This proposed rule would revise § 20.2004(b)(1) to include references to part 53 regarding the treatment or disposal of waste oil by incineration.

#### **§ 20.2201 Reports of Theft or Loss of Licensed Material**

This proposed rule would revise § 20.2201 to include references to part 53 in paragraphs (a)(2)(i), (b)(2)(i) and (c) regarding requirements for reports of theft or loss of licensed material.

#### **§ 20.2202 Notification of Incidents**

This proposed rule would revise § 20.2202(d)(1) to add references to part 53 regarding reports to the NRC Operations Center.

#### **§ 20.2203 Reports of Exposures, Radiation Levels, and Concentrations of Radioactive Material Exceeding the Constraints or Limits**

This proposed rule would revise § 20.2203(c) to refer to procedures under part 53 for reporting occurrences of exposures, radiation levels, and concentrations of radioactive material exceeding the constraints or limits.

#### **§ 20.2206 Reports of Individual Monitoring**

This proposed rule would revise § 20.2206(a)(1) to include a reference to part 53.

#### **§ 21.2 Scope**

This proposed rule would revise § 21.2, paragraphs (a), (b), and (c) to include references to part 53 regarding the scope and applicability of part 21 requirements.

#### **§ 21.3 Definitions**

This proposed rule, in § 21.3 would revise the definitions of "Basic component," "Commercial grade item," "Critical characteristics," "Dedicating entity," "Dedication," "Defect," and "Substantial safety hazard" with references to part 53.

#### **§ 21.21 Notification of Failure To Comply or Existence of a Defect and Its Evaluation**

This proposed rule would revise § 21.21, by incorporating references to part 53, to update the requirements for notifying the Commission of a failure to comply or defect in paragraphs (a)(3) and (d)(1).

#### **§ 21.51 Maintenance and Inspection of Records**

This proposed rule would revise § 21.51(a)(4) and (5) to apply to applicants for standard DC and applicants or holders of a standard design approval under part 53, in addition to part 52, regarding the retention of records.



### *§ 21.61 Failure To Notify*

This proposed rule would revise § 21.61(b) to include references to part 53 licensees and applicants regarding failure to provide the notice required in § 21.21.

### *§ 25.5 Definitions*

This proposed rule would update the definition of “License” to include those issued under part 53.

### *§ 25.17 Approval for Processing Applicants for Access Authorization*

This proposed rule would revise § 25.17(a) to add a reference to part 53 regarding AAs for individuals who need access to classified information in connection with activities under part 53.

### *§ 25.35 Classified Visits*

This proposed rule would update § 25.35(a) to apply the requirements for classified visits to licensees, certificate holders, and applicants under part 53 in addition to part 52.

### *§ 26.3 Scope*

This proposed rule would amend § 26.3 by revising paragraph (d) and adding new paragraph (f) which would establish the phase of construction or operation by which applicants and licensees under part 53 would be required to comply with subpart M of part 26, or all of the requirements of part 26 except subparts K and M.

### *§ 26.4 FFD Program Applicability to Categories of Individuals*

This proposed rule would revise paragraphs (a), (b), (c), (e), (f), (g), and (h) of § 26.4 to include references to part 53 and provisions for implementing an FFD program under subpart M.

### *§ 26.5 Definitions*

This proposed rule would amend § 26.5 by adding definitions for “Biological marker,” “Change,” “Illicit substance,” “Reduction in FFD program effectiveness,” and “Special Nuclear Material.” It would also revise definitions of “Constructing or construction activities,” “Contractor/vendor (C/V),” “Other entity,” “Questionable validity,” “Reviewing official,” “Safety-related structures, systems, and components (SSCs),” “Security-related SSCs,” and “Unit outage” within this section.

### *§ 26.8 Information Collection Requirements: OMB Approval*

This proposed rule would revise § 26.8(b) with the new information collection requirements contained in proposed §§ 26.202, 26.603, 26.604,

26.605, 26.606, 26.607, 26.608, 26.609, 26.611, 26.613, 26.617, and 26.619.

### *§ 26.21 Fitness-for-Duty Program*

This proposed rule would revise § 26.21 to include a reference to § 26.3(f).

### *§ 26.51 Applicability*

This proposed rule would revise § 26.51 to extend the requirements of subpart C of part 26 to licensees and other entities identified in § 26.3(f) that do not implement the requirements of subpart M of part 26, as well as licensees and other entities that implement the requirements of § 26.605.

### *§ 26.53 General Provisions*

This proposed rule would revise § 26.53 paragraphs (e), (g), (h), and (i) to include references to § 26.3(f).

### *§ 26.63 Suitable Inquiry*

This proposed rule would revise § 26.63(d) with a reference to § 26.3(f).

### *§ 26.73 Applicability*

This proposed rule would revise § 26.73 to extend the requirements of subpart D of part 26 to licensees and other entities identified in § 26.3(f) that do not implement the requirements of subpart M of part 26, as well as licensees and other entities that implement the requirements of § 26.605(b).

### *§ 26.81 Purpose and Applicability*

This proposed rule would revise § 26.81 to extend the requirements of subpart E of part 26 to licensees and other entities identified in § 26.3(f) that do not implement the requirements of subpart M of part 26, as well as licensees and other entities that implement the requirements of § 26.605.

### *§ 26.201 Applicability*

This proposed rule would revise § 26.201 to include references to the proposed provisions in §§ 26.3(f) and 26.202, as well as revise the applicability of requirements in subpart I of part 26.

### *§ 26.202 General Provisions for Facilities Licensed Under Part 53*

This proposed rule would add new § 26.202, which would require applicable licensees under part 53 to incorporate a policy for fatigue management into their FFD program in accordance with the provisions of this section.

### *§ 26.205 Work Hours*

This proposed rule would revise paragraphs (d)(7)(iii) and (d)(8) of

§ 26.205 to incorporate references to §§ 26.606 and 26.202(a) and (b).

### *§ 26.207 Waivers and Exceptions*

This proposed rule would revise § 26.207(a)(1)(ii) to include references to §§ 26.608 and 26.202(c) and to include provisions for implementing certain face-to-face supervisor assessments using electronic communications.

### *§ 26.211 Fatigue Assessments*

This proposed rule would revise § 26.211, paragraphs (a)(1), (a)(3), and (b) to incorporate references to §§ 26.202(c), 26.607(b), 26.608, and 26.619 and to include provisions for implementing certain face-to-face assessments using electronic communications.

### *Subpart M—Fitness for Duty Programs for Facilities Licensed Under Part 53*

This proposed rule would add new Subpart M of part 26 containing §§ 26.601, 26.603, 26.604 through 26.611, 26.613, 26.615, 26.617, and 26.619, which adds an optional technology-inclusive, risk-informed, and performance-based approach for the application of drug and alcohol testing and fatigue management requirements for facilities licensed under part 53.

### *§ 26.601 Applicability*

This proposed rule would add § 26.601, which would allow a licensee or other entity in § 26.3(f) to establish an FFD program in accordance with the requirements of subpart M of part 26.

### *§ 26.603 General Provisions*

This proposed rule would add § 26.603, which would establish the general requirements for implementing an FFD program under subpart M of part 26.

### *§ 26.604 FFD Program Requirements for Facilities That Satisfy the § 26.603(c) Criterion*

This proposed rule would add § 26.604, which would establish the FFD program elements for a licensee or other entity whose facilities and operations demonstrate compliance with the criterion in § 26.603(c).

### *§ 26.605 FFD Program Requirements for Facilities That Do Not Implement § 26.604*

This proposed rule would add § 26.605, which would establish the FFD program elements for a licensee or other entity that does not demonstrate compliance with the criterion in § 26.603(c), or otherwise chooses to maintain an FFD program under this section.

### *§ 26.606 Written Policies and Procedures*

This proposed rule would add § 26.606, which would require licensees and other entities that implement an FFD program under subpart M of part 26 to develop a written FFD policy statement and provide it to all individuals subject to the FFD program, and to establish, implement, and maintain written procedures addressing the topics outlined in this section.

### *§ 26.607 Drug and Alcohol Testing*

This proposed rule would add § 26.607, which would establish requirements for licensees and other entities performing drug and alcohol testing as part of an FFD program under subpart M of part 26.

### *§ 26.608 FFD Program Training*

This proposed rule would add § 26.608, which would require individuals who are subject to the FFD program under subpart M of part 26 to receive periodic training on FFD policies and procedures, including their duties and responsibilities under the BOP.

### *§ 26.609 Behavioral Observation*

This proposed rule would add § 26.609, which would establish the requirements for a BOP under subpart M of part 26.

### *§ 26.610 Sanctions*

This proposed rule would add § 26.610, which would require licensees and other entities implementing an FFD program under subpart M of part 26 to establish sanctions for FFD policy violations.

### *§ 26.611 Protection of Information*

This proposed rule would add § 26.611, which would require licensees and other entities implementing an FFD program under subpart M of part 26 to establish a system to protect personal information against unauthorized disclosure.

### *§ 26.613 Appeals Process*

This proposed rule would add § 26.613, which would require licensees and other entities that implement an FFD program under subpart M of part 26 to establish procedures for an individual to appeal a policy violation determination.

### *§ 26.615 Audits*

This proposed rule would add § 26.615, which would establish provisions for licensees and other entities that implement an FFD program under subpart M of part 26 to conduct

audits to monitor the effectiveness of FFD program elements.

### *§ 26.617 Recordkeeping and Reporting*

This proposed rule would add § 26.617, which would require licensees or other entities implementing an FFD program under subpart M of part 26 to retain records pertaining to the administration of the program and to make reports in accordance with the requirements of this section.

### *§ 26.619 Suitability and Fitness Determinations*

This proposed rule would add § 26.619, which would require licensees and other entities that implement FFD programs to develop, implement, and maintain procedures to assess whether individuals are fit to perform the duties that make them subject to the FFD program.

### *§ 26.709 Applicability*

This proposed rule would designate the current paragraph as new paragraph (a), and it would be revised to reference paragraphs (a) through (d) of § 26.3. It would also add paragraph (b) to § 26.709, which would extend the requirements of subpart N of part 26 to licensees and other entities identified in § 26.3(f) that do not implement the requirements of subpart M of part 26, as well as licensees and other entities that implement the requirements of § 26.605(b).

### *§ 26.711 General Provisions*

This proposed rule would revise § 26.711(c) and (d) to incorporate a reference to § 26.3(f).

### *§ 26.825 Criminal Penalties*

This proposed rule would revise § 26.825(b) to include a reference to the proposed § 26.601.

### *§ 30.4 Definitions*

This proposed rule would revise the definition for “Utilization facility” in § 30.4 to include utilization facilities defined in the regulations under part 53 in addition to part 50.

### *§ 30.50 Reporting Requirements*

This proposed rule would revise § 30.50(c)(3) to include references to part 53 in addition to part 50.

### *§ 40.60 Reporting Requirements*

This proposed rule would revise § 40.60(c)(3) to include references to part 53 in addition to part 50 regarding reporting requirements.

### *§ 50.47 Emergency Plans*

This proposed rule would revise § 50.47(a)(1) and (e) with appropriate references to part 53.

### *§ 50.54 Conditions of Licenses*

This proposed rule would revise § 50.54(q)(2), (q)(4), and (gg)(1) with appropriate references to part 53.

### *§ 50.160 Emergency Preparedness for Small Modular Reactors, Non-Light-Water Reactors, and Non-Power Production or Utilization Facilities*

This proposed rule would revise § 50.160(b)(3) and (c)(2) with the appropriate references to part 53.

### *Appendix B to 10 CFR Part 50—Quality Assurance Criteria for Nuclear Power Plants and Fuel Reprocessing Plants*

This proposed rule would revise appendix B to part 50 by revising the introduction and specific criteria to incorporate the appropriate references and terminology for part 53.

### *§ 51.20 Criteria for and Identification of Licensing and Regulatory Actions Requiring Environmental Impact Statements*

This proposed rule would revise § 51.20(b)(1) and (2) to require an EIS prior to the issuance of a CP, LWA, or ESP under part 53, or the issuance to renewal of a full power or design capacity license to operate a nuclear power reactor, testing facility, or fuel reprocessing plant under part 53.

### *§ 51.22 Criterion for Categorical Exclusion; Identification of Licensing and Regulatory Actions Eligible for Categorical Exclusion or Otherwise Not Requiring Environmental Review*

This proposed rule would revise § 51.22 to include corresponding references to part 53 in paragraphs (c)(3), (c)(9), (c)(12), (c)(17), (c)(22) and (23).

### *§ 51.26 Requirement To Publish Notice of Intent and Conduct Scoping Process*

This proposed rule would revise § 51.26(d) to add a reference to part 53.

### *§ 51.30 Environmental Assessment*

This proposed rule would revise the introductory text to paragraph (a) and revise paragraphs (d) and (e) of § 51.30 to incorporate the appropriate references to part 53 regarding EAs.

### *§ 51.31 Determinations Based on Environmental Assessment*

This proposed rule would revise § 51.31(a) to include a reference to part 53.

### *§ 51.32 Finding of No Significant Impact*

This proposed rule would revise § 51.32(b)(1) and (3), finding there is no significant environmental impact associated with the issuance of standard DCs and MLs under part 53.

### *§ 51.49 Environmental Report-Limited Work Authorization*

This proposed rule would revise the introductory text of § 51.49(c) to require applicants for an ESP under part 53 requesting a LWA to include the environmental report required by § 51.50(b).

### *§ 51.50 Environmental Report—Construction Permit, Early Site Permit, or Combined License Stage*

This proposed rule would revise § 51.50, paragraphs (a), (b)(4), and the introductory text for paragraph (c) to incorporate the appropriate references to part 53.

### *§ 51.53 Postconstruction Environmental Reports*

This proposed rule would revise § 51.53(d) to include the appropriate references to part 53 regarding a license termination plan or decommissioning plan and related requirements for postconstruction environmental reports.

### *§ 51.54 Environmental Report—Manufacturing License*

This proposed rule would update § 51.54(a) to require applicants for MLs under part 53 to submit an environmental report with the application.

### *§ 51.55 Environmental Report—Standard Design Certification*

This proposed rule would update § 51.55(a) to require applicants for a standard DC under part 53 to submit an environmental report with the application.

### *§ 51.58 Environmental Report—Number of Copies; Distribution*

This proposed rule would revise § 51.58(b) to incorporate the appropriate references to part 53.

### *§ 51.77 Distribution of Draft Environmental Impact Statement*

This proposed rule would revise the introductory text for § 51.77(a) to add a reference to part 53.

### *§ 51.92 Supplement to the Final Environmental Impact Statement*

This proposed rule would revise § 51.92(b) to apply to COL applications referencing an ESP under part 53.

### *§ 51.95 Postconstruction Environmental Impact Statements*

This proposed rule would revise the introductory text for § 51.95(c) to include a reference to part 53 regarding the Commission's obligations to prepare an EIS following the renewal of an operating or COL for a nuclear plant under part 53.

### *§ 51.101 Limitations on Actions*

This proposed rule would revise § 51.101(a)(2) to include the corresponding references to part 53 where appropriate.

### *§ 51.103 Record of Decision—General*

This proposed rule would update § 51.103(a)(6) to apply to the issuance of a LWA in connection with a CP or COL under part 53.

### *§ 51.105 Public Hearings in Proceedings for Issuance of Construction Permits or Early Site Permits; Limited Work Authorizations*

This proposed rule would revise § 51.105(c)(1) to include the appropriate reference to LWAs under part 53 for CPs or ESPs.

### *§ 51.107 Public Hearings in Proceedings for Issuance of Combined Licenses; Limited Work Authorizations*

This proposed rule would amend § 51.107 by revising the introductory text for paragraphs (a) and (b) and updating paragraph (d)(1) to include the appropriate corresponding references to part 53.

### *§ 51.108 Public Hearings on Commission Findings That Inspections, Tests, Analyses, and Acceptance Criteria of Combined Licenses Are Met*

This proposed rule would revise § 51.108 to incorporate the appropriate references to part 53.

## **10 CFR part 53—Risk-Informed, Technology-Inclusive Regulatory Framework for Commercial Nuclear Plants**

This proposed rule would add a new part to 10 CFR Chapter I, designated as Part 53 including §§ 53.000 through 53.9010.

### *§ 53.000 Purpose*

This proposed rule would add § 53.000 which provides an optional technology-inclusive, performance-based framework for the issuance, amendment, renewal, and termination of licenses, permits, certifications, and approvals for commercial nuclear plants licensed under section 103 of the Atomic Energy Act of 1954, as amended.

## *Subpart A—General Provisions*

This proposed rule would add subpart A, to establish a set of general provisions, which apply to all applicants and licensees under part 53.

### *§ 53.015 Scope*

This proposed rule would add § 53.015, which would extend the provisions of subpart A to all applicants and licensees under part 53.

### *§ 53.020 Definitions*

This proposed rule would add § 53.020, which would define key terms in part 53.

### *§ 53.040 Written Communications*

This proposed rule would add § 53.040, which would govern how applicants and licensees submit written communications to the NRC, including applications, submissions related to the security plans, emergency plan, and quality assurance, certifications of permanent cessation of operations and permanent fuel removal, and other submittals required under part 53.

### *§ 53.050 Deliberate Misconduct*

This proposed rule would add § 53.050, which would prohibit licensees or applicants, contractors and subcontractors, or employees of those entities from deliberately violating NRC rules, regulations, or orders, or the terms, conditions, and limitations of a part 53 license. This proposed rule would also prohibit deliberate submissions of incomplete or inaccurate information. Violations would be subject to enforcement actions under subpart B of part 2.

### *§ 53.060 Employee Protection*

This proposed rule would add § 53.060, which would prohibit applicants and licensees from discriminating against employees for engaging in the protected activities listed in this section and provide remedial procedures for employees who believe they are the subjects of discrimination.

### *§ 53.070 Completeness and Accuracy of Information*

This proposed rule would add § 53.070, which would require licensees and applicants under part 53 to provide complete and accurate information in accordance with all applicable laws, Commission regulations, and the terms and conditions of their license. This proposed rule would also require licensees to notify the Commission within two days of identifying information with material implications

for public health and safety or common defense and security.

#### *§ 53.080 Specific Exemptions*

This proposed rule would add § 53.080, which would establish the special circumstances under which the Commission could grant exemptions to part 53 licensees and the Commission's criteria for making such a determination.

#### *§ 53.090 Standards for Review*

This proposed rule would add § 53.090 to establish the standards that the Commission would consider when determining whether to issue a permit or license under part 53.

#### *§ 53.100 Jurisdictional Limits*

This proposed rule would add § 53.100, which would provide that permits, licenses, standard design approvals, and standard DCs are solely issued for activities within the jurisdiction of the United States.

#### *§ 53.110 Attacks and Destructive Acts*

This proposed rule would add § 53.110, which would exempt licensees or applicants under part 53 from providing design features to protect against attacks or destructive acts directed at the facility by United States adversaries.

#### *§ 53.115 Rights Related to Special Nuclear Material*

This proposed rule would add § 53.115, which would establish provisions regarding the rights to SNM under a part 53 license.

#### *§ 53.117 License Suspension and Rights of Recapture*

This proposed rule would add § 53.117, which would provide that the Commission may suspend licenses and recapture material or control of a facility in a state of war or national emergency declared by Congress.

#### *§ 53.120 Information Collection Requirements: OMB Approval*

This proposed rule would add § 53.120, which would establish requirements for information collection requirements and Office of Budget and Management approval.

#### *Subpart B—Technology-Inclusive Safety Requirements*

This proposed rule would add subpart B, to establish a set of technology-inclusive performance standards that would be used throughout part 53 to determine appropriate regulatory controls for SSCs, human actions, and programs.

#### *§ 53.210 Safety Criteria for Design-Basis Accidents*

This proposed rule would add § 53.210 to set dose values to ensure that plants are designed to limit the public's radiation exposure in the event of a DBA.

#### *§ 53.220 Safety Criteria for Licensing-Basis Events Other Than Design-Basis Accidents*

This proposed rule would add § 53.220 to require plants to implement a combination of design features and programmatic controls to control risks to the public in the event of a LBE other than a DBA.

#### *§ 53.230 Safety Functions*

This proposed rule would add § 53.230, which specifies that limiting the release of radioactive materials from the facility is the primary safety function of a commercial nuclear plant, and that additional safety functions must be defined to support the retention of radioactive materials during LBEs.

#### *§ 53.240 Licensing-Basis Events*

This proposed rule would add § 53.240 to require commercial nuclear plants to conduct an analysis of LBEs to confirm that design features and programmatic controls satisfy the safety criteria under §§ 53.210 and 53.220, or alternatively, under § 53.470.

#### *§ 53.250 Defense in Depth*

This proposed rule would add § 53.250 to establish a performance-based, defense-in-depth approach to address uncertainties about the effectiveness and reliability of plant SSCs, personnel, and programmatic controls.

#### *§ 53.260 Normal Operations*

This proposed rule would add § 53.260, requiring holders of licenses to operate commercial nuclear plants to control public doses and dose rates in unrestricted areas to meet the requirements in part 20, during normal plant operation.

#### *§ 53.270 Protection of Plant Workers*

This proposed rule would add § 53.270, requiring holders of licenses to operate commercial nuclear plants to control occupational doses to meet the requirements in part 20.

#### *Subpart C—Design and Analysis Requirements*

This proposed rule would add subpart C, which requires the implementation of certain design features and the performance of risk assessments and analyses to demonstrate compliance

with the safety criteria and safety functions in subpart B.

#### *§ 53.400 Design Features for Licensing-Basis Events*

This proposed rule would add § 53.400, which would require design features that satisfy the safety criteria defined in § 53.210 and § 53.220 or § 53.470 and fulfill the safety functions identified in § 53.230 during LBEs.

#### *§ 53.410 Functional Design Criteria for Design-Basis Accidents*

This proposed rule would add § 53.410, which would stipulate that functional design criteria must be defined for each design feature required by § 53.400 to demonstrate compliance with the safety criteria defined in § 53.210 for DBAs.

#### *§ 53.415 Protection Against External Hazards*

This proposed rule would add § 53.415, which would require SR SSCs to be designed to withstand the effects of natural phenomena and constructed hazards while performing the intended safety functions.

#### *§ 53.420 Functional Design Criteria for Licensing-Basis Events Other Than Design-Basis Accidents*

This proposed rule would add § 53.420, which would require functional design criteria to be defined for each design feature required by § 53.400 to demonstrate compliance with the safety criteria defined in § 53.220 for LBEs other than DBAs.

#### *§ 53.425 Design Features and Functional Design Criteria for Normal Operations*

This proposed rule would add § 53.425, which would require commercial nuclear plants to implement design features and define functional design criteria sufficient to demonstrate compliance with § 53.850 and show through functional design criteria that design features and corresponding programmatic controls control wastes, as required under part 20.

#### *§ 53.430 Design Features and Functional Design Criteria for Protection of Plant Workers*

This proposed rule would add § 53.430, which would require commercial nuclear plants to implement design features and define functional design criteria sufficient to demonstrate compliance with § 53.270.

#### *§ 53.440 Design Requirements*

This proposed rule would add § 53.440, which would establish various

design feature requirements, including protection against fires and explosions, criticality accidents, and the impact of a large commercial aircraft.

#### *§ 53.450 Analysis Requirements*

This proposed rule would add § 53.450, which would require commercial nuclear plants to perform PRAs in combination with other analytical methods to identify and assess risks and determine compliance with the safety criteria in subpart B. In addition, § 53.450 would require analysis of DBAs and other analyses to assess the adequacy of protections against fire, aircraft impact, and the release of effluents.

#### *§ 53.460 Safety Categorization and Special Treatments*

This proposed rule would add § 53.460 to address the safety classification of SSCs and determine appropriate special treatments.

#### *§ 53.470 Maintaining Analytical Safety Margins Used To Justify Operational Flexibilities*

This proposed rule would add § 53.470 to permit applicants and licensees to implement more restrictive criteria than that defined in §§ 53.220 and 53.450(e) to support operational flexibilities.

#### *§ 53.480 Earthquake Engineering*

This proposed rule would add § 53.480 to provide overall seismic design considerations based on the safety criteria in subpart B and siting requirements in subpart D to ensure that SSCs are able to withstand the effects of earthquakes without loss of capability to fulfill safety functions.

#### *Subpart D—Siting Requirements*

This proposed rule would add subpart D, which would address requirements associated with the siting of commercial nuclear facilities under part 53, including considerations of external hazards and potential adverse impacts on the surrounding population.

#### *§ 53.500 General Siting and Siting Assessment*

This proposed rule would add § 53.500, which would require a siting assessment for each commercial nuclear plant to ensure that design features and programmatic controls are sufficient to address LBEs and mitigate potential adverse impacts of the plant on the surrounding environs.

#### *§ 53.510 External Hazards*

This proposed rule would add § 53.510, which would require site-

specific assessments, including an evaluation of geological and seismic siting factors, to identify and characterize the external hazard level for a range of natural and constructed hazards.

#### *§ 53.520 Site Characteristics*

This proposed rule would add § 53.520, which would require the design and analyses conducted under subpart C to consider how site characteristics may contribute to LBEs.

#### *§ 53.530 Population-Related Considerations*

This proposed rule would add § 53.530, which would establish requirements related to the facility's exclusion area, low-population zone, and population center distance.

#### *§ 53.540 Siting Interfaces*

This proposed rule would add § 53.540, which would require that external hazards and site characteristics must be accounted for in the design features, programmatic controls, and supporting analyses used to demonstrate compliance with the safety criteria in §§ 53.210 and 53.220.

#### *Subpart E—Construction and Manufacturing Requirements*

This proposed rule would add subpart E, which would establish requirements for the construction and manufacture of commercial nuclear plants.

#### *§ 53.600 Construction and Manufacturing—Scope and Purpose*

This proposed rule would add § 53.600, which would indicate that this subpart applies to construction and manufacturing activities authorized by a CP, COL, ML, or LWA issued under this part.

#### *§ 53.605 Reporting of Defects and Noncompliance*

This proposed rule would add § 53.605, which would describe the procedures, notification requirements, and records retention requirements that each CP, ML, and COL is subject to with respect to reporting of defects and noncompliance.

#### *§ 53.610 Construction*

This proposed rule adds § 53.610 to address the management and control of the construction of a commercial nuclear plant, including specific requirements for procedures and quality assurance, control of radioactive materials, and post construction inspections.

#### *§ 53.620 Manufacturing*

This proposed rule would add § 53.620, which would ensure that the holders of an ML under part 53 develop plans, programs, and organizational units to manage and control manufacturing activities, and would establish requirements for the loading of fuel into a manufactured reactor for subsequent transport to a commercial nuclear plant and operation pursuant to a COL.

#### *Subpart F—Requirements for Operation*

This proposed rule would add subpart F, which would establish regulatory requirements to ensure that the safety criteria in subpart B are satisfied whenever a commercial nuclear plant licensed under part 53 is operational. This includes periods of normal operation and unplanned events.

#### *§ 53.700 Operational Objectives*

This proposed rule would add § 53.700, which would establish general operational objectives to ensure that licensees under part 53 have implemented and maintained the SSCs necessary to demonstrate compliance with the safety functions identified in subpart B for addressing normal operations and responding to LBEs.

#### *§ 53.710 Maintaining Capabilities and Availability of Structures, Systems, and Components*

This proposed rule would add § 53.710, which would require licensees under part 53 to demonstrate compliance with the safety criteria in subpart B by establishing TS for all SR SSCs and developing documents and procedures for all NSRSS SSCs.

#### *§ 53.715 Maintenance, Repair, and Inspection Programs*

This proposed rule would add § 53.715, which would require licensees to develop, implement, and maintain programs to assess and manage any risks posed by maintenance activities and to evaluate the efficacy of performance, condition monitoring, and maintenance activities.

#### *§ 53.720 Response to Seismic Events*

This proposed rule would add § 53.720, which would establish requirements for licensees to respond to a seismic event during the operating phase of the life cycle of a commercial nuclear plant.

#### *§ 53.725 General Staffing, Training, Personnel Qualifications, and Human Factors Requirements*

This proposed rule would add § 53.725, which would provide an

overview of the staffing, training, personnel qualifications, and human factors requirements established in §§ 53.725 through 53.830 and would provide definitions of “Automation,” “Auxiliary operator,” “Controls,” “Generally licensed reactor operator,” “Load following,” “Operator,” “Performance testing,” “Reference plant,” “Self-reliant mitigation facility,” “Senior operator,” “Simulation facility,” and “Systems approach to training.” Proposed §§ 53.725 through 53.830 would apply to applicants for or holders of OLs or COLs under part 53.

#### *§ 53.726 Communications*

This proposed rule would add § 53.726, which would contain communications requirements applicable to sections §§ 53.725 through 53.830. It also contains requirements to notify the Commission within 30 days should a specifically licensed operator or senior operator be reassigned, terminated, or suffer permanent disability or illness.

#### *§ 53.728 Completeness and Accuracy of Information*

This proposed rule would add § 53.728, which would require submitted information to be complete and accurate in all material respects.

#### *§ 53.730 Defining, Fulfilling, and Maintaining the Role of Personnel in Ensuring Safe Operations*

This proposed rule would add § 53.730, which would establish technical requirements for applicants or holders of OLs or COLs within the areas of HFE, human-system interface design, concept of operations, functional requirements analysis, function allocation, operating experience, procedures, staffing, operator training, operator examinations, and operator proficiency.

#### *§ 53.735 General Exemptions*

This proposed rule would add § 53.735, which would establish general exemptions for licensed operators.

#### *§ 53.740 Facility Licensee Requirements—General*

This proposed rule would add § 53.740, which would establish staffing requirements for interaction-dependent-mitigation facilities and self-reliant mitigation facilities.

#### *§ 53.745 Operator License Requirements*

This proposed rule would add § 53.745, which would require individuals to be licensed to perform certain functions.

#### *§ 53.760 Operator Licensing*

This proposed rule would add § 53.760, which would address the applicability of the requirements of §§ 53.760 through 53.795 for specifically licensed operators and senior operators.

#### *§ 53.765 Medical Requirements*

This proposed rule would add § 53.765, which would establish medical requirements for specifically licensed operators and senior operators.

#### *§ 53.770 Incapacitation Because of Disability or Illness*

This proposed rule would add § 53.770, which would establish requirements to address permanent medical conditions for specifically licensed operators and senior operators.

#### *§ 53.775 Applications for Operators and Senior Operators*

This proposed rule would add § 53.775, which would establish the application process and requirements for individuals applying for specific operator and senior operator licenses.

#### *§ 53.780 Training, Examination, and Proficiency Program*

This proposed rule would add § 53.780, which would contain the requirements associated with specifically licensed operator and senior operator initial training, initial examinations, requalification training, requalification examinations, examination integrity, simulation facilities, waivers, and proficiency.

#### *§ 53.785 Conditions of Operator and Senior Operator Licenses*

This proposed rule would add § 53.785, which would establish conditions for specific operator and senior operator licenses.

#### *§ 53.790 Issuance, Modification, and Revocation of Operator and Senior Operator Licenses*

This proposed rule would add § 53.790, which would contain requirements associated with the issuance, modification, or revocation of specific operator and senior operator licenses.

#### *§ 53.795 Expiration and Renewal of Operator and Senior Operator Licenses*

This proposed rule would add § 53.795, which would contain requirements associated with the expiration and renewal of specific operator and senior operator licenses.

#### *§ 53.800 Facility Licensees for Self-Reliant-Mitigation Facilities*

This proposed rule would add § 53.800, which would establish the technical criteria by which commercial nuclear plants under part 53 are determined to be of the self-reliant mitigation class of facilities that would be staffed by GLROs in lieu of specifically licensed operators and senior operators.

#### *§ 53.805 Facility Licensee Requirements Related to Generally Licensed Reactor Operators*

This proposed rule would add § 53.805, which would establish requirements that apply to the facility licensee at those facilities staffed by GLROs.

#### *§ 53.810 Generally Licensed Reactor Operators*

This proposed rule would add § 53.810, which would issue and describe the general license for GLROs that manipulate the controls of a self-reliant mitigation facility.

#### *§ 53.815 Generally Licensed Reactor Operator Training, Examination, and Proficiency Programs*

This proposed rule would add § 53.815, which would contain the requirements for GLRO initial training, initial examinations, continuing training, requalification examinations, examination integrity, simulation facilities, examination waivers, and proficiency.

#### *§ 53.820 Cessation of Individual Applicability*

This proposed rule would add § 53.820, which would address the requirements by which the general license for GLROs would cease to be applicable on an individual basis.

#### *§ 53.830 Training and Qualification of Commercial Nuclear Plant Personnel*

This proposed rule would add § 53.830, which would address training and qualification requirements for supervisors, technicians, and other appropriate operating personnel at commercial nuclear plants.

#### *§ 53.845 Programs*

This proposed rule would add § 53.845, which would require licensees under part 53 to establish programs that include, but are not limited to, radiation protection, emergency preparedness, security, quality assurance, integrity assessment, fire protection, ISI and IST, and facility safety, to ensure that the safety criteria and functions in subpart

B are maintained during normal operations and LBEs.

#### *§ 53.850 Radiation Protection*

This proposed rule would add § 53.850, which would require licensees under part 53 to implement and maintain programs and processes to limit and monitor radioactive plant effluents and limit the exposure of plant personnel and the public.

#### *§ 53.855 Emergency Preparedness*

This proposed rule would add § 53.855, which would require licensees under this part to have an emergency response plan for radiological emergencies.

#### *§ 53.860 Security Programs*

This proposed rule would add § 53.860, which would require licensees under part 53 to develop, implement, and maintain programs for physical security, FFD, AA, cybersecurity, and information security.

#### *§ 53.865 Quality Assurance*

This proposed rule would add § 53.865, which would require licensees under part 53 to establish a quality assurance program that includes a written manual to ensure activities are conducted in accordance with codes and standards found acceptable by the NRC.

#### *§ 53.870 Integrity Assessment Programs*

This proposed rule would add § 53.870, which would require licensees under part 53 to establish an integrity assessment program to ensure that the plant continues to fulfill safety criteria and functional design criteria as it ages.

#### *§ 53.875 Fire Protection*

This proposed rule would add § 53.875, which would require licensees under part 53 to establish a fire protection plan and describe the necessary elements that the plan must incorporate.

#### *§ 53.880 Inservice Inspection and Inservice Testing*

This proposed rule would add § 53.880, which would require licensees under part 53 to develop and implement a program for ISI and IST in accordance with the requirements of this section.

#### *§ 53.910 Procedures and Guidelines*

This proposed rule would add § 53.910, which would require licensees under part 53 to develop, maintain, and implement procedures and guidelines that address normal plant operations and responses to unplanned events.

### *Subpart G—Decommissioning Requirements*

This proposed rule would add subpart G, to establish decommissioning requirements for applicants for or holders of an OL or COL under part 53.

#### *§ 53.1000 Scope and Purpose*

This proposed rule would add § 53.1000, which would establish the scope of the decommissioning requirements for applicants and licensees under part 53 and describe the contents of subpart G of part 53.

#### *§ 53.1010 Financial Assurance for Decommissioning*

This proposed rule would add § 53.1010, which would establish the requirement that applicants for an OL or COL under part 53 provide reasonable assurance that funds will be available for the decommissioning process. This section would describe the requirements associated with the required plan and an associated decommissioning report that ensures and documents that adequate funding for decommissioning will be available.

#### *§ 53.1020 Cost Estimates for Decommissioning*

This proposed rule would add § 53.1020, which would require site-specific cost estimates for decommissioning and establish the aspects that must be included in the estimate.

#### *§ 53.1030 Annual Adjustments to Cost Estimates for Decommissioning*

This proposed rule would add § 53.1030, which would require that holders of an OL or COL under part 53 annually adjust their cost estimate for decommissioning to account for escalation in labor, energy, and waste burial costs. This section would allow licensees to elect either a site-specific adjustment factor or a generic adjustment factor.

#### *§ 53.1040 Methods for Providing Financial Assurance for Decommissioning*

This proposed rule would add § 53.1040, which would establish suitable methods that holders of an OL or COL under part 53 may use to provide financial assurance for decommissioning to the NRC.

#### *§ 53.1045 Limitations on the Use of Decommissioning Trust Funds*

This proposed rule would add § 53.1045, which would establish requirements for decommissioning trust funds under part 53, including criteria

for using decommissioning trust funds and required terms.

#### *§ 53.1050 NRC Oversight*

This proposed rule would add § 53.1050, which would outline the steps the NRC may take to ensure adequate accumulation of decommissioning funds.

#### *§ 53.1060 Reporting and Recordkeeping Requirements*

This proposed rule would add § 53.1060, which would contain reporting and recordkeeping requirements related to decommissioning for each holder of an OL or COL under part 53. This section would outline requirements for documents such as: certification of decommissioning funding, decommissioning cost estimates and copies of financial instruments, licensee records of information important to safe and effective decommissioning, post-shutdown decommissioning activities report, financial assurance reports, and reports on the status of funding for managing irradiated fuel.

#### *§ 53.1070 Termination of License*

This proposed rule would add § 53.1070, which would establish procedures for decommissioning and license termination applicable to licensees under part 53 that have determined to permanently cease operations.

#### *§ 53.1075 Program Requirements During Decommissioning*

This proposed rule would add § 53.1075, which would require licensees under part 53 to establish and maintain a decommissioning fire protection program to prevent, detect, and control fires, and ensure that the risk of fire induced radiological hazards are minimized through the various stages of facility decommissioning.

#### *§ 53.1080 Release of Part of a Commercial Nuclear Plant or Site for Unrestricted Use*

This proposed rule would add § 53.1080, which would establish licensee procedures for requesting and NRC procedures for approving partial release of a commercial nuclear plant or site for unrestricted use prior to receiving approval of a license termination plan from the Commission under part 53.

### *Subpart H—Licenses, Certifications, and Approvals*

This proposed rule would add subpart H, which would govern the process of applying for, amending, renewing, or



terminating a LWA, ESP, standard design approval, standard DC, ML, CP, OL, or COL under part 53.

*§ 53.1100 Filling of Application for Licenses, Certifications, or Approvals; Oath or Affirmation*

This proposed rule would add § 53.1100, which would establish requirements for applicants seeking a standard design approval, standard DC, license, or permit under part 53 to submit an application.

*§ 53.1101 Requirement for License*

This proposed rule would add § 53.1101, which would prohibit any use of a utilization facility except as authorized by a license issued by the NRC or by an exception as described in § 53.1120.

*§ 53.1103 Combining Applications and Licenses*

This proposed rule would add § 53.1103, which would permit applicants under part 53 seeking multiple licenses to submit a single application, and the Commission to issue a single license for activities that would otherwise be licensed separately.

*§ 53.1106 Elimination of Repetition*

This proposed rule would add § 53.1106, which would allow applicants under part 53 to reference information contained in previous documents filed with the Commission so long as those references are clear and specific.

*§ 53.1109 Contents of Applications; General Information*

This proposed rule would add § 53.1109, which would establish the general content to be included in applications made under part 53, including but not limited to the identifying information of the applicant and the radiological emergency response plans of government entities within the plume exposure pathway EPZ.

*§ 53.1112 Environmental Conditions*

This proposed rule would add § 53.1112, which would allow the Commission to attach conditions to CPs, ESPs, and licenses issued under part 53 to address environmental issues during construction, operation, or decommissioning. These conditions will be derived from the information contained in the environmental report submitted as part of the application for a permit or license.

*§ 53.1115 Agreement Limiting Access to Classified Information*

This proposed rule would add § 53.1115, which would require applicants to agree in writing, prior to receiving a license or standard design approval under part 53, to restrict any facilities, or any individuals with access to plant facilities, from possessing Restricted Data or classified National Security Information until they have received the appropriate authorization.

*§ 53.1118 Ineligibility of Certain Applicants*

This proposed rule would add § 53.1118, which would prevent citizens, nationals, or agents of a foreign country or corporations owned, controlled, or dominated by a foreign entity from applying for or obtaining a license under part 53.

*§ 53.1120 Exceptions and Exemptions From Licensing Requirements*

This proposed rule would add § 53.1120, which would establish the activities that are exempt from licensing requirements.

*§ 53.1121 Public Inspection of Applications*

This proposed rule would add § 53.1121, which would allow applicant submissions to be made publicly available under the provisions of part 2.

*§ 53.1124 Relationship Between Sections*

This proposed rule would add § 53.1124, which would outline the relationship between LWAs, ESPs, standard design approvals, standard DCs, MLs, CPs, OLs, and COLs under part 53.

*§ 53.1130 Limited Work Authorizations*

This proposed rule would add § 53.1130, which would establish requirements for requesting an LWA and grounds for the Commission to issue an LWA. It would also contain details about the effect of an LWA and the implementation of a redress plan.

*§ 53.1140 Early Site Permits*

This proposed rule would add § 53.1140, which would provide an overview of the requirements regarding applications for and the issuance of ESPs under part 53.

*§ 53.1143 Filing of Applications*

This proposed rule would add § 53.1143, which would enable an applicant under part 53 to apply for an ESP, regardless of whether they have

filed an application for a CP or COL for that site.

*§ 53.1144 Contents of Applications for Early Site Permits; General Information*

This proposed rule would add § 53.1144, which would require applications for ESPs to include the information required by § 53.1109(a) through (d) and (j).

*§ 53.1146 Contents of Applications for Early Site Permits; Technical Information*

This proposed rule would add § 53.1146, which would require applicants for ESPs to submit technical information, including but not limited to a Site Safety Analysis Report and emergency plans.

*§ 53.1149 Review of Applications*

This proposed rule would add § 53.1149, which would establish standards for review of applications for ESPs under part 53, including requirements for the Commission to prepare an EIS and assess the adequacy of protective actions in the event of a radiological emergency. It would also require the administrative review of applications and hearings to follow the procedural requirements of part 2.

*§ 53.1155 Referral to the Advisory Committee on Reactor Safeguards*

This proposed rule would add § 53.1115, which would require the ACRS to review SR content in the application for an ESP under part 53.

*§ 53.1158 Issuance of Early Site Permit*

This proposed rule would add § 53.1158, which would establish the conditions under which the Commission may issue an ESP under part 53, as well as the information, terms, and conditions to be included in the permit.

*§ 53.1161 Extent of Activities Permitted*

This proposed rule would add § 53.1161, which would require that a valid ESP only be used for the purpose of site redress, unless the site is referenced in an application for a CP or COL under part 53.

*§ 53.1164 Duration of Permit*

This proposed rule would add § 53.1164, which would govern the conditions under which an ESP remains valid following the date of issuance.

*§ 53.1167 Limited Work Authorization After Issuance of Early Site Permit*

This proposed rule would add § 53.1167, which would permit the

holder of an ESP to request a LWA under § 53.1130.

*§ 53.1170 Transfer of Early Site Permit*

This proposed rule would add § 53.1170, which would govern the transfer of an ESP in accordance with § 53.1570.

*§ 53.1173 Application for Renewal*

This proposed rule would add § 53.1173, which would establish the conditions and procedures for renewing an ESP under part 53.

*§ 53.1176 Criteria for Renewal*

This proposed rule would add § 53.1176, which would establish the criteria that the Commission may use to grant a renewal of an ESP under part 53.

*§ 53.1179 Duration of Renewal*

This proposed rule would add § 53.1179, which would govern the duration of a renewed ESP under part 53.

*§ 53.1182 Use of Site for Other Purposes*

This proposed rule would add § 53.1182, which would govern acceptable uses of the site for purposes other than those described in the permit.

*§ 53.1188 Finality of Early Site Permit Determinations*

This proposed rule would add § 53.1188, which would address the finality of ESP determinations under part 53.

*§ 53.1200 Standard Design Approvals*

This proposed rule would add § 53.1200, which would address the procedures for filing an application for a standard design approval under part 53, the process of review by NRC staff, and referral to the ACRS of standard designs.

*§ 53.1203 Filing of Applications*

This proposed rule would add § 53.1203, which would enable applicants to submit a final design for the entire facility, or major portions, to the NRC staff for review.

*§ 53.1206 Contents of Applications for Standard Design Approvals; General Information*

This proposed rule would add § 53.1206, which would require applications for a standard design approval under part 53 to contain the information required by § 53.1109(a) through (c) and (j).

*§ 53.1209 Contents of Applications for Standard Design Approvals; Technical Information*

This proposed rule would add § 53.1209, which would require the inclusion of certain technical information, including a FSAR, site parameters, and design information, when an applicant seeks review of major portions of a standard design.

*§ 53.1210 Contents of Applications for Standard Design Approvals; Other Application Content*

This proposed rule would add § 53.1210, which would require applications for standard design approvals under part 53 to include a description of the availability controls used to satisfy the safety criteria of § 53.220, the program to protect Safeguards Information against unauthorized disclosure, evidence that safety questions associated with SSCs have been resolved, and a description of how design features fulfill design criteria.

*§ 53.1212 Standards for Review of Applications*

This proposed rule would add § 53.1212, which would require applications for standard design approval to be reviewed under the standards in parts 20, 53, and 73.

*§ 53.1215 Referral to the Advisory Committee on Reactor Safeguards*

This proposed rule would add § 53.1215, which would require the ACRS to report on any portions of the application for a standard design approval under part 53 concerning safety.

*§ 53.1218 Staff Approval of Design*

This proposed rule would add § 53.1218, which would require the NRC staff to make a determination on the acceptability of the design, publish its decision in the **Federal Register**, and issue a report analyzing the design that is available at <http://nrc.gov>. Additionally, the rule would establish the conditions under which a design approval under part 53 remains valid.

*§ 53.1221 Finality of Standard Design Approvals; Information Requests*

This proposed rule would add § 53.1221, which would require NRC staff and the ACRS to rely upon an approved design in their review of any standard DC, ML, or individual facility license application under part 53 that references the standard design approval. The proposed rule would also govern requirements for issuing information requests.

*§ 53.1230 Standard Design Certifications*

This proposed rule would add § 53.1230, which would provide an overview of the requirements and procedures that govern the issuance of standard DCs under part 53.

*§ 53.1233 Filing of Applications*

This proposed rule would add § 53.1233, which would enable an application for DC to be filed, regardless of whether an application for a CP, COL, or ML has been filed, provided it complies with the filing requirements in § 53.040 and §§ 2.811 through 2.819.

*§ 53.1236 Contents of Applications for Standard Design Certifications; General Information*

This proposed rule would add § 53.1236, which would require an application for a standard DC under part 53 to contain all of the information required by § 53.1109(a) through (c) and (j).

*§ 53.1239 Contents of Applications for Standard Design Certifications; Technical Information*

This proposed rule would add § 53.1239, which would require applicants for a standard DC under part 53 to submit a FSAR that includes technical design information at a level of detail sufficient to enable the Commission to make a safety determination.

*§ 53.1241 Contents of Applications for Standard Design Certifications; Other Application Content*

This proposed rule would add § 53.1241, which would require applications for standard DCs under part 53 to include an environmental report, as well as a description of the availability controls used to satisfy the safety criteria of § 53.220, proposed ITAAC, the program to protect Safeguards Information against unauthorized disclosure, evidence that safety questions associated with SSCs have been resolved, and a description of how design features fulfill design criteria.

*§ 53.1242 Review of Applications*

This proposed rule would add § 53.1242, which would require applications for standard DCs to be reviewed for compliance with the standards in parts 20, 51, 53, and 73. It would also establish procedural requirements for reviewing applications and holding hearings in accordance with subpart H of part 2.

*§ 53.1245 Referral to the Advisory Committee on Reactor Safeguards*

This proposed rule would add § 53.1245, which would require the ACRS to report on any portions of the application for a standard DC under part 53 concerning safety.

*§ 53.1248 Issuance of Standard Design Certification*

This proposed rule would add § 53.1248, which would establish the conditions under which the Commission may issue a DC rule that specifies the site parameters, design characteristics, and any additional terms and conditions of the DC rule.

*§ 53.1251 Duration of Certification*

This proposed rule would add § 53.1251, which would set the conditions under which a standard DC remains valid.

*§ 53.1254 Application for Renewal*

This proposed rule would add § 53.1254, which would establish the conditions and procedures for renewing a standard DC under part 53.

*§ 53.1257 Criteria for Renewal*

This proposed rule would add § 53.1257, which would enable the Commission to issue a rule granting the renewal of a standard DC under part 53, impose additional requirements, and grant amendment requests.

*§ 53.1260 Duration of Renewal*

This proposed rule would add § 53.1260, which would provide that a renewal of a standard DC under part 53 is valid for not less than 10 years, nor more than 15 years.

*§ 53.1263 Finality of Standard Design Certifications*

This proposed rule would add § 53.1263, which would establish limited conditions under which the Commission may initiate a rulemaking to modify, rescind, or impose new requirements on a standard DC rule under part 53. It would also address requests for an exemption from elements of the certification information, and require that applicants for a CP, COL, or ML that references a DC rule make information normally contained in engineering documents available for audit.

*§ 53.1270 Manufacturing Licenses*

This proposed rule would add § 53.1270, which would provide an overview of the requirements and procedures for applying for and issuing an ML under part 53.

*§ 53.1273 Filing of Applications*

This proposed rule would add § 53.1273, which would establish the requirements to apply for an ML under part 53.

*§ 53.1276 Contents of Applications for Manufacturing Licenses; General Information*

This proposed rule would add § 53.1276, which would require applicants for an ML under part 53 to include the information contained in § 53.1109(a) through (e) and (j).

*§ 53.1279 Contents of Applications for Manufacturing Licenses; Technical Information*

This proposed rule would add § 53.1279, which would require an applicant for an ML under part 53 to include certain technical information in a FSAR, including but not limited to information about site parameters, design information, manufacturing information, and information related to the potential fueling and ultimate deployment of a completed manufactured reactor.

*§ 53.1282 Contents of Applications for Manufacturing Licenses; Other Application Content*

This proposed rule would add § 53.1282, which would require applicants for an ML under part 53 to include in their application the proposed ITAAC, an environmental report, a description of the program to protect Safeguards Information against unauthorized disclosure, and a description of how design features fulfill design criteria. It would also include content requirements for the ITAAC and environmental reports in applications that reference a standard DC.

*§ 53.1285 Review of Applications*

This proposed rule would add § 53.1285, which would require applications for MLs under part 53 to be reviewed for compliance with applicable standards and establish procedural requirements for reviewing applicants and holding hearings in accordance with part 2.

*§ 53.1286 Referral to the Advisory Committee on Reactor Safeguards*

This proposed rule would add § 53.1286, which would require the ACRS to report on any portions of the application for an ML under part 53 concerning safety.

*§ 53.1287 Issuance of Manufacturing Licenses*

This proposed rule would add § 53.1287, which would establish the conditions under which the Commission may issue an ML under part 53.

*§ 53.1288 Finality of Manufacturing Licenses*

This proposed rule would add § 53.1288, which would address the limited circumstances in which the Commission may modify, rescind, or impose new requirements following the issuance of an ML under part 53. It would also address requests for a departure from the specifications of the license.

*§ 53.1291 Duration of Manufacturing Licenses*

This proposed rule would add § 53.1291, which would govern the expiration of an ML, which is valid for no less than 5, nor more than 15 years from the date of issuance.

*§ 53.1293 Transfer of Manufacturing Licenses*

This proposed rule would add § 53.1293, which would provide that an ML under part 53 may be transferred in accordance with § 53.1570.

*§ 53.1295 Renewal of Manufacturing Licenses*

This proposed rule would add § 53.1295, which would establish the procedures for applicants to apply for and the Commission to grant a renewal of an ML under part 53.

*§ 53.1300 Construction Permits*

This proposed rule would add § 53.1300, which would provide an overview of the requirements and procedures for applicants to apply for and the Commission to grant a CP under part 53.

*§ 53.1306 Contents of Applications for Construction Permits; General Information*

This proposed rule would add § 53.1306, which would require applicants for a CP under part 53 to submit the general information required by § 53.1109, as well as financial information.

*§ 53.1309 Contents of Applications for Construction Permits; Technical Information*

This proposed rule would add § 53.1309, which would require applicants for a CP under part 53 to submit a PSAR and a description of the program to protect Safeguards

Information from unauthorized disclosure.

**§ 53.1312 Contents of Applications for Construction Permits; Other Application Content**

This proposed rule would add § 53.1312, which would require applicants for a CP under part 53 to submit an environmental report and to provide additional details in the PSAR if the application references an ESP, standard design approval, or standard DC.

**§ 53.1315 Review of Applications**

This proposed rule would add § 53.1315, which would require applications for CPs under part 53 to be reviewed for compliance with applicable standards and establish procedural requirements for reviewing applications and holding hearings in accordance with part 2.

**§ 53.1318 Finality of Referenced NRC Approvals, Permits, and Certifications**

This proposed rule would add § 53.1318, which would address the finality of ESPs, standard design approvals, and standard DCs referenced in the CP application.

**§ 53.1324 Referral to the Advisory Committee on Reactor Safeguards**

This proposed rule would add § 53.1324, which would require the ACRS to report on any portions of the application for a CP under part 53 concerning safety.

**§ 53.1327 Authorization To Conduct Limited Work Authorization Activities**

This proposed rule would add § 53.1327, which would govern authorization to conduct LWA activities.

**§ 53.1330 Exemptions, Departures, and Variances**

This proposed rule would add § 53.1330, which would govern requests for and issuance of exemptions from the Commission's regulations and exemptions, departures, and variances from NRC approvals, permits, and certifications.

**§ 53.1333 Issuance of Construction Permits**

This proposed rule would add § 53.1333, which would establish the conditions under which the Commission may issue CPs and accompanying terms and conditions under part 53.

**§ 53.1336 Finality of Construction Permits**

This proposed rule would add § 53.1336, which would address the finality of CPs.

**§ 53.1342 Duration of Construction Permits**

This proposed rule would add § 53.1342, which would establish requirements for the expiration of a CP.

**§ 53.1345 Transfer of Construction Permits**

This proposed rule would add § 53.1345, which would govern the transfer of CPs under part 53.

**§ 53.1348 Termination of Construction Permits**

This proposed rule would add § 53.1348, which would require the holder of a permit under part 53 to provide written certification to the Commission within 30 days of determining to permanently cease construction.

**§ 53.1360 Operating Licenses**

This proposed rule would add § 53.1360, which would provide an overview of the requirements and procedures for applicants to apply for and the Commission to issue an OL under part 53.

**§ 53.1366 Contents of Applications for Operating Licenses; General Information**

This proposed rule would add § 53.1366, which would require an application for an OL under part 53 to include the information required by § 53.1109 as well as financial information.

**§ 53.1369 Contents of Applications for Operating Licenses; Technical Information**

This proposed rule would add § 53.1369, which would require an application for an OL under part 53 to include certain technical information in an FSAR at a level of detail sufficient for the Commission to reach a final conclusion on all safety matters.

**§ 53.1372 Contents of Applications for Operating Licenses; Other Application Content**

This proposed rule would add § 53.1372, which would require an application for an OL under part 53 to include an environmental report and a description of availability controls.

**§ 53.1375 Review of Applications**

This proposed rule would add § 53.1375, which would establish the standards and procedures for reviewing

applications and holding hearings on OLs under part 53.

**§ 53.1381 Referral to the Advisory Committee on Reactor Safeguards**

This proposed rule would add § 53.1381, which would require the ACRS to report on any portions of the application for a CP under part 53 concerning safety.

**§ 53.1384 Exemptions, Departures, and Variances**

This proposed rule would add § 53.1384, which would govern requests for and the issuance of exemptions from the Commission's regulations and exemptions, departures, and variances from NRC approvals, permits, and certifications.

**§ 53.1387 Issuance of Operating Licenses**

This proposed rule would add § 53.1387, which would establish the conditions under which the Commission may issue OLs and accompanying conditions and limitations, including TS, under part 53.

**§ 53.1390 Backfitting of Operating Licenses**

This proposed rule would add § 53.1390, which would prevent the Commission from modifying, adding, or deleting any terms or conditions of the OL, except in accordance with § 53.1590.

**§ 53.1396 Duration of Operating Licenses**

This proposed rule would add § 53.1396, which would provide that an OL under part 53 may be valid for up to 40 years.

**§ 53.1399 Transfer of an Operating License**

This proposed rule would add § 53.1399, which would provide that an OL under part 53 may be transferred under § 53.1570.

**§ 53.1402 Application for Renewal**

This proposed rule would add § 53.1402, which would provide that an application for a renewed OL under part 53 must be filed in accordance with § 53.1595.

**§ 53.1405 Continuation of an Operating License**

This proposed rule would add § 53.1405, which would govern the continuing obligations of the holder of an OL under part 53 following the permanent cessation of operations.

*§ 53.1410 Combined Licenses*

This proposed rule would add § 53.1410, which would provide an overview of the requirements and procedures for applicants to apply for and the Commission to issue a COL under part 53.

*§ 53.1413 Contents of Applications for Combined Licenses; General Information*

This proposed rule would add § 53.1413, which would require an application for a COL under part 53 to include the information required by § 53.1109 as well as financial information.

*§ 53.1416 Contents of Applications for Combined Licenses; Technical Information*

This proposed rule would add § 53.1416, which would require applicants for a COL under part 53 to submit an FSAR with a level of technical information sufficient to reach a final conclusion on all safety matters.

*§ 53.1419 Contents of Applications for Combined Licenses; Other Application Content*

This proposed rule would add § 53.1419, which would require applicants for a COL under part 53 to submit an environmental report, a description of availability controls, the ITAAC that the licensee must perform. It would also include ITAAC requirements for applications that reference an ESP, standard DC, ML, or combination thereof.

*§ 53.1422 Review of Applications*

This proposed rule would add § 53.1422, which would require applications for COLs under part 53 to be reviewed for compliance with applicable standards and establish procedural requirements for reviewing applications and holding hearings in accordance with part 2.

*§ 53.1425 Finality of Referenced NRC Approvals*

This proposed rule would add § 53.1425 which would address the finality of ESPs, standard DC rules, standard design approvals, or MLs referenced in the application for a COL under part 53.

*§ 53.1431 Referral to the Advisory Committee on Reactor Safeguards*

This proposed rule would add § 53.1431, which would require the ACRS to report on any portions of the application for a COL under part 53 concerning safety.

*§ 53.1434 Authorization To Conduct Limited Work Authorization Activities*

This proposed rule would add § 53.1434, which would address authorization to conduct LWA activities.

*§ 53.1437 Exemptions, Departures, and Variances*

This proposed rule would add § 53.1437, which would govern the conditions in which the Commission may grant an exemption for one or more of its regulations, or an exemption, variance, or departure from a permit, design approval, or license.

*§ 53.1440 Issuance of Combined Licenses*

This proposed rule would add § 53.1440, which would establish the conditions under which the Commission may issue COLs and accompanying conditions and limitations, including TS, under part 53.

*§ 53.1443 Finality of Combined Licenses*

This proposed rule would add § 53.1443, which would govern permissible modifications or amendments that the Commission may make to a COL, as well as permissible changes that a licensee may make to facilities and procedures as described in the FSAR.

*§ 53.1449 Inspection During Construction*

This proposed rule would add § 53.1449, which would establish requirements related to inspections, tests, or analyses for the holder of a COL under part 53.

*§ 53.1452 Operation Under a Combined License*

This proposed rule would add § 53.1452, which would establish requirements describing the notifications, hearings, and findings to be made prior to commencing facility operations.

*§ 53.1455 Duration of a Combined License*

This proposed rule would add § 53.1455, which would govern the duration of a COL under part 53.

*§ 53.1456 Transfer of a Combined License*

This proposed rule would add § 53.1456, which would permit the transfer of a COL under part 53 in accordance with § 53.1570.

*§ 53.1458 Application for Renewal*

This proposed rule would add § 53.1458, which would provide that an application for renewal of a COL must be filed in accordance with § 53.1595.

*§ 53.1461 Continuation of Combined License*

This proposed rule would add § 53.1461, which would govern the continuing obligations of the holder of a COL under part 53 following the permanent cessation of operations.

*§ 53.1470 Standardization of Commercial Nuclear Plant Designs: Licenses To Construct and Operate Nuclear Power Reactors of Identical Design at Multiple Sites*

This proposed rule would add § 53.1470, which would govern the requirements and procedures for filing and issuing applications for a CP, OL, or COL under part 53 in which the applicant seeks approval of the same design for multiple sites.

*Subpart I—Maintaining and Revising Licensing-Basis Information*

This proposed rule would add subpart I, which would address the maintenance of licensing-basis information for part 53.

*§ 53.1500 Licensing-Basis Information*

This proposed rule would add § 53.1500, describing the purpose of subpart I, which would be to provide the requirements for the maintenance of licensing-basis information for commercial nuclear plants licensed under part 53.

*§ 53.1502 Specific Terms and Conditions of Licenses*

This proposed rule would add § 53.1502, which would outline the specific terms and conditions for obtaining a license under part 53.

*§ 53.1505 Changes to Licensing-Basis Information Requiring Prior NRC Approval*

This proposed rule would add § 53.1505, which would provide an overview of the process for licensees to request, and the Commission to issue, amendments to licensing-basis information under part 53.

*§ 53.1510 Application for Amendment of License*

This proposed rule would add § 53.1510, which would require licensees under part 53 to file an application to request an amendment to the license. Applicants must assess how their requested changes would impact the safety criteria and analysis

requirements in subpart B and C, as applicable, whether the amendment involves no significant hazards consideration using the standards in § 53.1520 and consider potential impacts on environmental factors.

#### *§ 53.1515 Public Notices; State Consultation*

This proposed rule would add § 53.1515, which would outline the Commission's procedures for issuing a notification in the **Federal Register** and consulting with the State in which the commercial nuclear facility is located in connection with its consideration of applications for an amendment to an OL or COL under part 53.

#### *§ 53.1520 Issuance of Amendment*

This proposed rule would add § 53.1520, which would outline criteria for the Commission to consider in issuing license amendments under part 53.

#### *§ 53.1525 Revising Certification Information Within a Design Certification Rule*

This proposed rule would add § 53.1525, which would address the requirements for applicants to request, and the Commission to grant, an exemption to a DC rule under part 53.

#### *§ 53.1530 Revising Design Information Within a Manufacturing License*

This proposed rule would add § 53.1530, which would require the holder of an ML to request an amendment under § 53.1510 and, as applicable, § 53.1520 to make changes to the design of a manufactured reactor. It would also outline the requirements for holders of a COL under part 53 to request amendments for changes to the design information of a manufactured reactor.

#### *§ 53.1535 Amendments During Construction*

This proposed rule would add § 53.1535, which would outline the process for licensees under part 53 to request amendments to CPs or LWAs during construction.

#### *§ 53.1540 Updating Licensing-Basis Information and Determining the Need for NRC Approval*

This proposed rule would add § 53.1540, which would provide an overview of the regulations in subpart I for holders of an OL or COL under part 53 to modify licensing-basis information and definitions relevant to §§ 53.1545 through 53.1565.

#### *§ 53.1545 Updating Final Safety Analysis Reports*

This proposed rule would add § 53.1545, which would require licensees under part 53 to regularly update FSARs in accordance with the requirements of this section to reflect changes to licensing-basis information.

#### *§ 53.1550 Evaluating Changes to Facility as Described in Final Safety Analysis Reports*

This proposed rule would add § 53.1550, which would require licensees under part 53 to follow the guidelines outlined in this section in determining whether changes to licensing-basis information described in the FSAR (as updated) require them to obtain a license amendment.

#### *§ 53.1560 Updating Program Documents Included in Licensing-Basis Information*

This proposed rule would add § 53.1560, which would require the holders of an OL or COL under part 53 to regularly update the program documents that they submitted in their application for a license.

#### *§ 53.1565 Evaluating Changes to Programs Included in Licensing-Basis Information*

This proposed rule would add § 53.1565, which would enable licensees under part 53 to make changes to the facility, procedures, or organization, or address changes to site environs as described in program documents without NRC approval if these changes satisfy the criteria outlined in this section.

#### *§ 53.1570 Transfer of Licenses*

This proposed rule would add § 53.1570, which would outline the requirements for an application for transfer of a license issued under part 53.

#### *§ 53.1575 Termination of Licenses*

This proposed rule would add § 53.1575, which would outline the process for terminating an OL or COL issued under part 53.

#### *§ 53.1580 Information Requests*

This proposed rule would add § 53.1580, which would address the process and circumstances under which the NRC may send information requests to the various types of licensees within part 53.

#### *§ 53.1585 Revocation, Suspension, Modification of Licenses and Approvals for Cause*

This proposed rule would add § 53.1585, which would address grounds for the revocation, suspension, or modification of a license or standard design approval issued under part 53.

#### *§ 53.1590 Backfitting*

This proposed rule would add § 53.1590, which would define backfitting and establish requirements to be met by the NRC when it takes backfitting actions under part 53.

#### *§ 53.1595 Renewal*

This proposed rule would add § 53.1595, which would provide for the renewal of a license under part 53 upon expiration.

#### *Subpart J—Reporting and Other Administrative Requirements*

This proposed rule would add subpart J, to establish various reporting and other administrative requirements for licensees under part 53.

#### *§ 53.1600 General Information*

This proposed rule would add § 53.1600, which provides an overview of the sections that would require applicants and licensees under part 53 to provide NRC inspectors with unfettered access to sites and facilities, maintain records and make reports, demonstrate compliance with financial qualification and reporting requirements, and maintain required financial protection for accidents.

#### *§ 53.1610 Unfettered Access for Inspections*

This proposed rule would add § 53.1610, which would require applicants and licensees under part 53 to provide unfettered access to NRC inspectors, including access to records, premises, activities, and licensed materials, in addition to providing office space to accommodate temporary or resident inspectors.

#### *§ 53.1620 Maintenance of Records, Making of Reports*

This proposed rule would add § 53.1620, which would require part 53 licensees to maintain all records and make reports as required by the conditions of the license or by the regulations in part 53.

#### *§ 53.1630 Immediate Notification Requirements for Operating Commercial Nuclear Plants*

This proposed rule would add § 53.1630, which would impose immediate notification requirements on

part 53 licensees following the declaration of an Emergency Class or the discovery of certain non-emergency events.

**§ 53.1640 Licensee Event Report System**

This proposed rule would add § 53.1640, which would require any commercial plant licensee holding an OL under part 53 to submit a Licensee Event Report in accordance with the specifications outlined in this section.

**§ 53.1645 Reports of Radiation Exposure to Members of the Public**

The proposed rule would add § 53.1645, which would require annual reports to the Commission, including radiological reports as required by part 20, an Annual Radioactive Effluent Release Report, and an Annual Environmental Operating Report.

**§ 53.1650 Facility Information and Verification**

The proposed rule would add § 53.1650, which would include a reporting requirement for applicants and holders of a CP or license under part 53 to support safeguards agreements between the United States and the IAEA.

**§ 53.1660 Financial Requirements**

This proposed rule would add § 53.1660, which would introduce requirements and procedures related to financial qualifications and reporting requirements for applicants, licensees, and CP holders under part 53.

**§ 53.1670 Financial Qualifications**

This proposed rule would add § 53.1670, which would require an applicant for a CP, OL, or COL under part 53 to must demonstrate possession or ability to obtain funds necessary for the activities for which the permit or license is sought.

**§ 53.1680 Annual Financial Reports**

This proposed rule would add § 53.1680, which would require licensees and holders of a CP under part 53 to submit annual financial reports to the Commission, with exceptions for those that submit financial forms to the Securities and Exchange Commission or the Federal Energy Regulatory Commission.

**§ 53.1690 Licensee's Change of Status; Financial Qualifications**

This proposed rule would add § 53.1690, which would require electric utility licensees that hold an OL or COL for a commercial nuclear plant under part 53 to provide the NRC with the

financial qualifications information outlined in this section within seventy-five days of ceasing to be an electric utility.

**§ 53.1700 Creditor Regulations**

This proposed rule would add § 53.1700, which would establish regulations with respect to the creditors of any facility under part 53.

**§ 53.1710 Financial Protection**

This proposed rule would add § 53.1710, which would establish requirements for licensees under part 53 to obtain and maintain insurance to cover the costs of an accident.

**§ 53.1720 Insurance Required To Stabilize and Decontaminate Plant Following an Accident**

This proposed rule would add § 53.1720, which would require commercial nuclear plant licensees under part 53 to obtain insurance sufficient to cover the costs of stabilizing and decontaminating the plant in the event of an accident.

**§ 53.1730 Financial Protection Requirements**

This proposed rule would add § 53.1730, which would require commercial nuclear plant licensees under part 53 to satisfy the provisions of part 140.

**Subpart M—Enforcement**

This proposed rule would add subpart M, which would address certain violations and penalties associated with violations of part 53 regulations.

**§ 53.9000 Violations**

This proposed rule would add § 53.9000, providing notice of the Commission's authority to obtain injunctions or other court orders for the violations enumerated in this section.

**§ 53.9010 Criminal Penalties**

This proposed rule would add § 53.9010, providing notice to all persons and entities subject to part 53 that they are subject to criminal sanctions for willful violations, attempted violations, or conspiracy to violate certain regulations under part 53.

**§ 70.20a General License to Possess Special Nuclear Material for Transport**

This proposed rule would revise § 70.20a(b) to include a reference to part 53.

**§ 70.22 Contents of Applications**

This proposed rule would revise § 70.22, paragraphs (b), (h)(1), (j)(1), and

(k) to include the appropriate references to part 53.

**§ 70.24 Criticality Accident Requirements**

This proposed rule would revise § 70.24(d) to include the appropriate references to part 53.

**§ 70.32 Conditions of Licenses**

This proposed rule would revise § 70.32(c)(1) and (d) to incorporate the appropriate references to part 53.

**§ 70.50 Reporting Requirements**

This proposed rule would revise § 70.50(d) to clarify the applicability of the reporting requirements of this section to part 53 licensees.

**§ 72.3 Definitions**

This proposed rule would revise the definition of “*Independent spent fuel storage installation or ISFSI*” in § 72.3 to include a reference to facilities licensed under part 53.

**§ 72.30 Financial Assurance and Recordkeeping for Decommissioning**

This proposed rule would revise § 72.30(e)(5) to include the appropriate references to part 53.

**§ 72.32 Emergency Plan**

This proposed rule would revise § 72.32(c)(2) to include a reference to the exclusion area as defined in part 53.

**§ 72.40 Issuance of License**

This proposed rule would revise § 72.40(c) regarding the issuance of a license under part 72 to include a reference to previous licensing actions, including the issuance of a CP under part 53.

**§ 72.75 Reporting Requirements for Specific Events and Conditions**

This proposed rule would revise § 72.75(i)(1)(ii) regarding reporting requirements for specific events and conditions with references to reactors licensed under part 53.

**§ 72.184 Safeguards Contingency Plan**

This proposed rule would revise § 72.184(a) regarding the requirements of a licensee's safeguarding contingency plan with a reference to nuclear facilities licensed under part 53.

**§ 72.210 General License Issued**

This proposed rule would revise § 72.210 to issue a general license for the storage of spent fuel in an independent spent storage installation at power to persons authorized to possess or operate nuclear power reactors under part 53.



*§ 72.212 Conditions of General License Issued Under § 72.210*

This proposed rule would revise § 72.212(b)(8) regarding the conditions of a general license issued under § 72.210 to include a reference to license amendments for a facility made pursuant to part 53.

*§ 72.218 Termination of Licenses*

This proposed rule would revise § 72.218(a) to include a reference to the notification required under part 53 regarding the plan for managing spent fuel prior to decommissioning. It would also extend the provisions of § 72.218(b) to a reactor operating or COL under part 53.

*§ 73.1 Purpose and Scope*

This proposed rule would revise § 73.1(b)(1)(i) to extend the scope of part 73 to production and utilization facilities licensed under part 53, in addition to parts 50 and 52.

*§ 73.2 Definitions*

This proposed rule would revise § 73.2 introductory text and paragraph (a) such that terms defined in part 53 have the same meaning in part 73.

*§ 73.8 Information Collection Requirements: OMB Approval*

This proposed rule would revise § 73.8(b) with the new information collection requirements contained in proposed §§ 73.77, 73.100, 73.110, and 73.120.

*§ 73.50 Requirements for Physical Protection of Licensed Activities*

This proposed rule would revise § 73.50 to exempt nuclear reactor facilities licensed under part 53, in addition to parts 50 and 52, from the requirements of this section.

*§ 73.55 Requirements for Physical Protection of Licensed Activities in Nuclear Power Reactors Against Radiological Sabotage*

This proposed rule would revise § 73.55, paragraphs (a)(4) and (6), (i)(4)(iii), (l)(1), (l)(7)(ii), (p)(1)(i), (r)(2), and (r)(4)(iii), to incorporate the appropriate references to part 53 regarding requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage.

*§ 73.56 Personnel Access Authorization Requirements for Nuclear Power Plants*

This proposed rule would revise § 73.56(a)(3) to apply this section's personnel AA requirements to applicants for an OL or holders of a COL

under part 53 who do not demonstrate compliance with certain requirements under part 53.

*§ 73.57 Requirements for Criminal History Records Checks of Individuals Granted Unescorted Access to a Nuclear Power Facility, a Non-power Reactor, or Access to Safeguards Information*

This proposed rule would revise § 73.57(a)(3) to incorporate the appropriate references to OLs granted under part 53 and Commission findings under § 53.1452(g) regarding the requirement for license applicants to submit fingerprints for all personnel with unescorted access.

*§ 73.58 Safety/Security Interface Requirements for Nuclear Power Reactors*

This proposed rule would revise § 73.58(a) to extend the requirements of this section to part 53 licensees.

*§ 73.67 Licensee Fixed Site and In-Transit Requirements for the Physical Protection of Special Nuclear Material of Moderate and Low Strategic Significance*

This proposed rule would revise § 73.67(d) and (f) to include a reference to licensees authorized to operate a nuclear power plant under part 53.

*§ 73.77 Cybersecurity Event Notifications*

This proposed rule would revise § 73.77, paragraphs (a), (b), (c)(6) and (7) regarding the notification process for cybersecurity events to include notifications for the declaration of an emergency class made under part 53.

*Subpart J—Security Requirements at Commercial Nuclear Plants*

This proposed rule would add new Subpart J of part 73 containing §§ 73.100, 73.110, and 73.120, to establish security requirements for commercial nuclear plants licensed under part 53.

*§ 73.100 Technology-Inclusive Requirements for Physical Protection of Licensed Activities at Commercial Nuclear Plants Against Radiological Sabotage*

This proposed rule would add § 73.100, which would establish a performance-based regulatory framework for physical protection as an alternative to the prescriptive requirements of § 73.55, which also governs physical protection programs for part 50 and 52 licensees.

*§ 73.110 Technology-Inclusive Requirements for Protection of Digital Computer and Communication Systems and Networks*

This proposed rule would add § 73.110, which would establish a consequence-based approach to cybersecurity and would require that part 53 licensees demonstrate reasonable assurance that digital computer and communication systems and networks are adequately protected against cyberattacks in a manner that is commensurate with the potential consequences of those attacks.

*§ 73.120 Access Authorization Program for Commercial Nuclear Plants*

This proposed rule would add § 73.120, which would establish performance objectives as an alternative to compliance with the AA provisions of §§ 73.55, 73.56, and 73.57. This proposed rule would afford part 53 licensees additional flexibility in establishing an AA program that demonstrates compliance with the performance objectives and requirements of this section.

*§ 73.1200 Notification of Physical Security Events*

This proposed rule would revise § 73.1200, paragraphs (a), (c)(1), (e)(1), (e)(3), (e)(4), (g)(1), (o)(5)(i), (o)(6)(i), (r), and (s) to extend the requirements of this section to part 53 licensees.

*§ 73.1205 Written Follow-Up Reports of Physical Security Events*

This proposed rule would revise § 73.1205(b)(2) to extend the requirements of this section to part 53 licensees.

*§ 73.1210 Recordkeeping of Physical Security Events*

This proposed rule would revise § 73.1210(a)(1) and (b)(3)(i) to extend the requirements of this section to part 53 licensees.

*§ 73.1215 Suspicious Activity Reports*

This proposed rule would revise § 73.1215(d)(1) to include a reference to § 73.100.

*Appendix B to part 73—General Criteria for Security Personnel*

This proposed rule would revise appendix B to part 73 to state that terms defined in part 53 have the same meaning when used in this appendix.

*§ 74.31 Nuclear Material Control and Accounting for Special Nuclear Material of Low Strategic Significance*

This proposed rule would revise § 74.31(a) to include a reference to

production or utilization facilities licensed under part 53, in addition to parts 50 and 70.

**§ 74.41 Nuclear Material Control and Accounting for Special Nuclear Material of Moderate Strategic Significance**

This proposed rule would revise § 74.41(a) to include a reference to nuclear reactors licensed under part 53.

**§ 74.51 Nuclear Material Control and Accounting for Strategic Special Nuclear Material**

This proposed rule would revise § 74.51(a) to include a reference to nuclear reactors licensed under part 53.

**§ 75.4 Definitions**

This proposed rule would revise § 75.4 such that terms defined in § 53.020 have the same meaning when used in this part. The definition of “Facility” would also be revised to include any plant or location where more than 1 effective kilogram of nuclear material is licensed pursuant to part 53.

**§ 95.5 Definitions**

This proposed rule would revise the definition of “License” in § 95.5 to include those issued under part 53.

**§ 95.39 External Transmission of Documents and Material**

This proposed rule would revise § 95.39(a) to apply restrictions to the external transmission of documents and material containing classified information in connection with NRC licenses, certificates, standard design approvals, or standard DCs issued under part 53.

**§ 140.2 Scope**

This proposed rule would revise § 140.2(a)(1) and (2) to include part 53 applicants and licensees within the scope of part 140 regulations.

**§ 140.10 Scope**

This proposed rule would revise § 140.10 to apply the provisions of subpart B to applicants or holders of a license to operate a nuclear reactor under part 53, as well as applicants and holders of a COL under part 53.

**§ 140.11 Amounts of Financial Protection for Certain Reactors**

This proposed rule would revise § 140.11(b) to require the licensee’s primary financial protection to cover all reactors in any case where a person is authorized under part 53 to operate two or more nuclear reactors at the same location.

**§ 140.12 Amount of Financial Protection Required for Other Reactors**

This proposed rule would revise § 140.12(c) to require the licensee’s primary financial protection to cover all reactors in any case where a person is authorized under part 53 to operate two or more nuclear reactors at the same location.

**§ 140.13 Amount of Financial Protection Required of Certain Holders of Construction Permits and Combined Licenses Under 10 CFR Part 52**

This proposed rule would revise § 140.13 with the appropriate references to part 53 regarding the requirement for holders of a CP or COL under part 53 to obtain financial protection.

**§ 140.20 Indemnity Agreements and Liens**

This proposed rule would revise § 140.20(a)(1)(i) and (ii) with appropriate references to part 53.

**§ 150.15 Persons Not Exempt**

The proposed rule would revise § 150.15, paragraphs (a)(7)(iii) and (a)(8) to add a reference to facilities licensed under parts 53 and 52.

**§ 170.3 Definitions**

The proposed rule would revise § 170.3 to incorporate references to part 53 into the definitions of “Manufacturing license,” “Part 55 Reviews,” “Power reactor,” and “Special projects.”

**§ 170.12 Payment of Fees**

The proposed rule would revise § 170.12(d)(1)(v) regarding special project fees in connection with FSARs to include part 53.

**§ 170.21 Schedule of Fees for Production and Utilization Facilities, Review of Standard Referenced Design Approvals, Special Projects, Inspections, And import and Export Licenses**

The proposed rule would revise § 170.21, footnote 1 to include fees charged for approvals issued under the exemption provision in § 53.080.

**§ 170.41 Failure by Applicant or Licensee to Pay Prescribed Fees**

The proposed rule would revise § 170.41 to include a general reference to part 53 in connection with remedial actions that the Commission might take when an applicant or licensee fails to pay a prescribed fee required by this part.

**§ 171.3 Scope**

The proposed rule would revise § 171.3 to apply the provisions of this part to any person holding an OL for a power reactor licensed under part 53 or a COL issued under part 53.

**§ 171.5 Definitions**

This proposed rule would revise the definitions of “Operating license” and “Power reactor” in § 171.5 to incorporate the appropriate references to part 53.

**§ 171.15 Annual fees: Non-Power Production or Utilization Licenses, Reactor Licenses, and Independent Spent Fuel Storage Licenses**

This proposed rule would revise § 171.15, paragraphs (a), (b)(2)(iii), (c)(1), and (d)(1) regarding annual fees that are applicable to part 53 licensees.

**§ 171.17 Proration**

This proposed rule would revise § 171.17, paragraphs (a), (a)(1)(ii) and (a)(2) with references to part 53 licenses.

**VIII. Regulatory Flexibility Certification**

The Regulatory Flexibility Act of 1980, as amended at 5 U.S.C. 601 *et seq.*, requires that agencies consider the impact of their rulemakings on small entities and, consistent with applicable statutes, consider alternatives to minimize these impacts on the businesses, organizations, and government jurisdictions to which they apply.

In accordance with the Small Business Administration’s (SBA’s) regulation at 13 CFR 121.903(c), the NRC has developed its own size standards for performing an RFA analysis and has verified with the SBA Office of Advocacy that its size standards are appropriate for NRC analyses. The NRC size standards at § 2.810, “NRC size standards,” are used to determine whether an applicant or licensee qualifies as a small entity in the NRC’s regulatory programs. Section 2.810 defines the following types of small entities:

Small business is a for-profit concern and is a—(1) Concern that provides a service or a concern not engaged in manufacturing with average gross receipts of \$8.0 million or less over its last 5 completed fiscal years; or (2) Manufacturing concern with an average number of 500 or fewer employees based upon employment during each pay period for the preceding 12 calendar months.

Small organization is a not-for-profit organization which is independently

owned and operated and has annual gross receipts of \$8.0 million or less.

Small governmental jurisdiction is a government of a city, county, town, township, village, school district, or special district with a population of less than 50,000.

Small educational institution is one that is—(1) Supported by a qualifying small governmental jurisdiction; or (2) Not State or publicly supported and has 500 or fewer employees.

#### *Number of Small Entities Affected*

The NRC is currently not aware of any known small entities as defined in § 2.810 that are planning to apply for a commercial nuclear plant ESP, CP, OL, ML, or COL under part 53 that would be impacted by this proposed rule. Based on this finding, the NRC has preliminarily determined that the proposed rule would not have a significant economic impact on a substantial number of small entities.

#### *Economic Impact on Small Entities*

Depending on how the ownership and/or operating responsibilities for such an enterprise were structured, applicants for a commercial nuclear plant rated 8 Megawatts electric (MWe) or less could conceivably qualify as small entities as defined by § 2.810. Owners that operate power reactors rated greater than 8 MWe could generate sufficient electricity revenue that exceeds the gross annual receipts limit of \$8 million, assuming a 90 percent capacity factor and the June 2021 DOE's Energy Information Administration U.S. average price of electricity to the ultimate customer for all sectors of 11.3 cents per kilowatt-hour.

Although the NRC is not aware of any small entities that would be affected by the proposed rule, there is a possibility that future applications for a commercial nuclear plant permit or license could be submitted by small entities who plan to own and operate a commercial nuclear plant rated 8 MWe or less. Commercial nuclear plants that are rated 8 MWe or less would most likely be used to support electrical demand for military bases or small remote towns and would provide process heat, so they would not directly compete with a larger commercial nuclear plant that would typically produce electricity for the grid. As a result of these differing purposes, the NRC would expect that small and large entities would not be in direct competition with each other.

Therefore, the NRC preliminarily concludes that this proposed rule would not have a significant economic impact

on a substantial number of small entities.

#### *Request for Comments*

The NRC is seeking comment on both its initial RFA analysis and on its preliminary conclusion that this proposed rule would not have a significant economic impact on a substantial number of small entities because of the likelihood that most expected applicants would not qualify as a small entity. Additionally, the NRC is seeking comment on its preliminary conclusion that if a small entity were to submit a commercial nuclear plant application, the small entity would not incur a significant economic impact as it would most likely not be in competition with a large entity.

Any small entity that could be subject to this regulation that determines, because of its size, it is likely to bear a disproportionate adverse economic impact should notify the Commission of this opinion in a comment that indicates—

1. The applicant's size and how the proposed regulation would impose a significant economic burden on the applicant as compared to the economic burden on a larger applicant;
2. How the proposed regulations could be modified to take into account the applicant's differing needs or capabilities;
3. The benefits that would accrue or the detriments that would be avoided if the proposed regulations were modified as suggested by the applicant;
4. How the proposed regulation, as modified, would more closely equalize the impact of NRC regulations or create more equal access to the benefits of Federal programs as opposed to providing special advantages to any individual or group; and
5. How the proposed regulation, as modified, would still adequately demonstrate compliance with the NRC's obligations under the Act.

#### **IX. Regulatory Analysis**

The NRC has prepared a draft regulatory analysis for this proposed rule. The analysis examines the costs and benefits of the alternatives considered by the NRC. The conclusion from the analysis is that this proposed rule and associated guidance would result in net averted costs to the industry and the NRC of \$28.1 million using a 7-percent discount rate and \$34.5 million using a 3-percent discount rate due to reductions in exemption requests. The analysis also assumes one applicant under part 53. As the number of applicants increases, so do the estimated averted costs. The NRC

requests public comment on the draft regulatory analysis, which is available as indicated in the "Availability of Documents" section of this document. Comments on the draft regulatory analysis may be submitted to the NRC as indicated under the **ADDRESSES** caption of this document.

#### **X. Backfitting and Issue Finality**

This section describes the backfitting and issue finality implications of this proposed rule and the draft guidance documents described in section XVIII, "Availability of Guidance," in this document, as applied to pertinent NRC approvals and certain applicants that reference NRC approvals in their applications. The NRC's current backfitting provisions associated with nuclear power plants appear in § 50.109, "Backfitting," and apply to CPs and OLs under part 50. Issue finality provisions (analogous to the backfitting provisions in § 50.109) for approvals under part 52 are located in various provisions of part 52. The NRC Management Directive 8.4, "Management of Backfitting, Forward Fitting, Issue Finality, and Information Requests," describes the Commission's policies on backfitting and issue finality.

This proposed rule would provide a regulatory scheme for entities to apply for approvals under part 53. The part 50 backfitting provisions and part 52 issue finality provisions apply to actions taken by the NRC under part 50 or part 52, respectively, or actions taken by the NRC under other parts of 10 CFR chapter I that, for holders of certain approvals under part 50 or part 52, inextricably affect their activities regulated under part 50 or part 52. Issuance and implementation of proposed part 53 would not constitute actions taken under part 50 or part 52. Also, proposed part 53 would not allow an applicant to reference approvals issued under part 50 or part 52. Therefore, the issuance and implementation of proposed part 53 would not affect part 50 or part 52 entities' activities regulated under part 50 or part 52. Therefore, the addition of part 53 through this proposed rule would not be within the scope of the part 50 backfitting and part 52 issue finality provisions.

The NRC also proposes conforming changes to parts 1, 2, 10, 11, 19, 20, 21, 25, 26, 30, 40, 50, 51, 70, 72, 73, 74, 75, 95, 140, 150, 170, and 171 to reflect the addition of part 53. These changes would not meet the definition of "backfitting" in § 50.109 or § 70.76, "Backfitting," because the proposed changes would not modify or add to the systems, structures, components, or

design of a facility or to the procedures or organization required to operate a facility under part 50 or 70. These changes would not meet the definition of “backfitting” in § 72.62, “Backfitting,” because the proposed changes would not add, eliminate, or modify the SSCs of an independent spent fuel storage installation (ISFSI) or the procedures or organization required to operate an ISFSI. These proposed changes would not inextricably affect activities regulated under parts 50, 52, 70, or 72. Therefore, the proposed changes to parts 1, 2, 10, 11, 19, 20, 21, 25, 26, 30, 40, 50, 51, 70, 72, 73, 74, 75, 95, 140, 150, 170, and 171 would not constitute backfitting under parts 50, 70, or 72 or affect the issue finality of an approval under part 52.

The NRC is issuing 10 draft guidance documents that, if issued as final guidance documents, would provide guidance on the methods acceptable to the NRC for complying with aspects of this proposed rule. These documents would not apply to holders of approvals issued under part 50 or part 52. Further, as discussed in the guidance documents, applicants and licensees would not be required to comply with the positions set forth in the guidance. Therefore, issuance of the guidance documents as final guidance would not constitute backfitting under part 50 or affect the issue finality of any approval issued under part 52.

## **XI. Cumulative Effects of Regulation**

The NRC seeks to minimize any potential negative consequences resulting from the cumulative effects of regulation (CER). The CER describes the challenges that licensees, or other impacted entities such as State partners, may face while implementing new regulatory positions, programs, or requirements (e.g., rules, generic letters, backfits, inspections). The CER is an organizational effectiveness challenge that may result from a licensee or impacted entity implementing a number of complex regulatory actions, programs, or requirements within limited available resources. The NRC’s CER process involved engaging with external stakeholders throughout this proposed rule and related regulatory activities. Public involvement has included numerous public meetings to examine the part 53 risk-informed, technology-inclusive requirements for commercial nuclear plants and the publication of numerous versions of preliminary proposed rule language. The NRC is considering holding additional public meetings during the remainder of the rulemaking process.

In parallel with this proposed rule, the NRC is issuing 10 draft implementing guidance documents for comment to support informed external stakeholder feedback. Section XVII, “Availability of Guidance,” of this document describes how the public can access the draft implementing guidance.

In addition to the questions in the “Specific Requests for Comments” section of this document, the NRC is requesting CER feedback on the following questions:

1. In light of any current or projected CER challenges, does the proposed rule’s effective date provide sufficient time to implement the new proposed requirements, including changes to programs, procedures, and the facility?

2. If CER challenges currently exist or are expected, what should be done to address them? For example, if more time is required for implementation of the new requirements, what period of time is sufficient?

3. Do other (NRC or other agency) regulatory actions (e.g., orders, generic communications, license amendment requests, inspection findings of a generic nature) influence the implementation of the proposed rule’s requirements?

4. Are there unintended consequences? Does the proposed rule create conditions that would be contrary to the proposed rule’s purpose and objectives? If so, what are the unintended consequences, and how should they be addressed?

5. Please comment on the NRC’s cost and benefit estimates in the regulatory analysis that supports this proposed rule. The draft regulatory analysis is available as indicated under the “Availability of Documents” section of this document.

## **XII. Plain Writing**

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

## **XIII. Environmental Assessment and Proposed Finding of No Significant Environmental Impact**

The Commission has preliminarily determined under the National Environmental Policy Act of 1969, as amended, and the Commission’s regulations in subpart A of part 51, that

this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment, and an EIS is not required. The implementation of the proposed rule requirements does not have a significant impact on the environment. The proposed rulemaking would either have requirements that are administrative in application, matters of procedure, or provide an equivalent level of safety as existing requirements; therefore, there would be similar environmental impacts from the implementation of the part 53 regulations as there are for existing requirements.

The preliminary determination of this EA is that there will be no significant effect on the quality of the human environment from this action. Public stakeholders should note, however, that comments on any aspect of this EA may be submitted to the NRC as indicated under the **ADDRESSES** section of this document. The EA is available as indicated under the “Availability of Documents” section of this document.

The NRC has sent a copy of the EA, and this proposed rule to every State Liaison Officer and has requested comments.

## **XIV. Paperwork Reduction Act**

This proposed rule contains new collections of information contained in parts 26, 50, 53, and 73 and NRC Forms 361S, 366, 366A, 366B, 893, and 894 that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). The collections of information have been submitted to the OMB for review and approval. The proposed changes to parts 2, 10, 11, 19, 20, 21, 25, 30, 40, 51, 70, 72, 74, 75, 95, 140, 150, 170, and 171 do not contain any new or amended collections of information subject to the Paperwork Reduction Act of 1995. Existing collections of information were approved by the OMB, approval numbers 3150–0062 (part 11), 3150–0044 (part 19), 3150–0014 (part 20), 3150–0035 (part 21), 3150–0046 (part 25), 3150–0017 (part 30), 3150–0020 (part 40), 3150–0021 (part 51), 3150–0024 (NRC Form 396), 3150–0090 (NRC Form 398), 3150–0009 (part 70), 3150–0132 (part 72), 3150–0123 (part 74), 3150–0055 (part 75), 3150–0047 (part 95), 3150–0039 (part 140), and 3150–0032 (part 150).

*Type of submission, new or revision:*  
Revision and new.

*The title of the information collection:*  
Risk-Informed, Technology-Inclusive Regulatory Framework for Advanced Reactors.

*The form number if applicable:* NRC Forms 361S, 366, 366A, 366B, 893, and 894.

*How often the collection is required or requested:* Once, on occasion, every 30 days, biannually, annually, biennially, every four years, every five years, every ten years.

*Who will be required or asked to respond:* Part 53 commercial nuclear plant licensees and license applicants for commercial nuclear plants to be licensed under part 53.

*An estimate of the number of annual responses:* 15 (2 responses for Part 26, 11 responses for Part 53, 2 responses for Part 50 and 0 responses for Part 73 and NRC Forms 361S, 366, 366A, 366B, 893, and 894)

*The estimated number of annual respondents:* 2 (2 respondents for Part 26, 2 respondents for Part 53, 2 respondents for Part 50 and 0 respondents for Part 73 and NRC Forms 361S, 366, 366A, 366B, 893, and 894)

*An estimate of the total number of hours needed annually to comply with the information collection requirement or request:* 230,244 hours. (656 hours for Part 26, 220,801 hours for Part 53, 8,767 hours for Part 50 and 0 hours for Part 73 and NRC Forms 361S, 366, 366A, 366B, 893, and 894)

*Abstract:* The NRC is proposing to establish an optional technology-inclusive regulatory framework for use by applicants for new commercial nuclear plant designs. The regulatory requirements developed in this rulemaking would use methods of evaluation, including risk-informed and performance-based methods, that are flexible and practicable for application to a variety of new reactor technologies. The NRC's goals in amending these regulations are to continue to provide reasonable assurance of adequate protection of public health and safety and the common defense and security at reactor sites at which new nuclear reactor designs are deployed to at least the same degree of protection as required for current-generation LWRs; protect health and minimize danger to life or property to at least the same degree of protection as required for current-generation LWRs; provide greater operational flexibilities where supported by enhanced margins of safety that may be provided in new nuclear designs; and promote regulatory stability, predictability, and clarity.

The proposed rule covers diverse topics, which result in recordkeeping and reporting requirements related to contents of applications, plant design and analysis, siting, construction and manufacturing, licensing-basis information, facility operations,

programs, staffing, FFD, physical security, cyber-security, AA, decommissioning, and quality assurance.

In addition to the new information collections in the proposed regulations, part 53 would result in new collections via NRC Forms 361S, 366, 366A, 366B, 893, and 894. NRC Forms 366, 366A, and 366B would be modified to include part 53 reportable events covering an equivalent scope as the requirements in 10 CFR 50.73, but without LWR-specific terminology to ensure technology inclusiveness. The proposed rule also would require part 53 licensees to use NRC Forms 893 and 894 to report on positive drug and alcohol test results (NRC Form 893) and annual fitness-for-duty program performance (NRC Form 894). Finally, a new version of NRC Form 361 (NRC Form 361S) would be created for use by part 53 licensees, covering an equivalent scope as the requirements in 10 CFR 50.72, but without LWR-specific terminology to ensure technology inclusiveness.

The NRC 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? Please explain your response.
2. Is the estimate of the burden of the proposed information collection accurate? Please explain your response.
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected? Please explain your response.
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? Please explain your response.

The OMB clearance documents and proposed rule is available as indicated under the "Availability of Documents" section in this document or may be viewed free of charge by contacting the NRC's PDR reference staff at 1-800-397-4209, at 301-415-4737, or by email to [PDR.resource@nrc.gov](mailto:PDR.resource@nrc.gov). You may obtain information and comment submissions related to the OMB clearance package by searching on <http://www.regulations.gov> under Docket ID NRC-2019-0062.

You may submit comments on any aspect of these proposed information collections, including suggestions for

reducing the burden and on the above issues, by the following methods:

- *Federal Rulemaking Website:* Go to <http://www.regulations.gov> and search for Docket ID NRC-2019-0062.
  - *Mail comments to:* FOIA, Library, and Information Collections Branch, Office of the Chief Information Officer, Mail Stop: T6-A10M, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001 or by email to [Infocollects.Resource@nrc.gov](mailto:Infocollects.Resource@nrc.gov) or to the OMB reviewer at: OMB Office of Information and Regulatory Affairs (3150-XXXX, 3150-0002, -0104, -0146, -0238), Attn: Desk Officer for the Nuclear Regulatory Commission, 725 17th Street NW, Washington, DC 20503.
- Submit comments by December 2, 2024. 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.

#### **XV. Criminal Penalties**

For the purposes of Section 223 of the Act, the NRC is issuing this proposed rule that would add a new part 53 and amend parts 26 and 73 under one or more of Sections 161b, 161i, or 161o of the Act, except as noted in proposed § 53.9010(b) and § 26.825(b). Willful violations of the part 53 and part 26 regulations not listed in proposed § 53.9010(b) and § 26.825(b) would be subject to criminal enforcement. Criminal penalties as they apply to regulations in part 53 would be discussed in § 53.9010.

#### **XVI. Voluntary Consensus Standards**

The NTTAA requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this proposed rule, the NRC would revise regulations by adding a risk-informed, technology-inclusive regulatory framework for commercial advanced nuclear reactors. This action does not constitute the establishment of a standard that contains generally applicable requirements.

#### **XVII. Availability of Guidance**

As discussed in section II, Background, of this document, the NRC's development of proposed part 53

built upon recent and ongoing activities such as those described in SECY-19-0117. Because a number of those activities are ongoing to support new reactor applications under the existing regulatory framework of 10 CFR parts 50 and 52, the NRC staff identified in its response to SRM-SECY-20-0032 that the timing of guidance document development to support the part 53 rulemaking was a key risk and uncertainty to publishing the final part 53 rule. To mitigate this risk, the NRC engaged external stakeholders to ensure a common prioritization of the development of these guidance documents and to work diligently on those that would be needed to support this rulemaking, forthcoming applications, or broader efforts such as the Advanced Reactor Demonstration Program being sponsored by the DOE. The NRC also recognizes that guidance development to support part 53 and advanced reactors will continue as the industry and NRC learn lessons from licensing reviews and operating experience. Therefore, the NRC categorized guidance supporting the part 53 rulemaking into three categories: (1) guidance issued or under development to support applications under the existing regulatory framework; (2) implementing guidance for part 53-specific proposed rule language; and (3) future guidance activities that would need to be completed after the part 53 proposed rule is published for public comment.

(1) Hundreds of guidance documents exist for the current fleet of operating reactors. While some of the guidance is specific to LWR technologies, other guidance is technology inclusive in nature and should be considered, as appropriate, in the development of all licensing applications and NRC reviews. In addition, the NRC has undertaken efforts to incorporate or reference the most relevant guidance in its efforts to develop additional guidance for future advanced reactors. The NRC has issued the following guidance to support licensing reviews of advanced reactors under the existing regulatory framework that will continue to inform applicant development and NRC reviews under parts 50 and 52. Conforming changes to these guidance documents would be needed to ensure they are applicable under part 53. The NRC will issue revisions or part 53-related companions to these guidance documents for public comment after the publication of this proposed rule and then finalize and issue the guidance documents with or after the final part 53 rule.

- RG 1.233, “Guidance for a Technology-Inclusive, Risk-Informed, and Performance-Based Methodology to Inform the Licensing Basis and Content of Applications for Licenses, Certifications, and Approvals for Non-Light-Water Reactors”
- RG 1.247 for trial use, “Acceptability of Probabilistic Risk Assessment Results for Non-Light-Water Reactor Risk-Informed Activities”
- NUREG-2246, “Fuel Qualification for Advanced Reactors”
- RG 1.87, Revision 2, “Acceptability of ASME Code, Section III, Division 5, ‘High Temperature Reactors’”
- RG 1.246, “Acceptability of ASME Code, Section XI, Division 2, ‘Requirements for Reliability And Integrity Management (RIM) Programs for Nuclear Power Plants,’ for Non-Light Water Reactors”

Also, the NRC continues to develop additional guidance to support licensing reviews of advanced reactors under the existing regulatory framework. Some of these guidance documents have been issued and others will be issued before the finalization of part 53 to support near-term applicants and NRC reviews. For example, the NRC has been and continues to be engaged with the DOE and industry to develop content of application guidance and other regulatory guidance for advanced reactors to support applications and subsequent operations under the existing regulatory framework. These guidance documents, such as the industry-led Technology-Inclusive Content of Application Project guidance found in NEI 21-07, Revision 1, and the NRC-led Advanced Reactor Content of Application Project (ARCAP) interim staff guidance (ISG) documents and NRC regulatory guidance endorsing NEI 21-07, Revision 1, will support developers in preparing advanced reactor applications. These guidance documents provide an overview of the information that should be included in an advanced reactor application, a review roadmap for the NRC with the principal purpose of ensuring consistency, quality, and uniformity of NRC reviews, and a well-defined base from which the NRC can evaluate proposed changes in the scope and requirements of reviews. While specific sections of the information are primarily aligned with the LMP methodology, as endorsed in RG 1.233, as one acceptable process for applicants to use when developing portions of an application, the concepts and general information may be used to inform the review of an application submitted using other traditional licensing approach

methodologies (as applicable). Other sections of the information are generally applicable and independent of the methodology used to develop an advanced reactor application. The ARCAP ISGs provide references to numerous regulatory guidance documents that should be considered by both applicants and the NRC in developing and reviewing, respectively, advanced reactor applications. The NRC has issued the following documents separately from this proposed rule. The NRC may issue other, related guidance documents with or after the final part 53 rule.

- RG 1.253, “Guidance for a Technology Inclusive Content of Application Methodology to Inform the Licensing Basis and Content of Applications for Licenses, Certifications, and Approvals for Non-Light-Water Reactors”
- DANU-ISG-2022-01, “Advanced Reactor Content of Application Project, ‘Review of Risk-Informed, Technology-Inclusive Advanced Reactor Applications—Roadmap’”
- DANU-ISG-2022-02, “Advanced Reactor Content of Application Project Chapter 2, ‘Site Information’”
- DANU-ISG-2022-03, “Advanced Reactor Content of Application Project Chapter 9, ‘Control of Routine Plant Radioactive Effluents, Plant Contamination and Solid Waste’”
- DANU-ISG-2022-04, “Advanced Reactor Content of Application Project Chapter 10, ‘Control of Occupational Dose’”
- DANU-ISG-2022-05, “Advanced Reactor Content of Application Project Chapter 11, ‘Organization and Human-System Considerations’”
- DANU-ISG-2022-06, “Advanced Reactor Content of Application Project Chapter 12, ‘Post-Construction Inspection, Testing, and Analysis Program’”
- DANU-ISG-2022-07, “Advanced Reactor Content of Application Project, ‘Risk-Informed Inservice Inspection/Inservice Testing’”
- DANU-ISG-2022-08, “Advanced Reactor Content of Application Project, ‘Risk-Informed Technical Specifications’”
- DANU-ISG-2022-09, “Advanced Reactor Content of Application Project, ‘Risk-Informed, Performance-Based Fire Protection Program (for Operations)’”
- RG 1.242, “Performance-Based Emergency Preparedness for Small Modular Reactors, Non-Light-Water Reactors, and Non-Power Production or Utilization Facilities”
- RG 4.7, “General Site Suitability Criteria for Nuclear Power Stations”

(2) The NRC is issuing for comment nine draft guidance documents for the implementation of the proposed requirements in this rulemaking. The guidance is available in ADAMS under the Accession Numbers as indicated under the “Availability of Documents” section in this document. Comments on this draft regulatory guidance may be submitted by the methods outlined in the **ADDRESSES** section of this document. Interested persons may obtain information and comment submissions related to the draft guidance by searching on <http://www.regulations.gov> under Docket ID NRC-2019-0062.

- **DG-1413, “Technology-Inclusive Identification of Licensing Events for Commercial Nuclear Plants”**

This DG describes an acceptable approach for identifying licensing events that can be used to inform the design basis, licensing basis, and content of applications for commercial nuclear plants, including large LWRs and non-LWRs. It applies to nuclear power reactor designers, applicants, and licensees of commercial nuclear plants applying for permits, licenses, certifications, and approvals under parts 50, 52, and 53. In this DG, the term “licensing events” is used in a generic sense to refer to collections of designated event categories such as, but not limited to AOOs, DBAs, DBEs, and postulated accidents. Specifically, this DG provides an acceptable approach for: (1) conducting a comprehensive and systematic search for initiating events; (2) using a systematic process to delineate a comprehensive set of event sequences; (3) grouping initiating events and event sequences into designated licensing event categories; and (4) providing assurance that the set of licensing events is complete.

- **DG-5073, “Fitness For Duty Programs for Commercial Nuclear Plants And Manufacturing Facilities Licensed Under 10 CFR part 53”**

This DG describes guidance for applicants under part 53 and licensees and other entities described in § 26.3(f) who would elect to or be required to implement FFD programs for facilities licensed under part 53. The FFD program requirements would be detailed in subpart M of part 26 and involve, in part, policies, procedures, drug and alcohol testing, laboratory requirements, behavioral observation, MRO responsibilities, fitness determinations, reporting, and recordkeeping. The FFD program for facilities licensed under part 53 subject to part 26 would also include requirements for a PMRP and FFD program change control that licensees or

other entities must implement to maintain an effective FFD program.

- **DG-5074, “Access Authorization Program for Commercial Nuclear Plants”**

This DG describes a method that the staff considers acceptable to comply with requirements in proposed § 73.120, “Access authorization program for commercial nuclear plants,” related to an AA program. This document provides guidance and would be one NRC-approved method (not the only method) for meeting regulatory requirements for part 53. The proposed language in § 73.120 would provide flexibility through availability of the use of an alternate approach, commensurate with risk and consequence to public health and safety, for part 53 applicants who demonstrate in an analysis that the offsite consequences satisfy the criterion defined in proposed § 53.860(a)(2)(i).

- **DG-5075, “Establishing Cybersecurity Programs for Commercial Nuclear Plants Licensed Under 10 CFR part 53”**

This DG describes an approach the NRC staff deems acceptable for complying with the Commission’s proposed regulations for establishing, implementing, and maintaining a cybersecurity program at commercial nuclear plants that would be licensed under part 53. This guidance provides an approach for meeting the requirements of proposed § 73.110, “Technology-inclusive requirements for protection of digital computer and communication systems and networks.”

- **DG-5076, “Guidance for Technology Inclusive Requirements for Physical Protection of Licensed Activities at Commercial Nuclear Plants”**

This DG describes methods and approaches that the NRC staff considers acceptable for meeting the proposed physical security requirements of part 53 and § 73.100. The guidance is intended to provide methods and considerations for complying with § 53.440(f) safety and security design process considerations, determining eligibility for meeting the performance criterion in § 53.860 to relieve the applicant from the applicable requirements to defend against radiological sabotage outlined in § 73.55 or § 73.100, and (if the required analysis for eligibility is not satisfied) applying the physical security requirements of § 73.100 as an alternative pathway from § 73.55 for protection against radiological sabotage.

- **DG-5078, “Fatigue Management for Nuclear Power Plant Personnel at**

**Commercial Nuclear Plants Licensed Under 10 CFR part 53”**

This DG describes proposed methods that the NRC staff considers acceptable for addressing certain aspects of FFD programs that would be established at commercial nuclear facilities licensed under part 53. This guidance, in conjunction with the existing RG 5.73, “Fatigue Management for Nuclear Plant Personnel,” would provide comprehensive guidance regarding acceptable methods for the development and implementation of licensee fatigue-management programs.

The NRC is issuing for public comment the following draft ISG documents for the implementation of NRC staff review of applications under the proposed requirements in this rulemaking:

- **DRO-ISG-2023-01, “Operator Licensing Programs”**

This draft ISG provides guidance for the review of tailored operator licensing programs that are submitted for review consistent with the technical requirements of proposed § 53.730(g). This guidance primarily addresses the review of operator licensing examination processes to facilitate the ability of reviewers to assess whether a proposed approach to the testing of licensed operators and trainees reflects sound assessment testing practices that are suitable for the screening of competent licensed operators. Additionally, this ISG provides further review guidance in other areas such as licensed operator continuing training and proficiency programs.

- **DRO-ISG-2023-02, “Interim Staff Guidance Augmenting NUREG-1791, ‘Guidance for Assessing Exemption Requests from the Nuclear Power Plant Licensed Operator Staffing Requirements Specified in 10 CFR 50.54(m),’ for Licensing Commercial Nuclear Plants under 10 CFR part 53”**

This draft ISG provides guidance for the review of customized facility operator staffing plans that are submitted for review consistent with the technical requirements of proposed § 53.730(f). This ISG is structured as a companion document to the existing NUREG-1791 and adapts the existing HFE-based methodologies of that document for use in the evaluation of staffing plans that would be submitted within the context of part 53 facilities. Additionally, this ISG provides further guidance to address other staffing-related considerations, such as provisions for engineering expertise.

- **DRO-ISG-2023-03, “Development of Scalable Human Factors Engineering Review Plans”**



This draft ISG applies to the HFE review of applications for OLs, COLs, DCs, and standard design approvals for commercial nuclear plants submitted under proposed part 53. The purpose of this ISG is to facilitate NRC understanding of an acceptable method for developing a scalable (*i.e.*, application-specific) plan for the review of these applications for compliance with applicable HFE requirements. The ISG describes a process and provides implementation guidance for the NRC to tailor HFE review plans to each application to achieve an effective and efficient review.

(3) The NRC has identified future guidance activities that would need to be completed after the part 53 proposed rule is published for public comment to support advanced reactor applications and NRC reviews. For example, the NRC recognizes that new guidance would be needed for the implementation of provisions in proposed § 53.620(d) and

the associated licensing provisions in proposed subpart H that would allow and establish requirements for the loading of fuel into a manufactured reactor for subsequent transport to and use at a commercial nuclear plant that will operate the facility pursuant to a COL. The NRC has not yet initiated the development of guidance documents in this category but will engage stakeholders during the development of these documents to ensure common prioritization. In addition, the NRC works with standards development organizations, advanced reactor developers, DOE, and other stakeholders to identify and facilitate new consensus codes and standards needed for advanced reactor development. The NRC will continue its membership and participation on standards development committees and working groups to support standards for advanced reactor technologies, where appropriate.

## XVIII. Public Meeting

The NRC will conduct a public meeting on this proposed rule for the purpose of describing the proposed rule and implementation guidance to the public and answering questions from the public on the proposed rule and implementation guidance.

The NRC will publish a notice of the public meeting's location, time, and agenda on the NRC's public meeting website at least 10 calendar days before the meeting. Stakeholders should monitor the NRC's public meeting website for information about the public meeting at: <https://www.nrc.gov/public-involve/public-meetings/index.cfm>.

## XIX. Availability of Documents

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

Document	ADAMS accession No./Web link/ Federal Register Citation
<b>Proposed Rule Documents</b>	
<b>Federal Register</b> Notification, "Proposed Rule: Risk-Informed, Technology-Inclusive Regulatory Framework for Advanced Reactors," October, 2024.	ML24095A161.
"Draft Environmental Assessment for the Proposed Rule—Risk Informed, Technology-Inclusive Regulatory Framework for Advanced Reactors," October, 2024.	ML24095A163.
"Draft Regulatory Analysis for the Proposed Rule: Risk Informed, Technology-Inclusive Regulatory Framework for Advanced Reactors," October, 2024.	ML24095A166.
<b>Information Collection Documents</b>	
Draft Supporting Statement for Information Collection Analysis—10 CFR Part 53 .....	ML21162A109.
Draft Supporting Statement for Information Collection Analysis—10 CFR Part 26 .....	ML23030A400.
Draft Supporting Statement for Information Collection Analysis—10 CFR Part 50 .....	ML24220A036.
Draft Supporting Statement for Information Collection Analysis—10 CFR Part 73 .....	ML23030A576.
Draft Supporting Statement for Information Collection Analysis—NRC Form 361S .....	ML24220A034.
Draft Supporting Statement for Information Collection Analysis—NRC Form 366 .....	ML24220A035.
Draft Supporting Statement for Information Collection Analysis—NRC Form 893 and 894 .....	ML24220A033.
Proposed Rule—Part 26 Burden Tables for Risk Informed, Technology-Inclusive Regulatory Framework for Advanced Reactors.	ML24240A008.
Proposed Rule—Part 50 Burden Tables for Risk Informed, Technology-Inclusive Regulatory Framework for Advanced Reactors.	ML24220A061.
Proposed Rule—Part 53 Burden Tables for Risk Informed, Technology-Inclusive Regulatory Framework for Advanced Reactors.	ML24220A060.
Proposed Rule—Part 73 Burden Tables for Risk Informed, Technology-Inclusive Regulatory Framework for Advanced Reactors.	ML24240A009.
Draft NRC Form 361S, "Part 53 Plant Event Notification Worksheet" .....	ML23032A443.
Draft NRC Form 366, "Licensee Event Report (LER)" .....	ML23032A445.
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DG-5074, "Access Authorization Program for Commercial Nuclear Plants," October, 2024 .....	ML22199A246.
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DG-5076, "Guidance for Technology Inclusive Requirements for Physical Protection of Licensed Activities at Commercial Nuclear Plants," October, 2024.	ML22203A131.

Document	ADAMS accession No./Web link/ Federal Register Citation
DG-5078, "Fatigue Management For Nuclear Power Plant Personnel At Commercial Nuclear Plants Licensed Under 10 CFR Part 53," October, 2024.	ML22264A109.
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<b>Federal Register</b> notification—Final rule, "Station Blackout," dated June 21, 1988 .....	53 FR 23203.
<b>Federal Register</b> notification—Final rule, "Technical Specifications," dated July 19, 1995 .....	60 FR 36953, 36955.
<b>Federal Register</b> notification—Guidance, "Mandatory Guidelines for Federal Workplace Drug Testing Programs," dated January 23, 2017.	82 FR 7920.
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<b>Federal Register</b> notification—Proposed rule, "Regulatory Improvements for Production and Utilization Facilities Transitioning to Decommissioning," dated March 3, 2022.	87 FR 12254.
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SECY-23-0021, Enclosure 3, "Draft Regulatory Analysis for the Proposed Rule: Risk Informed, Technology-Inclusive Regulatory Framework for Advanced Reactors".	ML21165A112.
SECY-23-0021, Enclosure 4, "Alternative Approaches Considered for Selected Topics During the Development of 10 CFR Part 53".	ML22244A001.
SECY-23-0021, Enclosure 5, "Estimated Resources for The Risk-Informed, Technology-Inclusive Regulatory Framework For Advanced Reactors Rulemaking".	ML22304A099 (non-public).
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Throughout the development of this rule, the NRC may post documents related to this rule, including public comments, on the Federal rulemaking website at <https://www.regulations.gov> under Docket ID NRC-2019-0062. 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 (NRC-2019-0062-0012); (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

##### 10 CFR Part 1

Flags, Organization and functions (Government Agencies), Seals and insignia.

##### 10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Confidential business information, Freedom of information, Environmental protection, Hazardous waste, Nuclear energy, Nuclear materials, Nuclear power plants and reactors, Penalties, Reporting and recordkeeping requirements, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

##### 10 CFR Part 10

Administrative practice and procedure, Classified information,

Government employees, Security measures.

##### 10 CFR Part 11

Hazardous materials transportation, Investigations, Nuclear energy, Nuclear materials, Penalties, Reporting and recordkeeping requirements, Security measures, Special nuclear material.

##### 10 CFR Part 19

Criminal penalties, Environmental protection, Nuclear Energy, Nuclear materials, Nuclear power plants and reactors, Occupational safety and health, Penalties, Radiation protection, Reporting and recordkeeping requirements, Sex discrimination.

##### 10 CFR Part 20

Byproduct material, Criminal penalties, Hazardous waste, Licensed material, Nuclear energy, Nuclear materials, Nuclear power plants and reactors, Occupational safety and health, Packaging and containers, Penalties, Radiation protection, Reporting and recordkeeping requirements, Source material, Special nuclear material, Waste treatment and disposal.

##### 10 CFR Part 21

Nuclear power plants and reactors, Penalties, Radiation protection, Reporting and recordkeeping requirements.

##### 10 CFR Part 25

Classified information, Criminal penalties, Investigations, Penalties,

Reporting and recordkeeping requirements, Security measures.

##### 10 CFR Part 26

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##### 10 CFR Part 30

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##### 10 CFR Part 40

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##### 10 CFR Part 50

Administrative practice and procedure, Antitrust, Backfitting, Classified information, Criminal penalties, Education, Emergency planning, Fire prevention, Fire protection, Intergovernmental relations, Nuclear power plants and reactors, Penalties, Radiation protection, Reactor siting criteria, Reporting and

recordkeeping requirements, Whistleblowing.

#### 10 CFR Part 53

Administrative practice and procedure, Environmental impact statements, Hazardous waste, Nuclear energy, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements.

#### 10 CFR Part 53

Administrative practice and procedure, Antitrust, Backfitting, Construction permit, Combined license, Classified information, Criminal penalties, Early site permit, Emergency planning, Fees, Fire prevention, Fire protection, Inspection, Intergovernmental relations, Limited work authorization, Manufacturing license, Nuclear power plants and reactors, Operating license, Penalties, Prototype, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements, Standard design, Standard design certification, Training programs.

#### 10 CFR Part 70

Classified information, Criminal penalties, Emergency medical services, Hazardous materials transportation, Material control and accounting, Nuclear energy, Nuclear materials, Packaging and containers, Penalties, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Special nuclear material, Whistleblowing.

#### 10 CFR Part 72

Administrative practice and procedure, Hazardous waste, Indians, Intergovernmental relations, Nuclear energy, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

#### 10 CFR Part 73

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#### 10 CFR Part 74

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#### 10 CFR Part 75

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#### 10 CFR Part 95

Classified information, Criminal penalties, Penalties, Reporting and recordkeeping requirements, Security measures.

#### 10 CFR Part 140

Criminal penalties, Extraordinary nuclear occurrence, Insurance, Intergovernmental relations, Nuclear materials, Nuclear power plants and reactors, Penalties, Reporting and recordkeeping requirements.

#### 10 CFR Part 150

Criminal penalties, Hazardous materials transportation, Intergovernmental relations, Nuclear energy, Nuclear materials, Penalties, Reporting and recordkeeping requirements, Security measures, Source material, Special nuclear material.

#### 10 CFR Part 170

Byproduct material, Import and export licenses, Intergovernmental relations, Non-payment penalties, Nuclear energy, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

#### 10 CFR Part 171

Annual charges, Approvals, Byproduct material, Holders of certificates, Intergovernmental relations, Nonpayment penalties, Nuclear materials, Nuclear power plants and reactors, Registrations, Source material, Special nuclear material.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553, the NRC is proposing the following amendments to 10 CFR parts 1, 2, 10, 11, 19, 20, 21, 25, 26, 30, 40, 50, 51, 70, 72, 73, 74, 75, 95, 140, 150, 170, and 171 and adding 10 CFR part 53:

### PART 1—STATEMENT OF ORGANIZATION AND GENERAL INFORMATION

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

**Authority:** Atomic Energy Act of 1954, secs. 23, 25, 29, 161, 191 (42 U.S.C. 2033, 2035, 2039, 2201, 2241); Energy

Reorganization Act of 1974, secs. 201, 203, 204, 205, 209 (42 U.S.C. 5841, 5843, 5844, 5845, 5849); Administrative Procedure Act (5 U.S.C. 552, 553); Reorganization Plan No. 1 of 1980, 5 U.S.C. Appendix (Reorganization Plans).

#### § 1.43 [Amended]

■ 2. In § 1.43, in paragraph (a)(2) remove the cross reference “10 CFR parts 50, 52, and 54” and add in its place the cross reference “10 CFR parts 50, 52, 53, and 54”.

### PART 2—AGENCY RULES OF PRACTICE AND PROCEDURE

■ 3. The authority citation for part 2 continues to read as follows:

**Authority:** Atomic Energy Act of 1954, secs. 29, 53, 62, 63, 81, 102, 103, 104, 105, 161, 181, 182, 183, 184, 186, 189, 191, 234 (42 U.S.C. 2039, 2073, 2092, 2093, 2111, 2132, 2133, 2134, 2135, 2201, 2231, 2232, 2233, 2234, 2236, 2239, 2241, 2282); Energy Reorganization Act of 1974, secs. 201, 206 (42 U.S.C. 5841, 5846); Nuclear Waste Policy Act of 1982, secs. 114(f), 134, 135, 141 (42 U.S.C. 10134(f), 10154, 10155, 10161); Administrative Procedure Act (5 U.S.C. 552, 553, 554, 557, 558); National Environmental Policy Act of 1969 (42 U.S.C. 4332); 44 U.S.C. 3504 note. Section 2.205(j) also issued under 28 U.S.C. 2461 note.

#### § 2.1 [Amended]

■ 4. In § 2.1, in paragraph (e) remove the phrase “part 52” and add in its place the phrase “part 52 or part 53”.

■ 5. In § 2.4, revise the definitions for “*Contested proceeding*” and “*Facility*” to read as follows:

#### § 2.4 Definitions.

\* \* \* \* \*

*Contested proceeding* means—

(1) A proceeding in which there is a controversy between the NRC staff and the applicant for a license or permit concerning the issuance of the license or permit or any of the terms or conditions thereof;

(2) A proceeding in which the NRC is imposing a civil penalty or other enforcement action, and the subject of the civil penalty or enforcement action is an applicant for or holder of a license or permit, or is or was an applicant for or holder of a license or permit, or is or was an applicant for a standard design certification under part 52 or part 53 of this chapter; and

(3) A proceeding in which a petition for leave to intervene in opposition to an application for a license or permit has been granted or is pending before the Commission.

\* \* \* \* \*

*Facility* means production facility or a utilization facility as defined in §§ 50.2 and 53.020 of this chapter.

\* \* \* \* \*

**§ 2.100 [Amended]**

■ 6. In § 2.100, remove the phrase “subpart E of part 52” and add in its place the phrase “subpart E of part 52 or subpart H of part 53”.

■ 7. In § 2.101, revise paragraphs (a)(3)(i), (a)(5), (a)(9) introductory text and paragraph (a)(9)(i) to read as follows:

**§ 2.101 Filing of application.**

(a) \* \* \*

(3) \* \* \*

(i) Submit to the Director, Office of Nuclear Reactor Regulation, or Director, Office of Nuclear Material Safety and Safeguards, as appropriate, such additional copies as the regulations in part 50, subpart A of part 51, and part 53 of this chapter require;

\* \* \* \* \*

(5) An applicant for a construction permit under parts 50 or 53 of this chapter or a combined license under parts 52 or 53 of this chapter for a production or utilization facility which is subject to § 51.20(b) of this chapter, and is of the type specified in § 50.21(b)(2) or (b)(3); or § 50.22; or part 53, as applicable, of this chapter, or is a testing facility, may submit the information required of applicants by parts 50, 52, or 53 of this chapter in two parts. One part shall be accompanied by the information required by § 50.30(f) of this chapter, § 52.80(b) of this chapter, or § 53.1100(f) of this chapter, as applicable. The other part shall include any information required by § 50.34(a) and, if applicable, § 50.34a of this chapter; or §§ 52.79 and 52.80(a) of this chapter; or §§ 53.1109, 53.1306, 53.1309, and 53.1312 of this chapter; or §§ 53.1109, 53.1413, 53.1416, and 53.1419 of this chapter, as applicable. One part may precede or follow other parts by no longer than 6 months. If it is determined that either of the parts as described above is incomplete and not acceptable for processing, the Director, Office of Nuclear Reactor Regulation, or Director, Office of Nuclear Material Safety and Safeguards, as appropriate, will inform the applicant of this determination and the respects in which the document is deficient. Such a determination of completeness will generally be made within a period of 30 days. Whichever part is filed first shall also include the fee required by § 50.30(e) or § 53.1100(e) and § 170.21 of this chapter and the information required by §§ 50.33, 50.34(a)(1), and 52.79(a)(1) of this chapter; or §§ 53.1109, 53.1309, and 53.1416 of this chapter, as applicable, and § 50.37 or § 53.1115, as applicable, of this chapter. The Director, Office of Nuclear Reactor Regulation, or Director, Office of

Nuclear Material Safety and Safeguards, as appropriate, will accept for docketing an application for a construction permit under part 50 or part 53 of this chapter or a combined license under parts 52 or 53 of this chapter for a production or utilization facility which is subject to § 51.20(b) of this chapter, and is of the type specified in § 50.21(b)(2) or (b)(3), or § 50.22, or part 53, as applicable, of this chapter or is a testing facility where one part of the application as described above is complete and conforms to the requirements of part 50 of this chapter. The additional parts will be docketed upon a determination by the Director, Office of Nuclear Reactor Regulation, or Director, Office of Nuclear Material Safety and Safeguards, as appropriate, that it is complete.

\* \* \* \* \*

(9) An applicant for a construction permit for a utilization facility which is subject to § 51.20(b) of this chapter and is of the type specified in § 50.21(b)(2) or (b)(3), or § 50.22, or part 53 of this chapter, an applicant for or holder of an early site permit under part 52 or part 53 of this chapter, or an applicant for a combined license under parts 52 or 53 of this chapter, who seeks to conduct the activities authorized under § 50.10(d) or § 53.1130 of this chapter may submit a complete application under paragraphs (a)(1) through (a)(4) of this section which includes the information required by § 50.10(d) or § 53.1130 of this chapter. Alternatively, the applicant (other than an applicant for or holder of an early site permit) may submit its application in two parts:

(i) Part one must include the information required by § 50.33(a) through (f) or § 53.1109(a) through (e) and § 53.1306 of this chapter, and the information required by § 50.10(d)(2) and (d)(3) or § 53.1130(a)(2) and (a)(3) of this chapter, as applicable.

\* \* \* \* \*

■ 8. In § 2.104, revise paragraph (a) to read as follows:

**§ 2.104 Notice of hearing.**

(a) In the case of an application on which a hearing is required by the Act or this chapter, or in which the Commission finds that a hearing is required in the public interest, the Secretary will issue a notice of hearing to be published in the **Federal Register**. The notice must be published at least 15 days, and in the case of an application concerning a limited work authorization, construction permit, early site permit, or combined license for a facility of the type described in § 50.21(b) or 50.22, or subpart H of part 53 of this chapter, as applicable, or a

testing facility, at least 30 days, before the date set for hearing in the notice.<sup>1</sup> In addition, in the case of an application for a limited work authorization, construction permit, early site permit, or combined license for a facility of the type described in § 50.22 or subpart H of part 53 of this chapter, as applicable, or a testing facility, the notice must be issued as soon as practicable after the NRC has docketed the application. If the Commission decides, under § 2.101(a)(2), to determine the acceptability of the application based on its technical adequacy as well as completeness, the notice must be issued as soon as practicable after the application has been tendered.

\* \* \* \* \*

<sup>1</sup> If the notice of hearing concerning an application for a limited work authorization, construction permit, early site permit, or combined license for a facility of the type described in § 50.21(b) or § 50.22, or subpart H of part 53 of this chapter, as applicable, or a testing facility, does not specify the time and place of initial hearing, a subsequent notice will be published in the **Federal Register** which will provide at least 30-day notice of the time and place of that hearing. After this notice is given, the presiding officer may reschedule the commencement of the initial hearing for a later date or reconvene a recessed hearing without again providing at least 30-day notice.

■ 9. In § 2.105, revise paragraph (a) introductory text and paragraphs (a)(4), (a)(10), (a)(12), (a)(13), (b)(3) introductory text, (b)(3)(i), (ii), and (iv) to read as follows:

**§ 2.105 Notice of proposed action.**

(a) If a hearing is not required by the Act or this chapter, and if the Commission has not found that a hearing is in the public interest, it will, before acting thereon, publish in the **Federal Register**, as applicable, or on the NRC's website, <http://www.nrc.gov>, or both, at the Commission's discretion, either a notice of intended operation under § 52.103(a) or § 53.1452(a) of this chapter, as applicable, and a proposed finding that inspections, tests, analyses, and acceptance criteria for a combined license under subpart C of part 52 or under subpart H of part 53 of this chapter, have been or will be met, or a notice of proposed action with respect to an application for:

\* \* \* \* \*

(4) An amendment to an operating license, combined license, or manufacturing license for a facility licensed under § 50.21(b) or § 50.22 or under subpart H of part 53 of this chapter, as applicable, or for a testing facility, as follows:

(i) If the Commission determines under § 50.58 or § 53.1515 of this

chapter that the amendment involves no significant hazards consideration, though it will provide notice of opportunity for a hearing pursuant to this section, it may make the amendment immediately effective and grant a hearing thereafter; or

(ii) If the Commission determines under §§ 50.58 and 50.91 or § 53.1515 of this chapter, as applicable, that an emergency situation exists or that exigent circumstances exist and that the amendment involves no significant hazards consideration, it will provide notice of opportunity for a hearing pursuant to § 2.106 (if a hearing is requested, it will be held after issuance of the amendment);

\* \* \* \* \*

(10) In the case of an application for an operating license for a facility of a type described in § 50.21(b) or § 50.22, or part 53 of this chapter or a testing facility, a notice of opportunity for hearing shall be issued as soon as practicable after the application has been docketed; or

\* \* \* \* \*

(12) An amendment to an early site permit issued under subpart A of part 52, or under subpart H of part 53 of this chapter, as follows:

(i) If the early site permit does not provide authority to conduct the activities allowed under § 50.10(e)(1) or § 53.1130(b)(1) of this chapter, the amendment will involve no significant hazards consideration, and though the NRC will provide notice of opportunity for a hearing under this section, it may make the amendment immediately effective and grant a hearing thereafter; and

(ii) If the early site permit provides authority to conduct the activities allowed under § 50.10(e)(1) or § 53.1130(b)(1) of this chapter and the Commission determines under §§ 50.58 and 50.91 or § 53.1515 of this chapter that an emergency situation exists or that exigent circumstances exist and that the amendment involves no significant hazards consideration, it will provide notice of opportunity for a hearing under § 2.106 of this chapter (if a hearing is requested, which will be held after issuance of the amendment).

(13) A manufacturing license under subpart F of part 52 or subpart H of part 53 of this chapter.

(b) \* \* \*

(3) For a notice of intended operation under § 52.103(a) or § 53.1452(a) of this chapter, the following information:

(i) The identification of the NRC action as making the finding required under § 52.103(g) or § 53.1452(g) of this chapter;

(ii) The manner in which the licensee notifications under § 52.99(c) or § 53.1449(c), of this chapter which are required to be made available by § 52.99(e)(2) or § 53.1449(e)(2), of this chapter may be obtained and examined;

\* \* \* \* \*

(iv) Any conditions, limitations, or restrictions to be placed on the license in connection with the finding under § 52.103(g) or § 53.1452(g) of this chapter, and the expiration date or circumstances (if any) under which the conditions, limitations or restrictions will no longer apply.

\* \* \* \* \*

■ 10. In § 2.106, revise paragraphs (a)(2), (a)(3), and (b)(2) introductory text to read as follows:

#### **§ 2.106 Notice of issuance.**

(a) \* \* \*

(2) An amendment of a license for a facility of the type described in § 50.21(b) or § 50.22, or part 53 of this chapter, as applicable, or a testing facility, whether or not a notice of proposed action has been previously published; and

(3) The finding under § 52.103(g) or § 53.1452(g) of this chapter.

(b) \* \* \*

(2) In the case of a finding under § 52.103(g) or § 53.1452(g) of this chapter:

\* \* \* \* \*

■ 11. In § 2.109, revise paragraphs (b), (c), and (d) to read as follows:

#### **§ 2.109 Effect of timely renewal application.**

\* \* \* \* \*

(b) If the licensee of a nuclear power plant licensed under § 50.21(b) or § 50.22 or under subpart H of part 53 of this chapter files a sufficient application for renewal of either an operating license or a combined license at least 5 years before the expiration of the existing license, the existing license will not be deemed to have expired until the application has been finally determined.

(c) If the holder of an early site permit licensed under subpart A of part 52 or under subpart H of part 53 of this chapter, as applicable, files a sufficient application for renewal under § 52.29 or § 53.1173 of this chapter, as applicable, at least 12 months before the expiration of the existing early site permit, the existing permit will not be deemed to have expired until the application has been finally determined.

(d) If the licensee of a manufacturing license under subpart F of part 52, or under subpart H of part 53 of this chapter files a sufficient application for renewal under § 52.177 or § 53.1295 of this chapter at least 12 months before

the expiration of the existing license, the existing license will not be deemed to have expired until the application has been finally determined.

\* \* \* \* \*

■ 12. In § 2.110, revise paragraphs (a)(1) and (b) to read as follows:

#### **§ 2.110 Filing and administrative action on submittals for standard design approval or early review of site suitability issues.**

(a)(1) A submittal for a standard design approval under subpart E of part 52 or under subpart H of part 53 of this chapter shall be subject to §§ 2.101(a) and 2.390 to the same extent as if it were an application for a permit or license.

\* \* \* \* \*

(b) Upon initiation of review by the NRC staff of a submittal for an early review of site suitability issues under appendix Q to part 50 of this chapter, or for a standard design approval under subpart E of part 52 or under subpart H of part 53 of this chapter, the Director, Office of Nuclear Reactor Regulation, shall publish in the **Federal Register** a notice of receipt of the submittal, inviting comments from interested persons within 60 days of publication or other time as may be specified, for consideration by the NRC staff and ACRS in their review.

\* \* \* \* \*

■ 13. In § 2.202, revise paragraph (e) to read as follows:

#### **§ 2.202 Orders.**

\* \* \* \* \*

(e)(1) If the order involves the modification of a part 50 or a part 53 license and is a backfit, the requirements of § 50.109 or § 53.1590 of this chapter, as applicable, shall be followed, unless the licensee has consented to the action required.

(2) If the order involves the modification of combined license under subpart C of part 52, or subpart H of part 53 of this chapter, the requirements of § 52.98 or § 53.1443 of this chapter, as applicable, shall be followed unless the licensee has consented to the action required.

(3) If the order involves a change to an early site permit under subpart A of part 52 or under subpart H of part 53 of this chapter, the requirements of § 52.39 or § 53.1188 of this chapter, as applicable, must be followed, unless the applicant or licensee has consented to the action required.

(4) If the order involves a change to a standard design certification rule referenced by that plant's application, the requirements, if any, in the referenced design certification rule with respect to changes must be followed, or, in the absence of these requirements,



the requirements of § 52.63 or § 53.1263 of this chapter, as applicable, must be followed, unless the applicant or licensee has consented to follow the action required.

(5) If the order involves a change to a standard design approval referenced by that plant's application, the requirements of § 52.145 or § 53.1221 of this chapter, as applicable, must be followed unless the applicant or licensee has consented to follow the action required.

(6) If the order involves a modification of a manufacturing license under subpart F of part 52 or under subpart H of part 53 of this chapter, the requirements of § 52.171 or § 53.1288 of this chapter, as applicable, must be followed, unless the applicant or licensee has consented to the action required.

■ 14. In § 2.309, revise paragraphs (a), (f)(1)(i), (f)(1)(vi) and (vii), (g), (h)(2), (i)(2), (j) to read as follows:

**§ 2.309 Hearing requests, petitions to intervene, requirements for standing, and contentions.**

(a) *General requirements.* Any person whose interest may be affected by a proceeding and who desires to participate as a party must file a written request for hearing and a specification of the contentions which the person seeks to have litigated in the hearing. In a proceeding under § 52.103 or § 53.1452 of this chapter, as applicable, the Commission, acting as the presiding officer, will grant the request if it determines that the requestor has standing under the provisions of paragraph (d) of this section and has proposed at least one admissible contention that meets the requirements of paragraph (f) of this section. For all other proceedings, except as provided in paragraph (e) of this section, the Commission, presiding officer, or the Atomic Safety and Licensing Board designated to rule on the request for hearing and/or petition for leave to intervene, will grant the request/petition if it determines that the requestor/petitioner has standing under the provisions of paragraph (d) of this section and has proposed at least one admissible contention that meets the requirements of paragraph (f) of this section. In ruling on the request for hearing/petition to intervene submitted by petitioners seeking to intervene in the proceeding on the HLW repository, the Commission, the presiding officer, or the Atomic Safety and Licensing Board shall also consider any failure of the petitioner to participate as a potential party in the pre-license application phase under subpart J of this

part in addition to the factors in paragraph (d) of this section. If a request for hearing or petition to intervene is filed in response to any notice of hearing or opportunity for hearing, the applicant/licensee shall be deemed to be a party.

\* \* \* \* \*

(f) \* \* \*

(1) \* \* \*

(i) Provide a specific statement of the issue of law or fact to be raised or controverted, provided further, that the issue of law or fact to be raised in a request for hearing under § 52.103(b) or § 53.1452(b) of this chapter, as applicable, must be directed at demonstrating that one or more of the acceptance criteria in the combined license have not been, or will not be met, and that the specific operational consequences of nonconformance would be contrary to providing reasonable assurance of adequate protection of the public health and safety;

\* \* \* \* \*

(vi) In a proceeding other than one under § 52.103 or § 53.1452 of this chapter provide sufficient information to show that a genuine dispute exists with the applicant/licensee on a material issue of law or fact. This information must include references to specific portions of the application (including the applicant's environmental report and safety report) that the petitioner disputes and the supporting reasons for each dispute, or, if the petitioner believes that the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the petitioner's belief; and

(vii) In a proceeding under § 52.103(b) or § 53.1452(b) of this chapter, as applicable, the information must be sufficient, and include supporting information showing, *prima facie*, that one or more of the acceptance criteria in the combined license have not been, or will not be met, and that the specific operational consequences of nonconformance would be contrary to providing reasonable assurance of adequate protection of the public health and safety. This information must include the specific portion of the report required by § 52.99(c) or § 53.1449(c) of this chapter, as applicable, which the requestor believes is inaccurate, incorrect, and/or incomplete (*i.e.*, fails to contain the necessary information required by § 52.99(c) or § 53.1449(c) of this chapter, as applicable). If the requestor identifies a specific portion of the report under § 52.99(c) or

§ 53.1449(c) of this chapter, as applicable, as incomplete and the requestor contends that the incomplete portion prevents the requestor from making the necessary *prima facie* showing, then the requestor must explain why this deficiency prevents the requestor from making the *prima facie* showing.

\* \* \* \* \*

(g) *Selection of hearing procedures.* A request for hearing and/or petition for leave to intervene may, except in a proceeding under § 52.103 or § 53.1452 of this chapter, as applicable, also address the selection of hearing procedures, taking into account the provisions of § 2.310. If a request/petition relies upon § 2.310(d), the request/petition must demonstrate, by reference to the contention and the bases provided and the specific procedures in subpart G of this part, that resolution of the contention necessitates resolution of material issues of fact which may be best determined through the use of the identified procedures.

(h) \* \* \*

(2) If the proceeding pertains to a production or utilization facility (as defined in § 50.2 or § 53.020 of this chapter) located within the boundaries of the State, local governmental body, or Federally-recognized Indian Tribe seeking to participate as a party, no further demonstration of standing is required. If the production or utilization facility is not located within the boundaries of the State, local governmental body, or Federally-recognized Indian Tribe seeking to participate as a party, the State, local governmental body, or Federally-recognized Indian Tribe also must demonstrate standing.

\* \* \* \* \*

(i) \* \* \*

(2) Except in a proceeding under § 52.103 or § 53.1452 of this chapter, as applicable, the participant who filed the hearing request, intervention petition, or motion for leave to file new or amended contentions after the deadline may file a reply to any answer. The reply must be filed within 7 days after service of that answer.

\* \* \* \* \*

(j) *Decision on request/petition.* (1) In all proceedings other than a proceeding under § 52.103 or § 53.1452 of this chapter, as applicable, the presiding officer shall issue a decision on each request for hearing or petition to intervene within 45 days of the conclusion of the initial pre-hearing conference or, if no pre-hearing conference is conducted, within 45 days after the filing of answers and replies

under paragraph (i) of this section. With respect to a request to admit amended or new contentions, the presiding officer shall issue a decision on each such request within 45 days of the conclusion of any pre-hearing conference that may be conducted regarding the proposed amended or new contentions or, if no pre-hearing conference is conducted, within 45 days after the filing of answers and replies, if any. In the event the presiding officer cannot issue a decision within 45 days, the presiding officer shall issue a notice advising the Commission and the parties, and the notice shall include the expected date of when the decision will issue.

(2) The Commission, acting as the presiding officer, shall expeditiously grant or deny the request for hearing in a proceeding under § 52.103 or § 53.1452 of this chapter, as applicable. The Commission's decision may not be the subject of any appeal under § 2.311.

■ 15. Amend § 2.310 by:

■ a. In paragraphs (a) and (h) introductory text, removing the cross-reference “parts 30, 32 through 36, 39, 40, 50, 52, 54, 55, 61, 70 and 72 of this chapter” and adding, in its place, the cross reference “parts 30, 32 through 36, 39, 40, 50, 52, 53, 54, 55, 61, 70 and 72 of this chapter”; and

■ b. Revising paragraphs (i) and (j).

The revisions read as follows.

#### § 2.310 Selection of hearing procedures.

(i) In design certification rulemaking proceedings under part 52 or part 53 of this chapter, any informal hearing held under § 52.51 or § 53.1242 of this chapter, as applicable, must be conducted under the procedures of subpart O of this part.

(j) Proceedings on a Commission finding under § 52.103(c) and (g) or § 53.1452(c) and (g) of this chapter, as applicable, shall be conducted in accordance with the procedures designated by the Commission in each proceeding.

\* \* \* \* \*

■ 16. In § 2.329, revise paragraph (a) to read as follows:

#### § 2.329 Prehearing conference.

(a) *Necessity for prehearing conference; timing.* The Commission or the presiding officer may, and in the case of a proceeding on an application for a construction permit or an operating license for a facility of a type described in §§ 50.21(b) or 50.22, or part 53 of this chapter, or a testing facility, must direct the parties or their counsel to appear at a specified time and place for a conference or conferences before trial. A prehearing conference in a proceeding

involving a construction permit or operating license for a facility of a type described in §§ 50.21(b) or 50.22 or part 53 of this chapter must be held within sixty (60) days after discovery has been completed or any other time specified by the Commission or the presiding officer.

\* \* \* \* \*

■ 17. In § 2.339, revise paragraph (d) to read as follows:

#### § 2.339 Expedited decision-making procedure.

\* \* \* \* \*

(d) The provisions of this section do not apply to an initial decision directing the issuance of a limited work authorization under 10 CFR 50.10 or 10 CFR 53.1130; an early site permit under subpart A of part 52 or under subpart H of part 53 of this chapter; a construction permit or construction authorization under part 50 or part 53 of this chapter; a combined license under subpart C of part 52 or under subpart H of part 53 of this chapter; or a manufacturing license under subpart F of part 52 or under subpart H of part 53.

■ 18. In § 2.340, revise paragraphs (b), (c), (d), (f), (i), and (j) to read as follows:

#### § 2.340 Initial decision in certain contested proceedings; immediate effectiveness of initial decisions; issuance of authorizations, permits and licenses.

\* \* \* \* \*

(b) *Initial decision—combined license under 10 CFR parts 52 or 53.* (1) Matters in controversy; presiding officer consideration of matters not put in controversy by parties. In any initial decision in a contested proceeding on an application for a combined license under parts 52 or 53 of this chapter (including an amendment to or renewal of combined license), the presiding officer shall make findings of fact and conclusions of law on the matters put into controversy by the parties and any matter designated by the Commission to be decided by the presiding officer. The presiding officer shall also make findings of fact and conclusions of law on any matter not put into controversy by the parties, but only to the extent that the presiding officer determines that a serious safety, environmental, or common defense and security matter exists, and the Commission approves of an examination of and decision on the matter upon its referral by the presiding officer under, inter alia, the provisions of §§ 2.323 and 2.341.

(2) Presiding officer initial decision and issuance of permit or license.

(i) In a contested proceeding for the initial issuance or renewal of a combined license under parts 52 or 53

of this chapter, or the amendment of a combined license where the NRC has not made a determination of no significant hazards consideration, the Commission or the Director, Office of Nuclear Reactor Regulation, as appropriate after making the requisite findings, shall issue, deny, or appropriately condition the permit or license in accordance with the presiding officer's initial decision once that decision becomes effective.

(ii) In a contested proceeding for the amendment of a combined license under parts 52 or 53 of this chapter where the NRC has made a determination of no significant hazards consideration, the Commission or the Director, Office of Nuclear Reactor Regulation, as appropriate (appropriate official), after making the requisite findings and complying with any applicable provisions of § 2.1202(a) or § 2.1403(a), may issue the amendment before the presiding officer's initial decision becomes effective. Once the presiding officer's initial decision becomes effective, the appropriate official shall take action with respect to that amendment in accordance with the initial decision. If the presiding officer's initial decision becomes effective before the appropriate official issues the amendment, then the appropriate official, after making the requisite findings, shall issue, deny, or appropriately condition the amendment in accordance with the presiding officer's initial decision.

(c) *Initial decision on findings under 10 CFR 52.103 or 10 CFR 53.1452 with respect to acceptance criteria in nuclear power reactor combined licenses.* In any initial decision under § 52.103(g) or § 53.1452(g) of this chapter with respect to whether acceptance criteria have been or will be met, the presiding officer shall make findings of fact and conclusions of law on the matters put into controversy by the parties, and any matter designated by the Commission to be decided by the presiding officer. Matters not put into controversy by the parties but identified by the presiding officer as matters requiring further examination, shall be referred to the Commission for its determination; the Commission may, in its discretion, treat any of these referred matters as a request for action under § 2.206 and process the matter in accordance with § 52.103(f) or § 53.1452(f) of this chapter.

(d) *Initial decision—manufacturing license under 10 CFR parts 52 or 53.* (1) Matters in controversy; presiding officer consideration of matters not put in controversy by parties. In any initial decision in a contested proceeding on an application for a manufacturing

license under subpart C of part 52 or subpart H of part 53 of this chapter (including an amendment to or renewal of a manufacturing license), the presiding officer shall make findings of fact and conclusions of law on the matters put into controversy by the parties and any matter designated by the Commission to be decided by the presiding officer. The presiding officer also shall make findings of fact and conclusions of law on any matter not put into controversy by the parties, but only to the extent that the presiding officer determines that a serious safety, environmental, or common defense and security matter exists, and the Commission approves of an examination of and decision on the matter upon its referral by the presiding officer under, *inter alia*, the provisions of §§ 2.323 and 2.341.

(2) Presiding officer initial decision and issuance of permit or license.

(i) In a contested proceeding for the initial issuance or renewal of a manufacturing license under subpart C of part 52 or subpart H of part 53 of this chapter, or the amendment of a manufacturing license, the Commission or the Director, Office of Nuclear Reactor Regulation, as appropriate, after making the requisite findings, shall issue, deny, or appropriately condition the permit or license in accordance with the presiding officer's initial decision once that decision becomes effective.

(ii) In a contested proceeding for the initial issuance or renewal of a manufacturing license under subpart C of part 52 or subpart H of part 53 of this chapter, or the amendment of a manufacturing license, the Commission or the Director, Office of Nuclear Reactor Regulation, as appropriate (appropriate official), may issue the license, permit, or license amendment in accordance with § 2.1202(a) or § 2.1403(a) before the presiding officer's initial decision becomes effective. If, however, the presiding officer's initial decision becomes effective before the license, permit, or license amendment is issued under § 2.1202 or § 2.1403, then the Commission or the Director, Office of Nuclear Reactor Regulation, as appropriate, shall issue, deny, or appropriately condition the license, permit, or license amendment in accordance with the presiding officer's initial decision.

(f) *Immediate effectiveness of certain presiding officer decisions.* A presiding officer's initial decision directing the issuance or amendment of a limited work authorization under § 50.10 or § 53.1130 of this chapter; an early site

permit under subpart A of part 52 or under subpart H of part 53 of this chapter; a construction permit or construction authorization under part 50 or part 53 of this chapter; an operating license under part 50 or part 53 of this chapter; a combined license under subpart C of part 52 or subpart H or part 53 of this chapter; a manufacturing license under subpart F of part 52 or subpart H of part 53 of this chapter; a renewed license under part 53 or part 54 of this chapter; or a license under part 72 of this chapter to store spent fuel in an independent spent fuel storage facility (ISFSI) or a monitored retrievable storage installation (MRS); an initial decision directing issuance of a license under part 61 of this chapter; or an initial decision under § 52.103(g) or § 53.1452(g) of this chapter that acceptance criteria in a combined license have been met, is immediately effective upon issuance unless the presiding officer finds that good cause has been shown by a party why the initial decision should not become immediately effective.

\* \* \* \* \*

(i) *Issuance of authorizations, permits, and licenses—production and utilization facilities.* The Commission or the Director, Office of Nuclear Reactor Regulation, as appropriate, shall issue a limited work authorization under § 50.10 or § 53.1130 of this chapter; an early site permit under subpart A of part 52 or subpart H of part 53 of this chapter; a construction permit or construction authorization under part 50 or part 53 of this chapter; an operating license under part 50 or part 53 of this chapter; a combined license under subpart C of part 52 or part 53 of this chapter; or a manufacturing license under subpart F of part 52 or part 53 of this chapter within 10 days from the date of issuance of the initial decision:

(1) If the Commission or the Director has made all findings necessary for issuance of the authorization, permit or license, not within the scope of the initial decision of the presiding officer; and

(2) Notwithstanding the pendency of a petition for reconsideration under § 2.345, a petition for review under § 2.341, or a motion for stay under § 2.342, or the filing of a petition under § 2.206.

(j) *Issuance of finding on acceptance criteria under 10 CFR 52.103 or 10 CFR 53.1452.* The Commission or the Director, Office of Nuclear Reactor Regulation, as appropriate, shall make the finding under § 52.103(g) or § 53.1452(g) of this chapter, that acceptance criteria in a combined

license are met within 10 days from the date of the presiding officer's initial decision:

(1) If the Commission or the Director is otherwise able to make the finding under § 52.103(g) or § 53.1452(g) of this chapter, that the prescribed acceptance criteria are met for those acceptance criteria not within the scope of the initial decision of the presiding officer;

(2) If the presiding officer's initial decision—with respect to contentions that the prescribed acceptance criteria have not been met—finds that those acceptance criteria have been met, and the Commission or the Director thereafter is able to make the finding that those acceptance criteria are met;

(3) If the presiding officer's initial decision—with respect to contentions that the prescribed acceptance criteria will not be met—finds that those acceptance criteria will be met, and the Commission or the Director thereafter is able to make the finding that those acceptance criteria are met; and

(4) Notwithstanding the pendency of a petition for reconsideration under § 2.345, a petition for review under § 2.341, or a motion for stay under § 2.342, or the filing of a petition under § 2.206.

\* \* \* \* \*

#### § 2.341 [Amended]

■ 19. In § 2.341(a)(1), remove the phrase “§ 52.103(c)” and add in its place the phrase “§ 52.103(c) or § 53.1452(c)”.

#### § 2.400 [Amended]

■ 20. In § 2.400, remove the phrase “parts 50 or 52” and add in its place the phrase “part 50 or part 52, or § 53.1470”.

■ 21. In § 2.401, revise the section heading and paragraph (a) to read as follows:

#### § 2.401 Notice of hearing on construction permit or combined license applications pursuant to appendix N of 10 CFR parts 50, 52, or 53.

(a) In the case of applications under appendix N of part 50 or § 53.1470 of this chapter for construction permits for nuclear power reactors of the type described in § 50.22 or part 53 of this chapter, or applications under appendix N of part 52 or § 53.1470 of this chapter for combined licenses, the Secretary will issue notices of hearing pursuant to § 2.104.

\* \* \* \* \*

■ 22. In § 2.402, revise paragraph (a) to read as follows:

#### § 2.402 Separate hearings on separate issues; consolidation of proceedings.

(a) In the case of applications under appendix N of part 50 or § 53.1470 of

this chapter for construction permits for nuclear power reactors of a type described in 10 CFR 50.22 or part 53, or applications pursuant to appendix N of part 52 or § 53.1470 of this chapter for combined licenses, the Commission or the presiding officer may order separate hearings on particular phases of the proceeding, such as matters related to the acceptability of the design of the reactor in the context of the site parameters postulated for the design or environmental matters.

\* \* \* \* \*

#### **§ 2.403 [Amended]**

■ 23. In § 2.403, remove the phrase “appendix N of part 50” and add in its place the phrase “appendix N to part 50 or § 53.1470”.

#### **§ 2.404 [Amended]**

■ 24. In § 2.404, remove the phrase “appendix N of part 50” and add in its place the phrase “appendix N to part 50 or § 53.1470”.

#### **§ 2.405 [Amended]**

■ 25. In § 2.405, remove the phrase “part 52” and add in its place the phrase “part 52 or part 53”.

#### **§ 2.406 [Amended]**

■ 26. In § 2.406, remove the phrase “appendix N of parts 50 or 52” and add in its place the phrase “appendix N to part 50 or part 52 or § 53.1470”.

#### **§ 2.500 [Amended]**

■ 27. In § 2.500, remove the phrase “subpart F of part 52” and add in its place the phrase “subpart F of part 52 or subpart H of part 53”.

■ 28. In § 2.501, revise the section heading and paragraph (a) introductory text to read as follows:

#### **§ 2.501 Notice of hearing on application under 10 CFR parts 52 or 53 for a license to manufacture nuclear power reactors.**

(a) In the case of an application under subpart F of part 52 or subpart H of part 53 of this chapter for a license to manufacture nuclear power reactors of the type described in § 50.22 or part 53 of this chapter to be operated at sites not identified in the license application, the Secretary will issue a notice of hearing to be published in the **Federal Register** at least 30 days before the date set for hearing in the notice.<sup>1</sup> The notice shall be issued as soon as practicable after the application has been docketed. The notice will state:

\* \* \* \* \*

<sup>1</sup> The thirty-day (30) requirement of this paragraph is not applicable to a notice of the time and place of hearing published by the presiding officer after notice of hearing described in this section has been published.

■ 29. In § 2.643, revise paragraph (b) to read as follows:

#### **§ 2.643 Acceptance and docketing of application for limited work authorization.**

\* \* \* \* \*

(b) The Director will accept for docketing part one of an application for a construction permit for a utilization facility which is subject to § 51.20(b) of this chapter and is of the type specified in § 50.21(b)(2) or (3) or § 50.22 or part 53 of this chapter or an application for a combined license where part one of the application as described in § 2.101(a)(9) is complete. Part one will not be considered complete unless it contains the information required by § 50.10(d)(3) or § 53.1130(a)(3) of this chapter. Upon assignment of a docket number, the procedures in § 2.101(a)(3) and (4) relating to formal docketing and the submission and distribution of additional copies of the application must be followed.

\* \* \* \* \*

#### **§ 2.645 [Amended]**

■ 30. In § 2.645, in paragraph (a), remove the phrase “§ 50.33(a) through (f) of this chapter” and add in its place the phrase “§§ 50.33(a) through (f), 53.1109, and 53.1306(a) or 53.1413 of this chapter, as applicable,”.

#### **§ 2.649 [Amended]**

■ 31. In § 2.649, remove the phrase “10 CFR 50.10(d)” and add in its place the phrase “10 CFR 50.10(d) or 10 CFR 53.1130(a)”.

#### **§ 2.800 [Amended]**

■ 32. In § 2.800, amend paragraphs (c) and (d) by removing the phrase “subpart B of part 52” and adding in its place the phrase “subpart B of part 52 or subpart H of part 53”.

#### **§ 2.801 [Amended]**

■ 33. In § 2.801, remove the phrase “subpart B of part 52” and add in its place the phrase “subpart B of part 52 or subpart H of part 53”.

#### **§ 2.813 [Amended]**

■ 34. In § 2.813(a), remove the phrase “parts 50, 52, and 100” and add in its place the phrase “parts 50, 52, 53, and 100”.

#### **§ 2.1103 [Amended]**

■ 35. In § 2.1103, remove the phrase “part 50 of this chapter” and add in its place the phrase “parts 50 or 53 of this chapter”.

■ 36. In § 2.1202, revise paragraphs (a)(1) through (3) and (a)(6) to read as follows:

#### **§ 2.1202 Authority and role of NRC staff.**

(a) \* \* \*

(1) An application to construct and/or operate a production or utilization facility (including an application for a limited work authorization under §§ 50.12 or 53.1130 of this chapter, or an application for a combined license under subpart C of 10 CFR part 52, or under subpart H of 10 CFR part 53;

(2) An application for an early site permit under subpart A of 10 CFR part 52 or under subpart H of 10 CFR part 53;

(3) An application for a manufacturing license under subpart F of 10 CFR part 52 or under subpart H of 10 CFR part 53;

\* \* \* \* \*

(6) Production or utilization facility licensing actions that involve significant hazards considerations as defined in §§ 50.92 or 53.1520 of this chapter.

\* \* \* \* \*

#### **§ 2.1301 [Amended]**

■ 37. In § 2.1301(b), remove “part 50 and part 52” and add in its place “parts 50, 52, and 53”.

#### **§ 2.1403 [Amended]**

■ 38. In § 2.1403, remove the phrase “10 CFR 50.92” and add in its place the phrase “10 CFR 50.92 or 10 CFR 53.1520”.

#### **§ 2.1500 [Amended]**

■ 39. In § 2.1500, remove the phrase “subpart B of part 52” and add in its place the phrase “subpart B of part 52 or under subpart H of part 53”.

#### **§ 2.1502 [Amended]**

■ 40. In § 2.1502, in paragraph (a), remove the phrase “§ 52.51(b)” and add in its place the phrase “§§ 52.51(b) or 53.1242(b)(2)”; and in paragraph (b)(1), wherever it appears, remove the phrase “§ 52.51(a)” and add in its place the phrase “§§ 52.51(a) or 53.1242(b)”.

### **PART 10—CRITERIA AND PROCEDURES FOR DETERMINING ELIGIBILITY FOR ACCESS TO RESTRICTED DATA OR NATIONAL SECURITY INFORMATION OR AN EMPLOYMENT CLEARANCE**

■ 41. The authority citation for part 10 continues to read as follows:

**Authority:** Atomic Energy Act of 1954, secs. 145, 161 (42 U.S.C. 2165, 2201); Energy Reorganization Act of 1974, sec. 201 (42 U.S.C. 5841); E.O. 10450, 18 FR 2489, 3 CFR, 1949–1953 Comp., p. 936, as amended; E.O. 10865, 25 FR 1583, 3 CFR, 1959–1963 Comp., p. 398, as amended; E.O. 12968, 60 FR 40245, 3 CFR, 1995 Comp., p. 391.

#### **§ 10.1 [Amended]**

■ 42. In § 10.1, in paragraph (a)(3) remove the phrase “under part 52” and

add in its place the phrase “under parts 52 or 53”.

#### § 10.2 [Amended]

■ 43. In § 10.2, in paragraph (b), wherever it appears, remove the phrase “under part 52” and add in its place the phrase “under parts 52 or 53”.

### PART 11—CRITERIA AND PROCEDURES FOR DETERMINING ELIGIBILITY FOR ACCESS TO OR CONTROL OVER SPECIAL NUCLEAR MATERIAL

■ 44. The authority citation for part 11 continues to read as follows:

**Authority:** Atomic Energy Act of 1954, secs. 161, 223 (42 U.S.C. 2201, 2273); Energy Reorganization Act of 1974, sec. 201 (42 U.S.C. 5841); 44 U.S.C. 3504 note. Section 11.15(e) also issued under 31 U.S.C. 9701; 42 U.S.C. 2214.

#### § 11.7 [Amended]

■ 45. In § 11.7, in the introductory text, remove the phrase “parts 10, 25, 50, 70, 72, 73, and 95 of this chapter” and add in its place the phrase “parts 10, 25, 50, 53, 70, 72, 73, and 95 of this chapter”.

### PART 19—NOTICES, INSTRUCTIONS AND REPORTS TO WORKERS: INSPECTION AND INVESTIGATIONS

■ 46. The authority citation for part 19 continues to read as follows:

**Authority:** Atomic Energy Act of 1954, secs. 53, 63, 81, 103, 104, 161, 223, 234, 1701 (42 U.S.C. 2073, 2093, 2111, 2133, 2134, 2201, 2273, 2282, 2297f); Energy Reorganization Act of 1974, secs. 201, 211, 401 (42 U.S.C. 5841, 5851, 5891); 44 U.S.C. 3504 note.

■ 47. In § 19.2, revise paragraph (a) to read as follows:

#### § 19.2 Scope.

(a) \* \* \*

(1) All persons who receive, possess, use, or transfer material licensed by the NRC under the regulations in parts 30 through 36, 39, 40, 60, 61, 63, 70, or 72 of this chapter, including persons licensed to operate a production or utilization facility under part 50, part 52, or part 53 of this chapter, persons licensed to possess power reactor spent fuel in an independent spent fuel storage installation (ISFSI) under part 72 of this chapter, and in accordance with 10 CFR 76.60 to persons required to obtain a certificate of compliance or an approved compliance plan under part 76 of this chapter;

(2) All applicants for and holders of licenses (including construction permits and early site permits) under parts 50, 52, 53, and 54 of this chapter;

(3) All applicants for and holders of a standard design approval under

subpart E of part 52 or under subpart H of part 53 of this chapter; and

(4) All applicants for a standard design certification under subpart B of part 52 or under subpart H of part 53 of this chapter, and those (former) applicants whose designs have been certified under that subpart.

\* \* \* \* \*

■ 48. In § 19.3, revise the definitions for “License” and “Regulated entities” to read as follows:

#### § 19.3 Definitions.

\* \* \* \* \*

*License* means a license issued under the regulations in parts 30 through 36, 39, 40, 60, 61, 63, 70, or 72 of this chapter, including licenses to manufacture, construct and/or operate a production or utilization facility under parts 50, 52, 53, or 54 of this chapter.

\* \* \* \* \*

*Regulated entities* means any individual, person, organization, or corporation that is subject to the regulatory jurisdiction of the NRC, including (but not limited to) an applicant for or holder of a standard design approval under subpart E of part 52 or under subpart H of part 53 of this chapter or a standard design certification under subpart B of part 52 or under subpart H of part 53 of this chapter.

\* \* \* \* \*

#### § 19.11 [Amended]

■ 49. In § 19.11, in paragraph (a) introductory text, paragraph (b) introductory text, and paragraph (e)(1), remove the phrase “of part 52” wherever it appears and add in its place the phrase “of part 52 or under subpart H of part 53”.

#### § 19.14 [Amended]

■ 50. In § 19.14, in paragraph (a), wherever it may appear, remove the phrase “of part 52” and add in its place the phrase “of part 52 or under subpart H of part 53”.

#### § 19.20 [Amended]

■ 51. In § 19.20, add the number “53,” in sequential order.

### PART 20—STANDARDS FOR PROTECTION AGAINST RADIATION

■ 52. The authority citation for part 20 continues to read as follows:

**Authority:** Atomic Energy Act of 1954, secs. 11, 53, 63, 65, 81, 103, 104, 161, 170H, 182, 186, 223, 234, 274, 1701 (42 U.S.C. 2014, 2073, 2093, 2095, 2111, 2133, 2134, 2201, 2210h, 2232, 2236, 2273, 2282, 2021, 2297f); Energy Reorganization Act of 1974, secs. 201, 202 (42 U.S.C. 5841, 5842); Low-Level Radioactive Waste Policy Amendments Act

of 1985, sec. 2 (42 U.S.C. 2021b); 44 U.S.C. 3504 note.

#### § 20.1002 [Amended]

■ 53. In § 20.1002, remove the phrase “parts 30 through 36, 39, 40, 50, 52, 60, 61, 63, 70, or 72 of this chapter” and add in its place the phrase “parts 30 through 36, 39, 40, 50, 52, 53, 60, 61, 63, 70, or 72 of this chapter”.

■ 54. In § 20.1003, revise the definition for “License” to read as follows:

#### § 20.1003 Definitions.

\* \* \* \* \*

*License* means a license issued under the regulations in parts 30 through 36, 39, 40, 50, 53, 60, 61, 63, 70, or 72 of this chapter.

\* \* \* \* \*

#### § 20.1101 [Amended]

■ 55. In § 20.1101, in paragraph (d), remove the phrase “subject to § 50.34a” and add in its place the phrase “subject to §§ 50.34a or 53.260 of this chapter”.

#### § 20.1401 [Amended]

■ 56. Amend § 20.1401 by:

■ a. In paragraph (a), removing the phrase “parts 30, 40, 50, 52, 60, 61, 63, 70, and 72 of this chapter”, and adding in its place the phrase “parts 30, 40, 50, 52, 53, 60, 61, 63, 70, and 72 of this chapter”; and

■ b. In paragraphs (a) and (c) removing the phrase “in accordance with § 50.83” and adding in its place the phrase “in accordance with §§ 50.83 or 53.1080”.

■ 57. In § 20.1403, revise paragraph (d) introductory text to read as follows:

#### § 20.1403 Criteria for license termination under restricted conditions.

\* \* \* \* \*

(d) The licensee has submitted a decommissioning plan or License Termination Plan (LTP) to the Commission indicating the licensee’s intent to decommission in accordance with §§ 30.36(d), 40.42(d), 50.82 (a) and (b), subpart G of part 53, 70.38(d), or 72.54 of this chapter, and specifying that the licensee intends to decommission by restricting use of the site. The licensee shall document in the LTP or decommissioning plan how the advice of individuals and institutions in the community who may be affected by the decommissioning has been sought and incorporated, as appropriate, following analysis of that advice.

\* \* \* \* \*

■ 58. In § 20.1404, revise paragraph (a)(4) introductory text to read as follows:

#### § 20.1404 Alternate criteria for license termination.

(a) \* \* \*

(4) Has submitted a decommissioning plan or License Termination Plan (LTP) to the Commission indicating the licensee's intent to decommission in accordance with § 30.36(d), 40.42(d), 50.82 (a) and (b), subpart G of part 53, 70.38(d), or 72.54 of this chapter, and specifying that the licensee proposes to decommission by use of alternate criteria. The licensee shall document in the decommissioning plan or LTP how the advice of individuals and institutions in the community who may be affected by the decommissioning has been sought and addressed, as appropriate, following analysis of that advice. In seeking such advice, the licensee shall provide for:

\* \* \* \* \*

#### § 20.1406 [Amended]

■ 59. In § 20.1406, in paragraphs (a) and (b), wherever it appears, remove the phrase “under part 52” and add in its place the phrase “under parts 52 or 53”.  
 ■ 60. In § 20.1501, revise paragraph (b) to read as follows:

#### § 20.1501 General.

\* \* \* \* \*

(b) Notwithstanding § 20.2103(a) of this part, records from surveys describing the location and amount of subsurface residual radioactivity identified at the site must be kept with records important for decommissioning, and such records must be retained in accordance with § 30.35(g), § 40.36(f), § 50.75(g), subpart G of part 53, § 70.25(g), or § 72.30(d) of this chapter, as applicable.

\* \* \* \* \*

#### § 20.1905 [Amended]

■ 61. In § 20.1905, in paragraph (g) introductory text, remove the phrase “Parts 50 or 52” and add in its place the phrase “parts 50, 52, or 53”.  
 ■ 62. In § 20.2004, revise paragraph (b)(1) to read as follows:

#### § 20.2004 Treatment or disposal by incineration.

\* \* \* \* \*

(b)(1) Waste oils (petroleum derived or synthetic oils used principally as lubricants, coolants, hydraulic or insulating fluids, or metalworking oils) that have been radioactively contaminated in the course of the operation or maintenance of a nuclear power reactor licensed under parts 50 or 53 of this chapter may be incinerated on the site where generated provided that the total radioactive effluents from the facility, including the effluents from such incineration, conform to the requirements of appendix I to part 50 or § 53.425(d) of this chapter and the

effluent release limits contained in applicable license conditions other than effluent limits specifically related to incineration of waste oil. The licensee shall report any changes or additions to the information supplied under §§ 50.34, 50.34a, or under subpart H of part 53 of this chapter associated with this incineration pursuant to §§ 50.71 or 53.1620 of this chapter, as appropriate. The licensee shall also follow the procedures of §§ 50.59 or 53.1565 of this chapter with respect to such changes to the facility or procedures.

\* \* \* \* \*

■ 63. In § 20.2201, revise paragraphs (a)(2)(i), (b)(2)(i), and (c) to read as follows:

#### § 20.2201 Reports of theft or loss of licensed material.

(a) \* \* \*

(2) \* \* \*

(i) Licensees having an installed Emergency Notification System shall make the reports to the NRC Operations Center under §§ 50.72 or 53.1630 of this chapter, and

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(i) For holders of an operating license for a nuclear power plant, the events included in paragraph (b) of this section must be reported under the procedures described in §§ 50.73(b), (c), (d), (e), and (g) or 53.1640(b), (c), (d), and (e) of this chapter and must include the information required in paragraph (b)(1) of this section, and

\* \* \* \* \*

(c) A duplicate report is not required under paragraph (b) of this section if the licensee is also required to submit a report pursuant to §§ 30.55(c), 37.57, 37.81, 40.64(c), 50.72, 50.73, 53.1630, 53.1640, 70.52, 73.27(b), 73.67(e)(3)(vii), 73.67(g)(3)(iii), 73.1205, or 150.19(c) of this chapter.

\* \* \* \* \*

#### § 20.2202 [Amended]

■ 64. In § 20.2202, in paragraph (d)(1), remove the phrase “10 CFR 50.72” and add in its place the phrase “§§ 50.72 or 53.1630 of this chapter;”.

■ 65. In § 20.2203, revise paragraph (c) to read as follows:

#### § 20.2203 Reports of exposures, radiation levels, and concentrations of radioactive material exceeding the constraints or limits.

\* \* \* \* \*

(c) For holders of an operating license or a combined license for a nuclear power plant, the occurrences included in paragraph (a) of this section must be reported under the procedures described in §§ 50.73(b), (c), (d), (e), and

(g) or 53.1640(b), (c), (d), and (e) of this chapter, and must include the information required by paragraph (b) of this section. Occurrences reported under §§ 50.73 or 53.1640 of this chapter need not be reported by a duplicate report under paragraph (a) of this section.

\* \* \* \* \*

#### § 20.2206 [Amended]

■ 66. In § 20.2206, in paragraph (a)(1), remove the phrase “or § 50.22” and add in its place the phrase “, § 50.22, or part 53”.

### PART 21—REPORTING OF DEFECTS AND NONCOMPLIANCE

■ 67. The authority citation for part 21 continues to read as follows:

**Authority:** Atomic Energy Act of 1954, secs. 53, 63, 81, 103, 104, 161, 223, 234, 1701 (42 U.S.C. 2073, 2093, 2111, 2133, 2134, 2201, 2273, 2282, 2297f); Energy Reorganization Act of 1974, secs. 201, 206 (42 U.S.C. 5841, 5846); Nuclear Waste Policy Act of 1982, secs. 135, 141 (42 U.S.C. 10155, 10161); 44 U.S.C. 3504 note.

■ 68. In § 21.2, revise paragraphs (a)(2) through (4), (b), and (c) to read as follows:

#### § 21.2 Scope.

(a) \* \* \*

(1) \* \* \*

(2) Each individual, corporation, partnership, or other entity doing business within the United States, and each director and responsible officer of such an organization, that constructs a production or utilization facility licensed for manufacture, construction, or operation under parts 50, 52, or 53 of this chapter, an ISFSI for the storage of spent fuel licensed under part 72 of this chapter, an MRS for the storage of spent fuel or high-level radioactive waste under part 72 of this chapter, or a geologic repository for the disposal of high-level radioactive waste under parts 60 or 63 of this chapter; or supplies basic components for a facility or activity licensed, other than for export, under parts 30, 40, 50, 52, 53, 60, 61, 63, 70, 71, or 72 of this chapter;

(3) Each individual, corporation, partnership, or other entity doing business within the United States, and each director and responsible officer of such an organization, applying for a design certification rule under parts 52 or 53 of this chapter; or supplying basic components with respect to that design certification, and each individual, corporation, partnership, or other entity doing business within the United States, and each director and responsible officer of such an organization, whose

application for design certification has been granted under parts 52 or 53 of this chapter, or who has supplied or is supplying basic components with respect to that design certification;

(4) Each individual, corporation, partnership, or other entity doing business within the United States, and each director and responsible officer of such an organization, applying for or holding a standard design approval under parts 52 or 53 of this chapter; or supplying basic components with respect to a standard design approval under parts 52 or 53 of this chapter;

(b) For persons licensed to construct a facility under either a construction permit issued under §§ 50.23 or 53.1333 of this chapter or a combined license under parts 52 or 53 of this chapter (for the period of construction until the date that the Commission makes the finding under §§ 52.103(g) or 53.1452(g) of this chapter), or to manufacture a facility under parts 52 or 53 of this chapter, evaluation of potential defects and failures to comply and reporting of defects and failures to comply under §§ 50.55(e) or 53.605 of this chapter satisfies each person's evaluation, notification, and reporting obligation to report defects and failures to comply under this part and the responsibility of individual directors and responsible officers of these licensees to report defects under Section 206 of the Energy Reorganization Act of 1974.

(c) For persons licensed to operate a nuclear power plant under part 50, part 52, or part 53 of this chapter, evaluation of potential defects and appropriate reporting of defects under §§ 50.72, 50.73, 53.1630, 53.1640, or 73.1200 and 73.1205 of this chapter, satisfies each person's evaluation, notification, and reporting obligation to report defects under this part, and the responsibility of individual directors and responsible officers of these licensees to report defects under Section 206 of the Energy Reorganization Act of 1974.

\* \* \* \* \*

■ 69. In § 21.3, revise the definitions for “Basic component”, “Commercial grade item”, “Critical characteristics”, “Dedicating entity”, “Dedication”, “Defect”, and “Substantial safety hazard” to read as follows:

#### § 21.3 Definitions.

\* \* \* \* \*

**Basic component.** (1)(i) When applied to nuclear power plants licensed under part 53 of this chapter, basic component means a safety-related structure, system, or component (SSC), or part thereof, and when applied to nuclear power plants licensed under parts 50 or 52, of this chapter, basic component means an

SSC, or part thereof that affects its safety function necessary to assure:

(A) The integrity of the reactor coolant pressure boundary;

(B) The capability to shut down the reactor and maintain it in a safe-shutdown condition; or

(C) The capability to prevent or mitigate the consequences of accidents which could result in potential offsite exposures comparable to those referred to in §§ 50.34(a)(1), 50.67(b)(2), or 100.11 of this chapter, as applicable.

(ii) Basic components are items designed and manufactured under a quality assurance program complying with appendix B to part 50 of this chapter, or commercial grade items which have successfully completed the dedication process.

(2) When applied to standard design certifications and approvals under part 53 of this chapter, basic component means the design or procurement information approved or to be approved within the scope of the design certification or approval for a safety-related SSC, or part thereof. When applied to standard design certifications under subpart B of part 52 of this chapter and standard design approvals under part 52 of this chapter, basic component means the design or procurement information approved or to be approved within the scope of the design certification or approval for an SSC, or part thereof, that affects its safety function necessary to assure:

(i) The integrity of the reactor coolant pressure boundary;

(ii) The capability to shut down the reactor and maintain it in a safe-shutdown condition; or

(iii) The capability to prevent or mitigate the consequences of accidents which could result in potential offsite exposures comparable to those referred to in §§ 50.34(a)(1), 50.67(b)(2), or 100.11 of this chapter, as applicable.

(3) When applied to other facilities and other activities licensed under 10 CFR parts 30, 40, 50 (other than nuclear power plants), 60, 61, 63, 70, 71, or 72 of this chapter, basic component means a structure, system, or component, or part thereof, that affects their safety function, that is directly procured by the licensee of a facility or activity subject to the regulations in this part and in which a defect or failure to comply with any applicable regulation in this chapter, order, or license issued by the Commission could create a substantial safety hazard.

(4) In all cases, basic component includes safety-related design, analysis, inspection, testing, fabrication, replacement of parts, or consulting services that are associated with the

component hardware, design certification, design approval, or information in support of an early site permit application under part 52 or part 53 of this chapter, whether these services are performed by the component supplier or others.

**Commercial grade item.** (1) When applied to nuclear power plants licensed under parts 50 or 53 of this chapter, commercial grade item means an SSC, or part thereof that affects its safety function, that was not designed and manufactured as a basic component. Commercial grade items do not include items where the design and manufacturing process require in-process inspections and verifications to ensure that defects or failures to comply are identified and corrected (*i.e.*, one or more critical characteristics of the item cannot be verified).

(2) When applied to facilities and activities licensed pursuant to parts 30, 40, 50 (other than nuclear power plants), 60, 61, 63, 70, 71, or 72 of this chapter, commercial grade item means an item that is:

(i) Not subject to design or specification requirements that are unique to those facilities or activities;

(ii) Used in applications other than those facilities or activities; and

(iii) To be ordered from the manufacturer/supplier on the basis of specifications set forth in the manufacturer's published product description (for example, a catalog).

\* \* \* \* \*

**Critical characteristics.** When applied to nuclear power plants licensed under parts 50, 52, or 53 of this chapter, critical characteristics are those important design, material, and performance characteristics of a commercial grade item that, once verified, will provide reasonable assurance that the item will perform its intended safety function.

**Dedicating entity.** When applied to nuclear power plants licensed under parts 50, 52, or 53 of this chapter, dedicating entity means the organization that performs the dedication process. Dedication may be performed by the manufacturer of the item, a third-party dedicating entity, or the licensee itself. The dedicating entity, under § 21.21(c) of this part, is responsible for identifying and evaluating deviations, reporting defects and failures to comply for the dedicated item, and maintaining auditable records of the dedication process.

**Dedication.** (1) When applied to nuclear power plants licensed pursuant to 10 CFR parts 30, 40, 50, 53, or 60, dedication is an acceptance process



undertaken to provide reasonable assurance that a commercial grade item to be used as a basic component will perform its intended safety function and, in this respect, is deemed equivalent to an item designed and manufactured under a 10 CFR part 50, appendix B, quality assurance program. This assurance is achieved by identifying the critical characteristics of the item and verifying their acceptability by inspections, tests, or analyses performed by the purchaser or third-party dedicating entity after delivery, supplemented as necessary by one or more of the following: commercial grade surveys; product inspections or witness at holdpoints at the manufacturer's facility, and analysis of historical records for acceptable performance. In all cases, the dedication process must be conducted under the applicable provisions of 10 CFR part 50, appendix B. The process is considered complete when the item is designated for use as a basic component.

(2) When applied to facilities and activities licensed pursuant to 10 CFR parts 30, 40, 50 (other than nuclear power plants), 60, 61, 63, 70, 71, or 72, dedication occurs after receipt when that item is designated for use as a basic component.

*Defect means:*

(1) A deviation in a basic component delivered to a purchaser for use in a facility or an activity subject to the regulations in this part if, on the basis of an evaluation, the deviation could create a substantial safety hazard;

(2) The installation, use, or operation of a basic component containing a defect as defined in this section;

(3) A deviation in a portion of a facility subject to the early site permit, standard design certification, standard design approval, construction permit, combined license or manufacturing licensing requirements of parts 50, 52, or 53 of this chapter, provided the deviation could, on the basis of an evaluation, create a substantial safety hazard and the portion of the facility containing the deviation has been offered to the purchaser for acceptance;

(4) A condition or circumstance involving a basic component that could contribute to the exceeding of a safety limit, as defined in the technical specifications of a license for operation issued under part 50, part 52, or part 53 of this chapter; or

(5) An error, omission or other circumstance in a design certification, or standard design approval that, on the basis of an evaluation, could create a substantial safety hazard.

\* \* \* \* \*

*Substantial safety hazard* means a loss of safety function to the extent that there is a major reduction in the degree of protection provided to public health and safety for any facility or activity licensed or otherwise approved or regulated by the NRC, other than for export, under part 30, 40, 50, 52, 53, 60, 61, 63, 70, 71, or 72 of this chapter.

\* \* \* \* \*

**§ 21.21 [Amended]**

■ 70. Amend § 21.21 by:

■ a. In paragraph (a)(3), removing the phrase “under part 52” and add in its place the phrase “under parts 52 or 53”; and

■ b. In paragraphs (d)(1)(i) and (ii) removing the phrase “parts 30, 40, 50, 52, 60, 61, 63, 70, 71, or 72 of this chapter” and adding in its place the phrase “parts 30, 40, 50, 52, 53, 60, 61, 63, 70, 71, or 72 of this chapter”.

**§ 21.51 [Amended]**

■ 71. In § 21.51, in paragraphs (a)(4) and (5) remove the phrase “of part 52” and add in its place the phrase “of part 52 or under subpart H of part 53”.

**§ 21.61 [Amended]**

■ 72. In § 21.61, in paragraph (b) remove the phrase “under part 52” and add in its place the phrase “under parts 52 or 53”.

**PART 25—ACCESS AUTHORIZATION**

■ 73. The authority citation for part 25 continues to read as follows:

**Authority:** Atomic Energy Act of 1954, secs. 145, 161, 223, 234 (42 U.S.C. 2165, 2201, 2273, 2282); Energy Reorganization Act of 1974, sec. 201 (42 U.S.C. 5841); 44 U.S.C. 3504 note; E.O. 10865, 25 FR 1583, as amended, 3 CFR, 1959–1963 Comp., p. 398; E.O. 12829, 58 FR 3479, 3 CFR, 1993 Comp., p. 570; E.O. 13526, 75 FR 707, 3 CFR, 2009 Comp., p. 298; E.O. 12968, 60 FR 40245, 3 CFR, 1995 Comp., p. 391. Section 25.17(f) and Appendix A also issued under 31 U.S.C. 9701; 42 U.S.C. 2214.

■ 74. In § 25.5, revise the definition for “License” to read as follows:

**§ 25.5 Definitions.**

\* \* \* \* \*

*License* means a license issued pursuant to 10 CFR parts 50, 52, 53, 60, 63, 70, or 72.

\* \* \* \* \*

**§ 25.17 [Amended]**

■ 75. In § 25.17, in paragraph (a), remove the phrase “under 10 CFR parts 50, 52, 54, 60, 63, 70, 72, or 76” and add in its place the phrase “under 10 CFR parts 50, 52, 53, 54, 60, 63, 70, 72, or 76”.

**§ 25.35 [Amended]**

■ 76. In § 25.35, in paragraph (a), wherever it appears, remove the phrase “under part 52” and add in its place the phrase “under parts 52 or 53”.

**PART 26—FITNESS FOR DUTY PROGRAMS**

■ 77. The authority citation for part 26 continues to read as follows:

**Authority:** Atomic Energy Act of 1954, secs. 53, 103, 104, 107, 161, 223, 234, 1701 (42 U.S.C. 2073, 2133, 2134, 2137, 2201, 2273, 2282, 2297f); Energy Reorganization Act of 1974, secs. 201, 202 (42 U.S.C. 5841, 5842); 44 U.S.C. 3504 note.

■ 78. In § 26.3, revise paragraph (d) and add paragraph (f) to read as follows:

**§ 26.3 Scope.**

\* \* \* \* \*

(d) Contractor/vendors (C/Vs) who implement FFD programs or program elements, to the extent that the licensees and other entities specified in paragraphs (a) through (c) and (f) of this section rely on those C/V FFD programs or program elements to meet the requirements of this part, shall comply with the requirements of this part.

\* \* \* \* \*

(f) No later than the start of construction activities, licensees and other entities that have applied for or have been issued a license under part 53 of this chapter, other than a manufacturing license (ML), must implement the requirements in subpart M of this part or all the requirements of this part except subparts K and M. Holders of an ML under part 53 of this chapter must implement the requirements in subpart M or all the requirements of this part except subparts K and M, before commencing activities that assemble a manufactured reactor.

■ 79. In § 26.4, revise paragraphs (a) introductory text, (a)(1), (a)(4), (b), (c), (e) introductory text, (e)(4), (f), (g) introductory text, and (h) to read as follows:

**§ 26.4 FFD program applicability to categories of individuals.**

(a) All persons who are granted unescorted access to nuclear power reactor protected areas by the licensees in § 26.3(a) and, as applicable, (c) and perform the following duties shall be subject to an FFD program that meets all of the requirements of this part, except subpart K of this part, and those persons who are granted unescorted access to either nuclear power reactor protected areas or remote facilities where safety-significant systems or components may be operated within the design basis of

a licensed commercial nuclear plant, by the licensees and other entities in § 26.3(f) and perform the following duties must be subject to an FFD program that satisfies the requirements in subpart M of this part, unless the licensee or other entity subjects these individuals to an FFD program that satisfies all of the requirements of this part except for those requirements in subparts K and M:

(1) For persons who are granted unescorted access by the licensees in § 26.3(a) and, as applicable, (c), operating or onsite directing of the operation of systems and components that a risk-informed evaluation process has shown to be significant to public health and safety; for those persons who are granted unescorted access by the licensees and other entities in § 26.3(f), operating or directing of the operation of systems and components that a risk-informed evaluation process has shown to be significant to public health and safety;

\* \* \* \* \*

(4) For persons who are granted unescorted access to nuclear power reactor protected areas by the licensees in § 26.3(a) and, as applicable, (c), performing maintenance or onsite directing of the maintenance of SSCs that a risk-informed evaluation process has shown to be significant to public health and safety; for those persons who are granted unescorted access to nuclear power reactor protected areas by the licensees and other entities in § 26.3(f), performing maintenance or directing of the maintenance of SSCs that a risk-informed evaluation process has shown to be significant to public health and safety; and

\* \* \* \* \*

(b) All persons who are granted unescorted access to nuclear power reactor protected areas by the licensees in § 26.3(a) and, as applicable, (c) and who do not perform the duties described in paragraph (a) of this section shall be subject to an FFD program that meets all of the requirements of this part, except §§ 26.205 through 26.209 and subpart K of this part. All persons who are granted unescorted access to a facility licensed under part 53 of this chapter, and who do not perform or direct the performance of the duties described in § 26.4(a), must be subject to the requirements in subpart M of this part, unless the licensee or other entity implements an FFD program that satisfies all of the requirements of this part, except §§ 26.205 through 26.209 and subparts K and M.

(c) All persons who are required by a licensee in § 26.3(a) and, as applicable, (c) to physically report to the licensee's Technical Support Center or Emergency Operations Facility by licensee emergency plans and procedures shall be subject to an FFD program that meets all of the requirements of this part, except §§ 26.205 through 26.209 and subpart K of this part. Also, for licensees or other entities in § 26.3(f), all persons without unescorted access to the facility who make decisions and/or direct actions regarding plant safety and security, and all persons who participate remotely in emergency response activities or physically report to the Technical Support Center or Emergency Operations Facility (or an equivalent facility), must be subject to an FFD program that satisfies all of the requirements described in subpart M of this part, unless the licensee or other entity implements an FFD program that satisfies all of the requirements of this part, except §§ 26.205 through 26.209 and subparts K and M.

\* \* \* \* \*

(e) When construction activities, as defined in § 26.5, begin, any individual whose duties for the licensees and other entities in § 26.3(c) require him or her to have the following types of access or perform the following activities at the location where the nuclear power plant will be constructed and operated shall be subject to an FFD program that meets all of the requirements of this part, except subparts I, K, and M of this part, and for any individual whose duties for the licensees and other entities in § 26.3(f) require him or her to have the following types of access, perform construction activities as defined in § 26.5, or perform the following activities must be subject to an FFD program as described in subpart M or an FFD program that satisfies all of the requirements of this part, except subparts I, K, and M:

\* \* \* \* \*

(4) Witnesses or determines inspections, tests, and analyses certification required under part 52 or part 53 of this chapter;

\* \* \* \* \*

(f) Any individual who is constructing or directing the construction of safety- or security-related SSCs shall be subject to an FFD program that meets the requirements of subpart K, or, if applicable, subpart M of this part, unless the licensee or other entity subjects these individuals to an FFD program that meets all of the requirements of this part, except for subparts I, K, and M of this part.

(g) All FFD program personnel who are involved in the day-to-day operations of the program, as defined by the procedures of the licensees and other entities in § 26.3(a) through (c), and, as applicable, (d) and whose duties require them to have the following types of access or perform the following activities shall be subject to an FFD program that meets all of the requirements of this part, except subparts I, K, and M of this part, and, at the licensee's or other entity's discretion, subpart C of this part. All personnel whose duties require them to have the following types of access or perform the following activities at facilities licensed under part 53 of this chapter must be subject to the requirements in subpart M or an FFD program that satisfies all of the requirements of this part, except subparts I, K, and M, and, at the licensee's or other entity's discretion, subpart C of this part:

\* \* \* \* \*

(h) Individuals who have applied for authorization to have the types of access or perform the activities described in paragraphs (a) through (d) of this section shall be subject to §§ 26.31(c)(1), 26.35(b), 26.37, 26.39, and the applicable requirements of subparts C, E through H, and M of this part.

\* \* \* \* \*

■ 80. Amend § 26.5 by:

- a. Adding the definitions for “Biological marker” and “Change”;
- b. Revising the definitions for “Constructing or construction activities” “Contractor/vendor (C/V)”;
- c. Adding the definition of “Illicit substance”;
- d. Revising the definitions of “Other entity” and “Questionable validity”;
- e. Adding the definitions of “Reduction in FFD program effectiveness”;
- f. Revising the definitions of “Reviewing official”, “Safety-related structures, systems, and components (SSCs)”, and “Security-related SSCs”;
- g. Adding the definitions of “Special nuclear material”; and
- h. Revising the definition of “Unit outage”.

The additions and revisions read as follows:

**§ 26.5 Definitions.**

\* \* \* \* \*

*Biological marker* means, for a part 53 licensee implementing subpart M of this part, an endogenous substance that is used to validate that the biological specimen collected for testing was produced by the donor.

\* \* \* \* \*

*Change* as used in § 26.603(e) means an action that results in a modification of, addition to, or removal from the licensee's or other entity's FFD program.

\* \* \* \* \*

*Constructing or construction activities* means, for the purposes of this part, the tasks involved in building a nuclear power plant that are performed at the location where the nuclear power plant will be constructed and operated. These tasks include fabricating, erecting, integrating, and testing safety- and security-related SSCs, and the installation of their foundations, including the placement of concrete. For a licensee or other entity described in § 26.3(f), construction is defined in § 53.020 of this chapter.

*Contractor/vendor (C/V)* means any company, or any individual not employed by a licensee or other entity specified in § 26.3(a) through (c) and (f), who is providing work or services to a licensee or other entity covered in § 26.3(a) through (c) and (f), either by contract, purchase order, oral agreement, or other arrangement.

\* \* \* \* \*

*Illicit substance* means a substance that causes impairment and possible addiction but is not an illegal drug as defined in § 26.5.

\* \* \* \* \*

*Other entity* means any corporation, firm, partnership, limited liability company, association, C/V, or other organization who is subject to this part under § 26.3(a) through (c) and (f) but is not licensed by the NRC.

\* \* \* \* \*

*Questionable validity* means the results of validity screening or initial validity tests at a licensee testing facility indicating that a urine specimen may be adulterated, substituted, dilute, or invalid. For a part 53 licensee or other entity, *questionable validity* means the results of validity screening or initial validity tests indicating that a biological specimen obtained from an individual pursuant to subpart M of this part may be adulterated, substituted, dilute, or invalid.

*Reduction in FFD program effectiveness* means, for a part 53 licensee or other entity implementing subpart M of this part, a change or series of changes to an element of the FFD program that reduces or eliminates the licensee's ability to satisfy or maintain site-specific FFD program performance when compared to historical site-specific performance, the licensee's fleet-level program performance, or industry performance.

\* \* \* \* \*

*Reviewing official* means an employee of a licensee or other entity specified in § 26.3(a) through (c) and (f), who is designated by the licensee or other entity to be responsible for reviewing and evaluating any potentially disqualifying FFD information about an individual, including, but not limited to, the results of a determination of fitness, as defined in § 26.189, in order to determine whether the individual may be granted or maintain authorization.

*Safety-related structures, systems, and components (SSCs)* means, for part 50 or part 52 licensees and other entities described in § 26.3(a) through (d), those SSCs that are relied on to remain functional during and following design basis events to ensure the integrity of the reactor coolant pressure boundary, the capability to shut down the reactor and maintain it in a safe shutdown condition, or the capability to prevent or mitigate the consequences of accidents that could result in potential offsite exposure comparable to the guidelines in § 50.34(a)(1) of this chapter. For part 53 licensees and other entities described in § 26.3(d) and (f), safety-related has the same meaning as that in § 53.020 of this chapter.

*Security-related SSCs* means, for the purposes of this part, those structures, systems, and components that the licensee will rely on to implement the licensee's physical security and safeguards contingency plans that either are required under part 73 of this chapter if the licensee is a construction permit applicant or holder or an early site permit holder, as described in § 26.3(c)(3) through (c)(5), respectively, or are included in the licensee's application if the licensee is a combined license applicant or holder, as described in § 26.3(c)(1) and (c)(2), respectively, or a licensee or other entity described in § 26.3(d) or (f).

\* \* \* \* \*

*Special nuclear material (SNM)* has the same meaning as that in § 70.4 of this chapter.

\* \* \* \* \*

*Unit outage* means, for the purposes of this part, for electricity-generation units, that the reactor unit is disconnected from the electrical grid. *Unit outage* means, for the purposes of this part, for non-electricity-generation units, that the reactor unit is disconnected from the loads to which its output is supplied under normal operating conditions.

\* \* \* \* \*

■ 81. In § 26.8, revise paragraph (b) to read as follows:

## **§ 26.8 Information collection requirements: OMB approval.**

\* \* \* \* \*

(b) The approved information collection requirements contained in this part appear in §§ 26.9, 26.27, 26.29, 26.31, 26.33, 26.35, 26.37, 26.39, 26.41, 26.53, 26.55, 26.57, 26.59, 26.61, 26.63, 26.65, 26.67, 26.69, 26.75, 26.77, 26.85, 26.87, 26.89, 26.91, 26.93, 26.95, 26.97, 26.99, 26.101, 26.103, 26.107, 26.109, 26.111, 26.113, 26.115, 26.117, 26.119, 26.125, 26.127, 26.129, 26.135, 26.137, 26.139, 26.153, 26.157, 26.159, 26.163, 26.165, 26.167, 26.168, 26.169, 26.183, 26.185, 26.187, 26.189, 26.202, 26.203, 26.205, 26.207, 26.211, 26.401, 26.403, 26.405, 26.406, 26.407, 26.411, 26.413, 26.415, 26.417, 26.603, 26.604, 26.605, 26.606, 26.607, 26.608, 26.609, 26.611, 26.613, 26.617, 26.619, 26.711, 26.713, 26.715, 26.717, 26.719, and 26.821.

■ 82. Revise § 26.21 to read as follows:

## **§ 26.21 Fitness-for-duty program.**

The licensees and other entities specified in § 26.3(a) through (c) and (f) (for those licensees and other entities that do not implement the requirements in subparts M and K of this part) shall establish, implement, and maintain FFD programs that, at a minimum, comprise the program elements contained in this subpart. The individuals specified in § 26.4(a) through (e) and (g), and, at the licensee's or other entity's discretion, § 26.4(f), and, if necessary, § 26.4(j) shall be subject to these FFD programs. Licensees and other entities may rely on the FFD program or program elements of a C/V, as defined in § 26.5, if the C/V's FFD program or program elements satisfy the applicable requirements of this part.

■ 83. Revise § 26.51 to read as follows:

## **§ 26.51 Applicability.**

The requirements in this subpart apply to the licensees and other entities identified in § 26.3(a), (b), and, as applicable, (c) for the categories of individuals in § 26.4(a) through (d), and, at the licensee's or other entity's discretion, in § 26.4(g) and, if necessary, § 26.4(j). The requirements in this subpart also apply to the licensees and other entities specified in § 26.3(c), as applicable, for the categories of individuals in § 26.4(e). At the discretion of a licensee or other entity in § 26.3(c), the requirements of this subpart also may be applied to the categories of individuals identified in § 26.4(f). In addition, the requirements in this subpart apply to the entities in § 26.3(d) to the extent that a licensee or other entity relies on the C/V to satisfy the requirements of this subpart. Certain requirements in this subpart also apply

to the individuals specified in § 26.4(h). The requirements in this subpart apply to the FFD programs of licensees and other entities identified in § 26.3(f) that elect not to implement the requirements in subpart M for the categories of individuals in § 26.4 and those licensees and other entities that elect to implement the requirements in § 26.605.

#### § 26.53 [Amended]

■ 84. Amend § 26.53 by:

■ a. In paragraph (e), wherever it appears, remove the phrase “§ 26.3(a) through (c)” and add in its place the phrase “§ 26.3(a) through (c) and (f)”;

■ b. In paragraphs (g), (h), and (i), wherever it appears, remove the phrase “(c) and (d)” and add in its place the phrase “(c), (d), and (f)”.

#### § 26.63 [Amended]

■ 85. In § 26.63, in paragraph (d) remove the phrase “§ 26.3(a) through (d)” and add in its place the phrase “§ 26.3(a) through (d) and (f)”.

■ 86. Revise § 26.73 to read as follows:

#### § 26.73 Applicability.

The requirements in this subpart apply to the licensees and other entities identified in § 26.3(a), (b), and, as applicable, (c) for the categories of individuals specified in § 26.4(a) through (d) and (g). The requirements in this subpart also apply to the licensees and other entities specified in § 26.3(c), as applicable, for the categories of individuals in § 26.4(e). At the discretion of a licensee or other entity in § 26.3(c), the requirements of this subpart also may be applied to the categories of individuals identified in § 26.4(f). In addition, the requirements in this subpart apply to the entities in § 26.3(d) to the extent that a licensee or other entity relies on the C/V to satisfy the requirements of this subpart. The regulations in this subpart also apply to the individuals specified in § 26.4(h) and (j), as appropriate. The requirements in this subpart apply to the FFD programs of licensees and other entities identified in § 26.3(f) that elect not to implement the requirements in subpart M for the categories of individuals in § 26.4 and those licensees and other entities that elect to implement the requirements in § 26.605(b).

■ 87. Revise § 26.81 to read as follows:

#### § 26.81 Purpose and applicability.

This subpart contains requirements for collecting specimens for drug testing and conducting alcohol tests by or on behalf of the licensees and other entities in § 26.3(a) through (d) for the categories

of individuals specified in § 26.4(a) through (d) and (g). At the discretion of a licensee or other entity in § 26.3(c), specimen collections and alcohol tests must be conducted either under this subpart for the individuals specified in § 26.4(e) and (f) or the licensee or other entity may rely on specimen collections and alcohol tests conducted under the requirements of 49 CFR part 40 for the individuals specified in § 26.4(e) and (f). The requirements of this subpart do not apply to specimen collections and alcohol tests that are conducted under the requirements of 49 CFR part 40, as permitted in this paragraph and under §§ 26.4(j) and 26.31(b)(2) and subpart K. The requirements in this subpart apply to the FFD programs of licensees and other entities identified in § 26.3(f) that elect not to implement the requirements in subpart M for the categories of individuals in § 26.4 and those licensees and other entities that elect to implement the requirements in § 26.605.

■ 88. Revise § 26.201 to read as follows:

#### § 26.201 Applicability.

(a) The requirements in this subpart, with the exception of § 26.202, apply to the licensees and other entities identified in § 26.3(a); if applicable, (c), (d), and (f), for licensees and other entities not implementing the requirements in subparts K and M. For the licensees and other entities to whom the requirements in this subpart, with the exception of § 26.202, apply, the requirements in §§ 26.203 and 26.211 apply to the individuals identified in § 26.4(a) through (c). In addition, the requirements in §§ 26.205 through 26.209 apply to the individuals identified in § 26.4(a).

(b) The requirements in this subpart, with the exception of § 26.203, apply to the licensees or other entities identified in § 26.3(f) implementing this subpart under §§ 26.604 and 26.605. For these licensees and other entities, the requirements in §§ 26.202 and 26.211 apply to the individuals identified in § 26.4(a) through (c) and any person licensed to operate under 10 CFR part 53; and the requirements in §§ 26.205 through 26.209 apply to the individuals identified in § 26.4(a).

■ 89. Add § 26.202 to read as follows:

#### § 26.202 General provisions for facilities licensed under part 53.

(a) *Policy.* Licensees must establish a policy for the management of fatigue for all individuals who are subject to the licensee's FFD program and incorporate it into the written policy required in § 26.606(a).

(b) *Procedures.* In addition to the procedures required in § 26.606(b),

licensees must develop, implement, and maintain procedures that—

(1) Describe the process to be followed when any individual identified in § 26.4(a) through (c) makes a self-declaration that he or she is not fit to safely and competently perform his or her duties for any part of a working tour as a result of fatigue. The procedure must—

(i) Describe the individual's and licensee's rights and responsibilities related to self-declaration;

(ii) Describe requirements for establishing controls and conditions under which an individual may be permitted or required to perform work after that individual declares that he or she is not fit due to fatigue; and

(iii) Describe the process to be followed if the individual disagrees with the results of a fatigue assessment that is required under § 26.211(a)(2);

(2) Describe the process for implementing the controls required under § 26.205 for the individuals who are performing the duties listed in § 26.4(a);

(3) Describe the process to be followed in conducting fatigue assessments under § 26.211; and

(4) Describe the disciplinary actions that the licensee may impose on an individual following a fatigue assessment, and the conditions and considerations for taking those disciplinary actions.

(c) *Training and assessments.* Licensees must include the following KAs in the content of the training and trainee assessments required in § 26.608:

(1) Knowledge of the contributors to worker fatigue, circadian variations in alertness and performance, indications and risk factors for common sleep disorders, shiftwork strategies for obtaining adequate rest, and the effective use of fatigue countermeasures; and

(2) Ability to identify symptoms of worker fatigue and contributors to decreased alertness in the workplace.

(d) *Recordkeeping.* Licensees must retain the following records for at least 3 years or until the completion of all related legal proceedings, whichever is later:

(1) Records of work hours for individuals who are subject to the work hour controls in § 26.205;

(2) For licensees implementing the requirements of § 26.205(d)(3), records of shift schedules and shift cycles, or, for licensees implementing the requirements of § 26.205(d)(7), records of shift schedules and records showing the beginning and end times and dates of all averaging periods, of individuals

who are subject to the work hour controls in § 26.205;

(3) The documentation of waivers that is required in § 26.207(a)(4), including the bases for granting the waivers;

(4) The documentation of work hour reviews that is required in § 26.205(e)(3) and (e)(4); and

(5) The documentation of fatigue assessments that is required in § 26.211(g).

(e) *Reporting*. Licensees must include the following information in a standard format in the annual FFD program performance report required under § 26.617(b)(2):

(1) A summary for each nuclear power plant site of all instances during the previous calendar year when the licensee waived one or more of the work hour controls specified in § 26.205(d)(1) through (d)(5)(i) and (d)(7) for individuals described in § 26.4(a). The summary must include only those waivers under which work was performed. If it was necessary to waive more than one work hour control during any single extended work period, the summary of instances must include each of the work hour controls that were waived during the period. For each category of individuals specified in § 26.4(a), the licensee must report—

(i) The number of instances when each applicable work hour control specified in § 26.205(d)(1)(i) through (iii), (d)(2)(i) and (ii), (d)(3)(i) through (v), and (d)(7) was waived for individuals not working on outage activities;

(ii) The number of instances when each applicable work hour control specified in § 26.205(d)(1)(i) through (iii), (d)(2)(i) and (ii), (d)(3)(i) through (v), (d)(4) and (d)(5)(i), and (d)(7) was waived for individuals working on outage activities; and

(iii) A summary that shows the distribution of waiver use among the individuals applicable within each category of individuals identified in § 26.4(a) (e.g., a table that shows the number of individuals who received only one waiver during the reporting period, the number of individuals who received a total of two waivers during the reporting period).

(2) A summary of corrective actions, if any, resulting from the analyses of these data, including fatigue assessments.

(f) *Audits*. Licensees must audit the management of worker fatigue under § 26.615.

■ 90. In § 26.205, revise paragraphs (d)(7)(iii) and (d)(8) to read as follows:

**§ 26.205 Work Hours.**

\* \* \* \* \*

(d) \* \* \*

(7) \* \* \*

(iii) Each licensee shall state, in its FFD policy and procedures required by either §§ 26.27 and 26.203(a) and (b) or §§ 26.202(a) and (b) and 26.606, the work hour counting system in § 26.205(d)(7)(ii) the licensee is using.

(8) Each licensee shall state, in its FFD policy and procedures required by either §§ 26.27 and 26.203(a) and (b) or §§ 26.202(a) and (b) and 26.606, the requirements with which the licensee is complying; the minimum days off requirements in § 26.205(d)(3) or maximum average work hours requirements in § 26.205(d)(7).

\* \* \* \* \*

■ 91. In § 26.207, revise paragraph (a)(1)(ii) to read as follows:

**§ 26.207 Waivers and exceptions.**

(a) \* \* \*

(1) \* \* \*

(ii) A supervisor assesses the individual face to face and determines that there is reasonable assurance that the individual will be able to safely and competently perform his or her duties during the additional work period for which the waiver will be granted. The supervisor performing the assessment shall be trained as required by either §§ 26.29 and 26.203(c) or §§ 26.202(c) and 26.608 and shall be qualified to direct the work to be performed by the individual. If there is no supervisor on site who is qualified to direct the work, the assessment may be performed by a supervisor who is qualified to provide oversight of the work to be performed by the individual. At a minimum, the assessment must address the potential for acute and cumulative fatigue considering the individual's work history for at least the past 14 days, the potential for circadian degradations in alertness and performance considering the time of day for which the waiver will be granted, the potential for fatigue-related degradations in alertness and performance to affect risk-significant functions, and whether any controls and conditions must be established under which the individual will be permitted to perform work. For licensees and other entities in § 26.3(f), the assessment may be performed remotely using electronic communications. In such instances, the assessment must be supported by someone who is present in-person with the individual whose alertness may be impaired, and that supporting person must be trained under the requirements of either § 26.29 and § 26.203(c) or § 26.202(c) and § 26.608.

\* \* \* \* \*

■ 92. In § 26.211, revise paragraphs (a)(1) and (3) and paragraph (b) introductory text to read as follows:

**§ 26.211 Fatigue assessments.**

(a) \* \* \*

(1) For-cause. In addition to any other test or determination of fitness that may be required under §§ 26.31(c), 26.77, 26.607(b), and 26.619, a fatigue assessment must be conducted in response to an observed condition of impaired individual alertness creating a reasonable suspicion that an individual is not fit to safely and competently perform his or her duties, except if the condition is observed during an individual's break period. If the observed condition is impaired alertness with no other behaviors or physical conditions creating a reasonable suspicion of possible substance abuse, then the licensee need only conduct a fatigue assessment. If the licensee has reason to believe that the observed condition is not due to fatigue, the licensee need not conduct a fatigue assessment;

\* \* \* \* \*

(3) Post-event. A fatigue assessment must be conducted in response to events requiring post-event drug and alcohol testing as specified in § 26.31(c) or post-event tests in § 26.607(b)(4). Licensees may not delay necessary medical treatment in order to conduct a fatigue assessment; and

\* \* \* \* \*

(b) Only supervisors and FFD program personnel who are trained under either §§ 26.29 and 26.203(c) or §§ 26.202(c) and 26.608 may conduct a fatigue assessment. The fatigue assessment must be conducted face to face with the individual whose alertness may be impaired. For licensees and other entities in § 26.3(f), a fatigue assessment may be performed remotely using electronic communications. In such instances, the fatigue assessment must be supported by someone who is present in-person with the individual whose alertness may be impaired, and that supporting person must be trained in accordance with the requirements of either §§ 26.29 and 26.203(c) or §§ 26.202(c) and 26.608.

\* \* \* \* \*

■ 93. Add Subpart M, consisting of §§ 26.601 through 26.619, to read as follows:

**Subpart M—Fitness for Duty Programs for Facilities Licensed Under 10 CFR Part 53**

Sec.

26.601 Applicability.

26.603 General provisions.

- 26.604 FFD program requirements for facilities that satisfy the § 26.603(c) criterion.
- 26.605 FFD program requirements for facilities that do not implement § 26.604.
- 26.606 Written policy and procedures.
- 26.607 Drug and alcohol testing.
- 26.608 FFD program training.
- 26.609 Behavioral observation.
- 26.610 Sanctions.
- 26.611 Protection of information.
- 26.613 Appeals process.
- 26.615 Audits.
- 26.617 Recordkeeping and reporting.
- 26.619 Suitability and fitness determinations.

#### **§ 26.601 Applicability.**

A licensee or other entity in § 26.3(f), at its discretion, may establish, implement, and maintain a fitness-for-duty (FFD) program that satisfies the requirements of this subpart for those categories of individuals in § 26.4, as applicable, and any person licensed to operate under 10 CFR part 53. If a licensee or other entity in § 26.3(f) does not elect to implement an FFD program that satisfies the requirements of this subpart, then those categories of individuals in § 26.4, as applicable, and any person licensed to operate under 10 CFR part 53 must be subject to an FFD program that satisfies all part 26 requirements, except for those requirements in subparts K and M.

#### **§ 26.603 General provisions.**

(a) *FFD program description.* An applicant's description of the FFD program in its Final Safety Analysis Report, required by subpart H of part 53 of this chapter, must include—

(1) If the applicant performed the analysis under paragraph (c) of this section, a summary of the analysis, including the assumptions, methodology, conclusion, and references;

(2) A statement whether the FFD program will be implemented pursuant to § 26.604 or § 26.605, or will satisfy all part 26 requirements, except for the requirements in subparts K and M;

(3) A discussion of the applicability of the FFD program to those individuals described in § 26.4 and how the program will be implemented offsite at a U.S. Nuclear Regulatory Commission (NRC)-licensed facility authorized to assemble or test a manufactured reactor, if applicable;

(4) A description of the drug and alcohol testing and fitness determination process to be implemented through the licensee's or other entity's procedures, including the collection and testing facilities to be used, biological specimens to be collected, and sanctions to be imposed

upon a confirmed FFD policy violation; and

(5) A summary of the FFD performance monitoring and review program (PMRP), including the measures and thresholds required by paragraph (d)(1) of this section.

(b) *FFD program implementation and availability.* For the licensees and other entities in § 26.3(f), other than the holder of a manufacturing license (ML), the FFD program must be implemented no later than the start of construction activities, as defined in § 26.5, and maintained until the NRC's docketing of the license holder's certifications described in § 53.1070 of this chapter. For holders of an ML, the FFD program must be implemented no later than the start of activities that assemble the manufactured reactor and maintained until expiration of the ML.

(c) *Criterion and analysis for an FFD program.* For a licensee or other entity to implement an FFD program under § 26.604, the licensee or other entity must perform a site-specific analysis to demonstrate that the facility and its operation satisfy the criterion in § 53.860(a)(2) of this chapter. The licensee or other entity must maintain the analysis, including updates to reflect changes made to the staffing, FFD programs, or offsite support resources described in the analysis, to show that the facility and its operation continue to satisfy the criterion, until permanent cessation of operations under § 53.1070 of this chapter.

(d) *FFD performance monitoring and review.* A licensee or other entity must establish performance measures and associated thresholds as described in paragraph (d)(1) of this section and monitor the effectiveness of its FFD program by comparing performance data against these performance measures and thresholds, in a manner sufficient to satisfy the § 26.23 performance objectives.

(1) *PRMP elements.* The PMRP must be documented and maintained and include the following program elements:

(i) *Performance measures.* Performance measures must be identified and designed to monitor FFD program performance.

(A) If the licensee or other entity is subject to the requirements in § 26.604, then the monitoring program must include performance measures for the following: the behavioral observation program; occurrence of FFD policy violations categorized by licensee employee, contractor/vendor, and labor category; and occurrence of individuals with potentially disqualifying information or who possessed FFD prohibited items.

(B) If the licensee or other entity is subject to the requirements in § 26.604 and has implemented a drug testing program at its discretion or is subject to the requirements of § 26.605, then the monitoring program must include performance measures identified in paragraph (d)(1)(i)(A) of this section. This monitoring program must also include performance measures for the pre-access and random positive testing rates, random testing rate for licensee employees and contractor/vendors, and the number of subversion attempts categorized by licensee employee, contractor/vendor, and labor category.

(ii) *Thresholds.* Licensee- or other entity-specific thresholds for its site-specific performance measures must be established and used to facilitate corrective actions to maintain FFD program performance. Initial thresholds must be based on FFD performance data from comparable facilities subject to part 26, the licensee's or other entity's fleet-level program performance if applicable, and industry FFD performance data.

(iii) *Monitoring program.* Licensees and other entities must monitor the performance of their FFD programs against licensee- or other entity-established performance measures and thresholds as FFD performance data is received to determine whether a threshold has been exceeded. Licensees and other entities must perform year-to-year comparisons of site-specific performance; site-specific performance to the licensee's or other entity's fleet-level program performance, if applicable; and site-specific to industry performance.

(iv) *Quantitative and qualitative reviews.* The PMRP must include a documented review of the elements in paragraph (d)(1)(i) through (iii) of this section and the following qualitative elements.

(A) *Worker protections.* The review must include a documented assessment of the licensee's or other entity's implementation of the protections described in §§ 26.606(b)(1)(iii), 26.611, and 26.613.

(B) *Laboratory test results and Medical Review Officer performance.* The review must include a documented assessment of whether the actions taken by the Medical Review Officer (MRO) met the requirements in § 26.185 based on the laboratory test results reported under § 26.169. This review must include a comparative analysis between the point of collection testing and assessment (POCTA) screening result(s) and the corresponding specimen test results obtained from the U.S. Department of Health and Human

Services (HHS)-certified laboratory if the POCTA indicated a positive, adulterated, substituted, or invalid screening result or discrepant biological marker, to assess the effectiveness of the POCTA and to inform MRO decisions under § 26.185 or § 26.607(m)(6).

(C) *Change control.* The review must include a documented assessment of the changes made under paragraph (e) of this section to verify that the summation of program changes has not resulted in a reduction in FFD program effectiveness.

(2) *Corrective actions.* Corrective actions must be implemented to address when FFD performance meets a licensee-established performance threshold or to resolve a finding resulting from a qualitative review or audit in a manner that restores performance and corrects root causes, contributing causes, or both.

(3) *Program review periodicity.* The documented review in paragraph (d)(1)(iv) of this section must be conducted biennially to assess and modify licensee or other entity implementation of its FFD program. This documented review must demonstrate that the performance measures and thresholds are appropriate and adjusted as necessary based on site-level and licensee's or other entity's fleet-level, if applicable, program performance, and industry performance.

(i) Identified program weaknesses and corrective actions must be summarized in the annual reporting requirement described in § 26.617(b)(2) or § 26.717, as applicable.

(ii) The program review must be completed and approved by the licensee or other entity to support the reporting of PMRP weaknesses and corrective actions as required in paragraph (d)(3)(i) of this section every odd-numbered year, and the implementation of corrective actions before May 15 of that odd-numbered year.

(e) *FFD program change control.* (1) The licensee or other entity may make changes to its FFD program under this subpart if—

(i) The licensee or other entity performs and retains an analysis demonstrating that the changes do not reduce the effectiveness of the FFD program; or

(ii) The change was necessitated or justified by a change to part 26, laboratory processes or procedures, or guidance issued by the HHS or NRC, as implemented by the licensee or other entity through its procedures.

(2) A licensee or other entity desiring to make a change that decreases FFD program effectiveness must implement a mitigating strategy so the FFD program,

as revised, will continue to satisfy the performance objectives in § 26.23 and not result in a reduction in program effectiveness.

(3) Except for phencyclidine, and notwithstanding paragraph (e)(1)(ii) of this section, the change control process may not be used to reduce the minimum panel of drugs to be tested in § 26.607(c)(1).

(4) The licensee must retain a record of each change made under this section for a period of at least 5 years from the date the change was implemented and summarize this change in its annual FFD performance report required by § 26.617(b)(2) or § 26.717, as applicable.

**§ 26.604 FFD program requirements for facilities that satisfy the § 26.603(c) criterion.**

(a) *FFD program.* A licensee or other entity with an analysis that demonstrates that its facility and operation satisfy the criterion in § 26.603(c) may elect to establish, implement, and maintain an FFD program under this section. That FFD program must contain the following elements:

(1) Applies to those individuals described in § 26.4, as applicable; and

(2) Implements the following requirements and subparts in this part:

- (i) § 26.23, Performance objectives;
- (ii) § 26.603, General provisions;
- (iii) § 26.606, Written policies and procedures, (a) and, if applicable (b);
- (iv) § 26.608, FFD program training;
- (v) § 26.609, Behavioral observation;
- (vi) § 26.610, Sanctions;
- (vii) § 26.611, Protection of information;

(viii) § 26.613, Appeals process;

(ix) § 26.615, Audits;

(x) § 26.617, Recordkeeping and reporting;

(xi) § 26.619, Suitability and fitness determinations;

(xii) Subpart A—Administrative Provisions;

(xiii) Subpart I—Managing Fatigue; and

(xiv) Subpart O—Inspections, Violations, and Penalties.

(b) [Reserved]

**§ 26.605 FFD program requirements for facilities that do not implement § 26.604.**

(a) Licensees and other entities who satisfy the criterion in § 26.603(c), at their discretion, and licensees and other entities who do not satisfy the criterion in § 26.603(c), must establish, implement, and maintain an FFD program under this section either during construction activities as defined in § 26.5, or during activities performed under an ML that allows the assembly,

testing, or both of a manufactured reactor, as applicable. This FFD program must contain the following elements:

(1) Applies to those individuals described in § 26.4, as applicable; and,

(2) Implements the following requirements and subparts in this part—

- (i) § 26.23, Performance objectives;
- (ii) § 26.603, General provisions;
- (iii) § 26.606, Written policy and procedures;

(iv) § 26.607, Drug and alcohol testing;

(v) § 26.608, FFD program training;

(vi) § 26.609, Behavioral observation;

(vii) § 26.610, Sanctions;

(viii) § 26.611, Protection of

information;

(ix) § 26.613, Appeals process;

(x) § 26.615, Audits;

(xi) § 26.617, Recordkeeping and reporting;

(xii) § 26.619, Suitability and fitness determinations;

(xiii) Subpart A—Administrative Provisions;

(xiv) Subpart I—Managing Fatigue, in the case of holders of an ML that allows the assembly, testing, or both of a manufactured reactor; and

(xv) Subpart O—Inspections, Violations, and Penalties.

(b) Licensees and other entities who satisfy the criterion in § 26.603(c), at their discretion, and licensees and other entities who do not satisfy the criterion in § 26.603(c), before the loading of fuel onsite into a reactor vessel; before receiving a manufactured reactor; or before individuals subject to part 26 operate, test, perform maintenance of, or direct the maintenance or surveillance of security-related equipment or equipment that a risk-informed evaluation process has shown to be significant to public health and safety, must establish, implement, and maintain an FFD program that—

(1) Applies to those individuals described in § 26.4, as applicable; and,

(2) Implements the following requirements and subparts—

(i) § 26.23, Performance objectives;

(ii) § 26.603, General provisions;

(iii) § 26.606, Written policy and procedures;

(iv) § 26.607, Drug and alcohol testing;

(v) § 26.608, FFD program training;

(vi) § 26.609, Behavioral observation;

(vii) § 26.611, Protection of

information;

(viii) § 26.613, Appeals process;

(ix) § 26.615, Audits;

(x) Subpart A—Administrative Provisions;

(xi) Subpart C—Granting and Maintaining Authorization;

(xii) Subpart D—Management Actions and Sanctions to be Imposed;

(xiii) Subpart H—Determining Fitness-for-Duty Policy Violations and



Determining Fitness, unless using the HHS Guidelines for MRO evaluation of drug test results, and determining fitness;

- (xiv) Subpart I—Managing Fatigue;
- (xv) Subpart N—Recordkeeping and Reporting Requirements; and
- (xvi) Subpart O—Inspections, Violations, and Penalties.

#### **§ 26.606 Written policy and procedures.**

(a) Licensees and other entities that implement an FFD program under this subpart must ensure that—

(1) A written FFD policy statement is provided to each individual who is subject to the program before the individual is subject to behavioral observation, drug and alcohol testing, or both.

(2) The FFD policy statement describes the performance objectives in § 26.23.

(3) The FFD policy statement describes the minimum days off requirements in § 26.205(d)(3) or maximum average work hours requirements in § 26.205(d)(7).

(4) The FFD policy statement must be written in sufficient detail to provide affected individuals with information on what is expected of them and what consequences may result from a lack of adherence to the policy, including those elements described in § 26.606(b), part 26-required sanctions, and required medical/clinical treatment and follow-up testing for FFD policy violations.

(5) The FFD policy statement describes the individual's responsibilities to report for work in a physiological and psychological condition that enables the safe and competent performance of assigned duties and responsibilities and inform a licensee- or other entity-designated representative when the individual determines that this cannot be accomplished.

(b) Licensees and other entities must establish, implement, and maintain written procedures that address the following topics:

(1) If implementing a drug and alcohol testing program under this subpart,

(i) The methods and techniques to collect and test for drugs and alcohol and for the shipping and temporary storage of biological specimens used for drug testing at HHS-certified laboratories,

(ii) The urine specimen volumes, techniques for split specimen collections, and the acceptability of a urine specimen as described in § 26.111 or as described in the HHS Guidelines,

(iii) Protecting the privacy of an individual who provides a specimen,

protecting the integrity of the specimen, and ensuring that the test results are valid and attributable to the correct individual, and

(iv) If the licensee or other entity elects to use the HHS Guidelines, the name of the specific HHS Guideline and revision being implemented by the licensee or other entity and a description of the specific sections in the guideline that are being implemented in the procedure, including specimen collections, drug testing, and evaluation of test results.

(2) The immediate and follow-up actions that will be taken, and the procedures to be used, in those cases in which individuals who are subject to the FFD program:

(i) Have been involved in the use, sale, or possession of illegal substances, illegal drugs, or illicit substances;

(ii) Are impaired by any illegal substances, illegal drugs, or illicit substances or the consumption of alcohol as determined by behavioral observation or a test that measures blood alcohol concentration;

(iii) If drug and alcohol testing is conducted, attempted to subvert the testing process by adulterating or diluting specimens (*in vivo* or *in vitro*), substituting specimens, or by any other means;

(iv) If drug and alcohol testing is conducted, refused to provide a specimen for analysis or follow instructions provided by FFD program personnel;

(v) Had legal action taken relating to drug or alcohol use; or

(vi) Demonstrated character or actions indicating that the individual cannot be trusted or relied upon to perform those duties and responsibilities or maintain access to NRC-licensed facilities, special nuclear material (SNM), or sensitive information.

(3) The process, including the duties and responsibilities of FFD program personnel, to be followed if an individual's behavior or condition raises a concern regarding the possible use, sale, or possession of illegal drugs on- or offsite; the possible use or possession of alcohol on the NRC-licensed facility; impairment from any cause that in any way could adversely affect the individual's ability to safely and competently perform the individual's duties; or the receipt of credible information indicating that the individual cannot be trusted or relied on to perform those duties and responsibilities making the individual subject to this part.

(4) Operation and oversight of an onsite or offsite collection facility.

(5) The fatigue management requirements in §§ 26.202(b) and either 26.205(d)(3) or (d)(7).

(6) Measures to prevent subversion of drug and alcohol tests conducted onsite and offsite.

#### **§ 26.607 Drug and alcohol testing.**

Licensees and other entities implementing § 26.604, at their discretion, and licensees and other entities implementing § 26.605 must perform drug and alcohol testing that complies with the following requirements—

(a) *Split specimens.* Split specimen collections of oral fluid or urine must be used for the test conditions described in paragraph (b) of this section. A split specimen collection need not be used if the licensee or other entity elects to use a POCTA device for a screening test conducted during random testing under paragraphs (b)(2) and (h) of this section or a protected area portal monitor indication that drugs or alcohol were detected under paragraph (j) of this section. Testing of the split specimen (specimen B) requires the donor's permission unless ordered by the MRO to resolve an invalid test result obtained for specimen A.

(b) *Test conditions.* Individuals identified in § 26.4 must be subject to drug and alcohol testing under the following conditions:

(1) *Pre-access.* A pre-access test must be conducted for drugs and alcohol before performing or directing the conduct of roles and responsibilities making the individual subject to this subpart or being granted unescorted access to the protected areas of the NRC-licensed facility. A pre-access test must have been conducted no more than 14 days before the individual is granted unescorted access.

(2) *Random.* Random testing for drugs and alcohol must—

(i) Be administered in a manner that provides reasonable assurance that individuals are unable to predict the time periods during which specimens will be collected;

(ii) Require individuals who are selected for random testing to report to the onsite collection site as soon as reasonably practicable after notification, within the time period specified in the FFD program procedure;

(iii) Ensure that all individuals in the population that is subject to random testing on a given day have an equal probability of being selected and tested;

(iv) Ensure that an individual completing a test is immediately eligible for another random test; and

(v) Ensure that the sampling process used to select individuals for random

testing provides that the number of random tests performed annually is equal to at least 50 percent for licensee employees and 50 percent for contractor/vendors at the NRC-licensed site.

(3) *For-cause.* A for-cause drug test, alcohol test, or both, must be conducted onsite in response to an individual's observed behavior or physical condition indicating possible substance abuse or after receiving credible information that an individual is engaging in substance abuse, as defined in § 26.5;

(4) *Post-event.* A post-event test for drugs and alcohol must be conducted—

(i) As soon as practical after an event involving a human error that was committed by an individual specified in § 26.4, where the human error may have caused or contributed to the event. This test must be conducted onsite unless the individual requires offsite medical care. The licensee or other entity must test the individual(s) who committed or directed the error and need not test individuals who were affected by the event and whose actions likely did not cause or contribute to the event. The licensee or other entity must describe in its procedures what constitutes a human error.

(ii) Within 4 hours of an event unless immediate medical intervention precludes the conduct of the test on the individual(s) who caused or contributed to the accident(s), if the event results in—

(A) An illness or personal injury to any individual which results in death, days away from work, restricted work, transfer to another job, medical treatment beyond first aid, loss of consciousness, or other significant illness or injury, as diagnosed by a licensee- or other entity-designated physician or other licensed health care professional, even if the illness or injury does not result in death, days away from work, restricted work or job transfer, medical treatment beyond first aid, or loss of consciousness; or

(B) Damage to any safety- or security-related structures, systems, and components; and

(5) *Follow-up.* An individual subject to part 26 who has violated the FFD policy for substance use or abuse, or the sale, use, or possession of illegal drugs must be subject to a follow-up series of tests for drugs, alcohol, or both to verify an individual's continued abstinence from substance abuse.

(c) *Urine and oral fluid specimens.* (1) All urine or oral fluid specimens must be subject to validity testing, including an adulterant and biological marker, and tested for the substances listed in

§ 26.31(d)(1), except as allowed by § 26.603(e)(3).

(2) For the use of urine as the biological specimen to be tested, the following requirements must be implemented—

(i) § 26.115, Collecting a urine specimen under direct observation;

(ii) § 26.119, Determining “shy” bladder; and

(iii) § 26.163, Cutoff levels for drugs and drug metabolites, (a)(2) regarding special analysis testing.

(3) For alcohol testing onsite, the following requirements must be implemented—

(i) § 26.91, Acceptable devices for conducting initial and confirmatory tests for alcohol and methods of use;

(ii) § 26.93, Preparing for alcohol testing;

(iii) § 26.95, Conducting an initial test for alcohol using a breath specimen;

(iv) § 26.97, Collecting oral fluid specimens for alcohol and drug testing;

(v) § 26.99, Determining the need for a confirmatory test for alcohol;

(vi) § 26.101, Conducting a confirmatory test for alcohol; and,

(vii) § 26.103, Determining a confirmed positive test result for alcohol.

(4) For all test conditions in paragraph (b) of this section, except for the use of a POCTA screening device in paragraph (h) of this section, and for MRO-directed tests under § 26.185, drug testing must be performed at an HHS-certified laboratory for the specific biological specimen to be tested. Only HHS-certified laboratory test results from urine and oral fluid specimens may be used for the issuance of a part 26-required sanction. The licensee or other entity must establish and maintain a contract with a primary and a back-up HHS-certified laboratory (with a different Certifying Scientist) for the specimen(s) to be tested. These contracts must stipulate that the laboratories are subject to inspection or audit by the licensee or other entity and that records and documents must be provided and/or able to be photocopied and removed from the premises to support the inspection or audit.

(d) *Privacy and integrity.* The specimen collection and drug and alcohol testing procedures of FFD programs must protect the donor's privacy and the integrity of the specimen and implement quality controls to ensure that test results are valid and attributable to the correct individual.

(e) *Offsite collection facilities.* At the licensee's or other entity's discretion, specimen collections and alcohol testing may be conducted at a local hospital or

other facility licensed to conduct specimen collections and perform alcohol testing and audited by the State or a State-designated entity. The licensee or other entity must audit these facilities, if used, before their initial use and then on a biennial basis to confirm that the facility procedures are comparable to those described in subpart E of this part or the HHS Guidelines for urine and oral fluid.

(f) *Initial testing.* A licensee or other entity subject to this subpart performing an initial test must use an immunoassay, or an alternative technology established in its FFD program through § 26.603(e), that satisfies the requirements of the U.S. Food and Drug Administration (FDA) for commercial distribution. Specimens that yield positive, adulterated, substituted, or invalid initial validity or drug test results or discrepant biological markers must be subject to confirmatory testing by an HHS-certified laboratory, certified for that biological specimen, except for invalid specimens that cannot be tested.

(g) *Oral fluid testing.* If the licensee or other entity elects to use oral fluid for drug or alcohol testing, the collection, packaging, and temporary storage of the drug or alcohol test device, and shipment of an oral fluid specimen to an HHS-certified laboratory or the collection of an oral fluid specimen for alcohol testing must be performed in accordance with licensee- or other entity-established procedures based either on the requirements in part 26 or the procedures in HHS Guidelines identified by the licensee or other entity in § 26.606(b)(1)(iv). The device must have received premarket approval from the FDA and must not expire before laboratory testing. The drugs, drug metabolites, initial and confirmatory testing cutoffs, and biological markers, if applicable, must be those established by HHS for oral fluid testing and the alcohol cutoffs in this part or, if not established by HHS or the NRC for the panel of drugs and drug metabolites to be tested, as determined and documented by a forensic toxicologist review conducted pursuant to § 26.31(d)(1)(i)(D).

(h) *Point of collection testing and assessment.* (1) If the licensee or other entity elects to use a POCTA device, then it may only be used for pre-access and random drug and alcohol initial testing in paragraph (b) of this section, the alcohol testing process in paragraph (c)(3) of this section, and the portal area screening process in paragraph (j) of this section. Before the licensee or other entity uses a POCTA device, a forensic toxicologist must review and document

their evaluation that the validity and accuracy of the device for alcohol and/or the drugs and drug metabolites listed in § 26.31(d) are comparable to the performance achieved by initial testing conducted using a similar technology at an HHS-certified laboratory. For initial testing of drugs and drug metabolites using a POCTA device, this review must include a documented evaluation of POCTA device performance against the requirements in § 26.161(b) for a urine specimen or the procedures in the HHS Guidelines for urine or oral fluid, as implemented by the licensee or other entity through its procedures.

(2) If the performance of the POCTA device is not comparable to that achieved from initial testing conducted by an HHS-certified laboratory as determined by the forensic toxicologist, then the licensee or other entity must implement a mitigating strategy to maintain program effectiveness under § 26.603(e)(2), as applicable.

(3) The licensee and other entity must implement procedures for the use of a POCTA that ensures the effectiveness of the collection process, assessment of the screening results, and prevention of subversion attempts.

(4) If the use of a POCTA device indicates a discrepant biological marker or that a test result exceeds the initial test cutoff, the specimen is invalid, or the individual subverted the drug or alcohol test, then the individual must be immediately removed from duties, responsibilities, and access making the individual subject to this subpart.

(i) The individual must be subject to an immediate drug and alcohol test using the alcohol testing process in paragraph (c)(3) of this section for a positive alcohol screen and either oral fluid or urine by a collection kit that is not a POCTA device, but of the same type of biological specimen collected by the POCTA, for validity, if required, and initial and confirmatory testing by an HHS-certified laboratory.

(ii) If this individual shows any signs of impairment, the individual's authorization must be temporarily removed until the MRO reviews the laboratory test result(s), interviews the individual, and performs a determination of fitness under § 26.189 or § 26.619, as applicable, that enables the restoration of authorization.

(i) *Hair testing.* The testing of hair specimens may only be used to inform a licensee's or other entity's determination of whether the individual is trustworthy and reliable under the test condition in paragraph (b)(1) of this section to supplement the information gained from a pre-access test using oral fluid or urine as the test specimen and

must be conducted at an HHS-certified laboratory certified for hair specimens.

(1) If used, this process must be described in the licensee's or other entity's FFD policy and described in detail in its procedure. The panel of drugs and drug metabolites to be evaluated must only include those listed as Schedule I or II of section 202 of the Controlled Substances Act [21 U.S.C. 812]. The collection, packaging, and temporary storage of a hair specimen and shipment of the specimen to an HHS-certified laboratory must be conducted in accordance with the HHS Guidelines. The test kit must be FDA cleared, and licensee- or other entity-designated FFD program personnel must conduct the collection, packaging, temporary storage, shipping, and custody and control of the specimen.

(2) Before the licensee or other entity begins to conduct hair testing, the initial and confirmatory testing cutoffs must be the cutoffs established by HHS for hair testing or, if not established by HHS or the NRC, as determined by a forensic toxicologist review conducted pursuant to § 26.31(d)(1)(i)(D).

(3) Confirmed positive test results must be considered potentially disqualifying FFD information until proven otherwise by a review under § 26.613. Sanctions under this subpart must not be issued for any FFD policy violation involving a drug test using a hair specimen unless the licensee or other entity determines that the individual subverted, as defined in § 26.5, the hair test.

(j) *Portal area screening.* A non-invasive point of collection testing instrument may be used to screen individuals for drugs, drug metabolites, and alcohol before the individuals' entry into or exit from a protected or vital area.

(1) If a licensee or other entity uses such an instrument, then before such use, a forensic toxicologist must review the instrument and document an evaluation that the instrument and setpoints used in the instrument are acceptable for use for the detection and screening of the drugs and drug metabolites selected for screening from the panel of drugs and drug metabolites to be tested under the FFD program and alcohol and its metabolites.

(2) The instrument must be operated in accordance with the manufacturer's specifications. If screening detects the presence of drugs, drug metabolites, or alcohol at or above the instrument set point(s), the individual screened by the instrument must be subject to a POCTA screening test using the process described in paragraph (h) of this

section or an oral fluid or urine test that is sent to an HHS-certified laboratory.

(3) A part 26 sanction may not be issued to an individual based solely on a portal area screening instrument detection that drugs or alcohol exceed the instrument's established setpoint.

(k) *Blood testing.* The testing of blood specimens may only be conducted under the order of the licensee- or other entity-designated MRO for a valid medical reason as confirmed by the MRO pursuant to § 26.31(d)(5). This specimen must be subject to testing by a laboratory that satisfies quality control requirements that are comparable to those required for certification by the HHS.

(l) *Custody-and-control form.* For the collection and packaging of urine, oral fluid, and hair specimens, the licensee or other entity must use a custody-and-control form approved by the U.S. Office of Management and Budget. For the use of a POCTA device, the licensee or other entity must implement a licensee- or other entity-approved and -maintained procedure that ensures the reliability of the tracking, handling, and storage of a specimen from the point of specimen collection to the final disposition of the specimen and the reliability of an identification system to uniquely assign the specimen to the donor.

(m) *Medical Review Officer.* Licensees or other entities must—

(1) Require their designated MRO to review positive, adulterated, substituted, and dilute confirmatory drug and validity test results and test results of questionable validity to determine whether the donor has violated the FFD policy for urine and oral fluid specimens. The review must be completed before reporting the results to the individual designated by the licensee or other entity to assess authorization or perform the suitability and fitness determinations required under § 26.619, or, if required, that are described in subpart H of this part.

(2) Require their MRO to satisfy the requirements in § 26.183 and, prior to conducting any activities under this part, attend and pass a medical- or clinical-based training session to improve his/her knowledge of MRO duties and responsibilities, drug and alcohol testing processes and procedures, and evaluation of drug testing results. This training session must be conducted by a nationally recognized MRO training and certification organization that has been assessed by the licensee's or other entity's FFD program personnel to include the technical elements an MRO must implement under § 26.185. An

MRO who performed the duties and responsibilities in §§ 26.185 and 26.187 for at least 3 continuous years in the last 10 years prior to being hired or contracted by the licensee or other entity satisfies the requirements in this paragraph.

(3) Require their MRO to attend a medical- or clinical-based training session on a triennial basis to improve his/her knowledge of changes in drug and alcohol testing processes and procedures and evaluation of drug testing results.

(4) Require their MRO to determine whether a biological specimen is positive, adulterated, substituted, dilute or of questionable validity by implementing the requirements in § 26.185 or the HHS Guidelines through the licensee's or other entity's procedures.

(i) If § 26.185 or the HHS Guidelines, as used by the licensee or other entity in its procedures, are insufficient to make this determination, then guidance issued by a State agency in the state in which the NRC-licensed facility is located, Federal agencies, or nationally recognized MRO training and certification organizations may be used to inform an MRO determination.

(ii) An MRO need not review a confirmed alcohol positive test result determined by an evidentiary breath testing device under paragraphs (c)(3)(vi) and (vii) of this section.

(5) Require their MRO to determine and approve the use of oral fluid or urine as an alternative biological specimen when the donor cannot provide a specimen for testing. This determination and the retest must be documented and completed as soon as reasonably practicable.

(6) Require the MRO to review all specimens screened and tested associated with a drug-related FFD policy violation. This review includes POCTA, split specimens, and all specimens taken to resolve a discrepant condition, such as a possible subversion attempt, impairment without a known cause, or a donor-requested or MRO-directed re-test. To resolve a discrepant condition, the MRO is authorized to test a specimen for a biological marker, adulterants, or additional drugs.

(n) *Limitations of screening and testing.* Specimens collected under NRC regulations may only be designated or approved for screening and testing as described in this part and may not be used to conduct any other analysis or test without the written permission of the donor. Analyses, screens, and tests that may not be conducted include, but are not limited to, DNA testing, serological typing, or any other medical

or genetic test used for diagnostic or specimen identification purposes. No biological specimens may be passively sampled and analyzed in a manner different than described in this subpart.

(o) *Specimen collectors.* All onsite specimen collections, except a collection by a portal area screening instrument in paragraph (j) of this section, must be conducted by licensee- or other entity-designated and -trained personnel.

#### **§ 26.608 FFD program training.**

(a) *FFD program training.* (1) Individuals must be trained in the FFD policy and procedure, including fatigue management, and their FFD program responsibilities. Individuals who collect specimens for testing or screening must also be trained in specimen collector duties and responsibilities, including, at a minimum, specimen collection, custody and control, identification and response to subversion attempts, and privacy. For licensees and other entities of commercial nuclear plants, the FFD program training program must use a systems approach to training as defined in § 53.725 of this chapter and described in § 53.830 of this chapter for those individuals in § 26.4.

(2) FFD program training must include training on the behavioral observation program. The behavioral observation program training must include the detection of physiological behaviors or conditions that may indicate—

(i) Possible use, sale, or possession of illegal drugs or illicit drugs, or substance abuse on- or offsite;

(ii) Use or possession of alcohol onsite or use while on duty offsite;

(iii) Impairment from fatigue or any cause that, if left unattended, could result in inattentiveness or human errors; and

(iv) Any individual's inability to safely and competently perform assigned duties and responsibilities or act in a trustworthy and reliable manner while having access to protected areas, SNM, or sensitive information.

(3) Training must explain that an individual's FFD policy violation will—

(i) Subject the individual to an FFD program-required sanction designed to preclude recurrence of an FFD policy violation;

(ii) Contribute to the licensee's or other entity's assessment of whether the individual can be trusted and relied upon to safely and competently perform the assigned duties and responsibilities making the individual subject to this subpart;

(iii) Be used to inform the licensee's or other entity's insider mitigation and

access authorization programs under §§ 73.55, 73.56, 73.100 or 73.120 of this chapter; and

(iv) Be used to inform other NRC licensees and other entities subject to part 26 when FFD program information is requested to support authorization determinations under subpart C of this part or §§ 73.56 or 73.120 of this chapter.

(b) *Training and assessments.*

Training and a trainee assessment must be conducted before pre-access testing, and refresher training and trainee assessments must be conducted periodically thereafter.

(c) *Training program review.* The licensee or other entity must periodically evaluate its FFD training program and revise it as appropriate to reflect industry experience as well as applicable changes to the regulations in this part, the HHS Guidelines, if used, and specimen collection and testing processes implemented by the licensee or other entity.

#### **§ 26.609 Behavioral observation.**

(a) Licensees and other entities must ensure that the individuals who are subject to this subpart are subject to behavioral observation and that behavioral observation is performed by all individuals subject to this subpart.

(b) Licensees and other entities must require all individuals subject to the FFD program to report to the licensee- or other entity-designated representative any onsite or offsite behaviors or activities by individuals subject to this part that may constitute an unreasonable risk to the safety or security of the NRC-licensed facility or SNM or may cause harm to others. This reporting must include any information relating to character or reputation of the individual indicating that the individual cannot be trusted or relied upon to perform those duties and responsibilities or maintain access to NRC-licensed facilities, SNM, or sensitive information that makes them subject to part 26.

(c) Behavioral observation must be performed visually, in-person, and, when necessary, remotely by live video and audible streaming and capture, to observe the behavior of individuals in the workforce subject to the requirements in this subpart.

(d) Notwithstanding paragraph (c) of this section, for a reactor facility where individual task loading does not allow for the effective conduct of behavior observation in addition to assigned operational tasks, the licensee or other entity must implement a live video and audible streaming and capture system to conduct behavioral observation of

persons licensed to operate under 10 CFR part 53 who manipulate the controls of any commercial nuclear plant licensed under 10 CFR part 53.

#### **§ 26.610 Sanctions.**

Licensees and other entities that implement an FFD program under this subpart must establish sanctions for FFD policy violations that, at a minimum, prohibit the individuals specified in § 26.4 from being assigned to perform or direct those duties and responsibilities or maintaining authorization making them subject to this subpart. The severity of the sanction must escalate with the number of occurrences and severity of the FFD policy violation. The sanction must be long enough to act as a deterrent and, if the individual is retained as a licensee employee or contractor/vendor, facilitate the individual to complete counseling or treatment. The sanctions must include a minimum 5-year denial of access to the NRC-licensed facility for any individual who is determined to have been involved in the sale, use, or possession of illegal drugs or the consumption of alcohol within a protected area of any facility licensed under part 53 of this chapter or within a transporter's facility or vehicle used in the conveyance of formula quantities of strategic SNM while the individual is subject to this subpart, and a permanent denial of access to the NRC-licensed facility for three FFD policy violations or any subversion attempt of any drug or alcohol test or screening process, including subversion attempts at any licensee or other entity subject to this part.

#### **§ 26.611 Protection of information.**

(a) Licensees and other entities that collect personal information about an individual for the purpose of complying with this subpart must establish and maintain a system of files and procedures to prevent unauthorized disclosure.

(b) Licensees and other entities must obtain a signed consent that documents the individual's acceptance of being subject to the FFD program and authorizes the disclosure of the personal information collected and maintained under this subpart, except for disclosures to the individuals and entities specified in § 26.37(b)(1) through (b)(6), (b)(8), and persons deciding matters under review in § 26.613. This signed and dated consent must be obtained before making the individual subject to the FFD program.

#### **§ 26.613 Appeals process.**

Licensees and other entities that implement an FFD program under this subpart must establish and implement procedures for the review of a determination that an individual in § 26.4 has violated the FFD policy. The procedure must provide for an objective and impartial review of the facts related to the determination that the individual has violated the FFD policy and a schedule for the completion of the review.

#### **§ 26.615 Audits.**

(a) Licensees and other entities that implement an FFD program under this subpart must audit their programs at a frequency that ensures the continuing effectiveness of their FFD program, FFD program elements that are provided by C/Vs, and the FFD programs of C/Vs that are accepted by the licensee or other entity. Corrective actions must be as soon as reasonably practicable to resolve any problems identified in an audit and preclude recurrence.

(b) The subject matter, scope, and frequency of audits must be revised as necessary to improve or maintain program performance based on findings resulting from licensee or other entity implementation of its FFD PMRP in § 26.603(d).

(c) Licensees and other entities may conduct joint audits or accept audits of C/Vs so long as the audit addresses the relevant services of the C/Vs.

(d) Licensees and other entities must audit HHS-certified laboratories unless the licensee's or other entity's panel of drugs and drug metabolites to be tested is equivalent to the panel by which the laboratory is certified by HHS or is subject to the standards and procedures for drug testing and evaluation used by the laboratory under the HHS Guidelines. Licensees and other entities must audit any hospital or other facility licensed by the State (or State-designated entity) if used to conduct specimen collections and perform alcohol testing under this part on a biennial basis to confirm that the facility procedures are comparable to those described in subpart E of this part, for urine and oral fluid.

#### **§ 26.617 Recordkeeping and reporting.**

(a) Licensees and other entities that implement FFD programs under this subpart must ensure that records pertaining to the administration of their program, which may be stored and archived electronically, are maintained so that they are available for NRC inspection purposes and for any legal proceedings resulting from the administration of the program. Records

pertaining to the administration of the FFD program and FFD performance data required by § 26.717 must be retained until license termination.

(b) Licensees and other entities must make the following reports:

(1) Reports to the NRC Operations Center by telephone within 24 hours after the licensee or other entity discovers any intentional act that casts doubt on the integrity of the FFD program and any programmatic failure, degradation, or discovered vulnerability of the FFD program that may permit undetected drug or alcohol use or abuse by individuals who are subject to this subpart. These events must be reported under this subpart, rather than under the provisions of § 73.1200 of this chapter; and

(2) Annual program performance reports for the FFD program, including the FFD program performance data listed in § 26.717(b), as applicable. Licensees and other entities must submit FFD program performance data (for January through December) to the NRC annually, before March 1 of the following year and must use unexpired NRC-provided forms for the electronic submission of FFD information to the NRC.

(c) Licensees and other entities subject to this subpart must describe in sufficient detail to support an authorization determination, an individual's FFD policy violation (while protecting privacy information under § 26.611) and FFD program weakness to NRC, licensees, and other entities subject to this part when requested to support authorization determinations under subpart C of this part or § 73.120 of this chapter, as applicable, or to support licensee or other entity performance monitoring.

#### **§ 26.619 Suitability and fitness determinations.**

Licensees and other entities that implement FFD programs under this subpart must develop, implement, and maintain procedures for evaluating whether to assign individuals to perform or direct those duties and responsibilities making them subject to this subpart. A suitability or fitness determination conducted for cause must be performed face to face. A suitability or fitness determination conducted for cause may be performed remotely using electronic communications only when supported by someone who is present in-person with the individual being assessed, and that supporting person must be trained in accordance with the requirements of either §§ 26.29 or 26.608.

■ 94. Revise § 26.709 to read as follows:

**§ 26.709 Applicability.**

(a) The requirements of this subpart apply to the FFD programs of licensees and other entities specified in § 26.3(a) through (d), except for FFD programs that are implemented under subpart K of this part.

(b) The requirements in this subpart apply to the FFD programs of licensees and other entities specified in § 26.3(f) that elect not to implement the requirements in subpart M or elect to implement the requirements in § 26.605(b).

**§ 26.711 [Amended]**

■ 95. In § 26.711, in paragraphs (c) and (d), remove the phrase “(c) and (d),” and add in its place the phrase “(c), (d), and (f).”.

**§ 26.825 [Amended]**

■ 96. In § 26.825, in paragraph (b) add remove the phrase “§§ 26.1, 26.3, 26.5, 26.7, 26.8, 26.9, 26.11, 26.51, 26.81, 26.121, 26.151, 26.181, 26.201, 26.823, and 26.825” and add in its place the phrase “§§ 26.1, 26.3, 26.5, 26.7, 26.8, 26.9, 26.11, 26.51, 26.81, 26.121, 26.151, 26.181, 26.201, 26.601, 26.823, and 26.825”.

**PART 30—RULES OF GENERAL APPLICABILITY TO DOMESTIC LICENSING OF BYPRODUCT MATERIAL**

■ 97. The authority citation for part 30 continues to read as follows:

**Authority:** Atomic Energy Act of 1954, secs. 11, 81, 161, 181, 182, 183, 184, 186, 187, 223, 234, 274 (42 U.S.C. 2014, 2111, 2201, 2231, 2232, 2233, 2234, 2236, 2237, 2273, 2282, 2021); Energy Reorganization Act of 1974, secs. 201, 202, 206, 211 (42 U.S.C. 5841, 5842, 5846, 5851); 44 U.S.C. 3504 note.

■ 98. In § 30.4, revise the definition for “*Utilization facility*” to read as follows:

**§ 30.4 Definitions.**

\* \* \* \* \*

*Utilization facility* means a utilization facility as defined in the regulations contained in part 50 or part 53 of this chapter;

■ 99. In § 30.50, revise paragraph (c)(3) to read as follows:

**§ 30.50 Reporting requirements.**

\* \* \* \* \*

(c) \* \* \*

(3) The provisions of this section do not apply to licensees subject to the notification requirements in §§ 50.72 or 53.1630 of this chapter. They do apply to those part 50 licensees possessing material licensed under this part, who are not subject to the notification requirements in § 50.72 of this chapter.

**PART 40—DOMESTIC LICENSING OF SOURCE MATERIAL**

■ 100. The authority citation for part 40 continues to read as follows:

**Authority:** Atomic Energy Act of 1954, secs. 62, 63, 64, 65, 69, 81, 83, 84, 122, 161, 181, 182, 183, 184, 186, 187, 193, 223, 234, 274, 275 (42 U.S.C. 2092, 2093, 2094, 2095, 2099, 2111, 2113, 2114, 2152, 2201, 2231, 2232, 2233, 2234, 2236, 2237, 2243, 2273, 2282, 2021, 2022); Energy Reorganization Act of 1974, secs. 201, 202, 206, 211 (42 U.S.C. 5841, 5842, 5846, 5851); Uranium Mill Tailings Radiation Control Act of 1978, sec. 104 (42 U.S.C. 7914); 44 U.S.C. 3504 note.

■ 101. In § 40.60, revise paragraph (c)(3) to read as follows:

**§ 40.60 Reporting requirements.**

\* \* \* \* \*

(c) \* \* \*

(3) The provisions of this section do not apply to licensees subject to the notification requirements in §§ 50.72 or 53.1630 of this chapter. They do apply to those part 50 licensees possessing material licensed under this part who are not subject to the notification requirements in § 50.72 of this chapter.

**PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES**

■ 102. 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, Pub. L. 96–295, 94 Stat. 783.

■ 103. In § 50.47, revise paragraphs (a)(1) and (e) to read as follows:

**§ 50.47 Emergency plans.**

(a)(1)(i) Except as provided in paragraph (d) of this section, no initial operating license for a nuclear power reactor will be issued under this part or under part 53 of this chapter unless a finding is made by the NRC that there is reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency. No finding under this section is necessary for issuance of a renewed nuclear power reactor operating license.

(ii) No initial combined license under parts 52 or 53 of this chapter will be issued unless a finding is made by the

NRC that there is reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency. No finding under this section is necessary for issuance of a renewed combined license.

(iii) If an application for an early site permit under subpart A of part 52 of this chapter includes complete and integrated emergency plans under § 52.17(b)(2)(ii) of this chapter or an application for an early site permit under subpart H of part 53 of this chapter includes complete and integrated emergency plans under § 53.1146(b)(2)(ii) of this chapter, no early site permit will be issued unless a finding is made by the NRC that the emergency plans provide reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency.

(iv) If an application for an early site permit proposes major features of the emergency plans under §§ 52.17(b)(2)(i) or 53.1146(b)(2)(i) of this chapter, no early site permit will be issued unless a finding is made by the NRC that the major features are acceptable in accordance with the applicable standards of either § 50.47 and appendix E to this part or the applicable requirements of § 50.160, within the scope of emergency preparedness matters addressed in the major features.

\* \* \* \* \*

(e) Notwithstanding the requirements of paragraph (b) of this section and the provisions of § 52.103 or § 53.1452 of this chapter, a holder of a combined license under part 52 or part 53 of this chapter, as applicable, that is complying with the requirements of § 50.47(b) and appendix E to this part may not load fuel or operate except as provided in accordance with appendix E to this part and § 50.54(gg), and a holder of a combined license under part 52 or part 53 of this chapter that is complying with the requirements of § 50.160 may not load fuel or operate except as provided in accordance with § 50.160(c)(2) and § 50.54(gg).

\* \* \* \* \*

■ 104. In § 50.54, revise paragraphs (q)(2), (q)(4), and (gg)(1) introductory text to read as follows:

**§ 50.54 Conditions of licenses.**

\* \* \* \* \*

(q) \* \* \*

(2)(i) Except as provided in paragraph (q)(2)(ii) of this section, a holder of a license under this part, or a combined license under parts 52 or 53 of this chapter after the Commission makes the finding under §§ 52.103(g) or 53.1452(g)

of this chapter, as applicable, shall follow and maintain the effectiveness of an emergency plan that meets the requirements in appendix E to this part and, for nuclear power reactor licensees, the planning standards of § 50.47(b).

(ii) A holder of a license under this part for a non-power production or utilization facility, a holder of a license under this part or part 53 of this chapter for a small modular reactor or a non-light-water reactor, or a holder of a combined license under parts 52 or 53 of this chapter after the Commission makes the finding under §§ 52.103(g) or 53.1452(g) of this chapter, as applicable, for a small modular reactor or a non-light-water reactor, shall follow and maintain the effectiveness of either an emergency plan that meets the requirements in § 50.160 or an emergency plan that meets the requirements in appendix E to this part and, for nuclear power reactor licensees, the planning standards of § 50.47(b).

(4) The changes to a licensee's emergency plan that reduce the effectiveness of the plan as defined in paragraph (q)(1)(iv) of this section may not be implemented without prior approval by the NRC. A licensee desiring to make such a change shall submit an application for an amendment to its license. In addition to the filing requirements of §§ 50.90 and 50.91 or §§ 53.1510 and 53.1515 of this chapter, as applicable, the request must include all emergency plan pages affected by that change and must be accompanied by a forwarding letter identifying the change, the reason for the change, and the basis for concluding that the licensee's emergency plan, as revised, will continue to meet either the requirements in § 50.160 or the requirements in appendix E to this part and, for nuclear power reactor licensees, the planning standards of § 50.47(b).

(gg)(1) Notwithstanding §§ 52.103 or 53.1452 of this chapter, if following the conduct of the exercise required by paragraph IV.f.2.a of appendix E to this part or § 50.160(c)(2), as applicable, FEMA identifies one or more deficiencies in the state of offsite emergency preparedness, the holder of a combined license under 10 CFR part 52 or under 10 CFR part 53, as applicable, may operate at up to 5 percent of rated thermal power only if the Commission finds that the state of onsite emergency preparedness provides reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency. The NRC will base this finding on its

assessment of the applicant's onsite emergency plans against the pertinent standards in either § 50.47 and appendix E to this part, or § 50.160, as applicable. Review of the applicant's emergency plans will include the following standards with offsite aspects:

\* \* \* \* \*

■ 105. In § 50.160, revise paragraphs (b)(3) and (c)(2) to read as follows:

**§ 50.160 Emergency preparedness for small modular reactors, non-light-water reactors, and non-power production or utilization facilities.**

\* \* \* \* \*

(b) \* \* \*

(3) *Emergency planning zone.* For an applicant whose analysis required by § 50.33(g)(2) or § 53.1109(g)(2) of this chapter meets the criteria in § 50.33(g)(2)(i) or § 53.1109(g)(2)(i) of this chapter, as applicable, determine and describe the boundary and physical characteristics of the EPZ in the emergency plan.

\* \* \* \* \*

(c) \* \* \*

(2) A holder of a combined license issued under parts 52 or 53 of this chapter before the Commission has made the finding under §§ 52.103(g) or 53.1452(g) of this chapter, as applicable, must establish, implement, and maintain an emergency preparedness program that meets the requirements of paragraph (b) of this section, as described in the approved emergency plan and license, and conduct an initial exercise to demonstrate this compliance within 2 years before the scheduled date for initial loading of fuel (or, for a fueled manufactured reactor, within 2 years before the scheduled date for initiating the physical removal of any one of the independent physical mechanisms to prevent criticality required under § 53.620(d)(1) of this chapter).

■ 106. In appendix B to part 50, revise the first paragraph in the Introduction section, the first paragraph of section III, Design Control, and section IV, Procurement Document Control, to read as follows:

### **Appendix B to Part 50—Quality Assurance Criteria for Nuclear Power Plants and Fuel Reprocessing Plants**

*Introduction.* Every applicant for a construction permit is required by the provisions of § 50.34 or § 53.1309 of this chapter to include in its preliminary safety analysis report a description of the quality assurance program to be applied to the design, fabrication, construction, and testing of the structures, systems, and components of the facility. Every applicant for an operating license is required by the provisions of § 50.34 or § 53.1369 of this chapter to include, in its final safety analysis report,

information pertaining to the managerial and administrative controls to be used to assure safe operation. Every applicant for a combined license is required by the provisions of §§ 52.79 or 53.1416 of this chapter to include in its final safety analysis report a description of the quality assurance applied to the design, and to be applied to the fabrication, construction, and testing of the structures, systems, and components of the facility and to the managerial and administrative controls to be used to assure safe operation. For applications submitted after September 27, 2007, every applicant for an early site permit is required by the provisions of §§ 52.17 or 53.1146 of this chapter to include in its site safety analysis report a description of the quality assurance program applied to site activities related to the design, fabrication, construction, and testing of the structures, systems, and components of a facility or facilities that may be constructed on the site. Every applicant for a design approval is required by the provisions of §§ 52.137 or 53.1209 of this chapter to include in its final safety analysis report a description of the quality assurance program applied to the design of the structures, systems, and components of the facility. Every applicant for a design certification is required by the provisions of §§ 52.47 or 53.1239 of this chapter to include in its final safety analysis report a description of the quality assurance program applied to the design of the structures, systems, and components of the facility. Every applicant for a manufacturing license is required by the provisions of §§ 52.157 or 53.1279 of this chapter to include in its final safety analysis report a description of the quality assurance program applied to the design, and to be applied to the manufacture of, the structures, systems, and components of the reactor. Nuclear power plants and fuel reprocessing plants include structures, systems, and components that prevent or mitigate the consequences of postulated accidents that could cause undue risk to the health and safety of the public. This appendix establishes quality assurance requirements for the design, manufacture, construction, and operation of those structures, systems, and components. The pertinent requirements of this appendix apply to all activities affecting the safety-related functions of those structures, systems, and components; these activities include designing, purchasing, fabricating, handling, shipping, storing, cleaning, erecting, installing, inspecting, testing, operating, maintaining, repairing, refueling, and modifying.

\* \* \* \* \*

### **III. Design Control**

Measures shall be established to assure that applicable regulatory requirements and the design bases, as defined in § 50.2 and as specified in the license application, or the functional design criteria, as defined in § 53.020 of this chapter and as specified in the license application, for those structures, systems, and components to which this appendix applies are correctly translated into specifications, drawings, procedures, and instructions. These measures shall include provisions to assure that appropriate quality



standards are specified and included in design documents and that deviations from such standards are controlled. Measures shall also be established for the selection and review for suitability of application of materials, parts, equipment, and processes that are essential to the safety-related functions of the structures, systems and components.

\* \* \* \* \*

#### IV. Procurement Document Control

Measures shall be established to assure that applicable regulatory requirements, design bases or functional design criteria, and other requirements which are necessary to assure adequate quality are suitably included or referenced in the documents for procurement of material, equipment, and services, whether purchased by the applicant or by its contractors or subcontractors. To the extent necessary, procurement documents shall require contractors or subcontractors to provide a quality assurance program consistent with the pertinent provisions of this appendix.

\* \* \* \* \*

### PART 51—ENVIRONMENTAL PROTECTION REGULATIONS FOR DOMESTIC LICENSING AND RELATED REGULATORY FUNCTIONS

■ 107. The authority citation for part 51 continues to read as follows:

**Authority:** Atomic Energy Act of 1954, secs. 161, 193 (42 U.S.C. 2201, 2243); Energy Reorganization Act of 1974, secs. 201, 202 (42 U.S.C. 5841, 5842); National Environmental Policy Act of 1969 (42 U.S.C. 4332, 4334, 4335); Nuclear Waste Policy Act of 1982, secs. 144(f), 121, 135, 141, 148 (42 U.S.C. 10134(f), 10141, 10155, 10161, 10168); 44 U.S.C. 3504 note.

■ 108. In § 51.20, revise paragraphs (b)(1) and (2) to read as follows:

#### § 51.20 Criteria for and identification of licensing and regulatory actions requiring environmental impact statements.

\* \* \* \* \*

(b) \* \* \*

(1) Issuance of a limited work authorization or a permit to construct a nuclear power reactor, testing facility, or fuel reprocessing plant under part 50 of this chapter, issuance of an early site permit under part 52 of this chapter, or issuance of a limited work authorization, construction permit, or early site permit under part 53 of this chapter.

(2) Issuance or renewal of a full power or design capacity license to operate a nuclear power reactor, testing facility, or fuel reprocessing plant under parts 50 or 53 of this chapter, or a combined license under parts 52 or 53 of this chapter.

\* \* \* \* \*

■ 109. In § 51.22, revise paragraphs (c)(3) introductory text, (c)(9) introductory text, (c)(12) introductory

text, (c)(17), (c)(22) and (23) to read as follows:

#### § 51.22 Criterion for categorical exclusion; identification of licensing and regulatory actions eligible for categorical exclusion or otherwise not requiring environmental review.

\* \* \* \* \*

(c) \* \* \*

(3) Amendments to parts 20, 30, 31, 32, 33, 34, 35, 37, 39, 40, 50, 51, 52, 53, 54, 60, 61, 63, 70, 71, 72, 73, 74, 81, and 100 of this chapter which relate to—

\* \* \* \* \*

(9) Issuance of an amendment to a permit or license for a reactor under part 50, part 52, or part 53 of this chapter that changes a requirement or issuance of an exemption from a requirement, with respect to installation or use of a facility component located within the restricted area, as defined in part 20 of this chapter; or the issuance of an amendment to a permit or license for a reactor under part 50, part 52, or part 53 of this chapter that changes an inspection or a surveillance requirement; provided that:

\* \* \* \* \*

(12) Issuance of an amendment to a license under parts 50, 52, 53, 60, 61, 63, 70, 72, or 75 of this chapter relating solely to safeguards matters (*i.e.*, protection against sabotage or loss or diversion of special nuclear material) or issuance of an approval of a safeguards plan submitted under parts 50, 52, 53, 70, 72, and 73 of this chapter, provided that the amendment or approval does not involve any significant construction impacts. These amendments and approvals are confined to—

\* \* \* \* \*

(17) Issuance of an amendment to a permit or license under part 30, part 40, part 50, part 52, part 53, or part 70 of this chapter which deletes any limiting condition of operation or monitoring requirement based on or applicable to any matter subject to the provisions of the Federal Water Pollution Control Act.

\* \* \* \* \*

(22) Issuance of a standard design approval under part 52 or part 53 of this chapter.

(23) The Commission finding for a combined license under § 52.103(g) or § 53.1452(g) of this chapter.

\* \* \* \* \*

#### § 51.26 [Amended]

■ 110. In § 51.26, in paragraph (d) remove the phrase “under part 52” and add in its place the phrase “under 10 CFR parts 52 or 53.”

■ 111. In § 51.30, revise paragraph (a) introductory text and paragraphs (d) and (e) to read as follows:

#### § 51.30 Environmental assessment.

(a) An environmental assessment for proposed actions, other than those for a standard design certification under 10 CFR parts 52 or 53, or a manufacturing license under 10 CFR parts 52 or 53, shall identify the proposed action and include:

\* \* \* \* \*

(d) An environmental assessment for a standard design certification under subpart B of part 52 of this chapter, or under subpart H of part 53 of this chapter must identify the proposed action and will be limited to the consideration of the costs and benefits of severe accident mitigation design alternatives and the bases for not incorporating severe accident mitigation design alternatives in the design certification. An environmental assessment for an amendment to a design certification will be limited to the consideration of whether the design change which is the subject of the proposed amendment renders a severe accident mitigation design alternative previously rejected in the earlier environmental assessment to become cost beneficial, or results in the identification of new severe accident mitigation design alternatives, in which case the costs and benefits of new severe accident mitigation design alternatives and the bases for not incorporating new severe accident mitigation design alternatives in the design certification must be addressed.

(e) An environmental assessment for a manufacturing license under subpart F of part 52 of this chapter or under subpart H of part 53 of this chapter must identify the proposed action and will be limited to the consideration of the costs and benefits of severe accident mitigation design alternatives and the bases for not incorporating severe accident mitigation design alternatives in the manufacturing license. An environmental assessment for an amendment to a manufacturing license will be limited to consideration of whether the design change which is the subject of the proposed amendment either renders a severe accident mitigation design alternative previously rejected in an environmental assessment to become cost beneficial, or results in the identification of new severe accident mitigation design alternatives, in which case the costs and benefits of new severe accident mitigation design alternatives and the bases for not incorporating new severe accident mitigation design alternatives in the manufacturing license must be addressed. In either case, the environmental assessment will not address the environmental impacts

associated with manufacturing the reactor under the manufacturing license.

#### **§ 51.31 [Amended]**

■ 112. In § 51.31, in paragraph (a) remove the phrase “under part 52” and add in its place the phrase “under parts 52 or 53”.

#### **§ 51.32 [Amended]**

■ 113. In § 51.32, in paragraphs (b)(1) and (3) remove the phrase “of part 52 of this chapter” and add in its place the phrase “of part 52 of this chapter or subpart H of part 53 of this chapter”.

#### **§ 51.49 [Amended]**

■ 114. In § 51.49, in paragraph (c) introductory text, remove the phrase “of part 52 of this chapter” and add in its place the phrase “of part 52 of this chapter or under subpart H of part 53 of this chapter”.

#### **§ 51.50 [Amended]**

■ 115. In § 51.50, wherever it appears, remove the phrase “in accordance with § 50.36b of this chapter” and add in its place the phrase “in accordance with § 50.36b or 53.1112 of this chapter”.

#### **§ 51.53 [Amended]**

■ 116. In § 51.53, in paragraph (d) remove the phrase “under § 50.82 of this chapter” and add in its place the phrase “under §§ 50.82 or 53.1080 of this chapter”.

#### **§ 51.54 [Amended]**

■ 117. In § 51.54, in paragraph (a), remove the phrase “of part 52 of this chapter” and add in its place the phrase “of part 52 of this chapter or under subpart H of part 53 of this chapter”.

#### **§ 51.55 [Amended]**

■ 118. In § 51.55, in paragraph (a) remove the phrase “of part 52 of this chapter” and add in its place the phrase “of part 52 of this chapter or under subpart H of part 53 of this chapter”.

■ 119. In § 51.58, revise paragraph (b) to read as follows:

#### **§ 51.58 Environmental report—number of copies; distribution.**

\* \* \* \* \*

(b) Each applicant for a license to manufacture a nuclear power reactor, or for an amendment to a license to manufacture, seeking approval of the final design of the nuclear power reactor under subpart F of part 52 of this chapter or under subpart H of part 53 of this chapter, shall submit to the Commission an environmental report or any supplement to an environmental report in the manner specified in §§ 52.3 or 53.040 of this chapter. The applicant shall maintain the capability to generate

additional copies of the environmental report or any supplement to the environmental report for subsequent distribution to parties and Boards in the NRC proceeding; Federal, State, and local officials; and any affected Indian Tribes, in accordance with written instructions issued by the Director, Office of Nuclear Reactor Regulation.

■ 120. In § 51.77, revise paragraph (a) introductory text to read as follows:

#### **§ 51.77 Distribution of draft environmental impact statement.**

(a) In addition to the distribution authorized by § 51.74, a copy of a draft environmental statement for a licensing action for a production or utilization facility, except an action authorizing issuance, amendment, or renewal of a license to manufacture a nuclear power reactor pursuant to 10 CFR part 52, subpart F or 10 CFR part 53, subparts H or I will also be distributed to:

\* \* \* \* \*

#### **§ 51.92 [Amended]**

■ 121. In § 51.92, in paragraph (b), wherever it may appear, remove the phrase “10 CFR part 52” and add in its place the phrase “10 CFR parts 52 or 53”.

#### **§ 51.95 [Amended]**

■ 122. In § 51.95, in paragraph (c) introductory text remove the phrase “under 10 CFR parts 52 or 54” and add in its place the phrase “under 10 CFR parts 52, 53, or 54”.

■ 123. In § 51.101, revise paragraph (a)(2) to read as follows:

#### **§ 51.101 Limitations on actions.**

(a) \* \* \*

(2) Any action concerning the proposal taken by an applicant which would—

(i) Have an adverse environmental impact, or

(ii) Limit the choice of reasonable alternatives that may be grounds for denial of the license. In the case of an application covered by §§ 30.32(f), 40.31(f), 50.10(c), 53.1130, 70.21(f), or 72.16 and 72.34 of this chapter, the provisions of this paragraph will be applied in accordance with § 30.33(a)(5), 40.32(e), 50.10(c), 53.1130, 70.23(a)(7), or 72.40(b) of this chapter, as appropriate.

\* \* \* \* \*

#### **§ 51.103 [Amended]**

■ 124. In § 51.103, in paragraph (a)(6) remove the phrase “under 10 CFR 50.10” and add in its place the phrase “under §§ 50.10 or 53.1130 of this chapter”.

■ 125. In § 51.105, revise paragraph (c)(1) introductory text to read as follows:

#### **§ 51.105 Public hearings in proceedings for issuance of construction permits or early site permits; limited work authorizations.**

\* \* \* \* \*

(c)(1) In addition to complying with the applicable provisions of § 51.104, in any proceeding for the issuance of a construction permit for a nuclear power plant or an early site permit under parts 52 or 53 of this chapter, where the applicant requests a limited work authorization under §§ 50.10(d) or 53.1130 of this chapter, the presiding officer will—

\* \* \* \* \*

■ 126. In § 51.107, revise paragraphs (a) introductory text, (b) introductory text, and (d)(1) introductory text to read as follows:

#### **§ 51.107 Public hearings in proceedings for issuance of combined licenses; limited work authorizations.**

(a) In addition to complying with the applicable requirements of § 51.104, in a proceeding for the issuance of a combined license for a nuclear power reactor under parts 52 or 53 of this chapter, the presiding officer will:

\* \* \* \* \*

(b) If a combined license application references an early site permit, then the presiding officer in the combined license hearing must not admit any contention proffered by any party on environmental issues that have been accorded finality under §§ 52.39 or 53.1188 of this chapter, unless the contention:

\* \* \* \* \*

(d)(1) In any proceeding for the issuance of a combined license where the applicant requests a limited work authorization under §§ 50.10(d) or 53.1130(a) of this chapter, the presiding officer, in addition to complying with any applicable provision of § 51.104, will:

\* \* \* \* \*

■ 127. Revise § 51.108 to read as follows:

#### **§ 51.108 Public hearings on Commission findings that inspections, tests, analyses, and acceptance criteria of combined licenses are met.**

In any public hearing requested under §§ 52.103(b) or 53.1452(b) of this chapter, the Commission will not admit any contentions on environmental issues, the adequacy of the environmental impact statement for the combined license issued under subpart C of part 52 of this chapter or under

subpart H of part 53 of this chapter, or the adequacy of any other environmental impact statement or environmental assessment referenced in the combined license application. The Commission will not make any environmental findings in connection with the finding under § 52.103(g) or § 53.1452(g) of this chapter.

■ 128. Add part 53, consisting of §§ 53.000 through 53.9010, to read as follows:

**PART 53—RISK-INFORMED, TECHNOLOGY-INCLUSIVE REGULATORY FRAMEWORK FOR COMMERCIAL NUCLEAR PLANTS**

Sec.

53.000 Purpose.

**Subpart A—General Provisions**

53.015 Scope.  
 53.020 Definitions.  
 53.030 Reserved.  
 53.040 Written communications.  
 53.050 Deliberate misconduct.  
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 53.070 Completeness and accuracy of information.  
 53.080 Specific exemptions.  
 53.090 Standards for review.  
 53.100 Jurisdictional limits.  
 53.110 Attacks and destructive acts.  
 53.115 Rights related to special nuclear material.  
 53.117 License suspension and rights of recapture.  
 53.120 Information collection requirements: OMB approval.

**Subpart B—Technology-Inclusive Safety Requirements**

53.210 Safety criteria for design-basis accidents.  
 53.220 Safety criteria for licensing-basis events other than design-basis accidents.  
 53.230 Safety functions.  
 53.240 Licensing-basis events.  
 53.250 Defense in depth.  
 53.260 Normal operations.  
 53.270 Protection of plant workers.

**Subpart C—Design and Analysis Requirements**

53.400 Design features for licensing-basis events.  
 53.410 Functional design criteria for design-basis accidents.  
 53.415 Protection against external hazards.  
 53.420 Functional design criteria for licensing-basis events other than design-basis accidents.  
 53.425 Design features and functional design criteria for normal operations.  
 53.430 Design features and functional design criteria for protection of plant workers.  
 53.440 Design requirements.  
 53.450 Analysis requirements.  
 53.460 Safety categorization and treatments.  
 53.470 Maintaining analytical safety margins used to justify operational flexibilities.  
 53.480 Earthquake engineering.

**Subpart D—Siting Requirements**

53.500 General siting and siting assessment.  
 53.510 External hazards.  
 53.520 Site characteristics.  
 53.530 Population-related considerations.  
 53.540 Siting interfaces.

**Subpart E—Construction and Manufacturing Requirements**

53.600 Construction and manufacturing—scope and purpose.  
 53.605 Reporting of defects and noncompliance.  
 53.610 Construction.  
 53.620 Manufacturing.

**Subpart F—Requirements for Operation**

53.700 Operational objectives.  
 53.710 Maintaining capabilities and availability of structures, systems, and components.  
 53.715 Maintenance, repair, and inspection programs.  
 53.720 Response to seismic events.  
 53.725 General staffing, training, personnel qualifications, and human factors requirements.  
 53.726 Communications.  
 53.728 Completeness and accuracy of information.  
 53.730 Defining, fulfilling, and maintaining the role of personnel in ensuring safe operations.  
 53.735 General exemptions.  
 53.740 Facility licensee requirements—General.  
 53.745 Operator license requirements.  
 53.760 Operator licensing.  
 53.765 Medical requirements.  
 53.770 Incapacitation because of disability or illness.  
 53.775 Applications for operators and senior operators.  
 53.780 Training, examination, and proficiency program.  
 53.785 Conditions of operator and senior operator licenses.  
 53.790 Issuance, modification, and revocation of operator and senior operator licenses.  
 53.795 Expiration and renewal of operator and senior operator licenses.  
 53.800 Facility licensees for self-reliant-mitigation facilities.  
 53.805 Facility licensee requirements related to generally licensed reactor operators.  
 53.810 Generally licensed reactor operators.  
 53.815 Generally licensed reactor operator training, examination, and proficiency programs.  
 53.820 Cessation of individual applicability.  
 53.830 Training and qualification of commercial nuclear plant personnel.  
 53.845 Programs.  
 53.850 Radiation protection.  
 53.855 Emergency preparedness.  
 53.860 Security programs.  
 53.865 Quality assurance.  
 53.870 Integrity assessment programs.  
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 53.880 Inservice inspection and inservice testing.  
 53.910 Procedures and guidelines.

**Subpart G—Decommissioning Requirements**

53.1000 Scope and purpose.  
 53.1010 Financial assurance for decommissioning.  
 53.1020 Cost estimates for decommissioning.  
 53.1030 Annual adjustments to cost estimates for decommissioning.  
 53.1040 Methods for providing financial assurance for decommissioning.  
 53.1045 Limitations on the use of decommissioning trust funds.  
 53.1050 NRC oversight.  
 53.1060 Reporting and recordkeeping requirements.  
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 53.1080 Release of part of a commercial nuclear plant or site for unrestricted use.

**Subpart H—Licenses, Certifications, and Approvals**

53.1100 Filing of application for licenses, certifications, or approvals; oath or affirmation.  
 53.1101 Requirement for license.  
 53.1103 Combining applications and licenses.  
 53.1106 Elimination of repetition.  
 53.1109 Contents of applications; general information.  
 53.1112 Environmental conditions.  
 53.1115 Agreement limiting access to classified information.  
 53.1118 Ineligibility of certain applicants.  
 53.1120 Exceptions and exemptions from licensing requirements.  
 53.1121 Public inspection of applications.  
 53.1124 Relationship between sections.  
 53.1130 Limited work authorizations.  
 53.1140 Early site permits.  
 53.1143 Filing of applications.  
 53.1144 Contents of applications for early site permits; general information.  
 53.1146 Contents of applications for early site permits; technical information.  
 53.1149 Review of applications.  
 53.1155 Referral to the Advisory Committee on Reactor Safeguards.  
 53.1158 Issuance of early site permit.  
 53.1161 Extent of activities permitted.  
 53.1164 Duration of permit.  
 53.1167 Limited work authorization after issuance of early site permit.  
 53.1170 Transfer of early site permit.  
 53.1173 Application for renewal.  
 53.1176 Criteria for renewal.  
 53.1179 Duration of renewal.  
 53.1182 Use of site for other purposes.  
 53.1188 Finality of early site permit determinations.  
 53.1200 Standard design approvals.  
 53.1203 Filing of applications.  
 53.1206 Contents of applications for standard design approvals; general information.  
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 53.1212 Standards for review of applications.

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53.1218 Staff approval of design.

53.1221 Finality of standard design approvals; information requests.

53.1230 Standard design certifications.

53.1233 Filing of applications.

53.1236 Contents of applications for standard design certifications; general information.

53.1239 Contents of applications for standard design certifications; technical information.

53.1241 Contents of applications for standard design certifications; other application content.

53.1242 Review of applications.

53.1245 Referral to the Advisory Committee on Reactor Safeguards.

53.1248 Issuance of standard design certification.

53.1251 Duration of certification.

53.1254 Application for renewal.

53.1257 Criteria for renewal.

53.1260 Duration of renewal.

53.1263 Finality of standard design certifications.

53.1270 Manufacturing licenses.

53.1273 Filing of applications.

53.1276 Contents of applications for manufacturing licenses; general information.

53.1279 Contents of applications for manufacturing licenses; technical information.

53.1282 Contents of applications for manufacturing licenses; other application content.

53.1285 Review of applications.

53.1286 Referral to the Advisory Committee on Reactor Safeguards.

53.1287 Issuance of manufacturing licenses.

53.1288 Finality of manufacturing licenses.

53.1291 Duration of manufacturing licenses.

53.1293 Transfer of manufacturing licenses.

53.1295 Renewal of manufacturing licenses.

53.1300 Construction permits.

53.1306 Contents of applications for construction permits; general information.

53.1309 Contents of applications for construction permits; technical information.

53.1312 Contents of applications for construction permits; other application content.

53.1315 Review of applications.

53.1318 Finality of referenced NRC approvals, permits, and certifications.

53.1324 Referral to the Advisory Committee on Reactor Safeguards.

53.1327 Authorization to conduct limited work authorization activities.

53.1330 Exemptions, departures, and variances.

53.1333 Issuance of construction permits.

53.1336 Finality of construction permits.

53.1342 Duration of construction permits.

53.1345 Transfer of construction permits.

53.1348 Termination of construction permits.

53.1360 Operating licenses.

53.1366 Contents of applications for operating licenses; general information.

53.1369 Contents of applications for operating licenses; technical information.

53.1372 Contents of applications for operating licenses; other application content.

53.1375 Review of applications.

53.1381 Referral to the Advisory Committee on Reactor Safeguards.

53.1384 Exemptions, departures, and variances.

53.1387 Issuance of operating licenses.

53.1390 Backfitting of operating licenses.

53.1396 Duration of operating licenses.

53.1399 Transfer of an operating license.

53.1402 Application for renewal.

53.1405 Continuation of an operating license.

53.1410 Combined licenses.

53.1413 Contents of applications for combined licenses; general information.

53.1416 Contents of applications for combined licenses; technical information.

53.1419 Contents of applications for combined licenses; other application content.

53.1422 Review of applications.

53.1425 Finality of referenced NRC approvals.

53.1431 Referral to the Advisory Committee on Reactor Safeguards.

53.1434 Authorization to conduct limited work authorization activities.

53.1437 Exemptions, departures, and variances.

53.1440 Issuance of combined licenses.

53.1443 Finality of combined licenses.

53.1449 Inspection during construction.

53.1452 Operation under a combined license.

53.1455 Duration of combined license.

53.1456 Transfer of a combined license.

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53.1470 Standardization of commercial nuclear plant designs: licenses to construct and operate nuclear power reactors of identical design at multiple sites.

#### **Subpart I—Maintaining and Revising Licensing-Basis Information**

53.1500 Licensing-basis information.

53.1502 Specific terms and conditions of licenses.

53.1505 Changes to licensing-basis information requiring prior NRC approval.

53.1510 Application for amendment of license.

53.1515 Public notices; State consultation.

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53.1525 Revising certification information within a design certification rule.

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53.1540 Updating licensing-basis information and determining the need for NRC approval.

53.1545 Updating Final Safety Analysis Reports.

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53.1560 Updating program documents included in licensing-basis information.

53.1565 Evaluating changes to programs included in licensing-basis information.

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53.1575 Termination of licenses.

53.1580 Information requests.

53.1585 Revocation, suspension, modification of licenses and approvals for cause.

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#### **Subpart J—Reporting and Other Administrative Requirements**

53.1600 General information.

53.1610 Unfettered access for inspections.

53.1620 Maintenance of records, making of reports.

53.1630 Immediate notification requirements for operating commercial nuclear plants.

53.1640 Licensee event report system.

53.1645 Reports of radiation exposure to members of the public.

53.1650 Facility information and verification.

53.1660 Financial requirements.

53.1670 Financial qualifications.

53.1680 Annual financial reports.

53.1690 Licensee's change of status; financial qualifications.

53.1700 Creditor regulations.

53.1710 Financial protection.

53.1720 Insurance required to stabilize and decontaminate plant following an accident.

53.1730 Financial protection requirements.

#### **Subpart M—Enforcement**

53.9000 Violations.

53.9010 Criminal penalties.

**Authority:** Atomic Energy Act of 1954, secs. 11, 101, 103, 108, 122, 147, 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, Pub. L. 96–295, 94 Stat. 783; Pub. L. 115–439, 132 Stat. 5571.

#### **§ 53.000 Purpose.**

This part provides an optional technology-inclusive, performance-based framework for the issuance, amendment, renewal, and termination of licenses, permits, certifications, and approvals for commercial nuclear plants licensed under section 103 of the Atomic Energy Act of 1954, as amended (the Act) (68 Stat. 919), and Title II of the Energy Reorganization Act of 1974, as amended (88 Stat. 1242). Also, this part gives notice to all persons who knowingly provide to any holder of or applicant for an approval, certification, permit, or license, or to a contractor, subcontractor, or consultant of any of

them, components, equipment, materials, or other goods or services that relate to the activities of a holder of or applicant for an approval, certification, permit, or license, subject to this part, that they may be individually subject to U.S. Nuclear Regulatory Commission enforcement action for violation of the provisions in § 53.050.

## Subpart A—General Provisions

### § 53.015 Scope.

Subpart A provides general provisions applicable to all applicants and licensees subject to the rules of this part.

### § 53.020 Definitions.

For the purpose of this part:

*Anticipated event sequence* means event sequences expected to occur one or more times during the life of a commercial nuclear plant. Anticipated event sequences take into account the expected response of all structures, systems, and components (SSCs) within the plant, regardless of safety classification.

*Applicant* means a person applying for a license, permit, or other form of Commission permission or approval under this part.

*Certified fuel handler* means, for a commercial nuclear plant, either—

(1) A non-licensed operator who has qualified in accordance with a fuel handler training program approved by the Commission; or

(2) A non-licensed operator who demonstrates compliance with the following criteria:

(i) Has qualified in accordance with a fuel handler training program that demonstrates compliance with the same requirements as training programs for non-licensed operators required by § 53.830, and

(ii) Is responsible for decisions on—  
(A) Safe conduct of decommissioning activities,

(B) Safe handling and storage of spent fuel, and

(C) Appropriate response to plant emergencies.

*Combined license (COL)* means a combined construction permit (CP) and operating license (OL) with conditions for a commercial nuclear plant issued under this part.

*Commercial nuclear plant* means a facility consisting of one or more commercial nuclear reactors and associated co-located support facilities, including the collection of buildings, radionuclide sources, and SSCs for which a license, certification, or approval is being sought under this part, that is or will be used for producing power for commercial electric power or

other commercial purposes. For the purposes of requirements in this part that reference requirements in part 50 of this chapter, a commercial nuclear plant is equivalent to a nuclear power plant.

*Commercial nuclear reactor* means an apparatus, other than an atomic weapon, designed or used to sustain nuclear fission. For the purposes of requirements in this part that reference requirements in 10 CFR part 50, a commercial nuclear reactor is equivalent to a nuclear reactor as defined in 10 CFR 50.2.

*Commission* means the U.S. Nuclear Regulatory Commission (NRC) or its duly authorized representatives.

*Consensus code or standard* means any technical standard that is—

(1) Developed or adopted by a voluntary consensus standard body under procedures that assure that persons having interests within the scope of the standard that are affected by the provisions of the standard have reached substantial agreement on its adoption;

(2) Formulated in a manner that afforded an opportunity for diverse views to be considered; and

(3) Designated by the standards body as a consensus code or standard.

*Construction* means the activities in paragraph (1) below and does not mean the activities in paragraph (2) below.

(1) Activities constituting construction are those activities credited or relied upon for demonstrating compliance with the safety criteria defined in subpart B of this part which are conducted on-site to build the commercial nuclear plant, including the driving of piles; subsurface preparation; placement of backfill, concrete, or permanent retaining walls within an excavation; installation of foundations; or in-place assembly, erection, fabrication, or testing, which are for—

(i) Safety-related (SR) and non-safety-related but safety-significant (NSRSS) SSCs of a facility;

(ii) SSCs necessary to comply with 10 CFR part 73; or

(iii) Onsite emergency facilities necessary to comply with § 53.855.

(2) Construction does not include—  
(i) Changes for temporary use of the land for public recreational purposes;

(ii) Site exploration, including necessary borings to determine foundation conditions or other preconstruction monitoring to establish background information related to the suitability of the site, the environmental impacts of construction or operation, or the protection of environmental values;

(iii) Preparation of a site for construction of a facility, including clearing of the site, grading, installation

of drainage, erosion, and other environmental mitigation measures, and construction of temporary roads and borrow areas;

(iv) Erection of fences and other access control measures;

(v) Excavation;

(vi) Erection of support buildings (such as construction equipment storage sheds, warehouse and shop facilities, utilities, concrete mixing plants, docking and unloading facilities, and office buildings) for use in connection with the construction of the facility;

(vii) Building of service facilities (such as paved roads, parking lots, railroad spurs, exterior utility and lighting systems, potable water systems, sanitary sewage treatment facilities, and transmission lines);

(viii) Procurement or fabrication of components or portions of the proposed facility occurring at locations other than the final, in-place location at the facility; or

(ix) Manufacture of a nuclear power reactor under a manufacturing license (ML) under subpart H of this part to be installed at the proposed site and to be part of the proposed facility.

*Custom combined license (custom COL)* means a COL that does not reference a standard design approval or design certification.

*Decommission or decommissioning* means to remove a plant or site safely from service and reduce residual radioactivity to a level that permits—

(1) Release of the property for unrestricted use and termination of the license; or

(2) Release of the property under restricted conditions and termination of the license.

*Defense in depth* means inclusion of two or more independent and redundant layers of defense in the design of a facility and its operating procedures to compensate for uncertainties such that no single layer of defense, no matter how robust, is exclusively relied upon. Defense in depth includes, but is not limited to, the use of access controls, physical barriers, redundant and diverse safety functions, and emergency response measures.

*Design-basis accidents (DBAs)* means postulated event sequences that are used to set functional design criteria and performance objectives for the design of SR SSCs through deterministic analyses. Design-basis accidents are a type of licensing-basis event and are based on the capabilities and reliabilities of SR SSCs needed to mitigate and prevent event sequences, respectively.

*Design-basis external hazard level* means the level of severity or intensity

of an external hazard for which the SR SSCs are protected against or designed to withstand without losing their capability to perform their safety functions.

*Design features* means the active and passive SSCs and the inherent characteristics of those SSCs that contribute to limiting the total effective dose equivalent to individual members of the public during normal operations and prevent or mitigate the consequences of event sequences.

*Electric utility* means any entity that generates or distributes electricity and that recovers the cost of this electricity, either directly or indirectly, through rates established by the entity itself or by a separate regulatory authority. Investor-owned utilities, including generation or distribution subsidiaries, public utility districts, municipalities, rural electric cooperatives, and State and Federal agencies, including associations of any of the foregoing, are included within the meaning of "electric utility."

*Event sequence* means a postulated initiating event defined for a set of initial plant conditions followed by system, safety function, and operator successes or failures, and terminating in a specified end state depending on the system, safety function, and operator successes and failures (e.g., prevention of release of radioactive material or release in one of the reactor-specific release categories). An event sequence may include many unique variations of events that are similar in terms of results or end states.

*Exclusion area* means that area surrounding the reactor, in which the reactor licensee has the authority to determine all activities including exclusion or removal of personnel and property from the area. This area may be traversed by a highway, railroad, or waterway, provided these are not so close to the facility as to interfere with normal operations of the facility and provided appropriate and effective arrangements are made to control traffic on the highway, railroad, or waterway, in case of emergency, to protect the public health and safety. Residence within the exclusion area must normally be prohibited. In any event, residents must be subject to ready removal in case of necessity. Activities unrelated to operation of the reactor may be permitted in an exclusion area under appropriate limitations, provided that no significant hazards to the public health and safety will result.

*Fission product release* means the amount and composition of radioactive material released to the environment, after accounting for any retention of

radionuclides provided by reactor design features.

*Fuel* means special nuclear material (SNM) or source material, discrete elements that physically contain SNM or source material, and homogeneous mixtures that contain SNM or source material, intended to or used to create power in a commercial nuclear plant.

*Functional design criteria* means metrics for the performance of SSCs. For SR SSCs, these criteria define performance metrics necessary to demonstrate compliance with the safety criteria in § 53.210. For NSRSS SSCs, these criteria define performance metrics necessary to demonstrate compliance with the safety criteria in § 53.220.

*License*, when used in the context of a facility, means a limited work authorization, CP, OL, early site permit, COL, or ML under this part, or a renewed license issued by the Commission under this part. When used in the context of a license authorizing an individual to manipulate the controls of a facility, *license* means a license issued by the Commission to perform the function of an operator, senior operator, or generally licensed reactor operator as defined in this part.

*Licensee* means a person who is authorized to conduct activities under a license issued under this part by the Commission.

*Licensing-basis events* means a collection of event sequences considered in the design and licensing of the commercial nuclear plant. Licensing-basis events are unplanned events and include anticipated event sequences, unlikely event sequences, very unlikely event sequences, and DBAs.

*Licensing-basis information* means the information contained in regulations, orders, licenses, certifications, or approvals issued by the NRC for a commercial nuclear plant licensed under this part and that information submitted to the NRC by an applicant or licensee in a Safety Analysis Report, program description, or other licensing-related document required under this part.

*Low-population zone* means the area immediately surrounding the exclusion area which contains residents, the total number and density of which are such that there is a reasonable probability that appropriate protective measures could be taken on their behalf in the event of a serious accident. A permissible population density or total population within this zone is not included in this definition because the situation may vary from case to case. Whether a specific number of people

can, for example, be evacuated from a specific area or instructed to take shelter on a timely basis, will depend on many factors such as location, number and size of highways, scope and extent of advance planning, and actual distribution of residents within the area.

*Major decommissioning activity* means, for a commercial nuclear plant, any activity that results in permanent removal of major radioactive components, permanently modifies the structure of the containment, if applicable, or results in dismantling components for shipment containing greater than class C waste in accordance with 10 CFR 61.55.

*Major feature of the emergency plans* means an aspect of those plans necessary to:

(1) Address in whole or part either one or more of the 16 standards in 10 CFR 50.47(b) or the requirements of 10 CFR 50.160(b), as applicable; or

(2) Describe the emergency planning zones as required in § 53.1109(g).

*Manufactured reactor* means the essential portions of a nuclear reactor that are manufactured under an ML and subsequently transported and incorporated into a commercial nuclear plant under a COL.

*Manufacturing license* means a license issued under this part that authorizes the manufacture of manufactured reactors but not its construction, installation, or operation.

*Non-Safety-Related but Safety-Significant (NSRSS) SSCs* means those SSCs which are not SR but are relied on to achieve adequate defense in depth or perform risk-significant functions and warrant special treatment.

*Non-Safety-Significant SSCs* means those SSCs that are not SR or NSRSS, are not relied on to achieve adequate defense in depth or to perform risk-significant functions, and do not warrant special treatment.

*Person* means—

(1) any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, government agency other than the Commission or the Department, except that the Department shall be considered a person to the extent that its facilities are subject to the licensing and related regulatory authority of the Commission pursuant to section 202 of the ERA, any State or any political subdivision of, or any political entity within a State, any foreign government or nation or any political subdivision of any such government or nation, or other entity; and

(2) any legal successor, representative, agent, or agency of the foregoing.

*Population center distance* means the distance from the reactor to the nearest boundary of a densely populated center containing more than about 25,000 residents.

*Probabilistic risk assessment* means a quantitative assessment of the risk associated with plant operation and maintenance that is measured in terms of event sequence occurrence frequencies and consequences.

*Programmatic controls* means administrative procedures that govern human action in implementing programs and operating, monitoring, and maintaining SSCs and equipment of a commercial nuclear plant. Programmatic controls considered to be licensing basis information are specified in an application for a requested activity of the Commission.

*Quality assurance (QA)* means all those planned and systematic actions necessary to ensure that a structure, system, or component will perform satisfactorily in service. Quality assurance includes quality control, which comprises those QA actions related to the physical characteristics of a material, structure, component, or system which provide a means to control the quality of the material, structure, component, or system to predetermined requirements.

*Safety criteria* means performance-based metrics that establish a level of safety provided in requirements in §§ 53.210 and 53.220.

*Safety-related structures, systems, or components* means those SSCs that are relied upon to demonstrate compliance with the safety criteria in § 53.210 and warrant special treatment.

*Small modular reactor* means a power reactor, which may be of modular design as defined in 10 CFR 52.1, licensed under this part to produce heat energy up to 1,000 megawatts thermal per module.

*Site characteristics* means the actual physical, environmental, and demographic features of a site. Site characteristics are specified in an early site permit or in a Preliminary or Final Safety Analysis Report for a limited work authorization, CP, or COL, as applicable.

*Site parameters* are the postulated physical, environmental, and demographic features of an assumed site. Site parameters are specified in a standard design approval, standard design certification, or ML.

*Source material* means source material as defined in subsection 11z. of the Atomic Energy Act of 1954, as amended, (the Act) and in the regulations contained in part 40 of this chapter.

*Special nuclear material (SNM)* means:

(1) Plutonium, uranium-233, uranium enriched in the isotope-233 or in the isotope-235, and any other material which the Commission, pursuant to the provisions of section 51 of the Act, determines to be SNM, but does not include source material; or

(2) Any material artificially enriched by any of the foregoing, but does not include source material.

*Special treatment* means those requirements, such as QA and programmatic controls, that ensure that SR and NSRSS SSCs will provide defense in depth or perform risk-significant functions. The requirements also ensure that the SSCs will perform under the service conditions and with the reliability assumed in the analysis performed under § 53.450 to demonstrate compliance with the safety criteria in §§ 53.210 and 53.220.

*Standard design* means a design which is sufficiently detailed and complete to support certification or approval in accordance with subpart H of this part, and which is usable under of this part for a multiple number of units or at a multiple number of sites without reopening or repeating the review.

*Standard design approval or design approval* means an NRC staff approval, issued under subpart H of this part, of a final standard design for a commercial nuclear plant. The approval may be for either the final design for the entire reactor facility or the final design of major portions thereof.

*Standard design certification or design certification* means a Commission approval, issued under subpart H of this part, of a final standard design for a nuclear power facility. This design may be referred to as a certified standard design.

*Total effective dose equivalent* means the sum of the effective dose equivalent (for external exposures) and the committed effective dose equivalent (for internal exposures).

*Utilization facility* means any commercial nuclear reactor other than one designed or used primarily for the formation of plutonium or uranium-233.

*Unlikely event sequences* means event sequences that are not expected to occur in the life of a commercial nuclear plant and are less likely than anticipated event sequences, but are infrequent rather than rare. Unlikely event sequences take into account the expected response of all SSCs within the plant regardless of safety classification.

*Very unlikely event sequences* means event sequences that are not expected to

occur in the life of a commercial nuclear plant, are less likely than an unlikely event sequence, and are rare. Very unlikely event sequences take into account the expected response of all SSCs within the plant regardless of safety classification.

#### § 53.030 [Reserved]

#### § 53.040 Written communications.

(a) *General requirements.* All correspondence, reports, applications, and other written communications from the applicant or licensee to the NRC concerning the regulations in this part or individual license conditions must be sent either by mail addressed: ATTN: Document Control Desk, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; by hand delivery to the NRC's offices at 11555 Rockville Pike, Rockville, Maryland, between the hours of 8:15 a.m. and 4 p.m. eastern time; or, where practicable, by electronic submission, for example, via Electronic Information Exchange, email, or CD-ROM. Electronic submissions must be made in a manner that enables the NRC to receive, read, authenticate, distribute, and archive the submission, and process and retrieve it a single page at a time. Detailed guidance on making electronic submissions can be obtained by visiting the NRC's website at <http://www.nrc.gov/site-help/e-submittals.html>; by email to [MSHD.Resource@nrc.gov](mailto:MSHD.Resource@nrc.gov); or by writing the Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. The guidance discusses, among other topics, the formats the NRC can accept, the use of electronic signatures, and the treatment of nonpublic information. If the communication is on paper, the signed original must be sent. If a submission due date falls on a Saturday, Sunday, or Federal holiday, the next Federal working day becomes the official due date.

(b) *Distribution requirements.* Copies of all correspondence, reports, and other written communications concerning the regulations in this part or individual license conditions, or the terms and conditions of an early site permit or standard design approval, must be submitted to the persons listed below (addresses for the NRC Regional Offices are listed in appendix D to 10 CFR part 20).

(1) *Applications for amendment of permits and licenses, reports, and other communications.* All written communications (including responses to generic letters, bulletins, information notices, regulatory information summaries, inspection reports, and



miscellaneous requests for additional information) that are required of holders of licenses, permits, and design approvals issued pursuant to this part, must be submitted as follows, except as otherwise specified in paragraphs (b)(2) through (7) of this section: to the NRC's Document Control Desk (if on paper, the signed original), with a copy to the appropriate Regional Office, and a copy to the appropriate NRC Resident Inspector if one has been assigned to the site of the facility or the place of manufacture of a reactor licensed under this part.

(2) *Applications for permits and licenses, and amendments to applications.* Applications for licenses, permits, and design approvals and amendments to any of these types of applications must be submitted to the NRC's Document Control Desk, with a copy to the appropriate Regional Office, and a copy to the appropriate NRC Resident Inspector if one has been assigned to the facility or the place of manufacture of a reactor licensed under this part, except as otherwise specified in paragraphs (b)(3) through (9) of this section. If the application or amendment is on paper, the submission to the Document Control Desk must be the signed original.

(3) *Acceptance review application.* Written communications required for an application for determination of suitability for docketing must be submitted to the NRC's Document Control Desk, with a copy to the appropriate Regional Office. If the communication is on paper, the submission to the Document Control Desk must be the signed original.

(4) *Security plan and related submissions.* Written communications, as defined in paragraphs (b)(4)(i) through (v) of this section, must be submitted to the NRC's Document Control Desk, with a copy to the appropriate Regional Office. If the communication is on paper, the submission to the Document Control Desk must be the signed original. Submissions should include the following as appropriate:

- (i) Physical security plan;
- (ii) Safeguards contingency plan;
- (iii) Cybersecurity plan;
- (iv) Change to security plan, guard training and qualification plan, safeguards contingency plan, or cybersecurity plan made without prior Commission approval under § 53.1565; and

- (v) Application for amendment of physical security plan, guard training and qualification plan, safeguards contingency plan, or cybersecurity plan under § 53.1510.

(5) *Emergency plan and related submissions.* Written communications as defined in paragraphs (b)(5)(i) through (iii) of this section must be submitted to the NRC's Document Control Desk, with a copy to the appropriate Regional Office, and a copy to the appropriate NRC Resident Inspector if one has been assigned to the site of the facility. If the communication is on paper, the submission to the Document Control Desk must be the signed original. Submissions should include the following as appropriate:

- (i) Emergency plan;
- (ii) Change to an emergency plan under § 53.1565; and
- (iii) Emergency implementing procedures under § 53.855.

(6) *Updated Final Safety Analysis Report.* An Updated Final Safety Analysis Report or replacement pages under § 53.1545 must be submitted to the NRC's Document Control Desk, with a copy to the appropriate Regional Office, and a copy to the appropriate NRC Resident Inspector if one has been assigned to the site of the facility or the place of manufacture of a reactor licensed under this part. Paper copy submissions may be made using replacement pages; however, if a licensee chooses to use electronic submission, all subsequent updates or submissions must be performed electronically on a total replacement basis. If the communication is on paper, the submission to the Document Control Desk must be the signed original. If the communications are submitted electronically, see Guidance for Electronic Submissions to the Commission.

(7) *Quality assurance related submissions.* (i) A change to the Safety Analysis Report QA program description under § 53.1565, or a change to a licensee's NRC-accepted QA topical report under § 53.1565, must be submitted to the NRC's Document Control Desk, with a copy to the appropriate Regional Office, and a copy to the appropriate NRC Resident Inspector if one has been assigned to the site of the facility or the place of manufacture of a reactor licensed under this part. If the communication is on paper, the submission to the Document Control Desk must be the signed original.

(ii) A change to an NRC-accepted QA topical report from non-licensees (*i.e.*, architect/engineers, nuclear steam supply system suppliers, fuel suppliers, constructors, etc.) must be submitted to the NRC's Document Control Desk. If the communication is on paper, the signed original must be sent.

(8) *Certification of permanent cessation of operations.* The licensee's certification of permanent cessation of operations, under subpart G of this part, must state the date on which operations have ceased or will cease, and must be submitted to the NRC's Document Control Desk. This submission must be under oath or affirmation.

(9) *Certification of permanent fuel removal.* The licensee's certification of permanent fuel removal, under subpart G of this part, must state the date on which the fuel was removed from the reactor vessel and the disposition of the fuel, and must be submitted to the NRC's Document Control Desk. This submission must be under oath or affirmation.

(c) *Form of communications.* All paper copies submitted to demonstrate compliance with the requirements set forth in paragraph (b) of this section must be typewritten, printed, or otherwise reproduced in permanent form on unglazed paper. Exceptions to these requirements imposed on paper submissions may be granted for the submission of micrographic, photographic, or similar forms.

(d) *Regulation governing submission.* Licensees, applicants, and holders of standard design approvals submitting correspondence, reports, and other written communications under the regulations of this part are requested but not required to cite whenever practical, in the upper right corner of the first page of the submission, the specific regulation or other basis requiring submission.

#### **§ 53.050 Deliberate misconduct.**

(a) Any licensee or applicant for a license; holder of or applicant for a standard design approval; applicant for a standard design certification; employee of a licensee, holder of a standard design approval, or applicant for a license, standard design approval, or standard design certification; or any contractor (including a supplier or consultant), subcontractor, employee of a contractor or subcontractor of any licensee or applicant for a license, holder of or applicant for a standard design approval, or applicant for a standard design certification, who knowingly provides to any licensee, applicant, contractor, or subcontractor, any components, equipment, materials, or other goods or services that relate to a licensee's or applicant's activities in this part, may not—

(1) Engage in deliberate misconduct that causes or would have caused, if not detected, a licensee or applicant to be in violation of any rule, regulation, or order; or any term, condition, or

limitation of any license issued by the Commission; or

(2) Deliberately submit to the NRC, a licensee, an applicant, or a licensee's or applicant's contractor or subcontractor, information that the person submitting the information knows to be incomplete or inaccurate in some respect material to the NRC.

(b) A person who violates paragraph (a)(1) or (2) of this section may be subject to enforcement action in accordance with the procedures in subpart B of 10 CFR part 2.

(c) For the purposes of paragraph (a)(1) of this section, deliberate misconduct by a person means an intentional act or omission that the person knows—

(1) Would cause a licensee or applicant to be in violation of any rule, regulation, or order; or any term, condition, or limitation, of any license issued by the Commission; or

(2) Constitutes a violation of a requirement, procedure, instruction, contract, purchase order, or policy of a licensee, applicant, contractor, or subcontractor.

#### **§ 53.060 Employee protection.**

(a) Discrimination by a Commission licensee, holder of a standard design approval, an applicant for a license, standard design certification, or standard design approval, a contractor or subcontractor of a Commission licensee, holder of a standard design approval, applicant for a license, standard design certification, or standard design approval, against an employee for engaging in certain protected activities is prohibited. Discrimination includes discharge and other actions that relate to compensation, terms, conditions, or privileges of employment. The protected activities are established in section 211 of the Energy Reorganization Act of 1974, as amended, and in general are related to the administration or enforcement of a requirement imposed under the Act or the Energy Reorganization Act of 1974, as amended.

(1) The protected activities include but are not limited to—

(i) Providing the Commission or his or her employer information about alleged violations of either of the statutes named in paragraph (a) of this section or possible violations of requirements imposed under either of those statutes;

(ii) Refusing to engage in any practice made unlawful under either of the statutes named in paragraph (a) of this section or under these requirements if the employee has identified the alleged illegality to the employer;

(iii) Requesting the NRC to institute action against his or her employer for the administration or enforcement of these requirements;

(iv) Testifying in any Commission proceeding, or before Congress, or at any Federal or State proceeding regarding any provision (or proposed provision) of either of the statutes named in paragraph (a) of this section; and

(v) Assisting or participating in, or being about to assist or participate in, these activities.

(2) These activities are protected even if no formal proceeding is actually initiated as a result of the employee assistance or participation.

(3) This section has no application to any employee alleging discrimination prohibited by this section who, acting without direction from his or her employer (or the employer's agent), deliberately causes a violation of any requirement of the Energy Reorganization Act of 1974, as amended, or the Act.

(b) Any employee who believes that they have been discharged or otherwise discriminated against by any person for engaging in protected activities specified in paragraph (a)(1) of this section may seek a remedy for the discharge or discrimination through an administrative proceeding in the Department of Labor. The administrative proceeding must be initiated within 180 days after an alleged violation occurs. The employee may do this by filing a complaint alleging the violation with the Department of Labor, Wage and Hour Division. The Department of Labor may order reinstatement, back pay, and compensatory damages.

(c) A violation of paragraph (a), (e), or (f) of this section by a Commission licensee, a holder of a standard design approval, an applicant for a Commission license, standard design certification, or a standard design approval, or a contractor or subcontractor of a Commission licensee, holder of a standard design approval, or any applicant may be grounds for—

(1) Denial, revocation, or suspension of the license or standard design approval;

(2) Withdrawal or revocation of a proposed or final standard design certification;

(3) Imposition of a civil penalty on the licensee, holder of a standard design approval, or applicant (including an applicant for a standard design certification under this part following Commission adoption of final design certification rule) or a contractor or subcontractor of the licensee, holder of

a standard design approval, or applicant; or

(4) Other enforcement action.

(d) Actions taken by an employer, or others, which adversely affect an employee may be predicated upon nondiscriminatory grounds. The prohibition applies when the adverse action occurs because the employee has engaged in protected activities. An employee's engagement in protected activities does not automatically render him or her immune from discharge or discipline for legitimate reasons or from adverse action dictated by nonprohibited considerations.

(e)(1) Each holder or applicant for a license or design approval, must prominently post the revision of NRC Form 3, "Notice to Employees," referenced in § 19.11(e)(1) of this chapter. This form must be posted at locations sufficient to permit employees protected by this section to observe a copy on the way to or from their place of work. Premises must be posted no later than 30 days after an application is docketed and remain posted while the application is pending before the Commission, during the term of the license, and for 30 days following license termination.

(2) Copies of NRC Form 3 may be obtained by writing to the Regional Administrator of the appropriate NRC Regional Office listed in appendix D to 10 CFR part 20, via email to [Forms.Resource@nrc.gov](mailto:Forms.Resource@nrc.gov), or by visiting the NRC's online library at <http://www.nrc.gov/reading-rm/doc-collections/forms/>.

(f) No agreement affecting the compensation, terms, conditions, or privileges of employment, including an agreement to settle a complaint filed by an employee with the Department of Labor pursuant to section 211 of the Energy Reorganization Act of 1974, as amended, may contain any provision which would prohibit, restrict, or otherwise discourage an employee from participating in protected activity as defined in paragraph (a)(1) of this section including, but not limited to, providing information to the NRC or to his or her employer on potential violations or other matters within NRC's regulatory responsibilities.

(g) Part 19 of 10 CFR sets forth requirements and regulatory provisions applicable to licensees, holders of a standard design approval, applicants for a license, standard design certification, or standard design approval, and contractors or subcontractors of a Commission licensee, or holder of a standard design approval, and are in addition to the requirements in this section.

**§ 53.070 Completeness and accuracy of information.**

(a) Information provided to the Commission by a holder of a license, permit, design certification, or standard design approval under this part or an applicant for a license, permit, design certification, or standard design approval under this part, and information required by statute or by the Commission's regulations, orders, license conditions, or terms and conditions of a standard design approval to be maintained by the applicant or the licensee must be complete and accurate in all material respects.

(b) Each applicant or licensee, each holder of a standard design approval under this part, and each applicant for a standard design certification under this part following Commission adoption of a final design certification regulation, must notify the Commission of information identified by the applicant or licensee as having for the regulated activity a significant implication for public health and safety or common defense and security. An applicant, licensee, or holder violates this paragraph only if the applicant, licensee, or holder fails to notify the Commission of information that the applicant, licensee, or holder has identified as having a significant implication for public health and safety or common defense and security. Notification must be provided to the Administrator of the appropriate Regional Office within 2 working days of identifying the information. This requirement is not applicable to information which is already required to be provided to the Commission by other reporting or updating requirements.

**§ 53.080 Specific exemptions.**

(a) The Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of the regulations of this part, which are authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security.

(b) The Commission will not consider granting an exemption unless special circumstances are present. Special circumstances are present whenever—

(1) Application of the regulation in the particular circumstances conflicts with other rules or requirements of the Commission;

(2) Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule;

(3) Compliance would result in undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted, or that are significantly in excess of those incurred by others similarly situated;

(4) The exemption would result in benefit to the public health and safety that compensates for any decrease in safety that may result from the grant of the exemption;

(5) The exemption would provide only temporary relief from the applicable regulation and the licensee or applicant has made good faith efforts to comply with the regulation; or

(6) There is present any other material circumstance not considered when the regulation was adopted for which it would be in the public interest to grant an exemption. If such condition is relied on exclusively for demonstrating compliance with paragraph (b) of this section, the exemption may not be granted until the Executive Director for Operations has consulted with the Commission.

(c) Any person may request an exemption permitting the conduct of construction activities prior to the issuance of a CP. The Commission may grant such an exemption upon considering and balancing the following factors:

(1) Whether conduct of the proposed activities will give rise to a significant adverse impact on the environment and the nature and extent of such impact, if any;

(2) Whether redress of any adverse environment impact from conduct of the proposed activities can reasonably be effective should such redress be necessary;

(3) Whether conduct of the proposed activities would foreclose subsequent adoption of alternatives; and

(4) The effect of delay in conducting such activities on the public interest, including whether the power needs to be used by the proposed facility, the availability of alternative sources, if any, to meet those needs on a timely basis and delay costs to the applicant and to consumers.

(d) Issuance of such an exemption must not be deemed to constitute a commitment to issue a CP. During the period of any exemption granted pursuant to paragraph (c) of this section, any activities conducted must be carried out in such a manner as will minimize or reduce their environmental impact.

(e) The Commission's consideration of requests for exemptions from requirements of the regulations of other parts in this chapter that are applicable by virtue of this part must be governed

by the exemption requirements of those parts.

**§ 53.090 Standards for review.**

(a) *Common standards.* In determining that a CP, OL, early site permit, COL, or ML under this part will be issued to an applicant, the Commission will be guided by the following considerations:

(1) Except for an early site permit or ML, the processes to be performed, the operating procedures, the facility and equipment, the use of the facility, and other technical specifications, or the proposals, in regard to any of the foregoing, collectively provide reasonable assurance that the applicant will comply with the regulations in this chapter, including the regulations in 10 CFR part 20, and that the health and safety of the public will not be endangered.

(2) The applicant for a CP, OL, COL, or ML is technically and financially qualified to engage in the proposed activities in accordance with the regulations in this chapter. However, no consideration of financial qualification is necessary for an electric utility applicant for an OL for a utilization facility of the type described in paragraph (d) of this section or for an applicant for an ML.

(3) The issuance of a CP, OL, early site permit, COL, or ML to the applicant will not, in the opinion of the Commission, be inimical to the common defense and security or to the health and safety of the public.

(4) Any applicable requirements of subpart A of 10 CFR part 51 have been satisfied.

(b) *Additional standards for licenses.* In determining whether a license will be issued to an applicant, the Commission will, in addition to applying the standards set forth in paragraph (a) of this section, consider whether the proposed activities will serve a useful purpose proportionate to the quantities of SNM or source material to be utilized.

(c) *Additional standards and provisions affecting licenses for commercial power.* In addition to applying the standards set forth in paragraphs (a) and (b) of this section, paragraphs (c)(1) through (c)(4) of this section apply in the case of a license for a facility for the generation of commercial power.

(1) The NRC will—

(i) Give notice in writing of each application to the regulatory agency or State as may have jurisdiction over the rates and services incident to the proposed activity;

(ii) Publish notice of the application in trade or news publications as it

deems appropriate to give reasonable notice to municipalities, private utilities, public bodies, and cooperatives which might have a potential interest in the utilization or production facility; and

(iii) Publish notice of the application once each week for four consecutive weeks in the **Federal Register**. No license will be issued by the NRC prior to the giving of these notices and until four weeks after the last notice is published in the **Federal Register**.

(2) If there are conflicting applications for a limited opportunity for such license, the Commission will give preferred consideration in the following order: first, to applications submitted by public or cooperative bodies for facilities to be located in high cost power areas in the United States; second, to applications submitted by others for facilities to be located in such areas; third, to applications submitted by public or cooperative bodies for facilities to be located in areas other than high cost power areas; and, fourth, to all other applicants.

(3) The licensee who transmits electric energy in interstate commerce, or sells it at wholesale in interstate commerce, must be subject to the regulatory provisions of the Federal Power Act.

(4) Nothing shall preclude any government agency, now or hereafter authorized by law to engage in the production, marketing, or distribution of electric energy, if otherwise qualified, from obtaining a CP, OL, or COL under this part for a utilization facility for the primary purpose of producing electric energy for disposition for ultimate public consumption.

(d) *Licenses for commercial nuclear plants.* A license will be issued, to an applicant who qualifies, for any one or more of the following: to transfer or receive in interstate commerce, or manufacture, produce, transfer, acquire, possess, or use a utilization facility for industrial or commercial purposes.

#### **§ 53.100 Jurisdictional limits.**

No permit, license, standard design approval, or standard design certification under this part shall be deemed to have been issued for activities that are not under or within the jurisdiction of the United States.

#### **§ 53.110 Attacks and destructive acts.**

Licensees, applicants for licenses, permits, certifications, and design approvals, and applicants for an amendment to any license, permit, certification, or design approval under this part are not required to provide for design features or other measures for the

specific purpose of protection against the effects of—

(a) Attacks and destructive acts, including sabotage, directed against the facility by an enemy of the United States, whether a foreign government or other person; or

(b) Use or deployment of weapons incident to U.S. defense activities.

#### **§ 53.115 Rights related to special nuclear material.**

(a) No right to the SNM will be conferred by a license issued under this part except as may be defined by the license.

(b) Neither a license issued under this part, nor any right thereunder, nor any right to utilize or produce SNM may be transferred, assigned, or disposed of in any manner, either voluntarily or involuntarily, directly or indirectly, through transfer of control of the license to any person, unless the Commission, after securing full information, finds that the transfer is in accordance with the provisions of the Act and gives its consent in writing.

#### **§ 53.117 License suspension and rights of recapture.**

Any license issued under this part must be subject to suspension and to the rights of recapture of the material or control of the facility reserved to the Commission under section 108 of the Act in a state of war or national emergency declared by Congress.

#### **§ 53.120 Information collection requirements: OMB approval.**

(a) The NRC has submitted the information collection requirements contained in this part to the Office of Management and Budget (OMB) for approval as required by the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). The NRC 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. OMB has approved the information collection requirements contained in this part under control number 3150–XXXX.

(b) The approved information collection requirements contained in this part appear in §§ 53.070, 53.080, 53.240, 53.410, 53.420, 53.425, 53.430, 53.440, 53.450, 53.480, 53.500, 53.540, 53.605, 53.610, 53.620, 53.700, 53.710, 53.715, 53.720, 53.730, 53.780, 53.785, 53.805, 53.810, 53.815, 53.830, 53.850, 53.855, 53.865, 53.870, 53.875, 53.880, 53.910, 53.1010, 53.1020, 53.1030, 53.1045, 53.1060, 53.1070, 53.1075, 53.1080, 53.1100, 53.1109, 53.1115, 53.1130, 53.1140, 53.1144, 53.1146, 53.1173, 53.1182, 53.1188, 53.1200, 53.1206, 53.1209, 53.1210, 53.1221,

53.1230, 53.1236, 53.1239, 53.1241, 53.1254, 53.1257, 53.1263, 53.1270, 53.1276, 53.1279, 53.1282, 53.1288, 53.1295, 53.1300, 53.1306, 53.1309, 53.1312, 53.1327, 53.1330, 53.1333, 53.1336, 53.1348, 53.1360, 53.1366, 53.1369, 53.1372, 53.1384, 53.1410, 53.1413, 53.1416, 53.1419, 53.1437, 53.1449, 53.1452, 53.1458, 53.1470, 53.1505, 53.1510, 53.1515, 53.1525, 53.1530, 53.1535, 53.1540, 53.1545, 53.1550, 53.1560, 53.1565, 53.1570, 53.1575, 53.1580, 53.1620, 53.1630, 53.1645, 53.1680, 53.1690, 53.1720.

(c) This part contains information collection requirements in addition to those approved under the control number specified in paragraph (a) of this section. The information collection requirement and the control numbers under which it is approved are as follows:

(1) In §§ 53.765, 53.770, 53.780, and 53.795, NRC Form 396 is approved under control number 3150–0024.

(2) In §§ 53.775 and 53.795, NRC Form 398 is approved under control number 3150–0090.

(3) In § 53.1640, NRC Form 366 is approved under control number 3150–0104.

(4) In § 53.1630, NRC Form 361 is approved under control number 3150–0238.

(5) In § 53.1650, International Atomic Energy Agency Design Information Questionnaire forms are approved under control number 3150–0056.

(6) In § 53.1650, DOC/NRC Form AP–A and associated forms are approved under control numbers 0694–0135.

### **Subpart B—Technology-Inclusive Safety Requirements**

#### **§ 53.210 Safety criteria for design-basis accidents.**

Design features and programmatic controls must be provided for each commercial nuclear plant such that identification and analyses of design-basis accidents (DBAs) in accordance with § 53.240 demonstrate the following:

(a) An individual located at any point on the boundary of the exclusion area for any 2-hour period following the onset of the postulated fission product release would not receive a radiation dose in excess of 25 rem (250 millisieverts) total effective dose equivalent (TEDE); and

(b) An individual located at any point on the outer boundary of the low-population zone who is exposed to the radioactive cloud resulting from the postulated fission product release (during the entire period of its passage) would not receive a radiation dose in

excess of 25 rem (250 millisieverts) TEDE.<sup>1</sup>

<sup>1</sup> The use of 25 rem TEDE is not intended to imply that this number constitutes an acceptable limit for an emergency dose to the public under accident conditions. Rather, this dose value has been set forth in this section as a reference value, which can be used in the evaluation of plant design features with respect to postulated reactor accidents, to assure that these designs provide assurance of low risk of public exposure to radiation, in the event of an accident.

#### **§ 53.220 Safety criteria for licensing-basis events other than design-basis accidents.**

Design features and programmatic controls must be provided for each commercial nuclear plant such that identification and analysis of licensing-basis events (LBEs) other than DBAs in accordance with § 53.240 demonstrate the following:

(a) Plant SSCs, personnel, and programs provide the necessary capabilities and maintain the necessary reliability to address LBEs other than DBAs in accordance with §§ 53.240 and 53.450(e), and provide measures for defense in depth in accordance with § 53.250; and

(b) The analysis of risks to public health and safety resulting from LBEs other than DBAs under § 53.450(e) includes comprehensive risk metrics that satisfy associated risk performance objectives that are acceptable to the NRC and provide an appropriate level of safety.

#### **§ 53.230 Safety functions.**

(a) The primary safety function is limiting the release of radioactive materials from the facility and must be maintained during normal operation and for LBEs over the life of the plant.

(b) Additional safety functions needed to support the retention of radioactive materials during LBEs—such as controlling reactivity, heat generation, heat removal, and chemical interactions—must be identified for each commercial nuclear plant.

(c) The primary and additional safety functions are required to satisfy the safety criteria defined in §§ 53.210 and 53.220, or more restrictive alternative criteria adopted under § 53.470, and must be fulfilled by the design features, human actions, and programmatic controls specified throughout this part.

#### **§ 53.240 Licensing-basis events.**

(a) Licensing-basis events must be identified for each commercial nuclear plant and analyzed under § 53.450 to demonstrate that the safety requirements in this subpart have been satisfied.

(b) The identified LBEs, ranging from anticipated event sequences to very unlikely event sequences, must collectively address combinations of malfunctions of plant SSCs, human errors, facility hazards, and the effects of external hazards.

(c) The analysis of LBEs must—

(1) Include analysis of one or more DBAs under § 53.450(f);

(2) Confirm the adequacy of design features and programmatic controls needed to satisfy the safety criteria defined in §§ 53.210 and 53.220, or more restrictive alternative criteria adopted under § 53.470, and

(3) Establish related functional requirements for plant SSCs, personnel, and programs.

#### **§ 53.250 Defense in depth.**

(a) Measures must be taken for each commercial nuclear plant to ensure appropriate defense in depth is provided to compensate for uncertainties in the analysis of the safety criteria such that there is reasonable assurance that the safety criteria in this subpart are met over the life of the plant.

(b) The uncertainties that must be addressed under paragraph (a) of this section include those related to the state of knowledge and modeling capabilities, the ability of barriers to limit the release of radioactive materials from the facility during LBEs other than DBAs, the reliability and performance of plant SSCs and personnel, and the effectiveness of programmatic controls.

(c) The safety analysis may not rely upon a single engineered design feature, human action, or programmatic control, no matter how robust, to address the range of LBEs other than DBAs.

#### **§ 53.260 Normal operations.**

Holders of licenses to operate commercial nuclear plants under this part must control public doses and dose rates in unrestricted areas from normal plant operations to meet the requirements in 10 CFR part 20.

#### **§ 53.270 Protection of plant workers.**

Holders of licenses to operate commercial nuclear plants under this part must control occupational doses to meet the requirements in 10 CFR part 20.

### **Subpart C—Design and Analysis Requirements**

#### **§ 53.400 Design features for licensing-basis events.**

(a) Design features must be provided for each commercial nuclear plant such that, when combined with corresponding human actions and

programmatic controls, the plant will satisfy the safety criteria defined in §§ 53.210 and 53.220, or more restrictive alternative criteria adopted under § 53.470.

(b) Design features must ensure that the safety functions identified in § 53.230 are fulfilled during licensing-basis events (LBEs).

#### **§ 53.410 Functional design criteria for design-basis accidents.**

(a) Functional design criteria must be defined for each design feature required by § 53.400 and relied upon to demonstrate compliance with the safety criteria defined in § 53.210.

(b) Corresponding human actions and programmatic controls must be identified and implemented in accordance with this and other subparts to achieve and maintain the reliability and capability of structures, systems, and components (SSCs) relied upon to satisfy the defined functional design criteria and the safety criteria required in § 53.210, and to maintain consistency with analyses required by § 53.450(f).

#### **§ 53.415 Protection against external hazards.**

Safety-related (SR) SSCs must be protected against or must be designed to withstand the effects of natural phenomena (*e.g.*, earthquakes, tornadoes, hurricanes, floods, tsunamis, and seiches) and constructed hazards (*e.g.*, dams, transportation routes, military and industrial facilities) considering an event severity up to the design-basis external hazard levels as determined under § 53.510 without losing the capability to perform the safety functions identified under § 53.230. Specific requirements for earthquake engineering are included in § 53.480.

#### **§ 53.420 Functional design criteria for licensing-basis events other than design-basis accidents.**

(a) Functional design criteria must be defined for each design feature required by § 53.400 and relied upon to—

(1) Demonstrate compliance with the safety criteria in § 53.220 or more restrictive alternative criteria adopted under § 53.470; and

(2) Demonstrate compliance with the evaluation criteria in § 53.450(e) or more restrictive alternative criteria adopted under § 53.470.

(b) Corresponding human actions and programmatic controls must be identified and implemented in accordance with this and other subparts to achieve and maintain the reliability and capability of SSCs relied upon to—

(1) Satisfy the safety criteria in § 53.220 or more restrictive alternative criteria adopted under § 53.470; and  
 (2) Satisfy the evaluation criteria in § 53.450(e) or more restrictive alternate criteria adopted under § 53.470.

**§ 53.425 Design features and functional design criteria for normal operations.**

(a) Design features must be provided for each commercial nuclear plant to support the Radiation Protection Program required in § 53.850.

(b) Functional design criteria must be defined for each design feature relied upon to demonstrate compliance with § 53.850.

(c) Functional design criteria, including design objectives for dose to the maximally exposed member of the public, must be defined for design features to show that plant design features and corresponding programmatic controls, including monitoring programs, control liquid, gaseous, and solid wastes, as required under part 20 of this chapter.<sup>1</sup>

<sup>1</sup> A guide for keeping doses to the public as low as is reasonably achievable is that the estimated annual dose to the maximally exposed member of the public does not exceed 10 mrem total effective dose equivalent. A design objective of maintaining doses below 10 mrem/year should not be construed as a radiation protection standard.

**§ 53.430 Design features and functional design criteria for protection of plant workers.**

(a) Design features must be provided for each commercial nuclear plant such that, when combined with corresponding programmatic controls, the requirements in § 53.270 can be met.

(b) Functional design criteria must be defined for each design feature relied upon to demonstrate compliance with § 53.270.

**§ 53.440 Design requirements.**

(a)(1) Analysis, appropriate test programs, prototype testing, operating experience, or a combination thereof must demonstrate that each design feature required by § 53.400 meets the defined functional design criteria required by §§ 53.410 and 53.420. This demonstration must consider interdependent effects throughout the commercial nuclear plant and the range of conditions under which the design features required by § 53.400 must function throughout the plant's lifetime.

(2) The design processes for SR and non-safety-related but safety-significant (NSRSS) SSCs under this part must include administrative procedures for evaluating operating, design, and construction experience and for considering applicable important

industry experiences in the design of those SSCs.

(b) The design features required by § 53.400 must, wherever applicable, be designed using generally accepted consensus codes and standards that have been endorsed or otherwise found acceptable by the U.S. Nuclear Regulatory Commission (NRC).

(c) The materials used for each SR and NSRSS SSC must be qualified for their service conditions over the design life of the SSC.

(d) Possible degradation mechanisms related to aging, fatigue, chemical interactions, operating temperatures, effects of irradiation, and other environmental factors that may affect the performance of SR and NSRSS SSCs must be evaluated and used to inform the design and the development of integrity assessment programs under § 53.870.

(e)(1) Safety-related and NSRSS SSCs must be designed and located to minimize, consistent with other safety requirements in this part, the probability and effect of fires and explosions.

(2) Noncombustible and fire-resistant materials must be used wherever practical throughout the facility, particularly in locations with SR and NSRSS SSCs.

(3) Fire detection and fire suppression systems of appropriate capacity and capability must be provided and designed to minimize the adverse effects of fires on SR and NSRSS SSCs.

(4) Fire suppression systems must be designed to ensure that their rupture or inadvertent operation does not significantly impair the ability of SR and NSRSS SSCs to perform their safety functions to satisfy § 53.230.

(f) Safety and security must be considered together in the design process such that, where possible, security issues are effectively resolved through design and engineered security features.

(g) The reactor system and waste stores for each commercial nuclear plant must be capable of achieving and maintaining a subcritical condition during normal operations and following any LBE identified in accordance with § 53.240.

(h) Each commercial nuclear plant must have a capability to provide long-term cooling of the reactor fuel and waste stores during normal operations and following any LBE identified in accordance with § 53.240.

(i) The design, analysis, staffing, and programmatic controls for each commercial nuclear plant must consider the number of reactors, waste stores, and other significant inventories of

radioactive materials and the associated operating configurations, common systems, system interfaces, and system interactions.

(j)(1) Design features must be provided and related functional design criteria defined such that, with limited use of operator actions, one or more physical barriers are maintained to limit the release of radionuclides from reactor systems, waste stores, or other significant inventories of radioactive materials assuming the impact of a large, commercial aircraft.

(2) The functional design criteria for those design features provided to address the requirements in paragraph (j)(1) of this section must be based on an assessment of the impact of a large, commercial aircraft used for long distance flights in the United States, with aviation fuel loading typically used in such flights, and an impact speed and angle of impact considering the ability of both experienced and inexperienced pilots to control large, commercial aircraft at low altitude representative of a commercial nuclear plant's low profile.<sup>1</sup>

<sup>1</sup> Changes to the detailed parameters on aircraft impact characteristics set forth in guidance must be approved by the Commission.

(k) Design features and related functional design criteria must be defined such that analyses demonstrate a low risk of permanent injury to the public due to the health effects of the chemical hazards of licensed material.

(l) Measures must be taken during the design of commercial nuclear plants to minimize, to the extent practicable, contamination of the facility and the environment, facilitate eventual decommissioning, and minimize, to the extent practicable, the generation of radioactive waste in accordance with § 20.1406 of this chapter.

(m)(1) Each commercial nuclear plant must include criticality monitoring capabilities meeting the requirements of either § 70.24 of this chapter or paragraph (m)(2) of this section.

(2) In lieu of maintaining a monitoring system capable of detecting criticality as described in § 70.24 of this chapter, criticality accident requirements may be satisfied by—

(i) Demonstrating the sub-criticality of special nuclear material, except when it is inside the reactor and the reactor is being operated, by maintaining k-effective below 0.95 at a 95 percent probability, 95 percent confidence level, under conditions that maximize reactivity for the applicable storage and handling configurations, and

(ii) Providing radiation monitors for fuel storage and associated handling

areas when fuel is present to detect excessive radiation levels and to support initiating appropriate safety actions.

(3) While a spent fuel transportation package approved under 10 CFR part 71 of this chapter or spent fuel storage cask approved under 10 CFR part 72 is in the special nuclear material handling or storage area, the requirements in 10 CFR parts 71 or 72, as applicable, and the requirements of the certificate of compliance for that package or cask, are the applicable requirements for the fuel within that package or cask.

(n)(1) The design of each commercial nuclear plant must reflect state-of-the-art human factors principles for safe and reliable performance in all locations that human activities are expected for performing or supporting the continued availability of plant safety or emergency response functions.

(2) The design must provide for the capabilities described in § 53.730(b) to ensure the plant staff are able to monitor plant conditions and respond to events.

(3) The means by which the design and human actions together will achieve the safety requirements of subpart B of this part must be evaluated and used to inform the design and the development of the concept of operations required by § 53.730(c).

(4) A functional requirements analysis and function allocation must be used to ensure that plant design features address how safety functions and functional safety criteria are satisfied, and how the safety functions will be assigned to appropriate combinations of human action, automation, active safety features, passive safety features, or inherent safety characteristics.

#### **§ 53.450 Analysis requirements.**

(a) *Requirement to have a probabilistic risk assessment (PRA).* A PRA of each commercial nuclear plant must be performed to identify potential failures, susceptibility to internal and external hazards, and other contributing factors to event sequences that might challenge the safety functions identified in § 53.230 and to support demonstrating that each commercial nuclear plant meets the safety criteria of § 53.220, or more restrictive alternative criteria adopted under § 53.470.

(b) *Specific uses of analyses.* The PRA in combination with other generally accepted approaches for systematically evaluating engineered systems must be used—

(1) In informing the selection of the LBEs, as described in § 53.240, which must be considered in the design to determine compliance with the safety criteria in subpart B of this part.

(2) For informing the classification of SSCs according to their safety significance in accordance with § 53.460 and for identifying the environmental conditions under which the SSCs and operating staff must perform their safety functions.

(3) In evaluating the adequacy of defense-in-depth measures required in accordance with § 53.250.

(4) To identify and assess all plant operating states where there is the potential for the uncontrolled release of radioactive material to the environment.

(5) To identify and assess events that challenge plant control and safety systems whose failure could lead to the uncontrolled release of radioactive material to the environment. These include internal events, such as human errors and equipment failures, and external events identified in accordance with subpart D of this part.

(c) *Maintenance and upgrade of analyses.* The PRA must be maintained at least every 5 years until the permanent cessation of operations under § 53.1070 and upgraded in conformance with generally accepted methods, standards, and practices that have been endorsed or otherwise found acceptable by the NRC.

(d) *Qualification of analytical codes.* The analytical codes used in modeling plant behavior in analyses of licensing-basis events (including but not limited to thermodynamics, reactor physics, fuel performance, and mechanistic source term codes) must be qualified for the range of conditions for which they are to be used.

(e) *Analyses of licensing-basis events other than design-basis accidents.*

(1) Analyses must be performed for LBEs other than design-basis accidents (DBAs). These LBEs must be identified using insights from a PRA in combination with other generally accepted approaches for systematically evaluating engineered systems to identify and analyze equipment failures and human errors.

(2) The analysis of LBEs other than DBAs must include definition of evaluation criteria for each event or specific categories of LBEs to determine the acceptability of the plant response to the challenges posed by internal and external hazards to provide an appropriate level of safety.

(3) The analyses of LBEs other than DBAs must address event sequences from initiation to a defined end state and be used in combination with other engineering analyses to demonstrate that the functional design criteria required by § 53.420 provide sufficient barriers to the unplanned release of radionuclides to satisfy the evaluation

criteria defined for each LBE other than DBAs, to satisfy the safety criteria specified in accordance with § 53.220 and provide defense in depth as required by § 53.250.

(4) The methodology used to identify, categorize, and analyze LBEs must include a means to identify event sequences deemed significant for controlling the risks posed to public health and safety.

(f) *Analysis of design-basis accidents.*

(1) The analysis of LBEs required by § 53.240 must include analysis of DBAs that address possible challenges to the safety functions identified under § 53.230. The events selected as DBAs must be those that, if not terminated, have the potential for exceeding the safety criteria in § 53.210.

(2) The DBAs selected must be analyzed using deterministic methods that address event sequences from initiation to a safe stable end state and assume only the SR SSCs identified under § 53.460 and human actions addressed by the requirements of subpart F of this part are available to perform the safety functions identified in accordance with § 53.230.

(3) The analysis must conservatively demonstrate compliance with the safety criteria in § 53.210.

(g) *Other required analyses.* Analyses must be performed to assess—

(1) *Fire protection.* Fire protection measures to demonstrate, through inclusion of fires in the analysis of LBEs or by separate analyses, that a fire or explosion in any plant area would not—

(i) Prevent equipment from fulfilling the safety functions identified in accordance with § 53.230, or

(ii) Challenge the safety criteria in §§ 53.210 and 53.220.

(2) *Aircraft impact.* Measures provided to protect against aircraft impacts under § 53.440(j).

(3) *Dose to members of the public.* Measures taken under § 53.425, including estimating—

(i) The quantity of each of the principal radionuclides expected to be released annually to unrestricted areas in liquid effluents produced during normal reactor operations and the dose to the maximally exposed member of the public in unrestricted areas.

(ii) The quantities of each of the principal radionuclides of the gases, halides, and particulates expected to be released annually to unrestricted areas in gaseous effluents produced during normal reactor operations and the dose to the maximally exposed member of the public in unrestricted areas.

(iii) The annual external radiation dose in unrestricted areas and the maximally exposed member of the



public in unrestricted areas due to direct radiation from contained radiation sources from the commercial nuclear plant during normal reactor operations.

**§ 53.460 Safety categorization and special treatments.**

(a) Structures, systems, and components must be classified according to their safety significance. The SSC categories must include “Safety-Related,” “Non-Safety-Related but Safety-Significant,” and “Non-Safety-Significant,” as defined in subpart A of this part.

(b) For SR and NSRSS SSCs, the conditions under which they must perform their safety function in § 53.230 must be identified. Special treatments must be established in accordance with this and other subparts to provide confidence that the SSCs will perform under the service conditions and with reliability consistent with the analysis performed under § 53.450 to demonstrate meeting the safety criteria in §§ 53.210 and 53.220, or more restrictive alternative criteria adopted under § 53.470.

(1) The special treatments for SR SSCs must include meeting the applicable quality assurance requirements from appendix B of part 50 of this chapter.

(2) The special treatments for NSRSS SSCs and special treatments for SR SSCs beyond those required under (b)(1) of this section may include meeting selected quality assurance requirements from appendix B of part 50 of this chapter when such treatment is needed to address performance requirements, equipment reliability, or uncertainties.

(c) Human actions needed to prevent or mitigate LBEs must be identified, be able to be performed reliably under the postulated environmental conditions, and be addressed by programs established in accordance with subpart F of this part to provide confidence that those actions will be performed as assumed in the analysis performed in accordance with § 53.450 to demonstrate meeting the criteria in §§ 53.210, 53.220, and 53.450(e), or more restrictive alternative criteria adopted under § 53.470.

**§ 53.470 Maintaining analytical safety margins used to justify operational flexibilities.**

Where an applicant or licensee so chooses, alternative criteria more restrictive than those defined in §§ 53.220 and 53.450(e) may be adopted to support operational flexibilities. In such cases, applicants and licensees must ensure that the functional design criteria of § 53.420, the analysis

requirements of § 53.450(e), and identification of special treatment of SSCs and human actions under § 53.460 reflect and support the use of alternative criteria to justify operational flexibilities. Licensees must ensure that measures taken to provide the analytical margins supporting operational flexibilities are incorporated into design features and programmatic controls and are maintained within programs required in other subparts.

**§ 53.480 Earthquake engineering.**

(a) *Effects of earthquakes.* Structures, systems, and components classified as SR or NSRSS must be able to withstand the effects of earthquakes, commensurate with the safety significance of the SSC, without loss of capability to perform their role in fulfilling the safety functions required by § 53.230.

(b) *Definitions.* For the purpose of this section—

*Design-Basis Ground Motions (DBGMs)* are the vibratory ground motions for which certain SSCs must be designed to remain functional.

*Operating basis earthquake (OBE) ground motion* is the vibratory ground motion for which those features of the commercial nuclear plant necessary for continued operation without undue risk to the health and safety of the public are designed to remain functional. The OBE ground motion is used in § 53.720.

*Response spectrum* is a plot of the maximum responses (acceleration, velocity, or displacement) of idealized single-degree-of-freedom oscillators as a function of the natural frequencies of the oscillators for a given damping value. The response spectrum is calculated for a specified vibratory motion input at the oscillators' supports.

*Surface deformation* is the distortion of geologic strata on or near the ground surface that occurs because of tectonic forces that result from earthquakes.

(c) *Design considerations*—(1) *Design-Basis Ground Motions.* (i) The DBGMs must be derived from the Site Ground Motion Response Spectra developed in accordance with § 53.510(c), by taking into consideration the functional design criteria of SSCs in accordance with §§ 53.410 and 53.420. The horizontal component of the DBGM(s) in the free-field at the foundation level of the structures must be an appropriate response spectrum that is determined based on the risk-significance of SSCs and their safety functions. In view of the limited data available on vibratory ground motion of strong earthquakes, it is acceptable that the design response spectra be smoothed spectra.

(ii) The commercial nuclear plant must be designed so that, if the DBGMs occur, the following SSCs remain functional and within applicable stress, strain, and deformation limits:

(A) Structures, systems, and components for which functional design criteria are established in accordance with § 53.410 or § 53.420; and

(B) Structures, systems, and components classified as SR or NSRSS commensurate with safety significance in accordance with § 53.460.

(iii) In addition to seismic loads, applicable concurrent normal operating, functional, and accident-induced loads must be taken into account in the design of the SR SSCs and, commensurate with safety significance, NSRSS SSCs.

(iv) The design of the commercial nuclear plant must take into account the possible effects of seismic-induced ground disruption, such as fissuring, lateral spreads, differential settlement, liquefaction, and landsliding, on the facility foundations.

(v) The SSCs fulfilling the safety functions required by § 53.230 must be demonstrated through design, testing, or qualification methods to be able to fulfill those safety functions during and after the vibratory ground motion associated with the DBGMs.

(vi) The evaluation of SSCs required by this section to show they are able to function during and after earthquake ground motion must take into account soil-structure interaction effects and the expected duration of vibratory motion. It is permissible to design for strain limits in excess of yield strain in some of these SSCs during the DBGMs and under the postulated concurrent loads, provided the necessary safety functions are maintained.

(2) *OBE Ground Motion.* The OBE Ground Motion must be characterized by response spectra. The value of the OBE Ground Motion must be set to one-third or less of the DBGMs response spectra.

(3) [Reserved]

(4) *Required seismic instrumentation.* Suitable instrumentation must be provided so that the seismic response of commercial nuclear plant SR SSCs or NSRSS SSCs can be evaluated promptly after an earthquake.

(d) *Surface deformation.* (1) The potential for surface deformation must be taken into account in the design of the commercial nuclear plant by providing reasonable assurance that in the event of deformation, SSCs classified as SR or NSRSS in accordance with § 53.460 will remain functional.

(2) In addition to surface deformation induced loads, the design of SSCs must take into account, commensurate with

safety significance, seismic loads and applicable concurrent functional and accident-induced loads.

(3) The design provisions for surface deformation must be based on its postulated occurrence in any direction and azimuth and under any part of the commercial nuclear plant, unless evidence indicates this assumption is not appropriate, and must take into account the estimated rate at which the surface deformation may occur.

(e) *Seismically induced floods and water waves and other design conditions.* Seismically induced floods and water waves from either locally or distantly generated seismic activity and other design conditions determined pursuant to subpart D of this part must be taken into account in the design of the commercial nuclear plant so as to prevent undue risk to the health and safety of the public.

(f) *Analysis.* The analyses required by § 53.450 must address seismic hazards and related SSC responses in determining that the safety criteria defined in § 53.220 will be met.

(g) *Design criteria, human actions, and programmatic controls.* Functional design criteria, human actions, and programmatic controls needed to address seismic events must be identified and implemented in accordance with this and other subparts to achieve and maintain the performance of SSCs relied upon to satisfy the safety criteria in § 53.220 and to maintain consistency with analyses required by § 53.450 when accounting for the site-specific frequencies and magnitudes of earthquakes for a commercial nuclear plant.

#### Subpart D—Siting Requirements

##### § 53.500 General siting and siting assessment.

(a) The siting of each commercial nuclear plant must be supported by assessments of proposed sites such that the design, including design features and programmatic controls corresponding to the site characteristics, satisfies the safety criteria defined in §§ 53.210 and 53.220 or more restrictive alternative criteria adopted under § 53.470. The siting assessment must ensure that site characteristics that might contribute to the initiation, progression, or consequences of licensing-basis events (LBEs) analyzed under §§ 53.450 and 53.480 are identified and mitigated by design features or programmatic controls. The siting assessment must take into consideration the potential adverse impacts that a commercial nuclear plant

may have on nearby populations as a result of normal operations or LBEs.

(b) Activities performed to identify site characteristics or otherwise needed to determine site-specific contributors to functional design criteria or analysis assumptions under subpart C of this part must satisfy the applicable special treatment requirements of § 53.460, including, where applicable, the quality assurance requirements from appendix B of part 50 of this chapter.

##### § 53.510 External hazards.

(a) *General external hazard requirements.* The design-basis external hazard level for the relevant external hazards for a site must be identified and characterized based on site-specific assessments of natural and constructed hazards with the potential to adversely affect plant functions. The external hazard frequencies and magnitudes determined from the site-specific assessments must take into account uncertainties and variabilities in data, models, and methods relied on to characterize the external hazards.

(b) *Definitions.* For the purpose of this section, the following terms mean:

*Geological siting factors* are geological and seismic factors that may affect the design and operation of the proposed commercial nuclear plant.

*Ground Motion Response Spectra (GMRS)* are the site-specific GMRS resulting from the geologic investigations and evaluations of the site vicinity and region and used to determine design-basis ground motions for structures, systems, and components under § 53.480.

*Probabilistic seismic hazard analysis* is an analytical methodology that incorporates uncertainty into estimates of an annual frequency of exceedance for a certain ground motion parameter (e.g., peak ground acceleration, peak ground velocity, response spectral values) at a site.

(c) *Geological investigations.* The GMRS for the site must be determined based on the results of investigations of the geological, seismological, and engineering characteristics of the site and its environs and must be characterized by both horizontal and vertical free-field GMRS at the free ground surface. The size of the region to be investigated and the type of data pertinent to the investigations must be determined based on the nature of the region surrounding the site. Data on vibratory ground motion, earthquake recurrence rates, fault geometry and slip rates, and site subsurface material properties must be obtained by reviewing pertinent literature and carrying out field investigations.

Uncertainties are inherent in the parameters and models used to estimate the GMRS for the site. The site assessment must reflect these uncertainties through an appropriate analysis, such as a probabilistic seismic hazard analysis.

(d) *Geologic and seismic siting factors.* The geologic and seismic siting factors considered for design under §§ 53.415 and 53.480 must include, but are not limited to, determination of the potential for surface tectonic and nontectonic deformations, the size and character of seismically induced floods and water waves that could affect a site from either locally or distantly generated seismic activity, soil and rock stability, liquefaction potential, and natural and artificial slope stability.

##### § 53.520 Site characteristics.

Site characteristics that might contribute to the initiation, progression, or consequences of LBEs analyzed under § 53.450 must be identified, assessed, and considered in the design and analyses required by subpart C of this part.

##### § 53.530 Population-related considerations.

Every site must have an exclusion area, a low-population zone, and a population center distance as defined in § 53.020.

(a) The offsite radiological consequences estimated by the analyses required by § 53.450(f) must be used to confirm that—

(1) An individual located at any point on the boundary of the exclusion area for any 2-hour period following onset of the postulated fission product release would not receive a radiation dose in excess of 25 rem (250 millisieverts) total effective dose equivalent.

(2) An individual located at any point on the outer boundary of the low-population zone who is exposed to the radioactive cloud resulting from the postulated fission product release (during the entire period of its passage) would not receive a radiation dose in excess of 25 rem (250 millisieverts) total effective dose equivalent.

(b) The population center distance must be at least one and one-third times the distance from the reactor to the outer boundary of the low-population zone. The boundary of the population center must be determined upon consideration of population distribution. Political boundaries are not controlling in the calculation of population center distance.

(c) Reactor sites should be located away from very densely populated centers. Areas of low-population density

are, generally, preferred. However, in determining the acceptability of a particular site located away from a very densely populated center but not in an area of low-population density, consideration will be given to safety, environmental, economic, or other factors, which may result in the site being found acceptable.

#### **§ 53.540 Siting interfaces.**

Site characteristics must be addressed by the design features, programmatic controls, and supporting analyses used to demonstrate that the safety criteria in §§ 53.210 and 53.220 are met for each commercial nuclear plant. Site characteristics must be such that adequate emergency plans and security plans can be developed and maintained.

### **Subpart E—Construction and Manufacturing Requirements**

#### **§ 53.600 Construction and manufacturing—scope and purpose.**

This subpart applies to those construction and manufacturing activities authorized by a construction permit (CP), combined license (COL), manufacturing license (ML), or limited work authorization (LWA) issued under this part.

#### **§ 53.605 Reporting of defects and noncompliance.**

Each CP and ML issued under this part is subject to the terms and conditions in this section, and each COL issued under this part is subject to the terms and conditions in this section until the date that the Commission makes the finding under § 53.1452(g).

(a) *Definitions.* The definitions in § 21.3 of this chapter apply to this section.

(b) *Posting requirements.* (1) Each individual, partnership, corporation, dedicating entity, or other entity subject to the regulations in this section must post current copies of this section and the regulations in 10 CFR part 21; section 206 of the Energy Reorganization Act of 1974, as amended; and procedures adopted under these regulations. These documents must be posted in a conspicuous position on any premises within the United States where the activities subject to the license are conducted.

(2) If posting of these regulations or the procedures adopted under them is not practical, the licensee may, in addition to posting section 206 of the Energy Reorganization Act of 1974, as amended, post a notice that describes the regulations/procedures, including the name of the individual to whom

reports may be made, and states where they may be examined.

(c) *Procedures.* The holder of a CP, COL, or ML subject to this section must adopt appropriate procedures to—

(1) Evaluate deviations and failures to comply to identify defects and failures to comply associated with substantial safety hazards as soon as practicable, and, except as provided in paragraph (c)(2) of this section, in all cases within 60 days of discovery, to identify a reportable defect or failure to comply that could create a substantial safety hazard, were it to remain uncorrected.

(2) Ensure that if an evaluation of an identified deviation or failure to comply potentially associated with a substantial safety hazard cannot be completed within 60 days from the discovery of the deviation or failure to comply, an interim report is prepared and submitted to the Commission through a director or responsible officer, or designated person as discussed in paragraph (d)(5) of this section. The interim report should describe the deviation or failure to comply that is being evaluated and should also state when the evaluation will be completed. This interim report must be submitted in writing within 60 days of discovery of the deviation or failure to comply.

(3) Ensure that a director or responsible officer of the holder of a CP, COL, or ML subject to this section is informed as soon as practicable, and, in all cases, within the 5 working days after completion of the evaluation described in paragraph (c)(1) or (c)(2) of this section, if the construction or manufacture of a facility or activity, or a basic component supplied for such a facility or activity—

(i) Fails to comply with the Atomic Energy Act of 1954, as amended, or any applicable regulation, order, or license of the Commission relating to a substantial safety hazard;

(ii) Contains a defect; or

(iii) Underwent any significant breakdown in any portion of the quality assurance program (QAP) conducted under the requirements of appendix B to part 50 of this chapter that could have produced a defect in a basic component. These breakdowns in the QAP are reportable whether or not the breakdown actually resulted in a defect in a design approved and released for construction, installation, or manufacture.

(d) *Reporting defects and noncompliance.* (1) The holder of a CP, COL, or ML subject to this section that obtains information reasonably indicating that the facility or manufactured reactors fails to comply with the Atomic Energy Act of 1954, as

amended, or any applicable regulation, order, or license of the Commission relating to a substantial safety hazard must notify the Commission of the failure to comply through a director, responsible officer, or designated person as discussed in paragraph (d)(5) of this section.

(2) The holder of a CP, COL, or ML subject to this section that obtains information reasonably indicating the existence of any defect found in the construction or manufacture, or any defect found in the final design of a facility as approved and released for construction or manufacture, must notify the Commission of the defect through a director, responsible officer, or designated person as discussed in paragraph (d)(5) of this section.

(3) The holder of a CP, COL, or ML subject to this part, who obtains information reasonably indicating that the QAP has undergone any significant breakdown discussed in paragraph (c)(3)(iii) of this section must notify the Commission of the breakdown in the QAP through a director, responsible officer, or designated person as discussed in paragraph (d)(5) of this section.

(4) When acting as a dedicating entity, the holder of a CP, COL, or ML subject to this section is responsible for identifying and evaluating deviations; reporting defects and failures to comply associated with substantial safety hazards for dedicated items; and maintaining auditable records for the dedication process.

(5) The notification requirements of this paragraph apply to all defects and failures to comply associated with a substantial safety hazard regardless of whether extensive evaluation, redesign, or repair is required to conform to the criteria and bases stated in the Safety Analysis Report, CP, COL, or ML. Evaluation of potential defects and failures to comply and reporting of defects and failures to comply under this section satisfies the CP holder's, COL holder's, and ML holder's evaluation and notification obligations under 10 CFR part 21, and satisfies the responsibility of individual directors or responsible officers or holders of a CP, COL, or ML subject to this section to report defects, and failures to comply associated with substantial safety hazards under section 206 of the Energy Reorganization Act of 1974, as amended. The director or responsible officer may authorize an individual to provide the notification required by this section. However, this does not relieve the director or responsible officer of his or her responsibility under this section.

(e) *Notification—timing and where sent.* The notification required by paragraph (d) of this section must consist of—

(1) Initial notification by telephone, facsimile, or email identified in appendix A to 10 CFR part 73 to the U.S. Nuclear Regulatory Commission (NRC) Operations Center within 2 days following receipt of information by the director or responsible corporate officer under paragraph (c)(3) of this section, on the identification of a defect or a failure to comply. If the CP, COL, or ML holder elects to use facsimile, verification that the facsimile has been received should be made by calling the NRC Operations Center. This paragraph does not apply to interim reports described in paragraph (c)(2) of this section.

(2) Written notification submitted to the NRC Document Control Desk by an appropriate method listed in § 53.040, with a copy to the appropriate NRC Regional Administrator at the address specified in appendix D to 10 CFR part 20 and a copy to the appropriate NRC resident inspector, if applicable, within 30 days following receipt of information by the director or responsible corporate officer under paragraph (c)(3) of this section, on the identification of a defect or failure to comply.

(f) *Content of notification.* The written notification required by paragraph (e)(2) of this section must clearly indicate that the written notification is being submitted under this section and include the following information, to the extent known.

(1) Name and address of the individual or individuals informing the Commission.

(2) Identification of the facility, the activity, or the basic component supplied for the facility or the activity within the United States which contains a defect or fails to comply.

(3) Identification of the firm constructing or manufacturing the facility or supplying the basic component which fails to comply or contains a defect.

(4) Nature of the defect or failure to comply and the safety hazard which is created or could be created by the defect or failure to comply.

(5) The date on which the information of a defect or failure to comply was obtained.

(6) In the case of a basic component that contains a defect or failure to comply, the number and location of these components in use at the facility subject to the regulations in this part.

(7) In the case of a completed reactor manufactured under this part, the

entities to which the reactor was supplied.

(8) The corrective action which has been, is being, or will be taken; the name of the individual or organization responsible for the action; and the length of time that has been or will be taken to complete the action.

(9) Any advice related to the defect or failure to comply about the facility, activity, or basic component that has been, is being, or will be given to other entities.

(g) *Procurement documents.* Each holder of a CP, COL, or ML subject to this section must ensure that each procurement document for a facility or a basic component specifies the provisions of 10 CFR part 21 or this section that apply, as applicable.

(h) *Coordination with 10 CFR part 21.* The requirements of this section are satisfied when the defect or failure to comply associated with a substantial safety hazard has been previously reported under 10 CFR part 21, under § 73.1205 of this chapter, under this section, or under § 53.1640.

(i) *Records retention.* The holder of a CP, COL, or ML subject to this section must prepare and maintain records necessary to accomplish the purposes of this section, specifically—

(1) Retain procurement documents, which define the requirements that facilities or basic components must satisfy in order to be considered acceptable, for the lifetime of the facility or basic component.

(2) Retain records of evaluations of all deviations and failures to comply under paragraph (c)(1) of this section for the longest of—

(i) Ten years from the date of the evaluation;

(ii) Five years from the date that an early site permit is referenced in an application for a COL; or

(iii) Five years from the date of delivery of a manufactured reactor.

(3) Retain records of all interim reports to the Commission made under paragraph (c)(2) of this section, or notifications to the Commission made under paragraph (d) of this section for the minimum time periods stated in paragraph (i)(2) of this section;

(4) Suppliers of basic components must retain records of—

(i) All notifications sent to affected licensees or purchasers under paragraph (d)(4) of this section for a minimum of 10 years following the date of the notification;

(ii) The facilities or other purchasers to whom the basic components or associated services were supplied for a minimum of 15 years from the delivery

of the basic component or associated services.

(5) Maintaining reports in accordance with this section satisfies the recordkeeping obligations under 10 CFR part 21 of the entities, including directors or responsible officers thereof, subject to this section.

#### **§ 53.610 Construction.**

(a) *Management and control.* Licensees must ensure that the following plans, programs, and organizational units are developed and implemented to manage and control the construction activities:

(1) Programs to ensure that the construction of a commercial nuclear plant supports the eventual compliance with the design and analysis requirements in subpart C of this part.

(2) An organization, headed by qualified personnel, responsible for managing, controlling, and evaluating the adequacy of the construction activities.

(3) Procedures describing the qualifications for personnel in key positions in the licensee's management and control organization and the organizational responsibilities, authority, and interfaces with other parts of the licensee's organization.

(4) Procedures to evaluate the applicability of other national and international construction experience to the planned and ongoing construction activities and to ensure the applicable experience will be provided to those constructing the plant.

(5) A fitness-for-duty program, under 10 CFR part 26.

(6)(i) A QAP meeting the requirements of appendix B of part 50 of this chapter as required by § 53.460(b).

(ii) Appropriate programmatic controls to provide special treatment for non-safety-related but safety-significant structures, systems, and components (SSCs).

(7) A radiation protection program, in accordance with 10 CFR part 20, that includes measures for monitoring the dose to individuals working with radioactive materials brought onto the site, as applicable.

(8) An information security program in accordance with §§ 73.21, 73.22, and 73.23 of this chapter, as applicable.

(b) *Construction activities.* No person may begin the construction of a commercial nuclear plant on a site on which the facility is to be operated under this part until that person has been issued either a CP or COL, an early site permit authorizing activities under § 53.1130, or an LWA under this part.

(1) Licensees must satisfy the following requirements:

(i) As appropriate, considering the types and quantities of radioactive materials being brought onto the site—

(A) The licensee must maintain and follow a special nuclear material (SNM) material control and accounting program, a measurement control program, and other material control procedures that include corresponding record management requirements as required by the provisions of § 70.32 of this chapter. Prior to initial receipt of SNM onsite, the licensee must implement an SNM material control and accounting program in accordance with 10 CFR part 74.

(B) Procedures must be in place to receive, possess, use, and store source, byproduct, and SNM in accordance with applicable portions of 10 CFR parts 30, 40, and 70.

(C) A plant staff training program associated with the receipt of radioactive material must be approved and implemented prior to initial receipt of byproduct, source or SNM (excluding exempt quantities as described in § 30.18 of this chapter).

(ii) For construction of a commercial nuclear plant involving multiple reactor units, plans and procedures must be in place to prevent or mitigate potential hazards to the SSCs of operating units resulting from construction activities, including the managerial and administrative controls to be used to provide assurance that the limiting conditions for operation of the operating units are not exceeded as a result of construction activities.

(iii) Procedures must be in place prior to the start of construction activities that describe how construction will be controlled so as not to impact other features important to the design, such as dewatering, slope stability, backfill, compaction, and seepage.

(iv) For LWA holders, a plan must be developed for redress of activities performed under the LWA should one of the following situations arise:

(A) LWA work activities are terminated by the holder of the LWA;

(B) The LWA is revoked by the NRC;

or  
(C) The Commission denies the associated CP or COL application.

(2)(i) Onsite fresh fuel must be protected and stored in compliance with § 73.67 of this chapter.

(ii) Before initial fuel load into the reactor (or, for a fueled manufactured reactor, before initiating the physical removal of any one of the independent physical mechanisms to prevent criticality required under § 53.620(d)(1)), a cybersecurity program that meets the requirements of §§ 73.54 or 73.110 of this chapter, a physical

security program that meets the requirements of §§ 73.55 or 73.100 of this chapter, and an access authorization program that meets the requirements of §§ 73.56 or 73.120 of this chapter must be established, as applicable.

(iii) Fire protection measures must be implemented for work and storage areas (including adjacent fire areas that could affect the work or storage area) before initial receipt of byproduct, source, or non-fuel SNM (excluding exempt quantities as described in § 30.18 of this chapter). The fire protection measures for areas associated with new fuel (including all fuel handling, fuel storage, and adjacent fire areas that could affect the new fuel) must be implemented before receipt of fuel. Prior to the receipt of fuel, a formal letter of agreement must be in place with the local fire department specifying the nature of arrangements in support of the fire protection program.

(c) *Inspection and acceptance.* (1) The licensee must have a process for accepting individual or groups of SSCs upon completion of construction and protecting them from damage or tampering as other construction activities continue.

(2) The post construction acceptance process must address the inspections, tests, analyses, and acceptance criteria specified in the COL under § 53.1440 or the equivalent verifications needed to support the issuance of an operating license under § 53.1387.

#### **§ 53.620 Manufacturing.**

(a) *Management and control.* Holders of MLs must ensure that the following plans, programs, and organizational units are developed and implemented to manage and control the manufacturing activities within the scope of the ML:

(1) Programs to ensure that the manufacturing of a manufactured reactor or portions of a manufactured reactor complies with the design and analysis requirements in subpart C of this part. The entity with design authority for the manufactured reactor covered by the ML must be identified in the license.

(2) An organizational and management structure responsible for managing, controlling, and evaluating the adequacy of the reactor design and manufacturing activities.

(3) Procedures describing the qualifications for personnel in key positions in the licensee's management and control organization and the organizational responsibilities, authority, and interfaces with other parts of the licensee's organization.

(4) A program to evaluate the applicability of other national and international design and manufacturing experience to the planned and ongoing manufacturing activities.

(5) A fitness-for-duty program, in accordance with 10 CFR part 26.

(6)(i) A QAP meeting the requirements of appendix B to part 50 of this chapter, to be applied to the design, fabrication, construction, and testing of the SSCs of the manufactured reactor.

(ii) Appropriate programmatic controls to provide special treatment measures for non-safety-related but safety-significant SSCs.

(7) A radiation protection program, in accordance with 10 CFR part 20, that includes measures for monitoring the dose to individuals if the manufacturing activities include working with radioactive materials.

(8) An information security program in accordance with §§ 73.21, 73.22 and 73.23 of this chapter, as applicable.

(b) *Manufacturing activities.* Holders of MLs must satisfy the following requirements:

(1) The manufacturing process must be conducted within facilities for which the ML holder has the authority to establish controls on any activity that might affect manufacturing. The licensee must establish access controls to the portions of each facility involved in the manufacturing processes governed by the ML.

(2) Manufacturing processes must be performed in accordance with the ML and the referenced codes and standards that have been endorsed or otherwise found acceptable by the NRC.

(3) A post-manufacturing inspection and acceptance process must be established and implemented before transporting a manufactured reactor or portions of a manufactured reactor for installation at a commercial nuclear plant. The process must consider the results of inspections, tests, and analyses that have been performed and the acceptance criteria that are necessary and sufficient to conclude that manufacturing activities have been completed in accordance with the ML.

(c) *Control of radioactive materials.* As appropriate considering the types and quantities of radioactive materials being brought into the manufacturing facility—

(1) Procedures must be in place to receive, transfer, possess, and use source, byproduct, and SNM in accordance with the applicable portions of 10 CFR parts 30, 40 and 70.

(2) A fire protection program must be established and implemented before the initial receipt of byproduct, source, or

non-fuel SNM (excluding exempt quantities as described in § 30.18 of this chapter).

(3) An emergency plan appropriate for responding to the facility-specific hazards of an accidental release of radioactive material and to limit the health effects of the associated chemical hazards of licensed material must be approved and implemented prior to the receipt of byproduct, source, or SNM (excluding exempt quantities as described in § 30.18 of this chapter).

(4) A plant staff training program associated with the receipt of radioactive material must be approved and implemented before initial receipt of byproduct, source, or SNM (excluding exempt quantities as described in § 30.18 of this chapter).

(5) Security requirements must be implemented for the protection of SNM based on the type, enrichment, and quantity in accordance with 10 CFR part 73, as applicable, and for the protection of Category 1 and Category 2 quantities of radioactive material in accordance with 10 CFR part 37, as applicable.

(d) *Fuel loading.* (1)(i) An ML may authorize possession of a manufactured reactor into which the licensee has loaded fresh (unirradiated) fuel pursuant to a license issued under part 70 of this chapter only if the manufactured reactor is configured during its loading, storage, and transport with at least two independent physical mechanisms in place, each of which is sufficient to prevent criticality assuming optimum neutron moderation and neutron reflection conditions.

(ii) The ML applicant may file a separate, subsequent application for the 10 CFR part 70 license or combine the application for the 10 CFR part 70 license with the application for an ML.

(iii) The Commission has determined that any such fueled manufactured reactor in which the independent physical mechanisms to prevent criticality have been installed is not in operation.

(iv) Upon installation of the fueled manufactured reactor in its place of operation and a Commission finding that the acceptance criteria in the COL that authorized reactor construction are met under § 53.1452(g), the independent physical mechanisms to prevent criticality may be removed. Upon initiating the physical removal of any one of the independent physical mechanisms to prevent criticality, the fueled manufactured reactor has commenced operation.

(2) Holders of 10 CFR part 70 licenses authorizing the possession and loading of fresh fuel into manufactured reactors must comply with the requirements of

10 CFR part 70 for the facilities and activities related to the storage, movement, and loading of fresh fuel in the manufactured reactor. Holders of these 10 CFR part 70 licenses must comply with the requirements of Subpart H to 10 CFR part 70, regardless of whether their proposed activities meet the applicability criteria found in 10 CFR 70.60. Procedures, equipment, and personnel required by the 10 CFR part 70 license, must be in place before the receipt of SNM at the manufacturing facility.

(i) Before the receipt of SNM, the licensee must have security programs in place that meet the performance objectives of 10 CFR 73.67, with the following additions and exceptions:

(A) A physical security plan describing the physical security program must be maintained and a cybersecurity program must be established for the possession and loading of fresh fuel into a manufactured reactor authorized by a 10 CFR part 70 license, regardless of fuel type, enrichment, and quantity.

(B) The physical security program must be designed to prevent unintended and uncontrolled criticality events.

(C) The cybersecurity program must provide reasonable assurance that a cyberattack would not adversely impact the functions performed by digital assets used by the licensee for implementing the physical security requirements of this section, or the radiation monitoring and criticality requirements in this section or in 10 CFR part 70.

(D) All holders of a part 70 license that authorizes loading of fresh fuel into a manufactured reactor must perform the screening required in § 73.67(d)(4) of this chapter to confirm the identity, trustworthiness, and reliability of individuals prior to granting unescorted access to special nuclear material; these determinations must be documented.

(ii) [Reserved]

(3) The loading or unloading of fresh fuel into or from a manufactured reactor and any changes to the configuration of reactivity control and prevention systems for the fueled manufactured reactor must be performed by a certified fuel handler meeting the requirements in subpart F of this part.

(e) *Transportation.* (1) A holder of an ML may not transport or allow to be removed from the places of manufacture the manufactured reactor or portions thereof as defined in the ML except for transport to a site for which the Commission has issued a COL that references the subject ML.

(2) A holder of an ML must include in any contract governing the transport of a manufactured reactor or portions

thereof as defined in the ML from the places of manufacture to any other location, a provision requiring that the person transporting the manufactured reactor comply with all shipping requirements in applicable NRC regulations, certificates of compliance, and NRC-issued licenses.

(3) Procedures governing the preparation of the manufactured reactor or portions thereof as defined in the ML for transport and the conduct of the transport must be issued prior to transport. The procedures must implement the protective measures and restrictions described in NRC regulations and NRC-issued licenses to protect the reactor from potential conditions that would adversely affect the safe operation of a commercial nuclear plant.

(4) For a manufactured reactor that is to be loaded with fresh fuel before transport to the place of operation, the ML must specify that transportation will be in accordance with parts 71 and 73 of this chapter.

(f) *Acceptance and installation at the site for which the Commission has issued a COL that references the subject ML.* (1) Installation at the site for which the Commission has issued a COL that references the subject ML must follow the regulations in § 53.610.

(2) Upon arrival at the site, the manufactured reactor or portions of a manufactured reactor may not be installed in its place of operation unless the COL holder performs inspections sufficient to verify the reactor is in compliance with the ML and has not been damaged in transit. The COL holder must perform these inspections in accordance with documented procedures subject to quality assurance measures commensurate with their importance to safety. In addition, inspections must confirm that the interface requirements between the manufactured reactor or portions of a manufactured reactor and the remaining portions of the commercial nuclear plant are met.

## Subpart F—Requirements for Operation

### § 53.700 Operational objectives.

(a) Each holder of an operating license (OL) or combined license (COL) under this part must develop, implement, and maintain controls for plant structures, systems, and components (SSCs), responsibilities of plant personnel, and plant programs during the operating life of each commercial nuclear plant such that the requirements defined in subpart B are satisfied. More specifically:

(1) Each holder of an OL or COL under this part must maintain the capabilities, availability, and reliability of plant SSCs to ensure that the safety functions identified in § 53.230 will be performed if called upon during licensing-basis events (LBEs).

(2) Each holder of an OL or COL under this part must ensure that plant personnel have adequate knowledge and skills to perform their assigned duties that support the performance of the safety functions identified in § 53.230.

(3) Each holder of an OL or COL under this part must implement plant programs sufficient to ensure that the safety functions identified in § 53.230 will be performed if called upon during normal operations and LBEs.

(b) [Reserved]

#### **§ 53.710 Maintaining capabilities and availability of structures, systems, and components.**

Controls must be provided for each commercial nuclear plant licensed under this part such that the capabilities, availability, and reliability of plant SSCs, when combined with corresponding programmatic controls and human actions, provide that the safety criteria defined in §§ 53.210 and 53.220 will be met.

(a) Technical specifications must be developed, implemented, and maintained that define conditions or limitations on plant operations that are necessary to ensure that safety-related (SR) SSCs can fulfill the safety functions identified under § 53.230 and support meeting the safety criteria of § 53.210. The technical specifications must describe the following requirements:

(1) Limits on the inventory of radioactive materials within the reactor system and supporting systems with the potential, individually or collectively, to cause a release exceeding the safety criteria in § 53.210 as a result of a design-basis accident analyzed in accordance with § 53.450(f).

(2) Operating limits for the facility that if exceeded could lead to a failure to perform a required safety function necessary to demonstrate compliance with the safety criteria in § 53.210.

(3) For each SSC classified as SR in accordance with § 53.460, technical specifications must define—

(i) *Limiting conditions for operation.* Limiting conditions for operation are the lowest functional capability or performance levels of SR SSCs required to ensure that the design-basis accidents analyzed in accordance with § 53.450(f) satisfy the safety criteria of § 53.210. When a limiting condition for operation is not met, the licensee must shut down the plant or follow any remedial action

permitted by the technical specifications until the condition can be met.

(ii) *Surveillance requirements.* Surveillance requirements are requirements relating to test, calibration, or inspection to assure that the necessary quality of systems and components is maintained and that the limiting conditions for operation will be met.

(4) Design elements to be included are those elements of the plant such as materials of construction and geometric arrangements, which, if altered or modified, would have a significant effect on safety and are not covered in categories described in paragraphs (a)(1) through (3) of this section.

(5) Administrative controls are the provisions relating to organization and management, procedures, recordkeeping, review and audit, and reporting necessary to assure operation of the plant in a safe manner. Each licensee must submit any reports to the Commission pursuant to approved technical specifications under § 53.040.

(b) Controls on plant operations, including availability controls, must be developed and implemented to ensure that the configurations and special treatments for SR SSCs and non-safety-related but safety-significant (NSRSS) SSCs provide the capabilities, availability, and reliability required to demonstrate compliance with the criteria of §§ 53.220 and 53.450(e).<sup>1</sup> The controls must—

<sup>1</sup> The comprehensive risk metrics and related risk performance objectives established under § 53.220 involve assessing and averaging the risks over a defined period (e.g., plant year) and do not constitute a real-time requirement that must be continuously demonstrated by the licensee.

(1)(i) Identify who within the commercial nuclear plant has authority to make configuration changes;

(ii) Establish processes to make configuration changes to NSRSS SSCs; and

(iii) Establish processes to ensure that all organizations of the commercial nuclear plant affected by the configuration changes are formally notified and approve of the change.

(2) Describe how the special treatments for each NSRSS SSC and special treatments for SR SSCs beyond those under paragraph (a) of this section will be established and maintained over the operating life of the commercial nuclear plant.

#### **§ 53.715 Maintenance, repair, and inspection programs.**

(a) A program to control maintenance activities and monitor the performance

or condition of SR and NSRSS SSCs must be developed, implemented, and maintained.

(b) Whenever a licensee determines through activities related to maintenance, repair, and inspection of SSCs, the activities under § 53.710, or otherwise that the performance or condition of an SR or NSRSS SSC does not demonstrate compliance with established special treatments or performance goals related to capabilities, availability, or reliability, the licensee must take appropriate corrective action.

(c) Performance and condition monitoring activities and associated goals and preventive maintenance activities must be evaluated at least every 24 months. The evaluations must take into account, where practical, industry-wide operating experience. Adjustments must be made where necessary to ensure that the objective of preventing failures of SSCs through maintenance is appropriately balanced against the objective of minimizing unavailability of SSCs due to monitoring or preventive maintenance.

(d) Before performing maintenance activities (including but not limited to surveillance, post-maintenance testing, and corrective and preventive maintenance), the licensee must assess and manage the increase in risk that may result from the proposed maintenance activities.

#### **§ 53.720 Response to seismic events.**

If vibratory ground motion exceeding that of the operating basis earthquake ground motion or significant plant damage due to vibratory ground motion occurs, the licensee must shut down the commercial nuclear plant. If structures, systems, or components necessary for the safe shutdown of the commercial nuclear plant are not available after the occurrence of this vibratory ground motion, the licensee must consult with the Commission and must propose a plan for the timely, safe shutdown of the commercial nuclear plant. Prior to resuming operations, the licensee must demonstrate to the Commission that those features necessary for continued operation without undue risk to the health and safety of the public or necessary to maintain the licensing basis of the commercial nuclear plant were either not functionally damaged or have been repaired.

#### **§ 53.725 General staffing, training, personnel qualifications, and human factors requirements.**

(a) *Two classes of commercial nuclear plants.* Commercial nuclear plants licensed under this part are either of the



class, based upon the similarity of operating and technical characteristics of the plants in the class, of self-reliant-mitigation facilities or of interaction-dependent-mitigation facilities. A commercial nuclear plant is a self-reliant-mitigation facility if the U.S. Nuclear Regulatory Commission (NRC) determined as part of its approval of the OL or COL for that plant that its design demonstrates compliance with the criteria of § 53.800(a)(1) through (a)(5). Otherwise, the commercial nuclear plant is an interaction-dependent-mitigation facility.

(b) *Purpose and applicability.* The regulations in §§ 53.725 through 53.830 address areas related to staffing, training, personnel qualifications, and human factors engineering for applicants for or holders of OLs or COLs under this part. These regulations are organized as follows:

(1) Sections 53.725 through 53.745 address general requirements for staffing, training, personnel qualifications, and human factors engineering. The regulations within these sections are applicable to all applicants for or holders of OLs or COLs under this part, except where specifically stated otherwise.

(2) Sections 53.760 through 53.795 address operator and senior operator licensing requirements. The regulations within these sections are applicable to those applicants for or holders of OLs or COLs under this part for interaction-dependent-mitigation facilities that have not yet certified the permanent cessation of operations and permanent removal of fuel from the reactor vessel as described under § 53.1070.

(3) Sections 53.800 through 53.820 address generally licensed reactor operator requirements. The regulations within these sections are in lieu of §§ 53.760 through 53.795 for those applicants for or holders of OLs or COLs under this part for self-reliant-mitigation facilities that have not yet certified the permanent cessation of operations and permanent removal of fuel from the reactor vessel as described under § 53.1070.

(4) Section 53.830 provides general personnel training requirements. The regulations within this section are applicable to all applicants for or holders of OLs or COLs under this part.

(c) *Definitions.* When used in §§ 53.725 through 53.830:

*Applicant* refers to an applicant for an operator or senior operator license; *licensee* refers to the holder of an operator, senior operator, or generally licensed reactor operator license; and *facility licensee* refers to the licensee for the commercial nuclear plant where the

applicant would be licensed or the licensee is licensed.

*Automation* means a device or system that accomplishes (partially or fully) a function or task.

*Auxiliary operator* means any individual who operates components of a commercial nuclear plant but does not manipulate controls or direct the manipulation of controls of the plant and is not required to be licensed under the provisions of this part.

*Controls* when used with respect to a nuclear reactor means apparatus and mechanisms, the manipulation of which directly affects the reactivity or power level of the reactor.

*Generally licensed reactor operator* means any individual licensed under the provisions of § 53.810 to manipulate controls of a self-reliant-mitigation facility and to direct the licensed activities of generally licensed reactor operators.

*Interaction-dependent-mitigation facility* means a commercial nuclear plant design other than one that demonstrates compliance with the operating and technical characteristics defined under § 53.800.

*Load following* means a commercial nuclear plant automatically changing its output to match expected demand in response to externally originated instructions or signals.

*Operator* means any individual licensed under the provisions of §§ 53.760 through 53.795 to manipulate controls of an interaction-dependent-mitigation facility.

*Performance testing* means testing conducted to verify a simulation facility's performance as compared to actual or predicted reference plant performance.

*Reference plant* means the specific commercial nuclear plant on which a simulation facility's configuration, system control arrangement, and design data are based. The reference plant may or may not be constructed.

*Self-reliant-mitigation facility* means a commercial nuclear plant design that demonstrates compliance with the operating and technical characteristics defined under § 53.800.

*Senior operator* means any individual licensed under the provisions of §§ 53.760 through 53.795 to manipulate controls of an interaction-dependent-mitigation facility and to direct the licensed activities of operators.

*Simulation facility* means an interface designed to provide a realistic imitation of the operation of a commercial nuclear plant used for the administration of examinations, for training, and/or to demonstrate compliance with experience requirements for applicants

or licensees. A simulation facility may rely, in whole or part, upon the physical utilization of the reference plant itself.

*Systems approach to training* means a training program that includes the following five elements:

(1) Systematic analysis of the jobs to be performed.

(2) Learning objectives derived from the analysis which describe desired performance after training.

(3) Training design and implementation based on the learning objectives.

(4) Evaluation of trainee mastery of the objectives during training.

(5) Evaluation and revision of the training based on the performance of trained personnel in the job setting.

#### § 53.726 Communications.

(a) An applicant or licensee or facility licensee must submit any communication or report required by the regulations contained within §§ 53.725 through 53.830 and must submit any application filed under these regulations to the Commission.

(b) Each licensee that is required to comply with the requirements of §§ 53.760 through 53.795 (*i.e.*, interaction-dependent-mitigation facilities) must notify the appropriate NRC contact within 30 days of the following in regard to a licensed operator or senior operator:

(1) Permanent reassignment from the position for which the licensee has certified the need for a licensed operator or senior operator under § 53.775(a)(1);

(2) Termination of any operator or senior operator; or

(3) Permanent disability or illness as required under § 55.770 of this chapter.

#### § 53.728 Completeness and accuracy of information.

Information provided to the Commission by an applicant for an operator or senior operator license or by a licensee or information required by statute or by the Commission's regulations, orders, or license conditions to be maintained by the applicant or the licensee must be complete and accurate in all material respects.

#### § 53.730 Defining, fulfilling, and maintaining the role of personnel in ensuring safe operations.

Each applicant for or holder of an OL or COL for a commercial nuclear plant under this part must comply with the following:

(a) *Human factors engineering design requirements.* The plant design must reflect state-of-the-art human factors engineering principles for safe and reliable performance in all locations that

human activities are expected for performing or supporting the continued availability of plant safety or emergency response functions.

(b) *Human system interface design requirements.* The plant design must provide for the following to support operating personnel in monitoring plant conditions and responding to plant events:

(1) Features for displaying to operating personnel a minimum set of parameters that define the safety status of the plant and are capable of displaying both the full range of important plant parameters and data trends on demand, as well as indicating when process limits are being approached or exceeded;

(2) Automatic indication of the bypassed and operable status of safety systems;

(3) Direct indication of SSC status that relates to the ability of the SSC to perform its safety function, such as relief and safety valve position (*i.e.*, open or closed) for barriers important to fulfilling safety functions of with such devices, and ultimate heat sink and cooling system status and availability;

(4) Instrumentation to measure, record, and display key plant parameters related to the performance of SSCs and the integrity of barriers important to fulfilling safety functions to support operators in monitoring plant conditions and responding to plant events. Examples include temperatures and pressures within important systems or structures, core or fuel system conditions (including possible damage states), temperatures and levels associated with cooling functions, combustible gas concentrations, radiation levels in systems and within structures, and radioactive effluent releases;

(5) Leakage control and detection in the design of systems that pass through barriers important to fulfilling safety functions for the release of radionuclides. An example is an SSC that penetrates a containment structure that might contain radioactive materials that could contribute to the source term during an accident;

(6) Monitoring of in-plant radiation and airborne radioactivity as appropriate for a broad range of normal operating and accident conditions; and

(7) For self-reliant-mitigation facilities, the plant design must also provide the generally licensed reactor operators with the capability to do the following:

(i) Receive plant operating data, including reactor parameters and information needed for the evaluation of emergency conditions.

(ii) Immediately initiate a reactor shutdown from their location.

(iii) Promptly dispatch operations and maintenance personnel.

(iv) Immediately implement responsibilities under the facility emergency plan, as applicable.

(c) *Concept of operations.* A concept of operations that is of sufficient scope and detail to address the following must be provided:

(1) Plant goals;

(2) The roles and responsibilities of operating personnel and automation (or any combination thereof) that are responsible for completing plant functions;

(3) Staffing, qualifications, and training;

(4) The management of normal operations;

(5) The management of off-normal conditions and emergencies;

(6) The management of maintenance and modifications; and

(7) The management of tests, inspections, and surveillances.

(d) *Functional requirements analysis and function allocation.* A functional requirements analysis and a function allocation must be provided that are sufficient to demonstrate compliance with the following:

(1) The functional requirements analysis must address how safety functions and functional safety criteria are satisfied, and

(2) The function allocation must describe how the safety functions will be assigned to human action, automation, active safety features, passive safety features, and/or inherent safety characteristics.

(e) *Operating experience.* A program, during construction and during operation, as applicable, for evaluating and applying operating experience must be developed, implemented, and maintained.

(f) *Staffing plan.* A staffing plan must be developed and comply with the following:

(1) The staffing plan must include a description of how engineering expertise will be available to the on-shift operating personnel during all plant conditions, to assist if they encounter a situation not covered by procedures or training. Engineering expertise includes familiarity with the operation of the plant for which the expertise is provided and one of the following:

(i) A bachelor's degree in engineering, engineering technology, or physical science from an institution accredited by a U.S. government recognized accrediting body or equivalent; or

(ii) A Professional Engineer's license from a U.S. State or territory.

(2) Applicants for or holders of OLs or COLs for interaction-dependent-mitigation facilities must include within their staffing plans a description of how the proposed numbers, positions, and qualifications of operators and senior operators across all modes of plant operations will be sufficient to ensure that plant safety functions will be maintained. This description must be supported by human factors engineering analyses and assessments.

(3) Applicants for or holders of OLs or COLs for self-reliant-mitigation facilities must include within their staffing plans a description of how generally licensed reactor operator staffing that is both sufficient to continually monitor the operations of fueled reactors and to provide for a continuity of responsibility for facility operations at all times during the operating phase will be maintained.

(4) Applicants for or holders of OLs or COLs under this part must include within their staffing plans a description of how the numbers, positions, and responsibilities of personnel contained within those plans will adequately support all necessary functions within areas such as plant operations, equipment surveillance and maintenance, radiological protection, chemistry control, fire brigades, engineering, security, and emergency response.

(5) The staffing plan must be approved by the NRC as part of its approval of the OL or COL for the plant. The approved staffing plan is subject to the requirements of § 53.1565.

(g) *Training, examination, and proficiency programs.* Develop, implement, and maintain programs that comply with the following requirements. These programs must be approved by the NRC as part of its approval of the OL or COL for the plant:

(1) For those applicants for or holders of OLs or COLs for interaction-dependent-mitigation facilities:

(i) The operator licensing initial training program required under § 53.780(a);

(ii) The operator licensing initial examination program required under § 53.780(b);

(iii) The operator licensing requalification program required under § 53.780(c); and

(iv) The operator proficiency program required under § 53.780(g).

(2) For those applicants for or holders of OLs or COLs for self-reliant-mitigation facilities, the generally licensed reactor operator training, examination, and proficiency programs required under § 53.815.

(3) The operator licensing requalification programs required under § 53.780(c) or § 53.815(b) must be implemented upon commencing the administration of initial examinations under the operator licensing examination program required under § 53.780(b) or § 53.815(b), respectively.

#### **§ 53.735 General exemptions.**

The regulations in §§ 53.725 through 53.830 do not require a license for an individual who—

(a) Under the direction and in the presence of an operator or senior operator or a generally licensed reactor operator, as appropriate, manipulates the controls of a commercial nuclear plant as a part of the individual's training in a facility licensee's training program as approved by the Commission to qualify for an operator or senior operator license or a generally licensed reactor operator license there, as appropriate, under these regulations; or

(b) Under the direction and in the presence of a senior operator or generally licensed reactor operator, as appropriate, manipulates the controls of a commercial nuclear plant to load or unload the fuel into, out of, or within the reactor vessel while the reactor is not operating.

#### **§ 53.740 Facility licensee requirements—General.**

(a) Facility licensees must demonstrate compliance with the requirements of either §§ 53.760 through 53.795 for interaction-dependent-mitigation facilities or §§ 53.800 through 53.820 for self-reliant-mitigation facilities.

(b) The facility licensee must maintain the staffing complement described under its approved facility staffing plan until such time as the permanent cessation of operations and permanent removal of fuel from the reactor vessel has been certified as described under § 53.1070. The approved staffing plan is subject to the requirements of § 53.1565.

(c) Except as provided under § 53.735, the facility licensee may not permit the manipulation of the controls of a commercial nuclear plant by anyone who is not an operator or senior operator or generally licensed reactor operator, as appropriate.

(d) Facility licensees for interaction-dependent-mitigation facilities that have not yet certified the permanent cessation of operations and permanent removal of fuel from the reactor vessel as described under § 53.1070 must designate senior operators to be

responsible for supervising the licensed activities of operators.

(e) Apparatus and mechanisms other than controls, the operation of which may affect the reactivity or power level of a reactor, must be manipulated only while plant conditions are being monitored by an individual who is an operator or senior operator or a generally licensed reactor operator, as appropriate.

(f)(1) Load following is permitted if at least one of the following is immediately capable of refusing demands when they could challenge the safe operation of the plant or when precluded by the plant equipment conditions:

(i) The actuation of an automatic protection system that utilizes setpoints more conservative than those otherwise credited for the purposes of reactor protection; or

(ii) An automated control system; or

(iii) An operator or senior operator or a generally licensed reactor operator, as appropriate.

(2) The provisions of paragraph (e) of this section do not apply during load following operations.

(g)(1) Facility licensees for interaction-dependent-mitigation facilities must have present during alteration of the core (including fuel loading or transfer) an individual holding a senior operator license, or a senior operator license limited to fuel handling to directly supervise the activity and, during this time, the facility licensee must not assign other duties to this person.

(2) Facility licensees for self-reliant-mitigation facilities must have present during alteration of the core (including fuel loading or transfer) an individual holding a generally licensed reactor operator license to directly supervise the activity and, during this time, the facility licensee must not assign other duties to this person.

(3) The provisions of paragraphs (g)(1) and (2) of this section do not apply to core alterations performed as part of refueling operations while a facility that is capable of online refueling is operating at power.

(h) Facility licensees may take reasonable action that departs from a license condition or a technical specification (contained in a license issued under this part) in an emergency when this action is immediately needed to protect the public health and safety and no action consistent with license conditions and technical specifications that can provide adequate or equivalent protection is immediately apparent. Such facility licensee action must be approved, as a minimum, by a senior

operator or a generally licensed reactor operator, as applicable, or, after certifying the permanent cessation of operations and permanent removal of fuel from the reactor vessel as described under § 53.1070 by a certified fuel handler, senior operator, or generally licensed reactor operator, as applicable, prior to taking the action.

#### **§ 53.745 Operator license requirements.**

A person must be authorized by a license issued by the Commission to perform the function of an operator, senior operator, or generally licensed reactor operator as defined in this part.

#### **§ 53.760 Operator licensing.**

(a) *Applicability.* Sections 53.760 through 53.795 address operator and senior operator licensing requirements. The regulations within these sections are applicable to those applicants for or holders of OLs or COLs under this part for interaction-dependent-mitigation facilities that have not yet certified the permanent cessation of operations and permanent removal of fuel from the reactor vessel as described under § 53.1070.

(b) Reserved.

#### **§ 53.765 Medical requirements.**

(a) An applicant for an operator or senior operator license must have a medical examination by a physician. An operator or senior operator must have a medical examination by a physician every 2 years.

(b) To certify the medical fitness of an applicant for an operator or senior operator license, an authorized representative of the facility licensee must complete and sign NRC Form 396, "Certification of Medical Examination by Facility Licensee," which can be obtained by writing the Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, by calling 301-415-7232, or by visiting the NRC's website at <https://www.nrc.gov> and selecting forms from the index found on the home page, or by other means provided by the NRC.

(1) Form NRC 396 must certify that a physician has conducted the medical examination of the applicant as required in paragraph (a) of this section.

(2) When the medical certification requests a conditional license based on medical evidence, the medical evidence must be submitted on NRC Form 396 to the Commission to enable the Commission to make a determination in accordance with § 53.775(b).

(c) The facility licensee must document and maintain the results of medical qualifications data, test results,

and each operator's or senior operator's medical history for the current license period and provide the documentation to the Commission upon request. The facility licensee must retain this documentation while an individual performs the functions of an operator or senior operator.

**§ 53.770 Incapacitation because of disability or illness.**

If, during the term of the operator or senior operator license, the licensee develops a permanent physical or mental condition that causes the licensee to fail to demonstrate compliance with the requirements of § 53.775(b)(1)(i), the facility licensee must notify the Commission within 30 days of learning of the diagnosis. For conditions for which a conditional license (as described in § 53.775(b)) is requested, the facility licensee must provide medical certification on Form NRC 396 to the Commission (as described in § 53.765(b)).

**§ 53.775 Applications for operators and senior operators.**

(a) *How to apply.* (1) The applicant for an operator or senior operator license must—

(i) Complete NRC Form 398, "Personal Qualification Statement—Licensee," which can be obtained by writing the Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, by calling 301-415-5877, or by visiting the NRC's website at <https://www.nrc.gov> and selecting forms from the index found on the home page, or by other means provided by the NRC;

(ii) File an original of NRC Form 398, or an equivalent electronic submittal, together with the information required in paragraphs (a)(1)(iii) and (a)(1)(iv) of this section, with the appropriate Regional Administrator.

(iii) Provide evidence that the applicant, as a trainee, has successfully demonstrated competence in manipulating the controls of either the facility for which a license is sought or a simulation facility that demonstrates compliance with the requirements of § 53.780(e). For operators applying for a senior operator license, certification that the operator has successfully operated the controls of the facility as an operator will be accepted; and

(iv) Provide certification by the facility licensee of medical condition and general health on Form NRC 396, to comply with § 53.765.

(2) The Commission may at any time after the application has been filed, and before the license has expired, require

further information under oath or affirmation to enable it to determine whether to grant or deny the application or whether to revoke, modify, or suspend the license.

(3) An applicant whose application has been denied because of a medical condition or their general health may submit a further medical report at any time as a supplement to the application.

(4) Each application and statement must contain complete and accurate disclosure as to all matters required to be disclosed. The applicant must sign statements required by paragraphs (a)(1)(i) and (a)(1)(ii) of this section.

(b) *Disposition of an initial application.* (1) *License approval.* The Commission will approve an initial application if it finds that the following criteria are met:

(i) *Health.* The applicant's medical condition and general health will not adversely affect the performance of assigned operator or senior operator job duties or cause operational errors endangering public health and safety. The Commission will base its finding upon the certification by the facility licensee as detailed in § 53.765(b).

(ii) *Examination.* The applicant has passed the requisite examination in accordance with § 53.780(b). The examination determines whether the applicant for an operator's or senior operator's license has learned to operate a facility competently and safely, and additionally, in the case of a senior operator, whether the applicant has learned to supervise the licensed activities of operators competently and safely.

(2) *Conditional license.* If an applicant's general medical condition does not demonstrate compliance with the minimum standards under § 53.775(b)(1)(i) of this section, the Commission may approve the application and include conditions in the license to accommodate the medical condition. The Commission will consider the recommendations and supporting evidence of the facility licensee and of the examining physician (provided on Form NRC 396) in arriving at its decision.

(c) *Re-applications.* (1) An applicant whose application for a license has been denied because of failure to pass the examination may file a new application. The application must be submitted on Form NRC 398 and include a statement signed by an authorized representative of the facility licensee by whom the applicant will be employed that states in detail the extent of the applicant's additional training and remediation since the denial and certifies that the applicant is ready for re-examination.

(2) An applicant who has passed a portion of the examination and failed another may request in a new application on Form NRC 398 to be excused from re-examination on the portions of the examination that the applicant has passed. The Commission may in its discretion grant the request if it determines that sufficient justification is presented.

**§ 53.780 Training, examination, and proficiency program.**

(a) *Operator licensing initial training program.* (1) A program that is based upon a systems approach to training, as defined by § 53.725(b), must be utilized for the training of applicants for operator and senior operator licenses. The program must ensure that applicants at the facility will possess the knowledge, skills, and abilities necessary to protect the public health and maintain those plant safety functions specific to the facility design. The program must be approved by the Commission prior to its use for training applicants, as described under § 53.730(g). The approved operator licensing initial training program is subject to the requirements of § 53.1565.

(2) The facility licensee must maintain operator licensing initial training program records documenting the initial operator licensing training administered and completed by each applicant. The facility licensee must retain these records during the period in which any trainees subsequently remain licensed as operators or senior operators at the facility.

(b) *Operator licensing initial examination program.* (1) The facility licensee must establish and implement an examination program for testing a representative sample of the knowledge, skills, and abilities needed to safely perform operator and senior operator duties, to include both the examination methods and criteria to be used to assess passing performance. The program must provide for valid and reliable examinations and be approved by the Commission prior to its use for examining applicants, as described under § 53.730(g). The approved operator licensing initial examination program is subject to the requirements of § 53.1565.

(2) The facility licensee must submit prepared examinations to the Commission for review and approval in advance of their administration.

(3) The Commission will either administer an approved examination or allow the facility licensee to administer the examination. The facility licensee must ensure that sufficient advance notification is provided to the

Commission to either administer the examination or allow for a representative of the Commission to be afforded the opportunity to be present when the facility licensee administers the examination.

(4) Graded examination documentation for each applicant must be promptly provided to the Commission for review in making operator licensing decisions.

(5) The facility licensee must maintain operator licensing initial examination program records documenting the participation of each operator and senior operator applicant in the initial examination. The records must contain copies of examinations administered, the answers given by the applicant, documentation of the grading of examinations, and documentation of any additional training administered in areas in which an applicant exhibited deficiencies. The facility licensee must retain these records during the period in which the associated operators or senior operators remain licensed at the facility.

(c) *Operator licensing requalification program.* (1) A program based upon a systems approach to training, as defined by § 53.725(b), must be utilized for the continuing training of operators and senior operators.

(i) The program must ensure that operators and senior operators at the facility maintain the knowledge, skills, and abilities necessary to protect the public health and maintain those plant safety functions specific to the facility design. The program must be conducted for a continuous period not to exceed 24 months in duration.

(ii) The program must be approved by the Commission prior to its use for continuing training, as described under § 53.730(g). The approved operator licensing requalification program is subject to the requirements of § 53.1565.

(2) The following requirements apply to operator licensing requalification programs:

(i) The facility licensee must propose a requalification examination program for testing, for each requalification period, a sample of the topics included under the systems approach to training, to include both the examination methods and criteria to be used to assess passing performance. The program must provide for valid and reliable examinations and be approved by the Commission prior to its use for examining operators and senior operators, as described under § 53.730(g). The approved requalification examination program is subject to the requirements of § 53.1565.

(ii) The following requirements apply to the requalification examination program:

(A) The facility licensee must make prepared requalification examinations available to the Commission for review.

(B) The facility licensee must ensure that a representative of the Commission is afforded the opportunity to be present during requalification examination administration.

(C) The facility licensee must ensure that each operator and senior operator is administered a complete requalification examination on a periodicity not to exceed 24 months. Additionally, the facility licensee must ensure that any licensed operator or senior licensed operator who either demonstrates unsatisfactory performance on, or fails to complete, the biennial requalification examination is removed from the performance of licensed operator and senior licensed operator duties until such time that any necessary remedial training has been completed and a retake examination has been passed.

(D) The facility licensee must promptly provide a summary of examination results for each operator and senior operator following the completion of the requalification examination.

(3) The facility licensee must maintain operator licensing requalification program records documenting the participation of each operator and senior operator in the requalification program. The records must contain copies of examinations administered, the answers given by the operator or senior operator, documentation of the grading of examinations, and documentation of any additional training administered in areas in which an operator or senior operator exhibited deficiencies. The facility licensee must retain these records until the operator's or senior operator's license is renewed.

(d) *Examination integrity.* Applicants, operators and senior operators, and facility licensees must not engage in any activity that compromises the integrity of any application or examination required by §§ 53.760 through 53.795. The integrity of an examination is considered compromised if any activity, regardless of intent, affected, or, but for detection, could have affected the equitable and consistent administration of the examination. This includes activities related to the preparation and certification of applications and all activities related to the preparation, administration, and grading of examinations required by §§ 53.760 through 53.795.

(e) *Simulation facilities.* (1) This section addresses the use of a simulation facility for the administration of examinations, for training, or to demonstrate compliance with experience requirements for applicants for operator and senior operator licenses.

(2) Simulation facilities used for training purposes, for demonstrating compliance with experience requirements, or for the conduct of examinations under § 53.780(b) and (c) must demonstrate compliance with the following criteria as they relate to the facility licensee's reference plant:

(i) The simulation facility must be of sufficient scope and fidelity for individuals to acquire and demonstrate the necessary knowledge, skills, and abilities to safely perform operator and senior operator duties.

(ii) The simulation facility must utilize models relating to nuclear, thermal-hydraulic, and other applicable design-specific characteristics that either replicate the most recent fuel load in the reference commercial nuclear plant or, prior to initial fuel load (or, for a fueled manufactured reactor, prior to initiating the physical removal of any one of the independent physical mechanisms to prevent criticality required under § 53.620(d)(1)), replicate the intended initial fuel load for the reference commercial nuclear plant, with the exception of those portions of the simulation facility that utilize the reference plant itself.

(iii) Simulation facility fidelity must be demonstrated so that significant control manipulations are completed without procedural exceptions, simulator performance exceptions, or deviation from the approved training scenario sequence.

(3) Facility licensees that maintain a simulation facility that has been approved by the Commission for training purposes, demonstrating compliance with experience requirements, or the conduct of examinations under § 53.780(b) and (c) for the facility licensee's reference plant must:

(i) Conduct performance testing throughout the life of the simulation facility in a manner sufficient to ensure that paragraph (e)(2) of this section is met;

(ii) Retain the results of performance testing for 4 years after the completion of each performance test or until superseded by updated test results;

(iii) Promptly correct modeling and hardware discrepancies and discrepancies identified from scenario validation and from performance testing or provide justification as to why the

presence of such discrepancies will not adversely affect simulator performance with respect to the criteria of paragraph (e)(2) of this section;

(iv) Make the results of any uncorrected performance test failures that may exist at the time of the initial license examination or requalification examination available for NRC review, prior to or concurrent with preparations for each initial license examination or requalification examination; and

(v) Maintain the provisions for license application and examination integrity consistent with § 53.780(d).

(4) A simulation facility must demonstrate compliance with the requirements of paragraphs (e)(2) and (e)(3) of this section for the Commission to accept the simulation facility for conducting initial examinations as described in § 53.780(b), requalification training as described in § 53.780(c), or performing control manipulations that affect reactivity to establish eligibility for an operator or senior operator license as described in § 53.775(a).

(f) *Waiver of examination requirement.* On application, the Commission may waive any or all of the requirements for an examination if it finds that the applicant has demonstrated the required knowledge, skills, and abilities to safely operate the plant, and is capable of continuing to do so. The Commission may make such a finding based on demonstration of the following:

(1) Operating experience at a comparable facility;

(2) Proof of the applicant's past competent and safe performance; and

(3) Proof of the applicant's current qualifications.

(g) *Proficiency.* The facility licensee must develop, implement, and maintain a proficiency program to ensure that operators and senior operators will actively perform the functions of an operator or senior operator, respectively, as needed to maintain proficiency with on-shift duties and familiarity with plant status. This program must include those steps that will be taken to re-establish proficiency when it cannot be maintained. This program must be approved by the Commission as part of its approval of the OL or COL for the plant. The approved proficiency program is subject to the requirements of § 53.1565.

(h) *Records.* Each record required by this section must be legible throughout the retention period specified by each Commission regulation. The record may be the original, a reproduced copy, or an electronic copy provided that the copy is authenticated by authorized personnel.

#### **§ 53.785 Conditions of operator and senior operator licenses.**

Each operator and senior operator license contains and is subject to the following conditions whether stated in the license or not:

(a) Neither the license nor any right under the license may be assigned or otherwise transferred.

(b) The license is limited to the facility for which it is issued.

(c) The license is limited to those controls of the facility or facilities specified in the license.

(d) The license is subject to, and the licensee must observe, all applicable rules, regulations, and orders of the Commission.

(e) The licensee must maintain or re-establish proficiency in accordance with the facility licensee's Commission-approved proficiency program required under § 53.780(g).

(f) The licensee must be subject to the facility's Commission-approved operator licensing requalification and requalification examination programs required under § 53.780(c).

(g) The licensee must have a biennial medical examination as described by § 53.765.

(h) The licensee must notify the Commission within 30 days about a conviction for a felony.

(i) The licensee must not consume or ingest alcoholic beverages within the protected area of commercial nuclear plants. The licensee must not use, possess, or sell any illegal drugs. The licensee must not perform activities authorized by a license issued under this part while under the influence of alcohol or any prescription, over-the-counter, or illegal substance that could adversely affect his or her ability to safely and competently perform his or her licensed duties. For the purpose of this paragraph, with respect to alcoholic beverages and drugs, the term "under the influence" means the licensee exceeded, as evidenced by a confirmed test result, the lower of the cutoff levels for drugs or alcohol contained in 10 CFR part 26, or as established by the facility licensee. The term "under the influence" also means the licensee could be mentally or physically impaired as a result of substance use including prescription and over-the-counter drugs, as determined under the provisions, policies, and procedures established by the facility licensee for its fitness-for-duty program, in such a manner as to adversely affect his or her ability to safely and competently perform licensed duties.

(j) Each licensee must participate in the drug and alcohol testing programs as required under 10 CFR part 26.

(k) The licensee must comply with any other conditions that the Commission may impose to protect health or to minimize danger to life or property.

#### **§ 53.790 Issuance, modification, and revocation of operator and senior operator licenses.**

(a) *Issuance of operator and senior operator licenses.* If the Commission determines that an applicant for an operator license or a senior operator license demonstrates compliance with the requirements of the Atomic Energy Act of 1954, as amended, (the Act) and its regulations, it will issue a license in the form and containing any conditions and limitations it considers appropriate and necessary.

(b) *Modification and revocation of operator and senior operator licenses.*

(1) The terms and conditions of all operator and senior operator licenses are subject to amendment, revision, or modification by reason of rules, regulations, or orders issued in accordance with the Act or any amendments thereto.

(2) Any license may be revoked, suspended, or modified, in whole or in part—

(i) For any material false statement in the application or in any statement of fact required under section 182 of the Act;

(ii) Because of conditions revealed by the application or statement of fact or any report, record, inspection, or other means that would warrant the Commission to refuse to grant a license on an original application;

(iii) For willful violation of, or failure to observe, any of the terms and conditions of the Act or the license, or of any rule, regulation, or order of the Commission;

(iv) For any conduct determined by the Commission to be a hazard to safe operation of the facility; or

(v) For the sale, use, or possession of illegal drugs, or refusal to participate in the facility drug and alcohol testing program, or a confirmed positive test for drugs, drug metabolites, or alcohol in violation of the conditions and cutoff levels established by § 53.785(i) or the consumption of alcoholic beverages within the protected area of commercial nuclear plants, or a determination of unfitness for scheduled work as a result of the consumption of alcoholic beverages.

#### **§ 53.795 Expiration and renewal of operator and senior operator licenses.**

(a) *Expiration.* (1) Each operator license and senior operator license expires 6 years after the date of

issuance, upon termination of employment with the facility licensee, or upon determination by the facility licensee that the licensed individual no longer needs to maintain a license.

(2) If a licensee files an application for renewal or an upgrade of an existing license on Form NRC 398 at least 30 days before the expiration of the existing license, it does not expire until disposition of the application for renewal or for an upgraded license has been finally determined by the Commission. Filing by mail will be deemed to be complete at the time the application is postmarked.

(b) *Renewal.* (1) The applicant for renewal of an operator license or senior operator license must—

(i) Complete and sign Form NRC 398 and include the number of the license for which renewal is sought.

(ii) File an original of NRC Form 398 as specified in § 53.775.

(iii) Provide written evidence of the applicant's experience under the existing license and the approximate number of hours that the licensee has operated the facility.

(iv) Provide a statement by an authorized representative of the facility licensee that during the effective term of the current license the applicant has satisfactorily completed the requalification program for the facility for which operator or senior operator license renewal is sought.

(v) Provide evidence that the applicant has discharged the license responsibilities competently and safely. The Commission may accept as evidence of the applicant's having met this requirement a certificate of an authorized representative of the facility licensee or holder of an authorization by which the licensee has been employed.

(vi) Provide certification by the facility licensee of medical condition and general health on Form NRC 396, to comply with § 53.765.

(2) The license will be renewed if the Commission finds that—

(i) The medical condition and the general health of the licensee continue to be such as not to cause operational errors that endanger public health and safety. The Commission will base this finding upon the certification by the facility licensee as described in § 53.765(b).

(ii) The licensee—

(A) Is capable of continuing to competently and safely assume licensed duties;

(B) Has successfully completed a requalification program that has been approved by the Commission as required by § 53.780(c); and

(C) Has passed the requalification examinations as required by § 53.780(c).

(iii) There is a continued need for an operator to operate or for a senior operator to supervise operators at the facility designated in the application.

(iv) The past performance of the licensee has been satisfactory to the Commission. In making its finding, the Commission will include in its evaluation information such as notices of violations or letters of reprimand in the licensee's docket.

#### **§ 53.800 Facility licensees for self-reliant-mitigation facilities.**

(a) A commercial nuclear plant is a self-reliant-mitigation facility if the NRC determined as part of its approval of the OL or COL for that plant that its design demonstrates compliance with criteria (a)(1) through (a)(5) of this section. A self-reliant-mitigation facility is of a class, based upon the similarity of operating and technical characteristics of the plants in the class, such that its licensee must comply with the requirements of §§ 53.800 through 53.820 in lieu of those in §§ 53.760 through 53.795.

(1) The safety performance criteria of §§ 53.210 and 53.220 and, if applicable, any alternative criteria used in accordance with § 53.470, must be met without reliance upon human action for credited event mitigation.

(2) The results of a probabilistic risk analysis must demonstrate that the evaluation criteria for the events analyzed in accordance with § 53.450 will be met without reliance on human actions to achieve acceptable event mitigation.

(3) The functional requirements analysis and function allocation performed under § 53.730(d) must demonstrate that functions required for safety are not reliant upon credited human action.

(4) The plant response to events analyzed under § 53.450 must rely exclusively on safety features and characteristics that will neither be rendered unavailable by credible human errors of commission or omission nor credibly require manual human operation in response to equipment failures. Compliance with this paragraph may be achieved through the use of SSCs that function through inherent characteristics or that have engineered protections against human failures.

(5) The plant design must provide for a layered defense-in-depth approach that is not dependent upon any single barrier or credited human action.

(b) [Reserved]

#### **§ 53.805 Facility licensee requirements related to generally licensed reactor operators.**

(a) Licensees for self-reliant-mitigation facilities that have not yet certified the permanent cessation of operations and permanent removal of fuel from the reactor vessel as described under § 53.1070 must demonstrate compliance with the following requirements:

(1) Ensure that, in addition to being qualified to perform those items identified by the facility-specific systems approach to training conducted under § 53.815, generally licensed reactor operators are qualified to safely and competently—

(i) Perform administrative tasks, including compliance with technical specifications, and perform operability determinations;

(ii) Implement maintenance and configuration controls;

(iii) Comply with radioactive release limitations;

(iv) Understand plant operating data, including reactor parameters, and evaluate emergency conditions;

(v) Initiate a reactor shutdown from necessary locations;

(vi) Dispatch and direct operations and maintenance personnel;

(vii) Implement any applicable responsibilities under the facility emergency plan; and

(viii) Make required notifications to local, State, participating Tribal and Federal authorities.

(2) Develop, implement, and maintain facility technical specifications that provide the necessary administrative controls to ensure the implementation of these requirements.

(3) Develop, implement, and maintain the generally licensed reactor operator training, examination, and proficiency programs required under § 53.815.

(4) Ensure that generally licensed reactor operators are subject to the facility's generally licensed reactor operator training, examination, and proficiency programs required under § 53.815. Ensure that generally licensed reactor operators are subject to and comply with the applicable programmatic requirements for plant personnel required under 10 CFR parts 26 and 73. An individual that is not in compliance with any of these programs is not qualified to be in a position that may involve the manipulation of the controls of the commercial nuclear plant.

(5) Report annually to the NRC the identity of all generally licensed reactor operators at the commercial nuclear plant, including all additions and deletions since the previous report.



(6) Ensure that the facility design continues to meet the criteria of § 53.800.

(b) [Reserved]

**§ 53.810 Generally licensed reactor operators.**

(a) A general license to manipulate the controls of a self-reliant-mitigation facility and to direct the licensed activities of generally licensed reactor operators is hereby issued to any individual employed in a position that may involve the manipulation of the controls of that self-reliant-mitigation facility and who observes the restrictions of this section.

(b) A generally licensed reactor operator must comply with the operating procedures and other conditions specified in the license authorizing operation of the facility.

(c) The general license is limited to the facility or facilities at which the operator is employed.

(d) The Commission will suspend the general license on an individual basis for violations of any provision of the Act or any rule or regulation issued thereunder whenever the Commission deems such suspension desirable, including—

(1) For willful violation of, or failure to observe, any of the terms and conditions of the Act or the general license, or of any rule, regulation, or order of the Commission;

(2) For any conduct determined by the Commission to be a hazard to safe operation of the facility; or

(3) For the sale, use, or possession of illegal drugs, or refusal to participate in the facility drug and alcohol testing program, or a confirmed positive test for drugs, drug metabolites, or alcohol in violation of the conditions and cutoff levels established by § 53.810(f) or the consumption of alcoholic beverages within the protected area of commercial nuclear plants, or a determination of unfitness for scheduled work as a result of the consumption of alcoholic beverages.

(e) The Commission may require information from a generally licensed reactor operator to determine whether a general license should be revoked or suspended with respect to that operator.

(f) The generally licensed reactor operator must not consume or ingest alcoholic beverages within the protected area of commercial nuclear plants. The generally licensed reactor operator must not use, possess, or sell any illegal drugs. The generally licensed reactor operator must not perform activities requiring a general license while under the influence of alcohol or any prescription, over-the-counter, or illegal

substance that could adversely affect his or her ability to safely and competently perform these activities. For the purpose of this paragraph, with respect to alcoholic beverages and drugs, the term “under the influence” means the generally licensed reactor operator exceeded, as evidenced by a confirmed test result, the lower of the cutoff levels for drugs or alcohol contained in 10 CFR part 26, or as established by the facility licensee. The term “under the influence” also means the generally licensed reactor operator could be mentally or physically impaired as a result of substance use including prescription and over-the-counter drugs, as determined under the provisions, policies, and procedures established by the facility licensee for its fitness-for-duty program, in such a manner as to adversely affect his or her ability to safely and competently perform generally licensed reactor operator duties.

(g) The generally licensed reactor operator must notify the Commission within 30 days about a conviction for a felony.

**§ 53.815 Generally licensed reactor operator training, examination, and proficiency programs.**

(a) *Applicability.* The requirements of this section apply to each licensee of a self-reliant-mitigation facility that has not yet certified the permanent cessation of operations and permanent removal of fuel from the reactor vessel as described under § 53.1070.

(b) *Requirements.* (1) The licensee must develop, implement, and maintain training and examination programs that demonstrate compliance with the requirements of paragraphs (b)(2) and (3) of this section.

(2) The training program must provide for both the initial and continuing training of generally licensed reactor operators and be derived from a systems approach to training as defined in this part.

(3)(i) The training program must incorporate the instructional requirements necessary to provide qualified generally licensed reactor operators to operate and maintain the facility in a safe manner in all modes of operation. The training program must comply with the facility license, including all technical specifications and applicable regulations. The facility licensee must periodically evaluate and revise the training program as appropriate to reflect industry experience and relevant changes, including changes to the facility, procedures, regulations, and quality assurance (QA) requirements. Facility

licensee management must periodically review the training program for effectiveness.

(ii) The training program must ensure that generally licensed reactor operators have and maintain the necessary knowledge, skills, and abilities.

(iii) The training program must include the generally licensed reactor operator manipulating the controls of either the facility or a simulation facility that demonstrates compliance with the requirements of § 53.815(e).

(iv) The training program must include an initial examination program for testing a representative sample of the knowledge, skills, and abilities needed to safely perform generally licensed reactor operator duties, to include both the examination methods and criteria to be used to assess passing performance. The facility licensee must provide the opportunity for a representative of the Commission to be present during initial examination administration.

(v) The training program must include a requalification examination program for testing a sample of the topics included under the systems approach to training, to include the examination methods and criteria to be used to assess passing performance. The requalification examination program must specify an appropriate periodicity for administering a complete requalification examination to each generally licensed reactor operator, and the facility licensee must provide the opportunity for a representative of the Commission to be present during requalification examination administration.

(A) The facility licensee must ensure that any generally licensed reactor operator who either demonstrates unsatisfactory performance on, or fails to complete, the requalification examination is removed from the performance of generally licensed reactor operator duties until such time that any necessary remedial training has been completed and a retake examination has been passed.

(B) [Reserved]

(vi) The training program must be approved by the Commission prior to its use, as described under § 53.730(g). The examination program must provide for valid and reliable examinations and must be approved by the Commission prior to their use, as described under § 53.730(g). The approved programs are subject to the requirements of § 53.1565.

(c) *Records.* The following is required regarding the documentation of the generally licensed reactor operator training and examination programs:

(1) Sufficient records must be maintained by the facility licensee to

maintain the integrity of the programs and kept available for NRC inspection to verify the adequacy of the programs.

(2) The facility licensee must maintain records documenting the participation of each generally licensed reactor operator in the training and examination programs. The records must contain copies of examinations administered, the answers given by the generally licensed reactor operator, documentation of the grading of examinations, and documentation of any additional training administered in areas in which a generally licensed reactor operator exhibited deficiencies. The facility licensee must retain these records while the associated generally licensed reactor operators remain employed at the facility.

(3) Each record required by this part must be legible throughout the retention period. The record may be the original, a reproduced copy, or an electronic copy provided that the copy is authenticated by authorized personnel.

(d) *Examination integrity.* Generally licensed reactor operators and facility licensees must not engage in any activity that compromises the integrity of any examination conducted under the generally licensed reactor operator training and examination programs. The integrity of an examination is considered compromised if any activity, regardless of intent, affected, or, but for detection, could have affected the equitable and consistent administration of the examination. This includes all activities related to the preparation, administration, and grading of examinations.

(e) *Simulation facilities.* (1) Simulation facilities used for training purposes, for maintaining proficiency, or for the conduct of examinations must demonstrate compliance with the following criteria as they relate to the facility licensee's reference plant:

(i) The simulation facility must be of sufficient scope and fidelity for individuals to acquire and demonstrate the necessary knowledge, skills, and abilities to safely perform generally licensed reactor operator duties.

(ii) The simulation facility must utilize models relating to nuclear, thermal-hydraulic, and other applicable design-specific characteristics that either replicate the most recent fuel load in the reference commercial nuclear plant or, prior to initial fuel load (or, for a fueled manufactured reactor, prior to initiating the physical removal of any one of the independent physical mechanisms to prevent criticality required under § 53.620(d)(1)), replicate the intended initial fuel load for the reference commercial nuclear plant,

with the exception of those portions of the simulation facility that utilize the reference plant itself.

(iii) Simulator fidelity must be demonstrated so that significant control manipulations are completed without procedural exceptions, simulator performance exceptions, or deviation from the approved training scenario sequence.

(2) Facility licensees that maintain a simulation facility for training purposes, for maintaining proficiency, or for the conduct of examinations must—

(i) Conduct performance testing throughout the life of the simulation facility in a manner sufficient to ensure that paragraph (e)(1) of this section is met;

(ii) Retain the results of performance testing for 4 years after the completion of each performance test or until superseded by updated test results;

(iii) Promptly correct modeling and hardware discrepancies and discrepancies identified from scenario validation and from performance testing or provide justification for why the presence of such discrepancies will not adversely affect the criteria of paragraph (e)(1) of this section;

(iv) Make the results of any uncorrected performance test failures that may exist at the time of an inspection available for NRC review; and

(v) Maintain the provisions for examination integrity consistent with § 53.815(d).

(f) *Waiver of examination requirement.* The facility licensee may waive any or all of the requirements for an examination in accordance with the facility licensee's Commission-approved generally licensed reactor operator training and examination programs.

(g) *Proficiency.* The facility licensee must develop, implement, and maintain a proficiency program to allow generally licensed reactor operators to maintain proficiency regarding position functions and familiarity with plant status. This program must include those steps that will be taken in order to re-establish proficiency when it cannot be maintained.

#### **§ 53.820 Cessation of individual applicability.**

The general license ceases to be applicable on an individual basis once a generally licensed reactor operator is no longer being employed in a position that may involve the manipulation of the controls of the self-reliant mitigation facility.

#### **§ 53.830 Training and qualification of commercial nuclear plant personnel.**

(a) This section addresses personnel training requirements. The regulations within this section are applicable to all applicants for or holders of OLs or COLs under this part.

(b) Prior to initial fuel load (or, for a fueled manufactured reactor, prior to initiating the physical removal of any one of the independent physical mechanisms to prevent criticality required under § 53.620(d)(1)), each holder of an operating or COL under this part must, with sufficient time to provide trained and qualified personnel to operate the facility, establish, implement, and maintain a training program that demonstrates compliance with the requirements of paragraphs (c) and (d) of this section.

(c) The training program must be derived from a systems approach to training as defined in this part and must provide, at a minimum, for the training and qualification of the following categories of commercial nuclear plant personnel:

(1) Supervisors (e.g., shift supervisors);

(2) Technicians (e.g., maintenance, chemistry, and radiological); and

(3) Other appropriate operating personnel (e.g., auxiliary operators, certified fuel handlers, and individuals who provide engineering expertise to on-shift operating personnel).

(d) The training program must incorporate the instructional requirements necessary to provide qualified personnel to operate components of a commercial nuclear plant and maintain the facility in a safe manner in all modes of operation. The training program must be developed to be in compliance with the facility license, including all technical specifications and applicable regulations.

(1) The training program must be periodically evaluated and revised as appropriate to reflect industry experience and relevant changes, including changes to the facility, procedures, regulations, and QA requirements. The training program must be periodically reviewed by facility licensee management for effectiveness.

(2) Sufficient records must be maintained by the facility licensee to maintain program integrity and kept available for NRC inspection to verify the adequacy of the training program.

#### **§ 53.845 Programs.**

(a) The required plant programs under this part must include but are not necessarily limited to the programs

described in the following sections of this subpart. Licensees may combine, separate, and otherwise organize programs and related documents as appropriate for the technologies and organizations associated with the commercial nuclear plant.

(b) In addition to the programs described in the following sections, programs must be provided for each commercial nuclear plant, if necessary, to ensure that the performance of design features and human actions are consistent with the analyses performed under §§ 53.450 and 53.730 and that the plant will demonstrate compliance with the safety criteria defined in §§ 53.210 and 53.220.

#### **§ 53.850 Radiation protection.**

(a) Each holder of an OL or COL under this part must develop, implement, and maintain a Radiation Protection Program for operations that is commensurate with the scope and extent of licensed activities under this part and includes measures for limiting and monitoring radioactive plant effluents and limiting and monitoring the dose to individuals working with radioactive materials in accordance with 10 CFR part 20.

(b) Each holder of an OL or COL under this part must develop, implement, and maintain a program for the control of radioactive effluents and for keeping the doses to members of the public from radioactive effluents as low as is reasonably achievable and for environmental monitoring. The program must be contained in an Offsite Dose Calculations Manual, must be implemented by procedures, and must include remedial actions to be taken whenever the program limits are exceeded. The Offsite Dose Calculations Manual must—

(1) Contain the methodology and parameters used in the calculation of offsite doses resulting from radioactive gaseous and liquid effluents, in the calculation of gaseous and liquid effluent monitoring alarm and trip setpoints, and in the conduct of the radiological environmental monitoring program; and

(2) Contain the radioactive effluent controls and radiological environmental monitoring activities, and descriptions of the information that should be included in the Annual Radiological Environmental Operating and Radioactive Effluent Release Reports required by § 53.1645.

(c) Each holder of an OL or COL under this part must develop, implement, and maintain a Process Control Program that identifies the administrative and operational controls

for solid radioactive waste processing, process parameters, and surveillance requirements sufficient to ensure compliance with the requirements of 10 CFR part 20, 10 CFR part 61, and 10 CFR part 71.

#### **§ 53.855 Emergency preparedness.**

(a) Each holder of an OL or COL under this part must have an emergency response plan that must contain information needed to demonstrate compliance with either the requirements in § 50.160 of this chapter or the requirements in appendix E to part 50 and the planning standards of § 50.47(b) of this chapter.

(b) No initial OL, initial COL, or early site permit that includes complete and integrated emergency plans will be issued under this part unless a finding is made by the NRC, in accordance with § 50.47 of this chapter, that there is reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency.

#### **§ 53.860 Security programs.**

(a) *Physical Protection Program.* Each holder of an OL or COL under this part must develop, implement, and maintain a physical protection program under the following requirements:

(1) The licensee must implement security requirements for the protection of special nuclear material based on the type, enrichment, and quantity in accordance with 10 CFR part 73, as applicable, and implement security requirements for the protection of Category 1 and Category 2 quantities of radioactive material in accordance with 10 CFR part 37, as applicable; and

(2) The licensee must demonstrate compliance with the provisions set forth in either §§ 73.55 or 73.100 of this chapter, unless the licensee demonstrates compliance with the following criterion:

(i) The radiological consequences from a design-basis threat-initiated event involving the loss of engineered systems for decay heat removal and possible breaches in physical structures surrounding the reactor, spent fuel, and other inventories of radioactive materials result in offsite doses below the values in § 53.210.

(ii) The applicant must perform a site-specific analysis, including identification of target sets, to demonstrate that the criterion in § 53.860(a)(2)(i) is satisfied. The analysis must assume that licensee mitigation and recovery actions, including any operator actions, are unavailable or ineffective. The licensee must maintain the analysis until the permanent

cessation of operations and permanent removal of fuel from the reactor vessel as described under § 53.1070.

(b) *Fitness for Duty.* Each holder of an OL or COL under this part must develop, implement, and maintain a fitness for duty program under 10 CFR part 26.

(c) *Access Authorization.* Each holder of an OL or COL under this part must develop, implement, and maintain an access authorization program under § 73.120 of this chapter if the criterion in § 53.860(a)(2)(i) is satisfied, or the requirements in § 73.56 of this chapter if the criterion is not satisfied.

(d) *Cybersecurity.* Each holder of an OL or COL under this part must develop, implement, and maintain a cybersecurity program under §§ 73.54 or 73.110 of this chapter.

(e) *Information Security.* Each holder of an OL or COL under this part must develop, implement, and maintain an information protection system under §§ 73.21, 73.22, and 73.23 of this chapter, as applicable.

#### **§ 53.865 Quality assurance.**

Each holder of an OL or COL under this part must develop, implement, and maintain a quality assurance program in accordance with appendix B of part 50 of this chapter. A written quality assurance program manual must be developed and used to guide the conduct of the program in accordance with generally accepted consensus codes and standards that have been endorsed or otherwise found acceptable by the NRC.

#### **§ 53.870 Integrity assessment programs.**

Each holder of an OL or COL under this part must develop, implement, and maintain an integrity assessment program to monitor, evaluate, and manage—

(a) The effects of plant aging on SR and NSRSS SSCs. The program may refer to surveillances, tests, and inspections conducted for specific SSCs in accordance with other requirements in this part or conducted in accordance with applicable consensus codes and standards endorsed or otherwise found acceptable by the NRC;

(b) Cyclic or transient load limits to ensure that SR and NSRSS SSCs are maintained within the applicable design limits; and

(c) Degradation mechanisms related to chemical interactions, operating temperatures, effects of irradiation, and other environmental factors to ensure that the capabilities, availability, and reliability of SR and NSRSS SSCs demonstrate compliance with the

functional design criteria of §§ 53.410 and 53.420.

#### **§ 53.875 Fire protection.**

(a)(1) Each holder of an OL or COL under this part must have a fire protection plan that describes the overall fire protection program for the facility; identifies the various positions within the licensee's organization that are responsible for the program; states the authorities that are delegated to each of these positions to implement those responsibilities; and outlines the plans for fire protection, fire detection and suppression capability; and limitation of fire damage.

(2) The fire protection plan must also describe specific features necessary to implement the program described in paragraph (a)(1) of this section such as the following: administrative controls and personnel requirements for fire prevention and manual fire suppression activities; automatic and manually operated fire detection and suppression systems; and the means to limit fire damage to SSCs so that the capability to demonstrate compliance with the requirements of § 53.210 is ensured.

(b)(1) Each holder of an OL or COL under this part must develop a performance-based or deterministic fire protection program that demonstrates compliance with the safety criteria outlined in §§ 53.210 and 53.220, related safety functions outlined in § 53.230, and defense in depth as outlined in § 53.250 with specific fire protection measures related to fire prevention, fire detection, and fire suppression.

(2) The fire protection program must comply with the following:

(i) Safety-related and NSRSS SSCs must be designed, located, and maintained to minimize, consistent with other safety requirements, the probability and effect of fires and explosions.

(ii) Noncombustible and fire-resistant materials must be used wherever practical throughout the facility, particularly in locations with SR and NSRSS SSCs.

(iii) Fire detection and fire suppression systems of appropriate capacity and capability must be provided and designed and maintained to minimize the adverse effects of fires on SR and NSRSS SSCs.

(iv) Fire suppression systems must be designed and maintained to ensure that their rupture or inadvertent operation does not significantly impair the ability of SR and NSRSS SSCs to perform their safety functions to satisfy § 53.230.

#### **§ 53.880 Inservice inspection and inservice testing.**

(a) Each holder of an OL or COL under this part must develop, implement, and maintain a program for inservice inspection (ISI) and inservice testing (IST) prior to receiving an OL or COL. The ISI/IST programs must, wherever applicable, be in accordance with generally accepted consensus codes and standards that have been endorsed or otherwise found acceptable by the NRC. The ISI/IST program must include all inspections and tests required by the codes and standards used in the design and be supplemented by risk insights that identify the most important SSCs to plant safety. The types of testing and inspections and their frequency should be informed by risk insights to maintain the reliability and performance of SSCs consistent with the associated design and analyses activities involving those SSCs. Risk insights must also be used to determine when to conduct the inspections and tests (e.g., full power, shutdown, refueling) to minimize risk to the plant workers and the public. The ISI/IST program must be documented in a written manual and managed by qualified personnel reporting to the Plant Manager.

(b) Prior to plant operation, baseline inspections and testing must be performed using the same techniques as will be used for future inspections and testing. The results of these inspections and testing must be used as benchmarks for evaluating the results of future inspections and testing. Sufficient room and support must be provided to accommodate the personnel, ISI/IST equipment, and shielding necessary to perform the inspections and testing. Acceptance criteria for determining whether corrective action is needed must be developed (or taken from the codes and standards used in the design) for evaluating the results of the inspections and testing. The results of the inspections and testing must be provided to the Plant Manager who is responsible for determining what, if any, corrective action is needed and when it should be taken. The ISI/IST results and corrective actions must be documented and the documentation retained for the life of the plant.

#### **§ 53.910 Procedures and guidelines.**

(a) Each holder of an OL or COL under this part must have a program for developing, implementing, and maintaining an integrated set of procedures, guidelines, and related supporting activities to support normal operations and respond to possible unplanned events.

(b) The program required by paragraph (a) of this section must include but is not limited to development, implementation, maintenance, and supporting activities of procedures and guidelines for the following:

- (1) Plant operations;
- (2) Maintenance activities under § 53.715;
- (3) Program requirements under this subpart F of this part;
- (4) Emergency operating procedures, if developed to address the role of human actions in responding to LBEs;
- (5) Accident management guidelines, if developed to address the role of human actions in responding to LBEs;
- (6) Procedures for each area in which licensed special nuclear material is handled, used, or stored to protect personnel upon the sounding of a criticality alarm required by § 53.440(m); and
- (7) Procedures that describe how the licensee will address the following areas if the licensee is notified of a potential aircraft threat:
  - (i) Verification of the authenticity of threat notifications;
  - (ii) Maintenance of continuous communication with threat notification sources;
  - (iii) Contacting all onsite personnel and applicable offsite response organizations;
  - (iv) Onsite actions necessary to enhance the capability of the facility to mitigate the consequences of an aircraft impact;
  - (v) Measures to reduce visual discrimination of the site relative to its surroundings or individual buildings within the protected area;
  - (vi) Dispersal of equipment and personnel, as well as rapid entry into site protected areas for essential onsite personnel and offsite responders who are necessary to mitigate the event; and
  - (vii) Recall of site personnel.

### **Subpart G—Decommissioning Requirements**

#### **§ 53.1000 Scope and purpose.**

This subpart defines the requirements related to decommissioning for applicants for, or holders of, an operating license (OL) or combined license (COL). The requirements related to maintaining financial assurance for decommissioning are in §§ 53.1010 through 53.1060. The requirements for transitioning from operations to decommissioning and for the release of property and termination of the license are in §§ 53.1070 through 53.1080.

**§ 53.1010 Financial assurance for decommissioning.**

(a) This section establishes requirements for indicating to the U.S. Nuclear Regulatory Commission (NRC) how an applicant for or holder of an OL or COL under this part will provide reasonable assurance that funds will be available for the decommissioning process. Reasonable assurance consists of a series of steps as provided in paragraph (b) of this section and §§ 53.1020, 53.1030 and 53.1040.

Funding for the decommissioning of commercial nuclear plants may also be subject to the regulation of Federal or State government agencies (e.g., Federal Energy Regulatory Commission (FERC) and State Public Utility Commissions) that have jurisdiction over rate regulation. The requirements of this subpart, in particular § 53.1020, are in addition to, and not a substitution for, other requirements, and are not intended to be used by themselves or by other agencies to establish rates.

(b) Each applicant for an OL or COL under this part must prepare a plan and an associated decommissioning report that ensures and documents that adequate funding will be available to decommission the facility. Each holder of an OL or COL must implement and maintain the plan.

(1)(i) Before the Commission issues an OL under this part, the applicant must update the decommissioning report to certify that it has provided financial assurance for decommissioning in the amount proposed in the application and approved by the NRC under § 53.1020.

(ii) No later than 30 days after the Commission issues the notice of intended operation under § 53.1452 for a COL under this part, the licensee must update the decommissioning report to certify that it has provided financial assurance for decommissioning in the amount proposed in the application and approved by the NRC under § 53.1020.

(2) The amount of financial assurance for decommissioning to be provided must be based on a site-specific cost estimate for decommissioning the facility under § 53.1020.

(3) The amount of financial assurance for decommissioning to be provided must be adjusted annually using a rate at least equal to that stated in § 53.1030.

(4) The amount of financial assurance for decommissioning to be provided must be covered by one or more of the methods described in § 53.1040 as acceptable to the NRC. A copy of the financial instrument obtained to satisfy the requirements of § 53.1040 must be submitted to the NRC as part of the application for an OL under this part; however, an applicant for or holder of

a COL need not obtain such financial instrument or submit a copy to the Commission except as provided in § 53.1060(b).

**§ 53.1020 Cost estimates for decommissioning.**

Cost estimates for decommissioning must be site-specific. Site-specific decommissioning cost estimates (DCEs) must account for the engineering, labor, equipment, transportation, disposal, and related charges needed to support termination of the license. They must include the costs for decontaminating structures, systems, and components and the site environs; removal of contaminated components and materials from the plant and the site environs; disposal of removed components and materials in appropriate facilities; and any other activities supporting the release of the property and termination of the license. They must also address the approach to annual adjustments required by § 53.1030. Finally, site-specific DCEs must include plans for adjusting levels of funds assured for decommissioning to demonstrate that a reasonable level of assurance will be provided that funds will be available when needed to cover the cost of decommissioning.

**§ 53.1030 Annual adjustments to cost estimates for decommissioning.**

Each holder of an OL or COL under this part must annually adjust the cost estimate for decommissioning to account for escalation in labor, energy, and waste burial costs. Licensees may elect to use either a site-specific adjustment factor, approved as part of the plan and associated decommissioning report required by § 53.1010, in paragraph (a) of this section or the generic adjustment factor in paragraph (b) of this section.

(a) A site-specific adjustment factor must address the estimated contributions and escalation of costs for the following aspects of decommissioning:

- (1) Labor, materials, and services;
- (2) Energy and waste transportation; and
- (3) Radioactive waste burial or other disposition.

(b) A generic adjustment factor must be at least equal to  $0.65 L + 0.13 E + 0.22 B$ , where L and E are escalation factors for labor and energy, respectively, and are to be taken from regional data of U.S. Department of Labor Bureau of Labor Statistics and B is an escalation factor for waste burial and is to be taken from NRC report NUREG-1307, "Report on Waste Burial Charges."

**§ 53.1040 Methods for providing financial assurance for decommissioning.**

Financial assurance for decommissioning is to be provided by the following methods.

(a) *Prepayment.* Prepayment is the deposit made preceding the start of operation or the transfer of a license under § 53.1570 into an account segregated from licensee assets and outside the administrative control of the licensee and its subsidiaries or affiliates of cash or liquid assets such that the amount of funds would be sufficient to pay decommissioning costs. Prepayment may be in the form of a trust, escrow account, or Government fund with payment by certificate of deposit, deposit of government or other securities, or other method acceptable to the NRC. This trust, escrow account, Government fund, or other type of agreement must be established in writing and maintained at all times in the United States with an entity that is an appropriate State or Federal Government agency, or an entity whose operations in which the prepayment deposit is managed are regulated and examined by a Federal or State agency. A licensee that has prepaid funds based on a site-specific cost estimate under § 53.1020 may take credit for projected earnings on the prepaid decommissioning trust funds, using up to a 2 percent annual real rate of return through the time of termination of the license. A licensee may use a credit of greater than 2 percent if the licensee's rate-setting authority has specifically authorized a higher rate. Actual earnings on existing funds may be used to calculate future fund needs.

(b) *External sinking fund.* An external sinking fund is a fund established and maintained by setting funds aside periodically in an account segregated from licensee assets and outside the administrative control of the licensee and its subsidiaries or affiliates in which the total amount of funds would be sufficient to pay decommissioning costs. An external sinking fund may be in the form of a trust, escrow account, or Government fund, with payment by certificate of deposit, deposit of Government or other securities, or other method acceptable to the NRC. This trust, escrow account, Government fund, or other type of agreement must be established in writing and maintained at all times in the United States with an entity that is an appropriate State or Federal Government agency, or an entity whose operations in which the external sinking fund is managed are regulated and examined by a Federal or State agency. A licensee that has collected funds based on a site-specific cost

estimate under § 53.1020 may take credit for projected earnings on the external sinking funds using up to a 2 percent annual real rate of return from the time of future funds' collection through the time of termination of the license. A licensee may use a credit of greater than 2 percent if the licensee's rate-setting authority has specifically authorized a higher rate. Actual earnings on existing funds may be used to calculate future fund needs. A licensee whose rates for decommissioning costs cover only a portion of these costs may make use of this method only for the portion of these costs that are collected in one of the manners described in this paragraph. This method may be used as the exclusive mechanism relied upon for providing financial assurance for decommissioning in the following circumstances:

(1) By a licensee that recovers, either directly or indirectly, the estimated total cost of decommissioning through rates established by "cost of service" or similar ratemaking regulation. Public utility districts, municipalities, rural electric cooperatives, and State and Federal agencies, including associations of any of the foregoing, that establish their own rates and are able to recover their cost of service allocable to decommissioning, are deemed to satisfy this condition.

(2) By a licensee whose source of revenues for its external sinking fund is a "non-bypassable charge," the total amount of which will provide funds estimated to be needed for decommissioning pursuant to §§ 53.1020, 53.1060, or 53.1575.

(c) *A surety method, insurance, or other guarantee method.* (1) These methods guarantee that decommissioning costs will be paid. A surety method may be in the form of a surety bond, or letter of credit. Any surety method or insurance used to provide financial assurance for decommissioning must contain the following conditions:

(i) The surety method or insurance must be open-ended, or, if written for a specified term, such as 5 years, must be renewed automatically, unless 90 days or more prior to the renewal day the issuer notifies the NRC, the beneficiary, and the licensee of its intention not to renew. The surety or insurance must also provide that the full-face amount be paid to the beneficiary automatically prior to the expiration without proof of forfeiture if the licensee fails to provide a replacement acceptable to the NRC within 30 days after receipt of notification of cancellation.

(ii) The surety or insurance must be payable to a trust established for decommissioning costs. The trustee and trust must be acceptable to the NRC. An acceptable trustee includes an appropriate State or Federal Government agency or an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State agency.

(2) A parent company guarantee of funds for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in appendix A to 10 CFR part 30.

(3) For commercial companies that issue bonds, a guarantee of funds by the applicant or licensee for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in appendix C to 10 CFR part 30. For commercial companies that do not issue bonds, a guarantee of funds by the applicant or licensee for decommissioning costs may be used if the guarantee and test are as contained in appendix D to 10 CFR part 30. A guarantee by the applicant or licensee may not be used in any situation in which the applicant or licensee has a parent company holding majority control of voting stock of the company.

(d) *Funding method for Federal licensees.* For a Federal licensee, a statement of intent containing a cost estimate for decommissioning and indicating that funds for decommissioning will be obtained when necessary.

(e) *Contractual funding method.* Contractual obligation(s) on the part of a licensee's customer(s), the total amount of which over the duration of the contract(s) will provide the licensee's total share of uncollected funds estimated to be needed for decommissioning pursuant to §§ 53.1020, 53.1060, or 53.1575. To be acceptable to the NRC as a method of decommissioning funding assurance, the terms of the contract(s) must include provisions that the buyer(s) of electricity or other products will pay for the decommissioning obligations specified in the contract(s), notwithstanding the operational status either of the licensed plant to which the contract(s) pertains or force majeure provisions. All proceeds from the contract(s) for decommissioning funding will be deposited to the external sinking fund. The NRC reserves the right to evaluate the terms of any contract(s) and the financial qualifications of the contracting entity or entities offered as assurance for decommissioning funding.

(f) *Other funding mechanisms.* Any other mechanism, or combination of

mechanisms, that provides, as determined by the NRC upon its evaluation of the specific circumstances of each licensee submittal, assurance of decommissioning funding equivalent to that provided by the mechanisms specified in paragraphs (a) through (e) of this section. Licensees who do not have sources of funding described in paragraph (b) of this section may use an external sinking fund in combination with a guarantee mechanism, as specified in paragraph (c) of this section, provided that the total amount of funds estimated to be necessary for decommissioning is assured.

#### **§ 53.1045 Limitations on the use of decommissioning trust funds.**

(a)(1) Decommissioning trust funds may be used by licensees if—

(i) The withdrawals are for expenses for decommissioning activities consistent with the definition of decommission or decommissioning in § 53.020;

(ii) The expenditure would not reduce the value of the decommissioning trust below an amount necessary to place and maintain the reactor in a safe storage condition if unforeseen conditions or expenses arise; and

(iii) The withdrawals would not inhibit the ability of the licensee to complete funding of any shortfalls in the decommissioning trust needed to ensure the availability of funds to ultimately release the site and terminate the license.

(2) Initially, 3 percent of the amount determined in accordance with § 53.1020 may be used for decommissioning planning. For licensees that have submitted the certifications required under § 53.1070 and commencing 90 days after the NRC has received the post-shutdown decommissioning activities report (PSDAR) required by § 53.1060, an additional 20 percent may be used. An updated site-specific DCE must be submitted to the NRC prior to the licensee using any funding in excess of these amounts.

(b) Licensees that are not "electric utilities" as defined in § 53.020 that use prepayment or an external sinking fund to provide financial assurance must provide in the terms of the arrangements governing the trust, escrow account, or Government fund, used to segregate and manage the funds that—

(1) The trustee, manager, investment advisor, or other person directing investment of the funds—

(i) Is prohibited from investing the funds in securities or other obligations of the licensee or any other owner or operator of any commercial nuclear

plant or their affiliates, subsidiaries, successors or assigns, or in a mutual fund in which at least 50 percent of the fund is invested in the securities of a licensee or parent company whose subsidiary is an owner or operator of a foreign or domestic commercial nuclear plant. However, the funds may be invested in securities tied to market indices or other non-nuclear sector collective, commingled, or mutual funds, provided that no more than 10 percent of trust assets may be indirectly invested in securities of any entity owning or operating one or more commercial nuclear plants.

(ii) Is obligated at all times to adhere to a standard of care set forth in the trust, which either shall be the standard of care, whether in investing or otherwise, required by State or Federal law or one or more State or Federal regulatory agencies with jurisdiction over the trust funds, or, in the absence of any such standard of care, whether in investing or otherwise, that a prudent investor would use in the same circumstances. The term “prudent investor,” shall have the same meaning as set forth in FERC’s “Regulations Governing Nuclear Plant Decommissioning Trust Funds” at 18 CFR 35.32(a)(3), or any successor regulation.

(2) The licensee, its affiliates, and its subsidiaries are prohibited from being engaged as investment manager for the funds or from giving day-to-day management direction of the funds’ investments or direction on individual investments by the funds, except in the case of passive fund management of trust funds where management is limited to investments tracking market indices.

(3) The trust, escrow account, Government fund, or other account used to segregate and manage the funds may not be amended in any material respect without written notification to the Director, Office of Nuclear Reactor Regulation, or Director, Office of Nuclear Material Safety and Safeguards, as applicable, at least 30 working days before the proposed effective date of the amendment. The licensee must provide the text of the proposed amendment and a statement of the reason for the proposed amendment. The trust, escrow account, Government fund, or other account may not be amended if the person responsible for managing the trust, escrow account, Government fund, or other account receives written notice of objection from the Director, Office of Nuclear Reactor Regulation, or Director, Office of Nuclear Material Safety and Safeguards, as applicable, within the notice period.

(4) Except for withdrawals being made under paragraph (a) of this section or for payments of ordinary administrative costs (including taxes) and other incidental expenses of the fund (including legal, accounting, actuarial, and trustee expenses) in connection with the operation of the fund, no disbursement or payment may be made from the trust, escrow account, Government fund, or other account used to segregate and manage the funds until written notice of the intention to make a disbursement or payment has been given to the Director, Office of Nuclear Reactor Regulation, or Director, Office of Nuclear Material Safety and Safeguards, as applicable, at least 30 working days before the date of the intended disbursement or payment. The disbursement or payment from the trust, escrow account, Government fund or other account may be made following the 30 working day notice period if the person responsible for managing the trust, escrow account, Government fund, or other account does not receive written notice of objection from the Director, Office of Nuclear Reactor Regulation, or Director, Office of Nuclear Material Safety and Safeguards, as applicable, within the notice period. Disbursements or payments from the trust, escrow account, Government fund, or other account used to segregate and manage the funds, other than for payment of ordinary administrative costs (including taxes) and other incidental expenses of the fund (including legal, accounting, actuarial, and trustee expenses) in connection with the operation of the fund, are restricted to decommissioning expenses or transfer to another financial assurance method acceptable under § 53.1040 until final decommissioning has been completed. After decommissioning has begun and withdrawals from the decommissioning fund are made under paragraph (a) of this section, no further notification need be made to the NRC.

(c) Licensees that are “electric utilities” under § 53.020 that use prepayment or an external sinking fund to provide financial assurance must include a provision in the terms of the trust, escrow account, Government fund, or other account used to segregate and manage funds that except for withdrawals being made under paragraph (a) of this section or for payments of ordinary administrative costs (including taxes) and other incidental expenses of the fund (including legal, accounting, actuarial, and trustee expenses) in connection with the operation of the fund, no

disbursement or payment may be made from the trust, escrow account, Government fund, or other account used to segregate and manage the funds until written notice of the intention to make a disbursement or payment has been given the Director, Office of Nuclear Reactor Regulation, or Director, Office of Nuclear Material Safety and Safeguards, as applicable, at least 30 working days before the date of the intended disbursement or payment. The disbursement or payment from the trust, escrow account, Government fund or other account may be made following the 30 working day notice period if the person responsible for managing the trust, escrow account, Government fund, or other account does not receive written notice of objection from the Director, Office of Nuclear Reactor Regulation, or Director, Office of Nuclear Material Safety and Safeguards, as applicable, within the notice period. Disbursements or payments from the trust, escrow account, Government fund, or other account used to segregate and manage the funds, other than for payment of ordinary administrative costs (including taxes) and other incidental expenses of the fund (including legal, accounting, actuarial, and trustee expenses) in connection with the operation of the fund, are restricted to decommissioning expenses or transfer to another financial assurance method acceptable under § 53.1040 until final decommissioning has been completed. After decommissioning has begun and withdrawals from the decommissioning fund are made under paragraph (a) of this section, no further notification need be made to the NRC.

(d) A licensee that is not an “electric utility” under § 53.020 and using a surety method, insurance, or other guarantee method to provide financial assurance must provide that the trust established for decommissioning costs to which the surety or insurance is payable contains in its terms the requirements in § 53.1045(b)(1) through (4).

#### **§ 53.1050 NRC oversight.**

The NRC reserves the right to take the following steps in order to ensure a licensee’s adequate accumulation of decommissioning funds: review, as needed, the rate of accumulation of decommissioning funds and, either independently or in cooperation with FERC and the licensee’s State Public Utility Commission, take additional actions as appropriate on a case-by-case basis, including modification of a licensee’s schedule for the accumulation of decommissioning funds.



**§ 53.1060 Reporting and recordkeeping requirements.**

(a) Each holder of an OL under this part or holder of a COL under this part after the date that the Commission has made the finding under § 53.1452(g) must report, at least once every 2 years, by March 31, on the status of its certification of decommissioning funding for each commercial nuclear reactor or part of a commercial nuclear reactor that it owns. The information in this report must include, at a minimum, the amount of decommissioning funds estimated to be required under §§ 53.1020 and 53.1030; the amount of decommissioning funds accumulated to the end of the calendar year preceding the date of the report; a schedule of the annual amounts remaining to be collected; the assumptions used regarding rates of escalation in decommissioning costs, rates of earnings on decommissioning funds, and rates of other factors used in funding projections; any contracts upon which the licensee is relying under § 53.1040(e); any modifications occurring to a licensee's method of providing financial assurance since the last submitted report; and any material changes to trust agreements. If any of the preceding items is not applicable, the licensee should so state in its report. Any licensee for a plant that is within 5 years of the projected end of its operation, or where conditions have changed such that it will close within 5 years (before the end of its licensed life), or that has already closed (before the end of its licensed life), or that is involved in a merger or an acquisition must submit this report annually.

(b) Each holder of a COL under this part must, 2 years before and 1 year before the scheduled date for initial loading of fuel (or, for a fueled manufactured reactor, 2 years before and 1 year before the scheduled date for initiating the physical removal of any one of the independent physical mechanisms to prevent criticality required under § 53.620(d)(1)), submit a report to the NRC containing a certification updating the DCEs and a copy of the financial instrument to be used to satisfy § 53.1040. No later than 30 days after the Commission publishes notice in the **Federal Register** under § 53.1452(a), the licensee must submit an updated decommissioning report required under § 53.1010(b)(1)(ii), including a copy of the financial instrument obtained to satisfy § 53.1040.

(c) Each licensee must keep records of information important to the safe and effective decommissioning of the facility in an identified location until the license is terminated by the

Commission. If records of relevant information are kept for other purposes, reference to these records and their locations may be used. Information the Commission considers important to decommissioning consists of—

(1) Records of spills or other unusual occurrences involving the spread of contamination in and around the facility, equipment, or site. These records may be limited to instances when significant contamination remains after any cleanup procedures or when there is reasonable likelihood that contaminants may have spread to inaccessible areas as in the case of possible seepage into porous materials such as concrete. These records must include any known information on identification of involved nuclides, quantities, forms, and concentrations.

(2) As-built drawings and modifications of structures and equipment in restricted areas where radioactive materials are used and/or stored and of locations of possible inaccessible contamination such as buried pipes that may be subject to contamination. If required drawings are referenced, each relevant document need not be indexed individually. If drawings are not available, the licensee must substitute appropriate records of available information concerning these areas and locations.

(3) Records of the cost estimate performed for the decommissioning funding plan or of the amount certified for decommissioning, and records of the funding method used for assuring funds if either a funding plan or certification is used.

(4) Records of—

(i) The licensed site area, as originally licensed and any revisions, which must include a site map and any acquisition or use of property outside the originally licensed site area for the purpose of receiving, possessing, or using licensed materials;

(ii) The licensed activities carried out on the acquired or used property; and

(iii) The release and final disposition of any property recorded in paragraph (c)(4)(i) of this section, the historical site assessment performed for the release, radiation surveys performed to support release of the property, submittals to the NRC made under § 53.1070, and the methods employed to ensure that the property met the radiological criteria of subpart E of 10 CFR part 20 at the time the property was released.

(d) Each holder of an OL or COL under this part must at or about 5 years prior to the projected end of operations submit a preliminary DCE which includes an up-to-date assessment of the

major factors that could affect the cost to decommission.

(e) Prior to or within 2 years following permanent cessation of operations, the licensee must submit a PSDAR to the NRC, and a copy to the affected State(s). The PSDAR must contain a description of the planned decommissioning activities along with a schedule for their accomplishment, a discussion that provides the reasons for concluding that the environmental impacts associated with site-specific decommissioning activities will be bounded by appropriate previously issued environmental impact statements, and a site-specific DCE, including the projected cost of managing irradiated fuel.

(f) For decommissioning activities that delay completion of decommissioning by including a period of storage or surveillance, the licensee must provide a means of adjusting cost estimates and associated funding levels over the storage or surveillance period.

(g) After submitting its site-specific DCE required by paragraph (e) of this section, and until the licensee has completed its final radiation survey and demonstrated that residual radioactivity has been reduced to a level that permits termination of its license, the licensee must annually submit to the NRC, by March 31, a financial assurance status report. The report must include the following information, current through the end of the previous calendar year:

(1) The amount spent on decommissioning, both cumulative and over the previous calendar year, the remaining balance of any decommissioning funds, and the amount provided by other financial assurance methods being relied upon;

(2) An estimate of the costs to complete decommissioning, reflecting any difference between actual and estimated costs for work performed during the year, and the decommissioning criteria upon which the estimate is based;

(3) Any modifications occurring to a licensee's current method of providing financial assurance since the last submitted report; and

(4) Any material changes to trust agreements or financial assurance contracts.

(5) If the sum of the balance of any remaining decommissioning funds, plus earnings on such funds calculated at not greater than a 2 percent real rate of return, together with the amount provided by other financial assurance methods being relied upon, does not cover the estimated cost to complete the decommissioning, the financial assurance status report must include

additional financial assurance to cover the estimated cost of completion.

(h) After submitting its site-specific DCE required by paragraph (e) of this section, the licensee must annually submit to the NRC, by March 31, a report on the status of its funding for managing irradiated fuel. The report must include the following information, current through the end of the previous calendar year:

(1) The amount of funds accumulated to cover the cost of managing the irradiated fuel;

(2) The projected cost of managing irradiated fuel until title to the fuel and possession of the fuel is transferred to the Secretary of Energy; and

(3) If the funds accumulated do not cover the projected cost, a plan to obtain additional funds to cover the cost.

#### **§ 53.1070 Termination of license.**

For each holder of an OL or COL under this part—

(a)(1) When the licensee has determined to permanently cease operations the licensee must, within 30 days, submit a written certification to the NRC, consistent with the requirements of § 53.040(b)(8);

(2) When appropriate to support decommissioning activities and the eventual permanent removal of fuel from the reactor vessel, the licensee must develop defueled technical specifications by reviewing the operational technical specifications and determining which specifications no longer apply during decommissioning and which ones should remain applicable. The licensee must make the appropriate submittals to the NRC in accordance with § 53.1510 to request changes to the technical specifications; and

(3)(i) Once fuel has been permanently removed from the reactor vessel, the licensee must submit a written certification to the NRC that meets the requirements of § 53.040(b)(9); and

(ii) The licensee must establish and maintain staffing consisting of certified fuel handlers, as defined under § 53.020, and other non-licensed personnel with appropriate qualifications, and in sufficient numbers, to ensure support for facility operations and radiological control activities, as required by the facility defueled technical specifications. These personnel must be subject to the training requirements of § 53.830.

(b) Upon docketing of the certifications for permanent cessation of operations and permanent removal of fuel from the reactor vessel, or when a final legally effective order to permanently cease operations has come

into effect, the license issued under this part no longer authorizes operation of the reactor or emplacement or retention of fuel into the reactor vessel.

(c) Decommissioning will be completed within 60 years of permanent cessation of operations. Completion of decommissioning beyond 60 years will be approved by the Commission only when necessary to protect public health and safety. Factors that will be considered by the Commission in evaluating an alternative that provides for completion of decommissioning beyond 60 years of permanent cessation of operations include unavailability of waste disposal capacity and other site-specific factors affecting the licensee's capability to carry out decommissioning, including presence of other nuclear facilities at the site.

(d)(1) Prior to or within 2 years following permanent cessation of operations, the licensee must submit a PSDAR and site-specific DCE in accordance with § 53.1060(e).

(2) The NRC must notice receipt of the PSDAR and make the PSDAR publicly available and publish notice of its availability for public comment in the **Federal Register**. The NRC must also schedule a public meeting readily accessible to individuals in the vicinity of the licensee's facility. The NRC must publish a notice in the **Federal Register** and in a forum, such as local newspapers, that is readily accessible to individuals in the vicinity of the site, announcing the date, time, and location of the meeting, along with a brief description of the purpose of the meeting.

(e) Licensees must not perform any major decommissioning activities, as defined in § 53.020, until 90 days after the NRC has received the licensee's PSDAR submittal and until certifications of permanent cessation of operations and permanent removal of fuel from the reactor vessel, as required under paragraph (a) of this section, have been submitted.

(f) Licensees must not perform any decommissioning activities, as defined in § 53.020, that—

(1) Foreclose release of the site for possible unrestricted use;

(2) Result in significant environmental impacts not previously reviewed; or

(3) Result in there no longer being reasonable assurance that adequate funds will be available for decommissioning.

(g) In taking actions permitted under § 53.1540 following submittal of the PSDAR, the licensee must notify the NRC in writing, and send a copy to the affected State(s), before performing any

decommissioning activity inconsistent with, or making any significant schedule change from, those actions and schedules described in the PSDAR, including changes that increase the decommissioning cost by more than 20 percent from the previously provided DCE.

(h) Licensees may use decommissioning trust funds consistent with the limitations of § 53.1045(a). Licensees must report on the status of decommissioning trust funds consistent with the requirements of § 53.1060.

(i) Licensees must submit an application for termination of license in accordance with § 53.1070. The application for termination of license must be accompanied or preceded by a license termination plan to be submitted for NRC approval.

(1) The license termination plan must be a supplement to the Final Safety Analysis Report or equivalent and must be submitted at least 2 years before termination of the license date.

(2) The license termination plan must include—

(i) A site characterization;

(ii) Identification of remaining dismantlement activities;

(iii) Plans for site remediation;

(iv) Detailed plans for the final radiation survey;

(v) A description of the end use of the site, if restricted;

(vi) An updated site-specific estimate of remaining decommissioning costs;

(vii) A supplement to the environmental report, pursuant to § 51.53 of this chapter, describing any new information or significant environmental change associated with the licensee's proposed termination activities; and

(viii) Identification of parts, if any, of the facility or site that were released for use before approval of the license termination plan.

(3) Following receipt of the license termination plan, the NRC must make the license termination plan publicly available and publish notice of its availability for public comment in the **Federal Register**. The NRC must also schedule a public meeting readily accessible to individuals in the vicinity of the licensee's facility upon receipt of the license termination plan. The NRC must publish a notice in the **Federal Register** and in a forum, such as local newspapers, that is readily accessible to individuals in the vicinity of the site, announcing the date, time, and location of the meeting, along with a brief description of the purpose of the meeting.

(j) If the license termination plan demonstrates that the remainder of

decommissioning activities will be performed in accordance with the regulations in this chapter, will not be inimical to the common defense and security or to the health and safety of the public, and will not have a significant effect on the quality of the environment and after notice to interested persons, the Commission will approve the plan, by license amendment, subject to such conditions and limitations as it deems appropriate and necessary and authorize implementation of the license termination plan.

(k) The Commission will terminate the license if it determines that—

- (1) The remaining dismantlement has been performed in accordance with the approved license termination plan, and
- (2) The final radiation survey and associated documentation, including an assessment of dose contributions associated with parts released for use before approval of the license termination plan, demonstrate that the facility and site have met the criteria for decommissioning in subpart E of 10 CFR part 20.

#### **§ 53.1075 Program requirements during decommissioning.**

(a) Licensees that have submitted the certifications required under § 53.1070 must maintain a decommissioning fire protection program to address the potential for fires that could cause the release or spread of radioactive materials.

(1) The objectives of the decommissioning fire protection program are to

- (i) Reasonably prevent these fires from occurring;
- (ii) Rapidly detect, control, and extinguish those fires that do occur and that could result in a radiological hazard; and
- (iii) Ensure that the risk of fire-induced radiological hazards to the public, environment, and plant personnel is minimized.

(2) The licensee must assess the decommissioning fire protection program on a regular basis. The licensee must revise the decommissioning fire protection program documentation as appropriate throughout the various stages of facility decommissioning.

(3) The licensee may make changes to the decommissioning fire protection program without NRC approval if these changes do not reduce the effectiveness of fire protection for structures, systems, and components that could result in a radiological hazard, taking into account the decommissioning plant conditions and activities.

(b) [Reserved]

#### **§ 53.1080 Release of part of a commercial nuclear plant or site for unrestricted use.**

(a) Prior written NRC approval is required to release part of a commercial nuclear plant or site for unrestricted use at any time before receiving approval of a license termination plan. Section 53.1060 specifies recordkeeping requirements associated with partial release. Holders of an OL or COL under this part seeking NRC review and approval must—

(1) Evaluate the effect of releasing the property to ensure that—

(i) The dose to individual members of the public does not exceed the limits and standards of subpart D of 10 CFR part 20;

(ii) There is no reduction in the effectiveness of emergency planning or physical security;

(iii) Effluent releases remain within license conditions;

(iv) The environmental monitoring program and offsite dose calculation manual are revised to account for the changes;

(v) The siting criteria of subpart D of this part continue to be met; and

(vi) All other applicable statutory and regulatory requirements continue to be met.

(2) Perform a historical site assessment of the part of the commercial nuclear plant or site to be released; and

(3) Perform surveys adequate to demonstrate compliance with the radiological criteria for unrestricted use specified in § 20.1402 of this chapter for impacted areas.

(b) For release of non-impacted areas, the licensee may submit a written request for NRC review and approval of the release if a license amendment is not otherwise required. The request submittal must include—

(1) The results of the evaluations performed in accordance with paragraphs (a)(1) and (a)(2) of this section;

(2) A description of the part of the commercial nuclear plant or site to be released;

(3) The schedule for release of the property;

(4) The results of the evaluations performed in accordance with § 53.1540; and

(5) A discussion that provides the reasons for concluding that the environmental impacts associated with the licensee's proposed release of the property will be bounded by appropriate previously issued environmental impact statements.

(c) After receiving a request from the licensee for NRC approval of the release of a non-impacted area, the NRC must—

(1) Determine whether the licensee has adequately evaluated the effect of

releasing the property as required by paragraph (a)(1) of this section;

(2) Determine whether the licensee's classification of any release areas as non-impacted is adequately justified; and

(3) If determining that the licensee's submittal is adequate, inform the licensee in writing that the release is approved.

(d) For release of impacted areas, the licensee must submit an application for amendment of its license for the release of the property. The application must include—

(1) The information specified in paragraphs (b)(1) through (b)(3) of this section;

(2) The methods used for and results obtained from the radiation surveys required to demonstrate compliance with the radiological criteria for unrestricted use specified in § 20.1402; and

(3) A supplement to the environmental report, under § 51.53 of this chapter, describing any new information or significant environmental change associated with the licensee's proposed release of the property.

(e) After receiving a license amendment application from the licensee for the release of an impacted area, the NRC must—

(1) Determine whether the licensee has adequately evaluated the effect of releasing the property as required by paragraph (a)(1) of this section;

(2) Determine whether the licensee's classification of any release areas as non-impacted is adequately justified;

(3) Determine whether the licensee's radiation survey for an impacted area is adequate; and

(4) If determining that the licensee's submittal is adequate, approve the licensee's amendment application.

(f) The NRC must publish notice receipt of the release approval request or license amendment application in the **Federal Register** and make the approval request or license amendment application available for public comment. Before acting on an approval request or license amendment application submitted in accordance with this section, the NRC must conduct a public meeting readily accessible to individuals in the vicinity of the licensee's facility for the purpose of obtaining public comments on the proposed release of part of the commercial nuclear plant or site. The NRC must publish a document in the **Federal Register** and in a forum, such as local newspapers, which is readily accessible to individuals in the vicinity of the site, announcing the date, time,

and location of the meeting, along with a brief description of the purpose of the meeting.

#### **Subpart H—Licenses, Certifications, and Approvals**

##### **§ 53.1100 Filing of application for licenses, certifications, or approvals; oath or affirmation.**

(a) *Serving of applications.* (1) Each filing of an application for a standard design approval, standard design certification, or license under this part, and any amendments to the applications, must be submitted to the U.S. Nuclear Regulatory Commission (NRC) under § 53.040, as applicable.

(2) Each applicant for a construction permit (CP), early site permit, combined license (COL), or manufacturing license (ML) under this part must, upon notification by the presiding officer designated to conduct the public hearing required by the Atomic Energy Act of 1954, as amended, (the Act) update the application and serve the updated copies of the application or parts of it, eliminating all superseded information, together with an index of the updated application, as directed by presiding officer. Any subsequent amendment to the application must be served on those served copies of the application and must be submitted to the NRC as specified in § 53.040, as applicable.

(3) The applicant must make a copy of the updated application available at the public hearing for the use of any other parties to the proceeding and must certify that the updated copies of the application contain the current contents of the application submitted in accordance with the requirements under this part.

(4) At the time of filing an application, the Commission will make available at the NRC website, <http://www.nrc.gov>, a copy of the application, subsequent amendments, and other records pertinent to the matter that is the subject of the application for public inspection and copying.

(5) The serving of copies required by this section must not occur until the application has been docketed under § 2.101(a) of this chapter. Copies must be submitted to the Commission, as specified in § 53.040, as applicable, to enable the Director, Office of Nuclear Reactor Regulation to determine whether the application is sufficiently complete to permit docketing.

(b) *Oath or affirmation.* Each application for a standard design approval, standard design certification, or license, including, whenever appropriate, a CP or early site permit, or amendment of it, and each amendment

of each application must be executed in a signed original by the applicant or duly authorized officer thereof under oath or affirmation.

(c) [Reserved]

(d) [Reserved]

(e) *Filing fees.* Each application for a standard design approval, standard design certification, or commercial nuclear plant license under this part, including, whenever appropriate, a CP, COL, operating license (OL), ML, or early site permit, other than a license exempted from 10 CFR part 170, must be accompanied by the fee prescribed in 10 CFR part 170. No fee will be required to accompany an application for renewal, amendment, or termination of a CP, OL, COL, or ML, except as provided in § 170.21 of this chapter.

(f) *Environmental report.* An application for a CP, OL, early site permit, design certification, COL, or ML for a commercial nuclear plant must be accompanied by an environmental report required under subpart A of 10 CFR part 51.

##### **§ 53.1101 Requirement for license.**

Except as provided in § 53.1120, no person within the United States may transfer or receive in interstate commerce, manufacture, produce, transfer, acquire, possess, or use any utilization facility except as authorized by a license issued by the Commission.

##### **§ 53.1103 Combining applications and licenses.**

(a) An applicant may combine several applications in one application for different kinds of licenses under the regulations in this chapter.

(b) The Commission may combine in a single license the activities of an applicant which would otherwise be licensed separately.

##### **§ 53.1106 Elimination of repetition.**

An applicant may incorporate by reference in its application information contained in previous applications, statements, or reports filed with the Commission, provided, however, that such references are clear and specific.

##### **§ 53.1109 Contents of applications; general information.**

Each application must include, unless otherwise indicated in this subpart—

(a) Name of applicant;

(b) Address of applicant;

(c) Description of business or occupation of applicant;

(d)(1) If applicant is an individual, the citizenship of applicant;

(2) If applicant is a partnership, the name, citizenship and address of each partner and the principal location where the partnership does business;

(3) If applicant is a corporation or an unincorporated association, the following information:

(i) The State where it is incorporated or organized and the principal location where it does business;

(ii) The names, addresses and citizenship of its directors and of its principal officers; and

(iii) Whether it is owned, controlled, or dominated by an alien, a foreign corporation, or foreign government, and if so, give details; or

(4) If the applicant is acting as agent or representative of another person in filing the application, identify the principal and furnish information required under this paragraph with respect to such principal;

(e) The class and type of license applied for, the use to which the facility will be put, the period of time for which the license is sought, and a list of other licenses, except operator's licenses, issued or applied for in connection with the proposed facility;

(f) [Reserved]

(g)(1) Except as provided in paragraph (g)(2) of this section, if the application is for an OL or COL for a commercial nuclear plant, or if the application is for an early site permit for a commercial nuclear plant and contains plans for coping with emergencies under § 53.1146(b)(2)(ii), the applicant must submit the radiological emergency response plans of State, local, and participating Tribal governmental entities in the United States that are wholly or partially within the plume exposure pathway emergency planning zone (EPZ),<sup>1</sup> and the plans of State governments wholly or partially within the ingestion pathway EPZ.<sup>2</sup> If the application is for an early site permit that, under § 53.1146(b)(2)(i), proposes major features of the emergency plans describing the EPZs, then the descriptions of the EPZs must meet the requirements of this paragraph. Generally, the plume exposure pathway EPZ for a commercial nuclear plant must consist of an area about 10 miles (16 km) in radius and the ingestion pathway EPZ must consist of an area about 50 miles (80 km) in radius. The exact size and configuration of the EPZs surrounding a particular commercial nuclear plant must be determined in relation to the local emergency response needs and capabilities as they are affected by such conditions as demography, topography, land characteristics, access routes, and jurisdictional boundaries. The size of the EPZs also may be determined on a case-by-case basis for gas-cooled reactors and for reactors with an authorized power level less than 250

megawatt thermal. The plans for the ingestion pathway must focus on such actions as are appropriate to protect the food ingestion pathway.

(2) Applicants for commercial nuclear plants consisting of either small modular reactors or non-light-water reactors complying with § 50.160 of this chapter who apply for a CP, an OL, a COL, or an early site permit under this part must submit as part of the application the analysis used to determine whether the criteria in § 53.1109(g)(2)(i)(A) and (B) are met and, if they are met, the size of the plume exposure pathway EPZ.

(i) The plume exposure pathway EPZ is the area within which:

(A) Public dose, as defined in § 20.1003 of this chapter, is projected to exceed 10 millisieverts (1 rem) total effective dose equivalent over 96 hours from the release of radioactive materials from the facility considering accident likelihood and source term, timing of the accident sequence, and meteorology; and

(B) Pre-determined, prompt protective measures are necessary.

(ii) If the application is for an OL or COL or if the application is for an early site permit and contains plans for coping with emergencies under § 53.1146(b)(2)(ii), and if the plume exposure pathway EPZ extends beyond the site boundary:

(A) The applicant must submit radiological emergency response plans of State, local, and participating Tribal governmental entities in the United States that are wholly or partially within the plume exposure pathway EPZ.

(B) The exact configuration of the plume exposure pathway EPZ surrounding the facility shall be determined in relation to the local emergency response needs and capabilities as they are affected by such conditions as demography, topography, land characteristics, access routes, and jurisdictional boundaries.

(iii) If the application is for an early site permit that, under § 53.1146(b)(2)(i), proposes major features of the emergency plans and describes the EPZ, and if the EPZ extends beyond the site boundary, then the exact configuration of the plume exposure pathway EPZ surrounding the facility must be determined in relation to the local emergency response needs and capabilities as they are affected by such conditions as demography, topography, land characteristics, access routes, and jurisdictional boundaries.

(h) [Reserved]

(i) A list of the names and addresses of such regulatory agencies as may have jurisdiction over the rates and services

incident to the proposed activity, and a list of trade and news publications which circulate in the area where the proposed activity will be conducted and which are considered appropriate to give reasonable notice of the application to those municipalities, private utilities, public bodies, and cooperatives, which might have a potential interest in the facility; and

(j) If the application contains Restricted Data or classified National Security information, confirmation that all Restricted Data and classified National Security information are separated from the unclassified information.

<sup>1</sup> EPZs are discussed in NUREG-0396, U.S. Environmental Protection Agency 520/1-78-016, "Planning Basis for the Development of State and Local Government Radiological Emergency Response Plans in Support of Light-Water Nuclear Power Plants," December 1978.

<sup>2</sup> If the State, local, and participating Tribal emergency response plans have been previously provided to the NRC for inclusion in the facility docket, the applicant need only provide the appropriate reference to meet this requirement.

#### **§ 53.1112 Environmental conditions.**

(a) Each CP, early site permit, and COL under this part may include conditions to address environmental issues during construction. These conditions are to be set out in an attachment to the license, which is incorporated in and made a part of the license. These conditions will be derived from information contained in the environmental report submitted pursuant to § 51.50 of this chapter, as analyzed and evaluated in the NRC record of decision and will identify the obligations of the licensee in the environmental area, including, as appropriate, requirements for reporting and keeping records of environmental data, and any conditions and monitoring requirement for the protection of the nonaquatic environment.

(b) Each license authorizing operation of a commercial nuclear plant under this part, and each license for a commercial nuclear plant for which the certification of permanent cessation of operations required under § 53.1070 has been submitted may include conditions to address environmental issues during operation and decommissioning. These conditions are to be set out in an attachment to the license, which is incorporated in and made a part of the license. These conditions will be derived from information contained in the environmental report or the supplement to the environmental report submitted under §§ 51.50 and 51.53 of

this chapter as analyzed and evaluated in the NRC record of decision, and will identify the obligations of the licensee in the environmental area, including, as appropriate, requirements for reporting and keeping records of environmental data and any conditions and monitoring requirement for the protection of the nonaquatic environment.

#### **§ 53.1115 Agreement limiting access to classified information.**

As part of its application and in any event before the receipt of Restricted Data or classified National Security Information or the issuance of a license or standard design approval under this part, or before the Commission has adopted a final standard design certification rule under this part, the applicant must agree in writing that it will not permit any individual to have access to or any facility to possess Restricted Data or classified National Security Information until the individual and/or facility has been approved for access under the provisions of 10 CFR parts 25 and/or 95. The agreement of the applicant becomes part of the license or standard design approval.

#### **§ 53.1118 Ineligibility of certain applicants.**

Any person who is a citizen, national, or agent of a foreign country, or any corporation, or other entity which the Commission knows or has reason to believe is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government, will be ineligible to apply for and obtain a license.

#### **§ 53.1120 Exceptions and exemptions from licensing requirements.**

Nothing in this part must be deemed to require a license for—

(a) The manufacture, production, or acquisition by the Department of Defense of any utilization facility authorized pursuant to section 91 of the Act or the use of such facility by the Department of Defense or by a person under contract with and for the account of the Department of Defense;

(b) Except to the extent that the Department of Energy facilities of the types subject to licensing pursuant to section 202 of the Energy Reorganization Act of 1974, as amended, are involved—

(1)(i) The processing, fabrication or refining of special nuclear material (SNM) or the separation of SNM, or the separation of SNM from other substances by a prime contractor of the Department of Energy under a prime contract for—

(A) The performance of work for the Department of Energy at a United States government-owned or controlled site;

(B) Research in, or development, manufacture, storage, testing or transportation of, atomic weapons or components thereof; or

(C) The use or operation of a utilization facility in a United States owned vehicle or vessel; or

(ii) The processing, fabrication or refining of SNM of the separation of SNM, or the separation of SNM from other substances by a prime contractor or subcontractor of the Commission or the Department of Energy under a prime contract or subcontract when the Commission determines that the exemption of the prime contractor or subcontractor is authorized by law; and that, under the terms of the contract or subcontract, there is adequate assurance that the work thereunder can be accomplished without undue risk to the public health and safety; or

(2)(i) The construction or operation of a utilization facility for the Department of Energy at a United States government-owned or controlled site, including the transportation of the utilization facility to or from such site and the performance of contract services during temporary interruptions of such transportation; or the construction or operation of a utilization facility for the Department of Energy in the performance of research in, or development, manufacture, storage, testing, or transportation of, atomic weapons or components thereof; or the use or operation of a utilization facility for the Department of Energy in a United States government-owned vehicle or vessel; provided that such activities are conducted by a prime contractor of the Department of Energy under a prime contract with the Department of Energy; or

(ii) The construction or operation of a utilization facility by a prime contractor or subcontractor of the Commission or the Department of Energy under his or her prime contract or subcontract when the Commission determines that the exemption of the prime contractor or subcontractor is authorized by law; and that, under the terms of the contract or subcontract, there is adequate assurance that the work thereunder can be accomplished without undue risk to the public health and safety; or

(c) The transportation or possession of any utilization facility by a common or contract carrier or warehouse employee in the regular course of carriage for another or storage incident thereto.

#### **§ 53.1121 Public inspection of applications.**

Applications and documents submitted to the Commission in connection with applications may be made available for public inspection under the provisions of part 2 of this chapter.

#### **§ 53.1124 Relationship between sections.**

(a) *Limited work authorization.* An application for a limited work authorization (LWA) under this part may be submitted as part of an application for an early site permit, CP, or COL under this part as required in § 53.1130(a)(2).

(b) *Early site permit.* (1) A holder of an early site permit may request an LWA.

(2) An application for a CP or COL under this part may, but need not, reference an early site permit.

(c) *Standard design approval.* An application for a standard design approval under this part may, but need not, reference an OL or custom COL under this part that is essentially the same as the information supporting the standard design for which approval is being requested.

(d) *Standard design certification.* An application for a standard design certification under this part may, but need not, reference an OL or custom COL under this part that is essentially the same as the standard design for which certification is being requested.

(e) *Manufacturing license.* (1) A manufactured reactor manufactured under an ML issued under this part may only be transported to and installed at a site for which a COL under this part has been issued.

(2) An ML applicant under this part may reference a standard design certification or a standard design approval under this part in its application.

(f) *Construction permit.* An application for a CP may, but need not, reference a standard design certification or standard design approval issued under this part, respectively, and may also reference an early site permit issued under this part. In the absence of a demonstration that an entity other than the one originally sponsoring a standard design certification is qualified to supply a design, the Commission will entertain an application for a CP that references a standard design certification issued under this part only if the entity that sponsored the certification supplies the design for the applicant's use.

(g) *Operating license.* (1) An application for an OL under this part may, but need not, reference an early

site permit, standard design certification, or standard design approval issued under this part. In the absence of a demonstration that an entity other than the one originally sponsoring a standard design certification is qualified to supply a design, the Commission will entertain an application for an OL that references a standard design certification issued under this part only if the entity that sponsored the certification supplies the design for the applicant's use.

(2) The holder of a CP must, at the time of submission of the Final Safety Analysis Report (FSAR), file an application for an OL.

(h) *Combined licenses.* An application for a COL under this part may, but need not, reference an early site permit, standard design certification, standard design approval, or ML issued under this part. In the absence of a demonstration that an entity other than the one originally sponsoring and obtaining a standard design certification is qualified to supply a design, the Commission will entertain an application for a COL that references a standard design certification issued under this part only if the entity that sponsored the certification supplies the design for the applicant's use.

#### **§ 53.1130 Limited work authorizations.**

(a) *Request for limited work authorization.* (1) Any person to whom the Commission may otherwise issue either a license or permit related to a commercial nuclear plant may request an LWA allowing that person to perform the driving of piles, subsurface preparation, placement of backfill, concrete, or permanent retaining walls within an excavation, and installation of the foundation, including placement of concrete, any of which are for a structure, system, or component (SSC) of the facility for which either a CP or COL is otherwise required under § 53.610.

(2) An application for an LWA may be submitted as part of a complete application for a CP or COL in accordance with § 2.101(a)(1) through (a)(5) of this chapter, or as a partial application in accordance with § 2.101(a)(9) of this chapter. An application for an LWA by the holder of an early site permit must be submitted as a complete application in accordance with § 2.101(a)(1) through (a)(4) of this chapter.

(3) The application must include—

(i) A Safety Analysis Report required by §§ 53.1146, 53.1309 or 53.1416, as applicable, a description of the activities requested to be performed, and the design and construction information

otherwise required by the Commission's rules and regulations to be submitted for a CP or COL under this part but limited to those portions of the facility that are within the scope of the LWA. The Safety Analysis Report must demonstrate that activities conducted under the LWA will be conducted in compliance with the technically relevant Commission requirements in 10 CFR chapter I applicable to the design of those portions of the facility within the scope of the LWA;

(ii) An environmental report in accordance with § 51.49 of this chapter; and

(iii) A plan for redress of activities performed under the LWA, should limited work activities be terminated by the holder, or the LWA be revoked by the NRC or upon effectiveness of the Commission's final decision denying the associated CP or COL application, as applicable.

(b) *Issuance of limited work authorization.* (1) The Director, Office of Nuclear Reactor Regulation may issue an LWA only after—

(i) The NRC staff issues the final environmental impact statement for the LWA under subpart A of part 51 of this chapter;

(ii) The presiding officer makes the finding in §§ 51.105(c) or 51.107(d) of this chapter, as applicable;

(iii) The Director determines that the applicable standards and requirements of the Act, and the Commission's regulations applicable to the activities to be conducted under the LWA, have been met, the applicant is technically qualified to engage in the activities authorized, and that issuance of the LWA will provide reasonable assurance of adequate protection to public health and safety and will not be inimical to the common defense and security; and

(iv) The presiding officer finds that there are no unresolved safety issues relating to the activities to be conducted under the LWA that would constitute good cause for withholding the authorization.

(2) Each LWA will specify the activities that the holder is authorized to perform.

(c) *Effect of limited work authorization.* Any activities undertaken under an LWA are entirely at the risk of the applicant and, except as to the matters determined under paragraph (b)(1) of this section, the issuance of the LWA has no bearing on the issuance of a CP or COL with respect to the requirements of the Act and rules, regulations, or orders issued under the Act. The environmental impact statement for a CP or COL application for which an LWA was previously

issued will not address, and the presiding officer will not consider, the sunk costs of the holder of the LWA in determining the proposed action (*i.e.*, issuance of the CP or COL).

(d) *Implementation of redress plan.* If construction is terminated by the holder, the underlying application is withdrawn by the applicant or denied by the NRC, or the LWA is revoked by the NRC, then the holder must begin implementation of the redress plan in a reasonable time. The holder must also complete the redress of the site no later than 18 months after termination of construction, revocation of the LWA, or upon effectiveness of the Commission's final decision denying the associated CP application or the associated COL application, as applicable.

#### **§ 53.1140 Early site permits.**

Sections 53.1140 through 53.1188 set out the requirements and procedures applicable to Commission issuance of an early site permit under this part for approval of a site for a commercial nuclear plant separate from the filing of an application for a CP or COL for the facility.

#### **§ 53.1143 Filing of applications.**

Any person who may apply for a CP or for a COL under this part, may file an application for an early site permit with the Director, Office of Nuclear Reactor Regulation. An application for an early site permit may be filed notwithstanding the fact that an application for a CP or a COL has not been filed in connection with the site for which a permit is sought.

#### **§ 53.1144 Contents of applications for early site permits; general information.**

The application must contain all of the information required by § 53.1109(a) through (d) and (j).

#### **§ 53.1146 Contents of applications for early site permits; technical information.**

(a) The application must contain—

(1) A Site Safety Analysis Report that must include the following:

(i) The specific number, type, and thermal power level of the facilities, or range of possible facilities, for which the site may be used;

(ii) The anticipated maximum levels of radiological and thermal effluents each facility will produce;

(iii) The type of cooling systems, including intakes and outflows, where appropriate, that may be associated with each facility;

(iv) The boundaries of the site;

(v) The proposed general location of each facility on the site;

(vi) The external hazards and site characteristics required by this part;

(vii) The location and description of any nearby industrial, military, or transportation facilities and routes;

(viii) The existing and projected future population profile of the area surrounding the site;

(ix) A description and assessment of the site on which a facility is to be located. The assessment must address the requirements of subpart D of this part;

(x) Information demonstrating that site characteristics are such that adequate security plans and measures can be developed; and

(xi) A description of the quality assurance program (QAP) required by appendix B to part 50 of this chapter applied to site-related activities for the future design, fabrication, construction, and testing of the SSCs of a facility or facilities that may be constructed on the site.

(2) A complete environmental report as required by § 51.50(b) of this chapter.

(b)(1) The Site Safety Analysis Report must identify physical characteristics of the proposed site, such as egress limitations from the area surrounding the site, that could pose a significant impediment to the development of emergency plans. If physical characteristics are identified that could pose a significant impediment to the development of emergency plans, the application must identify measures that would, when implemented, mitigate or eliminate the significant impediment.

(2) The Site Safety Analysis Report may also—

(i) Propose major features of the emergency plans, under either § 50.160 or the requirements in appendix E to part 50 and § 50.47(b) of this chapter, as applicable, such as the exact size and configuration of the EPZs, for review and approval by the NRC, in consultation with the Federal Emergency Management Agency (FEMA), as applicable, in the absence of complete and integrated emergency plans; or

(ii) Propose complete and integrated emergency plans for review and approval by the NRC, in consultation with FEMA, as applicable, in accordance with either § 50.160 or the requirements in appendix E to part 50 and § 50.47(b) of this chapter. To the extent approval of emergency plans is sought, the application must contain the information required by § 53.1109(g).

(3) Emergency plans submitted under paragraph (b)(2)(ii) of this section must include the proposed inspections, tests, and analyses that the holder of a COL referencing the early site permit must perform, and the acceptance criteria that are necessary and sufficient to provide



reasonable assurance that, if the inspections, tests, and analyses are performed and the acceptance criteria met, the facility has been constructed and will be operated in conformity with the emergency plans, the provisions of the Act, and the Commission's rules and regulations. Major features of an emergency plan submitted under paragraph (b)(2)(i) of this section may include proposed inspections, tests, analyses, and acceptance criteria (ITAAC).

(4) Under paragraphs (b)(1) and (b)(2)(i) of this section, the Site Safety Analysis Report must include, where appropriate, a description of contacts and arrangements made with Federal, State, participating Tribal, and local governmental agencies with emergency planning responsibilities. The Site Safety Analysis Report must contain any certifications that have been obtained. If these certifications, where appropriate, cannot be obtained, the Site Safety Analysis Report must contain information, including a utility plan, sufficient to show that the proposed plans provide reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency at the site. Under the option set forth in paragraph (b)(2)(ii) of this section, the applicant must make good faith efforts, where appropriate, to obtain from the same governmental agencies certifications that—

(i) The proposed emergency plans are practicable;

(ii) These agencies are committed to participating in any further development of the plans, including any required field demonstrations; and

(iii) That these agencies are committed to executing their responsibilities under the plans in the event of an emergency.

(c) An applicant may request that an LWA under § 53.1130 be issued in conjunction with the early site permit. The application must include the information otherwise required by § 53.1130.

(d) Each applicant for an early site permit under this part must protect safeguards information against unauthorized disclosure in accordance with the requirements in §§ 73.21 and 73.22 of this chapter, as applicable.

#### **§ 53.1149 Review of applications.**

(a) *Standards for review of applications.* Applications filed under this part will be reviewed according to the applicable standards set out in this part. In addition, the Commission must prepare an environmental impact statement during review of the

application, under the applicable provisions of 10 CFR part 51. The Commission must determine, after consultation with FEMA, as applicable, whether the information required of the applicant by § 53.1146(b)(1) shows that there is no significant impediment to the development of emergency plans that cannot be mitigated or eliminated by measures proposed by the applicant, whether any major features of emergency plans submitted by the applicant under § 53.1146(b)(2)(i) are acceptable under either § 50.160 or appendix E to part 50 and § 50.47(b) of this chapter, and whether any emergency plans submitted by the applicant under § 53.1146(b)(2)(ii) provide reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency.

(b) *Administrative review of applications; hearings.* An early site permit application is subject to all procedural requirements in 10 CFR part 2, including the requirements for docketing in § 2.101(a)(1) through (4) of this chapter, and the requirements for issuance of a notice of hearing in § 2.104(a) and (d) of this chapter, provided that the designated sections may not be construed to require that the environmental report, or draft or final environmental impact statement includes an assessment of the benefits of construction and operation of the reactor or reactors, or an analysis of alternative energy sources. The presiding officer in an early site permit hearing must not admit contentions proffered by any party concerning an assessment of the benefits of construction and operation of the reactor or reactors, or an analysis of alternative energy sources if those issues were not addressed by the applicant in the early site permit application. All hearings conducted on applications for early site permits filed under this part are governed by the procedures contained in subparts C, G, L, and N of 10 CFR part 2, as applicable.

#### **§ 53.1155 Referral to the Advisory Committee on Reactor Safeguards.**

The Commission must refer a copy of the application for an early site permit to the Advisory Committee on Reactor Safeguards (ACRS). The ACRS must report on those portions of the application which concern safety.

#### **§ 53.1158 Issuance of early site permit.**

(a) After conducting a hearing under § 53.1149(b) and receiving the report to be submitted by the ACRS under § 53.1155, the Commission may issue an early site permit, in the form the

Commission deems appropriate, if the Commission finds that—

(1) An application for an early site permit demonstrates compliance with the applicable standards and requirements of the Act and the Commission's regulations;

(2) Notifications, if any, to other agencies or bodies have been duly made;

(3) There is reasonable assurance that the site is in conformity with the provisions of the Act and the Commission's regulations;

(4) The applicant is technically qualified to engage in any activities authorized;

(5) The proposed ITAAC, including any on emergency planning, are necessary and sufficient, within the scope of the early site permit, to provide reasonable assurance that the facility has been constructed and will be operated in conformity with the license, the provisions of the Act, and the Commission's regulations;

(6) Issuance of the permit will not be inimical to the common defense and security or to the health and safety of the public;

(7) Any significant adverse environmental impact resulting from activities requested under § 53.1146(c) can be redressed; and

(8) The findings required by subpart A of 10 CFR part 51 have been made.

(b) The early site permit must specify the site characteristics, design parameters, and terms and conditions of the early site permit the Commission deems appropriate. Before issuance of either a CP or COL referencing an early site permit, the Commission must find that any relevant terms and conditions of the early site permit have been met. Any terms or conditions of the early site permit that could not be met by the time of issuance of the CP or COL, must be set forth as terms or conditions of the CP or COL.

(c) The early site permit must specify those § 53.1130(b) activities requested under § 53.1146(c) that the permit holder is authorized to perform.

#### **§ 53.1161 Extent of activities permitted.**

If the activities authorized by § 53.1158(c) are performed and the site is not referenced in an application for a CP or a COL issued under this part while the permit remains valid, then the early site permit remains in effect solely for the purpose of site redress, and the holder of the permit must redress the site under the terms of the site redress plan required by § 53.1146(c). If, before redress is complete, a use not envisaged in the redress plan is found for the site or parts thereof, the holder of the permit

must carry out the redress plan to the greatest extent possible consistent with the alternate use.

**§ 53.1164 Duration of permit.**

(a) Except as provided in paragraph (b) of this section, an early site permit issued under this subpart may be valid for not less than 10, nor more than 20 years from the date of issuance.

(b) An early site permit continues to be valid beyond the date of expiration in any proceeding on a CP application or a COL application that references the early site permit and is docketed before the date of expiration of the early site permit, or, if a timely application for renewal of the permit has been docketed, before the Commission has determined whether to renew the permit.

(c) An applicant for a CP or COL may, at its own risk, reference in its application a site for which an early site permit application has been docketed but not granted.

(d) Upon issuance of a CP or COL, a referenced early site permit is subsumed, to the extent referenced, into the CP or COL.

**§ 53.1167 Limited work authorization after issuance of early site permit.**

A holder of an early site permit may request an LWA under § 53.1130.

**§ 53.1170 Transfer of early site permit.**

An application to transfer an early site permit will be processed under § 53.1570.

**§ 53.1173 Application for renewal.**

(a) Not less than 12, nor more than 36 months before the expiration date stated in the early site permit, or any later renewal period, the permit holder may apply for a renewal of the permit. An application for renewal must contain all information necessary to bring up to date the information and data contained in the previous application.

(b) Any person whose interests may be affected by renewal of the permit may request a hearing on the application for renewal. The request for a hearing must comply with § 2.309 of this chapter. If a hearing is granted, notice of the hearing will be published under § 2.309 of this chapter.

(c) An early site permit, either original or renewed, for which a timely application for renewal has been filed, remains in effect until the Commission has determined whether to renew the permit. If the permit is not renewed, it continues to be valid in certain proceedings in accordance with the provisions of § 53.1164(b).

(d) The Commission must refer a copy of the application for renewal to the

ACRS. The ACRS must report on those portions of the application which concern safety and must apply the criteria set forth in § 53.1176.

**§ 53.1176 Criteria for renewal.**

(a) The Commission must grant the renewal if it determines that—

(1) The site complies with the Act, the Commission's regulations, and orders applicable and in effect at the time the site permit was originally issued; and

(2) Any new requirements the Commission may wish to impose—

(i) Are necessary for adequate protection to public health and safety or common defense and security;

(ii) Are necessary for compliance with the Commission's regulations, and orders applicable and in effect at the time the site permit was originally issued; or

(iii) Would provide a substantial increase in overall protection of the public health and safety or the common defense and security to be derived from the new requirements, and the direct and indirect costs of implementation of those requirements are justified in view of this increased protection.

(b) A denial of renewal under the provisions of § 53.1176(a) does not bar the permit holder or another applicant from filing a new application for the site which proposes changes to the site or the way that it is used to correct the deficiencies cited in the denial of the renewal.

**§ 53.1179 Duration of renewal.**

Each renewal of an early site permit may be for not less than 10, nor more than 20 years, plus any remaining years on the early site permit then in effect before renewal.

**§ 53.1182 Use of site for other purposes.**

A site for which an early site permit has been issued under this part may be used for purposes other than those described in the permit, including the location of other types of energy facilities. The permit holder must inform the Director, Office of Nuclear Reactor Regulation (Director), of any significant uses for the site which have not been approved in the early site permit. The information about the activities must be given to the Director at least 30 days in advance of any actual construction or site modification for the activities. The information provided could be the basis for imposing new requirements on the permit, under the provisions of § 53.1188. If the permit holder informs the Director that the holder no longer intends to use the site for a commercial nuclear plant, the Director may terminate the permit.

**§ 53.1188 Finality of early site permit determinations.**

(a) *Commission finality.* (1) While an early site permit is in effect under § 53.1164 or § 53.1179, the Commission may not change or impose new site characteristics, design parameters, or terms and conditions, including emergency planning requirements, on the early site permit unless the Commission—

(i) Determines that a modification is necessary to bring the permit or the site into compliance with the Commission's regulations and orders applicable and in effect at the time the permit was issued;

(ii) Determines the modification is necessary to assure adequate protection of the public health and safety or the common defense and security;

(iii) Determines that a modification is necessary based on an update under paragraph (b) of this section; or

(iv) Issues a variance requested under paragraph (d) of this section.

(2) In making the findings required for issuance of a CP, COL, or OL, or the findings required by § 53.1452(g), or in any enforcement hearing other than one initiated by the Commission under paragraph (a)(1) of this section, if the application for the CP, COL, or OL references an early site permit, the Commission must treat as resolved those matters resolved in the proceeding on the application for issuance or renewal of the early site permit, except as provided for in paragraphs (b), (c), and (d) of this section.

(i) If the Commission grants a CP application that references an early site permit and an application for an OL references the CP, the Commission must treat as resolved those matters resolved in the proceeding for the issuance or renewal of the early site permit, except as provided for in paragraphs (b), (c), and (d) of this section.

(ii) If the early site permit approved an emergency plan (or major features thereof) that is in use by a licensee of a commercial nuclear plant, the Commission must treat as resolved changes to the early site permit emergency plan (or major features thereof) that are identical to changes made to the licensee's emergency plans under § 53.1565 occurring after issuance of the early site permit.

(iii) If the early site permit approved an emergency plan (or major features thereof) that is not in use by a licensee of a commercial nuclear plant, the Commission must treat as resolved changes that are equivalent to those that could be made under § 53.1565 without prior NRC approval had the emergency plan been in use by a licensee.

(b) *Updating of early site permit-emergency preparedness.* An applicant for a CP, OL, or COL who has filed an application referencing an early site permit issued under this subpart must update the emergency preparedness information that was provided under § 53.1146(b) and discuss whether the updated information materially changes the bases for compliance with applicable NRC requirements.

(c) *Hearings and petitions.* (1) In any proceeding for the issuance of a CP, OL, or COL referencing an early site permit, contentions on the following matters may be litigated in the same manner as other issues material to the proceeding:

(i) The nuclear reactor proposed to be built does not fit within one or more of the site characteristics or design parameters included in the early site permit;

(ii) One or more of the terms and conditions of the early site permit have not been met;

(iii) A variance requested under paragraph (d) of this section is unwarranted or should be modified;

(iv) New or additional information is provided in the application that substantially alters the bases for a previous NRC conclusion or constitutes a sufficient basis for the Commission to modify or impose new terms and conditions related to emergency preparedness; or

(v) Any significant environmental issue that was not resolved in the early site permit proceeding, or any issue involving the impacts of construction and operation of the facility that was resolved in the early site permit proceeding for which significant new information has been identified.

(2) Any person may file a petition requesting that the site characteristics, design parameters, or terms and conditions of the early site permit be modified, or that the permit be suspended or revoked. The petition will be considered under § 2.206 of this chapter. Before construction commences, the Commission must consider the petition and determine whether any immediate action is required. If the petition is granted, an appropriate order will be issued. Construction under the CP or COL will not be affected by the granting of the petition unless the order is made immediately effective. Any change required by the Commission in response to the petition must demonstrate compliance with the requirements of paragraph (a)(1) of this section.

(d) *Variances.* An applicant for a CP, OL, or COL referencing an early site permit may include in its application a request for a variance from one or more

site characteristics, design parameters, or terms and conditions of the early site permit, or from the Site Safety Analysis Report. In determining whether to grant the variance, the Commission must apply the same technically relevant criteria applicable to the application for the original or renewed early site permit. Once a CP or COL referencing an early site permit is issued, variances from the early site permit will not be granted for that CP or COL.

(e) *Early site permit amendment.* The holder of an early site permit may not make changes to the early site permit or the Site Safety Analysis Report without prior Commission approval. The request for a change to the early site permit must be in the form of an application for a license amendment and must demonstrate compliance with the requirements of §§ 53.1510 and 53.1520.

#### **§ 53.1200 Standard design approvals.**

Sections 53.1200 through 53.1221 set out procedures for the filing, NRC staff review, and referral to the ACRS of standard designs, or major portions thereof, for a commercial nuclear plant under this part.

#### **§ 53.1203 Filing of applications.**

Any person may submit a proposed standard design for a commercial nuclear plant to the NRC staff for its review. The submittal may consist of either the final design for the entire facility or the final design for major portions thereof.

#### **§ 53.1206 Contents of applications for standard design approvals; general information.**

The application must contain all of the information required by § 53.1109(a) through (c) and (j).

#### **§ 53.1209 Contents of applications for standard design approvals; technical information.**

(a) *Major portion of a standard design.* If the applicant seeks review of a major portion of a standard design, the application need only contain the information required by this section to the extent the requirements are applicable to the major portion of the standard design for which NRC staff approval is sought. If an applicant seeks approval of a major portion of the design, the scope of the application for which approval is sought must include all functional design criteria necessary to demonstrate compliance with the safety criteria in §§ 53.210, 53.220 and 53.450(e), as applicable, for the major portion of the standard design for which NRC staff approval is sought. Such applicants must identify conditions related to interfaces with systems

outside the scope of the major portion of the standard design for which NRC staff approval is sought, and functional or physical boundary conditions between the major portion of the standard design for which NRC staff approval is sought and the remainder of the standard design. These conditions must be demonstrated when the standard design approval is incorporated into a subsequent CP, design certification, ML, or COL application.

(b) *Final Safety Analysis Report.* The application must contain an FSAR that describes the facility and the limits on its operation, presents a safety analysis of the SSCs and of the facility, or major portions thereof, for which the applicant seeks design approval, and must include the following information:

(1) *Site Parameters.* The site parameters postulated for the design under this part, including the design-basis external hazard levels for the relevant external hazards, and an analysis and evaluation of the design in terms of those site parameters.

(2) *Design information.* Except as specified in this paragraph, an application for a standard design approval for a commercial nuclear plant must include the design information equivalent to that required for a standard design certification under § 53.1239(a)(2) through (27) for those portions of a commercial nuclear plant included in the standard design approval.

#### **§ 53.1210 Contents of applications for standard design approvals; other application content.**

(a) In addition to the FSAR, the application must also include the following:

(1) *Availability Controls (if not included in the FSAR).* A description of the controls on plant operations, including availability controls, to provide reasonable confidence that the configurations and special treatments for safety-related (SR) SSCs and non-safety-related but safety-significant (NSRSS) SSCs provide the capabilities and reliabilities required to demonstrate compliance with the safety criteria of § 53.220.

(2) *Safeguards Information.* A description of the program to protect Safeguards Information against unauthorized disclosure in accordance with the requirements in §§ 73.21 and 73.22 of this chapter, as applicable.

(b) If there are SSCs of the plant which required research and development to confirm the adequacy of their design, provide a report in the application which documents the

resolution of any safety questions associated with such SSCs.

(c) A description of how the performance of each design feature has been demonstrated capable of fulfilling functional design criteria considering interdependent effects through either analysis, appropriate test programs, prototype testing, operating experience, or a combination thereof, in accordance with § 53.440(a).

**§ 53.1212 Standards for review of applications.**

Applications filed under this part will be reviewed under the standards set out in 10 CFR parts 20, 53, and 73.

**§ 53.1215 Referral to the Advisory Committee on Reactor Safeguards.**

The Commission must refer a copy of the application to the ACRS. The ACRS must report on those portions of the application which concern safety.

**§ 53.1218 Staff approval of design.**

(a) Upon completion of its review of a submittal under §§ 53.1200 through 53.1221 and receipt of a report by the ACRS under § 53.1215, the NRC staff must publish a determination in the **Federal Register** as to whether or not the design is acceptable, subject to appropriate terms and conditions, and make an analysis of the design in the form of a report available at the NRC website, <https://www.nrc.gov>.

(b) A standard design approval issued under this section is valid for 15 years from the date of issuance and may not be renewed. A design approval continues to be valid beyond the date of expiration in any proceeding on an application for a CP, OL, COL, or ML under this part that references the design approval and is docketed before the date of expiration of the design approval.

**§ 53.1221 Finality of standard design approvals; information requests.**

(a) An approved design must be used by and relied upon by the NRC staff and the ACRS in their reviews of any standard design certification or individual facility license application under this part that incorporates by reference a standard design approved under this part unless there exists significant new information that substantially affects the earlier determination or other good cause.

(b) The determination and report by the NRC staff do not constitute a commitment to issue a permit or license, or in any way affect the authority of the Commission, Atomic Safety and Licensing Board Panel, or presiding officers in any proceeding under part 2 of this chapter.

(c) Except for information requests seeking to verify compliance with the current licensing basis of the standard design approval, information requests to the holder of a standard design approval must be evaluated before issuance to ensure that the burden to be imposed on respondents is justified in view of the potential safety significance of the issue to be addressed in the requested information. Each evaluation performed by the NRC staff must be in accordance with § 53.1580 and must be approved by the Executive Director for Operations or authorized designee before issuance of the request.

(d) The Commission will require, before granting a CP, COL, OL, or ML that references a standard design approval, that engineering documents, such as analyses, drawings, procurement specifications, or construction and installation specifications, be completed and available for audit if the more detailed information is necessary for the Commission to verify the information in the application and make its safety determination, including the determination that the application is consistent with the design approval information. This information may be acquired by appropriate arrangements with the design approval applicant.

**§ 53.1230 Standard design certifications.**

Sections 53.1230 through 53.1263 set forth the requirements and procedures applicable to the Commission's issuance of rules granting standard design certifications for commercial nuclear plants under this part separate from the filing of an application for a CP or COL for such a facility.

**§ 53.1233 Filing of applications.**

(a) An application for design certification may be filed notwithstanding the fact that an application for a CP, COL, or ML for such a facility has not been filed.

(b) The application must comply with the applicable filing requirements of § 53.040 and §§ 2.811 through 2.819 of this chapter.

**§ 53.1236 Contents of applications for standard design certifications; general information.**

The application must contain all of the information required by § 53.1109(a) through (c) and (j).

**§ 53.1239 Contents of applications for standard design certifications; technical information.**

The application must contain a level of design information sufficient to enable the Commission to judge the applicant's proposed means of assuring

that construction conforms to the design and to reach a final conclusion on all safety questions associated with the design before the certification is granted. The information submitted for a design certification must include performance requirements and design information sufficiently detailed to permit the preparation of acceptance and inspection requirements by the NRC. The Commission will require, before design certification, that information normally contained in engineering documents, such as analyses, drawings, procurement specifications, or construction and installation specifications, be completed and available for audit if the more detailed information is necessary for the Commission to verify the information in the application and make its safety determination.

(a) *Final Safety Analysis Report.* The application must contain an FSAR that describes the facility and the limits on its operation, and presents a safety analysis of the SSCs, and must include the following information:

(1) *Site Parameters.* The site parameters postulated for the design under this part, including the design-basis external hazard levels for the relevant external hazards, and an analysis and evaluation of the design in terms of those site parameters.

(2) *Plant Description and Safety Functions—(i) General Plant Description.* A general description of the commercial nuclear plant including reactor type, the intended use of the reactor, nuclear design (e.g., neutron spectrum, reactor control, multi-unit reactor control), overall layout of the plant including significant plant features and SSCs, maximum power level and the nature and inventory of radioactive materials.

(ii) *Safety functions.* A description of the primary and additional safety functions required under § 53.230 and a summary of how each safety function is satisfied.

(3) *Design Features and functional design criteria—licensing-basis events.*

(i) A description of the design features required by § 53.400 and the functional design criteria required by §§ 53.410 and 53.420 that, when combined with corresponding human actions and programmatic controls, demonstrate that the plant will demonstrate compliance with the safety criteria defined in § 53.210 and established in accordance with § 53.220, or more restrictive alternative criteria adopted under § 53.470, during licensing-basis events (LBEs).

(ii) A description of how design features demonstrate compliance with

the requirements of § 53.440(a) through (i) and (k) through (m).

(4) *Design Features Supporting Normal Operations.* A description of the design features required by § 53.425 to support the holder of an OL or COL complying with § 53.260 during normal operations.

(5) *Design Features and Functional Design Criteria—aircraft impact.* A description of the design features and functional design criteria required to demonstrate compliance with the requirements of § 53.440(j) for addressing the impact of a large, commercial aircraft.

(6) *Earthquake engineering.* The information necessary to demonstrate that the commercial nuclear plant complies with the earthquake engineering criteria in § 53.480.

(7) *Programmatic Controls and Interfaces.* (i) A description of the corresponding programmatic controls and interfaces necessary to achieve and maintain the reliability and capability of SSCs relied upon to demonstrate compliance with the functional design criteria required by §§ 53.410 and 53.420 and the safety criteria in §§ 53.210 and 53.220, or more restrictive alternative criteria adopted under § 53.470, and necessary to maintain consistency with analyses required by § 53.450.

(ii) For an application for a multi-unit commercial nuclear plant, the programmatic controls and interfaces must also be described for different modular configurations, as required by § 53.440(i), including any restrictions that will be necessary during the construction and startup of any given unit to ensure the safe operation of the overall commercial nuclear plant to be licensed under this part.

(8) *Programmatic Controls for Normal Operations.* A description of how programmatic controls, including monitoring programs, would provide assurance that design features and procedures will enable the holder of an OL or COL to comply with § 53.260.

(9) *Design Features Supporting the Protection of Plant Workers.* A description of the design features required by § 53.430 to support the holder of an OL or COL complying with § 53.270.

(10) *Programmatic Controls for Protection of Plant Workers.* A description of how programmatic controls, including monitoring programs, would provide assurance that design features and procedures will enable the holder of an OL or COL to comply with § 53.270.

(11) *Codes and Standards.* A description of generally accepted

consensus codes and standards used to design the design features, as required by § 53.440(b).

(12) *Materials.* A description of the materials used for SR and NSRSS SSCs and a description of the qualification of these materials for their service conditions over the plant lifetime, as required by § 53.440(c).

(13) *Integrity Assessment Program.* A description of a design integrity assessment program that addresses the elements described in § 53.440(d).

(14) *Safety and Security.* Confirmation that safety and security were considered together in the design process, as required by § 53.440(f).

(15) *Criticality.* Information demonstrating how the applicant will comply with requirements for criticality accidents in § 53.440(m).

(16) *Multi-unit Plants.* For an application for standard design certification of a multi-unit commercial nuclear plant, the possible operating configurations of the reactor units, including common systems, interface requirements, and system interactions, as required by § 53.440(i).

(17) *SSC Classification.* (i) The classification of SSCs according to their safety significance under § 53.460(a).

(ii) For SR and NSRSS SSCs, the conditions under which they must perform the safety functions required by § 53.230, including environmental conditions.

(18) *Probabilistic Risk Assessment.* A description of the probabilistic risk assessment (PRA) required by § 53.450(a) and its results.

(19) *Analyses.* A description of the analyses performed under § 53.450(b) through (g) that includes the following information:

(i) A description of the analysis of LBEs and its results, as described in § 53.240. This analysis description must—

(A) Address the elements in § 53.450(e) and (f); and

(B) Under § 53.460(c)—

(1) Describe any human actions that are necessary to prevent or mitigate LBEs;

(2) Describe how those human actions are capable of being reliably performed under the postulated environmental conditions present; and

(3) Describe how those human actions would be addressed by programs established under subpart F of this part.

(ii)(A) A description of how SSCs relied on to meet the safety criteria defined in § 53.210 are protected against or designed to withstand the effects of external hazards under § 53.510.

(B) The information necessary to demonstrate that the commercial

nuclear plant complies with the earthquake engineering criteria in § 53.480.

(iii) A description of the defense-in-depth measures required by § 53.250.

(iv) A description of all plant operating states where there is the potential for the uncontrolled release of radioactive material to the environment, as required by § 53.450(b)(4).

(v) A description of the events that challenge plant control and safety systems whose failure could lead to an undesirable end state and/or radioactive material release, as required by § 53.450(b)(5).

(vi) A description of the analytical codes used in modeling plant behavior in analyses of LBEs and how these codes are qualified for the range of conditions for which they were used, as required by § 53.450(d).

(vii) If not described in addressing paragraph (5) of this section, the results of other analyses required by § 53.450(g).

(20) *Special Treatments.* A description of special treatments established as required by § 53.460.

(21) *Analytical Margins.* A description of any alternative criteria adopted to demonstrate analytical margins supporting operational flexibilities, if applicable, as required by § 53.470.

(22) *Quality Assurance.* A description of the QAP applied to the design of the SSCs of the commercial nuclear plant, as required by § 53.460(b). The description of the QAP for a commercial nuclear plant must include a discussion of how the applicable requirements of appendix B to part 50 of this chapter were satisfied.

(23) *Design Features and Controls to Address the Minimization of Contamination.* The information required by § 20.1406 of this chapter.

(24) *Interface Requirements.* (i) A description analysis, and evaluation of the interfaces between the standard design and the balance of the commercial nuclear plant that may impact the ability of the plant to demonstrate compliance with the functional design criteria or the safety criteria of subparts B and C of this part.

(ii) Confirmation that interface requirements are verifiable through inspections, testing, or analysis. These requirements must be sufficiently detailed to allow for completion of the final safety analysis by license applicants that reference the certified design under this subpart. The method to be used for verification of interface requirements must be included as part of the proposed ITAAC required by § 53.1241(a)(3).

(iii) A representative conceptual design for those portions of the plant for which the application does not seek certification to aid the NRC in its review of the FSAR and to permit assessment of the adequacy of the interface requirements under paragraph (a)(24)(i) of this section.

(25) *Technical Qualifications.* A description of the technical qualifications of the applicant to engage in the proposed activities in accordance with the regulations in this chapter.

(26) *Technical Specifications.* Proposed technical specifications prepared under § 53.710(a) for those areas addressed by the design certification.

(27) *Role of personnel.* Information to address the following for the role of personnel in ensuring safe operations:

(i) A description of how the human factors engineering design requirements of § 53.440(n)(1) are addressed;

(ii) A description of how the human system interface design requirements of § 53.440(n)(2) are addressed;

(iii) A concept of operations that is of sufficient scope and detail to address the requirements of § 53.440(n)(3);

(iv) A functional requirements analysis and function allocation that is of sufficient scope and detail to address the requirements of § 53.440(n)(4).

(b) [Reserved]

**§ 53.1241 Contents of applications for standard design certifications; other application content.**

(a) In addition to the FSAR, the application must also include the following:

(1) *Environmental report.* An environmental report as required by § 51.55 of this chapter.

(2) *Availability Controls* (if not included in the FSAR). A description of the controls on plant operations, including availability controls, to provide reasonable confidence that the configurations and special treatments for SR and NSRSS SSCs provide the capabilities and reliabilities required to demonstrate compliance with the safety criteria of § 53.220, or more restrictive alternative criteria adopted under § 53.470.

(3) *Inspections, tests, analyses, and acceptance criteria.* The proposed ITAAC that are necessary and sufficient to provide reasonable assurance that, if the inspections, tests, and analyses are performed and the acceptance criteria met, a facility that incorporates the design certification has been constructed and will be operated in conformity with the design certification, the provisions of the Act, and the Commission's rules and regulations.

(4) *Safeguards information.* A description of the program to protect Safeguards Information against unauthorized disclosure in accordance with the requirements in §§ 73.21 and 73.22 of this chapter, as applicable.

(b) If there are SSCs of the plant which required research and development to confirm the adequacy of their design, provide a report in the application which documents the resolution of any safety questions associated with such SSCs.

(c) A description of how the performance of each design feature has been demonstrated capable of fulfilling functional design criteria considering interdependent effects through either analysis, appropriate test programs, prototype testing, operating experience, or a combination thereof, in accordance with § 53.440(a).

**§ 53.1242 Review of applications.**

(a) *Standards for review of applications.* Applications filed under this part will be reviewed for compliance with the standards set out in this part and 10 CFR parts 20, 51, and 73.

(b) *Administrative review of applications; hearings.* (1) A standard design certification is a rule that will be issued under the provisions of subpart H of 10 CFR part 2, as supplemented by the provisions of this section. The Commission must initiate the rulemaking after an application has been filed under § 53.1233 and must specify the procedures to be used for the rulemaking. The notice of proposed rulemaking published in the **Federal Register** must provide an opportunity for the submission of comments on the proposed design certification rule. If, at the time a proposed design certification rule is published in the **Federal Register** under this paragraph, the Commission decides that a legislative hearing should be held, the information required by § 2.1502(c) of this chapter must be included in the **Federal Register** document for the proposed design certification.

(2) Following the submission of comments on the proposed design certification rule, the Commission may, at its discretion, hold a legislative hearing under the procedures in subpart O of part 2 of this chapter. The Commission must publish a document in the **Federal Register** of its decision to hold a legislative hearing. The document must contain the information specified in § 2.1502(c) of this chapter and specify whether the Commission or a presiding officer will conduct the legislative hearing.

(3) Notwithstanding anything in § 2.390 of this chapter to the contrary, proprietary information will be protected in the same manner and to the same extent as proprietary information submitted in connection with applications for licenses, provided that the design certification will be published in chapter I of this title.

(c) *Reference to an issued operating license or combined license.* In those cases where a design certification application is preceded by the issuance of an OL or custom COL for a commercial nuclear plant that is essentially the same as the standard design for which certification is being requested, the NRC review will follow the processes for referencing a standard design approval in § 53.1221, to the extent practicable.

**§ 53.1245 Referral to the Advisory Committee on Reactor Safeguards.**

The Commission must refer a copy of the application to the ACRS. The ACRS must report on those portions of the application which concern safety.

**§ 53.1248 Issuance of standard design certification.**

(a) After conducting a rulemaking proceeding under § 53.1242 on an application for a standard design certification and receiving the report to be submitted by the ACRS under § 53.1245, the Commission may issue a standard design certification in the form of a rule for the design that is the subject of the application, if the Commission determines that—

(1) The application demonstrates compliance with the applicable standards and requirements of the Act and the Commission's regulations;

(2) Notifications, if any, to other agencies or bodies have been duly made;

(3) There is reasonable assurance that the standard design conforms with the provisions of the Act and the Commission's regulations;

(4) The applicant is technically qualified;

(5) The proposed ITAAC are necessary and sufficient, within the scope of the standard design, to provide reasonable assurance that, if the inspections, tests, and analyses are performed and the acceptance criteria met, the facility has been constructed and will be operated in accordance with the design certification, the provisions of the Act, and the Commission's regulations;

(6) Issuance of the standard design certification will not be inimical to the common defense and security or to the health and safety of the public;

(7) The findings required by subpart A of part 51 of this chapter have been made; and

(8) The applicant has implemented the QAP described or referenced in the Safety Analysis Report.

(b) The design certification rule must specify the site parameters, design characteristics, and any additional requirements and restrictions of the design certification rule.

(c) After the Commission has adopted a final design certification rule, the applicant must not permit any individual to have access to or any facility to possess restricted data or classified National Security Information until the individual and/or facility has been approved for access under the provisions of 10 CFR parts 25 and/or 95, as applicable.

#### **§ 53.1251 Duration of certification.**

(a) Except as provided in paragraph (b) of this section, a standard design certification issued under this subpart is valid for 15 years from the effective date of the rule.

(b) A standard design certification continues to be valid beyond the date of expiration in any proceeding on an application for a COL or an OL under this part that references the standard design certification and is docketed either before the date of expiration of the certification, or, if a timely application for renewal of the certification has been filed, before the Commission has determined whether to renew the certification. A design certification also continues to be valid beyond the date of expiration in any hearing held under § 53.1452 before operation begins under a COL that references the design certification.

(c) An applicant for a CP, OL, COL, or ML under this part may, at its own risk, reference in its application a design for which a design certification application has been docketed but not granted.

#### **§ 53.1254 Application for renewal.**

(a) Not less than 12 nor more than 36 months before the expiration of the initial 15-year period, or any later renewal period, any person may apply for renewal of the certification. An application for renewal must contain all information necessary to bring up to date the information and data contained in the previous application. The Commission will require, before renewal of certification, that engineering documents, such as analyses, drawings, procurement specifications, or construction and installation specifications, be completed and available for audit if the more detailed

information is necessary for the Commission to verify the information in the application and make its safety determination. Notice and comment procedures must be used for a rulemaking proceeding on the application for renewal. The Commission, in its discretion, may require the use of additional procedures in individual renewal proceedings.

(b) A design certification, either original or renewed, for which a timely application for renewal has been filed remains in effect until the Commission has determined whether to renew the certification. If the certification is not renewed, it continues to be valid in certain proceedings under § 53.1251.

(c) The Commission must refer a copy of the application for renewal to the ACRS. The ACRS must report on those portions of the application which concern safety and must apply the criteria set forth in § 53.1257.

#### **§ 53.1257 Criteria for renewal.**

(a) The Commission must issue a rule granting the renewal if the design, either as originally certified or as modified during the rulemaking on the renewal, complies with the Act and the Commission's regulations applicable and in effect at the time the certification was issued.

(b) The Commission may impose other requirements if it determines that—

(1) They are necessary for adequate protection to public health and safety or common defense and security;

(2) They are necessary for compliance with the Commission's regulations and orders applicable and in effect at the time the design certification was issued; or

(3) There is a substantial increase in overall protection of the public health and safety or the common defense and security to be derived from the new requirements, and the direct and indirect costs of implementing those requirements are justified in view of this increased protection.

(c) In addition, the applicant for renewal may request an amendment to the design certification. The Commission must grant the amendment request if it determines that the amendment will comply with the Act and the Commission's regulations in effect at the time of renewal. If the amendment request entails such an extensive change to the design certification that an essentially new standard design is being proposed, an application for a design certification must be filed in accordance with this subpart.

(d) Denial of renewal does not bar the applicant, or another applicant, from filing a new application for certification of the design, which proposes design changes that correct the deficiencies cited in the denial of the renewal.

#### **§ 53.1260 Duration of renewal.**

Each renewal of certification for a standard design will be for not less than 10, nor more than 15 years.

#### **§ 53.1263 Finality of standard design certifications.**

(a)(1) While a standard design certification rule is in effect under §§ 53.1251 or 53.1260, the Commission may not modify, rescind, or impose new requirements on the certification information, whether on its own motion, or in response to a petition from any person, unless the Commission determines in a rulemaking that the change—

(i) Is necessary either to bring the certification information or the referencing plants into compliance with the Commission's regulations applicable and in effect at the time the certification was issued;

(ii) Is necessary to provide adequate protection of the public health and safety or the common defense and security;

(iii) Reduces unnecessary regulatory burden and maintains protection to public health and safety and the common defense and security;

(iv) Provides the detailed design information to be verified under those ITAAC that are directed at certification information (*i.e.*, design acceptance criteria);

(v) Is necessary to correct material errors in the certification information;

(vi) Substantially increases overall safety, reliability, or security of facility design, construction, or operation, and the direct and indirect costs of implementation of the rule change are justified in view of this increased safety, reliability, or security; or

(vii) Contributes to increased standardization of the certification information.

(2)(i) In a rulemaking under § 53.1263(a)(1), except for § 53.1263(a)(1)(ii), the Commission will give consideration to whether the benefits justify the costs for plants that are already licensed or for which an application for a permit or license is under consideration.

(ii) The rulemaking procedures for changes under § 53.1263(a)(1) must provide for notice and opportunity for public comment.

(3) Any modification the NRC imposes on a design certification rule



under paragraph (a)(1) of this section will be applied to all plants referencing the certified design, except those to which the modification has been rendered technically irrelevant by action taken under paragraphs (a)(4) or (b) of this section.

(4) The Commission may not impose new requirements by plant-specific order on any part of the design of a specific plant referencing the design certification rule if that part was approved in the design certification while a design certification rule is in effect under § 53.1248, unless—

(i) A modification is necessary to secure compliance with the Commission's regulations applicable and in effect at the time the certification was issued, or to assure adequate protection of the public health and safety or the common defense and security; and

(ii) Special circumstances as defined in § 53.080 are present. In addition to the factors listed in § 53.080, the Commission must consider whether the special circumstances which § 53.080 requires to be present outweigh any decrease in safety that may result from the reduction in standardization caused by the plant-specific order.

(5) Except as provided in § 2.335 of this chapter, in making the findings required for issuance of a COL, CP, OL, or ML, or for any hearing under § 53.1452, the Commission must treat as resolved those matters resolved in connection with the issuance or renewal of a design certification rule.

(b) An applicant who references a design certification rule may request an exemption from one or more elements of the certification information. The Commission may grant such a request only if it determines that the exemption will comply with the requirements of § 53.080. In addition to the factors listed in § 53.080, the Commission must consider whether the special circumstances that § 53.080 requires to be present outweigh any decrease in safety that may result from the reduction in standardization caused by the exemption. The granting of an exemption on request of an applicant is subject to litigation in the same manner as other issues in the OL or COL hearing.

(c) The Commission will require, before granting a CP, COL, OL, or ML that references a design certification rule, that information normally contained in engineering documents, such as analyses, drawings, procurement specifications, or construction and installation specifications, be completed and available for audit if the more detailed

information is necessary for the Commission to verify the information in the application and make its safety determination, including the determination that the application is consistent with the certification information. This information may be acquired by appropriate arrangements with the design certification applicant.

#### **§ 53.1270 Manufacturing licenses.**

Sections 53.1270 through 53.1295 set out the requirements and procedures applicable to Commission issuance of a license under this part authorizing manufacture of manufactured reactors to be installed at sites not identified in the ML application.

#### **§ 53.1273 Filing of applications.**

Any person, except one excluded by § 53.1118, may file an application for an ML under this part with the Director, Office of Nuclear Reactor Regulation.

#### **§ 53.1276 Contents of applications for manufacturing licenses; general information.**

Each application for an ML must include the information contained in § 53.1109(a) through (e), and (j).

#### **§ 53.1279 Contents of applications for manufacturing licenses; technical information.**

(a) *Final Safety Analysis Report-siting and design.* The application must include an FSAR containing the information set forth below, with a level of design information sufficient to enable the Commission to judge the applicant's proposed means of ensuring that the manufacturing conforms to the design and to reach a final conclusion on all safety questions associated with the design, permit the preparation of construction and installation specifications by an applicant who seeks to use the manufactured reactor, and permit the preparation of acceptance and inspection requirements by the NRC. The application must include the following information:

(1) *Site parameters.* The site parameters postulated for the design under this part, including the design-basis external hazard levels for the relevant external hazards, and an analysis and evaluation of the design in terms of those site parameters.

(2) *Design information.* Except as specified in this paragraph, the design information equivalent to that required for a standard design certification as defined in § 53.1239(a)(2) through (27) for those portions of a commercial nuclear plant included in the manufactured reactor.

(3) *Quality assurance program.* A description of the QAP applied to the

design, and to be applied to the fabrication and testing of the SSCs of the manufactured reactor under § 53.620(a)(6), including a discussion of how the applicable requirements of appendix B to part 50 of this chapter will be satisfied;

(4) *Conceptual designs.*

Representative conceptual designs for one or more commercial nuclear plants using the manufactured reactor;

(5) *Operating configurations.* If multiple manufactured reactors may be installed at a commercial nuclear plant, a description of the possible operating configurations, including common systems, interface requirements, and system interactions. The final safety analysis must also account for differences among the possible configurations, including any restrictions that will be necessary during the construction and startup of a given manufactured reactor to ensure the safe operation of any commercial nuclear reactor already operating;

(6) *Interface requirements.* (i) The interface requirements between the manufactured reactor and the remaining portions of the commercial nuclear plant or connections to other facilities outside of the commercial nuclear plant.

(ii) Confirmation that interface requirements are verifiable through inspections, testing, or analysis. These requirements must be sufficiently detailed to allow for completion of the final safety analysis by license applicants that reference the manufactured reactor manufactured under this subpart. Applicants for a COL under this part will need to verify the interface requirements at the installation site. The method to be used for verification of interface requirements must be included as part of the proposed ITAAC required by § 53.1282(a).

(iii) Information to support development of radiation monitoring programs required under subpart F of this part by an applicant for a COL, including potential pathways for radionuclides produced within the manufactured reactor to enter interfacing systems.

(b) *Final Safety Analysis Report—manufacturing information.* The FSAR must include the following information related to the manufacturing processes, organization, controls, and inspections:

(1) A description, including references to generally accepted consensus codes and standards, of the processes that will be used to procure, fabricate, and assemble components that make up the manufactured reactor. The description should clearly define which activities are proposed to be within the

scope of the ML and those, such as the making of a component to be procured from a separate company for installation in the manufactured reactor, that are not considered to be within the scope of the ML;

(2) A description of the organizational and management structure singularly responsible for direction of design and manufacture of the manufactured reactor. The information should include a description of the management plans, technical qualifications, and controls in place to demonstrate compliance with the requirements of § 53.620;

(3) A description of the inspections and tests to be performed as part of the manufacturing process, including the inspection of procured components, inspection and testing of fabrication processes such as the molding, welding, or coating of components, and inspections and testing of the assembled manufactured reactor or portions of the manufactured reactor;

(4) A description of the fitness-for-duty program required by part 26 of this chapter and its implementation.

(c) *Deployment of the completed manufactured reactor.* The application must include the following information related to the deployment of a manufactured reactor:

(1) Procedures governing the preparation of the manufactured reactor or portions of the manufactured reactor for shipping to the site where it is to be operated; the conduct of shipping; and verifying the condition of the shipped items upon receipt at the site;

(2) Details of the interaction of the design, manufacture, and installation of a manufactured reactor within the applicant's organization and the manner by which the applicant will ensure close integration between the designer, contractors, and any facility in which the manufactured reactor is to be installed;

(3) A description of the measures to be used for the control of interfaces, including the consideration of key site parameters, between the holder of the ML and the holder of the COL for the commercial nuclear plant at which the manufactured reactor is to be installed.

(d) *Special considerations for factory fueling.* In addition to the above paragraphs, an application for an ML for a manufactured reactor that will be fueled at the factory under a 10 CFR part 70 license must include the following information related to loading fuel and the required independent physical mechanisms to prevent criticality and to otherwise provide assurance that the fueled manufactured reactor can be successfully transported, installed, and operated at a site for which the

Commission has issued a COL that authorizes construction and operation of a commercial nuclear plant using the manufactured reactor:

(1) A description of the procedures used during the fueling of the manufactured reactor that ensure that the configuration of fuel within the fueled manufactured reactor is consistent with the design and analyses supporting operation of the manufactured reactor under the COL at the place of operation. The description may reference the applicable 10 CFR part 70 application and other sections of the Safety Analysis Report supporting the ML license application.

(i) The application must describe the measures taken for in-factory inspections and non-nuclear testing performed to ensure that the configuration of fuel within the fueled manufactured reactor is consistent with the design and analyses supporting operation of the manufactured reactor under the COL at the place of operation.

(ii) The application must describe the design features included in the manufactured reactor to prevent criticality, including at least two independent mechanisms each of which is sufficient to prevent criticality, the associated functional design criteria applied to those design features, and the physical and programmatic controls implemented during manufacturing, storage, and transport that are credited to assure the features function as designed when subject to potential hazards and human errors. The descriptions must include how those measures will be controlled during installation under the ML and removal under the COL at the place of operation.

(2) A description of the procedures governing the transfer of responsibilities for the fueled manufactured reactor from the holder of the ML to the holder of the COL for the installation site.

(3) If available at the time of filing the ML application or, if not available at the time of filing the ML application, submitted as an amendment to the ML or ML application at the time of filing the Part 70 application, a description of the programs needed to demonstrate compliance with the requirements of § 53.620(d) and 10 CFR parts 70, 71, and 73 for the receipt, storage, and loading of SNM into a manufactured reactor and the transport of the fueled manufactured reactor to a site for which the Commission has issued a COL that authorizes construction and operation of a commercial nuclear plant using the manufactured reactor, including the following:

(i) A physical security program in accordance with § 53.620(d)(2)(i).

(ii) A cybersecurity program in accordance with § 53.620(d)(2)(i).

**§ 53.1282 Contents of applications for manufacturing licenses; other application content.**

(a) *Inspections, tests, analyses, and acceptance criteria.* (1) The application must contain proposed inspections, tests, and analyses that the COL holder must perform, and the acceptance criteria that are necessary and sufficient to provide reasonable assurance that, if the inspections, tests, and analyses are performed and the acceptance criteria met:

(i) The reactor has been manufactured in conformity with the ML, the provisions of the Act, and the Commission's rules and regulations; and

(ii) The manufactured reactor will be operated in conformity with the approved design and any license authorizing operation of the manufactured reactor.

(2) If the application references a standard design certification, the ITAAC contained in the certified design must apply to those portions of the facility design that are covered by the design certification.

(3) If the application references a standard design certification, the application may include a notification that a required inspection, test, or analysis in the design certification ITAAC has been successfully completed and that the corresponding acceptance criterion has been met. The **Federal Register** notification required by § 53.1285 must indicate that the application includes this notification.

(b) *Environmental report.* (1) The application must contain an environmental report as required by § 51.54 of this chapter.

(2) If the ML application references a standard design certification, the environmental report need not contain a discussion of severe accident mitigation design alternatives for the manufactured reactor as used in a commercial nuclear plant.

(c) *Safeguards information.* The application must contain a description of the program to protect safeguards information against unauthorized disclosure in accordance with the requirements in §§ 73.21 and 73.22 of this chapter, as applicable.

(d) *Performance demonstration.* A description of how the performance of each design feature has been demonstrated capable of fulfilling functional design criteria considering interdependent effects through either analysis, appropriate test programs, prototype testing, operating experience,

or a combination thereof, in accordance with § 53.440(a).

#### **§ 53.1285 Review of applications.**

(a) *Standards for review of applications.* Applications for MLs under this part will be reviewed according to the applicable standards set out in this subpart as well as applicable standards in this part and 10 CFR parts 20, 25, 26, 51, 70, 71, 73, and 75.

(b) *Administrative review of applications, hearings.* A proceeding on an ML is subject to all applicable procedural requirements contained in 10 CFR part 2, including the requirements for docketing in § 2.101(a)(1) through (4) of this chapter, and the requirements for issuance of a notice of proposed action in § 2.105 of this chapter, *provided, however*, that the designated sections may not be construed to require that the environmental report or draft or final environmental impact statement include an assessment of the benefits of constructing and/or operating the manufactured reactor or an evaluation of alternative energy sources. All hearings on MLs are governed by the hearing procedures contained in 10 CFR part 2, subparts C, E, G, L, and N.

#### **§ 53.1286 Referral to the Advisory Committee on Reactor Safeguards.**

The Commission must refer a copy of the application to the ACRS. The ACRS must report on those portions of the application which concern safety.

#### **§ 53.1287 Issuance of manufacturing licenses.**

(a) After completing any hearing under § 53.1285(b), and receiving the report submitted by the ACRS, the Commission may issue an ML if the Commission finds that—

(1) Applicable standards and requirements of the Act and the Commission's regulations have been met;

(2) There is reasonable assurance that the manufactured reactor will be manufactured, and can be transported, incorporated into a commercial nuclear plant, and operated in conformity with the ML, the provision of the Act, and the Commission's regulations;

(3) The proposed manufactured reactor can be incorporated into a commercial nuclear plant and operated at sites having characteristics that fall within the site parameters postulated for the design of the manufactured reactors without undue risk to the health and safety of the public;

(4) The applicant is technically qualified to design and manufacture the proposed manufactured reactor;

(5) The proposed ITAAC are necessary and sufficient, within the scope of the ML, to provide reasonable assurance that the manufactured reactor has been manufactured and will be operated in conformity with the license, the provisions of the Act, and the Commission's regulations;

(6) The issuance of a license to the applicant will not be inimical to the common defense and security or to the health and safety of the public; and

(7) The findings required by subpart A of 10 CFR part 51 have been made.

(b) Each ML issued under this subpart must specify—

(1) Terms and conditions as the Commission deems necessary and appropriate;

(2) Technical specifications for operation of the manufactured reactor, as the Commission deems necessary and appropriate;

(3) Site parameters and design characteristics for the manufactured reactor;

(4) The interface requirements to be met by the site-specific elements of the facility, such as the energy conversions systems and ultimate heat sink, not within the scope of the manufactured reactor; and

(5) The entity with design authority for the manufactured reactor covered by the license.

#### **§ 53.1288 Finality of manufacturing licenses.**

(a)(1) Notwithstanding any provision in § 53.1590, during the term of an ML issued under this part the Commission may not modify, rescind, or impose new requirements on the design of the manufactured reactor, or the requirements for the manufacture of the manufactured reactor, unless the Commission determines that a modification is necessary to bring the design of the reactor or its manufacture into compliance with the Commission's requirements applicable and in effect at the time the ML was issued, or to provide reasonable assurance of adequate protection to public health and safety or common defense and security.

(2) Any modification to the design of a manufactured reactor that is imposed by the Commission under paragraph (a)(1) of this section will be applied to all manufactured reactors manufactured under the license, including those that have already been transported and sited, except those manufactured reactors to which the modification has been rendered technically irrelevant by action taken under § 53.1530 or paragraph (b) of this section.

(3) In making the findings required under this part for issuance of a COL,

in any hearing under § 53.1452, or in any enforcement hearing other than one initiated by the Commission under paragraph (a)(1) of this section, for which a manufactured reactor manufactured under this subpart is referenced or used, the Commission must treat as resolved those matters resolved in the proceeding on the application for issuance or renewal of the ML, including the adequacy of design of the manufactured reactor, the costs and benefits of severe accident mitigation design alternatives, and the bases for not incorporating severe accident mitigation design alternatives into the design of the manufactured reactor to be manufactured.

(b) An applicant who references or uses a manufactured reactor manufactured under an ML under this part may include in the application a request for a departure from the design characteristics, site parameters, terms and conditions, or approved design of the manufactured reactor. The Commission may grant a request only if it determines that the departure will comply with the requirements of § 53.080, and that the special circumstances outweigh any decrease in safety that may result from the reduction in standardization caused by the departure. The granting of a departure on request of an applicant is subject to litigation in the same manner as other issues in the COL hearing.

#### **§ 53.1291 Duration of manufacturing licenses.**

An ML issued under this part is valid for not less than 5, nor more than 15 years from the date of issuance. Upon expiration of the ML, the manufacture of any uncompleted manufactured reactors must cease unless a timely application for renewal has been docketed with the NRC.

#### **§ 53.1293 Transfer of manufacturing licenses.**

An ML may be transferred under § 53.1570.

#### **§ 53.1295 Renewal of manufacturing licenses.**

(a)(1) Not less than 12 months, nor more than 5 years before the expiration of the ML, or any later renewal period, the holder of the ML issued under this part may apply for a renewal of the license. An application for renewal must contain all information necessary to bring up to date the information and data contained in the previous application.

(2) The filing of an application for a renewed license must be in accordance with subpart A of 10 CFR part 2 and § 53.1100.

(3) An ML issued under this part, either original or renewed, for which a timely application for renewal has been filed, remains in effect until the Commission has made a final determination on the renewal application, *provided, however*, that the holder of an ML may not begin manufacture of a manufactured reactor less than 6 months before the expiration of the license.

(4) Any person whose interest may be affected by renewal of the license may request a hearing on the application for renewal. The request for a hearing must comply with § 2.309 of this chapter. If a hearing is granted, notice of the hearing will be published in accordance with § 2.104 of this chapter.

(5) The Commission must refer a copy of the application for renewal to the ACRS. The ACRS must report on those portions of the application which concern safety.

(b) The Commission may grant the renewal if the Commission determines—

(1) The ML complies with the Act and the Commission's regulations and orders applicable and in effect at the time the ML was originally issued; and

(2) Any new requirements the Commission may wish to impose are—

(i) Necessary for adequate protection to public health and safety or common defense and security;

(ii) Necessary for compliance with the Commission's regulations and orders applicable and in effect at the time the ML was originally issued; or

(iii) A substantial increase in overall protection of the public health and safety or the common defense and security to be derived from the new requirements, and the direct and indirect costs of implementation of those requirements are justified in view of this increased protection.

(c) A renewed ML may be issued for a term of not less than 5, nor more than 15 years, plus any remaining years on the ML then in effect before renewal. The renewed license must be subject to the requirements of § 53.1288.

#### **§ 53.1300 Construction permits.**

Sections 53.1300 through 53.1348 set out the requirements and procedures applicable to Commission issuance of a CP for commercial nuclear plants. A CP for the construction of a commercial nuclear plant under this part will be issued before the issuance of an OL if the application is otherwise acceptable and will be converted upon completion of the facility and Commission action, into an OL as provided under §§ 53.1360 through 53.1405.

#### **§ 53.1306 Contents of applications for construction permits; general information.**

An application for a CP must include the information required by § 53.1109 and the following information:

(a) Information sufficient to demonstrate to the Commission the financial qualification of the applicant to carry out, under the regulations in this chapter, the activities for which the permit is sought. As applicable, the following should be provided:

(1) The information that demonstrates that the applicant possesses or has reasonable assurance of obtaining the funds necessary to cover estimated construction costs and related fuel cycle costs, including estimates of the total construction costs and related fuel cycle costs of the facility and must indicate the source(s) of funds to cover these costs.

(2) Each application for a CP submitted by a newly formed entity organized for the primary purpose of constructing and operating a facility must also include information showing:

(i) The legal and financial relationships the entity has or proposes to have with its stockholders or owners;

(ii) The stockholders' or owners' financial ability to meet any contractual obligation to the entity that they have incurred or proposed to incur; and

(iii) Any other information considered necessary by the Commission to enable it to determine the applicant's financial qualification; and

(3) The Commission may request an established entity or newly-formed entity to submit additional or more detailed information respecting its financial arrangements and status of funds if the Commission considers this information appropriate. This may include information regarding an applicant's ability to continue the conduct of the activities authorized by the CP and to decommission the facility.

(b) If the applicant proposes to construct or alter a facility, the application must state the earliest and latest dates for completion of the construction or alteration.

#### **§ 53.1309 Contents of applications for construction permits; technical information.**

The application must contain a Preliminary Safety Analysis Report (PSAR) that describes the facility and the limits on its operation and presents a preliminary safety analysis of the SSCs of the facility as a whole. The PSAR must include the following information, at a level of detail sufficient to enable the Commission to reach a conclusion on safety matters that must be resolved by the Commission before issuance of a CP:

(a)(1) *Site information.* An application for a CP for a commercial nuclear reactor must include the site information equivalent to that required for an early site permit in § 53.1146(a)(1)(iv) through (x).

(2) *Design information.* Except as specified in this paragraph, an application for a CP for a commercial nuclear plant must include the design information equivalent to that required for a standard design certification as defined in § 53.1239(a)(2) through (27).

(i) *Quality assurance program.* A description of the QAP to be applied to the design, fabrication, construction, and testing of the SSCs of the facility under § 53.610(a)(6), including a discussion of how the requirements of appendix B to part 50 of this chapter will be satisfied.

(ii) *Preliminary design information.* The information provided in the application may include some aspects of the design that are not fully developed, and the information is therefore preliminary. The completed design, including any changes during construction, must be described in the FSAR required in § 53.1369 that supports an application for an OL.

(iii) *Planned research or testing.* Descriptions of how design features and related functional design criteria will fulfill the safety criteria in subpart B, or more restrictive alternative criteria adopted under § 53.470, and how that has been or will be demonstrated through either analysis, appropriate test programs, experience, or a combination thereof. Where any design feature has not been fully developed or demonstrated to fulfill the functional design criteria at the time of an application for a CP, the applicant must provide a plan for future analysis, research and development, test programs, gathering of experience, or a combination thereof to provide reasonable confidence that the required demonstration will be available for an application for an OL.

(iv) *Programmatic controls.* Descriptions of the programmatic controls may include those to be provided in the FSAR or other licensing basis documents because they are necessary to achieve and maintain the reliability and capability of SSCs relied upon to demonstrate compliance with the established safety criteria and functional design criteria required in subpart B, and to maintain consistency with analyses required by § 53.450.

(3) *Technical qualifications.* A description of the technical qualifications of the applicant to engage in the proposed activities under the regulations in this chapter.

(4) *Emergency preparedness.* A description of the applicant's preliminary plans for coping with emergencies based on:

(i) Except as provided in paragraph (a)(4)(ii) of this section, the requirements in appendix E to part 50.

(ii) For a commercial nuclear plant consisting of either small modular reactors or non-light-water reactors, the requirements in either § 50.160 or appendix E to part 50.

(5) *Physical security.* A report that provides a preliminary description of how the site characteristics support the development of adequate security plans and measures consistent with the requirements in § 53.540.

(6) *Fitness-for-duty program.* A description of the fitness-for-duty (FFD) program required by 10 CFR part 26 and its implementation.

(b) A description of the program to protect Safeguards Information against unauthorized disclosure in accordance with the requirements in §§ 73.21 and 73.22 of this chapter, as applicable.

#### **§ 53.1312 Contents of applications for construction permits; other application content.**

(a) In addition to the PSAR, the application must include the following:

(1) An environmental report either under § 51.50(a) of this chapter if an LWA under § 53.1130 is not requested in conjunction with the CP application, or under §§ 51.49 and 51.50(a) of this chapter if an LWA is requested in conjunction with the CP application; or

(2) If the applicant wishes to request that an LWA under § 53.1130 be issued before issuance of the CP, the information otherwise required by § 53.1130, in accordance with either § 2.101(a)(1) through (a)(5), or § 2.101(a)(9) of this chapter.

(b) If the CP application references an early site permit, standard design approval, or standard design certification issued under this part, then the following requirements apply:

(1) The PSAR need not contain information or analyses submitted to the Commission in connection with the referenced NRC approval, permit, or certification, provided, however, that the PSAR incorporates the material by reference and confirms that the site and design of the facility falls within parameter values postulated in the referenced NRC approval, permit, or certification.

(2) The PSAR must provide a means to demonstrate that all terms and conditions that have been included in the referenced NRC approval, permit, or certification will be satisfied by the date of issuance of the OL, as appropriate. If

the PSAR does not demonstrate that each site characteristic falls within the corresponding postulated site parameter and each design characteristic of the facility falls within the corresponding postulated design parameter, the application must justify a departure, variance, or exemption from the referenced NRC approval, license, or certification in regard to that particular site or design characteristic in compliance with the requirements of this part.

(3) If a referenced early site permit approves complete and integrated emergency plans, or major features of emergency plans, then the PSAR must include any new or additional information that updates and corrects the information that was provided under § 53.1146(b)(2) and discuss whether the new or additional information materially changes the bases for compliance with the applicable requirements.

#### **§ 53.1315 Review of applications.**

(a) *Standards for review of applications.* Applications filed under this part will be reviewed according to the standards set out in this part and 10 CFR parts 20, 51, 73, and 140.

(b) *Administrative review of applications; hearings.* A proceeding on a CP application is subject to all applicable procedural requirements contained in 10 CFR part 2, including the requirements for docketing (§ 2.101 of this chapter) and issuance of a notice of hearing (§ 2.104 of this chapter). All hearings on CP applications are governed by the procedures contained in 10 CFR part 2.

#### **§ 53.1318 Finality of referenced NRC approvals, permits, and certifications.**

If the application for a CP under this part references an early site permit, standard design approval, or standard design certification, the scope and nature of matters resolved for the application are governed by the relevant provisions addressing finality, including §§ 53.1188, 53.1221, and 53.1263.

#### **§ 53.1324 Referral to the Advisory Committee on Reactor Safeguards.**

The Commission must refer a copy of the application to the ACRS. The ACRS must report on those portions of the application that concern safety and must apply the standards referenced in § 53.1315, in accordance with the finality provisions in § 53.1318.

#### **§ 53.1327 Authorization to conduct limited work authorization activities.**

(a) If the application does not reference an early site permit which authorizes the holder to perform the

activities under § 53.1130, the applicant may not perform those activities without obtaining the separate authorization required by § 53.1130. Authorization may be granted only after the presiding officer in the proceeding on the application has made the findings and determination required by § 53.1130(b)(1)(ii) and (iv), and the Director, Office of Nuclear Reactor Regulation makes the determination required by § 53.1130(b)(1)(iii).

(b) If, after an applicant has performed the activities permitted by paragraph (a) of this section, the application for the CP is withdrawn or denied, then the applicant must implement an approved site redress plan.

#### **§ 53.1330 Exemptions, departures, and variances.**

(a) Applicants for a CP under this part, or any amendment to a CP, may include in the application a request for an exemption from one or more of the Commission's regulations. The Commission may grant a request if it determines that the exemption complies with § 53.080.

(b) An applicant for a CP who has filed an application referencing an NRC approval, permit, or certification issued under this part may include in the application a request for exemptions, departures, or variances related to the subject referenced NRC approval, permit, or certification. In determining whether to grant the departure, variance, or exemption, the Commission must apply the same technically relevant criteria as were applicable to the application for the original or renewed approval, license, or certification.

#### **§ 53.1333 Issuance of construction permits.**

(a) After conducting a hearing in accordance with § 53.1315 and receiving the report submitted by the ACRS, the Commission may issue a CP only if the Commission finds that—

(1) The applicant has described the proposed design of the facility and has identified the major features or components incorporated therein for the protection of the health and safety of the public;

(2) Such further technical or design information as may be required to complete the safety analysis, and which can reasonably be left for later consideration, will be supplied in the FSAR;

(3) Safety features or components, if any, that require research and development have been described by the applicant and the applicant has identified, and there will be conducted,

a research and development program reasonably designed to resolve any safety questions associated with such features or components; and

(4) On the basis of the foregoing, there is reasonable assurance of the following—

(i) Such safety questions will be satisfactorily resolved at or before the latest date stated in the application for completion of construction of the proposed facility; and

(ii) Taking into consideration the site criteria contained subpart D to this part, the proposed facility can be constructed and operated at the proposed location without undue risk to the health and safety of the public.

(b) A CP must contain the terms and conditions for the permit, as the Commission deems necessary and appropriate. The Commission may, in its discretion, incorporate in any CP provisions requiring the applicant to furnish periodic reports of the progress and results of research and development programs designed to resolve safety questions.

#### **§ 53.1336 Finality of construction permits.**

Notwithstanding any provision in § 53.1590, a CP constitutes an authorization to proceed with construction but does not constitute Commission approval of the safety of any design feature or specification unless the applicant specifically requests such approval and such approval is incorporated in the permit. The applicant, at its option, may request such approvals in the CP or by amendment to the CP. If approved by the NRC and included in the permit, the NRC will consider modifications to the approved design features or specifications in accordance with § 53.1590.

#### **§ 53.1342 Duration of construction permits.**

(a) A CP will state the earliest and latest dates for completion of construction or alteration of the facility, not to exceed 40 years from date of issuance.

(b) If the proposed construction or alteration of the facility is not completed by the latest completion date, the CP shall expire, and all rights are forfeited. However, upon good cause shown, the Commission will extend the completion date for a reasonable period of time. The Commission will recognize, among other things, developmental problems attributed to the experimental nature of the facility or fire, flood explosion, strike, sabotage, domestic violence, enemy action an act of the elements, and other acts beyond the

control of the permit holder, as a basis for extending the completion date.

#### **§ 53.1345 Transfer of construction permits.**

A CP may be transferred under § 53.1570.

#### **§ 53.1348 Termination of construction permits.**

When a permit holder has determined to permanently cease construction, the holder must, within 30 days, submit a written certification to the NRC.

#### **§ 53.1360 Operating licenses.**

Sections 53.1360 through 53.1405 set out the requirements and procedures applicable to Commission issuance of an OL for a nuclear power facility.

#### **§ 53.1366 Contents of applications for operating licenses; general information.**

An application for an OL must include the information required by § 53.1109 and the following information:

(a) Except for an electric utility applicant, information sufficient to demonstrate to the Commission the financial qualification of the applicant to carry out, in accordance with the regulations in this chapter, the activities for which the license is sought. As applicable, the following should be provided:

(1) The applicant must submit information that demonstrates the applicant possesses or has reasonable assurance of obtaining the funds necessary to cover estimated operation costs for the period of the license. The applicant must submit estimates for total annual operating costs for each of the first 5 years of operation of the facility. The applicant must also indicate the source(s) of funds to cover these costs.

(2) Each application for an OL submitted by a newly-formed entity organized for the primary purpose of operating the facility must also include information showing—

(i) The legal and financial relationships the entity has or proposes to have with its stockholders or owners;

(ii) The stockholders' or owners' financial ability to meet any contractual obligation to the entity which they have incurred or proposed to incur; and

(iii) Any other information considered necessary by the Commission to enable it to determine the applicant's financial qualification.

(3) The Commission may request an established entity or newly formed entity to submit additional or more detailed information respecting its financial arrangements and status of funds if the Commission considers this

information appropriate. This may include information regarding a licensee's ability to continue the conduct of the activities authorized by the license and to decommission the facility.

(b) The application must include information in the form of a report, as described in subpart G, indicating how reasonable assurance will be provided that funds will be available to decommission the facility, including a copy of the financial instrument obtained to satisfy the requirements of § 53.1040.

#### **§ 53.1369 Contents of applications for operating licenses; technical information.**

*Final Safety Analysis Report.* The application must contain an FSAR that describes the facility and the limits on its operation and presents a safety analysis of the SSCs of the facility as a whole. The FSAR must include the following information, at a level of detail sufficient to enable the Commission to reach a final conclusion on all safety matters that must be resolved by the Commission before issuance of an OL. The FSAR must include the following information:

(a) *Site information.* An application for an OL for a commercial nuclear reactor must include the site information equivalent to that required for an early site permit in § 53.1146(a)(1)(iv) through (x), including all current information, such as the results of environmental and meteorological monitoring programs, which has been developed since issuance of the CP, relating to site evaluation factors identified in this part.

(b) *Design information.* Except as specified in this paragraph, an FSAR for an OL for a commercial nuclear plant must include the final design information equivalent to that required for a standard design certification as defined in § 53.1239(a)(2) through (7), (a)(9), and (a)(11) through (a)(27).

(1) The completed design, including any changes during construction, must be described.

(2) Where any design feature had not been fully developed or demonstrated at the time of application for the CP, the applicant must provide the analysis, research and development, test programs, gathering of experience, or a combination thereof to provide the required demonstration to fulfill the functional design criteria.

(c) *Technical qualifications.* A description of the technical qualifications of the applicant to engage in the proposed activities in accordance with the regulations in this chapter.

(d) *Integrity assessment program.* A description of an Integrity Assessment Program that addresses the elements described in § 53.870.

(e) *Safeguards information.* A description of the program to protect Safeguards Information against unauthorized disclosure in accordance with the requirements in §§ 73.21 and 73.22 of this chapter, as applicable.

(f) *Emergency response facility or facilities.* Description of location and capabilities to be established for command and control, support, and coordination of onsite and offsite, as applicable, functions during reactor accident conditions.

(g) *Role of personnel.* (1) A description of the completed assessments related to the role of personnel in ensuring safe operations considering the analyses required by § 53.730. These assessments must include the following:

(i) Human factors engineering design requirements of § 53.730(a);

(ii) Human system interface design requirements of § 53.730(b);

(iii) Concept of operations of § 53.730(c);

(iv) Functional requirements analysis and function allocation of § 53.730(d);

(2) A description of the program to be used for evaluating and applying operating experience as required by § 53.730(e);

(3) A staffing plan and supporting analyses as required by § 53.730(f).

(h) *Training, examination, and proficiency programs.* (1) A description of the training, examination, and proficiency programs required by § 53.730(g);

(2) A description of the training programs required by § 53.830.

(i) *Emergency plan.* Emergency plans complying with the requirements of § 53.855.

(1) Include all emergency plan certifications, as applicable, that have been obtained from the State, local, and participating Tribal governmental agencies with emergency planning responsibilities that are wholly or partially within the EPZ plume exposure pathway. These certifications must state that—

(i) The proposed emergency plans are practicable;

(ii) These agencies are committed to participating in any further development of the plans, including any required field demonstrations; and

(iii) These agencies are committed to executing their responsibilities under the plans in the event of an emergency.

(2) If certifications cannot be obtained after sustained, good faith efforts by the applicant, then the application must

contain information, including a utility plan, sufficient to show that the proposed plans provide reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency at the site.

(3) If complete and integrated emergency plans were approved as part of an early site permit, or submitted, reviewed, and approved as part of the CP application, new certifications that demonstrate compliance with the requirements of paragraph (i)(1) of this section are not required.

(j) *Organization.* A description of the applicant's organizational structure, allocations of responsibilities and authorities, and personnel qualifications requirements for operation.

(k) *Maintenance program.* A description of a maintenance program under § 53.715.

(l) *Quality assurance.* A description of the QAP that demonstrates compliance with the requirements under § 53.865.

(m) *Radiation protection program.* A radiation protection program description under § 53.850.

(n) *Security program.* A physical security plan that describes how the applicant will comply with § 53.860 (and 10 CFR part 11, if applicable, including the identification and description of jobs as required by § 11.11(a) of this chapter, at the proposed facility). The plan must list tests, inspections, audits, and other means to be used to demonstrate compliance with the requirements of 10 CFR parts 11 and 73, if applicable.

(o) *Safeguards contingency plan.* A safeguards contingency plan in accordance with the criteria set forth in appendix C to 10 CFR part 73. The safeguards contingency plan must include plans for dealing with threats, thefts, and radiological sabotage, as defined in 10 CFR part 73, relating to the SNM and nuclear facilities licensed under this chapter and in the applicant's possession and control. Each application for this type of license must include the information contained in the applicant's safeguards contingency plan. (Implementing procedures required for this plan need not be submitted for approval.)<sup>1</sup>

(p) *Security training and qualification.* A training and qualification plan that describes how the applicant will demonstrate compliance with the criteria set forth in § 73.100 of this chapter or appendix B to 10 CFR part 73.

(q) *Cybersecurity plan.* A cybersecurity plan in accordance with the criteria set forth in § 73.54 or § 73.110 of this chapter.

(r) *Security, safeguards and cybersecurity plan implementation.* A description of the implementation of the physical security plan, safeguards contingency plan, training and qualification plan, and cybersecurity plan. Each applicant who prepares a physical security plan, a safeguards contingency plan, a training and qualification plan, or a cybersecurity plan must protect the plans and other related Safeguards Information against unauthorized disclosure in accordance with the requirements of §§ 73.21 and 73.22 of this chapter.

(s) *Fire protection program.* A description of the fire protection program under § 53.875.

(t) *Inservice inspection/inservice testing program.* A description of the inservice inspection and inservice testing programs under § 53.880.

(u) [Reserved]

(v) [Reserved]

(w) *General employee training.* A description of the training program required to demonstrate compliance with § 53.830 and its implementation.

(x) *Fitness-for-duty program.* A description of the FFD program required by 10 CFR part 26 and its implementation.

(y) *Other programs.* A description and evaluation of the results of the applicant's programs, including research and development, if any, to demonstrate that any safety questions identified at the CP stage have been resolved.

(z) *Safety design feature performance.* A description of how the performance of each safety design feature has been demonstrated capable of fulfilling functional design criteria considering interdependent effects through either analysis, appropriate test programs, prototype testing, operating experience, or a combination thereof, in accordance with § 53.440(a).

(aa) *Technical specifications.* Proposed technical specifications prepared in accordance with the requirements of § 53.710(a).

<sup>1</sup> A physical security plan that contains all the information required in both § 73.55 or § 73.100 of this chapter and appendix C to 10 CFR part 73 satisfies the requirement for a contingency plan.

#### **§ 53.1372 Contents of applications for operating licenses; other application content.**

In addition to the FSAR, the application must also include the following:

(a) *Environmental report.* An environmental report in accordance with § 51.53(b) of this chapter.

(b) *Availability controls (if not included in the FSAR).* A description of



the controls on plant operations, including availability controls, to provide reasonable confidence of safe operation and that the configurations and special treatments for SR and NSRSS SSCs provide the capabilities and reliabilities required to satisfy the safety criteria of § 53.220, or more restrictive alternative criteria adopted under § 53.470, if not addressed by Technical Specifications under § 53.1369(aa).

#### **§ 53.1375 Review of applications.**

(a) *Standards for review of applications.* Applications filed under this part will be reviewed according to the standards set out in 10 CFR parts 20, 26, 51, 53, 73, and 140.

(b) *Administrative review of applications; hearings.* A proceeding on an OL is subject to all applicable procedural requirements contained in 10 CFR part 2, including the requirements for docketing (§ 2.101 of this chapter) and issuance of a notice of hearing (§ 2.104 of this chapter). All hearings on OLs are governed by the procedures contained in 10 CFR part 2.

#### **§ 53.1381 Referral to the Advisory Committee on Reactor Safeguards.**

The Commission must refer a copy of the application to the ACRS. The ACRS must report on those portions of the application that concern safety and must apply the standards referenced in § 53.1375.

#### **§ 53.1384 Exemptions, departures, and variances.**

(a) Applicants for an OL under this part, or any amendment to an OL, may include in the application a request for an exemption from one or more of the Commission's regulations. The Commission may grant an exemption request if it determines that the exemption complies with § 53.080.

(b) An applicant for an OL who has filed an application referencing an NRC approval, permit, license, or certification issued under this part may include in the application a request for departures, variances, or exemptions related to the subject referenced NRC approval, permit, license, or certification. In determining whether to grant the departure, variance, or exemption, the Commission must apply the same technically relevant criteria as were applicable to the application for the original or renewed approval, license, or certification.

#### **§ 53.1387 Issuance of operating licenses.**

Upon completion of the construction or alteration of a facility, in compliance with the terms and conditions of the construction permit and subject to any

necessary testing of the facility for health or safety purposes, the Commission will, in the absence of good cause shown to the contrary, issue an OL or an appropriate amendment of the license, as the case may be.

(a)(1) After receiving the report submitted by the ACRS, the Commission may issue an OL if the Commission finds that—

(i) Construction of the facility has been substantially completed in conformity with the CP and the application as amended, the provisions of the Act, and the rules and regulations of the Commission;

(ii) Any required notifications to other agencies or bodies have been duly made;

(iii) The facility will operate in conformity with the application as amended, the provisions of the Act, and the rules and regulations of the Commission;

(iv) There is reasonable assurance that—

(A) the activities authorized by the OL can be conducted without endangering the health and safety of the public; and

(B) such activities will be conducted in compliance with the regulations in this chapter.

(v) The applicant is technically and financially qualified to engage in the activities authorized, however, no finding of financial qualification is necessary for an electric utility applicant for an OL;

(vi) Issuance of the license will not be inimical to the common defense and security or to the health and safety of the public;

(vii) The applicable provisions of 10 CFR part 140 have been satisfied; and

(viii) The findings required by subpart A of 10 CFR part 51 have been made.

(2) [Reserved]

(b) [Reserved]

(c) The OL will include appropriate provisions with respect to any uncompleted items of construction and such limitations or conditions as are required to assure that operation during the period of the completion of such items will not endanger public health and safety.

(d) The Commission will issue an OL in such form and containing such conditions and limitations, including technical specifications, as it deems necessary and appropriate.

#### **§ 53.1390 Backfitting of operating licenses.**

After issuance of an OL, the Commission may not modify, add, or delete any term or condition of the OL, except in accordance with the provisions of § 53.1590.

#### **§ 53.1396 Duration of operating licenses.**

The Commission will issue an OL under this part for the term requested by the applicant, not to exceed 40 years from the date of issuance, or for the estimated useful life of the facility if the Commission determines that the estimated useful life is less than the term requested.

#### **§ 53.1399 Transfer of an operating license.**

An OL may be transferred under § 53.1570.

#### **§ 53.1402 Application for renewal.**

The filing of an application for a renewed license must be in accordance with § 53.1595.

#### **§ 53.1405 Continuation of an operating license.**

Each OL for a facility that has permanently ceased operations continues in effect beyond the expiration date to authorize ownership and possession of the facility until the Commission notifies the licensee in writing that the license is terminated. During this period of continued effectiveness, the licensee must—

(a) Take actions necessary to decommission and decontaminate the facility and continue to maintain the facility, including, where applicable, the storage, control, and maintenance of the spent fuel in a safe condition; and

(b) Conduct activities in accordance with all other restrictions applicable to the facility in accordance with the NRC's regulations and the provisions of the OL for the facility.

#### **§ 53.1410 Combined licenses.**

Sections 53.1410 through 53.1461 set out the requirements and procedures applicable to Commission issuance of COLs for commercial nuclear plants under this part.

#### **§ 53.1413 Contents of applications for combined licenses; general information.**

An application for a COL must include the information required by § 53.1109 and the following information:

(a) Except for an electric utility applicant in regard to financial assurance required after a Commission finding under § 53.1452, the application must include information sufficient to demonstrate to the Commission the financial qualification of the applicant to carry out, in accordance with the regulations in this chapter, the activities for which the permit or license is sought. As applicable, the following should be provided:

(1) The applicant must submit information that demonstrates that the applicant possesses or has reasonable

assurance of obtaining the funds necessary to cover estimated construction costs and related fuel cycle costs. The applicant must submit estimates of the total construction costs of the facility and related fuel cycle costs and must indicate the source(s) of funds to cover these costs.

(2) The applicant must submit information that demonstrates the applicant possesses or has reasonable assurance of obtaining the funds necessary to cover estimated operation costs for the period of the license. The applicant must submit estimates for total annual operating costs for each of the first 5 years of operation of the facility. The applicant must also indicate the source(s) of funds to cover these costs.

(3) Each application for a COL submitted by a newly-formed entity organized for the primary purpose of constructing and operating a facility must also include information showing—

(i) The legal and financial relationships the entity has or proposes to have with its stockholders or owners; and

(ii) The stockholders' or owners' financial ability to meet any contractual obligation to the entity which they have incurred or proposed to incur; and

(iii) Any other information considered necessary by the Commission to enable it to determine the applicant's financial qualification.

(4) The Commission may request an established entity or newly formed entity to submit additional or more detailed information respecting its financial arrangements and status of funds if the Commission considers this information appropriate. This may include information regarding a licensee's ability to continue the conduct of the activities authorized by the license and to decommission the facility.

(b) The application must include information in the form of a report, as described in subpart G of this part, indicating how reasonable assurance will be provided that funds will be available to decommission the facility.

**§ 53.1416 Contents of applications for combined licenses; technical information.**

(a) *Final Safety Analysis Report.* The application must contain an FSAR that describes the facility and the limits on its operation and presents a safety analysis of the SSCs of the facility as a whole. The Commission will require, before issuance of a COL, that engineering documents, such as analyses, drawings, procurement specifications, or construction and

installation specifications, be completed and available for audit if the more detailed information is necessary for the Commission to verify the information in the application and make its safety determination. The FSAR must include the following information, at a level of detail sufficient to enable the Commission to reach a final conclusion on all safety matters that must be resolved by the Commission before issuance of a COL:

(1) *Site information.* An application for a COL for a commercial nuclear reactor must include the site information required for an early site permit in § 53.1146(a)(1)(iv) through (x).

(2) *Design information.* An application for a COL for a commercial nuclear plant must include the design information equivalent to that required for a standard design certification as defined in § 53.1239(a)(2) through (7), (a)(9), and (a)(11) through (27).

(3) *Technical qualifications.* A description of the technical qualifications of the applicant to engage in the proposed activities in accordance with the regulations in this chapter.

(4) *Integrity assessment program.* A description of an Integrity Assessment Program that addresses the elements described in § 53.870.

(5) *Safeguards information.* A description of the program to protect Safeguards Information against unauthorized disclosure in accordance with the requirements in §§ 73.21 and 73.22 of this chapter, as applicable.

(6) *Emergency response facility or facilities.* Description of the locations and capabilities to be established for command and control, support, and coordination of onsite and offsite, as applicable, functions during reactor accident conditions.

(7) *Role of personnel.* (i) A description of the completed assessments related to the role of personnel in ensuring safe operations considering the analyses required by § 53.730. These assessments must include the following:

(A) Human factors engineering design requirements of § 53.730(a);

(B) Human system interface design requirements of § 53.730(b);

(C) Concept of operations of § 53.730(c); and

(D) Functional requirements analysis and function allocation of § 53.730(d);

(ii) A description of the program to be used for evaluating and applying operating experience as required by § 53.730(e);

(iii) A staffing plan and supporting analyses as required by § 53.730(f).

(8) *Training, examination, and proficiency programs.* (i) A description of the training, examination, and

proficiency programs required by § 53.730(g); and

(ii) A description of the training programs required by § 53.830.

(9) *Emergency plan.* Emergency plans complying with the requirements of § 53.855.

(i) The emergency plan must include, as applicable, all emergency plan certifications that have been obtained from the State, local, and participating Tribal governmental agencies with emergency planning responsibilities. The certifications must state that—

(A) The proposed emergency plans are practicable;

(B) These agencies are committed to participating in any further development of the plans, including any required field demonstrations; and

(C) These agencies are committed to executing their responsibilities under the plans in the event of an emergency.

(ii) If certifications cannot be obtained after sustained, good faith efforts by the applicant, then the application must contain information, including a utility plan, sufficient to show that the proposed plans provide reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency at the site.

(10) *Organization.* A description of the applicant's organizational structure, allocations of responsibilities and authorities, and personnel qualifications requirements for operation.

(11) *Maintenance program.* A description of a maintenance program under § 53.715.

(12) *Quality assurance.* A description of the QAP under § 53.865.

(13) *Radiation protection program.* A radiation protection program description under § 53.850.

(14) *Security program.* A physical security plan that describes how the applicant will comply with § 53.860 (and 10 CFR part 11, if applicable, including the identification and description of jobs as required by § 11.11(a) of this chapter, at the proposed facility). The plan must list tests, inspections, audits, and other means to be used to demonstrate compliance with the requirements of 10 CFR parts 11 and 73, if applicable.

(15) *Safeguards contingency plan.* A safeguards contingency plan in accordance with the criteria set forth in appendix C to 10 CFR part 73. The safeguards contingency plan must include plans for dealing with threats, thefts, and radiological sabotage, as defined in 10 CFR part 73, relating to the SNM and nuclear facilities licensed under this chapter and in the applicant's possession and control. Each

application for this type of license must include the information contained in the applicant's safeguards contingency plan.<sup>1</sup> (Implementing procedures required for this plan need not be submitted for approval.)

(16) *Security training and qualification.* A training and qualification plan that describes how the applicant will demonstrate compliance with the criteria set forth in § 73.100 of this chapter or appendix B to 10 CFR part 73.

(17) *Cybersecurity plan.* A cybersecurity plan in accordance with the criteria set forth in § 73.54 or § 73.110 of this chapter.

(18) *Security, safeguards and cybersecurity plan implementation.* A description of the implementation of the physical security plan, safeguards contingency plan, training and qualification plan, and cybersecurity plan. Each applicant who prepares a physical security plan, a safeguards contingency plan, a training and qualification plan, or a cybersecurity plan must protect the plans and other related Safeguards Information against unauthorized disclosure in accordance with the requirements of §§ 73.21 and 73.22 of this chapter.

(19) *Fire protection program.* A description of the fire protection program under § 53.875.

(20) *Inservice inspection/inservice testing program.* Descriptions of inservice inspection and inservice testing programs under § 53.880.

(21) [Reserved]

(22) [Reserved]

(23) *General employee training.* A description of the training program required to demonstrate compliance with § 53.830 and its implementation.

(24) *Fitness-for-duty program.* A description of the FFD program under part 26 of this chapter and its implementation.

(25) *Technical specifications.* Proposed technical specifications prepared in accordance with the requirements of § 53.710(a).

(b) If there are SSCs of the plant for which research and development is necessary to confirm the adequacy of their design, a report which documents the resolution of any safety questions associated with such SSCs.

(c) A description of how the performance of each safety design feature has been demonstrated capable of fulfilling functional design criteria considering interdependent effects through either analysis, appropriate test programs, prototype testing, operating experience, or a combination thereof, in accordance with § 53.440(a).

(d) If the COL application references an early site permit, then the following requirements apply:

(1) The FSAR need not contain information or analyses submitted to the Commission in connection with the early site permit provided that the FSAR must either include or incorporate by reference the early site permit Site Safety Analysis Report and contain, in addition to the information and analyses otherwise required, information sufficient to demonstrate that the design of the facility falls within the site characteristics and design parameters specified in the early site permit.

(2) If the FSAR does not demonstrate that design of the facility falls within the site characteristics and design parameters, the application must include a request for a variance that complies with the requirements of §§ 53.1188(d) and 53.1437.

(3) The FSAR must demonstrate that all terms and conditions that have been included in the early site permit will be satisfied by the date of issuance of the COL. Any terms or conditions of the early site permit that could not be met by the time of issuance of the COL must be set forth as terms or conditions of the COL.

(4) If the early site permit approves complete and integrated emergency plans, or major features of emergency plans, then the FSAR must include any new or additional information that updates and corrects the information that was provided under § 53.1146(b)(2) and discuss whether the new or additional information materially changes the bases for compliance with the applicable requirements. The application must identify changes to the emergency plans or major features of emergency plans that have been incorporated into the proposed facility emergency plans and that constitute or would constitute a change in an emergency plan that results in reducing the licensee's capability to perform an emergency planning function in the event of a radiological emergency.

(5) If complete and integrated emergency plans are approved as part of the early site permit, new certifications meeting the requirements of paragraph (a)(9)(i) of this section are not required.

(e) If the COL application references a standard design approval, then the following requirements apply:

(1) The FSAR need not contain information or analyses submitted to the Commission in connection with the design approval, provided, however, that the FSAR must either include or incorporate by reference the standard design approval FSAR and must contain, in addition to the information

and analyses otherwise required, information sufficient to demonstrate that the characteristics of the site fall within the site parameters specified in the design approval. In addition, the plant-specific PRA information must use the PRA information for the design approval and must be updated to account for site specific design information and any design changes or departures.

(2) The FSAR must demonstrate that all terms and conditions that have been included in the design approval will be satisfied by the date of issuance of the COL.

(f) If the COL application references a standard design certification, then the following requirements apply:

(1) The FSAR need not contain information or analyses submitted to the Commission in connection with the standard design certification, provided, however, that the FSAR must either include or incorporate by reference the standard design certification FSAR and must contain, in addition to the information and analyses otherwise required, information sufficient to demonstrate that the site characteristics fall within the site parameters specified in the standard design certification. In addition, the plant-specific PRA information must use the PRA information for the standard design certification and must be updated to account for site-specific design information and any design changes or departures.

(2) The FSAR must demonstrate that the interface requirements established for the design under § 53.1239(a)(24) have been met.

(3) The FSAR must demonstrate that all requirements and restrictions set forth in the referenced standard design certification rule must be satisfied by the date of issuance of the COL. Any requirements and restrictions set forth in the referenced standard design certification rule that could not be satisfied by the time of issuance of the COL, must be set forth as terms or conditions of the COL.

(g) If the COL application references the use of one or more manufactured reactors licensed under § 53.1270, then the following requirements apply:

(1) The FSAR need not contain information or analyses submitted to the Commission in connection with the ML, provided, however, that the FSAR must either include or incorporate by reference the ML FSAR and must contain, in addition to the information and analyses otherwise required, information sufficient to demonstrate that the site characteristics fall within the site parameters specified in the ML.

In addition, the plant-specific PRA information must use the PRA information for the manufactured reactor and must be updated to account for site-specific design information and any design changes or departures.

(2) The FSAR must demonstrate that the interface requirements established for the design have been met.

(3) The FSAR must demonstrate that all terms and conditions that have been included in the ML will be satisfied by the date of issuance of the COL. Any terms or conditions of the ML that could not be met by the time of issuance of the COL, must be set forth as terms or conditions of the COL.

(h) Each applicant for a COL under this part must protect Safeguards Information against unauthorized disclosure in accordance with the requirements in §§ 73.21 and 73.22 of this chapter, as applicable.

<sup>1</sup> A physical security plan that contains all the information required in both § 73.55 or § 73.100 of this chapter and appendix C to 10 CFR part 73 demonstrates compliance with the requirement for a contingency plan.

**§ 53.1419 Contents of applications for combined licenses; other application content.**

(a) In addition to the FSAR, the application must also include the following:

(1) *Environmental report.* (i) An environmental report either in accordance with § 51.50(c) of this chapter if an LWA under § 53.1130 is not requested in conjunction with the COL application, or in accordance with §§ 51.49 and 51.50(c) of this chapter if an LWA is requested in conjunction with the COL application; or

(ii) If the applicant wishes to request that an LWA under § 53.1130 be issued before issuance of the COL, the information otherwise required by § 53.1130, in accordance with either § 2.101(a)(1) through (a)(4), or § 2.101(a)(9) of this chapter;

(2) *Availability controls (if not included in the FSAR).* A description of the controls on plant operations, including availability controls, to provide reasonable confidence of safe operation and that the configurations and special treatments for SR SSCs and NSRSS SSCs provide the capabilities and reliabilities required to satisfy the safety criteria of § 53.220, or more restrictive alternative criteria adopted under § 53.470, if not addressed by Technical Specifications under § 53.1416(a)(25); and

(3) *Inspections, tests, analyses, and acceptance criteria.* The proposed inspections, tests, and analyses, including those applicable to emergency

planning, that the licensee must perform, and the acceptance criteria that are necessary and sufficient to provide reasonable assurance that, if the inspections, tests, and analyses are performed and the acceptance criteria met, the facility has been constructed and will be operated in conformity with the COL, the provisions of the Act, and the Commission's rules and regulations.

(i) If the application references an early site permit with ITAAC, the early site permit ITAAC must apply to those aspects of the COL which are approved in the early site permit.

(ii) If the application references a standard design certification, the ITAAC contained in the certified design must apply to those portions of the facility design which are approved in the standard design certification.

(iii) If the application references an ML, the ITAAC contained in the ML must apply to those portions of the facility design which are approved in the ML.

(iv) If the application references an early site permit with ITAAC, a standard design certification, an ML, or combination thereof, the application may include a notification that a required inspection, test, or analysis in the ITAAC has been successfully completed and that the corresponding acceptance criterion has been met. The **Federal Register** notification required by § 53.1422 of this chapter must indicate that the application includes this notification.

(b) [Reserved]

**§ 53.1422 Review of applications.**

(a) *Standards for review of applications.* Applications filed under this part will be reviewed according to the standards set out in this part and 10 CFR parts 20, 51, 73, and 140.

(b) *Administrative review of applications; hearings.* A proceeding on a COL is subject to all applicable procedural requirements contained in 10 CFR part 2, including the requirements for docketing (§ 2.101 of this chapter) and issuance of a notice of hearing (§ 2.104 of this chapter). If an applicant requests a Commission finding on certain ITAAC with the issuance of the COL, then those ITAAC will be identified in the notice of hearing. All hearings on COLs are governed by the procedures contained in 10 CFR part 2.

**§ 53.1425 Finality of referenced NRC approvals.**

If the application for a COL under this part references an early site permit, standard design certification rule, standard design approval, or ML, issued

under this part, the scope and nature of matters resolved for the application and any COL issued are governed by the relevant provisions addressing finality, including §§ 53.1188, 53.1221, 53.1263, and 53.1288.

**§ 53.1431 Referral to the Advisory Committee on Reactor Safeguards.**

The Commission must refer a copy of the application to the ACRS. The ACRS must report on those portions of the application that concern safety and must apply the standards referenced in § 53.1422, in accordance with the finality provisions in § 53.1425.

**§ 53.1434 Authorization to conduct limited work authorization activities.**

(a) If the application for a COL under this part does not reference an early site permit which authorizes the holder to perform the activities under § 53.1130(b), the applicant may not perform those activities without obtaining the separate authorization required by § 53.1130(a). Authorization may be granted only after the presiding officer in the proceeding on the application has made the findings and determination required by § 53.1130(b)(1)(ii) and (b)(1)(iv), and the Director, Office of Nuclear Reactor Regulation makes the determination required by § 53.1130(b)(1)(iii).

(b) If, after an applicant has performed the activities permitted by a LWA issued under § 53.1130, the application for the COL is withdrawn or denied, then the applicant must implement the approved site redress plan.

**§ 53.1437 Exemptions, departures, and variances.**

(a) An applicant for a COL, or any amendment to a COL, may include in the application a request for an exemption from one or more of the Commission's regulations.

(1) If the request is for an exemption from any part of a referenced standard design certification rule, the Commission may grant the request if it determines that the exemption complies with any exemption provisions of the referenced standard design certification rule, or with § 53.1263 if there are no applicable exemption provisions in the referenced standard design certification rule.

(2) For all other requests for exemptions, the Commission may grant a request if it determines that the exemption complies with § 53.080.

(b) An applicant for a COL who has filed an application referencing an early site permit issued under § 53.1158 may include in the application a request for a variance from one or more site characteristics, design parameters, or

terms and conditions of the permit, or from the Site Safety Analysis Report. In determining whether to grant the variance, the Commission must apply the same technically relevant criteria as were applicable to the application for the original or renewed site permit. Once a COL referencing an early site permit is issued, variances from the early site permit will not be granted for that CP or COL.

(c) An applicant for a COL who has filed an application referencing use of a manufactured reactor may include in the application a request for a departure from one or more design characteristics, site parameters, terms and conditions, or approved design of the manufactured reactor under the ML issued under § 53.1287. The Commission may grant such a request only if it determines that the departure will comply with the requirements of § 53.080, and that the special circumstances outweigh any decrease in safety that may result from the reduction in standardization caused by the departure.

(d) Issuance of a variance under paragraph (b) of this section or a departure under paragraph (c) of this section is subject to litigation during the COL proceeding in the same manner as other issues material to that proceeding.

#### **§ 53.1440 Issuance of combined licenses.**

(a)(1) After conducting a hearing under § 53.1422(b) and receiving the report submitted by the ACRS, the Commission may issue a COL if the Commission finds that—

(i) The applicable standards and requirements of the Act and the Commission's regulations have been met;

(ii) Any required notifications to other agencies or bodies have been duly made;

(iii) There is reasonable assurance that the facility will be constructed and will operate in conformity with the license, the provisions of the Act, and the Commission's regulations;

(iv) The applicant is technically and financially qualified to engage in the activities authorized; however, no finding of financial qualification is necessary for an electric utility applicant for a COL;

(v) Issuance of the license will not be inimical to the common defense and security or to the health and safety of the public; and

(vi) The findings required by subpart A of 10 CFR part 51 have been made.

(2) The Commission may also find, at the time it issues the COL, that certain acceptance criteria in one or more of the ITAAC in a referenced early site permit, standard design certification, or ML

have been met. This finding will finally resolve that those acceptance criteria have been met, those acceptance criteria will be deemed to be excluded from the COL, and findings under § 53.1452(g) with respect to those acceptance criteria are unnecessary.

(b) The Commission must identify within the COL the inspections, tests, and analyses, including those applicable to emergency planning, that the licensee must perform, and the acceptance criteria that, if met, are necessary and sufficient to provide reasonable assurance that the facility has been constructed and will be operated in conformity with the license, the provisions of the Act, and the Commission's rules and regulations.

(c) A COL must contain the terms and conditions, including technical specifications, as the Commission deems necessary and appropriate.

#### **§ 53.1443 Finality of combined licenses.**

(a) After issuance of a COL, the Commission may not modify, add, or delete any term or condition of the COL, the design of the facility, the ITAAC contained in the license that are not derived from a referenced standard design certification or ML, except under the provisions of § 53.1452 or § 53.1590.

(b) If the COL does not reference a standard design certification or use of a manufactured reactor under an ML issued under § 53.1287, then a licensee may make changes in the facility as described in the FSAR (as updated) and make changes in the procedures as described in the FSAR (as updated) under the applicable change processes in § 53.1550.

(c) If the COL references a certified design, then—

(1) Changes to or departures from information within the scope of the referenced standard design certification rule are subject to the applicable change processes in that rule; and

(2) Changes that are not within the scope of the referenced standard design certification rule are subject to the applicable change processes in subpart I of this part, unless they also involve changes to or noncompliance with information within the scope of the referenced standard design certification rule. In these cases, the applicable provisions of this section and the standard design certification rule apply.

(d) If the COL references use of a manufactured reactor under an ML issued under this part, then—

(1) Changes to or departures from information within the scope of the manufactured reactor's design are subject to the change processes in § 53.1288; and

(2) Changes that are not within the scope of the manufactured reactor's design are subject to the applicable change processes in subpart I.

(e) The Commission may issue and make immediately effective any amendment to a COL upon a determination by the Commission that the amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person. The amendment may be issued and made immediately effective in advance of the holding and completion of any required hearing. The amendment will be processed under the procedures specified in § 53.1515.

(f) Any modification to, addition to, or deletion from the terms and conditions of a COL, including any modification to, addition to, or deletion from the inspections, tests, and analyses, or related acceptance criteria contained in the license is a proposed amendment to the license. There must be an opportunity for a hearing on the amendment.

#### **§ 53.1449 Inspection during construction.**

(a) *Licensee schedule for inspections, tests, or analyses.* The licensee must submit to the NRC, no later than 1 year after issuance of the COL or at the start of construction as defined at § 53.020, whichever is later, its schedule for completing the inspections, tests, or analyses in the ITAAC. The licensee must submit updates to the ITAAC schedules every 6 months thereafter and, within 1 year of its scheduled date for initial loading of fuel (or, for a fueled manufactured reactor, within 1 year of its scheduled date for initiating the physical removal of any one of the independent physical mechanisms to prevent criticality required under § 53.620(d)(1)), the licensee must submit updates to the ITAAC schedule every 30 days until the final notification is provided to the NRC under paragraph (c)(1) of this section.

(b) *Licensee and applicant conduct of activities subject to ITAAC.* With respect to activities subject to an ITAAC, an applicant for a COL may proceed at its own risk with design and procurement activities, and a licensee may proceed at its own risk with design, procurement, construction, and preoperational activities, even though the NRC may not have found that any one of the prescribed acceptance criteria are met.

(c) *Licensee notifications.* (1) *ITAAC closure notification.* The licensee must notify the NRC that prescribed inspections, tests, and analyses have been performed and that the prescribed acceptance criteria are met. The

notification must contain sufficient information to demonstrate that the prescribed inspections, test, and analyses have been performed and that the prescribed acceptance criteria are met.

(2) *ITAAC post-closure notifications.* Following the licensee's ITAAC closure notifications under paragraph (c)(1) of this section until the Commission makes the finding under § 53.1452(g), the licensee must notify the NRC, in a timely manner, of new information that materially alters the basis for determining that either inspections, tests, or analyses were performed as required, or that acceptance criteria are met. The notification must contain sufficient information to demonstrate that, notwithstanding the new information, the prescribed inspections, tests, and analyses have been performed as required, and the prescribed acceptance criteria are met.

(3) *Uncompleted ITAAC notification.* If the licensee has not provided, by the date 225 days before the scheduled date for initial loading of fuel (or, for a fueled manufactured reactor, by the date 225 days before the scheduled date for initiating the physical removal of any one of the independent physical mechanisms to prevent criticality required under § 53.620(d)(1)), the notification required by paragraph (c)(1) of this section for all ITAAC, then the licensee must notify the NRC that the prescribed inspections, tests, or analyses for all uncompleted ITAAC will be performed and that the prescribed acceptance criteria will be met prior to operation. The notification must be provided no later than the date 225 days before the scheduled date for initial loading of fuel (or, for a fueled manufactured reactor, no later than the date 225 days before the scheduled date for initiating the physical removal of any one of the independent physical mechanisms to prevent criticality required under § 53.620(d)(1)), and must provide sufficient information to demonstrate that the prescribed inspections, tests, or analyses will be performed and the prescribed acceptance criteria for the uncompleted ITAAC will be met, including, but not limited to, a description of the specific procedures and analytical methods to be used for performing the prescribed inspections, tests, and analyses and determining that the prescribed acceptance criteria are met.

(4) *All ITAAC complete notification.* The licensee must notify the NRC that all ITAAC are complete.

(d) *Licensee determination of noncompliance with ITAAC.* (1) In the event that an activity is subject to an

ITAAC derived from a referenced standard design certification and the licensee has not demonstrated that the prescribed acceptance criteria are met, the licensee may take corrective actions to successfully complete that ITAAC or request an exemption from the standard design certification ITAAC, as applicable. A request for an exemption must also be accompanied by a request for a license amendment under subpart I.

(2) In the event that an activity is subject to an ITAAC not derived from a referenced standard design certification and the licensee has not demonstrated that the prescribed acceptance criteria are met, the licensee may take corrective actions to successfully complete that ITAAC or request a license amendment under subpart I.

(e) *NRC inspection, publication of notices, and availability of licensee notifications.* The NRC must ensure that the prescribed inspections, tests, and analyses in the ITAAC are performed.

(1) At appropriate intervals until the last date for submission of requests for hearing under § 53.1452, the NRC must publish notices in the **Federal Register** of the NRC staff's determination of the successful completion of inspections, tests, and analyses.

(2) The NRC must make publicly available the licensee notifications under paragraph (c) of this section. The NRC must, no later than the date of publication of the notice of intended operation required by § 53.1452(a), make publicly available those licensee notifications under paragraph (c) of this section that have been submitted to the NRC at least 7 days before that notice.

#### **§ 53.1452 Operation under a combined license.**

(a) The licensee must notify the NRC of its scheduled date for initial loading of fuel no later than 270 days before the scheduled date and must notify the NRC of updates to its schedule every 30 days thereafter.<sup>1</sup> Not less than 180 days before the date scheduled for initial loading of fuel into a plant by a licensee that has been issued a COL under this part, the Commission must publish notice of intended operation in the **Federal Register**.<sup>2</sup> The notice must provide that any person whose interest may be affected by operation of the plant may, within 60 days, request that the Commission hold a hearing on whether the facility as constructed complies, or on completion will comply, with the acceptance criteria in the COL, except that a hearing must not be granted for those ITAAC that the Commission found were met under § 53.1440(a)(2).

(b) A request for hearing under paragraph (a) of this section must show, *prima facie*—

(1) That one or more of the acceptance criteria of the ITAAC in the COL have not been, or will not be, met; and

(2) The specific operational consequences of nonconformance that would be contrary to providing reasonable assurance of adequate protection of the public health and safety.

(c) The Commission, acting as the presiding officer, must determine whether to grant or deny the request for hearing under the applicable requirements of § 2.309 of this chapter. If the Commission grants the request, the Commission, acting as the presiding officer, must determine whether during a period of interim operation there will be reasonable assurance of adequate protection to the public health and safety. The Commission's determination must consider the petitioner's *prima facie* showing and any answers thereto. If the Commission determines there is such reasonable assurance, it must allow operation during an interim period under the COL.

(d) The Commission, in its discretion, must determine appropriate hearing procedures, whether informal or formal adjudicatory, for any hearing under paragraph (a) of this section, and must state its reasons therefore.

(e) The Commission must, to the maximum possible extent, render a decision on issues raised by the hearing request within 180 days of the publication of the notice provided by paragraph (a) of this section or by the anticipated date for initial loading of fuel into the reactor, whichever is later.

(f) A petition to modify the terms and conditions of the COL will be processed as a request for action under § 2.206 of this chapter. The petitioner must file the petition with the Secretary of the Commission. Before the licensed activity allegedly affected by the petition (fuel loading, low power testing, etc.) commences, the Commission must determine whether any immediate action is required. If the petition is granted, then an appropriate order will be issued. Fuel loading and operation under the COL will not be affected by the granting of the petition unless the order is made immediately effective.

(g) The licensee must not operate the facility until the Commission makes a finding that the acceptance criteria in the COL are met, except for those acceptance criteria that the Commission found were met under § 53.1440(a)(2). If the COL is for a modular design, each

reactor unit may require a separate finding as construction proceeds.

(h) After the Commission has made the finding in paragraph (g) of this section, the ITAAC do not, by virtue of their inclusion in the COL, constitute regulatory requirements either for licensees or for renewal of the license; except for the specific ITAAC for which the Commission has granted a hearing under paragraph (a) of this section, all ITAAC expire upon final Commission action in the proceeding. However, subsequent changes to the facility or procedures described in the FSAR (as updated) must comply with the requirements in § 53.1443(e) or (f), as applicable.

<sup>1</sup> For licensees installing fueled manufactured reactors under a COL, the COL holder must instead notify the NRC of its scheduled date for initiating the physical removal of any one of the independent physical mechanisms to prevent criticality required under § 53.620(d)(1) no later than 270 days before the scheduled date and must notify the NRC of updates to its schedule every 30 days thereafter.

<sup>2</sup> For licensees installing fueled manufactured reactors under a COL, the Commission must instead publish notice of intended operation in the **Federal Register** not less than 180 days before the date scheduled for initiating the physical removal of any one of the independent physical mechanisms to prevent criticality required under § 53.620(d)(1).

#### **§ 53.1455 Duration of combined license.**

A COL is issued for a specified period not to exceed 40 years from the date on which the Commission makes a finding that acceptance criteria are met under § 53.1452(g) or allowing operation during an interim period under the COL under § 53.1452(c).

#### **§ 53.1456 Transfer of a combined license.**

A COL may be transferred under § 53.1570.

#### **§ 53.1458 Application for renewal.**

The filing of an application for a renewed license must be in accordance with § 53.1595.

#### **§ 53.1461 Continuation of combined license.**

Each COL for a facility that has permanently ceased operations continues in effect beyond the expiration date to authorize ownership and possession of the facility until the Commission notifies the licensee in writing that the license is terminated. During this period of continued effectiveness, the licensee must—

(a) Take actions necessary to decommission and decontaminate the facility and continue to maintain the facility, including, where applicable, the

storage, control and maintenance of the spent fuel, in a safe condition; and

(b) Conduct activities in accordance with all other restrictions applicable to the facility in accordance with the NRC's regulations and the provisions of the COL for the facility.

#### **§ 53.1470 Standardization of commercial nuclear plant designs: licenses to construct and operate nuclear power reactors of identical design at multiple sites.**

(a) Except as otherwise specified in this section, the provisions of this section apply to CP, OL, and COL applications for commercial nuclear plants of identical design (the "common design") under this part.

(b) Each application for a CP, OL, or COL submitted pursuant to this section must be submitted as specified in §§ 53.1300, 53.1360, or 53.1410, respectively, and § 2.101 of this chapter. Each application must state that the applicant wishes to construct a facility identical to a facility proposed for one or more sites other than the applicant's (the "common design"), and the applicant wishes to have the application considered under this section. Each application must list each of the other applications to be treated together under this section.

(c) Each application must include the information required by the applicable sections of this subpart, *provided, however*, that the application must identify the common design, and, if applicable, reference a standard design certification or standard design approval under this part, or the use of a reactor manufactured under this part. The FSAR for each application must either incorporate by reference or include the final safety analysis of the common design, including, if applicable, the FSAR for the referenced standard design certification, standard design approval, or the manufactured reactor.

(d) Each application submitted pursuant to this section must contain an environmental report under §§ 53.1312(a)(1), 53.1372(a), or 53.1419(a)(1), as applicable, that complies with the applicable provisions of 10 CFR part 51, *provided, however*, that the application may incorporate by reference a single environmental report on the environmental impacts of the common design that are applicable to each site.

(e) Upon a determination that each application is acceptable for docketing under § 2.101 of this chapter, each application will be docketed and a notice of docketing for each application will be published in the **Federal Register**, under § 2.104 of this chapter, *provided, however*, that the notice must

state that the application will be processed under the provisions of this section and subpart D of 10 CFR part 2. At the discretion of the Commission, a single notice of docketing for multiple applications may be published in the **Federal Register**.

(f) The NRC must prepare an environmental assessment or draft and final environmental impact statements for each of the applications under 10 CFR part 51. Scoping under §§ 51.28 and 51.29 of this chapter for each of the license applications may be conducted simultaneously and joint scoping may be conducted with respect to the environmental issues relevant to the common design. If the applications reference a standard design certification, then the environmental assessment or environmental impact statement for each of the applications must incorporate by reference the standard design certification environmental assessment. If the applications do not reference a standard design certification, then the NRC must prepare environmental assessments or draft and final supplemental environmental impact statements which address severe accident mitigation design alternatives for the common design, which must be incorporated by reference into the environmental assessment or environmental impact statement prepared for each application. Scoping under §§ 51.28 and 51.29 of this chapter for the supplemental environmental impact statement may be conducted simultaneously and may be part of the scoping for each of the applications.

(g) The ACRS must report on each of the applications as required by the applicable sections of this subpart. Each report must be limited to those safety matters for each application that are not relevant to the common design. In addition, the ACRS must separately report on the safety of the common design, *provided, however*, that the report need not address the safety of a referenced standard design certification or reactor manufactured under this part.

(h) The Commission must designate a presiding officer to conduct the proceeding with respect to the health and safety, common defense and security, and environmental matters relating to the common design and affecting at least two applications. The hearing will be governed by the applicable provisions of subparts A, C, G, L, N, and O of 10 CFR part 2 relating to applications for CPs, OLs, and COLs. The presiding officer must issue a partial initial decision on the common design.

(i) If the design for the power reactor(s) proposed in a particular



application is not identical to the others, that application may not be processed under this section and subpart D of 10 CFR part 2.

(j) As used in this section, the design of a nuclear power reactor included in a single referenced Safety Analysis Report means the design of those SSCs important to radiological health and safety and the common defense and security.

### **Subpart I—Maintaining and Revising Licensing-Basis Information**

#### **§ 53.1500 Licensing-basis information.**

This subpart provides the requirements for each holder of a license for a commercial nuclear plant licensed under this part to maintain licensing-basis information as defined in § 53.020; evaluate changes to site characteristics, plant design features, and programmatic controls to determine needed approvals and revisions; and submit appropriate updates to the U.S. Nuclear Regulatory Commission (NRC).

#### **§ 53.1502 Specific terms and conditions of licenses.**

(a) Each license issued under this part is subject to the provisions of the Atomic Energy Act of 1954, as amended, (the Act) and to all rules, regulations, and orders of the Commission. The terms and conditions of the license will be subject to amendment, revision, or modification, by reason of amendments of the Act or by reason of rules, regulations, and orders issued in accordance with the terms of the Act.

(b) Each license issued under this part must be subject to all conditions imposed as a matter of law by sections 401(a)(2) and 401(d) of the Federal Water Pollution Control Act, as amended (33 U.S.C.A. 1341(a)(2) and (d)).

(c) A holder of an operating license (OL) or combined license (COL) under this part may take reasonable action that departs from a license condition or a technical specification included in a license issued under this part in a national security emergency established by a law enacted by the Congress or by an order or directive issued by the President pursuant to statutes or the Constitution of the United States. The authority under this paragraph must be exercised in accordance with law, including section 57e of the Act, and is in addition to the authority granted under § 53.740(h), which remains in effect unless otherwise directed by the Commission during a national security emergency. The authority under this paragraph may be exercised—

(1) When this action is immediately needed to implement national security

objectives as designated by the national command authority through the Commission; and

(2) No action consistent with license conditions and technical specifications that can satisfy national security objectives is immediately apparent.

(d)(1) If the NRC finds that the state of emergency preparedness does not provide reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency (including findings based on requirements of 10 CFR part 50, appendix E, section IV.D.3) and if the deficiencies (including deficiencies based on requirements of 10 CFR part 50, appendix E, section IV.D.3) are not corrected within 4 months of that finding, the Commission will determine whether the facility must be shut down or cease operations until such deficiencies are remedied or whether other enforcement action is appropriate. In determining whether a shutdown or other enforcement action is appropriate, the Commission will take into account, among other factors, whether the licensee can demonstrate to the Commission's satisfaction that the deficiencies in the plan are not significant for the plant in question, or that adequate interim compensating actions have been or will be taken promptly, or that there are other compelling reasons for continued operation.

(2) If the planning standards for radiological emergency preparedness apply to offsite emergency response plans, or if the planning activities in § 50.160(b)(1)(iv)(B) apply, then the NRC will base its finding on a review of the Federal Emergency Management Agency findings and determinations as to whether State, participating Tribal and local emergency plans are adequate and capable of being implemented, and on the NRC assessment as to whether the licensee's emergency plans are adequate and capable of being implemented. Nothing in this paragraph must be construed as limiting the authority of the Commission to take action under any other regulation or authority of the Commission or at any time other than that specified in this paragraph.

#### **§ 53.1505 Changes to licensing-basis information requiring prior NRC approval.**

(a) Sections 53.1510 through 53.1520 provide the process for a licensee to request and the NRC to issue amendments to licenses, including any conditions contained therein, technical specifications or other attachments to a license, and any orders issued by the NRC modifying a license. Sections

53.1525 and 53.1530 govern proposed changes to a commercial nuclear plant referencing a certified design or manufacturing license (ML).

(b) A licensee may propose changing licensing-basis information established by NRC regulations by requesting an exemption in accordance with § 53.080.

#### **§ 53.1510 Application for amendment of license.**

Whenever a holder of a license under this part desires to amend the license, an application for an amendment must be filed with the Commission, as specified in § 53.040, that fully describes the changes desired and, following as far as applicable, the form prescribed for original applications. Applications for amendments involving changes to plant structures, systems, and components (SSCs), programmatic controls, or the role of plant personnel must include an assessment of the changes in relation to the safety requirements in subpart B of this part and the analyses requirements of § 53.450 as applicable, an analysis of whether the amendment involves no significant hazards consideration using the standards in § 53.1520, and a consideration of environmental factors.

#### **§ 53.1515 Public notices; State consultation.**

The Commission will use the following procedures for an application requesting an amendment to an OL or COL issued under this part.

(a) *Public notices.* (1)(i) The Commission may publish in the **Federal Register** under § 2.105 of this chapter an individual notice of proposed action for an amendment for which it makes a proposed determination that no significant hazards consideration is involved, or, at least once every 30 days, publish a periodic **Federal Register** notice of proposed actions, which identifies each amendment issued and each amendment proposed to be issued since the last such periodic notice, or it may publish both such notices.

(ii) For each amendment proposed to be issued, the notice will

(A) Contain the staff's proposed determination under the standards in § 53.1520;

(B) Provide a brief description of the amendment and of the facility involved;

(C) Solicit public comments on the proposed determination; and

(D) Provide for a 30-day comment period.

(iii) The comment period will begin on the day after the date of the publication of the first notice, and, normally, the amendment will not be granted until after this comment period expires.

(2) The Commission may inform the public about the final disposition of an amendment request for which it has made a proposed determination of no significant hazards consideration either by issuing an individual notice of issuance under § 2.106 of this chapter or by publishing such a notice in its periodic system of **Federal Register** notices. In either event, it will not make and will not publish a final determination of no significant hazards consideration unless it receives a request for a hearing on that amendment request.

(3) Where the Commission makes a final determination that no significant hazards consideration is involved and that the amendment should be issued, the amendment will be effective on issuance, even if adverse public comments have been received and even if an interested person meeting the provisions for intervention called for in § 2.309 of this chapter has filed a request for a hearing. The Commission need hold any required hearing only after it issues an amendment, unless it determines that a significant hazards consideration is involved, in which case the Commission will provide an opportunity for a prior hearing.

(4) Where the Commission finds that an emergency situation exists, in that failure to act in a timely way would result in derating or shutdown of a commercial nuclear reactor, or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, it may issue a license amendment involving no significant hazards consideration without prior notice and opportunity for a hearing or for public comment. In such a situation, the Commission will not publish a notice of proposed determination on no significant hazards consideration but will publish a notice of issuance under § 2.106 of this chapter providing for opportunity for a hearing and for public comment after issuance. The Commission expects its licensees to apply for license amendments in a timely fashion. It will decline to dispense with notice and comment on the determination of no significant hazards consideration if it determines that the licensee has abused the emergency provision by failing to make timely application for the amendment and thus itself creating the emergency. Whenever an emergency situation exists, a licensee requesting an amendment must explain why this emergency situation occurred and why it could not avoid this situation, and the Commission will assess the licensee's

reasons for failing to file an application sufficiently in advance of that event.

(5) Where the Commission finds that exigent circumstances exist, in that a licensee and the Commission must act quickly and that time does not permit the Commission to publish a **Federal Register** notice allowing 30 days for prior public comment, and it also determines that the amendment involves no significant hazards considerations, it—

(i)(A) Will either issue a **Federal Register** notice providing notice of an opportunity for hearing and allowing at least 2 weeks from the date of the notice for prior public comment; or

(B) Will use local media to provide reasonable notice to the public in the area surrounding a licensee's facility of the licensee's amendment and of its proposed determination as described in paragraph (a)(1) of this section, consulting with the licensee on the proposed media release and on the geographical area of its coverage;

(ii) Will provide for a reasonable opportunity for the public to comment, using its best efforts to make available to the public whatever means of communication it can for the public to respond quickly, and, in the case of telephone comments, have these comments recorded or transcribed, as necessary and appropriate;

(iii) When it has issued a local media release, may inform the licensee of the public's comments, as necessary and appropriate;

(iv) Will publish a notice of issuance under § 2.106 of this chapter;

(v) Will provide a hearing after issuance, if one has been requested by a person who satisfies the provisions for intervention specified in § 2.309 of this chapter; and

(vi) Will require the licensee to explain the exigency and why the licensee cannot avoid it and use its normal public notice and comment procedures in paragraph (a)(1) of this section if it determines that the licensee has failed to use its best efforts to make a timely application for the amendment in order to create the exigency and to take advantage of this procedure.

(6) Where the Commission finds that significant hazards considerations are involved, it will issue a **Federal Register** notice providing an opportunity for a prior hearing even in an emergency situation, unless it finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

(b) *State consultation.* (1) At the time a licensee requests an amendment, it must notify the State in which its

facility is located of its request by providing that State with a copy of its application and its reasoned analysis about no significant hazards considerations and indicate on the application that it has done so.

(2) The Commission will advise the State of its proposed determination about no significant hazards consideration normally by sending it a copy of the **Federal Register** notice.

(3) The Commission will make the names of the Project Manager or other NRC personnel it designated to consult with the State available to the State official designated to consult about its proposed determination. The Commission will consider any comments of that State official. If it does not hear from the State in a timely manner, it will consider that the State has no interest in its determination; nonetheless, to ensure that the State is aware of the application, before it issues the amendment, it will make a good faith effort to communicate directly with that official. (Inability to consult with a responsible State official following good faith attempts will not prevent the Commission from making effective a license amendment involving no significant hazards consideration.)

(4) The Commission will make a good faith attempt to consult with the State before it issues a license amendment involving no significant hazards consideration. If, however, it does not have time to use its normal consultation procedures because of an emergency situation, it will attempt to communicate directly with the appropriate State official. (Inability to consult with a responsible State official following good faith attempts will not prevent the Commission from making effective a license amendment involving no significant hazards consideration, if the Commission deems it necessary in an emergency situation.)

(5) After the Commission issues the requested amendment, it will send a copy of its determination to the State.

(c) *Caveats about State consultation.* (1) The State consultation procedures in paragraph (b) of this section do not give the State a right—

(i) To veto the Commission's proposed or final determination;

(ii) To a hearing on the determination before the amendment becomes effective; or

(iii) To insist upon a postponement of the determination or upon issuance of the amendment.

(2) These procedures do not alter present provisions of law that reserve to the Commission exclusive responsibility for setting and enforcing radiological

health and safety requirements for commercial nuclear plants.

**§ 53.1520 Issuance of amendment.**

(a) In determining whether an amendment to a license will be issued to the applicant, the Commission will be guided by the considerations which govern the issuance of initial licenses to the extent applicable and appropriate. If the application is for amendment of an OL or COL and involves the material alteration of a commercial nuclear plant, a construction permit (CP) will be issued before the issuance of the amendment to the license, provided however, that if the application involves a material alteration to a manufactured reactor under this part before its installation at a site, or a COL before the date that the Commission makes the finding under § 53.1452(g), no application for or issuance of a CP is required. If the amendment involves a significant hazards consideration, the Commission will give notice of its proposed action—

(1) Under § 2.105 of this chapter before acting thereon; and

(2) As soon as practicable after the application has been docketed.

(b) The Commission will be particularly sensitive to a license amendment request that involves irreversible consequences (such as one that permits a significant increase in the amount of effluents or radiation emitted by a commercial nuclear plant).

(c) The Commission may make a final determination, under the procedures in § 53.1515, that a proposed amendment to an OL or a COL for a commercial nuclear plant under this part involves no significant hazards consideration, if operation of the plant in accordance with the proposed amendment would not—

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or

(2) Create the possibility of a new or different kind of an accident from any accident previously evaluated; or

(3) Involve a significant reduction in a margin of safety.

**§ 53.1525 Revising certification information within a design certification rule.**

(a) A holder of an OL or COL who references a design certification rule issued under this part must request an exemption if proposing to change one or more elements of the certification information. The Commission may grant such a request only if it determines that the exemption will comply with the requirements of § 53.080 and that the special circumstances outweigh any

decrease in safety that may result from the reduction in standardization caused by the departure.

(b) The request for an exemption must be included with any associated license amendment request, which must be requested and processed in accordance with §§ 53.1510, 53.1515, and 53.1520.

(c) Licensees must evaluate changes to the design as described in the Final Safety Analysis Report (FSAR) not involving changes to the certification information using the criteria in § 53.1550.

**§ 53.1530 Revising design information within a manufacturing license.**

(a) The holder of an ML may not make changes to the design of the manufactured reactor authorized to be manufactured without obtaining an amendment pursuant to § 53.1510 and, as applicable, § 53.1520.

(b) The holder of a COL under this part who references or uses a manufactured reactor under this part must request approval for any proposed departure from the design characteristics, site parameters, terms and conditions, or approved design of the manufactured reactor. The application for such departures must be submitted and processed in accordance with §§ 53.1510, 53.1515, and 53.1520. In those cases where an ML references a design certification rule, the amendment application from the holder of the COL must also request an exemption from the design certification rule under § 53.1525 if one or more elements of the certification information are adversely affected by the proposed change. The holder of the COL must evaluate changes to the commercial nuclear plant as described in the FSAR but outside of the scope of the referenced ML using the criteria in § 53.1550.

**§ 53.1535 Amendments during construction.**

(a) The holder of a CP or limited work authorization (LWA) under this part may request an amendment to the CP or LWA in order to gain Commission approval of the safety of selected design features or specifications, including proposed departures from a design certification rule or ML. Amendments to CPs or LWAs under this part must be requested and processed under §§ 53.1510 and 53.1520.

(b) The holder of a COL under this part for which the NRC has not yet made a finding in accordance with § 53.1452(g) must request amendments required by § 53.1525 or § 53.1550 no later than 45 days from the date the licensee begins the construction of the

SSCs to implement the change or departure requiring NRC approval. The licensee proceeds with such changes at its own risk recognizing that there is a possibility that the amendment will not be granted.

**§ 53.1540 Updating licensing-basis information and determining the need for NRC approval.**

(a) Sections 53.1545 through 53.1565 provide the process for a holder of an OL or COL to modify licensing-basis information and to evaluate potential changes to its facilities, procedures, programs, and organizations to determine if NRC approval is required.

(b) Definitions for the purposes of §§ 53.1545 through 53.1565—

*Change* means a modification or addition to, or removal from, the commercial nuclear plant or procedures that affects a design feature or related functional design criteria, method of performing or controlling the functions of design features, or an evaluation that demonstrates that intended functions will be accomplished.

*Departure from a method of evaluation described in the Final Safety Analysis Report (FSAR) (as updated) used in establishing the functional design criteria for safety-related structures, systems, or components or in the safety analyses* means—

(1) Changing any of the elements of the method described in the FSAR (as updated) unless the results of the analysis are conservative or essentially the same; or

(2) Changing from a method described in the FSAR to another method unless that method has been approved by NRC for the intended application.

*Facility as described in the FSAR (as updated)* means—

(1) The SSCs that are described in the FSAR (as updated),

(2) The design and performance requirements for such SSCs described in the FSAR (as updated), and

(3) The evaluations or methods of evaluation included in the FSAR (as updated) for such SSCs which demonstrate that their intended function(s) will be accomplished.

*Final Safety Analysis Report (as updated)* means the FSAR submitted under § 53.1369 or § 53.1416, as amended and supplemented, and as updated under § 53.1545, as applicable.

*Procedures as described in the Final Safety Analysis Report (as updated)* means those procedures that contain information described in the FSAR (as updated) such as how SSCs are operated and controlled (including assumed operator actions and response times).

**§ 53.1545 Updating Final Safety Analysis Reports.**

(a) Each holder of an OL or COL under this part for which the Commission has made the finding under § 53.1452(g) must update the FSAR originally submitted as part of the application for the license every 24 months or more frequently to assure that the information included in the report contains the latest information developed. The submittal must include the effects on the content of the FSAR of—

(1) Changes made to the facility or procedures as described in the FSAR;

(2) Safety analyses and evaluations performed by the licensee either in support of approved license amendments or in support of conclusions that changes did not require a license amendment under § 53.1550;

(3) Updates to the probabilistic risk assessments required under § 53.450;

(4) The cumulative effects of the changes to the facility or procedures on the margins to the safety criteria in §§ 53.210, 53.220, 53.450(e), and 53.470 since the last FSAR update; and

(5) Analyses of new safety issues performed by or on behalf of the licensee at Commission request.

(b)(1) The licensee must submit revisions containing updated information to the Commission, under § 53.040, identifying the location of revised or new information.

(2) The submittal must include—

(i) A certification by a duly authorized officer of the licensee that either the information accurately presents changes made since the previous submittal, necessary to reflect information and analyses submitted to the Commission or prepared pursuant to Commission requirement, or that no such changes were made; and

(ii) An identification of changes made under the provisions of § 53.1550 but not previously submitted to the Commission.

(c) Each applicant for or holder of a COL under this part for which the Commission has not made the finding under § 53.1452(g) must submit an update to the FSAR annually by providing the information required in (a)(1) through (a)(5) of this section and meeting the requirements of paragraph (b) of this section. Combined license applicants who have requested the NRC to suspend its review of the COL application and COL holders who have informed the NRC that they do not plan to pursue construction need not submit an annual update of the FSAR. If a COL applicant requests that the NRC resume its review, or a COL holder notifies the NRC that the COL holder plans to

commence or resume construction, then the COL applicant or holder must submit to NRC an update to its FSAR within 90 days of the request or notification, as applicable, and annually thereafter.

(d) The FSAR (as updated) must be retained by the licensee until the Commission terminates its license.

(e) Each holder of an ML under this part must submit an update of the FSAR reflecting any modification to the design that is directed or approved by the Commission under § 53.1288 or § 53.1530, and any new analyses of the design requested by the Commission under § 53.1580.

**§ 53.1550 Evaluating changes to facility as described in Final Safety Analysis Reports.**

(a) The holder of an OL or COL may make changes in the facility as described in the FSAR (as updated) and make changes in the procedures as described in the FSAR (as updated) without obtaining a license amendment pursuant to § 53.1510 only if—

(1) A change to the technical specifications incorporated in the license is not required; and

(2) The change meets all of the following criteria:

(i) Does not result in an increase to the frequency or consequences of an event sequence such that an event sequence not previously identified as risk significant becomes risk significant by the analyses performed in accordance with § 53.450(e).

(ii) Does not result in an increase to the frequency or consequences of an event sequence such that an event sequence identified as risk significant in accordance with § 53.450(e) exceeds the licensing-basis event evaluation criteria required to be established in accordance with § 53.450(e).

(iii) Does not involve either of the following: (A) a change to the NRC-approved comprehensive risk metric(s) or associated risk performance objective under § 53.220(b), or (B) an increase to the frequency or consequences of one or more event sequences such that there is more than a minimal reduction in the margin between the calculated comprehensive risks posed by the commercial nuclear plant and the safety criteria of § 53.220.

(iv) Does not involve a departure from a method of evaluation described in the FSAR (as updated) used in assessing licensing-basis events in accordance with § 53.450 unless the results of the analysis under § 53.450 are conservative or essentially the same, the revised method of evaluation has been previously approved by the NRC for the intended application, or the revised

method of evaluation can be used under an NRC-endorsed consensus code or standard.

(v) Does not result in the escalation in the safety classification of an SSC from non-safety-related to non-safety-related but safety-significant or from non-safety-related but safety-significant to safety-related.

(vi) Does not result in more than a minimal decrease in defense in depth.

(vii) For commercial nuclear plants licensed under this part for which alternative evaluation criteria are adopted in accordance with § 53.470, does not result in a change to the frequency or consequences of event sequences such that the calculated margins between the results for event sequences evaluated in accordance with § 53.450(e) and the alternative evaluation criteria decreases by 25 percent or more.

(viii) Does not result in the identification of a new design-basis accident in accordance with § 53.450(f).

(ix) Does not result in a decrease by 10 percent or more in the margin between the consequence of any design-basis accident and the safety criteria in § 53.210.

(x) Does not prevent meeting the design requirements in § 53.440(j) to limit the release of radionuclides from reactor systems, waste stores, or other significant inventories of radioactive materials assuming the impact of a large, commercial aircraft.

(3) In implementing this paragraph, the FSAR (as updated) is considered to include FSAR changes since submittal of the last update of the FSAR under § 53.1545.

(4) The provisions in this section do not apply to changes to the facility or procedures when the applicable regulations establish more specific criteria for accomplishing such changes.

(b)(1) A licensee who references a design certification rule may make departures from the standard design, without prior Commission approval, unless the proposed departure involves a change to the design as described in the rule certifying the design, in which case the requirements of § 53.1525 are applicable.

(2) The licensee must maintain records of all departures from the certified design of the facility and these records must be maintained and available for audit until the termination of the license. The licensee must identify the location and nature of departures from licensing-basis information within supporting documents for a certified design within the updates to the Safety Analysis Report required by § 53.1545.

(3) Licensees for which the NRC has docketed the certifications required under § 53.1070 need not retain records of departures from the design of the facility associated with SSCs that have been permanently removed from service using an NRC-approved change process.

(c)(1) The licensee must maintain records of changes in the facility and procedures made under paragraph (a) of this section. These records must include a written evaluation which provides the bases for the determination that the change does not require a license amendment under paragraph (a)(2) of this section.

(2) The licensee must submit, as specified in § 53.040, a report containing a brief description of any departures and changes, including a summary of the evaluation of each. A report must be submitted at intervals not to exceed 24 months. For COLs, the report must be submitted at intervals not to exceed 6 months during the period from the date of application for a COL to the date the Commission makes its findings under § 53.1452(g).

(3) The records of changes in the facility must be maintained until the termination of an OL or COL issued under this part, or the termination of a renewed license issued under § 53.1595—whichever is later. Records of changes in procedures must be maintained for a period of 5 years.

**§ 53.1560 Updating program documents included in licensing-basis information.**

(a) Each holder under this part of an OL or COL for which the Commission has made the finding under § 53.1452(g) must biennially or more frequently update the program documents submitted as part of an application to obtain or maintain the license to assure that the information included in the documents contains the latest information developed. The submittals must include the effects on the content of the program documents of—

(1) Changes made in the facility, procedures, licensee's organization, or site environs;

(2) Safety analyses and evaluations performed by the applicant or licensee either in support of approved license amendments or in support of conclusions that changes did not require a license amendment in accordance with § 53.1550;

(3) Analyses of new safety issues performed by or on behalf of the licensee at Commission request; and

(4) Changes to the programs as a result of operating experience, corrective actions, or other reasons deemed appropriate to ensure the programs serve their underlying purpose to

support the requirements in subpart B of this part or other NRC regulations.

(b)(1) The licensee must submit revisions containing updated information to the Commission, as specified in § 53.040, identifying the location of revised or new information.

(2) The submittal must include—

(i) A certification by a duly authorized officer of the licensee that either the information accurately presents changes made since the previous submittals, necessary to reflect information and analyses submitted to the Commission or prepared pursuant to Commission requirement, or that no such changes were made; and

(ii) An identification of changes made under the provisions of § 53.1550 but not previously submitted to the Commission.

(c) The updated program documents must be retained by the licensee until the Commission terminates their license.

**§ 53.1565 Evaluating changes to programs included in licensing-basis information.**

(a) A licensee may make changes to the facility, procedures, or organizations or address changes to site environs as described in the program documents included in licensing-basis information without obtaining prior NRC approval only if—

(1) A change to the technical specifications incorporated in the license is not required;

(2) An exemption from an NRC regulation is not required; and

(3) The change conforms to program-specific requirements included in regulations in this part, technical specifications, or the NRC-approved program document included and reviewed as part of a license application under subpart H or an amendment under this subpart.

(b) In implementing this section, the program documents (as updated) include changes since submittal of the last updates of the program documents pursuant to § 53.1560.

(c) The provisions in this section do not apply to changes to the program documents when the applicable regulations establish more specific criteria for accomplishing such changes.

(d) To make changes to the facility, procedures, or organizations or to address changes to site environs as described in the program documents included in licensing-basis information for individual programs, the following requirements must be satisfied:

(1) *Quality assurance program—operation.* (i) Each holder under this part of an OL or COL, after the Commission makes the finding under

§ 53.1452(g), may make a change to a previously accepted quality assurance program (QAP) description included or referenced in the Safety Analysis Report without prior NRC approval, provided the change does not reduce the commitments in the program description as accepted by the NRC. Changes to the QAP description that do not reduce the commitments must be submitted to the NRC in accordance with the requirements of § 53.1545. In addition to QAP changes involving administrative improvements and clarifications, spelling corrections, punctuation, or editorial items, the following changes are not considered to be reductions in commitment:

(A) The use of a quality assurance (QA) standard approved by the NRC which is more recent than the QA standard in the licensee's QAP at the time of the change;

(B) The use of a QA alternative or exception approved by an NRC safety evaluation, provided that the bases of the NRC approval are applicable to the licensee's facility;

(C) The use of generic organizational position titles that clearly denote the position function, supplemented as necessary by descriptive text, rather than specific titles;

(D) The use of generic organizational charts to indicate functional relationships, authorities, and responsibilities, or, alternately, the use of descriptive text;

(E) The elimination of QAP information that duplicates language in QA regulatory guides and QA standards to which the licensee is committed; and

(F) Organizational revisions that ensure that persons and organizations performing QA functions continue to have the requisite authority and organizational freedom, including sufficient independence from cost and schedule when opposed to safety considerations.

(ii) Changes to the QAP description that do reduce the commitments must be submitted to the NRC and receive NRC approval prior to implementation, as follows:

(A) Changes made to the QAP description as presented in the Safety Analysis Report or in a topical report must be submitted as specified in § 53.040.

(B) The submittal of a change to the Safety Analysis Report QAP description must include all pages affected by that change and must be accompanied by a forwarding letter identifying the change, the reason for the change, and the basis for concluding that the revised program incorporating the change continues to satisfy the criteria of appendix B to part

50 of this chapter and the Safety Analysis Report QAP description commitments previously accepted by the NRC (the letter need not provide the basis for changes that correct spelling, punctuation, or editorial items).

(C) A copy of the forwarding letter identifying the change must be maintained as a facility record for 3 years.

(D) Changes to the QAP description included or referenced in the Safety Analysis Report shall be regarded as accepted by the Commission upon receipt of a letter to this effect from the appropriate reviewing office of the Commission or 60 days after submittal to the Commission, whichever occurs first.

(2) *Quality assurance program—siting, construction, and manufacturing.* Each holder of an LWA, early site permit, CP, ML, or COL, before the Commission makes the finding under § 53.1452(g) of this chapter, under this part may make a change to a previously accepted QAP description included or referenced in the Safety Analysis Report without prior NRC approval, provided the change does not reduce the commitments in the program description previously accepted by the NRC. Changes to the QAP description that do not reduce the commitments must be submitted to NRC within 90 days. Changes to the QAP description that reduce the commitments must be submitted to NRC and receive NRC approval before implementation, as follows:

(i) Changes to the Safety Analysis Report must be submitted for review as specified in § 53.040. Changes made to NRC-accepted QA topical report descriptions must be submitted as specified in § 53.040.

(ii) The submittal of a change to the Safety Analysis Report QAP description must include all pages affected by that change and must be accompanied by a forwarding letter identifying the change, the reason for the change, and the basis for concluding that the revised program incorporating the change continues to satisfy the criteria of appendix B of part 50 of this chapter and the Safety Analysis Report QAP description commitments previously accepted by the NRC (the letter need not provide the basis for changes that correct spelling, punctuation, or editorial items).

(iii) A copy of the forwarding letter identifying the changes must be maintained as a facility record for 3 years.

(iv) Changes to the QAP description included or referenced in the Safety Analysis Report shall be regarded as accepted by the Commission upon

receipt of a letter to this effect from the appropriate reviewing office of the Commission or 60 days after submittal to the Commission, whichever occurs first.

(3) *Emergency preparedness program.* (i) Definitions for the purpose of paragraph (d)(3) of this section:

(A) *Change* means an action that results in modification or addition to, or removal from, the licensee's emergency plan. All such changes are subject to the provisions of this section except where the applicable regulations establish specific criteria for accomplishing a particular change.

(B) *Emergency plan* means the document(s), prepared and maintained by the licensee, that identify and describe the licensee's methods for maintaining emergency preparedness and responding to emergencies. An emergency plan includes the plan as originally approved by the NRC and all subsequent changes made by the licensee with, and without, prior NRC review and approval under paragraph (d)(3) of this section.

(C) *Emergency planning function* means a capability or resource necessary to prepare for and respond to a radiological emergency.

(D) *Reduction in effectiveness* means a change in an emergency plan that results in reducing the licensee's capability to perform an emergency planning function in the event of a radiological emergency.

(ii)(A) Except as provided in paragraph (d)(3)(ii)(B) of this section, a holder of an OL under this part, or a COL under this part after the Commission makes the finding under § 53.1452(g), must follow and maintain the effectiveness of an emergency plan that meets the requirements in appendix E to part 50 of this chapter and the planning standards of § 50.47(b).

(B) A holder of an OL under this part for a commercial nuclear plant consisting of small modular reactors (SMRs) or non-light-water reactors, or a holder of a COL under this part after the Commission makes the finding under § 53.1452(g) for a commercial nuclear plant consisting of either SMRs or non-light-water reactors, must follow and maintain the effectiveness of either an emergency plan that meets the requirements in § 50.160 or an emergency plan that meets the requirements in appendix E to part 50 of this chapter and the planning standards of § 50.47(b).

(iii)(A) Except as provided in paragraph (d)(3)(iii)(B) of this section, the licensee may make changes to its emergency plan without NRC approval only if the licensee performs and retains

an analysis demonstrating that the changes do not reduce the effectiveness of the plan and the plan, as changed, continues to meet the requirements in appendix E to part 50 of this chapter and the planning standards of § 50.47(b).

(B) A license under this part for a commercial nuclear plant consisting of either SMRs or non-light-water reactors may make changes to its emergency plan without NRC approval only if the licensee performs and retains an analysis demonstrating that the changes do not reduce the effectiveness of the plan and the plan, as changed, continues to meet either the requirements in § 50.160 or the requirements in appendix E to part 50 and the planning standards of § 50.47(b).

(iv) The changes to a licensee's emergency plan that reduce the effectiveness of the plan as defined in paragraph (d)(3)(i)(D) of this section may not be implemented without prior approval by the NRC. A licensee desiring to make such a change must submit an application for an amendment to its license. In addition to the filing requirements of §§ 53.1510 and 53.1515, the request must include all emergency plan pages affected by that change and must be accompanied by a forwarding letter identifying the change, the reason for the change, and the basis for concluding that the licensee's emergency plan, as revised, will continue to meet either the requirements in § 50.160 to this chapter or the requirements in appendix E to part 50 of this chapter and the planning standards of § 50.47(b) of this chapter.

(v) The licensee must retain a record of each change to the emergency plan made without prior NRC approval for a period of three years from the date of the change and shall submit, as specified in § 53.040, a report of each such change, including a summary of its analysis, within 30 days after the change is put in effect.

(vi) The licensee must retain the emergency plan and each change for which prior NRC approval was obtained pursuant to paragraph (d)(3)(iv) of this section as a record until the Commission terminates the license for the nuclear power reactor.

(vii)(A) The licensee must provide for the development, revision, implementation, and maintenance of its emergency preparedness program. The licensee must ensure that all program elements are reviewed by persons who have no direct responsibility for the implementation of the emergency preparedness program either—

(1) At intervals not to exceed 12 months; or

(2) As necessary, based on an assessment by the licensee against performance indicators, and as soon as reasonably practicable after a change occurs in personnel, procedures, equipment, or facilities that potentially could adversely affect emergency preparedness, but no longer than 12 months after the change. In any case, all elements of the emergency preparedness program must be reviewed at least once every 24 months.

(B) The review must include an evaluation for adequacy of interfaces with State participating Tribal and local governments and of licensee drills, exercises, capabilities, and procedures. The results of the review, along with recommendations for improvements, must be documented, reported to the licensee's corporate and plant management, and retained for a period of 5 years. The part of the review involving the evaluation for adequacy of interface with State, participating Tribal and local governments must be available to the appropriate State, participating Tribal and local governments.

(4) *Security programs.* (i) The licensee must prepare and maintain safeguards contingency plan procedures in accordance with appendix C of part 73 of this chapter for affecting the actions and decisions contained in the Responsibility Matrix of the safeguards contingency plan. The licensee may not make a change that would decrease the safeguard effectiveness of a physical security plan, or guard training and qualification plan, or cybersecurity plan submitted under subpart H or part 73 of this chapter, or of the first four categories of information (Background, Generic Planning Base, Licensee Planning Base, Responsibility Matrix) contained in a licensee safeguards contingency plan submitted under subpart H or part 73 of this chapter, as applicable, without prior approval of the Commission. A licensee desiring to make such a change must submit an application for amendment to the licensee's license under §§ 53.1510, 53.1515, and 53.1520.

(ii) The licensee may make changes to the plans referenced in paragraph (4)(i) of this section without prior Commission approval if the changes do not decrease the safeguards effectiveness of the plan. The licensee must maintain records of changes to the plans made without prior Commission approval for a period of 3 years from the date of the change, and must submit, as specified in § 53.040, a report containing a description of each change within 2 months after the change is

made. Prior to the safeguards contingency plan being put into effect, the licensee must have—

(A) All safeguards capabilities specified in the safeguards contingency plan available and functional;

(B) Detailed procedures developed according to appendix C to part 73 of this chapter available at the licensee's site; and

(C) All appropriate personnel trained to respond to safeguards incidents as outlined in the plan and specified in the detailed procedures.

(iii) The licensee must provide for the development, revision, implementation, and maintenance of its safeguards contingency plan. The licensee must ensure that all program elements are reviewed by individuals independent of both security program management and personnel who have direct responsibility for implementation of the security program either—

(A) At intervals not to exceed 12 months; or

(B) As necessary, based on an assessment by the licensee against performance indicators, and as soon as reasonably practicable after a change occurs in personnel, procedures, equipment, or facilities that potentially could adversely affect security, but no longer than 12 months after the change. In any case, all elements of the safeguards contingency plan must be reviewed at least once every 24 months.

(iv) The review must include a review and audit of safeguards contingency procedures and practices, an audit of the security system testing and maintenance program, and a test of the safeguards systems along with commitments established for response by local law enforcement authorities. The results of the review and audit, along with recommendations for improvements, must be documented, reported to the licensee's corporate and plant management, and kept available at the plant for inspection for a period of 3 years.

#### **§ 53.1570 Transfer of licenses.**

(a) No commercial nuclear plant license issued under this part, or any right thereunder, shall be transferred, assigned, or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of the license to any person, unless the Commission gives its consent in writing.

(b)(1) An application for transfer of a license must include—

(i) As much of the information described in §§ 53.1109, 53.1306, 53.1366, and 53.1413 with respect to the identity and technical and financial

qualifications of the proposed transferee as would be required by those sections if the application were for an initial license. The Commission may require additional information such as data respecting proposed safeguards against hazards from radioactive materials and the applicant's qualifications to protect against such hazards.

(ii) A statement of the purposes for which the transfer of the license is requested, the nature of the transaction necessitating or making desirable the transfer of the license, and an agreement to limit access to Restricted Data or Classified National Security Information pursuant to § 53.1115. The Commission may require any person who submits an application for license pursuant to the provisions of this section to file a written consent from the existing licensee or a certified copy of an order or judgment of a court of competent jurisdiction attesting to the person's right (subject to the licensing requirements of the Act and these regulations) to possession of the facility or site involved.

(2) [Reserved]

(c) After appropriate notice to interested persons, including the existing licensee, and observance of such procedures as may be required by the Act or regulations or orders of the Commission, the Commission will approve an application for the transfer of a license, if the Commission determines—

(1) That the proposed transferee is qualified to be the holder of the license; and

(2) That transfer of the license is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

#### **§ 53.1575 Termination of licenses.**

(a) When the holder of an OL or COL under this part has determined to permanently cease operations the licensee must, within 30 days, submit a written certification to the NRC, consistent with the requirements of § 53.1070.

(b) Once fuel has been permanently removed from the reactor system, the licensee must submit a written certification to the NRC that meets the requirements of § 53.1070.

(c)(1) Upon docketing of the certifications for permanent cessation of operations and permanent removal of fuel from the reactor system, or when a final legally effective order to permanently cease operations has come into effect, the license no longer authorizes operation of the reactor or



emplacement or retention of fuel into the reactor system.

(2) Activities associated with decommissioning will be carried out in accordance with the requirements and procedures in subpart G of this part.

(3) The Commission shall terminate the license if it determines that—

(i) The remaining dismantlement has been performed in accordance with the approved license termination plan required in subpart G of this part; and

(ii) The final radiation survey and associated documentation, including an assessment of dose contributions associated with parts released for use before approval of the license termination plan, demonstrate that the facility and site have met the criteria for decommissioning in subpart E of 10 CFR part 20.

(d) A holder of a CP or COL under this part may request the termination of the license as well as licenses issued by the NRC under parts 30, 40, or 70 of this chapter prior to plant operations. Such requests may support an immediate NRC approval of the site for unrestricted use.

#### **§ 53.1580 Information requests.**

Each licensee under this part must at any time before termination of the license, upon request of the Commission, submit, as specified in § 53.040 written statements, signed under oath or affirmation, to enable the Commission to determine whether or not the license should be modified, suspended, or revoked. Except for information sought to verify licensee compliance with the current licensing basis for that facility, the NRC must prepare the reason or reasons for each information request prior to issuance to ensure that the burden to be imposed on respondents is justified in view of the potential safety significance of the issue to be addressed in the requested information. Each such justification provided for an evaluation performed by the NRC staff must be approved by the Executive Director for Operations or his or her designee prior to issuance of the request.

#### **§ 53.1585 Revocation, suspension, modification of licenses and approvals for cause.**

A license or standard design approval issued under this part may be revoked, suspended, or modified, in whole or in part, for any material false statement in the application or in the supplemental or other statement of fact required of the applicant; or because of conditions revealed by the application or statement of fact of any report, record, inspection, or other means which would warrant

the Commission to refuse to grant a license or approval on an original application; or for failure to manufacture a reactor, or construct or operate a facility in accordance with the terms of the license, provided, however, that failure to make timely completion of the proposed construction or alteration of a facility under a CP under this part shall be governed by the provisions of § 53.1342(b); or for violation of, or failure to observe, any of the terms and provisions of the Act, regulations, license, approval, or order of the Commission.

#### **§ 53.1590 Backfitting.**

(a)(1) Backfitting means the modification or addition to systems, structures, components, or design of a facility; or the design approval or ML for a facility; or the procedures or organization required to design, construct or operate a facility; any of which may result from a new or amended provision in the Commission's regulations or the imposition of a regulatory staff position interpreting the Commission's regulations that is either new or different from a previously applicable staff position after the date of the commercial nuclear plant license issued under this part.

(2) Except as provided in paragraph (a)(4) of this section, the Commission shall require a systematic and documented analysis pursuant to paragraph (b) of this section for backfits which it seeks to impose.

(3) Except as provided in paragraph (a)(4) of this section, the Commission shall require the backfitting of a facility only when it determines, based on the analysis described in paragraph (b) of this section, that there is a substantial increase in the overall protection of the public health and safety or the common defense and security to be derived from the backfit and that the direct and indirect costs of implementation for that facility are justified in view of this increased protection.

(4) The provisions of paragraphs (a)(2) and (a)(3) of this section are inapplicable and, therefore, backfit analysis is not required and the standards in paragraph (a)(3) of this section do not apply where the Commission or staff, as appropriate, finds and declares, with appropriate documented evaluation for its finding, either—

(i) That a modification is necessary to bring a facility into compliance with a license or the rules or orders of the Commission, or into conformance with written commitments by the licensee; or

(ii) That regulatory action is necessary to ensure that the facility provides

adequate protection to the health and safety of the public and is in accord with the common defense and security; or

(iii) That the regulatory action involves defining or redefining what level of protection to the public health and safety or common defense and security should be regarded as adequate.

(5) The Commission must always require the backfitting of a facility if it determines that such regulatory action is necessary to ensure that the facility provides adequate protection to the health and safety of the public and is in accord with the common defense and security.

(6) The documented evaluation required by paragraph (a)(4) of this section must include a statement of the objectives of and reasons for the modification and the basis for invoking the exception. If immediately effective regulatory action is required, then the documented evaluation may follow rather than precede the regulatory action.

(7) If there are two or more ways to achieve compliance with a license or the rules or orders of the Commission, or with written licensee commitments, or there are two or more ways to reach a level of protection which is adequate, then ordinarily the applicant or licensee is free to choose the way which best suits its purposes. However, should it be necessary or appropriate for the Commission to prescribe a specific way to comply with its requirements or to achieve adequate protection, then cost may be a factor in selecting the way, provided that the objective of compliance or adequate protection is met.

(b) In reaching the determination required by paragraph (a)(3) of this section, the Commission will consider how the backfit should be scheduled in light of other ongoing regulatory activities at the facility and, in addition, will consider information available concerning any of the following factors as may be appropriate and any other information relevant and material to the proposed backfit:

(1) The statement of the specific objectives that the proposed backfit is designed to achieve;

(2) The general description of the activity that would be required by the licensee or applicant in order to complete the backfit;

(3) The potential change in the risk to the public from the accidental off-site release of radioactive material;

(4) The potential impact on radiological exposure of facility employees;

(5) The installation and continuing costs associated with the backfit, including the cost of facility downtime or the cost of construction delay;

(6) The potential safety impact of changes in plant or operational complexity, including the relationship to proposed and existing regulatory requirements;

(7) The estimated resource burden on the NRC associated with the proposed backfit and the availability of such resources;

(8) The potential impact of differences in facility type, design or age on the relevancy and practicality of the proposed backfit;

(9) Whether the proposed backfit is interim or final and, if interim, the justification for imposing the proposed backfit on an interim basis.

(c) No licensing action will be withheld during the pendency of backfit analyses required by the Commission's rules.

(d) The Executive Director for Operations shall be responsible for implementation of this section, and all analyses required by this section shall be approved by the Executive Director for Operations or his or her designee.

#### **§ 53.1595 Renewal.**

Licenses may be renewed by the Commission upon expiration of the period of the license.

### **Subpart J—Reporting and Other Administrative Requirements**

#### **§ 53.1600 General information.**

Each applicant and licensee under this part must ensure that U.S. Nuclear Regulatory Commission (NRC) inspectors have unfettered access to sites and facilities licensed or proposed to be licensed in § 53.1610, must maintain records and make reports to the NRC in accordance with requirements in §§ 53.1620 through 53.1650, must satisfy financial qualification and reporting requirements in §§ 53.1660 through 53.1700, and must obtain and maintain required financial protections in case of an accident in §§ 53.1720 and 53.1730.

#### **§ 53.1610 Unfettered access for inspections.**

(a) Each applicant for or holder of a manufacturing license (ML), operating license (OL), combined license (COL), construction permit (CP), or early site permit must permit inspection, by duly authorized representatives of the Commission, of its records, premises, activities, and of licensed materials in possession or use, related to the license or CP or early site permit as may be necessary to effectuate the purposes of

the Atomic Energy Act of 1956, as amended, (the Act) and the Energy Reorganization Act of 1974, as amended.

(b)(1) Each holder of an ML, OL, COL, or CP must, upon request by the Director, Office of Nuclear Reactor Regulation, provide rent-free office space for the exclusive use of the Commission inspection personnel. Heat, air conditioning, light, electrical outlets, and janitorial services must be furnished by each licensee and each holder of a CP. The office must be convenient to and have full access to the facility and must provide the inspectors both visual and acoustic privacy.

(2) For a site or facility with an assigned resident inspector, the space provided must be adequate to accommodate a full-time inspector, a part-time secretary, and transient NRC personnel and must be generally commensurate with other office facilities at the site. For sites or facilities assigned multiple resident inspectors, additional space may be requested. The office space that is provided must be subject to the approval of the Director, Office of Nuclear Reactor Regulation. All furniture, supplies, and communication equipment will be furnished by the Commission.

(3) For a site or facility without an assigned resident inspector, temporary space to accommodate periodic or special inspections must be provided. The office space must be generally commensurate with other office accommodations at the site.

(4) The licensee or permit holder must afford any NRC resident inspector assigned to that site, or other NRC inspectors identified by the Regional Administrator as likely to inspect the facility, immediate unfettered access, equivalent to access provided regular plant employees, following proper identification and compliance with applicable access control measures for security, radiological protection, and personal safety.

(5) The licensee or permit holder must ensure that the arrival and presence of an NRC inspector, who has been properly authorized facility access as described in paragraph (b)(4) of this section, is not announced or otherwise communicated by its employees or contractors to other persons at the facility unless specifically requested by the NRC inspector.

#### **§ 53.1620 Maintenance of records, making of reports.**

(a) Each holder of an ML, OL, COL, CP, or early site permit must maintain all records and make all reports, in connection with the activity, as may be

required by the conditions of the license or permit or by the regulations and orders of the Commission in effectuating the purposes of the Act and the Energy Reorganization Act of 1974, as amended. Reports must be submitted in accordance with § 53.040.

(b) [Reserved]

(c) Records that are required by the regulations in this part, by license condition, or by technical specifications must be retained for the period specified by the appropriate regulation, license condition, or technical specification. If a retention period is not otherwise specified, these records must be retained until the Commission terminates the facility license or, in the case of an early site permit, until the permit expires.

(d)(1) Records which must be retained under this part may be the original or a reproduced copy or a microform if the reproduced copy or microform is duly authenticated by authorized personnel and the microform is capable of producing a clear and legible copy after storage for the period specified by Commission regulations. The record may also be stored in electronic media with the capability of producing legible, accurate, and complete records during the required retention period. Records such as letters, drawings, and specifications, must include all pertinent information such as stamps, initials, and signatures. The licensee must maintain adequate safeguards against tampering with, and loss of records.

(2) If there is a conflict between the Commission's regulations in this part, license condition, or technical specification, or other written Commission approval or authorization pertaining to the retention period for the same type of record, the retention period specified in the regulations in this part for such records shall apply unless the Commission, under § 53.080 of this part, has granted a specific exemption from the record retention requirements in the regulations in this part.

(e) Each licensee must notify the Commission as specified in § 53.040 of this part, of successfully completing power ascension testing or startup testing as applicable within 30 calendar days of completing the testing.

#### **§ 53.1630 Immediate notification requirements for operating commercial nuclear plants.**

(a) *General requirements.*<sup>1</sup> (1) Each holder of an OL under this part or a COL under this part after the Commission makes the finding under § 53.1452(g), must notify the NRC Operations Center

via the Emergency Notification System (ENS) of—

(i) The declaration of any of the Emergency Classes specified in the licensee's approved Emergency Plan; or

(ii) Those non-emergency events specified in paragraph (b) of this section that occurred within 3 years of the date of discovery.

(2) If the ENS is inoperative, the licensee must make the required notifications via commercial telephone service, other dedicated telephone system, or any other method which will ensure that a report is made as soon as practical to the NRC Headquarters Operations Center at the numbers specified in appendix A to part 73 of this chapter.

(3) The licensee must notify the NRC immediately after notification of the appropriate State or local agencies and not later than 1 hour after the time the licensee declares one of the Emergency Classes.

(4) The licensee must activate the data links with the NRC as specified in their emergency plans after declaring an Emergency Class for events of actual or potential substantial degradation of plant safety or security, probable risk to site personnel life, or site equipment damage caused by hostile action. The data links may also be activated by the licensee during emergency drills or exercises if the licensee's computer system has the capability to transmit the exercise data.

(5) When making a report under paragraph (a)(1) of this section, the licensee must identify—

(i) The Emergency Class declared; or

(ii) Paragraph (b)(1), "One-hour reports," paragraph (b)(2), "Four-hour reports," or paragraph (b)(3), "Eight-hour reports," as the paragraph of this section requiring notification of the non-emergency event.

(b) *Non-emergency events.* (1) *One-hour reports.* If not reported as a declaration of an Emergency Class under paragraph (a) of this section, the licensee must notify the NRC as soon as practical and in all cases within one hour of the occurrence of any deviation from the plant's Technical Specifications authorized under § 53.740(h) of this part.

(2) *Four-hour reports.* If not reported under paragraphs (a) or (b)(1) of this section, the licensee must notify the NRC as soon as practical, and in all cases, within 4 hours of the occurrence of any of the following:

(i) The initiation of any commercial nuclear plant shutdown required by the plant's Technical Specifications.

(ii) Any event or condition that results in actuation of the reactor protection

system when the reactor is critical except when the actuation results from and is part of a pre-planned sequence during testing or reactor operation.

(iii) Any event or condition that results in an unplanned actuation of a safety-related (SR) standby cooling system or the unplanned sole reliance on an SR standby cooling system for those systems that are in constant operation.

(iv) Any event or condition that results in an unplanned movement of, change of state in, or chemical interaction involving a significant amount of radioactive material within the commercial nuclear plant.

(v) Any event or situation, related to the health and safety of the public or onsite personnel, or protection of the environment, for which a news release is planned or notification to other government agencies has been or will be made. Such an event may include an onsite fatality or inadvertent release of radioactively contaminated materials.

(3) *Eight-hour reports.* If not reported under paragraphs (a), (b)(1), or (b)(2) of this section, the licensee must notify the NRC as soon as practical and in all cases within 8 hours of the occurrence of any of the following:

(i) Any event or condition that results in—

(A) The condition of the commercial nuclear plant, including its principal safety barriers, being seriously degraded; or

(B) The commercial nuclear plant being in a condition not analyzed under § 53.450 that significantly degrades plant safety.

(ii) Any event or condition that results in valid actuation of an SR system, except when the actuation results from and is part of a pre-planned sequence during testing or reactor operation.

(iii) Any event or condition that at the time of discovery could have prevented the fulfilment of the safety functions identified under § 53.230. Events covered may include one or more procedural errors, equipment failures, and/or discovery of design, analysis, fabrication, construction, and/or procedural inadequacies. However, individual component failures need not be reported pursuant to this paragraph if other equipment was operable and available to perform the required safety function.

(iv) Any event requiring the transport of a radioactively contaminated person to an offsite medical facility for treatment.

(v) Any event that results in a major loss of emergency assessment capability, offsite response capability, or offsite communications capability (*e.g.*,

significant portion of control room indication, ENS, or offsite notification system).

(c) *Follow-up notification:* With respect to the notifications made under paragraphs (a) and (b) of this section, in addition to making the required initial notification, each licensee, must during the course of the event—

(1) Immediately Report:

(i) any further degradation in the level of safety of the plant or other worsening plant conditions, including those that require the declaration of any of the Emergency Classes, if such a declaration has not been previously made, or

(ii) any change from one Emergency Class to another, or

(iii) a termination of the Emergency Class.

(2) Immediately Report:

(i) the results of ensuing evaluations or assessments of plant conditions,

(ii) the effectiveness of response or protective measures taken, and

(iii) important information related to plant behavior that is not understood.

(3) Maintain an open, continuous communication channel with the NRC Operation Center upon request by the NRC.

<sup>1</sup> Other requirements for immediate notification of the NRC by licensed operating commercial nuclear plants are contained elsewhere in this chapter, in particular §§ 20.1906, 20.2202, 72.216, 73.77, and 73.1200 of this chapter.

#### **§ 53.1640 Licensee event report system.**

(a) *Reportable events.* (1) Each commercial nuclear plant licensee holding an OL under this part or a COL under this part after the Commission makes the finding under § 53.1452(g), must submit a Licensee Event Report (LER) for any event of the type described in this paragraph within 60 days after discovery of the event. In the case of an invalid actuation reported under § 53.1640(a)(2), other than automatic reactor shutdown when the reactor is critical, the licensee may, at its option, provide a telephone notification to the NRC Operations Center within 60 days after discovery of the event instead of submitting a written LER. Unless otherwise specified in this section, the licensee must report an event if it occurred within 3 years of the date of discovery regardless of the plant mode or power level, and regardless of the significance of the structure, system, or component that initiated the event.

(2) The licensee must report—

(i)(A) The completion of any commercial nuclear plant shutdown required by the plant's Technical Specifications.

(B) Any operation or condition which was prohibited by the plant's Technical Specifications except when—

(1) The Technical Specification is administrative in nature;

(2) The event consisted solely of a case of a late surveillance test where the oversight was corrected, the test was performed, and the equipment was found to be capable of performing its specified safety functions; or

(3) The Technical Specification was revised prior to discovery of the event such that the operation or condition was no longer prohibited at the time of the event.

(C) Any deviation from the plant's Technical Specifications authorized under § 53.740(h).

(ii) Any event or condition that resulted in—

(A) The condition of the commercial nuclear plant, including its principal safety barriers, being seriously degraded; or

(B) The commercial nuclear plant being in a condition not analyzed under § 53.450 that significantly degrades plant safety.

(iii) Any natural phenomena or other external condition that posed an actual threat to the safety of the commercial nuclear plant or significantly hampered site personnel in the performance of duties necessary for the safe operation of the commercial nuclear plant.

(iv) Any event or condition that resulted in inadvertent operation of any structures, systems, and component classified as SR for an identified safety function under § 53.460 or the unplanned sole reliance on an SR system for those systems that are in constant operation, except when—

(A) The actuation resulted from and was part of a pre-planned sequence during testing; or

(B) The actuation was invalid and—

(1) Occurred while the system was properly removed from service; or

(2) Occurred after the safety function had been already completed.

(v) Any event or condition that could have prevented the fulfillment of the safety functions identified under § 53.230.

(vi) Events covered in paragraph (a)(2)(v) of this section may include one or more procedural errors, equipment failures, and/or discovery of design, fabrication, construction, and/or procedural inadequacies. However, individual component failures need not be reported pursuant to paragraph (a)(2)(v) of this section if any other equipment was operable and available to perform the required safety function.

(vii)(A) Any event or condition that as a result of a single cause could have

prevented the fulfillment of any of the safety functions identified under § 53.230.

(B) Events covered in paragraph (a)(2)(vii)(A) of this section may include cases of procedural error, equipment failure, and/or discovery of a design, analysis, fabrication, construction, and/or procedural inadequacy.

However, licensees are not required to report an event pursuant to paragraph (a)(2)(vii)(A) of this section if the event results from—

(1) A shared dependency among trains or channels that is a natural or expected consequence of the approved plant design; or

(2) Normal and expected wear or degradation.

(viii)(A) Any airborne radioactive release that, when averaged over a time period of 1-hour, resulted in airborne radionuclide concentrations in an unrestricted area that exceeds 20 times the applicable concentration limits specified in appendix B to 10 CFR part 20, table 2, column 1.

(B) Any liquid effluent release that, when averaged over a time period of 1-hour, exceeds 20 times the applicable concentrations specified in appendix B to 10 CFR part 20, table 2, column 2, at the point of entry into the receiving waters (*i.e.*, unrestricted area) for all radionuclides except tritium and dissolved noble gases.

(ix) Any event that posed an actual threat to the safety of the commercial nuclear plant or significantly hampered site personnel in the performance of duties necessary for the safe operation of the plant, including fires, toxic gas releases, or radioactive releases.

(b) *Contents.* The LER must contain—

(1) A brief abstract describing the major occurrences during the event, including all component or system failures that contributed to the event and significant corrective action taken or planned to prevent recurrence.

(2)(i) A clear, specific narrative description of what occurred so that knowledgeable readers conversant with the design of commercial nuclear plants, but not familiar with the details of a particular plant, can understand the complete event.

(ii) The narrative description must include the following specific information as appropriate for the particular event:

(A) Plant operating conditions before the event.

(B) Status of systems, structures, or components that were inoperable at the start of the event and that contributed to the event.

(C) Dates and approximate time of the occurrences.

(D) The cause of each component or system failure or personnel error, if known.

(E) The failure mode, mechanism, and effect of each failed component, if known.

(F) [Reserved]

(G) For failures of components with multiple functions, include a list of systems or secondary functions that were also affected.

(H) For failure that rendered a component or system classified as SR or non-safety-related but safety-significant inoperable, an estimate of the elapsed time from the discovery of the failure until the component or system was returned to service.

(I) The method of discovery of each component or system failure or procedural error.

(J) For each human performance related root cause, the licensee must discuss the cause(s) and circumstances.

(K) Automatically and manually initiated safety system responses.

(L) The manufacturer and model number (or other identification) of each component that failed during the event.

(3) An assessment of the safety consequences and implications of the event. This assessment must include—

(i) The availability of systems or components that could have performed the same function as the components and systems that failed during the event, and

(ii) For events that occurred when the reactor was shut down, the availability of systems or components that are needed to shut down the reactor and maintain safe shutdown conditions, remove residual heat, control the release of radioactive material, or mitigate the consequences of an accident.

(4) A description of any corrective actions planned as a result of the event, including those to reduce the probability of similar events occurring in the future.

(5) Reference to any previous similar events at the same plant that are known to the licensee.

(6) The name and contact information of a person within the licensee's organization who is knowledgeable about the event and can provide additional information concerning the event and the plant's characteristics.

(c) *Supplemental Information.* The Commission may require the licensee to submit specific additional information beyond that required by paragraph (b) of this section if the Commission finds that supplemental material is necessary for complete understanding of an unusually complex or significant event. These requests for supplemental information will be made in writing and the licensee

must submit, as specified in § 53.040, the requested information as a supplement to the initial LER.

(d) *Submission of Reports.* Licensee Event Reports must be prepared on Form NRC 366 and submitted to the NRC, as specified in § 53.040.

(e) *Report Legibility.* The reports and copies that licensees are required to submit to the Commission under the provisions of this section must be of sufficient quality to permit legible reproduction and micrographic processing.

#### **53.1645 Reports of radiation exposure to members of the public.**

(a) Each holder of an OL, and each holder of a COL after the Commission has made the finding under § 53.1452(g), must submit radiological reports as required by 10 CFR part 20, as well as an Annual Radioactive Effluent Release Report and an Annual Radiological Environmental Operating Report. The Annual Radioactive Effluent Release Report must specify the quantity of each of the principal radionuclides released to unrestricted areas in liquid and in gaseous effluents and an estimate of the dose received by the maximally exposed member of the public in an unrestricted area from effluents and direct radiation from contained sources during the previous calendar year. The Annual Radiological Environmental Operating Report must provide data on measurable levels of radiation and radioactive materials in the environment, must include an evaluation of the relationship between quantities of radioactive material released in effluents and resultant radiation doses to individuals from principal pathways of exposure, and must include the results of environmental monitoring during the previous calendar year. These reports must also include any other information as may be required by the Commission to estimate maximum potential annual radiation doses to the public. The reports must be submitted as specified in § 53.040 by May 15 of each successive year. If the total effective dose equivalent to members of the public in unrestricted areas during the reporting period is greater than the as low as is reasonably achievable (ALARA) design objectives established under § 53.425, the report must specify the causes for exceeding the ALARA design objective and describe any corrective actions. On the basis of these reports and any additional information the Commission may obtain from the licensee or others, the Commission may require the licensee to take action as the Commission deems appropriate.

(b) If during any calendar quarter the radiation exposure to a member of the public in the unrestricted areas, calculated on the same basis as the respective ALARA design objective exposure, exceeds one-half of the annual ALARA design objective exposure, the licensee must submit a report as specified in § 53.040. The report shall specify the causes for exceeding one-half the annual ALARA design objective exposure in a quarter and describe corrective actions that the licensee will take to maintain radiation exposure to levels within the ALARA design objectives for the remainder of the year. The report shall be submitted within 30 days from the end of the quarter when one-half of the annual ALARA design objective exposure was exceeded.

#### **§ 53.1650 Facility information and verification.**

(a) In response to a written request by the Commission, each applicant for a CP or license and each recipient of a CP or a license must submit facility information, as described in § 75.10 of this chapter, on International Atomic Energy Agency (IAEA) Design Information Questionnaire forms and site information on DOC/NRC Form AP-A and associated forms;

(b) As required by the Additional Protocol, must submit location information described in § 75.11 of this chapter on DOC/NRC Form AP-1 and associated forms; and

(c) Must permit verification thereof by the IAEA and take other action as necessary to implement the US/IAEA Safeguards Agreement, as described in part 75 of this chapter.

#### **§ 53.1660 Financial requirements.**

Sections 53.1670 through 53.1700 set out the requirements and procedures related to financial qualifications and related reporting requirements.

#### **§ 53.1670 Financial qualifications.**

Except for an electric utility applicant for a license to operate a commercial nuclear plant, an applicant for a CP, OL, or COL under this part must possess or have reasonable assurance of obtaining the funds necessary for the activities for which the permit or license is sought.

#### **§ 53.1680 Annual financial reports.**

With respect to any commercial nuclear plant of a type described in § 53.020, each licensee and each holder of a CP must submit its annual financial report, including the certified financial statements, to the Commission, as specified in § 53.040, upon issuance of the report. However, licensees and holders of a CP who submit a Form 10-

Q with the Securities and Exchange Commission or a Form 1 with the Federal Energy Regulatory Commission need not submit the annual financial report or the certified financial statement under this section.

#### **§ 53.1690 Licensee's change of status; financial qualifications.**

(a) An electric utility licensee holding an OL or COL (including a renewed license) for a commercial nuclear plant, no later than seventy-five (75) days prior to ceasing to be an electric utility in any manner not involving a license transfer under § 53.1399 or § 53.1456 must provide the NRC with the financial qualifications information that would be required for obtaining an initial OL or COL under this part. The financial qualifications information must address the first full 5 years of operation after the date the licensee ceases to be an electric utility.

(b)(1) Any holder of a license issued under this part must notify the appropriate NRC Regional Administrator, in writing, immediately following the filing of a voluntary or involuntary petition for bankruptcy under any chapter of title 11 (Bankruptcy) of the United States Code by or against—

- (i) The licensee;
- (ii) An entity (as 11 U.S.C. 101(14) defines that term) controlling the licensee or listing the license or licensee as property of the estate; or
- (iii) An affiliate (as 11 U.S.C. 101(2) defines that term) of the licensee.

(2) This notification must indicate—

- (i) The bankruptcy court in which the petition for bankruptcy was filed; and
- (ii) The date of the filing of the petition.

#### **§ 53.1700 Creditor regulations.**

(a) Pursuant to section 184 of the Act, the Commission consents, without individual application, to the creation of any mortgage, pledge, or other lien upon any facility not owned by the United States which is the subject of a license or upon any leasehold or other interest in such facility; provided—

(1) That the rights of any creditor so secured may be exercised only in compliance with and subject to the same requirements and restrictions as would apply to the licensee pursuant to the provisions of the license, the Act, and regulations issued by the Commission under the Act; and

(2) That no creditor so secured may take possession of the facility pursuant to the provisions of this section prior to either the issuance of a license from the Commission authorizing such possession or the transfer of the license.

(b) Any creditor so secured may apply for transfer of the license covering such facility by filing an application for transfer of the license under § 53.1570. The Commission will act upon such application under subpart I of this part.

(c) Nothing contained in this regulation shall be deemed to affect the means of acquiring, or the priority of, any tax lien or other lien provided by law.

(d) As used in this section—

*License* includes any license under this part, which may be issued by the Commission with regard to a facility.

*Creditor* includes, without implied limitation, the trustee under any mortgage, pledge or lien on a facility made to secure any creditor, any trustee or receiver of the facility appointed by a court of competent jurisdiction in any action brought for the benefit of any creditor secured by such mortgage, pledge or lien, any purchaser of such facility at the sale thereof upon foreclosure of such mortgage, pledge, or lien or upon exercise of any power of sale contained therein, or any assignee of any such purchaser.

*Facility* includes, but is not limited to, a site which is the subject of an early site permit under this part, and a reactor manufactured under an ML under this part.

#### **§ 53.1710 Financial protection.**

Sections 53.1720 and 53.1730 set out the requirements and procedures related to licensees obtaining and maintaining insurance to cover stabilization and decontamination activities in the event of an accident and financial protection in accordance with part 140, “Financial Protection Requirements and Indemnity Agreements,” of this chapter.

#### **§ 53.1720 Insurance required to stabilize and decontaminate plant following an accident.**

Each commercial nuclear plant licensee under this part must take reasonable steps to obtain insurance available at reasonable costs and on reasonable terms from private sources or to demonstrate that it possesses an equivalent amount of protection covering the licensee’s obligation, in the event of an accident at the licensee’s commercial nuclear reactor, to stabilize and decontaminate the plant and the plant site at which such an accident may occur, provided that—

(a) The insurance required by this section must have a minimum coverage limit for each commercial nuclear plant site of \$1.06 billion, an amount based on plant-specific estimates of costs to stabilize and decontaminate a plant, or whatever amount of insurance is

generally available from private sources, whichever is less. The required insurance must clearly state that, as and to the extent provided in paragraph (d)(1) of this section, any proceeds must be payable first for stabilization of the plant and next for decontamination of the plant and the plant site. If a licensee’s coverage falls below the required minimum, the licensee must within 60 days take all reasonable steps to restore its coverage to the required minimum. The required insurance may, at the option of the licensee, be included within policies that also provide coverage for other risks, including, but not limited to, the risk of direct physical damage.

(b)(1) With respect to policies issued or annually renewed, the proceeds of such required insurance must be dedicated, as and to the extent provided in this paragraph, to reimbursement or payment on behalf of the insured of reasonable expenses incurred or estimated to be incurred by the licensee in taking action to fulfill the licensee’s obligation, in the event of an accident at the licensee’s plant, to ensure that the plant is in, or is returned to, and maintained in, a safe and stable condition and that radioactive contamination is removed or controlled such that personnel exposures are consistent with the occupational exposure limits in 10 CFR part 20. These actions must be consistent with any other obligation the licensee may have under this chapter and must be subject to paragraph (d) of this section. As used in this section, an “accident” means an event that involves the release of radioactive material from its intended place of confinement within the commercial nuclear plant such that there is a present danger of release off site in amounts that would pose a threat to the public health and safety.

(2) The stabilization and decontamination requirements set forth in paragraph (d) of this section must apply uniformly to all insurance policies required under this section.

(c) The licensee shall report to the NRC on April 1 of each year the current levels of this insurance or financial security it maintains and the sources of this insurance or financial security.

(d)(1) In the event of an accident at the licensee’s plant, whenever the estimated costs of stabilizing the licensed plant and of decontaminating the plant and the plant site exceed one tenth of the minimum insurance under paragraph (a) of this section, the proceeds of the insurance required by this section must be dedicated to and used, first, to ensure that the licensed plant is in, or is returned to, and can be

maintained in, a safe and stable condition so as to prevent any significant risk to the public health and safety and, second, to decontaminate the plant and the plant site in accordance with the licensee’s cleanup plan as approved by order of the Director, Office of Nuclear Reactor Regulation. This priority on insurance proceeds must remain in effect for 60 days or, upon order of the Director, for such longer periods, in increments not to exceed 60 days except as provided for activities under the cleanup plan required in paragraphs (d)(3) and (d)(4) of this section, as the Director may find necessary to protect the public health and safety. Actions needed to bring the plant to and maintain the plant in a safe and stable condition may include one or more of the following, as appropriate:

- (i) Shutdown of the reactor(s) and other processes at the plant;
- (ii) Establishment and maintenance of long-term cooling with stable decay heat removal;
- (iii) Maintenance of sub-criticality;
- (iv) Control of radioactive releases;

and

- (v) Securing of structures, systems, or components to minimize radiation exposure to onsite personnel or to the offsite public or to facilitate later decontamination or both.

(2) The licensee must inform the Director, Office of Nuclear Reactor Regulation in writing when the plant is and can be maintained in a safe and stable condition so as to prevent any significant risk to the public health and safety. Within 30 days after the licensee informs the Director that the plant is in this condition, or at such earlier time as the licensee may elect or the Director may for good cause direct, the licensee must prepare and submit a cleanup plan for the Director’s approval. The cleanup plan must identify and contain an estimate of the cost of each cleanup operation that will be required to decontaminate the reactor sufficiently to permit the licensee either to resume operation of the reactor or to apply to the Commission under subpart G of this part for authority to decommission the reactor and to surrender the license voluntarily. Cleanup operations may include one or more of the following, as appropriate:

- (i) Processing any contaminated materials generated by the accident and by decontamination operations to remove radioactive materials;
- (ii) Decontamination of surfaces inside the plant buildings to levels consistent with the Commission’s occupational exposure limits in 10 CFR part 20, and decontamination or disposal of equipment;

(iii) Decontamination or removal and disposal of internal parts, damaged fuel from the reactor coolant or fuel systems, or related process or waste systems; and

(iv) Cleanup of the reactor coolant or fuel systems or related process or waste systems.

(3) Following review of the licensee's cleanup plan, the Director will order the licensee to complete all operations that the Director finds are necessary to decontaminate the reactor sufficiently to permit the licensee either to resume operation of the reactor or to apply to the Commission under subpart G of this part for authority to decommission the reactor and to surrender the license voluntarily. The Director must approve or disapprove, in whole or in part for stated reasons, the licensee's estimate of cleanup costs for such operations. Such order may not be effective for more than one year, at which time it may be renewed. Each subsequent renewal order, if imposed, may be effective for not more than 6 months.

(4) Of the balance of the proceeds of the required insurance not already expended to place the plant in a safe and stable condition under paragraph (b)(1) of this section, an amount sufficient to cover the expenses of completion of those decontamination operations that are the subject of the Director's order must be dedicated to such use, provided that, upon certification to the Director of the amounts expended previously and from time to time for stabilization and decontamination and upon further certification to the Director as to the sufficiency of the dedicated amount remaining, policies of insurance may provide for payment to the licensee or other loss payees of amounts not so dedicated, and the licensee may proceed to use in parallel (and not in preference thereto) any insurance proceeds not so dedicated for other purposes.

#### **§ 53.1730 Financial protection requirements.**

Commercial nuclear plant licensees must satisfy the applicable provisions of part 140, "Financial Protection Requirements and Indemnity Agreements," of this chapter.

#### **Subparts K and L [Reserved]**

#### **Subpart M—Enforcement**

##### **§ 53.9000 Violations.**

(a) The Commission may obtain an injunction or other court order to prevent a violation of the provisions of—

(1) The Atomic Energy Act of 1954, as amended (the Act);

(2) Title II of the Energy Reorganization Act of 1974, as amended; or

(3) A regulation or order issued under those Acts.

(b) The Commission may obtain a court order for the payment of a civil penalty imposed under Section 234 of the Act:

(1) For violations of—

(i) Sections 53, 57, 62, 63, 81, 82, 101, 103, 104, 107, or 109 of the Act;

(ii) Section 206 of the Energy Reorganization Act of 1974, as amended;

(iii) Any rule, regulation, or order issued under the sections specified in paragraph (b)(1)(i) of this section;

(iv) Any term, condition, or limitation of any license issued under the sections specified in paragraph (b)(1)(i) of this section.

(2) For any violation for which a license may be revoked under section 186 of the Act.

##### **§ 53.9010 Criminal penalties.**

(a) Section 223 of the Act provides for criminal sanctions for willful violation of, attempted violation of, or conspiracy to violate, any regulation issued under sections 161b, 161i, or 161o of the Act. For purposes of section 223, all the regulations in part 53 are issued under one or more of sections 161b, 161i, or 161o, except for the sections listed in paragraph (b) of this section.

(b) The regulations in 10 CFR part 53 that are not issued under sections 161b, 161i, or 161o for the purposes of section 223 are as follows: §§ 53.000, 53.015, 53.020, 53.040, 53.080, 53.090, 53.100, 53.110, 53.120, 53.600, 53.725, 53.726, 53.735, 53.760, 53.775, 53.790, 53.795, 53.820, 53.910, 53.1000, 53.1050, 53.1100, 53.1103, 53.1106, 53.1109, 53.1112, 53.1115, 53.1118, 53.1120, 53.1121, 53.1124, 53.1140, 53.1143, 53.1144, 53.1146, 53.1149, 53.1155, 53.1158, 53.1164, 53.1170, 53.1173, 53.1176, 53.1179, 53.1188, 53.1200, 53.1203, 53.1206, 53.1209, 53.1210, 53.1212, 53.1215, 53.1218, 53.1221, 53.1230, 53.1236, 53.1239, 53.1241, 53.1242, 53.1245, 53.1248, 53.1251, 53.1254, 53.1257, 53.1260, 53.1263, 53.1270, 53.1273, 53.1276, 53.1279, 53.1282, 53.1285, 53.1286, 53.1287, 53.1288, 53.1291, 53.1293, 53.125, 53.1300, 53.1306, 53.1309, 53.1312, 53.1315, 53.1318, 53.1324, 53.1330, 53.1333, 53.1336, 53.1348, 53.1360, 53.1366, 53.1369, 53.1372, 53.1375, 53.1381, 53.1384, 53.1387, 53.1390, 53.1396, 53.1401, 53.1405, 53.1410, 53.1416, 53.1419, 53.1422, 53.1425, 53.1431, 53.1437, 53.1440, 53.1443, 53.1452, 53.1455, 53.1456, 53.1458, 53.1461, 53.1470, 53.1500, 53.1510,

53.1515, 53.1520, 53.1525, 53.1530, 53.1535, 53.1540, 53.1560, 53.1585, 53.1590, 53.1595, 53.1600, 53.1660, 53.1670, 53.1700, 53.1710, 53.1730, 53.9000, 53.9010.

#### **PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL**

■ 129. The authority citation for 10 CFR part 70 continues to read as follows:

**Authority:** Atomic Energy Act of 1954, secs. 51, 53, 57(d), 108, 122, 161, 182, 183, 184, 186, 187, 193, 223, 234, 274, 1701 (42 U.S.C. 2071, 2073, 2077(d), 2138, 2152, 2201, 2232, 2233, 2234, 2236, 2237, 2243, 2273, 2282, 2021, 2297f); Energy Reorganization Act of 1974, secs. 201, 202, 206, 211 (42 U.S.C. 5841, 5842, 5846, 5851); Nuclear Waste Policy Act of 1982, secs. 135, 141 (42 U.S.C. 10155, 10161); 44 U.S.C. 3504 note.

##### **§ 70.20a [Amended]**

■ 130. In § 70.20a, in paragraph (b) remove the phrase "parts 30 through 36, 39, 40, 50, 72, 110," and add in its place the phrase "parts 30 through 36, 39, 40, 50, 53, 72, 110".

##### **§ 70.22 [Amended]**

■ 131. In § 70.22, wherever it appears, remove the phrase "part 50" and add in its place the phrase "part 50 or 53".

■ 132. In § 70.24, revise paragraph (d) to read as follows:

##### **§ 70.24 Criticality accident requirements.**

\* \* \* \* \*

(d)(1) The requirements in paragraphs (a) through (c) of this section do not apply to a holder of a construction permit or operating license for a nuclear power reactor issued under part 50 or part 53 of this chapter or a combined license issued under part 52 or part 53 of this chapter, if the holder complies with the requirements of paragraph (b) of 10 CFR 50.68 or paragraph (m)(2) of 10 CFR 53.440, as applicable.

(2) An exemption from § 70.24 held by a licensee who thereafter elects to comply with requirements of paragraph (b) of 10 CFR 50.68 or paragraph (m)(2) of 10 CFR 53.440 does not exempt that licensee from complying with any of the requirements in § 50.68 or § 53.440(m) of this chapter but shall be ineffective so long as the licensee elects to comply with § 50.68(b) or § 53.440(m)(2) of this chapter, as applicable.

##### **§ 70.32 [Amended]**

■ 133. In § 70.32, in paragraph (c)(1) introductory text, remove the phrase "part 50 of this chapter" and add in its place the phrase "parts 50 or 53 of this chapter"; and in paragraph (d) remove the phrase "or § 70.34 of this chapter, as appropriate." and add in its place the phrase " , §§ 74.34 or 53.1510 of this chapter, as appropriate."



■ 134. In § 70.50, revise paragraph (d) to read as follows:

**§ 70.50 Reporting requirements.**

(d) The provisions of § 70.50 do not apply to licensees subject to §§ 50.72 or 53.1630 of this chapter. They do apply to those 10 CFR parts 50 or 53 licensees possessing material licensed under 10 CFR part 70 that are not subject to the notification requirements in §§ 50.72 or 53.1630 of this chapter.

**PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE, AND REACTOR-RELATED GREATER THAN CLASS C WASTE**

■ 135. The authority citation for 10 CFR part 72 continues to read as follows:

**Authority:** Atomic Energy Act of 1954, secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 223, 234, 274 (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2210e, 2232, 2233, 2234, 2236, 2237, 2238, 2273, 2282, 2021); Energy Reorganization Act of 1974, secs. 201, 202, 206, 211 (42 U.S.C. 5841, 5842, 5846, 5851); National Environmental Policy Act of 1969 (42 U.S.C. 4332); Nuclear Waste Policy Act of 1982, secs. 117(a), 132, 133, 134, 135, 137, 141, 145(g), 148, 218(a) (42 U.S.C. 10137(a), 10152, 10153, 10154, 10155, 10157, 10161, 10165(g), 10168, 10198(a)); 44 U.S.C. 3504 note.

■ 136. In § 72.3, revise the definition for “*Independent spent fuel storage installation or ISFSI*” to read as follows:

**§ 72.3 Definitions.**

*Independent spent fuel storage installation or ISFSI* means a complex designed and constructed for the interim storage of spent nuclear fuel, solid reactor-related GTCC waste, and other radioactive materials associated with spent fuel and reactor-related GTCC waste storage. An ISFSI which is located on the site of another facility licensed under this part or a facility licensed under part 50 or part 53 of this chapter and which shares common utilities and services with that facility or is physically connected with that other facility may still be considered independent.

■ 137. In § 72.30, revise paragraph (e)(5) to read as follows:

**§ 72.30 Financial assurance and recordkeeping for decommissioning.**

(e) In the case of licensees who are issued a power reactor license under

parts 50 or 53 of this chapter or ISFSI licensees who are an electric utility, as defined in parts 50 or 53 of this chapter, with a specific license issued under this part, the methods of §§ 50.75(b), (e), and (h) or 53.1010, 53.1040, 53.1045(b), and 53.1060 of this chapter, as applicable. In the event that funds remaining to be placed into the licensee’s ISFSI decommissioning external sinking fund are no longer approved for recovery in rates by a competent rate making authority, the licensee must make changes to provide financial assurance using one or more of the methods stated in paragraphs (a)(1) through (4) of this section.

■ 138. In § 72.32, revise paragraph (c)(2) to read as follows:

**§ 72.32 Emergency plan.**

(2)(i) Located within the exclusion area as defined in 10 CFR part 100, of a nuclear power reactor licensed for operation by the Commission, the emergency plan that meets either the requirements in § 50.160 of this chapter or the requirements in appendix E to part 50 of this chapter and § 50.47(b) of this chapter shall be deemed to satisfy the requirements of this section.

(ii) Located within the exclusion area, as defined in 10 CFR part 53, of a commercial nuclear plant licensed for operation by the Commission, the emergency plan that meets either the requirements in § 50.160 of this chapter or the requirements in appendix E to part 50 of this chapter and § 50.47(b) of this chapter shall be deemed to satisfy the requirements of this section.

**§ 72.40 [Amended]**

■ 139. In § 72.40, in paragraph (c) remove the phrase “under part 50 of this chapter,” and add in its place the phrase “under parts 50 or 53 of this chapter,”.

■ 140. In § 72.75, revise paragraph (i)(1)(ii) to read as follows:

**§ 72.75 Reporting requirements for specific events and conditions.**

(i) Licensees issued a general license under § 72.210, after the licensee has placed spent fuel on the ISFSI storage pad (if the ISFSI is located inside the collocated protected area, for a reactor licensed under parts 50 or 53 of this chapter) or after the licensee has transferred spent fuel waste outside the reactor licensee’s protected area to the ISFSI storage pad (if the ISFSI is located

outside the collocated protected area, for a reactor licensed under parts 50 or 53 of this chapter).

**§ 72.184 [Amended]**

■ 141. In § 72.184, in paragraph (a) remove the phrase “under part 50 of this chapter” and add in its place the phrase “under parts 50 or 53 of this chapter”.

■ 142. Revise § 72.210 to read as follows:

**§ 72.210 General license issued.**

A general license is hereby issued for the storage of spent fuel in an independent spent fuel storage installation at power reactor sites to persons authorized to possess or operate nuclear power reactors under 10 CFR parts 50, 52, or 53.

■ 143. In § 72.212, revise paragraph (b)(8) to read as follows:

**§ 72.212 Conditions of general license issued under § 72.210.**

(8) Before use of the general license, determine whether activities related to storage of spent fuel under this general license involve a change in the facility Technical Specifications or require a license amendment for the facility pursuant to §§ 50.59(c) or 53.1550 of this chapter. Results of this determination must be documented in the evaluations made in paragraph (b)(5) of this section.

■ 144. In § 72.218, revise paragraphs (a) and (b) to read as follows:

**§ 72.218 Termination of licenses.**

(a) The notification regarding the program for the management of spent fuel at the reactor required by §§ 50.54(bb) or 53.1060 of this chapter must include a plan for removal of the spent fuel stored under this general license from the reactor site. The plan must show how the spent fuel will be managed before starting to decommission systems and components needed for moving, unloading, and shipping this spent fuel.

(b) An application for termination of a reactor operating license issued under 10 CFR part 50 and submitted under § 50.82 of this chapter, or a combined license issued under 10 CFR part 52 and submitted under § 52.110 of this chapter, or a reactor operating or combined license under 10 CFR part 53 and submitted under § 53.1070 of this chapter must contain a description of how the spent fuel stored under this

general license will be removed from the reactor site.

\* \* \* \* \*

## PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS

■ 145. The authority citation for 10 CFR part 73 continues to read as follows:

**Authority:** Atomic Energy Act of 1954, secs. 53, 147, 149, 161, 161A, 170D, 170E, 170H, 170I, 223, 229, 234, 1701 (42 U.S.C. 2073, 2167, 2169, 2201, 2201a, 2210d, 2210e, 2210h, 2210i, 2273, 2278a, 2282, 2297f); Energy Reorganization Act of 1974, secs. 201, 202 (42 U.S.C. 5841, 5842); Nuclear Waste Policy Act of 1982, secs. 135, 141 (42 U.S.C. 10155, 10161); 44 U.S.C. 3504 note.

Section 73.37(b)(2) also issued under sec. 301, Pub. L. 96–295, 94 Stat. 789 (42 U.S.C. 5841 note).

■ 146. In § 73.1, revise paragraph (b)(1)(i) to read as follows:

### § 73.1 [Amended]

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(i) The physical protection of production and utilization facilities licensed under parts 50, 52, or 53 of this chapter,

\* \* \* \* \*

■ 147. In § 73.2, revise the introductory text and paragraph (a) to read as follows:

### § 73.2 Definitions.

As used in this part:

(a) Terms defined in parts 50, 52, 53, 70, and 95 of this chapter have the same meaning when used in this part.

\* \* \* \* \*

■ 148. In § 73.8, revise paragraph (b) to read as follows:

### § 73.8 Information collection requirements: OMB approval.

\* \* \* \* \*

(b) The approved information collection requirements contained in this part appear in §§ 73.5, 73.15, 73.17, 73.20, 73.21, 73.24, 73.25, 73.26, 73.27, 73.37, 73.40, 73.45, 73.46, 73.50, 73.54, 73.55, 73.56, 73.57, 73.58, 73.60, 73.67, 73.70, 73.72, 73.73, 73.74, 73.77, 73.100, 73.110, 73.120, 73.1200, 73.1205, 73.1210, 73.1215, and appendices B and C to this part.

\* \* \* \* \*

■ 149. In § 73.50, revise the introductory text to read as follows:

### § 73.50 Requirements for physical protection of licensed activities.

Each licensee who is not subject to § 73.51, but who possesses, uses, or stores formula quantities of strategic special nuclear material that are not readily separable from other radioactive

material and which have a total external radiation level in excess of 1 gray (100 rad) per hour at a distance of 1 meter (3.3 feet) from any accessible surfaces without intervening shielding other than at a nuclear reactor facility licensed under parts 50, 52, or 53 of this chapter, shall comply with the following:

\* \* \* \* \*

■ 150. In § 73.55, revise paragraphs (a)(4) and (6), (i)(4)(iii), (l)(1), (l)(7)(ii), (p)(1)(i), (r)(2) and (r)(4)(iii) to read as follows:

### § 73.55 Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage.

(a) \* \* \*

(4) Applicants for an operating license under the provisions of part 50 or part 53 of this chapter or holders of a combined license under the provisions of part 52 or part 53 of this chapter shall implement the requirements of this section before fuel is allowed onsite (protected area).

\* \* \* \* \*

(6) Applicants for an operating license under the provisions of part 50 or part 53 of this chapter, or holders of a combined license under the provisions of part 52 or part 53 of this chapter that do not reference a standard design certification or reference a standard design certification issued after May 26, 2009, shall meet the requirement of § 73.55(i)(4)(iii).

\* \* \* \* \*

(i) \* \* \*

(4) \* \* \*

(iii) Applicants for an operating license under the provisions of part 50 of this chapter, or holders of a combined license under the provisions of part 52 of this chapter, or licensees under part 53 of this chapter that elect to demonstrate compliance with § 73.55, consistent with § 53.860(a)(2) of this chapter, shall construct, locate, protect, and equip both the central and secondary alarm stations to the standards for the central alarm station contained in this section. Both alarm stations shall be equal and redundant, such that all functions needed to satisfy the requirements of this section can be performed in both alarm stations.

\* \* \* \* \*

(l) \* \* \*

(1) Commercial nuclear power reactors licensed under 10 CFR parts 50, 52, or 53 and authorized to use special nuclear material in the form of MOX fuel assemblies containing up to 20 weight percent PuO<sub>2</sub> shall, in addition to demonstrating compliance with the

requirements of this section, protect unirradiated MOX fuel assemblies against theft or diversion as described in this paragraph.

\* \* \* \* \*

(7) \* \* \*

(ii) Additional measures for the physical protection of unirradiated MOX fuel assemblies containing greater than 20 weight percent PuO<sub>2</sub> shall be determined by the Commission on a case-by-case basis and documented through license amendment in accordance with §§ 50.90 or 53.1510 of this chapter.

\* \* \* \* \*

(p) \* \* \*

(1) \* \* \*

(i) Under §§ 50.54(x) and (y) or 53.740(h) of this chapter, the licensee may suspend any security measures under this section in an emergency when this action is immediately needed to protect the public health and safety and no action consistent with license conditions and technical specifications that can provide adequate or equivalent protection is immediately apparent. This suspension of security measures must be approved as a minimum by a licensed senior operator before taking this action.

\* \* \* \* \*

(r) \* \* \*

(2) The licensee shall submit proposed alternative measure(s) to the Commission for review and approval under §§ 50.4 and 50.90, or §§ 53.040 and 53.1510 of this chapter before implementation.

\* \* \* \* \*

(4) \* \* \*

(iii) Based on comparison of the costs of the alternative measures to the costs of demonstrating compliance with the Commission's requirements using the essential elements of §§ 50.109 or 53.1590 of this chapter, the costs of fully demonstrating compliance with the Commission's requirements are not justified by the protection that would be provided.

■ 151. In § 73.56, revise paragraph (a)(3) to read as follows:

### § 73.56 Personnel access authorization requirements for nuclear power plants.

(a) \* \* \*

(3) Each applicant for an operating license under the provisions of part 50 of this chapter, each holder of a combined license under the provisions of part 52 of this chapter, and applicants for an operating license or holders of a combined license under part 53 of this chapter that do not meet the requirements of § 53.860(a)(2) of this chapter, shall implement the

requirements of this section before fuel is allowed on site (protected area).

\* \* \* \* \*

■ 152. In § 73.57, revise paragraph (a)(3) to read as follows:

**§ 73.57 Requirements for criminal history records checks of individuals granted unescorted access to a nuclear power facility, a non-power reactor, or access to Safeguards Information.**

(a) \* \* \*

(3) Before receiving its operating license under 10 CFR parts 50 or 53 or before the Commission makes its finding under §§ 52.103(g) or 53.1452(g) of this chapter, each applicant for a license to operate a nuclear power reactor (including an applicant for a combined license) or a non-power reactor may submit fingerprints for those individuals who will require unescorted access to the nuclear power facility or non-power reactor facility.

\* \* \* \* \*

■ 153. In § 73.58, revise paragraph (a) to read as follows:

**§ 73.58 Safety/security interface requirements for nuclear power reactors.**

(a) Each operating nuclear power reactor licensee with a license issued under parts 50, 52, or 53 of this chapter shall comply with the requirements of this section.

\* \* \* \* \*

■ 154. In § 73.67, revise paragraphs (d) introductory text and (f) introductory text to read as follows:

**§ 73.67 Licensee fixed site and in-transit requirements for the physical protection of special nuclear material of moderate and low strategic significance.**

\* \* \* \* \*

(d) *Fixed site requirements for special nuclear material of moderate strategic significance.* Each licensee who possesses, stores, or uses quantities and types of special nuclear material of moderate strategic significance at a fixed site or contiguous sites, except as allowed by paragraph (b)(2) of this section and except those who are licensed to operate a nuclear power reactor pursuant to part 50 or part 53, provided that the special nuclear material is located within a protected area and protected under § 73.55 or § 73.100, shall:

\* \* \* \* \*

(f) *Fixed site requirements for special nuclear material of low strategic significance.* Each licensee who possesses, stores, or uses special nuclear material of low strategic significance at a fixed site or contiguous sites, except those who are licensed to operate a nuclear power reactor pursuant to part

50 or part 53, provided that the special nuclear material is located within a protected area and protected under § 73.55 or § 73.100, shall:

\* \* \* \* \*

■ 155. In § 73.77, revise paragraphs (a), (b)(1), (c)(6) and (7) to read as follows:

**§ 73.77 Cybersecurity event notifications.**

(a) Each licensee subject to the provisions of §§ 73.54 or 73.110 shall notify the NRC Headquarters Operations Center via the Emergency Notification System (ENS), under paragraph (c) of this section:

(1) Within one hour after discovery of a cyberattack that adversely impacted:

(i) Safety-related or important-to-safety functions, security functions, or emergency preparedness functions (including offsite communications); or that compromised support systems and equipment resulting in adverse impacts to safety, security, or emergency preparedness functions within the scope of § 73.54; or,

(ii) Functions performed by digital assets that would prevent a postulated fission product release resulting in offsite doses exceeding the values in § 53.210 of this chapter, or functions performed by digital assets used by the licensee for implementing the physical security requirements in § 53.860(a) of this chapter.

(2) Within 4 hours:

(i) After discovery of a cyberattack that could have caused an adverse impact to:

(A) Safety-related or important-to-safety functions, security functions, or emergency preparedness functions (including offsite communications); or that could have compromised support systems and equipment, which if compromised, could have adversely impacted safety, security, or emergency preparedness functions within the scope of § 73.54; or,

(B) Functions performed by digital assets that would prevent a postulated fission product release resulting in offsite doses exceeding the values in § 53.210 of this chapter, or functions performed by digital assets used by the licensee for implementing the physical security requirements in § 53.860(a) of this chapter.

(ii) After discovery of a suspected or actual cyberattack initiated by personnel with physical or electronic access to digital computer and communication systems and networks within the scope of §§ 73.54 or 73.110.

(iii) After notification of a local, State, or other Federal agency (e.g., law enforcement, Federal Bureau of Investigation (FBI), etc.) of an event related to the licensee's implementation

of their cybersecurity program for digital computer and communication systems and networks within the scope of §§ 73.54 or 73.110 that does not otherwise require a notification under paragraph (a) of this section.

(3) Within 8 hours after receipt or collection of information regarding observed behavior, activities, or statements that may indicate intelligence gathering or pre-operational planning related to a cyberattack against digital computer and communication systems and networks within the scope of §§ 73.54 or 73.110.

(b) *Twenty-four hour recordable events.* (1) The licensee shall use the site corrective action program to record vulnerabilities, weaknesses, failures and deficiencies in their § 73.54 or § 73.110 cybersecurity program within 24 hours of their discovery.

\* \* \* \* \*

(c) \* \* \*

(6) *Declaration of emergencies.*

Notifications made to the NRC for the declaration of an emergency class shall be performed in accordance with §§ 50.72 or 53.1630 of this chapter, as applicable.

(7) *Elimination of duplication.*

Separate notifications and reports are not required for events that are also reportable under §§ 50.72 and 50.73 or §§ 53.1630 and 53.1640 of this chapter. However, these notifications should also indicate the applicable § 73.77 reporting criteria.

\* \* \* \* \*

■ 156. Add Subpart J consisting of §§ 73.100 through 73.120 to read as follows:

#### **Subpart J—Security Requirements at Commercial Nuclear Plants**

Sec.

73.100 Technology-inclusive requirements for physical protection of licensed activities at commercial nuclear plants against radiological sabotage.

73.110 Technology-inclusive requirements for protection of digital computer and communication systems and networks.

73.120 Access authorization program for commercial nuclear plants.

#### **Subpart J—Security Requirements at Commercial Nuclear Plants**

**§ 73.100 Technology-inclusive requirements for physical protection of licensed activities at commercial nuclear plants against radiological sabotage.**

(a) *Introduction.* (1) Each licensee that is licensed to operate a commercial nuclear plant under 10 CFR part 53 and elects to implement the requirements of this section must do so through its physical security plan, training and qualification plan, safeguards

contingency plan, and cybersecurity plan, referred to collectively hereafter as “security plans,” before initial fuel load into the reactor (or, for a fueled manufactured reactor, before initiating the physical removal of any one of the independent physical mechanisms to prevent criticality required under § 53.620(d)(1) of this chapter).

(2) The security plans must identify, describe, and account for site-specific conditions that affect the licensee’s capability to satisfy the requirements of this section.

(b) *General performance objective and requirements.* (1) The licensee must establish, implement, and maintain a physical protection program and a security organization, which will have as their objective to provide reasonable assurance that activities involving special nuclear material are not inimical to the common defense and security and do not constitute an unreasonable risk to the public health and safety.

(2) To satisfy the general performance objective of paragraph (b)(1) of this section, the physical protection program must protect against the design basis threat of radiological sabotage as stated in § 73.1. Specifically, the licensee must—

(i) Ensure that the physical protection program capabilities to protect against the design basis threat of radiological sabotage are maintained at all times; and

(ii) Provide defense in depth in achieving performance requirements through the integration of engineered systems, administrative controls, and management measures.

(3) The physical protection program must be designed and implemented to achieve and maintain the reliability and availability of structures, systems, and components (SSCs) required for demonstrating compliance with the following performance requirements at all times:

(i) Intrusion detection. The licensee must be capable of detecting attempted and actual unauthorized access to interior and exterior areas containing SSCs needed to implement safety and security functions.

(ii) Intrusion assessment. The licensee must be capable of timely assessment for determining the cause of a detected intrusion.

(iii) Security communication. The licensee must be capable of continuous security communications.

Communication systems must account for design basis threats that can interrupt or interfere with continuity or integrity of communications.

(iv) Security response. The physical protection program must be designed to provide timely security response to

interdict and neutralize adversary attacks up to and including the design basis threat of radiological sabotage. The physical protection program must be designed to provide layers of security response, with each layer assuring that a single failure does not result in the loss of capability to neutralize the design basis threat adversary. Structures, systems, and components relied on for delay functions must be designed to allow for timely security responses to adversary attacks with adequate defense in depth.

(A) The security response may rely on the use of onsite responders, law enforcement or other offsite armed responders, or a combination thereof, to fulfill the interdiction and neutralization functions required by paragraph (b)(3)(iv) of this section. A licensee relying entirely or partially on law enforcement or other offsite armed responders must—

(1) Maintain the capability to detect, assess, interdict, and neutralize threats as required by paragraphs (b)(3)(i), (b)(3)(ii), and (b)(3)(iv) of this section;

(2) Provide adequate delay to enable law enforcement or other offsite armed responders to fulfill the interdiction and neutralization functions for threats up to and including the design basis threat of radiological sabotage;

(3) Provide necessary information about the facility and make available periodic training to law enforcement or other offsite armed responders who will fulfill the interdiction and neutralization functions for threats up to and including the design basis threat of radiological sabotage;

(4) Fully describe in the safeguards contingency plan the role that law enforcement or other offsite armed responders will play in the licensee’s protective strategy. The description must provide sufficient detail to enable the NRC to determine that the licensee’s physical protection program provides reasonable assurance of adequate protection against threats up to and including the design basis threat of radiological sabotage; and

(5) Identify criteria and measures to compensate for the degradation or absence of law enforcement or other offsite armed responders and propose suitable compensatory measures that meet the requirements of paragraph (h)(3) of this section to address this degradation.

(B) For licensees relying entirely or partially on law enforcement responders to fulfill the interdiction and neutralization functions required by paragraph (b)(3)(iv) of this section, the training and qualification requirements related to armed response personnel in

paragraphs (c) and (e) of this section do not apply to law enforcement responders. The licensee shall continue to satisfy the performance evaluation requirements in paragraph (g) of this section for all armed response personnel, including law enforcement.

(v) Protecting against land and waterborne vehicle bomb assaults. The licensee must be capable of protecting the plant against the design basis threat vehicle bomb assault. The methods that are relied on to protect against a design basis threat land vehicle and waterborne vehicle bomb assault must be designed to protect the reactor building and structures containing safety- or security-related systems, and components from explosive effects.

(vi) Access control portals. The licensee must be capable of detecting and denying unauthorized access to persons and pass-through of contraband materials (e.g., weapons, incendiaries, explosives) to protected areas.

(4) The licensee must meet the requirements related to target sets in § 73.55(f).

(5) The licensee must identify and analyze site-specific conditions, including target sets, that may affect the physical protection program needed to implement the requirements of this section. The licensee must account for these conditions in demonstrating compliance with the requirements of this section.

(6) The licensee must establish, implement, and maintain a performance evaluation program to assess the effectiveness of the licensee’s implementation of the physical protection program to protect against the design basis threat of radiological sabotage.

(7) The licensee must establish, implement, and maintain an access authorization program under § 73.56 and must describe the program in the physical security plan.

(8) The licensee must establish, implement, and maintain a cybersecurity program under §§ 73.54 or 73.110 and must describe the program in the cybersecurity plan.

(9) The licensee must establish, implement, and maintain an insider mitigation program and must describe the program in the physical security plan.

(i) The insider mitigation program must monitor the initial and continuing trustworthiness and reliability of individuals granted or retaining unescorted access or unescorted access authorization to a protected or vital area, and implement defense-in-depth methodologies to minimize the potential for an insider (active, passive, or both)

to adversely affect, either directly or indirectly, the licensee's capability to protect against radiological sabotage.

(ii) The insider mitigation program must integrate elements of—

(A) The access authorization program under § 73.56;

(B) The fitness-for-duty program under 10 CFR part 26;

(C) The cybersecurity program under §§ 73.54 or 73.110; and

(D) The physical protection program under this section.

(10) The licensee must have the capability to track, trend, correct, and prevent recurrence of failures and deficiencies in the implementation of the requirements of this section.

(11) Implementation of security plans and associated procedures must be coordinated with other onsite plans and procedures to preclude conflict during both normal and emergency conditions and ensure the adequate management of the safety and security interface.

(12)(i) The licensee must ensure that the firearms background check requirements of § 73.17 of this part are met for all members of the security organization whose official duties require access to covered weapons or who inventory enhanced weapons.

(ii) The provisions of this paragraph are only applicable to licensees subject to this section that are also subject to the firearms background check provisions of § 73.17 of this part.

(c) *Security organization.* The licensee must establish and maintain a security organization that is staffed, trained, qualified, and equipped to implement the physical protection program under the requirements of this section.

(1) The licensee must establish a management system for maintaining and implementing security policies and procedures to implement the requirements of this section and the security plans.

(2) Implementing procedures must document the conduct of security operations, security design and configuration controls, maintenance, training and qualification, and contingency responses.

(3) The licensee must—

(i) Establish a process for the approval of designs, policies, processes, and procedures and changes by the individual with overall responsibility for the physical protection program; and

(ii) Ensure that revisions and changes to the physical protection program and implementing policies, processes, and procedures satisfy the requirements of this section.

(4) The licensee must retain, in accordance with § 73.70, all analyses, assessments, calculations, and

descriptions of the technical basis for demonstrating compliance with the performance requirements of § 73.100(b). The licensee must protect these records in accordance with the requirements for protecting safeguards information in §§ 73.21 and 73.22.

(5) The licensee may not permit any individual to implement any part of the physical protection program unless the individual has been trained, equipped, and qualified to perform their assigned duties and responsibilities in accordance with the training and qualification plan.

(d) *Search requirements.* The licensee must establish and implement searches of individuals, vehicles, and materials to detect and prevent the introduction into the protected area of firearms, explosives, incendiary devices, or other items and material which could be used to commit radiological sabotage.

(e) *Training and qualification program.* The licensee must establish and maintain a training and qualification program that ensures personnel who are responsible for the physical protection of the facility against radiological sabotage are able to effectively perform their assigned security-related job duties for implementing the requirements of this section and must describe the program in the training and qualification plan.

(f) *Security reviews.* The licensee must establish and implement security reviews to assess the effectiveness of the implementation of the physical protection program. Security reviews must be performed by individuals independent of those personnel responsible for program management and any individual who has direct responsibility for implementing the onsite physical protection program.

(1) The licensee must review each element of the physical protection program at a frequency commensurate with the importance or significance to safety of plant operations to ensure timely identification and documentation of vulnerabilities, improvements, and corrective actions. The objective of these reviews must be maintaining effective implementation of the engineered and administrative controls required to achieve the physical protection program functions and the management system required to implement programs and requirements in this section.

(2) The licensee must establish and perform self-assessments to ensure the effective implementation of the physical protection program functions of detection, assessment, communication, delay, and interdiction and neutralization to protect against the design basis threat of radiological

sabotage. The licensee must perform design verification and assessments of the capabilities of active and passive engineering systems relied on to protect against the design basis threat.

(3) Reviews of the security program must include, but are not limited to, an audit of the effectiveness of the physical protection program, security plans, implementing procedures, cybersecurity programs, safety/security interface activities, the testing, maintenance, and calibration program, and response commitments by local, State, and Federal law enforcement authorities.

(4) The results and recommendations of the onsite physical protection program reviews, management's findings regarding program effectiveness, and any actions taken as a result of recommendations from prior program reviews, must be documented in a report and must be maintained in an auditable form and available for inspection.

(g) *Performance evaluation.* Licensee performance evaluations must include methods appropriate and necessary to assess, test, and challenge the integration of the physical protection program's functions to protect against the design basis threat, including measures to protect against cyberattack and engineered systems designed to protect against the design basis threat standalone ground vehicle bomb attack.

(1) The licensee must establish the frequencies for performance evaluations commensurate with the security significance of the physical protection program.

(2) The licensee must document processes and procedures for implementing the performance evaluations. The licensee must maintain records, including results, findings, and corrective actions identified during the performance evaluations.

(h) *Maintenance, testing, and calibration and corrective actions.* (1) The licensee must ensure that security SSCs, including supporting systems, are inspected, tested, and calibrated for operability and performance at intervals necessary and sufficient to meet the requirements of this section.

(2) The licensee must implement corrective actions to ensure resolution of identified vulnerabilities and deficiencies to meet the requirements of this section.

(3) The licensee must establish and implement timely compensatory measures for degraded or inoperable security SSCs to meet the requirements of this section. Compensatory measures must provide a level of protection that is equivalent to the protection that was provided prior to the degradation or

inoperability of the security structures, systems, or components.

(4) The licensee must document processes and procedures and maintain records for implementing the corrective actions, compensatory measures, and maintenance, inspection, testing, and calibration of security SSCs.

(i) *Suspension of security measures.*

(1) The licensee may suspend implementation of affected requirements of this section in accordance with § 53.740(h) of this chapter under the following conditions:

(i) In an emergency, when action is immediately needed to protect the public health and safety; and

(ii) During severe weather, when the suspension of affected security measures is immediately needed to protect the personal health and safety of personnel.

(2) Suspended security measures must be reinstated as soon as conditions permit.

(3) The suspension of security measures must be reported and documented in accordance with the provisions of §§ 73.1200 and 73.1205.

(j) *Records.* (1) The Commission may inspect, copy, retain, and remove all reports, records, and documents required to be kept by Commission regulations, orders, or license conditions, whether the reports, records, and documents are kept by the licensee or a contractor.

(2) The licensee must maintain all records required to be kept by Commission regulations, orders, or license conditions, until the Commission terminates the license for which the records were developed and must maintain superseded portions of these records for at least 3 years after the record is superseded, unless otherwise specified by the Commission.

(3) If a contracted security force is used to implement the onsite physical protection program, the licensee's written agreement with the contractor must be retained by the licensee as a record for the duration of the contract.

(4) Review and audit reports must be available for inspection, for a period of 3 years.

**§ 73.110 Technology-inclusive requirements for protection of digital computer and communication systems and networks.**

(a) Each licensee that is licensed to operate a commercial nuclear plant under 10 CFR part 53 and elects to implement the requirements of this section must establish, implement, and maintain a cybersecurity program that is commensurate with the potential consequences resulting from

cyberattacks, up to and including the design basis threat as described in § 73.1. The cybersecurity program must provide reasonable assurance that digital computer and communication systems and networks are adequately protected against cyberattacks that are capable of causing the following consequences:

(1) Adversely impacting the functions performed by digital assets that would prevent a postulated fission product release resulting in offsite doses exceeding the values in § 53.210 of this chapter.

(2) Adversely impacting the functions performed by digital assets used by the licensee for implementing the physical security requirements in § 53.860(a) of this chapter.

(b) To protect digital computer and communication systems and networks associated with the functions described in paragraphs (a)(1) and (2), the licensee must—

(1) Analyze the potential consequences resulting from cyberattacks on digital computer and communication systems and networks and identify those assets that must be protected to demonstrate compliance with paragraph (a) of this section; and

(2) Implement the cybersecurity program in accordance with paragraph (d) of this section.

(c) The licensee must comply with the requirements in § 73.54(a)(2) for the systems and networks identified in paragraph (b)(1) of this section in a manner that is commensurate with the potential consequences resulting from cyberattacks.

(d) The cybersecurity program must be designed in a manner that is commensurate with the potential consequences resulting from cyberattacks through the following steps:

(1) Implement security controls to protect the assets identified under paragraph (b)(1) of this section from cyberattacks, commensurate with their safety and security significance;

(2) Apply and maintain defense-in-depth protective strategies to ensure the capability to detect, delay, respond to, and recover from cyberattacks capable of causing the consequences identified in paragraph (a) of this section;

(3) Mitigate the adverse effects of cyberattacks capable of causing the consequences identified in paragraph (a) of this section; and

(4) Ensure that the functions of protected assets identified under paragraph (b)(1) of this section are not adversely impacted due to cyberattacks.

(e) The licensee must implement the following requirements in a manner that

is commensurate with the potential consequences resulting from cyberattacks:

(1) As part of the cybersecurity program, the licensee must comply with the requirements in § 73.54(d)(1), (2), and (4), and must ensure that modifications to assets, identified under paragraph (b)(1) of this section are evaluated before implementation to ensure that the cybersecurity performance objectives identified in paragraph (a) of this section are maintained.

(2) The licensee must establish, implement, and maintain a cybersecurity plan that implements the cybersecurity program requirements of this section.

(i) The cybersecurity plan must describe how the requirements of this section will be implemented and must account for the site-specific conditions that affect implementation.

(ii) The cybersecurity plan must include measures for incident response and recovery for cyberattacks. The cybersecurity plan must include the analysis identified under paragraph (b)(1) of this section and describe how the licensee will—

(A) Apply and maintain defense-in-depth protective strategies as required in paragraph (d)(2) of this section;

(B) Maintain the capability for timely detection and response to cyberattacks;

(C) Mitigate the consequences of cyberattacks;

(D) Correct exploited vulnerabilities; and

(E) Restore affected systems, networks, and/or equipment affected by cyberattacks.

(3) The licensee must develop and maintain written policies and implementing procedures to implement the cybersecurity plan. Policies, implementing procedures, and other supporting technical information used by the licensee need not be submitted for Commission review and approval as part of the cybersecurity plan but are subject to inspection by NRC staff on a periodic basis.

(4) The licensee must establish and implement cybersecurity reviews to assess the effectiveness of the implementation of the cybersecurity program.

(i) The licensee must review each element of the cybersecurity program at a frequency commensurate with the importance or significance to safety of plant operations to ensure timely identification and documentation of vulnerabilities, improvements, and corrective actions.

(ii) Cybersecurity reviews must be performed by individuals independent

of those personnel responsible for program management and any individual who has direct responsibility for implementing the cybersecurity program.

(iii) The licensee must establish and perform self-assessments to ensure the effective implementation of the cybersecurity program.

(iv) The results and recommendations of the cybersecurity program reviews, management's findings regarding program effectiveness, and any actions taken as a result of recommendations from prior program reviews, must be documented in a report and must be maintained in an auditable form and available for inspection.

(5) The licensee must retain all records and supporting technical documentation required to demonstrate compliance with the requirements of this section as a record until the Commission terminates the license for which the records were developed and must maintain superseded portions of these records for at least three (3) years after the record is superseded, unless otherwise specified by the Commission.

#### **§ 73.120 Access authorization program for commercial nuclear plants.**

(a) *Introduction and scope.* Each applicant for an operating license or a holder of a combined license under 10 CFR part 53 must establish, maintain, and implement an access authorization program before initial fuel load into the reactor (or, for a fueled manufactured reactor, before initiating the physical removal of any one of the independent physical mechanisms to prevent criticality required under § 53.620(d)(1) of this chapter). The requirements in this section apply to licensees satisfying the criterion in § 53.860(a)(2)(i) of this chapter.

(b) *Applicability.* (1) The following individuals must be subject to an access authorization program under this section:

(i) Any individual to whom a licensee intends to grant unescorted access to a commercial nuclear plant protected area, vital area, or controlled access area where licensed material is used or stored;

(ii) Any individual whose duties and responsibilities permit the individual to take actions by electronic means, either on site or remotely, that could adversely impact the licensee's or applicant's operational safety, security, or emergency preparedness;

(iii) Any individual who has responsibilities for implementing a licensee's or applicant's protective strategy, including armed security force officers, alarm station operators, and

tactical response team leaders but not including Federal, State, or local law enforcement personnel; and

(iv) The licensee or applicant access authorization program reviewing official or contractor or vendor access authorization program reviewers.

(2) The licensee or applicant may subject other individuals, including employees of a contractor or a vendor who are designated in access authorization program procedures, to an access authorization program that demonstrates compliance with the requirements of this section.

(c) *General performance objectives and requirements.* Each licensee's or applicant's access authorization program under this section must demonstrate that the individuals who are specified in paragraph (b) of this section are trustworthy and reliable, such that they do not constitute an unreasonable risk to public health and safety or the common defense and security. The licensee's access authorization program must maintain the capabilities for demonstrating compliance with the following performance requirements:

(1) *Background investigation.* (i)(A) Licensees and applicants must ensure that any individual seeking initial unescorted access or to maintain unescorted access is subject to a background investigation.

(B) Background investigations must include the program elements contained under § 37.25 of this chapter and must also include a credit history evaluation.

(ii) Background investigations must include fingerprinting and an FBI identification and criminal history records check in accordance with § 37.27 of this chapter.

(iii) Licensees must have the informed and signed consent of the subject individual to initiate a background investigation. This consent must include authorization to share personal information with other individuals or organizations as necessary to complete the background investigation. A signed consent must be obtained prior to any reinvestigation. The subject individual may withdraw his or her consent at any time. Licensees must inform the individual that—

(A) If an individual withdraws his or her consent, the licensee may not initiate any elements of the background investigation that were not in progress at the time the individual withdrew his or her consent; and

(B) The withdrawal of consent for the background investigation is sufficient cause for denial or termination of unescorted access authorization.

(2) *Behavioral observation.* Licensees, applicants, contractors, and vendors must ensure the access authorization program includes provisions that the individuals specified in paragraph (b) of this section are subject to behavioral observation.

(i) Each person subject to behavioral observation must communicate to the licensee or applicant observed behaviors or activities of individuals that may constitute an unreasonable risk to the health and safety of the public and common defense and security.

(ii) Behavioral observation must include visual observation, in person or remotely by video, to detect and promptly report to plant supervision any concerns arising from behavioral observation, including, but not limited to, concerns related to any questionable behavior patterns or activities of others.

(3) *Self-reporting of legal actions.* Licensees or applicants must inform personnel who are granted and who maintain unescorted access of their responsibilities to self-report to plant supervision legal actions taken by a law enforcement authority or court of law against the individual that could result in incarceration or a court order or that requires a court appearance, including but not limited to an arrest, an indictment, the filing of charges, or a conviction, but excluding minor civil actions or misdemeanors such as parking violations or speeding tickets, for any individual who has applied for unescorted access or who maintains unescorted access.

(4) *Unescorted access.* Licensees or applicants must grant unescorted access only after the licensee has verified an individual is trustworthy and reliable. A list of persons currently approved for unescorted access to a protected area, vital area, or controlled access area must be maintained at all times. Unescorted access determinations must be reviewed annually by the reviewing official. Licensees and applicants must complete an FBI criminal history record check update for each individual maintaining unescorted access, within 10 years of the last review.

(5) *Termination of unescorted access.* Licensees and applicants must promptly terminate unescorted access when this access is no longer required or a reviewing official determines an individual is no longer trustworthy and reliable in accordance with this section.

(6) *Determination basis for access.* (i) The licensee's or applicant's reviewing official must determine whether to permit, deny, unfavorably terminate, maintain, or administratively withdraw an individual's unescorted access based on an evaluation of all of the



information collected to demonstrate compliance with the requirements of this section.

(ii) Licensees and applicants must provide individuals subject to this section, prior to any final adverse determination, the right to complete, correct, and explain information obtained as a result of the licensee's background investigation pursuant to § 37.23(g) of this chapter.

(iii) The licensee's or applicant's reviewing officials are the only individuals authorized to make unescorted access determination decisions. Each licensee or applicant must name one or more individuals to be reviewing officials pursuant to the requirements of § 37.23(b)(2) of this chapter.

(7) *Review procedures.* Review procedures must be established in accordance with § 37.23(f) of this chapter, to include provisions for the notification in writing of individuals who are denied unescorted access or who are unfavorably terminated.

(8) *Protection of information.* Licensees, applicants, contractors, or vendors must establish and maintain a system of files and procedures in accordance with § 37.31 of this chapter, to ensure personal information is not disclosed to unauthorized persons.

(9) *Access authorization reviews and corrective action.* Licensees and applicants must develop, implement, and maintain procedures for conduct of access authorization reviews and corrective actions in accordance with § 37.33 of this chapter to ensure the continuing effectiveness of the access authorization program and to ensure that the access authorization program and program elements are in compliance with the requirements of this section. Each licensee and applicant must be responsible for the continuing effectiveness of the access authorization program, including access authorization program elements that are provided by the contractors or vendors, and the access authorization programs of any of the contractors or vendors that are accepted by the licensee or applicant.

(10) *Records.* Licensees, applicants, and contractors or vendors must document the processes and procedures for maintaining records used or created to establish an individual's trustworthiness and reliability or to document access determinations. Licensees, applicants, and contractor or vendors must—

(i) Retain documentation regarding the trustworthiness and reliability of individual employees for 3 years from the date the individual no longer requires unescorted access;

(ii) Retain a copy of the current access authorization program procedures as a record for 3 years after the procedure is no longer needed. If any portion of the procedure is superseded, retain the superseded material for 3 years after the record is superseded; and

(iii) Retain the list of persons approved for unescorted access for 3 years after the list is superseded or replaced. Records maintained in any database(s) must be available for NRC review.

■ 157. In § 73.1200, revise paragraphs (a) introductory text, (c)(1) introductory text, (e)(1) introductory text, (e)(3) and (4), (g)(1) introductory text, (o)(5)(i) and (o)(6)(i), (r) and (s) to read as follows:

**§ 73.1200 Notification of physical security events.**

(a) *15-minute notifications—facilities.* Each licensee subject to the provisions of § 73.20, § 73.45, § 73.46, § 73.51, § 73.55, or § 73.100 must notify the NRC Headquarters Operations Center, as soon as possible but within 15 minutes after—

\* \* \* \* \*

(c) \* \* \*

(1) Each licensee subject to the provisions of §§ 73.20, 73.45, 73.46, 73.50, 73.51, 73.55, 73.60, 73.67, or 73.100 must notify the NRC Headquarters Operations Center as soon as possible but no later than 1 hour after the time of discovery of the following significant facility security events involving—

\* \* \* \* \*

(e) \* \* \*

(1) Each licensee subject to the provisions of §§ 73.20, 73.45, 73.46, 73.50, 73.51, 73.55, 73.60, 73.67, or 73.100 must notify the NRC Headquarters Operations Center within 4 hours after time of discovery of the following facility security events involving—

\* \* \* \* \*

(3)(i) An event involving a law enforcement response to the facility that could reasonably be expected to result in public or media inquiries and that does not otherwise require a notification under paragraphs (a) through (h) of this section, or in other NRC regulations such as § 50.72(b)(2)(xi) or § 53.1630(b)(2)(v) of this chapter.

(ii) As an exemption, licensees need not report law enforcement responses to minor incidents, such as traffic accidents.

(4) For licensees subject to the provisions of § 73.55 or § 73.100 of this part, an event involving the licensee's suspension of security measures.

\* \* \* \* \*

(g) \* \* \*

(1) Each licensee subject to the provisions of § 73.20, § 73.45, § 73.46, § 73.50, § 73.51, § 73.55, § 73.60, § 73.67, or § 73.100 must notify the NRC Headquarters Operations Center within 8 hours after time of discovery of the following facility security program failures involving—

\* \* \* \* \*

(o) \* \* \*

(5) \* \* \*

(i) Licensees must establish the requested continuous communications channel once the licensee has completed other required notifications under this section, § 50.72 of this chapter, appendix E to part 50 of this chapter, § 53.1630 of this chapter, § 70.50 of this chapter; or § 72.75 of this chapter; as appropriate.

\* \* \* \* \*

(6) \* \* \*

(i) Licensees must establish the requested continuous communications channel once the licensee or the movement control center has completed other required notifications under this section, § 50.72 of this chapter, appendix E to part 50 of this chapter, § 53.1630 of this chapter, § 70.50 of this chapter; § 72.75 of this chapter; or requested assistance from the LLEA, as appropriate.

\* \* \* \* \*

(r) *Declaration of emergencies.* Licensees notifying the NRC of the declaration of an emergency class must do so in accordance with §§ 50.72, 53.1630, 63.73, 70.50, and 72.75 of this chapter, as applicable.

(s) *Elimination of duplication.* Licensees with notification obligations under paragraphs (a) through (h), (m), and (n) of this section and §§ 50.72, 53.1630, 63.73, 70.50, and 72.75 of this chapter may notify the NRC of events in a single communication. This communication must identify each regulation under which the licensee is reporting.

\* \* \* \* \*

■ 158. In § 73.1205, revise paragraph (b)(2) to read as follows:

**§ 73.1205 Written follow-up reports of physical security events.**

\* \* \* \* \*

(b) \* \* \*

(2)(i) Licensees subject to § 50.73 or § 53.1640 of this chapter must prepare the written follow-up report on NRC Form 366.

(ii) Licensees not subject to § 50.73 or § 53.1640 of this chapter must prepare the written follow-up report in a letter format.

\* \* \* \* \*

- 159. In § 73.1210, revise paragraphs (a)(1) and (b)(3)(i) to read as follows:

**§ 73.1210 Recordkeeping of physical security events.**

(a) \* \* \*

(1) Licensees with facilities or shipment activities subject to the provisions of § 73.20, § 73.25, § 73.26, § 73.27, § 73.37, § 73.45, § 73.46, § 73.50, § 73.51, § 73.55, § 73.60, § 73.67, or § 73.100, must record the physical security events and conditions adverse to security that are specified in paragraphs (c) through (f) of this section.

\* \* \* \* \*

(b) \* \* \*

(3)(i) Licensees must record these physical security events and conditions adverse to security in either a stand-alone safeguards event log or as part of the licensee's corrective action program, as specified under the applicable quality assurance program provisions of parts 50, 52, 53, 60, 63, 70, and 72 of this chapter, or both.

\* \* \* \* \*

- 160. In § 73.1215, revise paragraph (d)(1) introductory text to read as follows:

**§ 73.1215 Suspicious activity reports.**

\* \* \* \* \*

(d) \* \* \*

(1) For licensees subject to the provisions of §§ 73.20, 73.45, 73.46, 73.50, 73.51, 73.55, 73.60, 73.67, or 73.100, the licensees must report activities they assess are suspicious. Examples include, but are not limited to, the following:

\* \* \* \* \*

- 161. In appendix B to part 73, revise *Definitions* introductory text to read as follows:

**Appendix B to Part 73—General Criteria for Security Personnel**

\* \* \* \* \*

**Definitions**

Terms defined in parts 50, 53, 70, and 73 of this chapter have the same meaning when used in this appendix.

\* \* \* \* \*

**PART 74—MATERIAL CONTROL AND ACCOUNTING OF SPECIAL NUCLEAR MATERIAL**

- 162. The authority citation for 10 CFR part 74 continues to read as follows:

**Authority:** Atomic Energy Act of 1954, secs. 53, 57, 161, 182, 223, 234, 1701 (42 U.S.C. 2073, 2077, 2201, 2232, 2273, 2282, 2297f); Energy Reorganization Act of 1974, secs. 201, 202 (42 U.S.C. 5841, 5842); 44 U.S.C. 3504 note.

- 163. In § 74.31, revise paragraph (a) introductory text to read as follows:

**§ 74.31 Nuclear material control and accounting for special nuclear material of low strategic significance.**

(a) *General performance objectives.*

Each licensee who is authorized to possess and use more than one effective kilogram of special nuclear material of low strategic significance, excluding sealed sources, at any site or contiguous sites subject to control by the licensee, other than a production or utilization facility licensed pursuant to parts 50, 53, or 70 of this chapter, or operations involved in waste disposal, shall implement and maintain a Commission approved material control and accounting system that will achieve the following objectives:

\* \* \* \* \*

- 164. In § 74.41, revise paragraph (a) introductory text to read as follows:

**§ 74.41 Nuclear material control and accounting for special nuclear material of moderate strategic significance.**

(a) *General performance objectives.*

Each licensee who is authorized to possess special nuclear material (SNM) of moderate strategic significance or SNM in a quantity exceeding one effective kilogram of strategic special nuclear material in irradiated fuel reprocessing operations other than as sealed sources and to use this material at any site other than a nuclear reactor licensed pursuant to parts 50 or 53 of this chapter; or as reactor irradiated fuels involved in research, development, and evaluation programs in facilities other than irradiated fuel reprocessing plants; or an operation involved with waste disposal, shall establish, implement, and maintain a Commission-approved material control and accounting (MC&A) system that will achieve the following performance objectives:

\* \* \* \* \*

- 165. In § 74.51, revise paragraph (a) introductory text to read as follows:

**§ 74.51 Nuclear material control and accounting for strategic special nuclear material.**

(a) *General performance objectives.*

Each licensee who is authorized to possess five or more formula kilograms of strategic special nuclear material (SSNM) and to use such material at any site, other than a nuclear reactor licensed pursuant to parts 50 or 53 of this chapter, an irradiated fuel reprocessing plant, an operation involved with waste disposal, or an independent spent fuel storage facility licensed pursuant to part 72 of this chapter shall establish, implement, and maintain a Commission-approved material control and accounting (MC&A)

system that will achieve the following objectives:

\* \* \* \* \*

**PART 75—SAFEGUARDS ON NUCLEAR MATERIAL—IMPLEMENTATION OF SAFEGUARDS AGREEMENTS BETWEEN THE UNITED STATES AND THE INTERNATIONAL ATOMIC ENERGY AGENCY**

- 166. The authority citation for 10 CFR part 75 continues to read as follows:

**Authority:** Atomic Energy Act of 1954, secs. 53, 63, 103, 104, 122, 161, 223, 234, 1701 (42 U.S.C. 2073, 2093, 2133, 2134, 2152, 2201, 2273, 2282, 2297f); Energy Reorganization Act of 1974, sec. 201 (42 U.S.C. 5841); Nuclear Waste Policy Act of 1982, secs. 135, 141 (42 U.S.C. 10155, 10161); 44 U.S.C. 3504 note.

- 167. In § 75.4, revise the introductory text and paragraph (6) of the definition for “Facility” to read as follows:

**§ 75.4 Definitions.**

\* \* \* \* \*

Unless otherwise defined in this section, the terms defined in §§ 40.4, 50.2, 53.020, and 70.4 of this chapter have the same meaning when used in this part.

\* \* \* \* \*

*Facility* means:

\* \* \* \* \*

(6) Any plant or location where the possession of more than 1 effective kilogram of nuclear material is licensed pursuant to 10 CFR part 40, 50, 53, 60, 61, 63, 70, 72, 76, or 150 of this chapter or an Agreement State license.

\* \* \* \* \*

**PART 95—FACILITY SECURITY CLEARANCE AND SAFEGUARDING OF NATIONAL SECURITY INFORMATION AND RESTRICTED DATA**

- 168. The authority citation for 10 CFR part 95 continues to read as follows:

**Authority:** Atomic Energy Act of 1954, secs. 145, 161, 223, 234 (42 U.S.C. 2165, 2201, 2273, 2282); Energy Reorganization Act of 1974, sec. 201 (42 U.S.C. 5841); 44 U.S.C. 3504 note; E.O. 10865, as amended, 25 FR 1583, 3 CFR, 1959–1963 Comp., p. 398; E.O. 12829, 58 FR 3479, 3 CFR, 1993 Comp., p. 570; E.O. 12968, 60 FR 40245, 3 CFR, 1995 Comp., p. 391; E.O. 13526, 75 FR 707, 3 CFR, 2009 Comp., p. 298.

- 169. In § 95.5, revise the definition for “License” to read as follows:

**§ 95.5 Definitions.**

\* \* \* \* \*

*License* means a license issued under 10 CFR part 50, 52, 53, 54, 60, 63, 70, or 72.

\* \* \* \* \*

**§ 95.39 [Amended]**

■ 170. In § 95.39(a), remove “part 52” and add in its place “parts 52 or 53.”

**PART 140—FINANCIAL PROTECTION REQUIREMENTS AND INDEMNITY AGREEMENTS**

■ 171. The authority citation for 10 CFR part 140 continues to read as follows:

**Authority:** Atomic Energy Act of 1954, secs. 161, 170, 223, 234 (42 U.S.C. 2201, 2210, 2273, 2282); Energy Reorganization Act of 1974, secs. 201, 202 (42 U.S.C. 5841, 5842); 44 U.S.C. 3504 note.

■ 172. In § 140.2, revise paragraphs (a)(1) and (2) to read as follows:

**§ 140.2 Scope.**

(a) \* \* \*

(1) To each person who is an applicant for or holder of a license issued under 10 CFR part 50, 52, 53, or 54 to operate a nuclear reactor, and

(2) With respect to an extraordinary nuclear occurrence, to each person who is an applicant for or holder of a license to operate a production facility or a utilization facility (including an operating license issued under part 50 or part 53 of this chapter and a combined license under part 52 or part 53 of this chapter), and to other persons indemnified with respect to the involved facilities.

\* \* \* \* \*

■ 173. Revise § 140.10 to read as follows:

**§ 140.10 Scope.**

This subpart applies to each person who is an applicant for or holder of a license issued under 10 CFR parts 50, 53 or 54 to operate a nuclear reactor, or is the applicant for or holder of a combined license issued under 10 CFR parts 52, 53, or 54, except licenses held by persons found by the Commission to be Federal agencies or nonprofit educational institutions licensed to conduct educational activities. This subpart also applies to persons licensed to possess and use plutonium in a plutonium processing and fuel fabrication plant.

■ 174. In § 140.11, revise paragraph (b) to read as follows:

**§ 140.11 Amounts of financial protection for certain reactors.**

\* \* \* \* \*

(b) In any case where a person is authorized under 10 CFR parts 50, 52, 53, or 54 to operate two or more nuclear reactors at the same location, the total primary financial protection required of the licensee for all such reactors is the highest amount which would otherwise be required for any one of those

reactors; provided, that such primary financial protection covers all reactors at the location.

■ 175. In § 140.12, revise paragraph (c) to read as follows:

**§ 140.12 Amount of financial protection required for other reactors.**

\* \* \* \* \*

(c) In any case where a person is authorized under 10 CFR parts 50, 52, 53, or 54 to operate two or more nuclear reactors at the same location, the total financial protection required of the licensee for all such reactors is the highest amount which would otherwise be required for any one of those reactors; provided, that such financial protection covers all reactors at the location.

\* \* \* \* \*

■ 176. Revise § 140.13 to read as follows:

**§ 140.13 Amount of financial protection required of certain holders of construction permits and combined licenses under 10 CFR part 52.**

Each holder of a 10 CFR part 50 or 10 CFR part 53 construction permit, or a holder of a combined license under parts 52 or 53 of this chapter before the date that the Commission had made the finding under §§ 52.103(g) or 53.1452(g) of this chapter, who also holds a license under part 70 of this chapter authorizing ownership, possession and storage only of special nuclear material at the site of the nuclear reactor for use as fuel in operation of the nuclear reactor after issuance of either an operating license under 10 CFR part 50 or 53, or a combined license under 10 CFR part 52 or 53, shall, during the period before issuance of a license authorizing operation under 10 CFR part 50 or 53, or the period before the Commission makes the finding under § 52.103(g) or § 53.1452(g) of this chapter, as applicable, have and maintain financial protection in the amount of \$1,000,000. Proof of financial protection shall be filed with the Commission in the manner specified in § 140.15 before issuance of the license under part 70 of this chapter.

■ 177. In § 140.20, revise paragraphs (a)(1)(i) and (ii) to read as follows:

**§ 140.20 Indemnity agreements and liens.**

(a) \* \* \*

(1)(i) The effective date of the license (issued under part 50 or part 53 of this chapter) authorizing the licensee to operate the nuclear reactor involved; or

(ii) The date that the Commission makes the finding under §§ 52.103(g) or 53.1452(g) of this chapter; or

\* \* \* \* \*

**PART 150—EXEMPTIONS AND CONTINUED REGULATORY AUTHORITY IN AGREEMENT STATES AND IN OFFSHORE WATERS UNDER SECTION 274**

■ 178. The authority citation for 10 CFR part 150 continues to read as follows:

**Authority:** Atomic Energy Act of 1954, secs. 11, 53, 81, 83, 84, 122, 161, 181, 223, 234, 274 (42 U.S.C. 2014, 2201, 2231, 2273, 2282, 2021); Energy Reorganization Act of 1974, sec. 201 (42 U.S.C. 5841); Nuclear Waste Policy Act of 1982, secs. 135, 141 (42 U.S.C. 10155, 10161); 44 U.S.C. 3504 note.

■ 179. In § 150.15, revise paragraphs (a)(7)(iii) and (a)(8) to read as follows:

**§ 150.15 Persons not exempt.**

(a) \* \* \*

(7) \* \* \*

(iii) Greater than Class C (GTCC)

waste, as defined in part 72 of this chapter, in an ISFSI or an MRS licensed under part 72 of this chapter; the GTCC waste must originate in, or be used by, a facility licensed under parts 50, 52, or 53 of this chapter.

(8) Greater than Class C waste, as defined in part 72 of this chapter, that originates in, or is used by, a facility licensed under parts 50, 52, or 53 of this chapter and is licensed under part 30 and/or part 70 of this chapter.

\* \* \* \* \*

**PART 170—FEES FOR FACILITIES, MATERIALS, IMPORT AND EXPORT LICENSES, AND OTHER REGULATORY SERVICES UNDER THE ATOMIC ENERGY ACT OF 1954, AS AMENDED**

■ 180. The authority citation for 10 CFR part 170 continues to read as follows:

**Authority:** Atomic Energy Act of 1954, secs. 11, 161(w) (42 U.S.C. 2014, 2201(w)); Energy Reorganization Act of 1974, sec. 201 (42 U.S.C. 5841); 42 U.S.C. 2215; 31 U.S.C. 901, 902, 9701; 44 U.S.C. 3504 note.

■ 181. In § 170.3, revise the definitions for “Manufacturing License,” “Part 55 Reviews,” “Power reactor,” and “Special projects” to read as follows:

**§ 170.3 Definitions.**

\* \* \* \* \*

*Manufacturing license* means a license under subpart F of part 52 of this chapter or subpart H of part 53 of this chapter to manufacture a nuclear power reactor(s) to be operated at sites not identified in the license application.

\* \* \* \* \*

*Part 55 Reviews* as used in this part means those services provided by the Commission to administer requalification and replacement examinations and tests for reactor

operators licensed under 10 CFR part 55 or 53 of the Commission's regulations and employed by part 50 or 53 licensees. These services also include related items such as the preparation, review, and grading of the examinations and tests.

\* \* \* \* \*

*Power reactor* means a nuclear reactor designed to produce electrical or heat energy licensed by the Commission under the authority of section 103 or subsection 104b of the Act, and under the provisions of §§ 50.21(b), 50.22, or part 53 of this chapter.

\* \* \* \* \*

*Special projects* means specific services provided by the Commission for which fees are not otherwise specified in this chapter. This includes, but is not limited to, contested hearings on licensing actions directly related to U.S. Government national security initiatives (as determined by the NRC), topical report reviews, early site reviews, waste solidification activities, activities related to the tracking and monitoring of shipment of classified matter, services provided to certify licensee, vendor, or other private industry personnel as instructors for 10 CFR part 55 or 53 reactor operators, reviews of financial assurance submittals that do not require a license amendment, reviews of responses to Confirmatory Action Letters, reviews of uranium recovery licensees' land-use survey reports, and reviews of §§ 50.71 or 53.1545 of this chapter Final Safety Analysis Reports. Special projects does not include activities otherwise exempt from fees under this part. It also does not include those contested hearings for which a fee exemption is granted in § 170.11(a)(2), including those related to individual plant security modifications.

\* \* \* \* \*

■ 182. In § 170.12, revise paragraph (d)(1)(v) to read as follows:

**§ 170.12 Payment of fees.**

\* \* \* \* \*

(d) \* \* \*

(1) \* \* \*

(v) 10 CFR 50.71 or 53.1545 final safety analysis reports;

\* \* \* \* \*

**§ 170.21 [Amended]**

■ 183. In § 170.21, in footnote 1 remove the phrase "(e.g., 10 CFR 50.12, 10 CFR 73.5)" and add in its place the phrase "(e.g., 10 CFR 50.12, 10 CFR 53.080, 10 CFR 73.5)".

■ 184. Revise § 170.41 to read as follows:

**§ 170.41 Failure by an applicant or licensee to pay prescribed fees.**

If the Commission determines that an applicant or a licensee has failed to pay a prescribed fee required in this part, the Commission will not process any application and may suspend or revoke any license or approval issued to the applicant or licensee. The Commission may issue an order with respect to licensed activities that the Commission determines to be appropriate or necessary to carry out the provisions of this part, parts 30, 31, 32 through 35, 40, 50, 53, 61, 70, 71, 72, 73, and 76 of this chapter, and of the Act.

**PART 171—ANNUAL FEES FOR REACTOR LICENSES AND FUEL CYCLE LICENSES AND MATERIALS LICENSES, INCLUDING HOLDERS OF CERTIFICATES OF COMPLIANCE, REGISTRATIONS, AND QUALITY ASSURANCE PROGRAM APPROVALS AND GOVERNMENT AGENCIES LICENSED BY THE NRC**

■ 185. The authority citation for 10 CFR part 171 continues to read as follows:

**Authority:** Atomic Energy Act of 1954, secs. 11, 161(w), 223, 234 (42 U.S.C. 2014, 2201(w), 2273, 2282); Energy Reorganization Act of 1974, sec. 201 (42 U.S.C. 5841); 42 U.S.C. 2215; 44 U.S.C. 3504 note.

■ 186. Revise § 171.3 to read as follows:

**§ 171.3 Scope.**

The regulations in this part apply to any person holding an operating license for a test reactor or research reactor issued under part 50 of this chapter, and to any person holding an operating license for a power reactor licensed under 10 CFR part 50 or 53, or a combined license issued under 10 CFR part 52 or 53, that has provided notification to the U.S. Nuclear Regulatory Commission (NRC) that the licensee has successfully completed power ascension testing. The regulations in this part also apply to any person holding a materials license as defined in this part, a Certificate of Compliance, a sealed source or device registration, a quality assurance program approval, and to a Government agency as defined in this part. Notwithstanding the other provisions in this section, the regulations in this part do not apply to uranium recovery and fuel facility licensees until after the Commission verifies through inspection that the facility has been constructed in accordance with the requirements of the license.

■ 187. In § 171.5, revise the definitions for "Operating license," and "Power reactor" to read as follows:

**§ 171.5 Definitions.**

\* \* \* \* \*

*Operating license* means having a license issued under §§ 50.57 or 53.1387 of this chapter. It does not include licenses that only authorize possession of special nuclear material after the Commission has received a request from the licensee to amend its license to permanently withdraw its authority to operate or the Commission has permanently revoked such authority.

\* \* \* \* \*

*Power reactor* means a nuclear reactor designed to produce electrical or heat energy and licensed by the Commission under the authority of section 103 or subsection 104b of the Atomic Energy Act of 1954, as amended, and under the provisions of §§ 50.21(b) or 50.22, or part 53 of this chapter.

\* \* \* \* \*

■ 188. In § 171.15, revise paragraphs (a), (b)(2)(iii), (c)(1), and (d)(1) to read as follows:

**§ 171.15 Annual fees: Non-power production or utilization licenses, reactor licenses, and independent spent fuel storage licenses.**

(a) Each person holding an operating license for one or more non-power production or utilization facilities under 10 CFR part 50 that has provided notification to the NRC of the successful completion of startup testing; each person holding an operating license for a power reactor licensed under 10 CFR part 50 or a combined license under 10 CFR part 52, or an operating license or combined license for a commercial nuclear plant under 10 CFR part 53, that has provided notification to the NRC of the successful completion of power ascension testing; each person holding a 10 CFR part 50 or 52, power reactor license, or a 10 CFR part 53 commercial nuclear plant license that is in decommissioning or possession only status, except those that have no spent fuel onsite; and each person holding a 10 CFR part 72 license who does not hold a 10 CFR part 50, 52, or 53 license and provides notification under § 72.80(g) of this chapter, shall pay the annual fee for each license held during the Federal fiscal year in which the fee is due. This paragraph (a) does not apply to test or research reactors exempted under § 171.11(b).

(b) \* \* \*

(2) \* \* \*

(iii) Generic activities required largely for NRC to regulate power reactors (e.g., updating part 50, part 52, or part 53 of this chapter, operating the Incident Response Center, new reactor regulatory infrastructure). The base annual fee for operating power reactors does not

include generic activities specifically related to reactor decommissioning.

(c)(1) The FY 2022 annual fee for each power reactor holding a 10 CFR part 50 operating license or combined license issued under 10 CFR part 52 or part 53 that is in a decommissioning or possession-only status and has spent fuel onsite, and for each independent spent fuel storage 10 CFR part 72 licensee who does not hold a 10 CFR part 50 or part 53 operating license, or a 10 CFR part 52 or part 53 combined license, is \$227,000.

\* \* \* \* \*

(d)(1) Each person holding an operating license for an SMR issued under 10 CFR part 50 or part 53, or a combined license issued under 10 CFR part 52 or part 53, that has provided notification to the NRC of the successful completion startup testing, shall pay the annual fee for all licenses held for an SMR site. The annual fee will be determined using the cumulative licensed thermal power rating of all SMR units and the bundled unit concept, during the fiscal year in which the fee is due. For a given site, the use of the bundled unit concept is independent of the number of SMR plants, the number of SMR licenses issued, or the sequencing of the SMR licenses that have been issued.

\* \* \* \* \*

■ 189. In § 171.17, revise paragraphs (a) introductory text, (a)(1)(ii), and (a)(2) to read as follows:

**§ 171.17 Proration.**

(a) Reactors, 10 CFR part 72 licensees who do not hold 10 CFR part 50, 52, or

53 licenses, and materials licenses with annual fees of \$100,000 or greater for a single fee category. The NRC will base the proration of annual fees for terminated and downgraded licenses on the fee rule in effect at the time the action is official. The NRC will base the determinations on the proration requirements under paragraphs (a)(2) and (3) of this section.

(1) \* \* \*

(ii) The annual fees for new licenses for non-power production or utilization facilities, 10 CFR part 72 licensees who do not hold 10 CFR part 50, 52, or 53 licenses, and materials licenses with annual fees of \$100,000 or greater for a single fee category for the current FY, that are subject to fees under this part and are granted a license to operate on or after October 1 of a FY, are prorated on the basis of the number of days remaining in the FY. Thereafter, the full annual fee is due and payable each subsequent FY.

(2) *Terminations.* The base operating power reactor annual fee for operating reactor licensees or the annual fee for small modular reactor licensees, who have requested amendment to withdraw operating authority permanently during the FY will be prorated based on the number of days during the FY the license was in effect before docketing of the certifications for permanent cessation of operations and permanent removal of fuel from the reactor vessel or when a final legally effective order to permanently cease operations has come into effect. The spent fuel storage/reactor decommissioning annual fee for reactor licensees who permanently

cease operations and have permanently removed fuel from the site during the FY will be prorated on the basis of the number of days remaining in the FY after docketing of both the certifications of permanent cessation of operations and permanent removal of fuel from the site. The spent fuel storage/reactor decommissioning annual fee will be prorated for those 10 CFR part 72 licensees who do not hold a 10 CFR part 50, 52, or 53 license who request termination of the 10 CFR part 72 license and permanently cease activities authorized by the license during the FY based on the number of days the license was in effect before receipt of the termination request. The annual fee for materials licenses with annual fees of \$100,000 or greater for a single fee category for the current FY will be prorated based on the number of days remaining in the FY when a termination request or a request for a possession-only license is received by the NRC, provided the licensee permanently ceased licensed activities during the specified period. The annual fee for non-power production or utilization facilities will be prorated based on the number of days remaining in the FY when the authorization to operate the facility has been permanently removed from the license during the FY.

\* \* \* \* \*

Dated: October 7, 2024.

For the Nuclear Regulatory Commission.

**Carrie Safford,**

*Secretary of the Commission.*

[FR Doc. 2024-23434 Filed 10-23-24; 8:45 am]

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## Part III

### Department of Education

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34 CFR Part 30

Student Debt Relief Based on Hardship for the William D. Ford Federal Direct Loan Program (Direct Loans), the Federal Family Education Loan (FFEL) Program, the Federal Perkins Loan (Perkins) Program, and the Health Education Assistance Loan (HEAL) Program; Proposed Rule

## DEPARTMENT OF EDUCATION

## 34 CFR Part 30

[Docket ID ED–2023–OPE–0123]

RIN 1840–AD95

**Student Debt Relief Based on Hardship for the William D. Ford Federal Direct Loan Program (Direct Loans), the Federal Family Education Loan (FFEL) Program, the Federal Perkins Loan (Perkins) Program, and the Health Education Assistance Loan (HEAL) Program****AGENCY:** Office of Postsecondary Education, Department of Education.**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Secretary proposes to amend the regulations related to the Higher Education Act of 1965, as amended (HEA), to provide for the waiver of certain student loan debts. The proposed regulations would specify the Secretary's authority to waive all or part of any student loan debts owed to the Department based on the Secretary's determination that a borrower has experienced or is experiencing hardship related to such a loan.

**DATES:** We must receive your comments on or before December 2, 2024.

**ADDRESSES:** Comments must be submitted via the Federal eRulemaking Portal at *Regulations.gov*. Information on using *Regulations.gov*, including instructions for finding a rule on the site and submitting comments, is available on the site under "FAQ." If you require an accommodation or cannot otherwise submit your comments via *Regulations.gov*, please contact *regulationshelpdesk@gsa.gov* or by phone at 1–866–498–2945. The Department will not accept comments submitted by fax or by email or comments submitted after the comment period closes. Please submit your comment only once so that we do not receive duplicate copies. Additionally, please include the Docket ID at the top of your comments.

**Privacy Note:** The Department's policy is to generally make comments received from members of the public available for public viewing on the Federal eRulemaking Portal at *Regulations.gov*. Therefore, commenters should include in their comments only information about themselves that they wish to make publicly available. Commenters should not include in their comments any information that identifies other individuals or that permits readers to identify other individuals. If, for example, your comment describes an experience of

someone other than yourself, please do not identify that individual or include information that would allow readers to identify that individual. The Department may not make comments that contain personally identifiable information (PII) about someone other than the commenter publicly available on *Regulations.gov* for privacy reasons. This may include comments where the commenter refers to a third-party individual without using their name if the Department determines that the comment provides enough detail that could allow one or more readers to link the information to the third party. For example, "a former student with a graduate level degree" does not provide information that identifies a third-party individual as opposed to "my sister, Jane Doe, had this experience while attending University X," which does provide enough information to identify a specific third-party individual. For privacy reasons, the Department reserves the right to not make available on *Regulations.gov* any information in comments that identifies other individuals, includes information that would allow readers to identify other individuals, or includes threats of harm to another person or to oneself.

**FOR FURTHER INFORMATION CONTACT:**

Tamy Abernathy, U.S. Department of Education, Office of Postsecondary Education, 400 Maryland Avenue SW, 5th floor, Washington, DC 20202. Telephone: (202) 245–4595. Email: *NegRegNPRMHelp@ed.gov*.

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7–1–1.

**SUPPLEMENTARY INFORMATION:****Executive Summary**

A brief summary of these proposed regulations is available at <https://www.regulations.gov/docket/ED-2023-OPE-0123>. These proposed regulations would clarify the use of the Secretary's longstanding authority to grant a waiver of some or all of the outstanding balance on a Federal student loan.<sup>1</sup> Under this

<sup>1</sup> As discussed more fully below, these proposed regulations focus on the Secretary's waiver authority under sections 432(a)(6) and 468(2) of the HEA. Section 432(a)(6) provides that, "in the performance of, and with respect to, the functions, powers and duties, vested in him by this part, the Secretary may . . . waive, or release any right, title, claim, lien, or demand, however acquired, including any equity or any right of redemption." 20 U.S.C. 1082(a)(6). Section 468(2), the Perkins Loan Program's authorizing statute, features a similar waiver provision. 20 U.S.C. 1087hh(2). The Department views sections 432(a)(6) and 468(2) as permitting the Secretary to waive the Department's right to require repayment of a debt when there are circumstances that warrant such relief, such as the

proposed rule, the Department would specify how the Secretary would exercise discretionary authority to grant waivers using the following standard: the Secretary would determine that a borrower is experiencing or has experienced hardship related to the loan: (1) that is likely to impair the borrower's ability to fully repay the Federal government, or (2) that renders the costs of enforcing the full amount of the debt not justified by the expected benefits of continued collection of the entire debt (proposed § 30.91(a)).

The proposed regulations would then provide a non-exhaustive list of factors the Secretary may consider in deciding whether to grant relief (proposed § 30.91(b)). Then, proposed § 30.91(c) would provide a process by which the Secretary may grant individualized automatic relief through a predictive assessment based on the factors in proposed § 30.91(b). Should the Secretary choose to exercise such discretion, proposed § 30.91(c) would provide immediate, one-time relief as soon as practicable. And, proposed § 30.91(d) would provide a primarily application-based process by which the Secretary may provide additional relief on an on-going basis.

The proposed regulations describe two different pathways that the Secretary could take to exercise discretion to grant a waiver in instances where the borrower meets the hardship standard in proposed § 30.91(a). We describe those pathways in greater detail in the preamble below to assist the public in understanding how the proposed regulations would operate and to clarify terminology to guide such a discussion.

The first pathway would be a "predictive assessment," pursuant to proposed § 30.91(c), under which the Secretary would consider information in

circumstances specified in these proposed regulations. The Department acknowledges that several states have challenged the Department's authority to waive loans under sections 432(a)(6) and 468(2) through litigation focused on separate proposed rules issued by the Department on April 17, 2024 (89 FR 27564) that also rely on the Department's waiver authority under the HEA. See *Missouri v. Biden*, No. 24–cv–1316 (E.D. Mo.). In that separate litigation, a Federal district court has preliminarily enjoined the Department "from implementing the Third Mass Cancellation Rule," a term that the plaintiffs used to refer to the April 2024 NPRM, and "from mass canceling student loans, forgiving any principal or interest, not charging borrowers accrued interest, or further implementing any other actions under the Rule or instructing federal contractors to take such actions." Memorandum and Order, Doc. 57 at 3, *Missouri v. Biden*, No. 24–cv–1316 (E.D. Mo. Oct. 3, 2024). As of the publication of this NPRM, this litigation remains pending with no final decision on the merits, including no final decision pertaining to the Secretary's authority under sections 432(a)(6) and 468(2) of the HEA.



the Department's possession to determine whether the borrower meets the proposed standard for hardship in § 30.91(a) such that their loans are at least 80 percent likely to be in default within the next two years. The Department would make a predictive assessment that considers factors indicating hardship (described in proposed § 30.91(b)) and may, in the Secretary's discretion, then provide immediate relief by granting waivers to eligible borrowers, without requiring any action by those borrowers to seek that relief.

The second pathway, which is under proposed § 30.91(d), would be a determination based on a "holistic assessment" of the borrower's circumstances (based on the factors in proposed § 30.91(b)) that meets the proposed hardship standard for waiver specified in proposed § 30.91(a). This assessment would focus on borrowers who are not otherwise eligible for the immediate relief under proposed § 30.91(c) and who are not eligible for relief sufficient to redress their hardships through other Department programs supporting student loan borrowers. Under this pathway for relief, the Department would conduct a holistic assessment of the borrower's hardship based on information about the borrower's experience with the factors in proposed § 30.91(b) obtained through an application or based on information already within the Department's possession, or a combination of the above. A borrower would be eligible for relief if, based on the Department's holistic assessment, the Department determines that the borrower is highly likely to be in default or experience similarly severe negative and persistent circumstances, and other options for payment relief would not sufficiently address the borrower's persistent hardship.

The two pathways for relief described above, namely the immediate relief in proposed § 30.91(c) and the additional relief in proposed § 30.91(d), would operate separately and distinctly from each other and would therefore be fully severable. Because these proposed regulations only concern waivers due to hardship, these proposed hardship waivers would therefore also be separate and distinct from other proposed rules related to waivers of Federal student loan debt.<sup>2</sup>

<sup>2</sup> See 89 FR 27564 (April 17, 2024). As described above, *see* n.1, *supra*, a Federal district court has issued an injunction focused on these separate proposed rules published on April 17, 2024. See *Missouri v. Biden*, No. 24–cv–1316 (E.D. Mo.). As of the date of publishing this NPRM, that separate litigation focused on the April 2024 NPRM remains

### Summary of This Regulatory Action

These proposed regulations would add a new § 30.91, which would reflect in regulations the Secretary's existing discretionary authority under section 432(a)(6) of the HEA to waive some or all of the outstanding balance of a loan owed to the Department when the Secretary determines that a borrower has experienced or is experiencing hardship related to the loan such that the hardship is likely to impair the borrower's ability to fully repay the Federal government, or the costs of enforcing the full amount of the debt are not justified by the expected benefits of continued collection of the entire debt. In addition to establishing this standard, the proposed provision would also specify the factors that the Secretary would consider in evaluating hardship and the particular processes by which the Secretary may provide relief under the standard for determining hardship.

We note that the Department published a Notice of Proposed Rulemaking in the **Federal Register** on April 17, 2024 (April 2024 NPRM) (89 FR 27564) but explained at that time that the April 2024 NPRM did not include proposed regulations for waivers related to hardship.<sup>3</sup> As discussed in greater detail in the Negotiated Rulemaking section of this NPRM, hardship waivers were discussed at a fourth session of the negotiating committee on February 22 and 23, 2024. The Committee reached consensus on proposed language, which is included in this NPRM.

**Costs and Benefits:** As further detailed in the *Regulatory Impact Analysis* (RIA), the proposed regulations would have

pending with no final decision on the merits. These regulations differ from the waivers proposed in the April 2024 NPRM along various dimensions, including that the provisions in these final regulations apply distinct and different eligibility criteria, and these provisions address different challenges with student loan repayment faced by borrowers and the Department. As further described throughout these proposed regulations, these provisions specify relief for borrowers that are experiencing or have experienced hardship that meet certain criteria. Specifically, under proposed § 30.91(c), the Secretary could provide individualized automatic relief through a predictive assessment based on certain factors. Under proposed § 30.91(d), the Secretary could provide relief based on a holistic assessment of the borrower's specific circumstances using the standard specified in these proposed regulations. Accordingly, the waivers in these proposed regulations would operate separately and distinctly from the waivers proposed in the April 2024 NPRM.

<sup>3</sup> As described above, *see* n.1, *supra*, a Federal district court has issued an injunction focused on these separate proposed rules published on April 17, 2024. See *Missouri v. Biden*, No. 24–cv–1316 (E.D. Mo.). As of the date of publishing this NPRM, that separate litigation focused on the April 2024 NPRM remains pending with no final decision on the merits.

significant impacts on borrowers, taxpayers, and the Department. Instances in which the Secretary decides to waive all or part of a borrower's outstanding loan balance would result in transfers between the Federal government and borrowers. This would create benefits for borrowers by eliminating the hardship they are facing with respect to their loans, allowing them to better afford necessities like food or housing, afford retirement, cover childcare or caretaking expenses, or otherwise improve their financial circumstances. In the case of a waiver of the full outstanding balance of the loan, a borrower would no longer have a repayment obligation and also no longer face the risk of delinquency or default. A borrower who receives a partial waiver would have a more affordable repayment obligation that could be repaid in full over time. The transfers resulting from the proposed regulations would be mitigated to the extent that the Secretary would exercise discretion to waive loans in whole or part where the borrower is unlikely to have the ability to repay, or where the costs of continued collection outweigh the benefits, allowing the Department to prioritize collection of loans that are most likely to be repaid.

Beyond transfers, these regulations would create administrative costs for the Department to process and implement relief based upon information in the Department's possession or based upon applications filed by borrowers.

**Invitation to Comment:** We invite you to submit comments regarding these proposed regulations. For your comments to have maximum effect in developing the final regulations, we urge you to clearly identify the specific section or sections of the proposed regulations that each of your comments addresses and to arrange your comments in the same order as the proposed regulations. The Department will not accept comments submitted after the comment period closes. Please submit your comments only once so that we do not receive duplicate copies.

The following tips are meant to help you prepare your comments and provide a basis for the Department to respond to issues raised in your comments in the notice of final regulations (NFR):

- Be concise but support your claims.
- Explain your views as clearly as possible and avoid using profanity.
- Refer to specific sections and subsections of the proposed regulations throughout your comments, particularly in any headings that are used to organize your submission.

- Explain why you agree or disagree with the proposed regulatory text and support these reasons with data-driven evidence, including the depth and breadth of your personal or professional experiences.

- Where you disagree with the proposed regulatory text, suggest alternatives, including regulatory language, and your rationale for the alternative suggestion.

- Do not include personally identifiable information (PII) such as Social Security numbers or loan account numbers for yourself or for others in your submission. Should you include any PII in your comment, such information may be posted publicly.

- Do not include any information that directly identifies or could identify other individuals or that permits readers to identify other individuals. Your comment may not be posted publicly if it includes PII about other individuals.

**Mass Writing Campaigns:** In instances where individual submissions appear to be duplicates or near duplicates of comments prepared as part of a writing campaign, the Department will post one representative sample comment along with the total comment count for that campaign to *Regulations.gov*. The Department will consider these comments along with all other comments received.

In instances where individual submissions are bundled together (submitted as a single document or packaged together), the Department will post all the substantive comments included in the submissions along with the total comment count for that document or package to *Regulations.gov*. A well-supported comment is often more informative to the agency than multiple form letters.

**Public Comments:** The Department invites you to submit comments on all aspects of the proposed regulatory language specified in this NPRM in § 30.91, the *Regulatory Impact Analysis*, and *Paperwork Reduction Act* sections.

The Department may, at its discretion, decide not to post or to withdraw certain comments and other materials that are computer-generated. Comments containing the promotion of commercial services or products and spam will be removed.

We may not address comments outside of the scope of these proposed regulations in the NFR. Generally, comments that are outside of the scope of these proposed regulations are comments that do not discuss the content or impact of the proposed regulations or the Department's evidence or reasons for the proposed regulations.

Comments that are submitted after the comment period closes will not be posted to *Regulations.gov* or addressed in the NFR.

Comments containing personal threats will not be posted to *Regulations.gov* and may be referred to the appropriate authorities.

We invite you to assist us in complying with the specific requirements of Executive Orders 12866, 13563, and 14094 and their overall requirement of reducing regulatory burden that might result from these proposed regulations. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the Department's programs and activities.

During and after the comment period, you may inspect public comments about these proposed regulations by accessing *Regulations.gov*.

**Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record:** On request, we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed regulations. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact one of the persons listed under **FOR FURTHER INFORMATION CONTACT**.

#### Directed Questions

The Department is particularly interested in comments on the following directed questions:

1. Is "two years" the appropriate measurement window for the waivers specified in proposed § 30.91(c) related to borrowers who are likely to be in default, or should the Department use a different time frame, and if so, what timeframe and why?

2. Is "80 percent" likelihood of being in default within the next two years the appropriate eligibility threshold for immediate relief in proposed § 30.91(c), or should the Department consider a different likelihood percentage, and if so, what should it be and why?

3. As described in this NPRM, eligibility for a hardship waiver under proposed § 30.91(d) would be relatively rare and limited to circumstances where the Secretary finds: (i) the borrower is highly likely to be in default, or experience similarly severe negative and persistent circumstances, and (ii) other options for payment relief would not sufficiently address the borrower's persistent hardship. The Department

invites feedback from the public on what circumstances constitute similarly severe negative and persistent circumstances that are comparable to default.

4. Under proposed § 30.91(d), is "highly likely" to be in default or to experience similarly severe negative and persistent circumstances the appropriate eligibility threshold? If so, why? If not, should the Department use a different likelihood threshold, and, if so, what threshold and why?

5. How should the Department help make certain that borrowers have the opportunity to enroll or apply for other programs administered by the Department that may be advantageous to the borrower and successfully demonstrate a hardship that qualifies for a waiver under proposed § 30.91(d)?

6. How can the Department improve or refine the estimates in the RIA related to the anticipated volume of applications for the application-based hardship waiver process, as well as the estimates related to the approval rate for such applications?

7. As described in this NPRM, the Department believes a presumption in favor of a full waiver is appropriate and would provide consistency in decision-making, but that this presumption could be rebutted in certain circumstances. For example, the Secretary may find the presumption in favor of full waiver is rebutted if there is evidence that a partial waiver would sufficiently reduce a borrower's monthly payment in a manner that alleviates their hardship under these regulations. The Department seeks input from the public on the types of circumstances and evidence that the Department should consider to determine when partial relief is more appropriate.

8. Under what circumstances, pursuant to proposed § 30.91(d), would a borrower who is eligible for a \$0 monthly payment under an income-driven repayment plan meet the standard for relief in proposed § 30.91(d) of being highly likely to be in default or experience similarly severe and persistent negative circumstances, and other options for payment relief would not sufficiently address the borrower's persistent hardship?

9. Under what circumstances would a borrower be highly likely to be in default, or experience similarly severe negative and persistent circumstances, such that relief pursuant to proposed § 30.91(d) would be appropriate?

10. What type of data could the Department use to determine whether a borrower who has not submitted an application qualifies for relief under

proposed § 30.91(d), and how could ED obtain those data?

11. If the Department were to establish a cap on the amount of relief eligible borrowers could receive, what would be a reasonable cap and what data, research, or other information would support the setting of such a cap? The Department is particularly interested in different approaches for formulating and justifying the amount of capped relief. For example, the Department welcomes feedback on whether the Department should apply any of the following approaches: a universal cap, a progressive cap based on the extent of the hardship up to a maximum possible limit, or a cap that provides proportional relief based on other circumstances.

### Background

Federal student loans provide an important resource for Americans to enroll in postsecondary education programs if they do not have the financial means to pay the total cost of attendance up front. Because postsecondary education generally provides economic returns, the increased financial benefits from greater education and training can be used to repay the debts incurred to pay for those opportunities.

Unfortunately, over the decades since the HEA was enacted, the increasing price of postsecondary education has exceeded the growth in family incomes.<sup>4</sup> For many students, available grant aid is not sufficient to cover postsecondary expenses, leading Federal student loans to fill a critical and inescapable gap in postsecondary education financing for many families.

Generally, financing postsecondary education with loans yields returns—such as increased income—that help borrowers afford their debts.<sup>5</sup> Increasing access to higher education through student loans also provides well-documented benefits to communities

and to the national economy and society. These benefits extend even to individuals who never attended college themselves. For example, college certificate and degree attainment typically lead to higher earnings, increasing the ability of individuals to spend money and invest in their local community.<sup>6</sup>

The HEA contains many provisions intended to assist borrowers when their investment in postsecondary education does not result in the expected benefits. The Department offers several options for payment relief and other forgiveness opportunities. For example, when an educational institution misrepresents the value of an education financed with a student loan, the HEA authorizes discharge of the obligation through a borrower defense claim. The HEA also provides for discharge when a school falsely certifies a borrower's eligibility for a loan, or someone obtains a loan in the borrower's name through identity theft. Other types of loan discharges are available if a borrower is unable to complete a program because an institution closes, or if the borrower becomes totally and permanently disabled.

The Department offers several different repayment options, some of which base payments on a borrower's income and forgive any remaining amounts after an extended period of payments, which is either 20 or 25 years for most plans.<sup>7</sup>

While existing discharge and repayment programs provide critical relief to borrowers, they do not capture the full set of circumstances that may impair borrowers' ability to fully repay their loans. Many situations unique to individual borrowers can cause borrowers to experience significant hardship repaying student loans and may make the cost of collecting the loan exceed the expected benefits of continued collection. Such situations often are not covered by existing avenues for relief. For example, older borrowers with high educational debt burdens can be at increased risk of financial insecurity since they are also more likely to be exposed to higher medical costs and declining incomes.<sup>8</sup>

But these risks are not factored into the determination of eligibility for relief under existing Department programs. Borrowers with significant medical expenses, dependent care expenses, or other extraordinary and necessary costs also may not qualify for other discharge and repayment programs, which do not assess such expenses in determining eligibility.

These proposed regulations would clarify how the Secretary would exercise their authority to waive some or all outstanding loan debt in certain situations where the Secretary determines that a borrower is facing hardship that impairs their ability to fully repay the loan or imposes unwarranted costs that exceed the benefits of continued collection. The proposed regulations describe the transparent, reasonable, and equitable factors the Secretary would use to determine when such waivers could be granted.

Section 432(a) of the HEA outlines the Secretary's legal powers and responsibilities relevant to this rulemaking. That section delegates to the Secretary the discretion to exercise certain "general powers." In particular, section 432(a)(6) provides that, "in the performance of, and with respect to, the functions, powers and duties, vested in him by this part, the Secretary may enforce, pay, compromise, waive, or release any right, title, claim, lien, or demand, however acquired, including any equity or any right of redemption."

The provisions of section 432(a)(6) are in, and explicitly apply to, title IV, part B, of the HEA, which establishes the FFEL program. Section 432(a)(6), however, also applies to the Direct Loan program. In creating the Direct Loan program, Congress established parity between the FFEL and Direct Loan programs, providing in section 451(b)(2) of the HEA that Federal Direct Loans "have the same terms, conditions, and benefits as loans made to borrowers" under the FFEL program. 20 U.S.C. 1087a(b)(2).<sup>9</sup> By its plain language, section 451(b)(2) requires that the benefits of FFEL loans should be available under the Direct Loan program, including the benefit to a borrower when the Secretary exercises

<sup>4</sup> For example, the published tuition and fees for public four-year, public two-year, and private nonprofit four-year institutions were, respectively, 209 percent, 151 percent, and 178 percent higher than those costs in the early 1990s (inflation adjusted). Over a similar time period, incomes rose by about 30 percent–40 percent among families outside of the top quintile, and 65 percent for families in the top quintile (inflation adjusted). See Ma, Jennifer and Matea Pender. *Trends in College Pricing and Student Aid 2023* (2023). New York: College Board.

<sup>5</sup> Avery, Christopher and Sarah Turner. "Student loans: Do college students borrow too much—or not enough?" *Journal of Economic Perspectives* vol. 26, no. 1 (2012): 165–192. Lovenheim, Michael, and Jonathan Smith. "Returns to different postsecondary investments: Institution type, academic programs, and credentials." *Handbook of the Economics of Education* vol. 6 (2023): 187–318. Elsevier.

<sup>6</sup> Matsudaira, Jordan. "The Economic Returns to Postsecondary Education: Public and Private Perspectives." *Postsecondary Value Commission* (2021). Moretti, Enrico. Estimating the social return to higher education: evidence from longitudinal and repeated cross-sectional data. *Journal of Econometrics* 121, no. 1–2 (2004): 175–212.

<sup>7</sup> See 20 U.S.C. 1087e(e) and 20 U.S.C. 1098e.

<sup>8</sup> See, for example, this US Government Accountability Office (GAO) report that demonstrates higher rates of debt among older Americans, <https://www.gao.gov/products/gao-21-170>. For a discussion of how medical costs account

for a larger share of expenditures among older individuals also see, Banks, James, Richard Blundell, Peter Levell, and James P. Smith. "Life-cycle consumption patterns at older ages in the United States and the United Kingdom: Can medical expenditures explain the difference?" *American Economic Journal: Economic Policy* 11, no. 3 (2019): 27–54.

<sup>9</sup> See *Sweet v. Cardona*, 641 F. Supp. 3d 814, 823–25 (N.D. Cal. 2022); *Weingarten v. DOE*, 468 F. Supp. 3d 322, 328 (D.D.C. 2020); *Chae v. SLM Corp.*, 593 F.3d 936, 945 (9th Cir. 2010).

discretionary authority under section 432(a)(6) to waive loan obligations for those experiencing hardship. A benefit is “something that produces good or helpful results or effects,”<sup>10</sup> and disallowing Direct Loan borrowers experiencing hardships the same opportunity as FFEL borrowers to have all or part of the balance of their loans eliminated plainly would afford different benefits between the loan programs, the result section 451(b)(2) was created to avoid.

The Secretary’s waiver authority under section 432(a)(6) of the HEA also extends to HEAL and Perkins loans. When transferring the HEAL loan program to the Department, Congress explicitly stated that the Secretary’s powers with respect to collecting FFEL loans extend to HEAL loans. See Division H, title V, section 525(d) of the Consolidated Appropriations Act, 2014 (Pub. L. 113–76). Likewise, section 468(2) of the HEA endows the Secretary with similarly broad and flexible powers with respect to loans arising under the Perkins program.

The Department’s statutory waiver authority dates to the enactment of the Higher Education Act in 1965.<sup>11</sup> The Department has viewed its waiver authority as permitting the Secretary to waive the Department’s right to require repayment of a debt.<sup>12</sup> Having such bounded flexibility is critical for the Department’s administration of the comprehensive and complex student loan programs, where unforeseen challenges could, absent waiver, interfere with the Secretary’s ability to administer the title IV programs effectively and efficiently.

The Department’s waiver authority operates within the context of the HEA’s text, structure, and goals, and the well-established principles that govern debt collection and waiver more broadly.

<sup>10</sup> <https://www.merriam-webster.com/dictionary/benefit>.

<sup>11</sup> See Public Law 89–329, 79 Stat. 1246 (Nov. 8, 1965).

<sup>12</sup> The authority to waive loan balances is provided by the statutory text of the HEA, such that the Secretary’s exercise of this authority in this proposed regulation is unaffected by the Supreme Court’s decision in *Biden v. Nebraska*, 600 U.S. 477 (2023). In *Nebraska*, the Court interpreted a provision of the HEROES Act, which authorizes waiver or modification of “statutory or regulatory provisions” applicable to the Federal student loan programs under certain circumstances. The Court found that the debt-relief program at issue there exceeded the scope of the HEROES Act authority to waive and modify rules. Here, unlike in *Nebraska*, the Secretary’s waiver authority derives from section 432(a)(6) of the HEA, which broadly authorizes waiver of Department claims, and therefore applies directly to “waiving loan balances or waiving the obligation to repay on the part of the borrower.” *Nebraska*, 600 U.S. at 497 (internal citation omitted).

Some agencies that exercise waiver authority consider whether collection of debts would be against equity and good conscience or the best interest of the United States. Agencies have also articulated numerous factors that may weigh in favor of waiving an individual’s debt, including when collection would defeat the purpose of the benefit program or impose financial hardship, among other considerations. We have taken such factors into consideration here.

On June 30, 2023, the Department announced that it would conduct a negotiated rulemaking process to specify the standard the Secretary plans to use in exercising the Secretary’s authority to waive loan debts under section 432(a) of the HEA. On April 17, 2024, the Department published the April 2024 NPRM, laying out some of the proposals from the negotiated rulemaking process, including the waiver of loans that have seen their balances grow far beyond what they were upon entering repayment, loans that first entered repayment a long time ago, loans held by borrowers that are otherwise eligible for certain forgiveness opportunities, or debts taken out to attend programs or institutions that failed to provide sufficient financial value.<sup>13</sup>

The waivers proposed in this NPRM are distinct from those in the April 2024 NPRM and are specifically related to determinations about whether borrowers are facing, or have faced, hardship. While it is possible that a borrower could qualify for a waiver under these proposed regulations as well as under other proposed and existing regulations, this NPRM is fully separate from, and these proposed regulations would operate independently of, such other regulations. In addition, paragraphs (a) through (d) of proposed § 30.91 would operate independently of each other and therefore would be fully severable, as more fully explained below.

### Pathways to Relief

In this NPRM, the Department describes two pathways by which the Secretary could exercise discretion to provide waivers of some or all of the outstanding balance of a Federal student loan held by the Department. Both of these proposed pathways would operate

separately and independently from each other and therefore would be fully severable. As noted above, the regulations specify: (i) a pathway for “immediate relief” using a predictive assessment in proposed § 30.91(c); (ii) a pathway for “additional relief” using a holistic assessment in proposed § 30.91(d) based on an application or data already in the Secretary’s possession, or a combination of both.

Under both pathways to relief, the Secretary proposes to analyze each individual borrower’s circumstances, as reflected in the factors in proposed § 30.91(b), to determine whether the borrower is experiencing or has experienced hardship as defined by these regulations.

Under the first pathway to relief, using a “predictive assessment” as described in proposed § 30.91(c), the Secretary would use data already in the Department’s possession (that is, not acquired by application) to identify borrowers who meet the standard in proposed § 30.91(a) such that they are at least 80 percent likely to be in default in the next two years after the proposed regulations’ publication date.<sup>14</sup> The Secretary would conduct this analysis by using a predictive model that considers the borrower’s circumstances as described by factors in proposed § 30.91(b). The Secretary then could choose to exercise discretion to grant “immediate relief” to borrowers who qualify under proposed § 30.91(c).

Under the second pathway for relief, described in proposed § 30.91(d), the Secretary may exercise discretion to grant a waiver to a borrower who meets the standard of hardship based on a holistic assessment of the borrower’s circumstances, based on the factors described in proposed § 30.91(b). The Department interprets the hardship required for relief under proposed § 30.91(d) as: the borrower must be highly likely to be in default or experience similarly severe negative and persistent circumstances, and other options for payment relief would not sufficiently address the borrower’s persistent hardship. This holistic assessment may rely on data already in the Secretary’s possession or acquired from a borrower through an application process that would allow a borrower to provide additional data relevant to the factors in proposed § 30.91(b), or a combination of both. The Department anticipates that the number of borrowers for whom the Department possesses sufficient information to conduct the

<sup>13</sup> 89 FR 27564 (April 17, 2024). As described above, *see* n.1, *supra*, a Federal district court has issued an injunction focused on these separate proposed rules published on April 17, 2024. *See Missouri v. Biden*, No. 24–cv–1316 (E.D. Mo.). As of the date of publishing this NPRM, that separate litigation focused on the April 2024 NPRM remains pending with no final decision on the merits.

<sup>14</sup> Borrowers who may be included in this model are those who have at least one federally held loan that has entered repayment.

holistic assessment without data acquired from an application would be small.

These proposed regulations account for challenges facing individual borrowers, while also recognizing that many borrowers are similarly situated. The Department has a longstanding practice of providing appropriate relief when it identifies specific circumstances that warrant relief and affect multiple borrowers. Such relief, regardless of how data is collected to make a determination about relief, is appropriate when individuals share relevant features. This approach comports with the HEA's statutory requirements and can also help to improve administrative efficiency and provide consistency across borrowers.<sup>15</sup>

Overall, these proposed regulations would provide important transparency and clarity about how the Secretary may exercise the discretion to provide relief in situations where a borrower is facing, or has faced, a hardship that might not be addressed through other means. Providing relief in such situations would help alleviate the challenge of repaying student loans for many individual borrowers and better target the costs involved in the Department's efforts to enforce collection and repayment.

### Public Participation

The Department has significantly engaged the public in developing this NPRM, as described here and below in the *Negotiated Rulemaking* section.

On July 6, 2023, the Department published a document in the **Federal Register**<sup>16</sup> announcing our intent to establish a negotiated rulemaking committee to prepare proposed regulations pertaining to the Secretary's authority under section 432(a) of the HEA, which relates to the modification, waiver, or compromise of loans.

On July 18, 2023, the Department held a virtual public hearing at which individuals and representatives of interested organizations provided advice and recommendations relating to the topic of proposed regulations on the modification, waiver, or compromise of loans. The Department considered the oral comments made by the public during the public hearing and written comments submitted between July 6, 2023, and July 20, 2023. We also held four negotiated rulemaking sessions of two days each. During each daily negotiated rulemaking session, we provided an opportunity for public comment. The fourth two-day session in

February 2024 focused exclusively on the issue of hardship criteria for discharge and the public had an opportunity to comment on the first day of that session. Additionally, non-Federal negotiators shared feedback from their stakeholders with the negotiating committee.

The Department accepted written comments on possible regulatory provisions that were submitted directly to the Department by interested parties and organizations. You may view the written comments submitted in response to the July 6, 2023, **Federal Register** document on the Federal eRulemaking Portal at *Regulations.gov*, within docket ID ED–2023–OPE–0123. Instructions for finding comments are also available on the site under “FAQ.”

Transcripts of the public hearings may be accessed at <https://www2.ed.gov/policy/highered/reg/hearulemaking/2023/index.html>.

### Negotiated Rulemaking

Section 492 of the HEA, 20 U.S.C. 1098a, requires the Secretary to obtain public involvement in the development of proposed regulations affecting programs authorized by title IV of the HEA. After obtaining extensive input and recommendations from the public, including individuals and representatives of groups involved in the title IV, HEA programs, the Secretary, in most cases, must engage in the negotiated rulemaking process before publishing proposed regulations in the **Federal Register**. If negotiators reach consensus on the proposed regulations, the Department agrees to publish without substantive alteration a defined group of regulations on which the negotiators reached consensus, unless the Secretary reopens the process or provides a written explanation to the participants stating why the Secretary has decided to depart from the agreement reached during negotiations. Further information on the negotiated rulemaking process can be found at:

<https://www2.ed.gov/policy/highered/reg/hearulemaking/2023/index.html>.

On August 31, 2023, the Department published a document in the **Federal Register**<sup>17</sup> announcing its intention to establish the Committee to prepare proposed regulations for the title IV, HEA programs. This document set forth a schedule for Committee meetings and requested nominations for individual negotiators to serve on the negotiating committee. In the document, we announced the topics that the Committee would address.

The Committee included the following members, representing their respective constituencies:

- *Civil Rights Organizations*: Wisdom Cole, NAACP, and India Heckstall (alternate), Center for Law and Social Policy.
- *Legal Assistance Organizations that Represent Students or Borrowers*: Kyra Taylor, National Consumer Law Center, and Scott Waterman (alternate), Student Loan Committee of the National Association of Chapter 13 Trustees.
- *State Officials, including State higher education executive officers, State authorizing agencies, and State regulators of institutions of higher education*: Lane Thompson, Oregon DCBS—Division of Financial Regulation, and Amber Gallup (alternate), New Mexico Higher Education Department.
- *State Attorneys General*: Yael Shavit, Office of the Massachusetts Attorney General, and Josh Divine (alternate), Missouri Attorney General's Office who withdrew from the committee during the third session.
- *Public Institutions of Higher Education, Including Two-Year and Four-Year Institutions*: Melissa Kunes, The Pennsylvania State University, and J.D. LaRock (alternate), North Shore Community College.
- *Private Nonprofit Institutions of Higher Education*: Angelika Williams, University of San Francisco, and Susan Teerink (alternate), Marquette University.
- *Proprietary Institutions*: Kathleen Dwyer, Galen College of Nursing, and Belen Gonzalez (alternate), Mech-Tech College.
- *Historically Black Colleges and Universities, Tribal Colleges and Universities, and Minority Serving Institutions (institutions of higher education eligible to receive Federal assistance under title III, parts A and F, and title V of the HEA)*: Sandra Boham, Salish Kootenai College, and Carol Peterson (alternate), Langston University.
- *Federal Family Education Loan (FFEL) Lenders, Servicers, or Guaranty Agencies*: Scott Buchanan, Student Loan Servicing Alliance, and Benjamin Lee (alternate), Ascendium Education Solutions, Inc.
- *Student Loan Borrowers Who Attended Programs of Two Years or Less*: Ashley Pizzuti, San Joaquin Delta College, and David Ramirez (alternate), Pasadena City College.
- *Student Loan Borrowers Who Attended Four-Year Programs*: Sherrie Gammage, The University of New Orleans, and Sarah Christa Butts (alternate), University of Maryland.

<sup>15</sup> See HEA section 432(a)(6).

<sup>16</sup> 88 FR 43069 (July 6, 2023).

<sup>17</sup> 88 FR 60163 (August 31, 2023).

- *Student Loan Borrowers Who Attended Graduate Programs*: Richard Haase, State University of New York at Stony Brook, and Dr. Jalil Bishop (alternate), University of California, Los Angeles.

- *Currently Enrolled Postsecondary Education Students*: Jada Sanford, Stephen F. Austin University, and Jordan Nellums (alternate), University of Texas.

- *Consumer Advocacy Organizations*: Jessica Ranucci, New York Legal Assistance Group, and Ed Boltz (alternate), Law Offices of John T. Orcutt, P.C.

- *Individuals with Disabilities or Organizations Representing Them*: John Whitelaw, Community Legal Aid Society Inc., and Waukecha Wilkerson (alternate), Sacramento State University.

- *U.S. Military Service Members, Veterans, or Groups Representing Them*: Vincent Andrews, Veteran. Originally the alternate, Mr. Andrews became the primary negotiator for this constituency group after Michael Jones withdrew from the Committee.

- *Federal Negotiator*: Tamy Abernathy, U.S. Department of Education.

At its first meeting, the Committee reached agreement on its protocols and proposed agenda. The protocols provided, among other things, that the Committee would operate by consensus. The protocols defined consensus as no dissent by any negotiator of the Committee for the Committee to be considered to have reached agreement and noted that consensus votes would be taken on each separate part of the proposed rules.

The Committee reviewed and discussed the Department's drafts of regulatory language and alternative language and suggestions proposed by negotiators.

At its third meeting in December 2023, the Committee reached consensus on some proposed regulations that have since been published in the April 2024 NPRM.<sup>18</sup> That NPRM also included all other proposed provisions from the third session on which consensus was not reached.

On February 2, 2024, the Department published a document in the **Federal Register**<sup>19</sup> announcing a fourth session of Committee negotiations on February

22 and 23, 2024 to focus exclusively on the issue of borrowers facing hardship. Some primary or alternate negotiators were unable to attend the fourth session of Committee negotiations in February 2024. Where the primary was unable to attend, the alternate filled the role of primary. The following Committee members participated in the fourth session, representing their respective constituencies:

- *Civil Rights Organizations*: Wisdom Cole, NAACP.

- *Legal Assistance Organizations that Represent Students or Borrowers*: Scott Waterman (alternate who served as primary), Student Loan Committee of the National Association of Chapter 13 Trustees.

- *State Officials, including State higher education executive officers, State authorizing agencies, and State regulators of institutions of higher education*: Lane Thompson, Oregon DCBS—Division of Financial Regulation.

- *State Attorneys General*: Yael Shavit, Office of the Massachusetts Attorney General.

- *Public Institutions of Higher Education, Including Two-Year and Four-Year Institutions*: Melissa Kunes, The Pennsylvania State University.

- *Private Nonprofit Institutions of Higher Education*: Angelika Williams, University of San Francisco, and Susan Teerink (alternate), Marquette University.

- *Proprietary Institutions*: Kathleen Dwyer, Galen College of Nursing, and Belen Gonzalez (alternate), Mech-Tech College.

- *Historically Black Colleges and Universities, Tribal Colleges and Universities, and Minority Serving Institutions (institutions of higher education eligible to receive Federal assistance under title III, parts A and F, and title V of the HEA)*: Carol Peterson (alternate who served as primary), Langston University.

- *Federal Family Education Loan (FFEL) Lenders, Servicers, or Guaranty Agencies*: Scott Buchanan, Student Loan Servicing Alliance.

- *Student Loan Borrowers Who Attended Programs of Two Years or Less*: Ashley Pizzuti, San Joaquin Delta College.

- *Student Loan Borrowers Who Attended Four-Year Programs*: Sarah Christa Butts (alternate who served as primary), University of Maryland.

- *Student Loan Borrowers Who Attended Graduate Programs*: Richard Haase, State University of New York at Stony Brook, and Dr. Jalil Bishop (alternate), University of California, Los Angeles.

- *Currently Enrolled Postsecondary Education Students*: Jordan Nellums (alternate who served as primary), University of Texas.

- *Consumer Advocacy Organizations*: Jessica Ranucci, New York Legal Assistance Group, and Ed Boltz (alternate), Law Offices of John T. Orcutt, P.C.

- *Individuals with Disabilities or Organizations Representing Them*: John Whitelaw, Community Legal Aid Society Inc.

- *U.S. Military Service Members, Veterans, or Groups Representing Them*: Vincent Andrews, Veteran.

- *Federal Negotiator*: Tamy Abernathy, U.S. Department of Education.

For more information about the Committee membership in the fourth session, please visit our Session 4 Meeting Summary: <https://www2.ed.gov/policy/highered/reg/hearulemaking/2023/final-session-4-summary-2-27-24.pdf>.

During that fourth session, the Department presented regulatory text for waivers that could assist borrowers who have experienced or are experiencing hardship. The negotiators reached consensus on this language.

This NPRM only includes proposed regulations on hardship. Because the Committee reached consensus on the proposed regulations, the proposed regulatory text in this NPRM is the same text on which consensus was reached.

For more information on the negotiated rulemaking sessions, please visit: <https://www2.ed.gov/policy/highered/reg/hearulemaking/2023/index.html>.

### Summary of Proposed Changes

These proposed regulations would add § 30.91 specifying the Secretary's authority to waive some or all of the outstanding balance of a loan owed to the Department when the Secretary determines that a borrower has experienced or is experiencing hardship related to the loan such that the hardship is likely to impair the borrower's ability to fully repay the Federal government or the costs of enforcing the full amount of the debt are not justified by the expected benefits of continued collection of the entire debt.

#### Significant Proposed Regulations

We discuss substantive issues under the sections of the proposed regulations to which they pertain. Generally, we do not address proposed regulatory provisions that are technical or otherwise minor in effect. For each section of the regulations discussed, we include the statutory citation, the current regulations being revised (if

<sup>18</sup> 89 FR 27564 (April 17, 2024). As described above, *see* n.1, *supra*, a Federal district court has issued an injunction focused on these separate proposed rules published on April 17, 2024. *See Missouri v. Biden*, No. 24-cv-1316 (E.D. Mo.). As of the date of publishing this NPRM, that separate litigation focused on the April 2024 NPRM remains pending with no final decision on the merits.

<sup>19</sup> 89 FR 7317 (February 2, 2024).

applicable), the new proposed regulatory text, and the reasons why we proposed to add new regulatory text or revise the existing regulatory text.

**§ 30.91(a) Standard for Waiver Due to Hardship**

*Statute:* Section 432(a) of the HEA (20 U.S.C. 1082(a)) provides that in the performance of, and with respect to, the functions, powers, and duties, vested in him by this part, the Secretary may enforce, pay, compromise, waive, or release any right, title, claim, lien, or demand, however acquired, including any equity or any right of redemption. Section 468(2) of the HEA endows the Secretary with similarly broad and flexible powers with respect to loans arising under the Perkins program.<sup>20</sup>

*Current Regulations:* None.

*Proposed Regulations:* Under proposed § 30.91(a), the Secretary may waive up to the outstanding balance of a Federal student loan owed to the Department when the Secretary determines that the borrower has experienced or is experiencing hardship related to that Federal student loan such that the hardship is likely to impair the borrower's ability to fully repay the Federal government, or the Secretary has determined that the costs of enforcing the full amount of the debt are not justified by the expected benefits of continued collection of the entire debt.

*Reasons:* Proposed § 30.91(a) sets forth the purpose of proposed § 30.91. It clarifies both the types of Federal loans that could be considered for waiver under proposed § 30.91 as well as the proposed standard that the Department would apply to determine if a borrower has faced, or is facing, hardship in a manner and extent that makes the borrower eligible for relief.

The Department proposes to include all types of Federal student loans held by the Department in § 30.91 because, among loans held by the Department, no programmatic differences exist between the loan types that would justify waiver of some of a borrower's loans and not others.

The Department proposes to consider waiver in situations in which a borrower "has experienced" or "is experiencing" hardship, because, in addition to current hardship that may raise immediate concerns, there could be situations where the Department has clear indicators of hardship, but such indicators may not be current. The Department believes that in certain situations, it would be appropriate and reasonable for the Department to infer that the past observed hardship has

continued. For example, if the Department has evidence from two years ago that a borrower has an incurable and chronic condition, then it would be reasonable to infer that situation has continued. It is also likely that, because reviewing information submitted by a borrower would involve significant Department staff time, the Department could make reasonable assumptions and inferences about facts that might have changed during the intervening time. The Department would retain the ability to request updated information if necessary to reach a determination.

Acknowledging past hardship also recognizes that previous periods of hardship may have current and future consequences for a borrower. For example, a borrower who struggled to repay their loans may have seen their balance increase in size such that full repayment of that greater amount is no longer feasible.

In all cases, the Secretary would only consider waiver of loans that are outstanding. The Department would not consider waivers of loans that are paid off or otherwise satisfied because, once repaid, a borrower's debt no longer exists. Moreover, a borrower could not be experiencing hardship that meets the proposed standard on a Federal loan that has been repaid. For the same reason, the Department would also not consider reimbursement of payments made on loans that are outstanding.

As noted above, the Department's proposed standard for assessing whether a borrower's hardship circumstances warrant relief involves determining whether such circumstances are likely to impair the borrower's ability to fully repay the Federal government or the costs of enforcing the full amount of the debt are not justified by the expected benefits of continued collection of the entire debt.

The Department proposes to evaluate whether a hardship is likely to impair the borrower's ability to fully repay the Federal government for several reasons. Whether a borrower can fully repay the debt aligns with general Federal principles of debt collection that guide agencies on the appropriateness of discharging all or part of a debt when the borrower is unlikely to fully repay their debt within a reasonable period or the agency is unlikely to collect the debt in full within a reasonable period. *See, e.g.,* 31 CFR 902.2(a)(1) and (2).

Considering situations where the borrower's hardship is "likely" to impair the ability to fully repay a loan allows the Department to make a reasonable, informed predictive determination regarding the impact of a

borrower's hardship, based upon factors that, from the Department's experience with student aid programs, are strongly correlated with an inability to fully repay student loan obligations. The Department would assess these factors to predict which borrowers face or have faced hardship likely to cause continued impairment of their ability to repay a loan without jeopardizing their financial security. For example, lengthy time in repayment, in conjunction with other factors such as repayment history, may predict that a borrower may be unable to pay the loan without jeopardizing basic needs, such as housing, food, medication, and other essentials. Use of predictive measures would permit the Secretary to address hardships before borrowers suffer the most significant consequences associated with student loan struggles, such as delinquency and default and their follow-on effects.

In addition to the impairment of a borrower's ability to repay, the Department proposes an additional standard for evaluating eligibility for relief where a borrower's hardship causes the cost of collection to exceed the expected benefits to the Federal government of continued collection. Such an approach acknowledges circumstances where it no longer advances the financial, operational, or programmatic goals of the Department to continue attempting to collect on a loan. In deciding whether collection advances such goals, the Department would consider a range of possible costs flowing from collection action. This might include financial and non-financial costs to the Department directly related to loan collection, such as compensating student loan servicers or debt collectors, and, because the Department's resources are limited, operational and administrative costs associated with outreach to high-risk borrowers unlikely to repay loans, rather than more beneficial outreach to other borrowers who may be more likely to be able to fully repay.

In assessing the costs of collection, the Department may also consider whether collection advances the principles of the title IV programs. For example, a key purpose of the title IV programs is to enable borrowers who pursue postsecondary education to improve their future economic outcomes,<sup>21</sup> and it may be contrary to

<sup>21</sup> In enacting the HEA, Congress emphasized a central purpose was to "extend the benefits of college education to increasing numbers of students . . . drawing upon the unique and invaluable resources of . . . universities to deal with national problems of poverty and community development." H.R. Rep. 80-561 (1965) at 2-3. Title IV was

<sup>20</sup> See 20 U.S.C. 1087hh(2).



this purpose to seek collection from borrowers who, due to labor market changes or family health challenges, are unable to participate fully in the market and repay their loans.

Proposed § 30.91(a) would permit the Secretary to waive all or part of an outstanding loan balance. Waiving part, but not all, of the amount owed could alleviate a borrower's inability to repay the remaining debt or alter the Department's cost-benefit equation associated with collecting the loan. The proposed regulation would preserve the Secretary's discretion to determine when it would be appropriate to provide such a partial waiver.

The language in proposed § 30.91(a) should be understood in the context of the standards for relief described in the discussion of proposed § 30.91(c) and § 30.91(d). If the Secretary determined that a borrower is eligible for relief under proposed § 30.91(a), the Secretary would next need to determine the amount of the outstanding balance to waive. To do so, the Secretary would assess the borrower's hardship factors to determine whether it is likely that those hardship issues could be addressed by only waiving part of the balance rather than the full amount. Generally, the Department would adopt a rebuttable presumption that the full amount would be eligible for waiver where the borrower meets the criteria in this proposed section. Such a presumption could, however, be rebutted if the Secretary concludes that the effect of the hardship on the borrower would be ameliorated by less than a full waiver.

The Department is proposing to use a presumption of a full waiver because we believe that full relief would be warranted in the majority of circumstances in which a waiver is granted under this standard, and because doing so would produce the most consistent decision-making. We reach this conclusion based upon past challenges in establishing methodologies for partial relief in other types of student loan forgiveness. For instance, the Department has struggled to address the issue of partial relief for years in the context of approved borrower defense to repayment discharges. Multiple borrower defense regulations have contemplated the award of partial discharges for

borrowers.<sup>22</sup> In those situations, the amount of relief was based upon the determined amount of financial harm faced by the borrower. The Department attempted to capture this through formulas that took into account typical borrower earnings compared to earnings at other comparable types of institutions and programs but encountered legal and methodological challenges with such approaches. In using such approaches, the Department struggled to make sure that the comparisons being drawn included the earnings of the borrower whose relief was being contemplated (for example, methodologies used the earnings of borrowers who graduated but there could be approved claims from non-graduates). The Department also could not determine that the experiences of the typical borrower matched those of the borrower in question. Ultimately, the Department adopted a rebuttable presumption of full relief for these discharges.

Though the Department has not previously implemented the hardship waivers proposed in this NPRM, we believe such a process would result in similar issues were we to not use a rebuttable presumption of a full waiver. Similar to calculating financial harm for approved borrower defense claims, we would need to calculate an amount that would allow the borrower to repay the debt in full in a reasonable period or justify the government's cost of collection based upon the expected benefits. Although a de minimis amount of debt might be predictably repaid, we have not been able to identify an implementable principle that would lead to consistent results for partial relief.

Moreover, the Department would need to make these decisions consistently. We do not anticipate that waivers would be granted across a common group of borrowers who attended the same school and program the way they typically are for borrower defense claims. That means the approaches attempted in borrower defense, which draw comparisons to similar educational programs, would not work here. The Department would therefore need to use a fully individualized process to determine relief. That has risks of inconsistency, especially in situations where waivers are granted as part of an application approach in which there is a holistic assessment of the factors. Borrowers approved under such a process could have very different characteristics from each other, making it challenging to

determine how such characteristics should be weighted for consistent waiver amount determinations.

Overall, then, we believe a rebuttable presumption of a full waiver would facilitate the greatest consistency in decision-making. Here, a rebuttable presumption means that if the presumption of full relief were rebutted, only then would the Department conduct a more involved determination. And doing so in more isolated cases would allow the Department's determinations to be more consistent and accurate.

The committee reached consensus on this section.

#### *§ 30.91(b) Factors That Substantiate Hardship*

*Statute:* Section 432(a) of the HEA (20 U.S.C. 1082(a)) provides that in the performance of, and with respect to, the functions, powers, and duties, vested in him by this part, the Secretary may enforce, pay, compromise, waive, or release any right, title, claim, lien, or demand, however acquired, including any equity or any right of redemption. Section 468(2) of the HEA endows the Secretary with similarly broad and flexible powers with respect to loans arising under the Perkins program.<sup>23</sup>

*Current Regulations:* None.

*Proposed Regulations:* Proposed § 30.91(b) provides a non-exhaustive list of factors related to the borrower that the Secretary may consider in determining whether a borrower meets the hardship standard for relief under these regulations. These factors are:

- Household income;
- Assets;
- Type of loans and total debt balances owed for loans described in proposed 30.91(a), including those not owed to the Department;
- Current repayment status and other repayment history information;
- Student loan total debt balances and required payments, relative to household income;
- Total debt balances and required payments, relative to household income;
- Receipt of a Pell Grant and other information from the Free Application for Federal Student Aid (FAFSA) form;
- Type and level of institution attended;
- Typical student outcomes associated with a program or programs attended;
- Whether the borrower has completed any postsecondary certificate or degree program for which the borrower received title IV, HEA financial assistance;

intended to increase student access to a "highly skilled professional [and] technical" workplace evolving in the United States. *Id.* at 20. Further, after signing the HEA into law, President Lyndon Johnson remarked that, among other purposes, the Act intended to provide "a way to deeper personal fulfillment, greater personal productivity, and increased personal reward." See Public Papers of the Presidents, Johnson 1965 book 2, at 1103–04.

<sup>22</sup> See, e.g., 81 FR 75926 (Nov. 1, 2016) and 84 FR 49788 (Sept. 23, 2019).

<sup>23</sup> See 20 U.S.C. 1087hh(2).

- Age;
- Disability;
- Age of the borrower's loan based upon first disbursement, or the disbursement of loans repaid by a consolidation loan;
- Receipt of means-tested public benefits;
- High-cost burdens for essential expenses, such as healthcare, caretaking, and housing;
- The extent to which hardship is likely to persist; and
- Any other indicators of hardship identified by the Secretary.

*Reasons:* The Department proposes this non-exhaustive list in proposed § 30.91(b)(1) through (16) to identify the data likely to best substantiate whether a borrower would be eligible for relief. The Department proposes that the list be non-exhaustive, and further proposes a “catch-all” provision in § 30.91(b)(17), to preserve the Department's flexibility to address unanticipated factors that affect specific borrowers. Although the list in proposed § 30.91(b) is not exhaustive, we believe that providing this extensive list of the factors that would be most relevant to the Secretary's determination provides appropriate notice and guidance as to what the Secretary would consider.

We do not anticipate that the Secretary would need to evaluate every factor in proposed § 30.91(b) for a given borrower. Rather, these factors identify different items that could be considered, either individually or in concert with other factors in proposed § 30.91(b), to make determinations of whether the borrower is eligible for relief. There are some factors that, might be sufficient with only limited additional evidence to determine a borrower is eligible for relief. By contrast, there are other factors that are likely to serve as contributing factors, but that would likely require several more factors to sufficiently demonstrate that the borrower is eligible for relief.

In an assessment of the borrower's factors indicating hardship, whether under proposed § 30.91(c) or § 30.91(d), the Department anticipates that determining that a borrower is eligible for relief would be the result of considering multiple factors identified in proposed § 30.91(b) and the interplay between those factors, including looking at a combination of the borrower's current financial circumstances and the history of their loan, to make the required determination of whether a borrower is eligible for relief.

The factors listed in proposed § 30.91(b) fall into several different groups, which in turn would inform how the factor could help demonstrate

hardship. Below we discuss these groupings and how they could inform the Secretary's determination of whether the borrower has experienced, or is experiencing, hardship that would qualify for relief.

We note that the term “factors” is used in the title of proposed § 30.91(b) and “indicators” is used in the regulatory text of proposed § 30.91(b). The term “indicators” was intended to refer to factors that may indicate hardship. To avoid confusion with the use of the term “indicators” in statistical terminology, we use “factors” where possible.

*Borrower's current and past finances (factors 1, 2, 3, 5, 6, 7, 14, and 15).* One category of proposed factors relates to borrowers' current finances. These are listed below with their corresponding number in proposed § 30.91(b):

1. Household income;
2. Assets;
3. Type of loans and total debt balances owed for Federal student loans, including those not owed to the Department;
5. Student loan total debt balances and required payments, relative to household income;
6. Total debt balances and required payments, relative to household income;
7. Receipt of a Pell Grant and other information from the Free Application for Federal Student Aid (FAFSA) form;
14. Receipt of means-tested public benefits; and
15. High-cost burdens for essential expenses, such as healthcare, caretaking, and housing.

The Department proposes these factors because they would provide important information about a borrower's financial situation. Information about household income and assets would help the Secretary understand the level of resources a borrower might have available to put toward their loans.

The borrower's household income also could be a relevant factor for evaluating their likelihood of default. Research has found a borrower's earnings to be correlated with their likelihood of default,<sup>24</sup> and a 2021 Pew survey indicated that borrowers who reported relatively low incomes or volatile incomes also reported substantially higher student loan default

rates, as compared to borrowers who reported higher incomes or who reported stable earnings.<sup>25</sup>

Assets would be relevant to determine whether a borrower's ability to repay a loan is impaired, because they are a component of a borrower's finances that might be liquidated to allow repayment. They also might provide a financial cushion that would allow a borrower to avoid default in the event of a job loss or a large unplanned expense, such as medical expenses.<sup>26</sup> Homeownership, for example—whether by the borrower or the borrower's parents—appears to be correlated with lower likelihood of default.<sup>27</sup> Homeowners can potentially obtain liquidity by borrowing against their home in times of need, and homeownership also correlates with other measures of creditworthiness and financial advantage. Because assets—particularly more liquid assets that can be tapped quickly in times of financial distress—might provide a valuable cushion against default, information on a borrower's assets, such as savings and investments, would be relevant to the determination of whether the hardship standard in proposed § 30.91(a) is met.

Similarly, the proposed factor related to receipt of means-tested public benefits could inform the Secretary if other government entities have determined that a borrower meets the qualifications for public assistance, which would streamline the Secretary's evaluation process.

Those data also could indicate hardship overall. Receipt of means-tested public benefits, such as through the Supplemental Nutrition Assistance Program (SNAP), Supplemental Security Income (SSI), or Temporary Assistance for Needy Families (TANF), indicates an individual or family is likely living at or near the Federal Poverty Level. Demonstrated eligibility for these programs could indicate that a borrower lacks additional funds to put toward repaying their student loan debt. Additionally, survey data indicate that borrowers who received public benefits were more likely to report not making

<sup>25</sup> Takti-Laryea, Ama and Phillip Oliff. “Who Experiences Default?” Pew Charitable Trusts. March 1, 2024. <https://www.pewtrusts.org/en/research-and-analysis/data-visualizations/2024/who-experiences-default>.

<sup>26</sup> Ibid.

<sup>27</sup> Scott-Clayton, Judith. “What accounts for gaps in student loan default, and what happens after.” (2018). Brookings. Mueller, Holger M. and Constantine Yannelis. “The rise in student loan defaults.” *Journal of Financial Economics* 131, no. 1 (2019): 1–19. Mezza, Alvaro A. and Kamila Sommer. “A Trillion-Dollar Question: What Predicts Student Loan Delinquencies?” *Journal of Student Financial Aid* 46, no. 3 (2016): 16–54.

<sup>24</sup> Looney, Adam and Constantine Yannelis. “A crisis in student loans?: How changes in the characteristics of borrowers and in the institutions they attended contributed to rising loan defaults.” *Brookings Papers on Economic Activity* 2015, no. 2 (2015): 1–89. Gross, Jacob PK, Osman Cekic, Don Hossler, and Nick Hillman. “What Matters in Student Loan Default: A Review of the Research Literature.” *Journal of Student Financial Aid* 39, no. 1 (2009): 19–29.

payments on their loans or having defaulted on a debt.<sup>28</sup>

Federal Pell Grants are awarded to students who demonstrate financial need. Information about Pell Grant receipt and other data from the FAFSA could provide helpful information about a borrower's economic circumstances at the time they went to college, as well as their trajectory over the course of their enrollment in higher education, which could help give the Secretary a perspective on the duration of hardship that some borrowers face, and help the Secretary determine the likelihood that the hardship would continue.

Researchers have found that receipt of a Pell Grant and the average amount of the Pell Grant (which is determined by a number of factors related to the borrower's enrollment, expenses, and financial capacity) is correlated with difficulties repaying loans.<sup>29</sup> Other evidence indicates that a borrower's expected family contribution (EFC)—an index number that until recent legislative changes was used to determine eligibility for Federal student aid including Pell Grants using data on students' income, assets, and other FAFSA inputs—is correlated with default on student loans within 12 years.<sup>30</sup>

Other borrower experiences that are reflected in data reported on the FAFSA also can be associated with future student loan default, including parental education, borrower age, and dependency status.<sup>31</sup>

<sup>28</sup> Blagg, Kristin. "The Demographics of Income-Driven Student Loan Repayment." February 26, 2018. Urban Institute. <https://www.urban.org/urban-wire/demographics-income-driven-student-loan-repayment>. Takti-Laryea, Ama and Phillip Oliff. "Who Experiences Default?" Pew Charitable Trusts. March 1, 2024. <https://www.pewtrusts.org/en/research-and-analysis/data-visualizations/2024/who-experiences-default>.

<sup>29</sup> Mezza, Alvaro A. and Kamila Sommer. "A trillion dollar question: What predicts student loan delinquencies?" Finance and Economics Discussion Series 2015–098 (2015). Washington: Board of Governors of the Federal Reserve System. Looney, Adam and Constantine Yannelis. "A crisis in student loans?: How changes in the characteristics of borrowers and in the institutions they attended contributed to rising loan defaults." Brookings Papers on Economic Activity 2015, no. 2 (2015): 1–89.

<sup>30</sup> Scott-Clayton, Judith. "What accounts for gaps in student loan default, and what happens after." (2018). Brookings. The EFC is no longer being used in financial aid calculations, starting with the 2024–2025 FAFSA form. Instead, there is a new index called the Student Aid Index (SAI) that will be used. While the EFC and SAI use different calculations, we expect the general evidence about EFC (e.g., that is correlated with default) to also be true for SAI.

<sup>31</sup> Ibid. Steiner, Matt and Natali Teszler. "Multivariate Analysis of Student Loan Defaulters at Texas A&M University." (2005) Texas Guaranteed Student Loan Corporation. Looney, Adam, and Constantine Yannelis. "A crisis in

The other proposed factors in this group (paragraphs 3 through 6) would provide important context about the extent to which financial resources available to the borrower must be put toward other critical expenses. For instance, information about a borrower's other debt obligations would give the Secretary a more in-depth picture of a borrower's financial situation that would account for other debts, including non-Federal student loans, that are not otherwise known to the Department. That helps in understanding total debt burden and how much of a borrower's income goes to debt repayment.

The type of student debt that borrowers hold, and the amount of that debt, can be predictive of the likelihood of being in default. For example, to receive a Grad PLUS or Parent PLUS loan, a borrower must not have an adverse credit history. This check for adverse credit history, along with likely differences among parents, graduate students, and undergraduate students, is likely to generate a pool of borrowers with different characteristics than borrowers who receive other types of Federal loans. Parent PLUS and Grad PLUS borrowers typically borrow at older ages, at which point many will have more established careers. Parent PLUS loans have lower rates of default than Federal loans issued directly to students. For example, in fiscal year 2015, among borrowers aged 50 to 64 who hold Parent PLUS loans, 10 percent were in default, while borrowers in the same age group who held Federal loans for their own education had a default rate of 35 percent.<sup>32</sup> Many older borrowers who take out Federal loans for their own education, however, have held their loans for a long time and are likely to have experienced repayment struggles.<sup>33</sup> An examination of data about those who borrowed FFEL loans to attend institutions of all types in Texas and who entered repayment between 2004 and 2010 indicates that Parent PLUS borrowers had higher repayment rates than student borrowers during this period, although Parent

student loans?: How changes in the characteristics of borrowers and in the institutions they attended contributed to rising loan defaults." Brookings Papers on Economic Activity 2015, no. 2 (2015): 1–89. Specifically, higher age at time of repayment is negatively associated with default, as is being a dependent. Borrowers who report a family income of under \$25,000 on their first FAFSA are more likely to default.

<sup>32</sup> U.S. Government Accountability Office. "Social Security Offsets: Improvements to Program Design Could Better Assist Older Student Borrowers with Obtaining Permitted Relief." December 2016.

<sup>33</sup> Blagg, Kristin and Victoria Lee. "The complexity of education debt among older Americans." November 2017. Urban Institute.

PLUS borrowers who borrowed for their children to attend Minority-Serving Institutions (MSIs) paid down less debt and were more likely to default than borrowers for children who attended other institutions.<sup>34</sup>

Total student loan balance has been shown to correlate with default, though the link between total student loan balances and default can vary across borrowers.<sup>35</sup> A borrower's outstanding balance, and the type of loans for which they were eligible, can be broadly correlated with other factors that could affect a borrower's ability to repay, such as level of education, whether the borrower completed education, and the borrower's dependency status. Federal student loan borrowers with higher balances tend to be less likely to enter default; more than half of borrowers in default as of 2015 owed less than \$10,000.<sup>36</sup> This may be because many borrowers with relatively high balances used loans to attend graduate school, which can often lead to higher earnings. Others could be parents who are borrowing to help pay for a child's education.<sup>37</sup> Because both balance amount and debt type may be correlated with a borrower's potential for experiencing default, these factors would be relevant for the Secretary to consider in determining whether a borrower is eligible for relief.

In addition to debt by itself, payments and the amount of debt relative to a borrower's income, such as their required monthly payments relative to monthly income, are correlated with an increased likelihood of default. For example, among a cohort of borrowers who first entered post-secondary education in 2003–04, higher debt-to-income ratios were associated with higher rates of default.<sup>38</sup> Other data show that among bachelor's degree recipients who left school in 1993, those with a monthly payment that was more than 12 percent of their monthly income were more likely to default by 2003 than those with debt payments that were a

<sup>34</sup> Di, Wenhua, Carla Fletcher, and Jeff Webster. "A Rescue or a Trap? An Analysis of Parent PLUS Student Loans." (2022). Federal Reserve Bank of Dallas.

<sup>35</sup> See, for example, Scott-Clayton 2018, Appendix Table A2, where amount borrowed is associated parabolically with likelihood of default.

<sup>36</sup> Looney, Adam, and Constantine Yannelis. "How useful are default rates? Borrowers with large balances and student loan repayment." Economics of Education Review 71 (2019): 135–145. Dynarski, Susan M. "An economist's perspective on student loans in the United States." Human Capital Policy (2021): 84–102. Edward Elgar Publishing.

<sup>37</sup> Ibid.

<sup>38</sup> Scott-Clayton, Judith. "What accounts for gaps in student loan default, and what happens after." (2018). Brookings.

lower share of income.<sup>39</sup> It is possible that these trends may be different in recent years due to the growth in usage of IDR plans. However, because analyses like this rely on surveys that follow the repayment histories of borrowers over a long-time horizon, these currently represent the best evidence available to the Department about longer-term repayment experiences.

A borrower's debt obligations beyond student loan debt can affect financial stability, with research and data from a variety of settings indicating that the types of debts that borrowers hold, their payments, and the ratio of total debt to income, may be predictive of default.<sup>40</sup> In addition, in the presence of financial distress, debtors may need to prioritize other payments instead of their student loans in an effort to preserve liquidity or avoid losing the home or auto that serves as collateral on other debt.<sup>41</sup>

The proposed factor in § 30.91(b)(15), related to high costs of other essential expenses, also captures a key concept that is not directly considered in other Department forms of repayment assistance. Formulas for income-driven repayment plans, for example, only focus on household size, income, and an amount of income protected based upon a multiplier of the Federal Poverty Level. The Department continues to believe that is the best approach for administering income-driven repayment obligations, as it is a simpler way to determine a payment obligation. However, that approach does not account for situations where borrowers face exceptionally high costs that are not otherwise factored in. During negotiated rulemaking, the Department heard from a borrower who is expending significant resources caring for a sick relative. In cases where the borrower is the only individual able to bear those costs on behalf of the relative, those costs may reduce the amount of

income available for making payments on Federal student loans and are an expense that could not reasonably be adjusted or anticipated by the borrower. Agencies engaged in collection activity often consider the borrower's overall expenses and whether such expenses are necessary or excessive.<sup>42</sup> Specifying that the Secretary may consider high-cost burdens for essential expenses in the hardship determination would allow the Secretary to address particularly concerning situations that could impair the borrower's ability to fully repay their loan or heighten the costs of enforcing the full debt to a point that such enforcement is not justified.

Among those who experienced student loan default, the time and financial burden of caring for young or medically needy family members is mentioned as a reason for missing student loan payments.<sup>43</sup> Among borrowers who pursued discharge of their student debt through bankruptcy proceedings, those who were a caretaker for family members who have health or medical conditions were more likely to be successful than borrowers who pursued bankruptcy proceedings, but who did not have that same family need.<sup>44</sup> Evidence also suggests that having medical collections is associated with student loan repayment struggles.<sup>45</sup>

For some borrowers, student loan payments make up a large portion of a household's overall budget. As payments restarted in October 2023 following the end of the payment pause, borrowers—particularly those with non-\$0 scheduled payments—anticipated making changes to their household budget, such as reducing discretionary spending or savings.<sup>46</sup> Therefore, essential expenses and duties would be relevant to the Secretary's determination of whether a borrower meets the hardship standard in proposed § 30.91(a).

*Experience repaying student loans (factors 4 and 13).* Another category of proposed factors relates to information about the borrower's experience

repaying student loans. These factors are:

4. Current repayment status and other repayment history information; and

13. Age of the borrower's loan based upon first disbursement, or the disbursement of loans repaid by a consolidation loan.

The Department proposes considering these two factors because they provide information about what is already known about the ability of the borrower to repay their debt. Repayment history could indicate if the borrower has previously experienced struggles repaying their debt.<sup>47</sup> Similarly, the age of loans would provide information about how long a borrower has held these debts. The longer a loan is outstanding without being repaid, the greater the concern about its eventual repayment. This is particularly true for loans that are well past the 10-year repayment period that is part of the Standard Repayment Plan.<sup>48</sup> For example, in a sample of students who first entered postsecondary education in 1995–1996 and have not borrowed since the 1999–2000 school year, the average borrower who had debt 20 years after entering school still owed 95 percent of what they initially borrowed, and the median borrower owed 69 percent.<sup>49</sup>

The Department has detailed information on the repayment histories of borrowers who first entered repayment on their student loans prior to the pandemic-related pause on student loan repayment. For borrowers who newly entered repayment when student loan payments restarted in October 2023, the Department will have at least six months of repayment history. In the Department's experience, repayment status and other information relevant to a borrower's loan history, including the borrower's ability to access payment options under Title IV of the HEA, can be a strong predictor of student loan default. Borrowers who default often stay in default for a long

<sup>39</sup> Choy, Susan P. and Xiaojie Li. "Dealing with Debt: 1992–93 Bachelor's Degree Recipients 10 Years Later. Postsecondary Education Descriptive Analysis Report." (2006) NCES 2006–156.

<sup>40</sup> Mezza, Alvaro A. and Kamila Sommer. "A trillion dollar question: What predicts student loan delinquencies?" Finance and Economics Discussion Series 2015–098 (2015). Washington: Board of Governors of the Federal Reserve System. Blagg, Kristin. "Underwater on Student Debt: Understanding Consumer Credit and Student Loan Default." (2018). Urban Institute. Fuster, Andreas and Paul S. Willen. "Payment size, negative equity, and mortgage default." American Economic Journal: Economic Policy 9, no. 4 (2017): 167–191.

<sup>41</sup> For example, see Li, Wenli. "The economics of student loan borrowing and repayment." Business Review Q3 (2013): 1–10. Federal Reserve Bank of Philadelphia. Ionescu, Felicia and Marius Ionescu. "The Interplay Between Student Loans and Credit Card Debt: Implications for Default in the Great Recession." Federal Reserve Bank Finance and Economics Discussion Series: 2014–14 (2014).

<sup>42</sup> See, e.g., 31 CFR 902.2(g).

<sup>43</sup> Pew Charitable Trusts. "Borrowers Discuss the Challenges of Student Loan Repayment." (2020).

<sup>44</sup> Iuliano, Jason. "An Empirical Assessment of Student Loan Discharges and the Undue Hardship Standard." American Bankruptcy Law Journal 86, no. 3 (Summer 2012): 495–526.

<sup>45</sup> Cohn, Jason. "Student Loan Default Patterns: What Different Paths through Default Can Tell Us about Equitably Supporting Borrowers." (November 2022). Urban Institute.

<sup>46</sup> Monarrez, Tomás, and Dubravka Ritter. "Resetting Wallets: Survey Evidence on Household Budget Adjustments with Student Loan Payments Resumption." (2024): 1–19.

<sup>47</sup> The Department recognizes that a borrower's documented repayment history could also be affected by servicer recordkeeping, access to complete payment history, right to alternative payment arrangement, loan forgiveness, cancellation, or discharge. Separate and apart from these proposed regulations, the Department has taken steps to address these issues such as through the payment count adjustment. Moreover, even with these possible limitations, the Department believes that it is still useful to include this factor because repayment history can still provide valuable information about a borrower's hardship.

<sup>48</sup> Federal Student Aid, U.S. Department of Education. "Standard Repayment Plan." <https://studentaid.gov/manage-loans/repayment/plans/standard>.

<sup>49</sup> U.S. Department of Education, National Center for Education Statistics, Beginning Postsecondary Students: 1996/2001 (BPS). <https://nces.ed.gov/datalab/powerstats/table/nsqptw>.

time and those who have a history of delinquency or previous defaults may be more likely to default again.

Whether a borrower postpones payments through deferment or forbearance could also be predictive of student loan default, though the diverse bases for these postponement periods means that their predictive power is context-dependent. For example, some borrowers use a deferment for additional school enrollment or military service, while others may seek a deferment due to economic hardship. In one study, the median defaulter among those who first entered postsecondary education in 2003–04 and experienced default within 12 years used two forbearances.<sup>50</sup> However, in another study, roughly 43 percent of a cohort of borrowers who entered repayment in fiscal year 2011 and attended community colleges in one State did not make a payment, or postpone their payments using deferment or forbearance, before their loans entered default.<sup>51</sup>

The Department acknowledges that the inclusion of factors related to a borrower's repayment history could create a perception that borrowers could intentionally change their repayment behavior to improve their chances of receiving a waiver. However, as described below, the Department believes that the plan for considering waivers would not encourage large numbers of borrowers to act in such a strategic manner. With respect to the relief under proposed § 30.91(c), the Department proposes using the publication date of the NPRM as the start of the two-year period in which a borrower may be predicted to default. This would prevent borrowers from trying to artificially establish hardship through strategic nonpayment; likewise, it prevents granting relief to any such borrowers. Failure to pay carries substantial risks to borrowers. Since there is no guarantee that they would receive any relief under this proposed rule, failure to pay would negatively impact credit scores, and risk wage garnishment or the loss of loan benefits. Overall, we believe using data from the publication date of the NPRM would negate the ability for borrowers to game the hardship model.

With respect to the relief proposed under § 30.91(d), the Department would also take measures that prevent strategic maneuvers to qualify for waiver. First,

as part of the holistic assessment, the Department would consider a multitude of factors that interact with each other. Therefore, borrower attempts to adjust behavior and qualify under that provision could result in a borrower hurting themselves through delinquency or default with no guarantee of a waiver. Second, solely being in delinquency or default is no guarantee that a borrower's application would be approved. Third, as part of the holistic assessment, the Department would consider anomalous changes in repayment behavior—such as a borrower suddenly showing signs of struggle when other borrower conditions appear favorable for repayment. Overall, we believe the negative borrower consequences of delinquency and default, combined with a multi-factor eligibility assessment that is not limited to such status, would discourage intentional nonrepayment of loans.

*Borrower's personal attributes (factors 11 and 12).* Another category of factors relates to additional information about a borrower's personal attributes. These are:

11. Age; and
12. Disability.

The Department proposes including these factors because they can provide additional information about the ability of the borrower to repay their loans, the likely amount the Department might be able to collect from a borrower, and the associated costs of enforced collections. Considering a borrower's age can help inform the likelihood that their financial position is going to improve, deteriorate, or stay the same. This is especially true when used in concert with other factors. For instance, elderly borrowers are highly unlikely to see their income increase and are instead more likely to see their income diminish as they stop working. Relatedly, information on a borrower's disability could indicate whether their earnings are affected, which could help the Secretary understand the resources they may or may not have available to repay their loans. Disability information may also indicate that the borrower faces additional expenses that subtract from what a borrower could pay on their loans. For many people, earnings grow as they age and gain more experience; however, many older borrowers have held their loans for a long time and may have experienced repayment struggles.<sup>52</sup> Older borrowers may also be more likely to have financial

commitments (such as expenses for children or caring for others) that can result in difficulty making student loan payments.<sup>53</sup> Earnings also tend to peak for workers in their mid-fifties, and so borrowers who hold loans until and beyond this age may see their ability to pay plateau or erode if their expenses are consistent but their income declines.<sup>54</sup>

Borrowers are eligible for a discharge of their student loans if they qualify for a total and permanent disability (TPD) discharge.<sup>55</sup> To qualify for a TPD discharge, the Secretary must determine that a borrower is “unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death, has lasted for a continuous period of not less than 60 months, or can be expected to last for a continuous period of not less than 60 months.”<sup>56</sup> With the proposed hardship waivers, the Secretary would be looking at situations where a borrower's disability may impair the extent to which they can work without rising to the level that would justify a TPD discharge. For example, the Department may consider, as one of several factors, whether a disability that limits a borrower's ability to work full-time for a sustained period, but does not completely preclude part-time work, increases the likelihood of default, and indicates hardship impairing the likely ability to fully repay the loan, even if that borrower would not qualify for a TPD discharge. Although employment rates for people with disabilities have increased since the COVID–19 pandemic, working-age individuals with disabilities have employment rates that are roughly half of their counterparts without disabilities.<sup>57</sup> Moreover, the medical costs that may be associated with treatment for a substantial disability or disabilities may make it more difficult to make student loan payments. Among borrowers who have successfully been granted a student loan discharge in bankruptcy and have a medical problem or a dependent medical problem, a work-limiting

<sup>53</sup> Ibid.

<sup>54</sup> Tamborini, Christopher R., ChangHwan Kim, and Arthur Sakamoto. “Education and lifetime earnings in the United States.” *Demography* 52, no. 4 (2015): 1383–1407.

<sup>55</sup> See, e.g., 20 U.S.C. 1087(a)(1) (authorizing the Department to cancel or discharge FFEL loans due to total and permanent disability), 20 U.S.C. 1087a(b)(2) (Direct loans), and 20 U.S.C. 1087dd(c)(1)(F)(ii) (Perkins loans).

<sup>56</sup> 20 U.S.C. 1087(a)(1).

<sup>57</sup> Andara, Kennedy, Anona Neal, and Rose Khattar. “Disabled Workers Saw Record Employment Gains in 2023, But Gaps Remain.” (2024). Center for American Progress.

<sup>50</sup> Miller, Ben. “Who Are Student Loan Defaulters?” (2017). Center for American Progress.

<sup>51</sup> Campbell, Colleen, and Nicholas Hillman. “A Closer Look at the Trillion: Borrowing, Repayment, and Default at Iowa's Community Colleges.” Association of Community College Trustees (2015).

<sup>52</sup> Gross, Jacob PK, Osman Cekic, Don Hossler, and Nick Hillman. “What Matters in Student Loan Default: A Review of the Research Literature.” *Journal of Student Financial Aid* 39, no. 1 (2009): 19–29.

medical condition was relatively common.<sup>58</sup>

Data and surveys indicate that borrowers with a disability tend to have a higher probability of default, with variation across conditions.<sup>59</sup> Half of borrowers who reported a disability in a 2021 Pew survey were in default, compared to a third of those without a disability.<sup>60</sup>

*Borrower's postsecondary experiences (factors 8, 9, and 10).* The final group of factors are those related to a borrower's postsecondary educational experience. Those factors are:

8. Type and level of institution attended;

9. Typical student outcomes associated with a program or programs attended; and

10. Whether the borrower has completed any postsecondary certificate or degree program for which the borrower received title IV, HEA financial assistance.

The Department proposes to include these factors because there are clear connections between student outcomes and the type of institution attended.<sup>61</sup> Similarly, there are very strong correlations between non-completion of a certificate or degree program and struggles repaying student loans, as described further below. This information could be particularly helpful for determining whether a borrower may be at heightened risk of default, which might indicate that the

borrower satisfies the hardship standard in proposed § 30.91(a).

The level of education pursued, and the type of institution attended, can have a substantial impact on a student's earning trajectory and on their propensity to default and propensity to experience hardship as defined in proposed § 30.91(a). Across multiple studies and datasets, the sector and level of education provided by the institution correlate with propensity to default. In particular, students who attended for-profit institutions are more likely to default.<sup>62</sup> For example, among a cohort of borrowers who first entered undergraduate education in 2003–04, borrowers who entered a for-profit institution were 10 percentage points more likely to default than those who enrolled at other types of institutions.<sup>63</sup> Further, students enrolled in two-year schools, or vocational schools, were more likely to default relative to students enrolled in four-year institutions.<sup>64</sup> And students who enroll in non-selective four-year institutions were more likely to default than those who enroll in selective four-year institutions.<sup>65</sup>

The Department has long used a CDR measure to assess an institution's continued participation in title IV aid programs. An institution's CDR is highly predictive of future student loan delinquency.<sup>66</sup>

Research also has shown that there can be differential financial returns to programs of study.<sup>67</sup> Certain programs are also more likely to produce graduates with high amounts of debt, relative to typical earnings, which may affect loan repayment outcomes.<sup>68</sup> While the prevalence of loan default among borrowers who attended a particular institution or program is not a direct measure of academic quality, it can provide insight into whether the financial returns provided by a program or institution are sufficient for borrowers.

While not independently determinative of hardship, whether a borrower has completed their program of study generally correlates with student loan delinquency and default.<sup>69</sup> Borrowers who leave school without the credential they were pursuing have debt but lack the additional earnings premium that can come with attaining a degree or certificate. Students who leave school without completing their degree are less likely to report financial well-being and are more likely to express a desire to have done things differently in their higher education experience.<sup>70</sup> These factors are relevant

delinquencies?" Finance and Economics Discussion Series 2015–098 (2015). Washington: Board of Governors of the Federal Reserve System.

<sup>67</sup> Webber, Douglas A. "The lifetime earnings premia of different majors: Correcting for selection based on cognitive, noncognitive, and unobserved factors." *Labour economics* 28 (2014): 14–23.; Andrews, Rodney J., Scott A. Imberman, Michael F. Lovenheim, and Kevin M. Stange. "The returns to college major choice: Average and distributional effects, career trajectories, and earnings variability." No. w30331. National Bureau of Economic Research, 2022.

<sup>68</sup> Cellini, Stephanie Riegg, and Nicholas Turner. "Gainfully employed? Assessing the employment and earnings of for-profit college students using administrative data." *Journal of Human Resources*, 59(3) (2019): 342–371.; Christensen, Cody and Lesley J. Turner. "Student Outcomes at Community Colleges: What Factors Explain Variation in Loan Repayment and Earnings?" Brookings Institution (2021).

<sup>69</sup> Gross, Jacob PK, Osman Cekic, Don Hossler, and Nick Hillman. "What Matters in Student Loan Default: A Review of the Research Literature." *Journal of Student Financial Aid* 39, no. 1 (2009): 19–29.; Mezza, Alvaro A. and Kamila Sommer. "A trillion dollar question: What predicts student loan delinquencies?" Finance and Economics Discussion Series 2015–098 (2015). Washington: Board of Governors of the Federal Reserve System.; Looney, Adam and Constantine Yannelis. "A crisis in student loans?: How changes in the characteristics of borrowers and in the institutions they attended contributed to rising loan defaults." Brookings Papers on Economic Activity 2015, no. 2 (2015): 1–89. Scott-Clayton, Judith. "What accounts for gaps in student loan default, and what happens after." (2018). Brookings.

<sup>70</sup> Lockwood, Jacob and Webber, Douglas, Non-Completion, Student Debt, and Financial Well-Being: Evidence from the Survey of Household Economics and Decisionmaking (August, 2023). FEDS Notes No. 2023–08–21.

<sup>58</sup> Iuliano, Jason. "An Empirical Assessment of Student Loan Discharges and the Undue Hardship Standard," *American Bankruptcy Law Journal* 86, no. 3 (Summer 2012): 495–526.

<sup>59</sup> Campbell, Colleen. "The Forgotten Faces of Student Loan Default." (2018). Center for American Progress. Specifically, 60 percent of borrowers with emotional or psychiatric condition, 40 percent of those with orthopedic or mobility impairment, and 37 percent of those with a health impairment or problem experienced a default within 12 years, relative to 28 percent of those without a disability.

<sup>60</sup> Takti-Laryea, Ama and Phillip Oliff. "Who Experiences Default?" Pew Charitable Trusts. March 1, 2024. <https://www.pewtrusts.org/en/research-and-analysis/data-visualizations/2024/who-experiences-default>.

<sup>61</sup> See, for example, Black, Dan A. & Smith, Jeffrey A. (2006). Estimating the Returns to College Quality with Multiple Proxies for Quality. *Journal of Labor Economics* 24.3: 701–728. Cohodes, Sarah R. & Goodman, Joshua S. (2014). Merit Aid, College Quality, and College Completion: Massachusetts' Adams Scholarship as an In-Kind Subsidy. *American Economic Journal: Applied Economics* 6.4: 251–285. Andrews, Rodney J., Li, Jing & Lovenheim, Michael F. (2016). Quantile treatment effects of college quality on earnings. *Journal of Human Resources* 51.1: 200–238. Dillon, Eleanor Wiske & Smith, Jeffrey Andrew (2020). The Consequences of Academic Match Between Students and Colleges. *Journal of Human Resources* 55.3: 767–808. Further discussion is included in *Federal Register* Vol. 88, No. 194.

<sup>62</sup> Mezza, Alvaro A. and Kamila Sommer. "A trillion dollar question: What predicts student loan delinquencies?" Finance and Economics Discussion Series 2015–098 (2015). Washington: Board of Governors of the Federal Reserve System.; Looney, Adam and Constantine Yannelis. "A crisis in student loans?: How changes in the characteristics of borrowers and in the institutions they attended contributed to rising loan defaults." Brookings Papers on Economic Activity 2015, no. 2 (2015): 1–89.; Armona, Luis, Rajashri Chakrabarti, and Michael F. Lovenheim. "Student debt and default: The role of for-profit colleges." *Journal of Financial Economics* 144, no. 1 (2022): 67–92.; Deming, David J., Claudia Goldin, and Lawrence F. Katz. "The for-profit postsecondary school sector: Nimble critters or agile predators?" *Journal of Economic Perspectives* 26, no. 1 (2012): 139–164.

<sup>63</sup> Scott-Clayton, Judith. "What accounts for gaps in student loan default, and what happens after." (2018). Brookings.

<sup>64</sup> Mezza, Alvaro A. and Kamila Sommer. "A trillion dollar question: What predicts student loan delinquencies?" Finance and Economics Discussion Series 2015–098 (2015). Washington: Board of Governors of the Federal Reserve System.; Looney, Adam and Constantine Yannelis. "A crisis in student loans?: How changes in the characteristics of borrowers and in the institutions they attended contributed to rising loan defaults." Brookings Papers on Economic Activity 2015, no. 2 (2015): 1–89.

<sup>65</sup> Looney, Adam and Constantine Yannelis. "A crisis in student loans?: How changes in the characteristics of borrowers and in the institutions they attended contributed to rising loan defaults." Brookings Papers on Economic Activity 2015, no. 2 (2015): 1–89.

<sup>66</sup> Mezza, Alvaro A. and Kamila Sommer. "A trillion dollar question: What predicts student loan

to the Secretary's determination of whether the borrower is experiencing or has experienced hardship that meets the eligibility requirements.

*Other factors (factors 16 and 17).* In addition to the proposed factors discussed above, the Department proposes to include § 30.91(b)(16) to capture whether a borrower's hardship is likely to persist. This information could help inform decisions about the amount of a potential waiver, as hardships that are likely to persist would counsel in favor of either larger or complete waivers. In addition, and as described more fully below, under proposed § 30.91(d), the Department's holistic assessment would consider the persistence of the borrower's hardship as part of the determination whether the borrower met the eligibility requirements of showing a high likelihood to be in default or experience similarly severe negative and persistent circumstances, and other options for payment relief would not sufficiently address the borrower's persistent hardship.

Finally, proposed § 30.91(b)(17) would be a catch-all provision. As already noted, it would be important to acknowledge that rare unanticipated circumstances may cause a borrower to experience hardship that satisfies the standard for relief.

*The Secretary's consideration of factors indicating hardship.* Using the factors in proposed § 30.91(b), under both a predictive assessment of the factors (under proposed § 30.91(c)) and a holistic assessment of the factors (under proposed § 30.91(d)), the Secretary would engage in a fact-specific analysis of individual borrowers to determine whether the facts indicate that a borrower is facing hardship that meets the eligibility requirements.

The committee reached consensus on this section.

#### *§ 30.91(c) Immediate Relief for Borrowers Likely To Default*

*Statute:* Section 432(a) of the HEA (20 U.S.C. 1082(a)) provides that in the performance of, and with respect to, the functions, powers, and duties, vested in him by this part, the Secretary may enforce, pay, compromise, waive, or release any right, title, claim, lien, or demand, however acquired, including any equity or any right of redemption. Section 468(2) of the HEA endows the Secretary with similarly broad and flexible powers with respect to loans arising under the Perkins program.<sup>71</sup>

*Current Regulations:* None.

*Proposed Regulations:* Proposed § 30.91(c) would specify the Secretary's discretionary authority to provide for immediate, one-time relief to borrowers who are likely to default on their student loan obligations. Specifically, should the Secretary choose to exercise such discretion, the Secretary would be able to consider the factors in proposed § 30.91(b) to waive all or part of the federally held student loans of borrowers who the Secretary determines, based on data in the Secretary's possession, have experienced or are experiencing hardship such that their loans are at least 80 percent likely to be in default in the next two years after these proposed regulations are published.

*Reasons:* Proposed § 30.91(c) provides that the Secretary may discharge loans for borrowers who would likely be in default within two years of the publication date of this proposed regulation. The Department proposes specifying the Secretary's authority to grant relief for borrowers at a high risk of defaulting because we are concerned about borrower hardship caused by default and its effects. The Department proposes a statistical model, discussed in more detail below, that describes the weighting of the factors in proposed § 30.91(b) that would predict which borrowers are likely to be in default within the two-year period and therefore meet the hardship standard in proposed § 30.91(a).

As previously described, a borrower's default status can be indicative of the borrower's hardship repaying the loan.<sup>72</sup> Department data show that borrowers who default on their student loans tend to be individuals who are lower income, are the first in their families to attend college, have lower amounts of loan debt and yet still struggle with repayment, and did not complete their postsecondary programs.

Importantly, using likelihood of being in default as an indicator of hardship draws an explicit connection between a borrower's financial circumstances and their ability to repay the loan. Default indicates that a borrower has already faced hardship impairing their ability to fully repay the loan, and default itself typically creates cascading consequences that would further impair the ability to pay.<sup>73</sup> When a borrower

defaults, their entire loan balance is accelerated, potentially leading to wage garnishment and offset of Federal tax refunds and benefits such as Social Security.<sup>74</sup> Default is also reported to consumer reporting agencies, likely reducing borrowers' credit scores, and impeding them from obtaining credit or securing employment. Injury to borrowers' credit history and scores from default may also affect borrowers' ability to obtain housing, often disqualifying them from mortgages and affecting the ability to rent property. Finally, default may render borrowers ineligible for additional title IV, HEA assistance, which may be needed to complete an unfinished education. Therefore, defaults can compound the burdens of existing loans by preventing the economic boost of a completed education necessary to repay the debt. For all the reasons described above, the relief under proposed § 30.91(c) is consistent with the exacting definition of "hardship,"<sup>75</sup> because default is typically a result of significant economic privation (such as income insufficient to meet expenses, resulting in an inability to meet basic needs) and is a cause of further privation.

Using a predictive assessment of the factors in proposed § 30.91(b) to grant immediate relief to borrowers likely to be in default also would serve important practical purposes. This approach would allow the Department to assess likely default based on information it already has, without soliciting additional information from borrowers or other sources. The Department would be able to assess borrower data that correlate with student loan default, and therefore predict which borrowers are likely to experience default within the two-year period. This includes the factors in proposed § 30.91(b) that correlate with default rates, such as borrowers' current repayment status and other repayment history, non-completion of a postsecondary program, low-income levels shown on a FAFSA, receipt of a Pell Grant, and attendance at a particular type and level of institution.

Default." <https://studentaid.gov/manage-loans/default>.

<sup>74</sup> Although the Secretary would consider the risk of default as a circumstance indicating the borrower is likely suffering hardship in repaying the loan, the statutory consequences of default remain unaffected by the regulation. Borrowers who enter default would remain subject to these consequences, while other borrowers may demonstrate a high risk of default indicating hardship, and therefore justifying a waiver, regardless of whether they have ever entered default on their loans.

<sup>75</sup> "Hardship" is defined as "Privation; suffering or adversity." Black's Law Dictionary (12th ed. 2024).

<sup>72</sup> Li, Wenli. "The economics of student loan borrowing and repayment." 2013. Business Review, Federal Reserve Bank of Philadelphia, issue Q3, pages 1–10. Takti-Laryea, Ama and Phillip Oliff. "Who Experiences Default?" Pew Charitable Trusts. March 1, 2024. <https://www.pewtrusts.org/en/research-and-analysis/data-visualizations/2024/who-experiences-default>.

<sup>73</sup> Federal Student Aid, U.S. Department of Education. "Student Loan Delinquency and

<sup>71</sup> See 20 U.S.C. 1087hh(2).



If the Secretary exercises discretion under proposed § 30.91(c), the Secretary's grant of waivers under proposed § 30.91(c) would be a one-time action. The Department anticipates that shortly after finalizing and implementing these regulations, the Department could identify borrowers who would be eligible for waivers under proposed § 30.91(c) based on data as of the publication of the NPRM, and then would expeditiously choose whether to exercise discretion to provide such relief as part of a one-time action.

The waivers under proposed § 30.91(c) would be one-time actions for two reasons. The Department has taken significant steps to reduce the likelihood of default in the future, such as giving borrowers a pathway to return defaulted loans to repayment status through the Fresh Start program.<sup>76</sup> Therefore, the Department anticipates that in the future fewer borrowers will be likely to default. Second, the relief available through proposed § 30.91(d), by submitting an application that would be reviewed on a holistic basis, would provide a pathway to relief going forward for borrowers who continue to experience hardship even with the measures described above. However, the proposed one-time relief in proposed § 30.91(c) would remain necessary to many borrowers who have had loans for years without access to such benefits. These borrowers may already have struggled with delinquency and default and may be more likely to have already experienced challenges with application processes in the past.<sup>77</sup> Providing relief to such borrowers, without requiring them to take additional steps, reduces the cost to borrowers to gain access to eligible relief, and potentially reduces the administrative costs to government.

The Department proposes to limit this waiver provision to borrowers who are highly likely to be in default in the near term. Therefore, proposed § 30.91(c) would provide a waiver only to borrowers who the Secretary determines have an "80 percent" or higher likelihood of being in default within two years after these proposed regulations are published. In determining the proper threshold to propose for this provision, the Department believes it is important to propose a likelihood of being in default greater than 50 percent. A number lower

than 50 percent would not be appropriate because it would imply that a borrower was more likely to not be in default than they were to be in default, and therefore materially less likely to be experiencing hardship that would impair their ability to fully repay their loans. We ultimately decided to propose an 80 percent threshold to distinguish a pool of borrowers with a distinctly higher risk of default, as measured by the factors in proposed § 30.91(b). Our goal in choosing a proposed threshold for this provision is to identify clusters of borrowers in the probability distribution who are highly likely to be in default within two years. Under the Department's proposed modeling of the likelihood that a borrower is in default within the next two years, which is described below, there is a significant group of borrowers with minimal predicted risk of being in default and another significant group of borrowers with a relatively high predicted risk of being in default. The difference between the number of borrowers who are 80 percent likely to be in default and those with somewhat lower likelihood of being in default, such as 60 percent or 70 percent, is minimal, but the Department nonetheless proposes 80 percent because it reasonably identifies borrowers who are most at risk for default. However, as the Department continues to obtain newly available repayment data through the publication of this NPRM—and particularly data after the payment pause ended—the Department would continue to incorporate such data into the model. As such, we seek feedback from the public about whether the Department should adjust the proposed 80 percent threshold, as well as feedback on whether there are other reasons to adjust the 80 percent threshold and the related justification.

Because we have taken steps to address default going forward, the Department proposes using the likelihood of being in default within two years of the publication date of the NPRM, as the Department is intent on providing relief to borrowers who are likely to experience hardship in the near term. We believe two years would be reasonable, since it is a relatively short time period that would also reflect the possible time it might take for a borrower to default if they began repayment or were current at the start of the observation window. Generally, a borrower is not treated as being in default on their loan until they are 270 days late on payments, with additional days added for the transfer of the loan to the Debt Management and Collections

System (DMCS). Were the Department to consider borrowers who are likely to be in default within a shorter period, many borrowers experiencing hardship would be excluded because they could not be in default within that timeframe. For example, were we to only consider borrowers likely to be in default within 12 months, then any borrower with fewer than two missed payments could not default within that window. A two-year observation window also would allow us to capture borrowers who may be using deferment or forbearance to postpone loan repayment due to economic hardship. For example, a borrower who used a 12-month postponement at the start of the observation window may still default within the second year. We believe using the proposed statistical model described below to identify borrowers who are highly likely to default within two years would be reasonable because these are borrowers who the Department can reasonably predict have experienced or are experiencing hardship that impairs their ability to fully repay their loans.

As noted above, we recognize that a model designed to predict the likelihood of being in default in the future might lead some to argue that borrowers would be able to qualify for a waiver by intentionally not repaying their loans, thereby increasing their risk of being in default. However, we believe this risk is minimal in this instance. First and foremost, as noted above, we are proposing that at the time of the final rule, we would use data as of the publication of these proposed rules. Since these regulations would identify borrowers eligible for relief using data as of the NPRM's publication to predict future outcomes, and since we anticipate that the Secretary's discretionary grant of waivers under proposed § 30.91(c) would be a one-time action, borrowers would have limited opportunity to change their likelihood of relief by strategically not paying and would have no opportunity after this NPRM is published. Even if a later date were chosen, trying to avoid payment to artificially indicate repayment struggles would be a significant risk on the part of borrowers because the issuance of any particular waiver is discretionary and is based on the consideration of multiple factors. Therefore, any borrower who intentionally fails to repay loans to try to qualify for a waiver may end up harming their credit and facing the consequences of delinquency or default with no guarantee of receiving a waiver. Second, the Department's analysis considers the experience of

<sup>76</sup> See <https://studentaid.gov/announcements-events/default-fresh-start>.

<sup>77</sup> See for example, Ganong, Peter and Jeffrey B. Liebman. "The decline, rebound, and further rise in SNAP enrollment: Disentangling business cycle fluctuations and policy changes." *American Economic Journal: Economic Policy* 10 (4) (2018): 153–176.

borrowers across the entire student loan portfolio. As such, even if an individual borrower exhibits signs of delinquency, that borrower may still not be identified as sufficiently likely to be in default if most similarly situated borrowers are not predicted to be in default.

To assess the proposed hardship standard in § 30.91(a) when granting relief under proposed § 30.91(c), the Department proposes to use a statistical model that would predict likelihood of being in default within two years. The model would guide how the Secretary would consider and weigh data associated with the factors identified in proposed § 30.91(b) that are accessible to the Secretary without the need for additional data collection.

This proposed model would be designed to predict default on a Federal student loan in any quarter for two years from the date these proposed regulations are published. Student loan default would be estimated by a series of “predictors,” a term that we use to refer to the data elements that serve as inputs into the model, which would correspond to the 17 factors identified in proposed § 30.91(b). In Table 1 below, we include a list of the explanatory predictors that we propose to consider based on data currently available to the Department. We describe the proposed process for designing and refining the prediction model that incorporates the factors from proposed § 30.91(b) in further detail below.

As noted, the Department would derive these predictors from several data sources available to the Department. Some of the data would come from individual records available in the National Student Loan Data System (NSLDS), such as repayment histories and loan debt outstanding. Other data would be derived from information provided on the borrower’s FAFSA, such as Adjusted Gross Income or parental education. Some data would be compiled based on multiple sources held within the Department, such as data on the programs for which students borrowed and data that are reported on the College Scorecard or in cohort default rate reports that indicate typical student outcomes associated with a program or programs attended.

TABLE 1—PROPOSED MODEL INPUTS (“PREDICTORS”)

Past and Present Repayment Statuses.  
Total amount of debt outstanding.  
Past and present types of loans held, and amounts borrowed.  
Year of loan disbursement.

TABLE 1—PROPOSED MODEL INPUTS (“PREDICTORS”)—Continued

Ratio of current loan balance to balances from 4 months prior.
Repayment plans in which borrower currently participates.
Payments made on student loans.
Scheduled payments on student loans.
Interest rate on loans.
Years in repayment.
Pell Grant receipt.
Adjusted Gross Income from the borrowers’ first FAFSA.
Expected Family Contribution calculated from inputs on the FAFSA.
Parent education level reported on the FAFSA.
Dependent/independent status.
Borrower age.
Highest academic level reported for the borrower’s loans.
Highest degree the borrower ever reported pursuing.
Graduation indicator.
Year of graduation, for those graduated.
Predominant degree of the school the student last attended or from which they last graduated.
Ownership type of the school the student last attended or from which they last graduated.
Cohort default rates of the school the student last attended or from which they last graduated.
Earnings and debt information from College Scorecard of the school the student last attended or from which they last graduated.

**Note:** The Department proposes to use loan repayment statuses that reflect the benefits provided by On Ramp and Fresh Start policies.

The proposed process for designing and refining the statistical model to determine which borrowers meet the hardship standard in proposed § 30.91(a) based on 80 percent likelihood of being in default (as described in proposed § 30.91(c)) within two years would be as follows. First, the Department would develop and validate the model using multiple two-year random samples of data on Department-held loans with data ranging from 2017 to February 2020. The Department proposes to use samples from this time period because it contains the most recent period of at least two years of uninterrupted repayment before the COVID–19 payment pause, and therefore should provide the most up to date predictions about the relationship between the predictors described above and observed default over a two-year period. We would use these data to estimate the extent to which the previously described explanatory predictors (displayed in Table 1) would predict whether a borrower was likely to be in default on a student loan in any quarter within two years and therefore

would meet the hardship standard in proposed § 30.91(a).

The Department would then evaluate a variety of methods to include the “predictors” in the proposed model to create the most accurate predictions of likelihood of being in default. There are generally two forms that predictors can take in the source data. The first form is continuous, which means that the predictor can be any value within a range. For example, the amount of outstanding debt that a borrower has could take on dollar values from greater than 0 to the maximum amount of outstanding debt in our data. The second form is categorical, which are predictors that have a finite number of distinct groups (e.g., type of higher education institution). We propose to scale continuous predictors by their means and standard deviations, but would also consider those same predictors without scaling, and as categorical variables defined with different types of cutoff values to create those categories. The Department would also consider additional statistical model specifications such as those that include interactions among individual predictors, the use of higher order polynomials, and those that generate estimates using different subgroups of the model. Among these approaches to including variables in the model, the Department would estimate the model using logistic regression as well as machine learning approaches, such as gradient boosted trees.<sup>78</sup>

Next, to select the proposed model from among various potential specifications and options, we would evaluate the performance of the model using a distinct random hold out test sample of Department-held loans from the same time period as the training sample. In this step, to evaluate the performance of the model, we would calculate commonly used metrics, including measures of model fit, confusion matrices with a variety of threshold levels, standard metrics derived from the confusion matrices, and other performance metrics.<sup>79</sup>

<sup>78</sup> Gradient boosted trees are a machine learning approach commonly used for prediction based on decision trees. Decision trees use a “tree-like” hierarchical structure to split the data at various points in the distribution of predictor variable values, with the goal of predicting the value of the target variable (in this application, default within two years). Boosted trees typically perform better than single decision trees or random forest methods by sequentially learning from many decision trees. See Hastie, Tibshirani, and Friedman (2009), *The Elements of Statistical Learning: Data Mining, Inference, and Prediction*. 2nd Edition.

<sup>79</sup> See for example, Albanesi, Stefania and Domonkos F. Vamossy. “Predicting Consumer Default: A Deeper Learning Approach.” NBER Working Paper 26165 (2019). Khandani, Amir E.,

Generally, these measures provide different ways of comparing observed outcomes to outcomes predicted by the model, and a model would be considered to perform better if it more accurately classified borrowers into those who will be in default and those who will not be in default.

The proposed assessment based on this model would produce a score for each borrower that accumulates the prediction related to the predictors included in the model for likelihood of being in default within two years. The scores would range from 0 percent to 100 percent. This score could be interpreted as an estimate of the probability that a borrower is in default within the next two years. We would use the score from the model to assist with identifying borrowers who were at least 80 percent likely to be in default on a student loan in any quarter within two years of the proposed regulations' publication date.

Once the regulations are finalized and implemented, this model would be used to conduct an individualized determination of whether each borrower fits within the hardship standard in proposed § 30.91(a) and therefore qualifies for a waiver under proposed § 30.91(c).

For purposes of this NPRM, we estimated which borrowers would have an 80 percent likelihood of being in default within the applicable two-year period using a 5 percent sample of Department-held loans as of April 2024. At the time of the publication of the NPRM, however, the Department will have access to additional data that could be used to refine the model. For example, in the data used for modeling in this NPRM, the Department has recent borrower repayment history only for about five months since the end of the payment pause. At the time of the publication of the NPRM, however, the Department will be able to observe recent repayment and engagement experiences over a longer time horizon through the date of the NPRM.

The Department proposes to measure this two-year window as of the publication date of the NPRM to preclude strategic behavior to increase the likelihood of receiving hardship relief by defaulting on loans. The reason for measuring the two-year window as of the publication date of the NPRM is because we are intent on providing

relief as soon as possible once the NPRM is finalized, and because we are concerned that a longer period between finalizing the regulations and measuring the two-year window could create incentives for borrowers to attempt to strategically adjust their repayment behavior to be more likely to obtain a waiver.

The committee reached consensus on this regulatory provision.

#### *§ 30.91(d) Process for Additional Relief*

*Statute:* Section 432(a) of the HEA (20 U.S.C. 1082(a)) provides that in the performance of, and with respect to, the functions, powers, and duties, vested in him by this part, the Secretary may enforce, pay, compromise, waive, or release any right, title, claim, lien, or demand, however acquired, including any equity or any right of redemption. Section 468(2) of the HEA endows the Secretary with similarly broad and flexible powers with respect to loans arising under the Perkins program.<sup>80</sup>

*Current Regulations:* None.

*Proposed Regulations:* Proposed § 30.91(d) provides that the Secretary may rely on data in the Secretary's possession that may have been acquired through an application or any other means to provide relief, including automated relief, based on criteria demonstrating that the borrower has experienced or is experiencing hardship.

*Reasons:* Proposed § 30.91(d) would clarify the procedures the Department could use to provide relief if the Secretary were to exercise the discretion under this section to issue waivers.

The pathway for discretionary relief under proposed § 30.91(d) is for the Secretary to assess a borrower's circumstances in a holistic manner, which may be based in part on an application submitted by the borrower, to determine if the borrower is experiencing or has experienced hardship. Proposed § 30.91(d) operates fully independently and separately from proposed § 30.91(c) and would therefore be fully severable.

The Department intends the "hardship" necessary to trigger relief under proposed § 30.91(d) to be a substantial harm. The Department interprets the hardship required for relief under proposed § 30.91(d) as: the borrower must be highly likely to be in default or experience similarly severe negative and persistent circumstances, and other options for payment relief would not sufficiently address the borrower's persistent hardship. The requirement that other payment relief

options would not sufficiently address a borrower's persistent hardship would apply both to borrowers who meet the standard because the Department finds they are highly likely to be in default and to borrowers who meet the standard because the Department finds they are highly likely to experience similarly severe negative and persistent circumstances.

Default is one of the strongest indications that a borrower has not been able to use options available to avoid hardship in repaying their student loans, so the Department would use a standard related to default as one part of the hardship test for individual applicants under proposed § 30.91(d).

In addition, the Department would also have to determine that other options for payment relief under the HEA, including IDR plans and other forgiveness opportunities, are not sufficient for the borrower to avoid a high likelihood of being in default or similarly severe and persistent negative circumstances.<sup>81</sup> To determine whether the borrower faces a persistent hardship, the Department would consider the factors described in proposed § 30.91(b).

The Department makes student loans to students with the expectation that they will be repaid according to the terms provided under the HEA and laid out in the Master Promissory note. The Department understands that many borrowers experience difficulty repaying their loans at some point in their repayment experience that necessitates relief from monthly payments calculated under the standard 10-year repayment plan. As discussed above, there are many options under the HEA available to borrowers who may experience difficulty repaying their loans. Relief options include the short-term use of deferment or forbearance options. These proposed regulations are not designed to supplant any of the options available to borrowers. Rather, these proposed regulations are designed as a safety valve for those borrowers who cannot receive sufficient relief to avoid hardship via payment relief options already in existence under the

<sup>81</sup> The Department recognizes that the relief in proposed § 30.91(d) would include a determination that other payment relief options are not sufficient, but the relief under proposed § 30.91(c) would not include such a determination. The Department does not think such a determination is necessary for the relief under proposed § 30.91(c) because eligible borrowers under that provision may have spent years or decades without access to other IDR plans, such as PAYE and REPAYE, and did not benefit from strengthened loan servicer accountability under the new USDS contracts. This determination also would not be needed under proposed § 30.91(c) because borrowers would have little to no ability to influence the results under proposed § 30.91(c) with strategic non-payment.

Adlar J. Kim, and Andrew W. Lo. "Consumer Credit-Risk Models Via Machine-Learning Algorithms." *Journal of Banking and Finance*, 34(2010): 2767–2787. Hastie, Trevor, Robert Tibshirani, and Jerome Friedman. *The Elements of Statistical Learning: Data Mining, Inference, and Prediction*. 2nd Edition (2009).

<sup>80</sup> See 20 U.S.C. 1087hh(2).

HEA. For the purposes of proposed § 30.91(d), the Department would consider the availability of the following payment relief options<sup>82</sup> to determine whether such options could sufficiently address the borrower's hardship: deferment or forbearance; forgiveness opportunities such as borrower defense discharge and TPD discharge, and income-driven repayment (IDR) plans.

A payment relief option would not be sufficient if it would not prevent the borrower from still experiencing a hardship related to the loan that makes them highly likely to be in default or experience similarly severe negative and persistent circumstances that substantially impairs their ability to fully repay the loan. For example, a borrower that is on an IDR plan with a \$0 monthly payment might still be eligible for a waiver if the borrower would still be highly likely to experience similarly severe negative and persistent circumstances because they have a persistent hardship and lack the disposable income needed to fully repay the loan without jeopardizing their basic financial security over an extended period of time. In other words, the Department could determine that a payment relief option was not sufficient if it only temporarily delayed—but did not eliminate—the need to discharge some or all of the borrower's loans to sufficiently address the hardship.

The Department seeks to provide relief for individuals who are experiencing hardship without creating incentives for borrowers to strategically choose to cease making payments in order to qualify for relief. Proposed § 30.91(c) would prevent this strategic behavior by specifying the Secretary's discretion to provide one-time immediate relief based on a predictive assessment that would use the publication date of this NPRM as the beginning of the two-year period. There would be no future opportunity to change behavior and to obtain relief under proposed § 30.91(c).

For proposed § 30.91(d), the Department would address the risk of strategic behavior with a two-fold requirement that the borrower must be highly likely to be in default, or experience similarly severe negative and persistent circumstances, and that other options for payment relief would not sufficiently address the borrower's persistent hardship, including IDR plans, for those eligible. As a result, a borrower who is experiencing a high likelihood of being in default that they

could avoid by enrolling in an IDR plan but has chosen not to enroll as an attempt at strategic behavior, would be extremely unlikely to receive relief under proposed § 30.91(d). In cases where a borrower who could find sufficient relief from hardship through an IDR plan applies for relief under proposed § 30.91(d), the Department would encourage that borrower to enroll in IDR, and that borrower would be unlikely to be eligible for a waiver under proposed § 30.91(d). Nor would a borrower who faces default simply because they have chosen not to make payments, without any evidence of experiencing hardship, receive relief under proposed § 30.91(d). These requirements would advance the goal of the proposed regulations and apply the standard of proposed § 30.91(a), providing relief in cases of genuine hardship.

Moreover, should the Secretary choose to exercise authority under these regulations, proposed § 30.91(c) would provide relief to the millions of borrowers who are experiencing hardship already, and in many cases who have lacked access to the full range of repayment options that will now be fully available going forward. Relief would only be available to individuals under proposed § 30.91(d) who experience hardship that is not sufficiently addressed by other options for payment relief and have a high likelihood of being in default or experiencing similarly severe negative and persistent circumstances.

One type of borrower eligible for relief under proposed § 30.91(d) would be a borrower who is already enrolled in an IDR plan but who is highly likely to default or experience similarly severe negative and persistent circumstances even with an IDR plan's payment protections. Although IDR plans take into account income and household size, there are borrowers who would still experience hardship related to their loans that could not be remedied through other means. Consistent with the factors described in § 30.91(b), the Secretary could consider, for example, whether an individual has unusually high expenses (such as nondiscretionary medical or housing expenses) such that they are highly likely to be in default, or to experience similarly severe negative and persistent circumstances.

In general, to determine whether an individual has such high expenses, the Department would look to established benchmarks, such as the Department of Housing and Urban Development measures of a "rent burdened" or "severely rent burdened" household that pays rent in 30 or 50 percent of

household income, respectively, or the Internal Revenue Code standard allowing for deduction of health expenses in excess of 7.5 percent of Adjusted Gross Income. The Department would consider these expenses in the context of the borrower's overall financial resources, including income, assets, and debt.

As an example, consider an individual who is earning \$80,000 a year, has \$35,000 in loans, few assets, three dependents, and a monthly payment obligation of approximately \$277 a month under an income-based repayment plan. That obligation would not ordinarily lead to hardship. However, in this example, the individual lives in a high-rent area and pays the typical rent of \$2,300 for a one-bedroom apartment (more than 30 percent of their income or "rent burdened" under the HUD standard) and has a dependent that requires medication and treatment for a chronic health condition that costs \$1,600 per month (well in excess of 7.5 percent of AGI). In order to pay for these expenses in addition to other essentials, like food and transportation, the borrower is in default or is on the verge of being in default after missing seven months of payments. If this borrower demonstrated that they did not have the assets to avoid being in default, and that their circumstances were unlikely to improve within a period of time, then they could potentially receive relief under this provision.

There may also be cases where an individual can demonstrate hardship even in the absence of a payment burden (such as when a borrower has a \$0 IDR payment). For example, a borrower may be able to show that they meet the standard for hardship described above if they can show that, even with a \$0 IDR payment, the existence of the debt itself causes the required hardship. As stated above, a borrower on an IDR plan with a \$0 monthly payment may also be able to show that they are still highly likely to experience similarly severe negative and persistent circumstances because they have a persistent hardship and lack the disposable income needed to fully repay the loan without jeopardizing their basic financial security over an extended period of time. The Department has also included a directed question regarding the circumstances in which this might occur.

Relief under proposed § 30.91(d), whether based on data "acquired through an application or by any other means" would be assessed on a holistic basis to determine whether the standard described above for proposed § 30.91(d)

<sup>82</sup> A payment relief option would only be available to a borrower if they satisfied the applicable statutory and regulatory requirements.

is met.<sup>83</sup> The Department interprets the word “automated” as used in proposed § 30.91(d) to mean relief that the Secretary may grant based on information already in the Department’s possession rather than acquired through an application. The Department anticipates that the number of borrowers for whom the Department would possess sufficient information to conduct the holistic review without data acquired from an application would be small. The Secretary would not be able to use a default risk model such as a model similar to the one described in § 30.91(c) in order to provide relief under proposed § 30.91(d). A borrower could only receive a waiver without an application under proposed § 30.91(d) if the Department’s holistic review of the borrower’s data satisfied the same stringent standard that the Department would apply for application-based relief. Such cases would be considered rare since the data that the Department possesses would have to sufficiently establish eligibility including that other options for payment relief would not sufficiently address the borrower’s persistent hardship and would also need to sufficiently distinguish such borrowers from otherwise similar borrowers who would not be deemed to qualify for relief.

The Department recognizes that to meet this stringent standard, the Department would need data that would allow the Secretary to determine whether a borrower meets proposed § 30.91(d)’s standard. The Department notes that the Secretary would need to expand or refine data elements in the future to provide relief to borrowers under proposed § 30.91(d) without an application because, at the time of preparing this NPRM, the Department does not currently have sufficient data

available to determine whether a borrower meets the eligibility standard. We seek feedback from the public about the type of data that could be used for relief without an application under proposed § 30.91(d), and how those data could be obtained.

As discussed throughout this NPRM including in the Regulatory Impact Analysis, the proposed process under § 30.91(d) would likely involve detailed reviews of applications submitted by borrowers or other data already in the Department’s possession. We anticipate that the processes under § 30.91(d) would take time to implement following the publication of a final rule, including developing an application, producing clarifying guidance, and hiring and training staff. Given the administrative costs associated with this process, we also anticipate that the volume of applications the Department would be able to process would be low at first and would be dependent on the amount of funding received by FSA through the annual appropriations process. Therefore, depending on the number of applications, it would take time for the Department to make waiver determinations on a borrower’s individual application, and the Department would not be in position to guarantee a response within a specific period. As a result, borrowers should anticipate continuing to make payments while their application is pending.

The committee reached consensus on this section.

### Regulatory Impact Analysis

#### Executive Orders 12866 (as Modified by 14094) and 13563

Under Executive Order 12866, the Office of Management and Budget (OMB) must determine whether this regulatory action is “significant” and, therefore, subject to the requirements of the Executive Order and subject to review by OMB. Section 3(f) of Executive Order 12866, as amended by Executive Order 14094, defines a “significant regulatory action” as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of \$200 million or more (adjusted every 3 years by the Administrator of OIRA for changes in gross domestic product), or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, territorial, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise legal or policy issues for which centralized review would meaningfully further the President’s priorities, or the principles stated in the Executive Order, as specifically authorized in a timely manner by the Administrator of OIRA in each case.

This proposed regulatory action would have an annual effect on the economy of \$200 million or more. Table 4.1 in this regulatory impact analysis (RIA) provides an estimate of the net budget effects of each provision of these proposed regulations. We also provide estimates of the administrative costs for these provisions. Because the net budget effect is larger than \$200 million a year, this proposed regulatory action is subject to review by OMB under section 3(f) of Executive Order 12866 (as amended by Executive Order 14094). Notwithstanding this determination, we have assessed the potential costs and benefits, both quantitative and qualitative, of this proposed regulatory action and have determined that the benefits would justify the costs.

We have also reviewed these regulations under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only on a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and considering—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to

<sup>83</sup> The Department recognizes that determining eligibility for relief under proposed § 30.91(c) relies on data already in the Department’s possession. However, as explained elsewhere, proposed § 30.91(c) and proposed § 30.91(d) are designed to address different challenges and accordingly have different eligibility criteria as described in this NPRM. Proposed § 30.91(c) is designed to provide, at the Secretary’s discretion, immediate relief on a one-time basis to address the hardship of borrowers who may have spent years or decades without access to other IDR plans, such as PAYE and REPAYE, and did not benefit from strengthened loan servicer accountability under the new USDS contracts. By contrast, proposed § 30.91(d) is meant to provide ongoing relief to borrowers on a going-forward basis even after the Department has implemented various improvements to assist with student loan repayment, such as the implementation of IDR plans and updated servicer contracts. The Department believes that in most instances, additional information would be necessary for the Department to conduct a holistic assessment to determine whether the borrower meets the specific standard for relief under proposed § 30.91(d).

encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency “to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.” The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include “identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.”

We are issuing these proposed regulations upon on a reasoned determination that their benefits would justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that, in the Department’s estimation, best balance the size of the estimated transfer and qualitative benefits and costs. Based on the analysis that follows, the Department believes that these proposed regulations are consistent with the principles in Executive Order 13563.

We have also determined that this regulatory action would not unduly interfere with State, local, territorial, and Tribal governments in the exercise of their governmental functions.

As described in OMB Circular A–4, we compare the proposed regulations to the current regulations. In this regulatory impact analysis, we discuss the need for regulatory action, the summary of key proposed provisions, potential costs and benefits, net budget impacts, and the regulatory alternatives we considered.

Elsewhere in this section under the *Paperwork Reduction Act of 1995*, we identify and explain burdens specifically associated with information collection requirements.

#### 1. Congressional Review Act Designation

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated that these regulations are covered under 5 U.S.C. 804(2) and (3).

#### 2. Need for Regulatory Action

These proposed regulations describe circumstances in which the Secretary might exercise the longstanding discretionary waiver authority under sections 432(a)(6) and 468(2) of the HEA to waive all or part of a Federal student loan held by the Department to provide relief to a borrower who has experienced or is experiencing hardship.

Addressing the issue of hardship is critical in building a strong student loan

program. While the Department currently offers a number of options for payment relief, including IDR plans and forgiveness opportunities, the complexity of borrowers’ lives may lead to hardships that are not sufficiently addressed by these existing options such that these hardships are likely to impair their ability to repay a Federal loan in full or cause the anticipated costs of collecting the loan to exceed the likely benefits of continued collection of the entire debt. The Department frequently hears from borrowers about a range of these situations, such as borrowers facing significant unexpected expenses caring for loved ones with chronic illnesses, living with disabilities that limit but do not eliminate work opportunities, dealing with financially burdensome medical bills, or fearing that they will struggle to repay loans as they prepare to exit the workforce by retiring.

Sections 432(a)(6) and 468(2) of the HEA provide the Secretary with discretion to address these situations. Issuing a clear regulatory framework to address hardship would better inform the public about how the Secretary might exercise this waiver authority by considering a set of factors and standards that would allow for the consistent treatment of similarly situated borrowers, while also recognizing the inherent variability of each borrower’s particular situation.

As further explained in the preamble, these proposed regulations specify two different pathways by which the Secretary may exercise discretion to grant relief to borrowers experiencing hardship: a pathway for immediate relief using a “predictive assessment” (proposed § 30.91(c)) and a separate pathway for additional relief based on a “holistic assessment” of information submitted by the borrower through an application or acquired by any other means (proposed § 30.91(d)).

For the immediate relief described in proposed § 30.91(c), the Secretary proposes to assess whether the borrower meets the hardship standard by determining whether a borrower has at least an 80 percent chance of being in default within two years, using a predictive assessment based on data already in the Department’s possession to analyze the hardship factors in proposed § 30.91(b). The use of a predictive assessment would allow the Department to recognize situations in which similarly situated borrowers face comparable challenges likely to impair their ability to fully repay the loan, or that would cause the costs of collecting the loan to outweigh the benefits.

Further, this predictive assessment under proposed § 30.91(c) would be based on data in the Department’s possession and therefore would promote efficiency and reduce administrative costs. For example, the predictive assessment would promote efficiency because it would eliminate the need for individual borrowers to complete applications and for the Department to process those applications. Furthermore, using this predictive assessment would also avoid the risk that many borrowers in need of relief would miss out on the opportunity for relief because they are unaware of the need to apply or be unable to overcome the administrative challenges of applying.

While the predictive assessment described in proposed § 30.91(c) would reduce administrative burden for both borrowers and the Department and could be implemented quickly because it would rely on data the Department already has, it would not be able to capture all borrowers who are experiencing hardship that satisfies the proposed standard for waiver. One reason is that the Department currently does not have data on several of the factors described in proposed § 30.91(b), such as information on debts not owed to the Department or a borrower’s expenses for caretaking, housing, and other factors, which could be burdensome for some borrowers.

Therefore, the Department would also need the discretionary option of receiving additional information from borrowers through an application process so that the Department could conduct a holistic assessment of the borrower’s circumstances to determine whether the borrower meets the applicable standard for hardship under proposed § 30.91(d). As described in the preamble, under this process, the Department would determine whether: (i) the borrower is highly likely to be in default or experience similarly severe and persistent negative circumstances, and (ii) other options for payment relief would not sufficiently address the borrower’s persistent hardship. The Department could also make this determination based on information already in the Department’s possession, or a combination of information already in the Department’s possession or received through an application. This application-based pathway would be important to give borrowers the opportunity to provide additional information and data that might not be captured in existing data systems to which the Department has access, or to describe any additional relevant circumstances.

Overall, the relief contemplated in these proposed regulations would provide important support in situations where a borrower's investment in postsecondary education fails to yield the potential benefits from completing such an education. Generally, postsecondary education provides significant individual and societal benefits. Earning a postsecondary credential typically provides individuals with a range of personal benefits in the labor market, including higher income and lower unemployment risk.<sup>84</sup> In addition to individual benefits related to earnings and employment, additional education can provide a host of individual benefits, including greater access to health insurance, increased job satisfaction, and overall happiness.<sup>85</sup> Increasing levels of postsecondary attainment also have spillover benefits for communities and society, including benefits to those who never attended or completed postsecondary education. For example, researchers have documented

that wages of non-college graduates rise when the supply of college graduates increases.<sup>86</sup> Increases in education are also linked to higher civic participation, reduced crime, and improved health of future generations.<sup>87</sup>

For some borrowers, financing an education does not lead to individual net benefits. Loans taken out for postsecondary education commonly take a decade or more to repay, and borrowers may never reach sustained periods of income security necessary to afford and manage their loans. This could be because they never complete their program and therefore never receive a meaningful earnings return, or they may lose the income security attendant to an education when they face unexpected and significant life events outside their control, such as the need to care for sick dependents, expensive medical problems, or the onset of disabilities that limit work opportunities.

These proposed regulations would establish a framework for the Secretary

to exercise the discretionary waiver authority in a consistent and transparent manner. This framework would fill existing gaps in relief that are otherwise available from the Department to assist borrowers with managing repayment of their loans. The Department's existing avenues for payment relief, for example, may be insufficient to assist older borrowers with high student loan debt burdens at increased risk of default and resulting financial insecurity, or those with significant obligations expenses for child or dependent care. Therefore, these proposed regulations would specify the Secretary's authority to grant relief where the Secretary determines the borrower's hardship impairs the borrower's ability to fully repay loans or makes collecting the loans unjustifiably costly.

#### Summary of Proposed Key Provisions

Table 2.1 below summarizes the proposed provisions in the NPRM.

TABLE 2.1—SUMMARY OF PROPOSED PROVISIONS

Provision	Regulatory section	Description of proposed provision
Standard for waiver due to likely impairment of borrower ability to fully repay or undue costs of collection.	§ 30.91(a)	Provides that the Secretary may waive up to the outstanding balance of a Federal student loan held by the Department if the Secretary determines that the borrower has experienced or is experiencing hardship related to such a loan such that the hardship is likely to impair the borrower's ability to fully repay the Federal government or the costs of enforcing the full amount of the debt are not justified by the expected benefits of continued collection of the entire debt.
Factors that substantiate hardship .....	§ 30.91(b)	Provides a non-exclusive list of factors the Secretary could consider in determining whether a borrower meets the standard for waiver based on hardship.
Immediate relief for borrowers likely to default.	§ 30.91(c)	Provides that the Secretary may consider the borrower's factors indicating hardship described in proposed § 30.91(b) to exercise discretion to waive all or some of outstanding loans held by borrowers who the Secretary determines have experienced or are experiencing hardship such that their loans are at least 80 percent likely to be in default in the two years after the publication of the proposed regulations.
Process for additional relief .....	§ 30.91(d)	Provides that the Secretary may rely on data obtained from an application or by any other means, or potentially a combination or both, to provide relief for borrowers who are highly likely to be in default or to experience similarly severe and persistent negative circumstances, and other payment relief options do not sufficiently address the borrower's persistent hardship.

### 3. Discussion of Costs, Benefits and Transfers

Overall, waivers that the Secretary grants under the proposed regulations would result in costs in the form of

transfers from the Federal Government to student loan borrowers. The size of these transfers would vary based upon the number of borrowers who the Secretary determines are at least 80 percent likely to be in default and,

therefore, eligible for waiver under proposed § 30.91(c). It would also depend on the number of borrowers who are approved for waivers under proposed § 30.91(d). The Department believes that these transfers would

<sup>84</sup> Barrow, Lisa and Ofer Malamud. "Is College a Worthwhile Investment?" *Annual Review of Economics* 7 no. 1 (2015): 519–555. Card, David. "The Causal Effect of Education on Earnings." *Handbook of Labor Economics* 3 (1999): 1801–1863.

<sup>85</sup> Oreopoulos, Philip and Kjell G. Salvanes. "Priceless: The Nonpecuniary Benefits of Schooling." *Journal of Economic Perspectives* 25 no. 1 (2011): 159–184.

<sup>86</sup> Moretti, Enrico. "Estimating the social return to higher education: evidence from longitudinal and

repeated cross-sectional data." *Journal of econometrics* 121, no. 1–2 (2004): 175–212.

<sup>87</sup> Currie, Janet, and Enrico Moretti. "Mother's education and the intergenerational transmission of human capital: Evidence from college openings." *The Quarterly journal of economics* 118, no. 4 (2003): 1495–1532; Lochner, Lance, "Nonproduction Benefits of Education: Crime, Health, and Good Citizenship," in E. Hanushek, S. Machin, and L. Woessmann (eds.), *Handbook of the Economics of Education*, Vol. 4, Ch. 2, Amsterdam: Elsevier Science (2011); Ma, Jennifer, and Matea

Pender. *Education Pays 2023: The Benefits of Higher Education for Individuals and Society*. Washington, DC: College Board. Milligan, Kevin, Enrico Moretti, and Philip Oreopoulos. "Does education improve citizenship? Evidence from the United States and the United Kingdom." *Journal of public Economics* 88, no. 9–10 (2004): 1667–1695.; Lochner, Lance, and Enrico Moretti. "The effect of education on crime: Evidence from prison inmates, arrests, and self-reports." *American economic review* 94, no. 1 (2004): 155–189.



provide significant benefits to borrowers in the form of waiving their obligation to repay some or all of their Federal student loan debt. The Department would also see benefits from waivers granted on loans that are unlikely to be repaid in a reasonable period, which would prevent or reduce costly collection efforts.

The transfers to borrowers in the form of waivers could result in costs to the Federal Government and in turn taxpayers, to the extent that borrowers receiving waivers might otherwise have repaid the loan in part or whole, or the financial costs of collecting the loan might have proved less than the benefits of collection. The proposed rules would also result in administrative expenses for the Department to implement these provisions. When considering all these factors, the Department believes that the benefits from these proposed regulations would outweigh the costs.

What follows is a description of the data used to create estimates in this RIA, followed by a discussion of the costs, benefits, and transfers for each of the distinct regulatory provisions.

#### Data Used in This RIA

This section describes the data used in the RIA. To generate information about the expected number of borrowers who would be eligible to receive relief under these proposed regulations, the Department relied upon non-public records contained in the administrative data the Department uses to administer the title IV, HEA programs.

The primary data used in the RIA to estimate the number of borrowers who could potentially qualify for a waiver under proposed § 30.91(c) is a 5 percent random sample of the Federal Department-held student loan portfolio with at least one open title IV, HEA student loan as of April 30, 2024. We are using a random sample including over 2 million borrowers, but we present all estimates in the analyses below in terms of the full Department-held student loan portfolio. The data we use for modeling in the RIA are stored in the National Student Loan Data System (NSLDS), maintained by the Department's Office of Federal Student Aid. The Department determined that a sample of this size was appropriate to provide reasonable estimates of the impact of the proposed regulation. A sample of this size is similar to what the Department uses in other modeling, such as for the annual President's budget and for the net budget impact modeling in this RIA.

#### Analysis of Costs, Benefits, and Transfers for Each Proposed Regulatory Section

The sections that follow contain a discussion of the costs, benefits, and transfers for the different proposed regulatory provisions if the Secretary chooses to grant waivers under such provisions. We separately discuss the relief potentially provided under proposed § 30.91(c)'s pathway for "immediate relief" and proposed § 30.91(d)'s pathway for "additional relief" based on an application or information already in the Secretary's possession, or both, because those provisions would represent different pathways for the Secretary to exercise discretion to grant a waiver for a borrower. Implementation of each of these provisions would include administrative costs for the Department. Because these administrative costs generally would represent baseline implementation expenses, we provide a separate discussion of administrative costs at the end of this part of the RIA.

We do not include a discussion of proposed § 30.91(a) or (b), which would establish the standard for hardship and the indicators to be considered in determining if a borrower is facing hardship, because these provisions do not describe discretionary pathways for relief that may result in costs, benefits, and transfers.

##### *§ 30.91(c) Immediate Relief for Borrowers Likely To Be in Default*

Should the Secretary choose to grant waivers under proposed § 30.91(c), the proposed regulations would result in costs in the form of transfers from the Department to borrowers through waiver of outstanding debt to the Department. Waiving these amounts would eliminate future payments by these borrowers to the Department, which is a cost to the Federal Government and, by extension, to taxpayers. The extent of transfers and their associated cost would vary depending on the eligible borrower's amount of outstanding debt, loan type(s), age of the loan, likelihood of repayment, and other factors. The proposed regulations would also result in administrative expenses for the Department to implement these provisions. When considering all these factors, the Department believes that the benefits from these proposed regulations would outweigh the costs.

Borrowers who are in default are likely to have repeated instances of default or be in default for a protracted time. Department data show that almost all of those who were likely to be in

default in the next two years had struggles with loan repayment in the past, as evidenced by instances of current or prior default, or of payment delinquency. Acknowledging past hardship recognizes that previous periods of hardship may have current and future consequences for a borrower. For example, a borrower who struggled to repay their loans may have seen their balance increase in size such that full repayment of that greater amount is no longer feasible. The likelihood of prior or persistent repayment struggles observed in Department data is similar to that found in other data. A Federal Reserve Bank of Philadelphia survey of borrowers demonstrated that most of the individuals who anticipated difficulties making loan payments after the payment pause ended also reported making no or partial payments prior to the pandemic forbearance.<sup>88</sup> These data also suggest that there is greater prevalence of longer-term or repeated defaults among communities with greater shares of Black and Hispanic residents, and that student loan default commonly co-occurs with delinquency and collections on other types of debt, such as medical debts and utilities.<sup>89</sup> These distributional effects reflect underlying differences in income, completion status, and other factors that correlate with student loan struggles.<sup>90</sup>

In addition, many of the borrowers who might receive a waiver under proposed § 30.91(c) have been in repayment for an extended time. For instance, based on analysis of Department data, in 2022, more than 1 million borrowers held loans that had been in default for at least 20 years. These borrowers could have been subject to negative credit reporting, wage garnishment, tax refund offset, and even litigation. If these loans are still outstanding after all this time, notwithstanding the availability of those powerful collection tools, the odds that they would be fully repaid in a reasonable period are unlikely.

Older loans are also likely to be held by older borrowers. Analysis of Department data indicates that almost a

<sup>88</sup> Akana, T., & Ritter, D. (2022). Expectations of Student Loan Repayment, Forbearance, and Cancellation: Insights from Recent Survey Data. Federal Reserve Bank of Philadelphia.

<sup>89</sup> Cohn, Jason. "Student Loan Default Patterns: What Different Paths through Default Can Tell Us about Equitably Supporting Borrowers." (November 2022). Urban Institute. See also LaVoice, J., & Vamossy, D. F. (2024). Racial disparities in debt collection. *Journal of Banking & Finance*, 164, 107208.

<sup>90</sup> The Department provides this information for showing proposed § 30.91(c)'s likely effects rather than an underlying reason for proposing such a waiver.

quarter of borrowers who would receive a waiver are over 55 years old. The older the borrower, the greater the likelihood that they will stop working prior to successful repayment. Forty-one percent of non-Parent PLUS borrowers 62 years of age and older with an open loan have held their student loans for more than 20 years, and 30 percent of borrowers 62 years of age and older with an open loan have held their student loans for more than 25 years.<sup>91</sup> Waiving such loans would not create significant costs for the Government in the form of transfers because the Department is unlikely to receive significant additional payments from a retired borrower.

About two-thirds of borrowers who may receive a waiver received a Pell Grant in our data, but this number is likely an underestimate because Pell Grant status is unavailable for most borrowers who entered repayment on their last loan before 1999.

Borrowers would receive significant benefits from no longer having to repay loans, and the Federal Government would also see benefits from conserved administrative costs through discontinued servicing or collecting on loans that the Department does not expect to be repaid in full.

As noted above, these transfers would create some costs for the Federal government and, by extension, taxpayers. However, as discussed above, these waivers would generally affect loans with lower expected repayment rates (therefore have a low likelihood of generating funds for the Federal government), and any limited lost revenue from waiving some of the Department's worst-performing loans would likely be outweighed by significant individual and social economic benefits to the borrower. Specifically, the waivers proposed here would provide borrowers facing hardship with a greater ability to avoid financial distress, and potentially lower delinquency rates on other types of debt, promote consumption (which can benefit the economic wellbeing of their communities), improve access to credit, and may reduce reliance on other forms of the Federal safety net.<sup>92</sup>

To estimate the number of borrowers we would expect to be eligible for relief under proposed § 30.91(c), we followed the process described for implementing proposed § 30.91(c) above, where we used predictors that correspond to the 17 factors described in proposed § 30.91(b) to predict whether borrowers were at least 80 percent likely to be in default on a student loan in any quarter for the subsequent two years after the NPRM's publication. For the purposes of the NPRM, we used a 5 percent sample of Department-held loans as of April 2024.

Should the Secretary choose to exercise authority under these regulations, we estimate that approximately 6.0 million borrowers would be eligible to receive relief under proposed § 30.91(c). This estimate is based on output of the proposed model developed to estimate the likelihood that a borrower would have been in default within two years.

The estimate of borrowers who may receive waivers under this provision uses data as of April 30, 2024, and calculates the two-year measurement window as of April 30, 2024. The Department chose April 30, 2024, because it was the most recent comprehensive dataset available to the Department at the time that the Department was developing the proposed model for this NPRM. The borrower portfolio may change between April 2024 and the publication of the NPRM, both in terms of its composition (*i.e.*, which borrowers are in the portfolio) and in the borrowers' circumstances (*e.g.*, the loans held by borrowers and outstanding debt amount may change between April 30, 2024 and the publication of the NPRM). It is not clear what the substantive effects of such changes would be, as they could drive the model's outcomes in different directions. Estimates presented in the NPRM also do not include potential overlap with relief that would be provided by any proposed rules that are not yet final as of the publication of this NPRM, or of waivers through other provisions that were not yet implemented as of April 30, 2024.

#### *§ 30.91(d) Process for Additional Relief*

Borrowers would benefit from any waivers granted by the Secretary under proposed § 30.91(d)'s pathway for additional relief based upon a holistic assessment of information already in the Secretary's possession or submitted by the borrower through an application

process, or both in conjunction, to determine whether: (i) the borrower is highly likely to be in default or to experience similarly severe and persistent negative circumstances, and (ii) other payment relief options would not sufficiently address the borrower's persistent hardship. As further described in this NPRM's preamble, such waivers would address challenges that these borrowers face while trying to repay their loans. While this approach would provide overall financial benefits, the specific benefits for borrowers who receive a waiver would vary depending on the nature of their qualifying hardship. Waivers granted under proposed § 30.91(d) would also create administrative costs for the Department to implement, which are discussed at the end of this subsection of the RIA.

Consider several examples of borrowers who may receive waivers based on a holistic assessment of the factors in proposed § 30.91(b). For example, a borrower whose qualifying hardship is a result of advanced age, having an old loan, and no longer working would benefit from no longer having to manage a loan payment in their final years of life. If they were in default, they could also potentially see an increase in the total amount of Social Security benefits they could retain since they would not be at risk of having amounts offset. By comparison, a borrower who is facing hardship due to having extensive expenses caring for an elderly relative could also accrue benefits, but in a different form, such as being able to better afford necessary care for that individual, including potentially paying for better services for that relative. Since the precise facts that support waiver under proposed § 30.91(d) would vary across individual borrowers' circumstances based on a holistic assessment of their factors in proposed § 30.91(b), the specific benefits of waiver would vary. But in general, to the extent that the hardship results in the borrower being overburdened by necessary expenses, the waiver would help a borrower better afford those expenses while maintaining basic financial security and also greatly reduce or eliminate their risk of experiencing the substantial harms of default, or other similarly severe negative and persistent circumstances.

Waivers granted under proposed § 30.91(d) would create costs to the government in the form of transfers to student loan borrowers. These costs would also accrue to taxpayers. However, we believe the benefits would exceed these costs. As discussed, the Secretary may provide a waiver under

<sup>91</sup> U.S. Department of Education. Negotiated Rulemaking for Higher Education 2023–2024 Materials for Student Loan Debt Relief Session 2 (November 6–7, 2023): Data on Older Borrowers and Parents. <https://www2.ed.gov/policy/highered/reg/hearulemaking/2023/data-on-older-borrowers-and-parents-session-2.pdf>.

<sup>92</sup> See, for example, The Economics of Administration Action on Student Debt, available at <https://www.whitehouse.gov/cea/written-materials/2024/04/08/the-economics-of-administration-action-on-student-debt/>.

Di Maggio, M., Kalda, A., & Yao, V. (2019). *Second chance: Life without student debt* (No. w25810). National Bureau of Economic Research.

proposed § 30.91(d) only after determining: (i) the borrower has experienced, or is experiencing, hardship such that the borrower is highly likely to be in default or to experience similarly severe and persistent negative circumstances, and (ii) other payment relief options do not sufficiently address the borrower's persistent hardship. Therefore, borrowers who may receive waivers are those with lower-than-expected repayments who are highly likely to struggle with repaying their loans. By contrast, as described above, the benefits to borrowers could be significant. And such waivers could provide benefits to the government as well. The Department would no longer pay to collect on or service loans that are highly unlikely to be repaid. And to the extent borrowers are facing hardship while receiving other Federal benefits, such as Social Security, no longer having those amounts at risk of being offset would allow broader Federal benefits to better achieve their intended purposes, such as keeping senior citizens out of poverty.

Estimating the number of borrowers who could, at the Secretary's discretion, be approved for relief under proposed § 30.91(d) depends on assumptions about: (1) the number of borrowers who have characteristics that are likely to make them eligible for relief based on the Department's holistic assessment of their circumstances, and (2) the share of borrowers who are potentially eligible who would actually apply. At the end of this section, to inform the estimates of administrative costs, we discuss further assumptions about the number of borrowers who would apply, but who we would expect would not be approved for discretionary relief. In the sections below, we describe the information the Department considered to reach estimates used in this NPRM. Recognizing data limitations and that there are no perfect historical analogs that could inform estimates with perfect precision, we included a directed question that solicits feedback and input from the public about other data or information that could be used to improve and refine estimates.

First, we consulted available Department data on borrowers and national survey data related to student debt holders to inform the number of borrowers who have characteristics that are likely to make them eligible for relief based on the Department's holistic assessment of their circumstances. These borrowers would need to have indicators that show they are highly likely to be in default or experience similarly severe negative and persistent

circumstances, that would not be sufficiently addressed by other options for payment relief. In addition, the Department anticipates that proposed § 30.91(c) would, at the Secretary's discretion, be implemented first and that such relief would likely be sufficient to address the hardship of a borrower who receives such relief. Therefore, because we do not want to double count borrowers, the estimate for proposed § 30.91(d) discussed below does not include borrowers who would be expected to receive full relief under proposed § 30.91(c).

As a starting point the Department consulted economic studies of individuals experiencing poverty. We believe estimates of persistent poverty provide an important perspective on borrowers who may have enduring negative economic conditions, even if it is not the perfect comparison. Poverty by itself may not lead to relief under proposed § 30.91(d), but people in poverty often face challenges such as not being able to afford necessary expenses. In addition, other available payment relief options might address episodic spells of poverty. As described earlier, the Department expects that a borrower would need to have indicators showing a high likelihood of persistent hardship rather than a short-term hardship to receive relief under this provision. On the other hand, it is also possible that borrowers could be facing persistent hardship and receive relief, even if they are not considered in poverty. Even acknowledging these limitations, we believe estimates of persistent poverty are a reasonable consideration for estimates under proposed § 30.91(d).

Studies suggest that a meaningful, but small, share of the population experience persistent poverty, defined in many studies as having an income below the Federal Poverty Level. For example, longitudinal studies of families experiencing poverty, using the Panel Study of Income Dynamics suggest that between about 3 to 5 percent of adults are exposed to instances of poverty that last five years or more across their adult lifetimes.<sup>93</sup>

<sup>93</sup> Other estimates suggest a rate of 10 to 15 percent over three years, and that rates can vary by education level, age, and other characteristics. See, for a review, Cellini, S.R., McKernan, S.M., & Ratcliffe, C. (2008). The dynamics of poverty in the United States: A review of data, methods, and findings. *Journal of Policy Analysis and Management: The Journal of the Association for Public Policy Analysis and Management*, 27(3), 577–605, as well as evidence from Sandoval, D.A., Rank, M.R., & Hirschl, T.A. (2009). The increasing risk of poverty across the American life course. *Demography*, 46, 717–737. and from Hoynes, H.W., Page, M.E., & Stevens, A.H. (2006). Poverty in

Therefore, if we applied the persistent poverty rate of 3 percent to 5 percent to the number of ED-managed borrowers in the current portfolio, we might expect somewhere between 1 and 2 million borrowers in the current portfolio to experience persistent economic hardship at some point in their adulthood that would meet the eligibility requirements under § 30.91(d).

This range of 1 to 2 million borrowers from the current portfolio is corroborated through other data sources. In Department data, as of December 2023, there were about 9 million borrowers who were recorded as past due in their payments.<sup>94</sup> Solely being behind on student loan payments would not lead to eligibility for a waiver under § 30.91(d). Therefore, the Department also reviewed information that was reported in the Federal Reserve Board's Survey of Household Economics and Decisionmaking (SHED).<sup>95</sup> The SHED provides information about borrowers and their personal finances, and indicates whether borrowers who were behind on student loan payments also reported some other condition that could indicate hardship, such as being unemployed or underemployed due to a health or medical limitation or a disability or living with parents or adult children to provide help with child or medical care.<sup>96</sup> Those data indicate that about 13 to 25 percent of borrowers who are behind on student loan payments also reported one of these other indicators. Applying those percentages to the current portfolio of borrowers implies that between 1 to 2 million borrowers may be experiencing some

America: Trends and Explanations. *The Journal of Economic Perspectives*, 20(1), 47–68. <http://www.jstor.org/stable/30033633>.

<sup>94</sup> <https://blog.ed.gov/2024/04/an-update-on-the-first-months-of-the-return-to-repayment/>. This does not include borrowers in default. This figure is likely to be a high-water mark, given the challenges and policy context of returning to repayment after the pandemic, and would be expected to decline in the future.

<sup>95</sup> For the analyses of SHED data, we stacked five years of SHED surveys (2018 to 2022) and used survey weights. We include data only for those who report student debt but are not currently enrolled in school. The SHED data likely undercounts borrowers who only hold Parent PLUS loans, and the survey does not distinguish between Federal student loans specifically and other types of student loans.

<sup>96</sup> In the SHED survey, roughly 18 percent of those with education debt indicated being behind on payments. Among all borrowers who are behind on student payments, about 25 percent of borrowers report being unemployed or underemployed due to a health or medical limitation or a disability, and 13 percent of borrowers live with parents or adult children to provide help with child or medical care. These forms of hardship are indicative of the types of circumstances that may make borrowers eligible to apply for a waiver under § 30.91(d).

substantial economic hardship and report being behind on payments. We would expect that borrowers reporting a greater number of economic challenges in survey data might be more indicative of the type of hardship that would qualify for a waiver under § 30.91(d). In the SHED data, about 40 percent of the student loan borrowers who are behind on payments experience both conditions described above, which would imply an estimate of the number of borrowers in the current portfolio in the range of 0.4 to 0.8 million borrowers. These ranges are based on a single point in time. Under § 30.91(d), borrowers would need to face hardship consistently in order to qualify for a waiver, so estimates based on an isolated observation likely overestimates the number of borrowers who are facing persistent challenges on these factors. On the other hand, a point in time observation would not count borrowers who may experience struggles in the future, even if not showing such markers at the time of the survey.

For our base assumptions, we take the high end of the range suggested by available evidence and assume that about 2 million borrowers from the current portfolio would potentially have characteristics that might make them highly likely to be in default or experience similarly severe negative and persistent circumstances at some point in their remaining repayment. As we discuss later, other payment relief options might sufficiently address the hardship for some of these borrowers, not all borrowers who might be eligible will apply for relief, and most borrowers will not have sufficient data already in the Department's possession that would be necessary for any non-application-based relief.

We assume a take up rate of 75 percent among the 2 million borrowers from the current portfolio that we estimate would be potentially eligible for relief. This take up rate is blended across borrowers who might meet the standard for relief under proposed § 30.91(d), described above, based on the Department conducting holistic assessments that may either rely on data already in the Secretary's possession, data submitted by the borrower through an application, or a combination of both. This borrower estimate assumes that, as noted above, the Department would need to expand or refine data elements in the future to provide relief to borrowers under proposed § 30.91(d) without an application because, at the time of preparing this NPRM, the Department does not have sufficient data available to determine whether a borrower meets the eligibility standard.

Borrowers for whom the Department possesses sufficient information to conduct the holistic review without data acquired from an application would not need to apply (implying a take up rate of 100 percent), but the Department anticipates that the number of such borrowers based on future data matches or data collections would be small. Ample evidence suggests that borrowers do not always apply for benefits for which they are eligible for many reasons, including because of the burden associated with application and lack of knowledge about the benefits. Evidence from other settings—none being perfect analogies—including from SNAP, the Earned Income Tax Credit (EITC), and Unemployment Insurance, suggest a range of take-up rates that differ across benefit amounts, salience, and eligible populations.<sup>97</sup> Many of the programs with high take-up rates, such as SNAP and EITC, which have take-up rates at or above 80 percent, are well known and have been around for a long time, and some programs have infrastructures that help beneficiaries apply. Other researchers have reported take up of Unemployment Insurance of 42 percent to 55 percent.<sup>98</sup> There are reasons to believe that the take-up rate for forgiveness proposed under § 30.91(d) could be lower than those for SNAP or EITC, since this would be a new program, benefits would be uncertain, and many borrowers do not engage with student loan programs that can be beneficial to them. In sensitivity analyses below, we assume a lower take-up rate.

We also assume that about one-third of these remaining borrowers would benefit from other payment relief options that could sufficiently address their hardship. Some estimates suggest that payment relief options available from the Department can benefit large swaths of borrowers;<sup>99</sup> however, not all borrowers who benefit from existing

payment relief options will have their hardship sufficiently addressed.

This leads to an estimate of 1 million borrowers, or about 2.5 percent of the current portfolio, who we expect could, at the Secretary's discretion, be approved for relief under proposed § 30.91(d) in the period after this regulation is implemented and throughout the remainder of the borrowers' repayment periods. We also estimate that an additional 1 million borrowers who could, at the Secretary's discretion, be approved among the next 10 cohorts of borrowers. To arrive at estimates of borrowers who would be affected in the next ten future cohorts, we assume that 5 percent of each cohort could, at the Secretary's discretion, be approved for a waiver under proposed § 30.91(d) at some point in their repayment. This is double the share of borrowers estimated in the current portfolio because borrowers in the current portfolio would receive waivers on a one-time basis under proposed § 30.91(c), whereas borrowers in future cohorts would not. Using an assumption of roughly 2 million new borrowers each year for the next ten years, this leads to an estimate of roughly 100,000 borrowers per cohort, and 1 million borrowers over these cohorts.

In addition to our primary estimate, we include low and high estimates to bound the range of reasonable possible waivers under proposed § 30.91(d). Our low estimate assumes that the take-up of application-based relief is 50 percent (instead of 75 percent), but still assumes that one-third of eligible borrowers benefit from other payment relief options. This results in a total of 1.33 million borrowers who could, at the Secretary's discretion, be approved for relief, 0.67 million among the current portfolio, and 0.67 million from future borrower cohorts. In our high estimate, we assume a larger share of borrowers would qualify for relief. Specifically, we assume that 10 percent of borrowers in the current portfolio could be approved for a waiver under proposed § 30.91(d). This larger share aligns with estimates from research suggesting that 10 percent of adults experience spells of poverty that last at least three years, whereas the 5 percent in our base estimate was based on five-year spells.<sup>100</sup> Similar to our

<sup>97</sup> See, e.g., U.S. Government Accountability Office. College Closures: Many Impacted Borrowers Struggled Despite Being Financially Eligible for Loan Discharges. (September 2021). Accessed at <https://www.gao.gov/products/gao-21-105373>. See the review in Ko & Moffitt (2022). Take-up of Social Benefits. *NBER Working Paper 30148*. Also see various articles in "Administrative Burdens and Inequality in Policy Implementation" Part I and Part II in *RSF: The Russell Sage Foundation Journal of the Social Sciences*, volume 9, issues 4 and 5, 2023 and Currie, Janet (2006). The Take-up of Social Benefits. In *Public Policy and the Income Distribution*. Russell Sage Foundation. Herd & Moynihan (2018). *Administrative Burdens*.

<sup>98</sup> Kuka and Stuart (2022). Racial Inequality in Unemployment Insurance Receipt and Take Up. *NBER Working Paper 29595*.

<sup>99</sup> For example, see <https://budgetmodel.wharton.upenn.edu/issues/2023/7/17/income-driven-repayment-modeling-take-up-rates>.

<sup>100</sup> Rates can vary by education level, age, and other characteristics. See, for a review, Cellini, S.R., McKernan, S.M., & Ratcliffe, C. (2008). The dynamics of poverty in the United States: A review of data, methods, and findings. *Journal of Policy Analysis and Management: The Journal of the Association for Public Policy Analysis and Management*, 27(3), 577–605, as well as evidence from Sandoval, D.A., Rank, M.R., & Hirschl, T.A. (2009). The increasing risk of poverty across the

base case, we assume a take-up rate of 75 percent and that  $\frac{1}{3}$  of borrowers get relief through another option. In this high scenario, we estimate that 2 million borrowers in the current portfolio, and 2 million borrowers in future cohorts would qualify. We note that overall estimates could be reduced once they account for other, anticipated regulatory actions that provide relief to borrowers with education debt.

We also consider the possibility that the Department could potentially use data aligned with the factors listed in § 30.91(b) that was not obtained through an application (e.g. from additional or refined data to which the Department has access in the future). In such potential cases, a borrower could receive a waiver if the Department's holistic review of the borrower's data satisfied the same stringent standard that the Department would apply for application-based relief under proposed § 30.91(d) (e.g., the borrower must be highly likely to be in default or experience similarly severe and persistent negative circumstances, and other payment relief options would not sufficiently address the borrower's persistent hardship). Such cases would be considered rare since the data that the Department may possess would have to sufficiently establish eligibility, sufficiently show that other options for payment relief did not address the borrower's hardship, and sufficiently distinguish such borrowers from otherwise similar borrowers who would not be deemed to qualify for relief.

We interpret the potential for such waivers to occur on the margin of the take-up rate that we have built into our overall estimates. Changes to the assumptions about the total number of borrowers who could be approved because of the potential for non-application waivers would not be due to differences in the applicable eligibility standard, but rather assumptions about the precision with which various data sources could identify borrowers who were experiencing hardship that could qualify under the standard for relief in proposed § 30.91(d). Our base case assumption includes a 75 percent take-up rate, and we believe this already generously incorporates a high implied take-up rate for a small share of borrowers who might receive waivers under proposed § 30.91(d) without an application. However, we consider the possibility that there could be a higher

take-up rate, for example, 80 percent. We also consider that a greater number of borrowers could potentially be approved. Assuming that 5 percent more borrowers could be approved, and a take-up rate of 80 percent, our primary estimates of who would receive relief under proposed § 30.91(d) would increase from 1 million borrowers in the current portfolio to about 1.1 million. We do not formally run a new budget scenario below with these different assumptions, as we believe those estimates would be below the high scenario already discussed above.

The Department also considered how to estimate how many applications it would receive, and the rate at which an application for waiver would be likely to be approved at the Secretary's discretion. As with the discussion above, there is no perfect comparison on which to rely. However, considering that some borrowers who are ineligible will apply, and that for other borrowers, other options for payment relief would sufficiently address the borrower's hardship, we assume that for every borrower who is approved at the Secretary's discretion, there would be one that is rejected, *i.e.*, we assume an approval rate of 50 percent.

For estimating the potential application rates, the Department considered situations that might be closely analogous to the application-based approach contemplated by proposed § 30.91(d), whereby the Secretary would conduct a holistic assessment of the borrower's factors indicating hardship to determine if the borrower met the standard for waiver described in proposed § 30.91(d). We identified few comparative situations. Applications similar to the ones for IDR, Public Service Loan Forgiveness, or the prior pandemic-related student debt relief plan under the HEROES Act were not closely relevant for this estimation, because they generally only involve completing straightforward background questions and checking certain boxes, and there is no meaningful open response required from the borrower. By contrast, the Department expects that the application for relief under proposed § 30.91(d) would solicit a range of qualitative and quantitative information from the borrower to inform the Department's determination of whether the borrower satisfies the hardship standard.

We also considered using the rate of approvals when borrowers submit applications to use a different payment amount when seeking to rehabilitate their loans, but that information is not readily tracked by the Department's contractor. Even if an approval rate were

available, that form may still not be an appropriate comparison, since it only affects borrowers in default and those borrowers have particular characteristics in terms of postsecondary completion, type of institution, and debt balance that might be different than the broader population of borrowers. Another approval rate we considered was borrower defense to repayment. Borrower defense also is not a perfect comparison because it tends to have disproportionate numbers of applications from borrowers who attended private for-profit colleges than might be expected to occur here, and there are significant differences between the factors that justify borrower defense to repayment and the waivers proposed here.

Unless specified otherwise in the above discussion, estimates of borrowers who would be eligible for relief under proposed § 30.91(d) do not account for potential overlap with relief that may be provided by any other proposed regulations that are not yet final as of the publication of the NPRM, or of waivers through other provisions that were not yet implemented as of April 30, 2024.

We invite feedback from the public about how to refine these estimates.

#### Administrative Costs

The proposed regulations could result in significant administrative costs for the Department. These costs would be relatively small for immediate relief granted under proposed § 30.91(c). For that type of relief, the Department would expend one-time resources on developing the predictive assessment contemplated in proposed § 30.91(c) that would predict the likelihood that a borrower will be in default within two years after the publication of these proposed regulations. But the Department would not need to expend significant further resources to apply the predictive assessment to a borrower's information and would not need to expend any resources developing an application, disseminating the application, and reviewing and processing the application.

For relief granted under the application-based pathway described in proposed § 30.91(d), however, the Department would incur significant costs to create, disseminate, and process applications to complete a holistic assessment of the information submitted by the borrower related to hardship. The Department would need to either repurpose or hire additional staff for this purpose. This would create expenses for systems to accept and track the status of applications as well as call-

American life course. *Demography*, 46, 717–737. and from Hoynes, H.W., Page, M.E., & Stevens, A.H. (2006). Poverty in America: Trends and Explanations. *The Journal of Economic Perspectives*, 20(1), 47–68. <http://www.jstor.org/stable/30033633>.

center staffing costs to address inquiries related to the application process. The degree of these costs would vary based upon the number of applications the Department has the capacity to process in a year. Increasing the Department's capacity to holistically assess applications would require hiring more staff, either directly or through subcontractors. Greater initial costs for staff could result in lower long-term costs, however, as we anticipate that most borrowers who are initially interested in the application-based process would do so soon after such process is available. We anticipate that future applications would come from newer borrowers or those with a significant change in their circumstances such that they have now decided to seek a hardship waiver.

The Department has developed estimates of the administrative costs for the application-based pathway specified in proposed § 30.91(d) by considering existing analogous administrative processes, particularly the costs related to reviewing applications for borrower defense to repayment. Those processes share some similarities, particularly that borrowers submit applications that may reveal information and evidence that is not otherwise available to the Department and must be reviewed. There are also some key differences. First, borrower defense requires conducting fact-finding related to an institution. That can be a significant upfront investment of time, but any findings from that work can then be applied to multiple applications. Second, the review of borrower defense applications is generally carried out by attorneys. This reflects the legal standards used for borrower defense approvals, which often include making determinations about the nature of misrepresentations and meeting certain evidentiary bars that are grounded in concepts similar to those used by States in their unfair and deceptive acts and practices (UDAP) laws.

The proposed application-based approach for hardship waivers under proposed § 30.91(d) would be different. First, we do not anticipate that the fact-finding related to institutional conduct would apply to the Department's review of applications under proposed § 30.91(d). Second, we do not anticipate that the individuals reviewing hardship applications would need to be attorneys. That means the typical staffing cost could be lower than it is for borrower defense.

Based upon these considerations, the Department modeled the possible administrative costs of the application-based pathway described in proposed § 30.91(d) in the following manner. First, we assumed that the cost per hour to review was \$50. This is based on the current hourly rate used by subcontractors for the Office of Federal Student Aid in the Department of Education, which is roughly half the hourly rate were Department staff hired for the same process. We then assumed that it would take each reviewer on average 30 minutes to review an application and render a recommended decision to the Secretary. The 30-minute estimate is similar to how long Department contractors typically take to review a form where borrowers submit detailed income and expense information when seeking to rehabilitate a defaulted loan (information collection 1845–0120). We expect that some applications would be faster while others that include significant additional information might take longer. The overall administrative cost would then depend on how many applications the Department anticipates receiving annually as well as how many we anticipate being able to review in a year. The number would also be higher or lower depending on the number of applications processed each year, the total number of anticipated applications, and the average time to review the application. If we expect a total of 4 million applications, at the current hourly rate and expected review time, the personnel costs for application review is estimated at about \$100 million. We will continue to refine these estimates based upon comments received from the public.

In addition to staffing costs, the Department also anticipates incurring some administrative costs for updating and maintaining data systems to process the intake of applications from borrowers seeking hardship waivers, staffing call centers for questions, and costs to train system users. We estimate this amount to be approximately \$9 million in the first year, and an additional \$1.7 million each year thereafter.

#### 4. Net Budget Impact

Table 4.1 provides an estimate of the net Federal budget impact of these proposed regulations that are summarized in Table 2.1 of this RIA. This includes both costs of a modification to existing loan cohorts

and costs for loan cohorts from 2025 to 2034. A cohort reflects all loans originated in a given fiscal year. Consistent with the requirements of the Federal Credit Reform Act of 1990 (FCRA), budget cost estimates for the student loan programs reflect the estimated net present value of all future non-administrative Federal costs associated with a cohort of loans. The baseline for estimating the cost of these final regulations is the President's Budget for 2025 (PB2025) as modified for changes to debt management policies. The baseline<sup>101</sup> does not include any changes related to the student debt relief provisions described in the NPRM published April 17, 2024.<sup>102</sup> Should such debt relief provisions be finalized as proposed in the April NPRM and should the Department provide waivers under such provisions, the Department expects that the estimated costs of these regulations would decrease.

<sup>101</sup> The Department notes that the baseline also includes the existence of the final regulations published in July 2023 that made various changes to the Department's pre-existing income contingent repayment plan (known as the Revised Pay As You Earn, or REPAYE, plan) and to the Department's other income contingent repayment plans. Those regulations also changed the name of the REPAYE plan to the Saving on a Valuable Education (SAVE) plan. See 88 FR 43820. Several states have challenged the SAVE regulations as part of ongoing litigation. See generally *Missouri v. Biden*, No. 24–2332 (8th Cir.); *Alaska v. Department of Education*, Nos. 24–3089, 24–3094 (10th Cir.). Because the SAVE regulations have not been permanently enjoined, it is appropriate to include them in the baseline. The Department recognizes that if the SAVE regulations are permanently enjoined, this could increase the estimated costs for these regulations because there may be more borrowers who are eligible for relief. For example, in the absence of provisions under SAVE or other ICR plans, the Department expects there would be more borrowers eligible for relief under proposed § 30.91(d) since more borrowers would be likely to be in default or experience similarly severe negative and persistent circumstances, and existing payment relief options would not sufficiently address their persistent hardship. The Department notes that even if the estimated costs increased in such a manner, the Department believes the benefits of these proposed regulations would still outweigh the costs since the proposed regulations would authorize providing waivers to borrowers who are unlikely to fully repay their loans and, relatedly, the waivers would discharge debt that the Department is unlikely to fully collect in a reasonable period of time.

<sup>102</sup> 89 FR 27564 (April 17, 2024). As described above, see n.1, *supra*, a Federal district court has issued an injunction focused on these separate proposed rules published on April 17, 2024. See *Missouri v. Biden*, No. 24–cv–1316 (E.D. Mo.). As of the date of publishing this NPRM, that separate litigation focused on the April 2024 NPRM remains pending with no final decision on the merits.

TABLE 4.1—ESTIMATED NET BUDGET IMPACT OF THE NPRM FOR DIRECT LOANS AND ED-HELD LOANS  
[\$ in millions]

Section	Description	Modification score (1994–2024)	Outyear score (2025–2034)	Total (1994–2034)
§ 30.91(c) .....	Immediate relief for borrowers likely to be in default .....	70,200	.....	70,200
§ 30.91(d) .....	Application-based relief for borrowers experiencing hardship.	29,600	12,100	41,700

It is possible that a borrower who is eligible for immediate relief under proposed § 30.91(c) may also be inclined to apply for relief under proposed § 30.91(d). For budgeting purposes, however, we assume that all relief would be full relief, and that if a borrower qualifies for and receives a waiver under proposed § 30.91(c) then they would not also receive a waiver under proposed § 30.91(d). Accordingly, the primary budget estimate stacks the scores in the order shown on the assumption that immediate relief under proposed § 30.91(c) would be provided to eligible borrowers prior to any additional relief under proposed § 30.91(d) to different borrowers. The Department believes this stacked estimation is appropriate for the primary estimates of the proposed regulations.

#### Methodology for Budget Impact

The Department estimated the budget impact of the proposed provisions in this NPRM through changes to the Department's Death, Disability, and Bankruptcy (DDB) assumption that handles a broad range of loan discharges or adjustments, the collections assumption to reflect balance changes on loans that ever defaulted, and the IDR assumption for effects on borrowers in those repayment plans. The DDB assumption is used in the Student Loan Model (SLM) to determine the rate and timing of loan discharges due to the death, disability, bankruptcy, or other discharge of the borrowers (this model is not the same as the predictive assessment that is described for determining whether a borrower may be eligible for a waiver under proposed § 30.91(c)). The SLM is designed to calculate cash flow estimates for the Department's Federal postsecondary student loan programs in compliance with the FCRA and all relevant Federal guidance. The SLM calculates student loan net cost estimates for loan cohorts where a cohort consists of the loans originated in a given budget (fiscal) year. The model operates with input data obtained from historical experience and other relevant data sources. The SLM cash flow components range from

origination fees through scheduled principal and interest payments, defaults, collections, recoveries, and fees. The cash flow time period begins with the fiscal year of first disbursement and ends with the fiscal year of the events at the end of the life of the loan: repayment, discharge, or forgiveness.

For each loan cohort, the SLM contains separate DDB rates by loan program, population (Non-Consolidated, Consolidated Not From Default, and Consolidated From Default), loan type, and budget risk group (Two-Year Proprietary, Two-Year Public and Not-for-Profit, Four-Year Freshman and Sophomore of all institution types, Four-Year Junior and Senior of all institution types, and Graduate Student of all institution types). The DDB rate is the sum of several component rates that reflect underlying claims data and assumptions about the effect of policy changes and updated data on future claims activity. In general, DDB claims are aggregated as the numerator by fiscal year of origination and population, program, loan type, risk group, and years from origination until the DDB claims. Zeros are used for any missing categories in the numerator. Net loan amounts are aggregated as the denominator by fiscal year of origination and population, program loan type, and risk group. The DDB rate is simply the ratio of the numerator to the denominator. Because the SLM only allows for DDB rates to be specified up to 30 years from origination, DDB claims occurring more than 30 years after origination are included in the year 30 rate. DDB rates for future cohorts are forecasted using weighted averages of prior year rates and have a number of additions and adjustment factors built into them to capture policies or anticipated discharges that are not reflected in the processed discharge data yet, including adjustments for anticipated increased borrower defense and closed school activity.

For estimates related to waivers granted to borrowers enrolled in IDR repayment plans, the Department has a borrower and loan type level submodel that generates representative cashflows for use in the SLM. This IDR submodel

contains information about borrowers' time in repayment, the use of deferments and forbearances, estimated incomes and filing statuses, and annual balances. Therefore, we are able to identify or assign the borrowers in the IDR submodel who would be eligible for one of the waivers in proposed § 30.91 and incorporate that effect by ending the payment cycle for borrowers who would be eligible to receive a waiver under proposed § 30.91(c) or (d).

The estimated cost of waivers under proposed § 30.91(c) or (d) varies depending on whether the borrower is in IDR, as well as whether the waiver is a full or partial discharge of the loan. Partial waiver of balances for borrowers already modeled to be on an IDR plan could have three different effects depending upon whether the borrower was expected to get IDR forgiveness prior to these waivers, and whether the waiver changes that anticipated outcome. These potential effects would be:

1. Before and after the waiver is applied, borrowers are expected to receive some IDR forgiveness at the end of their repayment term. For these borrowers, the waivers would affect the amount ultimately forgiven, but because payments are based upon income and the amount of time borrowers would be expected to repay is unchanged, there would be no effect on the amount of anticipated future payments.

2. The borrower was expected to receive IDR forgiveness before the waiver's application, but afterward is now expected to pay off their balance before receiving IDR forgiveness. Because these borrowers would now be expected to repay in less time, there would be some reduction in the amount of anticipated future payments.

3. Before applying the waiver, the borrower was expected to retire their loan balance prior to receiving IDR forgiveness, but as a result of the policy would now be expected to retire their balance sooner. Because these borrowers would now be expected to repay in less time, there would be some reduction in the amount of anticipated future payments.



Generally, we project that most partial waivers for borrowers modeled to be on IDR would end up in the first group. Since these borrowers would not see a change in the amount they pay before receiving forgiveness, we do not assign a cost to the waivers for these borrowers. Any costs for waivers granted to borrowers who are modeled to be on IDR come from either full waivers or the minority of borrowers in the second and third groups, for whom the waivers would reduce the number of payments needed to fully repay their loan.

For estimates related to the effects of the proposed waiver provisions on borrowers with loans not in IDR plans, the Department's approach would be to: (1) estimate the potential waiver amounts borrowers would be eligible for and aggregate them by loan cohort, loan type, and budget risk group used in the SLM; (2) add the waiver amounts for non-defaulted, non-IDR borrowers to the Department's baseline DDB assumption in FY 2025; and (3) remove the amounts associated with the waiver provisions from defaulted, non-IDR borrowers from the baseline collections assumption. The revised IDR, DDB and collections groups are run in a SLM scenario for each provision to generate the estimates in Table 4.1. To produce the potential waiver amounts in Step 1 of this process, the Department developed a loan-level file based on the FY2023 sample of NSLDS information used for preparing budget estimates, with balance information supplemented by redrawing key loan information as of June 13, 2024, to account for the discharges and waivers that occurred in FY2024 and reduced borrower's balances to zero. Information from this file would allow the evaluation of times in repayment that would qualify for one of the provisions and anticipated future balances for use in calculating the amount that the Secretary might waive for borrowers who have experienced changes in balance.

These estimates are all based on the same random sample of borrowers that the Department uses for all other budget estimation activity related to Federal student loans. Currently, the most recent sample available is from the end of FY2023, which is the best currently available data that maintains the Department's consistent scoring practices.

The Department followed two different approaches for modeling the estimated cost of the provisions in proposed § 30.91(c) and (d). For proposed § 30.91(c), the Department considered the output of the model developed to project the likelihood that

a borrower would be in default within two years. We used that model to estimate the number of borrowers by risk group as well as repayment status (*e.g.*, in default or in repayment) and estimated the cost of forgiving those loans. For the outyear cohorts, we randomly assigned borrowers to default based on default rates by cohort, risk group and loan type assumed in the President's Budget for FY2025 baseline. This approach reflects that under proposed § 30.91(c), the Secretary may identify borrowers eligible for relief based on a predictive assessment, without requiring any action by those borrowers.

The Department took a different approach for proposed § 30.91(d). That proposed provision describes an application-based pathway for relief whereby the Secretary may conduct a holistic assessment of the borrower's factors indicating hardship based on information obtained through an application process in addition to potentially supplementing that data with information already in the Department's possession. To model this approach, the Department generated assumptions of the number of borrowers who would be eligible for a waiver. Of this number of assumed eligible applicants, we then calculated the distribution of borrowers across risk group (*e.g.*, 2-year proprietary, graduate borrowers, and 4-year nonprofit or public institutions), and by cohort year. We describe this process in greater detail below.

First, as described earlier, the Department considered multiple potentially comparable situations it has dealt with in the past to estimate the number of applications from borrowers seeking proposed waivers related to hardship. We examined the volume associated with borrowers on IDR plans, those who applied for student debt relief under the HEROES Act, and those who applied for economic deferment or hardship from a period prior to the payment pause. With no perfect analog but based on the best available data, we use a base estimate that about 1 million borrowers in the current portfolio would be approved for relief. The estimate of borrowers who would be affected in future cohorts over the next ten years is 1 million.

To reduce the possibility in the net budget impact estimate that borrowers who might be otherwise captured under proposed § 30.91(c) and could potentially be double counted in both proposed § 30.91(c) and proposed § 30.91(d), we estimated the cost of the waivers proposed in proposed § 30.91(d) after accounting for the cost of proposed

§ 30.91(c) and only allowed borrowers to receive a waiver under one of the proposed provisions. The Department seeks feedback about the assumed number of borrowers who would be approved for a waiver under proposed § 30.91(d), and we will continue to refine this estimate.

Next, to estimate the distribution of approved applicants across risk group and cohort year, the Department consulted the closest past situations that might operate similarly to the proposed waivers. This included looking at the distribution of borrowers across risk group and cohort year who submitted applications for relief under the HEROES Act Plan that was announced in August 2022, borrowers who ever defaulted on loans based on Department data, and borrowers who had a qualifying economic hardship forbearance or deferment. While not exact corollaries, these data nonetheless provide useful information on which types of borrowers might choose to apply. We believe these are better comparisons for thinking about the distribution of approved borrowers than other types of existing information. For instance, we do not think closed school loan discharges would be a good comparison, because those borrowers only come from colleges that closed, which would largely exclude public institutions. We also chose not to use borrowers who documented income and expense information when seeking a loan rehabilitation, because these borrowers are disproportionately likely to have not finished their postsecondary programs, whereas the hardship applications could come from borrowers who graduated but who are struggling on their loans in ways beyond just being in default.

Specifically, to estimate the distribution of approved applicants across cohort years, the Department equally weighted the distributions observed under submitted applications for relief under the HEROES Act Plan that was announced in August 2022 and borrowers who ever defaulted on loans based on Department data. To calculate the distribution of borrowers across risk groups, the Department equally weighted the distributions observed under submitted applications for relief under the HEROES Act Plan that was announced in August 2022 and borrowers who had a qualifying hardship forbearance or deferment. If a cell reached 100 percent of sampling in current Department data, the excess approved applicants were distributed within the respective cohort range row by weight. The resulting estimated

distribution of approved applicants is shown in Table 4.2.

TABLE 4.2—ESTIMATED PERCENTAGE DISTRIBUTION OF APPROVED APPLICANTS BY COHORT AND RISK GROUP

	Non-consolidated	Consolidated non-default	Consolidated default	Total				
				2-Yr Proprietary	2-Yr Public	4-Yr PubPri FrSo	4-Yr PubPri JrSr	Grad
1994–2004 .....	0.6	0.2	1.3	1.3	1.4	3.5	0.9	9.1
2005–2009 .....	0.7	0.7	2.1	3.2	1.6	2.5	0.6	11.5
2010–2014 .....	2.3	2.4	6.9	10.5	5.1	8.3	2.1	37.4
2015–2019 .....	1.8	1.8	5.2	7.9	3.8	6.3	0.9	27.6
2020–2024 .....	0.9	0.9	2.8	4.2	2.0	3.3	0.1	14.3
Total .....	6.3	6.0	18.2	27.1	13.8	23.9	4.6	100.0

Next, we randomly identified non-defaulted, non-IDR borrowers within each risk group and cohort year cell, based on the percentages shown in Table 4.2, to be in the approved applicant pool. We then waived the assumed future balances in the sample to generate the estimated increase in DDB claims or reduction in collections associated with the hardship application provisions. To provide a maximally conservative budget estimate, we assumed all of these approvals would result in full relief. Lesser amounts of relief would reduce the estimated cost.

Table 4.3 shows the outstanding loan balances by risk group for approved borrowers from existing cohorts that entered repayment by 2024.

TABLE 4.3—OUTSTANDING LOAN BALANCES BY RISK GROUP  
[ \$ Millions ]

Risk group	Outstanding loan balances
2-Yr Proprietary .....	835
2-Yr Public .....	1,103
4-Yr PubPri FrSo .....	6,099
4-Yr PubPri JrSr .....	5,680
Grad .....	5,034
Consol .....	7,523
Total .....	26,275

The sampling process described above generated the estimated forgiveness for borrowers from existing cohorts for loans that entered repayment by 2024. For future cohorts and loans that enter repayment in 2025 and later from existing cohorts, we calculated the percent of net volume that was associated with borrowers that entered repayment by 2024 assigned to receive forgiveness by origination cohort, consolidation status, budget risk group, and time to receiving hardship forgiveness from entering repayment (offset). We then took the average forgiveness percentage of volume across origination cohorts by risk group, consolidation status, and offset to estimate the percent of volume that will enter repayment from 2025 and out that we estimate will receive hardship forgiveness. As we expect it will take borrowers some years in repayment to demonstrate persistent hardship, we have distributed forgiveness in the outyears evenly from years 5 to 15 in repayment. This estimated forgiveness is then summarized by origination cohort, consolidation status, budget risk group, loan type, and offset and added to the baseline estimate for the discharge assumption to generate the cost of § 30.91(d).

The Department also considered how to estimate how many applications it

would receive, and the rate at which an application for waiver would be likely to be approved.

As described previously, we assume that for every two borrowers who are eligible, there is one that is rejected because their needs are met via other Department payment relief options, such as IDR plans. We also assume that there would be borrowers who apply but do not meet the standard. On net, we assume that for every eligible applicant, there is also one ineligible applicant, for an effective approval rate of 50 percent. The Department seeks feedback about these assumed approval rates, and we will continue to refine this estimate.

5. Accounting Statement

As discussed in OMB Circular A–4, we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of these proposed regulations. Table 5.1 provides our best estimate of the changes in annual monetized transfers that may result from these proposed regulations.

Expenditures are classified as transfers from the Federal government to affected student loan borrowers.

TABLE 5.1—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED EXPENDITURES  
[In millions]

Reduction in loans that are unlikely to be repaid in full in a reasonable period .....	
Increased ability for borrowers to repay loans on which they have or are experiencing hardship .....	
Reduced administrative burden for Department due to reduced servicing, default, and collection costs .....	
Category:	
Paperwork Reduction Act burden on borrowers to complete applications .....	\$11.14
Administrative costs to Federal government to update systems and contracts to implement the proposed regulations .....	\$2.5
Administrative costs of staff reviews .....	\$12.1
Reduced transfers from borrowers due to waivers: .....	2%
Based on high likelihood of being in default .....	\$7,657
Based on applications .....	\$4,432

## 6. Alternatives Considered

The Department considered the option of not proposing these regulations, as the Secretary has existing waiver authority under sections 432(a)(6) and 468(2) of the HEA. However, we believe these regulations are important to inform the public about how the Secretary would exercise this longstanding discretionary waiver authority in a consistent and transparent manner. The Department believes that foregoing these proposed regulations would reduce transparency about the Secretary's discretionary use of waiver. For all the reasons detailed above, hardship waivers would produce substantial, critical benefits for borrowers and the Department. Overall, as discussed above in the context of the relevant Executive Orders, the Department's analysis suggests that the benefits of the proposed regulations will outweigh their costs.

As part of the development of these proposed regulations, the Department engaged in a negotiated rulemaking process in which we received comments and proposals from non-Federal negotiators representing numerous impacted constituencies. These included higher education institutions, legal assistance organizations, consumer advocacy organizations, student loan borrowers, civil rights organizations, State officials, and State attorneys general. Non-Federal negotiators submitted a variety of proposals relating to the issues under discussion. Information about these proposals is available on our negotiated rulemaking website at <https://www2.ed.gov/policy/highered/reg/hearulemaking/2023/index.html>.

Because the negotiators reached consensus on the proposed regulations in this NPRM, the Department did not consider alternative regulations in the drafting of this NPRM. We did, however, consider some alternatives during the negotiated rulemaking process.

The Department considered including the issue of borrowers affected by servicer errors as a potential sign of hardship. However, we decided not to explicitly include that as a factor under proposed § 30.91(b) because the Department has existing procedures to address administrative errors without needing these specific regulations for them.

The Department also considered using an exclusive list of factors indicating hardship in proposed § 30.91(b) but concluded that a non-exhaustive list would provide necessary flexibility to consider unanticipated factors

indicating hardship and to incorporate new types of data as they become available.

As noted above, the Committee reached consensus on the regulatory language proposed in this NPRM.

## 7. Regulatory Flexibility Act

The Secretary certifies, under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), that this final regulatory action would not have a significant economic impact on a substantial number of "small entities."

These regulations will not have a significant impact on a substantial number of small entities because they are focused on arrangements between the borrower and the Department. They do not affect institutions of higher education in any way, and those entities are typically the focus on the Regulatory Flexibility Act analysis. As noted in the Paperwork Reduction Act section, burden related to the final regulations will be assessed in a separate information collection process and that burden is expected to involve individuals.

## 8. Paperwork Reduction Act

As part of its continuing effort to reduce paperwork and respondent burden, the Department provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This helps make certain that the public understands the Department's collection instructions, respondents can provide the requested data in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the Department can properly assess the impact of collection requirements on respondents.

Proposed § 30.91 in this NPRM contains information collection requirements. Under the PRA, the Department would, at the required time, submit a copy of these sections and an Information Collections Request to the Office of Management and Budget (OMB) for its review.

A Federal agency may not conduct or sponsor a collection of information unless OMB approves the collection under the PRA and the corresponding information collection instrument displays a currently valid OMB control number. Notwithstanding any other provision of law, no person is required to comply with, or is subject to penalty for failure to comply with, a collection of information if the collection

instrument does not display a currently valid OMB control number. In the final regulations, we would display the control numbers assigned by OMB to any information collection requirements proposed in this NPRM and adopted in the final regulations.

*Section 30.91—Waiver due to likely impairment of borrower ability to repay or undue costs of collection.*

*Requirements:* The NPRM proposes to add a new § 30.91 to 34 CFR part 30 in which the Secretary would consider granting a waiver for borrowers experiencing hardship. To implement proposed § 30.91(d), the Department would use an "additional relief" process using a holistic assessment approach, where the Department would consider information provided by a borrower through an application, based on a non-exclusive list of factors in proposed § 30.91(b), indicating that they are experiencing hardship. Information would include items such as a borrower's household income and assets, payments on debt relative to household income, and exceptional amounts of costs for caretaking.

While some of the information in proposed § 30.91(b) could be obtained from the Department's administrative data, other information must be obtained from the borrowers themselves through an application. The information collected on the application would be used to assess eligibility for a hardship determination. The Department expects that the application for relief under proposed § 30.91(d) would solicit a range of qualitative and quantitative information from the borrower to inform the Department's determination of whether the borrower satisfies the hardship standard.

*Burden Calculations:*

*§ 30.91 Waiver due to likely impairment of borrower ability to repay or undue costs of collection.*

The proposed regulatory changes would add burden to borrowers and would require a new information collection. As discussed in the net budget impact section, we estimate that between 2.67 million and 8 million borrowers would submit hardship applications. The costs are estimated using the median hourly wage of \$23.11 reported by the Bureau of Labor Statistics for all occupations.<sup>103</sup> We estimated the number of hours needed to complete the proposed application based upon discussions with Department staff that have worked on similar processes in the past. Through those conversations, we estimate that it

<sup>103</sup> [https://www.bls.gov/oes/current/oes\\_nat.htm#00-0000](https://www.bls.gov/oes/current/oes_nat.htm#00-0000).

would take a typical borrower 1 hour to complete the application form to indicate they want to pursue the application-based process. The Department's two closest analogous types of application forms are the one that borrowers submit when filing a borrower defense to repayment application and the one that borrowers fill out to document their income and expenses when seeking to rehabilitate a defaulted loan. For borrower defense forms, the Department estimates that it takes a borrower 30 minutes (0.5 hours) to complete, while the rehabilitation form takes an estimated 60 minutes (1

hour) per borrower. We anticipate that the application form for the proposed hardship waiver would likely take as long as the rehabilitation form to fill out. We came to this conclusion because borrowers who want to provide information about indicators of hardship from their finances or assets may need to provide supplemental financial information. Applicants may have to put together documentation related to high essential expenses, such as health care or dependent care costs. They may also need to provide information about how they are experiencing hardship as a result of the

items identified and why it is likely to persist.

Because we do not want to double count borrowers who may qualify for and receive relief under proposed § 30.91(c), the estimate for proposed § 30.91(d) illustrated below does not include borrowers who would be expected to receive full relief under proposed § 30.91(c).

These figures and considerations are the basis for the following estimations.

*§ 30.91 Hardship Application—OMB Control Number 1845–NEW*

Affected entity	Applications	Burden hours	Cost \$22.31 per hour
Individual low scenario .....	2,667,000	2,667,000	59,500,770
Individual medium scenario .....	4,000,000	4,000,000	89,240,000
Individual high scenario .....	8,000,000	8,000,000	178,480,000
Average Total .....	4,889,000	4,889,000	109,073,590

Consistent with the discussions above, the following chart describes the sections of the proposed regulations involving information collections, the information being collected and the collections that the Department would

submit to OMB for approval and public comment under the PRA, and the estimated costs associated with the information collections. The monetized net cost of the increased burden for borrowers using wage data was

developed using Bureau of Labor Statistics (BLS) data. For individuals, we have used the median hourly wage for all occupations, \$23.11 per hour according to BLS.<sup>104</sup>

COLLECTION OF INFORMATION

Regulatory section	Information collection	OMB control number and estimated burden	Estimated cost \$23.11 per hour
§ 30.91 .....	Would allow the Secretary to receive applications that provide information for the Secretary to conduct hardship determinations..	1845–NEW 4,889,000 average hours.	\$109,073,590
Total .....	.....	1845–NEW 4,889,000 .....	109,073,590

If you wish to review and comment on the Information Collection Requests, please follow the instructions in the **ADDRESSES** section of this notification.

*Note:* The Office of Information and Regulatory Affairs in OMB and the Department review all comments posted at [www.regulations.gov](http://www.regulations.gov).

In preparing your comments, you may want to review the Information Collection Request, including the supporting materials, in [www.regulations.gov](http://www.regulations.gov) by using the Docket ID number specified in this notification. This proposed collection is identified as proposed collection 1845–NEW.

We consider your comments on these proposed collections of information in—

- Deciding whether the proposed collections are necessary for the proper

performance of our functions, including whether the information will have practical use.

- Evaluating the accuracy of our estimate of the burden of the proposed collections, including the validity of our methodology and assumptions.
- Enhancing the quality, usefulness, and clarity of the information we collect; and
- Minimizing the burden on those who must respond.

Consistent with 5 CFR 1320.8(d), the Department is soliciting comments on the information collection through this document. Between 30 and 60 days after publication of this document in the **Federal Register**, OMB is required to make a decision concerning the collections of information contained in these proposed priorities, requirements,

definitions, and selection criteria. Therefore, to make certain that OMB gives your comments full consideration, it is important that OMB receives your comments on these Information Collection Requests by December 2, 2024.

**9. Intergovernmental Review**

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive Order is to foster an intergovernmental partnership and a strengthened Federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

<sup>104</sup> [https://www.bls.gov/oes/current/oes\\_nat.htm#00-0000](https://www.bls.gov/oes/current/oes_nat.htm#00-0000).

This document provides early notification of our specific plans and actions for this program.

#### 10. Assessment of Education Impact

In accordance with section 411 of the General Education Provisions Act, 20 U.S.C. 1221e–4, the Secretary particularly requests comments on whether these final regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

#### 11. Federalism

Executive Order 13132 requires us to provide meaningful and timely input by State and local elected officials in the development of regulatory policies that have Federalism implications. “Federalism implications” means 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. The proposed regulations do not have Federalism implications.

**Accessible Format:** On request to the program contact person(s) listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or another accessible format.

**Electronic Access to This Document:** The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at [www.govinfo.gov](http://www.govinfo.gov). At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at [www.federalregister.gov](http://www.federalregister.gov). Specifically, through the advanced search feature at this site, you can limit

your search to documents published by the Department.

**Miguel Cardona**,  
*Secretary of Education.*

For the reasons discussed in the preamble, the Secretary of Education proposes to revise part 30 of title 34 of the Code of Federal Regulations as follows:

#### List of Subjects in 34 CFR Part 30

Claims, Income taxes.

For the reasons discussed in the preamble, the Department of Education proposes to amend 34 CFR part 30 to read as follows:

#### PART 30—DEBT COLLECTION

■ 1. The authority citation for part 30 continues to read as follows:

**Authority:** 20 U.S.C. 1221e–3(a)(1), and 1226a–1, 31 U.S.C. 3711(e), 31 U.S.C. 3716(b) and 3720A, unless otherwise noted.

■ 2. Add subpart G, consisting of § 30.91 to read as follows:

#### Subpart G—Waiver of Federal Student Loan Debts

##### § 30.91 Waiver due to likely impairment of borrower ability to repay or undue costs of collection.

(a) *Standard for waiver due to hardship.* The Secretary may waive up to the outstanding balance of a loan owed to the Department arising under the Federal Family Education Loan Program authorized under title IV, part B, of the HEA, the William D. Ford Federal Direct Loan Program authorized under title IV, part D, of the HEA, the Federal Perkins Loan Program authorized under title IV, part E, of the HEA, and the Health Education Assistance Loan Program authorized by sections 701–720 of the Public Health Service Act, 42 U.S.C. 292–292o, when the Secretary determines that a borrower has experienced or is experiencing hardship related to such a loan such that the hardship is likely to impair the borrower’s ability to fully repay the Federal government or the costs of enforcing the full amount of the debt are not justified by the expected benefits of continued collection of the entire debt.

(b) *Factors that substantiate hardship.* In determining whether a borrower meets the conditions described in paragraph (a) of this section, the Secretary may consider any indicators of hardship related to the borrower, including but not limited to—

- (1) Household income;
- (2) Assets;

(3) Type of loans and total debt balance owed for loans described in paragraph (a) of this section, including those not owed to the Department;

(4) Current repayment status and other repayment history information;

(5) Student loan total debt balances and required payments, relative to household income;

(6) Total debt balances and required payments, relative to household income;

(7) Receipt of a Pell Grant and other information from the FAFSA form;

(8) Type and level of institution attended;

(9) Typical student outcomes associated with a program or programs attended;

(10) Whether the borrower has completed any postsecondary certificate or degree program for which they received title IV, HEA financial assistance;

(11) Age;

(12) Disability;

(13) Age of the borrower’s loan based upon first disbursement, or the disbursement of loans repaid by a consolidation loan;

(14) Receipt of means-tested public benefits;

(15) High-cost burdens for essential expenses, such as healthcare, caretaking, and housing;

(16) The extent to which hardship is likely to persist; and

(17) Any other indicators of hardship identified by the Secretary.

(c) *Immediate relief for borrowers likely to default.* The Secretary may consider any indicators of hardship related to the borrower, including but not limited to the factors described in paragraph (b) of this section to waive all or part of the federally held student loans of borrowers who the Secretary determines based on data in the Secretary’s possession have experienced or are experiencing hardship such that their loans are at least 80 percent likely to be in default in the next two years after October 31, 2024.

(d) *Process for additional relief.* In exercising the authority described in paragraph (a) of this section, the Secretary may rely on data in the Secretary’s possession that may have been acquired through an application or any other means to provide relief, including automated relief, based on criteria demonstrating the conditions described in paragraph (a) of this section.

[FR Doc. 2024–25067 Filed 10–30–24; 8:45 am]

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## Part IV

## Department of Transportation

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Federal Transit Administration

49 CFR Part 671

Rail Transit Roadway Worker Protection; Final Rule

**DEPARTMENT OF TRANSPORTATION****Federal Transit Administration****49 CFR Part 671**

[Docket No. FTA–2023–0024]

RIN 2132–AB41

**Rail Transit Roadway Worker Protection**

**AGENCY:** Federal Transit Administration (FTA), Department of Transportation (DOT).

**ACTION:** Final rule.

**SUMMARY:** The Federal Transit Administration (FTA) is publishing a final rule for minimum safety standards for rail transit roadway worker protection (RWP) to ensure the safe operation of public transportation systems and to prevent safety events, fatalities, and injuries to transit workers who may access the roadway in the performance of work. This final rule applies to rail transit agencies (RTAs) covered by the State Safety Oversight (SSO) program, SSO agencies (SSOAs), and rail transit workers who access the roadway to perform work. This final rule sets minimum standards for RWP program elements, including an RWP manual and track access guide; requirements for on-track safety and supervision, job safety briefings, good faith safety challenges, and reporting unsafe acts and conditions and near-misses; development and implementation of risk-based redundant protections for workers; and establishment of RWP training and qualification and RWP compliance monitoring activities. RTAs are expected to comply with these Federal standards as a baseline and use their existing Safety Management System (SMS) processes to determine any additional mitigations appropriate to address the level of RWP risk identified. This final rule requires SSOAs to oversee and enforce implementation of the RWP program requirements.

**DATES:** The effective date of this final rule is December 2, 2024.

**ADDRESSES:** FTA's Office of Transit Safety and Oversight (TSO) will host a webinar to discuss the requirements of the RWP final rule. Please visit <https://www.transit.dot.gov/TSOWebinars> to register for webinars and for information about future webinars. FTA is committed to providing equal access for all webinar participants. If you need alternative formats, options, or services, contact [FTA-Knowledge@dot.gov](mailto:FTA-Knowledge@dot.gov) at least three business days prior to the event.

If you have any questions, please email [FTA-Knowledge@dot.gov](mailto:FTA-Knowledge@dot.gov).

**FOR FURTHER INFORMATION CONTACT:** For program matters, contact Ms. Margaretta "Mia" Veltri, Office of Transit Safety and Oversight, FTA, telephone at (202) 366–5094 or [margaretta.veltri@dot.gov](mailto:margaretta.veltri@dot.gov). For legal matters, contact Ms. Emily Jessup, Attorney Advisor, FTA, telephone at (202) 366–8907 or [emily.jessup@dot.gov](mailto:emily.jessup@dot.gov). Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

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**I. Executive Summary****A. Purpose and Summary of Regulatory Action**

The Federal Transit Administration (FTA) has adopted the principles and methods of Safety Management Systems (SMS) as the basis for enhancing the safety of public transportation in the United States. As part of its internal SMS, FTA established a Safety Risk Management (SRM) program to proactively address safety concerns impacting the transit industry and to systematically apply FTA's statutory oversight authority to improve the safety of the nation's transit infrastructure through the Public Transportation Safety Program.

The process follows a five-step approach: (1) identify safety concerns; (2) assess safety risk; (3) develop mitigation; (4) implement mitigation; and (5) monitor safety performance. In general, as a result of the first two steps, FTA may develop and advance appropriate mitigations to address a safety hazard, such as safety regulations, general or special directives, safety advisories, or technical assistance and training activities.

In 2019, FTA began piloting the SRM process to focus on high-priority safety risks and identified the roadway worker protection (RWP) safety concern as a topic for analysis. As part of FTA's assessment of the safety risk, FTA reviewed the rail transit industry's existing approaches to RWP. This review showed that on a national level, these approaches do not adequately protect transit workers from rail transit vehicles and other roadway hazards. As a result, FTA determined that a Federal baseline RWP program is an appropriate mitigation and is issuing this regulation to reduce fatalities and serious injury events involving rail transit workers that must access the roadway in the performance of their work.

This final rule requires rail transit agencies (RTAs) covered by the State Safety Oversight (SSO) program under 49 CFR part 674 (part 674) to implement a baseline RWP program to provide a standardized and consistent approach to protecting roadway workers industry-wide, overseen and enforced by State Safety Oversight Agencies (SSOAs).

This final rule prohibits the use of individual rail transit vehicle detection as a sole form of protection for workers on the roadway. It sets requirements for RTAs to conduct a safety risk assessment, use their existing documented SRM processes required under the Public Transportation Agency Safety Plans (PTASP) regulation at 49 CFR part 673 (part 673), to identify and establish redundant protections for each category of work that roadway workers perform on the roadway or track. Redundant protections may include procedures, such as foul time and advance warning systems, and also physical protections to stop trains in advance of workers, such as derailleurs and shunts. The SSOA must review and approve the RTA's RWP program, including the safety risk assessment and redundant protections.

The safety risk assessment must be consistent with the RTA's Agency Safety Plan (ASP) and the SSOA's program standard. RTAs may supplement the safety risk assessment with engineering assessments, inputs from the Safety Assurance process



established under § 673.27, the results of safety event investigations, and other SRM strategies and approaches.

To ensure effective implementation and oversight of the RWP program and redundant protections, this final rule also requires RWP training and compliance-monitoring activities, supplemented by near-miss reporting and SSOA oversight and auditing.

#### *B. Statutory Authority*

Congress directed FTA to establish a Public Transportation Safety Program in the Moving Ahead for Progress in the 21st Century Act (Pub. L. 112–141) (MAP–21), which was reauthorized by the Fixing America's Surface Transportation Act (FAST Act) (Pub. L. 114–94), and the Bipartisan Infrastructure Law, enacted as the Infrastructure Investment and Jobs Act (Pub. L. 117–58). FTA is authorized to regulate public transportation systems that receive Federal financial assistance under Chapter 53 of Title 49, United States Code (U.S.C.). FTA's safety program is authorized by 49 U.S.C. 5329.

49 U.S.C. 5329(f)(7) authorizes FTA to issue rules to carry out the Public Transportation Safety Program, and 49 U.S.C. 5329(b)(2) directs FTA to develop and implement a National Public Transportation Safety Plan (National Safety Plan) that includes minimum safety standards to ensure the safe operation of public transportation systems. In 2017, FTA published its first iteration of the National Safety Plan, which was intended to be FTA's primary tool for communicating with the transit industry about safety performance (82 FR 5628). Subsequently, on April 10, 2024, FTA published an updated version of the National Safety Plan (89 FR 25316). While FTA has previously published a National Safety Plan document that includes only voluntary standards, 49 U.S.C. 5329(f) provides FTA with the discretion and authority to issue mandatory minimum standards to ensure the safe operation of public transportation systems that consider, to the extent practicable, relevant recommendations of the National Transportation Safety Board (NTSB), best practices standards developed by the public transportation industry, any minimum safety standards or performance criteria being implemented across the public transportation industry, as well as any additional information that the Secretary determines necessary and appropriate. FTA's RWP rule establishes minimum standards that consider and are responsive to NTSB recommendations

that focus on the need for Federal regulation and minimum RWP requirements, best practices and voluntary standards issued by the American Public Transportation Association (APTA), as well as the results of research and safety event reviews conducted by FTA.

#### *C. Summary of Key Provisions*

This final rule establishes minimum safety standards to protect transit workers who may access the roadway in the performance of work.

The final rule requires each RTA to adopt and implement an RWP program to improve transit worker safety that is consistent with Federal and State safety requirements and is approved by its SSOA. The RWP program must be documented in a dedicated RWP manual, which includes the following: (1) terminology, abbreviations, and acronyms used to describe the RWP program activities and requirements; (2) RWP program elements; (3) a definition of RTA and transit worker responsibilities for the RWP program; (4) training, qualification, and supervision required for transit workers to access the roadway, by labor category or type of work performed; and (5) processes and procedures to provide adequate on-track safety for all transit workers who may access the roadway in the performance of their work, including safety and oversight personnel.

The RWP manual must include or incorporate by reference a track access guide to support on-track safety. The track access guide must be based on a physical survey of the track geometry and condition of the transit system.

The final rule requires the RTA to completely review and update its RWP manual at least every two years. Updates to the manual must reflect current conditions, lessons learned in implementing the RWP program as described in the manual, and information provided by the SSOA and FTA. The first review must be conducted within two years of the SSOA's initial approval of the RWP manual.

The final rule prohibits the use of individual rail transit vehicle detection. Each RTA is required to conduct a safety risk assessment to identify redundant protections for all workers to be included in the RWP program and manual. Protections must be based on the category of work being performed. Tasks demanding more attention from roadway workers, including the use of tools and equipment, may require RTAs to implement greater levels of protection

based on the results of the safety risk assessment.

In addition, the final rule requires comprehensive job safety briefings, a good faith safety challenge provision, and required reporting of near-misses. Formal training and qualification programs are required for all workers who access the roadway. RTAs also must adopt a program for RWP program compliance auditing and monitoring.

SSOAs are responsible for approving, overseeing, and enforcing implementation of the requirements in the final rule for each RTA in their jurisdiction, including the RWP manual and supporting training and qualification programs.

#### *Summary of Changes*

FTA made revisions throughout the rule in response to comments. FTA also made non-substantive technical edits throughout the rule to correct citations and typographical errors and for clarity.

In response to questions about the timeframe for implementation of the new RWP program requirements, FTA has included a provision in the final rule that provides RTAs with one year from the effective date of the rule to develop a compliant RWP program and obtain SSOA approval. FTA made changes to several definitions used throughout the rule. Those specific changes are detailed in II.D. below. FTA struck the word "all" from the SSOA requirement to review training and qualification records for transit workers who must enter a track zone to perform work at § 671.25(c)(2)(i)(E).

FTA added language at § 671.31(a)(5) that clarifies that the RTA may designate a single roadway worker in charge for the entire working limit and that, if a single roadway worker in charge is designated over multiple work groups within a working limit, each work group should be accompanied by an employee qualified to the level of a roadway worker in charge who shall be responsible for direct communication with the roadway worker in charge.

FTA updated § 671.31(b)(2) to clarify that in the event of an emergency, the roadway worker in charge must warn each roadway worker to immediately leave the roadway and not return until on-track safety is reestablished and a job safety briefing is completed.

At § 671.33(b)(3), FTA removed references to Federal Railroad Administration and Occupation Safety and Health Administration guidance, and added, as clarification, the requirement for job safety briefing elements to explicitly address the status of power and hazards explicitly related to electrified system for RTAs with

electrified systems. FTA also added general emergency response information at § 671.33(b)(4) and the inclusion of an emergency contact number for the roadway worker in charge at § 671.33(b)(8).

FTA revised § 671.33(c)(2) to clarify requirements for roadway workers to individually acknowledge, in writing, both the receipt and understanding of the job safety briefing and the requirement to use required personal protective equipment. In addition, FTA updated the language in § 671.33(c)(3) to clarify that the roadway worker in charge confirms in writing that they have received written acknowledgement of the job safety briefing from roadway workers rather than attesting that each roadway worker understands the job safety briefing.

FTA also revised the language in § 671.33(d) to require a follow-up briefing in the event of a change in on-track safety conditions.

The good faith safety challenge process at § 671.37(c) has been revised for clarity. The rule now explicitly clarifies that the roadway work group must remain clear of the roadway or track zone until a challenge and refusal is resolved.

FTA also updated § 671.39(a)(2) to clarify FTA's intent that it is the RTA's responsibility to establish redundant protections to ensure on-track safety for multiple roadway groups within a common work area.

FTA has revised § 671.39(d)(2) to clarify that redundant protections may include but are not limited to the listed protections.

FTA changed the frequency of the RWP Compliance Monitoring Program reporting from monthly to quarterly (§ 671.43(b)(1)).

D. Summary of Economic Analysis

The final rule, which sets minimum safety standards for RWP programs, will benefit roadway workers by reducing their risk of fatalities and injuries. FTA

analyzed national transit worker safety data from 2008 to 2020 and identified safety events that would have been prevented if agencies had implemented the protections required by this final rule. On average, the rule would prevent an estimated 1.2 fatalities and 2.4 injuries per year, resulting in annual safety benefits of \$16.2 million in undiscounted 2023 dollars. To meet the minimum safety standards, RTAs and SSOAs would incur an estimated \$2.6 million in start-up costs plus \$13.7 million in ongoing annual costs. The largest ongoing annual costs are for redundant worker protections (\$6.4 million) and RWP training (\$5.1 million).

Table ES-1 summarizes the potential effects of the rule over a ten-year analysis period from 2025 to 2034. In 2023 dollars, the rule would have annualized net benefits of \$2.0 million at a 2 percent discount rate (discounted to 2025), \$2.0 million at a 3 percent rate, and \$1.8 million at a 7 percent rate.

TABLE ES-1—SUMMARY OF ECONOMIC EFFECTS  
[2023 Dollars, discounted to 2025]

Item	Annualized value (2% discount rate)	Annualized value (3% discount rate)	Annualized value (7% discount rate)
Benefits .....	\$15,835,205	\$15,681,465	\$15,095,242
Costs .....	13,840,028	13,721,849	13,273,086
Net benefits .....	1,995,177	1,959,615	1,822,156

II. Notice of Proposed Rulemaking and Response to Comments

FTA issued a notice of proposed rulemaking (NPRM) for Rail Transit Roadway Worker Protection (RWP) on March 25, 2024 (89 FR 20605).<sup>1</sup> The public comment period for the NPRM closed on May 24, 2024.

FTA received comments from over 7100 unique respondents, including RTAs, SSOAs, labor unions, industry businesses and organizations, private individuals, and the National Transportation Safety Board (NTSB). FTA also received ex parte comments about the rulemaking, which are summarized in the rulemaking docket.

FTA reviewed all relevant comments and took them into consideration when developing this final rule. FTA addresses these comments in the corresponding sections below. Some comments were outside the scope of this rulemaking, and FTA does not respond to comments in this final rule that were outside the scope.

In response to comments, FTA made several changes to the final rule which are summarized above and discussed in more detail in the corresponding sections below.

A. General

1. Support for Regulation

*Comments:* FTA received 7,103 comments of support from individuals as part of a “response campaign” that provided a form letter for individuals to upload to the **Federal Register** along with their names and addresses. This letter expressed strong support for FTA’s proposed rule aimed at protecting rail transit workers, including support for preventing unsafe working conditions on the rail transit roadway, acknowledgment that FTA’s proposed rule aligns with long-standing recommendations from the NTSB, broad concern over worker safety and understaffing issues, and the urgency for finalizing and implementing the new rule quickly to save lives and prevent injuries.

Some individuals personalized the form letter with additional comments. Most of these commenters agreed that

rail transit workers are exposed to dangerous working conditions; should have the right to refuse to work in unsafe conditions; and should be able to report unsafe acts, conditions, and near-misses without fear of retaliation. Other personal comments emphasized the importance of a safe working environment. Some commenters included details about themselves or mentioned that family members or friends worked on the rail transit roadway. Many of these personal comments also expressed the need to address unsafe working conditions, long hours, understaffing, and the prioritization of profits over safety.

FTA also received comments of support from the NTSB, three SSOAs, four RTAs, two industry associations, fourteen labor organizations, one vendor, and multiple individuals. These commenters generally applauded FTA for taking action to address roadway worker safety in the transit industry and were supportive of FTA establishing standardized and robust safety standards to protect these essential workers. Commenters noted that the rule would signal a significant shift for

<sup>1</sup> Rail Transit Roadway Worker Protection, 88 FR 20605 (March 25, 2024). <https://www.federalregister.gov/documents/2024/03/25/2024-06251/rail-transit-roadway-worker-protection>.

the industry and emphasize the importance of ensuring that tasks are performed safely. Commenters urged FTA to act quickly to finalize this rule and noted support for the rule despite possible increased costs.

The NTSB expressed appreciation for FTA's consideration of many of the NTSB's safety recommendations on this topic and support for the proposals that address specific NTSB safety recommendations.

One SSOA commenter stated that the SSOA agrees with the purpose and intent of this proposal but suggested that RTAs should be allowed to comply with this rule in a manner that is not obstructive to operations. One SSOA commenter noted the important role SSOAs play in enforcing Federal requirements through auditing, inspections, deficiency resolution, and technical assistance. The commenter added that the SSOA supports many of the proposed changes, but suggested adjustments. Another SSOA commented that they are pleased that FTA recognizes the potential need for SSOAs to prescribe more stringent standards. The SSOA expressed support for specific requirements related to the proposed regulation's requirements that RTAs have an RWP manual, review and update it biennially, and share it with their SSOA. The commenter added that moving from piecemeal updates to a biennial update process, initial and refresher training requirements, and annual audits would lead to greater RTA compliance with RWP programs and improved worker safety.

An RTA commenter expressed support for the proposed requirement that RTAs develop a track access guide for on-track safety. One industry association commenter stated that a mandated RWP program is something that freight industry contractors have become accustomed to and fully recognize as an essential part of roadway worker safety. Another industry association commenter stated that the association supports FTA's proposed regulation where it leverages existing program elements, when possible, to promote efficient enhancements of the regulatory framework; increases involvement from frontline transit workers in safety-related decision-making; promotes or requires the meaningful use of safety data for safety-related decision-making; and clarifies roles, responsibilities, and reporting thresholds needed to comply with the regulation. In addition, the industry association commenter encouraged FTA to continue to hone and clarify its regulatory language, strengthen meaningful collaboration and

communication with agencies and organizations to develop its standards and minimum requirements, and provide clear and consistent guidance to transit and oversight agencies affected by the public transportation safety regulation. Another industry organization, the American Public Transportation Association (APTA), emphasized its support of FTA's efforts and strongly urged FTA to utilize the APTA standard for RWP, which it noted was recently updated and was prepared with input from a very diverse group of RTAs and business members.

One labor organization commenter agreed with the alignment of on-track safety regulations with the Federal Railroad Administration's (FRA) standards, which would ensure a heightened level of safety for workers as they carry out their daily responsibilities. Another labor organization commenter supported FTA's recommendations for aligning rail industry track worker safety with best-demonstrated practices that have proven beneficial to freight service engineers, conductors, and assistant conductors. The commenter also expressed support for FTA's proposal to implement job safety briefings, good faith safety challenges for workers whose safety is in jeopardy, additional formal safety training and qualifications for railroad workers whose duties involve being on and about the tracks, and full, formal reporting of near-misses or close calls that occur on or near railroad tracks. The commenter pointed out that all of the safety redundancies in the RWP are necessary and welcome. Another labor organization commented that it is hopeful that FTA will utilize this rulemaking process as a starting point to establish more specific and prescriptive RWP standards in the future. One international labor organization shared its trackwork collective bargaining agreement (CBA) clauses and Rail Safety Management Committee rules to assist FTA in further discussions and in the process of implementing new safety standards to protect railway workers and to improve the overall safety of public transport systems.

One vendor suggested that FTA use clarified guidance, circulars, or appendices, as appropriate, to define these standards in line with industry best practice.

An individual commenter noted that using the SSOAs as an oversight metric provides additional scrutiny to ensure compliance with safety standards. One individual commenter stated their strong support for FTA's new rule protecting rail workers and commented that the rule is necessary because of

understaffing and increased assaults on transit workers. Another individual commenter stated their support for FTA's proposal to increase safety standards for rail transit roadway workers and added that anyone working on a roadway or near a railroad crossing deserves a safe work environment. One individual noted that they particularly support the proposed requirements for redundant protections and comprehensive safety risk assessments, which are vital for mitigating the unique dangers rail workers face. In addition, the commenter stated that the requirement to prohibit reliance on individual rail transit vehicle detection as the sole form of protection resonates with the need for multifaceted safety approaches. One individual commenter agreed that job safety briefings; good faith safety challenges; and reporting unsafe acts, conditions, and near-misses would help with information transparency, allowing for increased transit worker safety. One individual commenter noted that the proposal's requirements to enhance job safety briefings and good faith safety challenges and establish clear protocols for reporting unsafe acts and conditions align with pro-union principles of empowering workers and ensuring that their voices are heard and acted upon in the workplace. One individual who commented noted that the proposal emphasizes the importance of adequate training and qualifications of rail transportation workers and the need to establish RWP-compliance-monitoring activities.

One anonymous individual commenter stated that FTA's emphasis on the importance of comprehensive safety protocols, notably the prohibition of sole reliance on individual rail transit vehicle detection, would ensure multiple layers of protection for railway workers.

**FTA Response:** FTA appreciates the extensive support for this rule from all stakeholders advocating for RWP in the rail transit industry. FTA agrees with the many comments that support the need for this rule due to the exposure of transit workers to dangerous working conditions when performing duties on or near the roadway. FTA has developed this rule to address many of the concerns that supporters have voiced in their comments. FTA designed the rule to be flexible and to address risks and challenges that RTAs face, as well as competing priorities for safety in the rail transit environment. This rule is also designed and intended to provide protections together with existing safeguards and regulations, including the PTASP regulation (49 CFR part 673).

FTA also appreciates the references and suggestions that commenters provided for rule development, including the considerations to align this rule with FRA standards and best practices, incorporate safety redundancies, reference the recently updated APTA standard for RWP, and review clauses from an international labor organization trackwork CBA and rules from the Rail Safety Management Committee to assist with development of the new RWP safety standards. As noted by many supporting commenters, the rule considers RWP-related NTSB recommendations as well as existing practices implemented through the FRA and RTAs that effectively support roadway worker safety. Some of these practices include requiring job safety briefings, instituting practices for good faith safety challenges to allow workers to refuse in good faith assignments in unsafe conditions, establishing a safety reporting program, ensuring adequate training and qualifications for workers, and ensuring multiple layers of protection for workers.

FTA welcomes the support for the role of the SSOA in enforcing the RWP programs and practices at RTAs including the review of the RWP manuals and RWP program implementation. While a few SSOAs suggested more stringent timeframes for RWP manual updates, training requirements, and audit activities, FTA's rule does provide opportunities for SSOAs to go above and beyond its requirements, as appropriate, in order to effectively oversee and enforce RWP practices at the RTAs within their jurisdiction.

FTA is encouraged to hear from a commenter that the freight industry has become accustomed to and fully recognizes RWP as an essential part of roadway worker safety. FTA also appreciates the support for the track access guide for on-track safety and the rule's application to railroad crossings.

FTA confirms that this rulemaking is a starting point for RWP and will consider strengthening requirements through the rulemaking process, if necessary, in the future. As requested by a number of commenters, FTA will plan to provide further guidance on RWP practices outside of this final rule, as well as present opportunities for collaboration with the rail transit industry and SSOAs in sharing best practices on RWP.

Finally, FTA is pleased to hear from many commenters that this rule signals a positive shift for the safety of rail transit RWP.

## 2. Implementation Timeframe

*Comments:* One industry association, two RTAs, and one individual commented on the implementation timeframe for the rule. The industry association expressed concern with the requirement for RTAs to submit their RWP program and manual to the SSOA for initial approval within 90 days, and strongly urged FTA to extend the deadline to at least 180 days. One RTA remarked that developing, implementing, updating, and maintaining an RWP program, as well as addressing "numerous downstream effects," will require a substantial investment of time and effort. The RTA noted that it is imperative that enough time is provided to safely roll out and manage a new rules program and suggested that FTA set an implementation period of no less than three years.

Another RTA commented that transitioning to a new RWP program could be challenging for RTAs that will have to overhaul their existing safety protocols and stated that the regulation should provide a flexible timeline for implementation to allow agencies enough time to adapt to the new requirements without compromising current safety measures.

One individual questioned why the regulation is just now going into effect and then asked how long it will take for everything to be put in place.

*FTA Response:* FTA agrees with the commenter that 90 days would be an insufficient timeframe to accommodate the development of the RTA's RWP program. Further, FTA agrees that setting up an RWP program will take time and effort and may require RTAs to revise existing programs. FTA has included in the final rule a provision, at § 671.1(d), that provides RTAs with one year from the effective date of the rule to develop an RWP program and manual and obtain SSOA approval. FTA believes that this one-year implementation timeframe balances the urgency of addressing RWP-related safety risk with the time and effort required by RTAs and SSOAs to comply with the rule requirements. FTA believes that the suggestion of three years is too long, given that FTA offers agencies significant flexibilities in how to structure their RWP programs under this rule, and recent FTA audits have revealed that unsafe conditions and practices persist in the industry and pose a substantial risk to workers.

FTA notes that safety-related regulations for RTAs have been in place since the initial 49 CFR part 659 Rail Fixed Guideway Systems State Safety

Oversight rule was finalized and went into effect January 26, 1996. Since then, rail transit safety has seen improvements, and in some cases setbacks, and regular revisions of regulations have continued enhancing safety for the rail transit industry.

## 3. Standards

*Comments:* One labor organization, one industry association, and one RTA provided comments related to RWP standards. The labor organization expressed concern over FTA's management-driven approach of issuing open-ended directives to address identified hazards instead of promulgating specific safety standards. They recommended that FTA adopt a standards-driven approach and develop specific standards for each element of the RWP program following the publication of this rule.

One RTA and industry association (APTA) recommended that FTA adopt the APTA standards because they provide a solid foundation for the governing documents of a rail system and are meant to be scalable without being overly prescriptive.

*FTA Response:* Due to the varying RTA operating characteristics and environments, this final rule establishes minimum standards as a baseline for rail transit RWP, which will provide important protections for workers. While FTA did not adopt APTA's standards, in developing this rule FTA did consider APTA's standards along with FTA's internal Safety Risk Assessment findings, NTSB recommendations, FRA regulations, California General Order No. 175-A regulations, common industry practices, and recommendations from the Transit Advisory Committee for Safety (TRACS). FTA declines to adopt wholesale any of the above-mentioned RWP standards and views the requirements finalized in this final rule as most appropriate for the transit industry. FTA notes that the final rule allows RTAs and SSOAs to establish additional or more stringent rules that are consistent with this part. FTA believes that it would be difficult to develop standards for all RWP elements that would be appropriate for the varying sizes of agencies subject to this rule. However, FTA will continue to monitor RWP safety concerns after the implementation of this rule to ensure effectiveness and may take additional action in the future.

## 4. Other Comments

*Comments:* One SSOA, one labor organization, one individual, two RTAs, and the NTSB provided additional

general comments on FTA's proposed part 671. The SSOA suggested that FTA should use the term "Public Transportation Agency Safety Plan (PTASP)" rather than "Agency Safety Plan (ASP)" since "PTASP" is defined throughout Federal regulations and is used as an industry standard for consistency with Federal statute and regulation.

The labor organization suggested that FTA provide a process for RTAs to request a variance where the RTAs can propose an alternative approach that does not compromise roadway worker safety to address any concerns regarding flexibility (size and scope) for RTAs. The commenter emphasized that FTA must take responsibility for enforcing standards and discouraged RTA self-monitoring, citing that this practice has contributed to the troubling roadway worker safety record that necessitated the proposed rule. Similarly, regarding implementation and oversight of the RWP requirements, an individual recommended FTA increase monitoring and evaluation of local implementation to ensure these measures are effective and support safety improvements for rail transit workers.

The NTSB encouraged FTA to address Safety Recommendation R-14-41 in future rulemaking, which recommends that FTA revise its SSO program regulation to require all federally funded rail transit properties to comply with certain Occupational Safety and Health Administration (OSHA) requirements.

An RTA commenter noted that the proposed rule will impact how an RTA handles city permits, traffic control, maintenance, and operations. The commenter added that allowing flexibility in following the law will help RTAs better protect transit workers in a format consistent with the rule's intent and meet industry best practices. Another RTA asked FTA to consider the burden that this and other additional regulations place on small transit providers and consider that regulations that might be manageable for larger systems could be overwhelming for small urban and rural transit systems, especially given their limited labor pool and high-cost operating environment. The commenter warned that implementing new regulations before recent PTASP requirements are fully adopted may not be sustainable with existing resources and funding levels.

**FTA Response:** FTA uses the acronym "PTASP" to refer to the regulation, 49 CFR part 673, and to describe associated regulatory requirements established in part 673. FTA uses the acronym "ASP" to refer to the agency safety plan

required by the PTASP regulation. FTA reiterates that, due to the varying RTA operating characteristics and environments, this final rule establishes minimum safety standards as a baseline for rail transit RWP and allows RTAs flexibility in developing RWP programs. Because there is significant flexibility in how RTAs can interpret and implement protections, FTA does not believe a formal process for requesting a variance is necessary. Congress has delegated direct safety oversight of RTAs to the SSOAs through 49 U.S.C. 5329(e). Therefore, FTA believes that the SSOA is best equipped to provide first-level oversight of compliance with this rule that goes beyond RTA self-monitoring. FTA will continue to monitor SSOA oversight through existing processes and will receive RTA RWP programs from the SSOAs following their approval.

FTA confirms that it will consider the NTSB recommendation for potential future efforts.

FTA is mindful of burdens on localities and small RTAs and reiterates that this final rule allows RTAs flexibility in developing RWP programs that best fit an RTA's needs based on operating characteristics and environments. For small urban and rural systems, FTA expects that RWP programs developed by these systems may be less complex, and therefore may not significantly impact staffing needs. FTA will provide additional technical assistance to smaller transit providers regarding the expectations of the rule. Additionally, as noted above, FTA is including in the final rule a provision that provides RTAs a one-year implementation timeframe to finalize their RWP programs and obtain SSOA approval, by which time all agencies subject to PTASP will have fully adopted the updated requirements under part 673.

#### *B. Section 671.1—Purpose and Applicability*

FTA received submissions from 16 commenters related to § 671.1's proposed requirements.

##### *1. Flexibility and Scalability*

**Comments:** FTA received comments from SSOAs, RTAs, an industry association, and individuals regarding the flexibility and scalability of the proposed rule. One commenter emphasized that FTA should consider the particular needs and realities of RTAs because operating environments and technical conditions among RTAs vary significantly. The commenter recommended that FTA work with local safety regulators and railroad operators before the regulation is implemented to

ensure the regulation considers local specifics. One SSOA and multiple RTAs noted that the proposed requirements appear to focus on larger RTA systems and the safety events occurring on those systems and recommended that FTA consider how the size of an RTA system will impact the RTA's implementation of RWP requirements.

Two SSOAs, several RTAs, and one industry association expressed their view that the proposals did not sufficiently consider different levels of risk and operating environments and may be burdensome or unattainable for street-running streetcar systems, inclined planes, or systems in similar environments and small and medium-sized RTAs in small urban or rural communities. The RTAs and an SSOA emphasized the need for scalability, including one RTA request that the rule be flexible or that FTA grant waivers or alternatives at a scaled-down level for RTAs that do not experience the same roadway worker risk as heavy rail agencies. One industry association requested a bifurcated final rule that imposes requirements that are commensurate with the system size and level of risk, while another industry association advocated for a nationally recognized program consistent with the regulation with consideration for the nuances of different operations. A commenter suggested that differentiating rule requirements between types of rail systems will help RTAs track what is more applicable to their systems.

**FTA Response:** FTA acknowledges commenters' concerns regarding the applicability of the rule for diverse RTAs providing service in different operating environments, under different operating plans, with different equipment and conditions, and with varying levels of associated risk. FTA intends the rule to be flexible enough to allow RTAs to craft an RWP program that complies with the RWP program requirements and fits the size and complexity of each agency. While FTA agrees that larger and heavy rail systems may experience more frequent RWP-related events or have a need for a more robust RWP program, FTA believes that hazards exist on and near the roadway for all RTAs, regardless of size. FTA has considered the difference in size and operating environments across the country and anticipates that RWP programs will not look the same due to the variability of needs. For example, the requirement for redundant protections prescribes that agencies use a safety risk assessment to implement protections that are proportional to the

RTA's determined risk, which will not be the same across agencies.

Smaller systems may opt to develop RWP programs and correlated documentation that are briefer and more basic based on the RTA's self-assessed level of risk, while larger and more complex systems will necessarily have more complex and detailed RWP programs.

While FTA acknowledges that a bifurcated rule could potentially create more specific requirements based on the size of the RTA, FTA believes it would be difficult, even in a bifurcated rule, to address the nuances of various RTAs' operating practices and environments more fully. FTA believes the rule is sufficiently flexible to address all system sizes and therefore that it does not need to be bifurcated. Likewise, FTA declines to establish a nationally recognized program consistent with the regulation, as a national program would face the same challenge of attempting to cover the nuances of various operators.

## 2. Revenue Service

*Comments:* FTA received comments from one RTA and one industry association seeking clarification on whether the rule would apply to vehicles on storage tracks and/or during the design and construction of a system, or whether the rule applies only to vehicles in revenue service. The industry organization recommended that the requirements apply only when trains are in revenue service because of the difference in risks.

*FTA Response:* To protect workers against various hazards, FTA confirms that this rule applies to any rail fixed guideway public transportation system, including those in engineering or construction. In FTA's safety risk analysis of hazards associated with RWP, it was determined that hazards are not limited to times when vehicles are in revenue service. FTA is aware of RWP-related safety events that have involved other on-track rail equipment, outside of revenue service times and off revenue service tracks. As such, FTA has defined "on-track safety" to mean freedom from the danger of being struck by a moving rail transit vehicle or other equipment," which includes non-revenue service vehicles. While there may be a difference in the level of risk between revenue and non-revenue service, FTA believes that all transit workers working on revenue and non-revenue service will benefit from the protections identified by this rule.

## 3. Roadway Workers and Transit Workers

*Comments:* FTA received several comments requesting clarification of the difference between "roadway workers" and "transit workers" and their respective responsibilities under the regulation. One RTA commenter recommended that the RWP program be specific to roadway workers and not include transit workers. One vendor suggested modifying the end of § 671.1(c) to remove the language "in the performance of work," which they commented would broaden the applicability of the rule. An RTA and an industry association suggested adding language to § 671.1(c) to specify that this part applies to transit workers who "perform work within a track zone" to clarify the applicability of the rule.

*FTA Response:* FTA appreciates the request to clarify the difference between the terms "transit workers" and "roadway workers" as used throughout the rule. FTA intends for the rule to provide protection for all transit workers who access the roadway to perform work. FTA has defined a "transit worker" to mean "any employee, contractor, or volunteer working on behalf of the RTA or SSOA." In comparison, a "roadway worker means a transit worker whose duties involve inspection, construction, maintenance, repairs, or providing on-track safety such as flag persons and watchpersons on or near the roadway or right-of-way or with the potential of fouling track." In other words, not all transit workers will be roadway workers. Because FTA intends for RWP policies, process, and procedures to prevent safety events for all transit workers, not just roadway workers, FTA disagrees with the suggestion to make the rule specific to "roadway workers."

FTA declines to revise § 671.1(c) as suggested by commenters because FTA believes the language in § 671.1(c) is sufficiently clear and has identified the individuals subject to the rule requirements throughout the regulation.

## 4. General

*Comments:* FTA received general comments on the applicability of the rule. An industry association inquired about the applicability of this rule to transit systems with shared corridors with FRA tracks. An SSOA asked about the applicability of the regulation to individuals or groups performing work on the right-of-way that are not associated with the RTA, such as personnel from Federal, State, and local agencies, and utilities. One RTA asked that FTA clarify how it determined that

existing measures across the nation are not adequately protecting transit workers and whether FTA's identification of RWP as a safety risk included data specific to streetcar or light rail systems.

*FTA Response:* Nothing in this final rule changes any existing FRA requirement that may apply to a rail transit system, and this part does not apply to rail systems that are already subject to the safety oversight of FRA. This final rule applies to all RTAs covered by the SSO program and RTAs that share corridors with FRA tracks should consider this configuration when developing their RWP programs.

The rule applies to RTAs, SSOAs, and transit workers who access any rail fixed guideway public transportation system in the performance of their work. The rule does not apply to individuals who are trespassing, transit workers accessing the track for reasons other than the performance of work, or routine pedestrian activity where applicable. Transit workers who access the roadway in the performance of their work must follow the RTA's RWP program access and rules practices with minimum standards established by this regulation. FTA agrees that there are others who may need to access the track who are not transit workers. Therefore, and in response to comments, FTA has added language to the final rule, at § 671.21(a)(8) that requires RTAs to include procedures in their RWP programs to provide an escort, as needed, for individuals that are not RWP-certified and do not fall into the categories of roadway worker, transit worker, or emergency personnel, who may need to access the track zone such as utilities workers.

FTA's internal SRM process identified RWP as a safety concern for analysis and determined that a Federal baseline RWP program is an appropriate mitigation. FTA considered information and data specific to streetcar and light rail systems during the SRM process and while drafting the NPRM and final rule.

## C. Section 671.3—Policy

*Comments:* One SSOA and one RTA provided FTA with comments relevant to § 671.3. One commenter suggested referencing the ASP in this section because that is the document where the RTA establishes its SMS process. An RTA recommended adding a section into this requirement stating that if the SSOA desires more stringent RWP-related requirements beyond the regulation, then the SSOA must collaborate with the RTA in the

development of these additional requirements.

*FTA Response:* FTA has included references to part 673 where appropriate throughout this rule, including in this section at § 671.3(b), where FTA requires RWP standards to be integrated into the RTA's SMS and Safety Assurance processes. FTA declines to add to this section a requirement for an SSOA to collaborate with the RTAs on any additional RWP-related requirements contained in the SSO's program standard that go beyond the requirements established in this final rule. While FTA encourages SSOAs and RTAs to work together whenever feasible, SSOAs play a critical role overseeing safety at RTAs, and as such, should have latitude to prioritize safety concerns and hazards at the RTAs they oversee. The SSO regulation at 49 CFR part 674 requires SSOAs to establish a disposition process that defines how the SSOA will address any comments the RTA makes with respect to the SSO program standard and FTA expects the requirements of this final rule and part 674 requirements to operate in concert.

#### D. Section 671.5—Definitions

FTA received several comments, both general and specific, related to § 671.5 definitions.

##### 1. General

*Comments:* One industry association commenter requested flexibility to allow RTAs to continue to use their existing, long-standing agency RWP terminology since transit workers have been trained on and are familiar with the terminology unique to their operating environments. The association expressed concern that changing RTA terminology may introduce hazards, including the potential for miscommunication and misapplication.

One RTA commenter recommended that FTA revise the definitions proposed in the NPRM to be consistent with those in APTA's RWP Program Requirements Standard (APTA RT-OP-S-106-11, Rev.2), noting that misalignment with APTA terminology may have a broader impact beyond the RWP manual such as on other RTA governing documents. The commenter noted that updating existing RTA terminology, such as in procedures and on forms, would require significant work and additional resources.

One vendor commented that RTAs should work with APTA and other industry groups to develop common operations terminology by geography and/or type of operations.

*FTA Response:* FTA acknowledges that changes to terms and definitions

may have an impact on RTAs and their existing RWP programs. FTA encourages RTAs to use the definitions in this final rule in their RWP programs for consistency in RWP programs across RTAs. However, the final rule does not require RTAs to adopt these terms, and RTAs may use their own definitions as appropriate. Through the final rule, FTA has developed a set of common terminology and considered multiple sources for definitions to be used in the development of this rule, including APTA's standard. However, FTA declines to simply adopt the definitions in APTA's RWP standard. When possible, FTA has opted to be consistent with FRA regulations. This decision will create commonly understood practices and terminology across the rail systems subject to Federal oversight, helps align FTA and FRA safety priorities, and ensure consistency for agencies that may be subject to both FRA and FTA regulations, among other benefits.

##### 2. Accountable Executive

*Comments:* FTA received a comment from an SSOA that suggested removing "ultimate responsibility" from the proposed definition of Accountable Executive, and replacing it with "the power and authority," because the meaning of "ultimate responsibility" is unclear and potentially unattainable. The SSOA commenter noted that the Board of Directors can also control or direct the human and capital resources needed to develop, maintain, and implement the ASP.

*FTA Response:* FTA declines to revise the definition as it would be inconsistent with the definition of Accountable Executive that FTA has established in part 673 and part 674. As these terms all refer to the same person within a transit agency, FTA believes consistency across the regulations is imperative and is finalizing the definition as proposed.

##### 3. Ample Time

*Comments:* FTA received comments from two RTAs, one SSOA, and one vendor regarding the proposed definition of "ample time." One RTA commenter noted that the definition implies two options for work crews to exercise: vacating the track zone or entering a place of safety, which is defined as "outside of the track zone." This commenter recommended that FTA review the "place of safety" definition in conjunction with the "ample time" proposed definition to ensure the two do not conflict. Another RTA commenter submitted a recommendation for revising the "ample

time" definition by replacing "to be clear of the track zone or in a place of safety 15 seconds before" with "to occupy a place of safety for no less than 15 seconds before" and "at the maximum authorized speed" with "at the civil speed limit." The RTA noted that using "maximum authorized speed" could potentially introduce human error to reduce the time needed to find safety. The SSOA commenter suggested adding "at least" before "15 seconds" and "or equipment" after "a rail transit vehicle." The comment from the vendor noted support for the definition with the clarification that "ample time" should be calculated from the moment the roadway worker is in a place of safety and clear of the track zone. Additionally, the vendor asked for clarification about whether "maximum authorized speed," as used in this proposed definition, is calculated based on line speed or a reduced speed enforced through control measures.

*FTA Response:* As suggested by the commenters, FTA reviewed the definitions of "place of safety" and "ample time" and determined they are not conflicting and notes these terms are consistent with the FRA RWP regulation. FTA considered the suggestions to revise the definition but declines to make changes as it views them as unnecessary. First, FTA notes that if a rail vehicle is moving above the authorized speed, the operator is violating the operating rules. Second, FTA declines to add "at least" before "15 seconds" to the definition, as the definition as proposed sufficiently establishes that 15 seconds is the baseline required time for workers to be clear of the track zone or in a place of safety. While 15 seconds is commonly adopted in the industry as an appropriate minimum time for workers to clear the track zone or enter a place of safety, FTA recognizes that some RTAs may wish to prescribe additional or more stringent time requirements consistent with this part. FTA believes it is unnecessary to add "or equipment" to the definition because the final rule defines "rail transit vehicle" as "any rolling stock." Therefore, FTA is finalizing the definition as proposed. FTA declines to opine on how to calculate "ample time" in this final rule but may provide guidance to RTAs in the future. FTA notes this calculation will vary based on an RTA's unique operating characteristics. FTA refers readers to the "maximum authorized speed" definition in this rule, which is calculated and established by an RTA based on the rail transit vehicle control



system, service schedule, and operating rules.

#### 4. Equivalent Protection

*Comments:* One SSOA commenter asked FTA to clarify in the definition whether the SSOA must approve or concur with the “equivalent protection” after the RTA demonstrates to the SSOA that the alternative design, material, or method will provide equal or greater safety for roadway workers. The commenter recommended clarification on what happens if the SSOA does not agree with the protection.

*FTA Response:* FTA is finalizing the definition as proposed. FTA believes it is unnecessary to clarify the definition because § 671.39(d)(3) establishes that an equivalent protection for lone workers must be “approved by the SSOA.” In accordance with an SSOA’s oversight responsibilities, FTA expects the SSOA to exercise judgment and authority in the review and approval of the RTA’s RWP program elements. In the event the SSOA does not agree with the RTA’s proposed equivalent protection in lieu of foul time for lone workers, the SSOA must notify the RTA expeditiously so that the RTA may propose revisions or an alternate equivalent protection that both parties agree is adequate.

#### 5. Flag Person

*Comments:* One RTA and one industry association recommended that FTA revise the proposed definition of “flag person” by changing “designated by the RTA” to “designated by the Roadway Worker in Charge.” Both commenters noted this would further clarify that the roadway worker in charge is the authority for safety while overseeing an active work zone and is typically the one to designate a qualified transit worker as a flag person. The industry association commenter added that a designated flag person should be able to perform work done by other crew members and not be restricted to solely flagging. Otherwise, RTAs will need additional personnel on every work crew, which is overly burdensome and inefficient.

*FTA Response:* In response to these comments, FTA has revised the definition of “flag person” to provide additional flexibility for the designation of a flag person across the diverse operating characteristics of rail fixed guideway public transportation systems and notes that the revised definition supports the designation of a flag person by the roadway worker in charge. FTA disagrees that a flag person should be able to perform other work while flagging. FTA believes it is necessary for

the flag person to be engaged solely in performing the flagging function to ensure the on-track safety of the roadway work group. Even minor tasks risk diverting a flagger’s attention, which increases the risk that they may err in their flagging duties. Flaggers also must be prepared to respond immediately to novel hazards or quickly changing situations and should not be engaged in any tasks that may divert their focus or delay their reaction time. In previous safety incidences, it is clear that undefined roles have resulted in communication breakdowns, with very serious consequences.

In accordance with § 671.31(a)(4) a roadway worker in charge serves in the function of maintaining on-track safety for members of the roadway group. FTA notes that, in the function of maintaining on-track safety, a roadway worker in charge may perform flagging duties in some situations. When a roadway worker in charge performs flagging duties, they cannot perform other duties. If a roadway worker in charge performing flagging duties needs to respond to a work crew issue, prior to responding, the roadway worker in charge must suspend flagging activity by stopping work, designating another flag person, or taking other action. While a roadway worker in charge position carries considerably more training experience and qualification than a flag person, FTA understands that in some situations a roadway worker in charge may carry out flagging duties as described above. In these scenarios, FTA expects that the roadway worker in charge would perform their other duties such as providing the job safety briefing prior to fouling the track and would perform the associated recordkeeping tasks prior to, and after, flagging duties are complete.

#### 6. Foul Time Protection

*Comments:* Three commenters suggested revisions to the proposed definition of “foul time protection.” One SSOA commenter suggested adding “RTA designated” in front of the first instance of “roadway worker.” One RTA commenter suggested adding the following: “on controlled track when that work will not disturb the track or third rail structure in a manner that would prevent movements at normal speeds” after “working limits,” “qualified” in front of the first instance of “roadway worker,” and “controlled” in front of “track.” They also suggested replacing “will be authorized to operate” with “will operate.” One vendor recommended adding “for a defined time period” after “working limits,” “and issued authority” after

“notified,” “to occupy a specific segment of track under which” after “control center,” and “or on-track equipment” after “no rail transit vehicles.”

*FTA Response:* FTA declines to make any of the recommended changes as they are too specific given the varied complexities in the operating characteristics of the rail fixed guideway public transportation systems this rule addresses and are not necessary for clarity of purpose in this final rule. Therefore, FTA is finalizing the definition as proposed.

#### 7. Fouling a Track

*Comments:* FTA received comments from three RTAs regarding the proposed definition of “fouling a track.” One RTA commenter asked if FTA will also define the term “proximity” as used in the definition. One RTA commenter recommended adopting the definition of “fouling a track” from 49 CFR part 214. The commenter noted that based on the proposed definitions of “fouling a track” and “track zone,” the distance from the running rail considered to be “fouling the track” would increase from four feet to six feet. The commenter added that this may require protection for some inspection and maintenance activities that currently do not need it. In addition, the commenter suggested that if these two proposed definitions become the standard, passengers would be fouling the track while standing behind the tactile warning strip. One RTA commenter recommended that FTA incorporate a standard distance for “fouling a track,” such as four feet from the nearest running rail or require RTAs to establish a set distance based on their fleets.

*FTA Response:* In response to comments, FTA has revised the definition of “fouling a track” in the final rule by adding “typically within four feet of the outside rail on both sides of any track” and has removed the last sentence of the proposed definition for clarity. The distance and language are adopted from the recommendations of the commenters and are consistent with FRA requirements in 49 CFR 214, which considers an individual or item of equipment to be fouling the track if “within four feet” of the rail. However, FTA opted to use the term “typically,” as FTA intends for RTAs to have flexibility to define greater distances, as needed. FTA has removed any distance language from the definition of “track zone,” and instead has included distance-related language in the definition of “fouling a track” to further parallel the definitional approach used

by the FRA and recommended by the commenters.

#### 8. Individual Rail Transit Vehicle Detection

*Comments:* One RTA and one SSOA commented on the proposed definition of “individual rail transit vehicle detection.” The RTA commenter noted that including lone worker provisions in the definition contradicts the proposed requirement regarding redundant protection. The SSOA commenter suggested rewording the proposed definition for clarity by adding “information on” before “approaching rail transit vehicles,” removing “and leaving the track,” and changing “in ample time” to “within ample time.”

*FTA Response:* FTA intends for this definition to describe the practice of relying on an individual to detect approaching vehicles or equipment and does not believe it conflicts with the requirements for redundant protections. FTA declines to revise the definition as suggested because it does not believe that the suggested revisions would make the definition clearer. Since individual rail transit vehicle detection is a commonly understood term in the industry, FTA has opted to adopt the FRA definition of this term and is finalizing the definition as proposed.

#### 9. Job Safety Briefing

*Comments:* FTA received comments from several commenters, including the NTSB, one RTA, one SSOA, and two vendors, regarding the proposed definition of “job safety briefing.” The NTSB expressed concern that the definition allows virtual job safety briefings without providing limitations for when RTAs can employ them and urged FTA to indicate when RTAs are permitted to conduct virtual job safety briefings. A vendor recommended adding for emphasis, “including the on-track safety being provided” after “the protections to eliminate or protect against those hazards.” One SSOA commenter suggested rewording the definition to, “Job safety briefing means a meeting conducted by the RTA designated Roadway Worker in Charge that addresses the requirements of this part.” The commenter noted that, if the regulation refers to the “requirements of this part” at the end of the definition, it is unnecessary to include some of the requirements within the definition. The commenter added that the definition also creates confusion by outlining only some of the requirements when all the requirements are important. Further, the commenter suggested that FTA clarify in the regulation where and when a job safety briefing should be conducted

rather than in the definition. One vendor commenter suggested that FTA clarify in the definition that a job safety briefing is conducted prior to commencing work or fouling the track because the information conveyed in a briefing is critical to safely fouling a track.

FTA also received a comment from an RTA regarding the use of “job safety briefing” compared with “roadway job safety briefing.”

*FTA Response:* While FTA understands the concern regarding virtual job safety briefings, the final rule permits virtual job safety briefings to account for situations where a roadway worker in charge is not physically located with a crew or lone worker. This may include situations where a lone worker calls in to receive a job safety briefing or where a work crew may be spread out over a larger working limit. FTA believes this flexibility is necessary for the unique operating environments of the RTAs covered by this rule and will help ensure that job safety briefings are provided. FTA leaves it to the RTAs to determine when a virtual briefing is permissible, and each RTA may establish its own limitations as necessary. FTA declines to adopt suggested revisions to the definition because FTA believes that the language as it is written is inclusive of all topics relating to the protections that may be necessary for on-track safety, and emphasis is not needed. FTA declines to remove the words “requirements of this part” as it makes it clear that the definition of “job safety briefing” is inclusive of all requirements specified elsewhere in the rule. The requirements of a job safety briefing and its use are included throughout the rule and not every aspect of these requirements can be captured within the definition. Details on the particular circumstances or events that may require a roadway worker in charge to provide the job safety briefing are included in the relevant sections of the rule, including § 671.31(b)(1), which describes when the roadway worker in charge must provide a job safety briefing. FTA also declines to revise the term “job safety briefing” to “roadway job safety briefing” because FTA intends to cover all individuals responsible for on-track safety or who are required to access the track zone to perform work and does not believe the suggested addition helps provide clarity.

#### 10. Lone Worker

*Comments:* One RTA asked whether rail supervisors perform activities that fall into the lone worker category, and if so, should rail supervisors also be

qualified as lone workers. This RTA commenter also requested clarification regarding the definition of “Lone Worker” and its implications related to brief track access (under 1 minute in duration).

*FTA Response:* If a rail supervisor is performing duties that fit the “lone worker” definition of “an individual roadway worker who is not afforded on-track safety by another roadway worker, who is not a member of a roadway work group, and who is not engaged in a common task with another roadway worker,” then the rail supervisor is a “lone worker” and must have the appropriate qualifications. The provisions in § 671.35 apply to lone workers as a subclassification of roadway workers, whose duties involve inspection, construction, maintenance, repairs, or providing on-track safety, such as flag persons and watchpersons, on or near the roadway or right-of-way or with the potential of fouling track. Transit workers who are not roadway workers and who must momentarily access the roadway in the performance of work are covered under the RWP program under § 671.23(b). Individual transit workers may only foul the track in the performance of work once they have received the appropriate permissions and redundant protections, such as foul time, that have been established as specified in the RWP manual. However, individual transit workers fouling the track momentarily in the performance of work are not roadway workers or lone workers and, therefore, are not subject to § 671.35 provisions.

#### 11. Maximum Authorized Speed

*Comments:* FTA received two comments on the proposed definition of “maximum authorized speed.” One RTA proposed that FTA change the definition to “the highest speed permitted for the movement of trains permanently established by timetable/special instructions.” One vendor requested FTA clarify whether an operating rule requiring speed reduction when personnel are trackside would be considered the “maximum authorized speed” per this definition.

*FTA Response:* FTA agrees that the maximum authorized speed includes the highest speed permitted on the rail transit system and therefore a definitional change is not necessary. This speed could be determined by the RTA’s design or engineering; it could be enforced by the train control system; or it could be specified in procedures, operating requirements, and timetables. FTA is finalizing the definition as proposed to ensure the highest or

maximum speed permitted on the system is used, wherever and however it may be specified, when calculating ample time. In response to the vendor, FTA confirms that the maximum authorized speed applies to the highest speed permitted for the movement of rail transit vehicles on the system, or part of the system, but does not extend to a general operating rule requiring speed reduction when personnel are trackside, unless that speed reduction was required for the entire system, or part of the system, not just when workers are encountered.

#### 12. Minor Tasks

*Comments:* FTA received comments about the proposed definition of “minor tasks” from one SSOA, one industry association, and one vendor. The SSOA commenter noted that FTA should clarify in the definition whether it intends to allow the use of individual rail transit vehicle detection for minor tasks. The comment from the industry association recommended that FTA change the definition to make clear that if a roadway worker performing a task with a tool can visually assess their surroundings every five seconds, the task remains a minor task under this regulation. The vendor also asked FTA to clarify the definition of “tool” because certain necessary inspection devices, such as a tape measure or track gauge, could be considered tools. The vendor recommended that minor tasks could include, but need not be limited to, visually inspecting, examining, or patrolling on a track. These tasks do not use tools and allow workers to hear and visually assess their surroundings regularly. The vendor recommended that “can hear” be added to the “minor task” definition because hearing is critical to receiving immediate notice of train movement. Further, the vendor recommended that a minor task should be defined based on a safety risk assessment of the task, which is necessary to determine whether a worker performing the task can assess their surroundings every five seconds.

*FTA Response:* FTA does not believe that it is necessary to provide greater clarity regarding the use of individual rail transit vehicle detection while conducting minor tasks within the definition because, as stated in § 671.21, this rule prohibits the use of individual rail transit vehicle detection as the only form of protection in the track zone. FTA confirms that as defined, a “minor task” is one that does not include the use of tools, which would include items such as a track gauge as suggested by the commenter. However, § 671.35 allows for lone workers to perform minor tasks

or routine inspections. Routine inspections do allow for the use of common inspection devices, such as tape measures or rail gauges, that do not impact a worker’s ability to assess their surroundings at least every five seconds. Additionally, FTA agrees with the vendor’s recommendation to revise the definition to specify that minor tasks should not prevent a transit worker from being able to assess their surroundings through what they hear. Therefore, in response to this comment, FTA has revised the definition of “minor tasks” to include “hear and” before “visually assess” to incorporate this aspect of awareness. FTA disagrees with the vendor’s recommendation to define a minor task based on a safety risk assessment of the task. The range of tasks that may fall within this description are numerous. Performing a safety risk assessment on each potential situation would be, at times, onerous. Agencies are encouraged to conduct safety risk assessments whenever they deem them necessary, but FTA declines to require RTAs to adopt this approach across the board for determining what constitutes a minor task in order to reduce the burden of implementing these new requirements.

#### 13. Near-Miss

*Comments:* One SSOA, two RTAs, and one vendor submitted comments regarding the proposed definition of “near-miss.” A vendor suggested FTA adopt a definition more specific to this rule, such as that provided by APTA in its “Roadway Worker Near-Miss Reporting Requirements” standard. The SSOA commenter stated the definition is ambiguous and needs clarity and suggested that FTA consider using a definition more in line with the OSHA definition. The SSOA stated that additional clarity in the definition would help an RTA more effectively report near-misses and limit under- or over-reporting events due to doubt about the definition and how to apply it and also would help SSOAs administer and enforce the regulation, minimize disputes between SSOAs and RTAs, and facilitate consistent application across the States. One RTA noted that the proposed definition of “near-miss” is somewhat generic and provides too little detail. The commenter recommended that FTA adopt the National Safety Council (NSC) definition, “an unplanned event that doesn’t result in injury or death but could have.” One RTA commented that the definition is highly subjective, and RTAs will apply it inconsistently because a transit worker’s interpretation of a near-miss may not necessarily align

with the agency’s interpretation. The commenter asked FTA to consider providing guidance to help RTAs navigate potential discrepancies.

*FTA Response:* FTA appreciates the comments recommending that FTA add more detail and specificity to the definition or adopt one of the alternative suggested definitions; however, FTA declines to make any changes in order to maintain consistency with the definition of “near-miss” used in 49 CFR part 673. FTA believes this consistency is necessary as near-miss information will be relevant to an agency’s SMS, as required under part 673 of this chapter. FTA recognizes that the definition of near-miss is not lengthy; this definition is intended to allow RTAs to use their own discretion and judgment to determine when an avoided safety event was narrowly missed and thus constitutes a near-miss. FTA also acknowledges that what constitutes a near-miss for one agency may be different for another, due to system configurations and other factors. FTA confirms the agency’s intent to provide technical assistance and guidance on the final rule, including how to identify near-miss situations. FTA recognizes the inherent challenges in defining a term such as “near-miss,” which is intended to include events with outcomes that did not occur. Necessarily, such terms will rely on some level of subjectivity or interpretation, and FTA encourages RTAs to work closely with frontline staff to educate personnel on near-misses and the procedures associated with the RTA’s transit worker safety reporting program required in 49 CFR part 673.

#### 14. On-Track Safety

*Comments:* FTA received comments from one SSOA, one RTA, and one vendor regarding the proposed definition of “on-track safety.” The SSOA commenter suggested that FTA revise the proposed definition by removing the words “a state of” before the word “freedom” to provide clarity. The RTA commenter recommended FTA adopt APTA’s definition of “on-track safety” from the “Roadway Worker Program Requirements” standard. The vendor commented that limiting the definition solely to vehicle-based hazards may exclude other significant hazards, such as electrical or switch movement. The commenter requested that FTA clarify whether “operating and safety rules that govern track occupancy” are intended to cover these other types of hazards.

*FTA Response:* FTA intends for “on-track safety” to encompass all hazards a

worker may encounter while working on the track roadway, including electrical and switch movement, as applicable to the RTA's operating environment. In response to the comments, FTA has updated the definition of on-track safety to include "other on-track hazards" for clarity. FTA declines to revise the definition further or adopt the APTA definition because FTA believes the definition in the final rule is sufficiently clear, and notes that it is consistent with FRA's definition of "on-track safety."

#### 15. Place of Safety

*Comments:* Three RTAs, one industry association, and one vendor submitted comments on the proposed definition of "place of safety." An RTA recommended FTA adopt APTA's definition of "place of safety" from the "Roadway Worker Program Requirements" standard. Another RTA commenter suggested FTA define "place of safety" as a "location within the roadway but outside the dynamic envelope of rail vehicles, to include at least four feet from the nearest running rail." The commenter added that the distance FTA defines in "fouling a track" should be used in the "place of safety" definition. One RTA commenter and an industry association commenter recommended that FTA revise the definition by removing "outside the track zone." The commenters suggested that this change would better suit RTAs with median street-running alignments that will find it impossible to identify a "place of safety" that is "outside the track zone" such as segments of rail alignment that are flanked by traffic lanes on both sides of the tracks. The vendor commenter agreed with the proposed definition of "place of safety;" however, they pointed out that the proposed definition of "track zone" currently suggests that "places of safety" within six feet of the track may be within the track zone.

*FTA Response:* FTA is finalizing the proposed definition without change. Due to the many varied configurations of rail transit systems, FTA believes that the definition balances the need to ensure safe egress for workers with the need to ensure that terminology can apply to a variety of different systems.

FTA does wish to clarify that "place of safety" includes cut-outs because these are areas of refuge safe from train passage. As for the definition of "place of safety" referencing the condition of being safely "outside of the track zone," several commenters suggested modifications to the term "track zone" for clarity. FTA considers a "place of safety" as being outside of the track

zone and therefore ensuring workers are safe from train vehicles and other rail hazards directly related to rail operations. With regard to other hazards, like nearby passing traffic, FTA expects RTAs to effectively protect workers from these external but real hazards near to and potentially impacting the track right-of-way and associated work when identifying places of safety. FTA has revised the definition of "track zone" (see Section II.D.26) by removing "typically an area within six feet of the outside rail on both sides of any track," and adding proximity language to the definition of "fouling a track" to better align with FRA's definitional approach and to provide flexibility to RTAs (see Section II.D.7).

#### 16. Rail Transit Vehicle

*Comments:* One SSOA commenter noted apparent inconsistency throughout the proposed rule's definitions regarding FTA's use of the terms "rail transit vehicle" or "equipment" and noted that sometimes both terms are used in a definition and sometimes not. The commenter noted that FTA did not define "rail transit equipment" and asked if the equipment used by an RTA contractor is included in the meaning of the term "equipment."

*FTA Response:* Definitions that reference rail transit vehicles in the context of ensuring workers have the necessary time and sight distance to be sufficiently clear of moving vehicles do not include the term "equipment." These definitions are the following: "ample time," "foul time protection," "maximum authorized speed," and "minor tasks." On-track equipment other than rolling stock, such as machinery or tools, may still pose safety risks and are referenced in other definitions throughout this section as relevant. As stated in the definition, "rail transit vehicle" includes "any rolling stock used on a rail fixed guideway public transportation system." This includes all vehicles used by contractors as well as by the RTA employees.

#### 17. Rail Transit Vehicle Approach Warning

*Comments:* One RTA commented on the proposed definition of "rail transit vehicle approach warning" and suggested FTA use the term "train" rather than "rail transit vehicle."

*FTA Response:* FTA declines to adopt this change out of consideration for and to encompass the various terms and equipment used in the rail transit industry including light rail vehicles,

streetcars, inclined plane cars, cable cars, and others.

#### 18. Redundant Protection

*Comments:* One RTA and one vendor submitted comments regarding the definition of "redundant protection." The RTA commenter asked FTA to clarify what constitutes "procedural" protection. The commenter expressed that the proposed definition allows too much room for subjectivity, leading to inconsistent application and conflicts between RTAs and SSOAs. Further, the commenter noted that although the proposed requirement at § 671.39(d) includes a list of types of redundant protections, most of which appear to be procedural, the term inherently encompasses much more than the list suggests. The vendor commenter recommended that FTA reword the definition of "redundant protection" if this type of protection must encompass all roadway workers. The commenter suggested FTA replace in the definition "individual rail transit vehicle detection" with "the minimum levels of protection specified in this subpart."

*FTA Response:* FTA will provide more information on "procedural" protections in the future. The list of "redundant protections" in the rule at § 671.39 is not meant to be exhaustive or limiting, but rather serve as a list of common examples. The rule allows flexibility for RTAs to design programs with effective redundant protections that work for their operations and environments, thus a degree of subjectivity is intended within this definition. FTA declines to amend the definition as the current definition makes clear that redundant protections are intended to ensure the safety of roadway workers. FTA also believes it is necessary to reference the limitations on individual rail transit vehicle detection within this definition to ensure RTAs, who commonly use this practice, understand the requirements for building out additional protections in relation to that practice.

#### 19. Roadway

*Comments:* FTA received comments from one SSOA regarding the proposed definition of "roadway." The SSOA commenter asked if the term includes maintenance facilities as they are "support infrastructure" for the movement of rail transit vehicles.

*FTA Response:* FTA does not intend for the term "roadway" in this rule to apply to maintenance structures, but it does apply to all track outside of those structures.

## 20. Roadway Maintenance Machine

*Comments:* One SSOA and one RTA commented on the proposed definition of “roadway maintenance machine.” The SSOA commenter suggested FTA change the term from “roadway maintenance machine” to “roadway machine” if, per the definition, this equipment is used for other activities beyond maintenance. The RTA commenter recommended that FTA revise the definition of roadway maintenance machine by adding “powered by any means of energy rather than hand power” after “device” and changing “rail transit track” to “railroad track.”

*FTA Response:* FTA disagrees that the definition of “roadway maintenance machine” needs revision. “Roadway maintenance machine” encompasses vehicles that support maintenance broadly, to include repair, construction, or inspection, as listed in the definition. A roadway maintenance machine encompasses a broad spectrum of machinery, from a hi-rail inspection vehicle to track vacuum equipment, which may be owned by the RTA or by contractors authorized to work on the roadway. Further, FTA does not find it necessary to exclude machinery by power mode for this definition. The roadway maintenance machine is used in this rule in relation to the RWP training and qualification program and job safety briefings, and in both contexts the term could potentially apply to hand-powered machinery. FTA will also keep the term “rail transit track” in the definition for clarity between rail transit track and other track.

## 21. Roadway Worker

*Comments:* Three RTAs submitted comments regarding the proposed definition of “roadway worker.” One RTA commenter asked FTA to define “construction” and how work in construction areas interacts with these proposed rules in pre-revenue and revenue service areas, because a construction area can be a very different environment than revenue service. The commenter recommended FTA exclude construction areas from the rule, as OSHA and other Federal guidelines already govern construction safety and argued that including construction contractors as roadway workers would unnecessarily burden RTAs. In support of this argument, the RTA commenter recommended that FTA add “in revenue service segments” to the end of the roadway worker definition to exclude workers in a non-service area. The commenter also suggested that FTA adopt APTA’s definition from its

“Roadway Worker Program Requirements” standard. Another RTA commented that the definition of roadway worker should be limited to anyone doing work (inspection, maintenance, or construction) in the track zone or providing protection for roadway workers in the track zone. One RTA argued that FTA should not use “transit workers” in the definition as there are alternate means of protection in place for those who do not meet the definition of a roadway worker. The commenter suggested the following revised definition for roadway worker: “An employee of a railroad or a contractor to a railroad whose duties include inspection, construction, maintenance, or repair of railroad track, bridges, roadway, signal and communication systems, electric traction systems, roadway facilities or maintenance machinery on or near track or with the potential of fouling a track, and watchperson/lookout.”

*FTA Response:* FTA declines to remove transit workers whose duties include construction from the definition of “roadway worker.” FTA’s proposed definition aligns with the FRA definition of roadway worker and the comprehensive protection it provides. This means a “roadway worker” includes an individual working in roadway construction in pre-revenue environments, and each RTA will need to ensure RWP during pre-revenue and revenue phases. FTA believes this is necessary as pre-revenue work may involve unique risks, including but not limited to, working alongside non-revenue service equipment or working adjacent to RTA infrastructure. For pre-revenue phases, RTAs should implement the RWP program and worker protections in a manner that is appropriate to address the specific risks of that working environment.

FTA considered adopting APTA’s definition of roadway worker from its “Roadway Worker Program Requirements” standard; however, FTA declined to do so because it is narrower. FTA’s definition is intentionally broader than APTA’s roadway worker definition, and all workers encompassed under APTA’s definition will also fall under FTA’s definition, including contractors. Likewise, FTA declines to further limit the definition of roadway worker to either eliminate the phrase “transit worker” or adjust the enumerated duties of a roadway worker. The definition of roadway worker in this rule was designed to protect any worker who may be exposed to hazards on or near the tracks while in the performance of work. FTA designed this definition to encompass a wide range of

potential job duties, and to ensure consistency across agencies. FTA has further clarified the relationship in this rule between the term transit worker and the term roadway worker in response to the comments on § 671.1. FTA is finalizing the definition of roadway worker as proposed.

## 22. Roadway Worker in Charge

*Comments:* FTA received comments regarding the proposed definition of “roadway worker in charge” from one SSOA, two RTAs, and one industry association. The SSOA commenter suggested that FTA add “protection and designated in this role by the RTA” to the end of the definition. One RTA commenter recommended FTA add “and may perform work that is part of the work crew’s responsibilities” to the end of the definition, arguing this revision would clarify that a roadway worker in charge may perform duties such as overseeing their work crew. Another RTA commenter suggested the following definition: “A qualified employee who is responsible for establishing on-track safety for roadway work crews.” An industry association commenter recommended adding “and may perform work that is part of the work crew’s responsibilities, including flagging for trains” to the end of the definition as it would clarify that the roadway worker in charge can flag trains, making a dedicated flagger unnecessary, especially for RTAs that require a flagger and a dedicated watchperson.

*FTA Response:* FTA declines to incorporate suggestions to amend the definition because § 671.31 sufficiently addresses the RTA’s role in designating the roadway worker in charge. Similarly, § 671.31(a)(4) requires a roadway worker in charge to serve in the role of maintaining on-track safety for all members of the roadway work group and perform no other unrelated job function while designated for duty; therefore, the recommendation to add “and may perform work that is part of the work crew’s responsibilities” would be inconsistent with FTA’s intent. The roadway worker in charge may only perform responsibilities related to maintaining on-track safety. This may include safety roles, such as flagging, though FTA declines to add “flagging for trains” to the definition of roadway worker in charge, as this responsibility would be ancillary and determined on a case-by-case basis. FTA also declines to add “safety for roadway work crews” to the end of this definition. FTA does not think it necessary to caveat that on-track safety be established for work crews only, as on-track safety in some

instances has wider implications for people such as transit operators or pedestrians.

### 23. Roadway Worker Protection

*Comments:* One RTA commenter argued that the proposed definition of “roadway worker protection” should refer to the protection from hazards associated with moving rail vehicles and not be so broad by mentioning “safety events.” The commenter added that RWP should only pertain to roadway workers, not transit workers. Further, the commenter noted that the definition specifies that RWP protects workers on the roadway, which they argued is vague and could be interpreted to mean that RWP is always required whenever a transit worker is on the roadway.

*FTA Response:* As recommended by the NTSB, FTA intends for RWP to address more safety events than just hazards associated with moving rail vehicles. FTA intends for the roadway worker protections established by this rule to protect all transit workers while they perform approved duties on the track roadway; therefore, FTA declines to amend the definition to only cover roadway workers. It is FTA’s intent that safety protections established in this rule will provide comprehensive safety coverage for workers on the roadway, irrespective of job titles.

### 24. State Safety Oversight Agency

*Comments:* One SSOA commented that the proposed definition of “State Safety Oversight Agency (SSOA)” does not include the statutory reference to 49 U.S.C. 5329(k) that was included in the definition of “State Safety Oversight Agency (SSOA)” that was proposed in the NPRM for 49 CFR part 673 (PTASP regulation).

*FTA Response:* FTA has revised the definition of “State Safety Oversight Agency” in the final rule to include the statutory reference to 49 U.S.C. 5329(k).

### 25. Track Access Guide

*Comments:* Two RTAs commented on the proposed definition of “track access guide.” One commenter recommended that FTA change the term from “track access” to “physical characteristics,” as many RTAs use “track access” in reference to their track allocation process. One commenter noted the definition is excessively broad, particularly the requirement to describe the physical characteristics of track areas with loud noise or potential environmental conditions.

*FTA Response:* Because FTA allows RTAs the flexibility to use their existing terms as long as the definitions do not

conflict with the definitions in this final rule, FTA declines to change the term “track access guide” as suggested. FTA believes a broad definition is necessary to account for a wide range of systems and ensure inclusivity. FTA also believes this broad definition is balanced by the minimum requirements of the track access guide, which are clearly enumerated in § 671.13(d)(1–7). RTAs may design their track access guides to address the components in this definition, and the requirements of § 671.13, to a degree of detail that is appropriate based on their respective systems.

### 26. Track Zone

*Comments:* FTA received comments from multiple commenters, including the NTSB, five RTAs, and two vendors, regarding the proposed definition of “track zone.” The NTSB expressed concern that, within the definition, the track zone is identified by transit workers rather than the RTAs and encouraged FTA to update its definition of track zone to state that RTAs identify the track zone, not transit workers. NTSB noted in their comment that an NTSB investigation determined that the probable cause of a significant safety event was the failure of a transit worker to stay clear of the approaching train, either because the worker was not aware of its presence or because they lacked a physical reference by which to identify a safe area outside the train’s dynamic envelope. The NTSB commented that RTAs should identify the track zone because transit workers may lack a physical reference to identify where a person or equipment could be struck by the widest equipment that could occupy the track. One RTA commenter recommended that FTA review the definition to better account for tight working conditions in subways and on elevated environments and suggested FTA remove the following from the track zone definition: “typically is an area within six feet of the outside rail on both sides of any track.” One RTA commenter questioned the practicality of the proposed definition and recommended FTA change the definition to follow the established APTA standard of track zone in “Roadway Worker Program Requirements.” The commenter also recommended FTA change the term from “track zone” to “foul zone” for consistency, as it is more in keeping with “fouling a track.” One RTA commenter noted the definition for track zone is defined separately from fouling a track, but that they appear very similar. The commenter asked if there is a significant difference between these

two definitions. Another RTA commenter indicated that the six feet referenced in the proposed track zone definition would not work for the RTA’s system, especially in tunnels and on tight rights-of-way. In addition, since the track zone definition is synonymous with “fouling the track,” the commenter recommended FTA use the term “foul zone” or “fouling zone” instead of “track zone.” One RTA commenter proposed that FTA remove the term “track zone,” because including the term could result in confusion about where protections are required. One vendor noted that many current places of safety, including niches, walkways, and bench walls, might be within the track zone as proposed to be defined by FTA and recommended that FTA remove the following from the track zone definition: “typically is an area within six feet of the outside rail on both sides of any track.” Another vendor commenter recommended FTA consider establishing a clear minimum threshold by making the track zone a minimum of six feet from the edge of the outside rail.

*FTA Response:* FTA agrees with the NTSB’s comment that the RTA should identify the track zone rather than the transit workers and has amended the definition in this final rule to replace “transit worker” with “the RTA.” Ensuring the RTA identifies the track zone will provide needed consistency and allow the RTA to better assess and manage risks in the track zone. FTA also agrees with commenters that the phrase “typically is an area within six feet of the outside rail on both sides of any track” should be removed. FTA notes that it has added proximity language to the definition of “fouling a track” (see section II.D.7) and reiterates that this rule is intended to consider the needs of various operating systems and track configurations. FTA disagrees with adopting the APTA standard and disagrees that the term should be changed to “foul zone.” FTA declines these changes as they would conflict with the changes just discussed. FTA notes that the track zone is the “location” of where the action of fouling a track occurs. FTA disagrees that including the term “track zone” on the list of definitions in the final rule might result in confusion about where protections are required because the final rule requires protections within track zones. FTA has defined this in § 671.39(c), which requires RTAs to identify redundant protections for roadway workers performing work on the roadway and “within track zones.” FTA also declines to establish a clear

threshold of “six feet from the edge of the outside rail” due to the need for flexibility, as mentioned above, to account for systems such as those operating on streets with mixed traffic.

#### 27. Transit Worker

*Comments:* One SSOA, one RTA, and one vendor submitted comments on the proposed definition of “transit worker.” The SSOA commenter asked if the definition includes an RTA’s police force. The RTA commented that the definition of “transit worker” does not align with the definition in 49 CFR part 673.5. In addition, the RTA commenter recommended that FTA remove SSOA personnel from throughout the provisions of part 671 and have rail transit stakeholders refer to the appropriate sections of part 674 or an SSO program standard, as appropriate. Further, the RTA commented that in part 671, subpart D (§§ 671.31 through 671.41), the term “roadway worker” takes precedence over “transit worker” or other terms that were previously defined. The commenter added that it is unclear to what extent transit workers must comply with these RWP program elements, even though the preceding sections seem to intentionally describe this larger population beyond those personnel working within the track zone. The vendor recommended FTA include language for third parties (such as emergency personnel) in the transit worker definition or a separate one to support § 671.21(b)(3), which proposes to require each RTA to establish requirements for on-track safety, “including protections for emergency personnel who must access the roadway or the track zone.”

*FTA Response:* FTA confirms that an RTA’s police force personnel are transit workers if they are “employees” or “contractors” working on behalf of the RTA as described in the definition. FTA confirms that it explicitly includes SSOA personnel and contractors in the definition of “transit worker” in part 671 to ensure that transit worker-related provisions apply to SSOA personnel conducting inspections or performing other activities that require track access. FTA refers readers to section II.D.21 of this preamble for more discussion about the terms “transit worker” and “roadway worker” as they pertain to the requirements established in this rule. FTA declines to include “emergency” in the personnel in the definition of transit worker because emergency personnel would not meet the definition of “transit worker” if they are not an employees, contractors, or volunteers working on behalf of the RTA or SSOA.

#### 28. Transit Worker Safety Reporting Program

*Comments:* One SSOA commenter asked FTA for a definition of “senior management” in the context of the “transit worker safety reporting program” proposed definition.

*FTA Response:* FTA declines to establish a formal definition for this term as RTAs may have varied levels of authority and leadership depending on size, and it is the responsibility of the individual agency to understand and determine which members of leadership should be involved.

#### 29. Watchperson

*Comments:* Two vendors commented on the proposed definition of “watchperson.” One vendor requested that FTA clarify whether “sole duty” in the definition means the roadway worker in charge and watchperson are separate roles carried out by separate workers. The other vendor noted that sufficient “reaction time” or, as the definition describes it, “plus time to clear,” has often been debated among RWP training professionals and Federal inspectors. The commenter recommended that FTA reword the definition of watchperson for consistency with other definitions. This commenter also recommended that FTA add language such as, “Watchpersons shall consider roadway worker reaction time to ensure full ample time is provided.” The commenter noted this restructuring would refer agencies, trainers, and employees to the “ample time” definition, which includes the language they proposed striking from the definition of “watchperson” and would emphasize the importance of the reaction time component that the watchperson is responsible for assessing.

*FTA Response:* This final rule provides that the roadway worker in charge must “serve only the function of maintaining on-track safety for all members of the roadway work group and perform no other unrelated job function while designated for duty.” The final rule allows a roadway worker in charge to serve in the role of watchperson because this role falls within the function of maintaining on-track safety.

FTA does not believe that the definition requires further clarification on response time because “plus time to clear” is sufficient to ensure ample time is given to the transit workers in such a scenario.

#### 30. Working Limits

*Comments:* One RTA commented on the proposed definition of “working

limits.” The commenter suggested that FTA add how working limits may be defined.

*FTA Response:* FTA declines to make this revision as the definition is intended to encompass RTAs of varying sizes and complexities and adding more specific detail would reduce the flexibility and scope of applicability.

#### 31. Work Zone

*Comments:* One vendor commented on the proposed definition of “work zone” and recommended that FTA incorporate “or adjacent to” into the definition after “within.” The commenter noted there had been numerous occasions where work zones adjacent to the track did or did not have sufficient on-track safety afforded, and the work activity unintentionally fouled the track zone. The commenter asked if this situation would meet the intent of the “work zone” definition.

*FTA Response:* FTA agrees that areas adjacent to the track zone have the potential to affect the track zone. FTA declines to amend the definition as suggested because the definition contemplates these areas already. The final rule uses the term “work zone” to refer to the immediate area of a track zone, which means it is the area where workers are performing work and therefore could be struck by a rail transit vehicle or equipment. FTA expects information on adjacent tracks and multiple roadway worker groups working in adjacent areas to be included in job safety briefings, including safety information about any adjacent track and identification of the roadway maintenance machines or on-track equipment that may foul adjacent tracks.

#### 32. Recommended Additions

*Comments:* FTA received comments from one SSOA and three RTAs recommending that FTA define additional terms in part 671. The SSOA commenter recommended FTA clearly define the terms “resources,” “qualified personnel,” and “complexity” to fully eliminate subjectivity because SSOAs are evaluated by these regulations, and FTA should clearly define expectations. One RTA commenter recommended FTA include a definition for “adjacent track” in § 671.5 because it is defined in § 671.33(b)(7). One RTA recommended FTA add a definition for “contractor” and adopt the definition from APTA’s “Roadway Worker Program Requirements” standard. Another RTA commenter suggested that FTA define “unsafe acts” and “unsafe conditions” to support employee education on the



requirements for safety reporting in §§ 671.21(a)(6) and 671.23(e).

**FTA Response:** FTA declines to establish formal definitions of the terms “resources,” “qualified personnel,” and “complexity” because these terms are not used in this final rule. However, “qualified” is defined in § 671.5 in relation to a roadway worker or transit worker’s training, proficiency, and authorization status. FTA appreciates the RTA commenter that recommended defining “adjacent track” in § 671.5 but does not believe it is necessary to add this to the definition section of the rule as it is only referred to in one section of the rule (§ 671.33(b)(7)) and is sufficiently clear in that context. FTA does not believe it is necessary to define commonly understood terms such as “contractor.” Similarly, FTA declines to formally define the terms “unsafe acts” and “unsafe conditions” as they are also commonly understood and intended to be flexible in this rule. By not defining these terms, FTA allows for adaptability in different scenarios and environments and ensures workers do not feel constrained in their ability to report potential hazards.

#### *E. Section 671.11—RWP Program*

**Comments:** FTA received comments related to the requirements for an RWP program in § 671.11. One SSOA commenter urged FTA to require relevant RTAs to include electrical safety plans within their RWP program to protect workers from electrocution.

An RTA commenter asked for specificity on the types of “subsequent updates” of the RWP manual that must be submitted to the SSOA for review and approval as required by § 671.11(c).

A vendor recommended that all RWP program elements and procedures align with an RTA’s operating procedures, and that RTA operating procedures must facilitate on-track safety implementation.

**FTA Response:** FTA appreciates the reminder of the electrical risk and safety concerns around many transit systems and has kept the rule language broad to account for varying types of systems and hazards. FTA recommends that RTAs incorporate electrical safety practices within their RWP programs as applicable.

With regard to the inquiry on approval of “subsequent updates” to the RWP manual, FTA considers those revisions or updates that result in any RWP policy changes as necessitating SSOA review and approval. Minor, non-substantive updates are not required by the rule to be approved by the SSOA. FTA expects SSOAs and RTAs to identify any necessary thresholds and

practices to execute RWP manual revisions and approvals.

FTA acknowledges the need for RWP programs to align with RTA operating procedures and encourages agencies to tailor RWP programs to synchronize with existing operating procedures accounting for agency size, operating environments, infrastructure, service delivery, and more.

#### *F. Section 671.13—RWP Manual*

##### *1. Requirements*

**Comments:** FTA received comments from multiple RTAs, two industry associations, and one vendor related to the requirement at § 671.13 to establish a single manual documenting the RWP Program elements, including responsibilities, processes and procedures, and the required training, qualification, and supervision for transit workers.

One industry association commenter expressed concern about RTAs having to create an RWP manual instead of using their existing rulebook and standard operating procedures (SOPs) for employees working on or near the track. The commenter urged FTA to provide flexibility for agencies to incorporate the requirements from the RWP manual into their rulebooks, SOPs, or other agency documents as long as they cover all the § 671.13 requirements. One RTA asserted that FTA should not require the RWP manual to be a stand-alone document but instead be integrated into existing rulebooks and recommended FTA remove the requirement of a separate document. The commenter suggested that a separate manual would increase the burden on employees who must maintain the operating rulebook, RWP manual, and a track access guide while performing duties. The commenter added that a separate manual could create version control issues where RWP manuals might be updated in conflict with operating rules and noted that version control is easier with a single operating rulebook. The commenter claimed this integration would streamline documentation, reduce redundancy, and better ensure compliance. One RTA commenter noted its system has both third rail-powered (heavy rail) lines and catenary-powered streetcar (light rail) lines and it intends to create separate RWP manuals, each satisfying the RWP program requirements, for each of its rail transit modes.

One industry association commenter suggested that the RWP manual should address distractions related to personal communication devices, which are a

major factor contributing to roadway worker safety events. The commenter recommended that §§ 671.13 and 671.23 could specifically identify “compliance with State, local, and agency rules and guidelines regarding worker distractions and prohibited devices/items.”

One RTA commenter recommended that FTA clarify the meaning of “by labor category or type of work performed” in terms of defining the training, qualification, and supervision required for accessing the track zone that must be documented in the RWP manual.

One RTA requested that FTA clarify how the “processes and procedures, including any use of roadway workers to provide adequate on-track safety, for all transit workers who may access the track zone in the performance of their work” affect transit workers such as an operator entering the roadway to troubleshoot a train, or a customer service representative accessing the right-of-way to retrieve a personal item. Another RTA requested flexibility to maintain RWP processes and procedures outside the RWP manual, similar to the flexibility proposed for the track access guide. The commenter noted that if those processes and procedures are included in the RWP manual, employees’ printed manuals may become outdated and no longer be reliable sources soon after issuance. Further, the commenter noted it is impossible to include the details of all track access and safety processes and procedures in the RWP manual while maintaining a reasonably sized document that employees can carry with them and easily navigate. The commenter argued that maintaining procedures separately would allow the manual to be more “evergreen” because its information will hold true even if the RTA makes minor procedure changes.

One vendor commenter asked FTA for guidance on processes and procedures to provide on-track safety for “safety and oversight personnel,” especially in emergencies, that could be included in the RWP manual. One RTA commenter noted that the requirement to include in the RWP manual “procedures for SSOA personnel to access the roadway” seem out of place. The commenter recommended that if procedures for an SSOA to enter RTA property need to be referenced in the manual, the SSOA and the RTA should work together to develop a process by which the SSOA will engage the RTA to ensure proper protection when entering the RTA’s track zone. One RTA commented that information on protecting safety and oversight personnel from moving rail vehicles should be in a separate section

and not included in the RWP manual section specific to “roadway workers.”

*FTA Response:* While FTA understands that RTAs may have existing rulebooks and SOPs in place that address RWP, FTA believes it is critical that RTAs establish and maintain a single, authoritative document so that it is clear to all parties where all the RWP information is housed and can be found. FTA believes that a singular document is also more conducive to annual reviews, and better facilitates SSOA and FTA oversight. FTA declines to remove the requirement for a separate manual but confirms that employees are not required under this rule to carry the RWP manual on their person. The rule only requires the RTA to distribute the RWP manual to all transit workers who access the roadway. FTA agrees with the commenter that suggested a single operating rulebook is preferable for version control and to reduce redundancy, which is why FTA is finalizing the requirement for a separate, dedicated manual. To reduce redundancy, FTA encourages RTAs to reference the RWP manual in existing rulebooks or operating procedures where appropriate or incorporate these existing documents into its RWP manual. In response to the comment that an RTA intends to create separate manuals for its heavy and light rail lines, FTA reiterates the requirement that RTAs establish one RWP manual as the single authoritative source of RWP program information for all rail modes operated by the RTA. However, the RTA could clearly differentiate in the manual the sections that are relevant to workers, based on the mode of operation.

While FTA agrees that electronic personal communication devices can cause distractions, FTA believes that electronic devices do have a purpose in the field at times. Therefore, FTA declines to revise the rule to specifically address distractions related to personal communication devices but notes that RTAs may establish additional rules that are consistent with this regulation.

FTA confirms that the intent of including the training, qualification, and supervision required for transit workers by labor category or type of work performed is to encourage RTAs to consider the different job roles, tasks, or functions for different classifications of workers or groupings of workers when addressing this requirement. Each labor category or worker classification may have distinct requirements based on the nature of the work they perform, which might require distinct training or supervision. As such, defining the necessary training, qualification, and supervision by labor category or type of

work performed ensures that each group is appropriately trained and certified to access the roadway and supervised as necessary.

The final rule requires that the RWP manual document processes and procedures for all transit workers who must access the track to perform their duties, which would include an operator entering the roadway to troubleshoot a train, or a customer service representative accessing the right-of-way to retrieve a personal item. For these instances of momentary track fouling, the final rule states that a transit worker may only foul the track once they have received appropriate permissions and redundant protections have been established as specified in the RWP manual. In response to the commenter that requested flexibility to maintain RWP processes and procedures outside the RWP manual, FTA reiterates the requirement that RTAs must establish one RWP manual as a single authoritative source of RWP program information. FTA believes maintaining one document ensures consistency and accountability for the workforce and strengthens the dependability of training and oversight measures. FTA also believes this requirement will encourage more efficient manual review and update processes pursuant to § 671.13(e). FTA has drawn the distinction for the track access guide to be incorporated by reference as track access guides for some agencies may be especially lengthy and/or may require more frequent updates than the updates to RTA policies and procedures. Because § 671.13 requires RTAs to update their RWP manuals as necessary and as soon as practicable upon any change to the system that conflicts with any element of the document, FTA is not concerned that including the processes in the RWP manual will result in outdated manuals. FTA notes that the final rule does not establish a requirement that RTAs must distribute a physical copy of the manual to all transit workers who access the roadway, thus eliminating the concern that the manuals may be too large to carry. The final rule offers RTAs flexibility to select the format for manual distribution, which could include electronically, as long as transit workers have easy access to an up-to-date version.

FTA will consider the request for FTA guidance on processes and procedures to provide on-track safety for safety and oversight personnel, especially in emergencies, for future guidance and technical assistance. FTA disagrees with the commenter that procedures for SSOA personnel to access the roadway

are out of place in the RWP manual because the final rule establishes requirements to ensure protections apply to all transit workers that access the roadway to perform work, including SSOA personnel conducting inspections or performing other oversight activities. FTA encourages the RTA and SSOA to work together, when appropriate, to establish procedures for SSOA personnel to access the roadway. The SSOA and RTA will also have the opportunity to formally agree on RWP procedures via the SSOA's approval of the RWP manual under § 671.25. FTA disagrees that information on protecting safety and oversight personnel from moving rail vehicles should not be included in the RWP manual. The RWP manual is intended to document processes and procedures for all transit workers who may access the track zone in the performance of work, including SSOA personnel.

## 2. Track Access Guide

*Comments:* One SSOA, seven RTAs, two industry associations, and two vendors submitted comments regarding the proposed requirement at § 671.13(d) that the RWP manual must include or incorporate by reference a track access guide to support on-track safety. An RTA commenter agreed that having this information easily accessible and maintained in one document would assist with its safety-promotion efforts.

The SSOA commenter recommended that FTA consider requiring the track access guide be part of the RWP manual and not be incorporated by reference, given the guide's integral nature with the RWP manual. One industry association commenter noted that while the association supports written RWP procedure requirements, FTA's requirement for both an RWP manual and a track access guide is very prescriptive and the requirement for a track access guide for numerous employees on thousands of miles of track would be extremely burdensome. Further, the commenter added that it would be nearly impossible for employees to carry the guide daily. One RTA commenter noted that RTA right-of-way training and familiarization gives roadway employees all the tools they need to understand right-of-way limitations and exceptions and suggested additional guides may become confusing and detrimental to track access and could hinder the roadway worker. One RTA commenter asked if all updates to the track access guide would also be subject to SSOA review and approval. One RTA commenter asked if the RTA could use

its current track access guide to meet the requirement at § 671.13(d).

Several RTAs and two industry associations commented on the locations that FTA proposed must be included in the track access guide. One RTA recommended FTA strike the requirements from the track access guide regarding identifying locations with specific conditions since many of the locations and conditions are variable.

One RTA commenter provided their assessment that the focus of the locations only applies to work conducted under train approach warning, as other forms of RWP restrict rail vehicle movement. Two commenters asked FTA to clarify whether the track access guide requires a physical map or whether a detailed written description of system locations could meet the requirement. One industry association commenter noted the requirements at § 671.13(d)(1) could be problematic for some agencies because their systems may not have many “clearance” zones along the track, especially in enclosed and elevated portions of subway systems while other systems such as streetcar will have clearance zones all along the track. One RTA commenter recommended that FTA include “changes in track grade” as locations required to be included in the track access guide.

Multiple RTAs, one SSOA, and two vendors commented on the requirement to include noise and environmental conditions in the track access guide. One RTA noted that these conditions constantly change within the RTA’s system and cannot be pre-determined. The commenter added that these site-by-site locational conditions should be addressed through a site-specific job safety briefing during each shift. Another commenter suggested FTA remove “environmental conditions” from the track access guide because listing all potential environmental conditions that would require additional consideration will be very difficult.

An SSOA and an RTA similarly asserted that the requirement to identify locations of reduced visibility due to weather conditions is unfeasible. The commenters added that identifying specific areas where weather may be a concern would be difficult, as weather conditions affecting visibility can change frequently and occur at any outdoor location on RTA property. The RTA commenter recommended that FTA modify this requirement to instead “identify additional procedures or precautions that RTAs must take when weather conditions reduce visibility”

rather than identify locations subject to reduced visibility due to weather conditions. One vendor requested that FTA clarify whether “reduced rail transit vehicle operator visibility due to precipitation or other weather conditions” is intended to cover any outdoor track generally or to call out specific areas of higher risk.

One RTA commenter noted that the requirement to identify “locations subject to increased rail vehicle or on-track equipment braking requirements” (§ 671.13(d)(2)) is only relevant to rail vehicle operators and not to roadway workers. The commenter recommended that RTAs incorporate this location information into a timetable or other documentation for rail vehicle operators. This RTA also suggested FTA remove the requirements from the track access guide regarding identifying locations with limited visibility, noise, and other environmental conditions for RTAs that may have this information integrated into their timetable. One vendor commented on the requirement to identify “locations with limited or no visibility due to obstructions or topography.” The commenter suggested that track access guides should identify locations with “permanent obstructions” and include general notes regarding temporary obstructions in the RWP manual. The commenter noted temporary obstructions are potentially caused by train movement on adjacent tracks.

One RTA commenter asked FTA to define “portals with a restricted view.” One vendor recommended FTA incorporate other locations that require hazard analysis to support safe access and adequate on-track safety. Two RTAs recommended that rather than including the environmental or weather conditions in the track access guide, the roadway worker in charge should respond to environmental conditions with appropriate additional safety procedures and discuss these conditions during job safety briefings.

**FTA Response:** FTA disagrees with requiring the track access guide to be part of the RWP manual because FTA believes that offering flexibility for RTAs to choose to maintain this track access guide separately from their RWP manual will allow frequent updates as the condition of the track system changes, which may be more frequent than changes to the RWP policies and procedures. FTA defers to RTAs on the design of the track access guide and expects that the level of detail for track access guides will correlate with the complexity of the transit system. The final rule does not require RTAs to distribute a physical copy of the track

access guide to all transit workers who access the roadway, nor does it require transit workers to carry it on their person. The final rule offers RTAs flexibility to select the format of the track access guide, which may include an electronic format, to distribute the track access guide as long as transit workers have easy access to an up-to-date version. FTA believes that right-of-way training and familiarization can be bolstered with the development of a track access guide. FTA does not believe that the addition of a track access guide will promote confusion, as the track access guide is based on a physical survey of the track geometry and condition of the transit system and is intended to provide workers a tangible reference point of the RTA’s track system. RTAs are encouraged to provide additional information to help workers identify which sections of the track access guide are relevant to their roles and how the guide applies to their specific job duties.

The final rule requires that the RWP manual include or incorporate by reference a track access guide and the SSOA must review and approve the RWP manual and any subsequent updates. As such, the SSOA must also review and approve updates to the track access guide.

FTA confirms that creating a new track access guide is unnecessary as long as the existing guide meets all the requirements of § 671.13.

FTA acknowledges that the requirement for the content of the track access guide is prescriptive but affirms that a track access guide is an important component of the RWP program to ensure awareness, coordination, and compliance among workers. FTA reviewed the comments regarding the specific locations that must be included in the track access guide and is finalizing the requirement as proposed. FTA believes that it is necessary to include all the areas listed in the rule because of the known safety risk posed by the enumerated locations and conditions. The track access guide is meant to inform workers of these areas of heightened risk and better allow for RTAs and workers to control for potential hazards. RTAs may opt to include additional environmental hazards in their track access guides, as needed. FTA disagrees that the focus of identified locations is only applicable to work that is being conducted under train approach warning and believes that identifying locations that may need additional consideration for establishing on-track safety is important and useful when accessing the roadway in the performance of all types of work.

However, FTA agrees that the information is particularly useful under train approach warning.

FTA is deferring to RTAs to determine the best way to structure the guide, and the final rule does not require a physical map. FTA emphasizes that the location of close clearance points is an important detail, particularly in enclosed systems.

FTA reiterates that the final rule establishes minimum standards as a baseline for rail transit RWP and expects that RTAs will establish their track access guides based on the unique environments and characteristics of their systems. FTA disagrees with the commenter that recommended FTA include “changes in track grades” as one of the locations required to be included in the track access guide, as it is unnecessary because this condition would fall under the umbrella of the requirement at § 671.13(d)(2) to include “locations subject to increased rail vehicle or on-track equipment braking requirements.”

FTA agrees that noise and environmental conditions may routinely change within an RTA’s system and cannot be pre-determined, and FTA agrees with the commenter that job safety briefings should include site-specific hazards and conditions related to the work to be performed and the protections to eliminate or protect against those hazards. RTAs are not required to list “all” environmental conditions, but rather those significant enough to require due consideration in establishing on-track safety. This may require the RTAs to conduct additional assessment, but will allow for better planning, preparedness, and risk mitigation in the long term. For that reason, FTA also declines to adopt the suggestion that FTA remove the requirements from the track access guide regarding identifying locations with limited visibility, noise, and other environmental conditions for RTAs that may have this information integrated into their timetable. FTA agrees that weather conditions are variable, and the final rule requires the track access guide to document locations of high risk that certain weather conditions may cause. For example, an RTA may be aware of track switches that frequently become covered by snow, which would affect the ability of a transit worker to see the switches, or of areas that are regularly covered by fog. Therefore, FTA declines to modify the requirement because FTA feels this information is useful and important to include.

FTA confirms that the requirement for RTAs to identify “locations with limited or no visibility due to obstructions or topography” (§ 671.13(d)(1)) within the

track access guide encompasses permanent obstructions. RTAs may opt to address temporary obstructions through various approaches, and FTA notes that job safety briefings provide an opportunity for RTAs to provide information on day-to-day conditions on the roadway or track zone.

FTA declines to define “portals with restricted views” because the term in the final rule is intended as a general phrase to direct RTAs to identify specific locations on the railway where views may be partially obstructed upon entering or exiting the location.

FTA declines to add other locations that require hazard analysis to support safe access and adequate on-track safety to the minimum required locations in a track access guide, as FTA believes the current list covers the locations that pose the greatest risk for most RTAs. However, FTA notes that the rule offers RTAs flexibility in identifying locations of high risk that require additional consideration for establishing on-track safety, and RTAs should include additional locations as appropriate to their systems.

FTA disagrees that the roadway worker in charge should respond to environmental and weather conditions with appropriate additional safety procedures and discuss these conditions during the job safety briefing rather than require the RTA to include the conditions in the track access guide. As mentioned previously, the rule does not require RTAs to use current weather reports but instead requires RTAs to document in the guide locations of high risk that certain weather and environmental conditions may cause. However, FTA agrees that the roadway worker in charge should address current weather and environmental conditions in the job safety briefing.

### 3. Review and Update

*Comments:* FTA received comments from six RTAs, two industry associations, and one vendor regarding the proposed RWP manual review and update requirements at §§ 671.13(e) and (f). One RTA commenter suggested the proposed timeframe of reviewing and updating the manual every two years is tight, particularly for small systems, and could lead to hasty review practices. The commenter recommended that FTA consider changing the timeframe to three years to align with the SSO Triennial Audit process. One RTA commenter asked FTA to clarify whether a continuous review cycle meets the review requirement.

One RTA and two industry associations recommended that FTA clarify the review and update

requirement by revising it as follows: “The RTA must review its RWP manual and, if necessary, update it.” The RTA commenter and one industry association commenter added that incorporating the phrase “if necessary” will guide RTAs in determining that, in some instances, significant changes may not be necessary. All three commenters suggested that FTA establish guidance similar to 49 CFR part 673, whereby an RTA certifies that no updates were required following a review.

One RTA recommended that each update to the RWP manual also address lessons learned from safety events, hazards, etc. The commenter asked whether addendums to the manual and track access guide count as forms of acceptable updates or if a manual reprint is required to satisfy the requirement to update as soon as practicable. One RTA commenter requested FTA permit bulletin notices as a temporary update to the manual rather than a complete reissue every time a change is identified within the two-year review period. Additionally, the vendor commented that changes to operating procedures could be incorporated by reference into the RWP manual, and RTAs could issue bulletins announcing operating rule changes. This would reduce the need to reprint RWP manuals and to conduct retraining on the manual. Another RTA commenter noted the requirement to update the RWP manual to reflect “information provided by the SSOA and FTA” and requested clarification from FTA regarding what constitutes “information.” In addition, the commenter asked FTA to clarify the grounds on which the SSOA or FTA can require an RTA to include this “information” in its RWP manual.

*FTA Response:* FTA disagrees that the requirement to review and update the RWP manual every two years could lead to hasty review practices. FTA asserts that the two-year timeframe ensures that the RWP manual reflects current RTA conditions, policies and procedures, and lessons learned. Requiring the review no less than every two years allows RTAs sufficient time to review and update the manual, but also provides flexibility for RTAs who find it prudent to update the manual more regularly. FTA thinks two years is an appropriate period of time to review and consider new information and, therefore, will not result in hasty review practices. In response to the commenter that requested FTA clarify whether a continuous review cycle meets the review requirement, FTA notes that the rule establishes a minimum requirement for RTA review and update at least

every two years. Continuous reviews could meet this requirement so long as they are comprehensive and the entire manual is verifiably reviewed at least every two years. Updates to the RWP manual must be submitted by the RTA to its SSOA for review and approval, as described in section § 671.25.

FTA declines to add a qualifier to the regulation that the RWP manual must only be updated if necessary, as was suggested by commenters. FTA believes that as drafted, RTAs are only required to update the manual if a review determines it is necessary. FTA recommends that RTAs document their review process and findings, which may conclude that no changes are needed. This documentation ensures RTA compliance with the requirement and provides a record that the review was carried out as mandated and notes that review findings indicated no changes were required.

FTA is not revising the regulation to specify that updates to the RWP manual include lessons learned from safety events and hazards, because FTA feels the existing regulatory text encompasses this expectation. FTA expects lessons learned in implementing the RWP program would include lessons learned from safety events, the results of RWP compliance monitoring, actions the RTA has taken to address reports of unsafe acts and conditions and near-misses, and the results of the agency's monitoring of redundant protection effectiveness. FTA is not requiring a specific format for the RWP manual update and intends for the final rule to provide flexibility for RTAs to determine the format of RWP manual updates as well as the format for distribution to workers.

In response to the commenter that requested FTA permit bulletin notices as a temporary update to the manual rather than a complete reissue every time a change is identified within the two-year review period, FTA notes that the final rule requires the RTA must update its RWP manual and track access guide as necessary and as soon as practicable upon any change to the system which conflicts with any element of either document. The manual document itself must be updated and redistributed to all transit workers who access the roadway, but the updated document can be provided in manner that is practical for the RTA (electronically, in paper, etc.)

The requirement to review and update the RWP manual to reflect "information provided by the SSOA and FTA" is consistent with the SRM requirements of the PTASP regulation for RTAs to include data and information provided

by an oversight authority as a source of hazard identification and to include guidance provided by an oversight authority as a source for safety risk mitigation. In this context, "information provided by the SSOA and FTA" may include, but is not limited to suggestions for improvement, industry best practices, relevant State and Federal regulatory updates, and information related to investigations or audit findings. SSOAs are required to approve the RWP manual and subsequent updates and are authorized to deny approval if information is omitted that the SSOA determines is necessary, consistent with the SSOA's general oversight authority.

#### 4. Distribution

*Comments:* Five RTAs, one industry association, and two vendors submitted comments regarding the proposed RWP manual distribution and redistribution requirement at § 671.13(g). Multiple commenters asked FTA to specify the required format for distributing the RWP manual and track access guide and asked if electronic/digital distributions are permissible or if hard copies must be distributed. A commenter asked if "distribute" means allowing easy access to the manual or if it requires a physical copy. Two commenters suggested that, similarly to FRA, the roadway worker in charge should carry a manual or have easy access to a manual and serve as the responsible party for responding to challenges or concerns that arise.

One RTA commenter alternatively suggested that it is more effective for departments to distribute procedures, rather than the entire manual, because the workers get only the RWP information related to their jobs. The commenter noted that this arrangement is less confusing for workers, particularly for contractor employees whose tenure at an RTA is brief and limited to a single location or a few locations. The RTA commenter agreed, however, that a single document would simplify SSOA review and approval.

One RTA commenter requested that FTA clarify whether RTAs also must redistribute the track access guide as part of any RWP manual update. One vendor recommended that FTA require RTAs to destroy or "confiscate" old copies when issuing new RWP manual versions because of the importance of version control. In addition, the commenter recommended that RTAs retrain or brief transit workers on substantial updates that fundamentally change an element of the RWP program before transit or roadway workers enter the track zone after a change. One RTA recommended that FTA change the

wording of the requirement that the manual be distributed "to all transit workers who access the roadway" to "all transit workers who must enter a track zone to perform work." The commenter argued this rewording would better align with the phrases used elsewhere in the rule. One industry association and an RTA noted concern about the practicality of requiring the manual to be distributed to "all transit workers who access the roadway" as this could be a large group and that distributing hard copies to all transit workers, including employees, contractors, and SSOA personnel, would come at a high cost and be an excessive administrative burden.

*FTA Response:* The final rule does not require RTAs to distribute physical copies of the manual and track access guide to all transit workers who access the roadway in the performance of their work. The final rule offers RTAs flexibility to select the distribution format, which could include electronic dissemination, as long as transit workers have access to up-to-date versions. This flexibility also is intended to ease the potential administrative and cost burden one commenter raised as a concern.

FTA agrees that access to the RWP manual at a worksite is useful for the roadway worker in charge as a reference to address good faith safety challenges. However, FTA is not adopting the suggestion to require the roadway worker in charge carry the manual. FTA acknowledges that RWP manuals will vary in size and content detail, and requiring the roadway worker in charge to keep the manual on their person may be impractical in certain circumstances. FTA defers to RTAs to decide if and when it is appropriate to require the roadway worker in charge or transit workers to keep a full or partial copy of the manual on hand. FTA reiterates that the rule requires RTAs to establish and maintain a separate, dedicated manual documenting its RWP program and to distribute the manual to all transit workers who access the roadway in the performance of their work. However, RTAs can highlight for workers which portions of the manual are relevant to their duties.

FTA confirms that an RTA would only be required to redistribute the track access guide if it is revised. FTA declines to establish a requirement for RTAs to destroy old manuals and is deferring to RTAs on their document control practices, so long as they are consistent with the recordkeeping requirements of this part. FTA is not incorporating into the final rule the suggestion that RTAs retrain or brief

transit workers on substantial updates that fundamentally change an element of the RWP program before transit or roadway workers enter the track zone after a change. FTA believes that the requirement for RTAs to redistribute the RWP manual after each revision and the requirements for refresher training in this rule are sufficient to ensure transit workers are aware of the changes but reiterates that RTAs may establish additional procedures that are consistent with this regulation.

FTA intends for the RWP manual to be broadly distributed to all transit workers who access the roadway in the performance of their work. Broad distribution of the RWP manual promotes a safety culture at RTAs wherein all transit workers are aware of the hazards of their job duties and work environment, are aware of the processes and procedures to mitigate those hazards and are accountable for compliance with those processes and procedures.

#### *G. Section 671.21—Rail Transit Agency*

FTA received comments on the various proposed responsibilities of RTAs.

##### **1. Procedures To Provide Ample Time**

*Comments:* One SSOA commented on the requirement for RTAs to establish procedures to provide ample time and determine the appropriate sight distance based on maximum authorized track speeds and suggested that a better way to establish the appropriate sight distance for determining ample time would be to require the track access maps to have the maximum allowable speeds printed on maps for entire system.

*FTA Response:* This rule requires RTAs to create and maintain track access guides to support on-track safety. FTA encourages agencies, as appropriate, to include allowable speeds within the track access guide or on related visual materials. However, due to significant variances in RTAs subject to this rule, FTA declines to require RTAs to include authorized speeds within the track access guide or other printed maps.

##### **2. Procedures Regarding Individual Rail Transit Vehicle Detection**

*Comments:* FTA received comments on the requirement that RTAs establish procedures to ensure that individual rail transit vehicle detection is never used as the only form of protection in the track zone at § 671.21(a)(2) from one SSOA, multiple RTAs, and one vendor. The SSOA commenter asked FTA to clarify whether it intends to allow individual

rail transit vehicle detection, asserting that FTA's definition of "minor task" muddies the issue.

A vendor asked if FTA intends to make individual rail transit vehicle detection the minimum form of on-track safety. If so, the commenter indicated that the definition of "individual rail transit vehicle detection" implies that only lone workers may use this form of on-track safety. The vendor also recommended that FTA reword § 671.21(a)(2) to read: "Ensure that individual rail transit vehicle detection is always accompanied by a form of redundant protection in the track zone."

One RTA commenter asked FTA to identify additional forms of protection that would satisfy the redundant protection requirement. Another RTA requested that FTA clarify what it envisions as additional forms of protection beyond individual rail transit vehicle detection for two-person work crews and lone workers. One vendor recommended that FTA specify in the rule the required forms of on-track safety beyond individual rail transit vehicle detection.

One RTA commenter agreed that most situations of fouling the roadway call for a higher form of protection than individual rail transit vehicle detection alone, but argued that in limited specific cases, such as a worker traveling a short distance (e.g., 100 feet) from one place of safety to another, employing a secondary form of protection in addition to individual train detection is impractical and unnecessary. The commenter suggested that FTA refrain from universally applying the requirement for supplemental protection while using individual train detection and instead reserve the right for an RTA to require supplemental protection as it deems necessary based on the environment, specific conditions, and cases of use. Another RTA commenter suggested that prohibiting the use of rail transit vehicle detection as the only form of protection may require agencies to modify their procedures for accessing the track for short periods of one minute or less, such as an operator getting out of the rail vehicle to remove debris from the track. The commenter asked that FTA consider the implications of this requirement on existing procedures governing short periods of track access and recommended that FTA leave the decision to determine secondary protections up to the RTAs, as called for in APTA's standard.

One RTA commented that prohibiting the use of individual rail transit vehicle detection as the only form of protection is more applicable to systems that do

not operate as line of sight, low speed, and in mixed traffic where pedestrians are common. This commenter noted that some RTA tasks, such as litter pick up, leaf blowing, and cutting grass, are typically performed without a flagger or other means of redundant protection but with other measures, including calling the operations control center and requiring operators to pass at walking speed.

One RTA noted that prohibiting the use of individual rail transit vehicle detection as the only form of protection will now require a two-man crew to perform work currently done by a lone worker. The commenter added that FTA did not address this issue in the regulation. Another RTA commenter stated that this requirement contradicts FTA's definition and requirements for lone workers.

*FTA Response:* This final rule prohibits the use of individual rail transit vehicle detection as a sole form of protection for all workers on the roadway, including those performing minor tasks. FTA confirms that RTAs can use individual rail transit vehicle detection as long as there is another form of protection in place. The rule sets requirements for RTAs to conduct a safety risk assessment to identify and establish redundant protections for each category of work that workers perform on the roadway or track, even those workers conducting minor tasks. FTA confirms that this rule does not identify a minimum form of on-track safety, but rather establishes a requirement for redundant protection that ensures no transit worker is allowed to use individual rail transit vehicle protection as their sole protection on the roadway. FTA declines to adopt the recommendation to reword § 671.21(a)(2) to emphasize that individual rail transit vehicle detection is always accompanied by a form of redundant protection because FTA believes the existing phrasing clearly expresses the requirement that RTAs cannot use individual rail transit vehicle detection as the only method of on-track safety. FTA is not prescribing the kinds of redundant protections that an RTA must have in place. Instead, RTAs must conduct a safety risk assessment to identify and establish redundant protections based on their unique operating characteristics and capabilities and SSOAs may also identify redundant protections for RTAs. A non-exhaustive list of potential redundant protections is also enumerated in § 671.39(d).

FTA disagrees that employing a secondary form of protection in addition to individual train detection is

impractical and unnecessary in limited specific cases. FTA risk assessments and NTSB investigations reveal that fatalities and injuries have occurred in recent years when work groups and individuals relied on rail transit vehicle detection for on-track safety. This prohibition is responsive to the NTSB recommendations to require redundant protections for roadway workers and to eliminate the use of individual rail vehicle detection. FTA appreciates that prohibiting the use of rail transit vehicle detection as the only form of protection may require agencies to modify their procedures for accessing the track for short periods, and FTA recognizes the burden this may place on agencies. Due to the high-risk nature of roadway work, and the demonstrable inadequacies of individual rail transit vehicle detection as a sole source of on-track safety, FTA believes it is necessary to require redundant protections for transit workers who foul a track even for short periods of time.

FTA acknowledges that line-of-sight, low-speed rail transit systems experience different risks than other RTAs. Prohibiting the use of individual rail transit vehicle detection as a sole form of protection is still necessary to address these differing risks. For example, in mixed traffic environments transit workers must account for noise or sight obstructions, pedestrian activity, or other vehicles—all of which may serve as a critical distraction to an individual worker. However, FTA understands RTAs have varying operating and environmental characteristics that may require different redundant protections which is why the final rule requires RTAs to use their safety risk assessment process to identify and establish the redundant protections that best suit their operating environments and the work performed by transit workers on the roadway.

FTA acknowledges that some tasks, such as litter pick up, leaf blowing, and cutting grass, are typically performed without a flagger or other means of redundant protection. However, reliance on rail transit vehicle detection, with no redundant protection, does not sufficiently account for unforeseen circumstances or predictable human error. FTA disagrees with the commenter that prohibiting the use of individual rail transit vehicle detection as the only form of protection will now require a two-man crew to perform work currently done by a lone worker. FTA notes that redundant protections that RTAs may identify may include procedures, such as foul time and advance warning systems, or physical protections to stop trains in advance of

workers, such as derailleurs and shunts, which do not require a second person. FTA disagrees that the requirement to ensure individual rail transit vehicle detection is never used as the only form of protection in the track zone contradicts FTA's definition and requirements for lone workers. The provisions regarding lone workers at § 671.35 emphasize that a lone worker may not use individual rail transit vehicle detection as the only form of on-track safety. Further, the rule requires RTAs to establish redundant protections for each category of worker, including lone workers. FTA's intent is to ensure that lone workers can perform appropriate tasks while maintaining a high level of safety through redundant protections.

### 3. Procedures Related to Job Safety Briefings

*Comments:* One vendor and one RTA commented on the requirement that RTAs establish procedures related to job safety briefings at § 671.21(a)(3) and (4). The vendor recommended that FTA revise the requirement for when job safety briefings must be provided. Specifically, the commenter recommended that job safety briefings be required for all transit workers who must or have the potential to enter the track zone, which the commenter argued would be consistent with FTA's proposed definition of roadway worker. The RTA suggested using the term "safety stand down" to refer to job safety briefings that are required after a rule violation is observed. This RTA also asked if this job safety briefing would occur after specific violations or all rule violations.

*FTA Response:* The final rule requires that RTAs establish procedures to provide a job safety briefing to transit workers whose job entails entering a track zone. FTA declines to revise § 671.21(a)(3) because FTA believes the language is sufficiently clear and identifies the individuals subject to the job briefing requirement. FTA expects the RTA to ensure that, as soon as it becomes clear that a transit worker who may potentially enter the track zone must enter track zone, the worker is provided with a job safety briefing.

FTA notes that RTAs may use their own term for job safety briefings as long as the briefings meet the requirements of this rule. FTA confirms that § 671.21(a)(4) intends that RTAs must conduct a job safety briefing after any observed rule violation, not just specific ones.

### 4. Procedures for Good Faith Safety Challenge

*Comments:* Labor organizations and one RTA commented on § 671.21(a)(5) and the requirement for RTAs to establish procedures to provide transit workers with the right to challenge and refuse in good faith any assignment. One labor organization welcomed and supported the NPRM provisions that would require an RTA to provide transit workers with a mechanism to exercise the right to refuse a work assignment presenting "on-track safety concerns." However, one labor organization noted that while FTA requires the RTA to have procedures to resolve these challenges "promptly and equitably," FTA did not define "equity" in this context. The labor organization commented that without a definition of "equity," management will be disinclined to use a process that gives equal weight to the worker's views—which is what the commenter urges "equity" must mean in the context of the proposed rule. Multiple labor organizations recommended that FTA define the process for resolving good faith safety challenges, suggesting the process could include negotiations with pre-determined representatives or with mediation or arbitration. The commenters argued that FTA should not give management space to plead vagueness regarding "equity" or to skirt FTA's intended meaning of the term, and that FTA must be clear in the final rule about what "equity" requires in the context of good-faith work refusals.

One RTA expressed concern about the requirement for procedures that allow workers to "refuse" work, which they alleged would go against good safety policy and potentially against collective bargaining unit agreements. The RTA recommended keeping the good-faith challenge language but removing the "refuse" language, noting that the RTA already has a good-faith challenge process that works when used properly.

*FTA Response:* FTA's provision for good faith safety challenge is consistent with APTA standard for RWP, and reflective of best practices within the transit industry. FTA declines to further prescribe a process for resolving good faith safety challenges, as FTA notes that an RTA's size, staffing, and system type may impact how they approach the good faith safety challenge process. FTA declines to define "equitably," as FTA uses "equitably" in this context in its commonly understood meaning.

FTA also notes the rule's provisions, per § 671.25(c)(2)(i)(C), requiring the SSOA to conduct annual audits to assess the effectiveness of the RTA's



implementation of its RWP program, including review of “all documentation of instances where a transit worker(s) challenged and refused in good faith any assignment based on on-track safety concerns and documentation of the resolution for any such instance during the period covered by the audit.” If during this audit the SSOA determines that good faith safety challenges are not resolved equitably, the SSOA must issue findings and require corrective action.

FTA acknowledges the concern regarding the requirement for procedures that allow workers to “refuse” work. However, FTA believes the right to refusal is integral to the good faith safety challenge to prioritize worker safety, promptly resolve hazards, and emphasize the preeminence of safety in a rail transit environment. FTA is not requiring that RTAs revise their existing process, as long as the process meets the minimum requirements specified in this rule.

#### 5. Procedures To Require Reporting of Unsafe Events

*Comments:* One RTA and one labor organization submitted comments regarding the requirement for RTAs to establish procedures to require the reporting of unsafe acts, unsafe conditions, and near-misses on the roadway in § 671.21(a)(6). The RTA commented that the new mandatory reporting requirements for transit workers in § 671.21(a)(6) and § 671.23(e) are a significant expansion of the employee safety reporting program and would require significantly more resources to manage on an ongoing basis given the broad nature of the new reporting categories. The commenter also noted concern about overburdening the Safety Committee established under the PTASP regulation with what would be a large increase in the volume of information reported through this program.

The labor organization suggested that confidentiality be emphasized for reporting near-misses, noting that participation would be more widespread and the accounts more accurate. The organization stated that near-miss data collection is most useful when plentiful and unvarnished, thus ensuring and emphasizing confidentiality in this reporting process will benefit all involved parties.

*FTA Response:* FTA notes that while the requirement in this rule for procedures for transit workers to report unsafe acts and conditions seems to represent an expansion of the employee reporting program, an RTA’s Transit Worker Safety Reporting Program, established under part 673, applies to

all workers and should already capture transit worker safety reports related to work performed on the roadway. This final rule emphasizes the importance of an RTA’s safety reporting program in capturing safety-critical information related to RWP, but it is FTA’s expectation that much of this information is being captured by RTAs via existing practice. FTA acknowledges that, where this is not the case, managing additional reporting will pose a burden for agencies. FTA believes these extra requirements are critical to ensuring safety and empowering workers to voice concerns, particularly because unsafe conditions and practices persist throughout the transit industry. FTA has accounted for the added cost of these reporting changes in the final rule economic analysis under “Near-Miss Reporting Program and Records” estimates.

FTA agrees that confidential reporting has many benefits that promote safety culture and encourage employee reporting and FTA encourages the practice of confidential reporting whenever appropriate and feasible. However, FTA is preserving the flexibility for RTAs to establish the transit worker safety reporting processes that are most effective for their operating realities. For some agencies, competing considerations such as expediency of reporting, staff size, and the need for additional information may require identified reporters. FTA confirms that acceptable methods of reporting near-miss information include both confidential and nonconfidential reporting. Further, FTA encourages RTAs to consider providing ways for transit workers to anonymously report safety concerns and to consider participating in third-party confidential close-call reporting programs.

#### 6. Procedures To Ensure Transit Workers Understand RWP Program

*Comments:* One RTA submitted a comment addressing the requirement that RTAs establish procedures to ensure all transit workers who must enter a track zone to perform work understand, are qualified in, and comply with the RWP program at § 671.21(a)(7). This RTA asserted that all transit workers should not be required to comply with the RWP program, as this program is designed for roadway workers. The commenter added that alternate methods of protection should be in place to protect workers of other crafts, *i.e.*, blue signal/flag protection for mechanical employees.

*FTA Response:* FTA disagrees that the RWP program is designed only for roadway workers and that not all transit

workers should be required to comply with the program, though FTA acknowledges that transit and roadway workers may have other requirements in place to ensure their safety, such as blue/signal flag protection for vehicle mechanics and technicians. FTA intends for the provisions in this rule to provide protection for all transit workers as they access the track in the performance of their work. FTA recognizes that work may take place on the track, in vehicle maintenance shops, in rail yards, or elsewhere that requires additional protections beyond those addressed by this final rule.

#### 7. Requirements for On-Track Safety

*Comments:* Multiple RTAs, one industry association, one individual, and one vendor commented on the provision that RTAs establish requirements for on-track equipment at § 671.21(b)(1). One RTA noted that the term “labor category” is used throughout the rule but is not defined anywhere and requested that FTA clarify the term since labor classifications and organizational structures vary by agency. Another RTA requested clarification on the requirement for credentials “by labor category.” The individual commented on behalf of railroad and transit workers that wear religiously mandated articles of faith such as Amish wide brimmed hats, Sikh dastaar or turban, and Jewish kippahs. The individual requested that FTA and FRA develop a policy or guidelines for rail workers who wear articles of faith that may be incompatible with personal protective equipment, such as hard hats. The vendor suggested that FTA not list examples of personal protective equipment at § 671.21(b)(1) as the intent is not to specify minimum personal protective equipment requirements.

Multiple RTAs and one industry association submitted comments on the credentials requirement at § 671.21(b)(2). One RTA asked FTA to explain the purpose of requiring RTAs to establish requirements for visibly displaying credentials, stating that if the roadway worker has their credentials somewhere on their person, then that should be sufficient. Two RTAs inquired if the FTA was proposing that these credentials must be displayed in a certain way, or whether the intention of this section is to require credentials always be visible.

One RTA suggested that the requirement for RTA employees to display RWP qualification credentials is likely to result in confusion, noting that the rule appears to propose that different credentials would be required

for each RWP position (worker, flag person, watchperson, roadway worker in charge). As an example, the commenter noted that an employee displaying a roadway worker in charge qualification might be performing watchperson duties. The RTA recommended that RTAs be free to select any effective method of identifying employees' qualifications.

One RTA and one industry association suggested revising § 671.21(b)(2) to remove reference to how the credentials of an RWP program are displayed. The commenters argued that credentialing requirements should be left at the discretion of the RTAs and the approving SSOA.

One RTA asked if an electronic solution, such as the roadway worker in charge electronically scanning ID badges during the job safety briefing, would meet the requirement to display credentials at § 671.21(b)(2). The RTA also expressed concern that, if credentials must be displayed at all times while on the roadway, it could create a safety hazard for RTAs that use lanyard type badges.

An RTA stated that the "roadway" definition, as it relates to required displayed credentials in § 671.21(b)(2), is problematic for RTAs with tracks that share city right-of-way with automobiles and intersection crosswalks with pedestrians and suggested considering specifying "work and work zones" rather than "roadway."

Two RTAs commented on the requirement for on-track safety protections for emergency response personnel at § 671.21(b)(3). One RTA explained that their agency stops service and movement of trains to ensure emergency personnel have a safe environment to do their job. The commenter noted that training of emergency personnel will be unnecessary because the danger of train movement will be halted during their response within the right-of-way. The other RTA commented that the RWP program is not the appropriate place for this requirement and that access to the roadway outside of the protection of a roadway worker in charge should be provided for in the RTA's emergency response plan.

One RTA commenter and one industry association commenter requested that FTA consider adding provisions that persons who are not trained on or qualified in the RWP program can be escorted in a track zone by RWP-qualified personnel, a practice currently existing in California. The commenters added that the need for this may occur due to unique track configurations, systems design, or

shared access areas with other non-RTA entities.

*FTA Response:* FTA declines to define the term "labor category" because labor categories and types of work performed can be defined in several ways and will vary by agency due to the diverse operating characteristics of RTAs. FTA defers to RTAs to identify the labor categories and different job functions that are relevant for their unique systems. FTA expects RTAs to establish minimum requirements, based on the type of work performed, for the equipment, training, qualification, supervision, and credentials required for transit workers to access the roadway and address those requirements accordingly. Regarding the requirement for credentials "by labor category," FTA intends that workers will display a physical indication of their qualification to access the roadway or the track zone. FTA defers to RTAs to determine the specific labor categories to be displayed.

FTA expects that RTA policies regarding personal protective equipment will consider religious articles that may be worn by transit workers. FTA encourages RTAs to develop personal protective equipment policies that adequately protect transit workers while being appropriately flexible.

FTA declines to remove the list of examples of personal protective equipment from the regulations because examples in this case help illustrate or show the characteristics of personal protective equipment. FTA notes these examples are non-exhaustive and only intended to clarify personal protective equipment.

FTA disagrees with the suggestion to revise § 671.21(b)(2) to remove any reference to displaying RWP program credentials. A physical indication of an individual's qualification to access the roadway or the track zone helps ensure that roadway workers have the proper training and are aware of the safety risks and the protections to reduce those risks. Displaying credentials also clarifies workers roles, and ensures workers are following the appropriate protocols for those roles. This requirement is reflective of industry best practices. FTA confirms that the final rule requires credentials be visible at all times, not just during the job safety briefing; however, this requirement does not specify that they be displayed in a certain way. Examples include credentials displayed in see-through card holders on safety vests, rubber identification bracelets, badges, and bands. FTA defers to RTAs to determine the form of credentialing, as long as it can be visible. FTA clarifies the rule

does not specify the content or the form of the credentials and defers to RTAs to establish the appropriate credentials for their systems. As mentioned previously, this requirement is reflective of industry best practices and a physical indication of an individual's qualification to access the roadway or the track zone helps ensure that only roadway workers who have the proper training and are aware of the safety risk and the protections to reduce that risk access the roadway. In response to the commenter's concern that lanyard-type badges could create a safety hazard, FTA is not prescribing the forms of credentialing and defers to RTAs to identify the form while keeping safety at the forefront. Similarly, because FTA is not requiring specific credentials, FTA has not accounted for additional expenses in the Benefits and Costs section.

Under § 671.21(b)(2), RTAs must establish requirements for credentials for transit workers who enter the roadway or track zone. FTA maintains that the language "roadway or track zone" within this provision allows for flexibility for systems with shared rights-of-way in determining when credentials must be displayed. FTA also does not believe "work zone" would be sufficient in this context, as roadway workers in the track zone but outside of the work zone still should be verifiably credentialed for reasons including ensuring proper authorization, communication, and emergency response protocols.

FTA notes that the rule does not require RTAs to provide RWP training to emergency personnel; rather, RTAs must establish procedures to protect emergency personnel who must access the roadway or the track zone to perform their job. FTA believes it is necessary to address emergency personnel in this part to make clear that RTAs are required to provide protections for emergency response personnel who must access the roadway or track zone, and that workers are aware of this requirement. FTA also notes that § 671.21(b)(3) requires an RTA to establish requirements for protections for emergency response personnel who must access the roadway or the track but does not prohibit an RTA from documenting these protections and procedures in the RTA's emergency response plan. In response to the RTA and industry association commenters who requested the addition of provisions to allow persons who are not trained on or qualified in the RWP program to be escorted in a track zone by RWP-qualified personnel, FTA is amending the regulation to address escorting non-transit workers when

necessary, to support individuals that are not RWP certified and do not fall into the categories of roadway worker, transit worker, or emergency personnel.

#### *H. Section 671.23—Transit Worker*

*Comments:* Five RTAs, one SSOA, and one vendor commented on the role of transit workers in the RWP program detailed in § 671.23. One RTA asked what the impact would be if a transit worker did not follow the requirements of the RTA's RWP program. The RTA asked FTA to clarify the intersection between this requirement and existing labor contracts and discipline processes and what FTA's intent is in including this requirement. Further, they recommended allowing the discipline processes outlined per standard RTA processes and/or labor agreements to stand and suggested that FTA add a line to the regulation that clearly states, "Do not get involved in discussions regarding discipline. That is a labor-management issue."

One RTA expressed concern with the practicality of the requirement in § 671.23(b) that a transit worker may only foul the track once they have received appropriate permissions, and redundant protections have been established as specified in the RWP manual. The commenter noted that in streetcar systems, transit workers foul the track every day whether on or off duty, simply by being pedestrians or motorists. Another RTA noted that the scope of this requirement is too broad by including all transit workers in a rulemaking focused on roadway workers. The commenter added that the requirement to obtain RWP for common activities, such as fouling a track to immediately cross from one place of safety to another when views are not obstructed creates an undue burden on control center personnel. One SSOA suggested using "fouling a track" rather than "fouling the track" in this subsection to mirror the definition in § 671.5.

Commenting on § 671.23(c), "Acknowledgement of protections providing on-track safety," one RTA asked if having the transit worker sign the bottom of the job safety briefing would be an acceptable form of written acknowledgement. Another RTA asked if this acknowledgement would be a secondary document beyond what is provided in a train order or special instruction during RWP work. One SSOA asked if the acknowledgement of on-track procedures in writing was intended to be part of the job safety briefing requirement and if it must be a formal signature. A vendor recommended requiring that it be the

transit worker's responsibility to obtain a safety briefing prior to accessing the track zone. The vendor emphasized the importance that transit workers understand that it is their responsibility to receive the safety briefing from the roadway worker in charge and not sign off on the briefing until they fully comprehend the on-track safety being afforded.

For the authority to refuse to foul the track identified in § 671.23(d), one RTA commented that the determination that an assignment is unsafe is a subjective view that requires no basis in fact and so should be removed as a reason for a transit worker to refuse to foul a track.

*FTA Response:* If transit workers do not comply with the requirements of the RTA's RWP program, the RTA must determine the reason for this failure. Because policies and regulations regarding labor practices will vary among RTAs and from State to State, FTA declines to stipulate what discipline processes an agency should or should not include as part of its RWP program. Similarly, FTA declines to add the FRA language recommended by the commenter to the regulation and notes that RTAs should ensure that they comply with both the RWP program and their existing labor contracts.

Regarding the concern with the practicality of the requirement that a transit worker may only foul the track once they have received appropriate permissions and redundant protections have been established, FTA's intent is to restrict workers from unauthorized track access and/or fouling the track unnecessarily. FTA understands that in streetcar systems, people, including pedestrians, motorists, or off-duty transit workers, may regularly foul the track. However, FTA reiterates that the regulation applies to transit workers who access any rail fixed guideway public transportation systems in the performance of work and does not set provisions for crossing the track as a pedestrian or motorist, but rather focuses on fouling the track in the performance of work under the protection of the RWP program.

FTA understands the concern that obtaining RWP for common activities, such as fouling a track to immediately cross from one place of safety to another, may be burdensome. However, FTA has determined that hazards exist for many categories of transit employees who work on or in close proximity to the right-of-way, regardless of the circumstances. For roadway workers, this rule includes provisions at § 671.39(d)(3) for equivalent protections approved by the SSOA for lone workers, providing flexibility for these situations.

For transit workers who are not roadway workers and who must momentarily access the roadway, agencies have flexibility to establish appropriate permissions and redundant protections in accordance with § 671.23(b).

FTA declines to revise "fouling the track" to "fouling a track" to mirror the definition language (§ 671.5) as it does not affect the meaning of the requirement as used in this section.

FTA confirms that signing the bottom of the job safety briefing would be an acceptable form of written acknowledgement and notes that the language of § 671.23(c) is intended to provide RTAs flexibility in the method of written acknowledgement they can provide. Written acknowledgement may be in the form of a formal signature or other method of written affirmation. FTA reiterates that transit workers must provide acknowledgement in writing but may do so in the method that best suits their purposes, including having the written acknowledgement be a secondary document. It is important to note that whatever method of written acknowledgement the RTA chooses to use must comply with the provisions established in the recordkeeping section of the rule (§ 671.51).

FTA confirms that the acknowledgement of on-track procedures does not need to be part of the job safety briefing but reiterates that transit workers are required to provide written acknowledgement of their understanding of the on-track safety protections. While FTA agrees on the importance of the transit workers having a thorough understanding of the safety briefing, FTA declines to amend the regulation to make it the transit worker's responsibility to obtain a safety briefing prior to accessing the track zone. FTA requires that each roadway worker acknowledge that they have received the job safety briefing. FTA does not believe additional requirements are necessary to ensure the transit worker's awareness and acknowledgement.

FTA appreciates the concern that it is too subjective for a roadway worker to determine what is "unsafe." However, FTA disagrees with the recommendation for removing this from the rule. The intent of § 671.23(d) is to permit the transit worker to use their own judgement and discretion when determining if an assignment related to this rule is unsafe. FTA believes frontline workers are often in the best position to recognize and understand the potential risks of an assignment and, therefore, must have the authority to raise those concerns without restrictions.

*I. Section 671.25—State Safety Oversight Agency*

1. RWP Program Oversight (§ 671.25(b))

*Comments:* FTA received multiple comments with respect to SSOA oversight for the RWP program. One individual stressed the importance of SSOA employees being knowledgeable of and qualified in the RTA's RWP program in order to effectively review and audit the RTA's RWP program.

One SSOA questioned what is meant by the provision, "The SSOA must update its program standard to explain the role of the SSOA in overseeing an RTA's execution of its RWP program." The commenter noted that it is not clear what updates would be required, and that these requirements should also be included in 49 CFR part 674.

*FTA Response:* FTA agrees that SSOA employees should be knowledgeable of the RWP program in order to effectively oversee its implementation. The recently published 49 CFR part 672, as part of the technical training plan, requires SSOAs to receive ongoing technical training in RWP program requirements specific to each RTA for which safety audits and examinations are conducted. The final rule also contains provisions that apply to SSOAs to ensure their engagement in the RWP program. For example, the term "transit worker" defined in § 671.5 includes any employee, contractor, or volunteer working on behalf of the RTA or SSOA. Per § 671.23, all transit workers, including SSOA employees, contractors, and volunteers, must follow the relevant requirements of the RTA's RWP program by position and labor category. Also, § 671.41(a)(1) requires that an RTA's RWP training program must address SSOA employees, contractors, and volunteers who have job duties that require them to foul the track.

FTA requires SSOAs to incorporate RWP program oversight requirements and responsibilities in the SSOA's SSO program standard. Because the SSO program standard documents the SSOA processes and procedures that the SSOA uses to provide oversight through the SSO program, the SSO program standard updates include the SSOA processes used to comply with the oversight requirements of this final rule and fulfill SSOA responsibilities at § 671.25. Additional practices and procedures may be adopted to supplement the program oversight requirements and responsibilities in the SSO program standard, but the SSO program standard must explain the role of the SSOA in overseeing the RTA's execution of its RWP program per § 671.25(b). While 49 CFR part 674

contains the majority of the requirements related to SSOAs, FTA believes it is clearer to contain all RWP requirements in this one regulation.

2. RWP Manual Review and Approval (§ 671.25(a))

*Comments:* Multiple RTAs, multiple SSOAs, one industry association, and one vendor commented on the requirements for SSOA review and approval of the RWP program elements and manual. One RTA noted that it is appropriate for SSOAs to review and provide feedback on RWP programs but commented that SSOA approval of the RWP program is inappropriate because the SSOA is not the subject matter expert on RWP and does not continuously interact with frontline workers. The commenter also stated that the RTA, not the SSOA, is in the best position to develop, manage, and oversee their RWP program. The SSOA has existing oversight authority of the RTA's rail system, and requiring SSOA approval of the RWP program would serve to only impose extra burdens on an RTA without providing any meaningful benefits.

One RTA asserted their opinion that SSOAs' review and approval of the RWP manual is redundant with the ASP approval because their RWP program currently exists within the ASP. With respect to updates in particular, one RTA requested clarification on what type of manual updates are expected to be reviewed by the SSOA, for example, minor formatting changes or content updates only. Similarly, an RTA raised concerns about whether any change made to an underlying SOP would need to go to the SSOA for approval prior to being signed, and if so, who would manage the process. The RTA stated that the requirement for SSOAs to approve the RWP manual is burdensome for RTAs as it's an additional compliance requirement. The RTA recommended that FTA consider providing additional resources to RTAs to meet these requirements.

Multiple SSOAs expressed concerns with the timeframes for initial RWP program approval and submission to FTA as established in § 671.25(a), noting specifically that it may not allow for enough time for the revisions required by the SSOAs. One SSOA commented that requiring SSOA approval within 90 days emphasizes timeliness over a full and detailed review of the program elements. One SSOA recommended that FTA require SSOAs to include in their program standard a process to review and approve the RWP program. Another SSOA proposed that FTA revise the rule text to state that initial approval of the

RWP program must be completed within "90 calendar days from receipt, or 60 calendar days from resubmission after SSOA comment." One SSOA recommended that FTA follow a similar format for SSOA review as in the PTASP rule—setting a deadline for the commencement of each RTA's RWP program, after which the SSOA would perform oversight at their discretion and within the context of their programs.

With respect to § 671.25(a)(2) and the requirement to submit all approved RWP program elements for each RTA in its jurisdiction, and any subsequent updates, to FTA within 30 calendar days of approving them, two SSOAs and one industry association recommended submission of the RWP program through the State Safety Oversight Reporting tool (SSOR). The two SSOAs suggested that the RWP program submission be added to the annual reporting process or follow a similar process and timeframe for other reports that are submitted to FTA by SSOAs, such as PTASP approval and triennial audit reports. One SSOA questioned FTA's role in validating the RWP program if it had already been approved by the SSOA. A vendor inquired about FTA's intention regarding making the SSOA responsible for the submission following SSOA approval rather than requiring the RTA to submit the approved program to FTA.

One SSOA questioned if the submissions are for individual RWP program elements or collectively for all RWP program elements in the State. An RTA asked if the SSOA must submit to FTA only newly established RWP programs or whether they must submit RWP program elements for existing programs.

It was also suggested by an industry association that FTA remove the 90- and 30-day timeframes altogether because these timeframes may cause confusion and conflict with existing submission practices between the SSOA and their RTAs.

*FTA Response:* FTA disagrees with the RTA comment stating that the SSOA's approval of the RWP program is inappropriate. As described in § 674.5, "a State that has a rail fixed guideway public transportation system within the State has primary responsibility for overseeing the safety of that rail fixed guideway public transportation system." Therefore, this final rule is consistent with the SSOA's existing responsibility to oversee RTAs. As part of this oversight, FTA believes it is necessary for SSOAs to review and approve the RWP program and manual regularly, and from the outset. This ensures sufficient procedures are in place before concerns arise and allows

SSOAs to confirm that the RWP program and manual are compliant with the requirements of this rule. Requiring full review and approval promotes accountability and thoroughness for SSOAs and creates a framework for consistency. SSOA staff and contractors should achieve the training and qualifications necessary, per 49 CFR part 672, to perform this responsibility.

To avoid redundancy, SSOAs may review and approve an RTA's ASP, and conduct the annual RWP program audit simultaneously. If the SSOA elects to conduct their annual RWP program audit alongside their annual review of the ASP or integrate the review of the RWP program into its triennial review of the ASP, the review must meet the RWP program audit requirements specified at § 671.25(c).

FTA considers those revisions or updates that result in any RWP policy changes as necessitating SSOA review and approval. Changes that do not impact content or procedures, for instance, formatting changes or grammatical corrections, do not require review by the SSOA. FTA expects SSOAs and RTAs to determine the appropriate thresholds and practices for SSOA review of manual updates. Because the SSOA-RTA oversight framework has been in place for many years, FTA believes that SSOAs and RTAs will already have practices in place to share, review, and approve safety procedures. As such, the SSOA's review and approval of the RWP manual should comport with the existing collaborative processes among the agencies. Regarding potential changes to an underlying SOP, FTA confirms that any revisions or updates that result in RWP policy changes and changes to the RWP manual must be reviewed by the SSOA. FTA believes that requiring SSOA approval in these circumstances is necessary to ensure safety concerns are brought to the forefront and addressed properly, with the appropriate level of coordination and feedback. While this may present some additional burden, FTA anticipates policy changes will be made only as necessary to promote consistency and ensure updates are meaningful and well considered. FTA will consider developing and sharing technical assistance resources to support this practice to help minimize the burden of this requirement for either agency.

Due to the safety-critical nature of the RWP program, FTA expects SSOAs to complete a comprehensive and detailed review of all RWP program elements. However, in response to comments FTA has removed the 90-day timeframe for SSOA approval so as to not

unnecessarily limit an SSOA's review. FTA considered the commenter's suggestion to add an additional 60-day window after the proposed 90-day timeframe to provide additional time for SSOAs to re-evaluate RWP programs in an instance where they do not approve an RTA's first submission. FTA believes that removing the time period for an SSOA's initial review of the RTA's RWP program provides flexibility to both the RTA and the SSOA to establish a review process that works best in their situation, rather than prescribing the review time period. FTA expects that SSOAs and RTAs will coordinate throughout the development of the RTA's RWP program to ensure (1) an effective RWP program to support roadway worker safety, and (2) the SSOA and RTA can meet required deadlines. FTA also believes that the one-year deadline in § 671.1(d) to establish an RWP program allows time for the RTA to develop its RWP program and for comprehensive review, feedback, and coordination between the SSOA and RTA. FTA notes that the RTA's RWP program development, as well as the SSOA's review and approval of the RWP program, must be a priority for both agencies and the one-year timeframe for establishment of the RWP program ensures the SSOA initial review of the RWP program is completed in a timely manner. As noted above, due to the existing relationships, FTA expects that the SSOA and RTA will coordinate on program elements throughout the RWP program development process. FTA believes that establishing a cadence for SSOA review and approval of RTA RWP programs is not dissimilar from the existing PTASP review structure which requires SSOA review of ASPs following an update.

FTA plans to review these RWP programs as a critical element of monitoring activities to assess that safety standards are met across the industry and both the RTA and SSOA are enforcing RWP programs in accordance with Federal requirements. FTA declines to accept the commenters' suggestion to remove this submission requirement and instead require SSOAs to include the RWP program in their subsequent SSO annual report via the existing SSOR, because this could delay FTA's receipt and review of these important materials. FTA confirms that it is the responsibility of the SSOA, not FTA, to approve the RWP program, but submission of the SSOA-approved RTA RWP program provides FTA with an opportunity to confirm requirements have been followed and offer feedback or technical assistance where necessary.

With respect to SSOAs that oversee multiple RTAs, FTA expects the SSOAs to submit the RTA RWP programs individually as they are approved, as opposed to waiting for the development and approval of all RWP programs within the State and then submitting them all together. Submitting the programs as they are approved will allow for a more measured and manageable accounting of RWP program status by FTA as it monitors industry-wide rule application. FTA confirms that submission requirements apply to all RWP programs, both newly established and existing. FTA expects a submission for each RTA's RWP program once approved by the SSOA. FTA disagrees that the 30-day deadline for SSOAs to submit approved programs to FTA is confusing and declines to change this requirement. These requirements are enumerated in the rule text at § 671.25(a)(1) and (2), within the section that is expressly directed to SSOAs.

### 3. Annual RWP Program Audit (§ 671.25(c))

FTA received comments from multiple RTAs, SSOAs, and industry associations and one vendor regarding the proposed rule's requirement for an annual audit of the RWP program to be conducted by the SSOA, as specified in § 671.25(c).

#### a. General

*Comments:* One RTA stated that the SSOA annual audit of the RTA's compliance with its RWP program is unnecessary because the RWP program is reviewed during the annual SSOA review of updates to the ASP. Further, this commenter expressed their concern that the annual SSO RWP program audit may delay the RTA from moving forward with the RWP manual and the required training that is crucial for day-to-day maintenance work and contractor work at the RTA.

Several commenters requested clarification on terms. An SSOA asked about the definition of "audit." A vendor asked for guidance on what constitutes a "representative sample" where FTA requires the annual audit of the RWP program to include a review of "a representative sample of written job safety briefing confirmations . . ."

*FTA Response:* FTA disagrees with the commenter that suggested the annual RWP program audit is unnecessary because the PTASP rule already requires an annual ASP review. FTA believes that a separate RWP program audit is necessary because the RWP program is a specific piece of the RTA's ASP, and FTA expects that the

RWP audit will consist of a more in-depth and specialized review of the RTA's RWP program compared with the review of the RTA's ASP. SSOAs may audit the RWP program and review or audit the ASP simultaneously where prudent, so long as the audit requirements at § 671.25(c) and § 673.13(a) are met.

FTA believes that suggestions that the RWP program audit will delay RWP manual updates and required training are unconvincing. The annual audit is intended to assess the RTA's compliance with its RWP program, which includes ensuring that trainings and guidance are being offered and updated as needed and should not result in a delay of either.

In general, an audit focused on safety is an independent examination to evaluate and/or verify conformity with the effectiveness of established safety practices and procedures. The term "representative sample" as used in this rule describes a subset grouping determined to accurately represent a larger grouping. Each SSOA is to determine what serves as a "representative sample" when conducting oversight and auditing activities on the RTAs within their respective jurisdictions.

#### b. Annual Audit Requirement

*Comments:* One SSOA asked how FTA determined that audits are needed annually and if FTA had performed a safety risk assessment to determine the frequency for RWP annual audits.

Several commenters noted that an annual audit of the RWP program is burdensome for RTAs already audited by their SSOAs. The commenters cited challenges with meeting this requirement as it is in addition to the other annual safety audits and reviews required by part 674, and the resulting need for more resources at both the RTAs and SSOAs and could dilute the substance of the audit. Of these commenters, one suggested that the audits be biennial instead of annual, while another suggested using sample-based audit techniques in place of auditing all program elements. Two industry associations suggested eliminating the annual audit requirement from the rule altogether.

FTA received several comments regarding how the RWP program audit would interface with the SSOA triennial audit schedule. These commenters asserted that the addition of an annual RWP program audit is duplicative of, and should be incorporated into, the SSOA triennial audit requirement established at § 674.31. One of these commenters suggested that, if FTA is

seeking to confirm the RWP program implementation through the audit process, the regulation could require the SSOA to audit the RWP program after the first year of implementation then incorporate subsequent audits into the SSOA triennial audit process with ongoing monitoring conducted by the RTA's Safety Assurance monitoring activities.

*FTA Response:* FTA appreciates the inquiry into the decision-making process for annual SSOA audits of the RTA's RWP program implementation. While FTA did not conduct a formal safety risk assessment specifically to determine this frequency, FTA's decision is based on the critical nature of RWP programs and the need for regular evaluation to ensure their effectiveness. FTA's RWP rule allows procedural protections that rely on compliance with rules and do not always require the placement of physical barriers between workers and rail transit vehicles. FTA recognizes that ensuring the effectiveness of procedural protections is critical to their success in protecting workers. Annual SSOA audits provide a consistent and independent mechanism to verify that procedural protections are being properly implemented and are achieving their intended safety outcomes.

Additionally, the annual audit frequency will ensure that the SSOA is involved and actively informed regarding the RTA's RWP program performance, and that the RTA is responsive to addressing deficiencies to elevate roadway worker safety through corrective action plans or other recommendations from the SSOA's audit. This final rule's requirement for annual RWP audits serves to confirm that RWP programs are working as intended and protections are functioning to keep roadway workers and rail transit vehicle operations safe.

FTA agrees that the addition of an annual RWP program audit at each RTA an SSOA oversees will require more time and attention from both the SSOA and the RTAs. The agencies will need to set priorities effectively to ensure part 671 requirements are met, including the annual audit requirements. FTA appreciates the suggestion to move annual audits to biennial audits, or once every two years. However, given the allowance for the use of procedural protections under this final rule, which require an increased level of vigilance to ensure they function compared with physical protections, FTA is finalizing the requirement for an annual audit to address the need for strong procedural oversight. FTA also believes that the

pattern of safety incidents and concerns reported at RTAs in recent years necessitates early detection of issues and timely implementation of corrective actions, which an annual audit may provide. FTA notes that sample-based auditing is a pragmatic approach to examining large amounts of information, records, activities, and more. This final rule does not prohibit SSOAs from using responsible, sample-based auditing practices to address the requirements of § 671.25. Each SSOA will determine which of its personnel, and potentially contractor staff, will perform the RWP audit.

FTA declines to remove the audit requirement completely given the importance of the RWP audit outlined above.

FTA also appreciates the comments received related to the relationship between the annual RWP audit and the SSOA triennial audit schedule. Due to the safety risk inherent with roadway work, FTA maintains the need for an annual RWP program audit and does not believe a triennial audit schedule would provide sufficient oversight. The means by which the SSOA schedules and administers the RWP program audit in concert with triennial audit responsibilities will be left to the SSOA to determine. Regarding the suggestion that FTA require annual SSOA RWP audits at the outset and then move to a triennial audit system later, FTA reiterates that the risks involved with roadway work, and the ever-changing nature of roadway hazards, warrant more frequent auditing. FTA disagrees that this audit is duplicative of the triennial audit because RWP program requirements and elements will be new for many RTAs. SSOAs that have been auditing RWP programs at their RTAs will need to ensure the audit encompasses all the requirements outlined in § 671.25(c). However, the SSOA may integrate the review of the RWP program into its triennial review of the RTA, as long as the triennial review covers the elements as described in the RWP rule.

#### c. Audit Report

*Comments:* FTA received comments from multiple SSOAs, RTAs, and industry associations about the proposed rule's requirement for a report documenting the results of the annual audit of the RWP program, as specified in § 671.25(c)(2). One SSOA and one industry association stated that having the SSOA determine the effectiveness of an RWP program, as required in § 671.25(c)(2)(i), is beyond an SSOA's scope. These commenters asserted that SSOAs currently only oversee

compliance with requirements, and the requirement to analyze the effectiveness of an RTA's RWP program would lead to a change in role for the SSOA and require more SSOA resources, training, and regulatory change to establish this authority. FTA received comments on the RWP program elements that must be reviewed by the SSOA as part of the RWP program audit and included in the audit report. One SSOA and one RTA requested that FTA define "RWP-related event" to avoid inconsistencies, and the RTA recommended requiring an audit of "all RWP manual violations" instead.

One RTA noted an inconsistency between § 671.25(c)(2)(i)(E) and (F). Further, one SSOA asserted that reviewing "all training and qualifications records for transit workers who must enter the track zone to perform work," outlined in § 671.25(c)(2)(i)(E), is overly burdensome and inefficient. The SSOA recommended that the language be updated to "require the RTA to certify to the SSOA that the training and qualification records are current for all transit workers who must enter a track zone to perform work," then the SSOA can perform oversight through certification audits and inspections.

Related to the audit report findings and recommendations, one SSOA recommended that the audit report should issue findings of noncompliance rather than corrective action plans as mentioned in § 671.25(c)(2)(iii). One RTA requested clarification on "recommendations for improvements" language related to the SSOA's RWP program audit report, including whether an SSOA would be expected to issue recommendations if the RTA is otherwise compliant with requirements, whether SSOA program standards need to account for these recommendations, and whether RTAs would be compelled to implement them. Two SSOAs noted that the SSOA's ability to provide recommendations raises liability concerns as this presents the SSOA with a decision-making type of role instead of an oversight role. One SSOA discouraged the inclusion of recommendations in the audit reports stating that the "SSOA shouldn't be making recommendations but rather be providing data and information for hazard identification." This SSOA argued that RTAs would view recommendations from the SSOA as a mandate, which goes against the SMS framework and is inconsistent with § 673.25(b)(2).

Two comments, one from an RTA and one from an industry association, recommended that FTA include a requirement for the SSOA to issue the

RWP audit report within 90 calendar days following the audit completion in order to ensure SSOA administrative backlogs do not delay audit reports.

Lastly, an RTA and an industry association both suggested revising the language in § 671.25(c)(3) to include the requirement that a formalized process be established to record any comments provided by the RTA on the RWP audit report and have the comments be available for FTA review. Commenters argued that this revised language would ensure that the RTAs can comment on any findings and recommendations during the SSOA audits and enshrine the comments in the record.

*FTA Response:* FTA disagrees that effectiveness determinations are beyond the scope of SSOA oversight. FTA notes that this is consistent with other FTA regulatory requirements for SSOAs established in both part 673 and 674 (for example, see § 674.31).

In response to the comments related to RWP audit elements, FTA does not see the need to define the term "RWP-related event" nor replace this term with "all RWP manual violations." FTA believes that, in some circumstances, safety events may occur that are not resulting from manual violations, or which the existing RWP manual failed to account for, which need to be reviewed. FTA clarifies that "RWP-related event" is intended as a broad term to provide SSOAs with flexibility to review a range of events that may occur in the RWP program as part of the annual audit, including safety events and near-misses; specific incidents or groups of incidents involving deficiencies in RWP program implementation or compliance, as may be related to § 671.25(c)(2)(i)(G); as well as any other unusual occurrences or conditions related to RWP program implementation.

FTA acknowledges the comment on inconsistent audit methodologies between § 671.25(c)(2)(i)(E) and (F) where the former requires the review of "all training and qualifications records" and the latter requires a "representative sample of written job safety briefings." FTA agrees that reviewing "all training and qualifications records" may not be attainable, especially for larger RTAs. Therefore, in the final rule FTA is striking the word "all" from § 671.25(c)(2)(i)(E), which will allow the SSOA the flexibility to either review all or a sampling of training and qualifications records while performing their audit activities.

FTA disagrees, however, with a more specific comment that argued that an SSOA's audit of RTA training and qualification records would be

duplicative of existing RTA work and recommended rewording the language to "require the RTA to certify to the SSOA that training and qualifications records are current for all transit workers who must enter the track zone to perform work." FTA declines to eliminate the requirement at § 671.25(c)(2)(i)(E) for SSOAs to review training and qualification records for transit workers who must enter a track zone to perform work and replace it with an RTA self-certification process, as FTA believes SSOAs should exercise oversight to ensure compliance with the training and qualification requirements.

In response to comments regarding the SSOA's RWP audit findings and their documentation in an audit report issued by the SSOA, FTA reiterates that this practice is consistent with the triennial audit requirements of § 674.31, which requires that the SSOA "shall issue a report with findings and recommendations" arising from the triennial audit. FTA confirms that this practice is established in current SSOA authorities, does not counter an RTA's SMS practices, and does not conflict with decision-making for the RTA. FTA believes that the issuance of recommendations is often a requisite part of the audit process but confirms that SSOAs may opt to provide data and hazard identification documentation if that information would provide the RTA with sufficient direction for improvement. Regarding the "recommendations for improvement," FTA defers to an SSOA on when to issue recommendations for improvement if an RTA is otherwise compliant with requirements. The SSOA's program standard must identify processes and procedures that govern the activities of the SSOA, and the processes and procedures an RTA must have in place to comply with the standard, but it does not need to detail all recommendations provided by the SSOA to the RTA. When providing recommendations, the SSOA must be clear about whether the proposed changes are necessary to ensure compliance with this part and ensure SSOA approval, or whether the proposed changes are suggested best practices for program improvement, which the RTA can exercise discretion in implementing. FTA also notes that it is within existing SSOA authority to issue or require corrective action plans to RTAs where necessary.

FTA appreciates the comment suggesting FTA establish a 90-day timeframe for the issuance of the SSOA's RWP audit report following the audit's completion. However, this final rule maintains the flexibility afforded



SSOAs to determine a timeframe most suitable for them and the RTAs they are auditing. As always, FTA encourages SSOAs to complete reports within a reasonable timeframe to avoid administrative backlogs. Likewise, FTA believes a less prescriptive requirement on the process for RTAs to provide comments on the SSOA's RWP audit report is best to allow SSOAs and associated RTAs to establish a process and timeframe that works for both agencies. FTA encourages SSOAs and RTAs to maintain a record of these comments to ensure that the perspectives of both agencies are properly captured and can be referenced in the future as necessary, but FTA does not require submission for review.

#### d. Separate Audit Requirement

*Comments:* FTA received comments responsive to the preamble language which stated that FTA expects SSOAs to conduct these RWP program audits independently from any analogous RTA audit. One RTA sought clarity on what additional information an audit is intended to provide, and who the inspector conducting the audit would be. Another RTA commenter suggested that if FTA determines the need for a separate RWP program audit, it should allow the SSOA and RTA to determine their own audit requirements.

*FTA Response:* Due to the safety risk inherent with roadway work, FTA maintains the need for an SSOA to conduct an independent annual RWP program audit rather than relying on the RTA's own audit findings. However, how the SSOA schedules and administers the RWP program audit in concert with other audit responsibilities will be left to the SSOA to determine. The audit is expected to cover the RTA's compliance with its SSOA-approved RWP program by analyzing program effectiveness through typical audit activities such as record reviews, examination of RWP event trends, application of practices such as job safety briefings and good faith safety challenges, observation of training and review of training records, and more. Section 671.25(c) defines FTA's expectations for SSOA annual RWP program audits, which include elements that are critical for review. Additional decisions regarding the processes and procedures related to the audit that are not outlined in this rule are left to the determination of the SSOA and RTA.

#### J. Section 671.31—Roadway Worker in Charge Requirements

##### 1. On-Track Safety and Supervision

*Comments:* FTA received comments from RTAs, industry associations, and vendors regarding the proposed provisions in § 671.31(a). One industry association stated that the proposal that the roadway worker in charge perform only one function is unreasonable, citing industry-wide workforce shortages and noting that prohibiting a roadway worker in charge from performing ancillary duties while also serving as the roadway worker in charge is too prescriptive. An RTA requested that FTA clarify what activities fall under the function of “maintaining on-track safety,” noting that if the roadway worker in charge is prohibited from performing other duties, it would be burdensome. An industry association commenter recommended revising the language in § 671.31(a)(4) to allow the roadway worker in charge to perform work that is part of the scope of the work crew.

One RTA remarked that the language of § 671.31(a) does not clarify whether the RTA has the option of designating a roadway worker in charge from the contracted group or whether the roadway worker in charge must be an RTA employee. One vendor recommended that FTA revise § 671.31(a) to require an RTA to designate a roadway worker in charge for each roadway work group whose duties require “the potential to foul a track,” which the commenter noted is consistent with the definition of “roadway worker.”

Another vendor remarked that, in certain circumstances, it seems infeasible for the sole roadway worker in charge to oversee a large group of employees across a wide work zone and suggested that the roadway worker in charge be allowed to designate equally qualified individuals to oversee work crews within a larger work zone. An RTA suggested that FTA clarify that when a roadway worker in charge may be responsible for working limits that include multiple work groups, each individual work group should have an employee in charge who coordinates that work group's tasks and movements with the roadway worker in charge. The commenter noted that revised language would serve to ensure that a single, ultimate authority is in control of the work limit, eliminating any confusion or miscommunication between multiple roadway workers in charge in a single working limit. An RTA and an industry association also recommended that RTAs could, at their discretion,

designate “secondary” roadway workers in charge, or similar a designation, for each crew working within a shared working limit, as long as the RTA identifies a single roadway worker in charge for the entire working limit and defines the secondary position relevant to the control hierarchy over the work limit. The commenters provided revised language that they asserted would serve to ensure that a single, ultimate authority is in control of the work limit, eliminating any confusion or miscommunication between multiple roadway workers in charge in a single working limit.

One RTA stated that the proposed rule does not align with FTA's definition of and requirements for a “lone worker” and recommended that FTA consider including a reference to § 671.35 within § 671.31 to reinforce that the individual transit worker is also serving as the roadway worker in charge.

One vendor recommended emphasizing that the roadway worker in charge is responsible for “establishing” the on-track safety for all members of the roadway group.

*FTA Response:* FTA confirms that the final rule intentionally limits roadway worker in charge activities because the focus of this position must be on the responsibility of maintaining on-track safety for all members of the roadway work group. In response to the request that FTA clarify which activities fall under the function of “maintaining on-track safety,” FTA has identified that activities such as flagging, work zone setup, and administrative tasks fall under that umbrella. FTA declines to revise the rule to allow the roadway worker in charge to perform work that is part of the scope of the work crew that goes beyond maintaining on-track safety. FTA believes this limit is necessary to ensure the undivided attention and singularity of purpose of the roadway worker in charge.

The final rule does not prescribe the employment status of the roadway worker in charge, and the roadway worker in charge can be a contractor or an employee of the RTA as long as the worker is qualified under the RTA's training and qualification program. In response to the commenter that recommended FTA revise § 671.31(a) to address the roadway work group's “potential to foul a track” to maintain consistency with the definition of roadway worker, FTA believes it is unnecessary to change the rule as recommended, because RTAs assign duties to roadway workers, which determines which workers will foul a track or have the potential of fouling a

track. FTA agrees with the commenters that argued that for multiple roadway work groups within common working limits, the roadway worker in charge be allowed to designate equally qualified individuals to help oversee work crews. This final rule adds language at § 671.31(a)(5) that clarifies when a single roadway worker in charge is designated over multiple work groups within a working limit, each work group should be accompanied by an employee qualified to the level of a roadway worker in charge who shall be responsible for direct communication with the roadway worker in charge.

FTA disagrees with the suggestion to include a reference to § 671.35 within § 671.31 to reinforce that a lone worker is also serving as the roadway worker in charge. In this section, a lone worker is not acting as a roadway worker in charge because there is no roadway work group to oversee. Rather, the lone worker is required to be qualified as a roadway worker in charge, in reference to training and qualification standards, under § 671.41. This qualification is necessary to ensure a lone worker has the requisite expertise and safety knowledge to foul the track alone.

FTA appreciates the commenter that recommended FTA emphasize that the roadway worker in charge is responsible for “establishing” the on-track safety for all members of the roadway group but believes this intention is sufficiently captured in § 671.31(a)(3), which broadly states the roadway worker in charge is “responsible for the on-track safety for all members of the roadway work group.”

## 2. Communication

*Comments:* FTA received comments from two RTAs, one vendor, and two industry associations regarding the proposed provisions in § 671.31(b) that the RTA must ensure that the roadway worker in charge provides a job safety briefing to all roadway workers before any member of a roadway work group fouls a track. One RTA commenter noted that they support the proposed requirements for the roadway worker in charge to provide a job safety briefing before accessing the roadway; however, they asserted that the proposed requirement for the roadway worker in charge to deliver a new briefing whenever a violation of on-track safety procedures is observed is overly broad and, as written, could disrupt work productivity without adding value or increasing work crew safety. The RTA also noted that there are instances in which a minor and isolated infraction involving a single worker is simply resolved and does not put the work

crew at risk and, therefore, should not necessitate a full crew stand-down and rebriefing. The RTA suggested narrowing the scope of this requirement to specify only violations that may compromise the work crew’s on-track safety and/or focusing the rebriefing on addressing the violation versus reiterating the full job briefing already provided. An RTA and an industry association suggested adding “or reported” in front of “violation” to better capture reports of violations of on-track safety procedures from a broad range of sources, including the public.

One RTA and one industry association suggested revising the language in § 671.31(b)(2) to clarify the meaning of “in advance” as it relates to notification of changes to on-track safety, as well as to more clearly indicate the party responsible for making immediate warning to leave the roadway in the event of an emergency.

One vendor suggested that FTA add clarification on how a sole roadway worker in charge can oversee a large outage when face-to-face interaction is not possible and went on to recommend that FTA allow the roadway worker in charge to designate an equally qualified individual to give the required job safety briefing prior to the roadway workers fouling the track.

*FTA Response:* FTA disagrees that the requirement for the roadway worker in charge to deliver a new briefing whenever a violation of on-track safety procedures is observed is overly broad and could be disruptive to work productivity. FTA believes this is necessary to address even minor or isolated infractions, to ensure workers are committed to following established safety procedures, and to ensure infractions are not repeated. Further, this job safety briefing requirement largely reflects industry practices that identify as a best practice updated job safety briefings to immediately respond to observed violations of on-track safety procedures. FTA confirms this rebriefing need not be a full recitation of the original safety briefing but should address the violation and ensure all are aware of the correct procedures. FTA declines to add “or reported” in front of “violation” to capture reports of violations of on-track safety procedures from a broad range of sources, including the public. FTA believes the language as currently drafted is sufficient to ensure that any violations of on-track safety that are observed by others in the work crew are addressed. FTA agrees that anyone in the work group or any other source, such as the public, who observes violations should report them. Further, FTA reiterates that RTAs may establish

additional rules that are consistent with this regulation.

In response to the commenters that suggested revising the language in § 671.31(b)(2) for clarity, FTA has updated the section to read: “In the event of an emergency, the roadway worker in charge must warn each roadway worker to immediately leave the roadway and not return until on-track safety is re-established, and a job safety briefing is completed.” FTA notes that these changes do not alter the intent of the requirement but provide clarification regarding emergency notification and the roadway worker in charge’s corresponding responsibilities.

In some circumstances, it may be necessary to provide a safety briefing remotely. It is within the discretion of the RTA to determine when remote options can take the place of face-to-face interaction. FTA declines to make the recommended change to allow the roadway worker in charge to designate an equally qualified individual to provide the job safety briefing. FTA maintains that it is important for the roadway worker in charge to perform this duty to promote accountability, reinforce their authority, and ensure consistency.

## K. Section 671.33—Job Safety Briefing Policies

### 1. General

*Comments:* FTA received multiple general comments on § 671.33 language. One RTA asked for clarification on FTA’s expectation, as described in the preamble, that a job safety briefing would include a discussion of the nature and characteristics of the work, including any relevant information for multiple roadway worker groups working in adjacent areas. Specifically, the RTA requested clarification on whether FTA meant for adjacent areas to refer to work areas within each other’s working limits or rather any work areas next to each other on the roadway.

Two RTAs commented on the requirement to brief individuals “every time the roadway worker fouls the track.” The commenters asserted this requirement is unsustainable in situations such as street-running environments and in situations when a worker wants to take a short break that requires them to leave the track. A vendor suggested that any roadway worker within close proximity to the track zone with the potential to foul the track also be provided with a job safety briefing, noting this is the practice used by their organization when a worker is within 10 feet of the track. Another vendor also commented on the virtual

job safety briefing provision, asking FTA to elaborate on it for remote workers. The vendor noted that in-person job safety briefings conducted at the job site are more effective for identifying hazards and understanding the protections afforded and noted that equipment used by a remote worker can potentially cause hazards or necessitate a different form of protection for individuals within the track zone. The vendor also noted that safety briefings should be conducted in a language the workers receiving the briefing are fluent in. In the event of a language barrier between the roadway worker in charge and the workers, a translator should be established.

**FTA Response:** In the phrase “multiple roadway worker groups working in adjacent areas” the term “adjacent areas” means groups working in areas next to each other on the track roadway. The job safety briefing should include procedures and processes for interaction for work groups that are operating in shared space or in proximity where work tasks may impact the safety of other nearby persons. With respect to the language that requires a job safety briefing for roadway workers “prior to fouling the track, every time the roadway worker fouls the track,” RTAs are expected to adopt safety measures deemed appropriate for their operating services and environments. While the rule defines “fouling a track” and “track zone,” the rule and these definitions are intentionally flexible to account for varying track environments and safety protocols. For street-running systems, FTA notes that job safety briefings can address the fact that transit workers may be fouling the track continually throughout the course of a working shift, and the job safety briefings may be provided accordingly. Regarding the suggestion that FTA require any workers within close proximity to the track zone to receive a job safety briefing, FTA encourages this practice where feasible but declines to adopt this as a requirement across the board due to the significant differences in track and systems design among RTAs.

FTA agrees that in-person job safety briefings are the most effective way to ensure clear communications are exchanged about key information to keep workers safe. FTA also appreciates that there may be circumstances where lone workers or work groups are working remotely on a job site or responding to an emergency situation, and a virtual briefing may be appropriate. FTA considered NTSB recommendations, FRA standards, and OSHA guidance when determining

whether to allow virtual job safety briefings. The rule is purposely flexible in this regard, and RTAs may establish practices for remote job safety briefings that suit their track environment and roadway work practices so long as they are compliant with this requirement.

FTA also agrees with the commenter who noted that job safety briefings should be conducted in a language that is fully understood by each worker receiving the briefing. The final rule is clear that it is the responsibility of the RTA to ensure that clear and constructive job safety briefings are provided to all employees accessing the track zone to perform work. Similarly, it is the responsibility of the roadway worker in charge to confirm that each worker understands the job safety briefing and the responsibility of the worker receiving the briefing to confirm in writing that they received and understood the briefing in its entirety.

## 2. Elements

**Comments:** One RTA, one individual, and two vendors provided comments on the job safety briefing elements identified in § 671.33(b). A vendor recommended adding additional required elements to the job safety briefings requirement, such as information regarding the electrification of the track and emergency contact details. A different vendor advocated for resequencing the elements in § 671.33(b) by placing (10) and (11) directly after (5) to guide the flow of the job safety briefing and develop standard forms. Further, the vendor suggested FTA require that the job safety briefing include a review of the applicable track segment in the track access guide. An RTA commented on the reference to FRA’s guidance on hazard identification as part of the job safety briefing. The RTA argued that RTAs should not be held to FRA standards and instead FTA should consider developing and implementing its own guidance relative to hazard identification for rail transit environments.

An individual commenter recommended that the job safety briefing also address adjacent hazards to the track.

**FTA Response:** FTA agrees that the reference to FRA guidance on hazard identification is misleading and has updated § 671.33(b)(3) to read, “The hazards involved in performing the work. For RTAs with electrified systems, this discussion must include the status of power and hazards explicitly related to the electrified system.” FTA intends to provide additional technical assistance in relation to this rule to guide RTAs on

hazard identification in rail transit environments. With consideration to comments, the sequencing of the elements will remain the same as in the proposed rule, as FTA believes the current sequencing is clear. However, job safety briefings and forms may address these topics in any order that is logical and appropriate. FTA also declines to require the job safety briefings to include a review of the relevant portion of the track access guide, as this may not be necessary for all scenarios where workers will foul a track. FTA does encourage the use of the track access guide in job safety briefings whenever applicable to support on-track safety and notes that all workers must have access to the track access guide.

FTA considers track electrification as a “hazard involved in performing the work” (§ 671.33(b)(3)). However, in response to comments, FTA has updated the final rule text for elements of the job safety briefing to expressly include: the status of any electrified system and mitigations in place to prevent electrocution (§ 671.33(b)(3)); emergency contact information for the roadway worker in charge (§ 671.33(b)(8)); and general emergency response information (§ 671.33(b)(4)).

Regarding adjacent tracks, FTA expects job safety briefings to review hazards adjacent to the tracks, as well as within the track segment, performed through § 671.33(b)(4) and (5) requirements.

## 3. Confirmation and Written Acknowledgement

**Comments:** FTA received multiple comments on the requirement for confirmation and written acknowledgement of the job safety briefing at § 671.33(c). Two RTAs and an industry association suggested revising § 671.33(c)(1), the requirement for the roadway worker in charge to confirm that each roadway worker understands the on-track safety procedures and instructions, to ensure that roadway workers attest for their individual understanding of the briefing rather than roadway workers in charge on their behalf.

There were three suggested revisions for the requirement in § 671.33(c)(2) that each roadway worker acknowledges the job safety briefing and the requirement to use the required personal protective equipment in writing. A vendor suggested FTA amend the text to put a little more emphasis on the roadway worker to positively convey they understood the briefing. An RTA and an industry association both recommended a revision to § 671.33(c)(2), which they suggested would certify the transit

workers' compliance with all briefing requirements, rather than only directly stating personal protective equipment. One vendor commented that FTA should emphasize that transit workers are also responsible for confirming, in writing, that they not only have received a briefing but that they understand the briefing.

An individual commenter recommended that it should be clearly stated that job safety briefing acknowledgements are recognized through written signature. In contrast, an industry association commented that requiring written confirmation by each roadway worker in acknowledgement of the job safety briefing is unduly burdensome. The commenter recommended FTA require job safety briefings before all shifts but remove the requirement for signed acknowledgements. An RTA also noted that, especially for roving work crews, obtaining confirmation and written acknowledgement of the job safety briefing after any change in the scope of work is overly prescriptive and difficult or impossible for some RTAs to implement. One RTA asked if job briefings outlined in § 671.21 must be documented and commented that, if so, this would be highly restrictive since documenting spoken job briefings that outline processes already in place would be cumbersome for most agencies.

**FTA Response:** FTA agrees with commenters who raised concerns with a roadway worker in charge attesting to the roadway workers' understanding of the job safety briefing. In response to these comments, FTA is revising the final rule in § 671.33(c) to state, "The roadway worker in charge confirms in writing that they have received written acknowledgement of the job safety briefing from each roadway worker."

FTA agrees that the suggested revisions to the rule language in § 671.33(c)(2) will help clarify requirements for roadway workers to individually acknowledge the job safety briefings. Both § 671.33(c)(2) and § 671.33(c)(3) state that roadway workers are to acknowledge, in writing, receipt and understanding of the job safety briefing, and this will be retained in the rule. However, for further clarity, FTA will update the language in § 671.33(c)(2) from "Each roadway worker acknowledges the briefing and the requirement to use the required personal protective equipment in writing" to "Each roadway worker acknowledges in writing the briefing and the requirement to use the required personal protective equipment."

FTA understands the challenges faced with ensuring roving work crews are briefed after any change in the scope of work and the requirement for written confirmation following these briefings. FTA believes this nature of work for roving work crews makes it even more vital that workers are verifiably briefed when the scope of work changes. The intent of this provision is to ensure that all workers receive safety briefings when necessary, and these briefings can be confirmed. FTA also believes that while this may pose an additional burden, agencies are free to conduct these briefings in a way that is most conducive to their working environments. FTA also notes that written acknowledgements of safety briefings is already a common industry practice, which RTAs have managed to implement without notable complication.

It is not expected that the job safety briefing be transcribed to written records. However, documentation that these briefings occurred must be kept on record, as required by the final rule. This type of documentation is often recorded using a form that captures the high-level information of the roadway work and safety measures by covering topics such as (examples only) job tasking, date, time, track location, on-track and adjacent hazards, weather conditions, track access period, work zone, protections in place, roadway worker in charge responsible, roadway workers on-site, track equipment involved, and more.

#### 4. Follow-Up Briefings

**Comments:** One RTA and one vendor commented on the requirement for follow-up briefings as established in § 671.33(d). The RTA stressed that the requirement for a follow-up briefing if a "violation of on-track safety is observed" is unclear since the term is not defined. The RTA argued that this term may be inconsistently interpreted among personnel and agencies. The vendor suggested follow-up briefings be conducted in consideration with changing weather conditions, as weather conditions may change the type and severity of risks.

**FTA Response:** FTA disagrees with including a specific definition for "violation of on-track safety" in this rule. Violations will be directly related to the various RWP programs and procedures developed by each agency and are to be communicated during the job safety briefing. It will be up to the RTAs to determine, clearly communicate, and respond to violations of on-track safety. Violations may not be "consistent" from agency to agency

depending on the specifics of agency policies, but in general, RTAs should consider any deviations from the procedures set forth in the RWP manual or the job safety briefings to be violations of on-track safety.

FTA agrees that changes to weather conditions may present new hazards and, therefore, require a follow-up briefing. In response to this comment and to address the potential for changing conditions, such as weather, FTA has revised the language in § 671.33(d) to require a follow-up briefing in the event on-track safety conditions change and made a corresponding change to § 671.31(b)(1).

#### L. Section 671.35—Lone Worker

##### 1. General

**Comments:** FTA received comments from RTAs related to FTA's general approach for the protection of lone workers in the proposed rule. One RTA agreed that FTA's proposal that lone workers may not use individual rail transit vehicle detection as the only form of on-track safety is responsive to NTSB recommendations but noted that FTA's approach to protection for lone workers deviates from FRA's procedures, as specified in 49 CFR 214.337, On-Track Safety Procedures for Lone Workers, which allows the use of individual train detection to establish on-track safety as specified in the on-track safety program of the railroad.

The RTA also stated that an employee working under "foul time" is not considered a "lone worker," and added that the term and usage of "lone worker" in this rule is confusing "as FTA is utilizing FRA terminology but changing the requirements around the procedures." Another RTA commenter suggested FTA reference APTA's "Roadway Worker Program Requirements" standard which distinguishes performing "work" from "momentarily fouling a track."

**FTA Response:** FTA's analysis of safety events shows that individual rail transit vehicle detection has consistently failed to protect transit workers from collisions with rail transit vehicles dating back to 2008 when it was the only form of on-track safety. Safety recommendations from the NTSB, resulting from in-depth investigations into major RTA safety events, also emphasize the ineffectiveness of this as the only form of protection for transit workers. Therefore, FTA is finalizing, as proposed, the prohibition that no single transit worker, whatever their position or labor category, including lone workers, may be allowed on the

roadway with individual rail transit vehicle detection as their sole protection. FTA finds that the rail transit environment, with its frequent train movements in multiple directions on multiple tracks, and its numerous electrical and fall hazards, creates an enhanced safety risk for all categories of transit workers that necessitates additional protections in rail transit RWP programs that may not be necessary for other railroad operations. FTA does not agree with the commenter that using the term “lone worker” in this rule is confusing. FTA’s use of the term “lone worker” in this section means an individual roadway worker on the roadway alone who is not part of a roadway work group but who, at a minimum, is on the roadway with foul time or an SSOA-approved equivalent protection. FTA acknowledges this definition differs from FRA’s definition of “lone worker,” but believes that the distinction is necessary given the differences between rail transit systems and other rail systems.

FTA appreciates the commenter that suggested FTA reference APTA’s “Roadway Worker Program Requirements” standard, which distinguishes between individual transit workers momentarily fouling the track and lone workers performing work on the roadway, such as inspections or minor tasks. This important distinction is also included in FTA’s requirements. Provisions in § 671.35 apply to lone workers as a sub-classification of roadway workers, whose duties involve inspection, construction, maintenance, repairs, or providing on-track safety such as flag persons and watchpersons on or near the roadway or right-of-way or with the potential of fouling track. Transit workers, who are not roadway workers, and who must momentarily access the roadway, are also protected under the RWP program under § 671.23(b). Individual transit workers may only foul the track once they have received appropriate permissions and redundant protections, such as foul time, have been established as specified in the RWP manual. However, individual transit workers fouling the track momentarily are not considered roadway workers or lone workers and, therefore, are not subject to § 671.35 provisions.

## 2. On-Track Safety and Supervision

FTA received multiple comments related to FTA’s proposed requirements for the on-track safety and supervision of lone workers in § 671.35(a).

### a. Lone Worker Must Be Qualified as a Roadway Worker in Charge

*Comments:* One RTA commented that a requirement for all lone workers to be qualified as a roadway worker in charge may be excessive for tasks such as debris removal. Another RTA commenter also expressed confusion about the requirement that the lone worker be qualified as a roadway worker in charge. This RTA also expressed concern regarding an apparent contradiction between § 671.31(a)(4) provisions—which specify that a roadway worker in charge can only perform the function of maintaining on-track safety and perform no unrelated job function—and the provisions in § 671.35(a)(2), which allow a lone worker, qualified as a roadway worker in charge, to perform routine inspection and minor tasks, unrelated to on-track safety.

Another RTA asked if the requirement for a lone worker to be qualified as a roadway worker in charge requires RTAs to establish a training program certification specifically for lone workers.

*FTA Response:* As mentioned previously, transit workers who are not roadway workers and who must momentarily access the roadway to clear debris are protected under § 671.23(b) as transit workers, not § 671.35, as lone workers. FTA appreciates that there may be confusion about the interface between the requirements that the lone worker be qualified as a roadway worker in charge, that a roadway worker in charge can only perform the function of maintaining on-track safety and perform no unrelated job function, and that a lone worker, qualified as a roadway worker in charge, can perform routine inspection and minor tasks unrelated to on-track safety. The roadway worker in charge qualification for lone workers is primarily a training and certification requirement. FTA believes that it is crucial for a lone worker who routinely performs tasks alone on the roadway to maintain the roadway worker in charge qualification for safety reasons. The intent is to ensure that lone workers possess a comprehensive understanding of on-track safety procedures and responsibilities, equivalent to that of a roadway worker in charge. This level of knowledge is critical for their safety when working independently. FTA disagrees that there is a contradiction between § 671.31(a)(4) and § 671.35(a)(2), because these provisions apply to different scenarios. The restrictions in § 671.31(a)(4) apply to an active roadway worker in charge overseeing a work group, while

§ 671.35(a)(2) applies to lone workers who, while trained and qualified as roadway workers in charge, are not actively performing that role.

The regulation requires RTAs to establish a specific training program for lone workers. Lone workers should undergo the same roadway worker in charge training and certification process as those who will actively perform roadway worker in charge duties. This ensures a consistent, high level of safety knowledge across all workers who may find themselves working independently on or near tracks. However, RTAs may choose to develop dedicated training for lone workers beyond the minimum requirements specified by FTA.

### b. Lone Workers May Perform Limited Duties (§ 671.35(a)(2))

*Comments:* One RTA asked FTA to explain the difference between a lone worker conducting inspections or performing work versus a situation where a lone worker needs to momentarily access the track for less than one minute. As an example, the RTA noted that removal of debris is a common lone worker task in most RTAs with street-running portions of their alignment and asked if a train operator authorized to leave their train to remove a piece of debris from the tracks would be considered a lone worker for the purposes of FTA’s proposed rule. Another RTA asked FTA to reconsider § 671.35(a)(2) provisions that specify that a lone worker “may not use power tools.” This RTA explained that gas blowers, lawn mowers, and compressors are commonly used by roadway workers performing as lone workers at their agency. This RTA commenter further commented that the use of power tools by an otherwise qualified and approved lone worker should be left up to the RTA to evaluate in its risk assessment(s) of roadway conditions and/or of risk-based redundant protections pursuant to § 671.39 and should not be dictated by FTA. This commenter further noted that this section does not appear to consider the unique operating characteristics of a street-running streetcar or light rail system, which is wholly or partially responsible for routine grounds maintenance with gas-powered lawn maintenance tools.

An industry association commented a concern about the restriction on the types of duties a lone worker may perform while on duty because many of its members currently have programs in place that allow workers to conduct common tasks alone. The same industry association commented that very large and smaller RTAs have expressed that FTA’s proposals will disrupt operations

as these RTAs do not have the resources, manpower, or time to send out multiple workers for tasks that can be performed safely by one worker at a time. The commenter argued that this requirement would further strain already limited resources to the brink of materially impacting an RTA's ability to provide daily transit services. This industry association also noted that its "Roadway Worker Program Requirements" standard provides the flexibility to allow lone workers to conduct common tasks, abiding by agency standards.

One vendor recommended that lone worker duties include visual inspection, patrol, examination, or minor tasks and further requested clarity as to whether lone workers may use any tools, as they are disallowed under the definition of minor task.

One RTA commented that the proposed section § 671.35(a)(2), which allows a lone worker to only access locations defined in the track access guide as "appropriate," does not consider the dynamic nature of an RTA's system. This RTA argued that a location that may not be typically noisy or have reduced visibility could change on a day-to-day basis due to construction, environmental conditions, or other factors and, therefore, the RTA suggested removing this provision.

**FTA Response:** A train operator who momentarily must leave their vehicle to remove debris is a transit worker, not a roadway worker or a lone worker, because their duties do not involve inspection, construction, maintenance, repairs, or providing on-track safety. Under this final rule, other transit workers, such as train operators, may momentarily access the track to perform tasks such as debris removal or to throw a switch, so long as they comply with the provisions in § 671.23(b). Given that these transit workers, who are not roadway workers or lone workers, may rarely access the track, FTA expects RTA safety risk assessments and SSOA approvals to mitigate additional safety risk as appropriate.

FTA appreciates the challenges faced by transit systems that to date may not have developed and implemented robust RWP requirements for lone workers. Similarly, FTA understands that the new requirements may impact street-running systems differently than others with a dedicated right-of-way. The final rule prohibits lone workers from using power tools as they may impact noise levels and the worker's ability to maintain situational awareness, hear, and visually assess their surroundings at least every five seconds for approaching rail transit

vehicles. FTA appreciates the industry association commenter's concerns with restricting lone worker duties and the potential strain on RTA resources, particularly regarding the performance of routine maintenance or common tasks, as allowed in the APTA "Roadway Worker Program Requirements" standard. FTA declines to expand the types of tasks that lone workers may perform because FTA agrees with the NTSB that the rail transit industry's safety performance indicates that lone workers cannot safely perform a broader range of tasks than currently defined in FTA's requirements.

Lone workers may perform minor tasks and may also perform routine inspections and move from one location to another. Specific tasks to be performed by a lone worker, that qualify as minor tasks, will depend on the situation and the RTA's RWP program but may include activities such as inspections, measurements, taking pictures, observing train movements, establishing on-track safety, and emergency response.

FTA understands that additional information beyond the track access guide may be needed to determine if a location is safe for lone workers. FTA acknowledges that work conditions can change due to various factors and that these changes may not be reflected in either the track access guide or the initial job safety briefing. As part of the RWP program, therefore, FTA expects RTAs to encourage all workers, including lone workers, to assess their work environment before and during their tasks. If conditions change significantly, all transit workers, including lone workers, are empowered to initiate a good faith safety challenge when they deem it necessary.

### c. Lone Workers Require Redundant Protections

**Comments:** One RTA commented on § 671.35(a)(2) and § 671.35(a)(3), stating that these two provisions appear to be contradictory, and requested clarity. One RTA commented that redundant protections are unnecessary for lone workers in some instances because RTA provisions identified for these workers usually limit their time in the active right-of-way, and workers complete the work within that time.

One RTA recommended removing "lone workers" from "Required RWP Program Elements" as this denotes the ability to use individual rail transit vehicle detection, which is inconsistent with FRA requirements for lone workers. The RTA asked FTA for additional clarification to explain the

reasoning behind allowing lone workers when lone workers may not use individual train detection as the only form of on-track safety.

Finally, one RTA commenter recommended revising the text in § 671.35(a)(3) to use affirmative language for simplicity and to mirror other parts of the rule.

**FTA Response:** FTA notes that the provisions in § 671.35(a)(2) and § 671.35(a)(3) are not contradictory but complementary. While § 671.35(a)(2) outlines the types of tasks a lone worker may perform, § 671.35(a)(3) specifies the safety measures required to perform the tasks, notably the prohibition of the use of individual rail transit vehicle detection as the sole protection. FTA's intent is to ensure that lone workers can perform appropriate tasks while maintaining a high level of safety through redundant protections. FTA believes that redundant protections are crucial regardless of the duration of exposure and that even brief periods on or near tracks can pose significant risks. Redundant protections provide an additional layer of safety that is essential in dynamic and potentially hazardous environments such as the track zone. FTA disagrees with the recommendation to remove "lone workers" from "Required RWP Program Elements" and declines to remove the term from the rule. While FTA understands the comparison to FRA requirements, FTA's approach aims to ensure redundant protections for individual roadway workers who are not afforded on-track safety by another roadway worker and who FTA considers to be "lone workers." FTA does not agree that the use of individual rail transit vehicle detection should be the sole defining characteristic of the term "lone worker." On the use of alternate forms of RWP for lone workers in existing RTA systems, FTA commends RTAs that already utilize redundant forms of protection for lone workers, such as foul time, and agrees that these protections can be effectively integrated into rail transit operations.

FTA disagrees with the vendor's suggestion to revise § 671.35(a)(3) to use affirmative language because FTA believes the existing phrasing clearly expresses the prohibition on the use of individual rail transit vehicle detection as the only form of on-track safety.

### 3. Communication

**Comments:** FTA received comments from one vendor and multiple RTAs regarding proposed requirements for lone workers to communicate with supervisors and receive and document

job safety briefings prior to fouling the track in § 671.35(b).

One vendor expressed their expectation that the lone worker protocol would include a welfare check-in procedure reflective of the task duration (e.g., a one-hour activity would have a 20- to 30-minute check-in window), as well as a procedure to confirm the lone worker is clear of the tracks and a missed check-in would trigger an escalation or appropriate response.

An RTA provided comments related to how RTAs and lone workers may manage the job safety briefing requirements. First, the RTA asked FTA to consider if it is feasible to require lone workers to acknowledge job safety briefings in writing. To resolve potential issues, this commenter recommended allowing the controller in the Control Center to provide the briefing for the lone worker via an all-call over the radio, rather than a written job safety briefing. This RTA asked FTA to clarify what difference, if any, exists in the job safety briefing requirement for lone workers momentarily fouling the track and those conducting longer lasting work. This RTA noted that this approach is allowed in APTA's RWP standard and sought clarification if this approach would, in fact, meet the intention of FTA's proposed requirement. They also commented that it may be more appropriate to request foul time on some systems rather than require a lone worker job safety briefing for momentary track access.

Another RTA expressed their concern that this requirement would become a "check the box exercise" and provide no value in establishing on-track safety for the employee. This commenter recommended that FTA clarify how it intends for lone workers to "acknowledge and document the job safety briefing in writing," as described in § 671.35(b). This commenter also questioned the objective of a roadway worker acknowledging their own briefing to themselves.

*FTA Response:* FTA appreciates the vendor commenter who suggested using welfare check-in procedures reflective of task duration to protect lone workers. While FTA does not include this practice as a minimum requirement in its RWP rule, FTA encourages RTAs to implement robust safety protocols for lone workers, which could include regular check-ins.

FTA is finalizing as proposed the requirement for lone workers to acknowledge and document the job safety briefing in writing. Because FTA understands that in some cases this may be logistically challenging, FTA is

allowing RTAs the flexibility to determine how they will document the written acknowledgement. For example, RTAs may use forms, notebooks, logs, or other tools for lone workers to document their acknowledgment. Further, regarding the difference in briefing requirements for momentary track fouling versus longer work, FTA intends for the job safety briefing to be proportional to the task's complexity and duration. Finally, FTA agrees that, like APTA's RWP program requirements, job safety briefings for lone workers may be provided from the Control Center over the radio. However, these briefings must be communicated directly to the lone worker and must meet the requirements of § 671.33(b), including a discussion of their planned work activities and the procedures that they intend to use to establish on-track safety and must be acknowledged in writing by the lone worker.

In response to the commenter concerned that the requirement for a lone worker to receive and acknowledge a job safety briefing may become a "check the box exercise" with no value, FTA disagrees. The intent of this requirement is to ensure that lone workers have current, relevant safety information before entering the track. The purpose of the job safety briefing acknowledgment is to ensure that the worker has thoroughly considered all safety aspects of their task before accessing the track. The goal is meaningful communication that enhances safety.

#### *M. Section 671.37—Good Faith Safety Challenge*

*Comments:* FTA received comments from multiple labor organizations, multiple RTAs, and a vendor regarding § 671.27. The labor organizations expressed support for the regulation without advocating for specific changes. One noted that a basic principle of occupational health and safety law is for a worker to have the right to withdraw their labor if they have a reasonable belief of imminent danger to life or health. One of these commenters provided an example of the existing processes used by a local union and the RTA to resolve safety challenges efficiently.

One RTA recommended that the entire work party remain clear of the track until a concern is resolved, stating that the way the rule is currently written makes it appear that only the roadway worker who voiced the concern should remain clear of the tracks. One vendor commented that the existing provision seems to allow a challenge only prior to work commencing and recommended

including provisions for a safety work stoppage if work is already underway.

*FTA Response:* FTA agrees that the entire roadway work group must remain clear of the track zone—not just the worker that made the good faith safety challenge. FTA has revised the rule to clarify that the roadway work group must remain clear of the roadway or track zone until the challenge and refusal is resolved.

In response to the comment that recommends including provisions for a safety work stoppage if work is already underway, FTA notes that the final rule requires the RTA to document its procedures for the good faith safety challenge element of the RWP program. FTA expects RTAs to address safely stopping work within these procedures.

#### *N. Section 671.39—Risk-Based Redundant Protections*

##### *1. General*

*Comments:* Multiple RTAs, one industry association, one labor organization, and multiple vendors supplied general comments for the requirements presented in § 671.39 for redundant protections. Of the three RTA commenters, two asked for clarification on types of acceptable RWP-redundant protection measures with one of those suggesting that FTA provide guidance for the rail transit industry to ensure consistent implementation and compliance with FTA expectations. The third RTA asked if FTA intends to define "redundant protection." The industry association recommended the revision of language in § 671.39(a) to affirmatively state the RTA's responsibility for establishing redundant protections. A vendor recommended that FTA set forth minimum levels of protection similar to those in 49 CFR 214 subpart C, such as exclusive track occupancy, foul time, train coordination, inaccessible track, train approach warning, or definite train location.

Multiple vendors recommended that FTA and RTAs explore the ability of technology to protect workers and promoted the use of their technologies as redundant RWP protections for roadway workers.

The labor organization noted that redundancies should be leveraged to ensure roadway worker safety, including ongoing communication with dispatchers, shunts, blue flags, signage, and locked derails to indicate occupied tracks. The labor organization emphasized that labor representatives must have input in identifying necessary redundancies and protocols. The commenter praised proposed RTA



requirements on safety risk assessments but urged FTA to use this rulemaking as a “starting point” to establish more prescriptive standards in the future.

*FTA Response:* Section 671.39(d) includes a non-exhaustive list of redundant protections that RTAs and SSOAs may use. Through safety risk assessments, RTAs may identify other redundant protections suitable to their specific circumstances. FTA has defined redundant protection in the definition section of the rule at § 671.5, which states that redundant protections may be procedural, physical, or both. FTA will consider this topic for future guidance and technical assistance.

FTA agrees with the industry association commenter that recommended a revision to § 671.39(a)(2) to be consistent with § 671.39(a)(1) to state affirmatively the RTA’s responsibility for establishing redundant protections. FTA is revising the regulatory text to clarify FTA’s intent that it is the RTA’s responsibility to establish redundant protections to ensure on-track safety for multiple roadway work groups within a common work area.

FTA appreciates the commenter that recommended FTA set forth minimum levels of protection similar to FRA to ensure redundant protections encompass all roadway workers. While FTA has identified the need for protection beyond individual vehicle detection, FTA declines to prescribe the specific redundant protections required and instead has opted to offer RTAs flexibility to determine the protections that best fit their needs by assessing safety risk and establishing mitigations in the form of redundant protections for each category of work performed by roadway workers on the rail transit system.

FTA agrees with the labor organization’s statement that redundancies should be leveraged to ensure roadway worker safety and that labor representatives must have input in identifying necessary redundancies and protocols to keep roadway workers safe. FTA encourages the joint labor-management Safety Committee, as part of its statutory responsibilities, to identify RWP-related safety deficiencies and identify and recommend risk-based mitigations or strategies to address RWP hazards identified in the agency’s safety risk assessment.

## 2. Safety Risk Assessment

*Comments:* Multiple RTAs and one vendor commented on the requirement for RTAs to conduct a safety risk assessment to determine redundant protections in § 671.39(b). One RTA

acknowledged that the rule allows for flexibility in identifying redundant protections suitable for specific circumstances but commented that the variety of roadway worker activities would make it “difficult to establish a one-size-fits-all approach” to redundant protections. Another RTA asked if this requirement necessitates a stand-alone safety risk assessment document and if this requirement applied to an RTA with an existing RWP program in place.

One RTA comment focused on the frequency of safety risk assessments established in § 671.39(b)(3), stating that conducting these activities at least every two years would be challenging for small and mid-size RTAs to implement due to the complexity and technical nature of such an assessment. The RTA recommended that the frequency of this assessment should be driven by the RTA’s SRM and management of change processes in § 673.27(c).

FTA received comments on the ability of the SSOA to identify and require alternate redundant RWP protections for an RTA in § 671.39(b)(4). A vendor recommended striking the word “require” from this section, suggesting that the SSOA should only require redundant protections if established by regulation or a corrective action plan, highlighting their awareness of past tensions when SSOAs have required program elements that are not achievable when evaluated by the RTA, while an RTA noted that SSOA program standards require roadway workers to comply with RTA procedures. Similarly, one RTA alleged that § 671.39(b)(4) is a stark departure from the existing RTA/SSOA relationship under part 674 and that decisions on RWP protections should be left with the RTA, not the SSOA.

*FTA Response:* FTA agrees that the variety of roadway worker activities would make it “difficult to establish a one-size-fits-all approach” to redundant protections which is why this final rule offers RTAs flexibility, not a one-size-fits-all approach, to determine the protections that best fit their needs by assessing safety risk and establishing mitigations in the form of redundant protections for each category of work performed by roadway workers on the rail transit system.

An RTA’s existing safety risk assessment process is specified in the ASP required by the PTASP regulation at § 673.25(c). RTAs will use this process to assess safety risk and identify mitigations including redundant protections. This final rule does not require a separate document so long as the risk assessment identifies the specific safety risk mitigations or

strategies necessary to address RWP risks and otherwise complies with the requirements of this rule. RTAs may use existing RWP programs and safety risk assessments as long as they meet all the requirements of this final rule, including the requirement to employ safety risk assessment processes to determine redundant protections.

FTA intends for RTAs to use the review and update requirement to ensure that the safety risk assessment reflects current conditions, lessons learned from safety events, actions the RTA has taken to address reports of unsafe acts and conditions and near-misses, and the results of the agency’s monitoring of redundant protection effectiveness. As the commenter noted, RTAs are expected to have processes for regular safety risk assessments, as well as management of change and continuous improvement activities through their ASPs, pursuant to part 673. FTA believes requiring the safety risk assessment to be reviewed and updated every two years is reasonable and necessary to account for new information, including reports of unsafe acts and conditions and near-misses. Safety information can change greatly in a two-year span and should be reassessed to ensure agencies are not relying on outdated information. FTA notes that review findings may indicate no changes are required.

FTA declines to amend the regulation to remove the authority of the SSOA to require alternative redundant protections. FTA notes that this requirement is reflective of the SSOA’s primary safety oversight responsibility for RTAs and is intended to allow for varying solutions based on the RTA’s unique operating characteristics and capabilities in case the redundant protections identified by an RTA’s safety risk assessment prove ineffective or inappropriate. Whenever possible, FTA encourages SSOAs and RTAs to work together to identify suitable redundant protections. Regarding current SSOA program standards, FTA reminds the commenter that this final rule requires the SSOA to update its program standard to explain the role of the SSOA in overseeing the RTA’s execution of its RWP program. FTA disagrees that § 671.39(b)(4) is a stark departure from the current role of the SSOA, as identifying and requiring alternate redundant protections where needed falls within the oversight purview of the SSOA to ensure the RTA’s safety program. However, FTA reiterates that RTAs have the responsibility to identify and provide redundant protections in the first instance.

### 3. Types of Redundant Protections

*Comments:* Multiple RTAs, multiple vendors, and the NTSB provided comments on the types of redundant protections presented in § 671.39(d). One RTA asked if there was a minimum number of protections that needed to be established to comply with the rule, while another RTA asked whether having a dedicated flagger served as a type of redundant protection. One vendor suggested FTA clarify that the use of walkways in tunnels and on elevated structures referenced in § 671.39(d)(2)(xi) as types of redundant protections do not include walkways deemed part of a track zone.

Another vendor commented that FTA does not appear to enumerate “core” or primary protections, only risked-based redundant protections. The commenter stated many of the protections listed in § 671.39(d)(2) are types of primary protections, though some may be considered redundant protections, and referenced 49 CFR 214 subpart C for a list of primary on-track safety protections. This commenter noted that, in their experience, shunts, physical barriers, warning devices, blocks in the dispatch system, and speed restrictions are types of redundant protections.

The NTSB urged FTA to prohibit rail transit vehicle approach warning without the use of a physical redundant protection, such as positive train control, secondary warning devices, or shunting.

*FTA Response:* The final rule establishes that there must always be at least two protections and, beyond that, the number of protections will depend on the work environment and the results of the RTA’s safety risk assessment. FTA affirms that a dedicated flagger is considered a form of redundant protection. FTA disagrees with the commenter that suggested FTA clarify that walkways in tunnels and on elevated structures referenced as redundant protections in § 671.39(d)(2)(xi) are not deemed part of a track zone. FTA notes the final rule defines track zone in § 671.5 and believes additional restatement is unnecessary.

Section 671.39(d) identifies a non-exhaustive list of redundant protections. For clarity, FTA is revising § 671.39(d) to clarify that redundant protections may include but are not limited to the listed protections. FTA declines to identify any of these protections as “core” protections, due to the varying operating environments of transit systems. It is FTA’s belief that RTAs should have options to determine which protections are most appropriate for

their system and circumstance, on a case-by-case basis, based on their safety risk assessment. This final rule allows RTAs flexibility regarding protections as long as individual rail transit vehicle detection is not the sole form of protection for workers on the roadway.

In response to the NTSB urging FTA to prohibit rail transit vehicle approach warning without the use of a physical redundant protection, such as positive train control, secondary warning devices, or shunting, FTA maintains that, in some circumstances, it may be necessary for RTAs to use procedural redundant protections rather than physical. FTA encourages the use of the strongest available forms of protection and multiple forms of protection when feasible.

#### *O. Section 671.41—RWP Training and Qualification Program*

##### 1. General

*Comments:* FTA received comments from the NTSB, five RTAs, two industry associations, two vendors, one SSOA, and one individual regarding the requirement for RTAs to adopt an RWP training program in § 671.41(a). The NTSB and one individual recommended that FTA require annual refresher training instead of biennial to be consistent with FRA requirements. One industry association supported the idea of more agency-specific refresher training to address the nuances of the varied operations of transit properties.

One RTA and one industry association suggested that FTA revise the requirement to review and update the RWP training program at least every two years to allow RTAs to attest that no changes are needed. Conversely, one RTA commenter suggested FTA require an annual review of training programs. The RTA also suggested FTA mirror FRA requirements in 49 CFR part 243 related to training programs and training program components. Another RTA commenter asked whether SSOAs will be required to review RWP training program updates.

One RTA commenter asked if all RTA employees and contractors are required to complete the same level of training or if it is only intended for employees who must be RWP qualified. The commenter also recommended that FTA follow APTA standards to set different levels of training based on a position’s level of responsibility. Another RTA questioned FTA’s inclusion of operations control center personnel as a work category that must be addressed by the RWP training program. The commenter suggested that operations control center personnel, rail transit vehicle operators, and other

transit workers should not be required to undergo full RWP training and instead should receive targeted training on their specific RWP responsibilities. The commenter added that this focused training will ensure all personnel are adequately prepared without necessitating comprehensive RWP training for roles that do not directly involve roadway work. In addition, the commenter noted that the training requirement for these workers is overly burdensome on the RTA and the workers and provides little benefit to workers who are not actively engaged daily in roadway work. The RTA commenter further noted that industry best practice calls for ensuring that personnel have the knowledge, skills, and abilities to perform their tasks, not the knowledge, skills, and abilities of those with whom they interact. However, a different RTA stated that existing SSOA program standards require all roadway workers to comply with the RTA’s RWP policies and procedures in relation to RWP training and qualifications.

One industry association commenter suggested that RTAs could benefit from the time and cost savings of a practice whereby contractor workers apply a previously completed generic but compliant RWP training with abbreviated on-track safety training to understand that particular railroad’s specific safety rules and procedures.

One vendor commenter recommended that FTA require RWP training to be conducted in the languages that trainees use most fluently. The commenter added that language barriers present a significant risk to transit or roadway workers in understanding the safety briefing and the on-track safety being afforded.

One RTA commenter stated that it does not appear that the rule aligns with current training programs, which allow shadowing as a form of on-the-job training and exposure under the oversight of a qualified transit worker.

One SSOA commenter asked if there is an official means of roadway worker designation and whether a flag person must receive any required training or certification. One vendor commenter suggested that FTA consider including mentorship along with the training, qualifications, and supervision required for transit workers to access the track zone. The commenter noted that mentorship will ensure that new employees have adequate on-track experience as assessed by a senior employee mentor.

*FTA Response:* While FTA seeks as much consistency as possible with FRA requirements, and recognizes the

benefits of more frequent refresher training, FTA also must consider the potential burdens on the rail transit industry regarding additional refresher training. FTA finds that biennial refresher training strikes an appropriate balance between safety and operational flexibility. In addition, given the other provisions in the rule to monitor implementation of the RWP program, ensure its effectiveness, and take corrective action to address deficiencies, FTA is confident that there are sufficient opportunities for an RTA to identify if it must move beyond the rule's minimum requirements to adopt more frequent refresher training to ensure effective implementation of its RWP program. FTA also notes that a biennial refresher provides time for the RWP training program to identify and address lessons learned through the results of compliance testing, near-miss reports, reports of unsafe acts or conditions, and feedback received on the training program, per § 671.41(a)(3). FTA agrees that agency-specific training is valuable. The current rule allows RTAs to tailor their training programs to address the nuances of their specific operations while meeting the minimum requirements set forth in the regulation.

FTA agrees with the RTA and industry association that there may be instances where, after a two-year period, no changes are required to the RTA's RWP training program. However, FTA believes that a regular review of the RWP training program is essential to ensure its continued effectiveness. The rule's biennial review requirement allows RTAs to make necessary updates or confirm that the existing program remains appropriate.

FTA confirms that SSOAs have oversight responsibility for the review and approval of RWP training programs and subsequent updates. Per § 671.25, the RTA's RWP training program is included as part of its RWP manual and program elements, and the final rule requires that SSOAs review and approve the RWP manual and program elements, and any subsequent updates, for each RTA within its jurisdiction.

In terms of which positions must be trained, FTA clarifies that the rule requires RTAs to develop appropriate training for all transit workers responsible for on-track safety, by position, including roadway workers, operations control center personnel, rail transit vehicle operators, operators of on-track equipment and roadway maintenance machines, and any others with a role in providing on-track safety or fouling a track for the performance of work, including contractors. Further, in response to this commenter's question

about use of APTA standards, while FTA's rule does not explicitly follow APTA standards, FTA encourages RTAs to use industry best practices to inform their training program development as appropriate.

FTA clarifies that the regulation requires that all transit workers, which by definition includes contractors working on behalf of the RTA or SSOA, with a responsibility for roadway worker safety, receive appropriate RWP training, by position. The level and content of training can be tailored to specific roles and responsibilities within the RTA's program. Training may be focused exclusively on the RWP responsibilities of a given position, and it may also include additional RWP training regarding the responsibilities of other roles or how other RWP program elements may work. FTA agrees with the commenter that noted SSOA program standards may have additional requirements related to RWP training and qualification.

In response to the industry association suggesting time- and cost-saving options for contractor training, FTA notes that RTAs have the flexibility to recognize prior training and provide abbreviated supplemental training on agency-specific rules and procedures, as long as all required elements of the RWP training program are covered. In terms of training in workers' most fluent languages, FTA agrees that effective communication is crucial for safety. RTAs should ensure that their training programs and on-track safety briefings are conducted in a manner that all workers can understand, which may include addressing language barriers.

FTA's rule does not preclude the use of on-the-job training or shadowing as part of a comprehensive RWP training program, provided it meets the requirements outlined in the regulation. FTA recognizes the benefits of such practices and encourages them when the RTA determines them necessary and effective.

In response to the SSOA commenter asking about roadway worker designation and flag person training, FTA clarifies that RTAs are responsible for designating roadway workers and ensuring all personnel, including flag persons, receive appropriate training and qualification for their roles as part of the RWP program. FTA agrees with the commenter who indicated that mentorship can be a valuable component of a comprehensive RWP training program. While not explicitly required, RTAs are encouraged to incorporate mentorship into their training and qualification processes.

## 2. Required Elements and Minimum Contents

*Comments:* There were comments from one SSOA, five RTAs, and two vendors related to required RWP training program elements and content as outlined in § 671.41(b) and (c). Out of concern for logistical challenges for track access and operations, one RTA requested clarification on what a "representative field setting" involves. They explained that an urban setting may be difficult to mirror in a safe training environment and suggested the regulation follow APTA standards regarding training levels and position responsibilities. One RTA stated that the training requirements in the rule as presented, which require practice exercises and demonstrations, are unattainable for some RTAs based on agency structure or characteristics, such as a street-running operating system and environment.

Two RTAs asked about computer-based refresher training, pointing out that the rule requires refresher training to include "demonstrations and assessments." One asked if an online format would still be permitted for RWP refresher training and if the test following the online class would satisfy this "demonstrations and assessments" requirement. One RTA communicated that they are developing a computer-based refresher training course, compliant with SSOA standards, which roadway workers will be required to complete every three years. The RTA sought clarification as to whether this type of training is acceptable or if in-person training is required.

Several commenters suggested additions to required RWP training elements and minimum contents. One vendor recommended adding pre- and post-training assessments to determine comprehension as an RWP training element. Recommendations for additional RWP minimum training elements included primary protections as well as scenario-based training with relevant examples, for example, review of near-misses, violations, and safety critical communication protocols.

An SSOA advocated that the current RWP manual be supplied to all workers governed by the RWP program as a training element. An RTA suggested this rule language mirror language in 49 CFR 243.101(d) and 243.103(a)(3) to support the inclusion of interactive and field demonstration training for the initial and refresher RWP trainings. Finally, an RTA asked if the contents proposed in § 671.41(c) are still required as part of the RWP training and program if these

minimum contents are not applicable to the RTA.

*FTA Response:* FTA acknowledges the challenges in replicating urban settings for training. The intent of FTA's requirement that initial training include experience in a "representative field setting" is to provide practical experience in environments similar to actual work conditions. FTA believes this is attainable for RTAs, as the rule provides flexibility for how to conduct this training. For example, agencies may use simulations or controlled environments that reasonably approximate field conditions to satisfy the requirement. FTA emphasizes that training is critical to ensure workers have tangible experience to conduct potentially high-risk work. FTA has declined to adopt APTA's training standards or FRA's training requirements because FTA believes the standards outlined in the final rule are necessary to ensure sufficient RWP training. However, FTA did consider APTA standards, along with common industry practice, NTSB recommendations, and FRA standards in the development of the minimum training program elements. FTA's minimum contents for RWP training include aspects of these standards, as well as other necessary training components, including how to interpret and use the RTA's RWP manual, and how to apply the rules and procedures for redundant protections identified under § 671.37 of this rule, and the requirement that both initial and refresher training include demonstrations and assessments.

FTA recognizes the range and diversity of RTA operations, and agencies should adapt training to their specific operating environments while meeting the requirements of FTA's regulation. FTA encourages agencies with unique challenges to consult with their SSOA for guidance on implementing effective training within their constraints. Industry associations and peer RTAs also may provide useful examples and support in addressing FTA's requirements. FTA will also provide technical assistance on RWP training expectations.

The final rule permits online refresher training, provided it includes interactive training with the opportunity to ask the RWP trainer questions and raise and discuss RWP issues and demonstrations and assessments to ensure the ability to comply with RWP instructions given by transit workers performing, or responsible for, on-track safety and RWP functions. For example, the "demonstrations and assessments" requirement can be satisfied through

well-designed virtual simulations and knowledge checks overseen by RWP trainers.

FTA appreciates the suggestions for additional specific training elements. FTA has opted not to add additional specific training elements, as the current list was developed to apply to RTAs of varying sizes and complexity. While FTA has not explicitly added these recommendations to the rule text, FTA encourages agencies to consider incorporating these elements into their training programs as appropriate for their operations. This includes pre- and post-assessments to determine comprehension for an RWP training element, additional training focused on primary protections, scenario-based training, safety-critical communication protocols, and providing current RWP manuals to workers as part of RWP training. FTA notes that the final rule requires that the RWP manual be distributed to all transit workers who access the roadway and the training program address how to interpret and use the RWP manual.

The minimum contents for RWP training listed in § 671.41(c) are intended to be comprehensive; however, if certain elements are not applicable to an agency's operations, they may omit those specific items after documenting the rationale in their training program. FTA has added "as applicable" to § 671.41(c) for clarity. FTA recommends that RTAs consult with their SSOA to ensure their training program adequately covers all relevant safety aspects and encourages all agencies to work closely with their SSOAs in developing and implementing RWP training programs that meet the rule's requirements while addressing their specific operational needs and constraints.

### 3. Training Personnel Qualifications

*Comments:* Three RTAs and one individual commented on the required qualifications of RWP training personnel outlined in § 671.41(e). The individual recommended that all instructors should have sufficient experience in the operating environment and have spent time on the tracks. One RTA asked for clarification on what "qualified" means for trainers, and if it may differ based on the type of trainee. Another RTA commented that the requirement of the RWP training instructors to have an active RWP certification at the RTA does not directly translate to an instructor/facilitator's ability to provide effective training and suggested FTA adopt a definition for "designated instructor," similar to FRA. The third RTA

recommended that FTA require each RTA develop their staff based on the RTAs' right-of-way, special circumstances, and anomalies.

*FTA Response:* FTA agrees that instructor experience is crucial and, as such, explicitly requires, per § 671.41(e), that each RTA must ensure that transit workers delivering RWP training are qualified and possess an active RWP certification at the RTA for which they are providing the training.

FTA has defined "qualified" in § 671.5 to mean "a status attained by a roadway worker or other transit worker who has successfully completed required training (including refresher training) for, has demonstrated proficiency in, and is authorized by the RTA to perform the duties of a particular position or function." Specifically for an RWP trainer, FTA expects these individuals to have the knowledge, skills, and abilities to effectively train others in the RTA's RWP program, including, in keeping with § 671.41(b), the ability to answer RWP questions from trainees, discuss RWP issues with trainees, oversee the trainee's experience in a representative field setting, and conduct demonstrations and assessments of trainees to ensure their ability to comply with RWP instructions given by transit workers performing, or responsible for, on-track safety and RWP functions.

FTA agrees with the RTA commenter that, while active RWP certification demonstrates current knowledge of the RTA's program, effective instruction requires additional skills. As specified in § 671.41(e), RTAs must consider both technical knowledge and instructional experience and ability when selecting trainers. While FTA is not adopting the FRA's "designated instructor" definition, RTAs may reference it when developing their own criteria for selecting RWP trainers, so long as the selected trainer also meets the rule's RWP qualification and experience requirements.

FTA agrees with the importance of RTA-specific training development. RTAs should tailor their training programs and instructor qualifications to address their specific right-of-way characteristics, operational circumstances, and unique challenges.

### P. Section 671.43—RWP Compliance Monitoring Program

#### 1. General

*Comments:* An industry association suggested that FTA remove the requirement for an RWP compliance monitoring plan, arguing that FTA's approach is duplicative of existing RTA

efforts, and FTA did not explain why more monitoring is necessary.

One vendor recommended that FTA monitor the effectiveness of RTAs' RWP programs using a similar committee process to the General Code of Operating Rules (GCOR), Northeast Operating Rules Advisory Committee (NORAC), and other railroad operating rules and recommended this process would facilitate the RTAs' ability to share knowledge and lessons learned in their RWP program development.

**FTA Response:** FTA disagrees that the RWP compliance monitoring program is duplicative of existing RTA efforts across the board and declines to remove it from the rule. Rather than being duplicative, the requirement for compliance monitoring is consistent with and works in concert with Safety Assurance principles for safety performance monitoring and measurement required by the PTASP regulation. The additional monitoring required by this rule is intended to ensure RWP practices are uniformly and effectively implemented and will help ensure early identification of safety issues and ensure that the safeguards that are in place are effective.

FTA declines to stand up a Federal committee to serve as a monitoring body for RWP compliance nationwide, as recommended by a commenter, because Congress has delegated direct safety oversight of RTAs to SSOAs (49 U.S.C. 5329(e)(3)(A)). If FTA identifies nationwide trends or isolated concerns regarding RWP compliance, FTA will intervene as necessary and appropriate.

## 2. Required Elements

**Comments:** FTA received comments from RTAs and the NTSB on the required elements for the RWP compliance monitoring program.

One RTA sought clarity on the requirement that the RWP compliance monitoring program includes audits. Another RTA requested that FTA clarify its expectations for the differences between inspections, observations, and audits as elements of the RWP compliance program. Another RTA commented that FTA should require RWP compliance reviews be completed by rail agencies as part of existing agency Safety Assurance and SRM processes, such as the RTA internal safety review process.

The NTSB recommended that FTA require compliance inspections to be unannounced to enable more efficient inspections.

**FTA Response:** Audits are a methodology used regularly by RTAs in their Safety Assurance activities to examine and verify compliance with

safety procedures, practices, plans, and programs. The RTA is responsible for developing and implementing compliance-monitoring activities that work for the agency to uncover and provide information on any deficiencies in the RWP program. FTA notes that all RTAs have already established a process to assess safety performance per § 673.27(d) and may use similar practices to conduct an audit of the RWP program, including how the audit is performed and the selection of the auditor performing the audit. This type of audit can verify whether or not the RWP program has any deficiencies, continues to comply with the regulation, and is achieving its objectives. In general, audits tend to examine the functionality of a department or unit and may include tasks such as inspections and observations to support the full audit activity. Generally speaking, an inspection is the review of a specific practice or item to carefully check the quality of how the practice is carried out or the condition of the item to ensure standards are met accordingly. In general, an observation is the shadowing of work by an informed manager, supervisor, or other knowledgeable individual, to identify and promptly address unsafe acts or conditions to prevent issues, injuries, or safety events. These types of monitoring activities may be used individually or together in the monitoring program. FTA agrees with the comment that RWP compliance monitoring executed by the RTA will fit within the constructs of the agency's SMS, particularly in Safety Assurance and SRM. Safety Assurance and compliance monitoring practices should be well-established at most RTAs; some agencies may need to add RWP compliance as an element for continued monitoring.

FTA notes that § 674.37 and 49 U.S.C. 5329(k) support an SSOA's use of unannounced inspections as part of the safety oversight of the RTAs. FTA declines to require unannounced inspections as part of the RWP compliance monitoring program to allow for discretion for RTAs to adopt a program for monitoring their compliance that accounts for available resources and operational demands. While FTA is not requiring RTAs to implement unannounced inspections as monitoring activities, FTA encourages RTAs to implement such inspections to capture true day-to-day conditions when effective and beneficial.

## 3. Briefing to Accountable Executive and Board of Directors

**Comments:** One RTA remarked that the requirement to provide an annual briefing to the Accountable Executive and also to the Board of Directors seems excessive and recommended that FTA allow RTAs to provide annual briefings only to the Accountable Executive. Another RTA remarked that the briefing requirements are unnecessary as this type of reporting is already incorporated into the review and update of the ASP and the delivery of internal safety reviews. The commenter went on to state that they believe the annual briefing requirement would add little value given all other types of reporting and data collection that already exist. Conversely, an SSOA supported the briefing requirement and recommended that FTA require the Chief Safety Officer and Accountable Executive provide the briefing to the Board of Directors.

**FTA Response:** FTA disagrees with the commenter that expressed concern that briefing the Board of Directors in addition to the Accountable Executive may be excessive or redundant. This requirement is consistent with § 673.11(a)(1), which requires that the ASP be approved by the Board of Directors. Because the RWP program is part of the ASP, FTA believes there is value in briefing the Board of Directors, or equivalent entity, on the performance of the RWP program so that the Board of Directors is continually informed about the workers exposed to some of the highest levels of safety risk in the RTA, the effectiveness of the practices in place to protect them, and any concerning trends that may require mitigation and/or dedicated resources to make safety improvements. The Board's involvement brings the power of high-level decision-making and action, if necessary, to a discipline and work environment where safety is paramount.

The final rule does not prescribe how the briefing is conducted at each RTA, but FTA encourages RTAs to have knowledgeable and informed personnel present this information to the Board of Directors, which may include the Chief Safety Officer, the Accountable Executive, and/or other subject matter experts.

## 4. Frequency of Reports to SSOA

**Comments:** Several RTAs, one SSOA, two industry associations, and one vendor submitted comments regarding the requirement for RTAs to provide monthly reports to the SSOA documenting its compliance with and sufficiency of its RWP program in § 671.43(b)(1). One SSOA recommended

that FTA eliminate the requirement and suggested that, instead, RTAs should assess the RWP program compliance and sufficiency on an ongoing basis, such as monthly, and submit documentation to the SSOA on an annual basis. The SSOA recommended this approach, noting that the internal safety review process is an existing RTA compliance monitoring process that could be expanded to include an annual review of RWP rather than creating a new compliance monitoring requirement. Two industry associations and one RTA also commented on the reporting requirement, stating that the monthly reporting would be overly burdensome to both generate and review and would likely hamper the functioning of the RWP program. Similar to the SSOA's comment, these commenters recommended leveraging existing related reporting requirements for RWP compliance reports on an annual basis. These commenters further noted that many SSO agencies and RTAs engage in quarterly reporting and that using these processes at already established reporting frequencies would be appropriate and more efficient.

One commenter stated that a one-size-fits-all regulation is burdensome for inclined plane systems and would require an unreasonable amount of reporting. Another RTA suggested that FTA consider reconciling the requirements under part 671 with part 673 and 674 and stated that the monthly reports are redundant as SSOAs will already have adequate data from rule compliance programs, including RWP compliance, due to the risk-based inspections and pre-existing data collection and sharing provisions.

One RTA and an industry association also stated that it is unclear how SSOAs are meant to use the various reports they receive from RTAs. The commenters suggested revising the language to require reports to SSOAs upon request.

One RTA requested clarification on what kind of content an RTA would be required to provide as part of the monthly reports, and another RTA requested clarity on who would be responsible for submitting the reports to the SSOA.

**FTA Response:** FTA appreciates the comments received on the proposed monthly RWP compliance monitoring reports to the SSOA and the various viewpoints that were presented. FTA agrees with commenters that argued monthly reporting may be too burdensome and has revised § 671.43(b)(1) as recommended by commenters to require quarterly reporting to the SSOA instead of monthly reporting. FTA believes that

quarterly reporting will be sufficient to ensure SSOAs are regularly informed of RWP program performance and notes that the sharing of this quarterly report with the SSOA may be done through established communication avenues such as email, meetings, presentations, etc. as determined by the SSOA and RTA. These reports will help the SSOA identify deficiencies in the RTA's RWP program and ensure that the program complies with all requirements and is sufficient for the RTA's operating characteristics and environment.

However, FTA declines to remove the reporting requirement altogether. FTA disagrees with the commenter that asserted RWP compliance reports are redundant with activities currently in place, because FTA has not previously required RTAs to develop an RWP program nor share RWP compliance information with SSOAs. In addition, RWP compliance is not specifically spelled out in risk-based inspection requirements. This final rule establishes consistent requirements for RTAs to share RWP compliance and performance information with their SSOAs.

With respect to the request for clarification on the content of RWP compliance monitoring reports required at § 671.43(b)(1), FTA defers to the RTA and SSOA to determine the content and how they will resolve disagreement on content. FTA recommends that RTAs refer to § 671.25(c)(2)(i) as a reference and consider including the following: RWP safety events; compliance monitoring results and findings; monthly performance measures and targets; related CAPs; program or manual updates; good faith safety challenges issued; and RWP initial and refresher training conducted. FTA defers to the RTA to determine who within the agency will be responsible for submitting the quarterly reports to the SSOA.

#### *Q. Section 671.51—Recordkeeping*

**Comments:** FTA received one comment from an RTA asking for clarification on whether recordkeeping practices outlined in § 671.51 included maintaining job safety briefings or job hazard assessments. An SSOA recommended that FTA consider requirements for RTA record retention in order to allow SSOAs to adequately perform consistent auditing responsibilities.

Regarding job safety briefing document retention, an SSOA recommended job safety briefing documentation be retained for a minimum of two years, while an individual noted that there is currently no requirement for how long job safety

briefing documents must be kept, noting that it is essential to have job safety briefings available for investigations.

**FTA Response:** The final rule finalizes, as proposed, the requirement that records and documents of the RTAs' compliance with the rule's requirements must be retained for a minimum of three years. This includes documents such as safety risk assessments, job safety briefings, and job safety briefing attestations. Retention of these records and documents will support SSOAs in performing audits and oversight activities and will serve as a library of RWP documentation for the RTA to reference as needed.

#### *R. Benefits and Costs*

**Comments:** Four RTAs, one industry association, and one labor organization commented on FTA's analytical approach to the benefit and cost analysis for the proposed RWP rule, addressing overall costs and impacts, the analytical option FTA selected, and the hours FTA estimated for specific activities.

An RTA expressed concern that implementing a Federal baseline RWP program could impose significant financial and operational burdens, especially on smaller agencies. This RTA noted that the costs involved in establishing and implementing redundant protections, conducting comprehensive safety risk assessments, and complying with training and equipment requirements could be substantial.

The industry association reported that many of its members find Option 1, which FTA chose for the proposed RWP rule, excessively burdensome, particularly for smaller systems. They alleged that FTA did not provide a rationale for treating all rail transit modes equally, regardless of the varying risks to workers. The association argued that instead of selecting an option balancing costs and benefits, FTA should have considered the least costly approach: incorporating the APTA RWP Standard by reference, as it represents industry consensus. They suggested that FTA could then analyze and require any additional necessary measures based on specific risks.

An industry association and an RTA challenged FTA's estimate that developing and implementing an RWP program would require 96 hours of labor. To illustrate their point, the industry association stated that the daily process of completing and acknowledging a form before each job safety briefing would alone consume thousands of labor hours annually. The RTA asserted that developing and

standing up a comprehensive RWP program would require an agency to invest several hundred man-hours. Further, the proposed requirement to revise and reissue the manual every two years would require substantial resources from multiple departments (if not additional contracted resources) on an ongoing basis and is not a one-time cost.

A labor organization commented on FTA's decision to select Option 1 over Option 3. The organization highlighted that Option 3 could potentially save one additional roadway worker life approximately every four years, and it could prevent three additional serious roadway worker injuries every two years. The labor organization also pointed out that while FTA estimated Option 3 would cost over 50% more than the chosen Option 1, it would prevent 63% more serious injuries and prevent 20% more fatalities. The RTA asserted that this comparison emphasizes the potential safety benefits of the standards-based approach despite its higher estimated cost. The commenter raised concern that the rule as proposed is not a sufficient substitute for "true RWP standards."

A small RTA commented that the proposed rule fails to recognize the significant resource limitations of smaller transit systems and the additional cost burdens recently required to implement new PTASP requirements.

Another RTA requested that FTA provide the data on which FTA's cost estimations are based so that RTAs can assess realistic cost impacts. This commenter noted that some estimates seemed unrealistic.

An RTA asserted that FTA's cost estimates do not account for downstream effects of the requirements, including to terminology, procedures and processes, roles and responsibilities, and equipment and safety devices. The RTA asserted that it would expect to need to assess and replace signage on the roadway; to assess, purchase, and develop procedures for new safety equipment; to review and update contractual language to align with new RWP requirements; to evaluate and potentially revise CBAs due to changes in affiliated employees' job responsibilities; to complete a full review and revision of roadway access request, planning, and documentation processes and systems; and to revise forms and documentation used for job briefings and other RWP-related processes. The RTA asserted that the development of initial and recurring RWP program training would take far greater than 120 total hours to develop,

commenting that one hour of training typically requires 30 or more hours of development. Further, the RTA commented that RWP trainings would have to be updated regularly, based on the requirement to update the RWP manual every two years.

An RTA commented that the potential of additional costs to RTAs of providing alternative credentials to meet the display requirement in § 671.21(b)(2) should be reflected in Table 3 of Regulatory Analyses and Notices as an initial and ongoing cost for the RTA.

A vendor commented that it appears that FTA assumed the highest possible implementation and maintenance costs for physically redundant protections and did not consider the wide range of costs (low to high) of commercially available technology solutions from multiple vendors.

**FTA Response:** In response to comments, FTA reviewed and revised the labor hour estimates as detailed in Section IV, "Regulatory Analyses and Notices" and summarized in this section. The updated costs and net benefits reflect the revised estimates.

For establishing an RWP program, FTA increased the initial estimated labor hours from 96 hours to 300 hours, reflecting one commenter's estimate of several hundred hours to establish a program as well as comments highlighting various administrative aspects of establishing the program. For initial development of trainings, FTA used a commenter's estimate of 30 hours of development per hour of training for roadway workers, lone roadway workers, and all employees. To account for labor costs associated with updating the RWP manual, associated trainings, and documentation every two years, FTA added an estimated annual average of 10 hours for manual updates and 20 hours for training updates. Finally, for giving written acknowledgment, FTA added an estimated annual average of 8.7 hours per frontline employee at agencies not already known to require written acknowledgments.

Although RTAs may incur additional costs related to the purchase of equipment or other physical protection, FTA assumes that agencies largely have the necessary equipment in place to comply with current requirements, as the rule provides flexibility with regard to the implementation of physical or procedural protections. FTA did not include additional labor hours for providing alternative credentials because requiring some form of identification is common practice among RTAs. The final rule does not specify the kinds of credentials

required, but rather requires only that the credentials be visible.

As described in "Baseline and Analytical Approach," FTA used occupational wage data from the Bureau of Labor Statistics as the primary data source for its cost estimates, in addition to the labor hour estimates updated with information from commenters. To reflect recent increases in labor costs, FTA updated its calculations to use May 2023 occupational wage data, the latest available as of August 2024.

Finally, FTA selected the requirements of the final rule based on multiple considerations, as described in "Regulatory Alternatives." Any estimated differences in prevented fatalities and injuries among the options analyzed should be interpreted with caution: the relative benefits of the options are sensitive to small differences in the expected number of prevented accidents, as shown in the sensitivity analysis. Although the final rule increases safety compliance costs for RTAs, FTA has taken several steps to reduce the burden while addressing roadway worker safety. The final rule provides agencies with a maximum of one year to develop an SSOA-approved RWP program.

### III. Section-by-Section Analysis

#### Subpart A—General

##### 671.1—Purpose and Applicability

This section sets forth the applicability of the RWP regulation. The regulation applies to any RTA that receives Federal financial assistance under 49 U.S.C. chapter 53 and all SSOAs that oversee the safety of rail fixed guideway public transportation systems. The final rule does not apply to rail systems that are subject to the safety oversight of the FRA.

The final rule also applies to transit workers who access any rail fixed guideway public transportation system in the performance of their work.

Subsection (d) of § 671.1 provides that, not later than one year after the effective date of the final rule, each RTA must have established an SSOA-approved RWP program that complies with this part.

##### 671.3—Policy

Section 671.3(a) explains that part 671 establishes minimum safety standards for rail transit RWP. Each RTA and SSOA may prescribe additional or more stringent rules that are consistent with this part.

Section 671.3(b) explains that FTA has adopted the use of SMS as the basis for enhancing the safety of public transportation. Activities conducted to



carry out this part must be integrated into the RTA's SMS, required under part 673 of this chapter.

#### 671.5—Definitions

This section sets forth the definitions of key terms used in the regulation. Most notably, readers should refer to the definitions of “fouling a track,” “individual rail transit vehicle detection,” “job safety briefing,” “lone worker,” “minor task,” “on-track safety,” “rail fixed guideway public transportation system,” “rail transit agency,” “rail transit vehicle,” “redundant protection,” “roadway,” “roadway worker,” “roadway worker protection,” “track zone,” “and “transit worker.”

#### *Subpart B—RWP Program and Manual*

This subpart establishes minimum requirements for the RWP program, which must be adopted and implemented by each RTA. This subpart also establishes minimum requirements for the RWP manual. The RWP manual documents the mechanisms by which the RTA will carry out its RWP program.

#### 671.11—RWP Program

Section 671.11(a) requires that each RTA adopt and implement an RWP program designed to improve transit worker safety and that this program must be consistent with Federal and State requirements.

Section 671.11(b) requires that the RWP program include an RWP manual, described further in § 671.13, and all the RWP program elements described in subpart D of this part.

Section 671.11(c) requires each RTA to submit its RWP manual and subsequent updates to its SSOA for review and approval, as described in § 671.25.

#### 671.13—RWP Manual

Section 671.13(a) requires each RTA to establish and maintain a separate, dedicated RWP manual. The creation of this document as a separate, dedicated manual reflects FTA's expectation that this manual will be a critical safety component of an RTA's rail program. This requirement also reflects FTA's belief that separation from other manuals or documents ensures all parties know where all RWP information can be found. FTA also believes that maintaining one document will encourage more efficient review and update processes.

Section 671.13(b) requires that the RWP manual include the terminology, abbreviations, and acronyms used by the RTA to describe its RWP program activities and requirements. This

requirement reflects FTA's expectation that RTAs will continue to use, or, when necessary, create standard terminology, abbreviations, and acronyms used throughout the agency in relation to RWP.

Section 671.13(c) specifies the list of required elements that must be documented in the RWP manual. The required elements of the manual include all elements of the RWP program required in subpart D (Required RWP Program Elements) of this part and a definition of RTA and transit worker responsibilities as described in subpart C (Responsibilities) of this part. This section requires that the RWP manual document the training, qualification, and supervision the RTA requires for transit workers to access the track zone, by labor category or type of work performed. This section requires the RWP manual to document the processes and procedures for all transit workers who may access the track zone in the performance of their work, including safety and oversight personnel. In addition, this section specifies that procedures for SSOA personnel to access the roadway must conform with the SSOA's risk-based inspection program. By requiring an RWP manual to contain certain elements, this requirement ensures that all critical elements of an RWP program are documented in one manual. FTA expects this to reduce the potential for conflicting RWP program directions and provide a single authoritative source of RWP program information.

Section 671.13(d) requires that the RWP manual include or incorporate by reference a track access guide to support on-track safety. FTA is providing flexibility for RTAs to choose to maintain this track access guide separately from their RWP manual to allow frequent updates as the condition of the track system changes. This section specifies that this guide must be based on a physical survey of the track geometry and condition of the track system.

Section 671.13(d)(1) requires that the track access guide includes locations with limited, close, or no clearance, including locations that have size or access limitations. Locations with size or access limitations may include but are not limited to alcoves, recessed spaces, or other designated places or areas of refuge or safety. FTA understands that although areas of refuge or safety should not be used in a way that limits access, such as being used to store or otherwise house tools, equipment, or materials, RTAs may use some of these areas to store or “stage” items used to repair, maintain, or

inspect the roadway. This section requires including these areas in the physical survey to ensure roadway workers are aware of any such areas with access limitations.

Section 671.13(d)(2) requires that the track access guide must also identify locations with increased rail vehicle or on-track equipment braking requirements.

Sections 671.13(d)(2), (3), (4), and (5) require that the track access guide identify areas with limited visibility, including locations with reduced rail transit operator visibility due to weather conditions, curves with limited or no visibility, locations with limited or no visibility due to obstructions or topography, and all portals with restricted views.

Finally, §§ 671.13(d)(6) and (7) require that the track access guide identify locations with heavy outside noise or other environmental conditions that impact on-track safety and any other locations with access considerations.

In § 671.13(e), FTA requires the RTA to completely review and update its RWP manual at least every two years. This includes updates to reflect current conditions, lessons learned in implementing the RWP program as described in the manual, and information provided by the SSOA and FTA. This section requires that this review and update occur within the two years following the SSOA's initial approval of the RWP manual and at least every two years thereafter.

As the track access guide must be included or incorporated by reference in the RWP manual, this complete review and update will include the track access guide, regardless of whether the guide is maintained as a separate document from the RWP manual.

Further, in § 671.13(f), FTA requires RTAs to update both the RWP manual and the track access guide as soon as is practicable when a change in RTA conditions means either document does not reflect current conditions.

Section 671.13(g) requires that the RTA distribute the RWP manual to all transit workers who access the roadway and that the RTA distribute the revised manual to all transit workers who access the roadway after each revision. For RTAs that decide to maintain the track access guide separately from the RWP manual, this section requires that those RTAs distribute the track access guide to all transit workers who access the roadway and distribute the revised track access guide to all transit workers after each revision.

*Subpart C—Responsibilities*

This section sets forth RWP responsibilities for three distinct entities: the RTA, the transit worker, and the SSOA.

**671.21—Rail Transit Agency**

Section 671.21 specifies responsibilities for the RTA, including establishing procedures and requirements for equipment and protection.

Section 671.21(a) establishes general requirements for the RTA as described in each subsection below. Section 671.21(a)(1) requires the RTA to establish procedures to provide ample time and determine appropriate sight distance based on maximum authorized track speeds. FTA's definition for terms used in this part can be found in § 671.5. As previously noted, it is FTA's intent with this rulemaking to ensure that roadway workers receive adequate time to move sufficiently clear of moving vehicles or equipment determined not only by the amount of time needed to move physically off the tracks but also by the amount of time needed in that specific location to be sufficiently clear of moving vehicles.

FTA expects that RTAs include considerations for roadway work group size when making these determinations, to ensure ample time for all workers to be sufficiently clear of moving vehicles. For example, if the nearest place of safety is not sufficiently large to allow the entire roadway work group to be sufficiently clear of moving vehicles, the RTA must include additional time for members of the work group to access another location clear of moving vehicles.

Section 671.21(a)(2) prohibits the use of individual rail transit vehicle detection as the only form of protection in the track zone. This prohibition reflects FTA's determination that a lone worker may not be able to reliably detect approaching rail transit vehicles or equipment in ample time and, further, that the safety risk associated with the practice of individual rail transit vehicle detection as the only form of protection in the track zone is unacceptable. This prohibition is consistent and responsive to the NTSB recommendations to require redundant protections for roadway workers and to eliminate the use of individual rail vehicle detection, which the NTSB has determined is a relatively weak form of on-track safety.

Sections 671.21(a)(3) and (4) require that the RTA establish procedures to provide job safety briefings to all transit workers who enter a track zone to

perform work whenever a rule violation is observed.

Section 671.21(a)(5) requires that the RTA establish procedures to provide transit workers with the right to challenge and refuse in good faith any assignment based on on-track safety concerns and resolve such challenges and refusals promptly and equitably. This is often called a "good faith safety challenge" or "good faith challenge." The good faith safety challenge process described in § 671.37 is generally modeled on the existing FRA good faith challenge. FTA understands that many RTAs already implement a version of this procedure and that their version may encompass more than just on-track safety concerns. The final rule does not require RTAs to revise their existing procedure and process, as long as they meet the minimums specified here.

Section 671.21(a)(6) requires that the RTA establish procedures to require the reporting of unsafe acts, unsafe conditions, and near-misses on the roadway to the Transit Worker Safety Reporting Program. This creates additional safety reporting requirements for an RTA's Transit Worker Safety Reporting Program established under FTA's PTASP regulation at § 673.23(b). An RTA's Transit Worker Safety Reporting program must include mandatory reporting of three major categories of safety concerns on the roadway (unsafe acts, unsafe conditions, and near-misses). This expansion of an RTA's safety reporting program reflects the safety critical nature of information related to RWP.

Section 671.21(a)(7) requires the RTA to establish procedures to ensure that all transit workers who must enter a track zone to perform work understand, are qualified in, and comply with the RWP program. This requirement reflects industry practice and is intended to ensure that the RWP program is sufficiently broad in application to address all transit workers who may access a track zone.

Section 671.21(a)(8) requires the RTA to establish procedures to ensure that all individuals who do not fall into the category of roadway worker or transit worker and are not RWP certified are provided with an escort prior to entering the track zone, as needed.

Section 671.21(b) requires the RTA to establish requirements for on-track safety, including equipment and protection. Section 671.21(b)(1) requires the RTA to establish requirements for equipment transit workers must have in order to access the roadway or track zone. In acknowledgement of the differences in equipment that different job functions may require, FTA specifies

that the RTA must establish these equipment requirements by labor category. FTA's intent is to ensure that RTAs establish minimum basic requirements for equipment that consider which positions at their agency may require additional equipment and address those requirements accordingly.

Section 671.21(b)(2) requires the RTA to establish requirements for credentials that transit workers must obtain and display while on the roadway or in the track zone. FTA's examples include a badge, wristband, or RWP card, but RTAs may identify alternate forms of credentialing. FTA requires that the RTA must also establish a requirement for display of credentials such that they are visible when on the roadway or in the track zone. A physical indication of an individual's qualification to access the roadway or the track zone is reflective of industry best practices.

Section 671.21(b)(3) requires the RTA to establish requirements for on-track safety, including protections for emergency response personnel who must access the roadway or the track zone. This requirement supports the safety of emergency personnel who need to access the roadway or track zone in the performance of their job duties.

Section 671.21(b)(4) requires the RTA to establish protections for multiple roadway work groups within a common area in a track zone. This requirement is responsive to NTSB recommendations and reflects FTA's expectation that these protections include, at a minimum, information such as, when multiple work groups are present, who is considered the roadway worker in charge, whether one job safety briefing is sufficient or multiple job safety briefings must occur, and how track access is granted and released.

**671.23—Transit Worker**

Section 671.23 establishes specific responsibilities for transit workers in part to respond to common industry observations that, when regulations apply only to the RTA, some RTAs experience difficulty ensuring compliance from the workforce. This section also establishes specific responsibilities for transit workers as a reflection of the key role the individual transit worker plays in ensuring on-track safety. This approach is consistent with FRA's requirement for individual roadway workers in 49 CFR 214.313.

Section 671.23(a) requires transit workers to follow the requirements of the RTA's RWP program as it applies to their position and labor category.

Section 671.23(b) prohibits transit workers from fouling the track until they have received appropriate

permissions and redundant protections have been established as specified in the RWP manual.

Section 671.23(c) requires transit workers to understand the protections that they will use for their on-track safety while performing the specific task that requires access to the roadway or track zone. Further, transit workers must acknowledge these protections in writing before they access the roadway or track zone.

Section 671.23(d) permits a transit worker to refuse to foul the track if the worker makes a good faith determination that an assignment does not comply with the RTA's RWP program or are otherwise unsafe. This section is the companion to § 671.21(a)(5), which requires RTAs to provide transit workers the right to challenge and refuse in good faith any assignment based on on-track safety concerns.

Similarly, § 671.23(e) requires transit workers to report unsafe acts and conditions and near-misses related to the RWP program as part of the RTA's Transit Worker Safety Reporting Program. This section is the companion to § 671.21(a)(6).

#### 671.25—State Safety Oversight Agency

Section 671.25 establishes responsibilities for the SSOA and requires the SSOA to fulfill these responsibilities for every RTA under their jurisdiction. SSOAs that oversee an RTA that operates in a location that places the RTA under the jurisdiction of two or more SSOAs must work cooperatively with the other SSOA(s) having jurisdiction, as required under part 674.

Section 671.25(a) requires the SSOA to review and approve the RWP manual and any subsequent updates for each RTA within their jurisdiction. This is reflective of the SSOA's primary safety oversight responsibility for RTAs.

Section 671.25(a)(1) requires the SSOA to review and initially approve RWP program elements in coordination with the RTA so that the RWP program can be established and approved within one calendar year from the effective date of the rule. It is expected that an RTA and SSOA will consult throughout the development of the RWP program, and as needed to resolve any concerns or deficiencies on an ongoing basis during this timeframe. This requirement reflects FTA's expectation that SSOAs complete full and detailed reviews of all program elements commensurate to the critical role the RWP program plays in ensuring transit worker safety. FTA encourages SSOAs and RTAs to collaborate early and often in the

development of the initial RWP program to ensure that (1) the SSOA and RTA can meet the one-year deadline for establishment of an SSOA-approved RWP program and (2) the RWP program developed is sufficient to ensure transit worker safety.

Section 671.25(a)(2) requires the SSOA to submit all approved RWP program elements for each RTA in its jurisdiction, and any subsequent updates, to FTA within 30 calendar days of when the SSOA approves those elements. This requirement ensures FTA can validate these safety critical elements.

Section 671.25(b) requires the SSOA to update its program standard to explain the role of the SSOA in overseeing the RTA's execution of its RWP program. FTA believes that, as a key safety element of an SSOA's oversight program, the RWP program must be reflected in the SSOA's program standard. FTA encourages SSOAs and RTAs to work collaboratively on this update in conjunction with the recommended collaboration on the initial RWP program. This requirement is intended to help SSOAs leverage RTA experience and vice versa, ultimately reducing the need for a prolonged RWP program review and revision process and strengthening both the RWP program and the SSOA's RWP program oversight.

Section 671.25(c)(1) requires the SSOA to conduct an annual audit of the RTA's compliance with its RWP program. This also requires that the audit include all required RWP program elements and be conducted for each RTA the SSOA oversees. FTA expects SSOAs to conduct these audits independently from any analogous RTA internal audit or compliance process. However, to avoid redundancy, SSOAs may review and approve an RTA's ASP and conduct the annual RWP program audit simultaneously. If the SSOA elects to conduct their annual RWP program audit alongside their annual review of the ASP or integrate the review of the RWP program into its triennial review of the ASP, the review must meet the RWP program audit requirements specified at § 671.25(c). The requirement is responsive to NTSB recommendations to require SSOAs to ensure RTAs meet the safety requirements for roadway workers.

Section 671.25(c)(2) requires the SSOA to issue a report with any findings and recommendations arising from the audit. This report must include, at a minimum, (1) an analysis of the effectiveness of the RWP program; (2) recommendations for improvements, if necessary or appropriate; and (3)

corrective action plan(s), if necessary or appropriate. This section requires that the RTA be given an opportunity to comment on any findings and recommendations. In including this requirement, FTA expects the SSOA to exercise judgment and incorporate changes to the findings or recommendations when presented with errors of fact or other reasonable requests from the RTA. FTA believes these audit reports will be a valuable tool for communicating the results of the SSOA's audit in a form that supports communication of these results to the RTA and, ultimately, resolution of any findings and incorporation of any recommendations as appropriate. SSO audit reports of the RWP program must include corrective action plans if necessary or appropriate. SSOAs and RTAs must follow processes established in part 674 for requiring, developing, approving, and executing corrective action plan(s) related to the RWP program audit.

#### *Subpart D—Required RWP Program Elements*

This section sets forth minimum RWP program element requirements: roadway worker in charge, job safety briefings, requirements for lone workers, good faith safety challenges, risk-based redundant protections, an RWP training and qualification program, and an RWP compliance monitoring program.

#### 671.31—Roadway Worker in Charge Requirements

Section 671.31(a) requires that the RTA designate one roadway worker in charge for each roadway work group whose duties require fouling a track. The roadway worker in charge must be qualified under the training and qualification program specified in § 671.41 and is responsible for the on-track safety for all members of the roadway work group. The individual assigned as the roadway worker in charge must serve only the function of maintaining on-track safety for all members of their roadway work group and to perform no other unrelated job function while designated for duty. RTAs may designate a general roadway worker in charge or may designate a roadway worker in charge specifically for a particular work situation.

For multiple roadway work groups within common working limits, the final rule allows an RTA to designate a single roadway worker in charge, provided each group is accompanied by an employee qualified to the level of a roadway worker in charge who is responsible for direct communication with the roadway worker in charge.

Section 671.31(b) requires that the RTA ensure that the roadway worker in charge provides a job safety briefing to all roadway workers before any member of the roadway work group fouls a track. Additionally, this section requires that the roadway worker in charge provide an updated job safety briefing before the on-track safety procedures change during the work period, whenever on-track safety conditions change, or immediately after any observed violation of on-track safety procedures before track zone work continues.

FTA understands that emergencies may occur such that roadway workers in charge may not be able to provide updated job safety briefings of changes to on-track safety. Therefore, § 671.31(b)(2) specifies, in the event of an emergency, any roadway worker must be warned immediately to leave the roadway and must not return until on-track safety is re-established and they have been given an updated job safety briefing.

#### 671.33—Job Safety Briefing Policies

Section 671.33 establishes specific requirements for job safety briefings. This requirement is responsive to NTSB safety recommendations about establishing requirements for job safety briefings and is generally consistent with FRA requirements.

Section 671.33(a) reiterates the requirements that the RTA must ensure the roadway worker in charge provides any roadway worker who must foul a track with a job safety briefing prior to fouling the track, every time the roadway worker fouls the track.

Section 671.33(b) establishes the required minimum elements, as appropriate, of the job safety briefing that the roadway worker in charge must provide. This section includes the “as appropriate” language because not all of the elements may be relevant to each rail transit system.

FTA expects that the discussion of the nature and characteristics of the work will include any relevant information for multiple roadway worker groups working in adjacent areas. The inclusion of instructions for each on-track safety procedure to be followed and the role and responsibilities for communication for all transit workers involved in the work in job safety briefings is responsive to NTSB recommendations.

Section 671.33(b)(10) requires that the job safety briefing identify designated place(s) of safety. FTA intends that the identified designated place(s) of safety will be sufficient for the number of transit workers in the roadway work group. FTA’s expectation is that, where multiple work groups occupy

overlapping or adjacent work locations, the associated roadway workers in charge coordinate to ensure that their job safety briefings identify designated place(s) of safety sufficient for the combined number of transit workers in the roadway work group.

Section 671.33(c) requires that, to complete a job safety briefing, the roadway worker in charge must confirm that each roadway worker understands the on-track safety procedures and instructions and has provided the roadway worker in charge with written acknowledgement of the job safety briefing, and the roadway worker in charge verifies in writing that they have received each roadway worker’s written acknowledgment of the briefing.

Section 671.33(d) requires that, if there is any change in the scope of work or roadway work group after the initial job safety briefing, if on-track safety conditions change, or if a violation of on-track safety is observed, a follow-up job safety briefing must be conducted.

#### 671.35—Lone Worker

Section 671.35 addresses common industry and NTSB concerns and recommendations about the practice of permitting a single person to foul the track alone. Specifically, 671.35(a) allows RTAs to authorize lone workers to perform limited duties that require fouling a track only under limited circumstances.

Section 671.35(b) requires that each lone worker must communicate with a supervisor or other designated transit worker to receive an on-track safety briefing consistent with § 671.33(b) prior to fouling the track. This briefing must include a discussion of the planned work activities and the procedures they will use to establish on-track safety. The lone worker must acknowledge and document the job safety briefing in writing.

#### 671.37—Good Faith Safety Challenge

Section 671.37(a) requires the RTA to document the procedures that it provides to roadway workers to challenge and refuse in good faith any assignment they believe is unsafe or would violate the RTA’s RWP program. Section 671.37(b) requires that this written procedure include methods or processes to ensure prompt and equitable resolution of any challenges and refusals made. Section 671.37(c) requires that the roadway worker provide a description of the safety concern regarding on-track safety and states that the roadway work group must remain clear of the roadway or track zone until the challenge and refusal is resolved. This process reflects common

industry practice and provides a mechanism for transit workers, who often are the most familiar with the particular needs and hazards related to their specific job tasks, to appropriately address unsafe situations.

#### 671.39—Risk-Based Redundant Protections

Section 671.39(a) establishes requirements for the RTA to identify and provide redundant protections for each category of work that roadway workers perform on the roadway or track. This section also requires RTAs to establish redundant protections to ensure on-track safety for multiple roadway work groups within a common area. This requirement is responsive to NTSB recommendations for FTA to require the use of redundant protections.

Section 671.39(b) requires that the RTA use the appropriate methods and processes of its SMS established in part 673 to assess safety risk and establish mitigations in the form of redundant protections. This requirement reflects FTA’s adoption of the principles of SMS as the mechanism for ensuring transit safety.

Section 671.39(b)(1) requires that this safety risk assessment be consistent with the RTA’s ASP and the SSOA’s program standard. This includes ensuring consistency in instances where SSOA program standards impose additional requirements on an RTA’s safety risk assessment process beyond the provisions in part 673.

Section 671.39(b)(2) specifies that the RTA may supplement the safety risk assessment with engineering assessments, inputs from the Safety Assurance process established in part 673, the results of safety event investigations, and other SRM strategies and approaches.

Section 671.39(b)(3) requires that the RTA review and update the safety risk assessment at least every two years. This requirement is intended to ensure that the safety risk assessment reflects current conditions, lessons learned from safety events, actions the RTA has taken to address reports of unsafe acts and conditions and near-misses, and the results of the agency’s monitoring of redundant protection effectiveness.

Section 671.39(b)(4) specifies that the SSOA may identify and require the RTA to implement alternate redundant protections based on the RTA’s unique operating characteristics and capabilities.

Section 671.39(c) requires that the RTA identify redundant protections for roadway workers performing different categories of work on the roadway and

within track zones. This flexibility is intended to reflect the wide range of activities conducted on the roadway and to provide the opportunity for RTAs to “right size” protections based on the safety risk associated with different categories of work. RTAs must establish and layer redundant protections commensurate with the work being performed.

Section 671.39(d)(1) specifies that redundant protections may be procedural or physical. The final rule includes definitions for each kind of protection as it is likely that RTAs will use a mix of procedural and physical redundant protections to ensure on-track safety. Allowing both physical and procedural redundant protections is responsive to RFI respondents, the majority of whom recommended that FTA allow both physical and redundant protections for workers on the roadway.

Section 671.39(d)(2) includes common examples of redundant protections. FTA is not defining an explicit set of redundant protections; rather, FTA expects that RTAs and SSOAs will use any of the redundant protections listed in this section or identify, using the agency’s SRM process, redundant protections suitable to the specific circumstance under which they will be used.

Section 671.39(d)(3) requires that redundant protections for lone workers must include, at a minimum, foul time or an equivalent protection approved by the SSOA.

#### 671.41—RWP Training and Qualifications

Section 671.41(a) establishes the general requirement for an RTA to adopt an RWP training program. This requirement is responsive to NTSB recommendations.

Section 671.41(a)(1) requires that the training program address all transit workers responsible for on-track safety by position.

Section 671.41(a)(2) requires that a transit worker complete the RWP training program for the relevant position before the RTA may assign that transit worker to perform the duties of a roadway worker; to oversee or supervise access to the track zone from the operations control center; or to operate vehicles, on-track equipment, and roadway maintenance machines on the rail transit system.

Section 671.41(a)(3) requires that the RWP training program address RWP hazard recognition and mitigation. This requirement is responsive to an NTSB recommendation to require initial and recurring training for roadway workers in hazard recognition and mitigation.

This section also specifies that the training program must address lessons learned through the results of compliance testing, near-miss reports, reports of unsafe acts or conditions, and feedback received on the training program.

Section 671.41(a)(4) requires that the RWP training program include both initial and refresher training by position and that refresher training must occur every two years at a minimum.

Section 671.41(a)(5) requires that the RTA review and update its RWP program not less than every two years (*i.e.*, at least once every two years). This includes incorporating lessons learned in implementing the RWP program and information provided by the SSOA and FTA. The review and update process must include an opportunity for roadway worker involvement to ensure that potentially valuable safety information from workers executing tasks on the roadway can be collected and incorporated into the safety training program.

Section 671.41(b) establishes the required elements of the RWP training program. These elements are based on industry best practices and best practices for adult learners and require that the RWP training program include interactive training that provides the opportunity for workers to ask the RWP trainer questions and for workers and trainers to raise and discuss RWP issues.

The final rule requires initial training to include experience in a representative field setting, meaning that the initial training may not be classroom only. Both the initial and refresher training must include worker demonstrations and trainer assessments of the worker’s ability to comply with RWP instructions.

Section 671.41(c) establishes minimum contents for the RWP training program. Section 671.41(d) establishes that the RWP program must include specialized minimum training and qualifications for transit workers with additional responsibilities for on-track safety. Similar to the general RWP training program, this specialized training must include demonstration and assessment of the transit worker’s ability to perform these additional responsibilities. Refresher training on these additional responsibilities must occur at least every two years. This requirement reflects the critical safety role these transit workers have in establishing, supervising, and monitoring on track safety.

Section 671.41(e) requires that the RTA ensure that those transit workers providing RWP training are qualified

and have active RWP certification at the RTA.

#### 671.43—RWP Compliance Monitoring Program

Section 671.43 requires that the RTA develop and implement a program to monitor its own compliance with the requirements specified in its RWP program. This monitoring program is consistent with Safety Assurance principles and is intended to ensure consistent and effective RWP program implementation. This program must include, at a minimum, inspections, observations, and audits consistent with the safety performance monitoring and measurement practices established in the RTA’s ASP and the SSOA’s program standard.

Section 671.43(b)(1) requires each RTA to provide quarterly reports to the SSOA documenting the RTA’s compliance with and sufficiency of the RWP program, and § 671.43(b)(2) specifies that the RTA must provide an annual briefing to the Accountable Executive and the Board of Directors, or equivalent entity, regarding the performance of the RWP program and any identified deficiencies requiring corrective action.

#### Subpart E—Recordkeeping

##### 671.51—Recordkeeping

This section sets forth recordkeeping requirements related to the RWP program in keeping with the recordkeeping requirements established in part 673, which requires RTAs to maintain documents related to SMS implementation and the results of SMS processes and activities.

#### IV. Regulatory Analyses and Notices

Executive Order 12866 (“Regulatory Planning and Review”), as supplemented by Executive Order 13563 (“Improving Regulation and Regulatory Review”) and Executive Order 14094 (“Modernizing Regulatory Review”), directs Federal agencies to assess the benefits and costs of regulations, select regulatory approaches that maximize net benefits when possible, and consider economic, environmental, and distributional effects. It also directs the Office of Management and Budget (OMB) to review significant regulatory actions, including regulations with annual economic effects of \$200 million or more. OMB has determined that the final rule is not significant within the meaning of Executive Order 12866 and has not reviewed it under that order.

### Overview and Need for Regulation

FTA has determined that unsafe practices and conditions place rail transit workers at risk of being killed or seriously injured while performing work on the roadway. According to data collected by FTA, roadway worker safety events have caused more transit worker fatalities than any other type of safety event. Since 1994, 52 rail transit workers have been killed and over 200 workers have experienced major injuries from roadway safety events, primarily from collisions with rail transit vehicles, falls, and electrocution. From January 1, 2008, to October 31, 2022, 22 workers have been killed and 120 workers seriously injured in roadway accidents. Currently, there are no Federal regulations or standards governing RWP for rail transit workers, despite recommendations from the NTSB and TRACS.

The final rule establishes RWP program standards for RTAs in all States. The rule establishes minimum baseline standards and requires risk-based redundant protections, defined as protections outside of the employee's individual ability to detect a train and move to a place of safety, such as shunts or derailleurs, for rail transit roadway workers occupying the rail roadway. The final rule requires RTAs to do the following:

1. Set minimum standards for RWP program elements, including an RWP manual and track access guide.
2. Meet requirements for on-track safety and supervision, job safety briefings, good faith safety challenges, and reporting unsafe acts and conditions and near-misses;
3. Develop and implement risk-based redundant protections for workers; and
4. Establish RWP training, qualification, and compliance-monitoring activities.

The final rule applies to RTAs in the SSO program, SSOAs, and rail transit workers who access the roadway to perform work. SSOAs oversee and enforce FTA's RWP program requirements.

### Updates From the NPRM

FTA made the following changes to the regulatory impact analysis in response to comments and updates to data sources:

- Adjusted labor hour estimates for establishing an RWP program from 96 to 300 hours.
- Adjusted labor hour estimates for developing initial and recurring training for roadway workers from 160 to 270 hours. The amount reflects an estimated 30 hours to develop one hour of training.

- Added labor hour estimates of 30 hours for developing training for all workers and 240 hours for developing training for lone roadway workers. The amounts reflect an estimated 30 hours to develop one hour of training.

- Added an estimated annual average of 8.7 labor hours per roadway worker for giving written acknowledgment of safety briefings at agencies not already known to require written acknowledgment. The amount reflects an estimated 2 minutes to give written acknowledgment per briefing and one briefing per day, multiplied by 260 working days per year for full-time employees.

- Added an estimated annual average of 60 hours for near-miss reporting requirements. The average reflects FTA's expectation that RTAs capture much of this information through existing practices, as described in "Support for Regulation."

- Added an estimated annual average of 10 hours per agency to update RWP manuals and 20 hours per agency to update training materials.

- Added calculations using a discount rate of 2 percent, following guidance in the November 2023 update to OMB Circular A-4.<sup>2</sup>

- Updated occupational wage data from May 2020 to May 2023, the latest data available as of August 2024.

- Updated the ten-year analysis period to start in 2024 and end in 2035. To give RTAs time to implement RWP programs and procedures and to conduct initial trainings, FTA will require compliance with RWP requirements one year from publication of the rule.

### Baseline and Analytical Approach

To assess the effects of the final rule, FTA analyzed roadway worker injuries and fatalities outside California from January 1, 2008, to September 19, 2020 (12.7 years). The analysis excludes California because the State already established RWP safety standards for its agencies in 2016.<sup>3</sup> Agencies outside California reported 97 injuries and 20 fatalities, for an annual average of 7.6 injuries and 1.6 fatalities. FTA used the annual averages as a baseline rate for fatalities and injuries in the absence of the rule.

<sup>2</sup> Office of Management and Budget (2023). "Circular No. A-4." <https://www.whitehouse.gov/wp-content/uploads/2023/11/CircularA-4.pdf>.

<sup>3</sup> Public Utilities Commission of the State of California (2016). "General Order No. 175-A: Rules and Regulations Governing Roadway Worker Protection Provided by Rail Transit Agencies and Rail Fixed Guideway Systems." <https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M159/K905/159905345.pdf>.

To estimate labor costs associated with meeting the requirements of the final rule, FTA used occupational wage data from the Bureau of Labor Statistics as of May 2023 for the "Urban Transit Systems" industry (North American Industry Classification System code 485100).<sup>4</sup> FTA used median hourly wages as a basis for the estimated labor costs, multiplied by 1.62 to account for employer benefits.<sup>5</sup>

To estimate benefits and costs of the final rule, FTA used a ten-year analysis period from 2024 to 2033. All listed dollar amounts are in 2023 dollars.

### Benefits

Transit subject matter experts working with FTA reviewed injuries and fatalities reported in the National Transit Database (NTD) to determine if the protections required by the final rule would have prevented them. FTA then calculated the average annual number of preventable injuries and fatalities to estimate the benefits of the protections. FTA estimates that the protections would prevent an average of 2.4 injuries and 1.2 fatalities per year.

One source of uncertainty for the estimate is that FTA does not have information on the RWP programs or protections that the agencies adopted voluntarily after the safety events. As a result, the analysis may overestimate the benefits (as well as the associated costs) of the final rule.

To determine the monetized values for prevented fatalities and injuries, FTA used a value of \$13.2 million for a fatality, based on Department of Transportation (DOT) guidance on valuation of a statistical life,<sup>6</sup> and a value of \$210,000 for an injury, based on values derived from the KABCO Injury Classification Scale for an injury with "Severity Unknown" and inflated to 2023 dollars.<sup>7</sup>

<sup>4</sup> Bureau of Labor Statistics (2024). "May 2023 National Occupational Employment and Wage Estimates: United States: NAICS 485000—Transit and Ground Passenger Transportation." [https://www.bls.gov/oes/2023/may/naics3\\_485000.htm](https://www.bls.gov/oes/2023/may/naics3_485000.htm).

<sup>5</sup> Multiplier derived using Bureau of Labor Statistics data on employer costs for employee compensation in December 2022 (<https://www.bls.gov/news.release/eccec.htm>). Employer costs for State and local government workers averaged \$57.60 an hour, with \$35.69 for wages and \$21.95 for benefit costs. To estimate full costs from wages, one would use a multiplier of \$57.60/\$21.95, or 1.62.

<sup>6</sup> U.S. Department of Transportation (2024). "Departmental Guidance on Valuation of a Statistical Life in Economic Analysis." <https://www.transportation.gov/office-policy/transportation-policy/revised-departmental-guidance-on-valuation-of-a-statistical-life-in-economic-analysis>.

<sup>7</sup> U.S. Department of Transportation (2023). "Benefit Cost Analysis Guidance 2024 Update, Table A-1: Value of Reduced Fatalities, Injuries,

Table 1 displays undiscounted and annualized benefits of the final rule. Over the ten-year analysis period, the rule has undiscounted benefits of \$161.5 million. Annualized benefits are \$15.8 million at a 2 percent rate discounted to 2024, \$15.7 million at a 3 percent rate, and \$15.1 million at a 7 percent rate.

**TABLE 1—BENEFITS OF THE FINAL RULE  
[2025–2034]**

Benefits	Amount
Undiscounted .....	\$161,519,087
Annualized	
2% discount rate .....	15,835,205
3% discount rate .....	15,681,465
7% discount rate .....	15,095,242

### Costs

Agencies are expected to incur start-up and ongoing costs to implement the requirements of the final rule. Agencies would incur costs for standalone RWP programs, RWP training programs, redundant worker protections, and other requirements.

### RWP Programs

RTAs would incur costs to develop and implement programs for right-of-way workers if they do not already have formal standalone programs. FTA estimates that 33 of the 55 RTAs outside California (60 percent) already have formal standalone programs, based on industry responses to FTA Safety Advisory 14–1,<sup>8</sup> and that 26 of the 33

RTAs already monitor the effectiveness of the programs.

For the remaining 22 RTAs (40 percent), FTA estimates that an RTA would need an average of 300 labor hours to develop and implement a formal standalone RWP program, plus 40 hours per year to monitor the program's effectiveness. The 40-hour estimate also applies to the 5 RTAs that already have programs but do not monitor their effectiveness. FTA assumes that the RWP program tasks are performed by an employee in the "First-Line Supervisor of Mechanics, Installers, and Repairers" category with a median wage rate of \$63.28 per hour. The program requirements have estimated one-time costs of \$612,525 and annual recurring costs of \$29,234 (Table 2).

**TABLE 2—RWP PROGRAM COSTS**

Requirement	One-time costs	Recurring costs
RWP program establishment .....	\$417,631	.....
RWP program effectiveness monitoring .....	.....	\$29,234
SSOA review .....	139,210	.....
RWP program response to SSOA comments .....	55,684	.....
Total .....	612,525	29,234

### RWP Training Programs

The final rule requires agencies to establish initial and refresher training for roadway workers, as well as training for all RTA employees and for lone workers. FTA subject matter experts estimated the resources needed for RTAs to develop and implement the training programs. FTA assumes that initial training and refresher trainings for roadway workers would require 4.5 hours to complete per employee, training for all employees would require 1 hour, and training for lone workers would require 8 hours. FTA assumes

that an RTA would need approximately 30 hours to develop one hour of training. RTAs that have not already developed training would need 135 hours to develop initial training, 135 hours to develop refresher training, 30 hours to develop training for all employees, and 240 hours to develop training for lone workers.

FTA estimates that 90 percent of RTAs have already developed initial training programs for roadway workers and 79 percent of RTAs have already developed refresher training for roadway workers. FTA assumes that no RTAs have already developed training

for all employees or training for lone workers.

RTAs would also need to update the trainings periodically. Although the time needed would vary by agency and by year, FTA assumes that an RTA would need an average of 40 hours every two years, or an average of 20 hours every year.

The training has estimated one-time costs of \$1.7 million and annual recurring costs of \$5.2 million. Table 3 shows estimated costs for RWP training in the first year and subsequent years; Table 4 shows estimated costs by occupation.

**TABLE 3—RWP TRAINING PROGRAM COSTS**

Requirement	Workers	Total required hours	Total costs, initial	Total costs, annual
Development of initial training .....	.....	135 hours per RTA ...	\$46,984	.....
Development of recurring training .....	.....	135 hours per RTA ...	98,665	.....
Development of lone worker training .....	.....	240 hours per RTA ...	835,263	.....
Development of training for all employees .....	.....	30 hours per RTA ....	104,408	.....
Training material updates .....	.....	20 hours per RTA ....	.....	\$69,605
Initial training for roadway workers .....	31,974	143,882 .....	622,553	.....
Recurring training for roadway workers .....	31,974	143,882 .....	.....	1,307,361
Training for all employees .....	50,132	50,132 .....	.....	2,135,457
Training for lone workers .....	5,500	44,000 .....	.....	1,690,763
Total .....	.....	.....	1,707,873	5,203,187

and Crashes." <https://www.transportation.gov/sites/dot.gov/files/2023-12/Benefit%20Cost%20Analysis%20Guidance%202024%20Update.pdf>.

<sup>8</sup> Federal Transit Administration (December 2013). "FTA Safety Advisory 14–1: Right-of-Way Worker Protection." <https://www.transit.dot.gov/>

[oversight-policy-areas/safety-advisory-14-1-right-way-worker-protection-december-2013](https://www.transportation.gov/sites/dot.gov/files/2023-12/Benefit%20Cost%20Analysis%20Guidance%202024%20Update.pdf).



TABLE 4—RWP TRAINING PROGRAM COSTS BY OCCUPATION

Occupation	Fully loaded wage rate	Workers	Hours per worker	Total required hours, initial	Total required hours, annual	Total costs, initial	Total costs, annual
49–9071 Maintenance and Repair Workers, General.	\$38.43	13,824 .....	4.5	6,221	13,064	\$239,046	\$501,997
53–4041 Subway and Street-car Operators.	46.96	18,150 .....	4.5	8,167	17,151	383,507	805,365
00–0000 All Occupations .....	42.60	50,132 .....	1	.....	50,132	.....	2,135,457
49–9071 Maintenance and Repair Workers, General (Lone Workers).	38.43	5,500 .....	8	.....	44,000	.....	1,690,763
49–1011 First-Line Supervisors of Mechanics, Installers, and Repairers.	63.28	6 (initial training); 12 (recurring training); 55 (lone worker and all employee training).	540	17,152	.....	1,085,320	69,605
Total .....	.....	87,606 .....	.....	31,540	124,347	1,707,873	5,203,187

## Redundant Worker Protections

The major cost driver for redundant worker protections is the number of full-time equivalent (FTE) employees needed to establish worker controls and access limitations. The final rule requires agencies to conduct a risk assessment to determine the types of redundant protections to use.

The estimated number of FTEs needed to implement the protections is derived from information in California's Public Utilities Commission General Order Number 175–A. FTA assumes that the FTEs are in the “Maintenance and Repairs, General” occupational category, which has a labor rate of \$38.43 per hour. FTA assumes that agencies would need a total of 80 additional FTEs (at 2,080 hours per FTE), for an annual total of 166,400 hours and \$6,394,160 in recurring costs.

## Additional RWP Requirements

Additional requirements in the final rule include:

- Developing an RWP manual (40 one-time hours) and making periodic updates ( \_ hours per year)
- Establishing rail fixed guideway public transportation system responsibilities (81.4 one-time hours; 5.3 hours per year)
- Establishing employee responsibilities (160 hours per year)
- Providing written acknowledgment of job safety briefings if they do not do so already (8.7 hours per roadway worker per year)
- Conducting a risk assessment for redundant protections (40 one-time hours)
- Maintaining employee injury and illness program records (12 hours per year)

- Establishing a near-miss reporting program (320 one-time hours; 100 hours per year) and maintaining records (16 hours per year)
- Maintaining other recordkeeping (8 hours per year)

Table 5 lists one-time and recurring costs for the additional requirements. To estimate the number of employees that would provide written acknowledgment of job safety briefings, FTA used facility maintenance worker data from the National Transit Database, adjusted for agencies known to require written acknowledgments.<sup>9</sup> FTA subject matter experts identified these agencies based on direct experience with the agencies. Other agencies may require written acknowledgments as well, which would result in lower compliance costs.

TABLE 5—ADDITIONAL RWP REQUIREMENTS

Requirement	Affected entities	Total required hours, initial	Total required hours, annual	One-time costs	Recurring costs
RWP manual .....	22 RTAs .....	880	220	\$55,684	\$13,921
Rail system responsibilities .....	20 RTAs .....	1,628	106	103,016	5,831
Employee responsibilities .....	55 RTAs .....	.....	8,800	.....	556,842
Written acknowledgment of job safety briefings.	3,329 maintenance workers .....	.....	28,851	.....	1,108,654
Risk assessment for redundant protections.	55 RTAs .....	2,200	.....	121,125	.....
Employee injury and illness program and records.	55 RTAs .....	.....	660	.....	36,337
Near-miss reporting program and records.	55 RTAs .....	17,600	6,380	968,998	351,262
Recordkeeping .....	55 RTAs .....	.....	.....	.....	27,842
Total .....	.....	22,968	44,357	1,248,823	2,100,689

<sup>9</sup> Agencies identified include Chicago Transit Authority, Hillsborough Transit Authority (Florida); Tren Urbano (San Juan); Metropolitan Atlanta Rapid Transit Authority; Metropolitan

Transportation Authority and Port Authority Transportation Corporation (New York); Massachusetts Bay Transportation Authority (Boston); Southeastern Pennsylvania Transportation

Authority (Philadelphia); TriMet (Portland); Sun Link (Tucson); and Washington Metropolitan Area Transit Authority (Washington DC).

## Summary of Costs

Table 6 summarizes the costs of the provisions over the ten-year analysis period. The largest cost is for the RWP training program, which has estimated costs of \$54.0 million over the ten-year period.

**TABLE 6—TEN-YEAR COSTS OF THE FINAL RULE, SUMMARY**  
[2025–2034]

Requirement	Ten-year cost
RWP programs .....	\$904,868
RWP manual .....	180,974
Rail system responsibilities ....	161,331
Employee responsibilities .....	5,568,418

**TABLE 6—TEN-YEAR COSTS OF THE FINAL RULE, SUMMARY—Continued**  
[2025–2034]

Requirement	Ten-year cost
Job safety briefing .....	11,086,540
Minimum controls and limitations .....	63,941,595
RWP training .....	53,739,740
Risk assessment for redundant protections .....	121,125
Employee injury and illness program and records .....	363,374
Near-miss reporting program and records .....	4,481,618
Recordkeeping .....	278,421
<b>Total ten-year costs .....</b>	<b>140,828,004</b>

The final rule has one-time undiscounted costs of \$2.6 million and annual undiscounted costs of \$13.6 million. Over a ten-year period, the total undiscounted costs are \$140.8 million. The annualized costs, discounted to 2024, are \$13.8 million at a 2 percent rate, \$13.7 million at a 3 percent rate, and \$13.3 million at a 7 percent rate. Table 7 lists the estimated discounted costs for each requirement.

**TABLE 7—DISCOUNTED COSTS**  
[2025–2034]

Requirement	2% Discount rate	3% Discount rate	7% Discount rate
RWP program .....	\$846,191	\$819,475	\$726,900
RWP manual .....	162,737	154,656	127,857
Rail system responsibilities .....	150,370	145,397	128,256
Employee responsibilities .....	4,903,803	4,611,625	3,655,163
Job safety briefing .....	9,763,313	9,181,596	7,277,310
Minimum controls and limitations .....	56,309,884	52,954,833	41,971,870
RWP training .....	47,463,188	44,701,327	35,645,934
Risk assessment for redundant protections .....	116,421	114,172	105,795
Employee injury and illness program and records .....	320,004	300,938	238,522
Near-miss reporting program and records .....	4,024,744	3,822,438	3,152,077
Recordkeeping .....	245,190	230,581	182,758
<b>Total costs .....</b>	<b>124,305,845</b>	<b>117,050,160</b>	<b>93,224,602</b>
<b>Annualized costs .....</b>	<b>13,840,028</b>	<b>13,721,849</b>	<b>13,273,086</b>

## Net Benefits

Table 8 shows the estimated net benefits of the final rule with discount

rates of 2, 3, and 7 percent, discounted to 2024. The rule has annualized net benefits of \$2.2 million at a 2 percent

discount rate, \$2.1 million at 3 percent, and \$2.0 million at 7 percent.

**TABLE 8—NET BENEFITS**

Item	2% Discount rate	3% Discount rate	7% Discount rate
Benefits .....	\$142,241,072	\$133,766,075	\$106,022,662
Costs .....	122,746,034	115,532,045	91,895,133
Net benefits .....	124,319,225	117,050,160	93,224,602
Annualized net benefits .....	17,921,846	16,715,916	12,798,060

## Regulatory Alternatives

FTA considered two regulatory alternatives when developing the rulemaking, with the key distinction being the degree to which the alternatives require redundant protections.

- Alternative 1: FTA would establish requirements for an RWP program but

would not mandate the use of redundant protections.

- Alternative 2: Instead of requiring RTAs to perform a risk analysis to determine what types of redundant protections must be used, FTA would mandate the use of physical redundant protections to protect workers when accessing the roadway.

Table 9 shows the number of annual preventable injuries and fatalities under the final rule and regulatory alternatives. Table 10 shows the net benefits with 2, 3, and 7 percent discount rates. The estimated costs for Alternative 1 and 2 reflect the labor hour adjustments made in response to feedback from commenters and updates to data sources.

TABLE 9—ANNUAL PREVENTABLE INJURIES AND FATALITIES  
[Regulatory alternatives]

Item	Final rule	Alternative 1	Alternative 2
Injuries .....	2.37	1.34	3.87
Fatalities .....	1.18	0.87	1.42

TABLE 10—NET BENEFITS  
[Regulatory alternatives]

Regulatory option	2% Discount rate	3% Discount rate	7% Discount rate
<b>Final Rule:</b>			
Benefits .....	\$142,241,072	\$133,766,075	\$106,022,662
Costs .....	124,319,225	117,050,160	93,224,602
Net benefits .....	17,921,846	16,715,916	12,798,060
Annualized net benefits .....	1,995,177	1,959,615	1,822,156
<b>Alternative 1:</b>			
Benefits .....	150,189,934	124,983,494	84,286,314
Costs .....	67,892,841	56,864,332	38,969,995
Net benefits .....	82,297,093	68,119,162	45,316,318
Annualized net benefits .....	9,161,850	7,985,644	6,452,024
<b>Alternative 2:</b>			
Benefits .....	172,690,626	162,401,387	128,718,939
Costs .....	180,571,999	169,948,989	135,144,586
Net benefits .....	−7,881,372	−7,547,601	−6,425,647
Annualized net benefits .....	−877,406	−884,809	−914,868

The net benefits of the final rule and regulatory alternatives primarily depend on the estimated number of fatalities they would prevent. FTA conducted a sensitivity analysis to understand how changes to the estimates would affect their net benefits. If the redundant worker protections that agencies adopt under the final rule would prevent more fatalities and injuries than estimated, then the net benefits of the final rule would increase. The protections would need to prevent an additional 1.1 fatalities (for an annual average of 2.3 fatalities) for the rule to have the same net benefits as Alternative 1 at a 2 percent discount rate. For Alternative 2, the redundant worker protections would need to prevent an additional 0.3 fatalities (for an annual average of 1.7 fatalities) for Alternative 2 to have the same net benefits as the final rule.

FTA selected the requirements of the final rule because they would prevent more roadway worker safety events than Alternative 1 while maintaining net positive benefits. Many current rail transit RWP programs have provisions that allow roadway workers onto the track to perform work without protections beyond their own ability to detect oncoming trains and clear the tracks before their arrival. FTA's internal SRM process identified the lack of redundant protections as the most significant contributor to rail transit roadway worker safety events. Similarly, the NTSB, TRACS, and many commenters responding to FTA's RFI on

Rail Transit Worker Safety also support the use of redundant protections.<sup>10</sup> Because no two RTAs are the same, the requirements provide RTAs the flexibility to determine the types of procedural and physical redundant protections to incorporate. The requirements also provide a clear role for SSOAs to approve RWP programs and to ensure overall program effectiveness.

#### Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires Federal agencies to assess the impact of a regulation on small entities unless the agency determines that the regulation is not expected to have a significant economic impact on a substantial number of small entities.

The final rule establishes new RWP program requirements for RTAs and SSOAs. Under the Act, public-sector organizations and local governments qualify as small entities if they serve a population of less than 50,000. No RTAs in current operation qualify as small entities because they all operate in urbanized areas with populations greater than 50,000, and SSOAs do not qualify because they are State agencies. FTA has therefore determined that the final rule does not have a significant

effect on a substantial number of small entities.

#### Unfunded Mandates Reform Act of 1995

FTA has determined that this rule would not impose unfunded mandates, as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule does not include a Federal mandate that may result in expenditures of \$100 million or more in any one year, adjusted for inflation, by State, local, and Tribal governments in the aggregate or by the private sector. The threshold in 2023 dollars is \$183 million after adjusting for inflation using the gross domestic product implicit price deflator. Additionally, the definition of “Federal mandate” in the Unfunded Mandates Reform Act excludes financial assistance of the type in which State, local, or Tribal governments have authority to adjust their participation in the program in accordance with changes made in the program by the Federal government. The Federal Transit Act permits this type of flexibility.

#### Executive Order 13132 (Federalism Assessment)

Executive Order 13132 requires agencies to assure meaningful and timely input by State and local officials in the development of regulatory policies that may 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

<sup>10</sup> Federal Transit Administration (2021). “Request for Information on Transit Worker Safety.” <https://www.federalregister.gov/documents/2021/09/24/2021-20744/request-for-information-on-transit-worker-safety>.

responsibilities among the various levels of government. This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 dated August 4, 1999, and FTA determined that this action will not have a substantial direct effect or sufficient federalism implications on the States. FTA also determined that this action will not preempt any State law or regulation or affect the States' ability to discharge traditional State governmental functions.

#### Executive Order 12372 (Intergovernmental Review)

The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

#### Paperwork Reduction Act

In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*) (PRA), and the White House OMB's implementing regulation at 5 CFR 1320.8(d), FTA is seeking approval from OMB for a new information collection request abstracted below.

- *Type of Collection:* Operators of rail public transportation systems.
- *Respondents to Collection:* RTAs in the SSO program, SSOAs, and rail transit workers who access the roadway to perform work.
- *Type of Review:* OMB Clearance.
- *Summary of the Collection:* The collection of information includes: (1) Each RTA must adopt and implement an RWP program to improve transit worker safety that is consistent with Federal and State safety requirements and approved by the SSOA; they are required to review and update their program manual at least every two years; (2) Require implementation of comprehensive job safety briefings and reporting of near-misses; (3) Documenting formal training and qualification programs for all workers who access the roadway; (4) Program compliance auditing and monitoring; (5) Periodic RFI; and (6) Ensuring compliance of SSOAs responsibility to approve, oversee and enforce RWP requirements (7) submission of RWP programs and updates to FTA.
- *Frequency:* Bi-Annual, Periodic.

#### National Environmental Policy Act

Federal agencies are required to adopt implementing procedures for the National Environmental Policy Act (NEPA) that establish specific criteria for, and identification of, three classes of actions: (1) those that normally

require preparation of an Environmental Impact Statement, (2) those that normally require preparation of an Environmental Assessment, and (3) those that are categorically excluded from further NEPA review (40 CFR 1507.3(b)). This rule qualifies for categorical exclusions under 23 CFR 771.118(c)(4) (planning and administrative activities that do not involve or lead directly to construction). FTA has evaluated whether the rule will involve unusual or extraordinary circumstances and has determined that it will not.

#### Executive Order 12630 (Taking of Private Property)

FTA has analyzed this rule under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. FTA does not believe that this rule affects taking of private property or otherwise has taking implications under Executive Order 12630.

#### Executive Order 12988 (Civil Justice Reform)

This rule meets applicable standards in Sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### Executive Order 13045 (Protection of Children)

FTA has analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. FTA certifies that this action will not cause an environmental risk to health or safety that might disproportionately affect children.

#### Executive Order 13175 (Tribal Consultation)

FTA has analyzed this rule under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, and believes that it will not have substantial direct effects on one or more Indian Tribes; will not impose substantial direct compliance costs on Indian Tribal governments; and will not preempt Tribal laws. Therefore, a Tribal summary impact statement is not required.

#### Executive Order 13211 (Energy Effects)

FTA has analyzed this action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. FTA has determined that this action is not a significant energy action under that order and is not likely to have a

significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required.

#### Executive Orders 14096 and 12898 (Environmental Justice)

Executive Order 14096 (Revitalizing Our Nation's Commitment to Environmental Justice for All) (Apr. 21, 2023) (which builds upon Executive Order 12898) and DOT Order 5610.2(a) (77 FR 27534, May 10, 2012)<sup>11</sup> require DOT agencies to achieve environmental justice (EJ) as part of their mission consistent with statutory authority by identifying, analyzing, and addressing, as appropriate, disproportionate and adverse human health or environmental effects, including those related to climate change and cumulative impacts of environmental and other burdens on communities with EJ concerns. All DOT agencies seek to advance these policy goals and engage in this analysis as appropriate, in all rulemaking activities. On August 15, 2012, FTA's Circular 4703.1 became effective, which contains guidance for recipients of FTA financial assistance to incorporate EJ principles into plans, projects, and activities.<sup>12</sup>

FTA has evaluated this action under its EJ policies and FTA has determined that this action will not cause disproportionate and adverse human health and environmental effects on communities with EJ concerns.

#### Regulation Identifier Number

A Regulation Identifier Number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this rule with the Unified Agenda.

<sup>11</sup> Department of Transportation Updated Environmental Justice Order 5610.2(a): Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 77 FR 27534 (May 10, 2012). <https://www.transportation.gov/transportation-policy/environmental-justice/departments-transportation-order-56102a>.

<sup>12</sup> Federal Transit Administration (February 2020). "Environmental Justice Policy Guidance for Federal Transit Administration Recipients." <https://www.transit.dot.gov/regulations-and-guidance/fta-circulars/environmental-justice-policy-guidance-federal-transit>.

**List of Subjects in 49 CFR Part 671**

Mass transportation, Reporting and recordkeeping requirements, Safety, Transportation.

**Veronica Vanterpool,**  
*Deputy Administrator.*

■ In consideration of the foregoing, and under the authority of 49 U.S.C. 5329 and 5334, and the delegations of authority at 49 CFR part 1.91, the Federal Transit Administration hereby amends Chapter VI of Title 49, Code of Federal Regulations, by adding part 671 to read as follows:

**PART 671—RAIL TRANSIT ROADWAY WORKER PROTECTION****Subpart A—General**

- Sec.  
671.1 Purpose and Applicability.  
671.3 Policy.  
671.5 Definitions.

**Subpart B—Roadway Worker Protection (RWP) Program and Manual**

- 671.11 RWP Program.  
671.13 RWP Manual.

**Subpart C—Responsibilities**

- 671.21 Rail Transit Agency.  
671.23 Transit Worker.  
671.25 State Safety Oversight Agency.

**Subpart D—Required RWP Program Elements**

- 671.31 Roadway Worker in Charge Requirements.  
671.33 Job Safety Briefing Policies.  
671.35 Lone Worker.  
671.37 Good Faith Safety Challenge.  
671.39 Risk-Based Redundant Protections.  
671.41 RWP Training and Qualification Program.  
671.43 RWP Compliance Monitoring Program.

**Subpart E—Recordkeeping**

- 671.51 Recordkeeping.

**PART 671—RAIL TRANSIT ROADWAY WORKER PROTECTION**

**Authority:** 49 U.S.C. 5329, 49 CFR 1.91.

**Subpart A—General****§ 671.1 Purpose and Applicability.**

(a) The purpose of this part is to set forth the applicability of the rail transit Roadway Worker Protection (RWP) regulation.

(b) This part applies to rail transit agencies (RTA) that receive Federal financial assistance authorized under 49 U.S.C. chapter 53; and to State Safety Oversight Agencies (SSOA) that oversee the safety of rail fixed guideway public transportation systems. This part does not apply to rail systems that are subject to the safety oversight of the Federal Railroad Administration (FRA).

(c) This part applies to transit workers who access any rail fixed guideway public transportation systems in the performance of work.

(d) An RTA must coordinate with an SSOA to establish an SSOA-approved RWP program that meets the requirements of this part, within one calendar year from the effective date of this rule.

**§ 671.3 Policy.**

(a) This part establishes minimum safety standards for rail transit Roadway Worker Protection (RWP) to ensure the safe operation of public transportation systems and to prevent safety events, fatalities, and injuries to transit workers who may access the roadway in the performance of work. Each RTA and SSOA may prescribe additional or more stringent operating rules, safety rules, and other special instructions that are consistent with this part.

(b) The Federal Transit Administration (FTA) has adopted the principles and methods of Safety Management Systems (SMS) as the basis for enhancing the safety of public transportation in the United States. Activities conducted to carry out these RWP safety standards must be integrated into the RTA's SMS, including the Safety Risk Management (SRM) process, specified in § 673.25 of this chapter, and the Safety Assurance process, specified in § 673.27 of this chapter.

**§ 671.5 Definitions.**

As used in this part:

Accountable Executive means a single identifiable person who has ultimate responsibility for carrying out the Public Transportation Agency Safety Plan of a transit agency; responsibility for carrying out the transit agency's Transit Asset Management Plan; and control or direction over the human and capital resources needed to develop and maintain both the transit agency's Public Transportation Agency Safety Plan, in accordance with 49 U.S.C. 5329(d), and the transit agency's Transit Asset Management Plan in accordance with 49 U.S.C. 5326.

*Ample time* means the time necessary for a roadway worker to be clear of the track zone or in a place of safety 15 seconds before a rail transit vehicle moving at the maximum authorized speed on that track could arrive at the location of the roadway worker.

Equivalent entity means an entity that carries out duties similar to that of a Board of Directors, for a recipient or subrecipient of FTA funds under 49 U.S.C. chapter 53, including sufficient authority to review and approve a

recipient or subrecipient's Public Transportation Agency Safety Plan.

*Equivalent protection* means alternative designs, materials, or methods that the RTA can demonstrate to the SSOA will provide equal or greater safety for roadway workers than the means specified in this part.

*Flag person* means a roadway worker designated to direct or restrict the movement of rail transit vehicles or equipment past a point on a track to provide on-track safety for roadway workers, while engaged solely in performing that function.

*Foul time protection* is a method of establishing working limits in which a roadway worker is notified by the control center that no rail transit vehicles will be authorized to operate within a specific segment of track until the roadway worker reports clear of the track.

*Fouling a track* means the placement of an individual or an item of equipment in such proximity to a track that the individual or equipment could be struck by a moving rail transit vehicle or on-track equipment, typically within four feet of the outside rail on both sides of any track.

*Individual rail transit vehicle detection* means a process by which a lone worker acquires on-track safety by visually detecting approaching rail transit vehicles or equipment and leaving the track in ample time.

*Job safety briefing* means a meeting addressing the requirements of this part that is conducted prior to commencing work by the Roadway Worker in Charge, typically at the job site, to notify roadway workers or other transit workers about the hazards related to the work to be performed and the protections to eliminate or protect against those hazards. Alternatively, briefings can be conducted virtually for those individuals who are working remotely on the job site.

*Lone worker* means an individual roadway worker who is not afforded on-track safety by another roadway worker, who is not a member of a roadway work group, and who is not engaged in a common task with another roadway worker.

*Maximum authorized speed* means the highest speed permitted for the movement of rail transit vehicles established by the rail transit vehicle control system, service schedule, and operating rules. This speed is used when calculating ample time.

*Minor tasks* mean those tasks performed without the use of tools during the execution of which a roadway worker or other transit worker can hear and visually assess their

surroundings at least every five (5) seconds for approaching rail transit vehicles and that can be performed without violating ample time.

*Near-miss* means a narrowly avoided safety event.

*On-track safety* means a state of freedom from the danger of being struck by a moving rail transit vehicle or other equipment, and other on-track hazards, as provided by operating and safety rules that govern track occupancy by roadway workers, other transit workers, rail transit vehicles, and on-track equipment.

*Place of safety* means a space an individual or individuals can safely occupy outside the track zone, sufficiently clear of any rail transit vehicle, including any on-track equipment, moving on any track.

*Qualified* means a status attained by a roadway worker or other transit worker who has successfully completed required training (including refresher training) for, has demonstrated proficiency in, and is authorized by the RTA to perform the duties of a particular position or function.

*Rail fixed guideway public transportation system* means any fixed guideway system, or any such system in engineering or construction, that uses rail, is operated for public transportation, is within the jurisdiction of a State, and is not subject to the jurisdiction of the Federal Railroad Administration. These include but are not limited to rapid rail, heavy rail, light rail, monorail, trolley, inclined plane, funicular, and automated guideway.

*Rail transit agency (RTA)* means any entity that provides services on a rail fixed guideway public transportation system.

*Rail transit vehicle* means any rolling stock used on a rail fixed guideway public transportation system, including but not limited to passenger and maintenance vehicles.

*Rail transit vehicle approach warning* means a method of establishing on-track safety by warning roadway workers of the approach of rail transit vehicles in ample time for them to move to or remain in a place of safety in accordance with the requirements of this part.

*Redundant protection* means at least one additional protection beyond individual rail transit vehicle detection to ensure on-track safety for roadway workers. Redundant protections may be procedural, physical, or both.

*Roadway* means land on which rail transit tracks and support infrastructure have been constructed to support the movement of rail transit vehicles.

*Roadway maintenance machine* means a device which is used on or near rail transit track for maintenance, repair, construction or inspection of track, bridges, roadway, signal, communications, or electric traction systems. Roadway maintenance machines may have road or rail wheels or may be stationary.

*Roadway worker* means a transit worker whose duties involve inspection, construction, maintenance, repairs, or providing on-track safety such as flag persons and watchpersons on or near the roadway or right-of-way or with the potential of fouling track.

*Roadway work group* means two or more roadway workers organized to work together on a common task.

*Roadway worker in charge* means a roadway worker who is qualified under this part to establish on-track safety.

*Roadway Worker Protection (RWP)* means the policies, processes, and procedures implemented by an RTA to prevent safety events for transit workers who must access the roadway in the performance of their work.

*RWP manual* means the entire set of the RTA's on-track safety rules and instructions maintained together, including operating rules and other procedures concerning on-track safety protection and on-track safety measures, designed to prevent roadway workers from being struck by rail transit vehicles or other on-track equipment.

*Safety event* means an unexpected outcome resulting in injury or death; damage to or loss of the facilities, equipment, rolling stock, or infrastructure of a public transportation system; or damage to the environment.

*Sight distance* means the length of roadway visible ahead for a roadway worker.

*State Safety Oversight Agency (SSOA)* means an agency established by a State that meets the requirements and performs the functions specified by 49 U.S.C. 5329(e) and (k) and 49 CFR part 674.

*Track access guide* means a document that describes the physical characteristics of the RTA's track system, including track areas with close or no clearance, curves with blind spots or restricted sight lines, areas with loud noise, and potential environmental conditions that require additional consideration in establishing on-track safety.

*Track zone* means an area identified by the RTA where a person or equipment could be struck by the widest equipment that could occupy the track.

*Transit worker* means any employee, contractor, or volunteer working on behalf of the RTA or SSOA.

*Transit Worker Safety Reporting Program* means the process required under § 673.23(b) that allows transit workers to report safety concerns, including transit worker assaults, near-misses, and unsafe acts and conditions to senior management, provides protections for transit workers who report safety conditions to senior management, and describes transit worker behaviors that may result in disciplinary action.

*Watchperson* means a roadway worker qualified to provide warning to roadway workers of approaching rail transit vehicles or track equipment whose sole duty is to look out for approaching rail transit vehicles and track equipment and provide at least 15 seconds advanced warning plus time to clear based on the maximum authorized track speed for the work location to transit workers before the arrival of rail transit vehicles.

*Working limits* means a segment of track with explicit boundaries upon which rail transit vehicles and on-track equipment may move only as authorized by the roadway worker having control over that defined segment of track.

*Work zone* means the immediate area where work is being performed within the track zone.

## **Subpart B—Roadway Worker Protection (RWP) Program and Manual**

### **§ 671.11 RWP program.**

(a) Each RTA must adopt and implement an approved RWP program to improve transit worker safety that is consistent with Federal and State safety requirements and meets the minimum requirements of this part.

(b) The RWP program must include:

(1) An RWP manual as described in § 671.13; and

(2) All of the RWP program elements described in Subpart D of this part.

(c) Each RTA must submit its RWP manual and subsequent updates to its SSOA for review and approval as described in § 671.25.

### **§ 671.13 RWP manual.**

(a) Each RTA must establish and maintain a separate, dedicated manual documenting its RWP program.

(b) The RWP manual must include the terminology, abbreviations, and acronyms used to describe the RWP program activities and requirements.

(c) The RWP manual must document:

(1) All elements of the RWP program in Subpart D of this part.

(2) A definition of RTA and transit worker responsibilities as described in Subpart C—Responsibilities.

(3) Training, qualification, and supervision required for transit workers to access the track zone, by labor category or type of work performed.

(4) Processes and procedures, including any use of roadway workers to provide adequate on-track safety, for all transit workers who may access the track zone in the performance of their work, including safety and oversight personnel. Procedures for SSOA personnel to access the roadway must conform with the SSOA's risk-based inspection program.

(d) The RWP manual must include or incorporate by reference a track access guide to support on-track safety. The track access guide must be based on a physical survey of the track geometry and condition of the transit system and include, at a minimum:

(1) Locations with limited, close, or no clearance, including locations (such as alcoves, recessed spaces, or other designated places or areas of refuge or safety) with size or access limitations.

(2) Locations subject to increased rail vehicle or on-track equipment braking requirements or reduced rail transit vehicle operator visibility due to precipitation or other weather conditions.

(3) Curves with no or limited visibility.

(4) Locations with limited or no visibility due to obstructions or topography.

(5) All portals with restricted views.

(6) Locations with heavy outside noise or other environmental conditions that impact on-track safety.

(7) Any other locations with access considerations.

(e) Following initial approval of the RWP manual by its SSOA, not less than every two years, the RTA must review and update its RWP manual to reflect current conditions and lessons learned in implementing the RWP program and information provided by the SSOA and FTA.

(f) The RTA must update its RWP manual and track access guide as necessary and as soon as practicable upon any change to the system that conflicts with any element of either document.

(g) The RWP manual must be distributed to all transit workers who access the roadway and redistributed after each revision.

### Subpart C—Responsibilities

#### § 671.21 Rail transit agency.

(a) *In General.* Each RTA must establish procedures to:

(1) Provide ample time and determine the appropriate sight distance based on maximum authorized track speeds.

(2) Ensure that individual rail transit vehicle detection is never used as the only form of protection in the track zone.

(3) Provide job safety briefings to all transit workers who must enter a track zone to perform work.

(4) Provide job safety briefings to all transit workers whenever a rule violation is observed.

(5) Provide transit workers with the right to challenge and refuse in good faith any assignment based on on-track safety concerns and resolve such challenges and refusals promptly and equitably.

(6) Require the reporting of unsafe acts, unsafe conditions, and near-misses on the roadway as part of the Transit Worker Safety Reporting Program and described in § 673.23(b) of this chapter.

(7) Ensure all transit workers who must enter a track zone to perform work understand, are qualified in, and comply with the RWP program.

(8) Provide an escort, as needed, to support individuals that are not RWP certified and do not fall into the categories of roadway worker, transit worker, or emergency personnel if they must enter a track zone.

(b) *Equipment and protections.* Each RTA must establish the requirements for on-track safety, including:

(1) Equipment that transit workers must have to access the roadway or a track zone by labor category, including personal protective equipment such as high-reflection vests, safety shoes, and hard hats.

(2) Credentials (e.g., badge, wristband, RWP card) for transit workers to enter the roadway or track zone by labor category and how to display them so they are visible.

(3) Protections for emergency response personnel who must access the roadway or the track zone.

(4) Protections for multiple roadway work groups within a common work area in a track zone.

#### § 671.23 Transit worker.

(a) *RWP program.* Each transit worker must follow the requirements of the RTA's RWP program by position and labor category.

(b) *Fouling the track.* A transit worker may only foul the track once they have received appropriate permissions and redundant protections have been established as specified in the RWP manual.

(c) *Acknowledgement of protections providing on-track safety.* A transit worker must understand and

acknowledge in writing the protections providing on-track safety measures for their specific task before accessing the roadway or track zone.

(d) *Refusal to foul the track.* A transit worker may refuse to foul the track if the transit worker makes a good faith determination that that they believe any assignment is unsafe or would violate the RTA's RWP program.

(e) *Reporting.* A transit worker must report unsafe acts and conditions and near-misses related to the RWP program as part of the RTA's Transit Worker Safety Reporting Program.

#### § 671.25 State safety oversight agency.

(a) *Review and approve RWP program elements.* The SSOA must review and approve the RWP manual and any subsequent updates for each RTA within its jurisdiction:

(1) The SSOA must coordinate with the RTA on the initial review and approval of the RWP program elements so that the RWP program is established and approved within one calendar year from December 2, 2024, and

(2) The SSOA also must submit all approved RWP program elements for each RTA in its jurisdiction, and any subsequent updates, to FTA within 30 calendar days of approving them.

(b) *RWP program oversight.* The SSOA must update its program standard to explain the role of the SSOA in overseeing an RTA's execution of its RWP program.

(c) *Annual RWP program audit.* (1) The SSOA must conduct an annual audit of the RTA's compliance with its RWP program, including all required RWP program elements, for each RTA that it oversees.

(2) The SSOA must issue a report with any findings and recommendations arising from the audit, which must include, at minimum:

(i) An analysis of the effectiveness of the RWP program, including, at a minimum, a review of:

(A) All RWP-related events over the period covered by the audit;

(B) All RWP-related reports made to the Transit Worker Safety Reporting Program over the period covered by the audit;

(C) All documentation of instances where a transit worker(s) challenged and refused in good faith any assignment based on on-track safety concerns and documentation of the resolution for any such instance during the period covered by the audit;

(D) An assessment of the adequacy of the track access guide, including whether the guide reflects current track geometry and conditions;

(E) A review of training and qualification records for transit workers



who must enter a track zone to perform work;

(F) A representative sample of written job safety briefing confirmations as described in § 671.33; and

(G) The compliance monitoring program described in § 671.43.

(ii) Recommendations for improvements, if necessary or appropriate.

(iii) Corrective action plan(s), if necessary or appropriate, must be developed and executed consistent with requirements established in part 674.

(3) The RTA must be given an opportunity to comment on any findings and recommendations.

#### **Subpart D—Required RWP Program Elements**

##### **§ 671.31 Roadway worker in charge requirements.**

(a) *On-track safety and supervision.* The RTA must designate one roadway worker in charge for each roadway work group whose duties require fouling a track.

(1) The roadway worker in charge must be qualified under the RTA's training and qualification program as specified in § 671.41.

(2) The roadway worker in charge may be designated generally or may be designated specifically for a particular work situation.

(3) The roadway worker in charge is responsible for the on-track safety for all members of the roadway work group.

(4) The roadway worker in charge must serve only the function of maintaining on-track safety for all members of the roadway work group and perform no other unrelated job function while designated for duty.

(5) For multiple roadway work groups within common working limits, the RTA may designate a single roadway worker in charge for the entire working limit. If a single roadway worker in charge is designated over multiple roadway work groups within a working limit, each work group must be accompanied by an employee qualified to the level of a roadway worker in charge, as specified in § 671.41, who shall be responsible for direct communication with the roadway worker in charge.

(b) *Communication.* The RTA must ensure that the roadway worker in charge provides a job safety briefing to all roadway workers before any member of a roadway work group fouls a track, following the requirements specified in § 671.33.

(1) The roadway worker in charge must provide a job safety briefing to all members of the roadway work group

before any on-track safety procedures change during the work period, whenever on-track safety conditions change, or immediately following an observed violation of on-track safety procedures, before work in the track zone may continue.

(2) In the event of an emergency, the roadway worker in charge must warn each roadway worker to immediately leave the roadway and not return until on-track safety is re-established, and a job safety briefing is completed.

##### **§ 671.33 Job safety briefing policies.**

(a) *General.* The RTA must ensure the roadway worker in charge provides any roadway worker who must foul a track with a job safety briefing prior to fouling the track, every time the roadway worker fouls the track.

(b) *Elements.* The job safety briefing must include, at a minimum, the following, as appropriate:

(1) A discussion of the nature of the work to be performed and the characteristics of the work, including work plans for multiple roadway worker groups within a single work area;

(2) Working limits;

(3) The hazards involved in performing the work. For RTAs with electrified systems, this discussion must include the status of power and hazards explicitly related to the electrified system;

(4) Information on how on-track safety is to be provided for each track identified to be fouled; identification and location of key personnel, such as a watchperson and the roadway worker in charge; and information on what should be done in the event of an emergency;

(5) Instructions for each on-track safety procedure to be followed, including appropriate flags and proper flag placement;

(6) Communication roles and responsibilities for all transit workers involved in the work;

(7) Safety information about any adjacent track, defined as track next to or adjoining the track zone where on-track safety has been established, and identification of roadway maintenance machines or on-track equipment that will foul such tracks;

(8) Information on the accessibility of the roadway worker in charge, including emergency contact information, and alternative procedures in the event the roadway worker in charge is no longer accessible to members of the roadway work group;

(9) Required personal protective equipment;

(10) Designated place(s) of safety of a sufficient size to accommodate all

roadway workers within the work area; and

(11) The means for determining ample time.

(c) *Confirmation and written acknowledgement.* A job safety briefing is complete only after:

(1) The roadway worker in charge confirms that each roadway worker understands the on-track safety procedures and instructions;

(2) Each roadway worker acknowledges in writing the briefing and the requirement to use the required personal protective equipment; and

(3) The roadway worker in charge confirms in writing that they have received written acknowledgement of the briefing from each worker.

(d) *Follow-up briefings.* If after the initial job safety briefing there is any change in the scope of work or roadway work group, or on-track safety conditions change, or a violation of on-track safety is observed, a follow-up job safety briefing must be conducted.

##### **§ 671.35 Lone worker.**

(a) *On-track safety and supervision.* The RTA may authorize lone workers to perform limited duties that require fouling a track.

(1) The lone worker must be qualified as a roadway worker in charge and lone worker under the RTA's training and qualification program as specified in § 671.41.

(2) The lone worker may perform routine inspection or minor tasks and move from one location to another. The lone worker may not use power tools and may only access locations have defined in the track access guide as appropriate for lone workers, *i.e.*, no loud noises, no restricted clearances, etc.

(3) The lone worker may not use individual rail transit vehicle detection, where the lone worker is solely responsible for seeing approaching trains and clearing the track before the trains arrive, as the only form of on-track safety.

(b) *Communication.* Each lone worker must communicate prior to fouling the track with a supervisor or another designated employee to receive an on-track safety job briefing consisting of the elements in § 671.33(b), including a discussion of their planned work activities and the procedures that they intend to use to establish on-track safety. The lone worker must acknowledge and document the job safety briefing in writing consistent with § 671.33(c).

##### **§ 671.37 Good faith safety challenge.**

(a) *Written procedure.* Each RTA must document its procedures that provide to

every roadway worker the right to challenge and refuse in good faith any assignment they believe is unsafe or would violate the RTA's RWP program.

(b) *Prompt and equitable resolution.* The written procedure must include methods or processes to achieve prompt and equitable resolution of any challenges and refusals made.

(c) *Requirements.* The written procedure must include a requirement that the roadway worker provide a description of the safety concern regarding on-track safety and that the roadway work group must remain clear of the roadway or track zone until the challenge and refusal is resolved.

#### **§ 671.39 Risk-based redundant protections.**

(a) *General requirements.* (1) Each RTA must identify and provide redundant protections for each category of work roadway workers perform on the roadway or track.

(2) Each RTA must establish redundant protections to ensure on-track safety for multiple roadway work groups within a common work area.

(b) *Safety risk assessment to determine redundant protections.* Each RTA must assess the risk associated with transit workers accessing the roadway using the methods and processes established under § 673.25(c) of this chapter. The RTA must use the methods and processes established under § 673.25(d) of this chapter to establish redundant protections for each category of work performed by roadway workers on the rail transit system and must include lone workers.

(1) The safety risk assessment must be consistent with the RTA's Agency Safety Plan (ASP) and the SSOA's program standard.

(2) The safety risk assessment may be supplemented by engineering assessments, inputs from the safety assurance process established under § 673.27 of this chapter, the results of safety event investigations, and other SRM strategies or approaches.

(3) The RTA must review and update the safety risk assessment at least every two years to include current conditions and lessons learned from safety events, actions taken to address reports of unsafe acts and conditions, and near-misses, and results from compliance monitoring regarding the effectiveness of the redundant protections.

(4) The SSOA may also identify and require the RTA to implement alternate redundant protections based on the RTA's unique operating characteristics and capabilities.

(c) *Categories of work requiring redundant protections.* Redundant

protections must be identified for roadway workers performing different categories of work on the roadway and within track zones, which may include but are not limited to categories such as:

- (1) Roadway workers moving from one track zone location to another;
- (2) Roadway workers performing minor tasks;
- (3) Roadway workers conducting visual inspections;
- (4) Roadway workers using hand tools, machines, or equipment in conducting testing of track system components or non-visual inspections;
- (5) Roadway workers using hand tools, machines, or equipment in performing maintenance, construction, or repairs; and/or
- (6) Lone workers accessing the roadway or track zone or performing visual inspections or minor tasks.

(d) *Types of redundant protections.*

(1) Redundant protections may be procedural or physical.

(i) Procedural protections alert rail transit vehicle operators to the presence of roadway workers and use radio communications, personnel, signage, or other means to direct rail transit vehicle movement.

(ii) Physical protections physically control the movement of rail transit vehicles into or through a work zone.

(2) Redundant protections may include but are not limited to:

- (i) Approaches consistent with the FRA rules governing redundant protections;
- (ii) Rail transit vehicle approach warning;
- (iii) Foul time;
- (iv) Exclusive track occupancy, defined as a method of establishing working limits, as part of on-track safety, in which movement authority of rail transit vehicles and other equipment is withheld by the control center or restricted by flag persons and provided by a roadway worker in charge;
- (v) Warning signs, flags, or lights;
- (vi) Flag persons;
- (vii) Lock outs from the rail transit vehicle control systems or lining and locking track switches or otherwise physically preventing entry and movement of rail transit vehicles;
- (viii) Secondary warning devices and alert systems;
- (ix) Shunt devices and portable trip stops to reduce the likelihood of rail transit vehicles from entering work zone with workers;
- (x) Restricting work to times when propulsion power is down with verification that track is out of service, and when barriers are placed that physically prevent rail transit vehicles,

including on-track equipment, from entering the work zone;

(xi) Use of walkways in tunnels and on elevated structures to reduce roadway worker time in the track zone; and

(xii) Speed restrictions.

(3) Redundant protections for lone workers must include, at a minimum, foul time or an equivalent protection approved by the SSOA.

#### **§ 671.41 RWP training and qualification program.**

(a) *General.* Each RTA must adopt an RWP training program.

(1) The RWP training program must address all transit workers responsible for on-track safety, by position, including roadway workers, operations control center personnel, rail transit vehicle operators, operators of on-track equipment and roadway maintenance machines, and any others with a role in providing on-track safety or fouling a track for the performance of work.

(2) The RWP training program must be completed for the relevant position before an RTA may assign a transit worker to perform the duties of a roadway worker, to oversee or supervise access to the track zone from the operations control center, or to operate vehicles, on-track equipment, and roadway maintenance machines on the rail transit system.

(3) The RWP training program must address RWP hazard recognition and mitigation, and lessons learned through the results of compliance testing, near-miss reports, reports of unsafe acts or conditions, and feedback received on the training program.

(4) The RWP training program must include initial and refresher training, by position. Refresher training must occur every two years at a minimum.

(5) The RTA must review and update its RWP training program not less than every two years, to reflect lessons learned in implementing the RWP program and information provided by the SSOA and FTA. The RTA must provide an opportunity for roadway worker involvement in the RWP training program review and update process.

(b) *Required elements.* The RWP training program must include interactive training with the opportunity to ask the RWP trainer questions and raise and discuss RWP issues.

(1) Initial training must include experience in a representative field setting.

(2) Initial and refresher training must include demonstrations and assessments to ensure the ability to comply with RWP instructions given by transit workers performing, or

responsible for, on-track safety and RWP functions.

(c) *Minimum contents for RWP training.* The RWP training program must address, as applicable, the following minimum contents:

(1) How to interpret and use the RTA's RWP manual;

(2) How to challenge and refuse assignments in good faith;

(3) How to report unsafe acts, unsafe conditions, and near-misses after they occur, and the mandatory duty to make such reports;

(4) Recognition of the track zone and understanding of the space around tracks within which on-track safety is required, including use of the track access guide;

(5) The functions and responsibilities of all transit workers involved in on-track safety, by position;

(6) Proper compliance with on-track safety instructions given by transit workers performing or responsible for on-track safety functions;

(7) Signals and directions given by watchpersons, and the proper procedures upon receiving a rail transit vehicle approach warning from a watchperson;

(8) The hazards associated with working on or near rail transit tracks to include traction power, if applicable;

(9) Rules and procedures for redundant protections identified under § 671.37 and how they are applied to RWP; and

(10) Requirements for safely crossing rail transit tracks in yards and on the mainline.

(d) *Specialized training and qualification for transit workers with additional responsibilities for on-track safety.* The RWP training program must include additional training for watchpersons, flag persons, lone

workers, roadway workers in charge, and other transit workers with responsibilities for establishing, supervising, and monitoring on-track safety.

(1) This training must cover the content and application of the additional RWP program requirements carried out by these positions and must address the relevant physical characteristics of the RTA's system where on-track safety may be established.

(2) This training must include demonstrations and assessments to confirm the transit worker's ability to perform these additional responsibilities.

(3) Refresher training on additional responsibilities for on-track safety, by position, must occur every two years at a minimum.

(e) *Competency and qualification of training personnel.* Each RTA must ensure that transit workers providing RWP training are qualified and have active RWP certification at the RTA to provide effective RWP training, and at a minimum must consider the following:

(1) A trainer's experience and knowledge of effective training techniques in the chosen learning environment;

(2) A trainer's experience with the RTA RWP program;

(3) A trainer's knowledge of the RTA RWP rules, operations, and operating environment, including applicable operating rules; and

(4) A trainer's knowledge of the training requirements specified in this part.

#### **§ 671.43 RWP compliance monitoring program.**

(a) *General.* Each RTA must adopt a program for monitoring its compliance

with the requirements specified in its RWP program.

(b) *Required elements.* The RWP compliance monitoring program must include inspections, observations, and audits, consistent with safety performance monitoring and measurement requirements in the RTA's ASP described in § 673.27(b) of this chapter and the SSOA's program standard.

(1) The RTA must provide quarterly reports to the SSOA documenting the RTA's compliance with and sufficiency of the RWP program.

(2) The RTA must provide an annual briefing to the Accountable Executive and the Board of Directors, or equivalent entity, regarding the performance of the RWP program and any identified deficiencies requiring corrective action.

### **Subpart E—Recordkeeping**

#### **§ 671.51 Recordkeeping.**

(a) Each RTA must maintain the documents that set forth its RWP program; documents related to the implementation of the RWP program; and results from the procedures, processes, assessments, training, and activities specified in this part for the RWP program.

(b) Each RTA must maintain records of its compliance with this requirement, including records of transit worker RWP training and refresher training, for a minimum of three years after they are created.

(c) These documents must be made available upon request by the FTA or other Federal entity, or an SSOA having jurisdiction.

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## Part V

### Department of Agriculture

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Food and Nutrition Service

7 Parts 247, 250, et al.

Food Distribution Programs: Improving Access and Parity; Final Rule

**DEPARTMENT OF AGRICULTURE****Food and Nutrition Service****7 CFR Part 247, 250, 251, 253, and 254**

[FNS–2023–0026]

RIN 0584–AE92

**Food Distribution Programs:  
Improving Access and Parity****AGENCY:** Food and Nutrition Service (FNS), USDA.**ACTION:** Final rule.

**SUMMARY:** This final rule considers public comments submitted in response to the proposed rule revising the Commodity Supplemental Food Program (CSFP), the Food Distribution Program on Indian Reservations (FDPIR), The Emergency Food Assistance Program (TEFAP), and USDA Foods disaster response regulations. This final rule makes access and parity improvements in USDA's food distribution programs to support access for eligible populations and streamline requirements for program operators.

**DATES:**

*Effective date:* This rule is effective December 30, 2024.

*Implementation dates:* See section 2 of the **SUPPLEMENTARY INFORMATION**.

This rulemaking consists of multiple provisions. Implementation for each provision is referenced in the **SUPPLEMENTARY INFORMATION** section of this final rule and detailed in the section-by-section analysis.

**FOR FURTHER INFORMATION CONTACT:**

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**SUPPLEMENTARY INFORMATION:****Section 1. Background and Discussion of the Final Rule**

The U.S. Department of Agriculture's (the Department or USDA) Food and Nutrition Service (FNS) works to increase food security and reduce hunger through the administration of 16 Federal nutrition assistance programs. Through the provision of food and administrative funding, USDA FNS food distribution programs assist the emergency feeding network—made up of thousands of food banks, food pantries, Tribal governments, and other community partners—in feeding those in need.

In a proposed rule published in the **Federal Register** on August 14, 2023 (88

FR 54908) (described hereafter as “the proposed rule”), FNS proposed to amend food distribution regulations at 7 CFR parts 247, 250, 251, 253, and 254 to make access and parity improvements within the Commodity Supplemental Food Program (CSFP), the Food Distribution Program on Indian Reservations (FDPIR), The Emergency Food Assistance Program (TEFAP), and USDA Foods disaster response. Based on comments received in response to the proposed rule, USDA is finalizing regulatory changes with the following overall aims:

- Increasing access to food distribution programs so eligible individuals can more easily receive the nutrition resources they need, and program operators can more easily provide those resources;
- Increasing parity between FDPIR and the Supplemental Nutrition Assistance Program (SNAP);
- Modernizing program operations by updating some outdated terminology and processes;
- Updating regulations to be consistent with current program operations and building in flexibility for future changes; and
- Incorporating lessons learned from implementing these critical programs during the COVID–19 pandemic.

**Section II. Public Comments and USDA Response**

During the 60-day comment period on the proposed rule (August 14–October 13, 2023), USDA received a total of 155 comments. The Department appreciates the comments provided and carefully considered these in the development of this final rule.

All comments were considered without regard to whether they were provided by a single commenter or repeated by many. Importance was given to the substance or content of the comment, rather than the number of times a comment was submitted. Of the 155 comments, 11 were duplicate or non-germane submissions, resulting in 144 relevant comments. All comments are posted online at (*see docket FNS–2023–0026, Food Distribution Programs: Improving Access and Parity*). Relevant comments were submitted by State and local agencies, Indian Tribal Organizations (ITOs), advocacy organizations, nongovernmental organizations, and other interested parties, including food banks, professional and trade associations, the research community, and individual commenters and members of the public. Comments that did not refer to the changes in the proposed rule were

considered outside of scope and are not addressed as part of this final rule.

Overall, five comments fully supported the proposed rule generally and one comment opposed it. The remaining comments were either mixed or only referenced and supported specific provisions. Additional detail on the comments received for provisions in the proposed rule are below.

**A. Commodity Supplemental Food Program****I. Technical Updates to the Entire Part 247**

This final rule codifies technical updates to 7 CFR part 247 as proposed. The Department is replacing the term “elderly” with “participants” because, under the Agricultural Act of 2014 (Pub. L. 113–79), as of February 2020, CSFP is limited to participation by senior adults aged 60 years and above. In § 247.2, the Department is removing reference to women, infants, and children receiving CSFP benefits as they are no longer a part of the program. Additionally, the Department is replacing the outdated term “commodities” with “USDA Foods” to better reflect current terminology and align with the newly proposed definition of USDA Foods in 7 CFR 247.1 (See II. Updates to Definitions). This technical update does not change any current requirements and is simply a change in terminology.

**Public Comments and USDA Response**

The Department received 21 comments that were all supportive of the technical updates to 7 CFR part 247. Commenters supporting the changes included: 4 State agencies, 7 advocacy groups, 5 program operators, and 5 individuals. One commenter discussed that updating the term “elderly” to “participants” would align with the use of person-centered language. Commenters in support of updating the term “commodities” to “USDA Foods” discussed how the technical updates will reduce confusion at the local agency level when identifying foods procured through USDA.

One State agency commenter requested clarification or technical guidance on which foods are solely eligible for CSFP versus other USDA Foods programs. The commenter stated that all of the foods in each program would be considered USDA Foods after this update is finalized. Per § 250.12(b), distributing agencies must ensure that USDA Foods at all storage facilities (including subdistributing agencies) are stored in a manner that permits them to be distinguished from other foods, and

must ensure that a separate inventory record of USDA Foods is maintained. Thus, State agencies must store USDA Foods provided for CSFP separately from USDA Foods provided for any other program (e.g., TEFAP) and must use those foods solely for the operation of CSFP.

## II. Updates to Definitions (§ 247.1)

This final rule codifies the updated definitions in § 247.1 as proposed. The Department is adding a new definition for the term “USDA Foods” to replace the outdated definition of “commodities” and align 7 CFR part 247 with current terminology. The Department is deleting the definition of “elderly persons” since § 247.9(a) specifies CSFP-eligible individuals must be at least 60 years of age and because the term “elderly persons” is being replaced throughout the part. Finally, the Department is updating the definition of “proxy” to exclude a “participant’s adult parent” because children are no longer eligible to participate in CSFP under the Agricultural Act of 2014 (Pub. L. 113–79).

### Public Comments and USDA Response

The Department received 21 comments that were all supportive of updating the definitions in § 247.1. Commenters supporting the change included: 4 State agencies, 7 advocacy groups, 5 program operators, and 5 individuals. The update to the definitions in § 247.1 reflects the technical updates discussed above (See I. Technical Updates to the Entire Part 247). Commenters noted these updates reflect current practices in the program and the change to the term “USDA Foods” provides clarity and consistency with other USDA programs while potentially reducing confusion at the local agency level when identifying USDA Foods. The Department concurs with commenters who stated that the proposed changes to § 247.1 will update the program to use current terminology and provide clarity and consistency with other USDA food distribution programs.

One commenter suggested expanding the definition of “proxy” to allow for proxies during certification and remove an access barrier to the program. The Department is not expanding the definition of “proxy” for certification periods as State agencies may already permit the use of proxies during certification and recertification.

## III. Public Posting of Availability of USDA Foods (§ 247.5)

This final rule codifies the proposed provision at § 247.5(b)(16) with modification to require that State agencies make available a list of CSFP local agencies, excluding agencies operating under an agreement with a local agency, on a publicly available internet web page. The State agency must post the name, address, and telephone number for each local agency. The list must be updated, at a minimum, on an annual basis. This is a revision from the proposed provision, which would have required State agencies to make publicly available a list of all CSFP distribution sites, including both local agencies and agencies operating under an agreement with a local agency. State agencies must implement this provision by October 31, 2025, a revision from the proposed 60-day implementation timeline which acknowledges the need for additional time to implement the new requirement.

### Public Comments and USDA Response

The Department received 33 comments, 23 of which were supportive of the proposed changes and 10 that were unsupportive. Commenters supporting the proposed change included: 4 State agencies, 6 advocacy groups, 8 program operators and 2 individuals. Unsupportive comments were received from: 5 State agencies, 1 advocacy group, 4 program operators and 1 individual.

Many commenters in support of the proposal discussed how this change would help potential applicants find food assistance during non-work hours and based on residency. Other commenters in support of the proposal pointed out that many State agencies currently list distribution sites on their public website and so this change would reflect current practice for many State agencies while increasing awareness of the program. Several commenters stated that to be effective, it is vital to keep distribution site information up-to-date and accurate.

However, several commenters raised concerns with the feasibility and practicality of this proposed requirement and offered alternative approaches. Some commenters pointed out that for some State agencies, posting every distribution site on a State agency’s website might not be a practical requirement, since distribution sites change periodically, causing the list to potentially be outdated quickly. Others pointed out that distribution sites may not have caseload available for potential applicants and may not have

the capability to answer phone calls or handle on site arrivals as a result of posting this information publicly. Some commenters proposed alternative approaches, including allowing State agencies to refer potential applicants directly to local agencies instead of maintaining the list of distribution sites at the State level. Others suggested requiring only posting of permanent site locations, a single lead agency, or one point of contact. One commenter suggested offering technology grants to support infrastructure updates, phasing in the requirement over time, aligning State Plan requirements with public information requirements, and for FNS to consider allowing State agencies to link to local agency websites that might be in a better position to provide current and updated information. Another commenter suggested the Department use language that State agencies “ensure” sites are posted without dictating the State agency maintain ownership of the website.

Public posting of CSFP distribution sites is intended to promote program access and help potential CSFP participants find their closest distribution sites. However, public comments noted the proposed provision could cause confusion if the list of CSFP distribution sites becomes outdated or inaccurate. The Department acknowledges that for State agencies with many small distribution sites, the requirement to post all CSFP distribution sites may not be beneficial as the list could become outdated as distribution sites open and close. As such, the Department modifies this proposed provision to require State agencies to make a list of CSFP local agencies publicly available. This revision reduces the administrative burden on State agencies to post information on all distribution sites while helping potential CSFP applicants locate local agencies, that may then direct potential applicants to distribution sites and ultimately increase program access.

State agencies are still encouraged, but not required, to post more frequent updates as they are needed and include additional information, such as operating hours, links to local agency websites, and information on distribution sites. State agencies are also encouraged, but not required, to develop tools to aid eligible individuals in accessing the program (e.g., a searchable tool by ZIP code). State agencies are encouraged to share any online resources they create with other organizations that serve CSFP-eligible individuals.

#### IV. State Plan Requirement (§§ 247.6(a) and 247.5(b)(17))

This final rule codifies the requirement that State agencies make publicly available the State Plan that is currently in use by the State agency on an internet web page as proposed. This modernizes the current requirement at 7 CFR 247.6(a) that State agencies must keep a copy of the State Plan on file at the State agency for public inspection. This final rule also codifies as proposed a related provision at § 247.5(b)(17), which requires State agencies to make publicly available the State Plan that is currently in use by the State agency on an internet web page. State agencies must implement this provision no later than 12 months after the date of publication of the final rule in the **Federal Register**.

#### Public Comments and USDA Response

The Department received 19 comments, 16 of which were supportive of the proposed changes and 3 that were unsupportive. Commenters supporting the proposed change included: 2 State agencies, 3 advocacy groups, 2 food bank associations, 8 program operators and 1 individual. Unsupportive commenters included: 1 State agency, 1 advocacy group, and 1 individual. Commenters supporting the proposed change expressed the new requirement would increase program transparency and increase awareness of the program. Unsupportive commenters had concerns the proposed change would create an undue administrative burden, and one suggested USDA post State Plans on its own website.

The Department recognizes there is an administrative burden associated with posting the State Plan on a publicly available internet web page. However, the Department estimates this burden will be modest and believes this is outweighed by the benefits of increasing transparency and awareness of the program and modernizing the current requirement that the State Plan be available for public inspection. A number of State agencies already post their State Plan on a publicly available website. However, for the State agencies posting their State Plan for the first time, FNS will provide guidance on the timing of when State Plans need to be posted to a website, giving direction and time to State agencies to comply with this change by the implementation date of 12 months after the date of publication of this final rule.

#### V. Eligibility Requirements (§ 247.9)

This final rule codifies the increase to the CSFP maximum income eligibility

guidelines to 150 percent of the U.S. Federal Poverty Guidelines published annually by the U.S. Department of Health and Human Services (HHS) at § 247.9(a) as proposed. This is an increase from the prior limit of 130 percent of the U.S. Federal Poverty Guidelines.

In addition to the proposed change to increase CSFP's maximum income eligibility guidelines to 150 percent of the U.S. Federal Poverty Guidelines without the addition of a medical deduction, the Department specifically requested public comments on an alternate level of 185 percent of the U.S. Federal Poverty Guidelines.

#### Public Comments and USDA Response

The Department received 88 comments on this provision, all of which were in support of raising CSFP income eligibility guidelines. Of these commenters, 19 supported raising the income guidelines without specifying a new threshold, including 2 State agencies, 4 program operators, 1 advocacy group, and 2 individuals. An additional 3 commenters supported raising the guidelines to 150 percent, including 1 State agency, 1 food bank association, and 1 program operator. The remaining 66 commenters supported raising the income guidelines to 185 percent, including 9 State agencies, 3 food bank associations, 10 advocacy groups, 1 member of industry, 22 program operators, and 21 individuals.

Many commenters discussed how an increase in the CSFP income eligibility limit would better serve residents in higher cost of living areas, those who have high medical expense costs, as well as participants living in remote, geographically isolated Tribal jurisdictions. Other supporters mentioned how nationwide inflation increases particularly affect CSFP's target population, given that older individuals more often have fixed incomes compared to younger individuals.

Specific to the 185 percent limit, commenters discussed how it would align the program with the Senior Farmers' Market Nutrition Program (SFMNP) and reduce confusion for participants of both programs. Commenters also mentioned how a 185 percent limit would align the program with other FNS food distribution programs.

The Department agrees the proposed increase to 150 percent will help serve participants in higher cost of living or remote areas, those with higher medical expenses, and participants experiencing

higher living costs due to increased inflation nationwide.

While the Department appreciates feedback on the alternative level of 185 percent, the Department's priority is to provide CSFP benefits to seniors who are most in need. As a discretionary program that does not operate Statewide in most jurisdictions, the Department believes the income eligibility limit of 150 percent of the U.S. Federal Poverty Guidelines best achieves this goal.

#### VI. Changes to Identification Check at Distribution and Flexibility for Identification Verification (§§ 247.10(b) and 247.6(c))

This final rule codifies the changes to identification checks at distribution at §§ 247.10(b) and 247.6(c), as proposed, increasing flexibility for State agencies in verifying participant identity. At § 247.10(b), the Department finalizes an update to the current requirement that each participant, or their proxy, present some form of identification before receiving USDA Foods, to instead require local agencies have a process in place, in accordance with State agency requirements, to verify the identity of a participant or their proxy before distributing USDA Foods. The Department also finalizes the associated change to § 247.6(c) as proposed to require State Plans have a description of the process in place to verify the identity of participants before receipt of USDA Foods.

#### Public Comments and USDA Response

The Department received 58 comments relating to these provisions, all of which were supportive of the proposed change to grant more flexibility when checking the identity of CSFP participants, or their proxies, during the time of delivery of the CSFP food package. Commenters supporting the change included: 10 State agencies, 11 advocacy groups and food bank associations, 1 member of industry, 23 program operators and 13 individuals. Many supportive commenters discussed how the proposed change would modernize and streamline the current requirement and increase program access to individuals with disabilities, mobility issues, language barriers, and individuals that do not have identification. Other supportive commenters mentioned how service would be streamlined under the proposed change and how the change would lower the burden of delivering food packages and allow for greater use of technology. The Department agrees this change modernizes the identification requirement and streamlines program access for



participants with disabilities, mobility issues, language barriers, and those without identification. This change allows local agencies and participants more flexibility in verifying participant identity and supports State and local agencies in modernizing the program's delivery methods, for example through innovative partnerships with third-party entities that deliver food packages directly to participants' homes. These entities now have greater flexibility when verifying participants' identity in line with the State's requirements.

Some commenters who supported the proposed provision also expressed a desire to remove identification verification completely from the program. Others requested examples of alternate materials that would satisfy this requirement and minimum thresholds for identity verification. State agencies have the flexibility to set their own parameters to verify the identity of participants or their proxies prior to distribution of food packages provided the method is in line with regulatory requirements, including that USDA Foods are only distributed to CSFP participants. FNS will provide additional guidance, including examples of how to meet this requirement, as part of the implementation of this final rule.

#### VII. Request for Comment: Federal and State Programs Conferring Eligibility for CSFP

This final rule codifies a new provision at § 247.9(b)(1) and (2) to give State agencies the option to allow CSFP participants to demonstrate eligibility for CSFP via participation in specific Federal programs or a State program with income limits at or under the CSFP threshold.

State agencies may accept participation in the following Federal programs as demonstrating eligibility for CSFP: the Supplemental Nutrition Assistance Program (SNAP), the Food Distribution Program on Indian Reservations (FDPIR), Supplemental Security Income (SSI), the Low Income Subsidy Program (LIS), also known as Extra Help, and available under the Medicare Part D prescription drug program, and the Medicare Savings Program(s) (MSP).

This final rule also allows State agencies to identify and accept participation in State level programs that have maximum income eligibility guidelines at or below the State's maximum CSFP guidelines as demonstrating eligibility for CSFP.

The Department sought feedback from CSFP State agencies, including ITOs, and the program community on this

proposal through the proposed rule, and specifically on the following questions:

1. Are there other Federal programs that you would like USDA to consider as options to demonstrate eligibility for CSFP?

2. Should USDA consider an option for State agencies to have the flexibility to include State means-tested programs to demonstrate eligibility for CSFP?

#### Public Comments and USDA Response

The Department received 17 comments that were all in support of considering participation in various programs at the Federal and State level as demonstrating eligibility for CSFP. Commenters supporting the change included: 5 State agencies, 4 advocacy groups, 5 program operators, and 3 individuals. Commenters in support of this provision suggested that participation in the following Federal programs should demonstrate eligibility for CSFP: SNAP, SSI, FDPIR, the Low Income Home Energy Assistance Program (LIHEAP), the Senior Farmers' Market Nutrition Program (SFMNP), the Housing Choice Voucher Program Section 8, Medicaid, the Children's Health Insurance Program (CHIP), Medicare, and the Supplemental Nutrition Program for Women, Infants, and Children (WIC).

One commenter suggested including programs with income limits above CSFP but did not suggest a limitation. Many commenters generally supported demonstrating eligibility for CSFP through participation in State-level programs with income limits at or below CSFP, and one commenter suggested the Michigan Housing Authority residence and utility assistance programs in their State.

Given that the Department received fully supportive comments on this change, the Department codifies in this final rule a provision to give State agencies the option to allow participation in specific Federal programs and State level programs with income eligibility standards at or below the CSFP requirements to demonstrate eligibility for the program. This provision reduces the administrative burden on local agencies and participants and will not impose any program changes to State agencies which do not elect to implement this provision. Through the comment period and subsequent analysis, the Department identified programs outside of those listed in the request for comments in the proposed rule, such as LIS and MSP, and included those as additional Federal programs allowed to demonstrate CSFP income eligibility.

#### VIII. Referral Materials for the Senior Farmers' Market Nutrition Program (§ 247.14)

This final rule codifies a new provision at § 247.14(a)(4) as proposed to require that local agencies, where applicable, share written information and referrals to the Senior Farmers' Market Nutrition Program (SFMNP) with CSFP applicants. Section 247.14(a) currently requires that local agencies, as appropriate, provide applicants with written information and make referrals on various programs, including SNAP. CSFP and SFMNP work in tandem to serve the low-income senior population and the benefits provided by each program help meet the needs of seniors at nutritional risk. State agencies and other affected parties must implement this provision no later than 12 months after the date of publication of the final rule in the **Federal Register**.

#### Public Comments and USDA Response

The Department received 29 comments for this provision, 25 of which were in support and 4 that were unsupportive. Commenters supporting the proposed provision included: 8 State agencies, 9 advocacy groups and food bank associations, 5 program operators, and 3 individuals. Unsupportive commenters included: 1 State agency and 1 local agency, 1 individual, and 1 advocacy group. Supportive commenters discussed how CSFP participants who gain access to SFMNP could receive access to fresh produce that is not currently offered in CSFP. The Department concurs with commenters who stated that providing SFMNP referral materials to CSFP participants can help participants access SFMNP and potentially increase their consumption of fresh produce.

Three commenters representing Indian Tribal Organizations requested FNS provide periodic updates on other CSFP or SFMNP program operators in their areas. The Department recognizes this information is important to support referrals and maintains publicly available contact information for CSFP and SFMNP State agency operators to facilitate connection between these programs.

One commenter requested that SFMNP have dedicated caseload for CSFP participants to ensure access to the program, a change that would be outside the scope of this rulemaking.

Other commenters requested a clarification on what "written" means in this provision, as many States operate in web-based communications and because printing materials may exhaust the limited budgets of implementing

agencies. One unsupportive commenter of this provision mentioned how, with labor shortages and other challenges, the benefit of this provision would not outweigh the cost of implementing it and how other program activities may be negatively impacted. Another commenter supported sharing information about SFMNP, but did not support formal referrals to other programs, due to it being an undue burden on local agencies. Another commenter mentioned how they do not support the provision as written because printing may not be available everywhere. The Department acknowledges that some State and local agencies have limited budgets and clarifies that for purposes of this provision, and in alignment with current CSFP policy, written materials can include electronic communications. In addition, this provision includes the language “where applicable” to ensure that SFMNP referrals do not need to occur in areas in which the program is not offered and in other instances when referrals are not applicable.

#### IX. Nondiscrimination Statement Update (§ 247.37)

The Department proposed an update to the nondiscrimination statement language at § 247.37 to state that CSFP must be operated in accordance with the most up-to-date USDA nondiscrimination statement. Because the nondiscrimination statement is applicable to multiple USDA programs, the Department has reconsidered its approach. The Department will not finalize the proposed provision in this rulemaking. The Department will instead consider options to address this in future rulemaking.

#### Public Comments and USDA Response

The Department received 4 comments on this proposed provision, all of which were in support of the proposed change, including 1 State agency, 2 advocacy groups, and 1 individual. Commenters highlighted how this proposed change would retain important nondiscrimination language while also ensuring that the most current USDA statement consistently remains official policy. The Department appreciates support for the proposed changes and will consider this feedback in future rulemaking addressing the nondiscrimination statement, with the goal of consistency across USDA programs.

#### B. USDA Foods in Disasters and Situations of Distress

##### I. Technical Updates to §§ 250.69 and 250.70

This final rule codifies the technical updates to §§ 250.69 and 250.70 as proposed, replacing the outdated terms “commodities,” “food commodities,” “donated commodities,” and “donated foods,” with “USDA Foods” to further align with the definition of “USDA Foods” in 7 CFR part 250. Technical updates also include reorganization for clarity.

#### Public Comments and USDA Response

The Department received 10 comments that were all supportive of the proposed change. Commenters included: 4 State agencies, 3 advocacy groups, and 3 individuals. The Department concurs with the commenters that noted the terms being replaced are no longer a part of the program and are outdated, as well as the commenter noting the technical changes will mitigate and reduce confusion at the recipient agency level.

##### II. Removal of Prohibition on Simultaneous Provision of USDA [Donated] Foods and D–SNAP During a Disaster (§§ 250.69(c)(2) and 250.70(d))

This final rule codifies the changes to §§ 250.69(c)(2) and 250.70(d) as proposed to remove the prohibition on the simultaneous distribution of USDA Foods and Disaster Supplemental Nutrition Assistance Program (D–SNAP) benefits to households during a disaster and situations of distress. The Department recognizes that immediate implementation of this provision may benefit State distributing agencies and recipients of USDA assistance during disasters. Because the removal of the dual participation prohibition removes a restriction, the Department is using the authority at 5 U.S.C. 553(d)(1) to make this provision effective immediately upon the date of publication of this final rule.

#### Public Comments and USDA Response

The Department received 24 comments that were all supportive of the proposed change. Commenters included: 6 State agencies, 10 advocacy groups, 1 food bank association, 3 local agencies, and 4 individuals. Many commenters noted that this change would allow disaster assistance to run more seamlessly and be more streamlined while also acknowledging that a person’s ability to access grocery stores or food distributions varies depending on the type of emergency. The Department concurs with

commenters that this change allows for more efficient disaster assistance and for expedited distribution of foods during times of high need.

##### III. Clarification of Requirements for Distribution of USDA Foods During a Disaster and Situations of Distress (§§ 250.69 and 250.70)

This rule codifies the clarification of requirements for the distribution of USDA Foods during a disaster at § 250.69 and during situations of distress at § 250.70 as proposed. The reorganization of §§ 250.69 and 250.70 clarifies which requirements in the section apply to approval of disaster organizations serving congregate meals and which requirements apply to disaster organizations providing USDA Foods for household consumption, as follows:

- Congregate meals language from § 250.69(c) and the entirety of § 250.69(e) will be consolidated at § 250.69(a);
- Household distribution language from § 250.69(c) and the entirety of § 250.69(d) will be consolidated at § 250.69(b); and
- Section 250.69(f) through (h), which apply to both methods of distribution, are redesignated to § 250.69(d) *Reporting and recordkeeping requirements*, § 250.69(e) *Replacement of USDA Foods*, and § 250.69(f) *Reimbursement of transportation costs*, respectively.
- Language from § 250.70(c) and the entirety of § 250.70(e) will be consolidated into a single provision at § 250.70(a) to clarify the use of USDA Foods in congregate meals.
- All language relevant to distribution to households, including language from § 250.70(c) and the entirety of § 250.70(d), will be consolidated into a single provision at § 250.70(b) to clarify the use of USDA Foods for distribution to households.
- Section 250.70(f) *Reporting and recordkeeping requirements*, § 250.70(g) *Replacement of donated foods*, and § 250.70(h) *Reimbursement of transportation costs*, which apply to both methods of distribution, will remain separate and will be redesignated to § 250.70(d) *Reporting and recordkeeping requirements*, Section 250.70(e) *Replacement of donated foods*, and § 250.70(f) *Reimbursement of transportation costs*, respectively.

#### Public Comments and USDA Response

The Department received 10 comments that were all supportive of the proposed change. Commenters included: 3 State agencies, 4 advocacy

groups, and 3 individuals. Commenters generally supported this provision along with the other technical changes proposed to §§ 250.69 and 250.70 as these changes make it easier to understand the regulations and provide disaster assistance.

#### IV. Limitation on Impacts to Other Programs (§§ 250.69(c) and 250.70(c))

This final rule codifies the provisions at §§ 250.69(c) and 250.70(c) as proposed to ensure the operation of congregate meals service and/or disaster household distribution, including in situations of distress, is not administered in lieu of regular program operations, nor does it negatively impact the distribution of USDA Foods through other programs within a distributing agency's jurisdiction. USDA Foods for disaster response activities are typically drawn from local USDA Foods inventories that support permanent programs such as TEFAP. This provision ensures that distributing agencies consider the operation of other USDA Foods programs when making decisions about using USDA Foods for disaster response activities.

#### Public Comments and USDA Response

The Department received 10 comments, 3 of which were supportive (1 State agency and 2 advocacy groups), 1 unsupportive (advocacy group), and 6 that requested additional clarification (2 State agencies, 3 local agencies, and 1 food bank association). The commenters requesting clarification stated that the proposed provision was written ambiguously and requested that FNS define what would qualify as an "ongoing negative impact" and what is considered a "limitation on impacts to other programs." Commenters mentioned how, without thresholds as to what a negative impact is, distributing agencies will be unable to enforce the provision. The Department clarifies that to ensure the operation of congregate meals service and/or disaster household distribution in situations of distress or during disasters is not administered in lieu of regular program operations, distributing agencies should only administer a USDA Foods in disaster response if USDA Food inventory levels of other programs, such as FDPIR and TEFAP, are sufficient to maintain and continue food distribution of those programs at the same levels prior to diverting USDA Foods for disaster response.

Additionally, negative impacts to the distribution of USDA Foods through other programs administered by the distributing agency can include, for example, when a disaster distribution

lowers the USDA Foods inventory of another program, such as FDPIR, to a level that may impact the distributing agency's ability to provide FDPIR benefits to participants at the current program levels. Distributing agencies should ensure the operation of congregate meals service and disaster household distribution, including under situations of distress, does not lower the inventory levels of other programs below their regulatory requirements. When determining whether an ongoing negative impact may occur, the distributing agency must take into consideration, among other factors, current program participation levels, household food preferences and the historical and projected volume of food distribution at each site.

The unsupportive comment argued the proposed provision would put the responsibility on distributing agencies to implement other programs like FDPIR and TEFAP and would put an undue burden on distributing agencies to determine how to divide resources. The Department clarifies this provision codifies a principle that is already in place for USDA Foods in Disasters, which is that distributing agencies should consider the operation, including inventory levels and current participant caseload levels, of their permanent programs like TEFAP and FDPIR when making decisions about using USDA Foods for disaster response. Although the distribution of USDA Foods during and after disasters divides a distributing agency's resources, operating USDA Foods disaster response activities should not negatively impact the operation of other programs. Specifically, disaster household distributions should not take the place of regular FDPIR or TEFAP operations, nor reduce food benefits and services of those programs. Per current regulations at § 250.69(g), USDA is responsible for the replacement of USDA Foods used in Presidentially-declared disaster or emergency response, if requested by the distributing agency. Replacement of those USDA Foods occurs within 45 days following the termination of disaster assistance.

#### V. Updated Reporting Requirements for Distribution of USDA Foods to Households During a Disaster (§§ 250.69(d) and 250.70(d))

This final rule codifies the requirement at §§ 250.69(d) and 250.70(d) with modification to require distributing agencies operating disaster household distributions to submit a biweekly report to FNS, rather than weekly as described in the

proposed rule. All distributing agencies operating disaster household distributions must submit a biweekly report (every two weeks) for the duration of the approved disaster household distribution, regardless of the distribution period's length. Distributing agencies must use the format prescribed by FNS, which must be submitted electronically for the duration of the approved disaster household distribution. The biweekly report must include: (i) The weekly distribution start and end dates, (ii) The total number of individual household members receiving assistance at all locations, (iii) Material identification codes for USDA Foods distributed, (iv) The USDA Foods description of the foods distributed, and (v) The total units of each food distributed. The information will be submitted electronically.

#### Public Comments and USDA Response

The Department received 19 comments on the proposed reporting requirement, with 7 in support and 12 in opposition. Supportive commenters included: 2 State agencies, 3 advocacy groups, 1 food bank association, and 1 individual. Unsupportive commenters included: 4 State agencies, 7 advocacy groups, and 1 local agency. Commenters in support of this provision discussed how the proposed reports would more efficiently help efforts to replace USDA Foods used in disaster response and would also assist in inventory management, ordering, and distribution. Supporters of the proposed provision also suggested the reporting mechanism be user-friendly and be a reasonable process that uses modern technology.

Commenters expressed concern with the resulting administrative burden associated with the increased reporting while also requesting increased funding or widespread adoption of automated reporting mechanisms to lessen the burden. Commenters also mentioned how the administrative burden would occur during times of already heightened administrative burden. Other suggestions included using a reporting method that uses current, up-to-date technology and to consider utilizing the data of other sources, such as the Federal Emergency Management Agency (FEMA), to collect this information.

This provision was intended to improve FNS' and State distributing agencies' understanding of the quantity and types of USDA Foods available for emergency response and facilitate FNS' efforts to replace USDA Foods used in disaster response to prioritize nutrition security for participants in all programs serving USDA Foods. The prolonged

nature of the COVID–19 pandemic and the quantity of USDA Foods distributed under disaster household distributions illustrated that requiring reporting of USDA Foods distributed only after the end of the disaster assistance period presented challenges. These challenges included timely tracking of USDA Foods inventories at both the national and State distributing agency levels, which affected USDA and State distributing agencies' ability to source and distribute foods to meet the needs of the public. However, the Department concurs with commenters who stated the proposed requirement as written represented a potential administrative burden on State distributing agencies.

In response to these comments, the Department amends the proposed provision in the final rule to lessen the associated administrative burden. Instead of weekly reporting required for disaster household distributions longer than 14 calendar days, the Department requires all distributing agencies operating disaster household distributions to submit a biweekly report (every two weeks) for the duration of the approved disaster household distribution, regardless of the distribution period's length.

The Department's decision to limit reporting to a biweekly basis, rather than the proposed weekly basis, lessens the administrative burden on distributing agencies while still collecting the information needed to track USDA Foods used in disaster response and monitoring inventory levels.

The Department clarifies the information requested in this new biweekly report is the same information that must be submitted with the currently required FNS–292A, *Report of Commodity Distribution for Disaster Relief*, that must be completed within 45 days following the termination of disaster assistance. Under this new reporting requirement, State distributing agencies may use the same data submitted in the biweekly report(s) to timely submit the FNS–292A to FNS. The Department agrees with utilizing available technology and will require the submission of biweekly reports electronically.

### C. The Emergency Food Assistance Program (TEFAP)

#### I. Technical Updates to the Entire Part 251

This final rule codifies the technical updates to 7 CFR part 251 as proposed. The Department is replacing instances of the outdated terms “commodities,” “food commodities,” “TEFAP

commodities,” “TEFAP foods,” “donated foods,” and “donated commodities” to “USDA Foods” to further align the program with the definition of “USDA Foods” in 7 CFR part 250.

#### Public Comments and USDA Response

The Department received 15 comments that were all in support of the proposed technical changes to 7 CFR part 251. Commenters included: 5 State and 5 local agencies, 2 food bank associations, and 3 advocacy groups. The Department concurs with the commenters.

#### II. Technical Clarification to the Definition of a Food Bank (§ 251.3)

This final rule codifies the update to the definition of a food bank at § 251.3 as proposed. The Department is removing a description of food provided by food banks in § 251.3(f), deleting “or edible commodities, or the products of food or edible commodities” from the definition of *food bank*, as this description caused confusion about the types of foods to which regulations apply. The Department did not receive any comments on this provision.

#### III. Requirement for the Public Posting of Availability of USDA Foods Through TEFAP and Encouraging Distribution of USDA Foods in Tribal Areas (§ 251.4)

This final rule codifies the proposed provision at § 251.4(l) with modification to require eligible recipient agencies (ERAs) that have agreements with the State agency to be posted to a publicly available internet web page. This final rule also codifies as proposed the provision at § 251.4(l) that each State agency publicly posts the State's uniform statewide eligibility criteria to receive USDA Foods for household consumption. The Department also codifies the provision at § 251.4(k) as proposed to encourage State agencies and ERAs to implement or expand USDA Foods distributions in rural, remote, and Tribal areas of the State, wherever possible.

##### 1. Requirement for the Public Posting of Availability of USDA Foods Through TEFAP (§ 251.4(l))

ERAs are organizations that distribute USDA Foods through TEFAP. The proposed rule would have required TEFAP State agencies to post information about all ERAs to publicly available websites, to include those ERAs which have agreements with other ERAs. In consideration of the administrative burden associated with this provision as highlighted through public comments, this final rule codifies

the proposed provision at § 251.4(l) with modification to require ERAs that have agreements with the State agency to be posted to a publicly available internet web page. At minimum, State agencies must publicly post the names, addresses, and contact telephone numbers for all ERAs that have an agreement with the State agency.

The Department codifies as proposed the requirement that State agencies must post the State's uniform Statewide eligibility criteria to receive USDA Foods for household consumption. The information must be posted on a publicly available internet web page and be updated on an annual basis or whenever changes to eligibility criteria are made (See IV. State Agency Options for TEFAP Eligibility Criteria, Documentation, and Public Communication (§ 251.5) 3. Public Posting of Statewide TEFAP Eligibility Criteria for further discussion (§ 251.5(b)). State agencies must implement this provision no later than 12 months after the date of publication of the final rule in the **Federal Register**.

#### Public Comments and USDA Response

The Department received 28 comments on this provision, 24 of which were supportive and 4 that were not supportive. Supportive commenters included 5 State and 6 local agencies, 6 food bank associations, 5 advocacy groups, and 2 individuals. Unsupportive commenters included 3 State agencies and 1 local agency.

Supporters of the change explained how publicly listing ERAs helps potential participants find food assistance during non-working hours and access residency information.

Other commenters supported the intent of the provision but had concerns with the administrative and financial burden associated with listing all ERAs, since information on smaller ERAs can change frequently and without notice. Commenters suggested that single points of direct contact be established that are better equipped to handle potential participants. Additional commenters had concerns over the accuracy of the data that would be made available to the public.

The Department agrees with commenters that suggested the proposed list of all ERAs may not be useful to participants or potential participants if there are issues with the list being outdated or inaccurate. Smaller ERAs may be added or removed from the program more frequently and may not have the capacity to handle direct referrals or questions from potential participants as well as larger ERAs. To lower the administrative and financial

burden of this provision, the Department is revising the provision to only require that ERAs holding an agreement with the State agency be posted publicly. ERAs that have direct agreements with the State agency are more likely to maintain consistent contact information and have the resources to direct potential participants to the program. Additionally, excluding ERAs that have agreements with other ERAs reduces the State agency's burden of posting the list.

Some commenters suggested that certain types of ERAs should not be posted publicly, for example, domestic violence shelters. The Department recognizes that some ERAs may have a compelling public safety reason for not having their address posted publicly and commits to working with State agencies on a case-by-case basis for ERAs that may be in this situation.

The intent of this provision is to improve participants' and potential participants' access to TEFAP, and the Department encourages State agencies to post the complete list of ERAs, including ERAs that hold agreements with other ERAs, to help the public understand where they may access TEFAP.

State agencies are still encouraged, but not required, to post more frequent updates as they are needed and to include additional information, such as operating hours, the areas served by the ERA, links to ERA websites, and distribution site addresses. State agencies are also encouraged, but not required, to develop tools to aid eligible individuals in accessing the program (e.g., a searchable tool by ZIP code).

#### 2. Encouraging Distribution of USDA Foods in Tribal Areas (§ 251.4(k))

This final rule codifies the revision to § 251.4(k) as proposed to encourage State agencies and ERAs to implement or expand distributions of USDA Foods in Tribal areas, in addition to the rural areas already listed.

#### Public Comments and USDA Response

The Department received 22 comments for this provision that were all supportive of the proposed change. Commenters included: 4 State and 5 local agencies, 6 food bank associations, 6 advocacy groups, and 1 individual. Supportive commenters discussed how this provision would help expand access to TEFAP in Tribal communities and other historically underserved populations while bolstering partnerships with Tribal Nations. Others mentioned their continued support for TEFAP Reach and Resiliency grant funding to carry out projects to expand

the reach of TEFAP to remote, rural, Tribal and/or low-income areas and how this provision can aid in these efforts. The Department agrees with all the commenters who supported the proposed provision and with the commenters who stated this proposed provision could expand TEFAP access to historically underserved populations while strengthening the program.

Commenters also suggested that FNS release guidance or best practices on how to achieve expanded access to TEFAP in Tribal areas. FNS will provide guidance and best practices to help implement or expand distributions of USDA Foods in Tribal areas as a part of the final rule implementation.

One commenter expressed the language that encourages the expansion of TEFAP is not strong enough and suggested that it should be required, and separately, that Congress should designate Tribes as legally eligible to administer TEFAP. While the Department appreciates this comment and agrees it is important to continue expanding TEFAP's reach into Tribal areas, this request is outside of the scope of this rulemaking.

#### IV. State Agency Options for TEFAP Eligibility Criteria, Documentation, and Public Communication (§ 251.5)

The Department is revising TEFAP regulations to increase alignment of income eligibility criteria nationwide, ensure access for vulnerable individuals, and ensure that statewide eligibility criteria are posted in a manner accessible to the public.

##### 1. TEFAP Maximum Income Eligibility Range and State Agency Option for Alternative Income Eligibility Thresholds (§ 251.5(b)(2))

This final rule codifies the proposed change with modification to implement a TEFAP maximum income eligibility range and State agency option for alternative income eligibility thresholds at § 251.5(b)(2). This change requires that income-based eligibility standards be between 185 percent and 300 percent of the U.S. Federal Poverty Guidelines, which are published annually by the U.S. Department of Health and Human Services (HHS). This is an increase from the upper threshold in the proposed rule, which would have set income-based standards at a maximum income eligibility threshold at or between 185 percent to 250 percent of the U.S. Federal Poverty Guidelines. This revision maintains the ability for State agencies to propose alternative income-based eligibility standards above this threshold with supporting rationale, subject to FNS approval. Consistent

with current program requirements at § 251.5(b), income eligibility standards set by a TEFAP State agency under the final provision must be applied uniformly statewide.

#### Public Comments and USDA Response

The Department received 62 comments on the proposed provision. Twenty commenters supported the proposed range of 185–250 percent of the U.S. Federal Poverty Guidelines, 32 did not support the cap as proposed and requested a cap above 250 percent, 3 were opposed to any maximum cap, 1 supported raising the lowest maximum above 185 percent to 200 percent, 3 commenters opposed the 250 percent maximum as too high, and 3 commenters opposed the proposed provision in full. Commenters included 9 State agencies, 24 local agencies, 11 food bank associations, 11 advocacy groups, and 7 individuals.

Commenters in support of the proposed provision stated the change would increase access for individuals who would not have previously qualified under the current guidelines and that the range is a starting point for standardizing eligibility standards nationwide.

Commenters who supported increasing the maximum cap beyond 250 percent stated the proposed cap was too low and would create an undue administrative burden on States currently operating over the 250 percent level, as they would have to submit additional justification to FNS to maintain their current income eligibility guidelines. They also mentioned the proposed maximum may be a potential deterrent for other States to adjust their income eligibility thresholds above 250 percent in the future, due to the increased administrative burden. Some commenters who felt the 250 percent maximum threshold was too low suggested that either FNS use no maximum threshold or create a maximum of 400 percent if necessary.

Commenters also mentioned concerns that USDA may deny requests for higher maximums above the proposed range. Supporters of a maximum cap above 250 percent stated that a higher maximum would be more inclusive of current State agency income eligibility thresholds and better reflect the economic realities of food insecurity in the country. Commenters also expressed concerns that in States with current income eligibility thresholds above the maximum identified in the proposed rule, participants could lose access to the program if their higher thresholds were not approved. One commenter suggested that all TEFAP participants be

treated like those visiting prepared meal sites and not be subject to income eligibility guidelines.

The Department concurs with commenters who expressed that a maximum income eligibility threshold of 250 percent of the U.S. Federal Poverty Guidelines is too low and may not encompass those in need who are living in areas with a high cost of living, such as urban centers, Tribal areas, and some geographically isolated States and U.S. Territories.

As some commenters mentioned, the Department also recognizes that current participants may be impacted by the proposed maximum threshold and the Department wishes to mitigate that impact. Thus, the Department is revising the provision to increase the maximum income threshold in this provision, from 250 percent to 300 percent of the Federal Poverty Guidelines. Additionally, the Department retains the ability for States to propose alternative income-based eligibility standards (*i.e.*, standards above 300 percent) with FNS approval. While the Department recognizes there is administrative burden associated with requesting this approval, the Department estimates the burden is modest and views this as necessary to ensure TEFAP resources are only reaching individuals most in need, without unduly impacting current participants.

Commenters also questioned whether FNS is changing its funding allocation model to reflect a larger pool of eligible participants. The TEFAP food and administrative funding formulas are set in program statute and accordingly, FNS will continue to use this formula to allocate program resources.

Additionally, some commenters requested guidance from FNS, including an approval matrix for States wishing to increase their ceiling above the maximum, and examples of what types of justification will be approved by FNS. FNS will provide guidance during implementation of this final rule to aid State agencies in requesting maximum income eligibility thresholds over 300 percent and expects requests will likely align with guidance in Policy Memo FD-153, *Guidance for Submitting Amendments to TEFAP State Plans per 7 CFR 251.6*. For those State agencies who currently have income guidelines over 300 percent, FNS will provide technical assistance to submit timely justifications as needed, in accordance with FNS guidance, and prior to this rulemaking's effective date.

## 2. Methods for Verifying Residency and Removal of Federal Address Collection Requirements (§§ 251.5(b)(3) and 251.10(a)(4))

This final rule codifies the change at § 251.5(b)(3) as proposed to establish that length of residency, address, or identification documents shall not be used as eligibility criteria when determining household eligibility. This final rule also codifies the removal of Federal address collection requirements at § 251.10(a)(4) as proposed. Current regulations at § 251.10(a)(3) require distribution sites to collect the addresses of households receiving USDA Foods for home consumption and maintain the record of participant addresses per the retention policy described in § 251.10(a)(4).

### Public Comments and USDA Response

The Department received 53 comments on this provision, 43 of which were supportive and 10 unsupportive. Supportive commenters included: 6 State and 16 local agencies, 7 advocacy groups, 12 food bank associations, and 2 individuals. Unsupportive commenters included: 1 State agency, 6 local agencies, and 3 individuals.

Supportive comments stated the current practice to collect full household addresses is burdensome to participants and ERAs, as well as a hindrance to migrant workers, people experiencing homelessness, those who move frequently, or those who have privacy concerns with providing an address. Other supportive comments stated that ERAs would benefit from the change by eliminating a lengthy administrative intake step, freeing up staff capacity and helping to shorten long lines at distributions. The Department concurs with the majority of commenters in support of the proposed change at § 251.5(b)(3) that collecting household information can be burdensome to both participants and ERAs. FNS aims to ensure that TEFAP State agencies retain the ability to develop statewide eligibility criteria which fit their needs, while supporting program access for vulnerable individuals and households.

Opposed commenters had concerns that not using an address to verify residency could result in individuals outside of their community accessing their distribution sites and depleting resources intended for community members. Some commenters expressed concern about not being able to collect zip codes under the proposed provision. Some commenters also suggested the final rule remove geographic limitations

on service altogether. Finally, one commenter requested clarification for State agencies on acceptable alternative forms of verification.

Along with self-attestation, other options for State agencies to confirm residency of TEFAP applicants may include collecting the zip code or county of residence of TEFAP applicants. These alternate forms of confirming residency also help address the concerns raised by a few commenters of the risk of individuals from outside of a community accessing an ERA's TEFAP offerings. In addition, the significant benefits of this provision, including supporting program access for vulnerable individuals and households, eliminating a lengthy administrative intake step, freeing up staff capacity, and helping to shorten long lines at distributions, outweigh the minimal concerns raised by some commenters.

Some commenters requested clarification on whether addresses can still be collected for other purposes, such as in cases of food recalls and providing information on more resources. The Department clarifies that ERAs cannot collect addresses as part of the eligibility determination process but may still collect addresses on a *voluntary* basis for other purposes, such as in cases of food recalls and providing information on other assistance programs, if it is clear providing the information is optional for applicants and is being collected for reasons other than TEFAP eligibility.

## 3. Public Posting of Statewide TEFAP Eligibility Criteria (§ 251.5(b))

This final rule codifies the change at § 251.5(b) as proposed to require State agencies to post statewide eligibility criteria, including requirements for demonstrating income and residency, to a publicly available website. State agencies must implement this provision no later than 12 months after the date of publication of the final rule in the **Federal Register**.

### Public Comments and USDA Response

The Department received 13 comments for this proposed change, 12 of which were supportive and one which was mixed. Commenters included 3 food bank associations, 5 local agencies, and 5 advocacy groups.

Supportive commenters discussed how making this information available online would make the program more transparent and accessible to people seeking food assistance. One commenter expressed concern with the administrative burden associated with posting the criteria, given staffing shortages. The Department recognizes

this provision poses an administrative burden on State agencies; however, FNS estimates the annual administrative burden as relatively low. Once a State agency has posted their statewide eligibility criteria to a publicly available website, State agencies only need to make updates if their Statewide eligibility criteria changes. The benefits of ensuring that eligible applicants are more easily able to understand how they may receive TEFAP outweigh the minimal administrative burden associated with this requirement.

#### V. Updated Reference for Farm to Food Bank Projects (§ 251.6)

This final rule codifies the change to § 251.6 as proposed to update the paragraphs cited for information that must be included in TEFAP State Plans for Farm to Food Bank Projects to reflect the reorganized section of regulations related to Farm to Food Bank Projects at new § 251.13. The Department did not receive any comments on this proposed change.

#### VI. Updated Reference for TEFAP Reporting Requirements (§ 251.9)

This final rule codifies the technical edit to § 251.6 as proposed to update the paragraph cited for the FNS–667, *Report of TEFAP Administrative Costs*. The Department did not receive any comments on this proposed change.

#### VII. Establishing Confidentiality Protections for Applicant and Participant Household Information and Participant Household Information (§ 251.10(c))

This final rule codifies the changes to § 251.10(c) as proposed to require that TEFAP participant information must be kept confidential and to create limits on the disclosure of information obtained from applicants or participants and the identity of persons making a complaint or allegation against persons participating in or administering the program. Current regulations do not include requirements for protecting the confidentiality of TEFAP applicant or participant household information. This new provision ensures the protection of information collected from households and aligns recordkeeping and retention requirements with those of other food assistance programs.

#### Public Comments and USDA Response

The Department received 29 comments on the proposed provision, 27 of which were supportive and 2 that were unsupportive. Supportive commenters included: 2 State and 13 local agencies, 5 advocacy groups, and 7 food bank associations. One State

agency and 1 food bank association were unsupportive of the provision.

Supportive commenters agreed that collecting names and addresses from clients can pose risks to confidentiality and requires data protection and stated that participants should not be vulnerable to unlawful targeting or harassment throughout any process. Other supportive comments cited that this provision would uphold privacy, confidentiality, and dignity standards within the program and one commenter urged USDA to prohibit the collection of unnecessary personally identifying identification, such as social security numbers, on the TEFAP eligibility form.

Some commenters expressed concern about whether the proposed provision would allow for the use of electronic intake platforms. The use of electronic systems in TEFAP, including electronic intake platforms, will continue to be acceptable under the final provision, as long as the systems are able to properly ensure the protection of information collected from households and meet existing program requirements and all relevant Federal or State requirements.

Other commenters expressed concern that the provision would not allow volunteers to collect information. This provision is not intended to stop the use of volunteers to collect program information. However, volunteers should be made aware of the confidentiality rules in TEFAP and keep information collected confidential. Commenters also questioned whether the requirement would require each participant to sign a separate sign-in sheet or intake form, which would be costly and time consuming. Provided that confidentiality is maintained, a separate sign-in sheets is not required for each participant. Finally, one commenter was concerned the provision would negatively impact categorical eligibility, and another was concerned the proposed requirement would impact existing data sharing agreements and questioned whether the proposed requirement would have a detrimental impact on efforts to improve nutrition and hunger relief programming. This provision does not impact categorical eligibility, as the regulatory language at § 251.10(c)(2) allows, with the consent of the participant, State or local agencies to share information obtained with other health or welfare programs for use in determining eligibility for those programs, or for program outreach.

#### VIII. Nondiscrimination Statement Update (§ 251.14(b))

The Department proposed an update to the nondiscrimination statement language at § 251.10(c) and

redesignating as § 251.14(b) to state that TEFAP must be operated in accordance with the most-up-to-date USDA nondiscrimination statement. Because the nondiscrimination statement is applicable to multiple USDA programs, the Department has reconsidered its approach. The Department will not finalize the proposed provision in this rulemaking. The Department will consider options to address this in future rulemaking. This rulemaking moves the current nondiscrimination statement language from § 251.10(c) to newly created § 251.14(b), with confidentiality protections codified at § 251.10(c).

#### Public Comments and USDA Response

The Department received 4 comments from 2 State agencies and 2 advocacy groups, all of which were supportive of the proposed change. The Department appreciates support for the proposed changes and will consider this feedback in future rulemaking addressing the nondiscrimination statement, with the goal of consistency across USDA programs.

#### IX. Eligible Recipient Agency Reporting (§ 251.10(b)(3))

This final rule codifies the proposed provision at § 251.10(b)(3) with modification to establish a new requirement for State agencies to annually submit a list of all ERAs and statewide eligibility criteria to FNS. The Department is revising the regulatory language to retain the intent of this provision as proposed. The proposed revision referenced the publicly available list of ERAs described at § 251.4(l). Since that provision is revised in this final rule to only include ERAs with direct agreements with the State agency, (see 'Requirement for the Public Posting of Availability of USDA Foods Through TEFAP'), the Department removes reference to the publicly posted ERA list at § 251.4(l) and instead modifies the provision to require that State agencies must annually submit a list of all ERAs and statewide eligibility criteria. This revision ensures this report includes all ERAs, including those ERAs which distribute USDA Foods to other ERAs, to eligible households for home consumption, or in prepared meals.

This information is collected for program management purposes so that FNS may understand both where TEFAP services are offered and the national landscape of participating TEFAP ERAs. It is not intended to be a 'real-time' list for active participant referrals. The list provided to FNS will include ERAs that have agreements with



a State agency and ERAs that have agreements with another ERA. The list also includes ERAs that distribute USDA Foods for home consumption and those that distribute USDA Foods in the form of prepared meals. This will allow FNS to better understand areas where there may be gaps in service, and work with States to eliminate these gaps. The Department did not receive any specific comments on the above proposed change at § 251.10(b)(3).

#### X. Household Distribution Participation Reporting (§ 251.10(b)(4))

This final rule codifies the provision at § 251.10(b)(4) with modification to require State agencies to report the number of persons (*i.e.*, site visits) served by all TEFAP distribution sites providing USDA Foods for home consumption per month. State agencies and ERAs will only need to count the total number of individuals served in a month and will not need to identify the number of unique households that are served in a month. To the extent possible, State agencies and ERAs should record the total number of persons in each household that is served for each site visit, but the Department acknowledges accuracy of these data will vary based on each agency's method of tracking participants. This is a revision from the proposed provision which would have required the State agency to report the total number of persons in all households receiving USDA Foods for household consumption per month. Consistent with the proposed rule, State agencies will be required to provide this information on a quarterly basis. FNS will align the timing of this report with other required quarterly reporting, such as administrative funds usage, in order to minimize reporting burden for State agencies.

#### Public Comments and USDA Response

The Department received 23 comments on the proposed provision, 14 of which were supportive and 9 which were not supportive. Supportive commenters included: 1 State and 4 local agencies, 2 advocacy groups, 5 food bank associations, and 2 individuals. Non-supportive commenters included: 6 State agencies, 2 local agencies, and 1 food bank association. A commenter indicated that increased reporting on TEFAP participation would enhance transparency in implementation and support informed decisions about program improvements. Additionally, commenters expressed support for the alignment of this report with other required quarterly reporting, indicating

that it will reduce the overall reporting burden for State agencies.

Commenters expressed concern that the proposed method of tracking could be complex because participants typically indicate the number of household members on their application, and do not typically convey the monthly number of individuals in their household each time they receive food. Commenters discussed how this could result in inaccuracies as individuals may move in and out of a household in each month, and that tracking nonresponse forms would be time consuming. Other commenters cited general administrative burden and more specifically, an increased burden for those using manual data collection systems. Further concerns were raised about the difficulty of ensuring unduplicated data when comparing the number of visits to a distribution site versus the number of individuals served.

The Department concurs with the commenters who expressed concern with the potential difficulties of reporting an unduplicated record of each household that visits a distribution site and other potential inaccuracies with the data. The Department is revising this provision in response to those comments to instead require that TEFAP State agencies report the total number of individuals served by each TEFAP distribution site per month, on a quarterly basis. This revision addresses concerns on the additional administrative burden of providing accurate and/or unduplicated data. For example, households that participate more than once a month may be counted as a separate visit each time they access a TEFAP distribution site. Distribution sites only need to report the total number of persons they served at the end of each month, without regard to how many unique households were served. To the extent possible, State agencies and ERAs should record the total number of individuals in each household who are served for each site visit, but the Department acknowledges that the accuracy of this data will vary based on each agency's method of tracking participants.

The Department currently has little insight into the total number of people served by TEFAP. This data will be used to help the Department understand the current reach of the program and to better understand and plan for future resource needs. The Department recognizes there is administrative burden associated with collecting this data and determined it is in the best interest of the program to collect this data to support the current operation of

TEFAP and plan for the future of the program. The Department will provide additional guidance on this provision as part of the implementation of this final rule. In recognition of the burden this provision requires, State agencies will have 12 months to implement this provision.

#### XI. Technical Corrections for Miscellaneous Provision (§ 251.10(d) and (f))

This final rule codifies the technical corrections at § 251.10(d) and (f) as proposed. The Department updates § 251.10(d) to correct an error in a reference to reporting requirements. The Department updates paragraph (f) references to reflect redesignations and newly created sections in the proposed rule, which are discussed below. The Department is also clarifying the requirements for limits on unrelated activities during the administration of TEFAP and potential consequences for violation of these limits by more clearly stating existing requirements.

#### Public Comments and USDA Response

The Department received 15 comments which were all supportive. Commenters included 5 State and 5 local agencies, 2 food bank associations, and 3 advocacy groups. The Department concurs with the commenters.

#### XII. Redesignations for Miscellaneous Provisions (§ 251.10)

This final rule codifies the redesignation for miscellaneous provisions at § 251.10 as proposed. The Department is breaking the current § 251.10 Miscellaneous into five distinct sections: § 251.10 Reports and recordkeeping, § 251.11 State monitoring system, § 251.12 Limitation on unrelated activities, § 251.13 Farm to Food Bank projects, and § 251.14 Miscellaneous to significantly improve the readability of the regulation, with the intent of reducing confusion on the part of State agencies. The Department did not receive any specific comments on this provision.

#### XIII. New Sections Created for Clarity (§§ 251.11, 251.12, 251.13, and 251.14)

This final rule codifies the creation of new sections for clarity at §§ 251.11, 251.12, 251.13, and 251.14 as proposed. Section 251.11 includes requirements for State agency monitoring systems, and § 251.12 explains limitations on unrelated activities at TEFAP distributions. Farm to Food Bank Project regulations move into § 251.13 so that State agencies can easily locate all requirements for these projects. Finally, § 251.14 includes miscellaneous

provisions that are not closely related to other provisions, such as nondiscrimination and use of volunteer workers and non-USDA foods. The Department did not receive any specific comments on the creation of new sections for clarity.

#### D. Food Distribution Program on Indian Reservations

Final revisions to FDPIR regulations (7 CFR part 253) establish further parity between FDPIR eligibility requirements and SNAP and support program access. Among the final changes, the Department is finalizing as proposed provisions to: clarify the household concept for purposes of FDPIR eligibility for spouses living together and spouses living apart in separate households; remove the urban place requirement which limits the operation of FDPIR in approved near areas and/or service areas that have a population of 10,000 people or more; update the shelter/utility standard deduction to remove the Regional standard deduction and set forth a revised approach pursuant to Tribal leader and FDPIR program community feedback; and establish a limited administrative waiver to be more consistent with SNAP waiver authorities. As discussed in Procedural Matters: Executive Order 13175, the Department consulted with Tribal leaders on a number of occasions on the development of both the proposed and final rules. The Department also commits to further consultation, including on implementation of the below FDPIR provisions, as needed.

#### I. Technical Updates to the Entire Part 253

This final rule codifies technical updates to the entire 7 CFR part 253 as proposed. Technical corrections throughout 7 CFR part 253 replace instances of the outdated terms “commodity” and “commodities” with “USDA Foods” and the outdated term “Food Stamps” with “SNAP,” the Supplemental Nutrition Assistance Program. These updates align 7 CFR part 253 with other sections in this chapter. The Department is also adding a technical edit to the definition of State agency at § 253.2. This technical change adds clarification to the definition of State agency that State agencies are also referred to as FDPIR administering agencies. This technical change supports modernizing terminology and recognizes that FDPIR administering agencies are primarily ITOs, with 107 ITOs and only 3 State agencies administering the program in 2024. Additional technical corrections are

noted, as applicable, in section discussions below.

#### Public Comments and USDA Response

The Department received 7 comments that were all supportive of the proposed changes. Commenters included: 2 ITOs and 5 advocacy groups. One comment noted how replacing commodities with USDA Foods will improve clarity and consistency across food distribution programs. The Department concurs with the commenters.

#### II. Removal of Urban Place Definition (§§ 253.2 and 253.4)

This final rule codifies the removal of references to urban places and the associated requirement that an FDPIR Indian Tribal Organization (ITO) or State agency must provide a justification to FNS to serve urban places off the reservation at §§ 253.2 and 253.4 as proposed. Prior to this rule change, per § 253.2, an urban place was defined as a city or town with a population of 10,000 or more. Further, per § 253.4(d), any urban place outside of the reservation boundaries could not be served unless an ITO or State agency requested to serve the urban place with a justification for FNS review and approval. Conforming revisions are also made to 7 CFR part 254, Administration of the Food Distribution Program for Indian Households in Oklahoma.

Additionally, the Department is changing the term “contract” in § 253.4(b)(3) to “delegate” in order to improve the clarity of the section and to be consistent with language used in 7 CFR parts 247, 250, and 251.

#### Public Comments and USDA Response

The Department received 16 comments about this provision, all of which were supportive. Commenters included: 2 ITOs, 10 advocacy groups, and 4 local agencies. Eleven comments specifically requested language ensuring that serving an urban population remains optional. The Department affirms that with the removal of the urban place language, FDPIR administering agencies maintain the choice of serving an urban population.

#### III. Periodically Assessing the FDPIR Food Package (§ 253.3)

In § 253.3, this final rule codifies as proposed the provision which requires FNS to periodically assess how USDA Foods provided in FDPIR compare to the *Dietary Guidelines for Americans* (DGAs) and the market baskets of the Thrifty Food Plan (TFP) and, to the extent practicable, adjust the FDPIR food package benefit as needed to ensure the FDPIR food package

continues to be consistent with these assessments of basic dietary needs. The provision prohibits the FDPIR food package benefit from being reduced as a result of the analysis.

Additionally, this final rule codifies as proposed the provisions at § 253.3(a)(2) to clarify in plain language that FDPIR households can receive FDPIR USDA Foods as well as USDA Foods from other programs in the same month, in accordance with the requirements of 7 CFR part 250 and with other Federal regulations applicable to specific USDA Foods programs.

This final rule also codifies a technical correction that removes the list of food groups in the FDPIR food package from § 253.3(d) as proposed.

#### Public Comments and USDA Response

The Department received 11 comments about this provision, all of which were supportive. Comments were submitted by 2 ITOs, 7 advocacy groups, and 2 local agencies. Commenters encouraged FNS to allow food package reviews on an as-needed basis without limitations on frequency. Comments also requested a requirement that any change in SNAP benefits would trigger an immediate FDPIR food package review. Commenters mentioned that changes to the FDPIR food package made during the pandemic were not commensurate with changes made to SNAP benefit levels.

FNS will continue to work with the program community, including Tribal partners, to routinely review the FDPIR food package and, to the extent practicable, offer USDA Foods that reflect preferences of eligible households. In addition, FNS will assess consistency between the amounts of food provided in FDPIR and SNAP at a frequency that aligns with the reevaluation of the TFP market basket and is practically feasible. While both SNAP and FDPIR benefit amounts are determined in part by TFP market basket amounts, SNAP provides participants with an electronic benefit to purchase eligible foods and FDPIR provides participants with a tangible food package benefit. This means that SNAP benefit levels must be adjusted annually for inflation to ensure that participants can purchase the same amount of food year-to-year, while FDPIR participants receive the same amount of food each year regardless of inflation. When inflation affects food prices, the increased cost of the FDPIR food package is absorbed by USDA and does not impact participants in the same way as it does in SNAP. To support transparency, FNS will communicate

when assessments will occur to program stakeholders with the frequency of such evaluations informed by publication of the most current DGAs and reevaluations of the TFP market baskets.

#### IV. Nondiscrimination Statement Update (§ 253.5)

The Department proposed an update to the nondiscrimination statement language at § 253.5 to state that FDPIR must be operated in accordance with the most up-to-date USDA nondiscrimination statement. Because the nondiscrimination statement is applicable to multiple USDA programs, the Department has reconsidered its approach. The Department will not finalize the proposed provision in this rulemaking. The Department will consider options to address this in future rulemaking.

#### Public Comments and USDA Response

The Department received 4 comments on this provision, all of which were supportive. Comments included: 3 advocacy groups and 1 individual. One commenter specifically requested that FNS ensure sexual orientation and gender identity are protected classes in program implementation. The Department appreciates input on the proposed changes and will consider this feedback in future rulemaking addressing the nondiscrimination statement, with the goal of consistency across USDA programs.

#### V. Updates to FDPIR Eligibility Provisions (§ 253.6)

This final rule codifies several changes to FDPIR eligibility provisions as proposed at § 253.6 to increase access to the program and to improve consistency between FDPIR and SNAP requirements.

##### 1. Separate Household Status for Spouses Not Living Together (§ 253.6(a)(1))

This final rule codifies the removal of the regulatory prohibition at § 253.6(a)(1) on granting separate household status to spouses living apart as proposed. For additional clarity, this final rule also adds a new paragraph § 253.6(a)(1)(iv) stating that spouses living separately and apart are considered separate households. Prior to this change, separate household status could not be granted to spouses living apart. The final provision establishes parity between FDPIR and SNAP regarding the treatment of household composition for spouses.

#### Public Comments and USDA Response

The Department received 12 comments about this provision, all of which were supportive. Comments included: 2 ITOs, 6 advocacy groups, and 2 local agencies. Comments described increased flexibility and maintaining parity with SNAP as positive factors for this provision. The Department concurs with the commenters.

##### 2. Minor Children Living Apart From Parents and Household Status (§ 253.6(a)(4))

This final rule codifies a new section at § 253.6(a)(4) as proposed to clarify that a child is considered under parental control if they are financially or otherwise dependent on a member of that household. This change improves consistency between FDPIR and SNAP requirements to ensure that both programs only certify a child if the adult household member has “parental” control over the child. For example, if a child is living with their grandparents, the child is not considered a part of their parents’ household when determining eligibility. Previous FDPIR regulations at § 253.6(a)(1) included language that children under the age of 18 under the parental control of a member of the household cannot receive separate household status, which is now allowed through this rulemaking.

#### Public Comments and USDA Response

The Department received 8 comments about this provision, all of which were supportive. Comments included: 2 ITOs, 4 advocacy groups, and 2 food bank associations. Comments supported increased flexibility and parity with SNAP for this provision. The Department concurs with the commenters.

##### 3. Removal of California SSI Cash-Out Reference (§ 253.6(a)(2)(ii))

This final rule codifies the removal of reference to Supplemental Security Income (SSI) cash-out at § 253.6(a)(2)(ii) when determining household eligibility as proposed, as this provision is no longer applicable. The Department did not receive any comments on this proposed change.

##### 4. Revisions to Shelter/Utility Deductions (§ 253.6(e)(5))

This final rule codifies the change to § 253.6(e)(5) as proposed to update the existing FDPIR standard shelter/utility deduction to allow a household to choose either a standard deduction amount or actual shelter/utility expenses when determining income eligibility for FDPIR. Consistent with

the proposed rule provision, FNS will both simplify the standard deduction and increase it by using the level of the SNAP maximum shelter deduction instead of the prior Regional standard deductions. The FDPIR base income eligibility thresholds are set annually using 100 percent of the U.S. Federal Poverty Guidelines published by the U.S. Department of Health and Human Services (HHS) and increased by the SNAP standard deduction by household size. FDPIR regulations at § 253.6(e) provide for income deductions, including the shelter/utility deduction, in recognition of expenses which impact the amount of household income available for food purchases. The new standard deduction for the applicable area (e.g., contiguous U.S., Alaska) will be consistent with SNAP maximum monthly excess shelter expense deduction limits outlined at § 273.9(d)(6)(ii). If a household chooses to claim actual expenses, then the household may claim up to 50 percent of their monthly net income and must provide verification of expenses. See VI. Verification Procedures (§ 253.7), where the Department finalizes verification requirements for applicants and participants seeking to provide actual shelter and utility expenses.

Under the revised standard deduction method, when the SNAP excess shelter deduction is updated annually for the next fiscal year (FY), as per § 273.9(d)(6)(ii), the maximum monthly excess shelter deduction limit established for the area is used as the FDPIR shelter/utility standard deduction amount. For example, in FY 2024, the SNAP maximum shelter deduction amount for the 48 contiguous States and the District of Columbia was \$672 and Alaska was \$1,073. Under this finalized provision, these amounts are used for the standard deduction for households that elect to use this amount; or the household could choose to provide actual expenses up to 50 percent of net income. The shelter/utility standard deduction amounts will be updated annually by October 1. For FY 2025, the Department will issue shelter/utility deduction standard amounts following publication of this final rule and prior to the effective date of 60 days after publication of this final rule. In future years, on October 1, the shelter/utility standard deduction will be updated and effective immediately.

In addition to these changes, the Department also finalizes the technical change at § 253.6(e)(1) to indicate that under the earned income deduction, twenty percent should be deducted from “gross earned income,” instead of the

previous “earned income,” which increases clarity in this section.

#### Public Comments and USDA Response

The Department received 15 comments on this provision, all of which were supportive. Comments included: 3 ITOs, 7 advocacy groups, and 5 food bank associations. Commenters highlighted the previous shelter and utility deduction process sometimes failed to consider the unique conditions in Indian country. Commenters also noted the proposed changes would increase FDPIR access and acknowledge the varying circumstances in Tribal communities. The Department concurs with commenters; these changes to the shelter/utility deductions help ensure access to households who may be food insecure due to high costs of shelter and utility expenses.

#### 5. Request for Public Comments: FDPIR Income Standards (§ 253.6(d))

As provided in the discussion of 4. Revisions to Shelter/Utility Deductions (§ 253.6(e)(5)) above, the FDPIR base income eligibility thresholds are set annually using 100 percent of the U.S. Federal Poverty Guidelines published by HHS and increased by the SNAP standard deduction by household size. The Department solicited comments regarding whether further changes should be made to FDPIR income eligibility standards to increase program access and parity with SNAP. The Department sought feedback from FDPIR ITOs and State agencies to inform potential future proposals on alternative eligibility thresholds for FDPIR, including feedback on the following questions:

1. Are there data sources in addition to HHS data that the Department should consider when determining income eligibility standards for FDPIR?

2. Should the Department consider use of a gross income eligibility requirement for FDPIR e.g., 185 percent of the U.S. Federal Poverty Guidelines published annually by HHS, without application of any income deductions?

#### Public Comments and USDA Response

The Department received 9 comments related to this request for comment. Comments included: 2 ITOs, 6 advocacy groups, and 1 local agency. Six commenters stated that national and regional standards do not always accurately reflect the situations of those living in Indian country and requested that FNS simplify the process by providing for an alternate calculation for determining eligibility. These commenters requested FNS allow

applicants the choice of qualifying under either increased gross income guidelines without deductions, or current guidelines with the proposed, and now finalized, increased shelter and utility cost deduction. Another commenter expressed that using gross income eligibility without deductions would simplify the process for many ITOs by minimizing the burden for administrative staff.

The Department appreciates the feedback received in response to this request for comment and will consider these comments for potential future rulemaking.

#### VI. Verification Procedures (§ 253.7)

This final rule codifies a technical update to the verification requirements for the shelter/utility deduction as proposed to provide verification for all expenses if actuals are used. The Department also finalizes a technical update to the threshold for which an ITO or State agency must verify a change in income from \$50 to \$100 at the time of recertification.

#### Public Comments and USDA Response

The Department received 1 comment from an advocacy group on this provision, which was supportive of the increased threshold. The Department concurs with the commenter.

#### VII. USDA Foods Inventory Management (§ 253.10)

This final rule codifies technical updates to § 253.10 as proposed to make this section consistent with the 2016 Final Rule, *Requirements for the Distribution and Control of Donated Foods—The Emergency Food Assistance Program: Implementation of the Agricultural Act of 2014*.<sup>1</sup> The Department also finalizes the removal of current FDPIR regulatory requirements at § 253.10(c)(1) through (6) and replacing them with a reference to follow storage and inventory management regulations listed at §§ 250.12 and 250.14. Additionally, the Department finalizes the proposed changes to move regulations at § 253.10(c)(7) through (17) to (d), as these regulations are applicable to distribution procedures and moving them improves readability and clarity.

<sup>1</sup> USDA Food and Nutrition Service, *Final Rule: Requirements for the Distribution and Control of Donated Foods—The Emergency Food Assistance Program: Implementation of the Agricultural Act of 2014* (81 FR 23085). Accessed 23 January 2023. Available at internet site: <https://www.federalregister.gov/documents/2016/04/19/2016-08639/requirements-for-the-distribution-and-control-of-donated-foods-the-emergency-food-assistance-program>.

The Department did not receive any comments on this provision.

#### VIII. Soliciting Tribal Stakeholder Feedback on the FDPIR Administrative Funding Methodology

The Department solicited comments on the method used to allocate administrative funding to FDPIR administering agencies, which include ITOs and State agencies that have an agreement with FNS to administer FDPIR. This solicitation of comments was intended to gather FDPIR administering agency feedback on the existing administrative funding methodology, including the budget negotiation process, to frame any necessary future discussions and changes to the methodology.

The Department specifically requested comments from FDPIR administering agencies on the following questions:

1. With the advent of two-year FDPIR administrative funding, and given the increase in funding in recent years, does the current methodology provide your organization with adequate funding to meet its administrative needs?

2. Are there aspects of the current funding methodology that could be improved, and if so, how?

3. Specifically, please provide comment on the effectiveness of the current regional allocation and budget negotiation process and if modifications or another model could better serve Indian Tribal Organization needs.

#### Public Comments and USDA Response

The Department received 8 comments applicable to this request for comment. Commenters included: 2 ITOs and 6 advocacy groups. Some commenters felt the current funding structure is adequate, while others suggested improvements are needed. Commenters also suggested that regional allocations and budget negotiations do not fully capture the challenges ITOs face. Because ITOs have different needs, commenters suggested increased flexibility in use of funds. Allowable uses of appropriated funds may include salaries and benefits for FDPIR personnel, materials and supplies, equipment, and meetings and conferences. FNS allocates funding according to the requests it receives from ITOs each fiscal year.

Commenters also requested increased Tribal inclusion in the USDA annual budget process, with commenters suggesting a process similar to the approach(es) at other Federal agencies.

The Department appreciates the varied feedback from commenters on this request for comment and will use

this feedback to inform any future discussions on FDPIR administrative funding.

#### IX. Establishment of Administrative Waiver Authority in FDPIR (§ 253.12)

This final rule codifies a new section at § 253.12 as proposed with technical modifications that provides authority for USDA FNS to waive or modify specific administrative requirements contained in the regulations under similar situations and processes and for similar amounts of time as SNAP regulations at § 272.3(c). Under this provision, ITOs and State agencies can request waivers of specific regulatory requirements. A technical correction was made to the text of § 253.12(a), which simplifies the language to be more in line with current SNAP waiver language without impacting the effect of the provision. The process requires ITOs and State agencies to provide compelling justification for each waiver request submitted. FNS may approve waivers only in the following circumstances: (1) the specific regulatory provision cannot be implemented due to extraordinary temporary situations, (2) FNS determines that the waiver would result in a more effective and efficient administration of the program, or (3) unique geographic conditions within the geographic area served by the administering agency preclude effective implementation of the specific regulatory provision and require an alternative procedure. FNS will not issue any waivers in situations where the waivers are inconsistent with provisions of the Food and Nutrition Act of 2008, as amended (Pub. L. 95–113). This provision is intended to mirror SNAP waiver requirements, thus increasing parity between the two programs, but the provision is separate and distinct from SNAP waiver authority. The Department recognizes that immediate implementation of this provision may benefit FDPIR ITOs and State agencies. Because this provision recognizes an exemption, the Department is using the authority at 5 U.S.C. 553(d)(1) to make this provision effective immediately upon the date of publication of this final rule.

#### Public Comments and USDA Response

The Department received 10 comments regarding this provision, all of which were generally supportive but also outlined specific requests or concerns about the provision. Commenters included 2 ITOs and 8 advocacy groups. Five commenters requested more specific language or examples regarding the need to provide

a compelling justification for a waiver, and specific language or examples of what documentation may be needed to demonstrate a compelling justification. FNS will provide written guidance on implementation of this provision including examples of compelling justifications for requesting a waiver in addition to example documentation and/or templates/formats for FDPIR ITOs and State agencies to use. To support simplicity in the administrative waiver process, FNS may also issue nationwide waivers if determined to be necessary and applicable to all FDPIR ITOs and State agencies, further reducing burden.

Multiple commenters also requested that FNS use the waiver authority in Executive Order 13175 to provide additional flexibility to the provision and to better reflect Tribal sovereignty. FNS notes the waiver authority referenced in Executive Order 13175 only applies to statutory or regulatory requirements that are discretionary and subject to waiver by the agency. FNS currently does not have any statutory or regulatory requirements for FDPIR that are discretionary in nature and subject to waiver. However, FNS believes this provision, as proposed, supports Executive Order 13175 by streamlining the process for FDPIR ITOs and State agencies to apply for waivers of specific regulatory requirements and further supports the comments received of providing additional flexibility to better reflect Tribal sovereignty.

The Department has simplified the language of the provision to be more in line with current SNAP waiver language, but the effect of the provision has not changed from what was proposed. While this provision will be effective upon publication of the final rule, the Department commits to further consultation on the implementation of this provision, including the waiver submission process, as needed.

#### *E. Administration of the Food Distribution Program for Indian Households in Oklahoma (7 CFR Part 254)*

Circumstances unique to distributing FDPIR to households residing in FNS services areas in Oklahoma are addressed in 7 CFR part 254. This final rule codifies changes to 7 CFR part 254 to align with updates made to 7 CFR part 253 as proposed. The technical updates to 7 CFR part 254 include replacing the outdated term “commodities” with “USDA Foods” to further align the program with the definition of “USDA Foods” in 7 CFR part 250. In accordance with the finalized changes in d. Food

Distribution on Indian Reservations, ii. Removal of Urban Place Definition (§§ 253.2 and 253.5), the Department is removing the references to the urban place definition and related terminology and the requirement to provide justification to FNS.

The Department did not receive any comments specific to changes made in 7 CFR part 254.

#### Section 2. Implementation

The Department initially proposed that State agencies, ITOs, and other affected parties must implement the provisions of the proposed rule no later than 60 days after the date of publication of the final rule in the **Federal Register**. The Department sought comments on the type and scope of administrative burden that may be associated with implementing the provisions in this proposed rule in this manner.

Commenters generally highlighted time, limited resources, and systems changes needed to successfully implement some of the provisions in this final rule. After evaluating comments, the Department is providing a 60-day implementation timeline for all provisions, with the exception of the following:

1. Two provisions will be effective immediately upon publication of the final rule:

a. Under 5 U.S.C. 553(d)(1), because this provision recognizes an exemption, the Department is making the Establishment of Administrative Waiver Authority in FDPIR (7 CFR 253.12) effective immediately upon the date of publication of this final rule.

b. Under 5 U.S.C. 553(d)(1), because this provision relieves a restriction, the Department is making the Removal of Prohibition on Simultaneous Provision of USDA [Donated] Foods and D–SNAP during a Disaster (§§ 250.69(c)(2) and 250.70(d)) effective immediately upon the date of publication of this final rule.

2. The Department is establishing a 12-month implementation period for the following six provisions:

a. CSFP State Plan Requirement (§§ 247.6(a) and 247.5(b)(17));

b. CSFP Public Posting of the Availability of USDA Foods (§ 247.5(b)(16));

c. CSFP Referral Materials for the Senior Farmers’ Market Nutrition Program (§ 247.14(a)(4));

d. TEFAP Requirement for the Public Posting of Availability of USDA Foods Through TEFAP (§ 251.4(l));

e. TEFAP Household Distribution Participation Reporting (§ 251.10(b)(4)); and

f. TEFAP Public Posting of Statewide TEFAP Eligibility Criteria (§ 251.5(b)).

State agencies are allowed and encouraged to implement these provisions prior to the 12-month deadline. For more information on each of these provisions, please refer to section 1. *Background and Discussion of the Final Rule*.

**Severability:** If any provision of such section promulgated through this final rule, “Food Distribution Programs: Improving Access and Parity” (FNS–2024–00XX; RIN 054–AE92), is held to be invalid or unenforceable by its terms, or as applied to any person or circumstances, it shall be severable and not affect the remainder thereof.

### Section 3. Procedural Matters

#### *Executive Order 12866 and 13563*

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). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

This final rule has been determined to be not significant and was not reviewed by the Office of Management and Budget (OMB) in conformance with Executive Order 12866.

#### Regulatory Impact Analysis

This rule has been designated as not significant by the Office of Management and Budget, therefore, no Regulatory Impact Analysis is required.

#### Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires Agencies to analyze the impact of rulemaking on small entities and consider alternatives that would minimize any significant impacts on a substantial number of small entities. Pursuant to that review, it has been certified that this rule would not have a significant impact on a substantial number of small entities.

While there may be some burden/impact on some small eligible recipient agencies in TEFAP because of the proposed requirement to report participation in TEFAP, the impact is not significant because these entities are already collecting this information as a part of their normal program operations under existing regulatory requirements.

#### *Congressional Review Act*

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as not a ‘major rule,’ as defined by 5 U.S.C. 804(2).

#### *Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and Tribal governments and the private sector. Under section 202 of the UMRA, the Department generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with “Federal mandates” that may result in expenditures by State, local or Tribal governments, in the aggregate, or the private sector, of \$146 million or more (when adjusted for inflation; GDP deflator source: Table 1.1.9 at <http://www.bea.gov/iTable> in any one year. When such a statement is needed for a rule, Section 205 of the UMRA generally requires the Department to identify and consider a reasonable number of regulatory alternatives and adopt the most cost effective or least burdensome alternative that achieves the objectives of the rule.

This final rule does not contain Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local and tribal governments or the private sector of \$146 million or more in any one year. Thus, the rule is not subject to the requirements of sections 202 and 205 of the UMRA.

#### *Executive Order 12372*

Program names are listed in the Catalog of Federal Domestic Assistance under Numbers 10.565 (CSFP), 10.569 (TEFAP), 10.568 (TEFAP Administrative Costs), 10.567 (FDPIR), and are subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 2 CFR chapter IV.)

#### *Federalism Summary Impact Statement*

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency’s considerations in terms of the three categories called for under Section (6)(b)(2)(B) of Executive Order 13132.

The Department has determined that this rule does not have Federalism implications. This rule does not impose substantial or direct compliance costs

on State and local governments. Therefore, under Section 6(b) of the Executive Order, a Federalism summary impact statement is not required.

#### *Executive Order 12988, Civil Justice Reform*

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full and timely implementation. This rule is not intended to have retroactive effect unless so specified in the Effective Dates section of the final rule. Prior to any judicial challenge to the provisions of the final rule, all applicable administrative procedures must be exhausted.

#### *Civil Rights Impact Analysis*

FNS has reviewed the final rule, in accordance with the Department Regulation 4300–004 “Civil Rights Impact Analysis,” to identify and address any major civil rights impacts the final rule might have on participants on the basis of race, sex (including gender identity and sexual orientation), national origin, disability, or age. The requirements outlined in the final rule aim to remove barriers to access and improve parity across programs. The final rule would impact State agencies, ITOs, local agencies, and food banks in ways that are expected to increase equity and access for participants.

To mitigate potential impacts on program access, FNS will provide State agencies with technical assistance aimed at ensuring that communication about program changes is available in appropriate languages and in alternative formats for persons with disabilities. After reviewing the potential impacts, FNS does not believe the final rule would result in civil rights impacts on protected groups of participants and applicants. However, the FNS Civil Rights Division will propose further outreach and mitigation strategies to alleviate any unforeseen impacts, if deemed necessary.

#### *Executive Order 13175*

Executive Order 13175 requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that 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.

On November 8, 2022, December 6 and 13, 2022, February 22, 2023, and June 27, 2023, FNS provided the opportunity for Tribal consultation on the proposed rule and received substantive feedback from several Tribal leaders which were taken into consideration during the development of the proposed rule. FNS also consulted with Tribal leaders on the implementation of the final rule on February 16, 2024. Notes from these consultations are available at <https://www.usda.gov/tribalrelations/tribal-consultations>.

If a Tribe requests additional consultation in the future, FNS will work with the USDA Office of Tribal Relations to ensure meaningful consultation is provided. We are unaware of current Tribal laws that could be in conflict with this rule.

#### *Paperwork Reduction Act*

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; 5 CFR 1320) requires the Office of Management and Budget (OMB) approve all collections of information by a Federal agency before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number.

The information collection and recordkeeping requirements included in this final rule have been submitted by the Agency to OMB for approval which is currently pending. FNS will not collect any information associated with this rule until the information collections are approved by OMB.

#### *E-Government Act Compliance*

The Department 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.

#### **List of Subjects**

##### *7 CFR Part 247*

Aged, Agricultural commodities, Food assistance programs, Public assistance programs.

##### *7 CFR Part 250*

Administrative practice and procedure, Aged, Disaster assistance, Food assistance programs, Grant programs—social programs, Indians, Infants and children, Reporting and

recordkeeping requirements, Surplus agricultural commodities.

##### *7 CFR Part 251*

Food assistance programs, Grant programs—social programs, Reporting and recordkeeping requirements, Surplus agricultural commodities.

##### *7 CFR Part 253*

Administrative practice and procedure, Agricultural commodities, Food assistance programs, Grant programs—social programs, Indians, Reporting and recordkeeping requirements, Surplus agricultural commodities.

##### *7 CFR Part 254*

Food assistance programs, Grant programs—social programs, Indians, Reporting and recordkeeping requirements, Surplus agricultural commodities.

Accordingly, 7 CFR parts 247, 250, 251, 253, and 254 are amended as follows:

#### **PART 247—COMMODITY SUPPLEMENTAL FOOD PROGRAM**

■ 1. The authority citation for part 247 continues to read as follows:

**Authority:** Sec. 5, Pub. L. 93–86, 87 Stat. 249, as added by Sec. 1304(b)(2), Pub. L. 95–113, 91 Stat. 980 (7 U.S.C. 612c note); sec. 1335, Pub. L. 97–98, 95 Stat. 1293 (7 U.S.C. 612c note); sec. 209, Pub. L. 98–8, 97 Stat. 35 (7 U.S.C. 612c note); sec. 2(8), Pub. L. 98–92, 97 Stat. 611 (7 U.S.C. 612c note); sec. 1562, Pub. L. 99–198, 99 Stat. 1590 (7 U.S.C. 612c note); sec. 101(k), Pub. L. 100–202; sec. 1771(a), Pub. L. 101–624, 101 Stat. 3806 (7 U.S.C. 612c note); sec. 402(a), Pub. L. 104–127, 110 Stat. 1028 (7 U.S.C. 612c note); sec. 4201, Pub. L. 107–171, 116 Stat. 134 (7 U.S.C. 7901 note); sec. 4221, Pub. L. 110–246, 122 Stat. 1886 (7 U.S.C. 612c note); sec. 4221, Pub. L. 113–79, 7 U.S.C. 612c note).

■ 2. Amend § 247.1 by:

- a. Removing the definitions of “Commodities” and “Elderly persons”;
- b. Revising the definitions of “Proxy” and “Subdistributing agency”; and
- c. Adding in alphabetical order a definition for “USDA Foods”.

The revisions and addition read as follows:

##### **§ 247.1 Definitions.**

\* \* \* \* \*

*Proxy* means any person designated by a participant or caretaker to obtain USDA Foods on behalf of the participant.

\* \* \* \* \*

*Subdistributing agency* means an agency or organization that has entered into an agreement with the State agency to perform functions normally

performed by the State, such as entering into agreements with eligible recipient agencies under which USDA Foods are made available, ordering USDA Foods and/or making arrangements for the storage and delivery of such USDA Foods on behalf of eligible recipient agencies.

*USDA Foods* means nutritious foods purchased by USDA to supplement the diets of CSFP participants, also referred to as donated foods.

\* \* \* \* \*

##### **§ 247.2 [Amended]**

- 3. In § 247.2 amend paragraph (a):
- a. In the first sentence, by removing the term “commodities” and adding in its place the term “USDA Foods”;
- b. In the first sentence, by removing the term “elderly persons” and adding in its place the term “participants”; and
- c. Removing the second sentence.

##### **§ 247.3 [Amended]**

- 4. Amend § 247.3 in the first and fifth sentences of paragraph (a) by removing the term “commodities” and adding in its place the term “USDA Foods”.

##### **§ 247.4 [Amended]**

- 5. Amend § 247.4 by removing the term “commodities” wherever it appears in paragraphs (a)(1) through (3), (b)(3), and (c)(3) and adding in its place the term “USDA Foods”.
- 6. Amend § 247.5 by:
- a. Revising paragraphs (a)(2) through (4) and (b)(14) and (15);
- b. Adding paragraphs (b)(16) and (17); and
- c. Revising paragraph (c)(7).

The revisions and additions read as follows:

##### **§ 247.5 State and local agency responsibilities.**

\* \* \* \* \*

- (a) \* \* \*
- (2) Ordering USDA Foods for distribution;
- (3) Storing and distributing USDA Foods;
- (4) Establishing procedures for resolving complaints about USDA Foods;

\* \* \* \* \*

- (b) \* \* \*
- (14) Providing guidance to local agencies, as needed;
- (15) Ensuring that program participation does not exceed the State agency’s caseload allocation on an average monthly basis; and
- (16) Making publicly available a list of all CSFP local agencies on a publicly available internet web page. The State agency must post the name, address,



and telephone number for each local agency. The list must be updated, at a minimum, on an annual basis.

(17) Posting the State Plan that is currently in use on a publicly available internet web page.

(c) \* \* \*

(7) Meeting the special needs of homebound participants, to the extent possible; and

\* \* \* \* \*

■ 7. Amend § 247.6 by revising the last sentence of paragraph (a), revising paragraphs (c)(5) and (6) and (10) through (12), and adding paragraph (c)(13) to read as follows:

**§ 247.6 State Plan.**

(a) \* \* \* A copy of the State Plan must be kept on file at the State agency and must also be posted on a publicly available internet web page for public inspection.

\* \* \* \* \*

(c) \* \* \*

(5) A description of plans for conducting outreach to participants;

(6) A description of the system for storing and distributing USDA Foods;

\* \* \* \* \*

(10) A description of the means by which the State will meet the needs of homebound participants;

(11) Copies of all agreements entered into by the State agency;

(12) The length of the State agency's certification period; and

(13) A description of the process in place to verify the identity of participants before receipt of USDA Foods.

\* \* \* \* \*

■ 8. Amend § 247.9 by revising paragraphs (b), (c), (d)(2) introductory text, and (d)(3) to read as follows:

**§ 247.9 Eligibility requirements.**

\* \* \* \* \*

(b) *What are the income eligibility requirements for CSFP applicants?* The State agency must use a household income limit at or below 150 percent of the U.S. Federal Poverty Guidelines published annually by the U.S. Department of Health and Human Services (HHS). Participants in households with income at or below this level must be considered eligible for CSFP benefits (assuming they meet other requirements contained in this part). However, participants certified before September 17, 1986 (*i.e.*, under the three elderly pilot projects) must remain subject to the eligibility criteria in effect at the time of their certification.

(1) The State agency may accept as income-eligible for CSFP benefits any applicant that documents that they are

certified as fully eligible for the following Federal programs: the Supplemental Nutrition Assistance Program, the Food Distribution Program on Indian Reservations, Supplemental Security Income (SSI), the Low Income Subsidy Program, and the Medicare Savings Programs.

(2) The State agency may accept, as evidence of income within the State agency's CSFP guidelines, documentation of the applicant's participation in State-administered programs not specified in this paragraph that routinely require documentation of income, provided that those programs have income eligibility guidelines at or below the State agency's CSFP threshold.

(3) Applicants who are adjunctively income eligible, as set forth in paragraphs (b)(1) and (2) of this section, shall not be subject to the income limits established under paragraph (b) of this section.

(c) *When must the State agency revise the CSFP income guidelines to reflect the annual adjustments of the U.S. Federal Poverty Guidelines?* Each year, FNS will notify State agencies, by memorandum, of adjusted income guidelines by household size at 150 percent and 100 percent of the U.S. Federal Poverty Guidelines published annually by HHS. The memorandum will reflect the annual adjustments to the U.S. Federal Poverty Guidelines issued by HHS. The State agency must implement the adjusted guidelines immediately upon receipt of the memorandum.

(d) \* \* \*

(2) The State agency may exclude from consideration the following sources of income:

\* \* \* \* \*

(3) The State agency must exclude from consideration all income sources excluded by legislation. FNS will notify State agencies of forms of income excluded by statute through program policy memoranda. The income sources which must be excluded from consideration as income include, but are not limited to:

(i) Reimbursements from the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L. 91-646, sec. 216, 42 U.S.C. 4636);

(ii) Any payment to volunteers under Title I (VISTA and others) and Title II (RSVP, foster grandparents, and others) of the Domestic Volunteer Service Act of 1973 (Pub. L. 93-113, sec. 404(g), 42 U.S.C. 5044(g)) to the extent excluded by that Act;

(iii) Payment to volunteers under section 8(b)(1)(B) of the Small Business

Act (SCORE and ACE) (Pub. L. 95-510, sec. 101, 15 U.S.C. 637(b)(1)(D));

(iv) Income derived from certain submarginal land of the United States which is held in trust for certain Indian Tribes (Pub. L. 94-114, sec. 6, 25 U.S.C. 459e);

(v) Payments received under the Job Training Partnership Act (Pub. L. 97-300, sec. 142(b), 29 U.S.C. 1552(b));

(vi) Income derived from the disposition of funds to the Grand River Band of Ottawa Indians (Pub. L. 94-540, sec. 6);

(vii) Payments received under the Alaska Native Claims Settlement Act (Pub. L. 100-241, sec. 15, 43 U.S.C. 1626(c));

(viii) The value of assistance to children or their families under the National School Lunch Act, as amended (Pub. L. 94-105, sec. 9(d), 42 U.S.C. 1760(e)), the Child Nutrition Act of 1966 (Pub. L. 89-642, sec. 11(b), 42 U.S.C. 1780(b)), and the Food and Nutrition Act of 2008 (Pub. L. 95-113, sec. 1301, 7 U.S.C. 2017(b));

(ix) Payments by the Indian Claims Commission to the Confederated Tribes and Bands of the Yakima Indian Nation or the Apache Tribe of the Mescalero Reservation (Pub. L. 95-433, sec. 2, 25 U.S.C. 609c-1);

(x) Payments to the Passamaquoddy Tribe and the Penobscot Nation or any of their members received pursuant to the Maine Indian Claims Settlement Act of 1980 (Pub. L. 96-420, sec. 6, 9(c), 25 U.S.C. 1725(i), 1728(c));

(xi) Payments under the Low-income Home Energy Assistance Act, as amended (Pub. L. 99-125, sec. 504(c), 42 U.S.C. 8624(f));

(xii) Student financial assistance received from any program funded in whole or part under Title IV of the Higher Education Act of 1965, including the Pell Grant, Supplemental Educational Opportunity Grant, State Student Incentive Grants, National Direct Student Loan, PLUS, College Work Study, and Byrd Honor Scholarship programs, which is used for costs described in section 472(1) and (2) of that Act (Pub. L. 99-498, section 479B, 20 U.S.C. 1087uu). The specified costs set forth in section 472(1) and (2) of the Higher Education Act are tuition and fees normally assessed a student carrying the same academic workload as determined by the institution, and including the costs for rental or purchase of any equipment, materials, or supplies required of all students in the same course of study; and an allowance for books, supplies, transportation, and miscellaneous personal expenses for a student attending the institution on at least a

half-time basis, as determined by the institution. The specified costs set forth in section 472(1) and (2) of the Act are those costs which are related to the costs of attendance at the educational institution and do not include room and board and dependent care expenses;

(xiii) Payments under the Disaster Relief Act of 1974, as amended by the Disaster Relief and Emergency Assistance Amendments of 1989 (Pub. L. 100–707, sec. 105(i), 42 U.S.C. 5155(d));

(xiv) Effective July 1, 1991, payments received under the Carl D. Perkins Vocational Education Act, as amended by the Carl D. Perkins Vocational and Applied Technology Education Act Amendments of 1990 (Pub. L. 101–392, sec. 501, 20 U.S.C. 2466d);

(xv) Payments pursuant to the Agent Orange Compensation Exclusion Act (Pub. L. 101–201, sec. 1);

(xvi) Payments received for Wartime Relocation of Civilians under the Civil Liberties Act of 1988 (Pub. L. 100–383, sec. 105(f)(2), 50 App. U.S.C. 1989b–4(f)(2));

(xvii) Value of any child care payments made under section 402(g)(1)(E) of the Social Security Act, as amended by the Family Support Act (Pub. L. 100–485, sec. 301, 42 U.S.C. 602 (g)(1)(E));

(xviii) Value of any “at-risk” block grant child care payments made under section 5081 of Pub. L. 101–508, which amended section 402(i) of the Social Security Act;

(xix) Value of any child care provided or paid for under the Child Care and Development Block Grant Act, as amended (Pub. L. 102–586, Sec. 8(b)), 42 U.S.C. 9858g);

(xx) Mandatory salary reduction amount for military service personnel which is used to fund the Veteran’s Educational Assistance Act of 1984 (GI Bill), as amended (Pub. L. 99–576, sec. 303(a)(1), 38 U.S.C. 1411 (b));

(xxi) Payments received under the Old Age Assistance Claims Settlement Act, except for per capita shares in excess of \$2,000 (Pub. L. 98–500, sec. 8, 25 U.S.C. 2307);

(xxii) Payments received under the Cranston-Gonzales National Affordable Housing Act, unless the income of the family equals or exceeds 80 percent of the median income of the area (Pub. L. 101–625, sec. 522(i)(4), 42 U.S.C. 1437f nt);

(xxiii) Payments received under the Housing and Community Development Act of 1987, unless the income of the family increases at any time to not less than 50 percent of the median income of the area (Pub. L. 100–242, sec. 126(c)(5)(A), 25 U.S.C. 2307);

(xxiv) Payments received under the Sac and Fox Indian claims agreement (Pub. L. 94–189, sec. 6);

(xxv) Payments received under the Judgment Award Authorization Act, as amended (Pub. L. 97–458, sec. 4, 25 U.S.C. 1407 and Pub. L. 98–64, sec. 2(b), 25 U.S.C. 117b(b));

(xxvi) Payments for the relocation assistance of members of Navajo and Hopi Tribes (Pub. L. 93–531, sec. 22, 22 U.S.C. 640d–21);

(xxvii) Payments to the Turtle Mountain Band of Chippewas, Arizona (Pub. L. 97–403, sec. 9);

(xxviii) Payments to the Blackfeet, Grosventre, and Assiniboiné Tribes (Montana) and the Papago (Arizona) (Pub. L. 97–408, sec. 8(d));

(xxix) Payments to the Assiniboiné Tribe of the Fort Belknap Indian community and the Assiniboiné Tribe of the Fort Peck Indian Reservation (Montana) (Pub. L. 98–124, sec. 5);

(xxx) Payments to the Red Lake Band of Chippewas (Pub. L. 98–123, sec. 3);

(xxxi) Payments received under the Saginaw Chippewa Indian Tribe of Michigan Distribution of Judgment Funds Act (Pub. L. 99–346, sec. 6(b)(2));

(xxxii) Payments to the Chippewas of Mississippi (Pub. L. 99–377, sec. 4(b));

(xxxiii) Payments received by members of the Armed Forces and their families under the Family Supplemental Subsistence Allowance from the Department of Defense (Pub. L. 109–163, sec. 608); and

(xxxiv) Payments received by property owners under the National Flood Insurance Program (Pub. L. 109–64).

(xxxv) Combat pay received by the household member under Chapter 5 of Title 37 or as otherwise designated by the Secretary.

\* \* \* \* \*

■ 9. Revise § 247.10 to read as follows:

**§ 247.10 Distribution and use of USDA Foods.**

(a) *What are the requirements for distributing USDA Foods to participants?* The local agency must distribute a package of USDA Foods to participants each month, or a two-month supply of USDA Foods to participants every other month, in accordance with the food package guide rates established by FNS.

(b) *What must the local agency do to ensure that USDA Foods are distributed only to CSFP participants?* The local agency must have a process in place, in accordance with State agency requirements, to verify the identity of participants or the participant’s proxy before distributing USDA Foods to that person.

(c) *What restrictions apply to State and local agencies in the distribution of USDA Foods?* State and local agencies must not require, or request, that participants make any payments, or provide any materials or services, in connection with the receipt of USDA Foods. State and local agencies must not use the distribution of USDA Foods as a means of furthering the political interests of any person or party.

(d) *What are the restrictions for the use of USDA Foods?* USDA Foods may not be used for outreach, refreshments, or for any purposes other than distribution to, and nutrition education for, CSFP participants.

■ 10. Amend § 247.14 by revising paragraphs (a)(2) and (3) and adding paragraph (a)(4) to read as follows:

**§ 247.14 Other public assistance programs.**

(a) \* \* \*

(2) Medical assistance provided under Title XIX of the Social Security Act (42 U.S.C. 1396 *et seq.*), including medical assistance provided to a qualified Medicare beneficiary (42 U.S.C. 1395(p) and 1396d(5));

(3) The Supplemental Nutrition Assistance Program (7 U.S.C. 2011 *et seq.*); and

(4) The Senior Farmers’ Market Nutrition Program (7 U.S.C. 3007 *et seq.*).

\* \* \* \* \*

■ 11. Amend § 247.18 by revising paragraphs (b)(1) and (2) and (d) to read as follows:

**§ 247.18 Nutrition education.**

\* \* \* \* \*

(b) \* \* \*

(1) The nutritional value of USDA Foods, and their relationship to the overall dietary needs of the population groups served;

(2) Nutritious ways to use USDA Foods;

\* \* \* \* \*

(d) *May USDA Foods be used in cooking demonstrations?* Yes. The State or local agency, or another agency with which it has signed an agreement, may use USDA Foods to conduct cooking demonstrations as part of the nutrition education provided to program participants, but not for other purposes.

**§ 247.20 [Amended]**

■ 12. Amend § 247.20:

■ a. In paragraph (a)(3), by removing the term “commodities” and adding in its place the term “USDA Foods”; and

■ b. In paragraphs (b)(1) through (3) by removing the term “CSFP commodities” and adding in its place the term “USDA Foods”.

■ 13. Amend § 247.21 by revising the first sentence of paragraph (a)(3) to read as follows:

**§ 247.21 Caseload assignment.**

(a) \* \* \*  
(3) \* \* \* Each State agency requesting to begin participation in the program, and with an approved State Plan, may receive caseload to serve participants, as requested in the State Plan. \* \* \*

**§ 247.25 [Amended]**

- 14. Amend § 247.25 in paragraph (e) by removing the term “commodities” and adding in its place “USDA Foods”.  
■ 15. Revise § 247.28 to read as follows:

**§ 247.28 Storage and inventory of USDA Foods.**

(a) *What are the requirements for storage of USDA Foods?* State and local agencies must provide for storage of USDA Foods that protects them from theft, spoilage, damage or destruction, or other loss. State and local agencies may contract with commercial facilities to store and distribute USDA Foods. The required standards for warehousing and distribution systems, and for contracts with storage facilities, are included in §§ 250.12 and 250.14 of this chapter.

(b) *What are the requirements for the inventory of USDA Foods?* A physical inventory of all USDA Foods must be conducted annually at each storage and distribution site where these USDA Foods are stored. Results of the physical inventory must be reconciled with inventory records and maintained on file by the State or local agency.

- 16. Amend § 247.29 by revising paragraphs (a) and (b)(2)(ii) to read as follows:

**§ 247.29 Reports and recordkeeping.**

(a) *What recordkeeping requirements must State and local agencies meet?* State and local agencies must maintain accurate and complete records relating to the receipt, disposal, and inventory of USDA Foods, the receipt and disbursement of administrative funds and other funds, eligibility determinations, fair hearings, and other program activities. State and local agencies must also maintain records pertaining to liability for any improper distribution of, use of, loss of, or damage to USDA Foods, and the results obtained from the pursuit of claims arising in favor of the State or local agency. All records must be retained for a period of three years from the end of the fiscal year to which they pertain, or, if they are related to unresolved claims actions, audits, or investigations, until

those activities have been resolved. All records must be available during normal business hours for use in management reviews, audits, investigations, or reports of the General Accounting Office.

(b) \* \* \*  
(2) \* \* \*  
(ii) The receipt and distribution of USDA Foods, and beginning and ending inventories, as well as other USDA Foods data; and  
\* \* \* \* \*

- 17. Amend § 247.30 by revising paragraphs (b), (c), (d) introductory text, and (d)(1) to read as follows:

**§ 247.30 Claims.**

\* \* \* \* \*  
(b) *What happens if a State or local agency misuses USDA Foods?* If a State or local agency misuses USDA Foods, FNS must initiate a claim against the State agency to recover the value of the misused USDA Foods. The procedures for pursuing claims resulting from misuse of USDA Foods are detailed in § 250.16(a) of this chapter. Misused USDA Foods include USDA Foods improperly distributed or lost, spoiled, stolen, or damaged as a result of improper storage, care, or handling. The State agency is responsible for initiating and pursuing claims against subcontracting agencies, local agencies, or other agencies or organizations if they misuse USDA Foods. The State agency must use funds recovered as a result of claims for USDA Foods losses in accordance with § 250.17(c) of this chapter.

(c) *What happens if a participant improperly receives or uses CSFP benefits through fraud?* The State agency must ensure that a local agency initiates a claim against a participant to recover the value of USDA Foods improperly received or used if the local agency determines that the participant or caretaker of the participant fraudulently received or used the USDA Foods. For purposes of this program, fraud includes intentionally making false or misleading statements, or intentionally withholding information, to obtain USDA Foods, or the selling or exchange of USDA Foods for non-food items. The local agency must advise the participant of the opportunity to appeal the claim through the fair hearing process, in accordance with § 247.33(a). The local agency must also disqualify the participant from CSFP for a period of up to one year, unless the local agency determines that disqualification would result in a serious health risk, in accordance with the requirements of § 247.20(b).

(d) *What procedures must be used in pursuing claims against participants?* The State agency must establish standards, based on a cost-benefit review, for determining when the pursuit of a claim is cost-effective, and must ensure that local agencies use these standards in determining if a claim is to be pursued. In pursuing a claim against a participant, the local agency must:

(1) Issue a letter demanding repayment for the value of the USDA Foods improperly received or used;  
\* \* \* \* \*

**§ 247.31 [Amended]**

- 18. Amend § 247.31 in paragraph (d) by removing the term “CSFP commodities” and adding in its place the term “USDA Foods”.

**§ 247.33 [Amended]**

- 19. Amend § 247.33 in paragraph (a) by removing the term “commodities” and adding in its place the term “USDA Foods”.

**PART 250—DONATION OF FOODS FOR USE IN THE UNITED STATES, ITS TERRITORIES AND POSSESSIONS AND AREAS UNDER ITS JURISDICTION**

- 20. The authority citation for part 250 continues to read as follows:

**Authority:** 5 U.S.C. 301; 7 U.S.C. 612c, 612c note, 1431, 1431b, 1431e, 1431 note, 1446a–1, 1859, 2014, 2025; 15 U.S.C. 713c; 22 U.S.C. 1922; 42 U.S.C. 1751, 1755, 1758, 1760, 1761, 1762a, 1766, 3030a, 5179, 5180.

- 21. Revise § 250.69 to read as follows:

**§ 250.69 Disasters.**

(a) *Use of USDA Foods to provide congregate meals.* The distributing agency may provide USDA Foods from current inventories, either at the distributing or recipient agency level, to a disaster organization (as defined in § 250.2), for use in providing congregate meals to persons in need of food assistance as a result of a Presidentially declared disaster or emergency (hereinafter referred to collectively as a “disaster”). FNS approval is not required for such use.

(1) *Notification of congregate meals activity to FNS.* Prior to using USDA Foods for congregate meals under this section, the distributing agency must notify FNS that such assistance is to be provided, and the period of time that it is expected to be needed. The distributing agency may extend such period of assistance as needs dictate but must notify FNS of such extension.

(2) *Selection of disaster organizations for disaster congregate meal service by*

the distributing agency. Distributing agencies are responsible for choosing disaster organizations to implement congregate meal service, subject to FNS approval as described in paragraph (a)(1) of this section. Before distribution of USDA Foods to a disaster organization for congregate meal service, the distributing agency must review and approve such organization's application in accordance with applicable FNS guidance. A disaster organization's application must be submitted to the distributing agency in written form. The disaster organization's application must, to the extent possible, include the following information at a minimum:

- (i) A description of the disaster situation;
- (ii) The number of people requiring assistance;
- (iii) The period of time for which USDA Foods are requested;
- (iv) The quantity and types of USDA Foods needed; and
- (v) The name, number, and location of sites where USDA Foods are to be used, to the extent that such information is known.

(3) *Eligibility of emergency relief workers for congregate meals.* The disaster organization may use USDA Foods to provide meals to any emergency relief workers at the congregate feeding site who are directly engaged in providing relief assistance.

(b) *Use of USDA Foods for distribution to households.* Subject to FNS approval, the distributing agency may provide USDA Foods from current inventories in accordance with paragraph (c) of this section, either at the distributing or recipient agency level, to a disaster organization, for distribution to households in need of food assistance because of a disaster. Once approved, such distribution may continue for the period that FNS has determined to be necessary to meet the needs of such households. Distributing agencies may request an extension of the distribution period, subject to FNS approval.

(1) *FNS approval of disaster household distribution.* Before permitting the distribution of USDA Foods to a disaster organization for household distribution, the distributing agency must submit an application to FNS for review and approval. The distributing agency's application must, to the extent possible, include the following information:

- (i) A description of the disaster situation;
- (ii) The number of people requiring assistance;

(iii) The period of time for which USDA Foods are requested;

(iv) The quantity and types of USDA Foods needed;

(v) The name, number, and location of sites where USDA Foods are to be used, to the extent that such information is known;

(vi) An explanation as to why household distribution is needed; and

(vii) The method(s) of distribution available.

(2) *Selection of a disaster organization for disaster household distribution of USDA Foods.* Distributing agencies are responsible for choosing disaster organizations to implement a disaster household distribution, subject to FNS approval as described in paragraph (b)(1) of this section. Before distribution of USDA Foods to a disaster organization, the distributing agency must review and approve such organization's application in accordance with applicable FNS guidance, which must be submitted to the distributing agency either electronically or in written form. The distributing agency must also submit such application to FNS for review and approval before permitting distribution of USDA Foods to households.

(c) *Limitation on impacts to other programs.* Distributing agencies must ensure that the operation of disaster congregate meal service and/or disaster household distribution is not administered in lieu of regular program operations nor does it negatively impact the distribution of USDA Foods through other programs administered by the distributing agency.

(d) *Reporting and recordkeeping requirements.* The distributing agency must report the following to FNS:

(1) The number, names, and locations of sites where USDA Foods are used in congregate meals or household distribution as these sites are established.

(2) The types and amounts of USDA Foods from distributing or recipient agency storage facilities used in disaster assistance, utilizing form FNS-292A, *Report of Commodity Distribution for Disaster Relief*, which must be submitted electronically, within 45 days from the termination of disaster assistance. This form must also be used to request replacement of USDA Foods, in accordance with paragraph (e) of this section. The distributing agency must maintain records of reports and other information relating to disasters.

(3) If the distributing agency is operating disaster household distribution per 250.69(b), the distributing agency must submit a biweekly report to FNS, utilizing the

format requested by FNS, for the approved disaster period. This report must be submitted electronically biweekly as long as the disaster household distribution continues operation. Biweekly reports must include:

(i) The weekly distribution start and end dates;

(ii) The total number of individual household members receiving assistance at all locations;

(iii) Material identification codes for USDA Foods distributed;

(iv) the USDA Foods description of the foods distributed; and

(v) the total units of each food distributed.

(e) *Replacement of USDA Foods.* In order to ensure replacement of USDA Foods used in disasters, the distributing agency must submit to FNS a request for such replacement, utilizing form FNS-292A, *Report of Commodity Distribution for Disaster Relief*, within 45 days following the termination of disaster assistance. The distributing agency may request replacement of USDA Foods used from inventories in which USDA Foods are commingled with other foods (*i.e.*, at storage facilities of recipient agencies utilizing single inventory management), if the recipient agency received USDA Foods of the same type as the foods used during the year preceding the onset of the disaster assistance. FNS will replace such USDA Foods in the amounts used, or in the amount of like USDA Foods received during the preceding year, whichever is less.

(f) *Reimbursement of transportation costs.* In order to receive reimbursement for any costs incurred in transporting USDA Foods within the State, or from one State to another, for use in disasters, the distributing agency must submit a public voucher to FNS with documentation of such costs. FNS will review the request and reimburse the distributing agency.

■ 22. Revise § 250.70 to read as follows:

#### **§ 250.70 Situations of distress.**

(a) *Use of USDA Foods to provide congregate meals.* The distributing agency may provide USDA Foods from current inventories, either at the distributing or recipient agency level, to a disaster organization, for use in providing congregate meals to persons in need of food assistance because of a situation of distress, as this term is defined in § 250.2.

(1) *Notification of congregate meals activity to FNS.* If the situation of distress results from a natural event (*e.g.*, a hurricane, flood, or snowstorm), congregate meals may be provided for a

period not to exceed 30 days, without the need for FNS approval. However, the distributing agency must notify FNS that such assistance is to be provided. FNS approval must be obtained to permit such USDA Foods assistance for a period exceeding 30 days. If the situation of distress results from other than a natural event (*e.g.*, an explosion), FNS approval is required to permit USDA Foods assistance for use in providing congregate meals for any period of time.

(2) *Selection of disaster organizations for disaster congregate meal service by the distributing agency.* Distributing agencies are responsible for choosing disaster organizations to implement congregate meal service, subject to approval as described in paragraph (a)(1) of this section. Before distribution of USDA Foods to a disaster organization, the distributing agency must review and approve such organization's application in accordance with applicable FNS guidance, which must be submitted to the distributing agency in written form. The distributing agency must also submit such application to FNS for review and approval before permitting distribution of USDA Foods in a situation of distress that is not the result of a natural event. The disaster organization's application must, to the extent possible, include the following information:

- (i) A description of the situation of distress;
- (ii) The number of people requiring assistance;
- (iii) The period of time for which USDA Foods are requested;
- (iv) The quantity and types of USDA Foods needed; and
- (v) The name, number, and location of sites where USDA Foods are to be used, to the extent that such information is known.

(3) *Eligibility of emergency relief workers for congregate meals.* The disaster organization may use USDA Foods to provide meals to any emergency relief workers at the congregate feeding site that are directly engaged in providing relief assistance.

(b) *Use of USDA Foods for distribution to households.* The distributing agency must receive FNS approval to provide USDA Foods from current inventories in accordance with paragraph (c) of this section, either at the distributing or recipient agency level, to a disaster organization for distribution to households in need of food assistance because of a situation of distress. Such distribution may continue for the period of time that FNS determines necessary to meet the needs of such households. Before permitting

the distribution of USDA Foods for household distribution, the distributing agency must submit an application to FNS for review and approval. The distributing agency's application must, to the extent possible, include the following information:

- (1) A description of the situation of distress;
- (2) The number of people requiring assistance;
- (3) The period of time for which USDA Foods are requested;
- (4) The quantity and types of USDA Foods needed;
- (5) The name, number, and location of sites where USDA Foods are to be used, to the extent that such information is known;
- (6) An explanation as to why household distribution is needed; and
- (7) The method(s) of distribution available.

(c) *Limitation on impacts to other programs.* Distributing agencies must ensure that the operation of congregate meal service and/or disaster household distribution in situations of distress is not administered in lieu of regular program operations nor does it negatively impact the distribution of USDA Foods through other programs administered by the distributing agency.

(d) *Reporting and recordkeeping requirements.* The distributing agency must report the following to FNS:

- (1) The number, names, and locations of sites where USDA Foods are used in congregate meals or household distribution as these sites are established.

(2) The distributing agency must also report the types and amounts of USDA Foods from distributing or recipient agency storage facilities used in the situation of distress, utilizing form FNS-292A, *Report of Commodity Distribution for Disaster Relief*, which must be submitted electronically, within 45 days from the termination of assistance. This form must also be used to request replacement of USDA Foods, in accordance with paragraph (e) of this section. The distributing agency must maintain records of reports and other information relating to situations of distress.

(3) If the distributing agency is operating disaster household distribution per 250.70(b), the distributing agency must submit a biweekly report to FNS, utilizing the format requested by FNS, for the approved disaster period. This report must be submitted electronically biweekly as long as the disaster household distribution continues operation. Biweekly reports must include:

(i) The weekly distribution start and end dates;

(ii) The total number of individual household members receiving assistance at all locations;

(iii) Material identification codes for USDA Foods distributed;

(iv) The USDA Foods description of the foods distributed; and

(v) The total units of each food distributed.

(e) *Replacement of USDA Foods.* FNS will replace USDA Foods used in a situation of distress only to the extent that funds to provide for such replacement are available. The distributing agency must submit to FNS a request for replacement of such USDA Foods, utilizing form FNS-292A, *Report of Commodity Distribution for Disaster Relief*, which must be submitted electronically, within 45 days from the termination of assistance. The distributing agency may request replacement of foods used from inventories in which USDA Foods are commingled with other foods (*i.e.*, at storage facilities of recipient agencies utilizing single inventory management), if the recipient agency received USDA Foods of the same type as the USDA Foods used during the year preceding the onset of the situation of distress. Subject to the availability of funds, FNS will replace such USDA Foods in the amounts used, or in the amount of like USDA Foods received during the preceding year, whichever is less.

(f) *Reimbursement of transportation costs.* In order to receive reimbursement for any costs incurred in transporting USDA Foods within the State, or from one State to another, for use in a situation of distress, the distributing agency must submit a public voucher to FNS with documentation of such costs. FNS will review the request and reimburse the distributing agency to the extent that funds are available.

## PART 251—THE EMERGENCY FOOD ASSISTANCE PROGRAM

■ 23. The authority citation for part 251 continues to read as follows:

**Authority:** 7 U.S.C. 7501–7516; 7 U.S.C. 2011–2036.

### § 251.2 [Amended]

■ 24. Amend § 251.2:

■ a. In paragraph (a), by removing the term “food commodities” and adding in its place the term “USDA Foods”;

■ b. In paragraphs (c)(1) and (2), by removing the term “donated foods” wherever it appears and adding in its place the term “USDA Foods”;

■ c. In paragraph (d)(1)(ii), by removing the term “commodities” and adding in its place the term “USDA Foods”; and

■ d. In paragraph (d)(2)(ii), by removing the terms “TEFAP commodities” and “commodities” and adding in their place the term “USDA Foods”.

■ 25. Amend § 251.3:

■ a. In paragraphs (c) and (d)(5), by removing the term “commodities” and adding in its place the term “USDA Foods”;

■ b. In paragraph (e) by removing the term “TEFAP commodities” and adding in its place the term “USDA Foods”;

■ c. By revising paragraph (f); and

■ d. In paragraphs (h) and (k) by removing the term “commodities” wherever it appears and adding in its place the term “USDA Foods”.

The revision reads as follows:

#### § 251.3 Definitions.

(f) *Food bank* means a public or charitable institution that maintains an established operation involving the provision of food to food pantries, soup kitchens, hunger relief centers, or other food or feeding centers that, as an integral part of their normal activities, provide meals or food to feed needy persons on a regular basis.

■ 26. Amend § 251.4 by:

■ a. Revising the section heading;

■ b. Removing the term “donated commodity” in paragraph (c)(4) and adding in its place the term “USDA Foods”;

■ c. Removing the term “donated food” in paragraphs (c)(4) and (5) and adding in its place the term “USDA Foods”;

■ d. Removing the term “Commodities” in paragraph (f) introductory text and adding in its place the term “USDA Foods”;

■ e. Revising paragraph (f)(3);

■ f. Removing the term “donated commodities” wherever it appears in paragraph (g) and in paragraph (i) and adding in its place the term “USDA Foods”;

■ g. Removing the term “TEFAP commodities” wherever it appears in paragraphs (h)(1)(i) and (ii) and (h)(2) through (4) and adding in its place the term “USDA Foods”;

■ h. Removing the term “commodity” in paragraphs h(1)(i) and (ii) and adding in its place the term “USDA Foods”;

■ i. Removing the term “USDA donated commodities” in paragraph (i) and adding in its place the term “USDA Foods”;

■ j. Revising paragraph (k);

■ k. Removing the term “commodities” wherever it appears and adding in its place the term “USDA Foods”; and

■ k. Adding paragraph (l).

The revisions and addition read as follows:

#### § 251.4 Availability of USDA Foods.

\* \* \* \* \*

(f) \* \* \*

(3) The State shall require the processor to meet Federal, State, and local health standards.

\* \* \* \* \*

(k) *Distribution in rural and Tribal areas.* FNS encourages State agencies and eligible recipient agencies to implement or expand USDA Foods distributions in rural, remote, and Tribal areas of the State wherever possible.

(l) *Public posting of availability of USDA Foods.* State agencies must make publicly available the list of eligible recipient agencies that have an agreement with the State agency and the State’s uniform Statewide eligibility criteria to receive USDA Foods for household consumption as per § 251.5(b), to ensure that eligible populations understand eligibility criteria and are able to identify where they may access USDA Foods. At minimum, State agencies must publicly post the names, addresses, and contact telephone numbers for all eligible recipient agencies that have an agreement with the State agency. The information must be posted on a publicly available internet web page and be updated on an annual basis or whenever changes to eligibility criteria are made.

■ 27. Amend § 251.5 by revising paragraphs (a) introductory text, (a)(1) and (2), (b), and (c) to read as follows:

#### § 251.5 Eligibility determinations.

(a) *Criteria for determining eligibility of organizations.* Prior to making USDA Foods or administrative funds available, State agencies, or eligible recipient agencies to which the State agency has delegated responsibility for the distribution of USDA Foods or administrative funds, must ensure that an organization applying for participation in the program meets the definition of an “eligible recipient agency” under § 251.3(d). In addition, applicant organizations must meet the following criteria:

(1) *Agencies distributing USDA Foods to households for home consumption.* Organizations distributing USDA Foods to households for home consumption must limit the distribution of USDA Foods provided under this part to those households which meet the eligibility criteria established by the State agency in accordance with paragraph (b) of this section.

(2) *Agencies providing prepared meals.* Organizations providing prepared meals must demonstrate, to the satisfaction of the State agency, or eligible recipient agency to which they have applied for the receipt of USDA Foods or administrative funds, that they serve predominantly needy persons. State agencies may establish a higher standard than “predominantly” and may determine whether organizations meet the applicable standard by considering socioeconomic data of the area in which the organization is located, or from which it draws its clientele. State agencies may not, however, require organizations to employ a means test to determine that recipients are needy, or to keep records solely for the purpose of demonstrating that its recipients are needy.

\* \* \* \* \*

(b) *Criteria for determining recipient eligibility.* Each State agency must establish uniform Statewide criteria for determining the eligibility of households to receive USDA Foods provided under this part for home consumption and must make these criteria publicly available as per § 251.4(l). The criteria must:

(1) Enable the State agency to ensure only households that need food assistance because of inadequate household income receive USDA Foods;

(2) Include income-based standards and the methods by which households may demonstrate eligibility under such standards. Income-based standards must include a maximum income eligibility threshold at or between 185 percent to 300 percent of the U.S. Federal Poverty Guidelines published annually by the U.S. Department of Health and Human Services (HHS). States may propose alternative income-based eligibility standards above this threshold with supporting rationale, subject to approval by FNS; and

(3) Include a requirement that the household reside in the geographic location served by the State agency at the time of applying for assistance, and the method for how residency will be determined. Length of residency, address, or identification documents shall not be used as an eligibility criterion.

(c) *Delegation of authority.* A State agency may delegate to one or more eligible recipient agencies with which the State agency enters into an agreement the responsibility for the distribution of USDA Foods and administrative funds made available under this part. State agencies may also delegate the authority for selecting eligible recipient agencies and for

determining the eligibility of such organizations to receive USDA Foods and administrative funds. However, responsibility for establishing eligibility criteria for organizations in accordance with paragraph (a) of this section, and for establishing recipient eligibility criteria in accordance with paragraph (b) of this section, may not be delegated. In instances in which State agencies delegate authority to eligible recipient agencies to determine the eligibility of organizations to receive USDA Foods and administrative funds, eligibility must be determined in accordance with the provisions contained in this part and the State plan. State agencies will remain responsible for ensuring that USDA Foods and administrative funds are distributed in accordance with the provisions contained in this part.

■ 28. Amend § 251.6 by revising paragraphs (a)(1), (2), (4), (5), and (6) to read as follows:

**§ 251.6 Distribution plan.**

(a) \* \* \*

(1) A designation of the State agency responsible for distributing USDA Foods and administrative funds provided under this part, and the address of such agency;

(2) A plan of operation and administration to expeditiously distribute USDA Foods received under this part;

\* \* \* \* \*

(4) A description of the criteria established in accordance with § 251.5(b) which must be used by eligible recipient agencies in determining the eligibility of households to receive USDA Foods for home consumption;

(5) At the option of the State agency, a plan of operation for one or more Farm to Food Bank Projects in partnership with one or more emergency feeding organizations located in the State, as described in § 251.13. The plan must include all items listed at § 251.13(e); and

(6) A plan, which may include the use of a State advisory board established under § 251.4(h)(4), that provides emergency feeding organizations or eligible recipient agencies within the State an opportunity to provide input on the USDA Foods preferences and needs of the emergency feeding organization or eligible recipient agency.

\* \* \* \* \*

**§ 251.7 [Amended]**

■ 29. Amend § 251.7 in paragraph (a) by removing the word “commodity” and adding in its place the term “USDA Foods”.

■ 30. Amend § 251.8 by revising paragraphs (a), (d), (e)(1) introductory text, (e)(1)(i) and (iii), and (e)(4)(iii) to read as follows:

**§ 251.8 Payment of funds for administrative costs.**

(a) *Availability and allocation of funds.* Funds made available to the Department for State and local costs associated with the distribution of USDA Foods under this part shall, in any fiscal year, be distributed to each State agency on the basis of the funding formula defined in § 251.3(h).

\* \* \* \* \*

(d) *Priority for eligible recipient agencies distributing USDA Foods.* State agencies and eligible recipient agencies distributing administrative funds must ensure that the administrative funding needs of eligible recipient agencies which receive USDA Foods are met, relative to both USDA Foods and any non-USDA foods they may receive before such funding is made available to eligible recipient agencies which distribute only non-USDA foods.

(e) \* \* \*

(1) *Allowable administrative costs.* State agencies and eligible recipient agencies may use funds made available under this part to pay the direct expenses associated with the distribution of USDA Foods and foods secured from other sources to the extent that the foods are ultimately distributed by eligible recipient agencies which have entered into agreements in accordance with § 251.2. Direct expenses include the following, regardless of whether they are charged to TEFAP as direct or indirect costs:

(i) The intrastate and interstate transport, storing, handling, repackaging, processing, and distribution of foods (including donated wild game); except that for interstate expenditures to be allowable, the foods must have been specifically earmarked for the particular State or eligible recipient agency which incurs the cost;

\* \* \* \* \*

(iii) Costs of providing information to persons receiving USDA Foods concerning the appropriate storage and preparation of such foods;

\* \* \* \* \*

(4) \* \* \*

(iii) State agencies must not charge for USDA Foods made available under this part to eligible recipient agencies.

\* \* \* \* \*

■ 31. Amend § 251.9:

■ a. In paragraph (c)(2)(i) by removing the word “commodities” and adding in its place the term “USDA Foods”;

■ b. In paragraph (d) by removing the term “donated foods” and adding in its place “USDA Foods”; and

■ c. Revising paragraph (e).

The revision reads as follows:

**§ 251.9 Matching of funds.**

\* \* \* \* \*

(e) *Reporting requirements.* State agencies must identify their matching contribution on the FNS–667, Report of TEFAP Administrative Costs, in accordance with § 251.10(b)(1).

\* \* \* \* \*

■ 32. Revise § 251.10 to read as follows:

**§ 251.10 Reports and recordkeeping.**

(a) *Records*—(1) *USDA Foods.* State agencies, subdistributing agencies (as defined in § 250.3 of this chapter), and eligible recipient agencies must maintain records to document the receipt, disposal, and inventory of USDA Foods received under this part that they, in turn, distribute to eligible recipient agencies. Such records must be maintained in accordance with the requirements set forth in § 250.16 of this chapter. Eligible recipient agencies must sign a receipt for USDA Foods which they receive under this part for distribution to households or for use in preparing meals, and records of all such receipts must be maintained.

(2) *Administrative funds.* In addition to maintaining financial records in accordance with 2 CFR part 200, subpart D, and USDA implementing regulations at 2 CFR part 400, State agencies must maintain records to document the amount of funds received under this part and paid to eligible recipient agencies for allowable administrative costs incurred by such eligible recipient agencies. State agencies must also ensure that eligible recipient agencies maintain such records.

(3) *Eligible recipient agency list.* State agencies must maintain a list of eligible recipient agencies, including eligible recipient agencies that have agreements with the State agency and eligible recipient agencies that have agreements with another eligible recipient agency. The list must include eligible recipient agencies that distribute USDA Foods for home consumption and those that distribute USDA Foods in the form of prepared meals.

(4) *Information about households receiving USDA Foods for home consumption.* Each distribution site must collect and maintain on record for each household receiving USDA Foods for home consumption, the name of the household member receiving USDA Foods, the number of persons in the household, and the basis for determining that the household is



eligible to receive USDA Foods for home consumption.

(5) *Record retention.* All records required by this section must be retained for a period of 3 years from the close of the Federal Fiscal Year to which they pertain, or longer if related to an audit or investigation in progress. State agencies may take physical possession of such records on behalf of their eligible recipient agencies. However, such records must be reasonably accessible at all times for use during management evaluation reviews, audits or investigations.

(b) *Reports*—(1) *Submission of Form FNS-667.* Designated State agencies must identify funds obligated and disbursed to cover the costs associated with the program at the State and local level. State and local costs must be identified separately. The data must be identified on Form FNS-667, Report of Administrative Costs (TEFAP) and submitted to the appropriate FNS Regional Office on a quarterly basis. The quarterly report must be submitted no later than 30 calendar days after the end of the quarter to which it pertains. The final report must be submitted no later than 90 calendar days after the end of the fiscal year to which it pertains.

(2) *Reports of excessive inventory.* Each State agency must complete and submit to the FNS Regional Office reports to ensure that excessive inventories of USDA Foods are not maintained, in accordance with the requirements of § 250.18(a) of this chapter.

(3) *Report of eligible recipient agency list.* On an annual basis, each State agency must provide the list of eligible recipient agencies and statewide eligibility criteria, as described in paragraph (a)(3) of this section, to FNS. The report should specify whether each eligible recipient agency has an agreement with the State agency or with another eligible recipient agency.

(4) *Recipients of USDA Foods for home consumption.* State agencies must report the total number of persons served by each distribution site for home consumption as collected in paragraph (a)(4) of this section to FNS on a quarterly basis. This report must capture the total number of persons in all households which participated in each calendar month within the quarter.

(c) *Confidentiality of applicants and participants*—(1) *Confidential applicant and participant information.* Confidential applicant and participant information is any information about an applicant or participant, whether it is obtained from the applicant or participant, another source, or generated as a result of TEFAP application,

certification, or participation, that individually identifies an applicant or participant and/or family member(s). Applicant or participant information is confidential, regardless of the original source and exclusive of previously applicable confidentiality provided in accordance with other Federal, State, or local law.

(2) *Limits on disclosure of information obtained from applicants or participants.* State and local agencies must restrict the use or disclosure of information obtained from TEFAP applicants or participants to persons directly connected with the administration or enforcement of the program. With the consent of the participant, the State or local agency may share information obtained with other health or welfare programs for use in determining eligibility for those programs, or for program outreach. However, the State agency must sign an agreement with the administering agencies for these programs to ensure that the information will be used only for the specified purposes, and that agencies receiving such information will not further share it.

(3) *Limits on disclosing the identity of persons making a complaint or allegation against an individual participating in or administering the program.* The State and local agency must protect the confidentiality, and other rights, of any person making allegations or complaints against another individual participating in, or administering TEFAP, except as necessary to conduct an investigation, hearing, or judicial proceeding, as applicable.

■ 33. Add §§ 251.11 through 251.14 to read as follows:

**Sec.**

*	*	*	*	*
251.11	State monitoring system.			
251.12	Limitation on unrelated activities.			
251.13	Farm to Food Bank Projects.			
251.14	Miscellaneous.			

**§ 251.11 State monitoring system.**

(a) Each State agency must monitor the operation of the program to ensure that it is being administered in accordance with Federal and State requirements. State agencies may not delegate this responsibility.

(b) Unless specific exceptions are approved in writing by FNS, the State agency monitoring system must include:

(1) An annual review of at least 25 percent of all eligible recipient agencies which have signed an agreement with the State agency pursuant to § 251.2(c), provided each such agency must be reviewed no less frequently than once every four years; and

(2) An annual review of one-tenth or 20, whichever is fewer, of all eligible recipient agencies which receive USDA Foods and/or administrative funds pursuant to an agreement with another eligible recipient agency. Reviews must be conducted, to the maximum extent feasible, simultaneously with actual distribution of USDA Foods and/or meal service, and eligibility determinations, if applicable. State agencies must develop a system for selecting eligible recipient agencies for review that ensures deficiencies in program administration are detected and resolved in an effective and efficient manner.

(c) Each review must encompass, as applicable, eligibility determinations, food ordering procedures, storage and warehousing practices, inventory controls, approval of distribution sites, reporting and recordkeeping requirements, and civil rights.

(d) Upon concurrence by FNS, reviews of eligible recipient agencies which have been conducted by FNS Regional Office personnel may be incorporated into the minimum coverage required by paragraph (b) of this section.

(e) If deficiencies are disclosed through the review of an eligible recipient agency, the State agency must submit a report of the review findings to the eligible recipient agency and ensure that corrective action is taken to eliminate the deficiencies identified.

**§ 251.12 Limitation on unrelated activities.**

(a) Activities unrelated to the distribution of USDA Foods or meal service may be conducted at distribution sites as long as:

(1) The person(s) conducting the activity makes clear that the activity is not part of TEFAP and is not endorsed by the Department. Nutrition education materials, such as recipes or other information about USDA Foods, dates of future distributions, hours of operations, or information about other Federal, State, or local government programs or services for the needy may be distributed without a clarification that the information is not endorsed by the Department;

(2) The person(s) conducting the activity makes clear that cooperation is not a condition of the receipt of USDA Foods for home consumption or prepared meals containing USDA Foods (cooperation includes contributing money, signing petitions, or conversing with the person(s));

(3) The activity is not conducted in a manner that disrupts the distribution of USDA Foods or meal service; and

(4) The activity does not involve information unrelated to TEFAP being

placed in or printed on bags, boxes, or other containers in which USDA Foods are distributed.

(b) Eligible recipient agencies and distribution sites shall ensure that activities unrelated to the distribution of USDA Foods or meal service are conducted in a manner consistent with paragraph (a) of this section.

(c) Except as provided in paragraph (d) of this section, State agencies shall immediately terminate from further participation in TEFAP operations any eligible recipient agency that distributes or permits distribution of materials in a manner inconsistent with the provisions of paragraph (a) of this section.

(d) The State agency may withhold termination of an eligible recipient agency's or distribution site's TEFAP participation if the State agency cannot find another eligible recipient agency to operate the distribution in the area served by the violating organization. In such circumstances, the State agency shall monitor the violating organization to ensure that no further violations occur.

#### **§ 251.13 Farm to Food Bank Projects.**

(a) *Definition of project.* Farm to Food Bank Projects are the harvesting, processing, packaging, or transportation of unharvested, unprocessed, or unpackaged foods donated by agricultural producers, processors, or distributors for use by emergency feeding organizations under section 203D of the Emergency Food Assistance Act of 1983.

(b) *Availability and allocation of funds.* Funds for the costs of carrying out a Farm to Food Bank Project will be allocated to State agencies as follows:

(1) Funds made available to the Department for Farm to Food Bank Projects will be distributed to State agencies that have submitted an approved amendment to their State plan. The amendment must describe a plan of operation for a Farm to Food Bank Project and include all elements listed in paragraph (e) of this section. The plan of operation must be updated and resubmitted on an annual basis by the dates requested by FNS.

(2) Funds for Farm to Food Bank Projects will be distributed each fiscal year to State agencies using the funding formula defined in § 251.3(h).

(3) Funds will be available to State agencies for one year from the date of allocation.

(c) *Purpose and use of funds.* State agencies may only use funds made available under this section for the costs of carrying out a Farm to Food Bank Project.

(1) Farm to Food Bank Projects must have a purpose of:

(i) Reducing food waste at the agricultural production, processing, or distribution level through the donation of food;

(ii) Providing food to individuals in need; and

(iii) Building relationships between agricultural producers, processors, and distributors and emergency feeding organizations through the donation of food.

(2) Project funds may only be used for costs associated with harvesting, processing, packaging, or transportation of unharvested, unprocessed, or unpackaged foods donated by agricultural producers, processors, or distributors for use by emergency feeding organizations.

(3) Project funds cannot be used to purchase foods or for agricultural production activities such as purchasing seeds or planting crops.

(d) *Matching of funds—(1) State matching requirement.* The State agency must provide a cash or in-kind contribution at least equal to the amount of funding received under this section for a Farm to Food Bank Project.

(2) *Allowable contributions.* State agencies shall meet the match requirement in paragraph (d) of this section by providing allowable contributions as described at § 251.9(c); contributions must only be for costs which would otherwise be allowable as a Farm to Food Bank Project cost.

(3) *Emergency feeding organization contributions.* Cash or in-kind contributions from emergency feeding organizations that partner with the State agency to administer the Farm to Food Bank Project are allowable.

(4) *Food donations.* Donations of foods, including the value of foods donated as a part of a Farm to Food Bank Project, cannot count toward the match requirement in paragraph (d) of this section.

(e) *Plans of Operation for Farm to Food Bank Projects.* A plan of operation for a Farm to Food Bank Project must include:

(1) A high-level summary of the Farm to Food Bank Project.

(2) A description of the types of foods expected to be donated through the Project.

(3) A list of emergency feeding organizations within the State that will operate the Project in partnership with the State agency.

(4) A list of any State agencies that will operate the Project as a part of a cooperative agreement.

(5) A description of the Project that includes how the Project will:

(i) Reduce food waste at the agricultural production, processing, or distribution level through the donation of food;

(ii) Provide food to individuals in need; and

(iii) Build relationships between agricultural producers, processors, and distributors and emergency feeding organizations through the donation of food.

(6) The fiscal year in which the Project will begin operating; and

(7) A description of how the match requirement will be met.

(f) *Reallocation of funds.* If, during the course of the fiscal year, the Department determines that a State agency will not expend all of the funds allocated to the State agency for a fiscal year under this section, the Department shall reallocate the unexpended funds to other State agencies that have an approved State Plan describing a plan of operation for a Farm to Food Bank Project during that fiscal year or the subsequent fiscal year.

(g) *Reporting requirements.* Each State agency to which Farm to Food Bank Project funds are allocated for a fiscal year must submit a report describing use of the funds. The data must be identified on Form SF-425, Federal Financial Report, and submitted to the appropriate FNS Regional Office on a semiannual basis. The reports, including a final report, must be submitted by the dates requested by FNS.

(h) *Cooperative agreements.* State agencies that carry out a Farm to Food Bank Project may enter into cooperative agreements with State agencies of other States to maximize the use of foods donated under the project.

#### **§ 251.14 Miscellaneous.**

(a) *USDA Foods not income.* In accordance with section 206 of Public Law 98–8, as amended, and notwithstanding any other provision of law, USDA Foods distributed for home consumption and meals prepared from USDA Foods distributed under this part shall not be considered income or resources for any purposes under any Federal, State, or local law.

(b) *Nondiscrimination.* There shall be no discrimination in the distribution of USDA Foods for home consumption or availability of meals prepared from USDA Foods donated under this part because of race, color, national origin, sex, age, or handicap.

(c) *Use of volunteer workers and non-USDA foods.* In the operation of The Emergency Food Assistance Program, State agencies and eligible recipient agencies shall, to the maximum extent practicable, use volunteer workers and

foods which have been donated by charitable and other types of organizations.

(d) *Maintenance of effort.* The State may not reduce the expenditure of its own funds to provide USDA Foods or services to organizations receiving funds or services under the Emergency Food Assistance Act of 1983 below the level of such expenditure existing in the fiscal year when the State first began administering TEFAP, or Fiscal Year 1988, which is the fiscal year in which the maintenance-of-effort requirement became effective, whichever is later.

(e) *Recruitment activities related to the Supplemental Nutrition Assistance Program (SNAP).* Any entity that receives USDA Foods identified in this section must adhere to regulations set forth under § 277.4(b)(6) of this chapter.

## PART 253—ADMINISTRATION OF THE FOOD DISTRIBUTION PROGRAM FOR HOUSEHOLDS ON INDIAN RESERVATIONS

■ 34. The authority citation for part 253 continues to read as follows:

**Authority:** 91 Stat. 958 (7 U.S.C. 2011–2036).

■ 35. Revise § 253.1 to read as follows:

### § 253.1 General purpose and scope.

This part describes the terms and conditions under which: USDA Foods (available under part 250 of this chapter) may be distributed to households on or near all or any part of any Indian reservation, the program may be administered by capable Indian tribal organizations (ITOs) and funds may be obtained from the Department for the costs incurred in administering the program. This part also provides for the concurrent operation of the Food Distribution Program and the Supplemental Nutrition Assistance Program (SNAP) on Indian reservations when such concurrent operation is requested by an ITO.

■ 36. Amend § 253.2 by revising the definitions of “Indian tribal organization (ITO)”, “Overissuance”, and “State agency” and removing the definition of “Urban place”.

The revisions read as follows:

### § 253.2 Definitions.

\* \* \* \* \*

*Indian Tribal Organization (ITO)* means:

(1) The recognized governing body of any Indian tribe on a reservation; or

(2) The tribally recognized intertribal organization which the recognized governing bodies of two or more Indian tribes on a reservation authorize to

operate SNAP or a Food Distribution Program on their behalf.

(3) State agencies are also referred to as FDIPIR administering agencies.

\* \* \* \* \*

*Overissuance* means the dollar value of USDA Foods issued to a household that exceeds the dollar value of USDA Foods it was eligible to receive.

\* \* \* \* \*

*State agency* means:

(1) The agency of State government, including the local offices thereof, which enters into an agreement with FNS for the distribution of USDA Foods on all or part of an Indian reservation, and

(2) The ITO of any Indian tribe, determined by the Department to be capable of effectively administering a Food Distribution Program, which enters into an agreement with FNS for the distribution of USDA Foods on all or part of an Indian reservation.

■ 37. Revise § 253.3 to read as follows:

### § 253.3 Availability of USDA Foods.

(a) *Conditions for distribution.* In jurisdictions where SNAP is in operation, there shall be no distribution of USDA Foods to households under the authority of any law, except that distribution may be made:

(1) On a temporary basis under programs authorized by law to meet disaster relief needs;

(2) For the purpose of the USDA Foods programs in accordance with the requirements of part 250 of this chapter and with other Federal regulations applicable to specific food assistance programs; and

(3) Whenever a request for concurrent or separate Food Distribution Program on a reservation is made by an ITO.

(b) *Concurrent or separate food program operation.* Distribution of USDA Foods under the Food Distribution Program, with or without SNAP, shall be made whenever an ITO submits to FNS a completed application for the Food Distribution Program on all or part of a reservation and the application is approved by FNS.

(1) Except as provided in paragraph (b)(2) of this section, when the Food Distribution Program is operating on all or part of a reservation, all eligible households within those boundaries may participate in the Food Distribution Program, or, if the ITO has elected concurrent operation of SNAP, may elect to participate in either program, without regard to whether the household is an Indian tribal household.

(2) FNS may determine, based on the number of non-Indian tribal households located on all or part of a reservation,

that concurrent operation is necessary. When such a determination has been made all households residing in such areas may apply to participate in either SNAP or the Food Distribution Program.

(c) *Household distribution.* USDA Foods acquired under section 416 of the Agricultural Act of 1949, as amended; section 32 of Public Law 320, 74th Congress, as amended; section 709 of the Food and Agricultural Act of 1963, as amended; and section 4(a) of the Agriculture and Consumer Protection Act of 1973, as amended, by section 1304 of the Food and Agriculture Act of 1977, may be made available under part 250 of this chapter for distribution to households in accordance with the provisions of that part and the additional provisions and requirements of this part.

(d) *Food distribution program benefits.* Households eligible under this part shall receive a monthly food package based on the number of household members. The food package offered to each household shall consist of a quantity and variety of USDA Foods made available by the Department to provide eligible households with an opportunity to obtain a more nutritious diet and shall represent an acceptable nutritional alternative to SNAP benefits. The food package offered to each household by the State agency shall contain a variety of foods from each of the food groups in the Food Distribution Program on Indian Reservations Monthly Distribution Guide Rates by Household Size. FNS shall periodically notify State agencies of the kinds of USDA Foods it proposes to make available based, insofar as practicable, on the preferences of eligible households as determined by the State agency. In the event one or more of the proposed USDA Foods cannot be delivered, the Department shall arrange for delivery of a similar USDA Foods within the same food group. FNS shall periodically assess how the USDA Foods provided in the Food Distribution Program compares to the Dietary Guidelines for Americans and the market baskets of the Thrifty Food Plan and, to the extent practicable, will adjust the food package as needed to ensure that the food package benefit is in alignment. The food package benefit will not decrease based on this adjustment.

### § 253.4 [Amended]

■ 38. Amend § 253.4:

■ a. In paragraph (b)(3) by removing the term “contract” in the first and fourth sentences and adding in its place the term “delegate” and in the second sentence removing the terms

“commodity” and “commodities” and adding in their place the term “USDA Foods”;

■ b. In paragraph (d) by removing the term “the Food Stamp Program” in the second sentence and adding in its place the term “SNAP” and by removing the fifth, sixth, and seventh sentences; and

■ c. In paragraphs (e)(1)(i) and (iii) by removing the term “commodities” and adding in its place the term “USDA Foods”.

■ 39. Amend § 253.5:

■ a. By removing the term “commodities” wherever it appears and adding in its place the term “USDA Foods”;

■ b. In paragraph (a)(2)(i) by removing the term “the Food Stamp Program” and adding in its place the term “SNAP”;

■ c. By revising paragraph (e); and

■ d. In paragraphs (f)(1) and (i)(2) by removing the term “commodity” and adding in its place the term “USDA Foods”.

#### § 253.4 State agency requirements.

\* \* \* \*

(e) *Outreach and referral.* The State agency shall inform potentially eligible households of the availability of the Food Distribution Program. The State agency shall develop and distribute printed information in the appropriate languages about the program and eligibility requirements. Outreach material shall contain information about a household’s right to file an application on the same date it contacts the certification office. The State agency shall be sufficiently familiar with general eligibility requirements for the Supplemental Food Program for Women, Infants and Children (WIC), the Commodity Supplemental Food Program (if available to reservation residents), the Supplemental Security Income Program (SSI), and appropriate public and general assistance programs, to identify those applicants whose households contain persons who may be eligible for these programs, to inform the applicants of their potential eligibility, and to provide the applicants with the addresses and telephone numbers for these programs. For example, the State agency should provide information on the WIC program to applicants whose households contain pregnant women, nursing or postpartum women, or children up to the fifth birthday.

\* \* \* \*

■ 40. Amend § 253.6 by:

■ a. Revising paragraph (a);

■ b. Revising the second sentence in paragraph (b)(1) and removing the term “the Food Stamp Program” in the seventh sentence;

■ c. Revising paragraphs (c) heading, (c)(1), and (d)(1)(i);

■ d. Removing the term “the Food Stamp Program” in paragraph (d)(1)(ii) and adding in its place the term “SNAP”; and

■ e. Revising paragraph (d)(2)(ii)(D);

■ f. Removing the term “the Food Stamp Program” in paragraph (d)(2)(ii)(G) and adding in its place the term “SNAP”;

■ g. Revising paragraphs (d)(3)(vii), (d)(3)(x)(C), and (e).

The revisions and addition read as follows:

#### § 253.6 Eligibility of households.

(a) *Household concept.* (1) The State agency shall determine eligibility for the Food Distribution Program on a household basis. Household means any of the following individuals or groups of individuals, provided that such individuals or groups are not boarders or residents of an institution.

(i) An individual living alone.

(ii) An individual living with others, but customarily purchasing food and preparing meals for home consumption separate and apart from the others.

(iii) A group of individuals living together for whom food is customarily purchased in common and for whom meals are prepared together for home consumption.

(iv) *Spouses living separately.* For purposes of this part, spouses living separately and apart are considered separate households.

(2) *Nonhousehold members.* The following individuals residing with a household shall not be considered household members in determining the household’s eligibility. Nonhousehold members specified in paragraphs (a)(2)(i) and (v) who are otherwise eligible may participate in the Program as separate households.

(i) *Roomers.* Individuals to whom a household furnishes lodging, but not meals, for compensation.

(ii) *Disqualified individuals.* Individuals disqualified from the Food Distribution Program per 253.7(f)(1) and SNAP for fraud, as set forth in § 273.16.

(iii) *Illegal residents.* Individuals who are not legal residents of the United States. While U.S. citizenship is not required for participation in the Food Distribution Program, persons receiving food distribution benefits must be lawfully living in the United States.

(iv) *Others.* Other individuals who share living quarters with the household but who do not customarily purchase food and prepare meals with the household. For example, if the applicant household shares living quarters with another family to save on rent, but does not purchase and prepare food together

with that family, the members of the other family are not members of the applicant household.

(3) *Authorized representatives.* The head of the household, spouse, or any other responsible member of the household may designate an authorized representative to act on behalf of the household in making application for USDA Foods and/or obtaining USDA Foods as provided in § 253.7(a)(10)(i) and § 253.7(a)(10)(ii) respectively.

(4) *Children.* A child (other than a foster child) under 18 years of age who lives with and is under the parental control of a household member must be considered a member of the household. A child must be considered under parental control for purposes of this provision if they are financially or otherwise dependent on a member of the household, unless State law defines such a person as an adult.

(b) \* \* \*

(1) \* \* \* All Indian tribal households as defined in § 253.2 of this part which reside in near areas established under § 253.4(d) of this part shall be eligible to apply for program benefits. \* \* \*

\* \* \* \*

(c) *Income eligibility standards of public assistance, supplemental security income (SSI), and certain general assistance households.* (1) Households in which all members are included in a federally aided public assistance or SSI grant shall, if otherwise eligible under this part, be determined to be eligible to participate in the Food Distribution Program while receiving such grants without regard to the income of the household members.

\* \* \* \*

(d) \* \* \*

(1) \* \* \*

(i) The State agency shall apply uniform national income eligibility standards for the Food Distribution Program except for households in which all members are recipients of public assistance, SSI, paragraph (c) of this section, or certain general assistance program payments as provided in § 283.6(c). The income eligibility standards shall be the applicable SNAP net monthly income eligibility standards for the appropriate area, increased by the amount of the applicable SNAP standard deduction for that area.

\* \* \* \*

(2) \* \* \*

(ii) \* \* \*

(D) Scholarships, education grants, fellowships, deferred payment loans for education, veteran’s education benefit and the like in excess of amounts excluded under paragraph (d)(3)(iii) of this section.

(3) \* \* \*

(vii) The earned income (as defined in paragraph (e)(2)(i) of this section) of children who are members of the household, who are students at least half time and who have not attained their eighteenth birthday. The exclusion shall continue to apply during temporary interruptions in school attendance due to semester or vacation breaks, provided the child's enrollment will resume following the break. Individuals are considered children for purposes of this provision if they are under the parental control of another household member.

\* \* \* \* \*

(x) \* \* \*

(C) Any payment to volunteers under Title II (RSVP, foster grandparents, and others) and title III (SCORE and ACE) of the Domestic Volunteer Services Act of 1973 (Pub. L. 93-113), as amended. Payments under title I (VISTA) to volunteers shall be excluded for those individuals receiving federally donated USDA Foods, SNAP, or public assistance at the time they joined the title I program, except that households which are receiving an income exclusion for a VISTA or other title I subsistence allowance at the time of implementation of these rules shall continue to receive an income exclusion for VISTA for the length of their volunteer contract in effect at the time of implementation of these rules. Temporary interruptions in food distribution shall not alter the exclusion once an initial determination has been made. New applicants who are not receiving federally donated USDA Foods, SNAP benefits or public assistance at the time they joined VISTA shall have these volunteer payments included as earned income.

\* \* \* \* \*

(e) *Income deductions*—(1) *Earned income deduction.* Households with earned income, as defined in paragraph (d)(2)(i) of this section, shall be allowed a deduction of twenty percent of their gross earned income. Earned income excluded under paragraph (e)(3) of this section shall not be considered earned income for the purpose of computing this deduction.

(2) *Dependent care deduction.* Households shall also receive a deduction for the actual costs for the care of a child or other dependent when necessary for a household member to accept or continue employment or attend training or pursue education which is preparatory to employment.

(3) *Child support deduction.* Households will receive a deduction for legally required child support payments

paid by a household member to or for a nonhousehold member, including payments made to a third party on behalf of the nonhousehold member (vendor payments). The State agency must allow a deduction for amounts paid towards overdue child support (arrearages). Alimony payments made to or for a nonhousehold member cannot be included in the child support deduction.

(4) *Excess medical deduction.* Households must receive a medical deduction for that portion of medical expenses in excess of \$35 per month, excluding special diets, incurred by any household member who is elderly or disabled as defined in § 253.2. Spouses or other persons receiving benefits as a dependent of a Supplemental Security Income (SSI), or disability and blindness recipient are not eligible to receive this deduction; however, persons receiving emergency SSI benefits based on presumptive eligibility are eligible for this deduction. The allowable medical costs are those permitted at § 273.9(d)(3) of this chapter for the Supplemental Nutrition Assistance Program (SNAP).

(5) *Shelter/utility deduction.* Households that incur monthly shelter and utility expenses will receive a shelter/utility deduction. The household may choose to receive a standard deduction or to provide actual expenses, subject to the provisions below.

(i) The household must incur, on a monthly basis, at least one allowable shelter/utility expense. The allowable shelter/utility expenses are those permitted at § 273.9(d)(6)(ii) of this chapter for SNAP.

(ii) The shelter/utility standard deduction amounts are set by FNS. The standard deductions are adjusted annually to reflect changes to SNAP maximum monthly excess shelter expense limits per § 273.9(d)(6)(ii) of this chapter. FNS will advise the State agencies of the updates prior to October 1 of each year.

(iii) Households that select actual expenses, may claim expenses up to the amount that does not exceed 50 percent of their net monthly income.

■ 41. Amend § 253.7 by:

■ a. Revising the paragraph (a)(6)(i)(C) heading and paragraphs (a)(6)(i)(D), (a)(6)(v), and (b)(3)(iii)(A);

■ b. Removing the term “USDA commodities” in paragraph (b)(3)(iii)(E) and the term “commodity” in paragraph (d)(2) and adding in their place the term “USDA Foods”;

■ c. Revising paragraphs (e) and (f)(1)(ii);

■ d. Removing the term “food stamp” wherever it appears in paragraph (e)(1) and adding in its place the term “SNAP”;

■ e. Removing the term “the Food Stamp Program” wherever it appears in paragraph (f)(1)(ii) and adding in its place the term “SNAP”; and

■ f. Removing the term “commodities” wherever it appears in the section and adding in its place the term “USDA Foods”.

The revisions read as follows:

#### § 253.7 Certification of households.

(a) \* \* \*

(6) \* \* \*

(i) \* \* \*

(C) *Medical expense deduction.* \* \* \*

(D) *Shelter/utility deduction.* A

household must incur, on a monthly basis, at least one allowable shelter/utility expense in accordance with § 253.6(e)(5)(i) of this chapter to qualify for the shelter/utility deduction. The State agency must verify that the household incurs the expense. If the household chooses to provide actual expenses, then the State agency must obtain verification for each shelter/utility deduction that the household wishes to deduct.

\* \* \* \* \*

(v) *Verification for recertification.* At recertification, the State agency shall verify a change in gross income if the source has changed or the amount has changed by more than \$100 per month since the last time the gross income was verified. State agencies may verify income which is unchanged or has changed by \$100 per month or less, provided verification is, at a minimum, required when information is questionable as defined in paragraph (a)(6)(ii) of this section. All other changes reported at the time of recertification shall be subject to the same verification procedures as apply at initial certification. Unchanged information, other than income, shall not be verified at recertification unless the information is questionable as defined in paragraph (a)(6)(ii) of this section.

\* \* \* \* \*

(b) \* \* \*

(3) \* \* \*

(iii) \* \* \*

(A) Prior to any action to reduce or terminate a household's benefits within the certification period, except for households voluntarily switching program participation from the Food Distribution Program to SNAP, State agencies shall provide the household timely and adequate advance notice before the adverse action is taken. The

notice must be issued within 10 days of determining that an adverse action is warranted. The adverse action must take effect with the next scheduled distribution of USDA Foods that follows the expiration of the advance notice period unless the household requests a fair hearing.

\* \* \* \* \*

(e) *Controls for dual participation*—(1) *Prohibition on dual participation.* No household shall be allowed to participate simultaneously in SNAP and the Food Distribution Program. The State agency shall inform each applicant household of this prohibition and shall develop a method to detect dual participation. The method developed by the State agency shall, at a minimum, employ lists of currently certified households provided by and provided to the appropriate SNAP agency on a monthly basis. The State agency may also employ computer checks, address checks and telephone calls to prevent dual participation. The State agency shall coordinate with the appropriate SNAP agency or agencies in developing controls for dual participation.

(2) *Choice of programs.* Households eligible for either SNAP or the Food Distribution Program on reservations on which both programs are available may elect to participate in either program. Such households may elect to participate in one program, and subsequently elect the other at the end of the certification period. Households may also elect to switch from one program to the other program within a certification period only by terminating their participation and notifying the State agency of their intention to switch programs. Households certified in either the Food Distribution Program or SNAP on the first day of the month can only receive benefits in the program for which they are currently certified during that month. At the point the household elects to change programs, the household should notify the State agency of its intent to switch programs and should file an application for the program in which it wishes to participate. Households voluntarily withdrawing from one program with the intent of switching to the other shall have their eligibility terminated for the program in which they are currently certified on the last day of the month in which the household notifies the State agency of its intent to change programs. Entitlement in the program for which a household is now filing an application, if all eligibility criteria are met, would begin in the month following the month of termination in the previous program.

(f) \* \* \*

(1) \* \* \*

(ii) Household members disqualified from SNAP for an intentional program violation under § 273.16 of this chapter. These household members may participate, if otherwise eligible, in the Food Distribution Program once the period of disqualification under SNAP has ended. The State agency must, in cooperation with the appropriate SNAP agency, develop a procedure that ensures that these household members are identified.

\* \* \* \* \*

#### § 253.8 [Amended]

■ 42. Amend § 253.8 by removing the term “commodities” wherever it appears and adding in its place the term “USDA Foods”.

#### § 253.9 [Amended]

■ 43. Amend § 253.9 in paragraph (a)(1) by removing the term “commodities” and adding in its place the term “USDA Foods”.

■ 44. Revise § 253.10 to read as follows:

#### § 253.10 USDA Foods inventory management, storage, and distribution.

(a) *Control and accountability.* The State agency shall be responsible for the issuance of USDA Foods to households and the control of and accountability for the USDA Foods upon its acceptance of the USDA Foods at time and place of delivery.

(b) *USDA Foods inventories.* The State agency shall, in cooperation with the FNS Regional office, develop an appropriate procedure for determining and monitoring the level of USDA Foods inventories at storage facilities and at each local distribution point. The State agency shall maintain the inventories at proper levels taking into consideration, among other factors, household preferences and the historical and projected volume of distribution at each site. The procedures shall provide that USDA Foods inventories at each storage facility and each local distribution point are not in excess, but are adequate for, an uninterrupted distribution of USDA Foods.

(c) *Inventory management and control.* The State agency shall as a minimum ensure that: all USDA Foods are stored and inventory is maintained per §§ 250.12 and 250.14 of this chapter.

(d) *Distribution.* The State agency shall distribute USDA Foods only to households eligible to receive them under this part. If the State agency uses any other agency, administration, bureau, service, or similar organization to effect or assist in the certification of households or distribution of USDA

Foods, the State agency shall impose upon such organization responsibility for determining that households to whom USDA Foods are distributed are eligible under this part. The State agency shall not delegate to any such organization its responsibilities to the Department for overall management and control of the Food Distribution Program. The State agency shall as a minimum ensure that:

(1) Notification is provided to certified households of the location of distribution sites and days and hours of distribution.

(2) An adequate supply of USDA Foods which are available from the Department is on hand at all distribution sites.

(3) Sufficient distribution sites, either stationary or mobile, are geographically located or routed in relation to population density of eligible households.

(4) Days and hours of distribution are sufficient for caseload size and convenience.

(5) Households are advised they may refuse any USDA Foods not desired, even if the USDA Foods are prepackaged by household size.

(6) Emergency issuance of USDA Foods will be made to households certified for expedited service in accordance with the provisions of § 253.7(a)(9).

(7) Eligible households or authorized representatives are identified prior to the issuance of USDA Foods.

(8) Authorized signatures are obtained for USDA Foods issued and the issue date recorded.

(9) Posters are conspicuously displayed advising program participants to accept only those USDA Foods, and in such quantities, as will be consumed by them.

(10) Complete and current records are kept of all USDA Foods received, issued, transferred, and on hand and of any inventory overages, shortages, and losses.

(11) A list of USDA Foods offered by the Department is displayed at distribution sites so that households may indicate preferences for future orders.

(e) *Improper distribution or loss of or damage of USDA Foods.* State agencies shall take action to obtain restitution in connection with claims arising in their favor for improper distribution, use or loss, or damage of USDA Foods in accordance with §§ 250.16 and 250.17 of this chapter.

(f) *Damaged or out-of-condition USDA Foods.* The State agency shall immediately notify the appropriate FNS Regional Office if any USDA Foods are

found to be damaged or out-of-condition at the time of arrival, or at any subsequent time, whether due to latent defects or any other reason. The FNS Regional Office shall advise the State agency of the appropriate action to be taken with regard to such USDA Foods. If the USDA Foods are declared unfit for human consumption in accordance with § 250.15 of this chapter, they shall be disposed of as provided for under that section. When out-of-condition USDA Foods do not create a hazard to other food at the same location, they shall not be disposed of until the FNS Regional Office or the responsible contractor approves. When circumstances require prior disposal of USDA Foods, the quantity and manner of disposition shall be reported to the appropriate FNS Regional Office. If any damaged or out-of-condition USDA Foods are inadvertently issued to a household and are rejected or returned by the household because the USDA Foods were unsound at the time of issuance and not because the household failed to provide proper storage, care or handling, the State agency shall replace the damaged or out-of-condition USDA Foods with the same or similar kind of USDA Foods which are sound and in good condition. The State agency shall account for such replacements on its monthly inventory report.

■ 45. Add § 253.12 to read as follows:

**§ 253.12 Administrative waivers.**

(a) The Administrator of the Food and Nutrition Service may waive or modify specific regulatory provisions contained in this part for one or more State agencies. Waivers may be issued only in the following situations:

(1) The specific regulatory provision cannot be implemented due to extraordinary temporary situations;

(2) FNS determines that the waiver would result in a more effective and efficient administration of the program; or

(3) Unique geographic conditions within the geographic area served by the

administering agency preclude effective implementation of the specific regulatory provision and require an alternate procedure.

(b) FNS shall not approve waivers when:

(1) The waiver would be inconsistent with the provisions of the Food and Nutrition Act of 2008; or

(2) The waiver would result in material impairment of any statutory or regulatory rights of participants or potential participants.

(c) FNS shall approve waivers for a period not to exceed one year unless the waiver is for an on-going situation. If the waiver is requested for longer than a year, appropriate justification shall be required and FNS will determine if a longer period is warranted and if so, the duration of the waiver. Extensions may be granted provided that State agencies submit appropriate justification to FNS.

(d) When submitting requests for waivers, State agencies shall provide compelling justification for the waiver in terms of how the waiver will meet the conditions of paragraphs (a)(1), (2), and/or (3) of this section. At a minimum, requests for waivers shall include but not necessarily be limited to:

(1) Reasons why the waiver is needed;

(2) Anticipated impact on service to participants or potential participants who would be affected;

(3) Anticipated time period for which the waiver is needed; and

(4) Thorough explanation of the proposed alternative provision to be used in lieu of the waived or modified regulatory provision.

**PART 254—ADMINISTRATION OF THE FOOD DISTRIBUTION PROGRAM FOR INDIAN HOUSEHOLDS IN OKLAHOMA**

■ 46. The authority citation for part 254 continues to read as follows:

**Authority:** Pub. L. 97–98, sec. 1338; Pub. L. 95–113.

**§ 254.1 [Amended]**

■ 47. Amend § 254.1 by removing the term “commodities” and adding in its place the term “USDA Foods”.

■ 48. Amend § 254.2 by revising paragraphs (b), (d), (f), and (g) and removing paragraph (h).

The revisions read as follows:

**§ 254.2 Definitions.**

\* \* \* \* \*

(b) *FNS service area* means the areas over which FNS has approved the food distribution program in Oklahoma.

\* \* \* \* \*

(d) *Indian tribal household* means a household in which at least one household member is recognized as a tribal member by any Indian tribe, as defined in § 253.2 of this chapter.

\* \* \* \* \*

(f) *Overissuance* means the dollar value of USDA Foods issued to a household that exceeds the dollar value of USDA Foods it was eligible to receive.

(g) *State agency* means the ITO of an Indian tribe, determined by the Department to be capable of effectively administering a Food Distribution Program, or an agency of State government, which enters into an agreement with FNS for the distribution of USDA Foods on an Indian reservation.

**§ 254.4 [Amended]**

■ 49. Amend § 254.4 in paragraphs (b)(1)(i) and (iii) by removing the term “commodities” and adding in its place the term “USDA Foods”.

**§ 254.5 [Amended]**

■ 50. Amend § 254.5 by removing paragraph (b) and redesignating paragraph (c) as paragraph (b).

**Tameka Owens,**

*Acting Administrator and Assistant Administrator, Food and Nutrition Service.*

[FR Doc. 2024–24966 Filed 10–30–24; 8:45 am]

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