Federal Register

6–15–05 Wednesday
Vol. 70 No. 114 June 15, 2005

Pages 34627–34984

The **FEDERAL REGISTER** (ISSN 0097–6326) is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

The **FEDERAL REGISTER** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see *www.archives.gov.*

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge as one of the databases on GPO Access, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** *www.gpoaccess.gov/nara,* available through GPO Access, is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6 a.m. each day the **Federal Register** is published and includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward.

For more information about GPO Access, contact the GPO Access User Support Team, call toll free 1-888-293-6498; DC area 202-512-1530; fax at 202-512-1262; or via e-mail at *gpoaccess@gpo.gov.* The Support Team is available between 7:00 a.m. and 9:00 p.m. Eastern Time, Monday–Friday, except official holidays.

The annual subscription price for the **Federal Register** paper edition is $749 plus postage, or $808, plus postage, for a combined **Federal Register, Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is $165, plus postage. Six month subscriptions are available for one-half the annual rate. The prevailing postal rates will be applied to orders according to the delivery method requested. The price of a single copy of the daily **Federal Register,** including postage, is based on the number of pages: $11 for an issue containing less than 200 pages; $22 for an issue containing 200 to 400 pages; and $33 for an issue containing more than 400 pages. Single issues of the microfiche edition may be purchased for $3 per copy, including postage. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard, American Express, or Discover. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954; or call toll free 1-866-512-1800, DC area 202-512-1800; or go to the U.S. Government Online Bookstore site, see *bookstore.gpo.gov.*

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 70 FR 12345.

Postmaster: Send address changes to the Superintendent of Documents, Federal Register, U.S. Government Printing Office, Washington DC 20402, along with the entire mailing label from the last issue received.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	**202–512–1800**
Assistance with public subscriptions	**202–512–1806**

General online information **202–512–1530; 1–888–293–6498**

Single copies/back copies:

Paper or fiche	**202–512–1800**
Assistance with public single copies	**1–866–512–1800 (Toll-Free)**

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	**202–741–6005**
Assistance with Federal agency subscriptions	**202–741–6005**

FEDERAL REGISTER WORKSHOP

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: Sponsored by the Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.

2. The relationship between the Federal Register and Code of Federal Regulations.

3. The important elements of typical Federal Register documents.

4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WHEN: Tuesday, July 19, 2005
9:00 a.m.–Noon

WHERE: Office of the Federal Register
Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC 20002

RESERVATIONS: (202) 741–6008

Printed on recycled paper.

Contents

Federal Register

Vol. 70, No. 114

Wednesday, June 15, 2005

Agency for Healthcare Research and Quality
NOTICES
Meetings:
Health Care Policy and Research Special Emphasis Panel, 34772

Agriculture Department
See Food and Nutrition Service
See Forest Service

Antitrust Division
NOTICES
National cooperative research notifications:
Southwest Research Institute, 34796

Arts and Humanities, National Foundation
See National Foundation on the Arts and the Humanities

Centers for Disease Control and Prevention
NOTICES
Organization, functions, and authority delegations:
Workforce and Career Development Office, 34772–34774

Children and Families Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 34774
Grants and cooperative agreements; availability, etc.:
Early Learning Opportunities Act discretionary grants, 34775–34788

Coast Guard
RULES
Regattas and marine parades:
Offshore Super Series Boat Race, 34658–34659
NOTICES
Environmental statements; availability, etc.:
Vessel and facility response plans for oil; 2003 removal equipment requirements and alternative technology revisions, 34789–34790

Commerce Department
See Foreign-Trade Zones Board
See International Trade Administration
See National Oceanic and Atmospheric Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 34741–34742

Comptroller of the Currency
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 34815–34816

Corporation for National and Community Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 34747–34748

Defense Department
RULES
Privacy Act; implementation, 34656–34658

Drug Enforcement Administration
NOTICES
Applications, hearings, determinations, etc.:
Boehringer Ingelheim Chemical Inc., 34796

Education Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Elementary and secondary education—
Enhanced Assessment Instruments; withdrawn, 34748
Postsecondary education:
Federal student aid programs—
Applications, reports, etc.; award year deadline dates; correction, 34818–34819

Election Assistance Commission
NOTICES
Meetings; Sunshine Act, 34748

Employment Standards Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 34797–34799

Energy Department
See Federal Energy Regulatory Commission

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:
Georgia, 34660–34665
NOTICES
Meetings:
Science Advisory Board, 34758
Reports and guidance documents; availability, etc.:
Terrestrial field dissipation studies; NAFTA guidance, 34758–34761

Executive Office of the President
See Presidential Documents

Federal Aviation Administration
RULES
Airworthiness directives:
Airbus, 34636–34638
Boeing, 34638–34641, 34644–34649
Bombardier, 34641–34642
Fokker, 34642–34644
Area navigation instrument flight rules terminal transition routes, 34649–34650
Restricted areas, 34650
PROPOSED RULES
Airworthiness directives:
Hartzell Propeller Inc., 34714–34724
Airworthiness standards:
Special conditions—
Boeing Model 737-200/200C/300/400/500/600/700/700C/800/900 series airplanes, 34702–34714

Federal Communications Commission
RULES
Common carrier services:
Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 and Telephone Consumer Protection Act of 1991; implementation—
Updated and amended definitions, 34665–34666
Satellite communications—
Satellite earth station use on board vessels in 5925-6425 M/Hz/ 3700-4200MHz bands and 14.0-14.5 GHz/11.7-12.12 GHz bands, 34665
Radio services, special:
Private land mobile services—
Spectrum efficient technologies on certain frequencies; promotion, 34666–34693
PROPOSED RULES
Common carrier services:
Telephone Consumer Protection Act; implementation—
California Consumer Legal Remedies Act; interstate telephone calls; declaratory ruling petition, 34725–34726
Unified intercarrier compensation regime; development, 34724–34725
Radio services, special:
Private land mobile services—
Spectrum efficient technologies on certain frequencies; promotion, 34726–34729
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 34761–34764
Radio services, special:
Private land mobile services—
Wave 1 and specific 800 MHz reconfiguration benchmark compliance dates; assigned NPSPAC Regions, 34764–34765
Rulemaking proceedings; petitions filed, granted, denied, etc., 34765–34766

Federal Election Commission
RULES
Compliance procedures:
Civil monetary penalties; inflation adjustments, 34633–34636

Federal Energy Regulatory Commission
RULES
Organization, functions, and authority delegations:
Director of the Office of Markets, Tariffs and Rates; Director of External Affairs, 34651–34652
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 34748–34750
Electric rate and corporate regulation combined filings, 34752–34754
Meetings:
Capacity markets in PJM Interconnection, L.L.C. region; technical conference, 34754–34755
Meetings; Sunshine Act, 34755–34758
Applications, hearings, determinations, etc.:
Brownsville Power I, L.L.C., et al., 34750
California Water Resources Department and Los Angeles, CA, 34750–34751
Pacific Summit Energy, LLC, 34751–34752

Federal Railroad Administration
NOTICES
Exemption petitions, etc.:
North County Transit District, 34807

Federal Reserve System
NOTICES
Banks and bank holding companies:
Change in bank control, 34766
Formations, acquisitions, and mergers, 34766–34767
Meetings; Sunshine Act, 34767

Federal Trade Commission
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 34767–34772

Fish and Wildlife Service
RULES
Migratory bird permits:
Connecticut; Federal falconry standards; compliance, 34695–34698
NOTICES
Endangered and threatened species and marine mammal permit applications, 34791–34792

Food and Drug Administration
RULES
Medical devices:
Medical device reporting, 34652

Food and Nutrition Service
RULES
Child nutrition programs:
Child and Adult Care Food Program—
Day care home providers, permanent agreements, 34630–34633
National School Lunch Program and School Breakfast Program; food safety inspections requirement, 34627–34630

Foreign-Trade Zones Board
NOTICES
Applications, hearings, determinations, etc.:
Illinois
Nissan Forklift Corp.; fork-lift truck manufacturing facilities, 34742–34743
Ohio, 34743–34744
Rhode Island
Southeast New England Shipbuilding Corp; shipbuilding and repair activity, 34744
Texas, 34744

Forest Service
NOTICES
Meetings:
Resource Advisory Committees—
Madera County, 34741
North Gifford Pinchot National Forest, 34741
South Gifford Pinchot National Forest, 34741

Health and Human Services Department
See Agency for Healthcare Research and Quality
See Centers for Disease Control and Prevention
See Children and Families Administration
See Food and Drug Administration
See Health Resources and Services Administration

Health Resources and Services Administration
NOTICES
Meetings:
National Health Service Corps National Advisory Council, 34788–34789

Homeland Security Department
See Coast Guard
See U.S. Citizenship and Immigration Services

Housing and Urban Development Department
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 34791

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See Reclamation Bureau

International Trade Administration
NOTICES
Antidumping:
Carbon and alloy steel wire rod from—
Ukraine, 34744–34745
Meetings:
Manufacturing Interagency Working Group, 34745–34746
North American Free Trade Agreement (NAFTA); binational panel reviews:
Softwood lumber products from—
Canada, 34746
Applications, hearings, determinations, etc.:
University of—
California, Lawrence Livermore National Laboratory et al., 34745

Justice Department
See Antitrust Division
See Drug Enforcement Administration
See Justice Programs Office
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 34795–34796

Justice Programs Office
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 34796–34797

Labor Department
See Employment Standards Administration
See Occupational Safety and Health Administration

Land Management Bureau
NOTICES
Environmental statements; notice of intent:
South National Petroleum Reserve-Alaska Integrated Activity Plan, 34792–34793
Meetings:
Resource Advisory Councils—
Northwest California, 34793
Southcentral Alaska Subsistence Regional Advisory Council, 34793–34794

Maritime Administration
NOTICES
Coastwise trade laws; administrative waivers:
BLACK PEARL, 34807–34808
COEUR DE LION, 34808
JANIE'S LOFT, 34808–34809
LUCKY STAR, 34809
VEGA, 34809–34810

National Foundation on the Arts and the Humanities
NOTICES
Senior Executive Service:
Performance Review Board; membership, 34801

National Highway Traffic Safety Administration
NOTICES
Motor vehicle safety standards:
Two- and three-wheeled vehicles; interpretation, 34810–34814

National Oceanic and Atmospheric Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 34746–34747

Nuclear Regulatory Commission
PROPOSED RULES
Rulemaking petitions:
Salsman, James, 34699–34700
Spano, Andrew J., 34700–34702

Occupational Safety and Health Administration
PROPOSED RULES
Construction and occupational safety and health standards:
Electric power generation, transmission, and distribution standard and electrical protective equipment standard; update, 34822–34980
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 34799–34801

Pension Benefit Guaranty Corporation
RULES
Single-employer plans:
Benefits payable in terminated plans; allocation of assets, interest assumptions for valuing and paying benefits, 34655–34656
NOTICES
Multi-employer plans:
Interest rates and assumptions, 34801–34802

Pipeline and Hazardous Materials Safety Administration
RULES
Pipeline safety:
Operator qualifications, 34693–34695
PROPOSED RULES
Hazardous materials:
Transportation—
Lithium batteries, 34729–34740

Presidential Documents
PROCLAMATIONS
Special observances:
Flag Day and National Flag Week (Proc. 7910), 34981–34984

Reclamation Bureau
NOTICES
Colorado River reservoirs operation:
Lake Powell and Lake Mead, AZ, NV, and UT; management strategies development; comment request and public meetings, 34794–34795

Securities and Exchange Commission
NOTICES
Self-regulatory organizations; proposed rule changes:
Chicago Stock Exchange, Inc., 34802–34803

National Association of Securities Dealers, Inc., 34803–34804
National Stock Exchange, 34805–34806

State Department
RULES
International Traffic in Arms regulations:
Miscellaneous amendments, 34652–34655
NOTICES
Consolidated Appropriations Act, 2005:
Determinations—
Magen David Adom Society of Israel; participation in International Red Cross and Red Crescent Movement activities, 34806
Meetings:
International Economic Policy Advisory Committee, 34806
Shipping Coordinating Committee, 34806–34807

Surface Transportation Board
NOTICES
Railroad operation, acquisition, construction, etc.:
Canadian National Railway Co., 34814
CSX Transportation, Inc., 34815

Transportation Department
See Federal Aviation Administration
See Federal Railroad Administration
See Maritime Administration
See National Highway Traffic Safety Administration
See Pipeline and Hazardous Materials Safety Administration
See Surface Transportation Board

Treasury Department
See Comptroller of the Currency

U.S. Citizenship and Immigration Services
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 34790–34791

United States Institute of Peace
NOTICES
Grants and cooperative agreements; availability, etc.:
Solicited grants—
Fall Competition Program, 34816
Unsolicited grants—
Fall Competition Program, 34816–34817

Separate Parts In This Issue

Part II
Labor Department, Occupational Safety and Health Administration, 34822–34980

Part III
Executive Office of the President, Presidential Documents, 34981–34984

Reader Aids

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

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

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

3 CFR

Proclamations:

7910 34983

7 CFR

210 34627
220 34627
226 34630

10 CFR

Proposed Rules:

20 34699
54 34700

11 CFR

111 34633

14 CFR

39 (6 documents) 34636, 34638, 34641, 34642, 34644, 34646
71 34649
73 34650

Proposed Rules:

25 34702
39 34714

18 CFR

375 34651

21 CFR

803 34652

22 CFR

120 34652
123 34652
124 34652
126 34652
127 34652

29 CFR

4022 34655
4044 34655

Proposed Rules:

1910 34822
1926 34822

32 CFR

311 34656

33 CFR

100 34658

40 CFR

52 34660
81 34660

47 CFR

25 34665
64 34665
90 34666

Proposed Rules:

Ch. I 34724
64 34725
90 34726

49 CFR

192 34693
195 34693

Proposed Rules:

171 34729
172 34729
173 34729
175 34729

50 CFR

21 34695

Rules and Regulations

Federal Register
Vol. 70, No. 114
Wednesday, June 15, 2005

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

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 210 and 220

RIN 0584–AD64

School Food Safety Inspections

AGENCY: Food and Nutrition Service, USDA.

ACTION: Interim rule.

SUMMARY: This interim rule reflects amendments made by section 111 of the Child Nutrition and WIC Reauthorization Act of 2004 which require schools participating in the National School Lunch Program (NSLP) and the School Breakfast Program (SBP) to increase the number of food safety inspections from the one inspection currently required to two inspections per year; to post the most recent inspection report in a visible location; and to release a copy of the report to members of the public upon request. This interim rule also reflects the statutory amendment which requires State agencies to annually monitor schools' compliance with the inspection requirement (through a consolidated report from the school food authority), and to submit a report on the results of the review to the Food and Nutrition Service (FNS).

As a result of the statutory amendments, schools will be able to identify and correct food safety problems in a more timely and consistent manner, thereby enhancing the quality of school meals. State monitoring of the inspection requirement will allow the State agency to target their technical assistance efforts to those school food authorities (SFAs) experiencing difficulties in meeting the requirement. Collecting the number of inspections completed by schools will help the State become aware of the level of compliance with this requirement and problems associated with it.

DATES: *Effective Date:* The amendments to §§ 210.9, 210.13 and 220.7 are effective July 15, 2005. The amendments to §§ 210.15, 210.20 and 220.13 contain information collection requirements that have not been approved by the Office of Management and Budget (OMB). The Food and Nutrition Service will publish a document in the **Federal Register** announcing the effective date of these provisions once this approval has been obtained.

Compliance Date: Compliance with §§ 210.9, 210.13 and 220.7 must begin July 1, 2005. Compliance with the reporting and recordkeeping requirements in §§ 210.15, 210.20 and 220.13 will be announced in a separate document once these requirements have been approved by OMB.

Comment Date: Comments on this rule must be received on or before June 15, 2006.

ADDRESSES: The Food and Nutrition Service invites interested persons to submit comments on this interim rule. Comments may be submitted by any of the following methods:

- E-Mail: Send comments to *CNDPROPOSAL@FNS.USDA.GOV.* The subject line must include the words ''School Food Safety Inspections''.
- Fax: Submit comments by facsimile transmission to: (703) 305–2879, attention Robert Eadie.
- Mail: Comments should be addressed to Mr. Robert Eadie, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, Department of Agriculture, 3101 Park Center Drive, Room 634, Alexandria, Virginia 22302–1594. All written submissions will be available for public inspection at this location Monday through Friday, 8:30 a.m.–5 p.m.
- Hand Delivery or Courier: Deliver comments to 3101 Park Center Drive, Room 634, Alexandria, Virginia 22302–1594, during normal business hours of 8:30 a.m.–5 p.m.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

FOR FURTHER INFORMATION CONTACT: Todd J. Barrett, Acting Section Chief, or Marisol Benesch, School Programs Section, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service at 703–305–2590.

SUPPLEMENTARY INFORMATION:

I. Background

Section 111 of the Child Nutrition and WIC Reauthorization Act of 2004 (Public Law 108–265; June 30, 2004) amended section 9(h) of the Richard B. Russell National School Lunch Act (NSLA) (42 U.S.C. 1758(h)) by increasing the number of mandatory food safety inspections for schools participating in the NSLP and SBP from one to two per year, and by requiring schools to post the most recent inspection report in a visible location and to release a copy of the report to the public upon request. Section 111 also requires State agencies to annually monitor the number of food safety inspections obtained by schools and to submit the results to FNS for each of fiscal years 2006 through 2009. (While Public Law 108–265 uses the term ''audit'', this rule uses the word ''monitor'' because it more appropriately describes the State agency's review of the number of inspections completed.) Compliance with these requirements is required to begin on July 1, 2005.

Prior to Public Law 108–265, the NSLA and NSLP regulations at 7 CFR 210.13(b) required schools to obtain at least one school food safety inspection per year, except when a food safety inspection of the school was mandated by a State or local governmental agency responsible for food safety inspections. No audit or reporting requirements existed.

Section 111 further adds a requirement that SFAs implement a school food safety program for the preparation and service of meals that complies with any hazard analysis and critical control point (HACCP) system established by the Secretary. This rule does not address the HACCP requirement. It will be addressed in a separate rulemaking.

II. Need for More Inspections

Food safety has always been a priority for the school meal programs. Thanks to the efforts of thousands of school foodservice workers, school meals are among the safest food available to children nationwide. Government data suggest that employee food safety practices at elementary schools are

superior to those at fast food and full-service restaurants.[1]

However, increasing public concern over reports of food safety violations in foodservice establishments nationwide and in some school districts led Congress to increase the number of required food safety inspections for schools. Congress has determined that it is necessary for all schools to adopt a more vigilant approach to guarding the safety of the program meals consumed by over 28 million children each day, as well as the several million children that purchase a la carte food items every day. Increasing the number of required inspections is expected to encourage more stringent food safety practices and further protect children from foodborne illness. This Congressional mandate is consistent with the NSLP's overall goal to protect the health and well-being of school children.

Two food safety inspections annually will give schools additional opportunities to identify and correct immediate and/or persistent food safety problems. Schools will also be better able to assess where they need to make changes to achieve food safety.

III. Implementation

FNS has no discretion in implementing the inspection requirement established by Public Law 108–265. However, we will work with our State cooperators, within the parameters of the law, to help facilitate compliance with the inspection requirement.

Schools

Many schools participate in both the NSLP and the SBP and use the same facilities for the production and service of meals. Schools participating in more than one school meal program will not be required to obtain separate food inspections for each meal program if production and service of meals take place in the same facility. This rule also allows food safety inspections conducted under the Summer Food Service Program (SFSP) or the Child and Adult Care Food Program (CACFP) at sites participating in these programs and in the NSLP and/or SBP to be counted toward meeting the annual requirement as long as the inspections cover the same food service facility. The requirements of Public Law 108–265 do not apply to schools that only offer the Special Milk Program.

Where there are indications that schools have difficulty complying with the inspection requirement, State agencies should work with State and local health officials to achieve compliance. In all cases, schools should fully document their efforts to comply with the food safety inspection requirement.

State and Local agencies

FNS expects State agencies to take a leading role in ensuring that schools meet the food safety provision. Prompt discussion and cooperation among the State agency, local educational agencies, and State and local public health agencies is essential to minimize obstacles that may hinder school compliance with the inspection requirement. This is necessary because the law requires that school food safety inspections be conducted by a State or local governmental agency responsible for food safety inspections.

State Reporting

The law requires the State agencies to monitor school compliance with the inspection requirement and to report the results to FNS for each of fiscal years 2006 through 2009. The reports by the State agencies will document the number of annual inspections obtained by local schools per school year and indicate nationwide compliance. The reports will be due to FNS by November 15 following each school year, which allows State agencies sufficient time to collect the inspection data from SFAs.

FNS will develop a form for the States to report the aggregate data on inspections. A 60-day notice was published in the **Federal Register** at 70 FR 25014 on May 12, 2005 announcing the information collection requirement.

IV. Concerns

This provision of the Reauthorization Act establishes a new and critical requirement for the school food service and for the school meal programs. This change in the Federal law removes the flexibility that existed in the previous health inspection requirement, and now requires that every participating school have at least two food safety inspections each school year. However, schools must depend on the specific action of another public agency, such as a local health department, to comply with the new inspection requirement. Consequently, compliance will require a commitment from Federal, State, and local government agencies to work cooperatively to fulfill their mutual responsibility to protect the health and welfare of school children. FNS will do everything it can to inform all parties at the Federal level of this important task, and expects State agencies to do the same across State government. School districts will need to work with local health authorities to construct procedures to accomplish the required inspections where no mechanism currently exists.

Schools may use school food service funds to pay associated costs that are directly attributable to compliance with the inspection requirement and that are otherwise permissible as allowable costs.

V. Food Safety Resources

FNS will continue to offer guidance and resources to strengthen food safety practices in schools. Because education of the food program staff is essential, we provide schools with material to help employees learn and practice food safety. FNS currently provides schools with publications and posters emphasizing proper food handling, employee personal hygiene, appropriate food temperature, cross-contamination prevention and other food safety topics. We will continue to work closely with the National Food Service Management Institute to develop additional technical assistance materials and training programs related to school food safety. ''Serving It Safe—A Manager's Tool Kit'' (second edition), one of the materials developed through this collaboration, was sent to State agencies in 2003 for distribution to SFAs.

VI. Procedural Matters

Regulatory Planning and Review

This interim rule has been determined to be not significant and was not reviewed by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). This rule increases the number of food safety inspections required for schools participating in the school meal programs. While this requirement imposes a reporting burden, it does not constitute a significant economic impact on small entities.

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, FNS must generally prepare a written

[1] ''FDA Report on the Occurrence of Foodborne Illness Risk Factors in Selected Institutional Foodservice, Restaurant, and Retail Food Store Facility Type (2004)'', U.S. Food and Drug Administration, Center for Food Safety and Applied Nutrition, Sept. 14, 2004.

statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires FNS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule. This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector of $100 million or more in any one year. Thus, this interim rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Intergovernmental Review of Federal Programs

The National School Lunch Program is listed in the Catalog of Federal Domestic Assistance under No. 10.555, and the School Breakfast Program is listed under No. 10.553. For the reasons set forth in the final rule in 7 CFR part 3015, Subpart V and related Notice (48 FR 29115), these programs are included in the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

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.

Prior Consultation With State and Local Officials

Shortly after passage of the Reauthorization Act, FNS held discussions with State education agencies that administer child nutrition programs and with organizations representing State and local public health agencies. These discussions provided FNS an opportunity to inform State and local officials about the new inspection requirement and to hear their concerns. However, the pre-emptive status of the law and the requirement to implement the provision by July 1, 2005, has precluded any need of, or opportunity for, formal consultation. The interim nature of this rule will, however, allow for changes based on local experience, provided they are consistent with the law.

Nature of Concerns and Need To Issue This Rule

Several State and local officials are concerned that the increased inspection requirement may result in additional expenses and workload for schools, and for the State and local health agencies responsible for conducting the inspections. Although FNS is aware of the potential impact of this rule, it is our responsibility to carry out this statutory requirement aimed at improving the safety of school meals.

Extent to Which FNS Meets Those Concerns

FNS understands the concerns of school officials and State and local health agencies. We provided timely information to the groups that will be affected by this rule and encouraged them to work together to remove barriers that may hinder school compliance with the inspection requirement.

FNS has attempted to minimize the impact of this rule by applying the inspection requirement to sites rather than individual school meal programs, and by allowing inspections performed for purposes of the SFSP and CACFP to meet the requirement if they use the same food service facility.

Civil Justice Reform

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule has a 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 implementation. This rule is not intended to have retroactive effect unless so specified in the Effective Date paragraph of this or the final rule. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted.

Civil Rights Impact Analysis

FNS has reviewed this interim rule in accordance with the Department Regulation 4300–4, ''Civil Rights Impact Analysis,'' to identify any major civil rights impacts the rule might have on children on the basis of race, color, national origin, sex or disability. After a careful review of the rule's intent and provisions, FNS has determined that it does not affect the participation of protected individuals in the National School Lunch and School Breakfast Programs.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35, see 5 CFR Part 1320) requires that OMB approve all collections of information by a Federal agency from the public 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. Information collections in this interim rule have been previously submitted to OMB for approval under OMB #0584–0006. A 60-day notice was published in the **Federal Register** at 70 FR 25014 on May 12, 2005, which provided the public an opportunity to submit comments on the information collection burden resulting from this rule. This information collection burden has not yet been approved by OMB. FNS will publish a document in the **Federal Register** once these requirements have been approved.

Government Paperwork Elimination Act

FNS is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. FNS will examine ways to collect electronically the information required by this rule.

Public Participation

FNS has determined, in accordance with 5 U.S.C. 553(b), that Notice of Proposed Rulemaking and opportunity for public comments is unnecessary and contrary to the public interest and, in accordance with 5 U.S.C. 553(d), finds that good cause exists for making this action effective without prior public comment. In Section 501(b) of Public Law 108–265, Congress specifically afforded the Secretary the option of implementing this rulemaking without prior notice and comment. In addition, the provisions of this interim rule reflect mandatory statutory requirements which are non-discretionary. The Department is, however, anxious to receive comments that might improve the administration of these mandatory requirements.

List of Subjects

7 CFR Part 210

Grant programs—education, Grant programs—health, Infants and children, Nutrition, Penalties, Reporting and recordkeeping requirements, School breakfast and lunch programs, Surplus agricultural commodities.

7 CFR Part 220

Grant programs—education, Grant programs—health, Infants and children, Nutrition, Reporting and recordkeeping requirements, School breakfast and lunch programs.

■ Accordingly, 7 CFR Parts 210 and 220 are amended as follows:

PART 210—NATIONAL SCHOOL LUNCH PROGRAM

■ 1. The authority citation for 7 CFR part 210 continues to read as follows:

Authority: 42 U.S.C. 1751–1760, 1779.

■ 2. In § 210.9, revise paragraph (b)(14) to read as follows:

§ 210.9 Agreement with State agency.

* * * * *

(b) * * *

(14) Maintain, in the storage, preparation and service of food, proper sanitation and health standards in conformance with all applicable State and local laws and regulations, and comply with the food safety inspection requirement of § 210.13(b);

* * * * *

■ 3. In § 210.13, revise paragraph (b) to read as follows:

§ 210.13 Facilities management.

* * * * *

(b) *Food safety inspections.* Schools shall obtain a minimum of two food safety inspections during each school year conducted by a State or local governmental agency responsible for food safety inspections. They shall post in a publicly visible location a report of the most recent inspection conducted, and provide a copy of the inspection report to a member of the public upon request. Sites participating in more than one child nutrition program shall only be required to obtain two food safety inspections per school year if the nutrition programs offered use the same facilities for the production and service of meals.

* * * * *

■ 4. In § 210.15,

■ a. Amend paragraph (a)(5) by removing the word ''and'' after the semicolon;

■ b. Amend paragraph (a)(6) by removing the period at the end and adding in its place a semicolon followed by the word ''and'';

■ c. Add a new paragraph (a)(7);

■ d. Amend paragraph (b)(4) by removing the period at the end and adding in its place a semicolon followed by the word ''and''; and

■ e. Add a new paragraph (b)(5).

The additions read as follows:

§ 210.15 Reporting and recordkeeping.

(a) * * *

(7) The number of food safety inspections obtained per school year by each school under its jurisdiction.

(b) * * *

(5) Food safety inspection records to demonstrate compliance with § 210.13(b).

■ 5. In § 210.20:

■ a. Amend paragraph (a)(6) by removing the word ''and'' after the semicolon;

■ b. Amend paragraph (a)(7) by removing the period at the end and adding in its place a semicolon followed by the word ''and'';

■ c. Add a new paragraph (a)(8);

■ d. Amend paragraph (b)(10) by removing the word ''and'' after the semicolon;

■ e. Amend paragraph (b)(11) by removing the period at the end and adding in its place a semicolon followed by the word ''and''; and

■ f. Add a new paragraph (b)(12).

The additions read as follows:

§ 210.20 Reporting and recordkeeping.

(a) * * *

(8) Results of the State agency's review of schools' compliance with the food safety inspection requirement in § 210.13(b) by November 15 following each of school years 2005–2006 through 2008–2009, beginning November 15, 2006. The report will be based on data supplied by the school food authorities in accordance with § 210.15(a)(7).

(b) * * *

(12) Records supplied by the school food authorities showing the number of food safety inspections obtained by schools for each of school years 2005–2006 through 2008–2009.

PART 220—SCHOOL BREAKFAST PROGRAM

■ 1. The authority citation for 7 CFR part 220 continues to read as follows:

Authority: 42 U.S.C. 1773, 1779, unless otherwise noted.

■ 2. In § 220.7:

■ a. Redesignate paragraphs (a-1) and (a-2) as paragraphs (a)(1) and (a)(2);

■ b. Revise the newly designated paragraph (a)(2); and

■ c. Revise paragraph (e)(8).

The revisions read as follows:

§ 220.7 Requirements for participation.

(a) * * *

(2) Schools shall obtain a minimum of two food safety inspections per school year conducted by a State or local governmental agency responsible for food safety inspections. Schools participating in more than one child nutrition program shall only be required to obtain a minimum of two food safety inspections per school year if the food preparation and service for all meal programs take place at the same facility. Schools shall post in a publicly visible location a report of the most recent inspection conducted, and provide a copy of the inspection report to a member of the public upon request.

* * * * *

(e) * * *

(8) Maintain, in the storage, preparation and service of food, proper sanitation and health standards in conformance with all applicable State and local laws and regulations, and comply with the food safety inspection requirement in paragraph (a)(2) of this section;

* * * * *

■ 3. In § 220.13, add paragraph (b)(3) to read as follows:

§ 220.13 Special responsibilities of State agencies.

* * * * *

(b) * * *

(3) For each of school years 2005–2006 through 2008–2009, each State agency shall monitor school food authority compliance with the food safety inspection requirement in § 220.7(a)(2) and submit an annual report to FNS documenting school compliance based on data supplied by the school food authorities. The report must be filed by November 15 following each of school years 2005–2006 through 2008–2009, beginning November 15, 2006. The State agency shall keep the records supplied by the school food authorities showing the number of food safety inspections obtained by schools for each of school years 2005–2006 through 2008–2009.

* * * * *

Dated: May 25, 2005.

Roberto Salazar,

Administrator, Food and Nutrition Service.

[FR Doc. 05–11805 Filed 6–14–05; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 226

RIN 0584–AD69

Child and Adult Care Food Program: Permanent Agreements for Day Care Home Providers

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the Child and Adult Care Food Program (CACFP) regulations to implement a provision of the Child Nutrition and WIC Reauthorization Act of 2004 which stipulates that the agreement between a sponsoring organization and family or group day care home participating in the CACFP is permanent and remains in effect until terminated by either party. This change will reduce the administrative workload and paperwork burden of sponsoring organizations, by eliminating the periodic renewal of agreements with their family or group day care homes.

DATES: This rule contains information collection requirements that have not been approved by the Office of Management and Budget (OMB). The Food and Nutrition Service will publish a document in the **Federal Register** announcing the effective date once these requirements have been approved.

FOR FURTHER INFORMATION CONTACT: Keith Churchill, Section Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, VA 22302, phone (703) 305–2590.

SUPPLEMENTARY INFORMATION:

I. Background

What Are Agreements Between the Sponsoring Organizations and the Family or Group Day Care Homes?

The agreements record specific requirements and responsibilities of sponsoring organizations and the family or group day care homes that participate in CACFP under their supervision. The standard form agreements are developed by State agencies. However, a State agency may allow sponsoring organizations to develop agreements for use with their family or group day care homes provided those agreements include all required elements.

What Did the New Law Change About the Agreements?

Prior to reauthorization, the Richard B. Russell National School Lunch Act required each State agency to develop, and provide for use, a standard form of agreement, and that a sponsoring organization must enter into an agreement with each day care home, for the purpose of specifying the rights and responsibilities of each party. The law did not set requirements on the duration of agreements. Currently, the CACFP regulations found at 7 CFR Part 226 make no mention of, nor set limits on, the duration of agreements between the sponsoring organizations and family or group day care homes. As a result, administering State agencies have applied a variety of standards for the duration of the agreements. For example, some State agencies have linked the renewal of agreements between sponsors and family or group day care homes with the renewal of licensing and/or application process. Section 119 of the Child Nutrition and WIC Reauthorization Act of 2004, Public Law 108–265, amended section 17(j) of the Richard B. Russell National School Lunch Act to mandate the use of permanent agreements between sponsoring organizations and family or group day care homes.

When Was This Change Effective?

The change made by Public Law 108–265 was effective on June 30, 2004. The Food and Nutrition Service (FNS) notified CACFP State agencies through an implementation memorandum on July 12, 2004, that all day care homes must have a permanent agreement in place no later than July 1, 2005. Although this provision went into effect on the date of enactment, sponsors are not immediately required to revise currently valid agreements, but must make all agreements permanent as they are updated or revised.

What Guidance Has the Department Provided on This Change?

On July 12, 2004, FNS provided CACFP State agencies with written guidance regarding the permanent agreement provision. In this written guidance, available at *http://www.fns.usda.gov/cnd/Care/Reauth_Memos/2004-07-12.pdf*, FNS explained that the agreement between sponsoring organizations and family or group day care homes must now be made permanent.

What Does This Rule Do?

The rule will stipulate that either party to the permanent agreement may still terminate the agreement. Although the agreement is permanent, it does not remove the right of the sponsoring organization to terminate a family or group day care home for cause (*e.g.*, expired license) or convenience. Additionally, the rule clarifies that the right of a day care home provider to change sponsors in accordance with current regulations is unchanged. Should a family or group day care home be out of compliance with program requirements, the sponsoring organization will follow the serious deficiency process, which may culminate in the termination of the family or group day care home's agreement. Sponsoring organizations will continue to be permitted to amend the permanent agreement when there is a change in program policy or meal services. State agencies and sponsoring organizations are reminded that permanent agreements must stipulate that CACFP payments are contingent upon the availability of Federal funds.

How Will the Change Affect Family or Group Day Care Home Providers?

This change should have a minimal effect on family and group day care home providers. They will no longer be required to sign an annual agreement with their sponsoring organizations.

How Will This Change Affect Sponsoring Organizations?

The primary change for sponsoring organizations of day care homes participating in the CACFP will be a reduction in their administrative workload and paperwork requirements. Sponsoring organizations will benefit from not having to renew agreements and should be able to direct their resources to other Program-related functions. In the past, some State agencies have required sponsoring organizations to link the renewal of agreements to the renewal of their family or group day care homes' licenses and/or applications, which usually occurred either annually or once every 2 or 3 years. The regulation mandates that sponsoring organizations of day care homes must establish permanent agreements with their family or group day care homes.

How Will This Change Affect State Agencies?

The effect on State agencies should be minimal. The annual responsibilities of State agencies, as described in the current CACFP regulations, are unchanged by the permanent agreement between the sponsoring organization and the family or group day care home. To implement this new provision, State agencies may require sponsoring organizations to amend their current agreement or execute a new permanent agreement.

What Changes Does This Rule Make to the CACFP Regulations?

Responsibilities for agreements between sponsoring organizations and family or group day care homes are described in the CACFP regulations at 7 CFR 226.6(p) for State agencies, and at 7 CFR 226.18(b) for day care homes. This final rule amends these two paragraphs to mandate that the agreements between sponsoring organizations and family or group day care homes be permanent, and adds a sentence to each of these paragraphs

stating that the amendment does not change, nor affect, any other requirements of the CACFP regulations. These are the only changes that are made to the CACFP regulations by this rulemaking.

II. Procedural Matters

Executive Order 12866

This final rule has been determined to be not significant and therefore was not reviewed by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

This final rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612). Roberto Salazar, Administrator for the Food and Nutrition Service, has certified that this rule will not have a significant impact on a substantial number of small entities. This rule will implement a statutory change that decreases the administrative workload and paperwork burden for sponsoring organizations by reducing the frequency with which agreements between sponsors and family or group day care home providers must be renewed. The U.S. Department of Agriculture does not anticipate any negative fiscal impact resulting from the implementation of this final rule.

Public Law 104–4

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 Food and Nutrition Service generally prepares a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires FNS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This final rule contains no Federal mandates (under regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector of $100 million or more in any one year. Thus, this final rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12372

The Child and Adult Care Food Program is listed in the Catalog of Federal Domestic Assistance under No. 10.558. For the reasons set forth in the final rule in 7 CFR part 3015, Subpart V and related Notice (48 FR 29115), this program is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Executive Order 13132

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 regulation describing the agency's considerations in terms of the three categories called for under section (6)(a)(B) of Executive Order 13132. FNS has considered the impact of this rule on State and local governments and has determined that this rule would not have federalism implications. This final 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

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This final rule will have a preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which otherwise impede its full implementation. This final rule does not have retroactive effect unless so specified in the **DATES** section of this preamble. Prior to any judicial challenge to the provisions of this final rule or the application of the provisions, all applicable administrative procedures must be exhausted. In the Child and Adult Food Care Program, the administrative procedures are set forth at 7 CFR 226.6(k), which establishes appeal procedures; and 7 CFR 226.22 and 7 CFR parts 3016 and 3019, which address administrative appeal procedures for disputes involving procurement by State agencies and institutions.

Civil Rights Impact Analysis

FNS has reviewed this final rule in accordance with the Department Regulation 4300–4, ''Civil Rights Impact Analysis'' to identify and address any major civil rights impacts the rule might have on minorities, women, and persons with disabilities. After a careful review of the rule's intent and provisions, FNS has determined that there is no negative effect on these groups. All data available to FNS indicate that protected individuals have the same opportunity to participate in the CACFP as non-protected individuals. Regulations at 7 CFR 226.6(f)(4)(iv) require that CACFP institutions agree to operate the Program in compliance with applicable Federal civil rights laws, including title VI of the Civil Rights Act of 1964, title IX of the Education amendments of 1972, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and the Department's regulations concerning nondiscrimination (7 CFR Parts 15, 15a, and 15b). At 7 CFR 226.6(m)(1), State agencies are required to monitor CACFP institution compliance with these laws and regulations.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35, see 5 CFR 1320) requires that OMB approve all collections of information by a Federal agency from the public 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. Information collections in this final rule have been previously submitted to OMB for approval under OMB #0584–0055. A 60-day notice was published in the **Federal Register** on May 5, 2005, at 70 FR 23835, which provides an opportunity for the public to submit comments on the reduction to the information collection burden resulting from the changes in the CACFP made by this final rule. This burden change has not yet been approved by OMB. FNS will publish a document in the **Federal Register** once these requirements have been approved.

Government Paperwork Elimination Act

FNS is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. The information collection in this rule involves the agreements that State agencies require sponsoring organizations to enter into with their family and group day care homes in order to participate in the CACFP. FNS encourages all State agencies and sponsoring organizations to automate their process whenever feasible.

Public Participation

This action is being finalized without prior notice or public comment under authority of 5 U.S.C. 553(b)(3)(A) and (B). This rule implements through amendments to current program regulations a nondiscretionary provision mandated by the Child Nutrition and WIC Reauthorization Act of 2004 (Public Law 108–265). Thus, the Department has determined in accordance with 5 U.S.C. 553(b) that Notice of Proposed Rulemaking and Opportunity for Public Comments is unnecessary and contrary to the public interest and, in accordance with 5 U.S.C. 553(d), finds that good cause exists for making this action effective.

List of Subjects in 7 CFR Part 226

Accounting, Aged, Day care, Food assistance programs, Grant programs, Grant programs—health, Indians, Individuals with disabilities, Infants and children, Intergovernmental relations, Loan programs, Reporting and recordkeeping requirements, Surplus agricultural commodities.

■ Accordingly, 7 CFR part 226 is amended as follows:

PART 226—CHILD AND ADULT CARE FOOD PROGRAM

■ 1. The authority citation for part 226 continues to read as follows:

Authority: Secs. 9, 11, 14, 16, and 17, Richard B. Russell National School Lunch Act, as amended (42 U.S.C. 1758, 1759a, 1762a, 1765, and 1766).

■ 2. In § 226.6, amend paragraph (p) by adding the words ''written permanent'' before the word ''agreement'' in the first sentence and by adding a new sentence after the first sentence, to read as follows:

§ 226.6 State agency administrative responsibilities.

* * * * *

(p) * * * Nothing in the preceding sentence shall be construed to limit the ability of the sponsoring organization to suspend or terminate the permanent agreement in accordance with § 226.16(l). * * *

* * * * *

■ 3. In § 226.18, amend paragraph (b) introductory text by adding the word ''permanent'' before the word ''agreement'' in the second sentence and by adding a new sentence after the second sentence, to read as follows:

§ 226.18 Day care home provisions.

* * * * *

(b) * * * Nothing in the preceding sentence shall be construed to limit the ability of the sponsoring organization to suspend or terminate the permanent agreement in accordance with § 226.16(l). * * *

* * * * *

Dated: May 25, 2005.

Roberto Salazar,

Administrator.

[FR Doc. 05–11806 Filed 6–14–05; 8:45 am]

BILLING CODE 3410–30–P

FEDERAL ELECTION COMMISSION

11 CFR Part 111

[Notice 2005 –16]

Inflation Adjustments for Civil Monetary Penalties

AGENCY: Federal Election Commission.

ACTION: Final rules.

SUMMARY: The Federal Election Commission (''Commission'') is adopting final rules to apply inflation adjustments to certain civil monetary penalties under the Federal Election Campaign Act of 1971, as amended (''FECA''), the Presidential Election Campaign Fund Act and the Presidential Primary Matching Payment Account Act. The civil penalties being adjusted are for (1) certain violations of these statutes that are not knowing and willful, involving contributions and expenditures; (2) knowing and willful violations of the prohibition against the making of a contribution in the name of another; (3) knowing and willful violations of the confidentiality provisions of FECA; and (4) failure to file timely 48-hour notices. No other civil penalties are being adjusted. These adjustments are required by the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996. Further information is provided in the supplementary information that follows.

DATES: These penalty adjustments are effective on June 15, 2005.

FOR FURTHER INFORMATION CONTACT: Ms. Mai T. Dinh, Assistant General Counsel, or Mr. Albert J. Kiss, Attorney, 999 E Street, NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Federal Civil Penalties Inflation Adjustment Act of 1990,[1] as amended by the Debt Collection Improvement Act of 1996,[2] (''Inflation Adjustment Act'') requires Federal agencies to adopt regulations at least once every four years adjusting for inflation the civil monetary penalties within the jurisdiction of the agency.

A civil monetary penalty (''civil penalty'') is defined in the Inflation Adjustment Act as any penalty, fine, or other sanction that is for a specific amount, or has a maximum amount, as provided by Federal law, and is assessed or enforced by an agency in an administrative proceeding or by a Federal court pursuant to Federal law.[3] This definition covers the civil penalties provided for in the Federal Election Campaign Act of 1971 (''FECA''), as amended, 2 U.S.C. 431 *et seq.*, for respondents who violate FECA, or violate the Presidential Election Campaign Fund Act, 26 U.S.C. 9001 *et seq.*, or the Presidential Primary Matching Payment Account Act, 26 U.S.C. 9031 *et seq.* (collectively ''chapters 95 and 96 of Title 26''). Under the Inflation Adjustment Act, a civil penalty is adjusted by a cost-of-living adjustment (''COLA''), determined by multiplying the amount of the civil penalty by the percentage (if any) by which the U.S. Department of Labor's Consumer Price Index for all urban consumers (''CPI'') for the month of June for the year preceding the year of adjustment exceeds the CPI for the month of June for the year in which the amount of the civil penalty was last set or adjusted.[4] The amount of the inflation adjustment is subject to rounding rules.[5]

In March 1997, the Commission promulgated new rules to adjust FECA's then-current civil penalties pursuant to the Inflation Adjustment Act. *Final Rules and Explanation and Justification for Adjustments to Civil Monetary Penalty Amounts,* 62 FR 11316 (Mar. 12, 1997) (''1997 Civil Penalty Adjustment E&J''). In January 2002, the Commission again examined its civil penalty rules under the Inflation Adjustment Act, but did not adjust any civil penalty rules because the operation of the Inflation Adjustment Act's rounding rules did not result in increases in any of the civil penalties. Agenda Doc. 02–06 (Jan. 17, 2002). As explained in more detail below, the Commission has determined that certain civil penalties in 11 CFR 111.24 and 111.44 must be increased again in 2005 due to the increases in the CPI and the application of the Inflation Adjustment Act's rounding rules to these civil penalties. However, other civil penalties in 11 CFR 111.24 and 111.43 are not being changed because the rounding rules negate any increases

[1] 28 U.S.C. 2461 note (2005).

[2] Public Law 104–134, 110 Stat. 1321–358, 1321–373, section 31001(s) (1996).

[3] 28 U.S.C. 2461 note (3)(2).

[4] 28 U.S.C. 2461 note (3)(3) and (5)(b).

[5] 28 U.S.C. 2461 note (5)(a).

in the civil penalties that would have resulted from the increases in the CPI.

The Commission is required by statute to adjust the civil penalties under its jurisdiction by a COLA formula. This application of the COLA does not involve Commission discretion or any policy judgments. Thus, the Commission finds that the ''good cause'' exception to the notice and comment requirement in section 553 of the Administrative Procedure Act applies to these rules because notice and comment are unnecessary. 5 U.S.C. 553(b)(B) and (d)(3). For the same reasons, these rules do not need to be submitted to the Speaker of the House of Representatives or the President of the Senate under the Congressional Review Act, 5 U.S.C. 801 *et seq.*, and these rules are effective upon publication. 5 U.S.C. 808(2). Accordingly, these amendments are effective on June 15, 2005. The new civil penalty amounts are applicable only to violations that occur after this effective date.

Explanation and Justification

11 CFR 111.24—Civil Penalties (2 U.S.C. 437g(a)(5), (6), (12), 28 U.S.C. 2461 nt.)

FECA provides for civil penalties for any person who violates any portion of FECA or chapters 95 and 96 of Title 26. FECA's civil penalties, found at 2 U.S.C. 437g(a)(5), (6), and (12), are organized into two tiers; one tier of civil penalties for violations of FECA or chapters 95 and 96 of Title 26, and a higher tier of civil penalties for ''knowing and willful'' violations of FECA or chapters 95 and 96 of Title 26. Commission regulations in section 111.24 set forth each civil penalty established by section 437g(a)(5), (6) and (12), as adjusted pursuant to the Inflation Adjustment Act.

1. 11 CFR 111.24(a)(1) Violations That Are Not Knowing and Willful

Under the core statutory provisions, the Commission may negotiate a civil penalty, or may institute an action for a civil penalty, or a court may impose a civil penalty, for a violation of FECA or of chapters 95 or 96 of Title 26 that does not exceed the greater of $5,000 or an amount equal to any contribution or expenditure involved in the violation. 2 U.S.C. 437g(a)(5)(A), (6)(A) and (6)(B). The $5,000 civil penalty amount was increased to $5,500 when section 111.24(a) was promulgated in 1997.[6] 1997 Civil Penalty Adjustment E&J at 11316.

At this time, to determine the appropriate COLA to apply to the $5,500 amount, the Commission uses the CPI for June of 2004, which is 189.7, and the CPI for June of 1997, which is 160.3.[7] The COLA is determined by dividing the CPI for June of 2004 (189.7) by the CPI for June of 1997 (160.3), which equals 1.183 (189.7/160.3 = 1.183). To obtain the inflation-adjusted civil penalty amount, the $5,500 amount is multiplied by the COLA of 1.183, which equals $6,507 ($5,500 × 1.183 = $6,507). Thus, the increase is $1,007 ($6,507 − $5,500 = $1,007). The amount of the increase is subject to the Inflation Adjustment Act rounding rules. Under the rounding rules, where the existing civil penalty is greater than $1,000 but less than or equal to $10,000, the increase is rounded to the nearest multiple of $1,000. Therefore, the amount of the civil penalty increase is rounded to $1,000. Consequently, section 111.24(a)(1) is amended by adding $1,000 to the $5,500 civil penalty to obtain the new inflation-adjusted civil penalty of $6,500.

2. 11 CFR 111.24(a)(2)(i)—Knowing and Willful Violations

The Commission may seek, or a court may impose, a civil penalty for a ''knowing and willful'' violation of FECA or of chapters 95 or 96 of Title 26 that does not exceed the greater of $10,000 or an amount equal to 200% of any contribution or expenditure involved in the violation. 2 U.S.C. 437g(a)(5)(B) and (6)(C). The $10,000 civil penalty amount was increased to $11,000 when section 111.24(a) was promulgated in 1997.[8] 1997 Civil Penalty Adjustment E&J at 11316.

At this time, to obtain the inflation-adjusted civil penalty, $11,000 is multiplied by the same COLA calculated above, *i.e.*, 1.183. The resulting amount equals $13,013 ($11,000 × 1.183 = $13,103). Thus, the increase is $2,013 ($13,013 − $11,000 = $2,013). Under the rounding rules, where the existing civil penalty is greater than $10,000 but less than or equal to $100,000, the increase is rounded to the nearest multiple of $5,000. Therefore, the amount of the civil penalty increase is rounded to zero, and the $11,000 civil penalty is not changed. Because no changes are being made at this time, the next adjustment will reflect inflationary changes since 1997 rather than 2005.

3. 11 CFR 111.24(a)(2)(ii)—Knowing and Willful Contributions Made in the Name of Another

The Bipartisan Campaign Reform Act of 2002, Public Law 107–155, 116 Stat. 81,108, section 315 (2002) (''BCRA''), increased minimum and maximum civil penalties for knowing and willful violations of the prohibition on contributions made in the name of another in 2 U.S.C. 441f. As revised by BCRA, the civil penalty for such a violation is not less than 300 percent of the amount involved in the violation, and is not more than the greater of $50,000 or 1,000 percent of the amount involved in the violation. 2 U.S.C. 437g(a)(5)(B) and (6)(C); 11 CFR 111.24(a)(2)(ii). To determine the appropriate COLA to apply to the $50,000 amount, the Commission uses the CPI for June of 2004, which is 189.7, and the CPI for June of 2002, which is 179.9. The COLA is determined by dividing the CPI for June of 2004 (189.7) by the CPI for June of 2002 (179.9), which equals 1.054 (189.7/179.9 = 1.054). To obtain the inflation-adjusted civil penalty, $50,000 is multiplied by the COLA of 1.054, which equals $52,700 ($50,000 × 1.054 = $52,700). Thus, the increase is $2,700 ($52,700 − $50,000 = $2,700). Under the rounding rules described above, $2,700 is rounded to $5,000. Consequently, section 111.24(a)(2)(ii) is amended by adding $5,000 to the $50,000 civil penalty to obtain the new inflation-adjusted civil penalty of $55,000.

4. 11 CFR 111.24(b)—Violations of Confidentiality

Any Commission member or employee, or any other person, who makes public any notification or investigation under 2 U.S.C. 437g without receiving the written consent of the person receiving such notification, or the person with respect to whom such investigation is made, shall be fined not more than $2,000, except that any such member, employee, or other person who knowingly and willfully violates this provision shall be fined not more than $5,000. 2 U.S.C. 437g(a)(12)(B). In 1997, the Commission promulgated 11 CFR 111.24(b) to increase the $2,000 civil penalty to $2,200, and to increase the $5,000 civil

[6] The Inflation Adjustment Act provides that the first adjustment to a civil penalty may not exceed ten percent of the penalty. Thus, the 1997 increase to the $5,000 civil penalty was limited to ten percent of $5,000, or $500, and this penalty was increased to $5,500.

[7] The base period for the CPI figures is 1982 to 1984. Thus, the price of a basket of goods and services that would have cost $100 in 1982–1984, rose to $160.30 in June 1997, and to $189.70 in June 2004.

[8] As discussed above, the first adjustment to a civil penalty may not exceed ten percent of the penalty. Thus, the 1997 increase to the $10,000 civil penalty was limited to ten percent of $10,000, or $1,000, and this penalty was increased to $11,000.

penalty to $5,500.[9] 1997 Civil Penalty Adjustment E&J at 11317.

For these civil penalties, the appropriate COLA is 1.183. *See* COLA calculation for civil penalties under 11 CFR 111.24(a)(1), above. To obtain the inflation-adjusted civil penalty for the $2,200 amount, $2,200 is multiplied by the COLA of 1.183, which equals $2,603 ($2,200 × 1.183 = $2,603). Thus, the increase is $403 ($2,603 − $2,200 = $403). Under the rounding rules described above, $403 is rounded to zero. Thus, the $2,200 civil penalty remains unchanged. Because no changes are being made at this time, the next adjustment will reflect inflationary changes since 1997 rather than 2005.

To obtain the inflation-adjusted civil penalty for the $5,500 amount, $5,500 is multiplied by the COLA of 1.183, equaling $6,507 ($5,500 × 1.183 = $6,507). Thus, the increase is $1,007 ($6,507 − $5,500 = $1,007). Under the rounding rules, the $1,007 amount is rounded to $1,000. Consequently, section 111.24(b) is amended by adding $1,000 to the $5,500 amount to obtain the new inflation-adjusted civil penalty of $6,500 for knowing and willful violations of confidentiality.

11 CFR 111.43—Schedules of Penalties

FECA permits the Commission to assess civil penalties for violations of the reporting requirements of 2 U.S.C. 434(a) in accordance with schedules of penalties established and published by the Commission. 2 U.S.C. 437g(a)(4)(C). The schedules of penalties for political committees that file their reports late or that fail to file reports are set out in 11 CFR 111.43, and were last amended in 2003. *Final Rules and Explanation and Justification for Administrative Fines,* 68 FR 12572, 12573–12575 (Mar. 17, 2003). To determine the appropriate COLA to apply to the schedules of penalties for violations of these reporting requirements, the Commission uses the CPI for June of 2004, which is 189.7, and the CPI for June of 2003, which is 183.7. Although applying the COLA of 1.033 (189.7/183.7 = 1.033) to all possible civil penalties under the schedules of penalties would result in a slight increase in the civil penalty amounts, the Inflation Adjustment Act rounding rules would round down the increased civil penalty amounts to the current amounts. Consequently, the formulas in the schedules of penalties in 11 CFR 111.43 are not changed.

However, the Commission is correcting a typographical error in the schedule at section 111.43(a)(2)(iii). Under the column entitled ''[I]f the level of activity in the report was,'' the level of activity of $450,000–$549,999.99 is missing the first instance of the number ''4.'' Thus, this level of activity is erroneously listed as ''$50,000–549,999.99.'' The Commission is correcting this to read ''$450,000—$549,999.99.''

11 CFR 111.44—Schedule of Penalties for 48-Hour Notices

Principal campaign committees are required to report, within 48 hours of receipt, any contributions of $1,000 or more that are received after the 20th day, but more than 48 hours before any election. 2 U.S.C. 434(a)(6). FECA permits the Commission to assess civil penalties for violations of this reporting requirement. 2 U.S.C. 437g(a)(4)(C). In 2000, the Commission adopted rules setting forth the civil penalties for failure to file timely notices of these last-minute contributions. *Final Rules and Explanation and Justification for Administrative Fines*, 65 FR 31787, 31793 (May 19, 2000). The amount of the civil penalty for each notice not filed timely is $100 plus ten percent of the amount of the contribution(s) not timely reported, and is increased for prior violations. 11 CFR 111.44. To determine the appropriate COLA to apply to the $100 amount, the Commission uses the CPI for June of 2004, which is 189.7, and the CPI for June of 2000, which is 172.4. The COLA is obtained by dividing the CPI for June of 2004 (189.7) by the CPI for June of 2000 (172.4), which equals 1.100 (189.7/172.4 = 1.100). To obtain the inflation-adjusted civil penalty amount, $100 is multiplied by the COLA of 1.100, which equals $110 ($100 × 1.100 = $110). Thus, the increase is $10 ($110 − $100 = $10). The Inflation Adjustment Act rounding rules do not change the amount of this increase.[10] Consequently, section 111.44 is amended by adding $10 to the $100 civil penalty to obtain the new inflation-adjusted civil penalty of $110.

Certification of No Effect Pursuant to 5 U.S.C. 605(b) (Regulatory Flexibility Act)

The provisions of the Regulatory Flexibility Act are not applicable to this final rule because the Commission was not required to publish a notice of proposed rulemaking or to seek public comment under 5 U.S.C. 553 or any other laws. 5 U.S.C. 603(a) and 604(a). Therefore, no regulatory flexibility analysis is required.

List of Subjects in 11 CFR Part 111

Administrative practice and procedure, Elections, Law enforcement, and Penalties.

■ For the reasons set out in the preamble, the Federal Election Commission amends subchapter A of chapter I of title 11 of the *Code of Federal Regulations* as follows:

PART 111—COMPLIANCE PROCEDURE (2 U.S.C. 437g, 437d(a))

■ 1. The authority citation for part 111 continues to read as follows:

Authority: 2 U.S.C. 437g, 437d(a), 438(a)(8); 28 U.S.C. 2461 nt.

■ 2. In § 111.24, paragraphs (a)(1), (a)(2)(ii) and (b) are revised to read as follows:

§ 111.24 Civil Penalties (2 U.S.C. 437g(a)(5), (6), (12), 28 U.S.C. 2461 nt.).

(a) * * *

(1) Except as provided in paragraph (a)(2) of this section, in the case of a violation of the Act or chapters 95 or 96 of title 26 (26 U.S.C.), the civil penalty shall not exceed the greater of $6,500 or an amount equal to any contribution or expenditure involved in the violation.

(2) * * *

(ii) Notwithstanding paragraph (a)(2)(i) of this section, in the case of a knowing and willful violation of 2 U.S.C. 441f, the civil penalty shall not be less than 300% of the amount of any contribution involved in the violation and shall not exceed the greater of $55,000 or 1,000% of the amount of any contribution involved in the violation.

(b) Any Commission member or employee, or any other person, who in violation of 2 U.S.C. 437g(a)(12)(A) makes public any notification or investigation under 2 U.S.C. 437g without receiving the written consent of the person receiving such notification, or the person with respect to whom such investigation is made, shall be fined not more than $2,200. Any such member, employee, or other person who knowingly and willfully violates this provision shall be fined not more than $6,500.

[9] As discussed above, the first adjustment to a civil penalty may not exceed ten percent of the penalty. Thus, the 1997 increase to the $2,000 civil penalty was limited to ten percent of $2,000, or $200, and this penalty was increased to $2,200. Similarly, the 1997 increase to the $5,000 civil penalty was limited to ten percent of $5,000, or $500, and this penalty was increased to $5,500.

[10] Under the rounding rules, where the existing penalty is less than or equal to $100, the increase is rounded to the nearest multiple of $10. Therefore, the amount of the penalty increase is rounded to $10, the same amount as it was prior to application of the rounding rules.

§ 111.43 [Amended]

■ 3. In § 111.43, paragraph (a)(2)(iii) is amended by removing ''$50,000 – $549,999.99'' and adding in its place ''$450,000–549,999.99.''

■ 4. In § 111.44, paragraph (a)(1) is revised to read as follows:

§ 111.44 What is the schedule of penalties for 48-hour notices that are not filed or are filed late?

(a) * * *

(1) Civil money penalty = $110 + (.10 × amount of the contribution(s) not timely reported).

* * * * *

Dated: June 9, 2005.

Scott E. Thomas,

Chairman, Federal Election Commission.

[FR Doc. 05–11790 Filed 6–14–05; 8:45 am]

BILLING CODE 6715–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–21433; Directorate Identifier 2005–NM–079–AD; Amendment 39–14123; AD 2005–12–07]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A319, A320, and A321 Series Airplanes

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

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Airbus Model A319, A320, and A321 series airplanes. This AD requires a one-time ultrasonic inspection for certain airplanes, and repetitive detailed inspections for all airplanes, for cracking in the forward lug of the support rib 5 fitting of both main landing gear (MLG), and repair if necessary. This AD also provides for optional terminating actions. This AD is prompted by a report of a crack found in the forward lug of the right-hand MLG rib 5 fitting during greasing of both MLG pintle bearings. We are issuing this AD to find and fix cracking in the forward lug of the MLG, which could result in failure of the lug and consequent collapse of the MLG during landing.

DATES: Effective June 30, 2005.

The incorporation by reference of a certain publication listed in the AD is approved by the Director of the Federal Register as of June 30, 2005.

We must receive comments on this AD by August 15, 2005.

ADDRESSES: Use one of the following addresses to submit comments on this AD.

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street SW., Nassif Building, room PL–401, Washington, DC 20590.
- Fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this AD, contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France.

You can examine the contents of this AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, on the plaza level of the Nassif Building, Washington, DC. This docket number is FAA–2005–21433; the directorate identifier for this docket is 2005-NM–079–AD.

Examining the Docket

You can examine the AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the Docket Management System (DMS) receives them.

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2141; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A319, A320, and A321 series airplanes. The DGAC advises that, during greasing of the main landing gear (MLG) pintle bearings on a Model A320 series airplane, a crack was found in the forward lug of the right-hand MLG rib 5 fitting. The airplane had accumulated 12,634 total flight cycles and 19,710 total flight hours at the time of the findings. Laboratory analysis of the damaged lug revealed that it was fitted with a bushing that had insufficient cadmium plating. Further investigation revealed that certain Airbus Model A319 and A320 series airplanes may have been equipped with bushings from a batch found to have insufficient cadmium plating. The forward lug of the left- and right-hand MLG rib 5 fitting of Airbus Model A319, A320, and A321 series airplanes that do not have Airbus Modification 32025 incorporated could also be susceptible to cracking. These conditions, if not corrected, could result in failure of the lug and consequent collapse of the MLG during landing.

Relevant Service Information

Airbus has issued Service Bulletin A320–57A1136, dated January 26, 2005 (for Model A319 and A320 series airplanes). The service bulletin describes procedures for a one-time ultrasonic inspection for cracking in the forward lug of the support rib 5 fitting of both MLG. The service bulletin recommends contacting the manufacturer for repair instructions if any cracking is found.

The DGAC mandated Service Bulletin A320–57A1136, and a detailed visual inspection as defined in the visual procedures of Airbus A318/A319/A320/A321 Nondestructive Testing Manual (NTM), Chapter 51–90–00, revision dated February 2003; and issued French airworthiness directive F–2005–035, dated March 2, 2005, to ensure the continued airworthiness of these airplanes in France.

Airbus has also issued Service Bulletin A320–57–1118, dated September 5, 2002, and Revision 01, dated August 28, 2003 (for Model A319, A320, and A321 series airplanes). The service bulletins describe procedures for modification of the lugs of the support rib 5 fitting of the left- and right-hand MLG and related investigative and corrective actions if necessary. The modification includes installing new bushings on the lugs of the support rib 5 fitting of the MLG, and applying protective sealant to the bores and spotfaces of the lug. The related investigative and corrective actions include performing a visual inspection for corrosion/damage of the bores and spotfaces of the lug for the pintle pin bushings, and repair if corrosion/damage is found. Accomplishing this

service bulletins eliminates the need to conduct the inspections described above.

FAA's Determination and Requirements of This AD

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. We have examined the DGAC's findings, evaluated all pertinent information, and determined that we need to issue an AD for products of this type design that are certificated for operation in the United States.

Therefore, we are issuing this AD to require accomplishing the actions specified in Service Bulletin A320–57A1136 (for Model A319 and A320 series airplanes), described previously, except as discussed under ''Difference Between the AD and Service Bulletin A320–57A1136.'' This AD also requires repetitive detailed inspections for all airplanes for cracking in the forward lug of the support rib 5 fitting of the MLG, and repair if necessary. This AD also provides for optional terminating actions.

Difference Between the AD and Service Bulletin A320–57A1136

The service bulletin specifies that you may contact the manufacturer for repair instructions if cracks are found, but this AD requires you to repair any cracking by using a method that we or the DGAC (or its delegated agent) approve. In light of the type of repair required to address the unsafe condition, and consistent with existing bilateral airworthiness agreements, we have determined that, for this AD, a repair we or the DGAC approve is acceptable for compliance with this AD.

Clarification of Inspection Terminology

In this AD, the ''detailed visual inspection'' specified in the French airworthiness directive is referred to as a ''detailed inspection.'' We have included the definition for a detailed inspection in a note in the AD.

Interim Action

We consider this AD interim action. We are currently considering requiring the optional modification of the lugs of the support rib 5 fitting of the left- and right-hand MLG, which would constitute terminating action for the repetitive inspections required by this AD action. However, the planned compliance time for the modification would require us to provide notice and opportunity for prior public comment on the merits of the modification.

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD; therefore, providing notice and opportunity for public comment before the AD is issued is impracticable, and good cause exists to make this AD effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements that affect flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any relevant written data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES.** Include ''Docket No. FAA–2005–21433; Directorate Identifier 2005-NM–079-AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the AD. We will consider all comments received by the closing date and may amend the AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this AD. Using the search function of our docket Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You can review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you can visit *http://dms.dot.gov.*

Authority for This Rulemaking

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

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

Regulatory Findings

We have determined that 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 the regulation:

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this AD. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2005–12–07 Airbus: Amendment 39–14123. Docket No. FAA–2005–21433; Directorate Identifier 2005–NM–079–AD.

(b) None.

(b) None.

Effective Date

(a) This AD becomes effective June 30, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A319, A320, and A321 series airplanes, certificated in any category; except those on which Airbus Modification 32025 was done during production.

Unsafe Condition

(d) This AD was prompted by a report of a crack found in the forward lug of the right-hand main landing gear (MLG) rib 5 fitting during greasing of the MLG pintle bearings. The FAA is issuing this AD to find and fix cracking in the forward lug of the MLG, which could result in failure of the lug and consequent collapse of the MLG during landing.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

One-Time Ultrasonic Inspection/Repair

(f) For Model A319 and A320 series airplanes having serial numbers 537 through 625 inclusive: At the earliest of the times specified in paragraphs (f)(1), (f)(2), and (f)(3) of this AD; perform a one-time ultrasonic inspection for cracking in the forward lug of the support rib 5 fitting of the left- and right-hand MLG by doing all the actions specified in the Accomplishment Instructions of Airbus Service Bulletin A320–57A1136, dated January 26, 2005. Repair any cracking before further flight, according to a method approved by either the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the Direction Générale de l'Aviation Civile (DGAC) (or its delegated agent).

(1) Within 750 flight cycles after the effective date of this AD.

(2) Within 600 flight hours after the effective date of this AD.

(3) Within 100 days after the effective date of this AD.

Repetitive Detailed Inspections

(g) Perform a detailed inspection for cracking in the forward lug of the support rib 5 fitting of the left- and right-hand MLG at the time specified in paragraph (g)(1) or (g)(2) of this AD, as applicable, and repair any cracking before further flight, according to a method approved by either the Manager, International Branch, ANM–116; or the DGAC (or its delegated agent). Accomplishing the actions specified in the Airbus A318/A319/A320/A321 Non-destructive Testing Manual, Chapter 51–90–00, revision dated February 2003, is one approved method for performing the detailed inspection. Repeat the inspection thereafter at intervals not to exceed 750 flight cycles, 600 flight hours, or 100 days, whichever occurs earliest.

(1) For Model A319 and A320 series airplanes having serial numbers 537 through 625 inclusive: Do the detailed inspection within 100 days after the effective date of this AD or at the earliest of the times specified in paragraphs (g)(1)(i), (g)(1)(ii), and (g)(1)(iii) of this AD, whichever is later.

(i) Within 750 flight cycles after accomplishing the ultrasonic inspection.

(ii) Within 600 flight hours after accomplishing the ultrasonic inspection.

(iii) Within 100 days after accomplishing the ultrasonic inspection.

(2) For all other airplanes: Do the detailed inspection at the earliest of the times specified in paragraphs (g)(2)(i), (g)(2)(ii), and (g)(2)(iii) of this AD.

(i) Within 750 flight cycles after the effective date of this AD.

(ii) Within 600 flight hours after the effective date of this AD.

(iii) Within 100 days after the effective date of this AD.

Note 1: For the purposes of this AD, a detailed inspection is: ''An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirror, magnifying lenses, etc., may be necessary. Surface cleaning and elaborate procedures may be required.''

Optional Terminating Action

(h) Modification of the lugs of the support rib 5 fitting of the left- and right-hand MLG and accomplishment of all related investigative actions and all applicable corrective actions in accordance with Airbus Service Bulletin A320–57–1118, dated September 5, 2002; or Revision 01, dated August 28, 2003; constitutes compliance with the requirements of this AD.

(i) Repair of the forward lugs of the support rib 5 fitting of the left- and right-hand MLG in accordance with Airbus A319 Structural Repair Manual, Chapter 5.C., 57–26–13: Airbus A320 Structural Repair Manual, Chapter 5.D., 57–26–13; and Airbus A321 Structural Repair Manual, Chapter 5.D., all revisions dated November 1, 2004, constitutes compliance with the requirements of this AD.

Alternative Methods of Compliance (AMOCs)

(j) The Manager, International Branch, ANM–116, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

Related Information

(k) French airworthiness directive F–2005–035, dated March 2, 2005, also addresses the subject of this AD.

Material Incorporated by Reference

(l) You must use Airbus Service Bulletin A320–57A1136, dated January 26, 2005, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approves the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To get copies of the service information, contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. To view the AD docket, go to the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Nassif Building, Washington, DC. To review copies of the service information, go to the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on June 6, 2005.

Michael J. Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–11707 Filed 6–14–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–21240; Directorate Identifier 2005–NM–104–AD; Amendment 39–14130; AD 2005–12–14]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767–200, –300, and –400ER Series Airplanes Equipped With Door-Mounted Escape Slides

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

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Boeing Model 767–200, –300, and –400ER series airplanes. This AD requires an inspection to determine if the door-mounted escape slide/rafts have certain part numbers. For those door-mounted escape slide/rafts having certain part numbers, this AD requires an inspection for excessive tension of the firing cable, and procedures for providing slack in the firing cable or rerouting the firing cable if necessary. This AD is prompted by reports of uncommanded inflation inside the airplane of a door-mounted escape slide/raft located in the passenger compartment. We are issuing this AD to prevent injury to maintenance personnel, passengers, and crew during otherwise normal operating conditions and to prevent interference with evacuation of the airplane during an emergency, due to uncommanded inflation of a door-mounted escape slide/raft.

DATES: Effective June 30, 2005.

The incorporation by reference of certain publications listed in the AD is

approved by the Director of the Federal Register as of June 30, 2005.

We must receive comments on this AD by August 15, 2005.

ADDRESSES: Use one of the following addresses to submit comments on this AD.

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street SW., Nassif Building, room PL–401, Washington, DC 20590.
- Fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this AD, contact Boeing Commercial Airplanes, PO Box 3707, Seattle, Washington 98124–2207; or Goodrich Aircraft Interior Products, 3414 South 5th Street, Phoenix, Arizona 85040, as applicable.

You can examine the contents of this AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, on the plaza level of the Nassif Building, Washington, DC. This docket number is FAA–2005–21240; the directorate identifier for this docket is 2005–NM–104–AD.

Examining the Dockets

You can examine the AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the Docket Management System (DMS) receives them.

FOR FURTHER INFORMATION CONTACT: Susan Rosanske, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6448; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION: We have received a report indicating that three cases of uncommanded inflation of door-mounted escape slide/rafts occurred on Boeing Model 767–300 series airplanes. In one case, the uncommanded inflation of the door-mounted escape slide/raft resulted in injury to a member of the cabin crew. In the other two incidents, damage occurred to the lavatory, ceiling panels, door bustles, and the sidewalls. Inspections by the airplane manufacturer and the escape slide/raft supplier of the factory packs and overhauled packs revealed variability in the slack/tension condition of the firing cable of the slide/rafts. The slide/rafts are designed with slack in the firing cable. Investigation revealed that a ''tight'' (excessive tension) firing cable, in combination with changes that occur in the pack as the result of the in-service environment, could result in the tension on the firing cable increasing and activating the regulator valve. This condition, if not corrected, could result in injury to maintenance personnel, passengers, and crew during otherwise normal operating conditions and could result in interference with evacuation of the airplane during an emergency, due to uncommanded inflation inside the airplane of a door-mounted escape slide/raft.

Relevant Service Information

We have reviewed Boeing Alert Service Bulletin (ASB) 767–25A0390, dated May 13, 2005. The ASB describes procedures for removing the cover (bustle) of the door-mounted escape slides/rafts, and performing a tension check to determine if there is excessive tension of the firing cable of the escape slides/rafts. Additionally, the ASB describes procedures for removing excessive tension of the firing cable by providing necessary slack in the firing cable, or removing the slide and rerouting the firing cable if necessary. The ASB also specifies that a general visual inspection or a records check may be accomplished to determine if certain Goodrich door-mounted escape slide/rafts are installed.

The ASB refers to Goodrich Alert Service Bulletin 5A3294/5A3295–25A356, dated May 11, 2005, as an additional source of service information.

Goodrich has also issued the following packing instructions for the slide/rafts: Goodrich Packing Instructions, Evacuation Slide/Raft, Document 501636, Revision G, dated May 16, 2005; Goodrich Packing Instructions, Evacuation Slide/Raft, LH, Document 501637, Revision E, dated May 16, 2005; and Goodrich Packing Instructions, Evacuation Slide/Raft, RH, Document 501638, Revision D, dated May 16, 2005.

FAA's Determination and Requirements of This AD

The unsafe condition described previously is likely to exist or develop on other airplanes of the same type design. Therefore, we are issuing this AD to prevent injury to maintenance personnel, passengers, and crew during otherwise normal operating conditions and to prevent interference with evacuation of the airplane during an emergency, due to uncommanded inflation of a door-mounted escape slide/raft. This AD requires accomplishing the actions specified in the service information described previously.

Interim Action

This is considered to be interim action. The manufacturer has advised that it currently is developing a modification that will address the unsafe condition addressed by this AD. Once this modification is developed, approved, and available, we may consider additional rulemaking.

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD; therefore, providing notice and opportunity for public comment before the AD is issued is impracticable, and good cause exists to make this AD effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements that affect flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any relevant written data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES.** Include ''Docket No. FAA–2005–21240; Directorate Identifier 2005–NM–104–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the AD. We will consider all comments received by the closing date and may amend the AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this AD. Using the search function of our docket web site, anyone can find and read the comments

in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You can review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you can visit http://dms.dot.gov.

Authority for This Rulemaking

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

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

Regulatory Findings

We have determined that 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 the regulation:

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this AD. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2005–12–14 Boeing: Amendment 39–14130. Docket No. FAA–2005–21240; Directorate Identifier 2005–NM–104–AD.

Effective Date

(a) This AD becomes effective June 30, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 767–200, –300, and –400ER series airplanes; certificated in any category; equipped with door-mounted escape slide/rafts.

Unsafe Condition

(d) This AD was prompted by reports of uncommanded inflation inside the airplane of a door-mounted escape slide/raft located in the passenger compartment. The FAA is issuing this AD to prevent injury to maintenance personnel, passengers, and crew during otherwise normal operating conditions and to prevent interference with evacuation of the airplane during an emergency, due to uncommanded inflation of the airplane of a door-mounted escape slide/raft.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Inspection for Part Numbers (P/Ns)

(f) Within 30 days after the effective date of this AD, accomplish the actions in either paragraph (f)(1) or (f)(2) of this AD.

(1) Perform a one-time inspection to determine if any Goodrich door-mounted escape slide/raft having P/N 5A3294–1, 5A3294–2, 5A3295–1, or 5A3295–3 is installed. If no slide/raft having any of those P/Ns is installed, no further action is required by this paragraph, except for the requirements of paragraph (j) of this AD.

(2) Perform a one-time check of the airplane maintenance records to determine if any Goodrich door-mounted escape slide/raft having P/N 5A3294–1, 5A3294–2, 5A3295–1, or 5A3295–3 is installed. If it can be conclusively determined from the airplane maintenance records that no slide/raft having any of those P/Ns is installed, no further action is required by this AD, except for the requirements of paragraph (j) of this AD.

Inspection for Excessive Tension on the Firing Cable

(g) If any door-mounted escape slide/raft with any P/N specified in paragraph (f) of this AD is installed: Within 30 days after the effective date of this AD, perform a tension check on the firing cable of the slide/raft, in accordance with Boeing Alert Service Bulletin (ASB) 767–25A0390, dated May 13, 2005. If no excessive tension is detected, no further action is required by this AD, except for the requirements of paragraph (j) of this AD.

Note 1: Boeing ASB 767–25A0390, dated May 13, 2005, references Goodrich ASB 5A3294/5A3295–25A356, dated May 11, 2005, as an additional source of service information.

Corrective Action for Excessive Tension on the Firing Cable

(h) If any excessive tension of the firing cable is detected, before further flight, do the applicable corrective actions; in accordance with the Boeing ASB 767–25A0390, dated May 13, 2005.

Previous Accomplishment

(i) Inspections of the firing cables for excessive tension in accordance with Boeing ASB 767–25A0390, dated May 13, 2005, that were accomplished before the effective date of this AD are acceptable for compliance with the requirements of paragraph (g) of this AD, provided that any applicable corrective was completed.

Parts Installation

(j) As of the effective date of this AD, no person may install on any airplane any Goodrich door-mounted escape slide/raft having P/N 5A3294–1, 5A3294–2, 5A3295–1, or 5A3295–3, unless the tension of the firing cable has been checked and the applicable corrective action completed in accordance with Boeing ASB 767–25A0390, dated May 13, 2005, or the escape slide/raft has been repacked in accordance with Goodrich Packing Instructions, Evacuation Slide/Raft, Document 501636, Revision G, dated May 16, 2005; Goodrich Packing Instructions, Evacuation Slide/Raft, LH, Document 501637, Revision E, dated May 16, 2005; or Goodrich Packing Instructions, Evacuation Slide/Raft, RH, Document 501638, Revision D, dated May 16, 2005; as applicable.

Alternative Methods of Compliance (AMOCs)

(k) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

Material Incorporated by Reference

(l) You must use Boeing ASB 767–25A0390, dated May 13, 2005, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approves the incorporation by reference of these documents in accordance with 5 U.S.C.

552(a) and 1 CFR part 51. To get copies of the service information, contact Boeing Commercial Airplanes, PO Box 3707, Seattle, Washington 98124–2207; or Goodrich Aircraft Interior Products, 3414 South 5th Street, Phoenix, Arizona 85040, as applicable. To view the AD docket, go to the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Nassif Building, Washington, DC. To review copies of the service information, go to the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

Issued in Renton, Washington, on June 7, 2005.

Michael J. Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–11696 Filed 6–14–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20860; Directorate Identifier 2005–NM–043–AD; Amendment 39–14131; AD 2005–12–15]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model DHC–8–400 Series Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Bombardier Model DHC–8–400 series airplanes. This AD requires revising the Airworthiness Limitation section of the Instructions for Continued Airworthiness of the Dash 8 400 Series (Bombardier) Maintenance Requirements Manual to reduce the life limits of the main landing gear (MLG) orifice support tube, upper bearing, and piston plug; and to reduce the threshold for initiating repetitive detailed inspections for cracking of the engine isolator brackets. This AD is prompted by the discovery of fatigue failures, during type certification fatigue testing, at the engine isolator bracket and at the orifice support tube, upper bearing, and piston plug in the shock strut assembly of the MLG, which are principal structural elements. We are issuing this AD to prevent the development of cracks in these principal structural elements, which could reduce the structural integrity of the engine installation and the MLG. Reduced structural integrity of the engine installation could result in separation of the engine from the airplane, and reduced structural integrity of the MLG could result in collapse of the MLG.

DATES: This AD becomes effective July 20, 2005.

The incorporation by reference of certain publications listed in the AD is approved by the Director of the Federal Register as of July 20, 2005.

ADDRESSES: For service information identified in this AD, contact Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada.

Docket: The AD docket contains the proposed AD, comments, and any final disposition. You can examine the AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Washington, DC. This docket number is FAA–2005–20860; the directorate identifier for this docket is 2005–NM–043–AD.

FOR FURTHER INFORMATION CONTACT: George Duckett, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7325; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 with an AD for certain Bombardier Model DHC–8–400 series airplanes. That action, published in the **Federal Register** on April 6, 2005 (70 FR 17354), proposed to require revising the Airworthiness Limitation section of the Instructions for Continued Airworthiness of the Dash 8 400 Series (Bombardier) Maintenance Requirements Manual to reduce the life limits of the main landing gear (MLG) orifice support tube, upper bearing, and piston plug; and to reduce the threshold for initiating repetitive detailed inspections for cracking of the engine isolator brackets.

Explanation of Change to Applicability

We have revised the applicability of the proposed AD to identify model designations as published in the most recent type certificate data sheet for the affected models.

Comments

We provided the public the opportunity to participate in the development of this AD. No comments have been submitted on the proposed AD or on the determination of the cost to the public.

Conclusion

We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD with the change described previously. We have determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Costs of Compliance

There are about 93 airplanes of the affected design in the worldwide fleet. This AD will affect about 21 airplanes of U.S. registry. The actions will take about 1 work hour per airplane, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of the AD for U.S. operators is $1,365, or $65 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify that this AD:

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this AD. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2005–12–15 Bombardier, Inc. (Formerly de Havilland, Inc.): Amendment 39–14131. Docket No. FAA–2005–20860; Directorate Identifier 2005–NM–043–AD.

Effective Date

(a) This AD becomes effective July 20, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Bombardier Model DHC–8–400 series airplanes, certificated in any category; serial numbers 4001, and 4003 through 4094 inclusive.

Note 1: This AD requires revision to a certain operator maintenance document to include a new replacement time. Compliance with this replacement time is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by this replacement time, the operator may not be able to accomplish the replacement described in the revision. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (g) of this AD. The request should include a description of changes to the required replacement time that will ensure the continued damage tolerance of the affected structure. The FAA has provided guidance for this determination in Advisory Circular (AC) 25–1529.

Unsafe Condition

(d) This AD was prompted by the discovery of fatigue failures, during type certification fatigue testing, at the engine isolator bracket and at the orifice support tube, upper bearing, and piston plug in the shock strut assembly of the main landing gear (MLG), which are principal structural elements. We are issuing this AD to prevent the development of cracks in these principal structural elements, which could reduce the structural integrity of the engine installation and MLG. Reduced structural integrity of the engine installation could result in separation of the engine from the airplane, and reduced structural integrity of the MLG could result in collapse of the MLG.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Revisions to Airworthiness Limitation (AWL) Section

(f) Within 30 days after the effective date of this AD, revise the AWL section of the Instructions for Continued Airworthiness of the Dash 8 400 Series (Bombardier) Maintenance Requirements Manual, PSM 1–84–7, by doing the actions specified in paragraphs (f)(1) and (f)(2) of this AD.

(1) Reduce the life limits of the MLG orifice support tube having part number (P/N) 46117–1, upper bearing having P/N 46114–1, and piston plug having P/N 46137–1, by inserting Dash 8 400 Series (Bombardier) Temporary Revision ALI–28, dated December 11, 2003, into the AWL section. Thereafter, except as provided in paragraph (g) of this AD, no alternative life limits may be approved for the MLG orifice support tube, upper bearing, or piston plug.

(2) Incorporate structural inspection tasks 712001F102 and 712003F102 to reduce the threshold for initiating repetitive detailed inspections for cracking of the engine isolator brackets by inserting Dash 8 400 Series (Bombardier) Temporary Revision ALI–37, dated March 30, 2004, into the AWL section. Thereafter, except as provided in paragraph (g) of this AD, no alternative structural inspection threshold may be approved.

Alternative Methods of Compliance (AMOCs)

(g) The Manager, New York Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

Related Information

(h) Canadian airworthiness directive CF–2004–19, dated September 21, 2004, also addresses the subject of this AD.

Material Incorporated by Reference

(i) You must use Dash 8 400 Series (Bombardier) Temporary Revision ALI–28, dated December 11, 2003; and Dash 8 400 Series (Bombardier) Temporary Revision ALI–37, dated March 30, 2004; to the Dash 8 400 Series (Bombardier) Maintenance Requirements Manual, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approves the incorporation by reference of these documents in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To get copies of the service information, contact Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. To view the AD docket, go to the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Nassif Building, Washington, DC. To review copies of the service information, go to the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on June 7, 2005.

Michael J. Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–11695 Filed 6–14–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20868; Directorate Identifier 2004–NM–162–AD; Amendment 39–14132; AD 2005–12–16]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F.28 Mark 0100 Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Fokker Model F.28 Mark 0100 airplanes. This AD requires an inspection to determine the part number of the passenger service unit (PSU) panels for the PSU modification status, and corrective actions if applicable. This AD is prompted by reported incidents of smoke in the passenger compartment during flight. One of those incidents also included a burning smell and consequently led to emergency evacuation of the airplane. We are issuing this AD to prevent overheating of the PSU panel due to moisture ingress, which could result in smoke or fire in the passenger cabin.

DATES: This AD becomes effective July 20, 2005.

The incorporation by reference of a certain publication listed in the AD is

approved by the Director of the Federal Register as of July 20, 2005.

ADDRESSES: For service information identified in this AD, contact Fokker Services B.V., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands.

Docket: The AD docket contains the proposed AD, comments, and any final disposition. You can examine the AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Washington, DC. This docket number is FAA–2005–20868; the directorate identifier for this docket is 2004–NM–162–AD.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1137; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 with an AD for all Fokker Model F.28 Mark 0100 airplanes. That action, published in the **Federal Register** on April 6, 2005 (70 FR 17375), proposed to require an inspection to determine the part number of the passenger service unit (PSU) panels for the PSU modification status, and corrective actions if applicable.

Explanation of Change to Applicability

We have revised the applicability of the proposed AD to identify the model designation as published in the most recent type certificate data sheet for the affected model.

Comments

We provided the public the opportunity to participate in the development of this AD. No comments have been submitted on the proposed AD or on the determination of the cost to the public.

Conclusion

We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD with the change described previously. We have determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Costs of Compliance

This AD will affect about 61 airplanes of U.S. registry. The actions will take about 5 work hours per airplane, at an average labor rate of $65 per work hour. Required parts will cost about $6 per airplane. Based on these figures, the estimated cost of the AD for U.S. operators is $20,191, or $331 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify that this AD:

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this AD. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2005–12–16 Fokker Services B.V.: Amendment 39–14132. Docket No. FAA–2005–20868; Directorate Identifier 2004–NM–162–AD.

Effective Date

(a) This AD becomes effective July 20, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Fokker Model F.28 Mark 0100 airplanes, certificated in any category.

Unsafe Condition

(d) This AD was prompted by reported incidents of smoke in the passenger compartment during flight. One of those incidents also included a burning smell and consequently led to emergency evacuation of the airplane. We are issuing this AD to prevent overheating of the passenger service unit (PSU) panel due to moisture ingress, which could result in smoke or fire in the passenger cabin.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Inspection and Corrective Actions if Applicable

(f) Within 36 months after the effective date of this AD, inspect to determine if Grimes Aerospace PSU panels having part number (P/N) 10–1178–( ) or 10–1571–(( ) are installed and the PSU modification status if applicable, and do any corrective actions if applicable, by doing all of the actions specified in the Accomplishment Instructions of Fokker Service Bulletin SBF100–25–097, dated December 30, 2003.

Note 1: Fokker Service Bulletin SBF100–25–097, dated December 30, 2003, refers to Grimes Aerospace Service Bulletin 10–1178–33–0040 (for PSU panel P/N 10–1178–(( )), Revision 1, dated March 25, 1996; and Service Bulletin 10–1571–33–0041 (for PSU panel P/N 10–1571–(( )), dated October 15, 1993, as additional sources of service information for modifying the PSU panel.

Parts Installation

(g) As of the effective date of this AD, no person may install a PSU panel, P/Ns 10–1178–(( ) and 10–1571–(( ), on any airplane, unless it has been inspected and any applicable corrective actions have been done in accordance with paragraph (f) of this AD.

Alternative Methods of Compliance (AMOCs)

(h) The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

Related Information

(i) Dutch airworthiness directive 2004–022, dated February 27, 2004, also addresses the subject of this AD.

Material Incorporated by Reference

(j) You must use Fokker Service Bulletin SBF100–25–097, dated December 30, 2003, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approves the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To get copies of the service information, contact Fokker Services B.V., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands. To view the AD docket, go to the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Nassif Building, Washington, DC. To review copies of the service information, go to the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on June 7, 2005.

Michael J. Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–11694 Filed 6–14–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19203; Directorate Identifier 2004–NM–109–AD; Amendment 39–14127; AD 2005–12–11]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 757–200 Series Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Boeing Model 757–200 series airplanes. This AD requires modifying the frequency converters located in the closet assembly in the passenger compartment, and making various wiring changes in and between the closet assembly and forward purser work station. This AD also requires modifying the in-flight entertainment system prior to or concurrently with the modification of the frequency converters. This AD is prompted by a certification review that revealed a frequency converter failure mode not identified in the original system design. We are issuing this AD to prevent a short circuit between the frequency converter output and the distribution circuit breakers, which could result in overheating and failure of adjacent wiring and consequent adverse effects on other systems sharing the affected wire bundle.

DATES: This AD becomes effective July 20, 2005.

The incorporation by reference of certain publications listed in the AD is approved by the Director of the Federal Register as of July 20, 2005.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207. You can examine this information at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Docket: The AD docket contains the proposed AD, comments, and any final disposition. You can examine the AD docket on the Internet at *http://dms.dot.gov,* or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Washington, DC. This docket number is FAA–2004–19203; the directorate identifier for this docket is 2004–NM–109–AD.

FOR FURTHER INFORMATION CONTACT: Binh Tran, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6485; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 with an AD for certain Boeing Model 757–200 series airplanes. That action, published in the **Federal Register** on September 29, 2004 (69 FR 58109), proposed to require modifying the frequency converters located in the closet assembly in the passenger compartment, and making various wiring changes in and between the closet assembly and forward purser work station. That action also proposed to require modifying the in-flight entertainment system prior to or concurrently with the modification of the frequency converters.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comments that have been submitted on the proposed AD from a single commenter.

Request To Clarify Discussion Section

The commenter states that the last sentence in the second paragraph of the Discussion section of the proposed AD is unclear as written, and asks that it be clarified. The commenter notes that the sentence specifies ''Therefore, all of these models may be subject to the same unsafe condition.'' The commenter states that the sentence should be changed to read ''Therefore, 757–200 series airplanes with frequency converters may have an unsafe condition.''

We acknowledge the commenter's request for clarification of the Discussion section of the proposed AD; however, that section is not restated in this final rule. In addition, the certification review specified in the Discussion section of the proposed AD is of a Model 737–700C series airplane, and the second paragraph merely clarifies that the frequency converters on certain Model 757–200 series airplanes are identical to those on the affected Model 737–700C series airplanes.

Request To Clarify Number of Airplanes in Costs of Compliance Section

The commenter states that the description for the number of airplanes specified in the first paragraph of the Costs of Compliance section of the proposed AD is unclear as written, and asks for clarification. The commenter notes that the first paragraph specifies ''This proposed AD would affect about 4 airplanes of U.S. registry and 4 airplanes worldwide.'' The commenter states that the paragraph should be changed to read ''This proposed AD

would affect 4 airplanes worldwide. All four are of U.S. registry.''

We agree with the commenter and have changed the subject paragraph for clarification.

Conclusion

We have carefully reviewed the available data, including the comments that have been submitted, and determined that air safety and the public interest require adopting the AD as proposed.

Costs of Compliance

This AD affects 4 airplanes worldwide; all of the airplanes are of U.S. registry.

For airplanes listed in Group 1 of Service Bulletin 757–25–0255: The modification takes about 97 work hours (including access, close-up, and test), at an average labor rate of $65 per work hour. Required parts will cost about $10,710 per airplane. Based on these figures, the estimated cost of the modification for U.S. operators is $17,015 per airplane.

For airplanes listed in Group 2 of Service Bulletin 757–25–0255: The modification takes about 105 work hours (including access, close-up, and test), at an average labor rate of $65 per work hour. Required parts will cost about $10,956 per airplane. Based on these figures, the estimated cost of the modification for U.S. operators is $17,781 per airplane.

For airplanes listed in Group 1 of Service Bulletin 757–24–0093: The concurrent modification, if not previously done, takes about 49 work hours, at an average labor rate of $65 per work hour. Required parts will cost about $5,315 per airplane. Based on these figures, the estimated cost of the modification for U.S. operators is $8,500 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify that this AD:

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this AD. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2005–12–11 Boeing: Amendment 39–14127. Docket No. FAA–2004–19203; Directorate Identifier 2004–NM–109–AD.

Effective Date

(a) This AD becomes effective July 20, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Model 757–200 series airplanes, certificated in any category, as listed in Boeing Service Bulletin 757–25–0255, dated December 11, 2003.

Unsafe Condition

(d) This AD was prompted by a certification review that revealed a frequency converter failure mode not identified in the original system design. We are issuing this AD to prevent a short circuit between the frequency converter output and the distribution circuit breakers, which could result in overheating and failure of adjacent wiring and consequent degraded operation of airplane systems.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Modification

(f) For all airplanes: Within 18 months after the effective date of this AD modify the frequency converters located in the closet assembly in the passenger compartment by doing all the applicable actions in accordance with the Accomplishment Instructions of Boeing Service Bulletin 757–25–0255, dated December 11, 2003.

Prior or Concurrent Modification

(g) For Group 1 airplanes identified in Boeing Service Bulletin 757–24–0093, dated August 14, 2003: Before or concurrent with accomplishment of paragraph (f) of this AD, modify the in-flight entertainment system by doing all the applicable actions in accordance with Boeing Service Bulletin 757–24–0093, dated August 14, 2003.

Part Installation

(h) As of the effective date of this AD, no person may install a frequency converter having part number 1–002–0102–0730 on any airplane unless that frequency converter has been modified as required by paragraph (f) of this AD.

Alternative Methods of Compliance (AMOCs)

(i) The Manager, Seattle Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

Material Incorporated by Reference

(j) You must use Boeing Service Bulletin 757–25–0255, dated December 11, 2003; and Boeing Service Bulletin 757–24–0093, dated August 14, 2003; as applicable; to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approves the incorporation by reference of these documents in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. For copies of the service information, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207. For information on the availability of this material at the National Archives and Records Administration (NARA), call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.* You may view the AD docket at the Docket Management Facility, U.S. Department of Transportation, 400

Seventh Street SW., room PL–401, Nassif Building, Washington, DC.

Issued in Renton, Washington, on May 27, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–11712 Filed 6–14–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19082; Directorate Identifier 2004–NM–79–AD; Amendment 39–14126; AD 2005–12–10]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–200F and –400 Series Airplanes; Model 767–400ER Series Airplanes; and Model 777 Series Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Boeing Model 747–200F and –400 series airplanes; Model 767–400ER series airplanes; and Model 777 series airplanes. This AD requires replacing the frequency converter(s) used to supply electrical power for utility outlets (for the galley, medical equipment, or personal computers) with modified frequency converter(s). This AD also requires any specified action and related concurrent actions, as necessary. This AD is prompted by a report that a hard short condition between the frequency converter's output and its downstream circuit breakers will produce a continuous current that could cause the undersized output wiring to overheat. We are issuing this AD to prevent the overheating of the frequency converter's undersized output wiring, which could lead to the failure of a wire bundle, and consequent adverse effects on other systems sharing the affected wire bundle.

DATES: This AD becomes effective July 20, 2005.

The incorporation by reference of certain publications listed in the AD is approved by the Director of the Federal Register as of July 20, 2005.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207.

Docket: The AD docket contains the proposed AD, comments, and any final disposition. You can examine the AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Washington, DC. This docket number is FAA–2004–19082; the directorate identifier for this docket is 2004–NM–79–AD.

FOR FURTHER INFORMATION CONTACT: Binh Tran, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6485; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 with an AD for certain Boeing Model 747–200F and –400 series airplanes; Model 767–400ER series airplanes; and Model 777 series airplanes. That action, published in the **Federal Register** on September 13, 2004 (69 FR 55120), proposed to require replacing the frequency converter(s) used to supply power for utility outlets (for the galley, medical equipment, or personal computers) with modified frequency converter(s); and any other specified action and related concurrent actions, as necessary.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comments that have been submitted on the proposed AD.

Request To Revise Applicability To List Frequency Converters

One commenter asks "* * * why not write the AD against the part instead of the aircraft?" and suggests that listing the frequency converter by manufacturer and part number may allow detection of similar problems on other aircraft and possible parts manufacturer approved (PMA) alternative units.

We disagree with revising the applicability. PMA parts frequently have a part numbering scheme different from that of the original manufacturer. For this reason, writing the AD against the part number may not accurately identify the PMA parts. Should we become aware of PMA parts that have similar characteristics as those addressed in this AD, we would consider further rulemaking.

The FAA's practice regarding unsafe conditions that result from the installation of a particular part in specific makes and models of airplanes is to issue an AD that applies to the affected airplane models. In doing so, U.S. operators of those airplanes will be notified directly of the unsafe condition and the action required to correct it. While we assume that operators can identify the airplane models they operate, they may not be aware of specific items installed on those airplanes. Therefore, specifying the airplane models in the applicability as the subject of the AD prevents an operator's "unknowing failure to comply" with the AD. We have not changed the final rule regarding this issue.

Request To Add Airplane Models to the Applicability of the AD

One commenter requests that certain Boeing Model 767–300 series airplanes be added to the applicability of this AD. Boeing has published Boeing Service Bulletin 767–25–0334, Revision 1, dated June 19, 2003, which addresses the same unsafe condition on some Model 767–300 series airplanes that were also delivered with affected frequency converters.

We agree that the Model 767–300 series airplanes are affected by the unsafe condition. We inadvertently omitted the service bulletin in the proposed AD. However, we disagree with revising the applicability of this AD, because we are considering a separate rulemaking action for the Model 767–300 series airplanes. A notice of proposed rulemaking for the Model 767–300 series airplanes was published in the **Federal Register** on March 17, 2005 (70 FR 12986). If we revise the applicability of this AD to add Model 767–300 series airplanes, we would need to reissue this AD as a revised notice. In light of the time that would be needed to reissue the proposed AD, and in consideration of the amount of time that has already elapsed since we issued the original notice, we have determined that further delay of this AD is not appropriate.

Request for Change of Terminology

One commenter requests that the phrase "continuous circuit" in the Summary section of the proposed AD be changed to "continuous current." The commenter provides no reason/justification.

We agree that the word should be changed, because the word ''circuit'' is incorrectly used in the phrase. We have revised the final rule to use the word ''current.''

Request To Revise the Description of the Unsafe Condition in the Discussion Section

One commenter requests that we change ''55 amps'' to ''180% rated current'' in the Discussion section of the proposed AD. The commenter states that the value of 55 amps is accurate only for installations that use a specific output (a 3.5 KVA, 115VAC rated output). For the series of converters used on Boeing airplanes, a hard short circuit fault on the output of the converter will produce a fault current that is approximately 180% of the nominal rated output current. Since Boeing installations use multiple converter part numbers with different rated outputs, the short circuit fault current will vary depending on the converter used.

We partially agree with the commenter's request. The hard short circuit fault condition will produce a continuous output current of approximately 170% to 200% of nominal current. However, since that section of the preamble does not reappear in the final rule, no change to the final rule is necessary regarding this issue.

Correction in Estimated Costs for Cost of Compliance

We provided a cost estimate in the proposed AD that used the cost of replacing converters under warranty, not the cost of replacing parts without a warranty. The cost impact information provided in the proposed AD is correct for parts that are still under warranty. However, we strive to provide a cost estimate that uses cost information for parts not under warranty. The cost of a replacement converter without a warranty is $1,800. We have revised the cost impact information in this final rule to include the revised part cost.

Conclusion

We have carefully reviewed the available data, including the comments that have been submitted, and determined that air safety and the public interest require adopting the AD with the changes described previously. We have determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Costs of Compliance

This AD will affect about 147 airplanes worldwide. The following table provides the estimated costs for U.S. operators to comply with this AD.

ESTIMATED COSTS

Boeing model	Work hours hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.–registered airplanes	Fleet cost
747–200F and –400 series airplanes.	5 per converter (1 converter on each airplane).	$65	$1,800	$2,125	0	$0
	5 per converter (2 converters on each airplane).	65	3,600	4,250	0	0
767–400ER series airplanes	2 per airplane	65	3,600	3,730	21	78,330
777 series airplanes	4 per airplane	65	7,200	7,460	8	59,680
Additional concurrent action for 777 series airplanes.	1 per airplane	65	1,800	1,865	6	11,190

Currently, there are no affected Model 747–200F or –400 series airplanes on the U.S. Register. However, an affected airplane that is imported and placed on the U.S. Register in the future would be subject to the costs specified above for those airplanes.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify that this AD:

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this AD. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2005–12–10 Boeing: Amendment 39–14126. Docket No. FAA–2004–19082; Directorate Identifier 2004–NM–79–AD.

Effective Date

(a) This AD becomes effective July 20, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to the airplanes listed in Table 1 of this AD, certificated in any category:

TABLE 1.—APPLICABILITY

Boeing model—	As listed in Boeing service bulletin—
747–200F and –400 series airplanes	747–25–3313, Revision 1, dated May 15, 2003.
767–400ER series airplanes	767–25–0335, dated November 7, 2002.
777 series airplanes	777–25–0210, dated October 17, 2002.

Unsafe Condition

(d) This AD was prompted by a report that a hard short condition between the frequency converter's output and its downstream circuit breakers will produce a continuous current, that could cause the undersized output wiring to overheat. We are issuing this AD to prevent the overheating of the frequency converter's output wiring, which could lead to the failure of a wire bundle, and consequent adverse effects on other systems sharing the affected wire bundle.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Replacement

(f) Within 18 months after the effective date of this AD, replace the frequency converter(s) used to supply electrical power to utility outlets (for the galley, medical equipment, or personal computers) with modified frequency converter(s); and do other applicable specified actions; by doing all of the actions in the Accomplishment Instructions of the applicable service bulletin listed in Table 2 of this AD.

TABLE 2.—APPLICABILITY SERVICE BULLETINS

For model—	Use Boeing service bulletin—
747–200F and –400 series airplanes	747–25–3313, Revision 1, dated May 15, 2003.
767–400ER series airplanes	767–25–0335, dated November 7, 2002.
777 series airplanes	777–25–0210, dated October 17, 2002.

Note 1: Boeing Service Bulletin 747–25–3313, Revision 1, dated May 15, 2003, refers to JAMCO Service Bulletin CAW74–25–1697, dated June 7, 2002, as an additional source of information for procedures to remove and install certain galley frequency converters.

Concurrent Service Bulletin

(g) For airplanes listed as Group 3 in the Effectivity of Boeing Service Bulletin 777–25–0210, dated October 17, 2002: Prior to or concurrently with the actions in Boeing Service Bulletin 777–25–0210, dated October 17, 2002, deactivate the galley frequency converter in accordance with the Accomplishment Instructions of Monogram Systems Service Bulletin 872869–25–2098, dated May 1, 2002.

Alternative Methods of Compliance (AMOCs)

(h) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

Material Incorporated by Reference

(i) You must use the service information that is specified in Table 3 of this AD to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approves the incorporation by reference of those documents in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To get copies of the service information, go to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207. To view the AD docket, go to the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Nassif Building, Washington, DC. To review copies of the service information, go to the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

TABLE 3.—MATERIAL INCORPORATED BY REFERENCE

Service bulletin	Revision level	Date
Boeing Service Bulletin 747–25–3313	1	May 15, 2003.
Boeing Service Bulletin 767–25–0335	Original	November 7, 2002.
Boeing Service Bulletin 777–25–0210	Original	October 17, 2002.
Monogram Systems Service Bulletin 872869–25–2098	Original	May 1, 2002.

Issued in Renton, Washington, on May 27, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–11711 Filed 6–14–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–20246; Airspace Docket No. 04–ASO–15]

RIN 2120–AA66

Establishment of Area Navigation Instrument Flight Rules Terminal Transition Routes (RITTR); Charlotte, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes four Area Navigation (RNAV) Instrument Flight Rules (IFR) Terminal Transition Routes (RITTR) in the Charlotte, NC, terminal area. RITTR's are low altitude Air Traffic Service (ATS) routes, based on RNAV, for use by aircraft having IFR-approved Global Positioning System (GPS)/Global Navigation Satellite System (GNSS) equipment. The purpose of RITTR is to expedite the handling of IFR overflight traffic through busy terminal airspace areas. The FAA is taking this action to enhance safety and the efficient use of the navigable airspace in the Charlotte, NC, terminal area.

DATES: Effective 0901 UTC, September 1, 2005.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace and Rules, Office of System Operations and Safety, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

On March 3, 2005, the FAA published in the **Federal Register** a notice of proposed rulemaking to establish four RITTR's in the Charlotte, NC, terminal area (70 FR 10346). Interested parties were invited to participate in this rulemaking effort by submitting written comments on this proposal to the FAA. Two comments were received in response to the NPRM. With the exception of editorial changes, this amendment is the same as that proposed in the notice.

Discussion of Comments

One commenter wrote in support of the proposal and suggested that, as more routes are developed at additional terminal areas, there will be a need for pilot training on this subject. The FAA is preparing information for publication in the Aeronautical Information Manual to explain RITTRs and their use by pilots.

A second commenter also wrote in support of the proposal but added that the FAA should publish guidance to allow aircraft operating under visual flight rules (VFR) to use these routes when transitioning through terminal airspace. The FAA does not agree and does not plan to formulate such guidance at this time. RITTRs were developed specifically to provide routing for GNSS-equipped aircraft, that are operating on an IFR flight plan, to transition through busy terminal areas. The fixes/waypoints used to define the routes do not have associated visual landmarks for reference by VFR pilots when navigating through the area. There are a number of programs already in place to assist VFR pilots in either avoiding or transitioning through Class B airspace or other airspace areas, where needed. These programs include: the Charted VFR Flyway Planning Chart Program, the Terminal Area VFR Route Program, and the VFR Waypoint Chart Program. These flyways, routes and waypoints, when designated, are depicted on the appropriate VFR Terminal Area Charts. VFR aircraft desiring to transit Class B airspace must obtain air traffic control (ATC) clearance to operate in Class B airspace. ATC may approve or deny requests from VFR aircraft to operate in or through Class B airspace based on controller workload, operational limitations and traffic conditions. In this respect, pilots of a suitably equipped VFR aircraft could request transit through the area along a RITTR track, but the request would be subject to ATC approval as described above.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by establishing four RITTR's, designated T–200, T–201, T–202, and T–203, in the Charlotte, NC, terminal area. These routes will be depicted in blue on the appropriate IFR en route low altitude charts. RITTRs are low altitude RNAV routes designed to facilitate the expeditious movement of IFR overflight traffic around or through certain congested terminal airspace areas. The routes may be used by GNSS-equipped aircraft that are capable of filing flight plan equipment suffix ''/G.'' The FAA is taking this action to enhance safety and facilitate the more flexible and efficient use of the navigable airspace for en route IFR aircraft transitioning through the Charlotte Class B airspace area.

Low altitude Area Navigation Routes are published in paragraph 6011 of FAA Order 7400.9M dated August 30, 2004 and effective September 16, 2004, which is incorporated by reference in 14 CFR 71.1. The routes listed in this document will be published subsequently in the order.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by Reference, Navigation (air).

The Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9M, Airspace Designations and Reporting Points, dated August 30, 2004, and effective September 16, 2004, is amended as follows:

Paragraph 6011 Area Navigation Routes.

* * * * *

T–200 Foothills, GA to Florence, SC [New]

Foothills, GA (ODF), VORTAC
(lat. 34°41′45″ N., long. 83°17′52″ W.)
RICHE, WP
(lat. 34°41′54″ N., long. 80°59′23″ W.)
Florence, SC (FLO), VORTAC
(lat. 34°13′59″ N., long. 79°39′26″ W.)

* * * * *

T–201 Columbia, SC to JOTTA [New]

Columbia, SC (CAE), VORTAC
(lat. 33°51′26″ N., long. 81°03′14″ W.)
HUSTN, WP
(lat. 34°53′20″ N., long. 80°34′20″ W.)
LOCAS, WP
(lat. 35°12′05″ N., long. 80°26′45″ W.)
JOTTA, WP
(lat. 36°00′53″ N., long. 80°50′58″ W.)

* * * * *

T–202 RICHE to GANTS [New]

RICHE, WP
(lat. 34°41′54″ N., long. 80°59′23″ W.)
HUSTN, WP
(lat. 34°53′20″ N., long. 80°34′20″ W.)
GANTS, WP
(lat. 35°27′12″ N., long. 80°06′16″ W.)

* * * * *

T–203 Columbia, SC to Pulaski, VA [New]

Columbia, SC (CAE), VORTAC
(lat. 33°51′26″ N., long. 81°03′14″ W.)
LOCKS, WP
(lat. 34°55′40″ N., long. 81°17′37″ W.)
Barretts Mountain, NC (BZM), VOR/DME
(lat. 35°52′08″ N., long. 81°14′26″ W.)
Pulaski, VA (PSK), VORTAC
(lat. 37°05′16″ N., long. 80°42′46″ W.)

* * * * *

Issued in Washington, DC, on June 8, 2005.

Edith V. Parish,

Acting Manager, Airspace and Rules.

[FR Doc. 05–11760 Filed 6–14–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Docket No. FAA–2005–20616; Airspace Docket No. 05–ANM–04]

RIN 2120–AA66

Amendment to Restricted Area 2211 Blair Lakes; AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action raises the ceiling of Restricted Area 2211 (R–2211), Blair Lakes, AK, from the current 18,000 feet above mean sea level (MSL) to Flight Level (FL) 310. The expanded airspace is required to fulfill United States Air Force (USAF) training requirements. The current restricted airspace at Blair Lakes is too small to allow aircrew training in high altitude weapons delivery tactics. Specifically, the training requirements call for practicing the release of weapons from higher altitudes than are currently available within the existing restricted airspace.

DATES: Effective 0901 UTC, September 1, 2005.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules, Office of System Operations and Safety, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

On March 28, 2005, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend R–2211 at Blair Lakes, AK (70 FR 15606). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. With the exception of editorial changes, this amendment is the same as that proposed in the notice.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 73 to modify R–2211 by raising the ceiling from 18,000 feet MSL to FL 310. The current restricted airspace at Blair Lakes is too small to allow aircrew training in high altitude weapons delivery tactics. The purpose of the expansion of R–2211 is to accommodate high altitude, high angle weapons delivery training to fulfill USAF training requirements.

Section 73.22 of 14 CFR part 73 was published in the FAA Regulatory/Non-Regulatory Special Use Airspace Areas consolidation dated January 27, 2005. The restricted area listed in this document will be published subsequently in the consolidation.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with paragraph 311(i) FAA Order 1050.1, Polices and Procedures for Considering Environmental Impacts. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exists that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 73

Airspace, Prohibited areas, Restricted areas.

The Amendment

■ In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 73 as follows:

PART 73—SPECIAL USE AIRSPACE

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 73.22 [Amended]

■ 2. § 73.22 is amended as follows:

* * * * *

R–2211 Blair Lakes, AK [Amended]

Boundaries: Beginning at lat. 64°29′58″ N., long. 147°44′09″ W.; to lat. 64°19′58″ N., long. 147°19′09″ W.; to lat. 64°13′28″ N., long. 147°32′8″ W.; to lat. 64°22′28″ N., long. 147°58′09″ W.; to the point of beginning.

Time of designation: 0800 to 1800, local Monday through Friday, other times by NOTAM.

Designated altitude: Surface to FL310.

Controlling agency. FAA, Fairbanks Approach Control.

Using agency: U.S. Air Force, 354th Fighter Wing, Eielson AFB, AK.

* * * * *

Issued in Washington, DC, June 8, 2005.

Edith V. Parish,

Acting Manager, Airspace and Rules.

[FR Doc. 05–11761 Filed 6–14–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 375

[Docket No. RM05–20–000; Order No. 660]

Delegation of Authority to the Director of the Office of Markets, Tariff and Rates, and to the Director of External Affairs

Issued May 31, 2005.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Commission is amending its regulations to delegate to the Director of the Office of Markets, Tariffs and Rates the ability to refer to an Administrative Law Judge uncontested interim rate motions for natural gas rate decreases, pending Commission action on settlement agreements. Currently, the Director only has this authority in electric cases. This change is needed to facilitate more efficient processing of natural gas settlements, which will permit customers to receive the benefits of lower rates at an earlier time. The Commission also is revising its regulations to allow the Director of the Office of External Affairs to subdelegate responsibilities under the Freedom of Information Act. This will allow for more efficient processing of requests under that Act.

DATES: The rule will become effective June 15, 2005.

FOR FURTHER INFORMATION CONTACT: Wilbur Miller, Office of General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8953.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Pat Wood, III, Chairman; Nora Mead Brownell, Joseph T. Kelliher, and Suedeen G. Kelly.

Delegation of Authority to Director of External Affairs; Final Rule

1. This Final Rule amends 18 CFR 375.307(f) to add a new subparagraph (4). The new provision parallels 18 CFR 375.307(k)(4), which delegates to the Director of the Office of Markets, Tariffs and Rates the authority to assign to an Administrative Law Judge (ALJ), with the ALJ's assent, an uncontested interim electric rate motion calling for lower rates, pending the Commission's consideration of a settlement. This authority is needed in natural gas proceedings as well, in situations where the Commission receives an uncontested motion calling for an interim rate decrease in a proceeding that is already pending before an ALJ. This revision will allow for more efficient processing of settlements, which in turn will permit customers to receive the benefits of lower rates at an earlier time.

2. One further change is being made, to specify, in both the natural gas (new § 375.307(f)(4)) and electric (existing § 375.307(k)(4)) provisions, that the motion will be referred to the Chief ALJ. In some cases, a settlement may already have been certified by the time the interim motion is received. In such cases it will be necessary for the Chief ALJ to assign the matter to an ALJ.

3. This rule also permits the Director of the Office of External Affairs (Director), to subdelegate authority to carry out responsibilities under the Freedom of Information Act (FOIA). Under the Commission's regulations, the Director has the primary responsibility for handling FOIA requests, including the responsibility to release information under FOIA, rule upon the applicability of FOIA exemptions, and grant or deny requests for fee waivers. *See* 18 CFR 388.108, 388.110 (2004). The current regulations, however, do not expressly permit the Director to subdelegate that responsibility to other officials with the Office of External Affairs. *Id.*; 18 CFR 375.311 (2004). In most cases, the Commission allows officials to subdelegate authority delegated to them by the Commission. *See generally* 18 CFR part 375. This facilitates the efficient division of responsibilities within an office. Subdelegations must be made to a deputy, head of division, or comparable official. 18 CFR 375.301(b) (2004). To ensure efficiency in the handling of FOIA matters, the Commission is revising the Director's delegations, in Section 375.311, to permit subdelegation to a designee.

Information Collections Statement

4. The Office of Management and Budget's (OMB) regulations require that OMB approve certain information collection requirements imposed by agency rule. 5 CFR part 1320.

5. This Final Rule contains no information reporting requirements, and is not subject to OMB approval.

Environmental Analysis

6. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[1] Issuance of this Final Rule does not represent a major federal action having a significant adverse effect on the human environment under the Commission's regulations implementing the National Environmental Policy Act.[2] Part 380 of the Commission's regulations lists exemptions to the requirement that an Environmental Analysis or Environmental Impact Statement be done. Included is an exemption for procedural, ministerial or internal administrative actions. 18 CFR 380.4(1) and (5). This rulemaking is exempt under that provision.

Regulatory Flexibility Act Certification

7. The Regulatory Flexibility Act of 1980 (RFA)[3] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The Regulatory Flexibility Act of 1980 (RFA)[4] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. This final rule concerns a matter of internal agency procedure and the Commission therefore certifies that it will not have such an impact. An analysis under the RFA is not required.

Document Availability

8. 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 FERC's Home Page (*http://www.ferc.gov*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington DC 20426.

9. From FERC's Home Page on the Internet, this information is available in the Federal Energy Regulatory Records Information System (FERRIS). The full text of this document is available on FERRIS in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in FERRIS, type the docket number excluding the last three digits of this document in the docket number field.

10. User assistance is available for FERRIS and the FERC's Web site during

[1] Order No. 486, *Regulations Implementing the National Environmental Policy Act*, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. Preambles 1986–1990 ¶ 30,783 (1987).

[2] Order No. 486, 52 FR 47897 (Dec. 17, 1987); FERC Stats. & Regs. [Regulations Preambles 1986–1990] ¶ 30,783 (Dec. 10, 1984) (codified at 18 CFR part 380).

[3] 5 U.S.C. 601–612.

[4] 5 U.S.C. 601–612.

normal business hours from our Help line at (202) 502–8222 or the Public Reference Room at (202) 502–8371 Press 0, TTY (202) 502–8659. E-Mail the Public Reference Room at *public.referenceroom@ferc.gov*.

Effective Date

11. These regulations are effective immediately upon publication in the **Federal Register**. In accordance with 5 U.S.C. 553(d)(3), the Commission finds that good cause exists to make this Final Rule effective immediately. It concerns only a matter of internal operations and will not affect the rights of persons appearing before the Commission. There is therefore no reason to make it effective at a later time.

12. The provisions of 5 U.S.C. 801 regarding Congressional review of Final Rules do not apply to this Final Rule, because the rule concerns agency procedure and practice and will not substantially affect the rights of non-agency parties.

13. The Commission is issuing this as a final rule without a period for public comment. Under 5 U.S.C. 553(b), notice and comment procedures are unnecessary where a rulemaking concerns only agency procedure and practice, or where the agency finds that notice and comment is unnecessary. This rule concerns only matters of agency procedure and will not significantly affect regulated entities or the general public.

List of Subjects in 18 CFR Part 375

Authority delegations (Government agencies), Seals and insignia, Sunshine Act.

By the Commission.

Linda Mitry,

Deputy Secretary.

■ In consideration of the foregoing, the Commission amends part 375, chapter I, title 18, *Code of Federal Regulations*, as follows.

PART 375—THE COMMISSION

■ 1. The authority citation for part 375 continues to read as follows:

Authority: 5 U.S.C. 551–557; 15 U.S.C. 717–717w, 3301–3432; 16 U.S.C. 791–825r, 2601–2645; 42 U.S.C. 7101–7352.

■ 2. Section 375.307 is amended by revising paragraphs (f)(3) and (k)(4) and by adding paragraph (f)(4) to read as follows:

§ 375.307 Delegations to the Director of the Office of Markets, Tariffs and Rates.

* * * * *

(f) * * *

(3) Advise the filing party of any actions taken under paragraph (f)(1) or (f)(2) of this section and designate rate schedules, rate schedule changes, and notices of changes in rates, and the effective date hereof; and

(4) Refer to the Chief Administrative Law Judge (Chief ALJ), with the Chief ALJ's concurrence, uncontested interim natural gas rate motions that would result in lower rates, pending Commission action on settlement agreements.

* * * * *

(k) * * *

(4) Refer to the Chief Administrative Law Judge (Chief ALJ), with the Chief ALJ's concurrence, uncontested interim electric rate motions that would result in lower rates, pending Commission action on settlement agreements.

* * * * *

■ 3. Section 375.311 is revised to read as follows:

§ 375.311 Delegations to the Director, Office of External Affairs.

The Commission authorizes the Director, Office of External Affairs, or the Director's designee, to take all actions required or permitted to be taken by the Director under Secs. 388.108 through 388.110 of this chapter.

[FR Doc. 05–11553 Filed 6–14–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 803

[Docket No. 2004N–0527]

Medical Devices; Medical Device Reporting; Confirmation of Effective Date

AGENCY: Food and Drug Administration, HHS.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: The Food and Drug Administration (FDA) is confirming the effective date of July 13, 2005, for the direct final rule that appeared in the **Federal Register** of February 28, 2005 (70 FR 9516). The direct final rule revised the medical device reporting regulations into plain language in order to make the regulations easier to understand. This document confirms the effective date of the direct final rule.

DATES: Effective date confirmed: July 13, 2005.

FOR FURTHER INFORMATION CONTACT: Howard Press, Center for Devices and Radiological Health (HFZ–531), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–827–2983.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 28, 2005 (70 FR 9516), FDA solicited comments concerning the direct final rule for a 75-day period ending May 16, 2005. FDA stated that the effective date of the direct final rule would be on July 13, 2005, 60 days after the end of the comment period, unless any significant adverse comment was submitted to FDA during the comment period. FDA received 16 comments, 3 of which supported the plain language revisions and several of which requested further revisions or substantive changes to the medical device reporting rule. The agency did not receive any significant adverse comment on the plain language revisions.

Authority: Therefore, under the Federal Food, Drug, and Cosmetic Act, and under authority delegated to the Commissioner of Food and Drugs, notice is given that no objections were filed in response to the February 28, 2005, direct final rule. Accordingly, the amendments issued thereby are effective July 13, 2005.

Dated: June 9, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–11786 Filed 6–14–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF STATE

22 CFR Parts 120, 123, 124, 126, and 127

[Public Notice 5108]

Z–RIN 1400–ZA15

Amendments to the International Traffic in Arms Regulations: Various

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: The Department of State is amending and/or clarifying the content of a number of provisions of the International Traffic in Arms Regulations (ITAR). The affected parts of the ITAR are: Part 120—Purpose and Definitions; Part 123—Licenses for the Export of Defense Articles; Part 124—Agreements, Off-Shore Procurement and Other Defense Services; Part 126—General Policies and Provisions; and Part 127—Violations and Penalties. See **SUPPLEMENTARY INFORMATION** for a description of the changes and clarifications for each respective part.

DATES: Effective June 15, 2005.

ADDRESSES: Interested parties are invited to submit written comments to

the Department of State, Directorate of Defense Trade Controls, Office of Defense Trade Controls Policy, ATTN: Regulatory Change, 12th Floor, SA–1, Washington, DC 20522–0112. E-mail comments may be sent to *DDTCResponseTeam@state.gov* with an appropriate subject line. Persons with access to the Internet may also view this notice by going to the regulations.gov Web site at: *http://www.regulations.gov*. Comments will be accepted at any time.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Tomchik, Office of Defense Trade Controls Policy, Department of State, Telephone (202) 663–2799 or FAX (202) 261–8199. ATTN: Regulatory Change, USML Parts 120.1, 123.15, 124.11, 126.5 and 127.12.

SUPPLEMENTARY INFORMATION: 22 CFR 120.1 describes *inter alia* the responsibilities of the several offices comprising the Directorate of Defense Trade Controls (DDTC). The textual changes to Sec. 120.1 reflect the transfer of responsibility for the commodity jurisdiction procedure from the Office of Defense Trade Controls Licensing to the Office of Defense Trade Controls Policy.

22 CFR 123.15 describes *inter alia* the monetary thresholds for export of major defense equipment, and the export of defense articles and services sold under contract that may take place only after DDTC notifies an exporter through the issuance of a license or other approval that Congress has not enacted a joint resolution prohibiting the export. Similarly, 22 CFR 124.11 describes the monetary thresholds for any technical assistance agreement or manufacturing license agreement providing for the manufacture abroad of significant military equipment on the United States Munitions List (USML), for the export of major defense equipment, and the export of defense articles and services sold under contract that shall be certified to Congress. Pursuant to Public Law 107–228, the Foreign Relations Authorization Act, Fiscal Year 2003, the threshold amounts for Congressional notice were adjusted in the following manner: (1) The threshold levels for member countries of the North Atlantic Treaty Organization (NATO), Australia, Japan and New Zealand are established at $25 million for the export of major defense equipment sold under a contract and $100 million for the export of defense articles and services sold under contract; and (2) a threshold level of $1 million is established for proposed exports to all countries involving firearms controlled under Category I of the USML.

22 CFR 126.5 describes *inter alia* the modalities by which exporters, without a license issued by DDTC, may carry out permanent and temporary exports of defense articles to Canada, and temporary imports from Canada. The textual additions to 22 CFR 126.5 are designed to clarify for exporters the range of defense articles, related technical data, and defense services that will continue to require a license issued by the DDTC for export to or temporary import from Canada.

The list of items excluded from the provisions of Section 126.5 are outlined in paragraph (b). That list is amended in the following ways:

(1) The text of 126.5(b)(6) amended to reflect a change in the title of Category I of the USML.

(2) The text of 126.5(b)(10) is amended to clarify that all types of aircraft covered by Category VIII(a) of the USML require an export license.

(3) The text of 126.5(b)(13) is amended to reflect the fact that nuclear radiation measuring devices manufactured to military specifications are now controlled in Category XVI vice Category XIV of the USML.

(4) The text of 126.5(b)(18) is amended to reflect a change in the title of Category XVI of the USML.

(5) A new entry is made to the text of 126.5(b) to clarify that the exclusion from the exemption also embraces man-portable air defense systems, and their parts and components, and technical data for such systems that are controlled in Category IV of the USML. Other Category IV items already are captured by the provisions 126.5(b)(2) which covers all Missile Technology Control Regime (MTCR) Annex Items.

22 CFR 127.12 describes *inter alia* procedures concerning voluntary disclosures by persons, firms, or organizations of violations of the Arms Export Control Act (AECA). The textual changes made to this section deal with the address to which such voluntary disclosures should be sent.

Regulatory Analysis and Notices: This amendment involves a foreign affairs function of the United States and, therefore, is not subject to the procedures required by 5 U.S.C. 553 and 554. It is exempt from review under Executive Order 12866; but has been reviewed internally by the Department of State to ensure consistency with the purposes thereof. This rule does not require analysis under the Regulatory Flexibility Act or the Unfunded Mandates Reform Act. This amendment has been found not to be a major rule within the meaning of the Small Business Regulatory Enforcement Fairness Act of 1996. It will not have substantial direct effects on the States, the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this rule does not have sufficient federalism implications to warrant application of the consultation provisions of Executive Orders 12372 and 13132. This rule does not impose any new reporting or recordkeeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. chapter 35.

List of Subjects

22 CFR Part 120

Arms and munitions, Classified information, Exports.

22 CFR Part 123

Arms and munitions, Exports.

22 CFR Part 124

Arms and munitions, Exports, Technical assistance.

22 CFR Part 126

Arms and munitions, Exports.

22 CFR Part 127

Arms and munitions, Crime, Exports, Penalties, Seizures and forfeitures.

■ Accordingly, for the reasons set forth above, title 22, chapter I, subchapter M, parts 120, 123, 124, 126, and 127 are amended as follows:

PART 120—PURPOSE AND DEFINITIONS

■ 1. The authority citation for part 120 is revised to read as follows:

Authority: Secs. 2, 38, and 71, Pub.L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); 22 U.S.C. 2794; E.O. 11958, 42 FR 4311; 3 CFR, 1977 Comp, p. 79; 22 U.S.C. 2651a; Pub. L. 105–261, 112 Stat. 1920.

■ 2. Section 120.1 is amended by revising paragraphs (b)(2)(i)(B) and (D) to read as follows:

§ 120.1 General authorities and eligibility.

* * * * *

(b) * * *

(2) * * *

(i) * * *

(B) The Office of Defense Trade Controls Licensing and the Director, Office of Defense Trade Controls Licensing, respectively, insofar as such references relate to licensing or other authorization of defense trade, including references under parts 120, 123, 124, 125, 126, 129 and 130 of this subchapter;

* * * * *

(D) The Office of Defense Trade Controls Policy and the Director, Office of Defense Trade Controls Policy, respectively, insofar as such references

relate to the general policies of defense trade, including references under this part 120 and part 126 of this subchapter, and the commodity jurisdiction procedure under this part 120.

* * * * *

PART 123—LICENSES FOR THE EXPORT OF DEFENSE ARTICLES

■ 3. The authority citation for part 123 is revised to read as follows:

Authority: Secs. 2, 38, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); 22 U.S.C. 2753; E.O. 11958, 42 FR 4311; 3 CFR, 1977 Comp. p. 79; 22 U.S.C. 2651a; 22 U.S.C. 2776; Pub. L. 105–261, 112 Stat. 1920; Sec 1205(a), Pub. L. 107–228.

■ 4. Section 123.15 is revised to read as follows:

§ 123.15 Congressional certification pursuant to Section 36(c) of the Arms Export Control Act.

(a) The Arms Export Control Act requires that a certification be provided to the Congress prior to the granting of any license or other approval for transactions, in the amounts described below, involving exports of any defense articles and defense services and for exports of major defense equipment, as defined in §120.8 of this subchapter. Approvals may not be granted when the Congress has enacted a joint resolution prohibiting the export. Certification is required for any transaction involving:

(1) A license for the export of major defense equipment sold under a contract in the amount of $14,000,000 or more, or for defense articles and defense services sold under a contract in the amount of $50,000,000 or more to any country that is not a member country of the North Atlantic Treaty Organization (NATO), or Australia, Japan or New Zealand that does not authorize a new sales territory; or

(2) A license for export to a country that is a member country of the North Atlantic Treaty Organization (NATO), or Australia, Japan or New Zealand of major defense equipment sold under a contract in the amount of $25,000,000 or more, or for defense articles and defense services sold under a contract in the amount of $100,000,000 or more and provided the transfer does not include any other countries; or

(3) A license for export of a firearm controlled under Category I of the United States Munitions List, of this subchapter, in an amount of $1,000,000 or more.

(b) Unless an emergency exists which requires the proposed export in the national security interests of the United States, approval may not be granted for any transaction until at least 15 calendar days have elapsed after receipt by the Congress of the certification required by 22 U.S.C. 2776(c)(1) involving the North Atlantic Treaty Organization, any member country of the Organization, or Australia, Japan or New Zealand or at least 30 calendar days have elapsed for any other country; in the case of a license for an export of a commercial communications satellite for launch from, and by nationals of, the Russian Federation, Ukraine, or Kazakhstan, until at least 15 calendar days after the Congress receives such certification.

(c) Persons who intend to export defense articles and defense services pursuant to any exemption in this subchapter under the circumstances described in this section must provide written notification to the Directorate of Defense Trade Controls and include a signed contract and a DSP–83 signed by the applicant, the foreign consignee and the end-user.

PART 124—AGREEMENTS, OFF-SHORE PROCUREMENT AND OTHER DEFENSE SERVICES

■ 5. The authority citation for part 124 is revised to read as follows:

Authority: Sec. 2, 38, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); E.O. 11958, 42 FR 4311; 3 CFR 1977 Comp. p. 79; 22 U.S.C. 2651a; 22 U.S.C. 2776; Pub. L. 105–261.

■ 6. Section 124.11 is revised to read as follows:

§ 124.11 Congressional certification pursuant to Section 36(d) of the Arms Export Control Act.

(a) The Arms Export Control Act requires that a certification be provided to the Congress prior to the granting of any approval of a manufacturing license agreement or technical assistance agreement as defined in Sections 120.21 and 120.22 respectively for the manufacturing abroad of any item of significant military equipment (see § 120.7 of this subchapter) that is entered into with any country regardless of dollar value. Additionally, any manufacturing license agreement or technical assistance agreement providing for the export of major defense equipment, as defined in §120.8 of this subchapter shall also require a certification when meeting the requirements of § 123.15 of this subchapter.

(b) Unless an emergency exists which requires the immediate approval of the agreement in the national security interests of the United States, approval may not be granted until at least 15 calendar days have elapsed after receipt by the Congress of the certification required by 22 U.S.C. 2776(d)(1) involving the North Atlantic Treaty Organization, any member country of that Organization, or Australia, Japan or New Zealand or at least 30 calendar days have elapsed for any other country. Approvals may not be granted when the Congress has enacted a joint resolution prohibiting the export.

(c) Persons who intend to export defense articles and defense services pursuant to any exemption in this subchapter under the circumstances described in this section and section 123.15 must provide written notification to the Directorate of Defense Trade Controls and include a signed contract and a DSP–83 signed by the applicant, the foreign consignee and the end-user.

PART 126—GENERAL POLICIES AND PROVISIONS

■ 7. The authority citation for part 126 is revised to read as follows:

Authority: Secs. 2, 38, 40, 42, and 71, Pub.L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2780, 2791, and 2797); E.O. 11958, 42 FR 4311; 3 CFR, 1977 Comp. p. 79; 22 U.S.C. 2651a; 22 U.S.C. 287c; E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp. p. 899.

■ 8. Section 126.5 is amended by revising paragraphs (b) introductory text, (6), (10), (13), and (18), (c)(1), and note 2, and by adding paragraph (b)(21) to read as follows:

§ 126.5 Canadian exemptions.

* * * * *

(b) Permanent and temporary export of defense articles. Except as provided below, District Director of Customs and postmasters shall permit, when for end-use in Canada by Canadian Federal or Provincial governmental authorities acting in an official capacity or by a Canadian-registered person or for return to the United States, the permanent and temporary export to Canada without a license of defense articles and related technical data identified in 22 CFR 121.1. The above exemption is subject to the following limitations: Defense articles and related technical data, and defense services identified in paragraphs (b)(1) through (b)(21) of this section and exports that transit third countries. Such limitations also are subject to meeting the requirements of this subchapter, (to include 22 CFR 120.1(c) and (d), parts 122 and 123 (except insofar as exemption from licensing requirements is herein authorized) and Section 126.1, and the requirement to obtain non-transfer and use assurances for all significant military equipment. For purposes of this section, ''Canadian-registered person'' is

any Canadian national (including Canadian business entities organized under the laws of Canada), dual citizen of Canada and a third country (subject to section 126.1), and permanent resident registered in Canada in accordance with the Canadian Defense Production Act, and such other Canadian Crown Corporations identified by the Department of State in a list of such persons publicly available through the Internet Web site of the Directorate of Defense Trade Controls and by other means. The defense articles, related technical data, and defense services identified in 22 CFR 121.1 continuing to require a license are:

* * * * *

(6) Firearms, close assault weapons and combat shotguns listed in Category I.

* * * * *

(10) All Category VIII(a) items, and developmental aircraft, engines and components identified in Category VIII(f).

* * * * *

(13) Nuclear radiation measuring devices manufactured to military specifications listed in Category XVI(c).

* * * * *

(18) Nuclear weapons, design and testing equipment listed in Category XVI.

* * * * *

(21) Man-portable air defense systems, and their parts and components, and technical data for such systems covered by Category IV.

(c) *Defense service exemption.* A defense service is exempt from the licensing requirements of part 124 of this subchapter, when the following criteria can be met.

(1) The item, technical data, defense service and transaction is not identified in paragraphs (b)(1) through (21) of this section; and

* * * * *

Notes to Sec. 126.5

* * * * *

2. Additional exemptions exist in other sections of this subchapter that are applicable to Canada, for example Secs. 123.9, 125.4 and 124.2, which allows for the performance of defense services related to training in basic operations and maintenance, without a license, for defense articles lawfully exported, including those identified in paragraphs (b)(1) through (21) of this section.

PART 127—VIOLATIONS AND PENALTIES

■ 9. The authority citation for part 127 is amended to read as follows:

Authority: Secs. 2, 38, and 42, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2791); E.O. 11958, 42 FR 4311; 3 CFR, 1977 Com. p. 79; 22 U.S.C. 401; 22 U.S.C. 2651a; 22 U.S.C. 2779a; 22 U.S.C. 2780.

■ 10. Section 127.12 is amended by revising paragraph (g) as follows:

§ 127.12 Voluntary disclosures.

* * * * *

(g) Voluntary disclosures should be sent to the Office of Defense Trade Controls Compliance, Directorate of Defense Trade Controls. Exporters should consult the Directorate of Defense Trade Controls Web site at *http://www.pmdtc.org* for the appropriate street address.

* * * * *

Dated: May 10, 2005.

John R. Bolton,

Under Secretary, Arms Control and International Security, Department of State.

[FR Doc. 05–11892 Filed 6–14–05; 8:45 am]

BILLING CODE 4710–25–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4022 and 4044

Benefits Payable in Terminated Single-Employer Plans; Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing and Paying Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: The Pension Benefit Guaranty Corporation's regulations on Benefits Payable in Terminated Single-Employer Plans and Allocation of Assets in Single-Employer Plans prescribe interest assumptions for valuing and paying benefits under terminating single-employer plans. This final rule amends the regulations to adopt interest assumptions for plans with valuation dates in July 2005. Interest assumptions are also published on the PBGC's Web site (*http://www.pbgc.gov*).

DATES: Effective July 1, 2005.

FOR FURTHER INFORMATION CONTACT: Catherine B. Klion, Attorney, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: The PBGC's regulations prescribe actuarial assumptions—including interest assumptions—for valuing and paying plan benefits of terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974. The interest assumptions are intended to reflect current conditions in the financial and annuity markets.

Three sets of interest assumptions are prescribed: (1) A set for the valuation of benefits for allocation purposes under section 4044 (found in Appendix B to part 4044), (2) a set for the PBGC to use to determine whether a benefit is payable as a lump sum and to determine lump-sum amounts to be paid by the PBGC (found in Appendix B to part 4022), and (3) a set for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology (found in Appendix C to part 4022).

Accordingly, this amendment (1) adds to Appendix B to part 4044 the interest assumptions for valuing benefits for allocation purposes in plans with valuation dates during July 2005, (2) adds to Appendix B to part 4022 the interest assumptions for the PBGC to use for its own lump-sum payments in plans with valuation dates during July 2005, and (3) adds to Appendix C to part 4022 the interest assumptions for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology for valuation dates during July 2005.

For valuation of benefits for allocation purposes, the interest assumptions that the PBGC will use (set forth in Appendix B to part 4044) will be 3.60 percent for the first 20 years following the valuation date and 4.75 percent thereafter. These interest assumptions represent a decrease (from those in effect for June 2005) of 0.10 percent for the first 20 years following the valuation date and are otherwise unchanged.

The interest assumptions that the PBGC will use for its own lump-sum payments (set forth in Appendix B to part 4022) will be 2.50 percent for the period during which a benefit is in pay status and 4.00 percent during any years preceding the benefit's placement in pay status. These interest assumptions are unchanged from those in effect for June 2005.

For private-sector payments, the interest assumptions (set forth in Appendix C to part 4022) will be the same as those used by the PBGC for determining and paying lump sums (set forth in Appendix B to part 4022).

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the

public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that the assumptions can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation and payment of benefits in plans with valuation dates during July 2005, the PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this action is not a ''significant regulatory action'' under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects

29 CFR Part 4022

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 4044

Employee benefit plans, Pension insurance, Pensions.

■ In consideration of the foregoing, 29 CFR parts 4022 and 4044 are amended as follows:

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

■ 1. The authority citation for part 4022 continues to read as follows:

Authority: 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

■ 2. In appendix B to part 4022, Rate Set 141, as set forth below, is added to the table. (The introductory text of the table is omitted.)

Appendix B to Part 4022—Lump Sum Interest Rates for PBGC Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*	*	*	*	*	*	*	
141	7–1–05	8–1–05	2.50	4.00	4.00	4.00	7	8

■ 3. In appendix C to part 4022, Rate Set 141, as set forth below, is added to the table. (The introductory text of the table is omitted.)

Appendix C to Part 4022—Lump Sum Interest Rates for Private-Sector Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*	*	*	*	*	*	*	
141	7–1–05	8–1–05	2.50	4.00	4.00	4.00	7	8

PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS

■ 4. The authority citation for part 4044 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

■ 5. In appendix B to part 4044, a new entry, as set forth below, is added to the table. (The introductory text of the table is omitted.)

Appendix B to Part 4044—Interest Rates Used To Value Benefits

* * * * *

For valuation dates occurring in the month—	The values of i_t are:					
	i_t	for t =	i_t	for t =	i_t	for t =
*	*	*	*	*	*	
July 2005	.0360	1–20	.0475	>20	N/A	N/A

Issued in Washington, DC, on this 8th day of June 2005.

Vincent K. Snowbarger,

Deputy Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 05–11769 Filed 6–14–05; 8:45 am]

BILLING CODE 7708–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 311

[Administrative Instruction 81]

Privacy Act; Implementation

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: The Office of the Secretary of Defense is exempting those records contained in DCIFA 01, entitled ''CIFA Operational and Analytical Records'' when an exemption has been previously claimed for the records in another Privacy Act system of records. The exemption will preserve the exempt

status of the record when the purposes underlying the exemption for the original record is still valid and necessary to protect the contents of the record.

EFFECTIVE DATE: July 15, 2005.

FOR FURTHER INFORMATION CONTACT: Mrs. Juanita Irvin at (703) 601–4722.

SUPPLEMENTARY INFORMATION: The proposed rule was published on February 25, 2005, at 70 FR 9260–9261. One public comment was received where the commenter expressed a number of concerns that the rule violates the spirit and letter of the Privacy Act. The commenter observes that it is objectionable for the Department to borrow exemptions from other systems of records. We disagree. The public policy that dictates the need for exempting records is based on the need to protect the contents of the records in the system—not the location of the records. The record does not lose its exempt status when recompiled in another system of records if the purposes underlying the exemption of the original record pertain to the recompilation as well. The commenter expresses concern that adoption of the rule will enable the Department to shield documents that heretofore have been made available to individuals and will prevent citizens and lawful residents from obtaining access to records about themselves. We disagree. As provided by law, the rule provides a basis for the Department to exempt specified records from certain provisions of the Act. It does not act to suspend any rights the individual otherwise may be entitled to under the law. To the extent the records were available to the individual formerly or to the extent the individual could obtain access to those records previously, the individual still will be able to obtain/access the records. But to the extent the records were not obtainable or not accessible before, the rule will permit the Department to continue to protect the records as is contemplated by the rule for the original records. And finally, the commenter observes that the Department is attempting to create a new exemption, a prerogative that only Congress possesses. We disagree. The Department is not establishing a new exemption. Rather, within the framework of existing law, the Department is adopting a rule that will protect the records to the same extent the records are now protected by a rule that has been adopted for the system of records from which the record was lawfully obtained.

Executive Order 12866, "Regulatory Planning and Review"

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

Pub. L. 96–354, "Regulatory Flexibility Act" (5 U.S.C. Chapter 6)

It has been determined that Privacy Act rules for the Department of Defense do not have significant economic impact on a substantial number of small entities because they are concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Pub. L. 96–511, "Paperwork Reduction Act" (44 U.S.C. Chapter 35)

It has been determined that Privacy Act rules for the Department of Defense impose no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

Section 202, Pub. L. 104–4, "Unfunded Mandates Reform Act"

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

Executive Order 13132, "Federalism"

It has been determined that Privacy Act rules for the Department of Defense do not have federalism implications. The rules do not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

Dated: June 8, 2005.

Jeannette Owings-Ballard,

OSD Federal Register Liaison Officer, Department of Defense.

List of Subjects in 32 CFR Part 311

Privacy.

■ Accordingly, 32 CFR part 311 is amended to read as follows:

PART 311—OSD PRIVACY PROGRAM

■ 1. The authority citation for 32 CFR part 311 continues to read as follows:

Authority: Pub. L. 93–579, 88 Stat. 1896 (5 U.S.C. 552a).

■ 2. Section 311.8 is amended by adding paragraph (c)(15) as follows:

§ 311.8 Procedures for exemptions.

* * * * *

(c) *Specific exemptions.* * * *

* * * * *

(15) System identifier and name: DCIFA 01, CIFA Operational and Analytical Records.

(i) Exemptions: This system of records is a compilation of information from other Department of Defense and U.S. Government systems of records. To the extent that copies of exempt records from those 'other' systems of records are entered into this system, OSD hereby claims the same exemptions for the records from those 'other' systems that are entered into this system, as claimed for the original primary system of which they are a part.

(ii) Authority: 5 U.S.C. 552a(j)(2), (k)(1), (k)(2), (k)(3), (k)(4), (k)(5), (k)(6), and (k)(7).

(iii) Records are only exempt from pertinent provisions of 5 U.S.C. 552a to the extent (1) such provisions have been identified and an exemption claimed for the original record and (2) the purposes underlying the exemption for the original record still pertain to the record which is now contained in this system of records. In general, the exemptions are claimed in order to protect properly classified information relating to national defense and foreign policy, to avoid interference during the conduct of criminal, civil, or administrative actions or investigations, to ensure protective services provided the President and others are not compromised, to protect the identity of confidential sources incident to Federal employment, military service, contract, and security clearance determinations, and to preserve the confidentiality and integrity of Federal evaluation materials. The exemption rule for the original records will identify the specific reasons

why the records are exempt from specific provisions of 5 U.S.C. 552a.

[FR Doc. 05–11814 Filed 6–14–05; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD 07–05–019]

RIN 1625–AA08

Special Local Regulations: Annual Offshore Super Series Boat Race, Fort Myers Beach, FL

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing permanent special local regulations for the Offshore Super Series Boat Race in Fort Myers Beach Florida. This event will be held annually during the second consecutive Saturday and Sunday of June between 10 a.m. and 5 p.m. EDT (Eastern Daylight Time). Historically, there have been approximately 350 participant and spectator craft. The resulting congestion of navigable channels creates an extra or unusual hazard in the navigable waters of the United States. This rule is necessary to ensure the safety of life for the participating vessels, spectators, and mariners in the area on the navigable waters of the United States.

DATES: This rule is effective July 15, 2005.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [CGD 07–05–019] and are available for inspection or copying at Coast Guard Marine Safety Office Tampa between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Jennifer Andrew at Coast Guard Marine Safety Office Tampa (813) 228–2191 Ext 8203.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On April 26, 2005, we published a notice of proposed rulemaking (NPRM) entitled Special Local Regulations: Annual Offshore Super Series Boat Race, Fort Myers Beach, FL in the **Federal Register** (70 FR 21376). We received no comments on the proposed rule. No public meeting was requested, and none was held.

Background and Purpose

The Offshore Super Series will sponsor an offshore powerboat race on the near-shore waters of Fort Myers Beach, Florida. The annual event will be held on the second consecutive Saturday and Sunday in June from 10 a.m. to 5 p.m. The event will host approximately 50 participant vessels that travel up to speeds of 130 mph and approximately 300 spectator craft. This regulation is needed to provide for the safety of life on the Navigable waters of the United States during the Annual Offshore Super Series Boat Race in the vicinity of the racecourse. The anticipated concentration of spectator and participant vessels associated with the event poses a safety concern that is addressed in this special local regulation.

Discussion of Comments and Changes

No comments were received for this rule.

Discussion of Rule

This regulation includes a regulated area around the racecourse that will prohibit all non-participant vessels and persons from entering the regulated area annually from 10 a.m. to 5 p.m. on the second consecutive Saturday and Sunday of June. The regulation will only permit anchoring of spectator vessels seaward of a designated spectator line. All spectator craft will be required to remain seaward of a designated spectator line. Although the regulation allows continuous entry and exit to Matanzas Pass Channel for the duration of the event, the northern portion of the regulated area is in very close proximity to the channel entrance. In order to avoid incursions into the northern portion of the regulated area by vessels avoiding collision due to traffic congestion in the channel, the rule will require vessels entering and exiting Matanzas Pass to proceed cautiously and take early action to avoid close-quarters situations until finally past and clear of the regulated area. This regulation is intended to provide for the safety of life on the navigable waters of the United States for event participants and for mariners traveling in the vicinity of the near-shore waters of Fort Myers Beach Florida.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. The regulation will be in effect for only a limited time in an area where vessel traffic is limited and vessels will still be allowed to enter and exit through Matanzas Pass Channel.

Small Entities

Under the Regulatory Flexibility Act (5 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 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. This rule may affect the following entities, some of which may be small entities: the owners and operators of vessels intending to transit near to shore at Fort Myers Beach, FL in the vicinity of Matanzas Pass annually from 10 a.m. to 5 p.m. on the second consecutive Saturday and Sunday in June. This rule will not have a significant economic impact on a substantial number of small entities since it would only be in effect for a limited time in an area where vessel traffic is limited and vessels will still be allowed to enter and exit through Matanzas Pass Channel.

Assistance for Small Entities

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).

Collection of Information

This rule calls for no new collection of information under the Paperwork

Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

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 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.

Taking of Private Property

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

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.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

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.

Energy Effects

We have analyzed this 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 that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, 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 rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(h), of the Instruction, from further environmental documentation. As a special local regulation issued in conjunction with a boat race, this rule satisfies the requirements of paragraph (34)(h). Under figure 2–1, paragraph (34)(h), of the Instruction, an ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' are not required for this rule.

List of Subjects in 33 CFR Part 100

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

■ For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 100 as follows:

PART 100—MARINE EVENTS AND REGATTAS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; Department of Homeland Security Delegation No. 0170.1

■ 2. Add § 100.740 to read as follows:

§ 100.740 Annual Offshore Super Series Boat Race; Fort Myers Beach, FL.

(a) *Regulated area.* (1) The regulated area is formed by the following coordinates; point 1: 26°27′43″N, 81°58′22″W south to point 2: 26°27′05″N, 81°58′37″W east to point 3: 26°25′39″N, 81°55′46″W north to point 4: 26°26′14″N, 81°55′22″W and west to original point 1: 26°27′43″N, 81°58′22″W. All coordinates referenced use datum: NAD 83.

(2) The spectator line is formed by the following coordinates; point 1: 26°26′53″N, 81°58′27″W east to point 2: 26°25′32″N, 81°53′57″W. All coordinates referenced use datum: NAD 83.

(b) *Special local regulations.*

(1) Non-participant vessels and persons are prohibited from entering the regulated area as defined in paragraph (a)(1) of this section.

(2) All vessel entering and exiting Matanzas Pass Channel shall proceed cautiously and take early action to avoid close-quarters situations until finally past and clear of the regulated area.

(3) Anchoring is only permitted seaward of the spectator line as defined in paragraph (a)(2) of this section.

(c) *Enforcement Dates.* This section will be enforced annually from 10 a.m. to 5 p.m. EDT on the second consecutive Saturday and Sunday of June.

Dated: June 2, 2005.

W.E. Justice,

Capt, U.S. Coast Guard, Acting Commander, Seventh Coast Guard District.

[FR Doc. 05–11822 Filed 6–14–05; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[RO4–OAR–2005–GA–0002; RO4–OAR–2005–GA–0003; R04–OAR–2004–GA–0003–200517; FRL–7924–7]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Georgia, Redesignation of Atlanta Severe 1-Hour Ozone Nonattainment Area to Attainment for Ozone; Maintenance Plan; Motor Vehicle Emission Budgets; Revisions to Rules for Air Quality

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is granting final approval of the 1-hour ozone redesignation request and the 10-year maintenance plan State Implementation Plan (SIP) revision, including the new 2015 Motor Vehicle Emission Budgets (MVEB) for the Atlanta severe 1-hour ozone National Ambient Air Quality Standard (NAAQS) nonattainment area, which were submitted by the Georgia Environmental Protection Division (EPD) on February 1, 2005. The current Atlanta severe 1-hour ozone nonattainment area consists of the following counties: Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry, Paulding, and Rockdale (Atlanta area). EPA's approval of the 1-hour ozone redesignation request is based on our determination that the Atlanta area has met the criteria for redesignation to attainment specified in the Clean Air Act (CAA or Act), including a demonstration that the Atlanta area has attained the 1-hour ozone NAAQS. EPA is granting final approval of the 10-year maintenance plan SIP revision, including the new 2015 MVEB, because EPA has determined that the plan complies with the requirements of section 175A of the Act.

For transportation purposes, EPA is also finalizing its adequacy determination for the new 2015 MVEB. EPA has determined that the MVEB for the year 2015 are adequate for transportation conformity purposes.

DATES: *Effective Date:* This rule is effective June 14, 2005.

ADDRESSES: EPA has established a docket for this action under Regional Material in EDocket (RME) ID No. RO4–OAR–2005–GA–0002; RO4–OAR–2005–GA–0003; R04–OAR–2004–GA–0003. All documents in the docket are listed in the RME index at *http://docket.epa.gov/rmepub/*. Once in the system, select ''quick search,'' then key in the appropriate RME Docket identification number. Although listed in the index, some information is not publicly available, *i.e.*, Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in RME or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management 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 to 4:30, excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Scott M. Martin, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street, SW., Atlanta, Georgia, 30303–8960. The telephone number is (404) 562–9036. Mr. Martin can also be reached via electronic mail at *martin.scott@epa.gov.*

SUPPLEMENTARY INFORMATION: The use of ''we,'' ''us,'' or ''our'' in this document refers to EPA.

Table of Contents

I. What is the background for this action?
II. What actions are we taking?
III. When are these actions effective?
IV. What comments did we receive and what are our responses?
V. Statutory and Executive Order Reviews

I. What Is the Background for This Action?

On February 1, 2005, EPD submitted a request to redesignate the severe 1-hour ozone nonattainment area of Atlanta, Georgia, to attainment, and a request for EPA approval of a Georgia SIP revision containing a 10-year maintenance plan for the Atlanta area, including new MVEB for the year 2015. In addition, Georgia requested that EPA make a determination that certain SIP submittal requirements related to attainment demonstrations and reasonable further progress (RFP) are not applicable requirements for the purposes of this redesignation request because the Atlanta area has attained the 1-hour ozone NAAQS based on ambient air ozone season monitoring data for the 3-year period including the years 2002, 2003, and 2004. On April 20, 2005, (70 FR 20495), EPA published a proposed rule proposing to take four actions on these requests: to find that the Atlanta area has attained the 1-hour ozone NAAQS; to find that certain attainment demonstration and RFP requirements, along with other related requirements of part D of title I of the CAA, are not applicable to the Atlanta area for so long as it continues to attain the 1-hour ozone NAAQS; to approve the 10-year maintenance plan, including the 2015 MVEB; and to approve the 1-hour ozone redesignation request for the Atlanta area.

In a separate action, effective June 14, 2005, EPA granted final approval on two of the four actions proposed for approval on April 20, 2005, (70 FR 20495). In that separate action, EPA determined that the Atlanta severe 1-hour ozone nonattainment area has attained the 1-hour ozone NAAQS, and that certain CAA requirements are no longer applicable, so long as the Atlanta area continues to maintain the 1-hour ozone NAAQS.

In addition, in another separate action taken on May 9, 2005, (70 FR 24310), EPA published a direct final rule approving revisions to Georgia's Rules for Air Quality to satisfy the additional requirements for severe 1-hour ozone nonattainment areas. The comment period for the May 9, 2005, action ended on June 8, 2005, and EPA received no adverse comment.

II. What Actions Are We Taking?

EPA is granting final approval of the remaining two actions proposed for approval on April 20, 2005, (70 FR 20495). Specifically, EPA is approving Georgia's request for redesignation and thereby approving a change in the legal designation of the Atlanta area from nonattainment to attainment for the 1-hour ozone NAAQS. EPA is also approving Georgia's 10-year maintenance plan SIP revision for the Atlanta area because the plan complies with the requirements of section 175A of the Act. The maintenance plan is designed to keep the Atlanta area in attainment for the 1-hour ozone standard for the next 10 years.

Finally, for transportation purposes, EPA is finalizing its adequacy determination for the new 2015 MVEB. EPA has determined that the MVEB for the year 2015 are adequate for transportation conformity purposes.

A. Redesignation and 10-Year Maintenance Plan

Section 107(d)(3)(D) of the Act allows a Governor to initiate the redesignation process for an area to apply for attainment status. On February 1, 2005, Georgia requested redesignation of the Atlanta area's severe 1-hour ozone nonattainment status to attainment status and requested EPA approval of the 10-year maintenance plan for the Atlanta area. Today, EPA is approving the 1-hour ozone redesignation request and the 10-year maintenance plan SIP revision. EPA's approval of the 1-hour ozone redesignation request is based on our determination that the Atlanta area has met the five criteria for redesignation to attainment specified in the CAA, including a demonstration that the area has attained the 1-hour ozone NAAQS. The 1990 CAA Amendments revised section 107(d)(3)(E) to provide five specific criteria that an area must meet in order to be redesignated from nonattainment to attainment. These five criteria are: (1) The area has attained the applicable NAAQS; (2) the area has a fully approved SIP under section 110(k) of the CAA; (3) the air quality improvement is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP, applicable federal air pollution control regulations, and other permanent and enforceable reductions; (4) the area has a fully approved maintenance plan pursuant to section 175A of the Act; and (5) the area has met all applicable requirements under section 110 and part D of the CAA. EPA's analysis of the five criteria as applied to the Atlanta area is discussed in detail in the April 20, 2005, (70 FR 20495), proposed rule.

With regard to criteria 1, EPA has already determined, in a separate action effective June 14, 2005, that the Atlanta severe 1-hour ozone nonattainment area has attained the 1-hour ozone NAAQS. With regard to criteria 2 and 5, EPA has determined that the Atlanta area has a fully approved SIP under section 110(k) of the CAA, and that the area has met all applicable requirements under section 110 and part D of the Act.

Specifically, EPA has analyzed the Georgia SIP and determined that it is consistent with the requirements of CAA section 110(a)(2). Title 40 CFR 52.570, subpart L, contains the historical record of the Georgia SIP. The Georgia SIP contains enforceable emission limitations; requires monitoring, compiling, and analyzing ambient air quality data; requires preconstruction review of new major stationary sources and major modifications to existing ones; provides for adequate funding, staff, and associated resources necessary to implement its requirements; and requires stationary source emissions monitoring and reporting.

In addition, EPA has determined that the Atlanta area has met all applicable requirements under section 110 and part D of the CAA. At the time of the proposed rule on April 20, 2005, (70 FR 20495), EPA proposed to find that the Atlanta area had met most of the applicable requirements under section 110 and part D of the Act. However, in the proposed rule, we stated that EPA had not yet approved certain rule revisions pertaining to section 182(a)(2)(A) and section 182(d) of the Act, and that we would take action on these rule revisions separately and prior to any final rule on the redesignation request. On May 9, 2005, (70 FR 24310), EPA published a direct final rule approving revisions to Georgia's Rules for Air Quality to satisfy the additional requirements for severe 1-hour ozone nonattainment areas required by section 182(d) of the Act. The comment period for this direct final rule ended on June 8, 2005, and EPA received no adverse comment. These revisions satisfy the additional requirements for severe 1-hour ozone nonattainment areas. Also, on April 12, 2005, (70 FR 19031), EPA proposed approval of Georgia's Severe Area Vehicle Miles Traveled SIP submittal which was for the purpose of offsetting any growth in emissions from growth in vehicle miles traveled (VMT) as required by the Act. In a separate action, effective June 14, 2005, EPA granted final approval to this submittal.

In our April 20, 2005, (70 FR 20495), proposed rule, EPA also indicated that we had not yet approved Georgia's reasonably available control technology (RACT) rule corrections, which are required by section 182(a)(2)(A) of the Act. This was an error. EPA approved Georgia's RACT rule corrections on October 13, 1992, (57 FR 46780), effective December 14, 1992.

Finally, EPA determined, in a separate action effective June 14, 2005, that certain attainment demonstration requirements (section 172(c)(1) of the CAA), along with certain other related requirements of part D of title I of the CAA, including the section 172(c)(9) contingency measure requirement (measures needed to mitigate a state's failure to achieve RFP toward, and attainment of, a NAAQS), the section 182 attainment demonstration and rate of progress (ROP) requirements, and the section 182(j) multi-state attainment demonstration requirement, are not applicable to the Atlanta area. Therefore, with regard to redesignation criteria 2 and 5, EPA finds that the Atlanta area has a fully approved SIP under section 110(k) of the CAA, and that the area has met all applicable requirements under section 110 and part D of the Act.

EPA also finds that redesignation criteria 3 and 4 have been met for the Atlanta area. For the reasons discussed in the April 20, 2005, (70 FR 20495), proposed rule, EPA has determined that the air quality improvement in the Atlanta area is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP, applicable federal air pollution control regulations, and other permanent and enforceable reductions. In addition, our April 20, 2005, (70 FR 20495), proposed rule provides a detailed discussion of EPA's reasons for its proposed approval of the Atlanta area's 10-year maintenance plan. EPA notes that in the proposed rule, we announced our preliminary conclusion that the Atlanta area's maintenance of the 1-hour ozone standard is indicated under either future fuel scenario (use of reformulated gasoline (RFG) or use of only the Georgia gasoline currently in place). We also announced our intention to confirm this preliminary conclusion prior to taking final action on the redesignation request and approval of the 10-year maintenance plan. As fully discussed in the Response to Comments section of this final rule, EPA has confirmed our preliminary conclusion that the Atlanta area will maintain the 1-hour ozone standard throughout the 10-year maintenance plan period by using only Georgia gasoline or by using RFG that meets the low-sulfur requirements in Georgia's SIP. For the reasons stated in our proposed rule on the 10-year maintenance plan and based on our confirmation concerning future fuel scenarios for the Atlanta area, EPA is finalizing its approval of Georgia's 10-year maintenance plan SIP submittal for the Atlanta area.

EPA's approval of Georgia's 10-year maintenance plan SIP submittal for the Atlanta area, includes our approval of the new 2015 MVEB contained within the maintenance plan. The 2015 MVEB for nitrogen oxide (NO_X) in the Atlanta area is 121.88 tons per ozone season weekday (tpd). The 2015 MVEB for volatile organic compounds (VOC) in the Atlanta area is 83.42 tpd.

B. What Are the Effects of Redesignation

Approval of the Atlanta area redesignation request changes the official designation for the 1-hour ozone NAAQS found at 40 CFR part 81 for the

State of Georgia, Atlanta Area, from nonattainment to attainment. It also incorporates into the Georgia SIP a plan for maintaining the 1-hour ozone NAAQS through 2015. The plan includes contingency measures to remedy any future violations of the 1-hour ozone NAAQS, and includes VOC and NO_X MVEB for 2015 for the Atlanta area.

C. Adequacy of the 2015 Motor Vehicle Emission Budgets

Through this rule, EPA is providing notice that it has determined that the 2015 MVEB for VOC and NO_X, as contained in the 10-year maintenance plan, meet the substantive criteria for ''adequacy,'' as set out in 40 CFR 93.118(e)(4), and are adequate for purposes of transportation conformity. The availability of the 10-year maintenance plan SIP submission containing these 2015 MVEB was announced for public comment on EPA's adequacy Web page on January 24, 2005, at: *http://www.epa.gov/otaq/transp/conform/currsips.htm.* The EPA public comment period on adequacy of the 2015 MVEB for the Atlanta area closed on February 24, 2005, and no adverse comments were received.

For transportation plan analysis years that involve the year 2014 or before, the applicable MVEB for the purposes of conducting transportation conformity analyses will be the 2004 MVEB for VOC (160.80 tpd) and for NO_X (318.24 tpd). For transportation plan analysis years that involve the year 2015 or beyond, the applicable MVEB for the purposes of conducting transportation conformity analyses will be the 2015 MVEB for VOC (83.42 tpd) and for NO_X (121.88 tpd).

III. When Are These Actions Effective?

EPA finds that there is good cause for these determinations (approval of redesignation and 10-year maintenance plan, including the 2015 MVEB) to become effective June 14, 2005, because a delayed effective date is unnecessary due to the nature of the determinations, which relieve the Atlanta area from certain CAA requirements that would otherwise apply to it. The expedited effective date for these actions is authorized under both 5 U.S.C. 553(d)(1), which provides that rule actions may become effective less than 30 days after publication if the rule ''grants or recognizes an exemption or relieves a restriction'' and section 5 U.S.C. 553(d)(3), which allows an effective date less than 30 days after publication ''as otherwise provided by the agency for good cause found and published with the rule.''

A redesignation to attainment relieves the Atlanta area from certain CAA requirements that otherwise would apply to it. The relief from these obligations is sufficient reason to allow an expedited effective date of this rule under 5 U.S.C. 553(d)(1). In addition, Georgia's relief from these obligations provides good cause to make this rule effective June 14, 2005, pursuant to 5 U.S.C. 553(d)(3). The purpose of the 30-day waiting period prescribed in 5 U.S.C. 553(d) is to give affected parties a reasonable time to adjust their behavior and prepare before the final rule takes effect. Where, as here, the final rule relieves obligations rather than imposes obligations, affected parties, such as the State of Georgia, do not need time to adjust and prepare before the rule takes effect.

IV. What Comments Did We Receive and What Are Our Responses?

Proposed Redesignation of the Atlanta Severe 1-Hour Nonattainment Area To Attainment for Ozone

EPA received one comment letter from the Renewable Fuels Association (RFA).

Comment: The RFA commented that EPA should not approve the proposed maintenance plan because: ''Georgia's submission seeking to demonstrate that attainment of the 1-hour ozone standard will continue to be maintained * * * relies on emissions data based on use of RFG [reformulated gas], while at the same time Georgia is trying to avoid use of RFG in Atlanta. * * * Georgia did not model the emissions for 2005 to 2015 based on use of Georgia Gas. Therefore, EPA has no basis to support a finding that Georgia Gas is sufficient to establish maintenance as required under the Act. EPA cannot approve a redesignation request which is based on use of Georgia Gas without a maintenance demonstration using Georgia Gas only. EPA must confirm such modeling and make it available for public comment prior to approving any redesignation. Until this demonstration is made, Georgia's application does not satisfy the criteria for redesignation established in section 107(d)(3)(E) and EPA cannot redesignate Atlanta to attainment for the 1-hour ozone standard.'' The commenter included two attachments to its comment: EPA's September 30, 2004, letter to Carol Couch, Director of Georgia EPD denying Georgia's request to waive the RFG requirement for Atlanta with EPA's ''Analysis of and Action on Georgia's Request for a Waiver of the Reformulated Gasoline Program'' (EPA420–S–04–006, October 2004); and ''Comments on Georgia's Petition for an RFG Waiver in Atlanta: Technical Analysis'' by Gary Z. Whitten, Ph.D., dated August 24, 2004.

Response: In EPA's proposed rule for this action on April 20, 2005 (70 FR 20495), EPA announced its preliminary conclusion that maintenance is indicated under either future fuel scenario (*i.e.*, using RFG or Georgia gasoline currently in place) for the Atlanta area for the 1-hour ozone NAAQS. Since the use of low-sulfur Georgia gasoline is a SIP requirement, Georgia correctly concluded that RFG sold in the Atlanta area would have to meet the low-sulfur requirement from the Georgia SIP as well as RFG requirements. EPA's preliminary conclusion that the Atlanta area would maintain the 1-hour ozone NAAQS by using Georgia gasoline or RFG that met the low-sulfur requirement for Georgia gasoline in the SIP was based on EPA's ''Analysis of and Action on Georgia's Request for a Waiver of the Reformulated Gasoline Program'' (EPA420–S–04–006, October 2004) that EPA conducted in its review of Georgia's petition request to be relieved of the RFG requirement and which the commenter attached to its comment.[1] EPA's analysis in the proposal was based on Georgia's modeling using RFG, its predictions of a declining mobile source emissions inventory post 2002, along with the modeling prepared by EPA comparing emissions between RFG and Georgia gasoline in 2005. The preliminary conclusion from the analysis in the proposed rule focused on predicting the emissions that would be expected over time with Georgia gasoline only. In the April 20, 2005, proposed rule, EPA announced our intention to confirm this preliminary conclusion prior to taking final action on the redesignation request and approval of the maintenance plan. After publication of the proposed rule, EPD ran a full MOBILE model run using only Georgia gasoline. This post-proposal analysis addresses the same issue that EPA addressed in the proposed rule, using a more direct modeling of the emissions at issue, and confirms EPA's preliminary conclusion in the proposed rule that the area will maintain the 1-hour ozone NAAQS with Georgia gasoline only throughout the initial

[1] This analysis was not included in the docket before the proposed rule was published; however the analysis was discussed in the proposal notice and was attached to the only comment received. Since it was publicly available, and was distributed to the commenter before the rule, EPA believes that the omission of this analysis from the docket at the time of the proposed rule is not significant. It is part of the docket for the final rule.

maintenance period, as required by section 107(d)(3)(E) of the Act. Since these data confirm EPA's preliminary analysis, EPA does not believe taking additional comment on this point is necessary.

The commenter also attached a memorandum from Gary Z. Whitten, ''Comments on Georgia's Petition for an RFG Waiver in Atlanta: Technical Analysis'' that was written to refute the State's assertion in its waiver request that utilization of federal RFG will adversely affect air quality in the Atlanta area. The commenter relies on Dr. Whitten's memo to support their argument that Georgia needs to model Georgia gasoline as part of a maintenance demonstration. As noted above, that modeling has been done by Georgia EPD. To the extent the commenter relies on Dr. Whitten's memo to indicate possible concerns with the modeling of Georgia gasoline, EPA notes that Dr. Whitten's comments basically address the inadequacy of prior modeling done by Georgia to compare RFG to Georgia gasoline, and raise concerns that Georgia underestimated various benefits of RFG in this comparison. The issue here, however, is the benefits of Georgia gasoline, and any claimed underestimation of the benefits of RFG compared to Georgia gasoline is irrelevant to determining whether Georgia would maintain the 1-hour ozone NAAQS with Georgia gasoline. In that context, EPA notes that the recent MOBILE modeling of Georgia gasoline performed by Georgia, uses sulfur, reid vapor pressure (RVP) and oxygen levels that are similar to the levels EPA determined appropriate in its analysis of Georgia only gasoline, as part of EPA's evaluation of Georgia's request for a waiver of the RFG program.[2] Further discussion of the levels EPA used in its evaluation of Georgia only gasoline can be found in EPA's ''Analysis of Emission Impacts of Implementation of Federal Reformulated Gasoline (RFG) in the Atlanta Area,'' which can be found in the docket for this rule.

Below are tables that show the results of the full MOBILE model run using Georgia low-sulfur gasoline only, which demonstrates that the emissions levels of NO_X and VOC for the period 2005–2015 are below those for the base year (*i.e.*, 2002), and thus indicate continued maintenance of the 1-hour standard. These tables were provided by the Georgia EPD during the public comment period on EPA's proposal as a supplement to their maintenance plan demonstration which accounted for a gasoline during the maintenance period which met the requirements of Georgia gasoline and RFG. With the supplemental information, the State has demonstrated continued maintenance for either a RFG or Georgia gasoline scenario. It should be noted that the mobile sector NO_X emissions are projected to be the same for either scenario because of the federal requirement for all gasoline to meet the low-sulfur standards that are being phased in beginning in 2004 and continuing through 2006.

NO_X WITH GEORGIA GASOLINE ONLY

	2002	2005	2010	2015
Point	55.58	54.99	58.43	63.79
Area	28.57	29.52	31.75	33.81
Mobile	365.55	284.72	191.65	110.80
Nonroad	114.35	113.34	105.26	95.62
Total	564.05	482.57	387.09	304.02

VOC WITH GEORGIA GASOLINE ONLY

	2002	2005	2010	2015
Point	15.71	17.11	19.69	22.12
Area	294.20	314.68	357.11	398.41
Mobile	184.84	143.80	113.61	77.29
Nonroad	83.44	68.84	52.13	50.19
Total	578.19	544.43	542.54	548.01

By taking this final action, EPA is not waiving the requirement to use RFG in the Atlanta severe 1-hour ozone NAAQS nonattainment area. The use of RFG in severe ozone nonattainment areas is required by section 211 of the Act, and the applicability of this requirement to Atlanta is currently in litigation before the 11th Circuit Court of Appeals. EPA believes that the redesignation request and approval of the 1-hour ozone maintenance plan are separate issues from the applicability of the RFG requirement for the Atlanta area, and thus the redesignation request and 10-year maintenance plan SIP submittal can be approved under the CAA section 107(d)(3)(E) since the data indicate that the Atlanta area will maintain the 1-hour ozone NAAQS through 2015 with either RFG or Georgia gasoline. EPA will take appropriate action in the future with respect to the applicability of RFG to the Atlanta area if necessary.

Comment: The commenter also stated in a footnote that Georgia omitted data from a 12th monitor that showed increasing emissions from 2000–2002 and recorded a violation[3] in 2002.

Response: Although, we do not construe this to be a comment with regard to EPA's determination of attainment (because it was provided in the context of the 10-year maintenance plan for the Atlanta area), we provided the following clarification in our separate final attainment determination rule. ''In response, EPA notes that there was a special purpose monitor (SPM) in Cherokee County, Georgia, (Waleska

[2] To the extent that RVP and oxygen parameters are different, emissions are expected to offset each other and would continue to support the conclusion that emissions in 2005 and later would be lower than 2002.

[3] A violation of this standard occurs when the daily maximum 1-hour average concentration measured by a continuous ambient air monitor exceeds 0.12 parts per million more than once per year, averaged over three consecutive years.

site) that operated from 1999–2002.[4] This monitor recorded only one exceedance of the 1-hour ozone NAAQS during this period that occurred in 2002. This one exceedance does not constitute a violation of the 1-hour ozone NAAQS. The monitor at the Waleska site was terminated by the State due to siting issues (potential interference by trees and a school's chemistry laboratory). The Waleska site was designated a SPM, and for this type of monitor the states are not required to obtain EPA concurrence for its termination.

Georgia's request for redesignation and a determination of attainment did include data from all ozone monitors in the Atlanta area with complete data for the period of 2002–2004, showing no violations of the 1-hour ozone NAAQS. Thus, there were no recorded violations of the 1-hour ozone NAAQS omitted from Georgia's redesignation request as implied by the commentator.''

VII. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. By June 14, 2005, EPA will submit a report containing these rules and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to June 14, 2005. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. 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 August 15, 2005. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule 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, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

List of Subject in 40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: June 9, 2005.

J.I. Palmer, Jr.,

Regional Administrator, Region 4.

■ Part 52 and 81, chapter I, title 40, *Code of Federal Regulations,* is amended as follows:

PART 52—[AMENDED]

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

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

Subpart L—Georgia

■ 2. Section 52.570(e) is amended by adding a new entry for ''21. Atlanta 1-hour ozone attainment area 2015 maintenance plan.''

§ 52.570 Identification of plan.

* * * * *

(e) EPA Approved Georgia Nonregulatory Provisions.

Name of nonregulatory SIP Provision	Applicable geographic or non-attainment area	State submittal date/ effective date	EPA approval date

[4] A special purpose monitor is a generic term used for all monitors other than State and Local Air Monitoring Stations (SLAMS), National Air Monitoring Stations (NAMS), Photochemical Assessment Monitoring Stations (PAMS), and Prevention of Significant Deterioration (PSD) monitors included in an agency's monitoring network for monitors used in a special study whose data area officially reported to EPA.

Name of nonregulatory SIP Provision	Applicable geographic or non-attainment area	State submittal date/ effective date	EPA approval date
* * *	* *	*	*
21. Atlanta 1-hour ozone attainment area 2015 maintenance plan.	Atlanta severe 1-hour ozone maintenance area.	February 1, 2005	June 14, 2005. [Insert first page number of publication]

PART 81—[AMENDED]

■ 1. The authority citation for part 81 continues to read as follows:

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

■ 2. In § 81.311 the table entitled ''Georgia—Ozone (1-hour standard)'' is amended by revising the entry for the Atlanta area to read as follows:

§ 81.311 Georgia.

GEORGIA—OZONE (1-HOUR STANDARD)

Designated Area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
Atlanta Area:	June 14, 2005	Attainment		
Cherokee County	June 14, 2005	Attainment		
Clayton County	June 14, 2005	Attainment		
Cobb County	June 14, 2005	Attainment		
Coweta County	June 14, 2005	Attainment		
DeKalb County	June 14, 2005	Attainment		
Douglas County	June 14, 2005	Attainment		
Fayette County	June 14, 2005	Attainment		
Forsyth County	June 14, 2005	Attainment		
Fulton County	June 14, 2005	Attainment		
Gwinnett County	June 14, 2005	Attainment		
Henry County	June 14, 2005	Attainment		
Paulding County	June 14, 2005	Attainment		
Rockdale County	June 14, 2005	Attainment		
* * *	*	* *	*	

[1] This date is October 18, 2000, unless otherwise noted.

* * * * *

[FR Doc. 05–11829 Filed 6–14–05; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 25

[IB Docket No. 02–10; FCC 04–286]

Procedures To Govern the Use of Satellite Earth Stations on Board Vessels in the 5925–6425 MHz/3700–4200 MHz Bands and 14.0–14.5 GHz/11.7–12.2 GHz Bands

AGENCY: Federal Communications Commission.

ACTION: Final rule, announcement of effective date.

SUMMARY: This document announces the effective date of the rule published on January 31, 2005. The rules adopted licensing and service rules for satellite earth stations on vessels (ESVs) in the C- and Ku-bands that will provide regulatory certainty to ESV licensees, while protecting existing users in the bands.

DATES: 47 CFR 25.221(c), 25.221(e), and 25.222(c) are effective June 15, 2005.

FOR FURTHER INFORMATION CONTACT: Jennifer Gorny or Howard Griboff, Policy Division, International Bureau, (202) 418–1460.

SUPPLEMENTARY INFORMATION: On January 6, 2005, the Commission released a Report and Order, a summary of which was published in the **Federal Register**. *See* 70 FR 4775, January 31, 2005. Although the rule changes in the Report and Order became effective on March 2, 2005, §§ 25.221(c), 25.221(e), and 25.222(c) contained modified information collection requirements, which required approval by the Office of Management and Budget (OMB). The information collection requirements were approved by OMB on May 25, 2005. *See* OMB No. 3060–1061.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–11541 Filed 6–14–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket Nos. 02–278 and 04–53; DA 05–692]

Rules and Regulations Implementing the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003; Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission amends its rules addressing unwanted mobile service commercial messages to cross reference new definitions adopted by the Federal Trade Commission (FTC). The Commission has directed the Consumer & Governmental Affairs Bureau (CGB) to revise the regulations of the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (CAN–SPAM Act) to reflect updated or amended definitions in the FTC's rules.

DATES: Effective June 15, 2005.

FOR FURTHER INFORMATION CONTACT: Julie Saulnier, Consumer & Governmental Affairs Bureau at (202) 418–2512.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Order,* DA 05–692, adopted March 24, 2005 and released March 25, 2005. Copies of this document and any subsequently filed documents in this matter will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may be purchased from the Commission's duplicating contractor, Best Copy and Printing Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. Customers may also contact BCPI at their Web site: *http://www.bcpiweb.com* or call 1–800–378–3160.

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice) or (202) 418–0432 (TTY). This *Order* can also be downloaded in Word and Portable Document Format (PDF) at *http://www.fcc.gov/cgb/policy/canspam.html.*

Synopsis

In this document, the Commission amends its rules addressing unwanted mobile service commercial messages to cross reference new definitions adopted by the Federal Trade Commission (FTC). In adopting rules to implement portions of the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (CAN–SPAM Act or Act), the Commission directed the Consumer & Governmental Affairs Bureau (CGB) to revise the regulations to reflect updated or amended definitions in the FTC's rules. The Act gives the FTC responsibility for making the ultimate determination of when electronic mail is to be considered ''commercial'' and for refining the definitions of ''transactional or relationship'' messages.

On December 16, 2004, the FTC adopted its final CAN–SPAM definitions and implementation rules, defining the criteria for determining whether an electronic message is ''commercial'' in nature, and refining the definition of ''transactional or relationship'' messages. This definition rule became effective on March 28, 2005. Consequently, we amend our CAN–SPAM rules to reflect the FTC's newly adopted definitions codified at 16 CFR 316.1–316.5 and cross reference those definitions in our rules so that our rules will reflect any further revisions the FTC makes.

Pursuant to the authority contained in sections 1–4, 222, 227 and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151–154, 222, 227, and 303(r), and the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003, Public Law 108–187, 117 Statute 2699, 15 U.S.C. 7701–7713, 18 U.S.C. 1037 and 28 U.S.C. 994, and the authority delegated to the Consumer & Governmental Affairs Bureau in the Commission's *CAN–SPAM Implementation Order,* FCC 04–194 (adopted August 4, 2004), this *Order* is *adopted,* and part 64 of the Commission's rules, 47 CFR 64.3100, is *amended.*

Report to Congress

The Commission will not send a copy of this *Order* pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A), because the adopted rules are rules of particular applicability.

List of Subjects in 47 CFR Part 64

Telecommunications, Telephone.

Federal Communications Commission.

Monica Desai,

Acting Chief, Consumer & Governmental Affairs Bureau.

Final Rules

■ For the reasons set forth in the preamble, the Federal Communications Commission amends 47 CFR part 64 as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

■ 1. The authority citation for part 64 continues to read as follows:

Authority: 47 U.S.C. 154, 254(k); secs. 403(b)(2)(B), (c), Pub. L. 104–104, 110 Stat. 56. Interpret or apply 47 U.S.C 201, 218, 222, 225, 226, 228, and 254 (k) unless otherwise noted.

■ 2. Section 64.3100 is amended by revising paragraphs (c)(2) and (c)(8) introductory text to read as follows:

§ 64.3100 Restrictions on mobile services commercial messages.

* * * * *

(c) * * *

(2) *Commercial electronic mail message* means the term as defined in the CAN–SPAM Act, 15 U.S.C 7702 and as further defined under 16 CFR 316.3. The term is defined as ''an electronic message for which the primary purpose is commercial advertisement or promotion of a commercial product or service (including content on an Internet Web site operated for a commercial purpose).'' The term ''commercial electronic mail message'' does not include a transactional or relationship message.

* * * * *

(8) *Transactional or relationship message* means the following and is further defined under 16 CFR 316.3 as any electronic mail message the primary purpose of which is:

* * * * *

[FR Doc. 05–11908 Filed 6–14–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[WT Docket No. 99–87; RM–9332; FCC 04–292]

Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended; Promotion of Spectrum Efficient Technologies on Certain Part 90 Frequencies

AGENCY: Federal Communications Commission.

ACTION: Final rule; lifting of stay.

SUMMARY: In this document the Commission addresses eighteen petitions for reconsideration of the rules adopted in the *Second Report and Order* in this proceeding to promote migration to narrowband (12.5 kHz) technology in the Private Land Mobile Radio (PLMR) services. In addition, we stay the January 1, 2005 date pending resolution of the issues raised in the *Third Further Notice of Proposed Rulemaking* published elsewhere in this issue. This document also lifts the stay of 47 CFR 90.209(b)(6).

DATES: The stay of § 90.209(b)(6) is lifted effective July 15, 2005, and the amendments are effective July 15, 2005.

FOR FURTHER INFORMATION CONTACT: Zenji Nakazawa, *Zenji.Nakazawa@fcc.gov*, Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau, (202) 418–0680, TTY (202) 418–7233.

SUPPLEMENTARY INFORMATION: This is a summary of the Federal Communications Commission's *Order*, FCC 04–292, adopted on December 20, 2004, and released on December 23, 2004. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from

the FCC's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The full text may also be downloaded at: *http://www.fcc.gov*. Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365 or at *bmillin@fcc.gov*.

1. The major decisions in the *Third Memorandum Opinion and Order* are as follows:

• For licensees in the Industrial/Business Radio Pool operating in the 150–174 MHz and 421–512 MHz bands, we affirm the *Second Report and Order's* (68 FR 42296, July 17, 2003) January 1, 2013 deadline for migration to 12.5 kHz technology, or a technology that achieves the narrowband equivalent of one channel per 12.5 kHz of channel bandwidth (voice) or 4800 bits per second per 6.25 kHz (data) if the bandwidth for transmissions specified in the modification application is greater than 12.5 kHz.

• For Public Safety Radio Pool licensees operating PLMR services in the same bands, we also establish a January 1, 2013 deadline for migration to 12.5 kHz technology, or a technology that achieves the narrowband equivalent of one channel per 12.5 kHz of channel bandwidth (voice) or 4800 bits per second per 6.25 kHz (data) if the bandwidth for transmissions specified in the modification application is greater than 12.5 kHz.

2. We revise the interim dates established in the *Second Report and Order* as follows:

• Applications for new operations using 25 kHz channels will be accepted until January 1, 2011. After January 1, 2011, applications for new operations using a bandwidth greater than 12.5 kHz will be accepted only to the extent that the equipment meets the spectrum efficiency standard of one channel per 12.5 kHz of channel bandwidth (voice) or 4800 bits per second per 6.25 kHz (data).

• Applications for modification of operations that expand the authorized contour of an existing station using 25 kHz channels will be accepted until January 1, 2011. After January 1, 2011, applications for modification of operations that expand the authorized contour of an existing station will be accepted only to the extent that the equipment meets the spectrum efficiency standard of one channel per 12.5 kHz of channel bandwidth (voice) or 4800 bits per second per 6.25 kHz (data) if the bandwidth for transmissions specified in the modification application is greater than 12.5 kHz.

• Manufacture and importation of any 150–174 MHz and 421–512 MHz band equipment operating on a channel bandwidth up to 25 kHz will be permitted until January 1, 2011. After January 1, 2011, manufacture and importation of any 150–174 MHz and 421–512 MHz band equipment operating on a channel bandwidth greater than 12.5 kHz will be accepted only to the extent that the equipment meets the spectrum efficiency standard of one channel per 12.5 kHz of channel bandwidth (voice) or 4800 bits per second per 6.25 kHz (data).

3. We revise our rules to permit applications for certification of equipment received on or after January 1, 2005 operating with a 25 kHz bandwidth, to the extent that the equipment meets the spectrum efficiency standard of one channel per 6.25 kHz of channel bandwidth (voice) or 4800 bits per second per 6.25 kHz (data). However, we stay the January 1, 2005 deadline with respect to certification of equipment in the *Order*, pending resolution of the issues raised in the *Third Further Notice of Proposed Rulemaking*.

4. We revise our rules to exempt part 90 paging-only frequencies from the narrowbanding requirements.

5. For Commission licensees operating in the Federal Government bands 150.05–150.8 MHz, 162.0125–173.2 MHz, and 173.4–174 MHz, we recognize that a separate ongoing proceeding—ET Docket No. 04–243—is addressing whether different narrowbanding requirements are needed to account for the Federal Government's own narrowbanding plans in those bands. Accordingly, we recognize that the decisions we adopt herein are subject to further modification with respect to those bands and defer decisions with respect to those bands where appropriate.

I. Procedural Matters

A. Paperwork Reduction Act

6. The Order does not contain any new or modified information collection.

B. Regulatory Flexibility Act Analyses

7. As required by the Regulatory Flexibility Act (RFA), *see* 5 U.S.C. 604, the Commission has prepared a Supplemental Final Regulatory Flexibility Analysis of the possible impact of the rule changes contained in this *Third Memorandum Opinion and Order* small entities. The Supplemental Final Regulatory Flexibility Act analysis is set forth below. The Commission's Consumer Information Bureau, Reference Information Center, will send a copy of this *Third Memorandum Opinion and Order, Third Further Notice and Order*, including the Final Regulatory Flexibility Act Analyses, to the Chief Counsel for Advocacy of the Small Business Administration.

C. Report to Congress

8. The Commission will send a copy of this *Third Memorandum Opinion and Order, Third Further Notice and Order* in a report to be sent to Congress and the General Accounting Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

II. Supplemental Final Regulatory Flexibility Analysis

9. As required by the Regulatory Flexibility Act (RFA), a Final Regulatory Flexibility Analysis (RFA) was incorporated in the *Second Report and Order and Second Further Notice of Proposed Rule Making (Second R&O and Second Further Notice)* in WT Docket 99–87. The Commission sought written public comment on the proposals in the *Second Further Notice of Proposed Rule Making*. In view of the fact that we have adopted further rule amendments in this *Third Memorandum Opinion and Order*, we have included this Supplemental Final Regulatory Flexibility Analysis (SFRFA). This Supplemental Final Regulatory Flexibility Analysis (SFRFA) conforms to the RFA.

Need for and Objectives of the Order

10. The *Third Memorandum Opinion and Order* adopts rules to promote the transition to narrowband technology in bands 150–174 MHz and 421–512 MHz. Specifically, we amend our rules to impose a deadline for migration to 12.5 kHz technology for both Public Safety Radio Pool and Industrial/Business Radio Pool licensees operating Private Land Mobile Radio Service (PLMRS) systems on those bands, beginning January 1, 2013. In addition, we amend our rules to prohibit the certification of any equipment capable of operating at one voice path per 25 kHz of spectrum, *i.e.*, multi-mode equipment that includes a 25 kHz mode, beginning January 1, 2011. We also prohibit the manufacture and importation of 25 kHz equipment (including multi-mode equipment that can operate on a 25 kHz bandwidth) beginning January 1, 2011. We will permit all licensees operating on these bands to modify existing systems, including modifications that expand coverage area, with 25 kHz equipment until January 1, 2011. No later than December 31, 2009 the Commission will issue a Public Notice of the impending January 1, 2011

deadline for filing new applications and modifications of any systems utilizing 25 kHz channels. This notice will also inform the public of the frequency coordinators cutoff date for accepting said applications. The Public Notice will also serve as a reminder that all Public Safety Radio Pool and Industrial/Business Radio Pool licensees are required to migrate to 12.5 kHz by January 1, 2013. These actions will effect a transition to a narrowband channel plan. The resulting gain in efficiency will ease congestion on the PLMRS channels in these bands.

Summary of Significant Issues Raised by Public Comments in Response to the FRFA

11. No comments or reply comments were filed in direct response to the FRFA. The Commission has, however, reviewed the general comments that may impact small businesses. Much of the potential impact on small businesses arises from the mandatory migration to 12.5 kHz technology beginning on January 1, 2011, the ban on importation and manufacture of 25 kHz equipment after January 1, 2011 and the freeze on new 25 kHz applications. The costs associated with replacement of current systems were cited in opposition to mandatory conversion proposals.

Description and Estimate of the Number of Small Entities to Which the Rules Apply

12. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the rules adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). A small organization is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide, as of 1992, there were approximately 275,801 small organizations.

13. The rule changes effectuated by this *Third Memorandum Opinion and Order* apply to licensees and applicants of private land mobile frequencies in the 150–174 MHz and 421–512 MHz bands, and to manufacturers of radio equipment.

14. *Private Land Mobile Radio* (PLMR). PLMR systems serve an essential role in a vast range of industrial, business, land transportation and public service activities. These radios are used by companies of all sizes that operate in all U.S. business categories. Because of the vast array of PLMR users, the Commission had not developed, nor would it be possible to develop, a definition of small entities specifically applicable to PLMR users. For the purpose of determining whether a licensee is a small business as defined by the Small Business Administration (SBA), each licensee would need to be evaluated within its own business area. The Commission's fiscal year 1994 annual report indicates that, at the end of fiscal year 1994, there were 1,087,276 licensees operating 12,481,989 transmitters in the PLMR bands below 512 MHz. Further, because any entity engaged in a commercial activity is eligible to hold a PLMR license, these rules could potentially impact every small business in the U.S.

15. *Public Safety.* Public Safety Radio Pool services include police, fire, local governments, forestry conservation, highway maintenance, and emergency medical services. The SBA rules contain a definition for small radiotelephone (wireless) companies, which encompass business entities engaged in radiotelephone communications employing no more that 1,500 persons. There are a total of approximately 127,540 licensees within these services. Governmental entities as well as private businesses comprise the licensees for these services. The RFA also includes small governmental entities as a part of the regulatory flexibility analysis. ''Small governmental jurisdiction'' generally means ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000.'' As of 1992, there were approximately 85,006 such jurisdictions in the United States. This number includes 38,978 counties, cities and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, the Commission estimates that 81,600 (96 percent) are small entities.

16. *Equipment Manufacturers.* We anticipate that at least six radio equipment manufacturers will be affected by our decisions in this proceeding. According to the SBA's regulations, a radio and television broadcasting and communications equipment manufacturer must have 750 or fewer employees in order to qualify as a small business concern. Census Bureau data indicate that there are 858 U.S. firms that manufacture radio and television broadcasting and communications equipment, and that 778 of these firms have fewer than 750 employees and would therefore be classified as small entities.

Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

17. This *Third Memorandum Opinion and Order* adopts rules to promote the transition to narrowband technology for private land mobile licensees, in the 150–174 MHz and 421–512 MHz bands. In particular, applications for operations on 25 kHz equipment will be accepted until January 1, 2011. We will permit all licensees operating on these bands to modify existing systems, including modifications that expand coverage area, with 25 kHz equipment until January 1, 2011. No later than December 31, 2009 the Commission will issue a Public Notice of the impending January 1, 2011 deadline for filing new applications and modifications of any systems utilizing 25 kHz channels. This notice will also inform the public of the frequency coordinators cutoff date for accepting said applications. The Public Notice will also serve as a reminder that all Public Safety Radio Pool and Industrial/Business Radio Pool licensees are required to migrate to 12.5 kHz by January 1, 2013. Further, this *Third Memorandum Opinion and Order* amends our current rules to prohibit the importation or manufacture of 25 kHz-only equipment beginning on January 1, 2011. All equipment utilized on or after January 1, 2013 must utilize a maximum channel bandwidth of 12.5 kHz, or meet the narrowband efficiency standard of one channel per 6.25 kHz (voice) or 4800 bits per second per 6.25 kHz (data).

Steps Taken To Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered

18. The FRFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design,

standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

19. The Commission adopted rules in this *Third Memorandum Opinion and Order* upon consideration of the economic burden on small businesses. For instance, many commenters supported adoption of rules that would require conversion of Industrial/Business Radio Pool licensees to 12.5 kHz equipment as early as January 1, 2008. Such a proposal fails to give any consideration to the amortization and life-span of current equipment and the resources available to small entities. Rather than require small business licensees to convert its system to 12.5 kHz or equivalent technology beginning on January 1, 2008, we retain our current rules governing mandatory migration to 12.5 kHz or equivalent technology until January 1, 2013 for Industrial/Business Radio Pool systems. Likewise, for Public Safety Radio Pool systems, many commenters supported adoption of rules that would require conversion of Public Safety Radio Pool systems to 12.5 kHz equipment as early as January 1, 2013. In recognizing the need for clarity and uniformity in a single final migration date, and in consideration of the development and readiness of public safety operators in general, we amend our rules to accelerate the mandatory migration to 12.5 kHz or equivalent technology to January 1, 2013 for INDUSTRIAL/Business Radio Pool PLMR systems. We rejected a phased approach that would have burdened licensees to determine which market and which date applied to them. We also rejected an approach that would assign different migration dates based on definitional concepts of urban or rural. Although we employ intermediary steps to promote migration to 12.5 kHz equipment, we believe that delaying the effective dates of these interim measures closer to the final migration date adopted herein will best facilitate a complete and seamless migration to 12.5 kHz narrowband equipment. We declined to initiate a plan at this time to mandate a further migration to narrowband equipment based on a 6.25 kHz standard as premature. Exemption from coverage of the rule changes for small businesses would frustrate the purpose of the rule, *i.e.*, migration to more efficient spectrum use, and facilitate continued inefficient use of spectrum.

Report to Congress

20. The Commission will send a copy of this *Third Memorandum Opinion and Order, Third Further Notice of Proposed Rule Making and Order,* including this SFRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, *see* 5 U.S.C. 801(a)(1) (A). In addition, the Commission will send a copy of the *Third Memorandum Opinion and Order, Third Further Notice of Proposed Rule Making and Order,* including this SFRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *Third Memorandum Opinion and Order, Third Further Notice of Proposed Rule Making and Order* and SFRFA (or summaries thereof) will also be published in the **Federal Register**. *See* 5 U.S.C. 604(b).

Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

21. None.

III. Ordering Clauses

22. Pursuant to Sections 1, 2, 4(i), 301, 302, and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 301, 302, and 303, and §§ 1.421 and 1.425 of the Commission's rules, 47 CFR 1.421 and 1.425, it is ordered that the *Third Memorandum Opinion and Order, Third Further Notice of Proposed Rule Making and Order* is hereby adopted.

23. It is further ordered that parts 1 and 90 of the Commission's rules are amended as set forth in Appendix B, and that these rules shall be effective July 15, 2005.

24. It is further ordered that the stay of 47 CFR. 90.209(b)(6), *see* FCC 03–306, 69 FR 17959, April 6, 2004, shall expire July 15, 2005.

25. It is further ordered that the January 1, 2005, deadline in 47 CFR 90.203(j)(4) and (j)(5) is stayed effective upon the release of this *Third Memorandum Opinion and Order, Third Further Notice of Proposed Rule Making and Order* pending resolution of the Petition to Defer filed by Motorola, Inc., Kenwood U.S.A. Corporation, and EFJohnson Company, on July 24, 2004.

26. It is further ordered that the Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this *Third Memorandum Opinion and Order, Third Further Notice of Proposed Rule Making and Order* including the Initial and Final Regulatory Flexibility Analyses, to the Chief Counsel for Advocacy of the U.S. Small Business Administration.

List of Subjects in 47 CFR Part 90

Communications equipment, Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Changes

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 90 as follows:

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

■ 1. The authority citation for part 90 continues to read as follows:

Authority: Sections 4(i), 11, 303(g), 303(r) and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7).

■ 2. Section 90.20 is amended by revising the following entries to the table in paragraph (c) and paragraphs (d)(27) and (d)(30) to read as follows:

§ 90.20 Public Safety Pool.

* * * * *

(c) * * *

(3) * * *

PUBLIC SAFETY POOL FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations	Coordinator
* * *	* * *		*
150.7825	do	88	PM
* * *	* * *		*
151.0025	do	27, 28	PH
* * *	* * *		*
151.0325	do	27, 28	PH

PUBLIC SAFETY POOL FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations	Coordinator
* * *	* * *		*
151.0475	do	27, 28	PH
* * *	* * *		*
151.0625	do	27, 28	PH
* * *	* * *		*
151.0775	do	27, 28	PH
* * *	* * *		*
151.0925	do	27, 28	PH
* * *	* * *		*
151.1075	do	27, 28	PH
* * *	* * *		*
151.1225	do	27, 28	PH
* * *	* * *		*
151.1375	do	27, 28, 80	PH
* * *	* * *		*
151.1525	do	27, 28	PO
* * *	* * *		*
151.1675	do	27, 28	PO
* * *	* * *		*
151.1825	do	27, 28	PO
* * *	* * *		*
151.1975	do	27, 28	PO
* * *	* * *		*
151.2125	do	27, 28	PO
* * *	* * *		*
151.2275	do	27, 28	PO
* * *	* * *		*
151.2425	do	27, 28	PO
* * *	* * *		*
151.2575	do	27, 28	PO
* * *	* * *		*
151.2725	do	27, 28	PO
* * *	* * *		*
151.2875	do	27, 28	PO
* * *	* * *		*
151.3025	do	27, 28	PO
* * *	* * *		*
151.3175	do	27, 28	PO
* * *	* * *		*
151.3325	do	27, 28	PO
* * *	* * *		*
151.3475	do	27, 28	PO
* * *	* * *		*
151.3625	do	27, 28	PO
* * *	* * *		*
151.3775	do	27, 28	PO
* * *	* * *		*
151.3925	do	27, 28	PO

PUBLIC SAFETY POOL FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations	Coordinator
* * *	* * *		*
151.4075	do	27, 28	PO
* * *	* * *		*
151.4225	do	27, 28	PO
* * *	* * *		*
151.4375	do	27, 28	PO
* * *	* * *		*
151.4525	do	27, 28	PO
* * *	* * *		*
151.4675	do	27, 28	PO
* * *	* * *		*
151.4825	do	27, 28	PO
* * *	* * *		*
151.4975	do	7, 27, 28	PO
* * *	* * *		*
153.7475	do	27	PX
* * *	* * *		*
153.7625	do	27	PX
* * *	* * *		*
153.7775	do	27	PF
* * *	* * *		*
153.7925	do	27	PX
* * *	* * *		*
153.8075	do	27	PX
* * *	* * *		*
153.8225	do	27	PX
* * *	* * *		*
153.8375	do	27, 31	PF
* * *	* * *		*
153.8525	do	27	PX
* * *	* * *		*
153.8675	do	27	PX
* * *	* * *		*
153.8825	do	27	PX
* * *	* * *		*
153.8975	do	27	PX
* * *	* * *		*
153.9125	do	27	PX
* * *	* * *		*
153.9275	do	27	PX
* * *	* * *		*
153.9425	do	27	PX
* * *	* * *		*
153.9575	do	27	PF
* * *	* * *		*
153.9725	do	27	PX
* * *	* * *		*
153.9875	do	27	PX

PUBLIC SAFETY POOL FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations	Coordinator
* * *	* * *		*
154.0025	do	27	PX
* * *	* * *		*
154.0175	do	27	PX
* * *	* * *		*
154.0325	do	27	PX
* * *	* * *		*
154.0475	do	27, 28	PX
* * *	* * *		*
154.0625	do	27, 28	PX
* * *	* * *		*
154.0775	do	27, 28	PF
* * *	* * *		*
154.0925	do	27, 28	PX
* * *	* * *		*
154.1075	do	27, 28	PX
* * *	* * *		*
154.1225	do	27, 28	PX
* * *	* * *		*
154.1375	do	27, 28	PF
* * *	* * *		*
154.1525	do	27, 28	PF
* * *	* * *		*
154.1675	do	27, 28	PF
* * *	* * *		*
154.1825	do	27, 28	PF
* * *	* * *		*
154.1975	do	27, 28	PF
* * *	* * *		*
154.2125	do	27, 28	PF
* * *	* * *		*
154.2275	do	27, 28	PF
* * *	* * *		*
154.2425	do	27, 28	PF
* * *	* * *		*
154.2575	do	27, 28	PF
* * *	* * *		*
154.2725	do	19, 27, 28	PF
* * *	* * *		*
154.2875	do	19, 27, 28	PF
* * *	* * *		*
154.3025	do	19, 27, 28	PF
* * *	* * *		*
154.3175	do	27, 28	PF
* * *	* * *		*
154.3325	do	27, 28	PF
* * *	* * *		*
154.3475	do	27, 28	PF

PUBLIC SAFETY POOL FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations	Coordinator
* * *	* * *		*
154.3625	do	27, 28	PF
* * *	* * *		*
154.3775	do	27, 28	PF
* * *	* * *		*
154.3925	do	27, 28	PF
* * *	* * *		*
154.4075	do	27, 28	PF
* * *	* * *		*
154.4225	do	27, 28	PF
* * *	* * *		*
154.4375	do	27, 28	PF
* * *	* * *		*
154.4525	do	27, 28, 80	PF
* * *	* * *		*
154.6575	do	27	PP
* * *	* * *		*
154.6725	do	16, 27	PP
* * *	* * *		*
154.6875	do	16, 27	PP
* * *	* * *		*
154.7025	do	16, 27	PP
* * *	* * *		*
154.7175	do	27	PP
* * *	* * *		*
154.7325	do	27	PP
* * *	* * *		*
154.7475	do	27	PP
* * *	* * *		*
154.7625	do	27	PP
* * *	* * *		*
154.7775	do	27	PP
* * *	* * *		*
154.7925	do	27	PP
* * *	* * *		*
154.8075	do	27	PP
* * *	* * *		*
154.8225	do	27	PP
* * *	* * *		*
154.8375	do	27	PP
* * *	* * *		*
154.8525	do	27	PP
* * *	* * *		*
154.8675	do	27	PP
* * *	* * *		*
154.8825	do	27	PP
* * *	* * *		*
154.8975	do	27	PP

PUBLIC SAFETY POOL FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations	Coordinator
* * *	* * *		*
154.9275	do	16, 27	PP
* * *	* * *		*
154.9425	do	16, 27	PP
* * *	* * *		*
154.9575	do	27	PX
* * *	* * *		*
154.9725	do	27	PX
* * *	* * *		*
154.9875	do	27	PX
* * *	* * *		*
155.0025	do	27	PX
* * *	* * *		*
155.0175	do	27	PP
* * *	* * *		*
155.0325	do	27	PX
* * *	* * *		*
155.0475	do	27	PX
* * *	* * *		*
155.0625	do	27	PX
* * *	* * *		*
155.0775	do	27	PP
* * *	* * *		*
155.0925	do	27	PX
* * *	* * *		*
155.1075	do	27	PX
* * *	* * *		*
155.1225	do	27	PX
* * *	* * *		*
155.1375	do	27	PP
* * *	* * *		*
155.1525	do	27	PX
* * *	* * *		*
155.1675	do	10, 27	PS
* * *	* * *		*
155.1825	do	10, 27	PS
* * *	* * *		*
155.1975	do	27	PP
* * *	* * *		*
155.2125	do	10, 27	PS
* * *	* * *		*
155.2275	do	10, 27	PS
* * *	* * *		*
155.2425	do	10, 27	PS
* * *	* * *		*
155.2575	do	27	PP
* * *	* * *		*
155.2725	do	10, 27	PS

PUBLIC SAFETY POOL FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations	Coordinator
* * *	* * *		*
155.2875	do	10, 27	PS
* * *	* * *		*
155.3025	do	10, 27	PSX
* * *	* * *		*
155.3175	do	27	PP
* * *	* * *		*
155.3325	do	27, 38, 39	PM
* * *	* * *		*
155.3475	do	27, 39, 40	PM
* * *	* * *		*
155.3625	do	27, 39, 40	PM
* * *	* * *		*
155.3775	do	27	PP
* * *	* * *		*
155.3925	do	27, 38, 39	PM
* * *	* * *		*
155.4075	do	27, 38, 39	PM
* * *	* * *		*
155.4225	do	27	PP
* * *	* * *		*
155.4375	do	27	PP
* * *	* * *		*
155.4525	do	16, 27	PP
* * *	* * *		*
155.4675	do	16,27	PP
* * *	* * *		*
155.4825	do	27,41	PP
* * *	* * *		*
155.4975	do	27	PP
* * *	* * *		*
155.5125	do	16, 27	PP
* * *	* * *		*
155.5275	do	27	PP
* * *	* * *		*
155.5425	do	27	PP
* * *	* * *		*
155.5575	do	27	PP
* * *	* * *		*
155.5725	do	27	PP
* * *	* * *		*
155.5875	do	27	PP
* * *	* * *		*
155.6025	do	27	PP
* * *	* * *		*
155.6175	do	27	PP
* * *	do * * *	27	PP*
155.6325	do	27	PP

PUBLIC SAFETY POOL FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations	Coordinator
* * *	* * *		*
155.6475	do	27	PP
* * *	* * *		*
155.6625	do	27	PP
* * *	* * *		*
155.6775	do	27	PP
* * *	* * *		*
155.6925	do	27	PP
* * *	* * *		*
155.7075	do	27	PP
* * *	* * *		*
155.7225	do	27	PP
* * *	* * *		*
155.7375	do	27	PP
* * *	* * *		*
155.7525	do	27, 80, 83	PX
* * *	* * *		*
155.7675	do	27	PX
* * *	* * *		*
155.7825	do	27	PX
* * *	* * *		*
155.7975	do	27	PP
* * *	* * *		*
155.8125	do	27	PX
* * *	* * *		*
155.8275	do	27	PX
* * *	* * *		*
155.8425	do	27	PP
* * *	* * *		*
155.8575	do	27	PX
* * *	* * *		*
155.8725	do	27	PX
* * *	* * *		*
155.8875	do	27	PX
* * *	* * *		*
155.9025	do	27	PX
* * *	* * *		*
155.9175	do	27	PP
* * *	* * *		*
155.9325	do	27	PX
* * *	* * *		*
155.9475	do	27	PX
* * *	* * *		*
155.9625	do	27	PX
* * *	* * *		*
155.9775	do	27	PP
* * *	* * *		*
155.9925	do	27	PX

PUBLIC SAFETY POOL FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations	Coordinator
* * *	* * *		*
156.0075	do	27	PX
* * *	* * *		*
156.0225	do	27	PX
* * *	* * *		*
156.0375	do	27	PP
* * *	* * *		*
156.0525	do	27, 42	PP
* * *	* * *		*
156.0675	do	27, 42	PH
* * *	* * *		*
156.0825	do	27	PH
* * *	* * *		*
156.0975	do	27	PP
* * *	* * *		*
156.1125	do	27	PH
* * *	* * *		*
156.1275	do	27	PP
* * *	* * *		*
156.1425	do	27	PH
* * *	* * *		*
156.1575	do	27	PP
* * *	* * *		*
156.1725	do	27, 42, 43	PH
* * *	* * *		*
156.1875	do	27, 42, 43	PH
* * *	* * *		*
156.2025	do	27, 43	PH
* * *	* * *		*
156.2175	do	27	PP
* * *	* * *		*
156.2325	do	27, 43	PH
* * *	* * *		*
158.7375	do	27, 80	PP
* * *	* * *		*
158.7525	do	27	PX
* * *	* * *		*
158.7675	do	27	PX
* * *	* * *		*
158.7825	do	27	PX
* * *	* * *		*
158.7975	do	27	PP
* * *	* * *		*
158.8125	do	27	PX
* * *	* * *		*
158.8425	do	27	PX
* * *	* * *		*
158.8575	do	27	PP

PUBLIC SAFETY POOL FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations	Coordinator
* * *	* * *		*
158.8725	do	27	PX
* * *	* * *		*
158.9025	do	27	PX
* * *	* * *		*
158.9175	do	27	PP
* * *	* * *		*
158.9325	do	27	PX
* * *	* * *		*
158.9625	do	27	PX
* * *	* * *		*
158.9775	do	27	PP
* * *	* * *		*
158.9925	do	27, 43	PH
* * *	* * *		*
159.0075	do	27, 43	PH
* * *	* * *		*
159.0225	do	27, 43	PH
* * *	* * *		*
159.0375	do	27	PP
* * *	* * *		*
159.0525	do	27, 43	PH
* * *	* * *		*
159.0675	do	27, 43	PH
* * *	* * *		*
159.0825	do	27, 43	PH
* * *	* * *		*
159.0975	do	27	PP
* * *	* * *		*
159.1125	do	27, 43	PH
* * *	* * *		*
159.1275	do	27, 43	PH
* * *	* * *		*
159.1425	do	27, 43	PH
* * *	* * *		*
159.1575	do	27	PP
* * *	* * *		*
159.1725	do	27, 43	PH
* * *	* * *		*
159.1875	do	27	PH
* * *	* * *		*
159.2025	do	27	PH
* * *	* * *		*
159.2175	do	27	PP
* * *	* * *		*
159.2325	do	27	PO
* * *	* * *		*
159.2475	do	27, 46	PO

PUBLIC SAFETY POOL FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations	Coordinator
* * *	* * *		*
159.2625	do	27, 46	PO
* * *	* * *		*
159.2775	do	27, 46	PO
* * *	* * *		*
159.2925	do	27, 46	PO
* * *	* * *		*
159.3075	do	27, 46	PO
* * *	* * *		*
159.3225	do	27, 46	PO
* * *	* * *		*
159.3375	do	27, 46	PO
* * *	* * *		*
159.3525	do	27, 46	PO
* * *	* * *		*
159.3675	do	27, 46	PO
* * *	* * *		*
159.3825	do	27, 46	PO
* * *	* * *		*
159.3975	do	27, 46	PO
* * *	* * *		*
159.4125	do	27, 46	PO
* * *	* * *		*
159.4275	do	27, 46	PO
* * *	* * *		*
159.4425	do	27, 46	PO
* * *	* * *		*
159.4575	do	27	PO
* * *	* * *		*
159.4725	do	27, 80	PO
* * *	* * *		*

* * * * *

(d) * * *

(27) This frequency will be assigned with an authorized bandwidth not to exceed 11.25 kHz. In the 450–470 MHz band, secondary telemetry operations pursuant to § 90.238(e) will be authorized on this frequency.

* * * * *

(30) This frequency will be authorized a channel bandwidth of 25 kHz.

* * * * *

■ 3. Section 90.35 is amended by revising the following entries to the table in paragraph (b)(3) and by revising paragraphs (c)(29) and (c)(30) to read as follows:

§ 90.35 Industrial/Business Pool.

* * * * *

(b) * * *

(3) * * *

INDUSTRIAL/BUSINESS POOL FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations	Coordinator
* * *	* * *		*
150.8525	do	30	LA
* * *	* * *		*
150.8675	do	30	LA

INDUSTRIAL/BUSINESS POOL FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations	Coordinator
* * *	* * *		*
150.8825	do	30	LA
* * *	* * *		*
150.8975	do	30	LA
* * *	* * *		*
150.9425	do	30	LA
* * *	* * *		*
150.9575	do	30	LA
* * *	* * *		*
150.9725	do	30	LA
* * *	* * *		*
150.9875	do	8, 30	IP
* * *	* * *		*
151.0025	do	30, 31	
* * *	* * *		*
151.0175	do	30, 31	
* * *	* * *		*
151.0325	do	30, 31	
* * *	* * *		*
151.0475	do	30, 31	
* * *	* * *		*
151.0925	do	30, 31	
* * *	* * *		*
151.1075	do	30, 31	
* * *	* * *		*
151.1225	do	30, 31	
* * *	* * *		*
151.1375	do	30, 31	
* * *	* * *		*
151.1525	do	30, 31	
* * *	* * *		*
151.1675	do	30, 31	
* * *	* * *		*
151.2125	do	30, 31	
* * *	* * *		*
151.2275	do	30, 31	
* * *	* * *		*
151.2425	do	30, 31	
* * *	* * *		*
151.2575	do	30, 31	
* * *	* * *		*
151.2725	do	30, 31	
* * *	* * *		*
151.2875	do	30, 31	
* * *	* * *		*
151.3325	do	30, 31	
* * *	* * *		*
151.3475	do	30, 31	

INDUSTRIAL/BUSINESS POOL FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations	Coordinator
* * *	* * *		*
151.3625	do	30, 31	
* * *	* * *		*
151.3775	do	30, 31	
* * *	* * *		*
151.3925	do	30, 31	
* * *	* * *		*
151.4075	do	30, 31	
* * *	* * *		*
151.4225	do	30, 31	
* * *	* * *		*
151.4375	do	30, 31	
* * *	* * *		*
151.4525	do	30, 31	
* * *	* * *		*
151.4675	do	30, 31	
* * *	* * *		*
151.4825	do	30, 31	
* * *	* * *		*
151.4975	do	30, 32	
* * *	* * *		*
151.5125	do	17, 30	
* * *	* * *		*
151.5275	do	30	
* * *	* * *		*
151.5425	do	30	
* * *	* * *		*
151.5575	do	30	
* * *	* * *		*
151.5725	do	30	
* * *	* * *		*
151.5875	do	30	
* * *	* * *		*
151.6025	do	30	
* * *	* * *		*
151.6475	do	30	
* * *	* * *		*
151.6625	do	30	
* * *	* * *		*
151.670	do	30	
151.6775	do	30	
* * *	* * *		*
151.700	do	10, 30, 34	
* * *	* * *		*
151.7225	do	30	
151.730	do	30	
151.7375	do	30	
* * *	* * *		*
151.760	do	10, 30, 34	

INDUSTRIAL/BUSINESS POOL FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations	Coordinator
* * *	* * *		*
151.7825	do	30	
151.790	do	30	
151.7975	do	30	
* * *	* * *		*
151.8425	do	30	
151.850	do	30	
151.8575	do	30	
* * *	* * *		*
151.9025	do	30	
151.910	do	30	
151.9175	do	30	
* * *	* * *		*
151.9625	do	30	
151.970	do	30	
151.9775	do	30	
* * *	* * *		*
151.2775	do	6, 30	
* * *	* * *		*
152.2925	do	6, 30	
* * *	* * *		*
152.3075	do	6, 30	
* * *	* * *		*
152.3225	do	6, 30	
* * *	* * *		*
152.3375	do	6, 30	
* * *	* * *		*
152.3525	do	6, 30	
* * *	* * *		*
152.3675	do	6, 30	
* * *	* * *		*
152.3825	do	6, 30	
* * *	* * *		*
152.3975	do	6, 30	
* * *	* * *		*
152.4125	do	6, 30	
* * *	* * *		*
152.4275	do	6, 30	
* * *	* * *		*
152.4425	do	6, 30	
* * *	* * *		*
152.4575	do	6, 30	
* * *	* * *		*
152.8775	do	30	
* * *	* * *		*
152.8925	do	30	
* * *	* * *		*
152.9075	do	30	
* * *	* * *		*
152.9225	do	30	
* * *	* * *		*
152.9375	do	30	

INDUSTRIAL/BUSINESS POOL FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations	Coordinator
* * *	* * *		*
152.9525	do	30	
* * *	* * *		*
152.9675	do	30	
* * *	* * *		*
152.9825	do	30	
* * *	* * *		*
152.9975	do	30	
* * *	* * *		*
153.0125	do	30	
* * *	* * *		*
153.0275	do	30	
* * *	* * *		*
153.0425	do	30	
* * *	* * *		*
153.0575	do	4, 7, 30	
* * *	* * *		*
153.0725	do	30	
* * *	* * *		*
153.0875	do	4, 7, 30	
* * *	* * *		*
153.1025	do	30, 80	
* * *	* * *		*
153.1175	do	4, 7, 30	
* * *	* * *		*
153.1325	do	30	
* * *	* * *		*
153.1475	do	4, 7, 30	
* * *	* * *		*
153.1625	do	30	
* * *	* * *		*
153.1775	do	4, 7, 30	
* * *	* * *		*
153.1925	do	30	
* * *	* * *		*
153.2075	do	4, 7, 30	
* * *	* * *		*
153.2225	do	30	
* * *	* * *		*
153.2375	do	4, 7, 30	
* * *	* * *		*
153.2525	do	30	
* * *	* * *		*
153.2625	do	4, 7, 30	
* * *	* * *		*
153.2825	do	30	
* * *	* * *		*
153.2975	do	4, 7, 30	

INDUSTRIAL/BUSINESS POOL FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations	Coordinator
* * *	* * *		*
153.3125	do	30	
* * *	* * *		*
153.3275	do	4, 7, 30	
* * *	* * *		*
153.3425	do	30	
* * *	* * *		*
153.3575	do	4, 7, 30	
* * *	* * *		*
153.3725	do	30	
* * *	* * *		*
153.3875	do	30	
* * *	* * *		*
153.4025	do	30	
* * *	* * *		*
153.4175	do	30	IW
* * *	* * *		*
153.4325	do	30, 80	IP, IW
* * *	* * *		*
153.4475	do	30, 80	IP, IW
* * *	* * *		*
153.4625	do	30, 80	IP, IW
* * *	* * *		*
153.4775	do	30	IW
* * *	* * *		*
153.4925	do	30, 80	IP, IW
* * *	* * *		*
153.5075	do	30, 80	IP, IW
* * *	* * *		*
153.5225	do	30, 80	IP, IW
* * *	* * *		*
153.5375	do	30	IW
* * *	* * *		*
153.5525	do	30, 80	IP, IW
153.560	do	30, 80	IP, IW
153.5675	do	30, 80	IP, IW
* * *	* * *		*
153.5825	do	30, 80	IP, IW
* * *	* * *		*
153.5975	do	30	IW
* * *	* * *		*
153.6125	do	30, 80	IP, IW
* * *	* * *		*
153.6275	do	30, 80	IP, IW
* * *	* * *		*
153.6425	do	30, 80	IP, IW
* * *	* * *		*
153.6575	do	30, 80	IW

INDUSTRIAL/BUSINESS POOL FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations	Coordinator
* * *	* * *		*
153.6725	do	30, 80	IP, IW
* * *	* * *		*
153.6875	do	30, 80	IP, IW
* * *	* * *		*
153.7025	do	30	IW
* * *	* * *		*
153.7175	do	30	IW
* * *	* * *		*
153.7325	do	30	IW
* * *	* * *		*
154.4825	Base or Mobile	30	
* * *	* * *		*
154.4975	do	30	
154.505	do	30	
* * *	* * *		*
154.5275	Mobile	10, 30, 34	
* * *	* * *		*
154.5475	do	30	
* * *	* * *		*
154.640	Base	30, 36, 37, 48	
* * *	* * *		*
157.4775	do	12, 30	LA
* * *	* * *		*
157.4925	do	12, 30	LA
* * *	* * *		*
157.5075	do	12, 30	LA
* * *	* * *		*
157.5225	do	12, 30	LA
* * *	* * *		*
157.5375	do	6, 30	
* * *	* * *		*
157.5525	do	6, 30.	
* * *	* * *		*
157.5675	do	6, 30	
* * *	* * *		*
157.5825	do	6, 30	
* * *	* * *		*
157.5975	do	6, 30	
* * *	* * *		*
157.6125	do	6, 30	
* * *	* * *		*
157.6275	do	6, 30	
* * *	* * *		*
157.6425	do	6, 30	
* * *	* * *		*
157.6575	do	6, 30	
* * *	* * *		*
157.6725	do	6, 30	

INDUSTRIAL/BUSINESS POOL FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations	Coordinator
* * *	* * *		*
157.6875	do	6, 30	
* * *	* * *		*
157.7025	do	6, 30	
* * *	* * *		*
157.7175	do	6, 30	
* * *	* * *		*
158.1375	do	6, 30	IW
* * *	* * *		*
158.1525	do	6, 30	IP, IW
* * *	* * *		*
158.1675	do	6, 30	IP, IW
* * *	* * *		*
158.1825	do	30, 81	IP, IW
* * *	* * *		*
158.1975	do	30	IW
* * *	* * *		*
158.2125	do	30, 81	IP, IW
* * *	* * *		*
158.2275	do	30, 81	IP, IW
* * *	* * *		*
158.2425	do	30, 81	IP, IW
* * *	* * *		*
158.2575	do	30	IW
* * *	* * *		*
158.2725	do	30, 81	IP, IW
* * *	* * *		*
158.2875	do	30	IP
* * *	* * *		*
158.3025	do	30	IP
* * *	* * *		*
158.3175	do	4, 7, 30	IP
* * *	* * *		*
158.3325	do	30	IP
* * *	* * *		*
158.3475	do	30	
* * *	* * *		*
158.3625	do	30	IP
* * *	* * *		*
158.3775	do	4, 7, 30	IP
* * *	* * *		*
158.3925	do	30	
* * *	* * *		*
158.4075	do	17, 30	
* * *	* * *		*
158.4225	do	30	IP
* * *	* * *		*
158.4375	do	4, 7, 30	IP

INDUSTRIAL/BUSINESS POOL FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations	Coordinator
* * *	* * *		*
159.4875	do	8, 30	IP
* * *	* * *		*
159.5025	do	30	
* * *	* * *		*
159.5175	do	30	
* * *	* * *		*
159.5325	do	30	
* * *	* * *		*
159.5475	do	30	
* * *	* * *		*
159.5625	do	30	
* * *	* * *		*
159.5775	do	30	
* * *	* * *		*
159.5925	do	30	
* * *	* * *		*
159.6075	do	30	
* * *	* * *		*
159.6225	do	30	
* * *	* * *		*
159.6375	do	30	
* * *	* * *		*
159.6525	do	30	
* * *	* * *		*
159.6675	do	30	
* * *	* * *		*
159.6825	do	30	
* * *	* * *		*
159.6975	do	30	
* * *	* * *		*
159.7125	do	30	
* * *	* * *		*
159.7275	do	30	
* * *	* * *		*
159.7425	do	30	
* * *	* * *		*
159.7575	do	30	
* * *	* * *		*
159.7725	do	30	
* * *	* * *		*
159.7875	do	30	
* * *	* * *		*
159.8025	do	30	
* * *	* * *		*
159.8175	do	30	
* * *	* * *		*
159.8325	do	30	

INDUSTRIAL/BUSINESS POOL FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations	Coordinator
* * *	* * *		*
159.8475	do	30	
* * *	* * *		*
159.8625	do	30	
* * *	* * *		*
159.8775	do	30	
* * *	* * *		*
159.8925	do	30	
* * *	* * *		*
159.9075	do	30	
* * *	* * *		*
159.9225	do	30	
* * *	* * *		*
159.9375	do	30	
* * *	* * *		*
159.9525	do	30	
* * *	* * *		*
159.9675	do	30	
* * *	* * *		*
159.9825	do	30	
* * *	* * *		*
159.9975	do	30	
* * *	* * *		*
160.0125	do	30	
* * *	* * *		*
160.0275	do	30	
* * *	* * *		*
160.0425	do	30	
* * *	* * *		*
160.0575	do	30	
* * *	* * *		*
160.0725	do	30	
* * *	* * *		*
160.0875	do	30	
* * *	* * *		*
160.1025	do	30	
* * *	* * *		*
160.1175	do	30	
* * *	* * *		*
160.1325	do	30	
* * *	* * *		*
160.1475	do	30	
* * *	* * *		*
160.1625	do	30	
* * *	* * *		*
160.1775	do	30	
* * *	* * *		*
160.1925	do	30	

INDUSTRIAL/BUSINESS POOL FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations	Coordinator
* * *	* * *		*
160.2075	do	30	
* * *	* * *		*
160.2225	do	30, 50	LR
* * *	* * *		*
160.2375	do	30, 50	LR
* * *	* * *		*
160.2525	do	30, 50	LR
* * *	* * *		*
160.2675	do	30, 50	LR
* * *	* * *		*
160.2825	do	30, 50	LR
* * *	* * *		*
160.2975	do	30, 50	LR
* * *	* * *		*
160.3125	do	30, 50	LR
* * *	* * *		*
160.3275	do	30, 50	LR
* * *	* * *		*
160.3425	do	30, 50	LR
* * *	* * *		*
160.3575	do	30, 50	LR
* * *	* * *		*
160.3725	do	30, 50	LR
* * *	* * *		*
160.3875	do	30, 50	LR
* * *	* * *		*
160.4025	do	30, 50	LR
* * *	* * *		*
160.4175	do	30, 50, 52	LR
* * *	* * *		*
160.4325	do	30, 50, 52	LR
* * *	* * *		*
160.4475	do	30, 50, 52	LR
* * *	* * *		*
160.4625	do	30, 50, 52	LR
* * *	* * *		*
160.4775	do	30, 50, 52	LR
* * *	* * *		*
160.4925	do	30, 50, 52	LR
* * *	* * *		*
160.5075	do	30, 50, 52	LR
* * *	* * *		*
160.5225	do	30, 50, 52	LR
* * *	* * *		*
160.5375	do	30, 50, 52	LR
* * *	* * *		*
160.5525	do	30, 50, 52	LR

INDUSTRIAL/BUSINESS POOL FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations	Coordinator
* * *	* * *		*
160.5675	do	30, 50, 52	LR
* * *	* * *		*
160.5825	do	30, 50, 52	LR
* * *	* * *		*
160.5975	do	30, 50, 52	LR
* * *	* * *		*
160.6125	do	30, 50, 52	LR
* * *	* * *		*
160.6275	do	30, 50	LR
* * *	* * *		*
160.6475	do	30, 50	LR
* * *	* * *		*
160.6575	do	30, 50	LR
* * *	* * *		*
160.6725	do	30, 50	LR
* * *	* * *		*
160.6875	do	30, 50	LR
* * *	* * *		*
160.7175	do	30, 50	LR
* * *	* * *		*
160.7325	do	30, 50	LR
* * *	* * *		*
160.7475	do	30, 50	LR
* * *	* * *		*
160.7625	do	30, 50	LR
* * *	* * *		*
160.7775	do	30, 50	LR
* * *	* * *		*
160.7925	do	30, 50	LR
* * *	* * *		*
160.8075	do	30, 50	LR
* * *	* * *		*
160.8225	do	30, 50	LR
* * *	* * *		*
160.8375	do	30, 50	LR
* * *	* * *		*
160.8525	do	30, 50	LR
* * *	* * *		*
160.8675	do	30, 50, 51	LR
* * *	* * *		*
160.8825	do	30, 50, 51	LR
* * *	* * *		*
160.8975	do	30, 50, 51	LR
* * *	* * *		*
160.9125	do	30, 50, 51	LR
* * *	* * *		*
160.9275	do	30, 50, 52	LR

INDUSTRIAL/BUSINESS POOL FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations	Coordinator
* * *	* * *		*
160.9425	do	30, 50, 51	LR
* * *	* * *		*
160.9575	do	30, 50, 51	LR
* * *	* * *		*
160.9725	do	30, 50, 51	LR
* * *	* * *		*
160.9875	do	30, 50, 51	LR
* * *	* * *		*
161.0025	do	30, 50, 51	LR
* * *	* * *		*
161.0175	do	30, 50, 51	LR
* * *	* * *		*
161.0475	do	30, 50, 51	LR
* * *	* * *		*
161.0625	do	30, 50, 51	LR
* * *	* * *		*
161.0775	do	30, 50, 51	LR
* * *	* * *		*
161.0925	do	30, 50, 51	LR
* * *	* * *		*
161.1075	do	30, 50, 51	LR
* * *	* * *		*
161.1225	do	30, 50, 51	LR
* * *	* * *		*
161.1375	do	30, 50, 51	LR
* * *	* * *		*
161.1525	do	30, 50, 51	LR
* * *	* * *		*
161.1675	do	30, 50, 51	LR
* * *	* * *		*
161.1825	do	30, 50, 51	LR
* * *	* * *		*
161.1975	do	30, 50, 51	LR
* * *	* * *		*
161.2125	do	30, 50, 51	LR
* * *	* * *		*
161.2275	do	30, 50, 51	LR
* * *	* * *		*
161.2425	do	30, 50, 51	LR
* * *	* * *		*
161.2575	do	30, 50, 51	LR
* * *	* * *		*
161.2725	do	30, 50, 51	LR
* * *	* * *		*
161.2875	do	30, 50, 51	LR
* * *	* * *		*
161.3025	do	30, 50, 51	LR

INDUSTRIAL/BUSINESS POOL FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations	Coordinator
* * *	* * *		*
161.3175	do	30, 50, 51	LR
* * *	* * *		*
161.3325	do	30, 50, 51	LR
* * *	* * *		*
161.3475	do	30, 50, 51	LR
* * *	* * *		*
161.3625	do	30, 50, 51	LR
* * *	* * *		*
161.3775	do	30, 50, 51	LR
* * *	* * *		*
161.3925	do	30, 50, 52	LR
* * *	* * *		*
161.4075	do	30, 50, 52	LR
* * *	* * *		*
161.4225	do	30, 50, 52	LR
* * *	* * *		*
161.4375	do	30, 50, 52	LR
* * *	* * *		*
161.4525	do	30, 50, 52	LR
* * *	* * *		*
161.4675	do	30, 50, 52	LR
* * *	* * *		*
161.4825	do	30, 50, 52	LR
* * *	* * *		*
161.4975	do	30, 50, 52	LR
* * *	* * *		*
161.5125	do	30, 50, 52	LR
* * *	* * *		*
161.5275	do	30, 50, 52	LR
* * *	* * *		*
161.5425	do	30, 50, 52	LR
* * *	* * *		*
161.5575	do	30, 50, 52	LR

* * * * *

(c) * * *

(29) This frequency will be authorized a channel bandwidth of 25 kHz. Except when limited elsewhere, one-way paging transmitters on this frequency may operate with an output power of 350 watts.

(30) This frequency will be assigned with an authorized bandwidth not to exceed 11.25 kHz. In the 450–470 MHz band, secondary telemetry operations pursuant to § 90.238(e) will be authorized on this frequency.

* * * * *

■ 4. Section 90.203 is amended by redesignating paragraphs (j)(6) through (j)(10) as paragraphs (j)(7) through (j) (11) and by revising paragraphs (j)(2) introductory text, (j)(3), (j)(4)(ii) and newly redesignated paragraphs (j)(8) and (j)(11) and by adding new paragraphs (j)(4)(iii), (j)(4)(iv), (j)(6), and (j)(6)(i) through (j)(6)(iii) to read as follows:

§ 90.203 Certification required.

* * * * *

(j) * * *

(2) Applications for certification received on or after February 14, 1997 but before January 1, 2005 will only be granted for equipment with the following channel bandwidths:

* * * * *

(3) Applications for part 90 certification of transmitters designed to operate on frequencies in the 150.8–162.0125 MHz, 173.2–173.4 MHz, and/or 421–512 MHz bands, received on or after February 14, 1997 must include a certification that the equipment meets a spectrum efficiency standard of one voice channel per 12.5 kHz of channel bandwidth. Additionally, if the equipment is capable of transmitting data, has transmitter output power greater than 500 mW, and has a channel

bandwidth of more than 6.25 kHz, the equipment must be capable of supporting a minimum data rate of 4800 bits per second per 6.25 kHz of channel bandwidth.

* * * * *

(4) * * *

(ii) 12.5 kHz for multi-bandwidth mode equipment with a maximum channel bandwidth of 12.5 kHz if it is capable of operating on channels of 6.25 kHz or less;

(iii) 25 kHz for multi-bandwidth mode equipment with a maximum channel bandwidth of 25 kHz if it is capable of operating on channels of 6.25 kHz or less; and

(iv) Up to 25 kHz if the equipment meets the efficiency standard of paragraph (j)(5) of this section.

* * * * *

(6) Applications for certification received on or after January 1, 2011, except for hand-held transmitters with an output power of two watts or less, will only be granted for equipment with the following channel bandwidths:

(i) 6.25 kHz or less for single bandwidth mode equipment;

(ii) 12.5 kHz for multi-bandwidth mode equipment with a maximum channel bandwidth of 12.5 kHz if it is capable of operating on channels of 6.25 kHz or less; and

(iii) Up to 25 kHz if the equipment meets the efficiency standard of paragraph (j)(5) of this section.

* * * * *

(8) Transmitters designed only for one-way paging operations may be certificated with up to a 25 kHz bandwidth and are exempt from the spectrum efficiency requirements of paragraphs (j)(3) and (j)(5) of this section.

* * * * *

(11) Except as provided in this paragraph, single-mode and multi-mode transmitters designed to operate in the 150–174 MHz and 421–512 MHz bands that operate with a maximum channel bandwidth greater than 12.5 kHz shall not be manufactured in, or imported into, the United States after January 1, 2011, except as follows:

(i) To the extent that the equipment meets the efficiency standard of paragraph (j)(3) of this section, or

(ii) Where operation with a bandwidth greater than 12.5 kHz is specified elsewhere.

* * * * *

■ 5. Section 90.209 is amended by revising footnote 3 immediately following the table in paragraph (b)(5) and by revising paragraph (b)(6) to read as follows:

§ 90.209 Bandwidth limitation.

* * * * *

(b) * * *

(5) * * *

STANDARD CHANNEL SPACING/BANDWIDTH

Frequency band (MHz)	Channel spacing (kHz)	Authorized bandwidth (kHz)
* *	* *	* *

* * * * *

[3] Operations using equipment using a 25 kHz bandwidth will be authorized a 20 kHz bandwidth. Operations using equipment designed to operate with a 12.5 kHz channel bandwidth will be authorized an 11.25 kHz bandwidth. Operations using equipment designed to operate with a 6.25 kHz channel bandwidth will be authorized a 6 kHz bandwidth. All stations must operate on channels with a bandwidth of 12.5 kHz or less beginning January 1, 2013, unless the operations meet the efficiency standard of § 90.203(j)(3) unless specified elsewhere.

* * * * *

(6)(i) Beginning January 1, 2011, no new applications for the 150–174 MHz and/or 421–512 MHz bands will be acceptable for filing if the applicant utilizes channels with an authorized bandwidth exceeding 11.25 kHz, unless specified elsewhere or the operations meet the efficiency standards of § 90.203(j)(3).

(ii) Beginning January 1, 2011, no modification applications for stations in the 150–174 MHz and/or 421–512 MHz bands that increase the station's authorized interference contour, will be acceptable for filing if the applicant utilizes channels with an authorized bandwidth exceeding 11.25 kHz, unless specified elsewhere or the operations meet the efficiency standards of § 90.203(j)(3). See § 90.187(b)(2)(iii) and (iv) for interference contour designations and calculations. Applications submitted pursuant to this paragraph must comply with frequency coordination requirements of § 90.175.

[FR Doc. 05–11477 Filed 6–14–05; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 192 and 195

[Docket No. RSPA–03–15734; Amdt. 192–100, 195–84]

RIN 2137–AD95

Pipeline Safety: Operator Qualifications; Statutory Changes

AGENCY: Office of Pipeline Safety (OPS), Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of the direct final rule published in the **Federal Register** on March 3, 2005. The direct final rule amended regulations that require operators of gas and hazardous liquid pipelines to conduct programs to evaluate the qualifications of individuals who perform certain safety-related tasks on pipelines.

DATES: The direct final rule published March 3, 2005, goes into effect July 15, 2005.

FOR FURTHER INFORMATION CONTACT: L.M. Furrow by phone at 202–366–4559, by fax at 202–366–4566, by mail at U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, or by e-mail at *buck.furrow@dot.gov*.

SUPPLEMENTARY INFORMATION: On March 3, 2005, PHMSA published a Direct Final Rule (DFR) titled ''Pipeline Safety: Operator Qualifications; Statutory Changes'' (70 FR 10332). The DFR amended the personnel qualification regulations in 49 CFR part 192, subpart N, and 49 CFR part 195, subpart G, which require operators of gas and hazardous liquid pipelines to conduct programs for evaluating the qualifications of pipeline personnel. The amendments conformed the regulations to program changes contained in section 13 of the Pipeline Safety Improvement Act of 2002 (49 U.S.C. 60131). These statutory changes concern personnel training, notice of significant program changes, governmental review and verification of

operators' programs, and using observation of on-the-job performance as the sole method of evaluating qualifications.

In the DFR, PHMSA stated that if it did not receive an adverse comment, as defined in 49 CFR 190.339(c), or notice of intent to file an adverse comment by May 2, 2005, it would publish a confirmation document to announce that the DFR would go into effect on July 1, 2005, or at least 30 days after the confirmation document is published, whichever is later.

PHMSA received two comments on the DFR. One commenter made general remarks about PHMSA's pipeline safety program, and the other commenter, DJL Services, had more specific comments. The comments are summarized below.

Comment: One commenter said that because severe pipeline explosions are causing deaths and injuries, program upgrades are needed, including higher penalties and more inspection visits for negligent pipeline operations.

Response: We are upgrading various aspects of our pipeline safety program. One important upgrade involves regulation of personnel qualifications and work with the American Society of Mechanical Engineers to create a national consensus standard on qualification of operator personnel. In addition, maximum penalties for violations of safety standards were recently increased, and we continue to focus inspections on operators that fail to give proper attention to compliance. Nevertheless, because this comment addresses pipeline safety in general rather than a new rule established by the DFR, we do not consider the comment to be an adverse comment.

Comment: DJL Services took issue with the preamble statement that ''observation of * * * training by simulation'' is an allowable evaluation method (*see* 70 FR 10334). The commenter argued that in 49 U.S.C. 60131(d)(1) Congress referred to ''simulations'' as a stand-alone method of examining or testing, and that calling simulations ''training by simulation'' will result in an inappropriate application of the law.

Response: Both the statute (49 U.S.C. 60131(d)(1)) and existing regulations (49 CFR 192.803 and 195.503) cite ''observation during * * * simulations'' as an acceptable method of evaluating personnel qualifications. The ''simulations'' to be observed involve personnel experiencing mock pipeline conditions, usually in the form of computer programs or planned events. However, operators largely use simulations to train personnel in certain skills or responses. To help make the point that operators may use simulations for training required by new §§ 192.805(h) and 195.505(h), we referred to ''simulations'' as ''training by simulation.'' In doing so, PHMSA did not intend to imply that if operators use simulations to evaluate qualifications, they must use training simulations. Nevertheless, since this comment concerns a statement we made about existing rules rather than a new rule established by the DFR, PHMSA does not consider the comment to be an adverse comment.

Comment: With respect to the new training rules (§§ 192.805(h) and 195.505(h)), DJL Services questioned the preamble statement that ''OPS does not intend this new program requirement to mean operators must pay for training provided by their programs.'' The commenter said this statement seemed at odds with the requirement that operators' qualification programs must provide training, and said it would cause confusion and make the rules ineffective.

Response: PHMSA made the statement in anticipation of future questions about whether operators may charge their personnel for any training they receive. Our safety regulatory authority does not include authority to decide who should ultimately stand the expense of compliance with safety standards operators must meet. Other agencies, such as the Federal Energy Regulatory Commission and State pipeline regulatory authorities, deal with financial issues through rate regulation. The expense of services operators provide their personnel may also be the subject of agreements negotiated with employees or contractors. Although the new training rules obligate operators to provide for training in their qualification programs, the rules do not obligate operators to stand the expense of training personnel may receive. Because this comment relates to a financial matter outside the purview of our regulatory authority and does not affect operators' compliance obligations, PHMSA does not consider the comment to be an adverse comment.

Comment: DJL Services also commented on the new rules that require operators to notify PHMSA or a State pipeline safety authority of significant changes to qualification programs that have been verified to be in compliance (§§ 192.805(i) and 195.505(i)). The commenter pointed out that PHMSA typically does not inform operators about the results of program audits unless the program needs to be revised. This lack of positive feedback, DJL Services said, would make the notification requirements ineffective.

Response: As stated in the DFR, PHMSA and State pipeline safety authorities periodically review operators' programs to verify that they comply with applicable requirements. After completing a review, the operator is informed of any probable violation or any revision its program needs. Positive feedback is not required by the statute or regulations, and PHMSA does not think it is needed for the new notification rules to be effective. The new rules merely provide PHMSA and State authorities an opportunity to review significant program modifications in advance of the next routine review. Regardless of the results of the last review, PHMSA and State authorities still need notices of significant program changes to decide whether to review them ahead of the next routine review. So to comply with §§ 192.805(i) and 195.505(i), operators must notify PHMSA or State authorities of each significant modification made after the initial program review—which for most programs has already occurred. Because this comment does not suggest that the rules themselves should be changed to be effective, we do not consider the comment to be an adverse comment.

Comment: In another comment on the notification rules (§§ 192.805(i) and 195.505(i)), DJL Services questioned the time within which operators must notify PHMSA or a State authority after making a significant program modification. DJL Services suggested that adding a 60-day time limit to the rules would make them more effective.

Response: We intended the notification rules to parallel requirements Congress had previously imposed on operators. (See 49 U.S.C. 60131(e)(4)). Since those requirements do not set a time limit on notifications, neither do the notification rules. However, in the absence of a specific time limit, a reasonable time for compliance is implied. At this stage of experience, PHMSA thinks it is premature to tell whether a more specific time limit is needed. PHMSA has not adopted DJL Services's suggestion to add a 60-day time limit to the rules. Because the comment did not explain that the rules would be ineffective or unacceptable without a more specific time limit, PHMSA does not consider the comment to be an adverse comment.

Comment: The last comment DJL Services made about the notification rules was that ''significant'' should be defined to add clarity to the rules.

Response: Sections 192.805(i) and 195.505(i) use the term ''significantly modifies'' because the parallel statutory

requirement uses that term. (See 49 U.S.C. 60131(e)(4)). PHMSA thinks that within the context of the rules, ''significant'' has the usual meaning of extensive or important and needs no special definition. The term provides the leeway needed to avoid notices of minor changes but calls attention to changes worth governmental review. PHMSA does not consider this comment to be an adverse comment because the comment does not explain that the rules would be ineffective or unacceptable without a definition of significant.

Comment: DJL Services said §§ 192.809(e) and 195.509(e), which provide that observation of on-the-job performance may not be the sole method of evaluating an individual's qualifications, were inappropriate because they restrict one of the more valid methods of measuring skills. The commenter also argued the rules imply that sole use of a written or oral exam is acceptable even if observation of an individual's performance is the best method of evaluation.

Response: The rules in §§ 192.809(e) and 195.509(e) parallel the statutory requirement in 49 U.S.C. 60131(d)(1), which restricts the use of on-the-job performance as a sole evaluation method. In effect, the rules do nothing more than minimize confusion by keeping the personnel qualification regulations in step with the statutory requirement. PHMSA has no discretion to change the statutory requirement, even if PHMSA considered it inappropriate. Also, operators are required to ''ensure through evaluation that individuals performing covered tasks are qualified'' (§§ 192.805(b) and 195.505(b)). The acceptability of using an exam as the sole evaluation method depends on whether the exam alone is sufficient to determine an individual's qualifications for the task concerned. PHMSA does not think the restriction on observation of on-the-job performance is in any way related to this acceptability decision. Because this comment did not recognize the parallel statutory requirement and that sole use of an exam as an evaluation method is governed by a separate requirement, PHMSA considers the comment to be insubstantial and thus not an adverse comment.

Comment: In a further comment on §§ 192.809(e) and 195.509(e), DJL Services suggested that the term ''on-the-job performance'' is not universally understood and should be defined in the regulations.

Response: Operators who use observation of on-the-job performance as a method of evaluation must describe the method in their personnel qualification programs. If PHMSA or a State authority considers an operator's program inadequate, it may order changes to the program. In our experience, this regulatory approach has been satisfactory. It allows operators leeway to account for variations in covered tasks that a special definition could restrain, while providing for governmental oversight. At this time, PHMSA does not see a need to adopt a special definition of on-the-job performance. Since this comment does not explain that the rules would be ineffective without a definition, PHMSA does not consider this comment to be an adverse comment.

Comment: Finally, DJL Services offered general comments on criteria PHMSA might develop to determine covered tasks for which observation of on-the-job performance is the best method of evaluation. Under 49 U.S.C. 60131(d)(1), such tasks would be exempt from the statutory restriction on using observation of on-the-job performance as the sole method of evaluation. DJL Services suggested that observation of on-the-job performance is a suitable method for any task that requires a skill to perform. An additional suggestion was that for complex tasks involving potential hazards, such as pig launching or receiving, observation of performance '' whether on-the-job or during simulation ''should be mandatory, with limited use of written or oral exams.

Response: PHMSA will consider these ideas in any future deliberation on criteria to determine those tasks for which observation of on-the-job performance is the best method of evaluation. However, PHMSA does not consider the comment to be an adverse comment because it does not explain that a change is needed to a rule established by the DFR.

Therefore, this document confirms that the DFR will go into effect on July 15, 2005.

Issued in Washington, DC, on June 10, 2005.

Stacey L. Gerard,

Acting Assistant Administrator/Chief Safety Officer.

[FR Doc. 05–11864 Filed 6–13–05; 8:52 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 21

RIN 1018–AT63

Migratory Bird Permits; Determination That Falconry Regulations for the State of Connecticut Meet Federal Standards

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We add the state of Connecticut to the list of states whose falconry laws meet or exceed Federal falconry standards. We have reviewed the Connecticut falconry regulations and public comments on the proposed rule to add Connecticut to the list of states with approved falconry regulations. We have concluded that the Connecticut falconry regulations are in compliance with the regulations governing falconry at 50 CFR 21.28 and 21.29. This action will enable citizens to apply for Federal and state falconry permits and to practice falconry in Connecticut.

DATES: This rule is effective June 15, 2005.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, at the Division of Migratory Bird Management, U.S. Fish and Wildlife Service, 4501 North Fairfax Drive, Room 4091, Arlington, Virginia 22203–1610.

FOR FURTHER INFORMATION CONTACT: Brian Millsap, Chief, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, 703–358–1714; Dr. George Allen, Wildlife Biologist, 703–358–1825; or Diane Pence, Regional Migratory Bird Coordinator, Hadley, Massachusetts, 413–253–8577.

SUPPLEMENTARY INFORMATION:

Why Is This Rulemaking Needed?

The need for the change to 50 CFR 21.29(k) arose from the desire of the state of Connecticut to institute a falconry program for the benefit of citizens interested in the sport of falconry. Accordingly, the state promulgated regulations that we have concluded meet the Federal requirements protecting migratory birds. The change to 50 CFR 21.29(k) is necessary to allow persons in the state of Connecticut to practice falconry under the regulations the state submitted for approval.

Background

The Fish and Wildlife Service is the Federal agency with the primary responsibility for managing migratory birds. Our authority is based on the Migratory Bird Treaty Act (MBTA) (16 U.S.C. 703 *et. seq.*), which implements conventions with Great Britain (for Canada), Mexico, Japan, and the Soviet Union (Russia). Raptors (birds of prey) are afforded Federal protection by the 1972 amendment to the Convention for the Protection of Migratory Birds and Game Animals, February 7, 1936, United States—Mexico, as amended; the Convention between the United States and Japan for the Protection of Migratory Birds in Danger of Extinction and Their Environment, September 19, 1974; and the Convention Between the United States of America and the Union of Soviet Socialist Republics (Russia) Concerning the Conservation of Migratory Birds and Their Environment, November 26, 1976.

The taking and possession of raptors for falconry are strictly prohibited except as permitted under regulations implementing the MBTA. Raptors also may be protected by state regulations. Regulations governing the issuance of permits for migratory birds are authorized by the MBTA and subsequent regulations. They are in title 50, Code of Federal Regulations, parts 10, 13, 21, and (for eagle falconry) 22.

Federal falconry standards contained in 50 CFR 21.29(d) through (i) include permit requirements, classes of permits, examination procedures, facilities and equipment standards, raptor marking restrictions, and raptor taking restrictions. Regulations in 50 CFR part 21 also provide for review and approval of state falconry laws by the Fish and Wildlife Service. A list of states whose falconry laws are approved by the Service is found in 50 CFR 21.29(k). The practice of falconry is authorized in those states.

On December 20, 2004, we published a proposed rule in the **Federal Register** (69 FR 75892) to add the state of Connecticut to the list of states whose falconry laws meet or exceed Federal falconry standards. As provided in 50 CFR 21.29(a) and (c), the Director had reviewed certified copies of the falconry regulations adopted by the state of Connecticut and had determined that they meet or exceed Federal falconry standards. Connecticut regulations also meet or exceed all restrictions or conditions found in 50 CFR 21.29(j), which includes requirements on the number, species, acquisition, and marking of raptors.

This rule adds the state of Connecticut under § 21.29(k) as a state that meets Federal falconry standards. Inclusion of Connecticut in this list eliminates the previous restriction that prohibited falconry within that state. The practice of falconry is now authorized in Connecticut.

This rule is effective immediately. The Administrative Procedure Act (5 U.S.C. 553(d)(1)) allows us to do so because this final rule relieves a restriction that prohibited the state of Connecticut from allowing the practice of falconry.

What Comments on the Proposed Rule Did We Receive?

We received 80 applicable comments on the proposed rule from individuals and organizations. We received no comments from government agencies. Fifty-one of the comments endorsed approval of the Connecticut falconry regulations. Thirteen of the comments expressed opposition to the approval of the Connecticut falconry regulations because the writers were opposed to falconry. None, however, addressed whether the Connecticut regulations are in compliance with the Federal falconry regulations.

We received 16 comments asking that we not approve the Connecticut falconry regulations for reasons related to the regulations themselves. These comments addressed the Connecticut regulations as more restrictive than the Federal regulations, or they dealt with local issues such as falconry facilities and zoning requirements. We concluded that these comments also failed to address whether the Connecticut regulations are in compliance with the Federal falconry regulations. Issues they raised, such as recapture of lost falconry birds, zoning that makes construction of outdoor falconry facilities difficult, or the ''cumbersome,'' ''difficult,'' and ''overly restrictive'' nature of the state regulations, are aspects of falconry regulation that are under the governance of the state.

Changes in the Regulations Governing Falconry

We add the state of Connecticut to the list of states with approved falconry regulations that will enable citizens to practice falconry in the state.

Regulatory Planning and Review. In accordance with the criteria in Executive Order 12866, this rule is not a significant regulatory action.

a. This rule will not have an annual economic effect of $100 million or more or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. A cost-benefit and economic analysis is not required. This rule will affect a limited number of potential falconers in Connecticut.

b. This rule will not create inconsistencies with other agencies' actions. The rule deals solely with governance of falconry in Connecticut. No other Federal agency has any role in regulating falconry.

c. This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. There are no entitlements, grants, user fees, or loan programs associated with the regulation of falconry.

d. This rule will not raise novel legal or policy issues. This rule simply adds Connecticut to the list of states with approved falconry regulations.

Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*)

Under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act. SBREFA amended the RFA to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. We have examined this rule's potential effects on small entities as required by the RFA, and have determined that this action will not have a significant economic impact on a substantial number of small entities because the change will merely approve the falconry regulations for Connecticut and allow the practice of falconry there. This determination is based on the fact that we are simply adding one state to the list of states with approved falconry regulations. This rule will have no significant economic effect on a substantial number of small entities, and no regulatory flexibility analysis is required.

This rule is not a major rule under SBREFA, 5 U.S.C. 804(2).

a. This rule does not have an annual effect on the economy of $100 million or more. Approval of the Connecticut regulations will have only a very small effect on the economy. We estimate that 20 individuals would obtain falconry permits as a result of this rule, and many of the expenditures of those permittees would accrue to small businesses. The maximum number of birds allowed a falconer is 3, so the maximum number of birds likely to be possessed is 60. Some birds would be taken from the wild, but others could be purchased. Using one of the more expensive birds, the northern goshawk, as an estimate, the cost to procure a single bird is less than $5,000, which, with an upper limit of 60 birds, translates into $300,000. Expenditures for building facilities would be less than $32,000 for 60 birds, and for care and feeding less than $60,000. These expenditures, totaling less than $400,000, represent an upper limit of potential economic impact from the addition of Connecticut to the list of approved states.

b. This rule will not cause a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions. The practice of falconry does not significantly affect costs or prices in any sector of the economy.

c. This rule will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. Falconry is an endeavor of private individuals. Neither regulation nor practice of falconry significantly affects business activities.

Unfunded Mandates Reform Act. In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*).

a. This rule will not ''significantly or uniquely'' affect small governments. A Small Government Agency Plan is not required. Falconry is an endeavor of private individuals. Neither regulation nor practice of falconry affects small government activities in any significant way.

b. This rule will not produce a Federal mandate of $100 million or greater in any year. It is not a ''significant regulatory action.''

Takings. In accordance with Executive Order 12630, the rule does not have significant takings implications. A takings implication assessment is not required. This rule does not contain a provision for taking of private property.

Federalism. This rule does not have sufficient Federalism effects to warrant preparation of a Federalism assessment under Executive Order 13132. It will not interfere with the state's ability to manage itself or its funds.

Civil Justice Reform. In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act. We examined these regulations under the Paperwork Reduction Act of 1995. OMB has approved the information collection requirements of the Migratory Bird Permits Program and assigned clearance number 1018–0022, which expires 7/31/2007. This regulation does not change or add to the approved information collection. Information from the collection is used to document take of wild raptors for use in falconry and to document transfers of birds held for falconry between permittees. A Federal 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.

National Environmental Policy Act. We have analyzed this rule in accordance with the criteria of the National Environmental Policy Act (NEPA) and Part 516 of the Department of the Interior Manual (DM). This rule does not constitute a major Federal action significantly affecting the quality of the human environment, and does not require the preparation of an Environmental Impact Statement or an Environmental Assessment (EA). We prepared an EA in July 1988 to support establishment of simpler, less restrictive Federal regulations governing the use of most raptors in falconry. You can obtain a copy of the EA by contacting us at the address in the **ADDRESSES** section. This rule simply adds Connecticut to the list of states with approved falconry regulations. In the last 5 years we have added several states to the list of those with approved falconry regulations. Those additions generated few public or agency comments. We view this action as a routine action with precedent. Therefore, pursuant to the U.S. Fish and Wildlife Service's NEPA procedures, located in the Department of the Interior's Manual, this action is categorically excluded as ''changes or amendments to an approved action when such changes have no or minor potential environmental impact'' (516 DM 8.5(A)(1)).

Government-to-Government Relationship with Tribes. In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and 512 DM 2, we have evaluated potential effects on Federally recognized Indian tribes and have determined that there are no potential effects. This rule will not interfere with the Tribes' ability to manage themselves or their funds or to regulate falconry on tribal lands.

Energy Supply, Distribution or Use (Executive Order 13211). On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Because this rule only affects the practice of falconry in the United States, it is not a significant regulatory action under Executive Order 12866, and will not significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Are There Environmental Consequences of the Action? The environmental impacts of this action are extremely limited.

Socioeconomic. We do not expect this action to have discernible socioeconomic impacts.

Raptor populations. This rule does not significantly alter the conduct of falconry in the United States. We believe that there only about 10 falconers or individuals interested in being falconers in Connecticut, and take of raptors for falconry in the state will be prohibited by the state falconry regulations. Therefore, this rule will have a negligible effect on raptor populations.

Endangered and Threatened Species. This regulation change will not affect threatened or endangered species in Connecticut for the reasons set forth below.

Is This Rule in Compliance With Endangered Species Act Requirements? Yes. Section 7 of the Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that ''The Secretary [of the Interior] shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act.'' It further states that the Secretary must ''insure that any action authorized, funded, or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat.'' The Division of

Threatened and Endangered Species concurred with our finding that the revised regulations are not likely to adversely affect any listed or proposed species or designated or proposed critical habitat.

Author. The author of this rulemaking is Dr. George T. Allen, U.S. Fish and Wildlife Service, Division of Migratory Bird Management, 4401 North Fairfax Drive, Mail Stop MBSP–4107, Arlington, Virginia 22203–1610.

List of Subjects in 50 CFR Part 21

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

■ For the reasons stated in the preamble, we amend part 21, subpart C, subchapter B, chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 21—MIGRATORY BIRD PERMITS

§ 21.29 [Amended]

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

Authority: 16 U.S.C. 703–712; Pub. L. 106–108; 16 U.S.C. 668a.

■ 2. Amend § 21.29 by adding to paragraph (k) the word ''Connecticut,'' between the words ''*Colorado,'' and ''*Delaware,''.

Dated: June 1, 2005.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 05–11783 Filed 6–14–05; 8:45 am]

BILLING CODE 4310–55–P

Proposed Rules

Federal Register
Vol. 70, No. 114
Wednesday, June 15, 2005

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

NUCLEAR REGULATORY COMMISSION

10 CFR Part 20

[Docket No. PRM–20–26]

James Salsman, Receipt of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; notice of receipt.

SUMMARY: The Nuclear Regulatory Commission (NRC) is publishing for public comment a notice of receipt of a petition for rulemaking, dated May 6, 2005, which was filed with the Commission by James Salsman. The petition was docketed by the NRC on May 13, 2005, and has been assigned Docket No. PRM–20–26. The petitioner requests that the NRC amend its regulations to modify exposure and environmental limits of heavy metal radionuclides.

DATES: Submit comments by August 29, 2005. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any one of the following methods. Please include the following number PRM–20–26 in the subject line of your comments. Comments on petitions submitted in writing or in electronic form will be made available for public inspection. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.

E-mail comments to: *SECY@nrc.gov*. If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at (301) 415–1966. You may also submit comments via the NRC's rulemaking Web site at *http://ruleforum.llnl.gov*. Address questions about our rulemaking Web site to Carol Gallagher (301) 415–5905; e-mail *cag@nrc.gov*. Comments can also be submitted via the Federal eRulemaking Portal *http://www.regulations.gov.*

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. Federal workdays. (Telephone (301) 415–1966).

Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at (301) 415–1101.

Publicly available documents related to this petition may be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. The PDR reproduction contractor will copy documents for a fee. Selected documents, including comments, may be viewed and downloaded electronically via the NRC rulemaking web site at *http://ruleforum.llnl.gov*.

Publicly available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Telephone: 301–415–7163 or Toll Free: 800–368–5642.

SUPPLEMENTARY INFORMATION:

Background

The NRC has established standards for protection against ionizing radiation resulting from activities conducted by licensees and has issued these standards in the regulations codified in 10 CFR part 20. These regulations are intended to control the receipt, possession, use, transfer, and disposal of licensed material by its licensees. Licensed material is any source, byproduct, or special nuclear material received, possessed, used, transferred, or disposed of under a general or specific license issued by the NRC.

Appendix B to part 20 lists the Annual Limits on Intake (ALIs) and Derived Air Concentrations of radionuclides for occupational exposure, effluent concentrations, and concentrations for release to sewerage.

The Petitioner's Discussion

The petitioner believes that the current regulations allow more soluble compounds than insoluble compounds. The petitioner states that the regulations were designed to address only the radiological hazard of uranium, and not the heavy metal toxicity, which is known to be about six orders of magnitude worse. The petitioner asserts, in practice, that the soluble compounds are far more toxic than the insoluble compounds. The petitioner states that this should indicate that the long half-life uranium isotope regulation standards need to be completely revised.

The petitioner states that in the current regulations, an annual inhalation of more than two grams of uranium is allowed. The petitioner states that because the LD50/30 of uranyl nitrate (which has considerably less uranyl ion per unit of mass than uranium trioxide) is 2.1 mg/kg in rabbits, 12.6 mg/kg in dogs, 48 mg/kg in rats, and 51 mg/kg in guinea pigs and albino mice, two grams of UO3 seems very likely to comprise a fatal dose for a 200 pound human (Gmelin Handbook of Inorganic Chemistry, 8th edition, English translation (1982), vol. U–A7, pp. 312–322).

The petitioner believes that these values seem much too high. He believes that they were derived to avoid immediate kidney failure only, without regard to reproductive toxicity. The petitioner does not believe they were derived with sufficient care to avoid allowing lethal exposures. The petitioner states that the explicit limit to 10 mg/day of soluble uranium compounds (or about half a gram per year) in 10 CFR 20.1201(e) seems likely

to allow substantial kidney damage and certain reproductive toxicity.

The petitioner states that a urine study performed (see *http://www.ncbi.nlm.nih.gov/entrez/query.fcgi?cmd=Retrieve&db=pubmed&dopt=Abstract&list_uids=12943033*) calculates an average initial lung burden of 0.34 milligrams elemental uranium for those with isotopic signatures consistent with exposure to depleted uranium in what he believes were symptomatic exposure victims. The petitioner believes that this study is flawed, as it assumes a uranium compound biological half-time of 3.85 years in the lungs. The petitioner states that the primary mode of uranium toxicity involves much greater solubility. The petitioner believes that monomeric uranium trioxide will turn out to be absorbed more rapidly in the mammalian lung than uranyl nitrate, because of its monomolecular gas nature, and not merely about as rapidly as the studies of granular uranium trioxide by P.E. Morrow, *et al.*, indicate (''Inhalation Studies of Uranium Trioxide,'' Health Physics, vol. 23 (1972), pp. 273–280). The petitioner states that even Class D may not be appropriate for monomolecular uranium trioxide gas.

The petitioner believes the correct way to determine these values, to account for the reproductive toxicity, is probably to measure resulting mutations of mammalian peripheral lymphocytes, such as was done in this study of Gulf War veterans (*http://www.ncbi.nlm.nih.gov/entrez/query.fcgi?cmd=Retrieve&db=pubmed&dopt=Abstract&list_uids=11765683*).

The Petitioner's Request

The petitioner requests that the NRC revise its regulations in 10 CFR part 20 that specify limits for ingestion and inhalation occupational values, effluent concentrations, and releases to sewers, for all heavy metal radionuclides with nonradiological chemical toxicity hazards exceeding that of their radiological hazards so that those limits properly reflect the hazards associated with reproductive toxicity, danger to organs, and all other known nonradiological aspects of heavy metal toxicity. The petitioner states that many of these limits consider the radiological hazard of certain chemically toxic radionuclides with slight radiological dangers (*e.g.*, Uranium-238), without regard to their greater nonradiological hazard. The petitioner notes that this petition does not request increasing the permissible quantities given by any of those limits specified. The petitioner also states that, for example, the soluble forms of Uranium-238 compounds, which are more toxic if inhaled than the insoluble compounds, are allowed in greater quantities than their insoluble compounds. Other examples may include, but are not necessarily limited to, Uranium-232, Plutonium-239, and other long half-life isotopes of the heavy metal elements. The petitioner also requests that the classification for uranium trioxide within Class W, given in the Class column of the table for Uranium-230 in Appendix B to 10 CFR part 20, be amended to Class D in light of P.E. Morrow, *et al.*, ''Inhalation Studies of Uranium Trioxide'' (Health Physics, vol. 23 (1972), pp. 273–280), which states: ''inhalation studies with uranium trioxide (UO3) indicated that the material was more similar to soluble uranyl salts than to the so-called insoluble oxides * * * UO3 is rapidly removed from the lungs, with most following a 4.7 day biological half time.''

The petitioner also requests that monomeric (monomolecular) uranium trioxide gas, as produced by the oxidation of U3O8 at temperatures above 1000 Celsius, be assigned its own unique solubility class if necessary, at such time in the future that its solubility characteristics become known (R.J. Ackermann, R.J. Thorn, C. Alexander, and M. Tetenbaum, in ''Free Energies of Formation of Gaseous Uranium, Molybdenum, and Tungsten Trioxides,'' Journal of Physical Chemistry, vol. 64 (1960) pp. 350–355: ''gaseous monomeric uranium trioxide is the principal species produced by the reaction of U3O8 with oxygen'' at 1200 Kelvin and above).

Conclusion

The petitioner requests that 10 CFR part 20 be revised in accordance with the proposed revisions as set forth above.

Dated at Rockville, Maryland, this 9th day of June 2005.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. 05–11799 Filed 6–14–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 54

[Docket No. PRM–54–02]

Andrew J. Spano, County of Westchester, NY; Receipt of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; notice of receipt.

SUMMARY: The Nuclear Regulatory Commission (NRC) is publishing for public comment a notice of receipt of a petition for rulemaking, dated May 10, 2005, which was filed with the Commission by Andrew J. Spano, County Executive, Westchester County, New York. The petition was docketed by the NRC on May 13, 2005, and has been assigned Docket No. PRM–54–02. The petitioner requests that the NRC amend its regulations to provide that a renewed license will be issued only if the plant operator demonstrates that the plant meets all criteria and requirements that would be applicable if the plant was being proposed de novo for initial construction.

DATES: Submit comments by August 29, 2005. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any one of the following methods. Please include PRM–54–02 in the subject line of your comments. Comments on petitions submitted in writing or in electronic form will be made available for public inspection. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.

E-mail comments to: *SECY@nrc.gov*. If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at (301) 415–1966. You may also submit comments via the NRC's rulemaking Web site at *http://ruleforum.llnl.gov*. Address questions about our rulemaking Web site to Carol Gallagher (301) 415–5905; e-mail *cag@nrc.gov*. Comments can also be submitted via the Federal eRulemaking Portal *http://www.regulations.gov*.

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. Federal workdays. (Telephone (301) 415–1966).

Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at (301) 415–1101.

Publicly available documents related to this petition may be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), Room O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. The PDR reproduction contractor will copy documents for a fee. Selected documents, including comments, may be viewed and downloaded electronically via the NRC rulemaking Web site at *http://ruleforum.llnl.gov*.

Publicly available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html*. From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Telephone: 301–415–7163 or Toll Free: 800–368–5642.

SUPPLEMENTARY INFORMATION:

The Petitioner

The petitioner is the County Executive of Westchester County, New York. Westchester County is a political subdivision, and municipality, of the State of New York, and is located immediately north of New York City. It is 450 square miles in size. It has a southern border with New York City (Bronx County) and a northern border with Putnam County. It is flanked on the west side by the Hudson River and on the east side by Long Island Sound and Fairfield County, Connecticut. The total population of Westchester County, as measured in the 2000 Census, is 923,459. The 2000 population is over 100,000 more than it was as measured in the 1960 Census.

Westchester County is the host county for the Nuclear Generation Stations at the Indian Point Energy Facility (Indian Point or IP), located in the Village of Buchanan, Town of Cortlandt. The petitioner states that because of the presence of the Indian Point facility, Westchester County has long had an interest and concern with the environmental, emergency, and public safety issues with respect to Indian Point.

Background

There are two nuclear power plants at Indian Point: IP2 and IP3. These are currently operated by single purpose entities controlled by the Entergy Corporation (Entergy). IP2 & IP3's operating licenses are scheduled to expire in 2013 and 2015, respectively. The petitioner believes that in accordance with industry trends, Entergy could apply for license extensions for up to an additional twenty years, provided certain operating, environmental, and safety conditions are met.

The petitioner states that he is concerned with the criteria that will be used by the Commission in deciding whether to grant license extensions. The petitioner is concerned that the scope of the Commission's current regulations is too limited and that, as a result, the safety of the residents and communities near Indian Point will be in question during any extended operating period. The petitioner states that many factors have changed (see below) since the construction of IP2 and IP3. The petitioner believes that these changes have a significant impact on the safety of the community, yet they are not considered under the current license renewal regulations.

The petitioner states that building a nuclear power plant in the United States in the 1960s and 1970s represented a mutual commitment between the utility owner and the local community for a specific and limited period of time. The atmosphere during those early days (prior to 1979), according to the petitioner, was generally positive, in which local host communities would receive significant property taxes, the public would be assured of reliable low-cost power, and utility owners had a long period of time to recover their investments. He asserts that the Indian Point facilities were located in Westchester County, after New York City sites were rejected and that the local communities perceived the benefits of siting the facilities in Westchester County to be having direct access to reliable low-cost power and positive local economic impacts. The projects created massive numbers of employment opportunities and were initially seen as safe technical ventures. The petitioner also asserts that both the local community and the utility had long term commitments to the facility, with the public having little recourse to question safety and operational issues after plant construction started and the utility having the right to the use of the plant for the full term of the license, often 40 years.

The petitioner states that after living with nuclear power plants for the past three decades, several events have changed that landscape—Three Mile Island-2, the Browns Ferry fire, utility bankruptcies, the Chernobyl accident, delays at Yucca Mountain, Davis-Besse reactor head problems, and the events of September 11, 2001. As a result, he states that plant orders have ceased and the public has become justifiably concerned about nuclear power plant safety. The petitioner states that these concerns are particularly sensitive at Indian Point, because of its proximity to major population centers, periodic leaks of radioactive material, difficult (if not impossible) evacuation issues, and its proximity to the World Trade Center.

The Proposed Amendment

The petitioner requests that the NRC amend its regulations to provide that a renewed license will be issued only if the plant operator demonstrates that the plant meets all criteria and requirements that would be applicable if the plant was being proposed *de novo* for initial construction. The petitioner also requests that § 54.29 be amended to provide that a renewed license may be issued by the Commission if the Commission finds that, upon a *de novo* review, the plant would be entitled to an initial operating license in accordance with all criteria applicable to initial operating licenses, as set out in the Commission's regulations, including 10 CFR parts 2, 19, 20, 21, 26, 30, 40, 50, 51, 54, 55, 71, 100 and the appendices to these regulations. The petitioner requests that corresponding amendments be made to §§ 54.4, 54.19, 54.21, and 54.23, and that § 54.30 be rescinded. The petitioner states that the criteria to be examined as part of a renewal application should include such factors as demographics, siting, emergency evacuation, site security, etc. This analysis should be performed in a manner that focuses the NRC's attention on the critical plant-specific factors and conditions that have the greatest potential to affect public safety.

Problems with the Current Process

The petitioner believes that the process and criteria currently established in Part 54 is seriously

flawed. He states that the process for license renewal appears to be based on the theory that if the plant was originally licensed at the site, it is satisfactory to renew the license, barring any significant issues having to do with passive systems, structures, and components (SSCs). The petitioner states that the regulations should be broadened and sufficiently comprehensive to cover all of the facets (including consideration of a worst-case scenario) that were considered for initial construction. Alternatively, he states that the license renewal process should examine all issues related to the plant and its original license, and then concentrate on any issues that are new to that plant or have changed since the original license was issued or that deviate from the original licensing basis.

The petitioner states that many key factors that affect nuclear plant licensing evolve over time; population grows, local/state Federal regulations evolve, public awareness increases, technology improves, and plant economic values change. As a result, roads and infrastructure required for a successful evacuation may not improve along with population density, inspection methods may not be adopted or may be used inappropriately, and regulations may alter the plant design after commercial operation. The petitioner believes that all of these factors should be examined and weighed in the formal 10 CFR part 54 relicensing process.

The petitioner states that prior to the concept of life extension for nuclear power plants, it was generally assumed that plants would exist as operating facilities for the rest of their design life, and then would enter a decommissioning phase. In fact, the collection of decommissioning funds from ratepayers initiated in the 1970s was based on a 40-year life.

Key Renewal Issues

The petitioner states that it is time for the NRC to review, at the end of the 40 years of life, several questions that he asserts relate to key renewal issues about nuclear power plants on a plant-specific basis. These questions include the following:

- Could a new plant, designed and built to current standards, be licensed on the same site today? For example, given the population growth in Westchester County, it is uncertain if Indian Point would be licensed today. The population in the areas near Indian Point has outpaced the capacity of the road infrastructure to support it, making effective evacuation in an emergency unlikely.
- Have the local societal and infrastructure factors that influenced the original plant licensing changed in a manner that would make the plant less apt to be licensed today? For example, three of four counties surrounding Indian Point have not submitted certified letters in support of the emergency evacuation plan. That would not be a consideration under the current licensing process. However, the inability of local governments to support the safety of the evacuation plan should, at the very least, give serious pause before the licenses of the plants are renewed.
- Can the plant be modified to assure public health and safety in a post-9/11 era? For example, Indian Point cannot be made sufficiently safe according to James Lee Witt, former head of FEMA.
- Have local/State regulations changed that would affect the plant's continued operation? For example, Indian Point must convert from once-through cooling to a closed-cycle design using cooling towers.
- The original design basis of older nuclear power plants did not include extended onsite storage of spent nuclear fuel (SNF). At Indian Point for example, the current SNF storage plan includes one or more Independent Spent Fuel Storage Installations onsite, which increases the overall risk to the local community.

Conclusion

The petitioner believes that these key renewal issues should be considered in the license renewal process, along with safety, security, and certainly the condition of both passive and active SSCs. The petitioner believes that the current NRC license renewal analyses ignore these issues.

The petitioner also believes that it is timely for the NRC to broaden the scope of license renewal investigations to assess the viability of the plants requesting license extension on a broad scale, one at least as broad as the original license hearings, and one that is site specific and site sensitive to an appropriate degree. Accordingly, the petitioner requests that the NRC amend its regulations concerning issuance of a renewed license.

Dated at Rockville, Maryland, this 9th day of June 2005.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. 05–11800 Filed 6–14–05; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM309; Notice No. 25–05–06–SC]

Proposed Special Conditions: Boeing Model 737–200/200C/300/400/500/600/700/700C/800/900 Series Airplanes; Flammability Reduction Means (Fuel Tank Inerting)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: The Federal Aviation Administration (FAA) proposes special conditions for the Boeing Model 737–200/200C/300/400/500/600/700/700C/800/900 series airplanes. These airplanes, as modified by Boeing Commercial Airplanes, include a new flammability reduction means that uses a nitrogen generation system to reduce the oxygen content in the center wing fuel tank so that exposure to a combustible mixture of fuel and air is substantially minimized. This system is intended to reduce the average flammability exposure of the fleet of airplanes with the system installed to a level equivalent to 3 percent of the airplane operating time. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for the design and installation of this system. These proposed special conditions contain the additional safety standards the Administrator considers necessary to ensure an acceptable level of safety for the installation of the system and to define performance objectives the system must achieve to be considered an acceptable means for minimizing development of flammable vapors in the fuel tank installation.

DATES: Comments must be received on or before July 15, 2005.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attn: Rules Docket (ANM–113), Docket No. NM309, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. Comments must be marked: Docket No. NM309. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Mike Dostert, Propulsion and Mechanical Systems Branch, FAA,

ANM–112, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; telephone (425) 227–2132, facsimile (425) 227–1320, e-mail *mike.dostert@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning these special conditions. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these proposed special conditions in light of the comments we receive.

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

Background

Boeing Commercial Airplanes intends to modify the Model 737 series airplanes to incorporate a new flammability reduction means (FRM) that will inert the center fuel tanks with nitrogen-enriched air (NEA). Though the provisions of § 25.981, as amended by Amendment 25–102, will apply to this design change, these proposed special conditions address novel design features. This document proposes the same special conditions that were published in the **Federal Register** [Docket No. NM270; Special Conditions No. 25–285–SC] for incorporation of an FRM on Boeing Model 747–100/200B/200F/200C/SR/SP/100B/300/100B SUD/400/400D/400F series airplanes (70 FR 7800, January 24, 2005).

Regulations used as the standard for certification of transport category airplanes prior to Amendment 25–102, effective June 6, 2001, were intended to prevent fuel tank explosions by eliminating possible ignition sources from inside the fuel tanks. Service experience of airplanes certificated to the earlier standards shows that ignition source prevention alone has not been totally effective at preventing accidents. Commercial transport airplane fuel tank safety requirements have remained relatively unchanged throughout the evolution of piston-powered airplanes and later into the jet age. The fundamental premise for precluding fuel tank explosions has involved establishing that the design does not result in a condition that would cause an ignition source within the fuel tank ullage (the space in the tank occupied by fuel vapor and air). A basic assumption in this approach has been that the fuel tank could contain flammable vapors under a wide range of airplane operating conditions, even though there were periods of time in which the vapor space would not support combustion.

Fuel Properties

Jet fuel vapors are flammable in certain temperature and pressure ranges. The flammability temperature range of jet engine fuel vapors varies with the type and properties of the fuel, the ambient pressure in the tank, and the amount of dissolved oxygen released from the fuel into the tank. The amount of dissolved oxygen in a tank will also vary depending on the amount of vibration and sloshing of the fuel that occurs within the tank.

Jet A fuel is the most commonly used commercial jet fuel in the United States. Jet A–1 fuel is commonly used in other parts of the world. At sea level and with no sloshing or vibration present, these fuels have flammability characteristics such that insufficient hydrocarbon molecules will be present in the fuel vapor-air mixture, to ignite when the temperature in the fuel tank is below approximately 100 °F. Too many hydrocarbon molecules will be present in the vapor to allow it to ignite when the fuel temperature is above approximately 175 °F. The temperature range where a flammable fuel vapor will form can vary with different batches of fuel, even for a specific fuel type. In between these temperatures the fuel vapor is flammable. This flammability temperature range decreases as the airplane gains altitude because of the corresponding decrease of internal tank air pressure. For example, at an altitude of 30,000 feet, the flammability temperature range is about 60 °F to 120 °F.

Most transport category airplanes used in air carrier service are approved for operation at altitudes from sea level to 45,000 feet. Those airplanes operated in the United States and in most overseas locations use Jet A or Jet A–1 fuel, which typically limits exposure to operation in the flammability range to warmer days.

We have always assumed that airplanes would sometimes be operated with flammable fuel vapors in their fuel tank ullage (the space in the tank occupied by fuel vapor and air).

Fire Triangle

Three conditions must be present in a fuel tank to support combustion. These include the presence of a suitable amount of fuel vapor, the presence of sufficient oxygen, and the presence of an ignition source. This has been named the ''fire triangle.'' Each point of the triangle represents one of these conditions. Because of technological limitations in the past, the FAA philosophy regarding the prevention of fuel tank explosions to ensure airplane safety was to only preclude ignition sources within fuel tanks. This philosophy included application of fail-safe design requirements to fuel tank components (lightning design requirements, fuel tank wiring, fuel tank temperature limits, etc.) that are intended to preclude ignition sources from being present in fuel tanks even when component failures occur.

Need to Address Flammability

Three accidents have occurred in the last 13 years as the result of unknown ignition sources within the fuel tank in spite of past efforts, highlighting the difficulty in continuously preventing ignition from occurring within fuel tanks. Between 1996 and 2000 the National Transportation Safety Board (NTSB) issued recommendations to improve fuel tank safety that included prevention of ignition sources and addressing fuel tank flammability (*i.e.*, the other two points of the fire triangle).

The FAA initiated safety reviews of all larger transport airplane type certificates to review the fail-safe features of previously approved designs and also initiated research into the feasibility of amending the regulations to address fuel tank flammability. Results from the safety reviews indicated a significant number of single and combinations of failures that can result in ignition sources within the fuel tanks. The FAA has adopted rulemaking to require design and/or maintenance actions to address these issues;

however, past experience indicates unforeseen design and maintenance errors can result in development of ignition sources. These findings show minimizing or preventing the formation of flammable vapors by addressing the flammability points of the fire triangle will enhance fuel tank safety.

On April 3, 1997, the FAA published a notice in the **Federal Register** (62 FR 16014), Fuel Tank Ignition Prevention Measures, that requested comments concerning the 1996 NTSB recommendations regarding reduced flammability. That notice provided significant discussion of the service history, background, and issues related to reducing flammability in transport airplane fuel tanks. Comments submitted to that notice indicated additional information was needed before the FAA could initiate rulemaking action to address all of the recommendations.

Past safety initiatives by the FAA and industry to reduce the likelihood of fuel tank explosions resulting from post crash ground fires have evaluated means to address other factors of the fire triangle. Previous attempts were made to develop commercially viable systems or features that would reduce or eliminate other aspects of the fire triangle (fuel or oxygen) such as fuel tank inerting or ullage space vapor ''scrubbing'' (ventilating the tank ullage with air to remove fuel vapor to prevent the accumulation of flammable concentrations of fuel vapor). Those initial attempts proved to be impractical for commercial transport airplanes due to the weight, complexity, and poor reliability of the systems, or undesirable secondary effects such as unacceptable atmospheric pollution.

Fuel Tank Harmonization Working Group

On January 23, 1998, the FAA published a notice in the **Federal Register** that established an Aviation Rulemaking Advisory Committee (ARAC) working group, the Fuel Tank Harmonization Working Group (FTHWG). The FAA tasked the FTHWG with providing a report to the FAA recommending regulatory text to address limiting fuel tank flammability in both new type certificates and the fleet of in service airplanes. The ARAC consists of interested parties, including the public, and provides a public process to advise the FAA concerning development of new regulations. (**Note:** The FAA formally established ARAC in 1991 (56 FR 2190, January 22, 1991), to provide advice and recommendations concerning the full range of the FAA's safety-related rulemaking activity.)

The FTHWG evaluated numerous possible means of reducing or eliminating hazards associated with explosive vapors in fuel tanks. On July 23, 1998, the ARAC submitted its report to the FAA. The full report is in the docket created for this ARAC working group (Docket No. FAA–1998–4183). This docket can be reviewed on the U.S. Department of Transportation electronic Document Management System on the Internet at *http://dms.dot.gov.*

The report provided a recommendation for the FAA to initiate rulemaking action to amend § 25.981, applicable to new type design airplanes, to include a requirement to limit the time transport airplane fuel tanks could operate with flammable vapors in the vapor space of the tank. The recommended regulatory text proposed, ''Limiting the development of flammable conditions in the fuel tanks, based on the intended fuel types, to less than 7 percent of the expected fleet operational time (defined in this rule as flammability exposure evaluation time (FEET)), or providing means to mitigate the effects of an ignition of fuel vapors within the fuel tanks such that any damage caused by an ignition will not prevent continued safe flight and landing.'' The report included a discussion of various options for showing compliance with this proposal, including managing heat input to the fuel tanks, installation of inerting systems or polyurethane fire suppressing foam, and suppressing an explosion if one occurred.

The level of flammability defined in the proposal was established based on a comparison of the safety record of center wing fuel tanks that, in certain airplanes, are heated by equipment located under the tank, and unheated fuel tanks located in the wing. The ARAC concluded that the safety record of fuel tanks located in the wings with a flammability exposure of 2 to 4 percent of the FEET was adequate and that if the same level could be achieved in center wing fuel tanks, the overall safety objective would be achieved. The thermal analyses documented in the report revealed that center wing fuel tanks that are heated by air conditioning equipment located beneath them contain flammable vapors, on a fleet average basis, in the range of 15 to 30 percent of the fleet operating time.

During the ARAC review, it was also determined that certain airplane types do not locate heat sources adjacent to the fuel tanks and have significant surface areas that allow cooling of the fuel tank by outside air. These airplanes provide significantly reduced flammability exposure, near the 2 to 4 percent value of the wing tanks. The group therefore determined that it would be feasible to design new airplanes such that airplane operation with fuel tanks that were flammable in the flammable range would be limited to nearly that of the wing fuel tanks. Findings from the ARAC report indicated that the primary method of compliance available at that time with the requirement proposed by the ARAC would likely be to control heat transfer into and out of fuel tanks. Design features such as locating the air conditioning equipment away from the fuel tanks, providing ventilation of the air conditioning bay to limit heating and to cool fuel tanks, and/or insulating the tanks from heat sources, would be practical means of complying with the regulation proposed by the ARAC.

In addition to its recommendation to revise § 25.981, the ARAC also recommended that the FAA continue to evaluate means for minimizing the development of flammable vapors within the fuel tanks to determine whether other alternatives, such as ground-based inerting of fuel tanks, could be shown to be cost effective.

To address the ARAC recommendations, the FAA continued with research and development activity to determine the feasibility of requiring inerting for both new and existing designs.

FAA Rulemaking Activity

Based in part on the ARAC recommendations to limit fuel tank flammability exposure on new type designs, the FAA developed and published Amendment 25–102 in the **Federal Register** on May 7, 2001 (66 FR 23085). The amendment included changes to § 25.981 that require minimization of fuel tank flammability to address both reduction in the time fuel tanks contain flammable vapors, (§ 25.981(c)), and additional changes regarding prevention of ignition sources in fuel tanks. Section 25.981(c) was based on the FTHWG recommendation to achieve a safety level equivalent to that achieved by the fleet of transports with unheated aluminum wing tanks, between 2 to 4 percent flammability. The FAA stated in the preamble to Amendment 25–102 that the intent of the rule was to—

* * * require that practical means, such as transferring heat from the fuel tank (e.g., use of ventilation or cooling air), be incorporated into the airplane design if heat sources were placed in or near the fuel tanks that significantly increased the formation of flammable fuel vapors in the tank, or if the tank is located in an area of the airplane where little or no cooling occurs. The intent

of the rule is to require that fuel tanks are not heated, and cool at a rate equivalent to that of a wing tank in the transport airplane being evaluated. This may require incorporating design features to reduce flammability, for example cooling and ventilation means or inerting for fuel tanks located in the center wing box, horizontal stabilizer, or auxiliary fuel tanks located in the cargo compartment.

Advisory circulars associated with Amendment 25–102 include AC 25.981–1B, ''Fuel Tank Ignition Source Prevention Guidelines,'' and AC 25.981–2, ''Fuel Tank Flammability Minimization.'' Like all advisory material, these advisory circulars describe an acceptable means, but not the only means, for demonstrating compliance with the regulations.

FAA Research

In addition to the notice published in the **Federal Register** on April 3, 1997, the FAA initiated research to provide a better understanding of the ignition process of commercial aviation fuel vapors and to explore new concepts for reducing or eliminating the presence of flammable fuel air mixtures within fuel tanks.

Fuel Tank Inerting

In the public comments received in response to the 1997 notice, reference was made to hollow fiber membrane technology that had been developed and was in use in other applications, such as the medical community, to separate oxygen from nitrogen in air. Air is made up of about 78 percent nitrogen and 21 percent oxygen, and the hollow fiber membrane material uses the absorption difference between the nitrogen and oxygen molecules to separate the NEA from the oxygen. In airplane applications NEA is produced when pressurized air from an airplane source such as the engines is forced through the hollow fibers. The NEA is then directed, at appropriate nitrogen concentrations, into the ullage space of fuel tanks and displaces the normal fuel vapor/air mixture in the tank.

Use of the hollow fiber technology allowed nitrogen to be separated from air, which eliminated the need to carry and store the nitrogen in the airplane. Researchers were aware of the earlier system's shortcomings in the areas of weight, reliability, cost, and performance. Recent advances in the technology have resolved those concerns and eliminated the need for storing nitrogen on board the airplane.

Criteria for Inerting

Earlier fuel tank inerting designs produced for military applications were based on defining ''inert'' as a maximum oxygen concentration of 9 percent. This value was established by the military for protection of fuel tanks from battle damage. One major finding from the FAA's research and development efforts was the determination that the 9 percent maximum oxygen concentration level benchmark, established to protect military airplanes from high-energy ignition sources encountered in battle, was significantly lower than that needed to inert civilian transport airplane fuel tanks from ignition sources resulting from airplane system failures and malfunctions that have much lower energy. This FAA research established a maximum value of 12 percent as being adequate at sea level. The test results are currently available on FAA Web site: *http://www.fire.tc.faa.gov/pdf/tn02–79.pdf* as FAA Technical Note ''Limiting Oxygen Concentrations Required to Inert Jet Fuel Vapors Existing at Reduced Fuel Tank Pressures,'' report number DOT/FAA/AR–TN02/79. As a result of this research, the quantity of NEA that is needed to inert commercial airplane fuel tanks was lessened so that an effective FRM can now be smaller and less complex than was originally assumed. The 12 percent value is based on the limited energy sources associated with an electrical arc that could be generated by airplane system failures on typical transport airplanes and does not include events such as explosives or hostile fire.

As previously discussed, existing fuel tank system requirements (contained in earlier Civil Air Regulation (CAR) 4b and now in 14 Code of Federal Regulations (CFR) part 25) have focused solely on prevention of ignition sources. The FRM is intended to add an additional layer of safety by reducing the exposure to flammable vapors in the heated center wing tank, not necessarily eliminating them under all operating conditions. Consequently, ignition prevention measures will still be the principal layer of defense in fuel system safety, now augmented by substantially reducing the time that flammable vapors are present in higher flammability tanks. We expect that by combining these two approaches, particularly for tanks with high flammability exposure, such as the heated center wing tank or tanks with limited cooling, risks for future fuel tank explosions can be substantially reduced.

Boeing Application for Certification of a Fuel Tank Inerting System

On September 23, 2005 (737Classics) and December 2, 2005 (737NG), Boeing Commercial Airplanes applied for a change to Type Certificate A16WE to modify Model 737–200/200C/300/400/500/600/700/700C/800/900 series airplanes to incorporate a new FRM that inerts the center fuel tanks with NEA. These airplanes, approved under Type Certificate No. A16WE, are two-engine transport airplanes with a passenger capacity up to 189, depending on the submodel. These airplanes have an approximate maximum gross weight of 174,700 lbs with an operating range up to 3,380 miles.

Type Certification Basis

Under the provisions of § 21.101, Boeing Commercial Airplanes must show that the Model 737–200/200C/300/400/500/600/700/700C/800/900 series airplanes, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A16WE, or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.'' The regulations incorporated by reference in Type Certificate A16WE include 14 CFR part 25, dated February 1, 1965, as amended by Amendments 25–1 through 25–94, except for proposed special conditions and exceptions noted in Type Certificate Data Sheet A16WE.

In addition, if the regulations incorporated by reference do not provide adequate standards with respect to the change, the applicant must comply with certain regulations in effect on the date of application for the change. The FAA has determined that the FRM installation on the Boeing Model 737–200/200C/300/400/500/600/700/700C/800/900 series airplanes must also be shown to comply with § 25.981 at Amendment 25–102.

If the Administrator finds that the applicable airworthiness regulations (14 CFR part 25) do not contain adequate or appropriate safety standards for the Boeing Model 737–200/200C/300/400/500/600/700/700C/800/900 series airplanes because of a novel or unusual design feature, proposed special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and proposed special conditions, the Model 737–200/200C/300/400/500/600/700/700C/800/900 series airplanes must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the acoustical change requirements of § 21.93(b).

Special conditions, as defined in § 11.19, are issued in accordance with § 11.38 and become part of the type certification basis in accordance with § 21.101.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same or similar novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same or similar novel or unusual design feature, these proposed special conditions would also apply to the other model under the provisions of § 21.101.

Novel or Unusual Design Features

Boeing has applied for approval of an FRM to minimize the development of flammable vapors in the center fuel tanks of Model 737–200/200C/300/400/500/600/700/700C/800/900 series airplanes. Boeing also plans to seek approval of this system on Boeing Model 747, 757, 767, and 777 airplanes.

Boeing has proposed to voluntarily comply with § 25.981(c), Amendment 25–102, which is normally only applicable to new type designs or type design changes affecting fuel tank flammability. The provisions of § 21.101 require Boeing to also comply with §§ 25.981(a) and (b), Amendment 25–102, for the changed aspects of the airplane by showing that the FRM does not introduce any additional potential sources of ignition into the fuel tanks.

The FRM uses a nitrogen generation system (NGS) that comprises a bleed-air shutoff valve, ozone converter, heat exchanger, air conditioning pack air cooling flow shutoff valve, filter, air separation module, temperature regulating valve controller and sensor, high-flow descent control valve, float valve, and system ducting. The system is located in the air conditioning pack bay below the center wing fuel tank. Engine bleed air from the existing engine pneumatic bleed source flows through a control valve into an ozone converter and then through a heat exchanger, where it is cooled using outside cooling air. The cooled air flows through a filter into an air separation module (ASM) that generates NEA, which is supplied to the center fuel tank, and also discharges oxygen-enriched air (OEA). The OEA from the ASM is mixed with cooling air from the heat exchanger to dilute the oxygen concentration and then exhausted overboard. The FRM also includes modifications to the fuel vent system to minimize dilution of the nitrogen-enriched ullage in the center tank due to cross-venting characteristics of the existing center wing fuel tank vent design.

Boeing has proposed that limited dispatch relief for operation with an inoperative NGS be allowed. Boeing has initially proposed a 10-day master minimum equipment list (MMEL) relief for the system. Boeing has stated that to meet operator needs and system reliability and availability objectives, built-in test functions would be included and system status indication of some kind would be provided. In addition, indications would be provided in the cockpit on certain airplane models that have engine indicating and crew alerting systems. The reliability of the system is expected to be designed to achieve a mean time between failure (MTBF) of 5000 hours or better.

Discussion

The FAA policy for establishing the type design approval basis of the FRM design will result in application of §§ 25.981(a) and (b), Amendment 25–102, for the changes to the airplane that might increase the risk of ignition of fuel vapors. Boeing will therefore be required to substantiate that changes introduced by the FRM will meet the ignition prevention requirements of §§ 25.981(a) and (b), Amendment 25–102 and other applicable regulations.

With respect to compliance with § 25.981(c), AC 25.981–2 provides guidance in addressing minimization of fuel tank flammability within a heated fuel tank, but there are no specific regulations that address the design and installation of an FRM that inerts the fuel tank. These proposed special conditions include additional requirements above that of Amendment 25–102 to § 25.981(c) to minimize fuel tank flammability, such that the level of minimization in these proposed special conditions would prevent a fuel tank with an FRM from being flammable during specific warm day operating conditions, such as those present when recent accidents occurred.

Definition of ''Inert''

For the purpose of these proposed special conditions, the tank is considered inert when the bulk average oxygen concentration within each compartment of the tank is 12 percent or less at sea level up to 10,000 feet, then linearly increasing from 12 percent at 10,000 feet to 14.5 percent at 40,000 feet and extrapolated linearly above that altitude. The reference to each section of the tank is necessary because fuel tanks that are compartmentalized may encounter localized oxygen concentrations in one or more compartments that exceed the 12 percent value. Currently there is not adequate data available to establish whether exceeding the 12 percent limit in one compartment of a fuel tank could create a hazard. For example, ignition of vapors in one compartment could result in a flame front within the compartment that travels to adjacent compartments and results in an ignition source that exceeds the ignition energy (the minimum amount of energy required to ignite fuel vapors) values used to establish the 12 percent limit. Therefore, ignition in other compartments of the tank may be possible. Technical discussions with the applicant indicate the pressure rise in a fuel tank that was at or near the 12 percent oxygen concentration level would likely be well below the value that would rupture a typical transport airplane fuel tank. While this may be possible to show, it is not within the scope of these proposed special conditions. Therefore, the effect of the definition of ''inert'' within these proposed special conditions is that the bulk average of each individual compartment or bay of the tank must be evaluated and shown to meet the oxygen concentration limits specified in the definitions section of these proposed special conditions (12 percent or less at sea level) to be considered inert.

Determining Flammability

The methodology for determining fuel tank flammability defined for use in these proposed special conditions is based on that used by ARAC to compare the flammability of unheated aluminum wing fuel tanks to that of tanks that are heated by adjacent equipment. The ARAC evaluated the relative flammability of airplane fuel tanks using a statistical analysis commonly referred to as a ''Monte Carlo'' analysis that considered a number of factors affecting formation of flammable vapors in the fuel tanks. The Monte Carlo analysis calculates values for the parameter of interest by randomly selecting values for each of the uncertain variables from distribution tables. This calculation is conducted over and over to simulate a process where the variables are randomly selected from defined distributions for each of the variables. The results of changing these variables for a large number of flights can then be used to approximate the results of the real world exposure of a large fleet of airplanes.

Factors that are considered in the Monte Carlo analysis required by these proposed special conditions include those affecting all airplane models in the transport airplane fleet such as: a statistical distribution of ground, overnight, and cruise air temperatures likely to be experienced worldwide, a

statistical distribution of likely fuel types, and properties of those fuels, and a definition of the conditions when the tank in question will be considered flammable. The analysis also includes factors affecting specific airplane models such as climb and descent profiles, fuel management, heat transfer characteristics of the fuel tanks, statistical distribution of flight lengths (mission durations) expected for the airplane model worldwide, etc. To quantify the fleet exposure, the Monte Carlo analysis approach is applied to a statistically significant number (1,000,000) of flights where each of the factors described above is randomly selected. The flights are then selected to be representative of the fleet using the defined distributions of the factors described previously. For example, flight one may be a short mission on a cold day with an average flash point fuel, and flight two may be a long mission on an average day with a low flash point fuel, and on and on until 1,000,000 flights have been defined in this manner. For every one of the 1,000,000 flights, the time that the fuel temperature is above the flash point of the fuel, and the tank is not inert, is calculated and used to establish if the fuel tank is flammable. Averaging the results for all 1,000,000 flights provides an average percentage of the flight time that any particular flight is considered to be flammable. While these proposed special conditions do not require that the analysis be conducted for 1,000,000 flights, the accuracy of the Monte Carlo analysis improves as the number of flights increases. Therefore, to account for this improved accuracy, appendix 2 of these proposed special conditions defines lower flammability limits if the applicant chooses to use fewer than 1,000,000 flights.

The determination of whether the fuel tank is flammable is based on the temperature of the fuel in the tank determined from the tank thermal model, the atmospheric pressure in the fuel tank, and properties of the fuel quantity loaded for a given flight, which is randomly selected from a database consisting of worldwide data. The criteria in the model are based on the assumption that as these variables change, the concentration of vapors in the tank instantaneously stabilizes and that the fuel tank is at a uniform temperature. This model does not include consideration of the time lag for the vapor concentration to reach equilibrium, the condensation of fuel vapors from differences in temperature that occur in the fuel tanks, or the effect of mass loading (times when the fuel tank is at the unusable fuel level and there is insufficient fuel at a given temperature to form flammable vapors). However, fresh air drawn into an otherwise inert tank during descent does not immediately saturate with fuel vapors so localized concentrations above the inert level during descent do not represent a hazardous condition. These proposed special conditions allow the time during descent, where a localized amount of fresh air may enter a fuel tank, to be excluded from the determination of fuel tank flammability exposure.

Definition of Transport Effects

The effects of low fuel conditions (mass loading) and the effects of fuel vaporization and condensation with time and temperature changes, referred to as ''transport effects'' in these proposed special conditions, are excluded from consideration in the Monte Carlo model used for demonstrating compliance with these proposed special conditions. These effects have been excluded because they were not considered in the original ARAC analysis, which was based on a relative measure of flammability. For example, the 3 percent flammability value established by the ARAC as the benchmark for fuel tank safety for wing fuel tanks did not include the effects of cooling of the wing tank surfaces and the associated condensation of vapors from the tank ullage. If this effect had been included in the wing tank flammability calculation, it would have resulted in a significantly lower wing tank flammability benchmark value. The ARAC analysis also did not consider the effects of mass loading which would significantly lower the calculated flammability value for fuel tanks that are routinely emptied (e.g., center wing tanks). The FAA and European Aviation Safety Agency (EASA) have determined that using the ARAC methodology provides a suitable basis for determining the adequacy of an FRM system.

The effect of condensation and vaporization in reducing the flammability exposure of wing tanks is comparable to the effect of the low fuel condition in reducing the flammability exposure of center tanks. We therefore consider these effects to be offsetting, so that by eliminating their consideration, the analysis will produce results for both types of tanks that are comparable. Using this approach, it is possible to follow the ARAC recommendation of using the unheated aluminum wing tank as the standard for evaluating the flammability exposure of all other tanks. For this reason, both factors have been excluded when establishing the flammability exposure limits. During development of these harmonized proposed special conditions, the FAA and EASA agreed that using the ARAC methodology provides a suitable basis for determining the flammability of a fuel tank and consideration of transport effects should not be permitted.

Flammability Limit

The FAA, in conjunction with EASA and Transport Canada, has developed criteria within these proposed special conditions that require overall fuel tank flammability to be limited to 3 percent of the fleet average operating time. This overall average flammability limit consists of times when the system performance cannot maintain an inert tank ullage, primarily during descent when the change in ambient pressures draws air into the fuel tanks and those times when the FRM is inoperative due to failures of the system and the airplane is dispatched with the system inoperative.

Specific Risk Flammability Limit

These proposed special conditions also include a requirement to limit fuel tank flammability to 3 percent during ground operations, and climb phases of flight to address the specific risk associated with operation during warmer day conditions when accidents have occurred. The specific risk requirement is intended to establish minimum system performance levels and therefore the 3 percent flammability limit excludes reliability related contributions, which are addressed in the average flammability assessment. The specific risk requirement may be met by conducting a separate Monte Carlo analysis for each of the specific phases of flight during warmer day conditions defined in the proposed special conditions, without including the times when the FRM is not available because of failures of the system or dispatch with the FRM inoperative.

Inerting System Indications

Fleet average flammability exposure involves several elements, including—

- The time the FRM is working properly and inerts the tank or when the tank is not flammable;
- The time when the FRM is working properly but fails to inert the tank or part of the tank, because of mission variation or other effects;
- The time the FRM is not functioning properly and the operator is unaware of the failure; and
- The time the FRM is not functioning properly and the operator is aware of the failure and is operating the

airplane for a limited time under MEL relief.

The applicant may propose that MMEL relief is provided for aircraft operation with the FRM unavailable; however, since the intent of § 25.981(c)(1) is to minimize flammability, the FRM system should be operational to the maximum extent practical. Therefore, these proposed special conditions include reliability and reporting requirements to enhance system reliability so that dispatch of airplanes with the FRM inoperative would be very infrequent. Cockpit indication of the system function that is accessible to the flightcrew is not an explicit requirement, but may be required if the results of the Monte Carlo analysis show the system cannot otherwise meet the flammability and reliability requirements defined in these proposed special conditions. Flight test demonstration and analysis will be required to demonstrate that the performance of the inerting system is effective in inerting the tank during those portions of ground and the flight operations where inerting is needed to meet the flammability requirements of these proposed special conditions.

Various means may be used to ensure system reliability and performance. These may include: system integrity monitoring and indication, redundancy of components, and maintenance actions. A combination of maintenance indication and/or maintenance check procedures will be required to limit exposure to latent failures within the system, or high inherent reliability is needed to assure the system will meet the fuel tank flammability requirements. The applicant's inerting system does not incorporate redundant features and includes a number of components essential for proper system operation. Past experience has shown inherent reliability of this type of system would be difficult to achieve. Therefore, if system maintenance indication is not provided for features of the system essential for proper system operation, system functional checks at appropriate intervals determined by the reliability analysis will be required for these features. Validation of proper function of essential features of the system would likely be required once per day by maintenance review of indications, reading of stored maintenance messages or functional checks (possibly prior to the first flight of the day) to meet the reliability levels defined in these special conditions. The determination of a proper interval and procedure will follow completion of the certification testing and demonstration of the system's reliability and performance prior to certification.

Any features or maintenance actions needed to achieve the minimum reliability of the FRM will result in fuel system airworthiness limitations similar to those defined in § 25.981(b). Boeing will be required to include in the instructions for continued airworthiness (ICA) the replacement times, inspection intervals, inspection procedures, and the fuel system limitations required by § 25.981(b). Overall system performance and reliability must achieve a fleet average flammability that meets the requirements of these proposed special conditions. If the system reliability falls to a point where the fleet average flammability exposure exceeds these requirements, Boeing will be required to define appropriate corrective actions, to be approved by the FAA, that will bring the exposure back down to the acceptable level.

Boeing proposed that the FRM be eligible for a 10-day MMEL dispatch interval. The Flight Operations Evaluation Board (FOEB) will establish the approved interval based on data the applicant submits to the FAA. The MMEL dispatch interval is one of the factors affecting system reliability analyses that must be considered early in the design of the FRM, prior to FAA approval of the MMEL. Boeing requested that the authorities agree to use of an MMEL inoperative dispatch interval for design of the system. Boeing data indicates that certain systems on the airplane are routinely repaired prior to the maximum allowable interval. These proposed special conditions require that Boeing use an MMEL inoperative dispatch interval of 60 hours in the analysis as representative of the mean time for which an inoperative condition may occur for the 10-day MMEL maximum interval requested. Boeing must also include actual dispatch inoperative interval data in the quarterly reports required by Special Condition III(c)(2). Boeing may request to use an alternative interval in the reliability analysis. Use of a value less than 60 hours would be a factor considered by the FOEB in establishing the maximum MMEL dispatch limit. The reporting requirement will provide data necessary to validate that the reliability of the FRM achieved in service meets the levels used in the analysis.

Appropriate maintenance and operational limitations with the FRM inoperative may also be required and noted in the MMEL. The MMEL limitations and any operational procedures should be established based on results of the Monte Carlo assessment, including the results associated with operations in warmer climates where the fuel tanks are flammable a significant portion of the FEET when not inert. While the system reliability analysis may show that it is possible to achieve an overall average fleet exposure equal to or less than that of a typical unheated aluminum wing tank, even with an MMEL allowing very long inoperative intervals, the intent of the rule is to minimize flammability. Therefore, the shortest practical MMEL relief interval should be proposed. To ensure limited airplane operation with the system inoperative and to meet the reliability requirements of these proposed special conditions, appropriate level messages that are needed to comply with any dispatch limitations of the MMEL must be provided.

Confined Space Hazard Markings

Introduction of the FRM will result in NEA within the center wing fuel tank and the possibility of NEA in compartments adjacent to the fuel tank if leakage from the tank or NEA supply lines were to occur. Lack of oxygen in these areas could be hazardous to maintenance personnel, the passengers, or flightcrew. Existing certification requirements do not address all aspects of these hazards. Paragraph II(f) of the proposed special conditions requires the applicant to provide markings to emphasize the potential hazards associated with confined spaces and areas where a hazardous atmosphere could be present due to the addition of an FRM.

For the purposes of these proposed special conditions, a confined space is an enclosed or partially enclosed area that is big enough for a worker to enter and perform assigned work and has limited or restricted means for entry or exit. It is not designed for someone to work in regularly, but workers may need to enter the confined space for tasks such as inspection, cleaning, maintenance, and repair. (Reference U.S. Department of Labor Occupational Safety & Health Administration (OSHA), 29 CFR 1910.146(b).) The requirement in the proposed special conditions does not significantly change the procedures maintenance personnel use to enter fuel tanks and are not intended to conflict with existing government agency requirements (*e.g.*, OSHA). Fuel tanks are classified as confined spaces and contain high concentrations of fuel vapors that must be exhausted from the fuel tank before entry. Other precautions such as measurement of the oxygen concentrations before entering a fuel tank are already required. Addition of

the FRM that utilizes inerting may result in reduced oxygen concentrations due to leakage of the system in locations in the airplane where service personnel would not expect it. A worker is considered to have entered a confined space just by putting his or her head across the plane of the opening. If the confined space contains high concentrations of inert gases, workers who are simply working near the opening may be at risk. Any hazards associated with working in adjacent spaces near the opening should be identified in the marking of the opening to the confined space. A large percentage of the work involved in properly inspecting and modifying airplane fuel tanks and their associated systems must be done in the interior of the tanks. Performing the necessary tasks requires inspection and maintenance personnel to physically enter the tank, where many environmental hazards exist. These potential hazards that exist in any fuel tank, regardless of whether nitrogen inerting has been installed, include fire and explosion, toxic and irritating chemicals, oxygen deficiency, and the confined nature of the fuel tank itself. In order to prevent related injuries, operator and repair station maintenance organizations have developed specific procedures for identifying, controlling, or eliminating the hazards associated with fuel-tank entry. In addition government agencies have adopted safety requirements for use when entering fuel tanks and other confined spaces. These same procedures would be applied to the reduced oxygen environment likely to be present in an inerted fuel tank.

The designs currently under consideration locate the FRM in the fairing below the center wing fuel tank. Access to these areas is obtained by opening doors or removing panels which could allow some ventilation of the spaces adjacent to the FRM. But this may not be enough to avoid creating a hazard. Therefore, we intend that marking be provided to warn service personnel of possible hazards associated with the reduced oxygen concentrations in the areas adjacent to the FRM.

Appropriate markings would be required for all inerted fuel tanks, tanks adjacent to inerted fuel tanks and all fuel tanks communicating with the inerted tanks via plumbing. The plumbing includes, but is not limited to, plumbing for the vent system, fuel feed system, refuel system, transfer system and cross-feed system. NEA could enter adjacent fuel tanks via structural leaks. It could also enter other fuel tanks through plumbing if valves are operated or fail in the open position. The markings should also be stenciled on the external upper and lower surfaces of the inerted tank adjacent to any openings to ensure maintenance personnel understand the possible contents of the fuel tank. Advisory Circular 25.981–2 will provide additional guidance regarding markings and placards.

Affect of FRM on Auxiliary Fuel Tank System Supplemental Type Certificates

Boeing plans to offer a service bulletin that will describe installation of the FRM on existing in-service airplanes. Some in-service airplanes have auxiliary fuel tank systems installed that interface with the center wing tank. The Boeing FRM design is intended to provide inerting of the center wing fuel tank volume of the 737 and does not include consideration of the auxiliary tank installations. Installation of the FRM on existing airplanes with auxiliary fuel tank systems may therefore require additional modifications to the auxiliary fuel tank system to prevent development of a condition that may cause the tank to exceed the 12 percent oxygen limit. The FAA will address these issues during development and approval of the service bulletin for the FRM.

Disposal of Oxygen-Enriched Air (OEA)

The FRM produces both NEA and OEA. The OEA generated by the FRM could result in an increased fire hazard if not disposed of properly. The OEA produced in the proposed design is diluted with air from a heat exchanger, which is intended to reduce the OEA concentration to non-hazardous levels. Special requirements are included in these proposed special conditions to address potential leakage of OEA due to failures and safe disposal of the OEA during normal operation.

To ensure that an acceptable level of safety is achieved for the modified airplanes using a system that inerts heated fuel tanks with NEA, proposed special conditions (per § 21.16) are needed to address the unusual design features of an FRM. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

Applicability

As discussed above, these proposed special conditions are applicable to the Boeing Model 737–200/200C/300/400/500/600/700/700C/800/900 series airplanes. Should the type certificate be amended later to include any other model that incorporates the same or similar novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same or similar novel or unusual design feature, the proposed special conditions would also apply to the other model under the provisions of § 21.101.

Conclusion

This action affects only certain novel or unusual design features on Boeing Model 737–200/200C/300/400/500/600/700/700C/800/900 series airplanes. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these proposed special conditions is as follows:

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

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for the Boeing Model 737–200/200C/300/400/500/600/700/700C/800/900 series airplanes, modified by Boeing Commercial Airplanes to include a flammability reduction means (FRM) that uses a nitrogen generation system to inert the center wing tank with nitrogen-enriched air (NEA).

Compliance with these proposed special conditions does not relieve the applicant from compliance with the existing certification requirements.

I. *Definitions.*

(a) *Bulk Average Fuel Temperature.* The average fuel temperature within the fuel tank, or different sections of the tank if the tank is subdivided by baffles or compartments.

(b) *Flammability Exposure Evaluation Time (FEET).* For the purpose of these proposed special conditions, the time from the start of preparing the airplane for flight, through the flight and landing, until all payload is unloaded and all passengers and crew have disembarked. In the Monte Carlo program, the flight time is randomly selected from the Mission Range Distribution (Table 3), the pre-flight times are provided as a function of the flight time, and the post-flight time is a constant 30 minutes.

(c) *Flammable.* With respect to a fluid or gas, flammable means susceptible to igniting readily or to exploding (14 CFR

part 1, Definitions). A non-flammable ullage is one where the gas mixture is too lean or too rich to burn and/or is inert per the definition below.

(d) *Flash Point.* The flash point of a flammable fluid is the lowest temperature at which the application of a flame to a heated sample causes the vapor to ignite momentarily, or ''flash.'' The test for jet fuel is defined in ASTM Specification D56, ''Standard Test Method for Flash Point by Tag Close Cup Tester.''

(e) *Hazardous Atmosphere.* An atmosphere that may expose any person(s) to the risk of death, incapacitation, impairment of ability to self-rescue (escape unaided from a space), injury, or acute illness.

(f) *Inert.* For the purpose of these proposed special conditions, the tank is considered inert when the bulk average oxygen concentration within each compartment of the tank is 12 percent or less at sea level up to 10,000 feet, then linearly increasing from 12 percent at 10,000 feet to 14.5 percent at 40,000 feet and extrapolated linearly above that altitude.

(g) *Inerting.* A process where a noncombustible gas is introduced into the ullage of a fuel tank to displace sufficient oxygen so that the ullage becomes inert.

(h) *Monte Carlo Analysis.* An analytical tool that provides a means to assess the degree of fleet average and warm day flammability exposure time for a fuel tank. See appendices 1 and 2 of these proposed special conditions for specific requirements for conducting the Monte Carlo analysis.

(i) *Transport Effects.* Transport effects are the effects on fuel vapor concentration caused by low fuel conditions (mass loading), fuel condensation, and vaporization.

(j) *Ullage, or Ullage Space.* The volume within the fuel tank not occupied by liquid fuel at the time interval under evaluation.

II. *System Performance and Reliability.* The FRM, for the airplane model under evaluation, must comply with the following performance and reliability requirements:

(a) The applicant must submit a Monte Carlo analysis, as defined in appendices 1 and 2 of these proposed special conditions, that—

(1) demonstrates that the overall fleet average flammability exposure of each fuel tank with an FRM installed is equal to or less than 3 percent of the FEET; and

(2) demonstrates that neither the performance (when the FRM is operational) nor reliability (including all periods when the FRM is inoperative) contributions to the overall fleet average flammability exposure of a tank with an FRM installed is more than 1.8 percent (this will establish appropriate maintenance inspection procedures and intervals as required in paragraph III(a) of these proposed special conditions).

(3) identifies critical features of the fuel tank system to prevent an auxiliary fuel tank installation from increasing the flammability exposure of the center wing tank above that permitted under paragraphs II(a)(1), II(a)(2), and II(b) of these proposed special conditions and to prevent degradation of the performance and reliability of the FRM.

(b) The applicant must submit a Monte Carlo analysis that demonstrates that the FRM, when functional, reduces the overall flammability exposure of each fuel tank with an FRM installed for warm day ground and climb phases to a level equal to or less than 3 percent of the FEET in each of these phases for the following conditions—

(1) The analysis must use the subset of 80° F and warmer days from the Monte Carlo analyses done for overall performance; and

(2) The flammability exposure must be calculated by comparing the time during ground and climb phases for which the tank was flammable and not inert, with the total time for the ground and climb phases.

(c) The applicant must provide data from ground testing and flight testing that—

(1) validate the inputs to the Monte Carlo analysis needed to show compliance with (or meet the requirements of) paragraphs II(a), (b), and (c)(2) of these proposed special conditions; and

(2) substantiate that the NEA distribution is effective at inerting all portions of the tank where the inerting system is needed to show compliance with these paragraphs.

(d) The applicant must validate that the FRM meets the requirements of paragraphs II(a), (b), and (c)(2) of these proposed special conditions, with any combination of engine model, engine thrust rating, fuel type, and relevant pneumatic system configuration approved for the airplane.

(e) Sufficient accessibility for maintenance personnel, or the flightcrew, must be provided to FRM status indications necessary to meet the reliability requirements of paragraph II(a) of these proposed special conditions.

(f) The access doors and panels to the fuel tanks with an FRM (including any tanks that communicate with an inerted tank via a vent system), and to any other confined spaces or enclosed areas that could contain NEA under normal conditions or failure conditions, must be permanently stenciled, marked, or placarded as appropriate to warn maintenance crews of the possible presence of a potentially hazardous atmosphere. The proposal for markings does not alter the existing requirements that must be addressed when entering airplane fuel tanks.

(g) Any FRM failures, or failures that could affect the FRM, with potential catastrophic consequences must not result from a single failure or a combination of failures not shown to be extremely improbable.

III. *Maintenance.*

(a) Airworthiness Limitations must be identified for all maintenance and/or inspection tasks required to identify failures of components within the FRM that are needed to meet paragraphs II(a), (b), and (c)(2) of these proposed special conditions. Airworthiness Limitations must also be identified for the critical fuel tank system features identified under paragraph II(a)(3).

(b) The applicant must provide the maintenance procedures that will be necessary and present a design review that identifies any hazardous aspects to be considered during maintenance of the FRM that will be included in the instructions for continued airworthiness (ICA) or appropriate maintenance documents.

(c) To ensure that the effects of component failures on FRM reliability are dequately assessed on an on-going basis, the applicant must—

(1) demonstrate effective means to ensure collection of FRM reliability data. The means must provide data affecting FRM availablity, such as component failures, and the FRM inoperative intervals due to dispatch under the MMEL;

(2) provide a report to the FAA on a quarterly basis for the first five years after service introduction. After that period, continued quarterly reporting may be replaced with other reliability tracking methods found acceptable to the FAA or eliminated if it is established that the reliability of the FRM meets, and will continue to meet, the exposure requirements of paragraphs II(a) and (b) of these proposed special conditions;

(3) provide a report to the validating authorities for a period of at least two years following introduction to service; and

(4) develop service instructions or revise the applicable airplane manual, per a schedule agreed on by the FAA, to correct any failures of the FRM that occur in service that could increase the fleet average or warm day flammability

exposure of the tank to more than the exposure requirements of paragraphs II(a) and (b) of these proposed special conditions.

Appendix 1

Monte Carlo Analysis

(a) A Monte Carlo analysis must be conducted for the fuel tank under evaluation to determine fleet average and warm day flammability exposure for the airplane and fuel type under evaluation. The analysis must include the parameters defined in appendices 1 and 2 of these proposed special conditions. The airplane specific parameters and assumptions used in the Monte Carlo analysis must include:

(1) FRM Performance—as defined by system performance.

(2) Cruise Altitude—as defined by airplane performance.

(3) Cruise Ambient Temperature—as defined in appendix 2 of these proposed special conditions.

(4) Overnight Temperature Drop—as defined in appendix 2 of these proposed special conditions.

(5) Fuel Flash Point and Upper and Lower Flammability Limits—as defined in appendix 2 of these proposed special conditions.

(6) Fuel Burn—as defined by airplane performance.

(7) Fuel Quantity—as defined by airplane performance.

(8) Fuel Transfer—as defined by airplane performance.

(9) Fueling Duration—as defined by airplane performance.

(10) Ground Temperature—as defined in appendix 2 of these proposed special conditions.

(11) Mach Number—as defined by airplane performance.

(12) Mission Distribution—the applicant must use the mission distribution defined in appendix 2 of these proposed special conditions or may request FAA approval of alternate data from the service history of the Model 737.

(13) Oxygen Evolution—as defined by airplane performance and as discussed in appendix 2 of these proposed special conditions.

(14) Maximum Airplane Range—as defined by airplane performance.

(15) Tank Thermal Characteristics—as defined by airplane performance.

(16) Descent Profile Distribution—the applicant must use a fixed 2500 feet per minute descent rate or may request FAA approval of alternate data from the service history of the Model 737.

(b) The assumptions for the analysis must include—

(1) FRM performance throughout the flammability exposure evaluation time;

(2) Vent losses due to crosswind effects and airplane performance;

(3) Any time periods when the system is operating properly but fails to inert the tank;

Note: Localized concentrations above the inert level as a result of fresh air that is drawn into the fuel tank through vents during descent would not be considered as flammable.

(4) Expected system reliability;

(5) The MMEL/MEL dispatch inoperative period assumed in the reliability analysis (60 flight hours must be used for a 10-day MMEL dispatch limit unless an alternative period has been approved by the FAA), including action to be taken when dispatching with the FRM inoperative (**Note:** The actual MMEL dispatch inoperative period data must be included in the engineering reporting requirement of paragraph III(c)(1) of these proposed special conditions.);

(6) Possible time periods of system inoperability due to latent or known failures, including airplane system shut-downs and failures that could cause the FRM to shut down or become inoperative; and

(7) Effects of failures of the FRM that could increase the flammability of the fuel tank.

(c) The Monte Carlo analysis, including a description of any variation assumed in the parameters (as identified under paragraph (a) of this appendix) that affect fleet average flammability exposure, and substantiating data must be submitted to the FAA for approval.

Appendix 2

I. Monte Carlo Model

(a) The FAA has developed a Monte Carlo model that can be used to calculate fleet average and warm day flammability exposure for a fuel tank in an airplane. Use of the program requires the user to enter the airplane performance data specific to the airplane model being evaluated, such as maximum range, cruise mach number, typical step climb altitudes, tank thermal characteristics specified as exponential heating/cooling time constants, and equilibrium temperatures for various fuel tank conditions. The general methodology for conducting a Monte Carlo model is described in AC 25.981–2.

(b) The FAA model, or one with modifications approved by the FAA, must be used as the means of compliance with these proposed special conditions. The accepted model can be obtained from the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this document. The following procedures, input variables, and data tables must be used in the analysis if the applicant develops a unique model to determine fleet average flammability exposure for a specific airplane type.

II. Monte Carlo Variables and Data Tables

(a) Fleet average flammability exposure is the percent of the mission time the fuel tank ullage is flammable for a fleet of an airplane type operating over the range of actual or expected missions and in a world-wide range of environmental conditions and fuel properties. Variables used to calculate fleet average flammability exposure must include atmosphere, mission length (as defined in Special Condition I. Definitions, as FEET), fuel flash point, thermal characteristics of the fuel tank, overnight temperature drop, and oxygen evolution from the fuel into the ullage. Transport effects are not to be allowed as parameters in the analysis.

(b) For the purposes of these proposed special conditions, a fuel tank is considered flammable when the ullage is not inert and the fuel vapor concentration is within the flammable range for the fuel type being used. The fuel vapor concentration of the ullage in a fuel tank must be determined based on the bulk average fuel temperature within the tank. This vapor concentration must be assumed to exist throughout all bays of the tank. For those airplanes with fuel tanks having different flammability exposure within different compartments of the tank, where mixing of the vapor or NEA does not occur, the Monte Carlo analysis must be conducted for the compartment of the tank with the highest flammability. The compartment with the highest flammability exposure for each flight phase must be used in the analysis to establish the fleet average flammability exposure. For example, the center wing fuel tank in some designs extends into the wing and has compartments of the tank that are cooled by outside air, and other compartments of the tank that are insulated from outside air. Therefore, the fuel temperature and flammability is significantly different between these compartments of the fuel tank.

(c) *Atmosphere.*

(1) To predict flammability exposure during a given flight, the variation of ground ambient temperatures, cruise ambient temperatures, and a method to compute the transition from ground to cruise and back again must be used. The variation of the ground and cruise ambient temperatures and the flash point of the fuel is defined by a Gaussian curve, given by the 50 percent value and a ± 1 standard deviation value.

(2) The ground and cruise temperatures are linked by a set of assumptions on the atmosphere. The temperature varies with altitude following the International Standard Atmosphere (ISA) rate of change from the ground temperature until the cruise temperature for the flight is reached. Above this altitude, the ambient temperature is fixed at the cruise ambient temperature. This results in a variation in the upper atmospheric (tropopause) temperature. For cold days, an inversion is applied up to 10,000 feet, and then the ISA rate of change is used. The warm day subset (see paragraph II(b)(2) of Appendix 2 of these proposed special conditions) for ground and climb uses a range of temperatures above 80° F and is included in the Monte Carlo model.

(3) The analysis must include a minimum number of flights, and for each flight a separate random number must be generated for each of the three parameters (that is, ground ambient temperature, cruise ambient temperature, and fuel flash point) using the Gaussian distribution defined in Table 1. The applicant can verify the output values from the Gaussian distribution using Table 2.

(d) *Fuel Properties.*

(1) *Flash point variation.* The variation of the flash point of the fuel is defined by a Gaussian curve, given by the 50 percent value and a ± 1-standard deviation value.

(2) *Upper and Lower Flammability Limits.* The flammability envelope of the fuel that must be used for the flammability exposure analysis is a function of the flash point of the fuel selected by the Monte Carlo for a given flight. The flammability envelope for the fuel is defined by the upper flammability limit

(UFL) and lower flammability limit (LFL) as follows:

(i) LFL at sea level = flash point temperature of the fuel at sea level minus 10 degrees F. LFL decreases from sea level value with increasing altitude at a rate of 1 degree F per 808 ft.

(ii) UFL at sea level = flash point temperature of the fuel at sea level plus 63.5 degrees F. UFL decreases from the sea level value with increasing altitude at a rate of 1 degree F per 512 ft.

Note: Table 1 includes the Gaussian distribution for fuel flash point. Table 2 also includes information to verify output values for fuel properties. Table 2 is based on typical use of Jet A type fuel, with limited TS–1 type fuel use.

TABLE 1.—GAUSSIAN DISTRIBUTION FOR GROUND AMBIENT TEMPERATURE, CRUISE AMBIENT TEMPERATURE, AND FUEL FLASH POINT

[Temperature in Deg. F]

Parameter	Ground ambient temperature	Cruise ambient temperature	Flash point (FP)
Mean Temp	59.95	−70	120
Neg 1 std dev	20.14	8	8
Pos 1 std dev	17.28	8	8

TABLE 2.—VERIFICATION OF TABLE 1

Percent probability of temps & flash point being below the listed values	Ground ambient temperature °F	Cruise ambient temperature °F	Flash point °F	Ground ambient temperature °C	Cruise ambient temperature °C	Flash point (FP) °C
1	13.1	−88.6	101.4	−10.5	−67.0	38.5
5	26.8	−83.2	106.8	−2.9	−64.0	41.6
10	34.1	−80.3	109.7	1.2	−62.4	43.2
15	39.1	−78.3	111.7	3.9	−61.3	44.3
20	43.0	−76.7	113.3	6.1	−60.4	45.1
25	46.4	−75.4	114.6	8.0	−59.7	45.9
30	49.4	−74.2	115.8	9.7	−59.0	46.6
35	52.2	−73.1	116.9	11.2	−58.4	47.2
40	54.8	−72.0	118.0	12.7	−57.8	47.8
45	57.4	−71.0	119.0	14.1	−57.2	48.3
50	59.9	−70.0	120.0	15.5	−56.7	48.9
55	62.1	−69.0	121.0	16.7	−56.1	49.4
60	64.3	−68.0	122.0	18.0	−55.5	50.0
65	66.6	−66.9	123.1	19.2	−55.0	50.6
70	69.0	−65.8	124.2	20.6	−54.3	51.2
75	71.6	−64.6	125.4	22.0	−53.7	51.9
80	74.5	−63.3	126.7	23.6	−52.9	52.6
85	77.9	−61.7	128.3	25.5	−52.1	53.5
90	82.1	−59.7	130.3	27.8	−51.0	54.6
95	88.4	−56.8	133.2	31.3	−49.4	56.2
99	100.1	−51.4	138.6	37.9	−46.3	59.2

(e) *Flight Mission Distribution.*

(1) The mission length for each flight is determined from an equation that takes the maximum mission length for the airplane and randomly selects multiple flight lengths based on typical airline use.

(2) The mission length selected for a given flight is used by the Monte Carlo model to select a 30-, 60-, or 90-minute time on the ground prior to takeoff, and the type of flight profile to be followed. Table 3 must be used to define the mission distribution. A linear interpolation between the values in the table must be assumed.

TABLE 3.—MISSION LENGTH DISTRIBUTION AIRPLANE MAXIMUM RANGE—NAUTICAL MILES (NM)

Flight length (NM)		Airplane maximum range (NM)									
From:	To:	1000	2000	3000	4000	5000	6000	7000	8000	9000	10000
		Distribution of mission lengths (%)									
0	200	11.7	7.5	6.2	5.5	4.7	4.0	3.4	3.0	2.6	2.3
200	400	27.3	19.9	17.0	15.2	13.2	11.4	9.7	8.5	7.5	6.7
400	600	46.3	40.0	35.7	32.6	28.5	24.9	21.2	18.7	16.4	14.8
600	800	10.3	11.6	11.0	10.2	9.1	8.0	6.9	6.1	5.4	4.8
800	1000	4.4	8.5	8.6	8.2	7.4	6.6	5.7	5.0	4.5	4.0
1000	1200	0.0	4.8	5.3	5.3	4.8	4.3	3.8	3.3	3.0	2.7
1200	1400	0.0	3.6	4.4	4.5	4.2	3.8	3.3	3.0	2.7	2.4
1400	1600	0.0	2.2	3.3	3.5	3.3	3.1	2.7	2.4	2.2	2.0
1600	1800	0.0	1.2	2.3	2.6	2.5	2.4	2.1	1.9	1.7	1.6
1800	2000	0.0	0.7	2.2	2.6	2.6	2.5	2.2	2.0	1.8	1.7
2000	2200	0.0	0.0	1.6	2.1	2.2	2.1	1.9	1.7	1.6	1.4

TABLE 3.—MISSION LENGTH DISTRIBUTION AIRPLANE MAXIMUM RANGE—NAUTICAL MILES (NM)—Continued

Flight length (NM)		Airplane maximum range (NM)									
From:	To:	1000	2000	3000	4000	5000	6000	7000	8000	9000	10000
2200	2400	0.0	0.0	1.1	1.6	1.7	1.7	1.6	1.4	1.3	1.2
2400	2600	0.0	0.0	0.7	1.2	1.4	1.4	1.3	1.2	1.1	1.0
2600	2800	0.0	0.0	0.4	0.9	1.0	1.1	1.0	0.9	0.9	0.8
2800	3000	0.0	0.0	0.2	0.6	0.7	0.8	0.7	0.7	0.6	0.6
3000	3200	0.0	0.0	0.0	0.6	0.8	0.8	0.8	0.8	0.7	0.7
3200	3400	0.0	0.0	0.0	0.7	1.1	1.2	1.2	1.1	1.1	1.0
3400	3600	0.0	0.0	0.0	0.7	1.3	1.6	1.6	1.5	1.5	1.4
3600	3800	0.0	0.0	0.0	0.9	2.2	2.7	2.8	2.7	2.6	2.5
3800	4000	0.0	0.0	0.0	0.5	2.0	2.6	2.8	2.8	2.7	2.6
4000	4200	0.0	0.0	0.0	0.0	2.1	3.0	3.2	3.3	3.2	3.1
4200	4400	0.0	0.0	0.0	0.0	1.4	2.2	2.5	2.6	2.6	2.5
4400	4600	0.0	0.0	0.0	0.0	1.0	2.0	2.3	2.5	2.5	2.4
4600	4800	0.0	0.0	0.0	0.0	0.6	1.5	1.8	2.0	2.0	2.0
4800	5000	0.0	0.0	0.0	0.0	0.2	1.0	1.4	1.5	1.6	1.5
5000	5200	0.0	0.0	0.0	0.0	0.0	0.8	1.1	1.3	1.3	1.3
5200	5400	0.0	0.0	0.0	0.0	0.0	0.8	1.2	1.5	1.6	1.6
5400	5600	0.0	0.0	0.0	0.0	0.0	0.9	1.7	2.1	2.2	2.3
5600	5800	0.0	0.0	0.0	0.0	0.0	0.6	1.6	2.2	2.4	2.5
5800	6000	0.0	0.0	0.0	0.0	0.0	0.2	1.8	2.4	2.8	2.9
6000	6200	0.0	0.0	0.0	0.0	0.0	0.0	1.7	2.6	3.1	3.3
6200	6400	0.0	0.0	0.0	0.0	0.0	0.0	1.4	2.4	2.9	3.1
6400	6600	0.0	0.0	0.0	0.0	0.0	0.0	0.9	1.8	2.2	2.5
6600	6800	0.0	0.0	0.0	0.0	0.0	0.0	0.5	1.2	1.6	1.9
6800	7000	0.0	0.0	0.0	0.0	0.0	0.0	0.2	0.8	1.1	1.3
7000	7200	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.4	0.7	0.8
7200	7400	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.3	0.5	0.7
7400	7600	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.2	0.5	0.6
7600	7800	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.1	0.5	0.7
7800	8000	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.1	0.6	0.8
8000	8200	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.5	0.8
8200	8400	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.5	1.0
8400	8600	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.6	1.3
8600	8800	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.4	1.1
8800	9000	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.2	0.8
9000	9200	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.5
9200	9400	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.2
9400	9600	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.1
9600	9800	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.1
9800	10000	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.1

(f) *Fuel Tank Thermal Characteristics.*

(1) The applicant must account for the thermal conditions of the fuel tank both on the ground and in flight. The Monte Carlo model, defines the ground condition using an equilibrium delta temperature (relative to the ambient temperature) the tank will reach given a long enough time, with any heat inputs from airplane sources. Values are also input to define two exponential time constants (one for a near empty tank and one for a near full tank) for the ground condition. These time constants define the time for the fuel in the fuel tank to heat or cool in response to heat input. The fuel is assumed to heat or cool according to a normal exponential transition, governed by the temperature difference between the current temperature and the equilibrium temperature, given by ambient temperature plus delta temperature. Input values for this data can be obtained from validated thermal models of the tank based on ground and flight test data. The inputs for the in-flight condition are similar but are used for in-flight analysis.

(2) Fuel management techniques are unique to each manufacturer's design. Variations in fuel quantity within the tank for given points in the flight, including fuel transfer for any purpose, must be accounted for in the model. The model uses a ''tank full'' time, specified in minutes, that defines the time before touchdown when the fuel tank is still full. For a center wing tank used first, this number would be the maximum flight time, and the tank would start to empty at takeoff. For a main tank used last, the tank will remain full for a shorter time before touchdown and would be ''empty'' at touchdown (that is, tank empty at 0 minutes before touchdown). For a main tank with reserves, the term empty means at reserve level rather than totally empty. The thermal data for tank empty would also be for reserve level.

(3) The model also uses a ''tank empty'' time to define the time when the tank is emptying, and the program uses a linear interpolation between the exponential time constants for full and empty during the time the tank is emptying. For a tank that is only used for long-range flights, the tank would be full only on longer-range flights and would be empty a long time before touchdown. For short flights, it would be empty for the whole flight. For a main tank that carried reserve fuel, it would be full for a long time and would only be down to empty at touchdown. In this case, empty would really be at reserve level, and the thermal constants at empty should be those for the reserve level.

(4) The applicant, whether using the available model or using another analysis tool, must propose means to validate thermal time constants and equilibrium temperatures to be used in the analysis. The applicant may propose using a more detailed thermal definition, such as changing time constants as a function of fuel quantity, provided the details and substantiating information are acceptable and the Monte Carlo model program changes are validated.

(g) *Overnight Temperature Drop.*

(1) An overnight temperature drop must be considered in the Monte Carlo analysis as it may affect the oxygen concentration level in the fuel tank. The overnight temperature drop for these proposed special conditions will be defined using:

- A temperature at the beginning of the overnight period based on the landing temperature that is a random value based on a Gaussian distribution; and

• An overnight temperature drop that is a random value based on a Gaussian distribution.

(2) For any flight that will end with an overnight ground period (one flight per day out of an average of ''x'' number of flights per day, (depending on use of the particular airplane model being evaluated), the landing outside air temperature (OAT) is to be chosen as a random value from the following Gaussian curve:

TABLE 4.—LANDING OAT

Parameter	Landing temperature °F
Mean Temp	58.68
neg 1 std dev	20.55
pos 1 std dev	13.21

(3) The outside air temperature (OAT) drop for that night is to be chosen as a random value from the following Gaussian curve:

TABLE 5.—OAT DROP

Parameter	OAT drop temperature °F
Mean Temp	12.0
1 std dev	6.0

(h) *Oxygen Evolution.* The oxygen evolution rate must be considered in the Monte Carlo analysis if it can affect the flammability of the fuel tank or compartment. Fuel contains dissolved gases, and in the case of oxygen and nitrogen absorbed from the air, the oxygen level in the fuel can exceed 30 percent, instead of the normal 21 percent oxygen in air. Some of these gases will be released from the fuel during the reduction of ambient pressure experienced in the climb and cruise phases of flight. The applicant must consider the effects of air evolution from the fuel on the level of oxygen in the tank ullage during ground and flight operations and address these effects on the overall performance of the FRM. The applicant must provide the air evolution rate for the fuel tank under evaluation, along with substantiation data.

(i) *Number of Simulated Flights Required in Analysis.* For the Monte Carlo analysis to be valid for showing compliance with the fleet average and warm day flammability exposure requirements of these proposed special conditions, the applicant must run the analysis for an appropriate number of flights to ensure that the fleet average and warm day flammability exposure for the fuel tank under evaluation meets the flammability limits defined in Table 6.

TABLE 6.—FLAMMABILITY LIMIT

Number of flights in Monte Carlo analysis	Maximum acceptable fuel tank flammability (%)
1,000	2.73
5,000	2.88
10,000	2.91
100,000	2.98
1,000,000	3.00

Issued in Renton, Washington, on June 3, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–11762 Filed 6–14–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20141; Directorate Identifier 2005–NE–01–AD]

RIN 2120–AA64

Airworthiness Directives; Hartzell Propeller Inc. Propellers and McCauley Propeller Systems Controllable Propellers

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Hartzell Propeller Inc. HC, BHC, and PHC series propellers; and McCauley Propeller Systems controllable propellers serviced by Oxford Aviation Services Limited, doing business as CSE Aviation, in the United Kingdom between September 1998 and October 2003. This proposed AD would require inspecting the propeller blades and other critical propeller parts for wear and mechanical damage. This proposed AD results from findings that CSE Aviation failed to perform specific inspections and repairs. We are proposing this AD to detect unsafe conditions that could result in a propeller blade separating from the hub and loss of control of the airplane.

DATES: We must receive any comments on this proposed AD by August 15, 2005.

ADDRESSES: Use one of the following addresses to comment on this proposed AD.

• DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.

• Government-wide rulemaking web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.

• Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.

• Fax: (202) 493–2251.

• Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

You may examine the comments on this proposed AD in the AD docket on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Timothy Smyth, Aerospace Engineer, Chicago Aircraft Certification Office, FAA, Small Airplane Directorate, 2300 East Devon Avenue, Des Plaines, IL 60018–4696; telephone (847) 294–7132; fax (847) 294–7834.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send us any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2005–20141; Directorate Identifier 2005–NE–01–AD'' in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of the DMS Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://dms.dot.gov*.

Examining the AD Docket

You may examine the docket that contains the proposal, any comments received and, any final disposition in person at the DMS Docket Offices

between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone (800) 647–5227) is located on the plaza level of the Department of Transportation Nassif Building at the street address stated in **ADDRESSES**. Comments will be available in the AD docket shortly after the DMS receives them.

Discussion

On October 28 and 29, 2003, an FAA International Field Office conducted an audit of Oxford Aviation Services Limited, doing business as CSE Aviation. That audit revealed that CSE Aviation was not using the latest maintenance manuals to perform inspections and repairs. The investigators believe the discrepancies date from about 1998, when CSE Aviation stopped updating their internal procedures to reflect the latest version of the manufacture's maintenance manuals. The audit also showed that CSE Aviation did not perform specific inspections required by the maintenance manual. CSE Aviation conducted an internal investigation and confirmed that they did not perform many inspections and rework procedures such as:

- Removing damage to propeller blade balance holes.
- Shot peening the balance holes as required by the manufacturer's maintenance instructions.

Some of the other findings from the CSE Aviations internal audit were:

- Returning propellers to service with hubs involved in ground strikes.
- Incomplete or incorrectly completed overhauls of the propellers before returning to service,
- Not performing significant inspections or repairs that would have required a repair or that would have caused that product to be declared unairworthy,

Service history shows that these types of omissions of inspections and repair procedures and improperly returning to service propellers with these conditions have resulted in cracked propeller blades and hubs. These conditions, if not corrected, could result in a propeller blade separating from the hub and loss of control of the airplane.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other products of this same type design. We are proposing this AD, which would require before further flight a search of aircraft and propeller records to determine if the propeller was involved in a ground strike. This proposed AD would also require disassembly, cleaning, inspection, and repair within the following compliance times:

- Within 10 flight hours (FH) time-in-service (TIS) after the effective date of this proposed AD, or 2 years after the effective date of the proposed AD, whichever is earlier, if the propeller was involved in a ground strike.
- Within 200 FH TIS after the effective date of this proposed AD, or 2 years after the effective date of the proposed AD, whichever is earlier, if the time-since-overhaul (TSO) of the propeller is more than 1,500 FH.
- Within 350 FH TIS after the effective date of this proposed AD, or 2 years after the effective date of the proposed AD, whichever is earlier, if the TSO of the propeller is more than 1,000 FH and fewer than 1,500 FH.
- Within 500 FH TIS after the effective date of this proposed AD, or 2 years after the effective date of the proposed AD, whichever is earlier, if the TSO of the propeller is 1,000 FH or fewer.

Costs of Compliance

We estimate that about 389 Hartzell Propeller Inc. HC series propellers and about 126 McCauley Propeller Systems controllable propellers of the affected design installed on airplanes of U.S. registry would be affected by this proposed AD. We also estimate that it would take about 10 work hours per propeller to perform the proposed actions, and that the average labor rate is $65 per work hour. Required parts would cost about $2,350 per propeller. Based on these figures, we estimate the total cost of the proposed AD to U.S. operators to be $1,545,000.

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.

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

Regulatory Findings

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

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

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this proposal and placed it in the AD Docket. You may get a copy of this summary at the address listed under **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new airworthiness directive:

Hartzell Propeller Inc. (Formerly TRW Hartzell Propeller) and McCauley Propeller Systems (Formerly Cessna Aircraft Co.): Docket No. FAA–2005–20141; Directorate Identifier 2005–NE–01–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this airworthiness directive (AD) action by August 15, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Hartzell Propeller Inc. (Formerly TRW Hartzell Propeller) and

McCauley Propeller Systems (Formerly Cessna Aircraft Co.) propellers that have a part number (P/N) and serial number (SN) listed in Table 1 or Table 2 of this AD, serviced by Oxford Aviation Limited, doing business as CSE Aviation. These propellers are installed on, but not limited to airplanes used in general aviation, agricultural, flight training, and charter businesses.

TABLE 1.—HARTZELL PROPELLERS BY P/N AND SN

CSE work order number	Hartzell propeller P/N	Hartzell propeller SN
Y03516	HC–E2YL–2BSF	BG2848
Y03517	HC–E2YL–2BSF	BG4112
Y04052	HC–82VL–2C1	942R
Y02965	BHC–C2YF–1BF	AM2854
Y02778	BHC–C2YF–2CKUF	AN1881
Y03382	BHC–C2YF–2CKUF	AN1968
Y04132	BHC–C2YF–2CKUF	AN2528
Y05097	BHC–C2YF–2CKUF	AN3274
Y05048	HC–C2YK–2CUF	AN3906
Y05047	HC–C2YK–2CUF	AN4033
Y03016	BHC–C2YF–2CKUF	AN4271
Y03983	BHC–C2YF–2CLKUF	AN4289
Y03166	BHC–C2YF–2CKUF	AN5248
Y02607	BHC–C2YF–2CKLUF	AN5832
Y04855	BHC–C2YF–2CKLUF	AN6857
Y04391	BHC–C2YF–2CKUF	AN6981A
Y05102	BHC–C2YF–2CLKUF	AN6998A
Y04709	BHC–C2YF–2CKUF	AN7006A
Y05070	BHC–C2YF–2CLKUF	AN7018A
Y03863	BHC–C2YF–CLKUF	AN7019A
Y04108	BHC–C2YF–2CKUF	AN7025A
Y03206	BHC–C2YK–2CLKUF	AN7168B
Y04592	BHC–C2YF–2CKUF	AN7071B
Y04865	BHC–C2YF–2CLKUF	AN7168B
Y04846	BHC–C2YF–2CKUF	AN7184B
Y04808	BHC–C2YF–2CLKUF	AN7199B
Y03185	BHC–C2YF–2CLKUF	AN7209B
Y03186	BHC–C2YF–2CKUF	AN7215B
Y04975	BHC–C2YF–2CKUF	AN7249B
Y04974	BHC–C2YF–2CLKUF	AN7279B
Y04818	BHC–C2YF–2CKUF	AN7280B
Y04532	BHC–C2YF–2CKUF	AN7540B
Y04561	BHC–C2YF–2CKUF	AN7552B
Y04638	BHC–C2YF–2CLKUF	AN7567B
Y04639	BHC–C2YF–2CKUF	AN7568B
Y04658	BHC–C2YF–2CLKUF	AN7581B
Y02866	HC–A3VF–2D	AT376
Y02867	HC–A3VF–2D	AT431
Y04053	HC–C2YK–2CUF	AU10008B
Y04096	HC–C2YK–2CUF	AU10023B
Y04143	HC–C2YK–2CUF	AU10126B
Y04171	HC–C2YK–2CUF	AU10139B
Y04283	HC–C2YK–2CUF	AU10165B
Y04274	HC–C2YK–2CUF	AU10178B
Y04416	HC–C2YK–2CUF	AU10401B
Y04415	HC–C2YK–2CUF	AU10402B
Y04478	HC–C2YK–2CUF	AU10462B
Y04518	HC–C2YK–2CUF	AU10541B
Y04479	HC–C2YK–2CUF	AU10542B
Y04563	HC–C2YK–4BF	AU10614B
Y04564	HC–C2YK–4BF	AU10615B
Y04560	HC–C2YK–2CUF	AU10616B
Y04610	HC–C2YK–2CUF	AU10696B
Y04565	HC–C2YF–2CUF	AU10729B
Y04566	HC–C2YK–2CUF	AU10730B
Y04632	HC–C2YK–4BF	AU10733B
Y04636	HC–C2YK–2CUF	AU10771B
Y04651	HC–C2YK–4BF	AU10790B
Y04659	HC–C2YK–2CUF	AU10817B
Y04681	HC–C2YK–4BF	AU10827B
Y04701	HC–C2YK–2CUF	AU10923B
Y04785	HC–C2YK–2CUF	AU10952B
Y04786	HC–C2YK–2CUF	AU11050B
Y04736	HC–C2YK–2CUF	AU11117B
Y04826	HC–C2YK–4BF	AU11145B
Y04871	HC–C2YK–1BF	AU11279B
Y04890	HC–C2YK–4BF	AU11343B

TABLE 1.—HARTZELL PROPELLERS BY P/N AND SN—Continued

CSE work order number	Hartzell propeller P/N	Hartzell propeller SN
Y05000	HC–C2YK–4CF	AU11591B
Y05050	HC–C2YK–2CUF	AU11731B
Y04410	HC–C2YK–2CGUF	AU1533
Y04409	HC–C2YK–2CGUF	AU1603
Y04344	HC–C2YK–2CLGUF	AU2892E
Y03377	HC–C2YK–2CGUF	AU2955
Y03688	HC–C2YK–2CU	AU354
Y02769	HC–C2YK–2CUF	AU9013B
Y04343	HC–C2YR–2CGUF	AU508E
Y03110	HC–C2YK–2CUF	AU5236
Y04400	HC–C2YK–2CLEUF	AU5974E
Y04652	HC–C2YK–1B	AU6120
Y04321	HC–C2YR–2CLEUF	AU6163
Y03200	HC–C2YK–2CUF	AU7153E
Y03838	HC–C2YK–2CUF	AU7357
Y04362	BHC–C2YF–2CLKUF	AU7491B
Y04219	HC–C2YK–2CLGUF	AU7662
Y02598	HC–C2YK–CUF	AU8212A
Y02770	HC–C2YK–2CUF	AU822
Y03482	HC–C2YK–2CUF	AU8233A
Y03564	HC–C2YK–2CUF	AU8299A
Y03773	HC–C2YK–2CUF	AU8318A
Y03674	HC–C2YK–2CUF	AU8338A
Y02991	HC–C2YK–2CUF	AU8339A
Y03137	HC–C2YK–2CUF	AU8347A
Y03018	HC–C2YK–2CUF	AU8349A
Y02805	HC–C2YK–2CUF	AU8354A
Y02703	HC–C2YK–2CUF	AU8417A
Y02664	HC–C2YK–2CUF	AU8859A
Y04095	HC–C2YK–2CUF	AU8923B
Y03761	HC–C2YK–CUF	AU8968B
Y02792	HC–C2YK–2CUF	AU9012B
Y02848	HC–C2YK–2CUF	AU9014B
Y03597	HC–C2YK–2CUF	AU9015B
Y04735	HC–C2YK–2CUF	AU9041B
Y03229	HC–C2YK–2CGUF	AU9135B
Y02943	HC–C2YK–2CUF	AU9136B
Y03197	HC–C2YK–2CUF	AU9150B
Y04675	HC–C2YK–2CUF	AU9182B
Y03352	HC–C2YK–2CUF	AU9241B
Y03354	HC–C2YK–2CUF	AU9243B
Y03097	HC–C2YK–2CUF	AU9246B
Y03201	HC–C2YK–2CUF	AU9247B
Y03686	HC–C2YK–2CUF	AU9312B
Y03607	HC–C2YK–2CUF	AU9332B
Y03614	HC–C2YK–2CGUF	AU9393B
Y03606	HC–C2YK–2CUF	AU9394B
Y03791	HC–C2YK–2CUF	AU9395B
Y03866	HC–C2YK–CUF	AU9396B
Y03888	HC–C2YK–CUF	AU9509B
Y04948	HC–C2YK–2CUF	AU9511B
Y03891	HC–C2YK–2CUF	AU9518B
Y03797	HC–C2YK–2CUF	AU9520B
Y04001	HC–C2YK–2CGUF	AU9593B
Y05083	HC–C2YK–2CUF	AU9599B
Y03694	HC–C2YK–4BF	AU9616B
Y03696	HC–C2YK–4BF	AU9618B
Y03695	HC–C2YK–4BF	AU9630B
Y03620	HC–C2YK–4BF	AU9631B
Y03627	HC–C2YK–4BF	AU9638B
Y03625	HC–C2YK–4BF	AU9649B
Y04047	HC–C2YK–2CUF	AU9985B
Y04376	HC–C2YL–1BF	AX522
Y05051	HC–C2YR–1BF	AX527
Y02908	HC–C2YL–1BF	AX841B
Y04763	HC–C2YL–1BF	AX720A
Y04731	HC–E2YR–2RBSF	BB6694
Y04900	HC–E2YL–2BSF	BG2122
Y04738	HC–E2YL–2BSF	BG2923
Y04547	HC–E2YL–2BSF	BG3219
Y03153	HC–E2YL–2BSF	BG3287

TABLE 1.—HARTZELL PROPELLERS BY P/N AND SN—Continued

CSE work order number	Hartzell propeller P/N	Hartzell propeller SN
Y04061	HC–E2YL–2BSF	BG3363
Y04917	HC–E2YL–2BSF	BG372
Y04062	HC–E2YL–2BSF	BG434
Y04190	HC–E2YL–2BSF	BG4344
Y04901	HC–E2YL–2BSF	BG4557
Y04737	HC–E2YL–2BSF	BG648
Y04898	HC–E2YR 2RBSF	BP3287
Y03327	HC–E2YR–2RBS	BP5179
Y03680	HC–E2YR–2RBSF	BP6199
Y04167	HC–E2YR–2RBSF	BP6206
Y03138	HC–E2YR–2RBSF	BP6606
Y02709	HC–E2YR–2RBSF	BP6838
Y04899	HC–E2YR–2RBSF	BP9158
Y03913	HC–E2YR–2RBSF	BP9159
Y03139	HC–E2YR–2RBSF	BP9168
Y04780	PHC–A3VF–2B	BR834
Y02939	HC–B3TN–3DY	BUA22056
YO2971	HC–B3TN–3DY	BU12462
Y04089	HC–B3TN–3C	BU14589
Y03948	HC–BCTN–3B	BU16789
Y02767	HC–B3TN–5FL	BV3382
Y02768	HC–B3TN–5FL	BV3540
Y02946	HC–B3TN–3DY	BUA22136
Y03726	HC–B3TN–3G	BUA21467
Y03727	HC–B3TN–3G	BUA23284
Y03928	HC–B3TN–3D	BUA24401
Y04429	HC–B3TN–3N	BUA24852
Y04430	HC–B3TN–3N	BUA24992
Y05019	HC–B3TN–3G	BUA27325
Y03719	HC–B3TN–5E	BVA7456
Y03718	HC–B3TN–5E	BVA7457
Y04443	HC–B3TN–5FL	BVA7770
Y04444	HC–B3TN–5FL	BVA7771
Y03304	HC–B4TN–5ML	CD1746
Y03165	HC–B4TN–5ML	CD1752
Y03164	HC–B4TN–5ML	CD1973
Y04535	HC–B4TN–S	CDA3529M1
Y04787	HC–B4N–ML	CDA3703
Y04788	HC–B4TN–5ML	CDA3704
Y03351	HC–B4TN–5ML	CDA4424
Y04644	HC–B4TN–5ML	CDA4819
Y04534	HC–B4TN–S	CDA5047M1
Y04399	HC–C2YK–1BF	CH11322
Y03764	HC–C2YK–1BF	CH1614B
Y02124	HC–C2YK–1BF	CH23470
Y02897	HC–C2YK–1BF	CH32119A
Y04516	HC–C2YK–1BF	CH20231
Y04371	HC–C2YK–1BF	CH21618
Y04260	HC–C2YK–1BF	CH23621
Y02641	HC–C2YK–1BF	CH23890(E)
Y03969	HC–C2YK–1BF	CH25517
Y02648	HC–C2YK–1BF	CH26145
Y02896	HC–C2YK–1BF	CH32118A
Y04244	HC–C2YR–1BF	CH27227
Y03763	HC–C2YK–1BF	CH27235
Y03704	HC–C2YK–1BF	CH28190
Y03141	HC–C2YK–1BF	CH29976
Y05015	HC–C2YK–1BF	CH30451
Y04153	HC–C2YK–1BF	CH32838B
Y03949	HC–C2YK–1BF	CH32683B
Y05124	HC–C2YKR–1BF	CH33316B
Y03205	HC–C2YK–1BF	CH33520B
Y03850	HC–C2YK–1BF	CH33777B
Y03843	HC–C2YK–1BF	CH34179B
Y04230	HC–C2YK–1BF	CH34607B
Y04014	HC–C2YR–1BF	CH34638B
Y05078	HC–C2YK–1BF	CH35009B
Y04361	HC–C2YK–1BF	CH35037B
Y04587	HC–C2YK–1BF	CH35445B
Y04588	HC–C2YK–1BF	CH35466B
Y05076	HC–C2YK–1BF	CH37285B

TABLE 1.—HARTZELL PROPELLERS BY P/N AND SN—Continued

CSE work order number	Hartzell propeller P/N	Hartzell propeller SN
Y05079	HC–C2YK–1BF	CH37286B
Y05056	HC–C2YK–1BF	CH3730B
Y04891	HC–C3YR–2LUF	CH4488A
Y03425	HC–C2YK–1BF	CH5073
Y03428	HC–C2YK–1B	CH617
Y04126	HC–E2YL–2BTF	CJ514
Y03027	HC–C3YR–2UF	CK3633A
Y02594	HC–C3YR–2UF	CK3634A
Y03429	HC–C3YR–2UF	CK3651A
Y03168	HC–C3YR–2UF	CK3662A
Y03995	HC–C3YR–2UF	CK3663A
Y03573	HC–C3YR–2UF	CK3678A
Y03611	HC–C3YR–2UF	CK3705A
Y03707	HC–C3YR–2UF	CK3706A
Y03513	HC–E3YR–2UF	CK3719A
Y03937	HC–C3YR–2UF	CK3872A
Y03794	HC–C3YR–2UF	CK3873A
Y03921	HC–C3YR–2UF	CK3874A
Y04892	HC–C3YR–2UF	CK4263A
Y03317	HC–C3YR–2UF	CK4459A
Y02871	HC–C3YR–2UF	CK4460A
Y02704	HC–C3YR–2UF	CK4645A
Y03522	HC–C3YR–2UF	CK4682A
Y04770	HC–F2YR–1F	CM535
Y05039	HC–C2YK–4BF	DH687E
Y04872	HC–E3YR–2ATF	DJ10539A
Y04873	HC–E3YR–2ALTF	DJ10542A
Y03975	HC–E3YR–2ALTF	DJ10585A
Y03974	HC–E3YR–2ATF	DJ10832A
Y03023	HC–E3YR–2ATF	DJ8092A
Y03998	HC–E3YR–2ATF	DJ8105A
Y03997	HC–E3YR–2ATF	DJ8106A
Y02865	HC–E3YR–2ALTF	DJ8128A
Y04149	HC–E3YR–2ATF	DJ8137A
Y04150	HC–E3YR–2ALTF	DJ8139A
Y04911	HC–E3YR–2ALTF	DJ8151A
Y02580	HC–E3YR–2ALTF	DJ8154A
Y04912	HC–E3YR–2ATF	DJ8157A
Y02864	HC–E3YR–2ATF	DJ8161A
Y02581	HC–E3YR–2AFT	DJ8180A
Y04775	HC–E3YR–2ATF	DJ8326A
Y04774	HC–E3YR–2ALTF	DJ8329A
Y03760	HC–E3YR–2ATF	DJ8872A
Y03022	HC–E3YR–2ALTF	DJ9503A
Y02120	HC–E2YR–1BF	DK1068
Y04375	HC–E2YR–1BF	DK155
Y03331	HC–E2YR–1BF	DK1902B
Y04373	HC–E2YR–1BF	DK611
Y04168	HC–E2YR–1BF	DK620
Y04471	HC–C2YK–1BF	DK669
Y03040	HC–C2YK–4BF	DN4101A
Y03590	HC–C2YK–4BF	AU8619A
Y03129	HC–C2YK–4BF	DN4111A
Y03442	HC–C2YK–4BF	DN4112A
Y03003	HC–C2YK–2CEUF	DN4126A
Y03630	HC–C2YK–4BF	DN4127A
Y02620	HC–C2YK–4FC7666A	DN4168A
Y02680	HC–C2YK–4FC7666A	DN4171A
Y02786	HC–C2YK–4FC7666A	DN4172A
Y02619	HC–C2YK–4FC7666A	DN4175A
Y03588	HC–C2YK–4BF	DN4187A
Y03116	HC–C2YK–4CF	DN4216A
Y02679	HC–C2YK–4FC7666A	DN4231A
Y03209	HC–C2YK–4BF	AU9643B
Y02677	HC–C2YK–4FC7666A	DN4249A
Y02667	HC–C2YK–4FC7666A	DN4263A
Y03253	HC–C2YK–4BF	DN4265A
Y03592	HC–C2YK–4BF	DN4268
Y02796	HC–C2YK–4FC7666A	DN4279A
Y02788	HC–C2YK–4FC7666A	DN4280A
Y03210	HC–C2YK–4BF	DN4284A

TABLE 1.—HARTZELL PROPELLERS BY P/N AND SN—Continued

CSE work order number	Hartzell propeller P/N	Hartzell propeller SN
Y03212	HC–C2YK–4BF	DN4299A
Y03574	HC–C2YK–4BF	DN9650B
Y03260	HC–C2YK–4BF	DN4340A
Y03254	HC–C2YK–4BF	DN4341A
Y02665	HC–C2YK–4FC7666A	DN4351A
Y02681	HC–C2YK–4FC7666A	DN4364A
Y03208	HC–C2YK–4BF	DN4371A
Y02787	HC–C2YK–4FC7666A	DN4380A
Y03621	HC–C2YK–4BF	DN4510A
Y02666	HC–C2YK–4FC7666A	DN4521A
Y03589	HC–C2YK–4BF	DN4514A
Y03619	HC–C2YK–4BF	DN4515A
Y02678	HC–C2YK–4FC7666A	DN4516A
Y02618	HC–C2YK–4FC7666A	DN4522A
Y02615	HC–C2YK–4FC7666A	DN4524A
Y02614	HC–C2YK–4FC7666A	DN4712A
Y02616	HC–C2YK–4FC7666A	DN4716A
Y03439	HC–C2YK–4BF	DN4719A
Y02662	HC–C2YK–4FC7666A	DN4955A
Y03626	HC–C2YK–4BF	DN4957A
Y03252	HC–C2YK–4BF	DN4963A
Y02668	HC–C2YK–4FC7666A	DN4965A
Y04191	HC–E2YL–2BLSF	DP94
Y02832	HC–C3YR–1RF	DY2464A
Y04175	PHC–C3YF–2UF	EB171
Y04174	PHC–C3YF–2UF	EB173
Y03788	PHC–C3YF–2UF	EB1977
Y03787	PHC–C3YF–2UF	EB1978
Y02779	HC–M2YR–2CEUF	FB379
Y04943	PHC–C3YF–1RF	EE1354
Y03959	PHC–C3YF–1RF	EE1369
Y03754	HC–C2YR–1RF	EE227
Y04730	PHC–C3YF–1RF	EE2322A
Y03767	HC–C3YF–1RF	EE351
Y04246	HC–BM5P–3C	EVA2226
Y04246	HC–BM5P–3C	EVA2246
Y04169	HC–B5MP–3C	EVA2281
Y02634	HC–M2YR–2CLEUF	FB102
Y02732	HC–M2YR–2CEUF	FB1061A
Y04252	HC–M2YR–2CEUF	FB1064A
Y02733	HC–M2YR–2CLEUF	FB1066A
Y04253	HC–M2YR–2CLEUF	FB1067A
Y03332	HC–M2YR–2CLEUF	FB1177B
Y04170	HC–M2YR–2CLEUF	FB1196B
Y02719	HC–M2YR–2CLEUF	FB1167B
Y02708	HC–M2YR–2CEUF	FB409
Y04492	HC–M2YR–2CEUF	FB454
Y03043	HC–M2YR–2CEUF	FB99
Y02905	HC–F2YL–2UF	FE11
Y02917	HC–F2YL–2UF	FE229
Y03753	HC–F2YL–2UF	FE282B
Y03827	HC–F2YL–2UF	FE285B
Y03453	HC–F2YL–2UF	FE58
Y04876	HC–C3YF–5F	FR101
Y04725	HC–C3YF–5F	FR185A
Y04726	HC–C3YF–5F	FR186A
Y04829	HC–C3YF–5F	FR187A
Y04830	HC–C3YF–5F	FR188A
Y05110	HC–C3YF–5F	FR192A
Y05111	HC–C3YF–5F	FR193A
Y04971	HC–C3YF–5F	FR206A
Y03814	HC–C3YF–5F	FR207A
Y04878	HC–C3YF–5F	FR39
Y03125	HC–C3YF–5F	FR206A
Y02715	HC–C3YF–5F	FR58
Y04448	HC–C3YF–5F	FR68
Y02716	HC–C3YF–5F	FR72
Y04450	HC–C3YF–5F	FR73
Y04569	HC–C3YF–5F	FR74
Y04449	HC–C3YF–5F	FR78
Y04085	HC–C3YF–5F	FR79

TABLE 1.—HARTZELL PROPELLERS BY P/N AND SN—Continued

CSE work order number	Hartzell propeller P/N	Hartzell propeller SN
Y04970	HC–C3YF–5F	FR80
Y02600	HC–C3YF–5F	FR82
Y03527	HC–C3YF–5F	FR83
Y04877	HC–C3YF–5F	FR86
Y04570	HC–C3YF–5F	FR87
Y04752	HC–C3YF–5F	FR92
Y05008	HC–C3YF–5F	FR94
Y03605	HC–B4MP–3B	FWA3209
Y03604	HC–B4MP–3B	FWA3201
Y03987	HC–B4MP–3A	FWA3043
Y03902	HC–B4MP–3A	FWA3216
Y03903	HC–B4MP–3A	FWA3217
Y04351	HC–B4MP–3A	FWA3270
Y03911	HC–B4MP–3A	FWA3444
Y03910	HC–B4MP–3A	FWA3445
Y03986	HC–B4MP–3A	FWA3538
Y04352	HC–B4MP–3A	FWA3732
Y04465	HC–B4MP–3A	FWA3760
Y04466	HC–B4MP–3A	FWA3761
Y03647	HC–A6A–3A	GP135
Y03647	HC–A6A–3A	GP135
Y02882	HC–A2VK–2	H238
Y02883	HC–A2VK–2	H2472
Y04864	HC–A2YK–2	H392
Y04863	HC–A2YK–2	H396
Y04979	HC–E4N–3G	HH1739
Y04980	HC–E4N–3G	HH360
Y04977	HC–E4N–3G	HH378
Y04978	HC–E4N–3G	HH379
Y03667	HC–E4N–3	HH43
Y04125	HC–E4A–3J	HJ1050
Y04124	HC–E4A–3J	HJ1079
Y04123	HC–E4A–3J	HJ1213
Y04874	HC–I3YR–1RF	HK127A
Y04597	HC–A2VK–1	J1153
Y04783	BHC–C2YF–2CLKUF	JS11B
Y04687	BHC–C2YF–CLKUF	JS70B
Y04051	HC–82VL–2C	K2624N

TABLE 2.—MCCAULEY PROPELLERS BY P/N AND SN

CSE work order number	McCauley propeller P/N	McCauley propeller SN
Y04664	D2A34C67–NP	714384
Y04665	D2A34C67–NP	714390
Y03274	D2A34C67–NP	723093
Y04543	D2A34C67–NP	723094
Y02754	D2A34C67–NP	723112
Y04360	D3A32C90–MN	739415
Y02989	2A34C50–NP	743482
Y04285	2A34C203–C	744591
Y04467	D2A34C58–NO	745446
Y04279	3FF32L501–A	757134
Y04278	3FF32C501–A	757204
Y02802	3AF32C87–N	757861
Y04250	3FF32C501–A	761008
Y03294	2A36C23–P–E–G	761063
Y03724	D2A34C67–NP	766297
Y04251	3FF32C501–A	768699
Y03855	D2AF34C81–0	772113
Y04261	B2D34C214	775347
Y03963	B2D34C213	776696
Y04996	B2D34C213–B	783689
Y03060	D3A34C402	785093
Y04396	3FF32C501	787591
Y03058	C2A34C204	788168
Y04100	3AF34C503	793041
Y04183	3AF34C503–B	794440
Y04084	2D34C215	795642

TABLE 2.—MCCAULEY PROPELLERS BY P/N AND SN—Continued

CSE work order number	McCauley propeller P/N	McCauley propeller SN
Y02771	B2D34C220	795939
Y03924	3AF34C502	798390
Y03202	2A34C216	798602
Y04255	3AF34C503	798788
Y04663	3AF34C503	798978
Y01682	B2D34C214–A	800359
Y04067	3AF34C502	801561
Y04256	3AF34C502	801583
Y02605	3AF34C502	801584
Y04459	2D34C215	801873
Y04959	3AF32C93–NR	803586
Y04112	3FF32C501A	803966
Y03725	2A34C203–C	805071
Y05013	C2A34C204	805223
Y05053	3AF34C503	805387
Y05052	3AF34C502	805405
Y03297	2AF34C55–0	805970
Y04113	3FF32C501A	806424
Y02575	3FF32C501A	961655
Y03923	2D34C215–B	808006
Y03824	3AF32C509	811678
Y04008	3AF32C508	811912
Y04782	3AF32C509	812482
Y04322	D2AF34C302–A	812874
Y05073	3AF32C509–B	814111
Y05087	3AF32C506	820138
Y02810	3AF32C506	820811
Y02809	3AF32C507	820812
Y03692	C2A34C204–BC	821916
Y04402	3AF32C508	823133
Y02248	3AF32C507	970209
Y05032	3AF32C508–B	840763
Y04033	3AF32C509–B	841002
Y04495	B2D34C213B	851122
Y04397	3FF32C501	860047
Y04680	3AF34C502–B	860142
Y03847	D3A34C403–C	861694
Y04087	3A32C406–C	870695
Y03848	D3A32C90–R	881455
Y01748	D3A32C409	881583
Y05072	3AF32C508–C	890018
Y03723	D2A34C67–0	890108
Y05104	C3D36C415–C	890669
Y05032	D3A32C90–R	890683
Y05034	B3D34C405–C	891388
Y03410	3AF32C508–C	891956
Y04540	3AF34C502	891996
Y04063	2A34C203–B	900028
Y03196	3GFR34C701–DF	900684
Y04653	3A32C406–C	901189
Y03524	B2D3AC207–B	902858
Y04499	3AF32C509–C	911526
Y04498	3AF32C508–C	912012
Y04924	3AF32C509	912323
Y04305	3AF34C502	912386
Y04473	3AF32C508–C	921236
Y04474	3AF32C509–C	921239
Y04099	2D34C215–B	921659
Y04425	3AF32C509–C	930215
Y04991	D3A32C411–C	930228
Y02387	5JFR36C1003	930291
Y02386	5JFR36C1003	930294
Y03011	B2D37C229–B	930318
Y02632	B3D32C419	930644
Y03523	C2A34C204–BC	930703
Y03404	B2D34C213–B	931938
Y03474	4HFR34C762–H	940651
Y04116	3AF32C512–C	941278
Y04117	3AF32C512–C	941284
Y03475	4HFR34C762–H	941528
Y04941	3AF32C515	942101

TABLE 2.—MCCAULEY PROPELLERS BY P/N AND SN—Continued

CSE work order number	McCauley propeller P/N	McCauley propeller SN
Y03756	3AF32C515	942106
Y04825	B3D32C419–C	950588
Y04813	3FF34C501A	961655
Y02608	D3A34C403–C	962466
Y04454	3AF32C508–C	962536
Y04757	3AF34C502–C	962541
Y04550	3AF32C509–C	970276
Y02583	3AF32C522	971311
Y02582	3AF32C523	971324
Y05082	B3D36C424–C	980136
Y02914	B2D34C214	980409
Y03894	3AF32C87–R	981955
Y03893	3AF32C87–R	982877
Y02752	B2D34C213	983395
Y03538	B2D34C213–B	983396
Y04137	B3D36C432–C	992420
Y04595	B2D34C214–B	7710604
Y02895	B2D34C213	7710613
Y03403	3AF34C503	7810116
Y04621	D2A34C98–0	7810684
Y05054	3AF34C503	7910085
Y04821	3AF34C503	7910363
Y02889	3AF32C87NR	7910688
Y02890	3AF32C87NR	7910690
Y04721	C2A34C204–C	000679
Y04452	D3A32C88	010463
Y04216	2A34C209	010522
Y04942	3AF32C523	020312
Y05007	2A34C201–C	022421

Unsafe Condition

(d) This AD results from findings that CSE Aviation failed to perform specific inspections and repairs. We are issuing this AD to detect unsafe conditions that could result in a propeller blade separating from the hub and loss of control of the airplane.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified unless the actions have already been done.

(f) For propellers listed by SN in Table 1 or Table 2 overhauled or repaired by CSE after November 2003, or overhauled by an FAA-approved propeller repair facility after October 2003, no further action is required.

All Propellers Listed by SN in Table 1 or Table 2

(g) Before further flight, perform a document search of airplane and propeller records to determine if the propeller was involved in a ground strike.

(h) If the propeller was involved in a ground strike, perform the requirements specified in paragraph (j) or paragraph (k) of this AD within 10 flight hours (FH) time-in-service (TIS) after the effective date of this AD, or 2 years after the effective date of this AD, whichever is earlier.

(i) For all propellers listed by SN in Table 1 or Table 2 of this AD, not involved in a ground strike, use the compliance schedule in the following Table 3 to perform the requirements specified in paragraph (j) or paragraph (k) of this AD as applicable.

TABLE 3.—COMPLIANCE SCHEDULE

If the time-since-overhaul (TSO) for the propeller on the effective date of this AD is—	Then perform the requirements of paragraph (j) or paragraph (k) of this AD within—
(1) 1,500 FH TSO or more.	200 FH TIS after the effective date of this AD, but do not exceed 2 years after the effective date of this AD.
(2) More than 1,000 FH TSO, but fewer than 1,500 FH TIS.	350 FH TIS after the effective date of this AD, but do not exceed 2 years after the effective date of this AD.
(3) 1,000 FH TSO or fewer	500 FH TIS after the effective date of this AD, but do not exceed 2 years after the effective date of this AD.

Hartzell Propellers

(j) For Hartzell propellers listed by SN in Table 1 of this AD, do the following:

(1) Disassemble the propeller.

(2) Clean all disassembled propeller parts.

(3) Perform a visual inspection for the following conditions:

(i) Wear or damage such as cracks, corrosion, scratches, or nicks.

(ii) Except for blades installed new at the last CSE maintenance action, examine for:

(A) Bent or damaged pitch change knobs.

(B) Damage in the bore area of the blade shank.

(C) Damage in the blade balance hole.

(iii) Damage that indicates a previous ground strike (if applicable).

(iv) Unacceptable wear or damage in areas where shot peening is required. It is not necessary to strip the paint and corrosion protective coatings from the external surface of the blade. It is also not necessary to perform dimensional measurements on the external surface of the blade unless there is evidence of damage that has occurred since CSE returned the propeller to service.

(v) Confirm that CSE Aviation correctly performed the repairs listed in the manufacturers maintenance manuals. An example of a maintenance manual repair is chamfering of the hub grease fitting hole on Hartzell ''Y'' shank series propellers.

(4) Perform all Eddy Current inspections applicable.

(5) Repair and replace with serviceable parts, as necessary.

(6) Assemble and test.

(7) Confirm that hubs affected by AD 2001–23–08 are returned to service only on aircraft affected by that AD.

McCauley Propellers

(k) For McCauley propellers listed by SN in Table 2 of this AD, do the following:

(1) Disassemble the propeller.

(2) Clean all disassembled propeller parts.

(3) Perform a visual inspection for the following conditions:

(i) Wear or damage such as cracks, corrosion, scratches or nicks.

(ii) Damage that indicates a previous ground strike (if applicable).

(iii) Unacceptable wear or damage in areas where shot peening is required, paying particular attention to hub internal shot peened surfaces and blade shank peening. It is not necessary to strip the paint and corrosion protective coatings from the external surface of the blade. It is also not necessary to perform dimensional measurements on the external surface of the blade unless there is evidence of damage that has occurred since CSE returned the propeller to service.

(4) Inspect threaded surfaces of threaded blade shanks with a 10X magnifying glass for scratches parallel to retention threads in the thread root of the first four outboard blade threads. If the retention threads are scratched, repair is not allowed.

(5) Confirm that CSE Aviation correctly performed repairs or modifications listed in the manufacturer's maintenance instructions.

(6) Repair and replace with serviceable parts, as necessary.

(7) Assemble and test.

Definitions

(l) For the purposes of this AD, overhauling a propeller is not necessary to comply with the requirements specified in paragraph (j) or paragraph (k) of this AD. If you don't overhaul the propeller, the TSO doesn't change.

Alternative Methods of Compliance (AMOCs)

(m) The Manager, Chicago Aircraft Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

Related Information

(n) The applicable Hartzell Propeller Inc. or McCauley Overhaul Manuals and Service Documents contain information on performing the inspections specified in this AD.

Issued in Burlington, Massachusetts, on June 7, 2005.

Francis A. Favara,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 05–11798 Filed 6–14–05; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter I

[CC Docket No. 01–92; DA 05–1553]

Developing a Unified Intercarrier Compensation Regime

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: By this document, the Wireline Competition Bureau extends the reply comment deadline to July 20, 2005. Due to the voluminous record received in the initial round of comments, the Bureau is concerned that it may be extremely difficult for parties to review and respond to the comments by the June 22, 2005 reply comment deadline. In the interest of developing a thorough and complete record in this proceeding, the Bureau, on its own motion, hereby extends the reply comment deadline. This extension should allow parties adequate time to review and respond to the voluminous record.

DATES: Reply comments are due on or before July 20, 2005.

ADDRESSES: You may submit comments, identified by CC Docket No. 01–92, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Federal Communications Commission's Web site: *http://www.fcc.gov.* Follow the instructions for submitting comments on the Electronic Comment Filing System (ECFS) / *http://www.fcc.gov/cgb/ecfs/.*
- Hand Delivery/Courier: The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002.

—The filing hours at this location are 8 a.m. to 7 p.m.

—All hand deliveries must be held together with rubber bands or fasteners.

—Any envelopes must be disposed of before entering the building.

—Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions on submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Victoria Goldberg, Wireline Competition Bureau, Pricing Policy Division, (202) 418–7353 or via the Internet at *victoria.goldberg@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order in CC Docket No. 01–92, adopted on May 31, 2005, and released on May 31, 2005. The complete text of this Order is available for public inspection Monday through Thursday from 8 a.m. to 4:30 p.m. and Friday from 8 a.m. to 11:30 a.m. in the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, Room CY–A257, 445 Twelfth Street, SW., Washington, DC 20554. The complete text is also available on the Commission's Internet site at *http://www. fcc.gov.* Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365. The complete text of the Order may be purchased from the Commission's duplicating contractor, Best Copying and Printing, Inc., Room CY–B402, 445 Twelfth Street, SW., Washington, DC 20554, telephone (202) 488–5300, facsimile (202) 488–5563, or e-mail at *http://www.bcpiweb.com.*

When filing reply comments, parties should reference CC Docket No. 01–92 and conform to the filing procedures referenced in the Order and provided in the Further Notice of Proposed Rulemaking. *See* Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01–92, Further Notice of Proposed Rulemaking, 70 FR 15030 (March 24, 2005). All pleadings may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html.* Commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number, in this case CC Docket No. 01–92. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov,* and should

include the following words in the body of the message, ''get form <your e-mail address>.'' A sample form and directions will be sent in reply.

Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. In addition, parties should send a copy of their filings to Victoria Goldberg, Pricing Policy Division, Wireline Competition Bureau, Federal Communications Commission, Room 5–A266, 445 12th Street, SW., Washington, DC 20554. Parties shall also serve one copy with the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, (202) 488–5300, or via e-mail to *fcc@bcpiweb.com.*

Documents in CC Docket No. 01–92 are available for review through the ECFS and are available for public inspection and copying during business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The documents may also be purchased from BCPI, telephone (202) 488–5300, facsimile (202) 488–5563, TTY (202) 488–5562, or by e-mail at *fcc@bcpiweb.com.*

Synopsis of Order

On February 10, 2005, the Commission adopted a Further Notice of Proposed Rulemaking (FNPRM) in CC Docket No. 01–92. *See* Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01–92, Further Notice of Proposed Rulemaking, 70 FR 15030 (March 24, 2005). In the FNPRM, the Commission sought further comment on specific proposals for comprehensive intercarrier compensation reform, alternative reform measures, and related issues. The comment deadline was May 23, 2005, and the reply comment deadline is June 22, 2005.

On May 23, 2005, the Commission received over 3,000 pages of comments from more than 100 parties. Due to the voluminous record received, we are concerned that it may be extremely difficult for parties to review and respond to the comments by the June 22, 2005 reply comment deadline. In the interest of developing a thorough and complete record in this proceeding, the Bureau, on its own motion, hereby extends the reply comment deadline to July 20, 2005. This extension should allow parties adequate time to review and respond to the voluminous record. Further, an extension should help avoid the piecemeal submission of arguments and analysis in the form of *ex parte* submissions after the reply comment deadline. All other filing requirements set forth in the FNPRM remain in effect.

Ordering Clause

Accordingly, *it is ordered* that, pursuant to the authority contained in sections 4(i) and 303(r) of the Communications Act, as amended, 47 U.S.C. 154(i) and 303(r), and §§ 0.204(b), 0.291, 1.45, and 1.415 of the Commission's rules, 47 CFR 0.204(b), 0.291, 1.45, and 1.415, the deadline for filing reply comments in response to the FNPRM is extended to July 20, 2005.

Federal Communications Commission.

Thomas J. Navin,

Acting Chief, Wireline Competition Bureau.

[FR Doc. 05–11728 Filed 6–14–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket No. 02–278; DA 05–1348]

Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; petition for declaratory ruling, comments requested.

SUMMARY: In this document, the Commission seeks comment on a petition for declaratory ruling (''Petition'') filed by Mark Boling, asking the Commission to declare that particular provisions of the California Consumer Legal Remedies Act (''CLRA''), as applied to interstate telephone calls, are not preempted by the Telephone Consumer Protection Act (''TCPA'').

DATES: Comments are due on or before July 15, 2005, and reply comments are due on or before August 4, 2005.

ADDRESSES: You may submit comments, identified by CG DOCKET NO. 02–278, DA 05–1348, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Federal Communications Commission's Web Site: http://www.fcc.gov/cgb/ecfs/.* Follow the instructions for submitting comments.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: *FCC504@fcc.gov* or phone: (202) 418–0530 or TTY: (202) 418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Kelli Farmer, Consumer Policy Division, Consumer & Governmental Affairs Bureau, (202) 418–2512 (voice), *Kelli.Farmer@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document, DA 05–1348, released May 13, 2005. The full text of this document and copies of any subsequently filed documents in this matter will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554, (202) 418–0270. This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing (BCPI), Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. Customers may contact BCPI, Inc. at their Web site: *http://www.bcpiweb.com* or by calling 1–800–378–3160.

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format) send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice) or (202) 418–0432 (TTY). This document can also be downloaded in Word or Portable Document Format (PDF) at *http://www.fcc.gov/cgb/policy.*

On July 3, 2003, the Commission released a *Report and Order* (*2003 TCPA Order*) revising its rules under the TCPA, published at 68 FR 44144, July 25, 2003. In the *2003 TCPA Order*, the Commission determined that it would consider any alleged conflicts between State and Federal requirements and the need for preemption on a case-by-case basis. Accordingly, the Commission instructed any party that believes a State law is inconsistent with § 227 or the Commission's rules to seek a declaratory ruling from the Commission. Mr. Boling's Petition seeks such a declaratory ruling. When filing comments, please reference CG Docket No. 02–278, DA 05–1348. Comments

may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121, May 1, 1998. Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html*. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message, ''get form <your e-mail address>.'' A sample form and directions will be sent in reply.

Parties who choose to file by paper must send an original and four (4) copies of each filing. Filings can be sent by hand or messenger delivery, by electronic media, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings or electronic media for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial and electronic media sent by overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Room TW–B204, Washington, DC 20554.

This proceeding shall be treated as a ''permit but disclose'' proceeding in accordance with the Commission's *ex parte* rules, 47 CFR 1.1200. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substances of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. *See* 47 CFR 1.1206(b). Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in § 1.1206(b) of the Commission's rules, 47 CFR 1.1206(b).

Synopsis

On August 11, 2003, Mark Boling filed a *Petition* ''individually and on behalf of California consumers and California businesses'' asking the Commission to declare that particular provisions of the California Consumer Legal Remedies Act (''CLRA''), as applied to interstate telephone calls, are not preempted by the Telephone Consumer Protection Act (''TCPA''). The Commission seeks comment on the issues raised in the *Petition*.

Mr. Boling states that he has acted as a party, representative party, or legal representative in numerous California lawsuits in which defendants have asserted as a defense that particular provisions of the CLRA are preempted by the TCPA. Mr. Boling indicates that the CLRA, as set forth in California Civil Code § 1770(a), contains a list of unlawful practices. He notes that California Civil Code § 1770(a)(22)(A), in particular, makes unlawful the ''dissemination of an unsolicited prerecorded message by telephone without an unrecorded, natural voice first informing the person answering the telephone of the name of the caller or the organization being represented, and either the address or the telephone number of the caller, and without obtaining the consent of that person to listen to the prerecorded message.''

Mr. Boling further notes that § 227(b)(1)(B) of the Communications Act, as amended by the TCPA, makes it unlawful for any person ''to initiate any telephone call to any residential telephone line using an artificial or prerecorded voice to deliver a message without the prior express consent of the called party, unless the call is initiated for emergency purposes or is exempted by rule or order by the Commission under paragraph (2)(B).'' Asserting that this provision of Federal law poses no conflict with the relevant provisions of the CLRA, Mr. Boling explains that:

> In this instance, the CLRA controls dissemination of a prerecorded message and does not control the telephone call containing that message. The TCPA controls the call, and not the dissemination of the message. Therefore, when a party initiates the unlawful call it violates the TCPA and when the unlawful message is received in California it violates the CLRA.

As such, Mr. Boling asserts that ''no conflict exists in the enforcement of the TCPA or the CLRA as it relates to the activities set forth in this action, as the actionable conduct in each law is separately defined.'' Finally, Mr. Boling asserts that, because the practices at issue in the *Petition* do not pertain to technical and procedural requirements for identification of senders of telephone facsimile messages or autodialed artificial or prerecorded voice messages, as described in section 227(d) of the TCPA, they are not subject to § 227(e) of the TCPA.

Accordingly, Mr. Boling asks the Commission to issue a declaratory ruling that the identified provisions of the California Civil Code, as applied to interstate calling, are not preempted by the TCPA.

Federal Communications Commission.

Monica Desai,

Acting Chief, Consumer & Governmental Affairs Bureau.

[FR Doc. 05–11910 Filed 6–14–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[WT Docket No. 99–87; RM–9332; FCC 04–292]

Promotion of Spectrum Efficient Technologies on Certain Frequencies

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission seeks comments on whether to defer or eliminate the requirement in the rules that certain applications for equipment authorization received on or after January 1, 2005, specify 6.24 kHz capability.

DATES: Submit comments on or before August 15, 2005, and reply comments are due on or before September 13, 2005.

FOR FURTHER INFORMATION CONTACT: Rodney Conway, *Rodney.Conway@fcc.gov*, Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau, (202) 418–0680, TTY (202) 418–7233.

SUPPLEMENTARY INFORMATION: This is a summary of the Federal Communications Commission's *Third Further Notice of Proposed Rule Making* (*3rd Further NPRM*), FCC 04–292, adopted on December 20, 2004, and released on December 23, 2004. The full

text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the FCC's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The full text may also be downloaded at: *http://www.fcc.gov*. Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365 or at *bmillin@fcc.gov*.

1. In the *Second Further Notice of Proposed Rule Making* (*2nd Further NPRM*) in this proceeding (68 FR 42337, July 17, 2003), the Commission sought comment on whether it should adopt measures to facilitate the migration to 6.25 kHz operations. In comments to the (*2nd Further NPRM*) and in separate pleadings, parties argued that the Commission should eliminate or, in the alternative, defer, the requirement in 47 CFR 90.203(j)(5) that equipment approval applications received on or after January 1, 2005 for equipment operating in the 150–174 MHz and/or 421–512 MHz bands must either be capable of operating on 6.25 kHz channels or meet a narrowband efficiency standard of one channel per 6.25 kHz (voice) or 4800 bits per second per 6.25 kHz (data).

2. Because these pleadings raise an issue beyond but connected to the Commission's inquiry in the *2nd Further NPRM*, the *3rd Further NPRM* seeks comment on this proposal. Specifically, it seeks comment on the petitioners' assumption that the current rule would place onerous burdens on manufacturers and jeopardize the promotion of interoperability between users in the absence of a 6.25 kHz equivalent efficiency standard. It also seeks comment on whether the question hinges on a distinction between equipment-based technologies that are specifically manufactured to utilize 6.25 kHz channel bandwidth as opposed to reconfigured 12.5 kHz equipment or software-defined 12.5 kHz equipment made capable of operating on channel bandwidths with an equivalent efficiency of 6.25 kHz. In the absence of a single, equipment-based 6.25 kHz technology standard, would the deployment of non-standardized equipment capable of utilizing 6.25 kHz efficiency channel bandwidths significantly hamper interoperability? The Commission seeks comment on these and any other related issues, but emphasizes that it is not reopening the record for comments regarding the broader issues raised in the *2nd Further NPRM* regarding migration to 6.25 kHz technology.

3. For Commission licensees operating in the Federal Government bands 150.05–150.8 MHz, 162.0125–173.2 MHz, and 173.4–174 MHz, we recognize that a separate ongoing proceeding—ET Docket No. 04–243—is addressing whether different narrowbanding requirements are needed to account for the Federal Government's own narrowbanding plans in those bands. Accordingly, we defer decisions with respect to those bands to that proceeding.

I. Procedural Matters

A. Ex Parte Rules—Permit-But-Disclose Proceeding

4. This is a permit-but-disclose notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's rules.

B. Comment Dates

5. Pursuant to § 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before August 15, 2005, and reply comments on or before September 13, 2005. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.

6. Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html*. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message, ''get form <your e-mail address>.'' A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th St., SW., Washington, DC 20554. Filings can be sent first class by the U.S. Postal Service, by an overnight courier or hand and message-delivered. Hand and message-delivered paper filings must be delivered to 236 Massachusetts Avenue, NE, Suite 110, Washington, DC 20002. Filings delivered by overnight courier (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

7. Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be submitted to: Rodney Conway, Wireless Telecommunications Bureau, 445 12th St., SW., Room 3–C405, Washington, DC 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using Microsoft Word or compatible software. The diskette should be accompanied by a cover letter and should be submitted in ''read only'' mode. The diskette should be clearly labeled with the commenter's name, proceeding (including the docket number in this case, WT Docket No. 99–87), type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase ''Disk Copy—Not an Original.'' Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters should send diskette copies to the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th St., SW., Room CY–B402, Washington, DC 20554.

C. Paperwork Reduction Act

8. This document does not contain proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified ''information collection burden for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

II. Regulatory Flexibility Act Analysis

9. As required by the Regulatory Flexibility Act (RFA), the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this *Third Further Notice of Proposed Rule Making (3rd Further NPRM)*. Written public

comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on this Further NPRM provided above in para. 5, *supra.* The Commission will send a copy of the *3rd Further NPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the *3rd Further NPRM* and IRFA (or summaries thereof) will be published in the **Federal Register**.

Need for, and Objectives of, the Proposed Rules

10. The purpose of this *3rd Further NPRM* is to determine whether it would be in the public interest, convenience, and necessity to amend our rules governing private land mobile radio licensees in the 150–174 MHz and 421–512 MHz bands to modify or eliminate the requirement in § 90.203(j)(5) of the Commission's rules that require applications for certification of equipment received on or after January 1, 2005 operating with a 25 kHz bandwidth only to the extent that the equipment meets the spectrum efficiency standard of one channel per 6.25 kHz of channel bandwidth (voice) or 4800 bits per second per 6.25 kHz (data).

Legal Basis

11. Authority for issuance of this *3rd Further NPRM* is contained in sections 4(i), 303(r), and 332(a)(2) of the Communications Act of 1934, as amended.

Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

12. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. Under the RFA, small entities may include small organizations, small businesses, and small governmental jurisdictions. The RFA generally defines the term ''small business'' as having the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. A small organization is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide, as of 1992, there were approximately 275,801 small organizations.

13. The proposed rule amendments may affect users of Public Safety Radio Pool services and private radio licensees that are regulated under part 90 of the Commission's rules, and may also affect manufacturers of radio equipment. An analysis of the number of small entities affected follows.

14. *Public safety services and Governmental entities.* Public safety radio services include police, fire, local governments, forestry conservation, highway maintenance, and emergency medical services. The SBA rules contain a definition for small radiotelephone (wireless) companies that encompass business entities engaged in radiotelephone communications employing no more that 1,500 persons. There are a total of approximately 127,540 licensees within these services. Governmental entities as well as private businesses comprise the licensees for these services. The RFA also includes small governmental entities as a part of the regulatory flexibility analysis. ''Small governmental jurisdiction'' generally means ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000.'' As of 1992, there were approximately 85,006 such jurisdictions in the United States. This number includes 38,978 counties, cities and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, the Commission estimates that 81,600 (96 percent) are small entities.

15. *Estimates for PLMR Licensees.* Private land mobile radio systems serve an essential role in a vast range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories. Because of the vast array of PLMR users, the Commission has not developed a definition of small entities specifically applicable to PLMR users, nor has the SBA developed any such definition. The SBA rules do, however, contain a definition for small radiotelephone (wireless) companies. Included in this definition are business entities engaged in radiotelephone communications employing no more that 1,500 persons. Entities engaged in telegraph and other message communications with no more than $5 million in annual receipts also qualify as small business concerns. According to the Bureau of the Census, only twelve radiotelephone firms of a total of 1,178 such firms which operated during 1992 had 1,000 or more employees. For the purpose of determining whether a licensee is a small business as defined by the SBA, each licensee would need to be evaluated within its own business area. The Commission's fiscal year 1994 annual report indicates that, at the end of fiscal year 1994, there were 1,101,711 licensees operating 12,882,623 transmitters in the PLMR bands below 512 MHz.

16. *Equipment Manufacturers.* We anticipate that at least six radio equipment manufacturers will be affected by our decisions in this proceeding. According to the SBA's regulations, a radio and television broadcasting and communications equipment manufacturer must have 750 or fewer employees in order to qualify as a small business concern. Census Bureau data indicate that there are 858 U.S. firms that manufacture radio and television broadcasting and communications equipment, and that 778 of these firms have fewer than 750 employees and would therefore be classified as small entities.

Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

17. This *3rd Further NPRM* stays the January 1, 2005 date in § 90.203(j)(5) of the Commission's rules pending resolution of the issues presented in the *2nd Further NPRM* and the Petition to Defer. Therefore, the *3rd Further NPRM* removes any administrative or recordkeeping burdens associated with the requirement that applications for certification of equipment received on or after January 1, 2005 operating with a 25 kHz bandwidth will be permitted only to the extent that the equipment meets the spectrum efficiency standard of one channel per 6.25 kHz of channel bandwidth (voice) or 4800 bits per second per 6.25 kHz (data) pursuant to § 90.203 (j)(5) of the Commission's rules.

Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

18. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from

coverage of the rule or any part thereof for small entities.

19. The objective in the *Refarming* proceeding was to provide a means to transition licensees to 6.25 kHz technology. Migration to 12.5 kHz technology was viewed as a stepping stone to operation at 6.25 kHz technology. However, requiring the use of 6.25 kHz technology by a date certain could impact some small entities requiring them to upgrade their communications systems before they would otherwise do so. An alternative would be to maintain the current rules, which are intended to foster migration to narrowband technology by way of progressively more stringent type certification requirements. We issue this *3rd Further NPRM* to stay the effectiveness of § 90.203(j)(5) of the Commission's rules and thereby ensure that a January 1, 2005 deadline would not injure any party while we consider whether a change in the Commission's rules would benefit small entities and other PLMR licensees.

Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

None.

III. Ordering Clauses

20. Pursuant to sections 1, 2, 4(i), 301, 302, and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 301, 302, and 303, and §§ 1.421 and 1.425 of the Commission's rules, 47 CFR 1.421 and 1.425, it is ordered that the *Third Further Notice of Proposed Rule Making* is hereby adopted.

21. It is further ordered that the Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this *Third Memorandum Opinion and Order, Third Further Notice of Proposed Rule Making* including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the U.S. Small Business Administration.

List of Subjects in 47 CFR Part 90

Communications equipment, Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

Marlene H. Dortch,

Secretary .

[FR Doc. 05–11476 Filed 6–14–05; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 171, 172, 173, and 175

[Docket No. PHMSA–02–11989 (HM–224C)]

RIN 2137–AD48

Hazardous Materials; Transportation of Lithium Batteries

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Initial regulatory flexibility analysis.

SUMMARY: The Pipeline and Hazardous Materials Safety Administration (PHMSA) is publishing this initial regulatory flexibility analysis to aid the public in commenting upon the potential small business impacts of the proposals in our April 2, 2002 notice of proposed rulemaking to amend the requirements in the Hazardous Materials Regulations (HMR) on: (1) Exceptions for ''small'' and for ''mid-size'' batteries (*i.e.,* cells up to 5 grams of lithium content and batteries up to 25 grams of lithium content); and (2) exceptions for aircraft passengers and crew. These changes are being proposed in order to clarify requirements to promote safer transportation practices; promote compliance and enforcement; eliminate unnecessary regulatory requirements; facilitate international commerce; and make these requirements easier to understand. We will consider comments received to improve our regulatory flexibility analysis and in making our decision on a final rule.

DATES: Written comments must be received on or before August 1, 2005.

ADDRESSES: You may submit comments (identified by DOT DMS Docket Number PHMSA–02–11989 (HM–224C)) by any of the following methods:

- Web site: *http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- Fax: 202–493–2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, PL–401, Washington, DC 20590–0001.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Instructions: You must include the agency name (Pipeline and Hazardous Materials Safety Administration) and the Docket number (PHMSA–02–11989 (HM–224C)) or the Regulatory Identification Number (RIN 2137–AD48) for this rulemaking at the beginning of your comments. You should submit two copies of your comments if you submit them by mail. If you wish to receive confirmation that PHMSA received your comments, you must include a self-addressed stamped postcard. Note that all comments received will be posted, without change, to *http://dms.dot.gov* including any personal information provided and will be available to internet users. Please see the Privacy Act section of this document.

Docket: For access to the docket to read background documents and comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: John Gale, Office of Hazardous Materials Standards, PHMSA, Department of Transportation, 400 Seventh St., SW., Washington, DC 20590–0001, Telephone (202) 366–8553.

SUPPLEMENTARY INFORMATION: In our April 2, 2002 notice of proposed rulemaking (NPRM) under this docket (67 FR 15510), the Research and Special Programs Administration (RSPA)—PHMSA's predecessor agency—explained that lithium batteries and equipment containing or packed with lithium batteries are regulated as Class 9 materials unless they meet an exception in the Hazardous materials Regulations (HMR, 49 CFR Parts 171–180). In that NPRM, RSPA proposed (1) changes to test methods for lithium batteries, (2) that excepted ''small'' batteries must be tested and each package containing more than 24 cells or 12 batteries must meet packaging standards, including a maximum gross mass, and have certain communication of the hazards (marking and accompanying documentation), (3) elimination of the exception for ''mid-size'' cells and batteries, and (4) exceptions for airline passengers and crew members to carry consumer electronic devices and spare batteries aboard aircraft, subject to limits on the lithium content and number of spare batteries.

Our April 2, 2002 NPRM did not include an initial regulatory flexibility analysis (IRFA) pursuant to the Regulatory Flexibility Act (5 U.S.C. 603)

because we concluded that the proposed changes would not have a significant economic impact on a substantial number of small entities (5 U.S.C. 605). We concluded that the costs associated with testing ''small'' lithium batteries would be incurred by lithium battery manufacturers, which are not small businesses. We also concluded that most small businesses that offer lithium batteries for transportation would make smaller shipments (fewer than 24 cells or 12 batteries) of ''small'' batteries and would not have to meet the packaging and hazard communication requirements.

Comments to the proposed rule indicated that some lithium battery manufacturers are small businesses and that the small shipment exception may not sufficiently mitigate their burden. On August 22, 2003, the Office of Management and Budget returned RSPA's draft final rule in this proceeding stating that, after discussions with the Small Business Administration, it believed that a full IRFA should be prepared containing ''additional information that will allow RSPA to more fully address comments disputing the need for regulating lithium ion batteries,'' with ''as much detail as possible on their cost estimates,'' and also to ''gather additional information on the number of small businesses impacted and their annual revenues.'' Thereafter, RSPA performed a threshold analysis and determined that at least 52 small businesses could be affected by the proposed rule and that this number could increase as the market for lithium batteries and cells increases. Based on the threshold analysis we concluded that this IRFA was required because the proposed rule may have significant economic impact on a substantial number of small businesses.

In an interim final rule (IFR) published December 15, 2004, under Docket No. PHMSA–04–19886 (HM–224E, 69 FR 75208), we amended the HMR to (1) prohibit the transportation of primary (non-rechargeable) lithium batteries and cells as cargo aboard passenger-carrying aircraft, (2) adopt conditions under which equipment containing or packed with primary lithium batteries and cells may be transported aboard passenger-carrying aircraft, and (3) require that packages of small and mid-size primary lithium batteries and cells (that are excepted from Class 9) must be marked ''Primary Lithium Batteries—Forbidden for Transport Aboard Passenger Aircraft'' when transported by highway, rail, vessel, or cargo aircraft. The IFR also provides that lithium batteries are not eligible for the ''small quantity'' exception in 49 CFR 173.4, but that airline passengers and crew members may carry consumer electronic and medical devices containing lithium cells or batteries, and spare batteries, in their carry-on or checked baggage, up to a maximum lithium content of each cell and each battery. The prohibition and restrictions adopted in this IFR apply to both foreign and domestic passenger-carrying aircraft entering, leaving, or operating in the United States and to persons offering primary lithium batteries and cells for transportation on any passenger-carrying aircraft. Aside the exception for electronic devices and spare batteries in airline passenger and crew member baggage, the provisions adopted in the IFR do not apply to secondary (rechargeable) lithium batteries (e.g., lithium ion batteries).

In a separate rulemaking proceeding, the revised UN test methods for lithium batteries were adopted in the HMR. Docket No. PHMSA–04–17036 (HM–215G), 69 FR 76043 (Dec. 20, 2004). For these reasons, this IRFA does not address the changes proposed in the April 2, 2002 NPRM concerning test methods or the exception for electronic devices.

Description of the reasons that action by the agency is being considered. PHMSA believes that the current regulations pertaining to the transportation of lithium batteries and cells are insufficient to prevent potentially serious incidents resulting from damage to these batteries and cells. The potential for fires that are difficult to extinguish from such incidents was discussed in the preamble to the proposed rule, which described two fires involving lithium batteries (67 FR 15511). Changes to the international regulations concerning the transportation of lithium batteries and cells, particularly the United Nations Recommendations on the Transport of Dangerous Goods (UN Recommendations), were adopted to address these safety issues. As a result, the HMR is now inconsistent with the UN Recommendations and, thus, makes it more difficult to transport these materials in international commerce.

Succinct statement of the objectives of, and legal basis for, the proposed rule.

The proposed rule will improve the safety of transportation of lithium batteries and cells by changing the test methods for lithium batteries, revising the exceptions for small batteries, eliminating an exception for larger batteries, adding exceptions for aircraft passengers and crew, and making editorial changes to clarify the requirements.

To further clarify and describe these changes, we have proposed to define small, mid-size, and large categories for lithium batteries and cells, as shown in Table 1, where Li means Lithium and ELC means equivalent lithium content. Equivalent lithium content means, for a lithium ion cell, the product of the rated capacity, in ampere-hours, of a lithium ion cell times 0.3. The equivalent lithium content of a battery equals the sum of the grams of equivalent lithium contents contained in the component cells of the battery.

TABLE 1.—BATTERY AND CELL CATEGORY DEFINITIONS

	Small (no more than)	Mid-size (between)	Large (more than)
Cells:			
Lithium Metal/Alloy	1 g Li	1 g and 5 g Li	5 gLi
Lithium Ion	1.5 g ELC	1.5 g and 5 g ELC	5 g ELC
Batteries:			
Lithium Metal/Alloy	2 g Li	2 g and 25 g Li	25 g Li
Lithium Ion	8 g ELC	8 g and 25 g ELC	25 g ELC

This IRFA considers the following specific changes to the HMR:

1. Revise the exception for small batteries.

a. Require testing of small batteries formerly excepted under the HMR

according to the UN Manual of Tests and Criteria.

b. When a package contains more than 24 cells or 12 batteries, except when installed in equipment, small batteries must meet the following packaging and shipping requirements:

• The package must be marked to indicate that it contains lithium batteries, and that special procedures should be followed in the event that the package is damaged;

• The package must be accompanied by a document indicating that the package contains lithium batteries and that special procedures should be followed in the event that the package is damaged;

• The package must be capable of withstanding a 1.2 meter drop test in any orientation without damage to cells or batteries contained in the package, without shifting of the contents that would allow short circuiting and without release of package contents; and

• Except in the case of lithium cells or batteries packed with or contained in equipment, in packages not exceeding 30 kilograms (gross weight).

2. Remove the exception associated with the shipment of mid-size batteries, so that these batteries and cells must be shipped as Class 9 hazardous materials. The requirement to transport mid-size batteries and cells as Class 9 hazardous materials will not subject the batteries to any additional testing; however, employees who are involved with any aspect of their transportation (including preparing shipping papers) would be now considered hazmat employees and would be subject to the applicable training requirements under the HMR. Additionally, these shipments would have to be made in UN performance-oriented packagings and marked, labeled, and described on shipping papers in accordance with the HMR.

3. Except from the HMR consumer electronic devices (watches, calculating machines, cameras, cellular phones, lap-top computers, camcorders, etc.) brought onboard an aircraft by passengers and crew. Also except from the HMR passengers and crew carrying spare batteries for consumer electronic devices containing lithium or lithium ion cells or batteries subject to quantity and lithium content limits when carried by passengers or crew member for personal use. Each spare battery must be individually protected so as to prevent short circuits and carried in carry-on baggage only. In addition, each spare battery must not exceed the following:

(i) For a lithium metal or lithium alloy battery, a lithium content of not more than 2 grams per battery; or

(ii) For a lithium ion battery, an aggregate equivalent lithium content of not more than 8 grams per battery, except that up to two batteries with an aggregate equivalent lithium content of more than 8 grams but not more than 25 grams may be carried.

These changes are summarized in Table 2.

TABLE 2.—SUMMARY OF REQUIREMENTS BY BATTERY AND CELL CATEGORY

	Small	Mid-size	Large
Testing	Will be subject to UN Testing requirements	No change	No change.
Shipping	Packages of more than 24 cells or 12 batteries (except when installed in equipment) have new integrity and communication requirements.	Now subject to HMR as Class 9 (only required old UN Tests before).	
	Revise exceptions for passengers and crew for carrying consumer electronic devices and spare batteries		

Description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply.

In recent years, the lithium battery industry has undergone a transformation from one serving a small, niche-driven market to a rapidly growing industry powering equipment in a broad range of sectors (*e.g.,* military, manufacturing and medical), and being used in a variety of consumer electronics, including: laptop computers, communications equipment, and entertainment products. Primary or non-chargeable batteries are used to power a number of electronics and other high-tech products, including digital cameras, memory backup circuits, security devices, calculators, and watches. Rechargeable or secondary lithium ion batteries are used in laptop computers, camcorders, cell phones, and other portable electronic devices.

The proposed rule would regulate the transportation of primary and secondary lithium batteries and cells. For this analysis, we identified 109 businesses potentially affected by the proposed rule. Of these 109 businesses, 60 were identified as small businesses based on the size standards developed by the Small Business Administration and codified in 13 CFR 121.201. These small businesses were identified using a number of sources:

1. Energy source guides at *http://energy.sourceguides.com/businesses/byP/batP/batt/btora/bType/lion/byB/mfg/byN/byName.shtml* and *http://energy.sourceguides.com /businesses/byP/batP/batt/byB/mfg/byN/byNameWeb.shtml*

2. Batteries EZ Search at *http://www.industrialbatteries-ez.com/industrialbatteries/0028713_0028679_1.html*

3. Portable Rechargeable Battery Assocation (PRBA) Member List at *http://www.prba.org/member.html*

4. Lexis-Nexis search ''manufactures lithium batteries''

5. Thomas Register at *http://www.thomasregister.com/*

6. Dun & Bradstreet financial and other reports (through Westlaw)

7. Dun & Bradstreet financial and other reports (through Electronics Business on-line)

8. Hoover's company database

9. Information Access company database

10. Reference USA

11. US business directory

12. Disclosure incorporated database

13. PR newswire

14. Mergent Inc. reports

15. Investext group

16. Corporate websites

Table 3 presents the number of small businesses impacted by the proposed rule for each industry.

TABLE 3.—NUMBER OF IMPACTED SMALL BUSINESSES BY NAICS CODE

Industries	NAICS code	Number of small businesses
Bare Printed Circuit Board Manufacturing	334412	1
Other Electronic Component Manufacturing	334419	3
Electromedical and Electrotherapeutic Apparatus Manufacturing	334510	1
Other Lighting Equipment Manufacturing	335129	1
Storage Battery Manufacturing	335911	21
Primary Battery Manufacturing	335912	8
All Other Miscellaneous Electrical Equipment and Component Manufacturing	335999	7
Surgical and Medical Instrument Manufacturing	339112	2
Surgical Appliance and Supplies Manufacturing	339113	1
Electrical Apparatus and Equipment, Wiring Supplies, and Related Equipment Merchant Wholesalers	423610	8
Other Electronic Parts and Equipment Merchant Wholesalers	423690	4
Industrial Supplies Merchant Wholesalers	423840	1
Research and Development in the Physical, Engineering, and Life Sciences	541710	2
Total		60

Approximately one-third of all small businesses identified are in NAICS 335911, Storage Battery Manufacturing. Primary Battery Manufacturing, NAICS 335912, is among the next largest categories of small businesses. Most of the businesses in these two categories are likely to have a significant portion of their business related to lithium-based products. Two of the firms that were contacted indicated that the lithium battery/cell business was a very small component of their overall business and that, while they have entered that market in anticipation of its growth, they would abandon the lithium battery/cell market if the compliance costs increased significantly.

Many of the small businesses identified in this IRFA both manufacture battery packs and distribute batteries manufactured by other companies. A total of 24 companies (40 percent) both manufacture and distribute battery packs. Battery manufacturing, as applied in this context, entails the packaging or assemblage of cells manufactured primarily from foreign sources into custom packs designed to meet specific customer demands. Of the 60 small business identified, 18 (30 percent) only manufacture batteries and 18 (30 percent) exclusively distribute batteries manufactured by other companies.

We believed that electronic equipment distributors would also be impacted by this proposed rule and contacted the Electronic Industries Alliance. However, they indicated that their industry is comprised primarily of large businesses.

The many of the small businesses impacted by this analysis described themselves as ''value-added'' businesses offering custom-designed batteries at relatively low-volumes to long-time military, medical, original equipment manufacturers (OEMs) and high-tech customers. Typically, the small businesses were purchasing cells from foreign sources and assembling them into packs for customers. Batteries offered by these small businesses tend to be more complex with higher quality and reliability standards, according to the respondents. These small businesses also develop computer and other consumer electronic batteries for ''after-market'' sales.

Table 4 stratifies the small businesses according to annual revenue. The annual revenue of the 60 small businesses identified for this examination totals roughly $681 million annually. There were nine small businesses contacted to examine the potential impact of the proposed rule on their operations. The annual revenue of these nine businesses impacted by the NPRM totals approximately $217.1 million, or 31.9 percent of the total. Annual revenues among all 60 small businesses range from a low of $100,000 to a high of $98.7 million. As shown, 47 percent of the small businesses generate less than $5 million in annual revenue, while 65 percent generate less than $10 million. Of the nine small businesses contacted, the sales-weighted before-tax profit margin was approximately 21 percent. Applying the 21 percent before-tax profit margin to the annual revenue estimates noted previously generates an estimated $145 million of before-tax profit for the small businesses affected by the proposed rule. Among the small businesses examined in this IRFA, the average before-tax profit is, therefore, estimated at $2.4 million annually. Note, however, that these businesses do not focus entirely on the manufacturing and distribution of lithium batteries. Thus, only a fraction of these profits are attributable to lithium batteries.

TABLE 4.—SMALL BUSINESS SIZE BY ANNUAL SALES

Annual sales	Number of small businesses	Percentage of small businesses	Cumulative percentage
0–499,999	4	7	7
500,000–999,999	3	5	12
1,000,000–4,999,999	20	35	47
5,000,000–9,999,999	10	18	65
10,000,000–14,999,999	3	5	70
15,000,000–19,999,999	8	14	84
20,000,000–24,999,999	3	5	89
25,000,000–29,999,999	2	4	93
30,000,000–34,999,999	1	2	95
35,000,000–39,999,999		0	95

TABLE 4.—SMALL BUSINESS SIZE BY ANNUAL SALES—Continued

Annual sales	Number of small businesses	Percentage of small businesses	Cumulative percentage
40,000,000–44,999,999		0	95
45,000,000–49,999,999		0	95
50,000,000–54,999,999	1	2	96
55,000,000–59,999,999		0	96
60,000,000–64,999,999		0	96
65,000,000–69,999,999	1	2	98
70,000,000–74,999,999		0	98
75,000,000–79,999,999		0	98
80,000,000–84,999,999		0	98
85,000,000–89,999,999		0	98
90,000,000–94,999,999		0	98
95,000,000–99,999,999	1	2	100
Subtotal	57		
Unknown	3		
Total	60		

Table 5 stratifies the small businesses according to their number of employees. The company with the lowest number of employees had two employees and the company with the highest number had 233 employees. The majority of the small businesses (64 percent) have fewer than 50 employees and the vast majority of these businesses (85 percent) have fewer than 100 employees.

TABLE 5.—SMALL BUSINESS SIZE BY NUMBER OF EMPLOYEES

Number of employees	Number of small businesses	Percentage of small businesses	Cumulative percentage
1–10	9	15	15
11–20	13	22	37
21–30	4	7	44
31–40	7	12	56
41–50	5	8	64
51–60	2	3	68
61–70	2	3	71
71–80	4	7	78
81–90	0	0	78
91–100	4	7	85
101–110	1	2	86
111–120	0	0	86
121–130	1	2	88
131–140	0	0	88
141–150	4	7	95
151–160	2	3	98
161–170	0	0	98
171–180	0	0	98
181–190	0	0	98
191–200	0	0	98
201–210	0	0	98
211–220	0	0	98
221–230	0	0	98
231–240	1	2	100
Subtotal	59		
Unknown	1		
Total	60		

Description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for preparation of the report or record.

The compliance costs to small businesses subject to the provisions in the proposed rule are primarily related to testing battery and cell designs, shipping of both prototypes and final products, and the training required for employees newly classified as hazmat employees. Each of these will be discussed separately. Additionally, we will discuss the extent to which these

additional compliance costs can be passed on to the small businesses' customers.

Testing

Based on the information presented in the NPRM, threshold analysis, regulatory evaluation and industry comments, testing requirements would be affected in the following manner.

1. The rule would remove the small battery exception to testing requirements. The following exceptions would be removed from the HMR, thus requiring that batteries falling into the categories outlined below be tested in accordance with the UN Manual of Tests and Criteria.

- Liquid cathode cell—no more than 0.5 grams of alloy per cell
- Liquid cathode battery—no more than 1 gram of lithium or lithium alloy
- Solid cathode cell—no more than 1 gram of lithium or lithium alloy per cell
- Solid cathode battery—no more than 2 grams of lithium or lithium alloy
- Lithium ion cell—no more than 1.5 grams of equivalent lithium content
- Lithium ion battery—no more than 8 grams of equivalent lithium content

2. Exceptions to the battery testing requirements would include:

- Batteries and cells that differ from a tested type by a change of no more than 0.1 gram or 20 percent by mass, whichever is greater.
- Batteries that are of a design similar to one that has been previously tested under UN standards and contain lithium content less than the original design.

3. At present, small battery and cell manufacturers and distributors are required to test all mid-size and larger batteries according to the 8 step approach in the UN Manual of Tests and Criteria. Estimated testing costs used for this IRFA are those charged by outside testing laboratories because virtually all of the small companies send their batteries to outside laboratories. The cost to test a particular design prototype ranges from approximately $5,000 to $8,000. Testing cost estimates are based on input provided by one independent testing laboratory (Motorola) and contacting nine businesses. These costs do not include the costs of supplying the test batteries (up to 24 for rechargeable batteries) or the cost of shipping the prototypes to the testing lab. The primary reason for this is that the tests are already required for any cell or batteries that are shipped internationally.

The major incremental cost under the proposed regulation for the small producers of lithium batteries and cells will result from the required testing of small batteries. To determine the number of new design types requiring testing, a series of questions were posed to nine businesses. First, respondents were asked to estimate the number of total new designs that would be tested this year and how they expected this number to change in the next five years. Respondents were asked to categorize the new design types according to size (small, mid-size, large) and type (primary, rechargeable). Contacted businesses were then asked to estimate the fraction of the new design types that could potentially be considered exempt due to the following reasons: (a) They are nearly identical to existing designs (e.g., batteries and cells that differ from a tested type by a change of no more than 0.1 gram or 20 percent by mass, whichever is greater) or (b) they will be manufactured in production runs of fewer than 100 batteries. The costs associated with testing batteries falling into these categories were excluded from the analysis.

The costs associated with testing new battery designs designated for international shipment were also excluded from the analysis. The basis of this exclusion is that lithium batteries that are manufactured within the U.S. but subsequently transported by aircraft to foreign destinations are already transported in accordance with the ICAO Technical Instructions, which have adopted the U.N. test standards. Thus, harmonization with the international standards would not impose any marginal costs on businesses engaged in the international transport of lithium batteries.

Table 6 shows the number of existing designs subject to testing over the two-year period following the effective date of the proposed rule as well as the number of new designs that would require testing over a 5-year period for the contacted businesses. As noted previously, the nine contacted small businesses comprise an estimated 31.9 percent ($217.1 million/$681.1 million) of all small businesses affected by the proposed rule in annual revenues. Thus, to expand these results to the entire population of small businesses, an expansion factor of 3.1 ($681.1 million/$217.1 million) was used to estimate the total number of designs requiring testing among all small businesses and these figures are also shown in Table 6.

TABLE 6.—ANNUAL TESTING REQUIREMENTS

[Number of battery and cell designs]

Year	Small businesses contacted				All small businesses			
	Previous designs	New designs			Previous designs	New designs		
		Small	Mid-size	Large		Small	Mid-size	Large
2004	254	115	61	2	797	360	190	5
2005	254	130	72	2	797	406	225	5
2006	.....	146	84	2	.....	458	265	5
2007	.....	165	100	2	.....	516	313	5
2008	.....	186	118	2	.....	582	369	5

Two scenarios were developed to reflect the costs for low- and high-end estimates of $5,000 and $8,000 per test, respectively. The costs for these scenarios are shown in Tables 7 and 8. There are no testing costs for mid-size and large batteries because they are already required to be tested. The production and shipping costs are the same for both estimates. The production costs assume that an average of 20 batteries is required for testing each design and that each battery produced for testing costs approximately $50. The shipping costs were determined by averaging the FedEx Express 2-day shipping costs for a package of 20 one-pound batteries to Motorola's Georgia testing location from New York City, Orlando, and Los Angeles. A certified packaging weighing two pounds and costing $5 was assumed and FedEx's $30 hazmat surcharge was included in the shipping cost estimate.

TABLE 7.—ANNUAL COSTS OF COMPLYING WITH TESTING REQUIREMENTS

[Low-end estimate]

Year	Previous designs	New designs			Production	Shipping	Total	Discounted total
		Small	Mid-size	Large				
2004	3,986,929	1,801,334			1,157,653	85,087	7,031,004	7,031,004
2005	3,986,929	2,030,941			1,203,574	88,463	7,309,907	6,831,689
2006		2,289,815			457,963	33,660	2,781,439	2,429,416
2007		2,581,687			516,337	37,951	3,135,975	2,559,889
2008		2,910,761			582,152	42,788	3,535,702	2,697,370
Total	7,973,858	11,614,539			3,917,679	287,949	23,794,026	21,549,368
Avg	1,594,772	2,322,908			783,536	57,590	4,758,805	4,309,874

TABLE 8.—ANNUAL COSTS OF COMPLYING WITH TESTING REQUIREMENTS

[High-end estimate]

Year	Previous designs	New designs			Production	Shipping	Total	Discounted total
		Small	Mid-size	Large				
2004	6,379,087	2,882,135			1,157,653	85,087	10,503,962	10,503,962
2005	6,379,087	3,249,506			1,203,574	88,463	10,920,630	10,206,196
2006		3,663,704			457,963	33,660	4,155,328	3,629,424
2007		4,130,698			516,337	37,951	4,684,987	3,824,345
2008		4,657,218			582,152	42,788	5,282,158	4,029,733
Total	12,758,173	18,583,262			3,917,679	287,949	35,547,064	32,193,660
Avg	2,551,635	3,716,652			783,536	57,590	7,109,413	6,438,732

As indicated in Table 7, the incremental cost for the low-end estimate over a five-year period for all 60 small businesses would be $21,549,368, discounted at 7 percent per year, while the discounted average annual cost would be $4,309,874.[1] For the high-end estimate shown in Table 8, the incremental discounted cost over a five-year period would be $32,193,660 while the discounted average annual cost would be $6,438,732. An average annual discounted cost over the five-year period for the averaged low- and high-end estimates would be about $5,374,303 for the same companies.

For each company there would be an estimated incremental discounted cost of approximately $71,831 annually for the low-end testing costs and about $107,312 average for the discounted high-end testing costs over the five-year period. The average annual estimated discounted testing cost per company using the averaged high- and low-end costs would be approximately $89,572.

Shipping

Currently, under 49 CFR 173.185, lithium batteries and cells are required to be shipped as Class 9 hazardous materials with certain significant exceptions. The proposed rules would eliminate one of these exceptions, requiring mid-size batteries and cells to be shipped as Class 9 materials. In addition, new packaging integrity and communication requirements now apply to small batteries and cells shipped in packages of more than 12 batteries or 24 cells, except when installed in equipment.

To ship lithium cells and batteries as Class 9 hazardous materials, transporters must meet the following requirements:

1. Packaging: Use only packaging that meets Packing Group II performance standards. (Packing must not exceed 5 kg (gross weight) for passenger aircraft and must not exceed 35 kg (gross weight) for cargo aircraft.

2. Marking: The following markings must be applied to the packaging:

- Shipping name: Lithium batteries
- Identification Number: UN 3090
- Shipper's Name and Address
- Name and address of company or individual receiving batteries
- UN Specification Certification

3. Labeling: The Class 9 label must be used.

4. Train personnel.

5. Shipping Papers: The following information must be included on shipping papers:

- Proper shipping name, hazard class, identification number, and packing group
- Number and type of packages
- Total quantity of hazardous materials
- Page number and total number of pages
- Emergency telephone number
- Shipper's certification
- Signature (Must be legibly signed by a principal, officer, partner, or employee of the shipper or his agent)

Based on the wide-ranging cost estimates gathered from interviewing selected small businesses for the additional shipping costs for lithium batteries and cells under the proposed rules, we adopted estimates for:

(a) The increased cost to ship small batteries and cells under the proposed rules,

(b) The increased cost to ship mid-sized cells as Class 9 materials, and

(c) The increased cost to ship mid-sized batteries as Class 9 materials.

These estimates were primarily developed from detailed data provided from a single small business; however, they were deemed to be reasonable average costs considering the varying estimates provided by other small businesses with somewhat lesser detail. These costs are $0.05 for each small battery and cell, $0.261 for each mid-sized cell, and $0.313 for each mid-size battery.

Table 9 shows the total number of batteries and cells in normal production runs (production units) that are expected to be shipped to customers

[1] Annual costs are presented in present value terms based on a real discount rate of 7 percent as prescribed in the Office of Management and Budget Circular A–94.

and also illustrates how the final production shipping costs were determined for the base year of the analysis (2004).

TABLE 9.—PRODUCTION UNITS SHIPPED TO CUSTOMERS AND INCREMENTAL SHIPPING COSTS FOR 2004

Type	Units shipped	Incremental unit cost	Incremental cost	Adjusted incremental cost
Cells:				
Primary Lithium:				
Small	802,800	0.05	40,140	125,901
Mid-size	7,132	0.261	1,861	5,839
Large	128	0.0	0	0
Lithium Ion:				
Small	0	0.0	0	0
Mid-size	0	0.0	0	0
Batteries:				
Primary Lithium:				
Small	1,065,464	0.05	52,273	167,094
Mid-size	1,104,944	0.313	345,847	1,084,765
Large	3,744	0.0	0	0
Lithium Ion:				
Small	1,322,444	0.05	66,122	207,395
Mid-size	305,500	0.313	95,622	299,921
Total			602,866	1,890,913

Table 10 shows the total annual shipping costs for production deliveries of lithium batteries and cells to customers of the small businesses for which shipment quantities were obtained. These costs were adjusted to reflect the costs for all 60 small businesses and then discounted using a 7 percent discount rate. The discounted costs for the five-year analysis period are $10,916,110, which equates to a discounted annual average of $2,183,222 per year. On a discounted annual basis, each small business would be expected to incur $36,387 in additional shipping costs to comply with the proposed rules.

TABLE 10.—ANNUAL INCREMENTAL SHIPPING COSTS TO CUSTOMERS

Year	Production runs		Total	Discounted total
	Incremental cost	Adjusted incremental cost		
2004	602,866	1,890,913	1,890,913	1,890,913
2005	691,466	2,168,812	2,168,812	2,026,927
2006	793,088	2,487,552	2,487,552	2,172,725
2007	909,645	2,853,137	2,853,137	2,329,010
2008	1,043,331	3,272,450	3,272,450	2,496,536
Total				10,916,110
Average Annual				2,183,222
Average Annual/Company				36,387

Training

As mentioned previously, lithium batteries and cells are now required to be shipped as a Class 9 hazardous material with certain significant exceptions. The proposed rules would eliminate one of these exceptions, requiring all mid-size batteries and cells to be shipped as Class 9 materials. One of the requirements for shipping lithium batteries and cells as a Class 9 hazardous material is that all hazmat employers must ensure that their hazmat employees receive training in general awareness of hazmat regulatory requirements, function-specific training related to the material they are handling, security awareness training and safety training including emergency response and protective measures. Hazmat training must:

- Take place before the employee can work with hazardous materials. Exceptions: The employee works under the direct supervision of a trained employee and the training is completed within 90 days of their hire or transfer into the job.
- Be done at least every three years for all hazmat employees. Training done by another employer can be used to meet these requirements.
- Be maintained for each employee for at least the past three years and for at least 90 days after the end of the employee's employment. This record must include:

—The employee's name,
—The most recent training completion date,
—A description, copy or location of the training materials,
—The name and address of the person providing the training, and
—Certification that the employee has been trained and tested.

All small companies that ship lithium batteries or cells as Class 9 hazardous materials must train hazmat employees in accordance with the provisions of the HMR. Based on the data conducted for this IRFA, all of the small battery companies were assumed to be shipping some batteries as Class 9 hazmat. This means that each company currently has a cadre of hazmat-trained employees and has therefore already made a

considerable financial investment in employee training.

Two different approaches have been used by small companies to train their employees. The first approach is to hire an outside expert to visit the company periodically (perhaps every two years) and present training on current and proposed changes to the hazmat regulations. The employees who attend these sessions would typically be trained as trainers and they, in turn, would train other workers as needed. The second approach to training is for a company to select one employee as their training expert. This employee would be exposed to a periodic (every two years) specialized off-site course providing expert training in hazardous materials. The trained employee returns to their company and trains other employees by conducting a series of hazmat training sessions.

Although costs differ for the various elements of these two training approaches, the research conducted for this IRFA indicates that the total costs to train one hazmat employee is approximately the same for both approaches. However, this analysis is focused on incremental costs represented by the need for small businesses to provide hazmat training to any additional employees needed to handle lithium batteries or cells that would newly be classified as hazmat as a result of the proposed regulations. As Table 11 shows, the estimated incremental discounted cost for training over a five-year period for all 60 small businesses would be $72,565 while the average annual discounted cost would be about $14,513. This cost is based on an estimated cost to train one hazmat employee of about $352, computed as the average of the estimates from three small businesses. Considering that slightly less than one employee per company needs additional training (0.83 employees per company based on contacted businesses), the average annual cost per small business is $242.

To illustrate the costs associated with training employees, one of the three businesses sharing detailed training cost information noted that it pays an experienced external trainer $1,500 to teach a detailed six-hour class on the handling of hazardous materials. There are six employees in attendance, whose average pay is $15/hour. With an average fringe benefit rate of 28.1 percent, total labor costs associated with class attendance is $692.[2] A human resources manager is charged with all data entry and recordkeeping requirements associated with hazardous material training and certification. The recordkeeping cost is $154 ($20/hour @ 6 hours + fringe benefits). The total cost to train these six employees is $2,346 and the average cost per employee is $391.

TABLE 11.—ANNUAL INCREMENTAL TRAINING COSTS

Year	Employees with certification	Additional employees requiring certification	Incremental cost	Adjust. incremental cost	Discounted total
2004	376	15	5,273	12,923	12,923
2005	426	17	5,970	14,630	13,673
2006	482	19	6,759	16,563	14,467
2007	546	22	7,652	18,752	15,307
2008	618	25	8,663	21,229	16,195
Total					72,565
Average Annual					14,513
Average Annual/Company					242

Summary of Costs

The incremental costs incurred by small businesses to implement the regulations in the proposed rule are summarized in Tables 12 and 13. Testing is by far the dominant added cost that would be mandated by the proposed regulation account for 66 percent of total costs in the low-end estimate and 74 percent of total costs in the high-end estimate. Shipping costs account for 35 and 26 percent, respectively, of the total low- and high-end cost estimates. In both estimates, training costs are approximate 0.2 percent of total costs.

TABLE 12.—SUMMARY OF COSTS TO SMALL BUSINESSES

[Low-end estimate]

Year	Testing	Training	Shipping	Total	Discounted
2004	$7,031,004	$12,923	$1,890,913	$8,934,839	$8,934,839
2005	7,309,907	14,630	2,168,812	9,465,221	8,846,001
2006	2,781,439	16,563	2,487,552	5,221,448	4,560,615
2007	3,135,975	18,752	2,853,137	5,898,286	4,814,759
2008	3,535,702	21,229	3,272,450	6,662,887	5,083,085
Total	23,794,026	84,097	12,672,863	36,182,682	32,239,299
Average Annual					6,447,860
Average Annual per Company					107,464

[2] Fringe benefits data based on Bureau of Labor Statistics, National Compensation Survey, Employer Cost for Employee Compensation, Total Benefits, Private Industry All Workers.

TABLE 13.—SUMMARY OF COSTS TO SMALL BUSINESSES

[High-end estimate]

Year	Testing	Training	Shipping	Total	Discounted
2004	$10,503,962	$16,540	$1,890,913	$12,407,798	$12,407,798
2005	10,920,630	18,971	2,168,812	13,075,943	12,220,508
2006	4,155,328	21,759	2,487,552	6,595,337	5,760,623
2007	4,684,987	24,957	2,853,137	7,447,298	6,079,214
2008	5,282,158	28,625	3,272,450	8,409,344	6,415,448
Total	35,547,064	110,853	12,672,863	47,935,720	42,883,590
Average Annual					8,576,718
Average Annual per Company					142,945

Examining the midpoint between the low- and high-end estimates, the total cost over the five-year analysis period (in current dollars) for all 60 small businesses is $37,561,444. On an annual basis, this is $7,512,289 and it equates to an average cost per company per year of $125,205 in constant dollars. The average cost per company represents an arithmetic mean or the value obtained by dividing the sum of total costs by the total number of companies examined in the IRFA. Thus, the average cost estimate cannot be uncritically applied to the operations of every company operating in the lithium battery industry. The 60 small businesses examined with this IRFA encompass a broad range of operations, as evidenced by the spectrum of annual revenues presented in Table 4. The costs associated with complying with the proposed rule are primarily driven by the number of new battery designs requiring testing and the volume of shipments of newly designated Class 9 packages. Based on the responses provided by the smaller firms examined within this IRFA, the evidence suggests smaller marginal costs for these small firms due to their limited size and scale of operations. That is, smaller firms generally develop fewer new battery designs and ship fewer batteries compared to the larger firms operating within the lithium battery industry. There are exceptions to this rule, of course, and to the extent any firms regardless of size develop a larger number of new designs to meet the demands of the market place (*e.g.*, small firms filling a high volume of custom orders), the costs associated with the new testing requirements could be greater.

As noted previously, the annual revenue of the 60 small businesses examined in this IRFA total roughly $681 million, while estimated profits are approximately $145 million annually. Thus, $7.5 million in annual costs is equal to roughly 1.1 percent and 5.2 percent of annual revenues and profits, respectively.

Competitive Impacts of the Rule on Small Businesses

The question of who bears the costs associated with the proposed rule is central to the issue of industry burden. Will the costs be borne by the company or be passed along to the consumer? If battery manufacturers pass these costs along to consumers, will battery sales be adversely impacted by these costs? The term for the relationship to changes in quantity demanded in response to changes in price is known as elasticity. The price elasticity of demand for a product is equal to the change in quantity demanded divided by the change in price. Price-sensitive or elastic goods are those where an increase in price is offset by a reduction in the quantity demanded. Examples of price-elastic goods include theater tickets, fur coats, and sail boats. Thus, for each percent that the price of these items grows, there is at least a one percent decline in sales. Price-inelastic goods are those where price increases proportionally more than demand decreases. Examples of price-inelastic goods include gasoline, medical services, bread, and milk.

The proposed rule would increase the cost of production for the affected small manufacturers and distributors. A company selling a perfectly inelastic good could increase its price without adversely affecting sales, while in the case of perfectly elastic products, companies cannot pass along any of the higher costs of production without losing their customers. Because goods sold in the marketplace demonstrate a range of elasticities and some respondents indicated that costs could be passed along to consumers while others indicated that costs would be entirely absorbed by industry, the costs of the proposed regulation are likely to be borne by both producers and consumers. The actual distribution of the costs among producers and consumers under the proposed rule is not known.

Description of any significant alternatives to the proposed rule that minimize significant economic impacts on small entities while accomplishing the agency's objectives. The proposed rule is designed to improve the safety of the transportation of lithium batteries and cells. Any alternatives to the proposed rule should result in similar safety benefits to warrant their consideration. We considered a number of possible alternatives:

1. Except batteries and cells transported by motor vehicle for the purposes of recycling from Class 9 hazmat requirements. The circumstances under which these materials would be shipped are essentially the same as those for disposal. The proposed rule provides an exception for lithium batteries and cells being transported by motor carrier for disposal as long as they are protected against short circuits and packed in a strong outer packaging conforming to the requirements of §§ 173.24 and 173.24a.

2. Provide manufacturers with four years, as opposed to two, to comply with the new testing requirements for existing small battery designs. This would ease the burden on small businesses by spreading out their compliance costs over twice the period, reducing the present value of the testing costs. This option would reduce the present value testing cost burden on the manufacturers by 2.8 percent, resulting in an average annual discounted testing costs per company from roughly $89,572 to $87,075.

3. Adopt a small production run exception from the testing requirements. The UN Recommendations provide for a small production run exception of 100 batteries or cells. Some small businesses felt that this number was too small to be effective and indicated that a higher number (*e.g.,* 1000) would be more appropriate. Other companies indicated that they rarely make small production

runs. One company stated that a threshold of 100 batteries or cells would cover 75 percent of their business and that a threshold of 250 would cover 85 to 90 percent of their business.

4. Retain the current exemption from the shipping requirements for mid-size lithium ion batteries and cells. This alternative is based on the belief by some small businesses that the flammability hazard for lithium ion batteries and cells is far lower than for lithium metal or lithium alloy batteries and cells. This alternative would reduce annualized shipping costs per company by $5,613 annually, from $35,391 to $29,778, as shown in Table 14.

TABLE 14.—COST SAVINGS FROM KEEPING THE CURRENT EXEMPTION FOR MID-SIZE LITHIUM ION BATTERIES AND CELLS

Year	Total incremental cost	Adjusted incremental cost	Total	Discounted total
2004	507,244	1,590,992	1,590,992	1,590,992
2005	574,246	1,801,146	1,801,146	1,683,314
2006	650,098	2,039,060	2,039,060	1,780,994
2007	735,970	2,308,399	2,308,399	1,884,341
2008	833,184	2,613,316	2,613,316	1,993,686
Total				8,933,328
Average Annual				1,786,666
Average Annual/Company				29,778

5. Increase the lower threshold for lithium ion mid-size batteries and cells. This would result in more batteries and cells falling into the small category. These materials would have already been subject to the UN tests and would be subject to the increased integrity and communication requirements for small batteries but would not be subject to the Class 9 shipping requirements being proposed for mid-size batteries. This would create a $0.211 savings for cells and a $0.263 savings for batteries for an annualized savings of approximately $4,717 per company, from $35,391 to $30,674, as shown in Table 15.

TABLE 15.—COST SAVINGS FROM A LOWER THRESHOLD FOR MID-SIZE LITHIUM ION BATTERIES

Year	Total incremental cost	Adjusted incremental cost	Total	Discounted total
2004	522,519	1,638,903	1,638,903	1,638,903
2005	591,539	1,855,385	1,855,385	1,734,005
2006	669,675	2,100,463	2,100,463	1,834,626
2007	758,133	2,377,914	2,377,914	1,941,086
2008	858,275	2,692,013	2,692,013	2,053,723
Total				9,202,343
Average Annual				1,840,468
Average Annual/Company				30,674

There are incremental differences in the properties of lithium metal or lithium alloy batteries and cells and lithium ion batteries and cells. These differences are recognized in the higher threshold limits between the small and mid-size categories for lithium ion products. Some organizations have argued that an equivalent level of safety could be maintained if the threshold between small and mid-size batteries were increased from 8 to 16 as long as the state of charge of the batteries was not more than 50 percent of the design rated capacity.[3] The aggregate equivalent lithium content of lithium ion batteries and cells has increased significantly in portable consumer products since the thresholds were established and this increase has focused more attention on those thresholds. However, a major concern with adopting thresholds tied to a state of charge is how the state of charge of a battery in transportation could be measured in the field to verify that it is in compliance with the regulations.

6. Except small, single-cell batteries from testing requirements if the cells have already passed the UN T1–T8 tests. This alternative is highly desired by those small businesses that manufacture these batteries. They argue that the characteristics of these batteries, from a safety standpoint, are essentially the same as for the component cells from which they are made. We do not have sufficient data to determine how many battery designs would be covered by this alternate exception; however several companies and the PRBA indicated that the cost implications for them would be very significant.

7. Require that small batteries be shipped as Class 9 hazmat but not require testing unless they are being shipped internationally by air. This alternative recognizes that international regulations require testing of batteries and cells that are being shipped internationally. While the incremental cost of shipping these materials as Class 9 hazmat is greater than shipping them with the increased integrity and communications requirements of the proposed rule ($0.211 more for cells and $0.263 more for batteries), eliminating the testing requirements would provide significant overall cost savings. This alternative would eliminate the costs associated with testing small battery designs, thus resulting in an annualized savings of $89,537 per company. Conversely, it would increase shipping costs by roughly $46,812 annually. The annualized net savings per company of this alternative would, therefore, be

[3] Informal document presented to the 25th Session (July 5–14, 2004) of the United Nations Sub-Committee of Experts on the Transport of Dangerous Goods (TDG) by the International Electrotechnical Commission (IEC). ''Changes to special provision 188 for lithium batteries: Request for comments.'' UN/SCETDG/25/INF.54.

$42,725, as compared to implementing the proposed rule in its entirety.

While it is possible that these alternatives might provide similar safety benefits to the proposed rule while reducing costs to the regulated community, PHMSA still believes, based on our current research and information, that the proposed rule offers the best approach for ensuring the safe transportation of lithium batteries and cells. PHMSA is open to consideration of these alternatives based on the comments received in response to this IRFA.

Identification, to the extent practicable, of all relevant federal rules that may duplicate, overlap, or conflict with the proposed rule. PHMSA is unaware of any duplicative, overlapping, or conflicting federal rules. As we stated above, there are international rules that address the transportation of lithium batteries and cells and this proposed rule attempts to improve the harmonization with those rules. We seek comments and information about any other rules which may be relevant to the transportation of lithium batteries and cells.

Questions for Comment to Assist Regulatory Flexibility Analysis: Please provide comment or information on any or all of the provisions in the proposed rule with regard to their impact on small entities or on the cost estimates in this interim regulatory flexibility analysis. We are particularly interested in comments concerning the following:

1. The categorization and identification of the affected small businesses. Are there additional categories of small business that would be impacted by the proposed rules? For example, are we correct that there are not a significant number of electronic equipment distributors that are small businesses?

2. The distribution of lithium batteries and cells among the three size categories. This allows proper calculation of the batteries and cells that would be subject to new testing and shipping requirements.

3. The estimated costs for testing the various battery and cell types.

4. The estimated shipping costs for both production and prototype batteries and cells, including packaging, marking, labeling, etc.

5. The estimated training costs for hazmat employees and the number of employees that would become hazmat employees as a result of this rule and its requirement that some batteries and cells currently exempt from being shipped as Class 9 hazardous materials would no longer be exempt.

6. Ways in which the rule could be modified to reduce any costs or burdens for small entities yet maintaining a consistent level of safety.

7. Any relevant Federal, State, or local rules that may duplicate, overlap, or conflict with the proposed rule.

8. Industry rules or policies that would require small entities to implement business practices that would already comply with the requirements of the proposed rule.

Issued in Washington, DC on June 8, 2005, under authority delegated in 49 CFR part 106.

Robert A. McGuire,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 05–11765 Filed 6–14–05; 8:45 am]

BILLING CODE 4910–60–P

Notices

Federal Register
Vol. 70, No. 114
Wednesday, June 15, 2005

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

South Gifford Pinchot National Forest Resource Advisory Committee Meeting Notice

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The South Gifford Pinchot National Forest Resource Advisory Committee will meet on Thursday, July 7, 2005 at the Skamania County Courthouse Annex, 170 NW. Vancouver Ave., Stevenson, Wash. The meeting will begin at 10 a.m. and continue until 1 p.m. The purpose of the meeting is to review ongoing Title II and III projects, elect a chair, and set an indirect project percentage, under the county payments law under the Secure Rural Schools and County Self-Determination Act of 2000.

All South Gifford Pinchot National Forest Resource Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend. The ''open forum'' provides opportunity for the public to bring issues, concerns, and discussion topics to the Advisory Committee. The ''open forum'' is scheduled to occur at 10:15 a.m. Interested speakers will need to register prior to the open forum period. The committee welcomes the public's written comments on committee business at any time.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Roger Peterson, Public Affairs Specialist, at (360) 891–5007, or write Forest Headquarters Office, Gifford Pinchot National Forest, 10600 NE. 51st Circle, Vancouver, WA 98682.

Dated: June 9, 2005.

Claire Lavendel,

Forest Supervisor.

[FR Doc. 05–11794 Filed 6–14–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Madera County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of resource advisory committee meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act of 1972 (Pub. L. 92–463) and under the secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Sierra National Forest's Resource Advisory Committee for Madera County will meet on Monday, June 20th, 2005. The Madera Resource Advisory Committee will meet at the Bass Lake Ranger District Office, North Fork, CA 93643. The purpose of the meeting is to review the draft public announcement for a call for project proposals on the Sierra National Forest.

DATES: The Madera Resource Advisory Committee meeting will be held Monday, June 20th, 2005. The meeting will be held from 7 p.m. to 9 p.m.

ADDRESSES: The Madera County RAC meeting will be held at the Bass Lake Ranger District Office, 57003 Road 225, North Fork, CA 93643.

FOR FURTHER INFORMATION CONTACT: Dave Martin, U.S.D.A., Sierra National Forest, Bass Lake Ranger District, 57003 Road 225, North Fork, CA 93643 (559) 877–2218 ext. 3100; e-mail: *dmartin05@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Agenda items to be covered include: (1) Review of the draft public announcement for a call for proposals.

Dated: June 9, 2005.

David Smith,

Acting District Ranger, Bass Lake Ranger District, Sierra National Forest.

[FR Doc. 05–11796 Filed 6–14–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

North Gifford Pinchot National Forest Resource Advisory Committee Meeting Notice

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The North Gifford Pinchot National Forest Resource Advisory Committee will meet on Friday, July 15, 2005 at the Packwood Community Center, 12935 US Hwy 12, Packwood, Wash. The meeting will begin at 9:30 a.m. and continue until 4 p.m. The purpose of the meeting is to: Review ongoing Title II and III projects, elect a chairperson, set an indirect project percentage and to review and make recommendations on 17 proposal for Title II funding of Forest projects under the Secure Rural Schools and County Self-Determination Act of 2000.

All North Gifford Pinchot National Forest Resource Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend. The ''open forum'' provides opportunity for the public to bring issues, concerns, and discussion topics to the Advisory Committee. The ''open forum'' is scheduled to occur at 9:40 a.m. Interested speakers will need to register prior to the open forum period. The committee welcomes the public's written comments on committee business at any time.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Roger Peterson, Public Affairs Specialist, at (360) 891–5007, or write Forest Headquarters Office, Gifford Pinchot National Forest, 10600 NE. 51st Circle, Vancouver, WA 98682.

Dated: June 9, 2005.

Claire Lavendel,

Forest Supervisor.

[FR Doc. 05–11797 Filed 6–14–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Seafood Inspection and Certification Requirements.

Form Number(s): NOAA Forms 89–800, 89–814, 89–819.

OMB Approval Number: 0648–0266.

Type of Request: Regular submission.

Burden Hours: 13,065.

Number of Respondents: 9,996.

Average Hours Per Response: 18 minutes.

Needs and Uses: The National Marine Fisheries Service (NMFS) operates a voluntary fee-for-service seafood inspection program (Program) under the authorities of the Agricultural Marketing Act of 1946, as amended, the Fish and Wildlife Act of 1956, and Reorganization Plan No. 4 of 1970. The regulations for the Program are contained in 50 CFR part 260. The program offers inspection grading, and certification services, including the use of official quality grade marks which indicate that specific products have been Federally inspected. Those wishing to participate in the program must request the services and submit specific compliance information.

Affected Public: Business or other for-profit organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, FAX number (202) 395–7285, or *David_Rostker@omb.eop.gov.*

Dated: June 9, 2005.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05–11824 Filed 6–14–05; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Highly Migratory Species Vessel Logbooks and Cost-Earnings Data Reports.

Form Number(s): Form NOAA 88–191.

OMB Approval Number: 0648–0371.

Type of Request: Regular submission.

Burden Hours: 30,611.

Number of Respondents: 7,741.

Average Hours Per Response: 5 hours.

Needs and Uses: The National Marine Fisheries Service (NMFS) seeks to renew an existing logbook information and cost-earnings data collection from fishermen who possess permits to fish for highly migratory species. The revision would: (1) Increase the number of respondents based on recent information; (2) revise the proportion of shark and swordfish permit holders based on recent information; and (3) increase the burden estimate associated with the cost-earnings and logbook forms. The information collected in logbooks and the cost-earnings form will help NMFS identify impacts of proposed regulatory measures on fishermen and the resource, consistent with applicable laws such as the Magnuson-Stevens Fishery Conservation and Management Act and the Regulatory Flexibility Act.

Affected Public: Individuals or households; business or other for-profit organizations.

Frequency: Annually and per fishing trip.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, FAX number (202) 395–7285, or *David_Rostker@omb.eop.gov.*

Dated: June 9, 2005.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05–11825 Filed 6–14–05; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

[Docket 28–2005]

Foreign–Trade Zone 176—Rockford, Illinois, Application for Subzone Status, Nissan Forklift Corporation North America Facilities (Fork–Lift Trucks), Marengo, Illinois

An application has been submitted to the Foreign–Trade Zones Board (the Board) by the Greater Rockford Airport Authority, grantee of FTZ 176, requesting special–purpose subzone status for the fork–lift truck manufacturing facilities of Nissan Forklift Corporation North America (NFC) (a subsidiary of Nissan Motor Company, Ltd., of Japan), located in Marengo, Illinois. The application was submitted pursuant to the provisions of the Foreign–Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on June 8, 2005.

The proposed subzone would include NFC's three facilities located in McHenry County, Illinois: *Site 1* (manufacturing/23 acres/389,000 sq.ft.) located at 240 N. Prospect Street, Marengo, Illinois, some two miles east of Rockford, Illinois; *Site 2* (warehouse–distribution/11 acres/43,000 sq. ft.) 19720 East Grant Highway, Marengo, about two miles to the southeast of Site 1; and *Site 3* (leased warehouse/81,000 sq.ft.) 308 South Division Street, Harvard, Illinois, about 12 miles north of Site 1. The facilities (449 employees) are used to produce rider type, fork–lift trucks (Class I through Class V) powered by gasoline, propane, or electric motors (HTSUS 8427.10.4000, 8427.20.4000). The manufacturing process at the facilities involves painting, assembly, and testing of up to 15,000 units annually. Components purchased from abroad (about 48% of finished fork–lift truck value) used in manufacturing include: plastic tubes/pipes/hoses/fittings/gaskets/washers/seals/fasteners, plastic knobs, rubber tubes/pipes/hoses, rubber mats/o–rings/seals/handles/knobs/vibration dampeners, paper/paperboard labels and gaskets, articles of textile materials (items under Textile Categories 362/363/369/666/669 must be admitted under privileged foreign status 19 CFR § 146.41), fabricated items of asbestos, mirrors, aging material, casters, base metal mountings, flex tubing, clasps, hydraulic engines, pumps, air compressors, wooden pins/dowels, connectors and connector assemblies, fasteners, springs, washers, brake components, hinges, pneumatic

cylinders, engines (gasoline, liquid propane) and related parts, hydraulic cylinders and related parts, pumps, air/oil/fuel/hydraulic filters, pneumatic and hydraulic valves, valves, bearings, hub/bearings, transmissions and related parts, transmission belts, crankshafts, gears, torque converters, flywheels, pulleys, clutches, couplings/u–joints, chains, sprockets, metal gaskets, electrical connectors, electric motors, generators, transformers, rotors, stators, power supplies, converters, spark plugs, ignition coils and distributors, starter motors, relays, switches, horns, capacitors, resistors, printed circuits/assemblies, fuses, controllers, circuit breakers and protectors, electrical connectors, conductors, lamps/lighting equipment, photovoltaic cells, ignition wiring harnesses, thermostats, measuring instruments (gauges), speedometers, tachometers, fiber optic cable, and seats (duty rate range: free – 9.0%).

FTZ procedures would exempt NFC from Customs duty payments on the foreign components used in export production. On its domestic sales and exports to NAFTA markets, the company would be able to choose the duty rate that applies to finished fork–lift trucks (duty free) for the foreign–sourced inputs noted above. Duties would be deferred or reduced on foreign production equipment admitted to the proposed subzone until which time it becomes operational. The application indicates that subzone status would help improve the facilities' international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the following addresses:

1. *Submissions via Express/Package Delivery Services*: Foreign–Trade Zones Board, U.S. Department of Commerce, Franklin Court Building 4100W, 1099 14th Street, NW, Washington, DC 20005; or,
2. *Submissions via the U.S. Postal Service*: Foreign–Trade Zones Board, U.S. Department of Commerce, FCB 4100W, 1401 Constitution Ave., NW, Washington, DC 20230.

The closing period for their receipt is August 15, 2005. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15–day period (to August 29, 2005).

A copy of the application will be available for public inspection at the Office of the Foreign–Trade Zones Board's Executive Secretary at address No.1 listed above and at the U.S. Department of Commerce Export Assistance Center, 515 N. Court Street, Rockford, IL 61103.

Dated: June 8, 2005.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 05–11816 Filed 6–14–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

[Docket 30–2005]

Foreign–Trade Zone 40—Cleveland, Ohio, Area Application for Expansion

An application has been submitted to the Foreign–Trade Zones (FTZ) Board (the Board), by the Cleveland–Cuyahoga County Port Authority, grantee of Foreign–Trade Zone 40, requesting authority to expand its zone in the Cleveland area, within the Cleveland Customs port of entry. The application was submitted pursuant to the provisions of the Foreign–Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on June 9, 2005.

FTZ 40 was approved on September 29, 1978 (Board Order 135, 43 FR 46886, 10/11/78) and expanded in June 1982 (Board Order 194, 47 FR 27579, 6/25/82); April 1992 (Board Order 574, 57 FR 13694, 4/17/92); February 1997 (Board Order 870, 62 FR 7750, 2/20/97); June 1999 (Board Order 1040, 64 FR 33242, 6/22/99); April 2002 (Board Order 1224, 67 FR 20087, 4/15/02); August 2003 (Board Order 1289, 68 FR 52384, 9/3/03; Board Order 1290, 68 FR 52384, 9/3/03; Board Order 1295, 68 FR 52383, 9/3/03); March 2004 (Board Order 1320, 69 FR 13283, 3/22/04; Board Order 1322, 69 FR 17642, 4/5/04); September 2004 (Board Order 1351, 69 FR 56038, 9/17/04); and, April 2005 (Board Orders 1384, 1385 and1386, 70 FR 21736, 4/27/05).

The general–purpose zone project currently consists of the following sites in the Cleveland area: *Site 1* consists of 1,339 acres in Cleveland, which includes the Port of Cleveland complex (Site 1A–94 acres), the Cleveland Bulk Terminal (Site1B–45 acres), and the Tow Path Valley Business Park (Site1C–1,200 acres); *Site 2* consists of 2,438 acres in Cleveland, which includes the Cleveland Hopkins International Airport (Site 2A–1,727 acres), the IX Center (Site 2B–175 acres), the Snow Road Industrial Park (Site 2C–42 acres), the Brook Park Road Industrial Park (Site 2D–322 acres), and the Cleveland Business Park (Site 2E–172 acres); *Site 3* (450 acres) -- the Burke Lakefront Airport in Cleveland; *Site 4* consists of 416 acres in Cleveland, which includes the Emerald Valley Business Park (Site 4A–298 acres) and the Solon Business Park (Site 4B–118 acres); *Site 5* (17 acres) -- within the Collinwood Industrial Park in Cleveland; *Site 6* consists of 434 acres in Strongsville, which includes the Strongsville Industrial Park (Site 6A–174 acres), the Progress Drive Business Park (Site 6B–48 acres, 3 parcels), and the Strongsville Commerce Center (Site 6C–212 acres); *Site 7* (13 acres) -- East 40th Street between Kelley and Perkins Avenues (3830 Kelley Ave) in Cleveland; *Site 8* (15 acres) -- within the Frane Properties Industrial Park in Morgan Township; *Site 9* (170 acres, 2 parcels) -- within the Harbour Point Business Park in Vermilion; and, *Site 10* (42 acres, 2 parcels) -- the Broad Oak Business Park in the Village of Oakwood.

The applicant is now requesting authority to expand the general–purpose zone to include an additional site in the Village of Oakwood: *Proposed Site 10B* (20 acres, 2 parcels) -- within the 100–acre Oakwood Commerce Center. The proposed site is bounded to the north by the Oak Leaf Oval, to the west by the Norfolk & Southern Railroad right–of-way, to the south by Alexander Road and to the east by Oak Leaf Road. The proposed site is owned by W & D Oakwood LLC and SBD properties and will be used for general warehousing and distribution activities.

No specific manufacturing authority is being requested at this time. Such requests would be made to the Board on a case–by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. *Submissions via Express/Package Delivery Services*: Foreign–Trade Zones Board, U.S. Department of Commerce, Franklin Court Building–Suite 4100W, 1099 14th Street, NW, Washington, DC 20005; or,

2. *Submissions via the U.S. Postal Service*: Foreign–Trade Zones Board, U.S. Department of Commerce, FCB–Suite 4100W, 1401 Constitution Avenue, NW, Washington, DC 20230.

The closing period for their receipt is August 15, 2005. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15–day period (to August 29, 2005).

A copy of the application and accompanying exhibits will be available during this time for public inspection at address Number 1 listed above, and at the U.S. Department of Commerce Export Assistance Center, 600 Superior Avenue East, Suite 700, Cleveland, OH 44114.

Dated: June 9, 2005.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 05–11818 Filed 6–14–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

[T–2–2005]

Foreign–Trade Zone 105 North Kingstown, RI, Application for Temporary/Interim Manufacturing Authority, Southeastern New England Shipbuilding Corporation, (Shipbuilding), Notice of Approval

On March 25, 2005, an application was filed by the Executive Secretary of the Foreign–Trade Zones (FTZ) Board submitted by the Rhode Island Economic Development Corporation, grantee of FTZ 105, on behalf of Southeastern New England Shipbuilding Corporation (Senesco), requesting temporary/interim manufacturing (T/IM) authority for the construction and repair of tugboats, double–hulled liquid barges, and articulating tug/barges at the Senesco shipbuilding facility within FTZ 105 Site 2.

The application has been processed in accordance with T/IM procedures, as authorized by FTZ Board Order 1347 (69 FR 52857, 8–30–2004) including notice in the **Federal Register** inviting public comment (70 FR 17062, 4–4–2005). The FTZ staff examiner reviewed the application and determined that it meets the criteria for approval under T/IM procedures. The foreign–origin components approved for this activity are diesel engines (8408.10) and overfill alarms (8531.90). Pursuant to the authority delegated to the FTZ Board Executive Secretary in Board Order 1347, the application is approved, effective this date, until June 8, 2007, subject to the FTZ Act and the Board's regulations, including Section 400.28.

Dated: June 8, 2005.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 05–11815 Filed 6–14–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket No. 29–2005]

Proposed Foreign-Trade Zone, Athens, TX, Application and Public Hearing

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Athens Economic Development Corporation, Texas, to establish a general-purpose foreign-trade zone at sites in Athens, Texas, adjacent to the Dallas/Ft. Worth Customs port of entry. The application was submitted pursuant to the provisions of the FTZ Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on June 9, 2005. The applicant is authorized to make the proposal under Texas Revised Civil Statutes Article 1446.01.

The proposed zone would consist of 2 sites covering 186 acres in Athens, Texas: Site 1 (127 acres)—Athens Industrial Park, 1621 Enterprise Street, Athens, Site 2 (59 acres)—Henderson Industrial Part, 1380 Flat Creek Road, Athens. The sites are owned by a number of public and private corporations.

The application indicates a need for zone services in Athens, Texas. Several firms have indicated an interest in using zone procedures for warehousing/distribution activities for such products as medical and pet products. Specific manufacturing requests are not being sought at this time. Requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ staff has been designated examiner to investigate the application and report to the Board.

As part of the investigation, the Commerce examiner will hold a public hearing on July 13th, 2005, 10 a.m., at the Cain Center, 915 South Palestine Street, Athens, Texas 75751.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following locations:

1. Submissions via Express/Package Delivery Services: Foreign-Trade Zones Board, U.S. Department of Commerce, Franklin Court Building–Suite 4100W, 1099–14th Street, NW., Washington, DC 20005; or

2. Submissions via the U.S. Postal Service: Foreign-Trade Zones Board, U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Avenue, NW., Washington, DC 20230.

The closing period for their receipt is August 15, 2005. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to August 29, 2005.

A copy of the application and accompanying exhibits will be available for public inspection at the Office of Foreign-Trade Zones Board's Executive Secretary at the first address listed above, and at Athens Economic Development Corporation, 100 W. Tyler Street, Athens, TX 75751.

Dated: June 9, 2005.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 05–11817 Filed 6–14–05; 8:45 am]

BILLING CODE 3510–05–M

DEPARTMENT OF COMMERCE

International Trade Administration

(A–823–812)

Changed Circumstances Review of the Antidumping Duty Order on Carbon and Certain Alloy Steel Wire Rod from Ukraine.

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATE: June 15, 2005.

ACTION: Extension of Comment Period.

SUMMARY: On April 26, 2005, in response to a request from the Government of Ukraine, the Department of Commerce published a notice in the **Federal Register** initiating a changed circumstances review in order to determine whether Ukraine should continue to be treated as a non–market economy country for purposes of the U.S. antidumping duty law (70 FR 21396). The Department has decided to extend the comment period by thirty days, pursuant to 19 CFR 351.302(b), making the new deadline for the submission of public comment July 11, 2005. Written comments (original and six copies) should be sent to Joseph A. Spetrini, Acting Assistant Secretary for

Import Administration, U.S. Department of Commerce, Central Records Unit, Room 1870, 14th Street and Constitution Avenue NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Lawrence Norton or Shauna Lee–Alaia, Office of Policy, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC, 20230, 202–482–1579 or 202–482–2793, respectively.

SUPPLEMENTARY INFORMATION:

Comments--Deadline, Format, and Number of Copies

The Department is extending the deadline for submission of comments by thirty days, making the new deadline July 11, 2005. Rebuttal comments may be submitted up to 30 days after the date by which initial comments are due. Each person submitting comments should include his or her name and address, and give reasons for any recommendation. To facilitate their consideration by the Department, comments should be submitted in the following format: (1) begin each comment on a separate page; (2) concisely state the issue identified and discussed in the comment and include any supporting documentation in exhibits or appendices; (3) provide a brief summary of the comment (a maximum of three sentences) and label this section ''summary of comment≥; (4) provide an index or table of contents; and (5) include the case number, A–823–812, in the top right hand corner of the submission.

Persons wishing to comment should file a signed original and six copies of each set of comments by the dates specified above. All comments responding to this notice will be a matter of public record and will be available for public inspection and copying at Import Administration's Central Records Unit, Room B–099, between the hours of 8:30 a.m. and 5 p.m. on business days. The Department requires that comments be submitted in written form. The Department recommends submission of comments in electronic media, preferably in Portable Document Format (PDF), to accompany the required paper copies. Comments filed in electronic form should be submitted on CD–ROM as comments submitted on diskettes are likely to be damaged by postal radiation treatment.

Comments received in electronic form will be made available to the public on the Internet at the Import Administration Web site at the following address: *http://ia.ita.doc.gov/*.

Any questions concerning file formatting, document conversion, access on the Internet, or other electronic filing issues should be addressed to Andrew Lee Beller, Import Administration Webmaster, at (202) 482–0866, email: *webmaster–support@ita.doc.gov*.

Dated: June 9, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5–3081 Filed 6–14–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

University of California, Lawrence Livermore National Laboratory et al., Notice of Consolidated Decision on Applications, for Duty–Free Entry of Electron Microscopes

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Suite 4100W, Franklin Court Building, U.S. Department of Commerce, 1099 14th Street, NW, Washington, D.C.

Docket Number: 05–016. Applicant: Lawrence Livermore National Laboratory, Livermore, CA 94550. Instrument: Electron Microscope, Model Technai G² F20 S–TWIN. Manufacturer: FEI Company, The Netherlands. Intended Use: See notice at 70 FR 25016, May 12, 2005. Order Date: January 30, 2005.

Docket Number: 05–019 Applicant: The University of Texas at

Austin, Texas Materials Institute, Austin, TX 78712. Instrument: Electron Microscope, Model Technai G² F20 X–TWIN. Manufacturer: FEI Company, The Netherlands. Intended Use: See notice at 70 FR 25016, May 12, 2005. Order Date: November 8, 2004.

Docket Number: 05–022. Applicant: The Mayo Clinic, Rochester, MN 55905. Instrument: Electron Microscope, Model Technai G² 12 TWIN. Manufacturer: FEI Company, The Netherlands. Intended Use: See notice at 70 FR 25016, May 12, 2005. Order Date: August 2, 2004.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered. Reasons: Each foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States either at the time of order of each instrument OR at the time of receipt of application by U.S. Customs and Border Protection.

Gerald A. Zerdy,

Program Manager Statutory Import Programs Staff.

[FR Doc. E5–3082 Filed 6–14–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Office of Manufacturing and Services, Interagency Working Group on Manufacturing; Notice of Request for Written Comments

The ''Manufacturing in America Report'' *(http://www.manufacturing.gov)* was released in January 2004, and included 57 recommendations aimed at unleashing the full potential of American manufacturers. Of the 57 recommendations, one of the most significant to the success of U.S. manufacturing is the ''Creation of an Interagency Working Group on Manufacturing.'' On June 22, 2005, the U.S. Department of Commerce and the Office of Manufacturing and Services will host the first meeting to convene the Interagency Working Group on Manufacturing. The purpose of the meeting is to bring representatives from the Federal Agencies together to discuss the state of manufacturing in the United States. The Interagency Working Group will be responsible for coordination and implementation of the recommendations, as well as developing new initiatives that will carry the Manufacturing Initiative forward. Interagency coordination within the Federal Government is vital to creating a favorable environment and a level playing field for U.S. manufacturers.

Written Comments: Industry input is essential to this process; therefore, we would like to solicit written comments from all interested stakeholders including: representatives of manufacturers, retailers, trade and industry associations, Advisory Committee's, NGO's, (non-governmental organizations) and all organizations.

Written comments or input may be submitted to *Sarah.Aker@mail.doc.gov*

no later than 12 p.m. on Monday, June 20, 2005. Please include your name, phone number, and organization affiliation.

For Further Information Contact: Sarah E. Aker, Office of the Assistant Secretary for Manufacturing and Services, Department of Commerce, Room 3832, 1401 Constitution Ave., Washington, DC 20230 (phone: 202–482–1112).

Dated: June 10, 2005.

Sarah E. Aker,

Deputy Chief of Staff.

[FR Doc. 05–11841 Filed 6–14–05; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free Trade Agreement, Article 1904 NAFTA Panel Reviews; Notice of Panel Decision

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of panel decision.

SUMMARY: On June 9, 2005, the binational panel issued its decision in the review of the final results of the affirmative antidumping duty re-determination on remand made by the International Trade Administration (ITA) respecting Certain Softwood Lumber Products from Canada (Secretariat File No. USA–CDA–2002–1904–02) affirmed in part and remanded in part the determination of the Department of Commerce. The Department will return the re-determination on remand not later than July 11, 2005. A copy of the complete panel decision is available from the NAFTA Secretariat.

FOR FURTHER INFORMATION CONTACT: Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement (''Agreement'') establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from the other country with review by independent binational panels. When a request for panel review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* (''Rules''). These rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686).

Panel Decision: On June 9, 2005, the Binational Panel affirmed in part and remanded in part the Department of Commerce's final antidumping duty determination on remand. The following issues were remanded to the Department:

1. To render a negative less than fair value (LTFV) determination with respect to exports by respondent West Fraser Mills, and to revoke the antidumping duty order on Softwood Lumber from Canada with respect to exports by West Fraser Mills; and it is further ordered that

2. The Panel remands this case to the Department, with instructions for the Department to recalculate the final LTFV margins for respondents other than West Fraser without regard to ''zeroing''.

The Panel affirmed Commerce's amended final LTFV determination with respect to all other issues.

Commerce was directed to issue its determination on remand within 30 days of the issuance of the panel decision or not later than July 11, 2005.

Dated: June 9, 2005.

Caratina L. Alston,

United States Secretary, NAFTA Secretariat.

[FR Doc. E5–3070 Filed 6–14–05; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Knowledge, Attitudes, and Perceptions of Management Strategies/Regulations in the Florida Keys National Marine Sanctuary

AGENCY: National Oceanic and Atmospheric Administration (NOAA), DOC.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before August 15, 2005.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Dr. Vernon R. (Bob Leeworthy, 301–713–3000 ext. 138 or *Bob.Leeworthy@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The purpose of this effort is to do an approximate 10-year replication of a 1995–96 study that established baseline information on the knowledge, attitudes and perceptions of management strategies and regulations of the Florida Keys National Marine Sanctuary (FKNMS). The baseline was conducted for three user groups: (1) Commercial fishermen, (2) Dive Shop Owners/Operators, and (3) members of three local environmental groups (Last Stand, Reef Relief, and Sanctuary Friends). In 1998, the Socioeconomic Research and Monitoring Program for the FKNMS was established and the 1995–96 study results were incorporated as baseline measures.

The National Marine Sanctuaries Act (16 U.S.C. 1431, *et seq.*) authorizes the use of monitoring within National Marine Sanctuaries (NMS). The Florida Keys National Marine Sanctuary and Protection Act (Public Law 101–605, Sec 7 (5)) also authorizes monitoring. The Management Plan and regulations for the FKNMS were not implemented until July 1997, which established 22 Sanctuary Preservation Areas (SPAs) and one Ecological Reserve (ER) that are ''no take'' zones. Another ER, the Tortugas, was established as part of a two-year public process and its regulations went into effect in July 2002. All consumptive or take activities were displaced from these zones. Eighteen (18) of the SPAs were also created to resolve user conflicts, while four were set aside for ''Research Only.'' In creating these special zones, socioeconomic impact analyses were done as required under the National Environmental Policy Act (NEPA). In addition, a Regulatory Impact Review and an Initial and Final Regulatory

Flexibility Analysis (if small businesses are potentially impacted by the no take regulations) were conducted. However, many of the benefits and costs identified in these analyses are speculative in nature and therefore a great deal of uncertainty about both the benefits and the costs. The 10-year replication of the 1995–96 study will support an assessment of any changes in knowledge, attitudes and perceptions of the no-take areas and establish new baselines on several new regulations established since 1995–96.

II. Method of Collection

Paper questionnaires and in-person interviews will be used to collect information.

III. Data

OMB Number: None.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Individuals or households; business or other for-profits organizations; not-for-profit institutions.

Estimated Number of Respondents: 255.

Estimated Time Per Response: 2 hours.

Estimated Total Annual Burden Hours: 491.

Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: June 9, 2005.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05–11823 Filed 6–14–05; 8:45 am]

BILLING CODE 3510–NK–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Information Collection; Submission for OMB Review, Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter ''Corporation''), in proposing the renewal of its Learn and Serve America (hereinafter ''LSA'') grant applications, has submitted two public information collection requests (ICRs) entitled the Learn and Serve America School- and Community-Based Application Instructions and the Learn and Serve America Higher Education Application Instructions to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995, Pub. L. 104–13, (44 U.S.C. Chapter 35). Copies of this ICR, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, Mr. Mark Abbott, at (202) 606–5000, ext. 120. Individuals who use a telecommunications device for the deaf (TTY–TDD) may call (202) 565–2799 between 8:30 a.m. and 5 p.m. eastern time, Monday through Friday.

ADDRESSES: Comments may be submitted, identified by the title of the information collection activity, to the Office of Information and Regulatory Affairs, Attn: Ms. Katherine Astrich, OMB Desk Officer for the Corporation for National and Community Service, by either of the following two methods within 30 days from the date of publication in this **Federal Register:**

(1) By fax to: (202) 395–6974, Attention: Ms. Katherine Astrich, OMB Desk Officer for the Corporation for National and Community Service; and

(2) Electronically by e-mail to: *Katherine_T._Astrich@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Propose ways to enhance the quality, utility, and clarity of the information to be collected; and
- Propose ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

Comments

A 60-day public comment notice was published in the **Federal Register** on February 2, 2005. This comment period ended April 2, 2005. No public comments were received from this notice.

Description: The Corporation is seeking approval of the LSA Grant Application Instructions, which will assist organizations interested in managing a service-learning program directly or administering grant funds to other eligible organizations in applying for LSA funds.

The Information provided in the applications will be used by Learn and Serve America peer reviewers and staff to ensure the highest quality applications are selected for funding. Yearly updates to these applications will also be used to determine grantee eligibility for second and third year Continuation Grants, which are available to Learn and Serve America grantees subject to funding availability and adequate progress towards meeting performance measures.

Type of Review: Renewal.

Agency: Corporation for National and Community Service.

Title: Learn and Serve America Application Instructions.

OMB Number: 3045–0045 for Learn and Serve America School and Community-Based Application Instructions and 3045–0046 for Learn and Serve America Higher Education Application Instructions.

Agency Number: SF 424–NSSC.

Affected Public: Current/prospective recipients of Learn and Serve America Grants.

Total Respondents: 600 (400 for 3045–0045 and 200 for 3045-0046).

Frequency: Annually.

Average Time Per Response: 10 hours for new applicants, 5 hours for Continuation applicants.

Estimated Total Burden Hours: 6000 hours annually in years with a new competition; 520 hours annually in years with Continuation requests only.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): $240,000.

Dated: June 6, 2005.

Mark Abbott,

Associate Director for Grants Management, Learn and Serve America.

[FR Doc. 05–11771 Filed 6–14–05; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education—Enhanced Assessment Instruments; Withdrawal of Notice Inviting Applications for New Awards for Fiscal Year (FY) 2005

Catalog of Federal Domestic Assistance (CFDA) Number: 84.368.

SUMMARY: On April 19, 2005, the Secretary published in the **Federal Register** (70 FR 20360) a notice inviting applications for new awards for fiscal year (FY) 2005 under the Enhanced Assessment Instruments Grants program. Subsequent to the publication of this notice, the Secretary announced that the Department will be publishing a notice of proposed rulemaking (NPRM) related to modified achievement standards for a limited group of students with disabilities. These regulations may affect the criteria for awarding Enhanced Assessment Instruments Grants. The purpose of this notice is to withdraw the invitation for applications for new awards for Enhanced Assessment Instrument Grants for fiscal year 2005.

SUPPLEMENTARY INFORMATION: The Secretary anticipates re-announcing this competition after publication in the **Federal Register** of both an NPRM and final regulations that may change the selection criteria for this program. The Department will publish a new notice in the **Federal Register** inviting applications for new awards for FY 2006 at a later date.

FOR FURTHER INFORMATION CONTACT: Sue Rigney, Student Achievement and School Accountability Program, U.S. Department of Education, 400 Maryland Avenue, SW., room 3C139, Washington, DC 20202–6132. Telephone: 202–260–0931 or by e-mail: *sue.rigney@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed in this section.

Electronic Access to This Document: You may 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) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Program Authority: 20 U.S.C. 7842 and 7301a.

Dated: June 10, 2005.

Raymond Simon,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 05–11803 Filed 6–14–05; 8:45 am]

BILLING CODE 4000–01–P?≤

ELECTION ASSISTANCE COMMISSION

Sunshine Act Notice

AGENCY: United States Election Assistance Commission.

ACTION: Notice of public hearing agenda.

DATE & TIME: Thursday, June 30, 2005, 11 a.m.–5 p.m.

PLACE: New York Marriott Marquis, 1535 Broadway, New York, NY 10036; (212) 398–1900. (Metro Stop: MTA 42nd Street.)

AGENDA: The Commission will conduct a public hearing on the proposed voluntary voting system guidelines. The Commission will receive presentations regarding the proposed guidelines from representatives of testing laboratories and equipment vendors. The Commission will also hear comments specifically related to the Voter Verifiable Paper Audit Trail (VVPAT) testing guidelines from state and local elections officials whose state law requires VVPAT, academics and advocates.

EAC will provide a public comment period to receive comments from the public regarding the voluntary voting system guidelines. Members of the public who wish to speak should contact EAC via e-mail at *testimony@eac.gov,* or via mail addressed to the U.S. Election Assistance Commission 1225 New York Ave, NW., Suite 1100, Washington, DC 20005, or by fax at 202/566–3127. Comments will be strictly limited to 3 minutes per person or organization to assure that all constituent or stakeholder groups are represented. All speakers will be contacted prior to the hearing. EAC also encourages members of the public to submit written testimony via e-mail, mail or fax. All public comments will be taken in writing via e-mail at *testimony@eac.gov*, or via mail addressed to the U.S. Election Assistance Commission 1225 New York Ave, NW., Suite 1100, Washington, DC 20005, or by fax at 202/566–3127.

This hearing will be open to the public.

Person to Contact for Information: Bryan Whitener. Telephone: (202) 566–3100.

Carol A. Paquette,

Interim Executive Director, U.S. Election Assistance Commission.

[FR Doc. 05–11934 Filed 6–13–05; 4:02 pm]

BILLING CODE 6820–KF–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC05–583–000; FERC–583]

Commission Information Collection Activities, Proposed Collection; Comment Request; Extension

June 8, 2005.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed information collection and request for comments.

SUMMARY: In compliance with the requirements of section 3506(c)(2)(a) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), the Federal Energy Regulatory Commission (Commission) is soliciting public comment on the specific aspects of the information collection described below.

DATES: Comments on the collection of information are due August 19, 2005.

ADDRESSES: Copies of sample filings of the proposed collection of information can be obtained from the Commission's Web site (*http://www.ferc.gov/docs-filings/elibrary.asp*) or may be addressed to the Federal Energy Regulatory Commission, Attn: Michael Miller, Office of the Executive Director Officer, ED–33, 888 First Street NE., Washington, DC 20426. Comments may be filed either in paper format or electronically. Those parties filing electronically do not need to make a paper filing. For paper filings, the original and 14 copies of such

comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 and refer to Docket No. IC05–583–000.

Documents filed electronically via the Internet must be prepared in WordPerfect, MS Word, Portable Document Format, or ASCII format. To file the document, access the Commission's Web site at *http://www.ferc.gov* and click on ''Make an E-filing'', and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgement to the sender's e-mail address upon receipt of comments.

All comments may be viewed, printed or downloaded remotely via the Internet through FERC's homepage using the eLibrary link. For user assistance, contact *FERCOlineSupport@ferc.gov* or toll-free at (866) 208–3676 or for TTY, contact (202) 502–8659.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202)502–8415, by fax at (202)273–0873, and by e-mail at *michael.miller@ferc.gov.*

SUPPLEMENTARY INFORMATION: The information collected under the requirements of FERC–583 ''Annual Kilowatt Generating Report (Annual Charges)'' (OMB No. 1902–0136) is used by the Commission to implement the statutory provisions of section 10(e) of the Federal Power Act (FPA), part I, 16 U.S.C. 803(e) which requires the Commission to collect annual charges from hydropower licensees for, among other things, the cost of administering part I of the FPA and for the use of United States dams. In addition, the Omnibus Budget Reconciliation Act of 1986 (OBRA) authorizes the Commission to ''assess and collect fees and annual charges in any fiscal year in amounts equal to all of the costs incurred by the Commission in that fiscal year.'' The information is collected annually and used to determine the amounts of the annual charges to be assessed licensees for reimbursable government administrative costs and for the use of government dams. The Commission implements theses filing requirements in the Code of Federal Regulations (CFR) under 18 CFR part 11.

Action: The Commission is requesting a three-year extension of the current expiration date, with no changes to the existing collection of data.

Burden Statement: Public reporting burden for this collection is estimated as:

Number of respondents annually (1)	Number of responses per respondent (2)	Average burden hours per response (3)	Total annual burden hours (1)×(2)×(3)
705	1	2	1410

Estimated cost burden to respondents is $73,590. (1410 hours/2080 hours per year times $108,558 per year average per employee = $ 73,590). The cost per respondent is $104.

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology *e.g.* permitting electronic submission of responses.

Magalie R. Salas,

Secretary.

[FR Doc. E5–3077 Filed 6–14–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER00–826–003, ER98–421–014, ER98–4055–011, ER01–1337–006, ER96–2504–011, ER01–1820–006, ER02–177–007, ER96–2506–009, ER03–1212–005, ER96–110–014, ER99–3822–007, ER02–443–006, ER03–185–005, ER03–17–005, ER01–545–007, ER03–956–005, ER01–1619–007, ER98–2680–009, ER98–2681–009, ER98–2682–009, ER99–1785–008, ER99–3118–006, ER99–3118–006, ER97–3858–002, ER00–1783–007, ER02–795–005, ER98–2783–007 and ER00–3696–004]

Brownsville Power I, L.L.C.; Caledonia Power, I, L.L.C.; CinCap V, LLC; CinCap V, LLC; Cinergy Capital & Trading, Inc., Cincinnati Gas & Electric Co., Cinergy Services, Inc., Cinergy Power Investments, Inc., PSI Energy, Inc., St. Paul Cogeneration, LLC; Duke Power, a division of Duke Power Corporation, Casco Bay Energy Company, LLC; Duke Energy Arlington Valley, LLC; Duke Energy Fayette, LLC; Duke Energy Hanging Rock, LLC; Duke Energy Lee, LLC; Duke Energy Marketing America, LLC; Duke Energy Mohave, LLC; Duke Energy Moss Landing, LLC; Duke Energy Morro Bay, LLC; Duke Energy Oakland, LLC; Duke Energy South Bay, LLC; Duke Energy St. Francis, LLC; Duke Energy Trading and Marketing, L.L.C.; Duke Energy Vermillion, LLC; Bridgeport Energy, LLC; Griffith Energy, LLC; Notice of Filing**

June 9, 2005.

Take notice that on May 20, 2005, the above-captioned companies, each of which are direct or indirect subsidiaries of Cinergy Corporation (Cinergy) or indirect subsidiaries of Duke Energy Corporation (Duke Energy) except for Duke Power which is a division of Duke, submits for filing to the Commission notification of the pending merger of Cinergy and Duke Energy, and of the measures that the entities will take to treat one another like affiliates while the Merger remains pending.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. 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. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The filing in the above proceeding is accessible in the Commission's eLibrary system. It is also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. on June 16, 2005.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–3071 Filed 6–14–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

June 8, 2005.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment of license.

b. *Project No:* 2426–197.

c. *Date Filed:* March 17, 2005.

d. *Applicant:* California Department of Water Resources and the City of Los Angeles.

e. *Name of Project:* California Aqueduct Project.

f. *Location:* The project is located on the California Aqueduct, in San Bernadino, Los Angeles, San Luis Obispo, Ventura, and Kern Counties, California. This project is located within the Angeles National Forest and Los Padres National Forest.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a) 825(r) and 799 and 801.

h. *Applicant Contact:* Dr. Eva Begley, California State Dept. of Water Resources, 1416 Ninth Street, Room 1115–9, Sacramento, CA, 95814, (916) 653–5951.

i. *FERC Contacts:* Any questions on this notice should be addressed to Rebecca Martin at (202) 502–6012, or e-mail address: *rebecca.martin@ferc.gov*.

j. *Deadline for filing comments and or motions:* July 8, 2005.

All documents (original and eight copies) should be filed with: Ms. Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. Please include the project number (P–2426–197) on any comments or motions filed. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages e-filings.

k. *Description of Request:* The licensees are seeking Commission approval to modify the minimum flow requirements for the Piru Creek below Pyramid Dam which are required under article 52 and Exhibit S of the license. The licensees' amendment would allow the licensees to simulate natural flows to the extent operationally feasible and consistent with safety requirements. The licensees request this amendment to avoid an incidental take of the arroyo toad which is a listed species under the Endangered Species Act. By letter dated February 2, 2005, the U.S. Fish and Wildlife Service supports this request for more natural flows in order to not adversely affect the arroyo toad and its habitat.

l. *Location of the Application:* The filing is available for review at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online support at *FERCOnLineSupport@ferc.gov* or toll free (866) 208 3676 or TTY, contact (202) 502–8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS,'' ''PROTEST,'' or ''MOTION TO INTERVENE,'' as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. E5–3076 Filed 6–14–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER05–743–001]

Pacific Summit Energy, LLC; Notice of Amendment to Filing

June 9, 2005.

Take notice that on May 26, 2005, Pacific Summit Energy, LLC (PSE) submitted an amendment to its petition filed March 30, 2005 for order accepting initial rate schedule waiving regulations, and granting blanket approvals in Docket No. ER05–743–000.

Any person desiring to intervene or to protest in the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. 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. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The filing in the above proceeding is accessible in the Commission's eLibrary system. It is also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-

mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. on June 13, 2005.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–3072 Filed 6–14–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

June 6, 2005.

Take notice that the Commission received the following electric rate filings.

Docket Numbers: ER01–389–002.

Applicants: Calumet Energy Team, LLC.

Description: Calmet Energy Team LLC submits its tariff revisions made in compliance with the 5/11/05 letter order under ER01–389.

Filed Date: 05/31/2005.

Accession Number: 20050602–0063.

Comment Date: 5 p.m. eastern time on Tuesday, June 21, 2005.

Docket Numbers: ER02–1632–002.

Applicants: Energy America LLC.

Description: Energy America, LLC submits its Triennial Market Power Review in support of its market-based rate authority under ER02–1632.

Filed Date: 05/31/2005.

Accession Number: 20050602–0028.

Comment Date: 5 p.m. eastern time on Tuesday, June 21, 2005.

Docket Numbers: ER03–563–051; EL04–02–009.

Applicants: Power Marketing Inc.

Description: Fourth Compliance Report of ISO New England Inc. pursuant to Order issued June 2, 2004, 107 FERC ¶ 61,240 (2004).

Filed Date: 05/31/2005.

Accession Number: 20050531–5066.

Comment Date: 5 p.m. eastern time on Tuesday, June 21, 2005.

Docket Numbers: ER03–1413–004; ER94–1691–000.

Applicants: Sempra Energy Trading Corp.

Description: Sempra Energy Trading Corp. submits a notice of non-material change in status in compliance reporting requirements of Order 652 under ER03–1413 *et al.*

Filed Date: 05/31/2005.

Accession Number: 20050602–0129.

Comment Date: 5 p.m. eastern time on Tuesday, June 21, 2005.

Docket Numbers: ER05–10–003.

Applicants: PJM Interconnection L.L.C.

Description: PJM Interconnection, LLC submits amendments to the PJM open Access Transmission Tariff and Amended and Restated Operating Agreement of PJM Interconnection, L.L.C. under ER05–10.

Filed Date: 05/31/2005.

Accession Number: 20050602–0026.

Comment Date: 5 p.m. eastern time on Tuesday, June 21, 2005.

Docket Numbers: ER05–1043–000.

Applicants: Florida Power Corporation.

Description: Florida Power Corp d/b/a Progress Energy Florida, Inc. submits a Network Integration Transmission Service Agreement and Network Operating Agreement with the City of Winter Park under ER05–1043.

Filed Date: 05/31/2005.

Accession Number: 20050602–0061.

Comment Date: 5 p.m. eastern time on Tuesday, June 21, 2005.

Docket Numbers: ER05–1044–000.

Applicants: ISO New England and Northeast Utilities Service Company.

Description: ISO New England Inc. and Northeast Utilities Service Company, on behalf of The Connecticut Light and Power Company, submit the executed Standard Large Generator Interconnection Agreement with Waterside Power, LLC under ER05–1044.

Filed Date: 05/31/2005.

Accession Number: 20050602–0091.

Comment Date: 5 p.m. eastern time on Tuesday, June 21, 2005.

Docket Numbers: ER05–1045–000.

Applicants: Virginia Electric and Power Company.

Description: Virginia Electric and Power Co d/b/a Dominion Virginia Power submits a revised long-term service agreement providing for sales of electric power and the resale of transmission rights with Town of Enfield, NC under ER05–1045.

Filed Date: 05/31/2005.

Accession Number: 20050602–0057.

Comment Date: 5 p.m. eastern time on Tuesday, June 21, 2005.

Docket Numbers: ER05–1046–000.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc. submits an Interconnection & Operating Agreement among Cowell Wind Project, Midwest ISO and Northern States Power Company d/b/a Xcel Energy.

Filed Date: 05/31/2005.

Accession Number: 20050602–0058.

Comment Date: 5 p.m. eastern time on Tuesday, June 21, 2005.

Docket Numbers: ER05–1047–000.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc. submits an Interconnection and Operating Agreement among East Ridge Transmission, LLC, Midwest ISO and Great River Energy.

Filed Date: 05/31/2005.

Accession Number: 20050602–0090.

Comment Date: 5 p.m. eastern time on Tuesday, June 21, 2005.

Docket Numbers: ER05–1048–000.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator Inc. submits an Interconnection and Operating Agreement among Wolf Wind Transmission LLC, Midwest ISO and Great River Energy.

Filed Date: 05/31/2005.

Accession Number: 20050602–0089.

Comment Date: 5 p.m. eastern time on Tuesday, June 21, 2005.

Docket Numbers: ER05–1049–000.

Applicants: Union Electric Company d/b/a AmerenUE.

Description: Union Electric Co d/b/a AmerenUE submits certain amendments to the Interchange Agreement with Associated Electric Cooperative, Incorporated.

Filed Date: 05/31/2005.

Accession Number: 20050602–0036.

Comment Date: 5 p.m. eastern time on Tuesday, June 21, 2005.

Docket Numbers: ER05–1050–000.

Applicants: AmerGen Energy Company LLC.

Description: AmerGen Energy Co LLC submits a rate schedule and supporting cost data for a proposed Reactive Support and Voltage Control from Generation Sources Services pursuant to section 205 of the Federal Power Act under ER05–1050.

Filed Date: 05/31/2005.

Accession Number: 20050602–0037.

Comment Date: 5 p.m. eastern time on Tuesday, June 21, 2005.

Docket Numbers: ER05–1051–000.

Applicants: Westar Energy, Inc.

Description: Westar Energy Inc submits an unexecuted Form of Service Agreement for Ancillary Services and Distribution Facilities between Westar Energy, Inc., Kansas Power Pool and Southwest Power Pool, to become effective 5/1/05 under ER05–1051.

Filed Date: 05/31/2005.

Accession Number: 20050602–0038.

Comment Date: 5 p.m. eastern time on Tuesday, June 21, 2005.

Docket Numbers: ER05–1052–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc submits an unexecuted Form of

Service Agreement with Westar Energy, Inc and Kansas Power Pool, effective 5/1/05 under ER05–1052.

Filed Date: 05/31/2005.

Accession Number: 20050602–0035.

Comment Date: 5 p.m. eastern time on Tuesday, June 21, 2005.

Docket Numbers: ER05–1053–000.

Applicants: Virginia Electric and Power Company.

Description: Virginia Electric & Power Company on behalf of PJM Transmission Owners Agreement Administrative Committees submits changes to the PJM Transmission Owners Agreement amending section 5.4 of its agreement.

Filed Date: 05/31/2005.

Accession Number: 20050602–0033.

Comment Date: 5 p.m. eastern time on Tuesday, June 21, 2005.

Docket Numbers: ER05–1054–000.

Applicants: Eastern Landfill Gas, LLC.

Description: Application of Eastern Landfill Gas, LLC for blanket authorization, certain waivers, order approving rate schedule and expedited action under ER05–1054.

Filed Date: 05/31/2005.

Accession Number: 20050602–0034.

Comment Date: 5 p.m. eastern time on Tuesday, June 21, 2005.

Docket Numbers: ER05–1055–000.

Applicants: Maine Public Service Company.

Description: Maine Public Service Co submits Second Revised Sheet Nos. 205, 207 and 209 to FERC Electric Tariff, First Revised Volume 4, effective 6/1/05 under ER05–1055.

Filed Date: 05/31/2005.

Accession Number: 20050602–0130.

Comment Date: 5 p.m. eastern time on Tuesday, June 21, 2005.

Docket Numbers: ER05–1056–000.

Applicants: Chehalis Power Generating, L. P.

Description: Chehalis Power Generating, LP submits its initial Rate Schedule No. 2 for the provision of Reactive Supply and Voltage Control Service from Generation Sources Service from the Chehalis electric generating facility to Bonneville Power Administration to be effective 8/1/05.

Filed Date: 05/31/2005.

Accession Number: 20050602–0131.

Comment Date: 5 p.m. eastern time on Tuesday, June 21, 2005.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. 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. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other and the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlinSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–3073 Filed 6–14–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings # 2

June 6, 2005.

Take notice that the Commission received the following electric rate filings;

Docket Numbers: ER05–652–003.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc submits a revised tariff sheet with the correct revenue requirement for Southwestern Power Administration to correct its filing submitted on 2/28/05 to implement a regional transmission cost allocation proposal with regard to new transmission upgrades.

Filed Date: 05/27/2005.

Accession Number: 20050602–0062.

Comment Date: 5 p.m. eastern time on Friday, June 17, 2005.

Docket Numbers: ER05–698–002.

Applicants: San Joaquin Cogen, L.L.C.

Description: San Joaquin Cogen, L.L.C. submits revisions to its market-based rate tariff, designated as FERC Electric Tariff, Original Volume 1, pursuant to the Commission's letter order issued 5/11/05.

Filed Date: 06/01/2005.

Accession Number: 20050603–0092.

Comment Date: 5 p.m. eastern time on Wednesday, June 22, 2005.

Docket Numbers: ER05–717–002.

Applicants: Spring Canyon Energy LLC.

Description: Spring Canyon Energy LLC submits Substitute Original Sheet 3 to its market-based rate tariff that reflects the conforming changes required by the Commission the order issued May 25, 2005.

Filed Date: 06/01/2005.

Accession Number: 20050603–0086.

Comment Date: 5 p.m. eastern time on Wednesday, June 22, 2005.

Docket Numbers: ER05–833–001.

Applicants: American Transmission Company LLC.

Description: American Transmission Co LLC submits a supplemental replacement page to the Table of Contents re to its Amended & Restated Generation—Transmission Interconnection Agreement filed on May 27, 2005.

Filed Date: 06/01/2005.

Accession Number: 20050603–0098.

Comment Date: 5 p.m. eastern time on Wednesday, June 22, 2005.

Docket Numbers: ER05–1057–000.

Applicants: Virginia Electric and Power Company.

Description: Virginia Electric and Power Co d/b/a as Dominion Virginia Power submits an unexecuted Mutual Operating Agreement with North Carolina Electric Membership Corporation to be effective 5/1/05 under ER05–1057.

Filed Date: 05/31/2005.

Accession Number: 20050602–0132.

Comment Date: 5 p.m. eastern time on Tuesday, June 21, 2005.

Docket Numbers: ER05–1058–000; ER05–1059–000; ER05–1060–000.

Applicants: Bayonne Plant Holding, L.L.C., Camden Plant Holding, L.L.C.,

Newark Bay Cogeneration Partnership, L.P.

Description: New Market Power Co, LLC on behalf of Bayonne Plant Holding, L.L.C., Camden Plant Holding, L.L.C. and Newark Bay Cogeneration Partnership, L.P. submits

Rate Schedules setting forth charges and revenue requirements for providing cost-based Reactive Support and Voltage Control from Generation Sources Service to be effective 7/1/05.

Filed Date: 05/31/2005.

Accession Number: 20050602–0133.

Comment Date: 5 p.m. eastern time on Tuesday, June 21, 2005.

Docket Numbers: ER98–3285–004; ER00–2687–006.

Applicants: Central Illinois Public Service Company and Union Electric Company.

Description: Central Illinois Public Service Company and Union Electric Company notifies FERC of certain changes in status relevant to their continued authorizations to sell power at market-based rates.

Filed Date: 06/01/2005.

Accession Number: 20050603–0091.

Comment Date: 5 p.m. eastern time on Wednesday, June 22, 2005.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. 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. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other and the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlinSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–3074 Filed 6–14–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. PL05–7–000, EL03–236–000 et al., ER04–539–000 et al.]

Capacity Markets in the PJM Region, PJM Interconnection, LLC, PJM Interconnection, LLC; Supplemental Notice of Technical Conference

June 8, 2005.

On May 19, 2005, a notice was issued in Docket No. PL05–7–000 [1] announcing that a technical conference will be held June 16, 2005, to discuss the capacity markets currently in use in the PJM Interconnection, L.L.C. (PJM) region. The notice indicated that the technical conference is intended to provide a forum through which Federal and State regulators and participants in the PJM market may come to a common understanding of the current PJM capacity situation, the problems perceived in the market and what deficiencies, if any, exist in the current PJM market construct that contribute to, or do not properly address, those perceived problems, and potential alternative solutions. Members of the Federal Energy Regulatory Commission, state public utilities commissions, and their respective staffs are expected to participate. This supplemental notice provides additional information and an agenda for the conference.

[1] This notice also includes additional dockets, listed in the caption, that relate to issues that may be discussed.

The morning session of the conference will be focused on general capacity market objectives, how PJM's current capacity market meets those objectives, and alternative approaches under consideration, including PJM's Reliability Pricing Model (RPM) proposal. The afternoon session will address specific elements of a capacity market, including whether and how transmission planning and load response can be integrated with the capacity market as well as procurement issues, such as the shape of the demand curve and the appropriate role for PJM. Discussion during the afternoon should address how the elements of the various alternative proposals compare with regard to those elements.

The conference is open for the public to attend and advance registration is not required.

Transcripts of the conference will be immediately available from Ace Reporting Company (202–347–3700 or 1–800–336–6646) for a fee. They will be available for the public on the Commission's eLibrary system 7 calendar days after FERC receives the transcript. Additionally, Capitol Connection offers the opportunity for remote listening and viewing of the conference. It is available for a fee, live over the Internet, by phone or via satellite. Persons interested in receiving the broadcast or who need information on making arrangements should contact David Reininger or Julia Morelli at the Capitol Connection (703–993–3100) as soon as possible or visit the Capitol Connection Web site at *http://www.capitolconnection.org* and click on ''FERC.''

FERC conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an e-mail to *accessibility@ferc.gov* or call toll free 866–208–3372 (voice) or 202–208–1659 (TTY), or send a FAX to 202–208–2106 with the required accommodations.

For additional information, please contact Morris Margolis at (202) 502–8611; *morris.margolis@ferc.gov,* or Sarah McKinley at (202) 502–8004, or *sarah.mckinley@ferc.gov.*

Magalie R. Salas,

Secretary.

Technical Conference Agenda

9 a.m.

I. Opening Remarks and Introductions

II. General Capacity Market Objectives and PJM

Objectives of a capacity market

Interrelationship with other markets

Does PJM's current capacity construct meet those objectives?

Should there be an ''exit strategy'' for the capacity market? *i.e.*, are capacity markets a short term fix? If so, how to design an exit strategy?

Panelists: Joseph Bowring, Manager, PJM Market Monitoring Unit; Elizabeth Anne Moler, Executive Vice President, Exelon Corp.; Thomas Shaw, Executive Vice President and COO, PEPCO Holdings, Inc.; Bob Weishaar, PJM Industrial Customer Coalition; Patrick McCullar, President and CEO, Delaware Municipal Electric Corp.; Lynne Kiesling, Northwestern University and the International Foundation for Research in Experimental Economics; Brian Chin, Energy Merchant Analyst, Smith Barney; Roy Shanker.

III. Description of Alternative Capacity Market Proposals

Andy Ott, Vice President, Market Services, PJM—PJM's Reliability Pricing Model (RPM), Ed Tatum, Old Dominion Electric Cooperative—Enhanced Integrated Transmission and Capacity Construct (EITCC), Tom Hyzinski, PPL Corporation—PPL Resource Adequacy Market Proposal.

Lunch Break

IV. Capacity Market Elements

Panel 1: Transmission Planning: Planning horizon time frame, Role of ''reliability must run'', or RMR agreements, Transmission investment triggers, ''Granularity'' of locational requirements.

Panelists: Steve Herling, Executive Director, System Planning, PJM; Craig Baker, Senior Vice President, Regulatory Services, AEP; Laurie Oppel, Navigant Consulting; Gary Sorenson, Managing Director, Energy Operations, PSEG Energy Resources and Trade, L.L.C.; George Owens, Downes Associates, Inc.

Panel 2: Procurement: Shape of demand curve (*i.e.*, vertical or sloped), Penalty structure, Timing of forward obligations/procurement, Role of PJM in procurement, Impact on retail access, Impact on long term bilateral contracting, Facilitation of demand response, including annual v. peak pricing.

Panelists: Tom Welch, Market Strategy, Market Services Division, PJM; Ben Hobbs, Johns Hopkins University; Reem Fahey, Regional V.P. of Market Policy, Edison Mission Energy; Jon Wallach, on behalf of Maryland Peoples' Counsel; John Orr, Director, Reliant Energy; Steve Wemple, Director, ConEdison Energy; Stephen Fernands, Customized Energy Solutions; Mark Scott, Old Dominion Electric Cooperative.

4 p.m.—Recap

5 p.m.—Adjourn

[FR Doc. E5–3075 Filed 6–14–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting Notice

June 8, 2005.

The following notice of meeting is published pursuant to section 3(a) of the government in the Sunshine Act (Pub. L. 94–409), 5 U.S.C 552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: June 15, 2005; 10 a.m.

PLACE: Room 2C, 888 First Street, NE., Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

***Note**—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Magalie R. Salas, Secretary, Telephone (202) 502–8400.

For a recorded listing items stricken from or added to the meeting, call (202) 502–8627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Public Reference Room.

892ND—MEETING; REGULAR MEETING; JUNE 15, 2005; 10 A.M.

Item No.	Docket No.	Company
		Administrative Agenda
A–1	AD02–7–000	Customer Matters, Reliability, Security and Market Operations.
A–2	AD02–1–000	Agency Administrative Matters.
A–3	MO05–4–000	State of the Markets Report.
		Markets, Tariffs, and Rates—Electric
E–1	ER96–110–013	Duke Power, Division of Duke Energy Corporation.
	EL05–4–000	
E–2	ER91–569–023	Entergy Services, Inc.
	ER91–569–024	
	ER91–569–008	
	EL04–123–000	
E–3	ER97–4166–019	Southern Company Energy Marketing, Inc.
	ER96–780–009	Southern Company Services, Inc.
	EL04–124–002	
	EL04–124–000	
E–4	ER01–3155–007	New York Independent System Operator, Inc. and Consolidated Edison Co. of New York, Inc.
	EL01–45–015	
	ER01–1385–016	
E–5	ER04–691–024	Midwest Independent Transmission System Operator, Inc.
	EL04–104–023	Public Utilities With Grandfathered Agreements in the Midwest ISO Region.
E–6	EL05–80–000	Southern California Edison Company.
E–7	RM02–1–006	Standardization of Generator Interconnection Agreements and Procedures.
E–8	RM04–14–001	Reporting Requirement for Changes in Status for Public Utilities With Market-Based Rate Authority.
E–9	ER05–636–000	Midwest Independent Transmission System Operator, Inc.
	ER05–636–001	
	ER05–662–000	
	ER05–662–001	
	ER05–864–000	
	ER05–881–000	
E–10	ER05–837–000	American Electric Power Service Corporation.
E–11	ER05–844–000	Pacific Gas and Electric Company.

892ND—MEETING; REGULAR MEETING; JUNE 15, 2005; 10 A.M.—Continued

Item No.	Docket No.	Company
E–12	ER05–850–000	Brownsville Power I, L.L.C.
	ER05–851–000	Caledonia Power I, L.L.C.
	ER05–852–000	Cinergy Capital & Trading, Inc.
E–13	ER05–853–000	San Diego Gas & Electric Company.
E–14	Omitted	
E–15	Omitted	
E–16	ER05–912–000	Calpine Construction Finance Company, L.P.
E–17	ER96–1085–006	South Carolina Electric & Gas Company.
	ER96–1085–007	
E–18	Omitted	
E–19	ER01–1011–002	Redbud Energy LP.
	ER01–1011–003	
	ER01–1011–004	
	ER01–1011–005	
E–20	ER01–3103–007	Astoria Energy LLC.
	ER01–3103–008	
	ER01–3103–009	
E–21	Omitted	
E–22	ER03–647–006	New York Independent System Operator, Inc.
E–23	ER99–4160–003	Dynery Power Marketing, Inc.
	ER99–4160–007	
	ER98–1127–005	El Segundo Power, LLC.
	ER98–1127–006	
	ER98–1796–004	Long Beach Generation LLC.
	ER98–1796–005	
	ER99–1115–005	Cabrillo Power I LLC.
	ER99–1115–006	
	ER99–1116–005	Cabrillo Power II LLC.
	ER99–1116–006	
	ER99–1567–002	Rockingham Power, L.L.C.
	ER99–1567–003	
	ER99–2157–002	Rocky Road Power, LLC.
	ER99–2157–003	
	ER00–1049–003	Calcasieu Power, LLC.
	ER00–1049–004	
	ER00–1895–002	Dynery Midwest Generation, Inc.
	ER00–1895–004	
	ER01–140–002	Dynery Danskammer, L.L.C.
	ER01–140–003	
	ER01–141–002	Dynery Roseton, L.L.C.
	ER01–141–003	
	ER01–943–002	Heard County Power, LLC.
	ER01–943–003	
	ER01–1044–002	Riverside Generating Company, L.L.C.
	ER01–1044–004	
	ER01–3109–002	Renaissance Power, L.L.C.
	ER01–3109–004	
	ER02–506–002	Bluegrass Generation Company, L.L.C.
	ER02–506–004	
	ER02–553–001	Rolling Hills Generating, L.L.C.
	ER02–553–003	
	ER98–2782–002	AG-Energy, L.P., Power City Partners, L.P., Seneca Power Partners, L.P., and Sterling Power Partners, L.P.
	ER98–2782–003	
	ER98–2782–006	
	ER98–2782–007	
	ER98–2782–008	
	ER02–2202–001	Sithe Energy Marketing, LP.
	ER02–2202–005	
	ER02–2202–006	
	ER02–2202–007	
	ER03–42–006	Sithe/Independence Power Partners, L.P.
	ER03–42–007	
	ER03–42–008	
E–24	ER00–895–006	Onodago Cogeneration Limited Partnership.
	ER00–895–001	
E–25	Omitted	
E–26	Omitted	
E–27	EL04–70–000	Kansas Gas and Electric Company.
	EL04–72–000	Oklahoma Gas and Electric Company.
E–28	IN03–10–008	Investigation of Anomalous Bidding Behavior and Practices in the Western Markets.
E–29	ER05–270–002	Dynery Midwest Generation, Inc.
	EL05–72–001	

892ND—MEETING; REGULAR MEETING; JUNE 15, 2005; 10 A.M.—Continued

Item No.	Docket No.	Company
E–30	ER04–1055–000	Riverside Energy Center, LLC.
	ER04–1059–000	RockGen Energy, LLC.
E–31	ER04–886–000	Entergy Services, Inc.
E–32	Omitted	
E–33	Omitted	
E–34	Omitted	
E–35	ER03–1381–004	Southern Company Services, Inc.
	ER03–1381–003	
E–36	ER05–439–001	ISO New England Inc.
E–37	Omitted	
E–38	Omitted	
E–39	Omitted	
E–40	ER05–366–000	Sierra Pacific Power Company.
E–41	ER05–170–000	Southern California Edison Company.
	ER05–170–001	
E–42	PL03–1–000	Pricing Policy for Efficient Operation and Expansion of Transmission Grid.
		Miscellaneous Agenda
M–1	RM02–4–003	Critical Infrastructure Information.
	PL02–1–003	
M–2	PL03–3–006	Price Discovery in Natural Gas and Electric Markets.
	AD03–7–006	Natural Gas Price Formation.
		Markets, Tariffs, and Rates—Gas
G–1	PL05–8–000	Creditworthiness Standards for Interstate Natural Gas Pipelines.
	RM04–4–000	
G–2	RP00–305–023	CenterPoint Energy-Mississippi River Transmission Corporation.
G–3	RP05–339–000	North Baja Pipeline, LLC.
G–4	RP04–171–001	Portland Natural Gas Transmission System.
G–5	Omitted	
G–6	RP02–309–005	*Sunoco, Inc.* (R&M) v. *Transcontinental Gas Pipe Line Corporation.*
G–7	RP03–398–000	Northern Natural Gas Company.
	RP04–155–000	
G–8	Omitted	
G–9	AI05–1–000	Jurisdictional Public Utilities and Licensees, Natural Gas Companies, Oil Pipeline Companies.
		Energy Projects—Hydro
H–1	P–1494–251	Grand River Dam Authority.
H–2	P–11659–004	Gustavus Electric Company.
H–3	P–2207–011	Mosinee Paper Corporation.
H–4	P–2237–014	Georgia Power Company.
H–5	P–2030–036	Portland General Electric Company and Confederated Tribes of the Warms Springs Reservation of Oregon.
H–6	P–2161–015	Rhinelander Paper Company.
		Energy Projects—Certificates
C–1	CP05–2–000	El Paso Natural Gas Company.
	CP05–2–001	
C–2	CP04–365–000	Dominion Transmission, Inc.
C–3	CP04–34–000	Columbia Gas Transmission Corporation.
C–4	CP05–64–000	Florida Gas Transmission Company.
C–5	CP05–87–000	Kinder Morgan North Texas Pipeline, L.P.
C–6	CP05–42–000	Tennessee Gas Pipeline Company.
C–7	CP04–395–000	Vista Del Sol LNG Terminal LP.
	CP04–405–000	Vista Del Sol Pipeline L.P.
	CP04–406–000	
	CP04–407–000	
C–8	CP05–211–000	EnCana Border Pipelines Limited.
C–9	CP05–71–000	Gulf South Pipeline Company, LP, Transcontinental Gas Pipe Line Corporation.
C–10	CP97–169–004	Alliance Pipeline L.P.
C–11	Omitted	

Magalie R. Salas,

Secretary.

The Capitol Connection offers the opportunity for remote listening and viewing of the meeting. It is available for a fee, live over the Internet, via C-Band Satellite. Persons interested in receiving the broadcast, or who need information on making arrangements should contact David Reininger or Julia Morelli at the Capitol Connection (703–993–3100) as soon as possible or visit the Capitol Connection Web site at *http://www.capitolconnection.gmu.edu and click on "FERC".*

Immediately following the conclusion of the Commission Meeting, a press briefing will be held in Hearing Room 2. Members of the public may view this briefing in the Commission Meeting overflow room. This statement is intended to notify the public that the press briefings that follow Commission meetings may now be viewed remotely at Commission headquarters, but will not be telecast through the Capitol Connection service.

[FR Doc. 05–11859 Filed 6–10–05; 4:16 pm]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7924–6]

Science Advisory Board Staff Office; Notification of Upcoming Meeting of the Science Advisory Board, Homeland Security Advisory Committee (HSAC)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA Science Advisory Board (SAB) Staff Office announces a public meeting of the Homeland Security Advisory Committee (HSAC).

DATES: July 15, 2005. The Committee will hold a public face-to-face meeting on July 15, 2005 from 8:30 a.m.to 4 p.m. (EST).

ADDRESSES: The meeting of the Committee will be held at the SAB Conference Center located at the Woodies Building, 1025 F St. NW., Room 3705, Washington, DC, 20004.

FOR FURTHER INFORMATION CONTACT: Members of the public who wish to obtain more information regarding this meeting may contact Dr. Heidi Bethel, EPA Science Advisory Board Staff Office (1400F), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone/voice mail: (202) 343–9975; Fax (202) 233–0643 or via e-mail at *bethel.heidi@epa.gov.*

SUPPLEMENTARY INFORMATION:

Background: The Agency's overall mission with respect to homeland security is the protection of the nation against the environmental and health consequences of acts of terrorism. Five Mission Critical Areas (MCAs) are described in the U.S. EPA's 2004 Homeland Security Strategy (*http://www.epa.gov/homelandsecurity/htm/ohs-sp.htm*). EPA's roles within the MCAs include protection of critical infrastructure including water and wastewater industries; aiding other federal agencies in the protection of the chemical, food, transportation, and energy sectors; responding and recovering from any chemical, biological, radiological, or nuclear terrorist events; providing environmental expertise to support federal law enforcement activities; improving compliance monitoring and surveillance of imports in U.S. ports of entry; and synthesizing and communicating complex information related to human health and the environment. Additionally, EPA is committed to protecting its own personnel and infrastructure and conducting internal evaluations of the Agency's homeland security activities to determine if objectives are achieved.

Because of the cross-disciplinary nature of homeland security issues, multiple EPA offices are involved and their efforts are coordinated by the Administrator's Office of Homeland Security (OHS) (*http://www.epa.gov/homelandsecurity/index.htm*). Homeland security research at EPA is conducted by the Office of Research and Development's National Homeland Security Research Center (NHSRC) (*http://www.epa.gov/nhsrc/*). Research is conducted by the Agency in the following three areas: building cleanup through detection, containment, decontamination and disposal of terrorist agents and building materials; threat and consequence assessment, which involves the development of information systems and tools, risk estimates, and risk communication; and water infrastructure protection with an emphasis on water supply, treatment, and distribution infrastructures.

In response to a request from the Agency, the SAB has formed a subcommittee of the Chartered SAB to provide independent scientific and technical advice on matters pertaining to EPA's mission in protecting against the environmental and health consequences of terrorism. Background on this SAB Committee and its charge was provided in a **Federal Register** (FR) Notice published on July 30, 2003 (68 FR 44761–44762).

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, Notice is hereby given that the SAB HSAC, a subcommittee of the Chartered SAB, will hold a public face-to-face meeting. The Committee will receive briefings from EPA offices regarding the Agency's role in homeland security and the scope of their research and program activities. EPA's technical contact is Ms. Lee Ann Byrd, EPA Office of Homeland Security (1109A), 1200 Pennsylvania Ave, NW., Washington, DC 20460; telephone/voice mail: (202) 564–0675/6978; or via e-mail at *byrd.lee@epa.gov.*

Availability of Meeting Materials: The meeting agenda and meeting materials will be posted on the SAB Web site at: *http://www.epa.gov/science1/agendas.htm* prior to the meeting.

Procedures for Providing Public Comment: It is the policy of the EPA Science Advisory Board (SAB) Staff Office to accept written public comments of any length, and to accommodate oral public comments whenever possible. *Oral Comments:* Requests to provide oral comments must be in writing (e-mail, fax or mail) and received by Dr. Bethel no later than five business days prior to the meeting in order to reserve time on the meeting agenda. For face-to-face meetings, opportunities for oral comment will usually be limited to no more than ten minutes per speaker or organization (unless otherwise stated). Speakers should bring at least 35 copies of their comments and presentation slides for distribution to the reviewers and public at the meeting. *Written Comments:* Although written comments are accepted until the date of the meeting (unless otherwise stated), written comments should be received in the SAB Staff Office at least five business days prior to the meeting date so that the comments may be made available to the committee for their consideration. Comments should be supplied to the DFO at the address/contact information noted above in the following formats: one hard copy with original signature and one electronic copy via e-mail (acceptable file format: Adobe Acrobat, WordPerfect, Word, or Rich Text files (in IBM–PC/Windows 98/2000/XP format).

Dated: June 9, 2004.

Vanessa T. Vu,

Director, EPA Science Advisory Board Staff Office.

[FR Doc. 05–11826 Filed 6–14–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2005–0129; FRL–7713–7]

NAFTA Guidance for Conducting Terrestrial Field Dissipation Studies

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Under the North American Free Trade Agreement (NAFTA), EPA and the Canadian Pest Management Regulatory Agency (PMRA) have agreed

to harmonize their testing guidelines so that one set of tests can be used for the registration of pesticides in Canada and the United States. The NAFTA harmonized guidance for terrestrial field dissipation (TFD) studies are conducted to demonstrate the transformation, transport, and fate of pesticides under representative actual use conditions. These field studies are needed to substantiate the physicochemical, mobility, and biotransformation data from laboratory studies. Environmental fate studies have shown that pesticide dissipation may proceed at different rates under field conditions and may result in degradates forming at levels different from those observed in laboratory studies. The objective of this revised guidance document is to help ensure that TFD studies are conducted in a manner that will provide risk assessors and risk managers with more confidence in the data generated and with a better understanding of the assumptions and limitations of the data and estimated half-lives of the pesticide. The revised guidance can be found at: *http://www.epa.gov/oppefed1/ecorisk_ders/efed_final_draft_tfd_guidance.pdf*.

DATES: Comments, identified by docket ID number OPP–2005–0129, must be received on or before August 1, 2005.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Mark Corbin, Environmental Fate and Effects Division (7507C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: 703–605–0033; fax number: 703–305–6309; e-mail address: *mark.corbin@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

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

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2005–0129. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at*http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please

follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at*http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2005–0129. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to*opp-docket@epa.gov*, Attention: Docket ID Number OPP–2005–0129. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures youre-mail address. E-mail addresses that are automatically captured by EPA'se-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2005–0129.

3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID Number OPP–2005–0129. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the comment period deadline identified.
8. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

II. Background

A. What Action is the Agency Taking?

The Terrestrial Field Dissipation study has been a basic requirement for registrants of new and existing pesticides since 1982. While laboratory environmental fate studies are designed to address one dissipation process at a time, terrestrial field dissipation studies address pesticide loss as a combined result of chemical and biological processes (e.g., hydrolysis, photolysis, microbial transformation) and physical migration (e.g., volatilization, leaching, plant uptake). Data from these studies can reduce potential overestimation of exposure and risk and can confirm assumptions of low levels of toxic degradates. Results can be used to propose scenario-specific effective risk mitigation.

In general, the terrestrial field dissipation study results should allow the risk assessor to:

- Compare predicted routes of dissipation identified in the laboratory with those measured in the field.
- Characterize the rates of dissipation of the parent compound and formation and decline of the major and/or toxicologically significant transformation products under field conditions.
- Characterize the rates and relative importance of the different transport processes, including leaching, runoff, and volatilization.
- Establish the distribution of the parent compound and the major transformation products in the soil profile.
- Characterize the persistence of the parent compound and major transformation products in soil, including retention and residue carryover in the soil to the following crop season.
- Characterize the effect(s) of different typical pesticide formulation categories, where applicable.

EPA and PMRA have developed harmonized guidance for conducting

terrestrial field dissipation studies so that one set of tests can be used for registration of a pesticide in Canada, the United States, and Mexico. In developing this guidance document, EPA and PMRA conducted an extensive outreach and review program, soliciting input from stakeholders and the technical community through several forums: three symposia, one Scientific Advisory Panel (SAP) meeting, and one workshop. Working closely with its stakeholders, PMRA and EPA developed a conceptual model for designing terrestrial studies that will evaluate the overall dissipation of a pesticide in the field. The conceptual model, which is specific for each pesticide, is based on the chemical's physicochemical properties, laboratory environmental fate studies, formulation type and intended use pattern. At this time, the Agency is soliciting input from the public on the draft harmonized guidance and conceptual model, which can be found at the following address: *http://www.epa.gov/oppefed1/ecorisk_ders/efed_final_draft_tfd_guidance.pdf.*

B. What is the Agency's Authority for Taking this Action?

This action is being taken under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

List of Subjects

Environmental protection, Terrestrial field dissipation, Harmonized guidance.

Dated: May 9, 2005.

Steven Bradbury,

Director, Environmental Fate and Effects Division, Office of Pesticide Programs.

[FR Doc. 05–11830 Filed 6–14–05 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

June 2, 2005.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before August 15, 2005. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Judith-B.Herman@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0813.

Title: Enhanced 911 Emergency Calling Services.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit and state, local or tribal government.

Number of Respondents: 47,031.

Estimated Time Per Response: 1–5 hours.

Frequency of Response: On occasion and annual reporting requirements and third party disclosure requirements.

Total Annual Burden: 198,200 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Needs and Uses: The notification requirement on Public Safety Answering Points (PSAPs) will be used by the carriers to verify that wireless E911 calls are referred to PSAPs who have the technical capability to use the data to the caller's benefit. TTY and dispatch notification requirements will be used to avoid customer confusion as to the capabilities of their handsets in reaching help in emergency situations, thus minimizing the possibility of critical delays in response time. The annual TTY reports will be used to monitor the progress of TTY technology and thus capability. Consultations on the specific meaning assigned to pseudo-Automatic Location Identification (ANI) are appropriate to ensure that all parties are working with the same information. Coordination between carriers and state and local entities to determine the appropriate PSAPs to receive and respond to E911 calls is necessary because of the difficulty in assigning PSAPs based on the location of the wireless caller. The deployment schedule that must be submitted by carriers seeking a waiver of Phase I or Phase II deployment schedule will be used by the Commission to guarantee that the rules are enforced in timely manner as possible within technological constraints.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–11538 Filed 6–14–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority

May 26, 2005.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance

the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comment on this information collection should submit comments August 15, 2005. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Judith B. Herman, Federal Communications Commission, 445 12th Street, SW., Room 1–C804, Washington, DC 20554 or via the Internet to *Judith-B.Herman@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0204.

Title: Section 90.20(a)(2)(v), Physically Handicapped ''Special Eligibility Showing''.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households; business or other for profit.

Number of Respondents: 20.

Estimated Time Per Response: .084 hours.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 2 hours.

Annual Cost Burden: $1,000.

Privacy Act Impact Assessment: No.

Needs and Uses: Section 90.20(a)(2)(v) provides that persons claiming eligibility in the Special Emergency Radio Service on the basis of being physically handicapped must present a physician's statement indicating that they are disabled. Submission of this information is necessary to ensure that frequencies reserved for licensing to the handicapped individuals are not licensed to non-handicapped persons. Commission personnel use the data to determine the eligibility of applicants to hold a radio station authorization for specific frequencies. If the information is not collected, the Commission has no way to determine eligibility.

OMB Control No.: 3060–0223.

Title: Section 90.129, Supplemental Information to be Routinely Submitted with Applications, Non-Type Accepted Equipment.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households, business or other for profit, not-for-profit institutions, and state, local or tribal government.

Number of Respondents: 100.

Estimated Time Per Response: .33 hours (20 minutes).

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 34 hours.

Annual Cost Burden: N/A.

Privacy Act Impact Assessment: No.

Needs and Uses: Section 90.129 requires applicants proposing to use transmitting equipment that is not type-certified by FCC laboratory personnel to provide a description of the proposed equipment. This assures that the equipment is capable of performing within certain tolerances that limit the interference potential of the device. This information collected is used by FC engineers to determine the interference potential of the proposed equipment.

OMB Control No.: 3060–0325.

Title: Section 80.605, U.S. Coast Guard Coordination.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households; business or other for profit.

Number of Respondents: 47.

Estimated Time Per Response: 1.1 hours.

Frequency of Response: On occasion reporting requirement and third party disclosure requirement.

Total Annual Burden: 52 hours.

Annual Cost Burden: N/A.

Privacy Act Impact Assessment: No.

Needs and Uses: Section 80.605 is needed to insure that no hazard to marine navigation will result from the grant of applications for non-selectable transponders and shore based radionavigation aids. If this collection were not conducted, stations posing a hazard to marine navigation could be licensed inadvertently and/or long delays in processing of applications could result due to the necessity for coordination between the Commission, the U.S. Coast Guard and the applicant.

OMB Control No.: 3060–0554.

Title: Section 87.199, Special Requirements for 406.025 MHz Emergency Locator Transmitters (ELTs).

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households; business or other for profit.

Number of Respondents: 500.

Estimated Time Per Response: .084 hours.

Frequency of Response: On occasion reporting requirement and third party disclosure requirement.

Total Annual Burden: 42 hours.

Annual Cost Burden: N/A.

Privacy Act Impact Assessment: No.

Needs and Uses: Section 87.199 requires owners of 406.025 MHz Emergency Locator Transmitters (ELTs) to register information such as name, address, and type of vessel with the National Oceanic and Atmospheric Administration (NOAA). The information would be used by search and rescue personnel to identify the aircraft in distress and to select the proper rescue units and search methods. The information is used by NOAA to maintain a database used to provide information about the owner of an activated ELT of an aircraft in distress. If the collection were not conducted, NOAA would not have access to this information which would increase the time needed to complete a search and rescue operation.

OMB Control No.: 3060–0556.

Title: Section 80.1061, Special Requirements for 406.025 MHz Emergency Position Indicting Radio Beacons (EPIRBs).

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households; business or other for profit.

Number of Respondents: 9,500.

Estimated Time Per Response: .084 hours.

Frequency of Response: On occasion reporting requirement and third party disclosure requirement.

Total Annual Burden: 798 hours.

Annual Cost Burden: N/A.

Privacy Act Impact Assessment: No.

Needs and Uses: Section 80.1061 requires owners of 406.025 MHz Emergency Position Indicating Radio Beacons (EPIRBs) to register information such as name, address, and type of vessel with the National Oceanic and Atmospheric Administration (NOAA). Additionally, the radio beacon must be certified by a test facility recognized by the U.S. Coast Guard to certify that the equipment complies with the U.S. Coast Guard environmental and operational requirements associated with the test procedures described in Appendix A of the RTCM Recommended Standards. If the collection of information were not conducted, NOAA would not have access to this information which would increase the time needed to complete a search and rescue operation.

OMB Control No.: 3060–0695.

Title: Section 87.219, Automatic Operations.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for profit.

Number of Respondents: 50.

Estimated Time Per Response: 0.7 hours.

Frequency of Response: On occasion reporting requirement, recordkeeping requirement and third party disclosure requirement.

Total Annual Burden: 35 hours.

Annual Cost Burden: $6,000.

Privacy Act Impact Assessment: N/A.

Needs and Uses: This rule section requires that if airports have control towers or Federal Aviation Administration (FAA) flight service stations, and should more than one licensee want to have an automated aeronautical advisory station (''unicom''), the licensees must write an agreement outlining who will be responsible for the unicom's operation, sign the agreement, and keep a copy of the agreement with each licensee's station authorization. The information will be used by compliance personnel for enforcement purposes and by licensees to clarify responsibility in operating unicom.

OMB Control No.: 3060–0882.

Title: Section 95.833, Construction Requirements.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households; business or other for profit.

Number of Respondents: 1,468.

Estimated Time Per Response: 1 hour.

Frequency of Response: Every 10 year reporting requirement.

Total Annual Burden: 1,468 hours.

Annual Cost Burden: N/A.

Privacy Act Impact Assessment: No.

Needs and Uses: Section 95.833 requires each 218–219 MHz service system license to file a report after ten years of the license grant to demonstrate that the licensee provides substantial service to its service areas. The information is used by Commission staff to assess compliance with 218–219 MHz service construction requirements, and to provide adequate spectrum for the service. This will facilitate spectrum efficiency and competition by the 218–219 MHz service licensees in the wireless marketplace. Without this information, the Commission would not be able to carry out its statutory responsibilities.

OMB Control No.: 3060–0987.

Title: 911 Callback Capability; Non-initialized Phones.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for profit, and state, local or tribal government.

Number of Respondents: 3,137.

Estimated Time Per Response: 1–3 hours.

Frequency of Response: One time reporting requirement and third party disclosure requirement.

Total Annual Burden: 4,885 hours.

Annual Cost Burden: $661,125.

Privacy Act Impact Assessment: N/A.

Needs and Uses: The labeling requirement, education requirement, and software/coding requirement are all needed to make all parties involved in emergency calls originating from non-initialized and ''911 only'' phones aware that the calling party cannot be reached for further information. This is necessary to advise the public and emergency workers of this limitation, and to advise them in using such phones in emergency situations to provide as much critical location information must be supplied to the Public Safety Answering Points (PSAPs) as quickly as possible in the originating call.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–11540 Filed 6–14–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

June 3, 2005.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before July 15, 2005. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments regarding this Paperwork Reduction Act submission to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., DC 20554 or via the Internet to *Judith-B.Herman@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–1080.

Title: Improving Public Safety Communications in the 800 MHz Band.

Form No: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions, and state, local and tribal government.

Number of Respondents: 2,500.

Estimated Time Per Response: 3—8 hours.

Frequency of Response: On occasion reporting requirement and third party disclosure requirement.

Total Annual Burden: 27,162 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Needs and Uses: The Commission is seeking extension (no change) to this information collection in order to obtain the full three year clearance from the OMB. This information collection contains reporting and third party disclosure requirements to resolve interference to public safety (*e.g.,* police, fire, and other emergency first responders) communications in the 800 MHz band that are cause by Cellular Radiotelphone and Enhanced Specialized Mobile Radio (ESMR) operators. After exploring all possible technical remedies, the Commission adopted a two-prong approach to resolving interference.

In the short-term, the Commission's rules will abate interference to the

extent possible. The most important of these rules imposes responsibility on the interfering carriers to remedy interference in a timely manner.

In the long-term, the Commission concluded that the entire 800 MHz band must be restructured. Band restructuring or reconfiguration refers to spectrally segregating public safety and ESMR operators as far as technically possible. To this end, Nextel Communications Inc. (Nextel) will secure a $2.5 billion letter (letters) of credit to pay for band reconfiguration. Without Nextel's support, public safety licensees could not afford the costs of relocating their systems. This information collection includes the following requirements: (1) Prior notification; (2) electronic database; (3) response to interference complaints; (4) clear and imminent danger; (5) relocation agreements; and (6) Transition Administrator.

The information collection requirements and third party disclosure requirements will be used by the Commission to ensure that Cellular/ESMR, Public Safety, Critical Infrastructure Industry (CII), and other 800 MHz licensees comply with interference mitigation and frequency relocation requirements in an orderly, timely, comprehensive fashion with no unnecessary delay.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–11645 Filed 6–14–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority

June 3, 2005.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Pub. L. No. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before August 15, 2005. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *pra@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Cathy Williams at (202) 418–2918 or via the Internet at *pra@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0707.

Title: Over-the-Air Reception Devices (OTARD).

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: State, local or tribal government.

Number of Respondents: 60.

Estimated Time per Response: 2-6 hours.

Frequency of Response: On occasion reporting requirement; Third party disclosure requirement.

Total Annual Burden: 224 hours.

Total Annual Cost: $9,050.

Privacy Impact Assessment: No impact(s).

Needs and Uses: Petitions for waivers of Section 207 rules are used by the Commission to determine whether the state, local or non-governmental regulation or restriction is unique in a way that justifies waiver of our rules prohibiting restrictions to the use of the over-the-air reception devices.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–11646 Filed 6–14–05; 8:45 am]

BILLING CODE 6712–10–P

FEDERAL COMMUNICATIONS COMMISSION

[WT Docket No. 02–55; DA 05–1546]

NPSPAC Regions Assigned to Wave 1 and Specific 800 MHz Reconfiguration Benchmark Compliance Dates

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: As part of the 800 MHz band reconfiguration process, the Commission stated that it would issue a public notice thirty days before reconfiguration is scheduled to start in each NPSPAC region. Each such public notice will specify a three-month voluntary negotiation period during which time identified licensees in the regions being reconfigured are encouraged to reach agreement with Nextel on the details of relocating. The voluntary negotiation period would be followed by a three-month mandatory negotiation period, if necessary. The Commission also stated that it would freeze the filing of certain 800 MHz applications for the regions being reconfigured when it issued a public notice announcing the date when voluntary negotiation of relocation agreements must be concluded. The Commission explained that this freeze is necessary in order to maintain a stable spectral landscape during the reconfiguration process in each region. Finally, the Commission noted that the start date for reconfiguration in the first NPSPAC region will also be the start date for computation of two interim reconfiguration benchmarks (eighteen and thirty months) and the start date for determining when reconfiguration must be completed (thirty-six months).

DATES: This notice announces that 800 MHz band reconfiguration shall commence on June 27, 2005.

FOR FURTHER INFORMATION CONTACT: Roberto Mussenden, *Roberto.Mussenden@FCC.gov,* Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau, (202) 418–0680, TTY (202) 418–7233.

SUPPLEMENTARY INFORMATION: This is a summary of a public notice released on May 27, 2005.

1. In July 2004, the Federal Communications Commission (FCC) adopted a *Report and Order* (69 FR 67823, November 22, 2004), which reconfigured the 800 MHz band to eliminate interference to public safety and other land mobile communication systems operating in the band. As specified in the *Report and Order,* the

band reconfiguration process is being overseen by a Transition Administrator (TA) which has provided the Commission with a plan detailing when band reconfiguration will commence in each of the fifty-five 800 MHz National Public Safety Planning Advisory Committee (NPSPAC) regions. On March 11, 2005, the Bureau approved the TA's basic 800 MHz band reconfiguration schedule, *i.e.,* the grouping of the NPSPAC regions into four waves (Waves 1–4) and starting the reconfiguration process in each wave on the dates recommended by the TA.

2. In a public notice released on May 27, 2005, the Commission announced that the 800 MHz band reconfiguration process for non-NPSPAC channels will start June 27, 2005, in the NPSPAC regions assigned to Wave 1. A list of NPSPAC regions assigned to Wave 1 is attached to this notice. Therefore, the three-month period during which non-NPSPAC 800 MHz licensees have the option of negotiating on a voluntary basis will end September 26, 2005, followed by a the three-month mandatory negotiation period that will end December 26, 2005.

3. The Commission also announced that, effective May 27, 2005, it froze the filing of 800 MHz applications for non-NPSPAC channels in Wave 1. The freeze applies to stations located in either (1) one of the NPSPAC regions assigned to Wave 1 or (2) an adjacent region but within 70 miles of the border of one of the Wave 1 regions. This freeze will last until thirty working days after the date for completion of mandatory negotiations as specified above, *i.e.,* until February 8, 2006. The freeze does not apply to modification applications filed to implement 800 MHz band reconfiguration, modification applications filed that do not change a 800 MHz frequency or expand a 800 MHz station's existing coverage area (*e.g.,* administrative updates), assignments/transfers, or renewal-only applications.

4. The release date of the May 27, 2005 public notice also established the eighteen, thirty and thirty-six month reconfiguration benchmark compliance dates as defined in the *Report and Order* and *Supplemental Order.* Therefore, Nextel Communications, Inc., must (i) relocate all but Nextel and SouthernLINC incumbents from Channels 1–120 in the first twenty NPSPAC regions scheduled for reconfiguration and (ii) initiate retuning negotiations with all NPSPAC licensees in those same regions by December 26, 2006, (eighteen month benchmark) and that all applicable systems must have commenced reconfiguration by December 26, 2007 (thirty month benchmark). The 800 MHz band reconfiguration must be completed by June 26, 2008 (thirty-six month benchmark).

5. To facilitate the 800 MHz reconfiguration process, the Commission has established the following new radio service codes for licenses that list 800 MHz band frequencies governed by part 90 of the Commission's Rules:

Site specific licenses:

- Public safety (conventional)—GE
- Public safety (trunked)—YE
- Business/Industrial/Land Transportation (conventional)—GJ
- Business/Industrial/Land Transportation (trunked)—YJ
- SMR (conventional)—GM and GL (The GL code is used only for applications listing both 800 MHz and 900 MHz frequencies)
- SMR (trunked)—YM and YL (The YL code is used only for applications listing both 800 MHz and 900 MHz frequencies)

Geographic area licenses:

ATTACHMENT—NPSPAC REGIONS ASSIGNED TO WAVE 1

NPSPAC Region	Description of Region [1]
6	California (Northern)
7	Colorado
8	NY City area (NY, NJ, & CT)
11	Hawaii
13	Illinois (except Southern Lake Michigan counties)
14	Indiana (except Southern Lake Michigan counties)
19	New England
20	Maryland, Northern VA & DC
27	Nevada
28	Eastern PA, DE & Southern NJ
35	Oregon
41	Utah
42	Virginia
45	Wisconsin (except Southern Lake Michigan counties)
54	Southern Lake Michigan (MI, WI, IL, & IN) [2]
*	Large non-public safety systems that cover multiple NPSPAC regions [3]

1 Regions that are only a portion of a state or states are defined by counties. A list of the counties in each of these regions can be accessed at *http://www.fcc.gov/Bureaus/Wireless/Orders/1998/fcc98191.txt.*

2 The counties in Michigan in Region 54 will be in Wave 4 because of border area issues. *See* TA Plan.

3 Large non-public safety systems that provide coverage beyond the border of NPSPAC regions in Wave 1 will have their entire system, including base stations located outside the boundaries of Wave 1 NPSPAC regions, reconfigured as part of the Wave 1 reconfiguration process.

- SMR, market area—YH and CY (The CY code is used only for applications listing both 800 MHz and 1.9 GHz frequencies)

6. The Commission's Universal Licensing System (ULS) will automatically update modification applications filed to implement 800 MHz band reconfiguration to show the appropriate new radio service code (*i.e.*, applicants should file using their current radio service codes). Once the radio service code has been changed on the license by the Commission, licensees filing subsequent applications concerning that license must use the new radio service code.

7. The Reconfiguration Plan filed by the TA is available on the Commission's 800 MHz band reconfiguration Web page at *http://www.800MHz.gov*. Questions concerning the plan, and other Transition Administrator matters, including whether your 800 MHz system must be relocated, should be directed to Brett Haan, BearingPoint, 1676 International Drive, McLean, VA 22102, *Brett.Haan@800ta.org*.

Federal Communications Commission.

Ramona Melson,

Chief of Staff, Public Safety and Critical Infrastructure Division, WTB.

[FR Doc. 05–11644 Filed 6–14–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2710]

Petitions For Reconsideration of Action in Rulemaking Proceedings

May 25, 2005.

Petitions for Reconsideration have been filed in the Commission's Rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of this document is available for viewing and copying in Room CY–B402, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI) (1–800–378–3160). Oppositions to these petitions must be filed by June 30, 2005. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions have expired.

Subject: In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers (CC Docket No. 01–338)

Implementation of the Local Competition Provisions of the Telecommunications Act of 1996 (CC Docket No. 96–98)

Deployment of Wireline Services Offering Advanced Telecommunications Capability (CC Docket No. 98–147)

Number of Petitions Filed: 1.

Subject: In the Matter of Review of Unbundled Access to Network Elements (WC Docket No. 04–313)

Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers (CC Docket No. 01–338)

Number of Petitions Filed: 1.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–11544 Filed 6–14–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2712]

Petitions For Reconsideration of Action in Rulemaking Proceedings

May 25, 2005.

Petitions for Reconsideration have been filed in the Commission's Rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of this document is available for viewing and copying in Room CY-B402, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI) (1–800–378–3160). Oppositions to these petitions must be filed by June 30, 2005. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions have expired.

Subject: In the Matter of Petition for Waiver of the Part 15 UWB Regulations Filed by the Multi-band OFDM Alliance Special Interest Group (ET Docket No. 04–352)

Number of Petitions Filed: 1.

Subject: In the Matter of Revision of Part 15 of the Commission's Rules Regarding Ultra-Wideband Transmission Systems

Number of Petitions Filed: 1.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–11547 Filed 6–14–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2713]

Petitions for Reconsideration of Action in Rulemaking Proceeding

May 25, 2005.

Petitions for Reconsideration have been filed in the Commission's Rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR section 1.429(e). The full text of this document is available for viewing and copying in Room CY–B402, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI) (1–800–378–3160). Oppositions to these petitions must be filed by June 30, 2005. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions have expired.

Subject: In the Matter of Developing a Unified Intercarrier Compensation Regime (CC Docket No. 01–92).

T-Mobile *et al.* Petition for Declaratory Ruling Regarding Incumbent LEC Wireless Termination Tariffs.

Number of Petitions Filed: 5.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–11549 Filed 6–14–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2714]

Petitions for Reconsideration of Action in Rulemaking Proceeding

June 3, 2005.

Petitions for Reconsideration have been filed in the Commission's Rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR section 1.429(e). The full text of this document is available for viewing and copying in Room CY–B402, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI) (1–800–378–3160). Oppositions to these petitions must be filed by June 30, 2005. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions have expired.

Subject: In the Matter of Amendment of Section 73.202(b) Table of Allotments FM Broadcast Stations (Evergreen, Alabama and Shalimar, Florida) (MB Docket No. 04–219).

Number of Petitions Filed: 1.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–11552 Filed 6–14–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 29, 2005.

A. Federal Reserve Bank of Chicago (Patrick M. Wilder, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. Ralph Mason and Brad Mason, both of Bourbon, Indiana; to acquire voting shares of The First State Bank of Bourbon, Indiana, Bourbon, Indiana.

Board of Governors of the Federal Reserve System, June 9, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 05–11766 Filed 6–14–05; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the

banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 8, 2005.

A. Federal Reserve Bank of Chicago (Patrick M. Wilder, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. Western Illinois Bancshares, Inc., Monmouth, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Midwest Bank of Western Illinois, Monmouth, Illinois.

Board of Governors of the Federal Reserve System, June 9, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 05–11767 Filed 6–14–05; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:30 a.m., Monday, June 20, 2005.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

FOR FURTHER INFORMATION CONTACT: Michelle A. Smith, Director, Office of Board Members; 202–452–2955.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Board of Governors of the Federal Reserve System, June 10, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 05–11870 Filed 6–13–05; 9:25 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request; Extension

AGENCY: Federal Trade Commission (''Commission'' or ''FTC'').

ACTION: Notice.

SUMMARY: The information collection requirements described below will be submitted to the Office of Management and Budget (''OMB'') for review, as required by the Paperwork Reduction Act (''PRA'') (44 U.S.C. 3501–3520). The FTC is seeking public comments on its proposal to extend through June 30, 2008, the current Paperwork Reduction Act clearances for information collection requirements contained in three Commission Rules. Those clearances expire on June 30, 2005.

DATES: Comments must be submitted on or before July 15, 2005.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to ''Paperwork Comment: FTC File No. P822108'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room H–159 (Annex J), 600 Pennsylvania Avenue, NW., Washington, DC 20580. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Alternatively, comments may be filed in electronic form (in ASCII format, WordPerfect, or Microsoft Word) as part of or as an attachment to e-mail messages directed to the following e-mail box: *PaperworkComment@ftc.gov*. If the comment contains any material for which confidential treatment is requested, it must be filed in paper form, and the first page of the document must be clearly labeled ''Confidential.'' [1]

All comments should additionally be submitted to: Office of Management and Budget, Attention: Desk Officer for the Federal Trade Commission. Comments should be submitted via facsimile to (202) 395–6974 because U.S. Postal Mail is subject to lengthy delays due to heightened security precautions.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments will be considered by the Commission and will be available to the public on the FTC web site, to the extent practicable, at *http://www.ftc.gov*. As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy at *http://www.ftc.gov/ftc/privacy.htm*.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information requirements for the Funeral Industry Practices Rule (''Funeral Rule'') should be addressed to Catherine Harrington-McBride, Attorney, Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, Room H–238, 600 Pennsylvania Ave., NW., Washington, DC 20580, (202) 326–2452. Requests for additional information or copies of the proposed information requirements for the Children's Online Privacy Protection Act Rule (''COPPA Rule'') should be addressed to Rona Kelner, (202) 326–2752, or Karen Muoio, (202) 326–2491, Federal Trade Commission, Bureau of Consumer Protection, Division of

[1] Commission Rule 4.2(d), 16 CFR 4.2(d). The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

Advertising Practices, 600 Pennsylvania Ave., NW., Mail Drop NJ–3212, Washington, DC 20580. Requests for additional information or copies of the proposed information requirements for the Gramm-Leach-Bliley Act Privacy Rule (''GLBA Privacy Rule'') should be addressed to Laura Berger, Attorney, Division of Financial Practices, Bureau of Consumer Protection, Federal Trade Commission, Room S–4429, 601 Pennsylvania Ave., NW., Washington, DC 20580, (202) 326–3224.

SUPPLEMENTARY INFORMATION: On March 9, 2005, the FTC sought comment on the information collection requirements associated with the Funeral Rule (OMB Control Number 3084–0025), the COPPA Rule (OMB Control Number 3084–0117), and the GLBA Privacy Rule (OMB Control Number 3084–0121). See 70 FR 11662. As discussed below, one comment relating to the Funeral Rule was received. Pursuant to the OMB regulations that implement the PRA (5 CFR Part 1320), the FTC is providing this second opportunity for public comment while seeking OMB approval to extend the existing paperwork clearance for the rule.

1. The Funeral Rule, 16 CFR Part 453 (OMB Control Number 3084–0025)

The Funeral Rule ensures that consumers who are purchasing funeral goods and services have accurate information about the terms and conditions (especially prices) for such goods and services. The Rule requires that funeral providers disclose this information to consumers and maintain records to facilitate enforcement of the Rule. The PRA clearance for the Funeral Rule was scheduled to expire on March 31, 2005. On February 7, 2005, the OMB granted the FTC's request for a short-term extension to June 30, 2005.

The Commission received only one comment on the information collection requirements attendant to the Funeral Rule. The commenter, Selected Independent Funeral Homes (''SIFH''), a trade association whose members include approximately 1500 independent, privately-owned funeral homes around the world, noted that it ''believes that the Commission's burden estimates are within accurate ranges.'' SIFH at 1. However, SIFH, citing a comment it submitted in the 1999 review of the Funeral Rule, expressed concern that because the Funeral Rule currently applies ''only to traditional funeral homes,'' the Rule's burdens ''disparately impact only a portion of an industry selling the same or similar goods or services.'' SIFH at 2. This concern addresses the scope of the Rule, not the PRA burden estimates

The estimated burden associated with the collection of information required by the Rule is 21,500 hours for recordkeeping, 104,545 hours for disclosures, and 43,000 hours for training, for a total of 169,000 hours (rounded to the nearest thousand). This estimate is based on the number of funeral providers (approximately 21,500),[2] the number of funerals annually (approximately 2.4 million),[3] and the time needed to fulfill the information collection tasks required by the Rule. The methodology followed in deriving burden estimates for the existing clearance is detailed in an April 11, 2002, **Federal Register** Notice that responded to a comment by the National Funeral Directors Association (''NFDA'') regarding the FTC's 2001 request for an extension of the clearance. *See* 67 FR 17691.

Recordkeeping: The Rule requires that funeral providers retain copies of price lists and statements of funeral goods and services selected by consumers. Based on a maximum average burden of one hour per provider per year for this task, the total burden for the 21,500 providers is 21,500 hours. This estimate is lower than FTC staff's 2002 estimate of 22,300 hours due to a decrease in the number of funeral providers.

Disclosure: The Rule requires that funeral providers: (1) Maintain current price lists for funeral goods and services, (2) provide written documentation of the funeral goods and services selected by consumers making funeral arrangements, and (3) provide information about funeral prices in response to telephone inquiries.

1. Maintaining current price lists requires that funeral providers revise their price lists from time to time throughout the year to reflect price changes. Staff estimates, consistent with its current clearance, that this task requires a maximum average burden of two and one-half hours per provider per year for this task. Thus, the total burden for 21,500 providers is 53,750 hours.

2. Staff retains its 2002 estimate that 13% of funeral providers prepare written documentation of funeral goods and services selected by consumers specifically due to the Rule's mandate. The original rulemaking record indicated that 87% of funeral providers provided written documentation of funeral arrangements, even absent the Rule's requirements.[4] The NFDA's 2002 comment indicates that even before the Rule became effective, nearly every funeral home already had been providing consumers with some kind of final statement in writing. NFDA stated that likely only the timing of the statement's issuance had changed as a result of the Rule. Nonetheless, staff believes it prudent to err, if at all, on the side of overestimating the burden imposed by the Rule.

According to the rulemaking record, these providers are typically the smallest funeral homes. The written documentation requirement can be satisfied through the use of a standard form (an example of which the FTC has provided to all funeral providers in its compliance guide).[5] Based on an estimate that these smaller funeral homes arrange, on average, approximately twenty funerals per year and that it would take each of them about three minutes to record prices for each consumer on the standard form, FTC staff estimates that the total burden associated with the written documentation requirement is one hour per provider not already in compliance, for a total of 2,795 hours [(21,500 funeral providers × 13%) × (20 statements per year × 3 minutes per statement)].

3. The Funeral Rule also requires funeral providers to answer telephone inquiries about the provider's offerings or prices. Industry data indicate that only about 12% of funeral purchasers make telephone inquiries, with each call lasting an estimated ten minutes. Thus, assuming that the average purchaser who makes telephone inquiries places one call per funeral to determine prices, the estimated burden is 48,000 hours (2.4 million funerals per year × 12% × 10 minutes per inquiry), a slight increase over the 46,000 hours estimated by staff in 2002 due to the

[2] The estimated number of funeral providers is from data provided on the National Funeral Directors Association (''NFDA'') Web site (*www.nfda.org*), which was accessed in January 2005.

[3] The estimated number of funerals annually is taken from the National Center for Health Statistics, *http://www.cdc.gov/nchs/*. According to NCHS, 2,443,387 deaths occurred in the United States in 2002, the most recent year for which final data is available. *See* National Vital Statistics Reports, vol. 53, no. 5 ''Deaths: Final Data for 2002,'' available at *http://www.cdc.gov/nchs/data/nvsr/nvsr53/nvsr53_05acc.pdf.*

[4] The original version of the Funeral Rule required that funeral providers retain a copy of and give each customer a separate ''Statement of Funeral Goods and Services Selected.'' The 1994 amendments to the Rule eliminated that requirement, allowing instead for such disclosures to be incorporated into a written contract, bill of sale, or other record of a transaction that providers use to memorialize sales agreements with customers.

[5] The FTC has provided its compliance guide to all funeral providers at no cost, and additional copies are available on the FTC Web site, *http://www.ftc.gov,* or by mail.

increase in the number of funerals per year. This burden likely will decline over time as consumers increasingly rely on the Internet for funeral price information.

In sum, the burden due to the Rule's disclosure requirements totals 104,545 hours (53,750 + 2,795 + 48,000).

Training: In addition to the recordkeeping and disclosure-related tasks noted above, funeral homes may also have training requirements specifically attributable to the Rule. While staff believes that annual training burdens associated with the Rule should be minimal because Rule compliance is generally included in continuing education requirements for licensing and voluntary certification programs, staff estimates that, industry-wide, funeral homes should incur no more than 43,000 hours related to training specific to the Rule each year. This estimate is consistent with staff's assumption for the current clearance that an ''average'' funeral home consists of approximately five employees (full-time and part-time employment combined), but with no more than four of them having tasks specifically associated with the Funeral Rule. Staff retains its estimate that each of the four employees (three directors and a clerical employee) per firm would each require one-half hour, at most, per year, for such training. Thus, total estimated time for training is 43,000 hours (4 employees per firm × ½ hour × 21,500 providers).

Estimated annual cost burden: $4,882,000, rounded to the nearest thousand ($3,654,000 in labor costs and $1,228,000 in non-labor costs).

Labor costs: Labor costs are derived by applying appropriate hourly cost figures to the burden hours described above. The hourly rates used below are averages.

Clerical personnel, at an hourly rate of $13, can perform the recordkeeping tasks required under the Rule. Based on the estimated hour burden of 21,500 hours, the estimated cost burden for recordkeeping is $279,500 ($13 per hour × 21,500 hours).

The two and one-half hours required of each provider, on average, to update price lists should consist of approximately one and one-half hours of managerial or professional time, at $27.50 per hour, and one hour of clerical time, at $13 per hour, for a total of $54.25 per provider[6] [($27.50 per hour × 1.5 hours) + ($13.00 per hour × 1 hour)]. Thus, the estimated total cost burden for maintaining price lists is $1,166,375 ($54.25 per provider × 21,500 providers).

The cost of providing written documentation of the goods and services selected by the consumer is 2,795 hours of managerial or professional time at approximately $27.50 per hour, or $76,862.50 (2,795 hours × $27.50 per hour).

The cost of responding to telephone inquiries about offerings or prices is 48,000 hours of managerial or professional time at $27.50 per hour, or $1,320,000 (48,000 hours × $27.50 per hour).

The cost of training licensed and non-licensed funeral home staff to comply with the Funeral Rule is two hours per funeral home, with four employees of varying ranks each spending one-half hour on training. Consistent with estimates in the current clearance, the Commission is assuming that three funeral directors, at hourly wages of $27.50, $20, and $15, respectively, as well as one clerical or administrative staff member, at $13 per hour, require such training, for a total burden of 43,000 hours (21,500 funeral homes × 2 hours total per establishment), and $811,625 [($27.50 + $20 + $15 + $13) × ½ hour per employee × 21,500 funeral homes].

The total labor cost of the three disclosure requirements imposed by the Funeral Rule is $2,563,237.50 ($1,166,375 + $76,862.50 + $1,320,000). The total labor cost for recordkeeping is $279,500. The total labor cost for disclosures, recordkeeping and training is $3,654,000 ($279,500 for recordkeeping + $811,625 for training + $2,563,237.50 for disclosures), rounded to the nearest thousand.

Capital or other non-labor costs: The Rule imposes minimal capital costs and no current start-up costs. The Rule first took effect in 1984 and the revised Rule took effect in 1994, so funeral providers should already have in place capital equipment to carry out tasks associated with Rule compliance. Moreover, most funeral homes already have access, for other business purposes, to the ordinary office equipment needed for compliance, so the Rule likely imposes minimal additional capital expense.

Compliance with the Rule, however, does entail some expense to funeral providers for printing and duplication of price lists. Assuming that two price lists per funeral/cremation are created by industry to adhere to the Rule, 4,800,000 copies per year are made for a total cost of $1,200,000 (2,400,000 funerals per year × 2 copies per funeral × $.25 per copy). In addition, the estimated 2,795 providers not already providing written documentation of funeral arrangements apart from the Rule will incur additional printing and copying costs. Assuming that those providers use the standard two-page form shown in the Compliance Guide, at twenty-five cents per page, at an average of twenty funerals per year, the added cost burden would be $27,950 (2,795 providers × 20 funerals per year × 2 pages per funeral × $.25). Thus, estimated non-labor costs are $1,228,000, rounded to the nearest thousand.

2. The COPPA Rule, 16 CFR Part 312 (OMB Control Number 3084–0117)

The COPPA Rule prohibits unfair and deceptive acts and practices in connection with the collection and use of personally identifiable information from and about children on the Internet.

Estimated annual hours burden: 2000 hours (rounded to the nearest thousand)

Disclosure Requirements: 1800 hours.

The COPPA Rule contains certain statutorily-required notice requirements, which constitute a ''collection of information'' under the PRA:

(a) The Rule requires each Web site and online service operator directed to children, and any Web site or online service operator with actual knowledge that it is collecting personal information from children, to provide notice of how it collects, uses, and discloses such information and, with exceptions, to obtain the prior consent of the child's parent in order to engage in such collection, use, and disclosure;

(b) The Rule requires the operator to provide the parent with notice of the specific types of personal information being collected from the child, to give the parent the opportunity to forbid the operator at any time from further collecting, using, or maintaining such information, and to provide reasonable means for the parent to obtain the information;

(c) The Rule prohibits a child's participation in a game, a prize offer, or other activity from being conditioned on the child's disclosure of more personal information than is ''reasonably necessary'' for the child to participate in that activity; and

(d) The Rule requires Web site and online service operators to establish procedures that protect the confidentiality, security, and integrity of personal information collected from children.

After consulting with the COPPA safe harbor programs and industry groups, the FTC staff retains its earlier estimate that roughly thirty new web entrants

[6] National Compensation Survey: Occupational Wages in the United States, July 2003, U.S. Department of Labor, Bureau of Labor Statistics (Aug. 2004) (''BLS National Compensation Survey'') (citing the mean hourly earnings for funeral directors as $21.30/hour), available at *http://www.bls.gov/ncs/ocs/sp/ncbl0636.pdf.* As in the past, staff has increased this figure on the assumption that the owner or managing director, who would be paid at a slightly higher rate, would be responsible for making pricing decisions.

each year will fall within the Rule's coverage. Web site operators that have previously created or adjusted their sites to comply with the Rule will incur no further burden associated with the Rule, unless they opt to change their policies and information collection in ways that will further invoke the Rule's provisions. Moreover, the staff believes that existing COPPA-compliant operators who introduce additional sites beyond those they already have created will incur minimal, if any, incremental PRA burden. This is because such operators already have been through the start-up phase and can carry over the results of that to the new sites they create.

Staff also retains its prior estimate that on average, new entrants will spend approximately sixty hours crafting a privacy policy, designing a mechanism to provide the required notice, and posting it online. Accordingly, the staff estimates that complying with the Rule's disclosure requirements will require approximately 1,800 hours (30 new web entrants × 60 hours per entrant). Consistent with prior estimates, FTC staff estimates that the time spent on compliance would be apportioned five to one between legal (lawyers or similar professionals) and technical (computer programmers) personnel. The staff therefore estimates that lawyers or similar professionals who craft privacy policies will account for 1,500 of the 1,800 hours required. Computer programmers responsible for posting the policy will account for the remaining 300 hours.

Voluntary Reporting Requirements for Safe Harbor Participants: 130 hours.

Operators can comply with the Rule by meeting the terms of industry self-regulatory guidelines that the Commission approves after notice and comment.[7] While the submission of industry self-regulatory guidelines to the agency is voluntary, the Rule includes specific reporting requirements that all safe harbor applicants must provide to receive Commission approval.

FTC staff retains its estimate that it would require, on average, 265 hours per new safe harbor program applicant to prepare and submit its safe harbor proposal in accordance with Section 312.12(c) of the Rule. Industry sources have confirmed recently that this estimate is reasonable and advised that all of this time would be attributable to the efforts of lawyers. Based on past experience and industry input, the staff believes that no more than one applicant every two years will submit a request. Thus, the burden attributable to this requirement would be approximately 130 hours per year (265 hours/2 years).

The staff believes that most of the records submitted in connection with a safe harbor request would be records that marketing and online industry representatives have kept in the ordinary course of business before the Rule was issued. Any incremental effort associated with maintaining the results of independent assessments under Section 312.10(d)(3) would also be in the normal course of business. Thus, in accordance with the regulations implementing the PRA, the burden estimate does not include effort expended for these activities. 5 CFR 1320.3(b)(2).

Accordingly, the staff estimates that total hours per year for the disclosure requirements affecting new web entrants and the reporting requirements for safe harbor applications would be approximately 2000 hours (rounded to the nearest thousand).

Labor costs: Labor costs are derived by applying appropriate hourly cost figures to the burden hours described above. The staff conservatively assumes hourly rates of $85 and $30, respectively, for lawyers or similar professionals and computer programmers.[8] Based on these inputs, the staff further estimates that the associated annual labor costs for new entrants would be $136,500 [(1,500 hours × $85 per hour for legal) + (300 hours × $30 per hour for computer programmers)] and for safe harbor applicants would be $11,050 (130 hours per year × $85 per hour), for a total labor cost of $148,000 (rounded to the nearest thousand).

Non-labor costs: Because Web sites will already be equipped with the computer equipment and software necessary to comply with the Rule's notice requirements, the sole costs incurred by the Web sites are the aforementioned estimated labor costs. Similarly, industry members should already have in place the means to retain and store the records that must be maintained under the Rule's safe harbor recordkeeping provisions, because they are likely to have been keeping these records independent of the Rule.

3. The GLBA Rule, 16 CFR Part 313 (OMB Control Number 3084–0121)

The GLBA Rule is designed to ensure that customers and consumers, subject to certain exceptions, will have access to the privacy policies of the financial institutions with which they conduct business. As mandated by the GLBA, 15 U.S.C. 6801–6809, the Rule requires financial institutions to disclose to consumers: (1) Initial notice of the financial institution's privacy policy when establishing a customer relationship with a consumer and/or before sharing a consumer's non-public personal information with certain nonaffiliated third parties; (2) notice of the consumer's right to opt out of information sharing with such parties; (3) annual notice of the institution's privacy policy to any continuing customer; and (4) notice of changes in the institution's practices on information sharing. These requirements are subject to the PRA. The Rule does not require recordkeeping.

Estimated annual hours burden: As noted in the original burden estimate for the GLBA Rule, determining the paperwork burden of the Rule's disclosure requirements is very difficult because of the highly diverse group of affected entities, consisting of financial institutions not regulated by a federal financial regulatory agency. *See* 15 U.S.C. 6805 (committing to the Commission's jurisdiction entities that are not specifically subject to another agency's jurisdiction).

The burden estimates represent the FTC staff's best assessment, based on its knowledge and expertise relating to the financial institutions subject to the Commission's jurisdiction under this law. To derive these estimates, staff considered the wide variations in covered entities. In some instances, covered entities may make the required disclosures in the ordinary course of business, apart from the GLBA Rule. In addition, some entities may use highly automated means to provide the required disclosures, while others may rely on methods requiring more manual effort. The burden estimates shown below include the time that may be necessary to train staff to comply with the regulations. These figures are averages based on staff's best estimate of the burden incurred over the broad spectrum of covered entities.

Staff retains its prior estimate of the number of the number of entities each year that will address the GLBA Rule for the first time (5,000) and its estimate of established entities already familiar with the Rule (100,000). While the

[7] *See* Section 312.10(c). Approved self-regulatory guidelines can be found on the FTC's Web site at *http://www.ftc.gov/privacy/safeharbor/shp.htm.*

[8] FTC staff estimates average legal costs at $85 hour, which is consistent with Commission experience with other information collection activities. The $30 estimate for computer programmers is based on the BLS National Compensation Survey, which indicates the mean hourly wage rate for computer programmers as $29.53.

number of established entities familiar with the Rule would theoretically increase each year with the addition of new entrants, staff retain its previous estimate of established entities in consideration of the fact that a number of the established entities will close in any given year, and the difficulty of establishing a more precise estimate. Staff's burden estimates for new entrants and established entities are detailed in the charts below.

Start-up hours and labor costs for new entities:

Event	Hourly wage and labor category	Hours per respondent	Labor cost per event* (per respondent)	Approx. number of respondents	Approx. total annual hrs.	Approx. total labor costs
Reviewing internal policies and developing GLBA-implementing instructions**.	$35.92 managerial/professional.	20	$718.40	5,000	100,000	$3,592,000
Creating disclosure document or electronic disclosure (including initial, annual, and opt out disclosures).	$13.77 clerical	5	68.85	5,000	25,000	344,250
	$28.37 professional/technical	10	283.70		50,000	1,418,500
Disseminating initial discloure (including opt out notices).	$13.77 clerical	15	206.55	5,000	75,000	1,032,750
	$28.37 professional/technical	10	283.70	50,000		1,418,500
Total					300,000	7,806,000

* Staff calculated labor costs by applying appropriate hourly cost figures to burden hours. The hourly rates used were based on mean wages for managerial/professional time (e.g., compliance evaluation and/or planning), professional/technical time (e.g., designing and producing notices, reviewing and updating information systems), and clerical time (e.g., reproduction tasks, filing, and, where applicable to the given event, typing or mailing). See BLS National Compensation Survey, Table 3, available at *http://www.bls.gov/ncs/ocs/sp/ncbl0635.pdf.* Labor cost totals reflect solely that of the commercial entities affected. Staff assumes that the time required of consumers to respond affirmatively to respondents' opt-out programs (be it manually or electronically) would be minimal.

** Reviewing instructions includes all efforts performed by or for the respondent to: Determine whether and to what extent the respondent is covered by an agency collection of information, understand the nature of the request, and determine the appropriate response (including the creation and dissemination of document and/or electronic disclosures).

Burden hours and costs for established entities: Burden for established entities already familiar with the Rule predictably would be less than for start-up entities because start-up costs, such as crafting a privacy policy, are generally one-time costs and have already been incurred. Staff's best estimate of the average burden for these entities is as follows:

Event	Hourly wage and labor category	Hours per respondent*	Approx. number of respondents**	Approx. total annual hours	Approx. total labor costs
Reviewing GLBA-implementing policies and practices.	$35.72 managerial/professional	4	70,000	280,000	$10,001,600
Disseminating annual disclosure	$13.77 clerical	15	70,000	1,050,000	14,458,500
	$28.37 professional/technical	5		350,000	9,929,500
Changes to privacy policies and related disclosure.	$13.77 clerical	15	1,000	15,000	206,550
	$28.37 professional/technical	5		5,000	141,850
Total				1,700,000	$34,738,000

* Staff calculated labor costs by applying appropriate hourly cost figures to burden hours. The hourly wage rates used were based on mean wages for managerial/professional time (e.g., compliance evaluation and/or planning), skilled professional/technical time (e.g., designing and producing notices, reviewing and updating information systems), and clerical time (e.g., reproduction tasks, filing, and, where applicable to the given event, typing or mailing). (Bureau of Labor Statistics, Table 3, July 2003; *http://www.bls.gov/ncs/ocs/sp/ncbl0635.pdf*). Consumers have a continuing right to opt-out, as well as a right to revoke their opt-out at any time. When a respondent changes its information sharing practices, consumers are again given the opportunity to opt-out. Again, staff assumes that the time required of consumers to respond affirmatively to respondents' opt-out programs (be it manually or electronically) would be minimal.

** The estimate of respondents is based on the following assumptions: (1) 100,000 respondents, approximately 70% of whom maintain customer relationships exceeding one year, (2) no more than 1% (1,000) of whom make additional changes to privacy policies at any time other than the occasion of the annual notice; and (3) such changes will occur no more often than once per year.

As calculated above, the total annual PRA burden for all affected entities in a given year would be 2,000,000 hours and $42,544,000.

Estimated Capital/Other Non-Labor Costs Burden: Staff estimates that the

capital or other non-labor costs associated with the document requests are minimal. Covered entities will already be equipped to provide written notices (e.g., computers with word processing programs, typewriters, copying machines, mailing capabilities). Most likely, only entities that already have on-line capabilities will offer consumers the choice to receive notices via electronic format. As such, these entities will already be equipped with the computer equipment and software necessary to disseminate the required disclosures via electronic means.

William Blumenthal,

General Counsel.

[FR Doc. 05–11748 Filed 6–14–05; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Notice of Meeting

In accordance with section 10(d) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2), announcement is made of a Health Care Policy and Research Special Emphasis Panel (SEP) meeting.

A Special Emphasis Panel is a group of experts in fields related to health care research who are invited by the Agency for Healthcare Research and Quality (AHRQ), and agree to be available, to conduct on an as needed basis, scientific reviews of applications for AHRQ support. Individual members of the Panel do not attend regularly-scheduled meetings and do not serve for fixed terms or a long period of time. Rather, they are asked to participate in particular review meetings which require their type of expertise.

Substantial segments of the upcoming SEP meeting listed below will be closed to the public in accordance with the Federal Advisory Committee Act, section 10(d) of 5 U.S.C., Appendix 2 and 5 U.S.C. 552b(c)(6). Grant applications for the Limited Competition Supplement Funds to Centers for Education and Research on Therapeutics (CERTs) for Developing Effectiveness Research Methodologies and Measures (RFA–HS–SUPP–1) are to be reviewed and discussed at this meeting. These discussions are likely to reveal personal information concerning individuals associated with the applications. This information is exempt from mandatory disclosure under the above-cited statutes.

SEP Meeting on: The Limited Competition Supplement Funds to Centers for Education and Research on Therapeutics (CERTs) for Developing Effectiveness Research Methodologies and Measures.

Date: July 29, 2006 (open on July 29 from 10 a.m. to 10:15 a.m. and closed for the remainder of the meeting).

Place: John M. Eisenberg Building, AHRQ Conference Center, 540 Gaither Road, Rockville, Maryland 20850.

Contact Person: Anyone wishing to obtain a roster of members, agenda or minutes of the non-confidential portions of this meeting should contact Mrs. Bonnie Campbell, Committee Management Officer, Office of Extramural Research, Education and Priority Populations, AHRQ, 540 Gaither Road, Room 2038, Rockville, Maryland 20850, Telephone (301) 427–1554.

Agenda items for this meeting are subject to change as priorities dictate.

Dated: June 7, 2005.

Carolyn M. Clancy,

Director.

[FR Doc. 05–11749 Filed 6–13–05; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 70 FR 30120–30121, dated May 25, 2005) is amended to reflect the establishment of the Office of Workforce and Career Development within the Office of the Director, Centers for Disease Control and Prevention.

Section C–B, Organization and Functions, is hereby amended as follows:

After the mission statement for the Office of the Chief Science Officer (CAS), insert the following:

Office of Workforce and Career Development (CAL). The mission of the Office of Workforce and Career Development (OWCD) is to improve health outcomes by ensuring a competent and sustainable workforce through excellence and innovation in workforce and career development. In carrying out its mission, OWCD: (1) Develops goals and objectives, and provides leadership, policy formation, scientific oversight, and guidance in program planning and development; (2) plans, directs, and manages CDC-wide training programs, and internship and fellowship programs; (3) provides consultation, technical assistance, and training on epidemiology, public health informatics, and prevention effectiveness to CDC/ATSDR, states, other agencies, other countries, and domestic and international organizations; (4) develops, designs, and implements an accredited comprehensive strategic human resource leadership development and career management program for all occupational series throughout CDC; organizational development, career management, employee development, and training; (5) maximizes economies of scale through systematic planning and evaluation of agency-wide training initiatives to assist CDC employees in achieving required competencies; (6) assists in the definition and analysis of training needs of public health workers, and develops and evaluates instructional products designed to meet those needs; (7) works with partners, internally and externally, to develop a strategic vision for the public health workforce; (8) collaborates with the Office of Strategy and Innovation (OSI) to develop workforce goals for all of CDC/ATSDR; (9) coordinates the Excellence in Learning Council to coordinate, inform, and share strategic vision for all of CDC's Coordinating Centers/Coordinating Offices (CC/CO); (10) conducts internal succession planning, forecasting services, and environmental scanning to ascertain both current and future public health workforce needs; and (11) in carrying out the above functions, collaborates, as appropriate, with the CDC Office of the Director, CDC CC/COs, domestic and international agencies and organizations.

Office of the Director (CAL1). (1) Provides leadership and overall direction for OWCD; (2) develops goal and objectives, and provides leadership, policy formation, scientific oversight, and guidance in program planning and development; (3) plans, coordinates, and develops research plans for OWCD; (4) provides scientific leadership OWCD research-related activities; (5) ensures adherence to CDC and HHS science-related policies, *e.g.,* ethical conduct of research, information security, extramural research, data sharing; and responds to allegations of scientific

misconduct; (6) provides training related to scientific policies; (7) ensures quality of scientific products developed by OWCD staff; (8) oversees and manages OWCD clearance process for scientific and technical documents; (9) oversees and manages OWCD Institutional Review Board-related activities and procedures; (10) develops policies governing OWCD's internal and external partnership activities; (11) coordinates all program reviews including all written and visual materials; (12) reviews, prepares, and coordinates legislation, Congressional testimony, and briefing materials; (13) develops proposed legislation, analyze bills, and provides for other legislative-related activities; (14) plans and prepares OWCD promotional and marketing materials; and (15) in carrying out the above functions, collaborates, as appropriate, with the CDC Office of the Director, CDC CC/COs, domestic and international agencies and organizations.

Management and Operations Activity (CAL13). (1) Provides leadership, oversight, and guidance in the management and operations of OWCD's programs; (2) plans, coordinates, and provides administrative management support, advice, and guidance to OWCD, involving the areas of fiscal management, personnel, travel, and other administrative services; (3) coordinates the development of the OWCD annual budget submission; (4) directs and coordinates the activities of the office; (5) conducts management analyses of OWCD programs and staff to ensure optimal utilization of resources and accomplishment of program objectives; (6) plans, allocates, and monitors OWCD resources; (7) maintains liaison and collaborates with other CDC components and external organizations in support of OWCD management and operations; (8) works closely with other federal agencies involved with OWCD interagency agreements; (9) provides fiscal management and stewardship of grants, contracts, and cooperative agreements; (10) develops and implements administrative policies, procedures, and operations, as appropriate for OWCD, and prepares special reports and studies, as required, in the administrative management areas; (11) provides coordinated services to OWCD for all conference/meeting management; (12) coordinates OWCD requirements relating to contracts, grants, cooperative agreements, reimbursable agreements, procurement, and materiel management; and (13) in carrying out the above functions, collaborates, as appropriate, with the CDC Office of the Director, CDC CC/COs, domestic and international agencies and organizations.

Strategic Workforce Activity (CAL14). (1) Develops strategic vision for training for CDC/ATSDR; (2) works with partners, internally and externally, to develop a strategic vision/plan for the public health workforce; (3) collaborates with the OSI to develop workforce goals for all of CDC/ATSDR; (4) co-chairs the Excellence in Learning Council to coordinate, inform, and share strategic vision for all of CDC's CC/COs; (5) works with the Excellence in Learning Council to develop and standardize learning policies for CDC/ATSDR; (6) conducts environmental scanning to ascertain both current and future public health workforce needs, and establishes priorities for the public health workforce based on the scanning; (7) provides forecasting services to anticipate the workforce needs; (8) determines the distribution and impact of best practices; (9) develops strategic plan for workout development at CDC and establishes system(s) for monitoring implementation and impact of this plan; (10) works with Atlanta Human Resources Center and the Office of the Chief Operating Officer (OCOO) to develop particular elements for strategic planning of internal succession planning, workforce retention, targeted recruitment, and change management; (11) oversees development and implementation of demonstration projects in the best practices for workforce development and assures dissemination of results of these projects; (12) establishes policies governing major learning initiatives, and new learning or partnership activities; (13) works collaboratively within the OWCD, and with CDC's Office of the Director, the Financial Management Office, the OCOO, and other components of CDC in planning, developing, and implementing policies related to training initiatives, including but not limited to, Individual Learning Accounts, Individual Development Plans, and loan repayment programs; (14) provides oversight or serves as a primary liaison for contracts relating to OWCD policy and partnership activities; (15) provides leadership, advocacy, and coordination of learning policies and partnership development activities; and (16) in carrying out the above functions, collaborates, as appropriate, with the CDC Office of the Director, CDC CC/COs, domestic and international agencies and organizations.

Career Development Division (CALC). (1) Plans, directs, and manages CDC-wide competency-based training and service programs, including the Epidemic Intelligence Service, the Preventive Medicine Residency, Public Health Informatics Fellowship, Prevention Effectiveness Fellowship, the CDC Experience, the Knight Journalism Fellowship, and the Public Health Prevention Service (PHPS) programs, as well as various internship and fellowship programs, developing new programs as strategically indicated; (2) develops and maintains standards, criteria, and core competencies for fellowship programs across the agency, ensuring scientific rigor and consistency with adult learning principles; (3) provides consultation, technical assistance, and training on epidemiology, public health informatics, and prevention effectiveness to CDC/ATSDR, states, other agencies, other countries, and domestic and international organizations; (4) provides epidemiologic, informatics, decision analysis, and health economics assistance to states, other agencies, and other countries through the field assignment of fellows; (5) assumes an active national and international leadership role in applied public health training and competency development for the disciplines of epidemiology, informatic, health economics, and decision sciences; (6) evaluates programs to ensure training is relevant and responsive to needs of fellows and health agencies; (7) develops and maintains a strategic plan for recruitment in accordance with the CDC workforce diversity goals; (8) evaluates performance and monitors the completion of program requirements by fellows; (9) receives, coordinates, and approves, as appropriate, requests for epidemiologic assistance (EPI–AIDs) and the expenditures of funds; (10) establishes capacity in the public health community to conduct and use epidemiologic, economic and decision analysis, and public health informatics; (11) provides and maintains leadership in the development, acquisition application, and evaluation of economic and decision science, and informatics methods for use in public health; (12) provides technical assistance in the area of economics and economics workforce development throughout CDC and other organizations; (13) disseminates economic and decision analysis, informatics, and preventive medicine training materials used in programs for adaptation and use by the health workforce; and (14) in carrying out the above functions, collaborates, as appropriate, with the CDC Office of the Director, CDC CC/COs, domestic and

international agencies and organizations.

Training and Curriculum Services Division (CALD). (1) Develops, designs, and implements a comprehensive strategic human resource leadership development and career management program for all occupational series throughout CDC; (2) develops and implements training strategies and activities that contribute to the agency's mission, accomplishments, and organizational performance; (3) maintains employee training records; (4) develops and administers intern and professional development programs, the long-term training program, and the mentoring program; (5) conducts comprehensive training needs assessment of CDC employees nationwide; (6) manages the classroom facilities including establishing policy and scheduling room usage; (7) provides analysis and data to correlate individual training with corporate strategic plans; (8) develops and maintains assessment tools to identify core competency requirements for each occupational series throughout the agency; (9) provides consultation, guidance, and technical assistance to managers and employees in organizational development, career management, employee development, and training; (10) develops and delivers educational programming to meet the identified needs of the public health workforce; (11) promotes, develops, and implements training needs assessment methodology to establish priorities for training interventions; (12) evaluates the efficiency and effectiveness of education/training needs assessments, development of training tools, implementation methods, and the impact of education/training on the quality of laboratory practice; (13) designs, produces, and delivers informational and instructional products; (14) registers participants of laboratory and public health courses offered by CDC; (15) maximizes economies of scale through systematic planning and evaluation of agency-wide training initiatives to assist CDC employees in achieving required competencies; (16) implements and monitors the CDC Training Management System (Learning Management System) for compliance with the Government Employees Training Act; (17) assists in the definition and analysis of training needs of public health workers, and develops and evaluates instructional products designed to meet those needs; (18) develops and maintains continuing education unit accreditation; (19) designs, produces and delivers a variety of visual materials and instructional products; (20) develops and conducts training to facilitate the timely transfer of newly emerging laboratory technology and standards for laboratory practice; (21) provides technical assistance, consultation, and training for trainers to improve the capacity of regional organizations and state health agencies to develop and maintain decentralized training networks for laboratory professionals; (22) fosters communications to assist regional, state, and local health agencies in the identification and utilization of laboratory resources in support of the Nation's health objectives; (23) provides technical assistance and consultation for programs at the national, state, regional and international levels to develop the leadership and management competencies of current and emerging public health officials, including, but not limited to, the National Public Health Leadership Institute and the Management Academy for Public Health; and (24) in carrying out the above functions, collaborates, as appropriate, with the CDC Office of the Director, CDC CC/COs, domestic and international agencies and organizations.

Dated: June 3, 2005.

William H. Gimson,

Chief Operating Officer, Centers for Disease Control and Prevention (CDC).

[FR Doc. 05–11795 Filed 6–14–05; 8:45 am]

BILLING CODE 4160–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: OCSE–157 Child Support Enforcement Program Annual Data Report.

OMB No.: 0970–0177.

Description: The information obtained from this form will be used to report Child Support Enforcement activities to the Congress as required by law, to complete incentive measure and performance indicators utilized in the program, and to assist the Office of Child Support Enforcement in monitoring and evaluating State Child Support programs.

Respondents: The 50 States, the Territories and the virgin Islands.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
OCSE–157	54	1	7.0	378.0

Estimated Total Annual Burden Hours: 378.0

Additional Information

Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: *grjohnson@acf.hhs.gov.*

OMB Comment

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Attn: Desk Officer for ACF, E-mail address: *Katherine_T._Astrich@omb.eop.gov.*

Dated: June 8, 2005.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 05–11753 Filed 6–14–05; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Administration on Children, Youth and Families, Child Care Bureau; Early Learning Opportunities Act (ELOA) Discretionary Grants

Announcement Type: Initial.

Funding Opportunity Number: HHS–2005–ACF–ACYF–LO–0028.

CFDA Number: 93.577.

Due Date For Letter of Intent or Preapplications: Letters of Intent are due June 30, 2005.

Due Date for Applications: Applications are due July 15, 2005.

Executive Summary: The Administration for Children and Families, Administration on Children, Youth and Families, Child Care Bureau (CCB) announces the availability of funds and request for applications for its FY 2005 Early Learning Opportunities Act (ELOA) grants. Funds will be awarded to eligible Local Councils that have been designated as the Local Council for the purposes of applying for an ELOA grant, as evidenced in a letter of designation, signed by an entity of local government, an Indian Tribe, Regional Corporation, or Native Hawaiian entity.

I. Funding Opportunity Description

Priority Area 1

Early Learning Opportunities Act (ELOA) Discretionary Grants

1. Description: The Administration for Children and Families, Administration on Children, Youth and Families, Child Care Bureau (CCB) announces the availability of funds and request for applications for its FY 2005 Early Learning Opportunities Act (ELOA) grants. Grants will be awarded to Local Councils that have been designated as the Local Council for the purposes of applying for an ELOA grant, as evidenced in a letter of designation, signed by an entity of local government, an Indian Tribe, Regional Corporation, or Native Hawaiian entity.

Local Councils, whose membership must represent a cross-section of early learning programs, and those affected by early learning programs, must develop a coordinated plan for addressing early learning and related needs identified through a local needs and resources assessment. The activities funded augment and coordinate with the services already in the community including child care, health, welfare, and early intervention. To ensure the effectiveness of activities supported with ELOA funds, Local Councils must establish outcome measures and evaluation methods for each proposed ELOA activity.

Since ELOA funds are intended to support Local Councils in exploring new ways communities can come together for a common purpose with the intent of building self-sustaining partnerships, ELOA may not be used to replace Federal, State, or local funds. Applicants must demonstrate how the activities supported through ELOA will be sustained once the grant ends. Similarly, eligible prior year ELOA grantees that apply, must show how a new grant, if received, would build on and not simply continue the activities funded through an earlier ELOA grant.

ELOA funds may only be used for young children from birth to the age of mandatory school attendance in the State where the child resides. Information on the mandatory school age in each State is available at *http://nces.ed.gov/programs/digest/d03/tables/dt151.asp.*

A. The Child Care Bureau

The Child Care Bureau (CCB) was established in 1995 to provide leadership to efforts to enhance the quality, affordability, and supply of child care. The CCB administers the Child Care and Development Fund (CCDF), a $4.8 billion child care program that includes funding for child care subsidies and activities to improve the quality and availability of child care. CCDF was created after amendments to Administration for Children and Families (ACF) child care programs by Title VI of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 consolidated four Federal child care funding streams including the Child Care and Development Block Grant, AFDC/JOBS Child Care, Transitional Child Care, and At-Risk Child Care. With related State and Federal funding, CCDF provides more than $11 billion a year to States, Territories, and Tribes to help low-income working families access child care services.

The Bureau works closely with ACF Regional Offices, States, Territories, and Tribes to assist with, oversee, and document implementation of new policies and programs in support of State, local, and private sector administration of child care services and systems. In addition, the Bureau collaborates extensively with other offices throughout the Federal government to promote integrated, family-focused services, and coordinated child care delivery systems. In all of these activities, the Bureau seeks to enhance the quality, availability, and affordability of child care services, support children's healthy growth and development in safe child care environments, enhance parental choice and involvement in their children's care, and facilitate the linkage of child care with other community services.

B. The Early Learning Opportunities Act (Pub. L. 106–554, 20 U.S.C. 9401, et seq.)

The Early Learning Opportunities Act (ELOA) was passed by Congress to award grants to States* to enable them to increase, support, expand, and better coordinate early learning opportunities for children and their families through local community organizations. The purposes of the Act are:

- To increase the availability of voluntary programs, services, and activities that support early childhood development, increase parent effectiveness, and promote the learning readiness of young children so that they enter school ready to learn; To support parents, child care providers, and caregivers who want to incorporate early learning activities into the daily lives of young children;
- To remove barriers to the provision of an accessible system of early childhood learning programs in communities throughout the United States;
- To increase the availability and affordability of professional development activities and compensation for caregivers and child care providers; and
- To facilitate the development of community-based systems of collaborative service delivery models characterized by resource sharing, linkages between appropriate supports, and local planning for services.

*The Act provides that if the amount appropriated for this program in any fiscal year is less than $150 million, the Department of Health and Human Services (DHHS) shall award grants on a competitive basis directly to Local Councils. DHHS is administering the program under this special provision in Fiscal Year (FY) 2005.

C. Allowable Early Learning Activities and Preferred Action

In general, Local Councils may use ELOA funds to pay for developing, operating, or enhancing voluntary early learning programs that are likely to produce sustained gains in early learning. The President has identified the enhancement of early childhood literacy as a priority for this administration. Therefore, for FY 2005

grants, the Child Care Bureau will only consider for funding those Local Councils that include in their applications activities for ''Enhancing Early Childhood Literacy'' (see Item 1 below), AND two or more of the other allowable activities listed below (*i.e.*, Items 2 through 8):

1. Enhancing early childhood literacy;
2. Helping parents, caregivers, child care providers, and educators increase their capacity to facilitate the development of cognitive, language comprehension, expressive language, social-emotional, and motor skills and promote learning readiness in young children;
3. Promoting effective parenting;
4. Developing linkages among early learning programs within a community and between early learning programs and health care services for young children;
5. Increasing access to early learning opportunities for young children with special needs including developmental delays, by facilitating coordination with other programs serving such young children;
6. Increasing access to existing early learning programs by expanding the days or times that the young children are served, by expanding the number of young children served, or by improving the affordability of the programs for low-income families;
7. Improving the quality of early learning programs through professional development and training activities, increased compensation, and recruitment and retention incentives for early learning providers;
8. Removing ancillary barriers to early learning, including transportation difficulties and absence of programs during nontraditional work times.

Construction and purchase of real property are not allowable activities or expenditures under this program

D. Definitions

Administrative Costs—means costs related to the overall management of the program, which do not directly relate to the provision of program services. These costs can be in both the personnel and non-personnel budget categories and include, but are not limited to: salaries of managerial and administrative staff, indirect costs, and other costs associated with administrative functions such as accounting, payroll services, or auditing.

Note: Not more than three percent of the total Federal share received by the Local Council through this announcement shall be used to pay for the ''administrative costs'' of the Local Council, including administrative costs of any sub-grantees and third parties in carrying out activities funded under the grant.

Budget Period—for the purposes of this announcement, budget period means the 17-month period of time for which ELOA funds are made available to a particular grantee (*i.e.*, beginning on September 30, 2005, and ending on February 28, 2007).

Caregiver—means an individual, including a relative, neighbor, or family friend, who regularly or frequently provides care, with or without compensation, for a child for whom the individual is not the parent.

Child Care Provider—means a provider of non-residential child care services (including center-based, family-based, and in-home child care services) for compensation who or that is legally operating under State law, and in compliance with applicable State and local requirements for the provision of child care services.

Early Learning—when used with respect to a program or activity, means learning designed to facilitate the development of cognitive, language, motor and social-emotional skills for, and to promote learning readiness in, young children (see definition of Young Child below).

Early Learning Program—means a program of services or activities that helps parents, caregivers, and child care providers to incorporate early learning into the daily lives of young children; or a program that directly provides early learning to young children.

Indian Tribe—has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

Local Council—means a Local Council established or designated by a local government, Indian Tribe, Regional Corporation, or Native Hawaiian entity to serve as applicant under this announcement serving one or more localities.

Local Government—means a county, municipality, city, town, township, borough, parish, select board, council of local governments (whether or not incorporated as a non-profit corporation under State law), intra-state district, a general purpose unit of local government, and any other interstate or regional unit of local government. ''Local Government'' does not mean any of the 50 States, or any agency or instrumentality of a State exclusive of local governments.

Locality—means a city, county, borough, township, or area served by another general purpose unit of local government, an Indian Tribe, a Regional Corporation, or a Native Hawaiian entity.

Native Hawaiian Entity—means a private non-profit organization that serves the interests of Native Hawaiians, and is recognized by the Governor of Hawaii for the purpose of planning, conducting, or administering programs (or parts of programs) for the benefit of Native Hawaiians.

Non-Federal Share—means that portion of project costs not borne by the Federal government. Under ELOA, the minimum required Non-Federal Share is 15 percent of the total cost of the approved project.

Parent—means a biological parent, an adoptive parent, a stepparent, a foster parent, or a legal guardian of, or a person standing in loco parentis to, a child.

Program Income—means gross income earned by the grantee or subgrantee that is directly generated by a grant supported activity, or earned only as a result of the award. 45 CFR Parts 74 and 92 include similar types of earned revenue, which qualify as program income. These include but are not limited to income from fees for services performed and the use of rental property.

Project Period—for the purposes of this announcement, project period means the 17-month period starting on September 30, 2005, and ending on February 28, 2007.

Real Property—means land, including land improvements, structures and appurtenances thereto, excluding movable machinery and equipment.

Regional Corporation—means a Native Alaska Regional Corporation; an entity listed in section 419(4)(B) of the Social Security Act (42 U.S.C. 619(4)(B)).

Training—means instruction in early learning that: (a) Is required for certification under State and local laws, regulations, and policies; (b) is required to receive a nationally or State recognized credential or its equivalent; (c) is received in a postsecondary education program focused on early learning or early childhood development in which the individual is enrolled; or (d) is provided, certified, or sponsored by an organization that is recognized for its expertise in promoting early learning or early childhood development.

Young Child—for purposes of this program, means any child from birth to the age of mandatory school attendance in the State where the child resides. Information on the compulsory school age in each State is available at *http://nces.ed.gov/programs/digest/d03/tables/dt151.asp.*

E. Protections

• Participation Not Required: No person, including a parent, shall be required to participate in any program of early childhood education, early learning, parent education, or developmental screening pursuant to the provisions of the Early Learning Opportunities Act.

• Rights of Parents: Nothing in the Early Learning Opportunities Act shall be construed to affect the rights of parents otherwise established in Federal, State, or local law.

• Particular Methods or Settings: No entity that receives funds under the Early Learning Opportunities Act shall be required to provide services under this announcement through a particular instructional method or in a particular instructional setting to comply with the ELOA.

• Nonduplication: No funds provided under this title shall be used to carry out an activity funded under another provision of law providing for Federal child care or early learning programs, unless an expansion of such activity is identified in the local needs assessment and performance goals under this announcement.

II. Award Information

Funding Instrument Type: Grant.

Anticipated Total Priority Area Funding: $35,712,000.

Anticipated Number of Awards: 30 to 55.

Ceiling on Amount of Individual Awards per project period: $1,000,000.

Floor on Amount of Individual Awards per project period: $250,000.

Average Projected Award Amount: $700,000.

Length of Project Periods: 17 months.

III. Eligibility Information

1. Eligible Applicants

Others (See Additional Information on Eligibility below.)

Additional Information on Eligibility

Required Letter(s) of Designation (Designation of Local Council by Local Government Entity)

An eligible applicant for an FY 2005 ELOA grant must be a Local Council designated, in writing, by a local government entity(ies) (or Indian Tribe, Regional Corporation, or Native Hawaiian entity) as the ''Local Council'' to serve one or more localities for the purpose of applying for an ELOA discretionary grant. The applicant must include a ''Letter of Designation'' in its application from an appropriate local government entity(ies) specifically designating it as the Local Council *for the purpose of applying for* an ELOA discretionary grant.

Because the structure and authority of local governments differ greatly across the nation, and even within a State, it is the responsibility of the applicant to determine and identify the appropriate entity(ies) of local government to designate them as the Local Council for an ELOA grant application. The local government entity(ies) making the designation must also clearly explain in its letter the source/nature of its authority to make such a designation on behalf of the locality(ies) it represents. Examples of officials that may be authorized to sign the Letter of Designation on behalf of the local government entity(ies) include but are not limited to: mayors, city managers, city councils, county boards of supervisors, county boards of commissioners, county administrators, Tribal Councils, boards of municipal officers, etc.

Appendices A and B are sample Letters of Designation that meet this purpose. Applicants are strongly encouraged to utilize the exact language and format provided in the sample Letters of Designation in order to meet this statutory eligibility requirement. Appendix A is a sample Letter of Designation for a Local Council when the services of a Fiscal Agent will not be used. Appendix B is a sample Letter of Designation for a Local Council that will use a Fiscal Agent.

In addition, applicants (*i.e.*, Local Councils) serving multiple localities (*e.g.*, cities, townships, boroughs, counties) are strongly encouraged to obtain a Letter of Designation from an appropriate entity of local government in each of the localities to be served.

Any applicant that fails to provide the required Letter(s) of Designation (Designation of Local Council by Local Government Entity(ies)) in its application will be considered non-responsive and will not be considered for funding under this announcement.

Required Statutory Membership Composition of a Local Council

To be eligible to receive a grant award, Local Councils *must* provide clear evidence in their application that their membership meets all of the following statutory composition requirements:

A. Representatives of local agencies that will be directly affected by early learning programs assisted under the ELOA;

B. Parents;

C. Other individuals concerned with early learning issues in the locality, such as representatives of entities providing elementary education, child care resource and referral services, early learning opportunities, child care, and health services; and

D. Other key community leaders, such as representatives of the local Chamber of Commerce or service organizations.

Local Councils *must* assign each of their members to one of the four categories above. For the purposes of Local Council membership, a single individual may not represent more than one category. Applications from Local Councils whose membership does not meet the above statutory composition requirements will be considered non-responsive and will not be considered for funding under this announcement. Local Councils are encouraged to include representatives from a diversity of perspectives including the involvement of faith-based and community organizations and providers.

Note: Appendix C is a sample roster for a Local Council. Please note that each member is clearly labeled with a letter, A—D. These four letters correspond with the four required statutory categories. To be considered eligible, Local Councils must include representatives of each of the four categories listed above (*i.e.*, ''A,'' ''B,'' ''C,'' and ''D'') at the time of submission of the application. Members of Local Councils that are identified with categories other than the four above will not be considered as meeting the statutory eligibility requirements for the composition of the Local Council.

Designation of a Fiscal Agent by the Local Council

A Local Council may enter into an agreement with an entity (including a faith-based or community organization) that has a demonstrated capacity for administering grants that is affected by, or concerned with, early learning issues, including the State, to serve as fiscal agent for the administration of grant funds received by the Local Council under ELOA. However, the Local Council, if selected to receive a grant, must be responsible for ensuring compliance with the activities and terms of the grant. Local Councils (and their Fiscal Agents) must be able to demonstrate organizational and fiscal capabilities to manage the grant.

If a Local Council uses a Fiscal Agent, the Fiscal Agent's name and Employer Identification Number (EIN) must also be included in the ''Letter of Designation'' (see Appendix B)

Geographic Location and Locality(ies) To Be Served

At the beginning of the project descriptions, applicants must describe the precise location of the project and boundaries of the area to be served

including the following: the State, county(ies), and specific locality(ies) (*e.g.*, city, town, township, borough, parish, or area served by another general purpose unit of local government, Indian Tribe, Alaska Native Regional Corporation, or Native Hawaiian entity).

In general, Local Councils in each of the 50 States of the United States, the District of Columbia, and the Commonwealth of Puerto Rico are eligible to apply under this announcement.

Set-Aside

The Act (Pub. L. 106–554, Section 809) provides that the Secretary shall reserve a portion of each year's total ELOA appropriation for Indian Tribes, Regional Corporations, and Native Hawaiian entities. ACF anticipates competitively awarding funds to at least one Local Council designated by an Indian Tribe and one Local Council designated by an Alaska Native Regional Corporation or Native Hawaiian entity, subject to receipt of applications meeting the requirements of the Act as reflected in this announcement. ACF is setting aside no less than one percent of the FY 2005 ELOA appropriation for these purposes.

2. Cost Sharing/Matching

Yes.

Grantees are required to meet a non-Federal share of the project costs, in accordance with Pub. L. 106–554, Section 807 (b)(2). Grantees must provide at least 15 percent of the total approved cost of the project. The total approved cost of the project is the sum of the ACF share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. For example, in order to meet the match requirements, a project with a total approved cost of $823,529, requesting $700,000 in ACF funds, must provide a non-Federal share of at least $123,529 (15 percent of total approved project cost of $823,529). Grantees will be held accountable for commitments of non-federal resources even if over the amount of the required match. Failure to provide the amount will result in disallowance of Federal funds. Lack of supporting documentation at the time of application will not impact the responsiveness of the application for competitive review.

Applicants are discouraged from providing non-Federal share resources in excess of the required 15 percent. Applicants that provide more than the required 15 percent will *not* receive any additional credit or points under the evaluation criteria.

The required 15 percent non-Federal share may be contributed in cash or in-kind, fairly evaluated, including facilities, equipment, or services, which may be provided from State or local public sources, or through donations from private entities. For the purposes of this paragraph, the term ''facilities'' includes the use of facilities, but, the term ''equipment'' means donated equipment and not the use of equipment.

Cost sharing/Matching is not an evaluation and/or preference criterion.

Please refer to Section IV for any pre-award requirements.

3. Other

- All applicants are required to include activities for ''enhancing early childhood literacy'' in their projects.
- ''Letter(s) of Support'' for the Local Council from a local government entity(ies) will not be considered as meeting the eligibility requirement for a ''Letter of Designation.''
- Applications from Indian Tribes and Regional Corporations must include a tribal resolution from the governing body of the Tribe(s) or Regional Corporation(s), designating a Local Council for the purpose of the ELOA grant. **Note**: The Tribal Council would not be considered a Local Council for ELOA unless its membership also meets the composition requirements (see Composition of Local Council.
- ''State'' governments do not meet the definition of ''Local Government'' (see Section I. D). Therefore, a Letter(s) of Designation from an entity(ies) of State Government will not be considered as meeting these eligibility requirements.
- Local Councils that were formed prior to the date of enactment of the ELOA and that meet the membership requirements below will be considered eligible for the purposes of applying for an ELOA grant if a Letter(s) of Designation from an appropriate entity(ies) of local government is submitted as part of the application. In localities where a Local Council does not exist, one may be formed and designated for the purposes of applying for an ELOA grant.
- FY 2003 ELOA grantees whose grant project period ends on or before September 29, 2005 are eligible to apply for a FY 2005 grant under this program announcement. **Note:** The project period for all grantees is noted in Block 9 of their ''Financial Assistance Award'' document.
- To be considered eligible for a new award, current ELOA grantees may not have a pending request to extend their existing ELOA grant project period beyond September 29, 2005.
- The 40 Local Councils (and the localities served by those Local Councils) that received FY 2004 ELOA grants will not be considered for FY 2005 awards under this announcement.
- Only Local Councils, not individuals or individual organizations/agencies, are eligible to apply under this announcement.

All applicants must have a Dun & Bradstreet number. On June 27, 2003 the Office of Management and Budget published in the **Federal Register** a new Federal policy applicable to all Federal grant applicants. The policy requires Federal grant applicants to provide a Dun & Bradstreet Data Universal Numbering System (DUNS) number when applying for Federal grants or cooperative agreements on or after October 1, 2003. The DUNS number will be required whether an applicant is submitting a paper application or using the government-wide electronic portal (*www.Grants.gov*). A DUNS number will be required for every application for a new award or renewal/continuation of an award, including applications or plans under formula, entitlement and block grant programs, submitted on or after October 1, 2003.

Please ensure that your organization has a DUNS number. You may acquire a DUNS number at no cost by calling the dedicated toll-free DUNS number request line on 1–866–705–5711 or you may request a number on-line at *http://www.dnb.com.*

Non-profit organizations applying for funding are required to submit proof of their non-profit status. Proof of non-profit status is any one of the following:

- A reference to the applicant organization's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in the IRS Code.
- A copy of a currently valid IRS tax exemption certificate.
- A statement from a State taxing body, State attorney general, or other appropriate State official certifying that the applicant organization has a non-profit status and that none of the net earning accrue to any private shareholders or individuals.
- A certified copy of the organization's certificate of incorporation or similar document that clearly establishes non-profit status.
- Any of the items in the subparagraphs immediately above for a State or national parent organization and a statement signed by the parent organization that the applicant

organization is a local non-profit affiliate.

Private, non-profit organizations are encouraged to submit with their applications the survey located under ''Grant Related Documents and Forms,'' ''Survey for Private, Non-Profit Grant Applicants,'' titled, ''Survey on Ensuring Equal Opportunity for Applicants,'' at: *http://www.acf.hhs.gov/programs/ofs/forms.htm.*

Disqualification Factors: Applications that exceed the $1,000,000 ceiling amount will be considered non-responsive and will not be eligible for funding under this announcement.

Any application that fails to satisfy the deadline requirements referenced in Section IV.3 will be considered non-responsive and will not be considered for funding under this announcement.

Any applicant that fails to provide the required Letter(s) of Designation (Designation of Local Council by Local Government Entity(ies)) in its application will be considered non-responsive and will not be considered for funding under this announcement. (See Section III.1. Additional Information on Eligibility and Appendices A and B).

Applications from Local Councils whose membership do not meet the statutory composition requirements will be considered non-responsive and will not be considered for funding under this announcement. (See Section III.1. Additional Information on Eligibility and Appendix C).

IV. Application and Submission Information

1. Address To Request Application Package

ACYF Operations, The Dixon Center, Inc, ELOA/CCB, 118 Q Street NE., Washington, DC 20002–2132, Phone: 866–796–1591, E-mail: *CCB@dixongroup.com.*

2. Content and Form of Application Submission

Applicants must submit one signed original and two copies of the application, including all attachments, to the application receipt point specified above. The original copy of the application must have original signatures, signed in blue ink. The original must be stapled (back and front) in the upper left corner. Rubber bands may be used to secure the pages of the two copies. The original application and the two copies must be submitted in a single package. Applicants have the option of omitting from the application copies (not the original) specific salary rates or amounts for individuals specified in the application budget.

Each application will be duplicated, therefore, please do not use or include colored paper, colored ink, separate covers, binders, clips, tabs, plastic inserts, over-sized paper, videotapes, or any other items that cannot be easily duplicated on a photocopy machine with an automatic feed. Do not bind, clip, staple, or fasten in any way separate subsections of the application, including the supporting documentation. Applicants are advised that a copy (not the original) of the application as submitted will be reproduced by the Federal government for review by the panel of evaluators.

Letters of Intent: Applicants are strongly encouraged to notify Ms. Taryonka Reid at the Child Care Bureau by fax (202–690–5600) by June 30, 2005. Your fax should include the following information: number and title of this announcement (required); the name and address of the Local Council (required) and Fiscal Agent (if known); and your contact person's name, phone number, fax number, and email address.

Letter of Intent information will be used to determine the number of expert reviewers needed to evaluate applications and to update the mailing list for future program announcements. Do not include a description of your proposed project. Failure to submit a Letter of Intent will not impact eligibility to submit an application and will not disqualify an application from competitive review based on non-responsiveness.

A complete application consists of the following items in the order listed:

Application for Federal Assistance (Standard Form 424, Rev. 9–2003). Follow the instructions on the back of the form. In Item 5 on the SF–424, enter the name of the applicant [Local Council]. However, if the Local Council is not incorporated or does not have an Employer Identification Number (EIN) issued by the Internal Revenue Service, the name of its fiscal agent must be entered followed by ''on behalf of the [name of Local Council]''. For example: Caring County Community Services on behalf of the Early Childhood Alliance Local Council. Enter the EIN of the Local Council, or if applicable, its Fiscal Agent, in Item 6. The EIN entered in Item 6 must be the number assigned to the entity identified in Item 5. In Item 8 on the SF–424, check ''New.'' In Item 10, clearly identify the Catalog of Federal Domestic Assistance program title and number (*i.e.*, Early Learning Opportunities Act, 93.577). A signature on the application constitutes an assurance that the applicant will comply with the relevant Departmental regulations contained in 45 CFR Part 74 or Part 92. The SF–424 must be signed by an individual authorized to act for the Local Council (*i.e.*, Chair of the Local Council) and to assume responsibility for the obligations imposed by terms and conditions of the grant award.

Budget Information Non-Construction Programs (Standard Form 424A). Follow the instructions on the back of the form.

Assurances Non-Construction Programs (Standard Form 424B). Form must be signed by a duly authorized representative of the applicant Local Council.

Certification Regarding Environmental Tobacco Smoke. By signing and submitting the application, applicants are providing this certification and need not mail back the certification with the application.

Certification Regarding Lobbying. Applicants must include an executed Certification Regarding Lobbying when applying for an award in excess of $100,000.

Cover Letter. Applicants must include a Cover Letter that includes the program announcement number and contact information for the applicant. The letter must be signed by the Chair of the Local Council to acknowledge responsibility for the obligations imposed by terms and conditions of the grant award.

Required Letter of Designation for the Local Council. Applicants must include a signed Letter(s) of Designation for the Local Council from a local government entity(ies) that explains its authority to make such a designation and includes the required information on the membership composition of the Local Council. (See Section III.1. Additional Information on Eligibility and Appendices A and B)

Note: ''Letter(s) of Support'' for the Local Council from a local government entity(ies) will not be considered as meeting the requirements for a Letter of Designation. (See Section I.D.)

Required Statutory Composition of the Local Council. Please see Section III.1. and Appendix C, which is a sample roster of a Local Council with each member's role identified only as A, B, C, or D; no other codes meet the statutory composition requirements.

Tribal Resolution (if applicable). Fully-executed Tribal Resolution including: resolution number, date, voting information, and authorized signatures.

Table of Contents

A Project Description Summary/Abstract (one page maximum). Clearly identify this page with the applicant's

name (Local Council) as shown in Item 5 on the SF–424 (e.g., Caring County Community Services on behalf of the Early Childhood Alliance Local Council), identify the title of the proposed project as shown in Item 11 (e.g., Building Resources for Early Learning Opportunities in Caring County), and the service area as shown in Item 12 of the SF–424 (e.g., Caring County). The Project Description Summary/Abstract must not exceed 300 words. The first paragraph must describe the precise location of the project and the boundaries of the area to be served including the following: The State, county(ies), specific locality(ies) (e.g., city, county, borough, township, parish, etc.), and/or region(s). Care should be taken to produce a Project Summary/Abstract that accurately and concisely reflects the proposed project. It should briefly describe the objectives of the project, the approach to be used, and the results and benefits expected. The Project Summary/Abstract must also clearly state which of the eight allowable ELOA activities are included in the project.

Note: All applicants are required to include activities for ''enhancing early childhood literacy'' in their projects.

The Project Narrative. The applicant is strongly encouraged to use the evaluation criteria to organize its response. Specific information should be provided that addresses all components of each criterion. Local Councils receiving assistance under the ELOA shall ensure that programs, services, and activities assisted under this program, which customarily require a payment for such programs, services, or activities, adjust the cost of such programs, services, and activities provided to the individual or the individual's child based on the individual's ability to pay.

It is in the applicant's best interest to ensure that the project description is easy to read, logically developed in accordance with the evaluation criteria, and adheres to recommended page limitations. In addition, the applicant should be mindful of the importance of preparing and submitting applications using language, terms, concepts, and descriptions that are generally known to the field of early learning as defined under this announcement. The pages of the project description must be double-spaced, printed in black only, printed on only one side, with no less than one-inch margins, and numbered. Applicants are strongly encouraged to limit this portion of their application to no more than 100 pages.

Appendices. The recommended maximum number of pages for supporting documentation is 50 numbered pages. These documents might include excerpts from the needs and resources assessment, resumes/job descriptions, photocopies of news clippings, documents related to the involvement and participation of the Local Council, and evidence of its efforts to coordinate early care and education services at the local level including letters of support and/or third-party agreements.

You may submit your application to us in either electronic or paper format. To submit an application electronically, please use the *www.Grants.gov/Apply* site. If you use Grants.gov, you will be able to download a copy of the application package, complete it off-line, and then upload and submit the application via the Grants.gov site. ACF will not accept grant applications via email or facsimile transmission.

Please note the following if you plan to submit your application electronically via Grants.gov:

- Electronic submission is voluntary, but strongly encouraged.
- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation. We strongly recommend that you do not wait until the application deadline date to begin the application process through Grants.gov.
- We recommend you visit Grants.gov at least 30 days prior to filing your application to fully understand the process and requirements. We encourage applicants who submit electronically to submit well before the closing date and time so that if difficulties are encountered an applicant can still send in a hard copy overnight. If you encounter difficulties, please contact the Grants.gov Help Desk at 1–800–518–4276 to report the problem and obtain assistance with the system.
- To use Grants.gov, you, as the applicant, must have a DUNS Number and register in the Central Contractor Registry (CCR). You should allow a minimum of five days to complete the CCR registration.
- You will not receive additional point value because you submit a grant application in electronic format, nor will we penalize you if you submit an application in paper format.
- You may submit all documents electronically, including all information typically included on the SF 424 and all necessary assurances and certifications.
- Your application must comply with any page limitation requirements described in this program announcement.
- After you electronically submit your application, you will receive an automatic acknowledgement from Grants.gov that contains a Grants.gov tracking number. The Administration for Children and Families will retrieve your application from Grants.gov.
- We may request that you provide original signatures on forms at a later date.
- You may access the electronic application for this program on www.Grants.gov
- You must search for the downloadable application package by the CFDA number.

Applicants that are submitting their application in paper format should submit an original and two copies of the complete application. The original and each of the two copies must include all required forms, certifications, assurances, and appendices, be signed by an authorized representative, have original signatures, and be submitted unbound.

Private, non-profit organizations are encouraged to submit with their applications the survey located under ''Grant Related Documents and Forms,'' ''Survey for Private, Non-Profit Grant Applicants,'' titled, ''Survey on Ensuring Equal Opportunity for Applicants,'' at: *www.acf.hhs.gov/programs/ofs/forms.htm.*

Standard Forms and Certifications: The project description should include all the information requirements described in the specific evaluation criteria outlined in the program announcement under Section V Application Review Information. In addition to the project description, the applicant needs to complete all the standard forms required for making applications for awards under this announcement.

Applicants seeking financial assistance under this announcement must file the Standard Form (SF) 424, Application for Federal Assistance; SF–424A, Budget Information—Non-Construction Programs; SF–424B, Assurances—Non-Construction Programs. The forms may be reproduced for use in submitting applications. Applicants must sign and return the standard forms with their application.

Applicants must furnish prior to award an executed copy of the Standard Form LLL, Certification Regarding Lobbying, when applying for an award in excess of $100,000. Applicants who have used non-Federal funds for lobbying activities in connection with receiving assistance under this announcement shall complete a

disclosure form, if applicable, with their applications. Applicants must sign and return the certification with their application.

Applicants must also understand they will be held accountable for the smoking prohibition included within P.L. 103–227, Title XII Environmental Tobacco Smoke (also known as the PRO-KIDS Act of 1994). A copy of the **Federal Register** notice which implements the smoking prohibition is included with the forms. By signing and submitting the application, applicants are providing the certification and need not mail back the certification with the application.

Applicants must make the appropriate certification of their compliance with all Federal statutes relating to nondiscrimination. By signing and submitting the applications, applicants are providing the certification and need not mail back the certification form. Complete the standard forms and the associated certifications and assurances based on the instructions on the forms. The forms and certifications may be found at: *http://www.acf.hhs.gov/programs/ofs/forms.htm.*

Please see Section V.1. Criteria, for instructions on preparing the full project description.

3. Submission Dates and Times

Letters of Intent Due Date: June 30, 2005.

Application Due Date: July 15, 2005.

Explanation of Due Dates: The closing date for submission of applications is referenced above. Mailed applications postmarked after the closing date will be classified as late.

Deadline: Mailed applications shall be considered as meeting an announced deadline if they are either received on or before the deadline date or sent on or before the deadline date and received by ACF in time for the independent review referenced in Section IV.6.

Applicants must ensure that a legibly dated U.S. Postal Service postmark or a legibly dated, machine produced postmark of a commercial mail service is affixed to the envelope/package containing the application(s). To be acceptable as a proof of timely mailing, a postmark from a commercial mail service must include the logo/emblem of the commercial mail service company and must reflect the date the package was received by the commercial mail service company from the applicant. Private Metered postmarks shall not be acceptable as proof of timely mailing. (Applicants are cautioned that express/overnight mail services do not always deliver as agreed.)

Applications hand carried by applicants, applicant couriers, or by other representatives of the applicant shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 8:00 a.m. and 4:30 p.m. ET, at the address referenced in Section IV.6., between Monday and Friday (excluding Federal holidays). Applicants are cautioned that express/overnight mail services do not always deliver as agreed.

ACF cannot accommodate transmission of applications by fax. Therefore, applications transmitted to ACF by fax will not be accepted regardless of date or time of submission and time of receipt.

Late applications: Applications which do not meet the criteria above are considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition.

Extension of deadlines: ACF may extend application deadlines when circumstances such as acts of God (floods, hurricanes, etc.) occur, or when there are widespread disruptions of mail service, or in other rare cases. Determination to extend or waive deadline requirements rests with the Chief Grants Management Officer.

Receipt acknowledgement for application packages will be provided to applicants who submit their package via mail, courier services, or by hand delivery. However, applicants will receive an electronic acknowledgement for applications that are submitted via *http://www.Grants.gov.*

Other: For the purposes of this announcement, please note that all references to ''Letters of Intent due dates'' and ''Application due dates'' refer to a *postmark* deadline.

Checklist: You may use the checklist below as a guide when preparing your application package.

What to submit	Required content	Required form or format	When to submit
Letter of Intent	See Section IV.2	Found in Section IV.2	June 30, 2005.
Table of Contents	See Section IV.2	Found in Section IV.2	By application due date.
Project Abstract	See Sections IV.2 and V	Found in Sections IV.2 and V	By application due date.
Project Narrative	See Sections IV.2 and V	Found in Sections IV.2 and V	By application due date.
SF–424	See Section IV.2	See *http://www.acf.hhs.gov/programs/ofs/forms.htm*	By application due date.
SF–424A	See Section IV.2	See *http://www.acf.hhs.gov/programs/ofs/forms.htm*	By application due date.
Assurances	See Section IV.2	See *http://www.acf.hhs.gov/programs/ofs/forms.htm*	By application due date.
Support Letters	See Section V	Found in Section V	By application due date.
Non-Federal Commitment Letters.	See Section V	Found in Section V	By application due date.
Proof of Non-Profit Status	See Section III.3	See *http://www.acf.hhs.gov/programs/ofs/forms.htm*	By date of award.
Letter of Designation for the Local Council (and Fiscal Agent, if appropriate) from an entity(ies) of local government.	See Section III.1. and Appendices A & B.	Appendix A must be used by Local Councils NOT using a Fiscal Agent. Appendix B must be used by Local Councils using a Fiscal Agent.	By application due date.
Composition of Local Council.	See Section III.1. and Appendix C.	Found in Section III.1. for eligibility requirements and Appendix C for appropriate format.	By application due date.
Tribal Resolution, if applicable.	See Section IV.2	Found in Section IV	By application due date.
SF-LLL Certification Regarding Lobbying.	See Section IV.2	See *http://www.acf.hhs.gov/programs/ofs/forms.htm*	By date of award.
Certification Regarding Environmental Tobacco Smoke.	See Section IV.2	See *http://www.acf.hhs.gov/programs/ofs/forms.htm*	By date of award.

Additional Forms: Private, non-profit organizations are encouraged to submit with their applications the survey located under ''Grant Related Documents and Forms,'' ''Survey for Private, Non-Profit Grant Applicants,'' titled, ''Survey on Ensuring Equal Opportunity for Applicants,'' at: *http://www.acf.hhs.gov/programs/ofs/forms.htm.*

What to submit	Required content	Location	When to submit
Survey for Private, Non-Profit Grant Applicants.	See form	May be found on *http://www.acf.hhs.gov/programs/ofs/forms.htm.*	By application due date.

4. Intergovernmental Review

This program is not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' or 45 CFR part 100, ''Intergovernmental Review of Department of Health and Human Services Programs and Activities.

5. Funding Restrictions

Grant awards will not allow reimbursement of pre-award costs. Construction and purchase of real property are not allowable activities or expenditures under this program.

Not more than three percent of the total Federal share received by the Local Council through this announcement shall be used to pay for the administrative costs of the Local Council, including the administrative costs of any of its sub-grantees and third parties, in carrying out activities funded under the grant.

Local Councils receiving assistance under the ELOA shall ensure that programs, services, and activities assisted under this program, which customarily require a payment for such programs, services, or activities, adjust the cost of such programs, services, and activities provided to the individual or the individual's child based on the individual's ability to pay.

6. Other Submission Requirements

Submission by Mail: An applicant must provide an original application with all attachments, signed by an authorized representative and two copies. The application must be postmarked to the address below on or before the closing date. Applications should be mailed to: ACYF Operations Center, c/o The Dixon Group, Inc., ELOA/CCB, 118 Q Street, NE., Washington, DC 20002–2132.

Hand Delivery: An applicant must provide an original application with all attachments signed by an authorized representative and two copies. The application must be received at the address below by 4:30 p.m. eastern time on or before the closing date. Applications that are hand delivered will be accepted between the hours of 8 a.m. to 4:30 p.m. eastern time, Monday through Friday. Applications should be delivered to: c/o The Dixon Group, Inc., ELOA/CCB, 118 Q Street, NE., Washington, DC 20002–2132, Attention: ACYF Operations Center.

Electronic Submission: http://www.Grants.gov. Please see section IV. 2 Content and Form of Application Submission, for guidelines and requirements when submitting applications electronically.

V. Application Review Information

The Paperwork Reduction Act of 1995 (Pub. L. 104–13)

Public reporting burden for this collection of information is estimated to average 25 hours per response, including the time for reviewing instructions, gathering and maintaining the data needed and reviewing the collection information.

The project description is approved under OMB control number 0970–0139 which expires 4/30/2007.

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.

1. Criteria

Purpose

The project description provides a major means by which an application is evaluated and ranked to compete with other applications for available assistance. The project description should be concise and complete and should address the activity for which Federal funds are being requested. Supporting documents should be included where they can present information clearly and succinctly. In preparing your project description, information responsive to each of the requested evaluation criteria must be provided. Awarding offices use this and other information in making their funding recommendations. It is important, therefore, that this information be included in the application in a manner that is clear and complete.

General Instructions

ACF is particularly interested in specific project descriptions that focus on outcomes and convey strategies for achieving intended performance. Project descriptions are evaluated on the basis of substance and measurable outcomes, not length. Extensive exhibits are not required. Cross-referencing should be used rather than repetition. Supporting information concerning activities that will not be directly funded by the grant or information that does not directly pertain to an integral part of the grant funded activity should be placed in an appendix. Pages should be numbered and a table of contents should be included for easy reference.

Introduction

Applicants required to submit a full project description shall prepare the project description statement in accordance with the following instructions while being aware of the specified evaluation criteria. The text options give a broad overview of what your project description should include while the evaluation criteria identifies the measures that will be used to evaluate applications.

Project Summary/Abstract

Provide a summary of the project description (a page or less) with reference to the funding request.

Objectives and Need for Assistance

Clearly identify the physical, economic, social, financial, institutional, and/or other problem(s) requiring a solution. The need for assistance must be demonstrated and the principal and subordinate objectives of the project must be clearly stated; supporting documentation, such as letters of support and testimonials from concerned interests other than the applicant, may be included. Any relevant data based on planning studies should be included or referred to in the endnotes/footnotes. Incorporate demographic data and participant/beneficiary information, as needed. In developing the project description, the applicant may volunteer or be requested to provide information on the total range of projects currently being conducted and supported (or to be initiated), some of which may be

outside the scope of the program announcement.

Results or Benefits Expected

Identify the results and benefits to be derived.

For example, explain how your proposed project will achieve the specific goals and objectives you have set; specify the number of children and families to be served, and how the services to be provided will be funded consistent with the local needs and resources assessment. Or, explain how the expected results will benefit the population to be served in meeting its needs for early learning services and activities. What benefits will the families, children, and child care providers derive from these services? How will the services help them? What lessons will be learned which might help other agencies and organizations that are addressing the needs of a similar client population?

Approach

Outline a plan of action that describes the scope and detail of how the proposed work will be accomplished. Account for all functions or activities identified in the application. Cite factors that might accelerate or decelerate the work and state your reason for taking the proposed approach rather than others. Describe any unusual features of the project such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvement.

Provide quantitative monthly or quarterly projections of the accomplishments to be achieved for each function or activity in such terms as the number of people to be served and the number of activities accomplished. For example, for any project that will include informal caregivers, including friends, family and in-home child care providers, or caregivers who are somewhat isolated, such as child care providers who operate alone or in rural areas, please describe the means by which training and technical assistance will be made available to such informal and/or isolated caregivers and quality child care will be supported/assured. The Child Care Bureau is interested in: Promoting the involvement of faith-based and community-based providers in their projects; incorporating strategies and activities that involve fathers and strengthen families; and encouraging the appropriate use of innovative approaches, learning techniques, and other uses of technology, to meet the needs of young children, child care providers, and parents.

When accomplishments cannot be quantified by activity or function, list them in chronological order to show the schedule of accomplishments and their target dates.

If any data is to be collected, maintained, and/or disseminated, clearance may be required from the U.S. Office of Management and Budget (OMB). This clearance pertains to any ''collection of information that is conducted or sponsored by ACF.''

List organizations, cooperating entities, consultants, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution.

Evaluation

Provide a narrative addressing how the conduct of the project and the results of the project will be evaluated. In addressing the evaluation of results, state how you will determine the extent to which the project has achieved its stated objectives and the extent to which the accomplishment of objectives can be attributed to the project. Discuss the criteria to be used to evaluate results, and explain the methodology that will be used to determine if the needs identified and discussed are being met and if the project results and benefits are being achieved. With respect to the conduct of the project, define the procedures to be employed to determine whether the project is being conducted in a manner consistent with the work plan presented and discuss the impact of the project's various activities on the project's effectiveness.

Geographic Location

Describe the precise location of the project and boundaries of the area to be served by the proposed project. Maps or other graphic aids may be attached.

Additional Information

Following are requests for additional information that need to be included in the application:

Staff and Position Data

Provide a biographical sketch and job description for each key person appointed. Job descriptions for each vacant key position should be included as well. As new key staff is appointed, biographical sketches will also be required.

Plan for Project Continuance Beyond Grant Support

Provide a plan for securing resources and continuing project activities after Federal assistance has ended.

Third-Party Agreements

Provide written and signed agreements between grantees and subgrantees or subcontractors or other cooperating entities. These agreements must detail scope of work to be performed, work schedules, remuneration, and other terms and conditions that structure or define the relationship.

Letters of Support

Provide statements from community, public and commercial leaders that support the project proposed for funding. All submissions should be included in the application OR by application deadline.

Budget and Budget Justification

Provide a budget with line item detail and detailed calculations for each budget object class identified on the Budget Information form. Detailed calculations must include estimation methods, quantities, unit costs, and other similar quantitative detail sufficient for the calculation to be duplicated. Also include a breakout by the funding sources identified in Block 15 of the SF–424.

Provide a narrative budget justification that describes how the categorical costs are derived. Discuss the necessity, reasonableness, and allocability of the proposed costs.

General

Use the following guidelines for preparing the budget and budget justification. Both Federal and non-Federal resources shall be detailed and justified in the budget and narrative justification. ''Federal resources'' refers only to the ACF grant for which you are applying. ''Non-Federal resources'' are all other Federal and non-Federal resources. It is suggested that budget amounts and computations be presented in a columnar format: First column, object class categories; second column, Federal budget; next column(s), non-Federal budget(s), and last column, total budget. The budget justification should be a narrative.

Personnel

Description: Costs of employee salaries and wages.

Justification: Identify the project director or principal investigator, if known. For each staff person, provide the title, time commitment to the project (in months), time commitment to the project (as a percentage or full-time equivalent), annual salary, grant salary, wage rates, etc. Do not include the costs of consultants or personnel costs of delegate agencies or of specific

project(s) or businesses to be financed by the applicant.

Fringe Benefits

Description: Costs of employee fringe benefits unless treated as part of an approved indirect cost rate.

Justification: Provide a breakdown of the amounts and percentages that comprise fringe benefit costs such as health insurance, FICA, retirement insurance, taxes, etc.

Travel

Description: Costs of project-related travel by employees of the applicant organization (does not include costs of consultant travel).

Justification: For each trip, show the total number of traveler(s), travel destination, duration of trip, per diem, mileage allowances, if privately owned vehicles will be used, and other transportation costs and subsistence allowances. Travel costs for key staff to attend ACF-sponsored workshops should be detailed in the budget.

Equipment

Description: ''Equipment'' means an article of nonexpendable, tangible personal property having a useful life of more than one year and an acquisition cost which equals or exceeds the lesser of (a) the capitalization level established by the organization for the financial statement purposes, or (b) $5,000. (Note: Acquisition cost means the net invoice unit price of an item of equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired. Ancillary charges, such as taxes, duty, protective in-transit insurance, freight, and installation shall be included in or excluded from acquisition cost in accordance with the organization's regular written accounting practices.)

Justification: For each type of equipment requested, provide a description of the equipment, the cost per unit, the number of units, the total cost, and a plan for use on the project, as well as use or disposal of the equipment after the project ends. An applicant organization that uses its own definition for equipment should provide a copy of its policy or section of its policy which includes the equipment definition.

Supplies

Description: Costs of all tangible personal property other than that included under the Equipment category.

Justification: Specify general categories of supplies and their costs. Show computations and provide other information which supports the amount requested.

Contractual

Description: Costs of all contracts for services and goods except for those that belong under other categories such as equipment, supplies, construction, etc. Include third party evaluation contracts (if applicable) and contracts with secondary recipient organizations, including delegate agencies and specific project(s) or businesses to be financed by the applicant.

Justification: Demonstrate that all procurement transactions will be conducted in a manner to provide, to the maximum extent practical, open and free competition. Recipients and subrecipients, other than States that are required to use Part 92 procedures, must justify any anticipated procurement action that is expected to be awarded without competition and exceed the simplified acquisition threshold fixed at 41 U.S.C. 403(11) (currently set at $100,000).

Recipients might be required to make available to ACF pre-award review and procurement documents, such as request for proposals or invitations for bids, independent cost estimates, etc.

Note: Whenever the applicant intends to delegate part of the project to another agency, the applicant must provide a detailed budget and budget narrative for each delegate agency, by agency title, along with the required supporting information referred to in these instructions.

Other

Enter the total of all other costs. Such costs, where applicable and appropriate, may include but are not limited to insurance, food, medical and dental costs (noncontractual), professional services costs, space and equipment rentals, printing and publication, computer use, training costs, such as tuition and stipends, staff development costs, and administrative costs.

Justification: Provide computations, a narrative description and a justification for each cost under this category.

Indirect Charges

Description: Total amount of indirect costs. This category should be used only when the applicant currently has an indirect cost rate approved by the Department of Health and Human Services (HHS) or another cognizant Federal agency.

Justification: An applicant that will charge indirect costs to the grant must enclose a copy of the current rate agreement. If the applicant organization is in the process of initially developing or renegotiating a rate, upon notification that an award will be made, it should immediately develop a tentative indirect cost rate proposal based on its most recently completed fiscal year, in accordance with the cognizant agency's guidelines for establishing indirect cost rates, and submit it to the cognizant agency. Applicants awaiting approval of their indirect cost proposals may also request indirect costs. When an indirect cost rate is requested, those costs included in the indirect cost pool should not also be charged as direct costs to the grant. Also, if the applicant is requesting a rate which is less than what is allowed under the program, the authorized representative of the applicant organization must submit a signed acknowledgement that the applicant is accepting a lower rate than allowed.

Program Income

Description: The estimated amount of income, if any, expected to be generated from this project.

Justification: Describe the nature, source and anticipated use of program income in the budget or refer to the pages in the application which contain this information.

Non-Federal Resources

Description: Amounts of non-Federal resources that will be used to support the project as identified in Block 15 of the SF–424.

Justification: The firm commitment of these resources must be documented and submitted with the application so the applicant is given credit in the review process. A detailed budget must be prepared for each funding source.

Evaluation Criteria: The following evaluation criteria appear in weighted descending order. The corresponding score values indicate the relative importance that ACF places on each evaluation criterion, however applicants need not develop their applications precisely according to the order presented. Application components may be organized such that a reviewer will be able to follow a seamless and logical flow of information, *i.e.*, from a broad overview of the project to more detailed information about how it will be conducted.

In considering how applicants will carry out the responsibilities addressed under this announcement, competing applications for financial assistance will be reviewed and evaluated against the following criteria:

Objectives and Need for Assistance 25 Points

Note: *Applicant* means the Local Council.

1. The extent to which the applicant demonstrates: (a) The need for assistance for early learning opportunities including identification and discussion of its needs and resources assessment concerning early learning services; and (b) the relevancy of the results as the basis for determining its objectives and need for assistance.

2. The extent to which the applicant describes: (a) The context of the project, including the characteristics of the community, magnitude and severity of the problem; (b) the needs to be addressed; and (c) includes relevant data from the needs and resources assessment.

3. The extent to which the applicant: (a) defines the project's goals and specific measurable objectives; (b) describes how its goals and objectives are linked together; and (c) explains how implementation will fulfill the purposes of the ELOA.

4. The extent to which the applicant demonstrates a thorough understanding of the importance of early learning services and activities that help parents, caregivers, and child care providers incorporate early learning into the daily lives of young children, as well as programs that directly provide early learning to young children.

5. The extent to which the applicant demonstrates that the project: (a) Expands and enhances activities; maximizes the use of resources through collaboration with other early learning programs; (b) provides continuity of services for young children across the age spectrum; and (c) helps parents and other caregivers promote early learning with their young children.

6. For eligible prior year ELOA grantees, the extent to which the applicant demonstrates that the project builds on, and does not simply continue the activities funded through an earlier ELOA grant.

Approach 20 Points

Note: *Applicant* means the Local Council.

1. The extent to which the applicant presents an approach that: (a) Reflects an understanding of the characteristics, needs, and services currently available to the target population; (b) is based on current theory, research, and/or best practices; (c) is appropriate and feasible; (d) can be reliably evaluated; (e) could be replicated, if successful; and (f) does not use ELOA funds to replace Federal, State, or local funds.

2. The extent to which the applicant includes: (a) A detailed plan that describes the sequence and timing of the major activities, tasks and subtasks, important milestones, and reports; and (b) projections for the accomplishment of each function or activity, including the number of people to be served. When accomplishments cannot be quantified by activity or function, the extent to which the accomplishments are listed in chronological order to show the schedule of accomplishments and target dates.

3. The extent to which the applicant: (a) Specifies who will conduct the activities under each objective; and (b) describes how subcontractors will be chosen and held accountable for carrying out activities in compliance with this application and the terms and conditions of the grant.

4. The extent to which the applicant describes how actual and perceived conflict of interest will be avoided if members of the Local Council are also direct service providers and potential recipients of ELOA funds.

5. The extent to which the applicant describes how programs, services, and activities will be provided based on the family's ability to pay (for those services that customarily require a payment).

6. The extent to which the applicant describes how the project will form collaborations among local early learning, social service, educational providers (including faith-based and community organizations) to maximize resources and concentrate efforts on areas of greatest need.

7. The extent to which the applicant describes its work with local educational agencies to identify cognitive, social-emotional, and motor developmental abilities, which are necessary to support children's readiness for school.

8. The extent to which the applicant's programs, services, and activities assisted under ELOA will represent developmentally appropriate steps toward the acquisition of those abilities.

9. The extent to which the applicant's programs, services, and activities assisted under ELOA provide benefits for children cared for in their own homes as well as children placed in the care of others.

10. The extent to which the applicant's plan: (a) Describes how the project will be structured and managed including how Local Council members will be actively involved in ongoing management; (b) defines the procedures to be used to determine whether the project is being conducted in a manner consistent with the work plan; (c) lists organizations, cooperating entities, consultants, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution to the project; (d) discusses the impact of the project's various activities on the project's effectiveness including factors that may affect project implementation or outcomes and presents realistic strategies for resolution of these difficulties; and (e) describes how unanticipated problems will be resolved to ensure that the project will be completed on time and with a high degree of quality.

Results or Benefits Expected 15 Points

Note: *Applicant* means the Local Council.

1. The extent to which the applicant: (a) Specifies the number of children and families to be served; and (b) how the services to be provided and funded are consistent with the results of the needs and resources assessment.

2. The extent to which the applicant explains how the expected results will benefit the population to be served in meeting its needs for early learning services and activities.

3. The extent to which the applicant demonstrates the completion of the proposed objectives will result in specific, measurable results.

Staff and Position Data 10 Points

Note: *Applicant* means the Local Council.

1. The extent to which the applicant provides information and evidence of its management and administrative structure.

2. The extent to which the applicant: (a) Demonstrates its staff and organizational experience particularly in areas of facilitating needs and resources assessments and collaborative activities as they relate to early childhood services; (b) documents its experience in facilitating such activities and the length of time the applicant has been involved in these activities; and (c) clearly shows the successful management of projects of similar scope by the organization, and/or by the individuals designated to manage the project.

3. The extent to which the applicant: (a) Provides position descriptions and/or resumes of key personnel, including those of consultants, which clearly relate to the personnel staffing required to achieve the ELOA project objectives and the proposed budget; and (b) provides position descriptions and resumes that clearly describe the qualifications, any specialized skills, and duties for each position necessary for overall quality implementation of the project.

4. The extent to which the applicant: (a) Describes its agency including the types, quantities, and costs of services it

provides; and (b) discusses the role of other organizations that will be involved in providing direct services to children and families through this grant.

5. The extent to which the applicant provides information about itself and the fiscal agent, if applicable, including: (a) Its management and administrative structure; (b) its qualifications; (c) its relationship to the Local Council; and (d) demonstrates that it has sufficient fiscal and accounting capacity to ensure prudent use, proper disbursement, and accurate accounting of funds.

6. The extent to which the applicant provides organizational charts for the Local Council, its members, and any third party, including a list of all sites, addresses, phone numbers, and staff contacts and titles. **Note:** These organizational charts are *not* to be confused with the information required for applicants to provide regarding the statutory membership composition of the Local Council. (See Section III.1. Eligibility and Appendix C).

7. The extent to which the applicant demonstrates active participation of the entire Local Council in the development of its application and the project, including a description of the ongoing role of the Local Council in the implementation of the project, and methods for documenting its participation (*e.g.*, minutes of council meetings, council resolutions, newspaper articles, and community surveys).

8. The extent to which the applicant includes third-party agreements with cooperating entities, which: (a) Detail the scope of work to be performed; (b) work schedules, remuneration; and (c) any other terms and conditions that structure or define the relationship. Information about new agreements that will be executed with subgrantees, contractors, or other cooperating entities should also be included. If no written agreements exist, sample/draft agreements may be submitted.

9. The extent to which the applicant demonstrates support for the project from: (a) Parents; (b) the community at-large; and (c) other key leaders and stakeholders.

Plan for Project Continuance Beyond Grant Support 10 Points

Note: *Applicant* means the Local Council.

1. The extent to which the applicant describes a feasible plan for securing resources and continuing project activities, if applicable, after Federal assistance has ceased.

2. The extent to which the applicant demonstrates its understanding that ACF is interested in funding projects that will be completed, self-sustaining, or financed by other than ELOA funds at the end of the project period.

Budget and Budget Justification 10 Points

Note: *Applicant* means the Local Council.

1. The extent to which the applicant demonstrates that: (a) The funds requested will be used for early learning services that are allowed under this announcement; and (b) the discussion refers to:

(1) The budget information presented on Standard Forms 424 and 424A and the applicant's budget justification and

(2) The results or benefits identified under the Results or Benefits Expected criterion above.

2. The extent to which the project's costs are: (a) Reasonable in view of the activities to be carried out; (b) the funds are appropriately allocated across component areas; and (c) that the budget is sufficient to accomplish the objectives.

3. The extent to which the applicant's budget narrative provides: (a) Detailed calculations that describe how the categorical costs are derived; (b) detailed calculations including estimation methods, quantities, unit costs, and other similar quantitative detail sufficient for the calculation to be duplicated; and (c) costs are specified for the entire 17-month ELOA project period, not separated into 12-month and five-month budget periods.

4. The extent to which the applicant has allocated sufficient funds in the project budget to implement the proposed evaluation activities.

5. The extent to which funds are allocated to allow two representatives from the Local Council to attend one two-day grantee meeting in Washington, DC.

6. The extent to which the applicant provides: (a) Letter(s) of commitment from the State, local public and private organizations/agencies, and any other source that will be contributing toward the applicant's non-Federal share of project costs; and (b) letter(s) of commitment stating the amount to be contributed and the form of the contribution (*i.e.*, cash or in-kind). **Note:** Letter(s) of Commitment (encouraged) are not to be confused with Letter(s) of Support (encouraged) or with the Local Council's Letter of Designation (required) by an Entity of Local Government.

Evaluation 10 Points

Note: *Applicant* means the Local Council.

1. The extent to which the applicant: (a) Describes how the evaluation plan will demonstrate the effectiveness of its activities and services in addressing the needs identified under its needs and resources assessment; (b) demonstrates how the results or benefits identified for each objective will serve as standards for evaluating the achievement of objectives at the end of the project period (*i.e.*, 17 months).

2. The extent to which the applicant's evaluation plan includes: (a) A process component that describes the activities of the project; (b) how the project will operate; (c) how well the design was followed; and (d) the extent to which it produced the expected results.

3. The extent to which the applicant demonstrates: (a) The relationships among the needs identified in the needs and resources assessment; (b) the activities/interventions proposed; and (c) anticipated results and benefits (*e.g.*, a diagram (logic model) for demonstration purposes).

4. The extent to which the applicant's evaluation plan is: (a) Sound and appropriate to the activities/interventions implemented; and (b) demonstrates the extent to which program goals/objectives will be achieved.

5. The extent to which the applicant's evaluation plan reflects sensitivity to technical, logistical, cultural, and ethical issues that may arise and includes realistic strategies for the resolution of difficulties.

6. The extent to which the applicant's evaluation plan adequately protects human subjects, confidentiality of data, and consent procedures, as appropriate.

2. Review and Selection Process

A. Competitive Review Process

Each application will undergo an eligibility and conformance review by the Federal staff. Applications that pass the eligibility and conformance review will be evaluated on a competitive basis according to the specified evaluation criteria.

The competitive review will be conducted in the Washington, DC metropolitan area by panels of Federal and non-Federal experts knowledgeable in the areas of literacy, early learning, child care, early childhood education, and other relevant program areas.

Application review panels will assign a score to each application and identify its strengths and weaknesses.

B. Application Consideration and Selection

The Child Care Bureau will conduct an administrative review of the

applications and the results of the competitive review panels and make recommendations for funding to the Commissioner, ACYF.

Subject to the recommendation of the Child Care Bureau's Associate Commissioner, the Commissioner, ACYF, will make the final selection of the applications to be funded. An application may be funded in whole or in part depending on: (1) The ranked order of applicants resulting from the competitive review; (2) staff review and consultations; (3) the combination of projects that best meets the Bureau's objectives; (4) the funds available; (5) the statutory requirement that reserves funds for Indian Tribes, Alaska Native Regional Corporations, and Native Hawaiian entities; and (6) other relevant considerations. The Commissioner may also elect not to fund any applicants with known management, fiscal, reporting, program, or other problems, which make it unlikely that they would be able to provide effective services.

VI. Award Administration Information

1. Award Notices

The successful applicants will be notified through the issuance of a Financial Assistance Award document which sets forth the amount of funds granted, the terms and conditions of the grant, the effective date of the grant, the budget period for which initial support will be given, the non-Federal share to be provided (if applicable), and the total project period for which support is contemplated. The Financial Assistance Award will be signed by the Grants Officer and transmitted via postal mail.

Organizations whose applications will not be funded will be notified in writing.

2. Administrative and National Policy Requirements

Grantees are subject to the requirements in 45 CFR part 74 (non-governmental) or 45 CFR part 92 (governmental).

In addition, ELOA grantees are subject to the requirements in 45 CFR parts 16, 30, 46, 74, 75, 76, 80, 81, 84, 86, 91, 92, 93, and 100 and 37 CFR part 401.

Direct Federal grants, sub-award funds, or contracts under this Family Support Initiative 2005 program shall not be used to support inherently religious activities such as religious instruction, worship, or proselytization. Therefore, organizations must take steps to separate, in time or location, their inherently religious activities from the services funded under this Program. Regulations pertaining to the Equal Treatment For Faith-Based Organizations, which includes the prohibition against Federal funding of inherently religious activities, can be found at either 45 CFR 87.1 or the HHS Web site at: *http://www.os.dhhs.gov/fbci/waisgate21.pdf.*

3. Reporting Requirements

Programmatic Reports: Semi-Annually.

Financial Reports: Semi-Annually.

Grantees will be required to submit program progress and financial reports (SF 269) throughout the project period. Program progress and financial reports are due 30 days after the reporting period. In addition, final programmatic and financial reports are due 90 days after the close of the project period. The SF–269 can be found at the following URL: *http://www.acf.hhs.gov/programs/ofs/forms.htm.*

VII. Agency Contacts

Program Office Contact

Carol L. Gage, ELOA Project Officer, CCB/ACYF, 330 C Street, SW., Switzer Building, Room 2046, Washington, DC 20447. Phone: 202–690–6243. Fax: 202–690–5600. E-mail: *cgage@acf.hhs.gov.*

Grants Management Office Contact

Peter Thompson, Grants Officer, ACF, 330 C Street, SW., Room 2070, Washington, DC 20447. Phone: 202–401–4608. E-mail: *pathompson@acf.hhs.gov.*

VIII. Other Information

Please reference Section IV.3 for details about acknowledgement of received applications.

Electronic Link to Announcement: Copies of this Program Announcement may be downloaded from the Child Care Bureau's Web site at *http://www.acf.hhs.gov/programs/ccb/* approximately five days after its publication in the **Federal Register**.

Notice: Beginning with FY 2006, the Administration for Children and Families (ACF) will no longer publish grant announcements in the **Federal Register**. Beginning October 1, 2005, applicants will be able to find a synopsis of all ACF grant opportunities and apply electronically for opportunities via: *http://www.Grants.gov.* Applicants will also be able to find the complete text of all ACF grant announcements on the ACF Web site located at: *http://www.acf.hhs.gov/grants/index.html.*

The FY 2006 President's Budget does not include or propose funding for the Child Care Bureau's Early Learning Opportunities Act discretionary grant program. However, because we are announcing the availability of one-time 17-month grants to be funded with already appropriated FY 2005 discretionary funds, the FY 2006 President's Budget proposal *does not* affect the availability of grant awards under this announcement.

Dated: June 8, 2005.

Susan Orr,

Acting Commissioner, Administration on Children, Youth and Families.

Appendix A—Sample Letter of Designation of the Local Council by an Entity of Local Government

Date

To Whom It May Concern:

Under the authority granted by the *(Specify Source of Authority to Act on behalf of the Entity of Local Government),* I/We hereby designate the *(Insert Name of Local Council)* as the eligible Local Council for the *(Insert the name(s) of localities to be served by the Local Council (e.g., city(ies), county(ies), borough(s), etc.))* for the purposes of applying for a discretionary grant under the Early Learning Opportunities Act (ELOA) program. I/We also authorize the *(Insert Name of Local Council)* to develop and submit an application to the Administration on Children, Youth and Families, Child Care Bureau in response to the ELOA Funding Opportunity Number: HHS–2005–ACF–ACYF–LO–0028, and to administer the implementation of the project if funded.

As required under the statute governing ELOA, the *(Insert Name of Local Council)* includes: (A) representatives of local agencies that will be directly affected by early learning programs assisted under the ELOA and this announcement; (B) parents; (C) other individuals concerned with early learning issues in the locality, such as representatives of entities providing elementary education, child care resource and referral services, early learning opportunities, child care, and health services; and (D) other key community leaders.

The *(Insert Name of Local Council)* was responsible for preparing and submitting the enclosed application for the ELOA discretionary grant program.

Sincerely,

Signed and dated by an individual with authority to represent the entity of local government (*e.g.*, mayor, city/county manager, city/county executive, city/county council, board of supervisors, select board, etc.)

Appendix B—Sample Letter of Designation of the Local Council and Identification of the Fiscal Agent by an Entity of Local Government

Date

To Whom It May Concern:

Under the authority granted by the *(Specify Source of Authority to Act on behalf of the Entity of Local Government),* I/We hereby designate the *(Insert Name of Local Council)* as the eligible Local Council for the *(Insert the name(s) of localities to be served by the Local Council (e.g., city(ies), county(ies),*

borough(s), etc.)) for the purposes of the Early Learning Opportunities Act (ELOA) discretionary grant program. I/We also authorize the *(Insert Name of Local Council)* to develop and submit an application to the Administration on Children, Youth and Families, Child Care Bureau in response to the ELOA Funding Opportunity Number: HHS–2005–ACF–ACYF–LO–0028, and to administer the implementation of the project if funded.

I/We hereby authorize the *(Insert Name of Fiscal Agent)* to serve as the Fiscal Agent on behalf of the *(Insert Name of Local Council)* and the Fiscal Agent's Employer Identification Number (EIN) is: _____ and this EIN has been entered in Item 6 on the Application for Federal Assistance (SF–424).

As required under the statute governing ELOA, the (Insert Name of Local Council) includes: (A) Representatives of local agencies that will be directly affected by early learning programs assisted under the ELOA and this announcement; (B) parents; (C) other individuals concerned with early learning issues in the locality, such as representatives of entities providing elementary education, child care resource and referral services, early learning opportunities, child care, and health services; and (D) other key community leaders.

The *(Insert Name of Local Council)* was responsible for preparing and submitting the enclosed application for the ELOA discretionary grant program.

Sincerely,

Signed and dated by an individual with authority to represent the entity of local government (*e.g.*, mayor, city/county manager, city/county executive, city/county council, board of supervisors, select board, etc.)

Appendix C—Sample Format for Providing Information on the Composition of the Local Council

Emerald County Local Council

Members name	Title	Role	Agency
Marsha Severn	Chair of Local Council	D	Emerald City Chamber of Commerce.
Michele Dixon	Director	C	Child Care Resource & Referral.
Mike Andrews	Foster Parent of a Young Child	B	
Rev. P. Nelson	Director, Child & Family Services	A	Holy Trinity Church.
Patricia Lawson	Director	A	Happy Days Child Care Center.
Fr. Michael Bates	Child & Family Program Manager	D	Catholic Charities.
Angela Bauer	Director	A	St. James Head Start.
M. J. Anderson	Director	A	ABC Child Care Center.
Monica Presley	Director	C	Emerald County Health Dept.
L. M. Peterson	Superintendent	C	Emerald City Public Schools.
Peggy Davis	Family Child Care Provider	C	
Sarah Curtis	Autism Consultant	C	Emerald City Public Schools.
Susan Meyers	Parent of Young Child	B	
Susan LaPierre	President	A	Emerald County Community College.
Alberta Collins	Vice President	D	Emerald City United Way Services.
Frank Jimenez	County Manager	D	Emerald County.
Sean Red Cloud	Consultant	D	Lakota Community Services.
Christopher Potter	Parent of Young Child	B	
Harriet Huggins	Director	C	Emerald County Social Services.
Isabella Flores	Director	D	La Puerta Fundacíon.
T. Rex Reid	President	D	Emerald City Bank.
Lionel Mejias	Director	A	Early Childhood Services, Inc.
Ameila Quigley	Program Parent	B	Parents as Teachers.
Amy Takmamura	Director	A	Emerald City Child Care Consortium.
Juana Garcia	Director, Special Education	A	Emerald City Public Schools.
Casey Brown	Parent of a Young Child	B	
Margaret James	Managing Director	A	Community Child Care Center.
Stephen Cho	Parent of a Young Child	B	
C. L. Madsen, M.D.	Pediatrician	C	Emerald City Primary Care Associates.

Legend

(Also see Section III. Additional Information on Eligibility.)

A = Representatives of local agencies that will be directly affected by early learning programs assisted under the ELOA and this announcement.

B = Parents.

C = Other individuals concerned with early learning issues in the locality, such as representatives of entities providing elementary education, child care resource and referral services, early learning opportunities, child care, and health services.

D = Other key community leaders.

Note: Members of Local Councils that are identified with categories other than the four categories above will not be considered as meeting the statutory eligibility requirements for the composition of the Local Council.

[FR Doc. 05–11754 Filed 6–14–05; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Advisory Council on the National Health Service Corps; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), notice is hereby given of the following meeting:

Name: National Advisory Council on the National Health Service Corps.

Dates and Times: June 23, 2005, 8:30 a.m.–6 p.m.; June 24, 2005, 8:30 a.m.–6 p.m.; June 25, 2005, 9 a.m.–5:30 p.m.; and June 26, 2005, 8 a.m.–10:30 a.m.

Place: Hilton Alexandria Mark Center, 5000 Seminary Road, Alexandria, Virginia 22311,

703–845–1010.

Status: The meeting will be open to the public.

Agenda: The Council will review the National Health Service Corps legislation in effort to conduct a full orientation for new members. Program staff and Agency management will provide guidance on program operations and opportunities for future Council consideration.

For Further Information Contact: Tira Robinson-Patterson, Division of National Health Service Corps, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8A–55, 5600 Fishers Lane, Rockville, MD 20857; telephone: (301) 594–4140.

Dated: June 9, 2005.

Tina M. Cheatham,

Director, Division of Policy Review and Coordination.

[FR Doc. 05–11784 Filed 6–14–05; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2000–7833]

Draft Programmatic Environmental Impact Statement for Vessel and Facility Response Plans for Oil: 2003 Removal Equipment Requirements and Alternative Technology Revisions

AGENCY: Coast Guard, DHS.

ACTION: Notice of public hearings.

SUMMARY: The Coast Guard will hold four public hearings to solicit comments on the draft programmatic environmental impact statement (DPEIS) for the rulemaking on Vessel and Facility Response Plans for Oil: 2003 Removal Equipment Requirements and Alternative Technology Revisions. The DPEIS addresses the increase of the oil removal capacity requirements for tank vessels and marine transportation-related facilities and added requirements for new response technologies. We seek comments from any interested or affected stakeholders and encourage all stakeholders to attend these hearings.

DATES: The public hearings will be held on the following dates in the cities listed:

- Houston, TX, July 11, 2005, from 12 p.m. to 7 p.m.
- Sacramento, CA, July 13, 2005, from 12 p.m. to 6 p.m
- Anchorage, AK, July 15, 2005, from 12 p.m. to 7 p.m.
- Washington DC, July 19, 2005, from 12 p.m. to 7 p.m.

Material submitted in response to the request for comments must reach the Department of Transportation's Docket Management Facility on or before August 1, 2005.

ADDRESSES: The Coast Guard will hold the public hearings at the following locations:

- Houston, TX—Hilton-University of Houston, 4800 Calhoun Street, Houston, TX 77204.
- Sacramento, CA—Office of Spill Prevention and Response, 1700 K Street, First Floor Meeting Room, Sacramento, CA 95814.
- Anchorage, AK—Hilton-Anchorage, 500 West 3rd Avenue, Anchorage, AK 99501.
- Washington, DC—Nassif Building, 400 Seventh Street SW., Room 2230, Washington, DC 20590.

You may also submit your comments directly to the Docket Management Facility. To ensure that your comments and related material are not entered more than once in the docket (USCG–2000–7833), please submit them by only one of the following means:

(1) Web Site: *http://dms.dot.gov.*

(2) Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590–0001.

(3) Fax: 202–493–2251.

(4) Delivery: Room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call Bradley McKitrick, Coast Guard, telephone 202–267–0995, or e-mail *bmckitrick@comdt.uscg.mil.* If you have questions on viewing or submitting material to the docket, call Andrea M. Jenkins, Program Manager, Docket Operations, telephone 202–366–0271.

SUPPLEMENTARY INFORMATION:

Request for Comments

All comments received will be posted, without change, to *http://dms.dot.gov* and will include any personal information you have provided. We have an agreement with the Department of Transportation (DOT) to use the Docket Management Facility. Please see DOT's ''Privacy Act'' paragraph below.

Submitting comments: If you submit a comment, please include your name and address, identify the docket number for this notice (USCG–2000–7833) and give the reason for each comment. You may submit your comments by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES;** but please submit your comments by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments received during the comment period.

We are requesting your comments on issues related to the DPEIS. We will publish comments received during the DPEIS review period in the final PEIS.

Viewing comments and documents: To view comments, go to *http://dms.dot.gov* at any time and conduct a simple search using the docket number. You may also visit the Docket Management Facility in room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://dms.dot.gov.*

Public Hearings

The Coast Guard encourages interested and affected stakeholders to attend the hearings and present oral comment or written comments during the hearings. The hearings are open to members of the public. Please note that the hearings may close early if all business is finished. If you are unable to attend the hearings, we encourage you to submit comments to the Docket Management Facility as indicated under **ADDRESSES** by August 1, 2005.

Information on Services for Individuals With Disabilities

If you plan to attend these hearings and require special assistance, such as sign language interpretation or other reasonable accommodations, contact us as indicated in **FOR FURTHER INFORMATION CONTACT**.

Background and Purpose

On June 1, 2005, the Coast Guard published a notice of availability with a request for comments in the **Federal Register** (70 FR 31487) to announce the availability of the draft programmatic environmental impact statement (DPEIS) for the rulemaking on Vessel and Facility Response Plans for Oil: 2003 Removal Equipment Requirements and Alternative Technology Revisions. At the time of that notice, public hearings had not been scheduled. This notice provides the information on the public hearings. Public hearings are an integral part of the environmental review process and are authorized by 40 CFR Part 1506. Therefore, the Coast Guard will hold public hearings at the times and locations noted above in **DATES** and **ADDRESSES**. You can access the DPEIS through the Department of Transportation Docket Management System (DMS) at *http://dms.dot.gov* using docket number USCG–2000–7833 or the Coast Guard's Web site *http://*

www.uscg.mil/hq/g-m/regs/PEIS/peisindex.html.

Dated: June 8, 2005.

Raymond J. Petow,

Captain, U.S. Coast Guard, Acting Director of Standards, Marine Safety, Security, and Environmental Protection, U.S. Coast Guard.

[FR Doc. 05–11821 Filed 6–14–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Extension of a Currently Approved Information Collection; Comment Request

ACTION: 60-day notice of information collection under review: Freedom of Information/Privacy Act request; Form G–639.

The Department of Homeland Security, U.S. Citizenship and Immigration Services has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until August 15, 2005.

Written comments and suggestions from the public and affected agencies concerning the collection of information should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of information to be collected; and

(4) Minimize the burden of collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Freedom of Information/Privacy Act Request.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form G–639. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or requested to respond, as well as a brief abstract:* Primary: Individuals or Households. This form is provided as a convenient means for persons to provide data necessary for identification of a particular record desired under FOIA/PA.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 100,000 responses at 15 Minutes per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 25,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the information collection instrument with instructions, please contact Richard A. Sloan, Director, Regulatory Management Division, U.S. Citizenship and Immigration Services, 111 Massachusetts Avenue, NW., Washington, DC 20529; 202–272–8377.

Dated: June 10, 2005.

Richard A. Sloan,

Director, Regulatory Management Division, U.S. Citizenship and Immigration Services.

[FR Doc. 05–11812 Filed 6–14–05; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Extension of a Currently Approved Information Collection; Comment Request

ACTION: 60-day notice of information collection under review: application for T nonimmigrant status; application for immediate family member of T–1 recipient; and declaration of law enforcement officer for victim of trafficking in persons, Forms I–914, I–914 Supplement A, I–914 Supplement B.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted an emergency information collection for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until August 15, 2005.

Written comments and suggestions from the public and affected agencies concerning the collection of information should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Application for T Nonimmigrant Status; Application for Immediate Family Member of T–1 Recipient; and Declaration of Law Enforcement Officer for Victim of Trafficking in Persons.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Forms I–914, I–914 Supplement A, and I–914 Supplement B. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals and Households. This application incorporates information pertinent to eligibility under the Victims of Trafficking and Violence Protection Act of 2000 (Pub. L. 106–386) and a request for employment. The information on all three parts of the form will be used by the USCIS to determine whether applicants meet the eligibility requirements for certain immigration benefits.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 8,750 I–914 responses at 2.25

hours per response; 18,750 I–914 Supplement A responses at 1 hour per response; and 7,000 I–914 Supplement B responses at .50 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 41,938 annual burden hours.

If you have additional comments, suggestions, or need a copy of the information collection instrument, please contact Mr. Richard A. Sloan, Director, Regulatory Management Division, U.S. Citizenship and Immigration Services, 111 Massachusetts Avenue, NW., Washington, DC 20529; 202–272–8377.

Dated: June 10, 2005.

Richard A. Sloan,

Director, Regulatory Management Division, U.S. Citizenship and Immigration Services.

[FR Doc. 05–11813 Filed 6–14–05; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4971–N–32]

Notice of Submission of Proposed Information Collection to OMB; Environmental Review of Proposed Housing Development

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

This is a request for approval of a collection of information in use without an OMB control number. The information collection applies to applicants seeking HUD financial assistance for their project proposals and is used by HUD for the performance of the Department's compliance with the National Environmental Policy Act and related federal environmental laws and authorities in accordance with HUD environmental regulations.

DATES: *Comments Due Date:* July 15, 2005.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* or Lillian Deitzer at *Lillian_L_Deitzer@HUD.gov* or telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. Eddins or Ms Deitzer or from HUD's Web site at *http://hlannwp031.hud.gov/po/i/icbts/collectionsearch.cfm.*

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Environmental Review of Proposed Housing Development.

OMB Approval Number: 2506–Pending.

Form Numbers: None.

Description of the Need for the Information and Its Proposed Use: Developers of affordable housing applying for HUD financial assistance are required to provide information necessary for HUD to ensure compliance with Federal environmental laws.

Frequency of Submission: On occasion.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting burden	2,600	1		2		5,200

Total Estimated Burden Hours: 5,200.

Status: Collection of information in use without an OMB control number.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: June 8, 2005.

Wayne Eddins,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E5–3069 Filed 6–14–05; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and marine mammals.

DATES: Written data, comments or requests must be received by July 15, 2005.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following applications for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

Applicant: International Wildlife Veterinary Services, Santa Cruz, CA, PRT–797485.

The applicant requests a permit to import biological samples taken from free-ranging black rhinoceros (*Diceros bicornis*) in Kenya, South Africa, and Zimbabwe for scientific research. This notification covers activities to be conducted by the applicant over a five-year period.

Applicant: Eugene W.C. Yap, Kealakekua, HI, PRT–103046.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Marine Mammals

The public is invited to comment on the following application for a permit to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the regulations governing marine mammals (50 CFR part 18). Written data, comments, or requests for copies of the complete applications or requests for a public hearing on these applications should be submitted to the Director (address above). Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Applicant: James Cowan, Julian, PA, PRT–103568.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Lancaster Sound polar bear population in Canada for personal, noncommercial use.

Dated: June 3, 2005.

Monica Farris,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 05–11785 Filed 6–14–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–020–1610–DO]

Notice of Intent To Prepare the South National Petroleum Reserve-Alaska Integrated Activity Plan and To Prepare an Accompanying Environmental Impact Statement, Request for Information, Call for Nominations and Comments, and Solicitation of Interest in Hardrock and Coal Mining

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: The Bureau of Land Management (BLM), Alaska State Office, is preparing an Integrated Activity Plan (IAP) for the South portion of the National Petroleum Reserve-Alaska (NPR–A) and an accompanying Environmental Impact Statement (EIS). This Notice initiates the public scoping process and a Call for Nominations related to oil and gas leasing. It also requests public input on hardrock and coal mining.

DATES: Scoping comments can be submitted in writing to the address listed below and will be accepted until August 26, 2005. Scoping meetings will be held in northwestern Alaska, Anchorage and Fairbanks. All public meetings will be announced through the local news media and a mailing. Responses to the Call for Nominations related to oil and gas leasing are also due no later than August 26, 2005.

ADDRESSES: Scoping comments should be submitted to: South NPR–A Planning Team Leader, 222 West 7th Avenue, #13, Anchorage, Alaska 99513–7599.

Responses to the Call for Nominations must be submitted in envelopes labeled ''Nominations Related to the South NPR–A IAP/EIS'' to protect the confidentiality of the nominations. They are to be addressed to: Call for Nominations, South NPR–A Team, 222 West 7th Avenue, #13, Anchorage, Alaska 99513–7599.

FOR FURTHER INFORMATION CONTACT: Jim Ducker (907–271–3130) or Susan Childs (907–271–1985) by phone or by mail at 222 W. 7th Avenue, #13, Anchorage, AK 99513–7599.

SUPPLEMENTARY INFORMATION: The BLM published a Record of Decision (ROD) October 7, 1998, for the Northeast National Petroleum Reserve-Alaska Integrated Activity Plan/Environmental Impact Statement. An amendment to that plan is in progress; a Final EIS for the amendment was issued January 28, 2005. On January 22, 2004 BLM published a ROD for the Northwest National Petroleum Reserve-Alaska Integrated Activity Plan/Environmental Impact Statement. The South National Petroleum Reserve-Alaska Integrated Activity Plan/Environmental Impact Statement (South IAP/EIS) will complete planning for the Petroleum Reserve, the largest contiguous land under BLM management.

The objectives of the South IAP/EIS are three-fold:

1. To examine what, if any, lands are appropriate to be made available for oil and gas leasing and to identify the performance-based mitigations that should be adopted to protect resources if oil and gas leasing is authorized.

2. Identify options for and impacts of a range of management actions that BLM land planning guidance recommends be considered in land use plans, including recommendations for designation of Wild and Scenic Rivers.

3. Identify options for and impacts of a range of management actions relevant to certain resources and land uses of particular concern either to the public or to BLM. These include the desired population and habitat conditions, and/or management goals and actions appropriate to achieve these goals for various species (including cliff-dwelling raptors, buff-breasted sandpipers, Pacific salmon, fish habitat, grizzly bears, wolverines), recreation opportunities, and cultural resources. Additional topics may be developed through the public scoping.

In addition, the BLM is taking this opportunity to learn whether there is interest in making part or all of the planning area available for hard rock or coal mining. It would require Congressional legislation to open these lands to such mining. The South IAP/EIS may analyze alternatives that would contemplate recommendations for opening.

During the course of development of the South IAP/EIS, BLM will also develop a river management plan for the Colville River. These plans will be developed in tandem and the Colville River Management Plan will tier off both the management decision developed through the South IAP/EIS and the Records of Decision for the Northeast and Northwest portions of the Petroleum Reserve.

The purpose of this notice is to seek comment on the South IAP/EIS and to call for nomination of areas to be considered for oil and gas leasing. Information and comments on specific issues to be addressed in the plan are sought from all interested parties. This early planning and consultation step is important for ensuring that all interests

and concerns are communicated to the BLM Northern Field Office manager for decisions in land use, planning, and management.

The South planning area is described as beginning on the Petroleum Reserve boundary on the township line between T. 8 N., R. 40 W. and T. 9 N., R. 39 W., Umiat Meridian (U.M.), and thence easterly along the township lines to the northeast corner of T. 8 N., R. 26 W., U.M., thence southerly and easterly along township and section lines in a stair-step fashion to the Petroleum Reserve boundary where the Colville River flows from T. 5 S., R. 15 W. to T. 4 S., R. 15 W., U.M., thence generally westerly, southerly, westerly, and northerly following the boundary of the Petroleum Reserve to the point of beginning. This area consists of approximately 9.2 million acres. A map of the plan area (which also serves as the Call map) showing boundaries of the area on a township-by-township basis is available at BLM's Information Center in the Anchorage Federal Office Building, 222 West 7th Avenue, Anchorage, (907–271–5960).

Call for Nominations: Pursuant to 43 CFR 3131.1 and 3131.2, relevant information related to possible oil and gas leasing is requested for the plan area. Oil and gas companies are specifically requested to nominate areas within the plan area that they would like to have considered for oil and gas leasing. Nominations must be depicted on a Call map by outlining the area(s) of interest along township lines. Nominators are asked to submit a list of townships nominated to facilitate correct interpretation of the Call map. Although the identities of those submitting nominations for oil and gas leasing become a matter of public record, the individual nominations will be held confidential.

Nominators also are requested to rank townships nominated for oil and gas leasing according to priority of interest (*e.g.*, high priority 1, medium priority 2, or low priority 3). Townships nominated that do not indicate priorities will be considered priority 3. Blanket priorities on large areas are not useful in the analysis of industry interest. The telephone number and name of a person to contact in the nominator's organization for additional information should be included in the response.

Although nominations are to be submitted along township lines, comments are also being sought on the preferred size of tracts for leasing in this area, not to exceed 60,000 acres. 43 CFR 3130.4–1 limits the size of an oil and gas lease tract within the NPR-A boundaries to no more than 60,000 acres.

Authority: Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*), as amended; the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), as amended; Title I of the Naval Petroleum Reserves Production Act of 1976 (42 U.S.C. 6501 *et seq.*), as amended by the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1981, Pub. L. 96–514, 94 Stat. 2957, 2964 (codified in 42 U.S.C. 6508); the Alaska National Interest Lands Conservation Act, Pub. L. 96–487, 94 Stat. 2371, section 810, 16 U.S.C. 3120; and the regulations at 43 CFR parts 2360 and 3130.

Henri R. Bisson,

State Director.

[FR Doc. 05–11773 Filed 6–14–05; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–310–0777–XG]

Notice of Public Meeting: Northwest California Resource Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976 (FLPMA), and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Northwest California Resource Advisory Council will meet as indicated below.

DATES: The meeting will be held Tuesday and Wednesday, July 19 and 20, 2005, in Lake County, California. On July 19, members will convene at the Bureau of Land Management's Redbud Trailhead, on California State Highway 20, eight miles east of Clearlake Oaks. Members will join BLM staff members for a float trip on a portion of Cache Creek which will be the focus of land and resource management decisions in the Ukiah Resource Management Plan now under development. Members of the public are welcome on the trip, but they must provide their own transportation and water craft. On July 20, the members will convene a business meeting at 8 a.m. in the Conference Center at the Konocti Harbor Resort, 8727 Soda Bay Rd, Kelseyville, California. Time for public comment has been scheduled for 1 p.m.

FOR FURTHER INFORMATION CONTACT: BLM Ukiah Field Manager Rich Burns (707) 468–4000 or BLM Public Affairs Officer Joseph J. Fontana, (530) 252–5332.

SUPPLEMENTARY INFORMATION: The 12-member council advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in Northwest California. At this meeting, agenda topics will include discussion of the draft range of alternatives being developed for the Ukiah Resource Management Plan and review of an environmental assessment for the Salmon Creek Resources land exchange in the Redding Field Office. The RAC members will also hear status reports from the Arcata, Redding and Ukiah field office managers. All meetings are open to the public. Members of the public may present written comments to the council. Each formal council meeting will have time allocated for public comments. Depending on the number of persons wishing to speak, and the time available, the time for individual comments may be limited. Members of the public are welcome on field tours, but they must provide their own transportation and lunch. Individuals who plan to attend and need special assistance, such as sign language interpretation and other reasonable accommodations, should contact the BLM as provided above.

Dated: June 6, 2005.

Joseph J. Fontana,

Public Affairs Officer.

[FR Doc. 05–11768 Filed 6–14–05; 8:45 am]

BILLING CODE 4310–40–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–930–02–1610–PN]

Southcentral Alaska Subsistence Regional Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice informs the public that the Southcentral Alaska Subsistence Regional Advisory Council will hold a public meeting on July 27, 2005. The public is invited to participate and to provide oral testimony.

DATES: July 27, 2005.

FOR FURTHER INFORMATION CONTACT: Glennallen Field Office, P.O. Box 147, Glennallen, Alaska 99588; phone (907) 822–3217. For questions related to subsistence management issues on

Bureau of Land Management lands, inquiries may also be directed to Taylor Brelsford, Subsistence Coordinator, Alaska State Office, 222 West 7th Avenue, #13, Anchorage, Alaska 99513; phone (907) 271–5806.

SUPPLEMENTARY INFORMATION: Regional Council discussion during the meeting will be devoted to the review and recommendation of the East Alaska Draft Resource Management Plan and Environmental Impact Statement.

Dated: June 7, 2005.

Henri R. Bisson,

State Director.

[FR Doc. 05–11774 Filed 6–14–05; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Colorado River Reservoir Operations: Development of Management Strategies for Lake Powell and Lake Mead Under Low Reservoir Conditions

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice to solicit comments and hold public meetings on the development of management strategies for Lake Powell and Lake Mead, including Lower Basin shortage guidelines, under low reservoir conditions.

SUMMARY: The Secretary of the Interior (Secretary) has directed the Bureau of Reclamation (Reclamation) to develop additional Colorado River management strategies to address operations of Lake Powell and Lake Mead under low reservoir conditions. It is anticipated that, among other potential elements, these strategies could identify those circumstances under which the Department of the Interior (Department) would reduce annual water deliveries, and the manner in which annual operations would be modified.

DATES AND ADDRESSES: Two public meetings will be held to solicit comments on the content, format, mechanism, and analysis to be considered during the development of management strategies for Lake Powell and Lake Mead under low reservoir conditions. Oral and written comments will be accepted at the public meetings to be held at the following locations:

- *Tuesday, July 26, 2005*–10 a.m. to 12 noon, Henderson Convention Center, Grand Ballroom, 200 South Water Street, Henderson, Nevada.
- *Thursday, July 28, 2005*–10 a.m. to 12 noon, Hilton Salt Lake City Center, Topaz Room, 255 South West Temple, Salt Lake City, Utah.

Written comments on the proposed development of these strategies may be sent by close of business on *Wednesday, August 31, 2005,* to: Regional Director, Bureau of Reclamation, Lower Colorado Region, Attention: BCOO–1000, P.O. Box 61470, Boulder City, Nevada 89006–1470, fax at 702–293–8156, or e-mail at *strategies@lc.usbr.gov;* and/or Regional Director, Bureau of Reclamation, Upper Colorado Region, Attention: UC–402, 125 South State Street, Salt Lake City, Utah 84318–1147, fax at 801–524–3858, or e-mail at *strategies@uc.usbr.gov.*

FOR FURTHER INFORMATION CONTACT: Terrance J. Fulp, Ph.D., at 702–293–8500 or e-mail at *strategies@lc.usbr.gov;* and/or Randall Peterson at 801–524–3633 or e-mail at *strategies@uc.usbr.gov.* If special assistance is required regarding accommodations for attendance at either of the public meetings, please call Nan Yoder at 702–293–8495, fax at 702–293–8156, or e-mail at *nyoder@lc.usbr.gov* no less than 5 working days prior to the applicable meeting(s).

SUPPLEMENTARY INFORMATION: In recent years the Department has undertaken a number of initiatives to improve the efficient and coordinated operation and management of the Colorado River. For example, a number of Indian water rights settlements have been enacted and implemented, while additional settlements are under active negotiation. Important programs have been developed in the Upper and Lower Basins to address conservation of endangered species. Scientific investigations are proceeding under the framework of the Glen Canyon Adaptive Management Program to study the impacts to and improve the values for which the Grand Canyon National Park and the Glen Canyon National Recreation Area were established. In 2003, water users in California executed agreements that will assist California to limit its use of water from the Colorado River to its normal year apportionment of 4.4 million acre-feet (maf).

More recently a new management challenge has emerged on the Colorado River. The Colorado River Basin has experienced the worst five-year drought in recorded history. Drought in the Basin has impacted system storage, while demands for Colorado River water supplies have continued to increase. During the period from October 1, 1999, to October 1, 2004, storage in Colorado River reservoirs fell from 55.7 maf to 29.7 maf.

In the future, low reservoir conditions may not be limited to drought periods as additional development of Colorado River water occurs. The Colorado River is of strategic importance in the southwestern United States for water supply, hydropower production, recreation, fish and wildlife habitat, and other benefits. In addition, the Republic of Mexico has an allocation to the waters of the Colorado River pursuant to a 1944 treaty with the United States.

In a May 2, 2005, letter to the Governors of the Colorado River Basin States, issued in the context of the 2005 Annual Operating Plan mid-year review, the Secretary directed Reclamation to develop additional strategies to improve coordinated management of the reservoirs in the Colorado River system. Pursuant to that direction, Reclamation conducted a public consultation workshop on May 26, 2005, in Henderson, Nevada, and has prepared this **Federal Register** notice. In order to assure the continued productive use of the Colorado River into the future, Reclamation is soliciting public comments on, at a minimum, the development of management strategies for the operation of Lake Powell and Lake Mead under low reservoir conditions.

It is the Department's intent that the development of additional management strategies, including Lower Basin Shortage Guidelines, will provide guidance to the Secretary's Annual Operating Plan decisions, and provide more predictability to water users throughout the Basin, particularly those in the Lower Division States of Arizona, California, and Nevada. For example, in 2001 the Department adopted Interim Surplus Guidelines (66 FR 7772) that are used by the Secretary in making annual determinations regarding ''Normal'' and ''Surplus'' conditions for the operation of Lake Mead. Among other provisions, these Guidelines have allowed the Department and entities in Arizona, California, and Nevada that rely on the Colorado River greater predictability in identifying when Colorado River water in excess of 7.5 maf will be available for use within these three states. In contrast, at this time the Department does not have detailed guidelines in place for annual determinations of releases from Lake Mead of less than 7.5 maf to water users in the three Lower Division States (often referred to as a ''shortage'' condition on the lower Colorado River). Therefore, water users who rely on the Colorado River in these states are not currently able to identify particular reservoir conditions under which the Secretary would release less than 7.5 maf for use

on an annual basis. Nor are these water users able to identify the amount of any potential future annual reductions in water deliveries. By developing additional management strategies, these users would be better able to plan for periods of less than full water deliveries. Additional operational tools may also facilitate conservation of reservoir storage, thereby minimizing the adverse effects of long-term drought or low-reservoir conditions in the Colorado River Basin.

Over the past year, the seven Colorado River Basin States have been proactively discussing strategies to address the current system-wide drought in the Colorado River Basin. In addition, Reclamation has conducted detailed briefings for stakeholders in the Colorado River Basin and other interested entities regarding future scenarios for Colorado River operations. Reclamation will integrate available technical information in the upcoming development of additional management strategies for Colorado River operations.

Reclamation intends to utilize a public process during the development of management strategies for Lake Powell and Lake Mead under low reservoir conditions. By this notice, Reclamation invites all interested members of the general public, including the seven Colorado River Basin States, Indian Tribes, water and power contractors, environmental organizations, representatives of academic and scientific communities, representatives of the recreation industry, and other organizations and agencies to present oral and written comments concerning the content, format, mechanism, and analysis to be considered during the development of these proposed strategies.

Reclamation has not yet determined the appropriate level of National Environmental Policy Act (NEPA) documentation for the upcoming development of additional management strategies. However, to ensure timely consideration of technical information and public comment, Reclamation is proceeding, at this time, as if the development of additional management strategies would require preparation of an Environmental Impact Statement. Information received by Reclamation pursuant to this **Federal Register** notice and the upcoming public meetings will be analyzed in order to define the nature of any proposed federal actions, the level of appropriate NEPA documentation, and the need, if any, for additional scoping activities. In addition to NEPA documentation, other compliance activities, as appropriate, will be undertaken pursuant to applicable Federal law.

Public Disclosure

Written comments, including names and home addresses of respondents, will be made available for public review. Individual respondents may request that their home address be withheld from public disclosure, which will be honored to the extent allowable by law. There may be circumstances in which respondents' identity may also be withheld from public disclosure, as allowable by law. If you wish to have your name and/or address withheld, you must state this prominently at the beginning of your comment. All submissions from organizations, business, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Dated: June 6, 2005.

Darryl Beckmann,

Deputy Regional Director—UC Region, Bureau of Reclamation.

Dated: June 7, 2005.

Robert W. Johnson,

Regional Director—LC Region, Bureau of Reclamation.

[FR Doc. 05–11776 Filed 6–14–05; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services, Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-day notice of information collection under review: Annual Report to Congress—Expired COPS Awards Exceeding $5 Million.

The Department of Justice (DOJ) Office of Community Oriented Policing Services (COPS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. The purpose of this notice is to allow for 60 days for public comment until August 15, 2005. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Rebekah Dorr, Department of Justice Office of Community Oriented Policing Services, 1100 Vermont Avenue, NW., Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* New Collection.

(2) *Title of the Form/Collection:* Annual Report to Congress—Expired COPS Awards Exceeding $5 Million.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form Number: None. Office of Community Oriented Policing Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State, Local, or Tribal Government. Law enforcement agencies that are recipients of COPS grants over $5,000,000 that are programmatically and financially closed out or that otherwise ended in the immediately preceding fiscal year.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that approximately 10 respondents annually will complete the form within one hour.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are approximately 10 total annual burden hours associated with this collection.

If additional information is required contact: Brenda E. Dyer, Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: June 10, 2005.

Brenda E. Dyer,

Department Clearance Officer, PRA, Department of Justice.

[FR Doc. 05–11777 Filed 6–14–05; 8:45 am]

BILLING CODE 4410–AT–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant To The National Cooperative Research and Production Act of 1993—Southwest Research Institute: Joint Industry Project For Fluid Properties Meter Development and Support

Notice is hereby given that, on April 11, 2005, pursuant to section 6(a) of the National Cooperative Research Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Southwest Research Institute: Joint Industry Project for Fluid Properties Meter Development and Support (''SwRI: Fluid Properties Meter'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, YZ Systems, Inc., Conroe, TX has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and SwRI: Fluid Properties Meter intends to file additional written notification disclosing all changes in membership.

On November 30, 2004, SwRI: Fluid Properties Meter filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on February 2, 2005 (70 FR 5487), as corrected on May 12, 2005 (70 FR 25111).

Dorothy B. Fountain,

Deputy Director of Operations Antitrust Division.

[FR Doc. 05–11751 Filed 6–14–05; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to Section 1301.33(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on April 27, 2005, Boehringer Ingelheim Chemical Inc., 2820 N. Normandy Drive, Petersburg, Virginia 23805, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed in Schedule II:

Drug	Schedule
Amphetamine (1100)	II
Methylphenidate (1724)	II
Methadone (9250)	II
Methadone Intermediate (9254)	II
Dextropropoxyphene, bulk (non-dosage form) (9273).	II
Levo-alphacetylmethadol (9648)	II
Fentanyl (9801)	II

The company plans to manufacture the listed controlled substances for formulation into finished pharmaceuticals.

Any other such applicant and any person who is presently registered with DEA to manufacture such a substance may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections being sent via regular mail may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA Federal Register Representative, Liaison and Policy Section (ODL); or any being sent via express mail should be sent to DEA Headquarters, Attention: DEA Federal Register Representative/ODL, 2401 Jefferson-Davis Highway, Alexandria, Virginia 22301; and must be filed no later than August 15, 2005.

Dated: June 8, 2005.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 05–11791 Filed 6–14–05; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-day notice of information collection under review: 2005 Census of State and Federal Correctional Facilities.

The Department of Justice (DOJ), Office of Justice Programs (OJP), Bureau of Justice Statistics (BJS), has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until August 15, 2005. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact James Stephan, Bureau of Justice Statistics, Office of Justice Programs, Department of Justice, 810 7th Street, NW., Washington, DC 20531, (202) 616–3289.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Reinstatement, with change, of a previously approved collection for which approval has expired.

(2) *Title of the Form/Collection:* 2005 Census of State and Federal Correctional Facilities.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: CJ–43, Bureau of Justice Statistics, Office of Justice Programs, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Federal, State, and District prison authorities. The Census of State and Federal Correctional Facilities obtains information on each type of facility designed to house adults sentenced to confinement by State, District, or Federal court. These facilities include prisons, penitentiaries, and correctional institutions; boot camps; prison farms; reception, diagnostic, and classification centers; road camps; forestry and conservation camps; youthful offender facilities (except in California); vocational training facilities; prison hospitals; drug and alcohol treatment facilities; and State operated local detention facilities.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 1,700 respondents will complete a 3-hour census form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 5,100 total annual burden hours associated with this collection.

If additional information is required contact: Brenda E. Dyer, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: June 10, 2005.

Brenda E. Dyer,

Department Clearance Officer, Department of Justice.

[FR Doc. 05–11778 Filed 6–14–05; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-day notice of information collection under review: Semi-annual progress report for the Transitional Housing Assistance Grant Program.

The Department of Justice (DOJ), Office of Justice Programs (OJP), Office on Violence Against Women (OVW) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until August 15, 2005. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact: Cathy Poston, Attorney Advisor, Office on Violence Against Women, U.S. Department of Justice, 810 Seventh Street NW., Washington, DC 20531.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* New Collection.

(2) *Title of the Form/Collection:* Semi-Annual Progress Report for the Transitional Housing Assistance Grant Program.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: None. Office of Justice Programs, Office on Violence Against Women.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Not-for-profit institutions. Other: State, Local, or Tribal Government. The affected public includes the approximately 120 grantees from the Transitional Housing Assistance Grant Program. These grants will provide funds to States, units of local government, Indian tribes, and other organizations, to carry out programs to provide transitional housing assistance and support services to minors, adults, and their dependents who are homeless, or in need of transitional housing or other housing assistance, as a result of fleeing a situation of domestic violence and for whom emergency shelter services or other crisis intervention services are unavailable or insufficient. 42 U.S.C. 13975.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: It is estimated that it will take the approximately 120 respondents (grantees) approximately one hour to complete the Semi-Annual Progress Report. The report is divided into sections that pertain to the different types of activities that grantees may engage in with grant funds. Grantees must complete only those sections that are relevant to their activities.

(6) An estimate of the total public burden (in hours) associated with the collection: The estimated public burden associated with this collection is 240 hours.

If additional information is required contact: Brenda E. Dyer, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: June 10, 2005.

Brenda E. Dyer,

Department Clearance Officer, Department of Justice.

[FR Doc. 05–11779 Filed 6–14–05; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). 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. Currently, the Employment Standards Administration is soliciting comments concerning the proposed collection: Office of Federal Contract Compliance Programs Recordkeeping and Reporting Requirements, Construction. A copy of the proposed information collection request can be obtained by contacting the office listed below in the addresses section of this notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before August 15, 2005.

ADDRESSES: Ms. Hazel M. Bell, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0418, fax (202) 693–1451, e-mail *Bell.Hazel@dol.gov.* Please use only one method of transmission for comments (mail, fax, or e-mail).

SUPPLEMENTARY INFORMATION

I. Background

The Office of Federal Contract Compliance Programs (OFCCP) is responsible for the administration of three equal opportunity programs, which prohibit employment discrimination and require affirmative action by Federal contractors and subcontractors. The laws administered by the OFCCP are Executive Order 11246, as amended, section 503 of the Rehabilitation Act, as amended, and the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (VEVRAA), 38 U.S.C. 4212. OFCCP has promulgated regulations implementing these laws, which are found at Title 41 of the Code of Federal Regulations, Chapter 60. For purposes of this clearance request, the programs have been divided functionally into two categories, construction and supply and service. This information collection request covers the recordkeeping and reporting requirements for the functional aspects of the program involving construction. A separate information collection request covers the recordkeeping and reporting requirements for functional aspects of the program involving supply and service, and is approved under OMB 1215–0072. This information collection is currently approved for use through June 30, 2005.

On December 8, 2003, OFCCP published a **Federal Register** Notice (FRN) indicating the intent to conduct an internal assessment of the burden hours associated with the construction program. The burden hour results of the internal assessment are included in this FRN, for which OFCCP is seeking public comments. The results of the internal study, along with the public comments, will be incorporated in the final Information Collection Request seeking a three-year approval.

The Department of Labor invites comments on the accuracy of the estimated universe of 178,487 Federal contractor construction firms. OFCCP developed this estimate through a multi-step process. First, OFCCP obtained the total number of construction firms in the United States from statistics compiled by the U.S. Census Bureau in 2001. The census compilation indicated that there were 691,110 construction firms in the United States. Second, OFCCP subtracted from the total 98,837 firms with zero (0) employees. Third, OFCCP deducted from the first three employee size ranges (1 to 4, 5 to 9, and 10 to 19) a total of 146,056 firms, which represents the number of firms engaged in single-family housing construction, leaving 446,217 construction firms. Fourth, because all construction firms are not covered contractors within OFCCP's jurisdiction, OFCCP developed an estimate of the percentage of firms that are covered contractors by examining the percentage of supply and service firms that are covered contractors. Employer Information Report (EEO–1) forms filed annually by many employers provide information on the supply and service universe of Federal contractors. Relying on EEO–1 data, OFCCP found that there were 25,681 supply and service consolidated EEO–1 Reports (multi-establishment employers are required to file consolidated EEO–1 Reports for establishments with 50 or more employees as well as establishments with fewer than 50 employees) filed in FY 2002. This is a reasonable approximation of the total number of supply and service firms submitting consolidated reports in the United States. Of these firms, 10,498 (40.8%) indicated that they were Federal contractors. Based on the proportion of supply and service contractors that self-identified as federal contractors, OFCCP assumed that 40 percent of the U.S. construction firms would hold one or more Federal or federally assisted construction contracts. Accordingly, OFCCP estimated that 40.0% of the 446,217 construction firms, or 178,487 firms, are Federal or federally assisted construction contractors.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

The Department of Labor seeks the extension of approval to collect this information in order to carry out its responsibility to enforce the affirmative action and nondiscrimination provisions of the three laws that it administers.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: OFCCP Recordkeeping and Reporting Requirements, Construction.

OMB Number: 1215–0163.

Affected Public: Business or other for-profit, Not-for-profit institutions.

Total Respondents: 178,487.

Total Annual Responses: 178,487.

Average Time per Response, Recordkeeping: 9 hours.

Average Time per Response, Reporting: 0 hours.

Affirmative Action Program, Initial Development: 32,112 hours.

Affirmative Action Program, Annual Update: 120,487 hours.

Compliance Reviews: 715 hours.

Total Burden Hours, Recordkeeping and Reporting: 1,710,325.

Frequency: Annually.

Total Burden Cost (capital/startup): $59,882.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: June 8, 2005.

Bruce Bohanon,

Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. 05–11780 Filed 6–14–05; 8:45 am]

BILLING CODE 4510–CM–P

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). 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. Currently, the Employment Standards Administration is soliciting comments concerning the proposed collection: Application for Authority for an Institution of Higher Education to Employ its Full-Time Students at Subminimum Wages Under Regulations 29 CFR Part 519 (WH–201). A copy of the proposed information collection request can be obtained by contacting the office listed below in the addresses section of this notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before August 15, 2005.

ADDRESSES: Ms. Hazel M. Bell, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0418, fax (202) 693–1451, e-mail *bell.hazel@dol.gov.* Please use only one method of transmission for comments (mail, fax, or e-mail).

SUPPLEMENTARY INFORMATION

I. Background

Fair Labor Standards Act (FLSA) section 14(b)(3), 29 U.S.C. 214(b)(3), authorizes the Secretary of Labor to provide certificates allowing institutions of higher education to employ their full-time students at subminimum wages, to the extent necessary to prevent curtailment of opportunities for employment. This section also sets limits on such employment and protects the full-time employment opportunities of other workers. The Department of Labor (DOL) has issued Regulations 29 CFR part 519 to implement the statutory provision. An institution of higher education uses Form WH–201, when applying for authorization to pay subminimum wages to its full-time students employed by the institution. The WH–201 application provides the information necessary to ascertain whether the requirements of section 14(b) have been met. This information collection is currently approved for use through November 30, 2005.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

The Wage and Hour Division seeks the approval of the extension of this information collection to carry out its responsibility to make a determination whether to grant or deny subminimum wage authority to the applicant. If the information were not collected, institutions of higher education would not have a mechanism to apply for authorization to pay full-time students at subminimum wages and job opportunities for full-time students would be reduced.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Application for Authority for an Institution of Higher Education to Employ its Full-Time Students at Subminimum Wages under Regulations 29 CFR Part 519.

OMB Number: 1215–0080.

Agency Number: WH–201.

Affected Public: Business or other for-profit; Not-for-profit institutions.

Total Respondents: 15.

Total Annual Responses: 15.

Estimated Time per Response: 15 to 30 minutes.

Burden Hours Per Response (Recordkeeping): 1 minute.

Estimated Total Burden Hours (Reporting and Recordkeeping): 5.

Frequency: Annually.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: June 8, 2005.

Bruce Bohanon,

Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. 05–11781 Filed 6–14–05; 8:45 am]

BILLING CODE 4510–27–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–1218–0126(2005)]

Acrylonitrile Standard; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comment.

SUMMARY: OSHA solicits public comment concerning its request for an extension of the information collection requirements contained in the Acrylonitrile Standard (the ''AN'' Standard) (29 CFR 1910.1045).

DATES: Comments must be submitted by the following dates:

Hard copy: Your comments must be submitted (postmarked or received) by August 15, 2005.

Facsimile and electronic transmission: Your comments must be received by August 15, 2005.

ADDRESSES: You may submit comments, identified by OSHA Docket No. ICR–1218–0126(2005), by any of the following methods:

Regular mail, express delivery, hand delivery, and messenger service: Submit your comments and attachments to the OSHA Docket Office, Room N–2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2350 (OSHA's TTY number is (877) 889–5627). OSHA Docket Office and Department of Labor hours are 8:15 a.m. to 4:45 p.m., ET.

Facsimile: If your comments are 10 pages or fewer in length, including attachments, you may fax them to the OSHA Docket Office at (202) 693–1648.

Electronic: You may submit comments through the Internet at *http://ecomments.osha.gov.* Follow instructions on the OSHA Web page for submitting comments.

Docket: For access to the docket to read or download comments or background materials, such as the complete Information Collection Request (ICR) (containing the Supporting Statement, OMB–83–I Form, and attachments), go to OSHA's Web page at *http://www.OSHA.gov.* In addition, the ICR, comments and submissions are available for inspection and copying at the OSHA Docket Office at the address above. You may also contact Todd Owen at the address below to obtain a copy of the ICR. For additional information on submitting comments, please see the ''Public Participation'' heading in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Todd Owen, Directorate of Standards and Guidance, OSHA, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210, telephone: (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e.*, employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)).

This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657).

On January 5, 2005, OSHA published the Standards Improvement Project—Phase II, Final rule (70 FR 1112). The final rule removed and revised provisions of standards that were outdated, duplicative, unnecessary, or inconsistent and clarified or simplified regulatory language. The final rule contained several revisions to collections of information contained in the AN Standard.[1] These revisions included: Reducing the frequency of exposure monitoring and updating compliance plans; allowing employers the option to post employee exposure-monitoring results instead of requiring individual notification; and eliminating the need for employers to report emergencies to OSHA and to notify OSHA when establishing a regulated area. Those changes reduced paperwork burden hours while maintaining worker protection and improving consistency among standards.

The information collection requirements specified in the AN Standard protect employees from the adverse health effects that may result from their exposure to AN. The major information collection requirements of the AN Standard include notifying employees of their AN exposures, implementing a written compliance program, providing examining physicians with specific information, ensuring that employees receive a copy of their medical examination results, maintaining employee's exposure-monitoring and medical records for specific periods, and providing access to these records by OSHA, the National Institute for Occupational Safety and Health, the affected employees, and designated representatives.

[1] The Office of Management and Budget approved the reduction of 1,511 burden hours after reviewing the Information Collection Request for the Standards Improvement Project—Phase II Notice of Proposed Rulemaking, published October 31, 2002 (67 FR 66494). On January 5, 2005, when the final rule was published (70 FR 1112) documentation was submitted to OMB revising the reduction of 1,511 hours to 1,196 hours to reflect the increase in time to conduct exposure monitoring.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

OSHA proposes to extend the Office of Management and Budget's (OMB) approval of these collections of information (paperwork) requirements necessitated by the AN standard (29 CFR 1910.1045). The Agency will include this summary in its request to OMB to extend the approval of these collections of information requirements.

Type of Review: Extension of currently approved information collection requirements.

Title: Acrylonitrile Standard.

OMB Number 1218–0126.

Affected Public: Business or other for-profits; Federal government; State, local or tribal government.

Frequency: On occasion.

Average Time Per Response: Varies from 5 minutes (.08 hour) to provide information to the examining physician to 1.5 hour to conduct medical examinations.

Estimated Total Burden Hours: 3,237.

Estimated Cost (Operation and Maintenance): $173,652.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments and supporting materials in response to this notice by (1) hard-copy, (2) FAX transmission (facsimile), or (3) electronically through the OSHA Web page. Because of security-related problems, there may be a significant delay in the receipt of comments by regular mail. Please contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627) for information about security procedures concerning the delivery of submissions by express delivery, hand delivery and courier service.

All comments, submissions and background documents are available for inspection and copying at the OSHA Docket Office at the above address. Comments and submissions posted on OSHA's Web page are available at *http://www.OSHA.gov*. Contact the OSHA Docket Office for information about materials not available through the OSHA Web page and for assistance using the Web page to locate docket submissions.

Electronic copies of this **Federal Register** notice as well as other relevant documents are available on OSHA's Web page. Since all submissions become public, private information such as social security numbers should not be submitted.

V. Authority and Signature

Jonathan L. Snare, Acting Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*), and Secretary of Labor's Order No. 5–2002 (67 FR 65008).

Dated: Signed at Washington, DC, on June 8, 2005.

Jonathan L. Snare,

Acting Assistant Secretary of Labor

[FR Doc. 05–11811 Filed 6–14–05; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

SES Performance Review Board

AGENCY: National Endowment for the Arts.

ACTION: Notice.

SUMMARY: Notice is hereby given of the names and members of the Performance Review Board for the National Endowment for the Arts. This notice supersedes all previous notices of the PRB membership of the Agency.

DATES: Upon publication.

FOR FURTHER INFORMATION CONTACT: Craig McCord, Director of Human Resources, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Room 627, Washington, DC 20506, (202) 682–5473.

SUPPLEMENTARY INFORMATION: Sec. 4314(c)(1) through (5) of Title 5, U.S.C., requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more SES Performance Review Boards. The Board shall review and evaluate the initial appraisal of a senior executive's performance by the supervisor, along with any response by the senior executive, and make recommendations to the appointing authority relative to the performance of the senior executive.

The following persons have been selected to serve on the Performance Review Board of the National Endowment for the Arts:

Eileen B. Mason, Senior Deputy Chairman.

Laurence M. Baden, Deputy Chairman for Management and Budget.

Tony Chauveaux, Deputy Chairman for Grants and Awards.

Ann Guthrie Hingston, Director of the Office of Government Affairs.

Michael R. Burke, Chief Information Officer.

James F. McDermott, Deputy Director, Office of Human Resources U.S. Nuclear Regulatory Commission.

Murray R. Welsh,

Director of Administrative Services, National Endowment for the Arts.

[FR Doc. 05–11788 Filed 6–14–05; 8:45 am]

BILLING CODE 7536–01–M

PENSION BENEFIT GUARANTY CORPORATION

Required Interest Rate Assumption for Determining Variable-Rate Premium; Interest Assumptions for Multiemployer Plan Valuations Following Mass Withdrawal

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of interest rates and assumptions.

SUMMARY: This notice informs the public of the interest rates and assumptions to be used under certain Pension Benefit Guaranty Corporation regulations. These rates and assumptions are published elsewhere (or can be derived from rates published elsewhere), but are collected and published in this notice for the convenience of the public. Interest rates are also published on the PBGC's Web site (*http://www.pbgc.gov*).

DATES: The required interest rate for determining the variable-rate premium under part 4006 applies to premium payment years beginning in June 2005. The interest assumptions for performing multiemployer plan valuations following mass withdrawal under part 4281 apply to valuation dates occurring in July 2005.

FOR FURTHER INFORMATION CONTACT: Catherine B. Klion, Attorney, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION:

Variable-Rate Premiums

Section 4006(a)(3)(E)(iii)(II) of the Employee Retirement Income Security Act of 1974 (ERISA) and § 4006.4(b)(1) of the PBGC's regulation on Premium Rates (29 CFR part 4006) prescribe use of an assumed interest rate (the ''required interest rate'') in determining a single-employer plan's variable-rate premium. Pursuant to the Pension Funding Equity Act of 2004, for premium payment years beginning in 2004 or 2005, the required interest rate is the ''applicable percentage'' (currently 85 percent) of the annual rate of interest determined by the Secretary of the Treasury on amounts invested conservatively in long-term investment grade corporate bonds for the month preceding the beginning of the plan year for which premiums are being paid. Thus, the required interest rate to be used in determining variable-rate premiums for premium payment years beginning in June 2005 is 4.60 percent (*i.e.,* 85 percent of the 5.41 percent composite corporate bond rate for May 2005 as determined by the Treasury).

The following table lists the required interest rates to be used in determining variable-rate premiums for premium payment years beginning between July 2004 and June 2005.

For premium payment years beginning in:	The required interest rate is:
July 2004	5.25
August 2004	5.10
September 2004	4.95
October 2004	4.79
November 2004	4.73
December 2004	4.75
anuary 2005	4.73
February 2005	4.66
March 2005	4.56
April 2005	4.78
May 2005	4.72
June 2005	4.60

Multiemployer Plan Valuations Following Mass Withdrawal

The PBGC's regulation on Duties of Plan Sponsor Following Mass Withdrawal (29 CFR part 4281) prescribes the use of interest assumptions under the PBGC's regulation on Allocation of Assets in Single-Employer Plans (29 CFR part 4044). The interest assumptions applicable to valuation dates in July 2005 under part 4044 are contained in an amendment to part 4044 published elsewhere in today's **Federal Register.**

Tables showing the assumptions applicable to prior periods are codified in appendix B to 29 CFR part 4044.

Issued in Washington, DC, on this 8th day of June, 2005.

Vincent K. Snowbarger,

Deputy Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 05–11770 Filed 6–14–05; 8:45 am]

BILLING CODE 7708–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51800; File No. SR–CHX–2005–14]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto Relating to Participant Fees and Credits

June 8, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 2, 2005, the Chicago Stock Exchange, Inc. (''CHX'' 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. On June 3, 2005, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CHX proposes to amend its Participant Fee Schedule (the ''Fee Schedule'') to add new fees for 17-inch flat-panel monitors and for voice recording services provided by the Exchange. The text of the proposed rule change is available on the CHX's Web site (*http://www.chx.com*), at the CHX's Office of the Secretary, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange made technical corrections to the rule text of the proposed rule change. The effective date of the original proposed rule change is May 2, 2005, and the effective date of the amendment is June 3, 2005. For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change, as amended, under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on June 3, 2005, the date on which the Exchange submitted Amendment No. 1. *See* 15 U.S.C. 78s(b)(3)(C).

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 CHX 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 CHX 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

Under the current Fee Schedule, the Exchange charges its members for specific types of equipment and technology services provided by the Exchange. These charges include fees for personal computers, monitors and printers. Fees vary based on the specific type of equipment or service provided.[4]

In this proposal, the Exchange seeks to add a new charge, of $24.00 per month, for 17-inch flat-panel monitors provided to participant firms.[5] Additionally, the Exchange seeks to add a new charge, of $20.00 per month per phone, to provide voice recording services to on-floor firms that specifically request this service. These new fees are designed to charge CHX participants the costs associated with these monitors and voice recording services and are designed to take effect immediately.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[6] in general, and furthers the objectives of Section 6(b)(4) of the Act,[7] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

[4] For example, a laptop computer has a charge of $150.00 per month, while a Pentium 450 PC has a charge of only $70.00 per month.

[5] The Exchange currently charges $15.00 per month for 15-inch flat-panel monitors and $32.00 per month for 18 and 19-inch flat-panel monitors.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4).

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 proposed rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act[8] and subparagraph (f)(2) of Rule 19b–4 thereunder,[9] because it establishes or changes a due, fee, or other charge imposed by the CHX. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate 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.[10]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CHX–2005–14 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549.

All submissions should refer to File Number SR–CHX–2005–14. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 17 CFR 240.19b–4(f)(2).

[10] *See supra* note 3.

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 inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal offices of the CHX. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CHX–2005–14 and should be submitted on or before July 6, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–3079 Filed 6–14–05; 8:45 am]

BILLING CODE 8010–01–P

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51810; File No. SR–NASD–2005–069]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Multiple Market Participant Identifiers

June 9, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 25, 2005, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by Nasdaq. Nasdaq has filed the proposal as a ''non-controversial'' rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to re-establish two pilot programs that provide market participants who execute transactions in Nasdaq and exchange-listed securities through its systems the ability to display trading interest using up to 10 individual MPIDs. The text of the proposed rule change is available on the Nasdaq's Web site (*http://www.nasdaq.com*), at the Nasdaq'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, Nasdaq 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. Nasdaq 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

As set forth in more detail below, Nasdaq is proposing to re-establish two pilot programs that inadvertently were permitted to lapse on March 1, 2005. On March 1, 2004, Nasdaq submitted to the Commission SR–NASD–2004–037[5] establishing the ability of ECNs and market makers in Nasdaq securities to use up to 10 individual Market Participant Identifiers (''MPIDs'') to display attributable quotes and orders in the Nasdaq Quotation Montage. On July 29, 2004, Nasdaq submitted to the Commission SR–NASD–2004–097,[6] which created this same capability for ECNs and market makers using Nasdaq systems to quote and trade exchange-listed securities. MPIDs for Nasdaq and exchange-listed securities are allocated and, when Nasdaq is reaching technological limits for displayed, attributable MPIDs, re-allocated using the same procedures.[7] An additional MPID is known as a ''Supplemental MPID'' with a market maker's or ECN's first MPID being known as the ''Primary MPID.'' On September 1, 2004, Nasdaq submitted SR–NASD–2004–134 which extended both pilots through March 1, 2005.[8] Nasdaq is proposing to re-establish the pilot programs through November 30, 2005.

The purpose of providing Supplemental MPIDs is to provide quoting market participants a better ability to organize and manage diverse order flows from their customers and to route orders and quotes to Nasdaq's listed trading facilities from different units/desks. To the extent that this flexibility provides increased incentives to provide liquidity to Nasdaq systems all market participants can be expected to benefit.[9]

The restrictions on the use of any Supplemental MPID are the same as those applicable to a Primary MPID. Regardless of the number of MPIDs used, NASD members will trade exchange-listed securities using Nasdaq systems in compliance with all pre-existing NASD and SEC rules governing the trading of these securities. There are only two exceptions to this general principle. First, the continuous quote requirement and the need to obtain an excused withdrawal, or functional excused withdrawal, as described in Rule 5220(e), as well as the procedures described in Rule 4710(b)(2)(B) and (b)(5), do not apply to Supplemental MPIDs; Second, only one MPID may be used to engage in passive market making or to enter stabilizing bids pursuant to NASD Rules 4614 and 4619. In all other respects, market makers and ECNs will have the same rights and obligations in using a Supplemental MPID to enter quotes and orders and to display quotations, as they do today.

[5] Securities Exchange Act Release No. 49471 (March 25, 2004), 69 FR 17006 (March 31, 2004).

[6] Securities Exchange Act Release No. 50140 (August 3, 2004), 69 FR 48535 (August 10, 2004).

[7] Under those procedures, rankings are based only on the volume associated with a member's Supplemental MPID—Primary MPIDs will be excluded from the calculation. The member with lowest volume using a Supplemental MPID will continue to be the first to lose the display privilege, but only with respect to the Supplemental MPID that caused the member to have the lowest ranking; the member will not lose its authority to use the Supplemental MPID in that security to submit quotes and orders to SIZE or the display privileges associated with that Supplemental MPID with respect to other securities in which it is permitted to use the identifier. When re-allocating the display privileges, requests for Primary MPIDs will continue to receive precedence over requests for Supplemental MPIDs.

[8] Securities Exchange Act Release No. 50434 (Sept. 23, 2004), 69 FR 58564 (Sept. 30, 2004).

[9] Nasdaq assesses no fees for the issuance or use of a Supplemental MPIDs other than the SEC-approved transaction fees set forth in NASD Rule 7010.

The granting of Supplemental MPIDs is secondary to the integrity of the Nasdaq system trading those issues. As such, ECNs and market makers may not use a Supplemental MPID(s) to accomplish indirectly what they would be prohibited from doing directly through a single MPID. For example, members will not be permitted to use a Supplemental MPID to avoid their Manning or best execution obligations or their obligations under the SEC Order Handling Rules, the firm quote rule, the OATS rules, and the SEC order routing and execution quality disclosure rules. To the extent that the allocation of Supplemental MPIDs creates regulatory confusion or ambiguity, every inference will be drawn against the use of Supplemental MPIDs in a manner that would diminish the quality or rigor of the regulation of the Nasdaq market. Accordingly, if it is determined that a Supplemental exchange-listed MPID is being used improperly, Nasdaq will withdraw its grant of the Supplemental MPID for all purposes for all securities.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,[10] in general and with Section 15A(b)(6) of the Act,[11] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, remove impediments to a free and open market and a national market system, and, in general, to protect investors and the public interest. In particular, the use of multiple MPIDs in listed securities can be expected to provide greater flexibility in the processing of diverse orders flows thereby improving overall system liquidity for the benefit of all market participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

[10] 15 U.S.C. 78o–3.

[11] 15 U.S.C. 78o–3(b)(6).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[12] and Rule 19b–4(f)(6) thereunder.[13]

Pursuant to Rule 19b–4(f)(6)(iii), a proposed ''non-controversial'' rule change does not become operative for 30 days after the date of filing, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest.[14] Nasdaq has requested that the Commission waive the 30-day operative delay and designate the proposed rule change as immediately operative.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.[15] The proposal will make available a functionality that has been widely adopted by Nasdaq market participants and that has, in Nasdaq's view, improved liquidity and transparency within the Nasdaq market center since its inception. According to Nasdaq, to deny the waiver of the 30-day implementation delay would require widespread re-programming to decommission multiple MPIDs, imposing great cost on market participants. For this reason, the Commission designates the proposal to be effective and operative upon filing with the Commission.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate 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, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASD–2005–069 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–NASD–2005–069. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–NASD–2005–069 and should be submitted on or before July 6, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–3078 Filed 6–14–05; 8:45 am]

BILLING CODE 8010–01–P

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 240.19b–4(f)(6)(iii).

[15] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51805; File No. SR–NSX–2005–05]

Self-Regulatory Organizations; National Stock Exchange; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Liquidity Provider Rebate and Fee Program

June 8, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 26, 2005, the National Stock Exchange (''NSX'' or ''Exchange'')[3] 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 Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[4] and Rule 19b–4(f)(6) thereunder,[5] which renders the proposed rule change effective upon filing with the Commission.[6] The Commission is publishing this notice to solicit comments on the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange established a liquidity provider rebate and fee pilot program (''Program'') in SR–CSE–2002–16.[7] The Program is currently in effect and is scheduled to expire June 30, 2005.[8] With the instant proposed rule change, the Exchange extends the Program through June 30, 2006. The Exchange is making no substantive changes to the Program, other than extending its operation through June 30, 2006. The text of the proposed rule change is available on the NSX's Web site (*http://www.nsx.com*), at the NSX's principal office, 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 parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In SR–CSE–2002–16,[9] the Exchange established the Program, which provides a transaction credit for liquidity providers that is paid by liquidity takers on each intra-Exchange execution[10] in Nasdaq securities. To establish the Program, the Exchange amended Exchange Rule 11.10A(g)(1) by adding subparagraph (B) to charge the liquidity taker (*i.e.*, the party executing against a previously displayed quote/order) $0.004 per share. The Exchange then passes on to the liquidity provider (*i.e.*, the party providing the displayed quote/order) $0.003 per share, allowing the Exchange to retain $0.001 per share. With the instant proposed rule change, the Exchange is extending the Program through June 30, 2006.[11] The Exchange is making no other changes to the Program as it currently operates.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act[12] in general, and furthers the objectives of Section 6(b)(5)[13] in particular, in that it is designed to promote just and equitable principles of trade and to remove impediments to and perfect the mechanism of a free and open market and a national market system and, generally, in that it protects investors and the public interest. The Exchange believes that the proposed rule change is also consistent with Section 6(b)(4) of the Act,[14] in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among Exchange members by crediting members on a *pro rata* basis.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate 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

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, 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)[15] of the Act and Rule 19b–4(f)(6) thereunder.[16]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate 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.

---

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange was formerly known as The Cincinnati Stock Exchange or ''CSE''. *See* Securities Exchange Act Release No. 48774 (November 12, 2003), 68 FR 65332 (November 19, 2003) (SR–CSE–2003–12).

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(6).

[6] The Exchange provided the Commission with written notice of its intention to file the proposed rule change on May 20, 2005. The Commission received the Exchange's submission, and asked the Exchange to file the instant proposed rule change, pursuant to Rule 19b–4(f)(6) under the Act. 17 CFR 240.19–4(f)(6).

[7] Securities Exchange Act Release No. 46848 (November 19, 2002), 67 FR 70793 (November 26, 2002) (''Original Pilot'').

[8] The Program was originally set to expire on March 31, 2003. It has been extended four times, with the most recent extension due to expire on June 30, 2005. *See* Securities Exchange Act Release Nos. 47596 (March 28, 2003), 68 FR 16594 (April 4, 2003)(SR–CSE–2003–03)(extending the pilot until September 30, 2003); 48584 (October 2, 2003), 68 FR 58368 (October 9, 2003)(SR–CSE–2003–13)(extending the pilot until December 31, 2003); 48891 (December 8, 2003), 68 FR 69738 (December 15, 2003) (SR–CSE–2003–14)(extending the pilot until June 30, 2004); and 49792 (June 2, 2004), 69 FR 32389 (June 9, 2004)(SR–NSX–2004–05)(extending the pilot until June 30, 2005).

[9] *See* Original Pilot, *supra* note 7.

[10] An ''intra-Exchange execution'' (referred to in the original filing as an ''intra-CSE execution'') is any transaction that is executed on the Exchange for which the executing member on the buy-side of the transaction differs from the executing member on the sell-side of the transaction.

[11] The Exchange understands that the Commission's Regulation NMS (''Reg NMS'') may have an impact on the Program. Accordingly, the Exchange will undertake to work with the Commission to ensure that the Program would be consistent with the rules and regulations contained in Reg NMS when they become effective.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C. 78f(b)(4).

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b-4(f)(6).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NSX–2005–05 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–NSX–2005–05. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NSX–2005–05 and should be submitted on or before July 6, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–3080 Filed 6–14–05; 8:45 am]

BILLING CODE 8010–01–P

[17] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 5107]

Determination Related to the Participation of the Magen David Adom Society of Israel in the Activities of the International Red Cross and Red Crescent Movement

Pursuant to the requirements contained in the FY 2005 Consolidated Appropriations Act (Division D, Pub. L. 108–447), under the heading of Migration and Refugee Assistance, I hereby determine that the Magen David Adom Society of Israel is not being denied participation in the activities of the International Red Cross and Red Crescent Movement.

This Determination shall be published in the **Federal Register**, and copies shall be provided to the appropriate committees of the Congress.

Dated: June 8, 2005.

Condoleeza Rice,

Secretary of State, Department of State.

[FR Doc. 05–11891 Filed 6–14–05; 8:45 am]

BILLING CODE 4710–33–P

DEPARTMENT OF STATE

[Public Notice 5072]

Advisory Committee on Internatioinal Economic Policy; Notice of Open Meeting

The Advisory Committee on International Economic Policy (ACIEP) will meet from 1:30 p.m. to 4:30 p.m. on Thursday, July 14, 2005, in Room 1107, U.S. Department of State, 2201 C Street NW., Washington, DC. The meeting will be hosted by Assistant Secretary of State for Economic and Business Affairs E. Anthony Wayne and Committee Chairman R. Michael Gadbaw. Topics for the meeting are (1) Recent developments in U.S.-European cooperation, (2) the Security and Prosperity Partnership, and (3) U.S.-Russia economic relations. The ACIEP serves the U.S. Government in a solely advisory capacity concerning issues and problems in international economic policy.

This meeting is open to the public as seating capacity allows. Entry to the building is controlled and will be facilitated by advance arrangements. Members of the public planning to attend should provide, by July 11, their name, professional affiliation, social security number (or other identification, such as driver's license), date of birth, and citizenship to Gwendolyn Jackson by fax (202) 647–5936, e-mail *(jacksongl@state.gov)*, or telephone (202) 647–0847.

For additional information, contact David Freudenwald, Office of Economic Policy and Public Diplomacy, Bureau of Economic and Business Affairs, at (202) 647–2231 or *freudenwalddj@state.gov.*

Dated: June 7, 2005.

Daniel Clune,

Office Director, Office of Economic Policy Analysis and Public Diplomacy, Department of State.

[FR Doc. 05–11819 Filed 6–14–05; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF STATE

[Public Notice 5097]

Shipping Coordinating Committee; Notice of Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 9:30 a.m. on Monday, June 27, 2005, in Room 2415 of the United States Coast Guard Headquarters Building, 2100 2nd Street, SW., Washington, DC 20593–0001. The primary purpose of the meeting is to prepare for the 53rd Session of the International Maritime Organization (IMO) Marine Environment Protection Committee (MEPC) to be held at IMO Headquarters in London, England from July 18th to 22nd, 2005.

The primary matters to be considered include:

—Harmful aquatic organisms in ballast water;
—Recycling of ships;
—Prevention of air pollution from ships;
—Consideration and adoption of amendments to mandatory instruments;
—Interpretation and amendments of MARPOL 73/78 and related instruments;
—Implementation of the International Convention on Oil Pollution Preparedness, Response and Cooperation (OPRC) Convention and the OPRC-Hazardous Noxious Substance (OPRC–HNS) Protocol and relevant conference resolutions;
—Identification and protection of Special Areas and Particularly Sensitive Sea Areas;
—Inadequacy of reception facilities;
—Voluntary IMO Member State Audit Scheme
—Follow-up to the revised MARPOL Annex I and Annex II;
—Harmful anti-fouling systems for ships;
—Promotion of implementation and enforcement of MARPOL 73/78 and related instruments;

—Follow-up to UNCED and WSSD;
—Technical cooperation program;
—Future role of formal safety assessment and human element issues; and
—Work program of the Committee and subsidiary bodies.

Immediately following the meeting, there will be an extended technical discussion on the topic of greenhouse gases, which is part of the agenda item regarding prevention of air pollution from ships. The focus of this discussion will be on draft voluntary guidelines for developing carbon dioxide indexes for ships. These draft guidelines were developed at MEPC 52 and will be discussed at MEPC 53.

Please note that hard copies of documents associated with MEPC 53 will not be available at this meeting. Documents will be available in Adobe Acrobat format on CD–ROM. To request documents please write to the address provided below, or request documents via the following Internet link: *http://www.uscg.mil/hq/gm/mso/mso4/mepc.html.*

Members of the public may attend this meeting up to the seating capacity of the room. Interested persons may seek information by writing to Ensign Christina Sullivan, Commandant (G–MSO–4), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Room 1601, Washington, DC 20593–0001 or by calling (202) 267–2079.

Dated: June 9, 2005.

Clay Diamond,

Executive Secretary, Shipping Coordinating Committee, Department of State.

[FR Doc. 05–11820 Filed 6–14–05; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Waiver Petition Docket Number FRA–2002–11809]

North County Transit District; Supplementary Notice of Waiver Request; Notice of Public Hearing; and Extension of Comment Period

As a supplement to North County Transit District's (NCTD) Petition for Approval of Shared Use and Waiver of Certain Federal Railroad Administration Regulations (the Waiver was granted by the FRA on June 24, 2003), NCTD seeks permanent waiver of compliance from additional sections of Title 49 of the CFR for operation of its SPRINTER rail line between Oceanside, CA., and Escondido, CA. See Statement of Agency Policy Concerning Jurisdiction Over the Safety of Railroad Passenger Operations and Waivers Related to Shared Use of the Tracks of the General Railroad System by Light Rail and Conventional Equipment, 65 FR 42529 (July 10, 2000). See also Joint Statement of Agency Policy Concerning Shared Use of the Tracks of the General Railroad System by Conventional Railroads and Light Rail Transit Systems, 65 FR 42626 (July 10, 2000).

In this regard, NCTD has advanced the design and construction of the SPRINTER rail line towards implementation and in the process, has identified the following additional regulations from which it hereby seeks waivers: 49 CFR part 223 Safety Glazing Standards—Locomotives, Passenger Cars and Cabooses, Section 223.9(c); and part 229 Railroad Locomotive Safety Standards, Section 229.125(a).

As a result of the comments received by FRA concerning this waiver petition, FRA has determined that a public hearing is necessary before a final decision is made on this petition. Accordingly, a public hearing is set to begin at 9 a.m., on July 27, 2005, in the Room 3328 at the Department of Transportation Headquarters Nassif Building, 400 7th Street, SW., Washington, DC 20590. Interested parties are invited to present oral statements at this hearing.

The hearing will be informal and will be conducted in accordance with FRA's Rules of Practice (49 CFR 211.25) by a representative designated by FRA. FRA's representative will make an opening statement outlining the scope of the hearing, as well as any additional procedures for the conduct of the hearing. The hearing will be a non-adversarial proceeding in which all interested parties will be given the opportunity to express their views regarding this waiver petition, without cross-examination. After all initial statements have been completed, those persons wishing to make a brief rebuttal will be given an opportunity to do so in the same order in which initial statements were made. Additional procedures, if necessary for the conduct of the hearing, will be announced at the hearing.

In addition, FRA is extending the comment period in this proceeding until August 12, 2005. FRA reserves the right to announce a further extension of the comment period for the purpose of receiving post-hearing submissions should that appear appropriate in the judgment of the Federal Railroad Administration Safety Board based on testimony received at the public hearing. All communications concerning these proceedings should identify the appropriate docket number (Waiver Petition Docket Number FRA–2002–11809), and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's web site at *http://dms.dot.gov.*

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000, (Volume 65, Number 70; Pages 19477–78). The Statement may also be found at *http://dms.dot.gov.*

Issued in Washington, DC. on June 8, 2005.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 05–11763 Filed 6–14–05; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number 2005–21427]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel BLACK PEARL.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2005–21427 at *http://dms.dot.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in

accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before July 15, 2005.

ADDRESSES: Comments should refer to docket number MARAD–2005 21427.

Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone (202) 366–5979.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel *BLACK PEARL* is:

Intended Use: ''Charter Operations.''

Geographic Region: Texas, Louisiana, Mississippi, Alabama, Florida, Georgia, South Carolina, North Carolina, Virginia, Maryland, Delaware, New Jersey, New York, Connecticut, Massachusetts, New Hampshire, Maine, The Great Lakes, Waterways leading to the Inland States and Great Lakes, Puerto Rico, Virgin Islands.

Dated: June 7, 2005.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 05–11759 Filed 6–14–05; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number 2005–21429]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel COEUR DE LION.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2005–21429 at *http://dms.dot.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before July 15, 2005.

ADDRESSES: Comments should refer to docket number MARAD–2005 21429.

Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Sharon Cassidy, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–5506.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel COEUR DE LION is:

Intended Use: ''6 person or fewer sailing charters in conjunction with on-board business strategy consulting service operated by Best Partners Strategic Charters Inc.''

Geographic Region: ''California.''

Dated: June 7, 2005.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 05–11758 Filed 6–14–05; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: 2005–21431]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel JANIE'S LOFT.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2005–21431 at *http://dms.dot.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver

application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before July 15, 2005.

ADDRESSES: Comments should refer to docket number MARAD–2005–21431.

Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Sharon Cassidy, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–5506.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel *JANIE'S LOFT* is:

Intended Use: ''sail tours of Barnegat Bay.''

Geographic Region: ''near coastal waters of NJ.''

Dated: June 7, 2005.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 05–11756 Filed 6–14–05; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number 2005 21428]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel LUCKY STAR.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2005–21428 at *http://dms.dot.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before July 15, 2005.

ADDRESSES: Comments should refer to docket number MARAD–2005 21428. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Sharon Cassidy, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–5506.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel LUCKY STAR is:

Intended Use: ''Occasionally giving sailing lessons, or day charters/rides.''

Geographic Region: U.S. Northeast Coastal waters, mostly inland.''

Dated: June 7, 2005.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 05–11755 Filed 6–14–05; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number 2005 21430]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel VEGA.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2005–21430 at *http://dms.dot.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before July 15, 2005.

ADDRESSES: Comments should refer to docket number MARAD–2005 21430. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Sharon Cassidy, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–5506.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel VEGA is:

Intended Use: ''Provide day and multi-day sail/auxiliary passenger service for up to six passengers.''

Geographic Region: ''South Central Alaska from Prince William Sound west to include Kenai Fiord, Afornak Island and Kodiak Island.''

Dated: June 7, 2005.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 05–11757 Filed 6–14–05; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2005–21467]

Two- and Three-Wheeled Vehicles

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of draft interpretation; request for comments.

SUMMARY: This document sets forth a draft interpretation concerning whether certain two- and three-wheeled vehicles are ''motor vehicles'' and thus subject to the Federal motor vehicle safety standards and to other vehicle safety requirements. Physical characteristics previously relied upon by the agency are no longer reliable determinants of whether a two- or three-wheeled vehicle is a ''motor vehicle.'' Additionally, the vehicles that were the subject of past agency interpretations are no longer representative of the two- and three-wheeled vehicles on the market today. For these reasons, and because vehicle designs continue to change and proliferate, manufacturers, importers, and import specialists from U.S. Customs and Border Protection (Customs) are requesting interpretations from NHTSA as to whether various two- and three-wheeled vehicles are ''motor vehicles.'' This document would address the issues raised in those types of requests.

DATES: You should submit comments early enough to ensure that Docket Management receives them not later than August 15, 2005.

ADDRESSES: You may submit comments (identified by the DOT DMS Docket Number above) by any of the following methods:

- Web Site: *http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- Fax: 1–202–493–2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number. For detailed instructions on submitting comments, see the Submission of Comments heading under the Supplementary Information section of this document.

Note that all comments received will be posted without change to *http://dms.dot.gov,* including any personal information provided. Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Christopher Calamita, Vehicle Safety Rulemaking and Harmonization Division, Office of Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590, telephone: (202) 366–2992, Fax: (202) 366–3820.

SUPPLEMENTARY INFORMATION:

I. Background
II. Draft Interpretation
A. Vehicles with Speed Capabilities of Less than 20 mph
B. Off-road Two- and Three-wheeled vehicles
III. Reliance on Draft Interpretation
IV. Submission of Comments

I. Background

Under 49 U.S.C. Chapter 301, NHTSA has authority to establish safety standards for ''motor vehicles.'' ''Motor vehicle'' is defined at 49 U.S.C. 30102(a) as:

> [A] vehicle driven or drawn by mechanical power and manufactured primarily for use on the public streets, roads, and highways, but does not include a vehicle operated only on a rail line.

NHTSA has issued regulations to define various types of motor vehicles, *e.g.,* passenger car, multipurpose passenger vehicle, truck, and motorcycle, recognizing that different types of motor vehicles present different safety problems and that the standards that are reasonable, practicable and appropriate for one type of vehicle may not be for another type (see definitions at 49 CFR 571.3). The agency has relied on these regulatory definitions to ensure that vehicles are correctly classified and made subject to the appropriate set of safety requirements.

The agency has defined the term ''motorcycle,'' as a motor vehicle having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground (49 CFR 571.3). Recognizing that small, low-powered motorcycles should be regulated differently than larger, higher-powered motorcycles, we established a sub-classification of ''motorcycle,'' the ''motor-driven cycle.'' [1] However, in order for a two-or three-wheeled vehicle to be regulated as a motorcycle or a motor-driven cycle, it must still come within the statutory definition of ''motor vehicle.''

The agency's interpretations of the term ''motor vehicle,'' have centered on the word ''primarily'' used in the statutory definition. We have generally interpreted ''primarily'' to mean that a significant portion of a vehicle's use must be on public roads in order for the vehicle to be considered a ''motor vehicle.'' Vehicles that cannot be operated on public roads, such as vehicles with tracks, are not ''motor vehicles'' and are not regulated by this agency. Conversely, we have held that the ability to operate on public roads is indicative that a vehicle is a motor vehicle.

The agency has long recognized that not all two- and three-wheeled, motorized vehicles with on-road capabilities are motor vehicles. In 1969,

[1] ''Motor-driven cycle'' is defined as ''a motorcycle with a motor that produces 5-brake horsepower or less.'' 49 CFR 571.3.

the agency was asked to reconsider its interpretation that ''mini-bikes'' were motor vehicles (See 34 FR 15416; October 3, 1969). Manufacturers stated that ''mini-bikes'' were manufactured for use primarily off-road and should not be classified as ''motor vehicles.'' In response, the agency concluded that ''mini-bikes'' did not qualify as ''motor vehicles'' even though they were capable of operation on public roads. The agency stated that in determining whether a vehicle is manufactured primarily for use on public roads and is therefore a ''motor vehicle,'' it would defer, in the first instance, to the manufacturer's judgment. However, we also stated that the decision of the manufacturer would not be conclusive. In excluding ''mini-bikes,'' we noted that a vast majority of States did not permit or license ''mini-bikes'' for use on public roads.

In the ''mini-bike'' notice, the agency also addressed the issue of whether a vehicle with on-road capabilities, but no history of more than incidental use on public roads, is a motor vehicle (*e.g.*, vehicles intended for use almost entirely on industrial sites). In such borderline cases, we stated that a manufacturer's determination that a vehicle is not a motor vehicle would be accepted if the manufacturer:

(1) Did not equip them with devices and accessories that render them lawful for use and registration on public highways under State and local law;

(2) Did not otherwise participate or assist in making the vehicles lawful for operation on public roads (as by furnishing certificates of origin or other title documents, unless those documents contain a statement that the vehicles were not manufactured for use on public streets, roads, or highways);

(3) Did not advertise or promote them as vehicles suitable for use on public roads;

(4) Did not generally market them through retail dealers of motor vehicles; and

(5) Affixed to them a notice stating in substance that the vehicles are not for use on public streets, roads, or highways.

Since this interpretation was published in 1969, we have identified additional elements for consideration in determining whether vehicles capable of on-road use are motor vehicles.

In a number of interpretation letters, the agency indicated that vehicles were excluded from the definition of ''motor vehicle'' if they had an ''abnormal'' configuration and if their maximum speed was 20 miles per hour (mph) or less. Developed initially to deal with large, slow moving vehicles such as large road maintenance vehicles that stand out from the normal flow of traffic and thus are readily visible to approaching and following drivers, this approach came to be used for vehicles of all sizes.

The agency also indicated that folding handlebars and collapsible or removable seats could indicate that a two-wheeled vehicle was not a ''motor vehicle.'' At that time, a variety of two- or three-wheeled vehicles were designed to stow in the cargo area of a passenger vehicle, so that these vehicles could be easily transported to off-road areas.[2] Typically, these vehicles were transported to an off-road location for operation and would not be themselves a means of transport on public roads. Therefore, these vehicles were not motor vehicles. Folding handlebars and collapsible or removable seats were characteristics that demonstrated the portability of these vehicles, and provided a convenient indication of whether a vehicle was designed primarily for off-road use.

In 1997, we announced that we were abandoning the ''abnormal'' configuration line of interpretation, stating that as it was then being applied, it lacked the necessary clarity to provide adequate guidance.[3] While the agency abandoned the ''abnormal'' configuration test, we continued to rely on a vehicle's speed capability as an important, although not a conclusive, factor in determining whether a two- or three-wheeled vehicle is a motor vehicle, *i.e.*, a maximum speed capability under 20 mph makes it less likely that a vehicle would be operated on public roads. Speed capability has continued to be considered in conjunction with various physical features of vehicles as being indicative of intended use.

In recent years, there has been a proliferation in the variety of designs of two- and three-wheeled vehicles, including vehicles popularly referred to as pocket bikes, mini-choppers, pocket ninjas, etc. As vehicle designs continue to change and more varieties of two- and three-wheeled vehicles are introduced into the market, characteristics previously relied upon for classification purposes may no longer be reliably indicative of off-road use. For example, vehicle designs previously classified as motorcycles have been modified and manufactured with folding handlebars and removable seats. However, these changes in design did little to increase the portability of these vehicles. Further, while the mini-bike designs considered in the 1969 notice lacked equipment for on-road use, vehicles with low seating heights now are often equipped with headlights, turn signals, brake lights, and mirrors. The presence of this type of equipment on a low speed vehicle may be intended for ornamental purposes only (*i.e.*, to provide a more realistic ''toy'') or it may suggest that a vehicle is intended for on-road use.

As a result of the evolution of two- and three-wheeled vehicle designs, previous characteristics used in determining whether a vehicle is a ''motor vehicle'' may no longer be appropriate. The vehicle designs addressed in previous agency interpretation letters are no longer representative of those vehicles being imported and manufactured. This has been evidenced by an increase in the number of importers, manufacturers, and import specialists seeking agency interpretations regarding the proper classification of two- and three-wheeled motor vehicles.

On June 28, 2004, the agency published its intent to propose an amendment to the definition of ''motorcycle'' in 49 CFR 571.3 to address this issue (69 FR 37917, 37922). However, we have tentatively decided to address this issue through an interpretation. As the main issue is whether certain two- and three wheeled vehicles are motor vehicles, we believe that it is more appropriate to provide an interpretation of the statutory definition of ''motor vehicle,'' as opposed to amending the definition of motorcycle.

II. Draft Interpretation

The agency continues to adhere to the view that in determining whether a vehicle is a ''motor vehicle'' under the statute, we must rely primarily on vehicle characteristics to discern whether a vehicle was manufactured primarily for use on public roads. Physical characteristics are more readily discernible than information about vehicle usage. Further, they provide a more objective basis, as opposed to a manufacturer's subjective intent, for classifying a particular vehicle as a ''motor vehicle.'' However, as stated above, with the evolution of vehicle designs, not all characteristics previously relied upon are necessarily still indicative of on-or off-road use. Also, while we believe it was necessary to abandon the use of ''abnormal configuration'' in making interpretations, this may leave a void in

[2] In this notice, we are using the term ''off-road'' to mean any non-public area. The term is not limited to unpaved areas and includes parking lots, private roads, and paved trails.

[3] See Notice of Proposed Rulemaking, 62 FR 1077, 1079 (January 8, 1997) and the November 20, 1997 letter to Mr. Gary Starr of ZAP Electric Bikes.

determining how some vehicles with low speed capabilities should be classified.

A. Vehicles With Speed Capabilities of Less Than 20 mph

To provide an interpretation that would allow a clearer and easier determination, the agency is considering giving significantly greater value to maximum speed capability as a dividing line between non-motor vehicles and motor vehicles. For the reasons explained below, we have tentatively concluded that the maximum speed of a vehicle with on-road capabilities is largely determinative of whether the vehicle was manufactured to operate on a public road, in normal moving traffic, and therefore a ''motor vehicle.''

Basing our interpretation primarily on speed would be consistent with Congress' decision to exclude from NHTSA's regulatory authority electric bicycles with a specified maximum speed capability (Pub. L. 107–319, December 4, 2002; codified at 15 U.S.C. 2085; Consumer Product Safety Act). Congress concluded that because low-speed electric bikes ''are designed not to exceed the maximum speed of a human-powered bicycle, and they are typically used in the same manner as human-powered bicycles, electric bicycles should be regulated in the same manner and under the same agency (the [Consumer Product Safety Commission (CPSC)]) as human-powered bicycles (id.).''

The Consumer Product Safety Act defines the term ''low speed electric bicycle'' as a two- or three-wheeled vehicle with fully operable pedals and an electric motor of less than 750 watts (1 horsepower), whose maximum speed on a paved level surface, when powered solely by such a motor while ridden by an operator who weighs 170 pounds, is less than 20 mph (15 U.S.C. 2085(b)).[4]

Consistent with the Congressional definition of low speed electric bicycle, we have tentatively concluded that if a two- or three-wheeled vehicle were to have a maximum speed capability of less than 20 mph (32 km/h), regardless of on-road capabilities, it would not be a ''motor vehicle,'' except in very limited circumstances, as explained below. As with electric bicycles, motorized vehicles with a maximum speed capability of less than 20 mph are designed not to exceed the maximum speed of human-powered bicycles. Therefore, we have tentatively concluded that vehicles with this low speed capability should not be regulated as ''motor vehicles.''

This maximum speed capability approach is also consistent with the agency's traditional consideration of a maximum speed capability of 20 mph as one factor to use in distinguishing between motor vehicles and non-motor vehicles. A speed capability of 20 mph or greater makes it much more likely that a vehicle could be operated in normal moving traffic and would be used on the public roadways. The lowest posted maximum speeds for public roads are typically 20 mph or 25 mph. Vehicles with a lower speed capability would have difficulty operating in normal moving traffic and thus would be less likely to be used on public roadways. In fact, States can regulate the operation of these vehicles and prohibit their operation on some or all public roads, as appropriate. Additionally, this 20 mph dividing line would provide a clear, single parameter for determining whether many vehicles are subject to the Federal motor vehicle safety standards (49 CFR Part 571) and the regulations governing notification and remedy for safety-related defects and noncompliance (49 CFR Part 573 and 577).

The agency recognizes that we must be specific as to the meaning of maximum speed capability in order to provide a clear interpretation. For example, the speed of a low-powered, two-wheeled vehicle may vary considerably depending on the weight of the driver. Clarity in this area is of importance for manufacturers and also for individuals attempting to determine a vehicle's speed upon inspection (*e.g.*, Customs officers at a Port of Entry). The agency has tentatively decided to rely on the method that is based on ISO 7116, ''Road Vehicles—Measurement Method for the Maximum Speed of Mopeds.'' This should provide a method with which industry and testing laboratories are already familiar.

A vehicle's maximum speed would be the highest speed attainable in 1 mile (1.6 km) averaged over a distance interval of 328 feet (100 meters). ISO 7116 specifies a distance interval of 656 feet (200 meters), but because battery capacity of electric vehicles may limit the distance over which an absolute top speed can be maintained, we tentatively concluded that half that distance would be appropriate. As such, we have tentatively concluded that a two-or three-wheeled vehicle's maximum speed would be determined as follows:

> A vehicle's maximum speed would be the highest speed attainable in 1 mile (1.6 km), averaged over a distance interval of 328 feet (100 m), on a paved level surface, while carrying 170 lb (± 5 lb) including the operator. The maximum speed test would be performed in opposite directions over the same track, and the results of the two runs averaged.

In other words, a vehicle's maximum speed would be the speed averaged over a continuous 328-foot (100 m) interval that is within one mile (1.6 km) of the start position. For example, a vehicle could be operated for a total of 492 ft (150 m). The first 164 feet would permit the vehicle to obtain maximum speed, then the following 328 feet (100 m) would be used to obtain a time-over-distance measurement. Under the procedure described above, the initial distance could be any distance less than 1 mile (1.6 km) at which the vehicle reached its top speed and the test was completed within a distance of 1 mile (1.6 km). The test would then be run on the same track in the opposite direction to account for slope in the track and for wind, with the vehicle's maximum speed being the average of the two measurements.

The agency is requesting comment on the appropriateness of relying primarily, and nearly exclusively for lower speed vehicles, on the maximum speed capability when classifying two- and three-wheeled vehicles as motor vehicles or non-motor vehicles and on the appropriateness of using 20 mph as the threshold.

While the speed capability would be given greater weight in excluding low-speed, two- and three-wheeled vehicles from the definition of ''motor vehicle,'' it would not be an absolute consideration. In certain instances, the agency would not rely on a speed capability that is based on the presence of a device used to mechanically limit the maximum speed of a vehicle (a speed governor). In a June 28, 2000 letter to Mr. Thomas E. Dahl, we explained that when determining the maximum speed capability of a high-speed vehicle which is equipped with a speed governor, we would look beyond the speed which might be attained with the governor engaged and consider the underlying speed capability of that vehicle.

The letter to Mr. Dahl was in reference to four-wheeled low-speed vehicles, as defined in 49 CFR 571.3,[5]

[4] On March 22, 2002, the U.S. Electric Bicycle and Scooter Association petitioned the NHTSA to adopt the then proposed statutory definition of ''low speed electric bicycle.'' See Docket No. 2000–7073–7. Given the adoption of this definition in the legislation enacted by Congress, we find the petition to be moot.

[5] The agency established ''low-speed vehicles'' as a separate class of motor vehicles, which are subject to safety standards appropriate given the limited operational capabilities and environments of those vehicles. ''Low-speed vehicle'' is defined as a ''4-wheeled motor vehicle, other than a truck, whose

but this draft interpretation would adopt this rationale for two- and three-wheeled vehicles. If a vehicle's maximum speed were limited by a governor, the agency would consider the vehicle's underlying speed (*i.e.*, without the governor engaged) in determining whether the vehicle is a motor vehicle, unless the governor was installed by the manufacturer and was not easily removable or defeatable. Moreover, regardless of the circumstances, the addition of a governor to an obviously high speed vehicle (*e.g.*, one that travels at speeds of 45 mph or greater) would not turn it into a low speed vehicle.

We request comments on any other factors that should be considered with respect to the underlying speed capability of vehicles, so that our interpretation would not be used inadvertently to classify vehicles with larger power plants as falling outside the definition of ''motor vehicle.'' For example, how should the agency deal with a vehicle whose speed capability can readily be increased to speeds of 20 mph or more through simple adjustments to the vehicle?

A consequence of this interpretation would be that two- and three-wheeled vehicles with a maximum speed capability of less than 20 mph may become subject to the jurisdiction of the CPSC. Under the Consumer Product Safety Act, the CPSC has authority to regulate consumer products (15 U.S.C. 2051(b)). The Consumer Product Safety Act defines a consumer product, in part, as:

> [A]ny article, or component part thereof, produced or distributed (i) for sale to a consumer for use in or around a permanent or temporary household or residence, a school, in recreation, or otherwise, or (ii) for the personal use, consumption or enjoyment of a consumer in or around a permanent or temporary household or residence, a school, in recreation, or otherwise; but such term does not include * * *
>
> (C) motor vehicles or motor vehicle equipment (as defined by sections 102(3) and (4) of the National Traffic and Motor Vehicle Safety Act of 1966), [49 U.S.C. 30102(a)(6)–(7).]

(15 U.S.C. 2052(c)). To ensure continued protection of the public, NHTSA is coordinating our interpretation with CPSC.

B. Vehicles With Speed Capabilities Greater Than 20 mph

Under the draft interpretation, two- and three-wheeled vehicles with a speed capability of 20 mph (32 km/h) or greater would be excluded from the definition of ''motor vehicle'' if they are manufactured primarily for off-road use (*e.g.*, dirt bikes and motocross bikes). These vehicles are not used primarily on public roads, and therefore are not ''motor vehicles.'' In determining whether a two- or three-wheeled vehicle is an ''off-road'' vehicle, we would again look to the physical features of the vehicle.

We have tentatively concluded that if a two- or three-wheeled vehicle lacks a vehicle identification number (VIN) as specified in 49 CFR Part 565, *Vehicle Identification Number Requirements*, and lacks mirrors, turn signal lamps, side marker lamps, and stop lamps (on-road equipment), then the vehicle should be considered an ''off-road'' vehicle. We have tentatively concluded that the lack of a VIN and on-road equipment indicates that a vehicle was not manufactured primarily for use on public roads. Therefore, these vehicles would not be considered ''motor vehicles.'' By contrast, the presence of these items on a two- or three-wheeled vehicle that has a speed capability of 20 mph (32 km/h) or greater indicates that the vehicle is intended for on-road use.

VINs

In a vast majority of circumstances, a VIN is required under State law to register a vehicle for use on public roads. Unless a vehicle is properly registered, most jurisdictions prohibit its operation on public roads, and the operation of an unregistered vehicle on public roads is a matter of State or local enforcement.

We recognize that some States require the registration of off-road vehicles, and that some States require a VIN or VIN-like number for this registration. Previously, the Society of Automotive Engineers was assigning World Manufacturer Identifiers (WMIs), which normally consist of the first 3 characters of a VIN, to manufacturers for assigning identification numbers to off-road vehicles. At the direction of NHTSA, SAE no longer assigns WMIs for this purpose. Therefore, an off-road vehicle should not be assigned an identification number that complies with Part 565. To facilitate the continued State registration of off-road vehicles the SAE VIN/WMI Technical Committee is working to develop an alternative format that would not conflict with Part 565.

On-Road Equipment

In order for a two- and three-wheeled vehicle to be safely operated on a public road it requires mirrors, turn signal lamps, side marker lamps, and stop lamps [6]. The agency has tentatively concluded that a lack of these features would demonstrate that a vehicle was not intended for on-road use. This is consistent with our past interpretation letters in which we have stated that the presence of mirrors, turn signal lamps, side marker lamps, or a stop lamp suggests that a vehicle is intended for on-road use.

Additionally, the agency reviewed the current off-road vehicle market in order to identify the appropriate equipment to identify vehicles manufactured for on-road use. However, the agency does not have the same level of experience with off-road vehicles as we do with on-road vehicles. Further, we recognize that there may be some value to safety in equipping off-road vehicles with one or more of these items. Therefore, we request comment on the appropriateness of the on-road equipment chosen to distinguish off-road vehicles with maximum speed capabilities 20 mph or greater from on-road vehicles.

- Are there currently off-road vehicles that would be classified as on-road vehicles based on the ''on-road equipment'' guidelines?
- If so, which vehicles?
- If we were to adopt guidelines as discussed above, what would be the impact to off-road vehicle manufacturers?
- Are there other vehicle characteristics that may better distinguish on-road two- and three-wheeled vehicles from off-road two- and three-wheeled vehicles?

III. Reliance on Draft Interpretation

We are inviting public comments on our draft interpretation and, after reviewing the comments plan to publish a final interpretation in the **Federal Register**. We recognize that, in the meantime, manufacturers, importers, and import specialists must make determinations as to whether various two- and three-wheeled vehicles are ''motor vehicles'' and thus subject to the Federal motor vehicle safety standards and to other vehicle safety requirements. Until we publish a final interpretation, these and other parties may rely on our draft interpretation with regard to vehicles with maximum speed capabilities less than 20 mph.

speed attainable in 1.6 km (1 mile) is more than 32 kilometers per hour (20 miles per hour) and not more than 40 kilometers per hour (25 miles per hour) on a paved level surface'' (49 CFR 571.3).

[6] A stop lamp is a lamp that gives a steady light to the rear of a vehicle to indicate the intention of the vehicle operator to stop or reduce speed through braking.

IV. Submission of Comments

How Do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long. (49 CFR 553.21). We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES.** Comments may also be submitted to the docket electronically by logging onto the Dockets Management System Web site at *http://dms.dot.gov.* Click on ''Help & Information'' or *AHelp/Info@* to obtain instructions for filing the document electronically.

How Can I Be Sure That My Comments Were Received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How Do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT**. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES.** When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation. (49 CFR Part 512.)

Will the Agency Consider Late Comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under DATES. To the extent possible, we will also consider comments that Docket Management receives after that date.

How Can I Read the Comments Submitted by Other People?

You may read the comments received by Docket Management at the address given above under **ADDRESSES.** The hours of the Docket are indicated above in the same location.

You may also see the comments on the Internet. To read the comments on the Internet, take the following steps:

(1) Go to the Docket Management System (DMS) Web page of the Department of Transportation (*http://dms.dot.gov/*).

(2) On that page, click on ''search.''

(3) On the next page (*http://dms.dot.gov/search/*), type in the four-digit docket number shown at the beginning of this document. Example: If the docket number were ''NHTSA–1998–1234,'' you would type ''1234.'' After typing the docket number, click on ''search.''

(4) On the next page, which contains docket summary information for the docket you selected, click on the desired comments. You may download the comments. However, since the comments are imaged documents, instead of word processing documents, the downloaded comments are not word searchable.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov*.

Issued on June 8, 2005.

Jacqueline Glassman,

Chief Counsel.

[FR Doc. 05–11764 Filed 6–14–05; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34711]

Union Pacific Railroad Company—Trackage Rights Exemption—Illinois Central Railroad Company D/B/A Canadian National Railway Company

Illinois Central Railroad Company d/b/a Canadian National Railway Company (CN) has agreed to grant overhead trackage rights to Union Pacific Railroad Company (UP) over CN's line of railroad between CN's connection with UP at CN milepost 228.9, near Kinmundy, IL, and the north end of Laclede Siding at CN milepost 214.6, near Laclede, IL, a distance of approximately 14.3 miles.

The transaction is scheduled to be consummated on the June 8, 2005 effective date of the exemption.

The purpose of the trackage rights is to permit UP to operate over the CN trackage to interchange with CN at an alternate location when interchange at Salem, IL, is precluded.

As a condition to this exemption, any employees affected by the acquisition of the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34711 must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Robert T. Opal, Union Pacific Railroad Company, 1400 Douglas Street, Mail Stop 1580, Omaha, NE 68179.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: June 3, 2005.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 05–11731 Filed 6–14–05; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34689]

Florida Northern Railroad Company, Inc.—Lease Exemption—Line of CSX Transportation, Inc.

Florida Northern Railroad Company, Inc. (FNOR), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to lease and operate, pursuant to an agreement [1] entered into with CSX Transportation, Inc. (CSXT), CSXT's line of railroad (the Newberry Line) extending from milepost AR 716.88 at High Springs, FL, through Newberry, FL, to milepost AR 777.76 at Dunnellon, FL, and from milepost ARD 777.36 at Dunnellon [2] to milepost ARD 785.71 at Citronelle, FL. FNOR also will lease and operate a short segment of connecting CSXT track at Newberry, extending from milepost SN 717.22 to milepost SN 718.73. The total distance of rail line to be leased and operated by FNOR is approximately 70.74 miles.

Based on projected revenues for the Newberry Line, FNOR expects to remain a Class III rail carrier after consummation of the proposed transaction. It certifies that the projected annual operating revenue of FNOR does not exceed $5 million.

The transaction was scheduled to be consummated on or shortly after May 27, 2005, the effective date of the exemption (7 days after the exemption was filed).

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34689, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on William C. Sippel, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 920, Chicago, IL 60606–2832.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: June 7, 2005.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 05–11733 Filed 6–14–05; 8:45 am]

BILLING CODE 4915–01–P

[1] FNOR indicated that FNOR and CSXT expect to execute a Land and Track Lease Agreement shortly.

[2] Milepost AR 777.76 and milepost ARD 777.36 designate the same location at Dunnellon.

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Proposed Information Collection; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. Currently, the OCC is soliciting comment concerning its extension, without change, of an information collection titled ''Debt Cancellation Contracts and Debt Suspension Agreements ''12 CFR 37.''

DATES: You should submit written comments by: August 15, 2005.

ADDRESSES: You should direct all written comments to the Communications Division, Attention: 1557–0224, Third Floor, Office of the Comptroller of the Currency, 250 E Street, SW. Washington, DC 20219. In addition, comments may be sent by facsimile transmission to (202)874–4448, or by electronic mail to *regs.comments@occ.treas.gov.*

FOR FURTHER INFORMATION CONTACT: You can request additional information or a copy of the collection from Mary Gottlieb or Camille Dixon, (202) 874–5090, Legislative and Regulatory Activities Division (1557–0202), Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219. You can inspect and photocopy the comments at the OCC's Public Reference Room, 250 E Street, SW., Washington, DC, between 9 a.m. and 5 p.m. on business days. You can make an appointment to inspect the comments by calling (202) 874–5043.

SUPPLEMENTARY INFORMATION: The OCC is proposing to extend OMB approval of the following information collection:

Title: Debt Cancellation Contracts and Debt Suspension Agreements.

OMB Number: 1557–0224.

Description: This submission covers an existing regulation and involves no change to the regulation or the information collection. The OCC requests only that OMB renew its approval of the information collection.

The regulation requires national banks to disclose information about a Debt Cancellation Contract (DCC) or Debt Suspension Agreement (DSA). The short form disclosure is usually made orally and is issued at the time the bank first solicits the purchase of a contract. The long form disclosure is usually made in writing and is issued before the customer completes the purchase of the contract. There are special rules for transactions by telephone, solicitations using written mail inserts or ''take one'' applications, and electronic transactions. Part 37 provides two forms of disclosure that serve as models for satisfying the requirements of the rule. Use of the forms is not mandatory. A bank may adjust the form and wording of its disclosures so long as the requirements of the regulation are met.

12 U.S.C. 24 (Seventh) authorizes national banks to enter into DCCs and DSAs. The requirements of part 37 enhance consumer protections for customers who buy DCCs and DSAs from national banks and ensure that national banks do so on a safe and sound basis by requiring them to effectively manage their risk exposure.

Section 37.6

Section 37.6 requires a bank to provide the following disclosures, as appropriate:

- Anti-tying—A bank must inform the customer that neither its decision whether to approve a loan nor the terms and conditions of the loan are conditioned on the purchase of a DCC or DSA.
- Explanation of debt suspension agreement—A bank must disclose that if a customer activates the agreement, the customer's duty to pay the loan principal and interest is only suspended and the customer must fully repay the loan after the period of suspension has expired.
- Amount of the fee—A bank must make disclosures regarding the amount of the fee. The disclosure must differ depending on whether the credit is open-end or closed-end. In the case of closed-end credit, the bank must disclose the total fee. In the case of open-end credit, the bank must either disclose that the periodic fee is based on the account balance multiplied by a unit cost and provide the unit cost, or disclose the formula used to compute the fee.
- Lump sum payment of fee—A bank must disclose, where appropriate, that a customer has the option to pay the fee

in a single payment or in periodic payments. This disclosure is not appropriate in the case of a DCC or DSA provided in connection with a home mortgage loan since the option to pay the fee in a single payment is not available in that case. Banks are also required to disclose that adding the fee to the amount borrowed will increase the cost of the contract.

• Lump sum payment of fee with no refund—A bank must disclose that the customer has the option to choose a contract with or without a refund provision. This disclosure also states that prices of refund and no-refund products are likely to differ.

• Refund of fee paid in lump sum—If a bank permits a customer to pay the fee in a single payment and to add the fee to the amount borrowed, the bank must disclose the bank's cancellation policy. The disclosure informs the customer that the DCC or DSA may be canceled at any time for a refund, within a specified number of days for a full refund, or at any time with no refund.

• Whether use of credit line is restricted—A bank must inform a customer if the customer's activation of the contract would prohibit the customer from incurring additional charges or using the credit line.

• Termination of a DCC or DSA—A bank must explain the circumstances under which a customer or the bank could terminate the contract if termination is permitted during the life of the loan.

• Additional disclosures—A bank must inform consumers that it will provide additional information before the customer is required to pay for the product.

• Eligibility requirements, conditions, and exclusions—A bank must describe any material limitations relating to the DCC or DSA.

The content of the short and long form may vary, depending on whether a bank elects to provide a summary of the conditions and exclusions in the long form disclosures or refer the customer to the pertinent paragraphs in the contract. The short form requires a bank to instruct the customer to read carefully both the long form disclosures and the contract for a full explanation of the terms of the contract. The long form gives a bank the option of either separately summarizing the limitations or advising the customer that a complete explanation of the eligibility requirements, conditions, and exclusions is available in the contract and identifying the paragraphs where a customer may find that information.

Section 37.7

Section 37.7 requires a bank to obtain a customer's written affirmative election to purchase a contract and written acknowledgment of receipt of the disclosures required by § 37.6. If the sale of the contract occurs by telephone, the customer's affirmative election to purchase and acknowledgment of receipt of the required short form may be made orally, provided the bank maintains certain documentation.

If the contract is solicited through written materials such as mail inserts or ''take one'' applications and the bank provides only the short form disclosures in the written materials, then the bank shall mail the acknowledgment, together with the long form disclosures, to the customer. The bank may not obligate the customer to pay for the contract until after the bank has received the customer's written acknowledgment of receipt of disclosures unless the bank maintains certain documentation. The affirmative election and acknowledgment may also be made electronically.

Type of Review: Extension, without change, of a currently approved collection.

Affected Public: Businesses or other for-profit.

Number of Respondents: 2,200.

Total Annual Responses: 2,200.

Frequency of Response: On occasion.

Total Annual Burden Hours: 52,800.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility;

(b) The accuracy of the agency's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

Stuart Feldstein,

Assistant Director, Legislative & Regulatory Activities Division.

[FR Doc. 05–11782 Filed 6–14–05; 8:45 am]

BILLING CODE 4810–33–P

UNITED STATES INSTITUTE OF PEACE

Announcement of the Fall 2005 Solicited Grant Competition Grant Program

AGENCY: United States Institute of Peace.

ACTION: Notice

SUMMARY: The Agency Announces its Upcoming Fall 2005 Solicited Grant Competition. The Solicited Grant competition is restricted to projects that fit specific themes and topics identified in advance by the Institute of Peace.

The themes and topics for the Fall 2005 Solicited competition are:

• Solicitation A: Rule of Law in African Countries Emerging from Violent Conflict.

• Solicitation B: Education and Islam.

Deadline: October 1, 2005.

Application material available on request and at *http://www.usip.org/grants.*

DATES: *Receipt of Application:* October 1, 2005. *Notification Date:* March 31, 2006.

ADDRESSES: For more information and an application package: United States Institute of Peace, Grant Program—Solicited Grants, 1200 17th Street, NW., Suite 200, Washington, DC 20036–3011, (202) 429–3842 (phone), (202) 833–1018 (fax), (202) 457–1719 (TTY), E-mail: *grants@usip.org.*

FOR FURTHER INFORMATION CONTACT: The Grant Program, phone (202) 429–3842, e-mail: *grants@usip.org.*

Dated: June 10, 2005.

Erin Singshinsuk,

Vice President for Management.

[FR Doc. 05–11809 Filed 6–14–05; 8:45 am]

BILLING CODE 6820–AR–M

UNITED STATES INSTITUTE OF PEACE

Announcement of the Fall 2005 Unsolicited Grant Competition Grant Program

AGENCY: United States Institute of Peace.

ACTION: Notice.

SUMMARY: The Agency announces its Upcoming Unsolicited Grant Program, which offers support for research, education and training, and the dissemination of information on international peace and conflict resolution. The Unsolicited competition is open to any project that falls within the Institute's broad mandate of international conflict resolution.

Deadline: October 1, 2005.

Application Material Available on

Request and at *http://www.usip.org/grants.*

DATES: *Receipt of Application:* October 1, 2005. *Notification Date:* March 31, 2006.

ADDRESSES: For Application Package: United States Institute of Peace, Grant Program, 1200 17th Street, NW., Suite 200, Washington, DC 20036–3011, (202) 429–3842 (phone), (202) 833–1018 (fax), (202) 457–1719 (TTY), E-mail: *grants@usip.org.*

FOR FURTHER INFORMATION CONTACT: The Grant Program—Unsolicited Grants, Phone (202) 429–3842, E-mail: *grants@usip.org.*

Dated: June 10, 2005.

Erin Singshinsuk,

Vice President for Management.

[FR Doc. 05–11810 Filed 6–15–05; 8:45 am]

BILLING CODE 6820–AR–M

Corrections

Federal Register
Vol. 70, No. 114
Wednesday, June 15, 2005

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF EDUCATION

[CFDA Nos. 84.007, 84.032, 84.033, 84.038, 84.063, 84.069, and 84.268]

Student Assistance General Provisions, Federal Supplemental Educational Opportunity Grant, Federal Family Education Loan, Federal Work-Study, Federal Perkins Loan, Federal Pell Grant, Leveraging Educational Assistance Partnership, and William D. Ford Federal Direct Loan Programs

Correction

In notice document 05–11291 beginning on page 33134 in the issue of Tuesday, June 7, 2005, make the following correction:

On page 33139, the table is corrected in part to read as follows:

	Request for administrative relief based on a natural disaster or other unusual circumstances, or an administrative error made by the Department	By email to: fsa.administrative.relief@ed.gov	The earlier of: - a date designated by the Secretary after consultation with the institution; or - January 31, 2007
	Request for administrative relief for a student who reenters the institution (1) within 180 days after initially withdrawing and (2) after September 15, 2006[2]	By email to: fsa.administrative.relief@ed.gov	The earlier of: - 30 days after the student reenrolls; or - May 1, 2007

[1] The deadline for electronic transactions is 11:59 p.m. (Eastern Time) on October 2, 2006. Transmissions must be completed and accepted before 12:00 midnight to meet the deadline. If transmissions are started before 12:00 midnight but are not completed until after 12:00 midnight, those transmissions will not meet the deadline. In addition, any transmission submitted on or just prior to the deadline date that is rejected may not be reprocessed because the deadline will have passed by the time the user gets the information notifying him/her of the rejection.

[2] Applies only to students enrolled in clock-hour and nonterm credit-hour educational programs.

NOTE: The COD System must accept origination data for a student from an institution before it accepts disbursement information from the institution for that student. Institutions may submit origination and disbursement data for a student in the same transmission. However, if the origination data is rejected, the disbursement data is rejected.

[FR Doc. C5–11291 Filed X–XX–05; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Wednesday,
June 15, 2005

Part II

Department of Labor

Occupational Safety and Health Administration

29 CFR Parts 1910 and 1926

Electric Power Generation, Transmission, and Distribution; Electrical Protective Equipment; Proposed Rule

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910 and 1926

[Docket No. S–215]

RIN 1218–AB67

Electric Power Generation, Transmission, and Distribution; Electrical Protective Equipment

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Proposed rule.

SUMMARY: OSHA is proposing to update the existing standard for the construction of electric power transmission and distribution installations and make it consistent with the more recently promulgated general industry standard addressing the maintenance and repair of electric power generation, transmission, and distribution lines and equipment. The proposal also makes some miscellaneous changes to both standards, including adding provisions related to host employers and contractors, flame resistant clothing, and training, and updates the construction standard for electrical protective equipment, makes it consistent with the corresponding general industry standard, and makes it applicable to construction generally.

The existing rules for this type of work were issued in 1971. They are out of date and are not consistent with the more recent, corresponding rules for the operation and maintenance of electric power transmission and distribution systems. The revised standard would include requirements relating to enclosed spaces, working near energized parts, grounding for employee protection, work on underground and overhead installations, work in substations, and other special conditions and equipment unique to the transmission and distribution of electric energy.

OSHA is also proposing a new standard on electrical protective equipment for the construction industry. The current standards for the design of electrical protective equipment, which apply only to electric power transmission and distribution work, adopt several national consensus standards by reference. The new standard would replace the incorporation of these out-of-date consensus standards with a set of performance-oriented requirements that is consistent with the latest revisions of these consensus standards and with the corresponding standard for general industry. Additionally, OSHA is proposing new requirements for the safe use and care of electrical protective equipment to complement the equipment design provisions.

In addition, OSHA is proposing changes to the two corresponding general industry standards. These changes address: Class 00 rubber insulating gloves, electrical protective equipment made from materials other than rubber, training for electric power generation, transmission, and distribution workers, host-contractor responsibilities, job briefings, fall protection (including a requirement that employees in aerial lifts use harnesses), insulation and working position of employees working on or near live parts, protective clothing, minimum approach distances, deenergizing transmission and distribution lines and equipment, protective grounding, operating mechanical equipment near overhead power lines, and working in manholes and vaults. These changes would ensure that employers, where appropriate, face consistent requirements for work performed under the construction and general industry standards and would further protect employees performing electrical work covered under the general industry standards. The proposal would also update references to consensus standards in §§ 1910.137 and 1910.269 and would add new appendices to help employers comply with provisions on protective clothing and the inspection of work positioning equipment.

OSHA is also proposing to revise the general industry standard for foot protection. This standard has substantial application to employers performing work on electric power transmission and distribution installations, but that applies to employers in other industries as well. The proposal would remove the requirement for employees to wear protective footwear as protection against electric shock.

DATES: *Informal public hearing.* OSHA will hold an informal public hearing in Washington, DC, beginning December 6, 2005. The hearing will commence at 10 a.m. on the first day, and at 9 a.m. on the second and subsequent days, which will be scheduled, if necessary.

Comments. Comments must be submitted (postmarked or sent) by October 13, 2005.

Notices of intention to appear. Parties who intend to present testimony at the informal public hearing must notify OSHA in writing of their intention to do so no later than August 15, 2005.

Hearing testimony and documentary evidence. Parties who request more than 10 minutes for their presentations at the informal public hearing and parties who will submit documentary evidence at the hearing must submit the full text of their testimony and all documentary evidence postmarked no later than November 3, 2005.

ADDRESSES: You may submit written comments, notices of intention to appear, hearing testimony, and documentary evidence—identified by docket number (S–215) or RIN number (1218–AB67)—by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- OSHA Web site: *http://dockets.osha.gov/.* Follow the instructions for submitting comments on OSHA's Web page.
- Fax: If your written comments are 10 pages or fewer, you may fax them to the OSHA Docket Office at (202) 693–1648.
- Regular mail, express delivery, hand delivery and courier service: Submit three copies to the OSHA Docket Office, Docket No. S–215, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N2625, Washington, DC 20210; telephone (202) 693–2350. (OSHA's TTY number is (877) 889–5627.) OSHA Docket Office hours of operation are 8:15 a.m. to 4:45 p.m., E.S.T.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. All comments received will be posted without change to *http://dockets.osha.gov/*, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read comments and background documents that can be posted go to *http://dockets.osha.gov/.* Written comments received, notices of intention to appear, and all other material related to the development of this proposed standard will be available for inspection and copying in the public record in the Docket Office, Room N2439, at the address listed previously.

Hearing. The hearing will be held in the auditorium of the U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: *General information and press inquiries:*

Mr. Kevin Ropp, Director, Office of Communications, Room N3647, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–1999.

Technical information: Mr. David Wallis, Director, Office of Engineering Safety, Room N3609, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2277 or fax (202) 693–1663.

Hearings: Ms. Veneta Chatmon, OSHA Office of Communications, Occupational Safety and Health Administration, Room N3647; 200 Constitution Avenue, NW., Washington, DC 20210, telephone: (202) 693–1999.

For additional copies of this **Federal Register** notice, contact OSHA, Office of Publications, U.S. Department of Labor, Room N3101, 200 Constitution Avenue, NW., Washington, DC, 20210; telephone (202) 693–1888. Electronic copies of this **Federal Register** notice, as well as news releases and other relevant documents, are available at OSHA's Web page on the Internet at *http://www.osha.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background
II. Development of Proposal
III. Legal Authority
IV. Summary and Explanation of Proposed Rule
V. Preliminary Regulatory Impact Analysis and Initial Regulatory Flexibility Analysis
VI. State Plan Standards
VII. Environmental Impact Analysis
VIII. Unfunded Mandates
IX. Federalism
X. OMB Review under the Paperwork Reduction Act of 1995
XI. Public Participation'Comments and Hearings
XII. List of Subjects in 29 CFR Parts 1910 and 1926
XIII. Authority and Signature

I. Background

A. Acronyms

The following acronyms have been used throughout this document:

AED Automated external defibrillator
ALJ Administrative law judge
ANSI American National Standards Institute
ASTM American Society for Testing and Materials
BLS Bureau of Labor Statistics
CFOI Census of Fatal Occupational Injuries
CPR Cardiopulmonary resuscitation
EEI Edison Electric Institute
EPRI Electric Power Research Institute
FRA Flame-resistant apparel
FTE Full-Time Equivalent [Employee]
IBEW International Brotherhood of Electrical Workers
IEEE Institute of Electrical and Electronic Engineers
IMIS OSHA's Integrated Management Information System
IRFA Initial Regulatory Flexibility Analysis
NAICS North American Industry Classification System
NEPA National Environmental Policy Act of 1969
NESC National Electrical Safety Code
NFPA National Fire Protection Association
NIOSH National Institute for Occupational Safety and Health
OIRA Office of Information and Regulatory Affairs
OMB Office of Management and Budget
OSH Act (or simply ''the Act'') Occupational Safety and Health Act of 1970
OSHA Occupational Safety and Health Administration
OSHRC Occupational Safety and Health Review Commission
PRIA Preliminary Regulatory Impact Analysis
RIN Regulatory information number
SBA Small Business Administration
SBAR Small Business Advocacy Review Panel
SBREFA Small Business Regulatory Enforcement Fairness Act
SER small entity representative
SIC Standard Industrial Classification
WCRI Worker Compensation Research Institute

B. Need for Rule

Employees maintaining or constructing electric power transmission or distribution installations are not adequately protected by current OSHA standards, though these employees face far greater electrical hazards than those faced by other workers. The voltages involved are generally much higher than voltages encountered in other types of work, and a large part of electric power transmission and distribution work exposes employees to energized parts of the power system.

Employees performing work involving electric power generation, transmission, and distribution are exposed to a variety of significant hazards, such as fall, electric shock, and burn hazards, that can and do cause serious injury and death. As detailed below, OSHA estimates that, on average, 444 serious injuries and 74 fatalities occur annually among these workers.

Although some of these incidents may have been prevented with better compliance with existing safety standards, research and analyses conducted by OSHA have found that many preventable injuries and fatalities would continue to occur even if full compliance with the existing standards were achieved. Without counting incidents that would potentially have been prevented with compliance with existing standards, an estimated additional 116 injuries and 19 fatalities would be prevented through full compliance with the proposed standards.

Additional benefits associated with this rulemaking involve providing updated, clear, and consistent safety standards regarding electric power generation, transmission, and distribution work. The existing standard for the construction of electric power transmission and distribution lines and equipment is contained in Subpart V of OSHA's construction standards (29 CFR part 1926). This standard was promulgated on November 23, 1972, over 30 years ago (37 FR 24880). Some of the technology involved in electric power transmission and distribution work has changed since then, and the current standard does not reflect those changes. For example, the method of determining minimum approach distances has become more exact since 1972, and the minimum approach distances given in existing § 1926.950(c)(1) are not based on the latest methodology. The minimum approach distances in this proposal are more protective as well as more technologically sound. Additionally, parts of Subpart V need clarification. For example, in existing Subpart V, there are three different requirements relating to the use of mechanical equipment near overhead lines: §§ 1926.952(c)(2) [1] and 1926.955(a)(5) [2] and (a)(6).[3] These provisions apply

[1] This requirement reads as follows:

(2) With the exception of equipment certified for work on the proper voltage, mechanical equipment shall not be operator closer to any energized line or equipment than the clearances set forth in § 1926.950(c) unless:

(i) An insulated barrier is installed between the energized part and the mechanical equipment, or

(ii) The mechanical equipment is grounded, or

(iii) The mechanical equipment is insulated, or

(iv) The mechanical equipment is considered as energized.

[2] This requirement reads as follows:

(5)(i) When setting, moving, or removing poles using cranes, derricks, gin poles, A-frames, or other mechanized equipment near energized lines or equipment, precautions shall be taken to avoid contact with energized lines or equipment, except in bare-hand live-line work, or where barriers or protective devices are used.

(ii) Equipment and machinery operating adjacent to energized lines or equipment shall comply with § 1926.952(c)(2).

[3] This requirement reads as follows:

(6)(i) Unless using suitable protective equipment for the voltage involved, employees standing on the

Continued

different requirements to these operations depending on whether or not the mechanical equipment involved is lifting equipment and on whether or not work is being performed on overhead lines. Two different United States Courts of Appeals found these regulations to be confusing even though they accepted OSHA's interpretation regarding their application (*Wisconsin Electric Power Co.* v. *OSHRC,* 567 F.2d 735 (7th Cir. 1977); *Pennsylvania Power & Light Co.* v. *OSHRC,* 737 F.2d 350 (3d Cir. 1984)). In fact, the majority in the Wisconsin Electric decision noted that ''[r]evision of the regulations by any competent draftsman would greatly improve their clarity'' (*Wisconsin Electric,* 567 F.2d at 738).

Even the newer general industry standards on the operation and maintenance of electric power generation, transmission, and distribution installations (29 CFR 1910.269) and electrical protective equipment (29 CFR 1910.137) are not completely consistent with the latest advances in technology represented by updated consensus standards covering this type of work and equipment.

OSHA has different standards covering construction work on electric power transmission and distribution systems and general industry work on the same systems. In most instances, the work practices used by employees to perform construction or general industry work on these systems are the same. The application of OSHA's construction or general industry standards to a particular job depends upon whether the employer is altering the system (construction work) or maintaining the system (general industry work). For example, employers changing a cutout (disconnect switch) on a transmission and distribution system would be performing construction work if they were upgrading the cutout, but general industry work if they were simply replacing the cutout with the same model.

Since the work practices used by the employees would most likely be identical, the applicable OSHA standards should be identical. OSHA's existing requirements are not, however. Conceivably, for work involving two or more cutouts, different and conflicting OSHA standards might apply. The inconsistencies between the two standards create difficulties for employers attempting to develop appropriate work practices for their employees. For this reason, employers and employees have told OSHA that it should make the two standards identical. This proposal does so.

C. Accident Data

OSHA has looked to several sources for information on accidents in the electric utility industry in preparing this proposed rule. Besides OSHA's own accident investigation files, statistics on injuries are compiled by the Edison Electric Institute (EEI) and by the International Brotherhood of Electrical Workers (IBEW). Additionally, the Bureau of Labor Statistics (BLS) publishes such accident data as incidence rates for total cases, lost workday cases, and lost workdays. The National Institute for Occupational Safety and Health (NIOSH) publishes accident data as part of its Fatality Assessment and Control Evaluation Program.

Analyses of accident data for electric power transmission and distribution workers can be found in the following documents, which (like all exhibits) are available for inspection and copying in Docket S–215 in the Docket Office:

(1) ''Preparation of an Economic Impact Study for the Proposed OSHA Regulation Covering Electric Power Generation, Transmission, and Distribution,'' June 1986, Eastern Research Group, Section 4.

(2) ''Assessment of the Benefits of the Proposed Standard on Electric Power Generation, Transmission, and Distribution Coding Results and Analysis,'' October 5, 1990, Eastern Research Group.

(3) ''Analytical Support and Data Gathering for a Preliminary Economic Analysis for Proposed Standards for Work on Electric Power Generation, Transmission, and Distribution Lines and Equipment (29 CFR 1910.269 and 29 CFR 1926—Subpart V),'' 2005, CONSAD Research Corp., Chapter 4.

To develop estimates of the potential benefits associated with this proposal, CONSAD Corp., under contract to OSHA, researched and reviewed potential sources of useful data. CONSAD, in consultation with the Agency, determined that the most reliable data sources for this purpose included OSHA's Integrated Management Information System, and the Census of Fatal Occupational Injuries developed by the BLS.

From these sources, CONSAD identified and analyzed injuries and fatalities that would be addressed by this proposal. A description of the methodological approach used for analyzing these data is included in the final report submitted to OSHA from CONSAD. CONSAD's analysis found that an average of 74 fatalities and 25 injuries involving circumstances directly addressed by the existing or proposed standards are recorded annually in the relevant databases. These accidents include cases involving electric shock, burns from electric arcs, and falls, which are the predominant types of accidents occurring in electric power generation, transmission, and distribution work.

D. Significant Risk

OSHA must show that the hazards the Agency addresses in a safety regulation present significant risks to employees. OSHA has generally considered an excess risk of 1 death per 1000 employees over a 45-year working lifetime as clearly representing a significant risk. *Industrial Union Dept.* v. *American Petroleum Institute (Benzene),* 448 U.S. 607, 655 (1980); *International Union* v. *Pendergrass (Formaldehyde),* 878 F.2d 389, 392–93 (D.C. Cir. 1989); *Building and Construction Trades Dept., AFL–CIO* v. *Brock (Asbestos),* 838 F.2d 1258, 1264–65 (D.C. Cir. 1988). As part of the regulatory analyses for this standard, OSHA has determined the population at risk, the occupations presenting major risks, and the incidence and severity of injuries attributable to the failure to follow the rules established in the proposed standard. In keeping with the purpose of safety standards to prevent accidental injury and death, OSHA has estimated the number of accidents that would be prevented by the new rule.

Electricity has long been recognized as a serious workplace hazard exposing employees to dangers such as electric shock, electrocution, electric arcs, fires, and explosions. The other hazards this rule addresses, namely, falls and being struck by, struck against, or caught between objects, are also widely recognized. The 227,683 employees performing work covered by the proposed standards experience an average of 444 injuries and 74 fatalities each year.[4] Over a 45-year working lifetime, more than 14 of every 1000 of these employees[5] will die from hazards

ground shall avoid contacting equipment or machinery working adjacent to energized lines or equipment.

(ii) Lifting equipment shall be bonded to an effective ground or it shall be considered energized and barricaded when utilized near energized equipment or lines.

[4] For a detailed explanation of the number of employees covered by the proposal and the number of injuries and fatalities experienced by these workers, see Section V, Preliminary Regulatory Impact Analysis and Initial Regulatory Flexibility Analysis, later in this preamble.

[5] The number of fatalities expected to occur in 45 years is 74 fatalities × 45, or 3330. Thus, 14.6 employees in 1000 covered by the proposal ((3330 fatalities/227,683 employees) × 1000) will die from job-related hazards.

posed by their work. As detailed in Section V, Preliminary Regulatory Impact Analysis and Initial Regulatory Flexibility Analysis, later in this preamble, the Agency estimates that the proposed rule will prevent 116 injuries and 19 deaths each year. Accordingly, OSHA has preliminarily determined that hazards faced by employees performing construction or maintenance work on electric power generation, transmission, and distribution installations pose a significant risk of injury or death to those employees, and that this proposed rule would substantially reduce that risk and would be reasonably necessary to provide protection from these hazards.

II. Development of Proposal

A. Present OSHA Standards

OSHA adopted standards applying to the construction of power transmission and distribution lines and equipment in 1972 (Subpart V of Part 1926). OSHA defines the term ''construction work'' in § 1910.12 as ''work for construction, alteration, and/or repair, including painting and decorating.'' The term ''construction'' is broadly defined in § 1910.12(d) and § 1926.950(a)(1) to include alteration, conversion, and improvement of electric power transmission lines and equipment, as well as the original installation of the lines and equipment. However, Subpart V does not apply to the operation or maintenance of transmission or distribution installations.

On January 31, 1994, OSHA adopted rules for the operation and maintenance of electric power generation, transmission, and distribution lines and equipment, § 1910.269. This standard was intended as a companion standard to Subpart V of the construction standards to address areas where Subpart V did not apply. The new standard was also based on the latest technology and national consensus standards.

OSHA revised its electrical protective equipment standard in § 1910.137 at the same time § 1910.269 was issued. The revision of § 1910.137 eliminated the incorporation by reference of national consensus standards relating to rubber insulating equipment and replaced it with performance-oriented rules for the design, manufacture, and safe care and use of electrical protective equipment.

Other OSHA standards also relate to electric power generation, transmission, and distribution work. The permit-required confined space standard in § 1910.146 applies to entry into certain confined spaces found in this type of work. Section 1910.147 is OSHA's generic lockout and tagging standard. Although this standard does not apply to electric power generation, transmission, or distribution installations, it formed the basis of § 1910.269(d), which does apply to the lockout and tagging of these installations. Subpart S of the General Industry Standards and Subpart K of the construction standards set requirements for unqualified [6] workers who are working near electric power generation, transmission, and distribution lines and equipment.

B. Relevant consensus standards

The National Electrical Safety Code (American National Standards Institute Standard ANSI C2, also known as the NESC) was also taken into consideration in the development this proposal. This national consensus standard contains requirements specifically addressing electric power generation, transmission, and distribution work. The latest version of ANSI C2 [7] is much more up-to-date than Subpart V. However, ANSI C2 is primarily directed to the prevention of electric shock, although it does contain a few requirements for the prevention of falls.

The American Society for Testing and Materials (ASTM) has adopted standards related to electric power generation, transmission, and distribution work. ASTM Committee F18 on Electrical Protective Equipment for Workers has developed standards on rubber insulating equipment, climbing equipment, protective grounding equipment, fiberglass rod and tube used in live-line tools, and clothing for workers exposed to electric arcs.

The National Fire Protection Association (NFPA) has adopted a standard on electrical safety for employees, NFPA 70E–2004, Electrical Safety Requirements for Employee Workplaces. Although it does not apply to electric power generation, transmission, or distribution installations, this standard contains requirements for unqualified employees working near such installations.

The Institute of Electrical and Electronic Engineers (IEEE) is also responsible for writing standards for electric power generation, transmission, and distribution installations and for work on those installations. Many of these standards have been adopted by ANSI. Among these IEEE standards are: IEEE Std. 516, IEEE Guide for Maintenance Methods on Energized Power-Lines, and IEEE Std. 1048, IEEE Guide for Protective Grounding of Power Lines.

A list of consensus standards relating to electric power generation, transmission, and distribution work can be found in existing Appendix E to § 1910.269. OSHA considered the latest editions of all the standards listed in this section of the preamble or the Appendix in the development of the proposal.

C. Advisory Committee on Construction Safety and Health

Section 107 of the Contract Work Hours and Safety Standards Act and the Agency's own rulemaking regulations in 29 CFR Part 1911 require OSHA to consult with the Advisory Committee on Construction Safety and Health (ACCSH or the Committee) in setting standards for construction work. Specifically, § 1911.10(a) requires the Assistant Secretary to (1) provide ACCSH with the draft proposed rule along with pertinent factual information, (2) and to prescribe a period within which the Committee must submit its recommendations on the proposal.

OSHA has a 10-year history of consulting with ACCSH on the proposed construction standards for electrical protective equipment and electric transmission and distribution work. The Agency has provided several drafts of the proposed construction rules and updates on the status of the proposal.

On May 25, 1995, OSHA first took a draft of the proposed construction standards to ACCSH, providing the Committee with a draft of the proposal and with a statement on the need for and background behind the proposal. The Committee formed a workgroup to review the document and report back to ACCSH. The workgroup provided comments to OSHA. Although the Agency gave a status report on the proposal to the Committee on August 8, 1995, ACCSH did not make any formal recommendations to OSHA at that time.

The Agency provided a later draft of the proposal to ACCSH on December 10, 1999. This time, the Committee made no comments. On February 13, 2003, OSHA gave ACCSH a status report on the proposal and summarized the major revisions in the draft.

On May 22, 2003, OSHA provided the Committee with the same copy of the draft proposal that had been provided to the small entity representatives who

[6] In this preamble, ''unqualified worker'' (or ''unqualified employee'') means an employee who does not have the requisite training to work on or near electric power generation, transmission, or distribution installations. For more information, see the discussion of proposed § 1926.950(b) in Section IV, Summary and Explanation of Proposed Rule, later in this preamble.

[7] ANSI/IEEE C2–2002.

were participating in the Small Business Regulatory Enforcement and Fairness Act (SBREFA) proceedings, which were being conducted at that time. OSHA also explained the major issues being raised by the small entity representatives on the draft proposal.

On May 18, 2004, ACCSH gave formal recommendations on OSHA's proposal. OSHA sought ACCSH's recommendations on the proposal generally, as well as on issues specifically related to host employer-contractor communications and flame-resistant clothing. ACCSH voted unanimously that: (1) The construction standards for electric power transmission and distribution work should be the same as the general industry standards for the same type of work; (2) requiring some safety-related communications between host employers and contractors was necessary; and (3) employees need to be protected from hazards posed by electric arcs through the use of flame-resistant clothing. ACCSH also recommended unanimously that OSHA issue its proposal, consistent with these specific votes.

III. Legal Authority

The purpose of the Occupational Safety and Health Act of 1970 (OSH Act or the Act), 29 U.S.C. 651 *et seq.*, is ''to assure so far as possible every working man and woman in the Nation safe and healthful working conditions and to preserve our human resources.'' 29 U.S.C. 651(b). To achieve this goal, Congress authorized the Secretary of Labor to promulgate and enforce occupational safety and health standards. 29 U.S.C. 655(b) and 658.

A safety or health standard ''requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe or healthful employment and places of employment.'' 29 U.S.C. 652(8). A standard is reasonably necessary or appropriate within the meaning of Section 652(8) if:

- A significant risk of material harm exists in the workplace and the proposed standard would substantially reduce or eliminate that workplace risk;
- It is technologically and economically feasible;
- It employs the most cost effective protective measures;
- It is consistent with prior Agency action or supported by a reasoned justification for departing from prior Agency action;
- It is supported by substantial evidence; and
- In the event the standard is preceded by a consensus standard, it is better able to effectuate the purposes of the OSH Act than the standard it supersedes.

International Union, UAW v. *OSHA (LOTO II),* 37 F.3d 665, 668 (D.C. Cir. 1994).

OSHA has generally considered an excess risk of 1 death per 1000 employees over a 45-year working lifetime as clearly representing a significant risk *(see Industrial Union Dept.* v. *American Petroleum Institute (Benzene),* 448 U.S. 607, 655 (1980); International Union v. Pendergrass (Formaldehyde), 878 F.2d 389, 392–93 (D.C. Cir. 1989); *Building and Construction Trades Dept., AFL-CIO* v. *Brock (Asbestos),* 838 F.2d 1258, 1264–65 (D.C. Cir. 1988)).

A standard is considered technologically feasible if the protective measures it requires already exist, can be brought into existence with available technology, or can be created with technology that can reasonably be expected to be developed *(see American Iron and Steel Institute* v. *OSHA (Lead II),* 939 F.2d 975, 980 (D.C. Cir. 1991)). A standard is economically feasible when industry can absorb or pass on the costs of compliance without threatening the industry's long-term profitability or competitive structure *(see American Textile Mfrs. Institute* v. *OSHA (Cotton Dust),* 452 U.S. 490, 530 n. 55 (1981); Lead II, 939 F.2d at 980). A standard is cost effective if the protective measures it requires are the least costly of the available alternatives that achieve the same level of protection (*see LOTO II,* 37 F.3d at 668).

All OSHA standards must be highly protective (*LOTO II,* 37 F.3d at 669) and, where practical, ''expressed in terms of objective criteria and of the performance desired.'' 29 U.S.C. 655(b)(5). Finally, the OSH Act requires that when promulgating a rule that differs substantially from a national consensus standard, OSHA must explain why the promulgated rule is a better method for effectuating the purpose of the Act. 29 U.S.C. 655(b)(8). As discussed elsewhere in this preamble, OSHA is using several consensus standards as the basis for its proposed rule. The deviations from these consensus standards are explained in Section IV, Summary and Explanation of Proposed Rule, later in this preamble.

IV. Summary and Explanation of Proposed Rule

This section discusses the important elements of the proposed standard, explains the purpose of the individual requirements, and explains any differences between the proposed rule and existing standards. References in parentheses are to exhibits in the rulemaking record. References prefixed by ''269'' are to exhibits and transcripts in the rulemaking record from OSHA's earlier rulemaking on § 1910.137 and § 1910.269. These documents are available for inspection and copying in the Docket Office under Docket S–015. (The transcripts are listed in the docket as ''exhibits'' 100–X through 208–X.)

OSHA is proposing a new construction standard on electrical protective equipment, 29 CFR 1926.97, and a revision of the standard on the construction of electric power transmission and distribution lines and equipment, 29 CFR Part 1926, Subpart V. The Agency is also proposing changes to the general industry counterparts to these two construction standards, 29 CFR 1910.137 and 1910.269, respectively. The proposed construction standards may contain some nonsubstantive differences from their existing counterpart general industry requirements that are not separately included in the proposed revision of the general industry standards. However, the Agency intends for the corresponding construction and general industry requirements to be the same in the final rule except to the extent that separate requirements are supported by the rulemaking record. For example, the definition of ''designated employee'' in existing § 1910.269(x) reads as follows:

> An employee (or person) who is designated by the employer to perform specific duties under the terms of this section and who is knowledgeable in the construction and operation of the equipment and the hazards involved.

OSHA is proposing a slightly revised version of this definition in § 1926.968, as follows:

> An employee (or person) who is assigned by the employer to perform specific duties under the terms of this section and who has sufficient knowledge of the construction and operation of the equipment and the hazards involved to perform his or her duties safely.

The Agency does not believe that the proposed definition for Subpart V is substantially different from the existing definition in § 1910.269(x). Therefore, OSHA is not specifically including the proposed change to the definition of ''designated employee'' in the proposed changes to § 1910.269. The language in the final standards (that is, §§ 1910.269(x) and 1926.968) will be the same, however, unless the record warrants a separate definition for construction work.

In addition, the proposal references national consensus standards in notes following various requirements. These references are intended to provide employers and employees with additional useful sources of information that can assist them in complying with the standards. OSHA intends to review the latest editions of these consensus standards and reference those editions when promulgating the final rule provided they still provide suitable guidance.

A. Electrical Protective Equipment, Section 1926.97

Electrical protective equipment is in constant use during electric power transmission and distribution work; and, appropriately, existing Subpart V contains provisions related to this equipment. The existing OSHA standards for electrical protective equipment in construction work are contained in § 1926.951(a)(1), which only applies during construction of electric power transmission and distribution lines and equipment. Electrical protective equipment, however, is used throughout the construction industry. OSHA therefore believes that updated personal protective equipment provisions should apply throughout the construction industry, wherever such equipment is necessary for employee safety, and that electrical protective equipment provisions should not be limited to the use of this equipment in electric power transmission and distribution work. Therefore, OSHA is proposing new § 1926.97, Electrical protective equipment, to replace § 1926.951(a)(1), which incorporates by reference the following six American National Standards Institute (ANSI) standards:

Item	ANSI Standard
Rubber insulating gloves	J6.6–1971
Rubber matting for use around electric apparatus.	J6.7–1935 (R1971)
Rubber insulating blankets	J6.4–1971
Rubber insulating hoods	J6.2–1950 (R1971)
Rubber insulating line hose	J6.1–1950 (R1971)
Rubber insulating sleeves	J6.5–1971

These ANSI standards were originally developed and adopted as American Society for Testing and Materials (ASTM) standards. (In fact, the latest revisions of these standards use the ASTM designations, rather than using separate designations for both standards-writing organizations.) As is typical of national consensus standards, the ASTM standards are filled with detailed specifications for the manufacture, testing, and design of electrical protective equipment. Additionally, these standards are revised frequently, making existing § 1926.951(a)(1) over a quarter century out of date. For example, the most recent ANSI standard listed in the former OSHA requirement is dated 1971. The most recent ASTM version available is a 2002 edition of specifications on rubber insulating gloves. The complete list of current ASTM standards corresponding to the ANSI standards is as follows:

ASTM D120–02a, Specification for Rubber Insulating Gloves.

ASTM D178–01^{e1}, Specification for Rubber Insulating Matting.

ASTM D1048–99, Specification for Rubber Insulating Blankets.

ASTM D1049–98^{e1} (Reapproved 2002), Specification for Rubber Insulating Covers.

ASTM D1050–90 (Reapproved 1999), Specification for Rubber Insulating Line Hose.

ASTM D1051–02, Specification for Rubber Insulating Sleeves.

Additionally, ASTM has adopted standards on the in-service care of insulating line hose and covers (ASTM F478–92 (Reapproved 1999)), insulating blankets (ASTM F479–95 (Reapproved 2001)), and insulating gloves and sleeves (ASTM F496–02a), which have no current counterparts in existing § 1926.951(a)(1).

In an attempt to retain the quality of protection afforded by the ASTM standards, OSHA has developed proposed new § 1926.97 which has been derived from the ASTM documents but which has been written in performance terms. OSHA recognizes the importance of the ASTM standards in defining basic requirements for the safe design and manufacture of electrical protective equipment for employees. Proposed § 1926.97 would increase the protection presently afforded to power transmission and distribution employees by the outdated ANSI/ASTM standards incorporated by reference in the existing standard. The proposal carries forward ASTM provisions that are performance oriented and necessary for employee safety, but does not contain many of the detailed specifications in those consensus standards. The proposal will thus provide greater flexibility for compliance with these provisions to the extent that worker safety warrants.

There are several reasons why adopting the ASTM standards in toto would be inappropriate in this rulemaking. First, ASTM has revised each of the currently referenced standards several times since they were adopted in the former OSHA regulation. Because of the continual process by which ASTM periodically revises its standards, any specific editions that OSHA might adopt would likely be outdated within a few years. Additionally, since the rulemaking process is lengthy, a complete revision of OSHA's electrical protective equipment requirements every three years or so to keep pace with the changes in the consensus standards is not practical. (In fact, some of the ASTM standards will likely be revised again during the rulemaking period.) To remedy this problem, OSHA is proposing new § 1926.97 to make the standards flexible enough to accommodate changes in technology, obviating the need for constant revision. Where possible, the proposed standard has been written in performance terms in order to allow alternative methods of compliance if they provide comparable safety to the employee.

Another difficulty with incorporation of the ASTM standards by reference is that they contain details that go beyond the purposes of the OSHA standard or that are not directly related to employee safety. In proposed § 1926.97, OSHA has tried to carry forward only provisions that are relevant to employee safety in the workplace. Furthermore, OSHA has attempted to simplify those provisions to make the requirements easier for employers and employees to use and understand. Because the revision places all relevant requirements in the text of the regulations, employers would no longer have to refer to the ASTM documents to determine their obligations under OSHA.

In striving for this degree of simplification, the Agency has tried to use an approach that will accept new methods of protection that may appear in future editions of the ASTM standards. OSHA recognizes that such future editions of these standards might contain technological advances providing significant improvement in employee safety, which might not be permitted under proposed § 1926.97. However, due to the performance-oriented nature of the OSHA standard as compared to the ASTM standards, conflicts between the two standards in areas affecting employee safety are expected to be infrequent.

Furthermore, an employer who follows future versions of ASTM standards would likely be covered by OSHA's *de minimis* policy as set forth in OSHA Instruction CPL 02–00–103 (Field Inspection Reference Manual). Under that policy, a *de minimis*

condition[8] exists: (1) Where an employer's workplace has been updated in accordance with new technology or equipment as a result of revisions to the latest consensus publications from which OSHA standards were derived, (2) where the updated versions result in a ''state of the art'' workplace, technically advanced beyond the requirements of the applicable OSHA standard, and (3) where equal or greater safety and health protection is provided.

Paragraph (a). Paragraph (a) of § 1926.97 addresses the design and manufacture of insulating blankets, matting, covers, line hose, gloves, and sleeves made of rubber (either natural or synthetic). See the summary and explanation of proposed § 1926.97(b) for general requirements on other types of insulating equipment.

Under proposed paragraph (a)(1)(i), blankets, gloves, and sleeves would have to be manufactured without seams. This method of making the protective equipment minimizes the chance that the material will split. Because they are used when workers handle energized lines, gloves and sleeves are the only defense an employee has against electric shock. Additionally, blankets, gloves, and sleeves need to be seamless because the stresses placed on the equipment by the flexing of the rubber during normal use could cause a seam to separate. The other three types of electrical protective equipment (covers, line hose, and matting) generally provide a more indirect form of protection—they insulate the live parts from accidental, rather than intended, contact—and they are not usually subject to similar amounts or types of flexing.

Proposed paragraph (a)(1)(ii) would require electrical protective equipment to be marked to indicate its class and type. The class marking indicates the voltage with which the equipment can be used; the type marking indicates whether or not the equipment is ozone resistant. This will enable employees to know the uses and voltages for which the equipment is suited. Proposed paragraph (a)(1)(ii) would also permit equipment to contain other relevant markings, such as one indicating the manufacturer's name or compliance with ASTM standards.

Paragraph (a)(1)(iii) would require all markings to be nonconductive and to be applied so that the properties of the equipment are not impaired. This would ensure that no marking interferes with the protection to be provided by the equipment.

Paragraph (a)(1)(iv) would require markings on gloves to be provided only in the cuff area. Markings in other areas could possibly wear off. Moreover, having the markings in one place will allow the employee to determine the class and type of glove quickly. Furthermore, OSHA would require in paragraph (c)(2)(vii) that rubber gloves normally be worn under protector gloves. Because a protector glove is almost always shorter than the corresponding rubber glove with which it is worn and because the cuff of the protector glove can easily be pulled back without removal, it is easy to see markings on the cuff portion of the rubber glove beneath. Any marking provided on the rubber glove in an area outside of the cuff could not be seen with the protector glove in place.

Under the national consensus standards, electrical protective equipment must be capable of passing certain electrical tests. In proposed § 1926.97(a)(2), OSHA incorporates these requirements. The tests specified in the ASTM standards are very detailed. This is not the case in the OSHA standard. Through the use of performance language, the proposed rule would establish the same level of protection without a lengthy discussion of test procedures.

Paragraph (a)(2)(i) would require electrical protective equipment to be capable of withstanding the a-c proof-test voltages in Table E–1 or the d-c proof-test voltages in Table E–2 of the standard (depending, of course, on whether an a-c proof test or an equivalent d-c proof test is performed). The proof-test voltages listed in these tables have been taken from the current ASTM standards, which also contain details of the test procedures used to determine whether electrical protective equipment is capable of withstanding these voltages. These details have not been included in the proposed rule. Paragraph (a)(2)(i)(A) replaces them with a performance-oriented requirement that whatever test is used must reliably indicate that the equipment can withstand the proof-test voltage involved. To meet the requirements of the OSHA performance standard, employers would normally get the assurance of the manufacturer that the equipment is capable of withstanding the appropriate proof-test voltage.[9] Manufacturers typically look to the ASTM standards for guidance in determining the testing procedure.

Proposed paragraph (a)(2)(i)(B) would require the proof-test voltage to be applied for 1 minute for insulating matting and for 3 minutes for other insulating equipment. These times are based on the proof-test times given in the ASTM design standards and are appropriate for testing the design capabilities of electrical protective equipment.

Proposed paragraph (a)(2)(i)(C) would require rubber insulating gloves to be capable of withstanding the a-c proof-test voltage indicated in Table E–1 of the standard after a 16-hour water soak. If rubber insulating gloves absorb water, a reduction in insulating properties will result. Water absorption is thus a critical property because exposure to perspiration or rain is quite common while line worker's gloves are in use. Electrical work is sometimes performed in the rain, and an employee's perspiration is often present while the gloves are in use. The soak test is needed to ensure that electrical protective equipment can withstand the voltage involved under these conditions.

When an a-c proof test is used on gloves, the resulting proof-test current gives an indication of the validity of the gloves' make-up, the dielectric constant of the type of material used, its thickness, and the total area under test. Paragraph (a)(2)(ii) prohibits the a-c proof-test current from exceeding the current allowed in Table E–1. The currents listed in the table have been taken from ASTM D120–02a.

Under paragraph (a)(2)(ii)(A), the maximum current for a-c voltages at frequencies other than 60 hertz would be computed from the direct ratio of the frequencies.

Gloves are filled with and immersed in water during the a-c proof test, and the water inside and outside the glove forms the electrodes. The a-c proof-test current is dependent on the length of the portion of the glove that is out of water. Because the proof-test current is a function of immersion depth, it is important to specify the depth in the rule. Otherwise, employee safety could be compromised. Therefore, paragraph (a)(2)(ii)(B) in the proposed standard specifies that gloves to be tested must be filled with and immersed in water to the depth given in Table E–3 in the standard. This table was taken directly

[8] OSHA considers a *de minimis* condition to be a technical violation of a standard only. However, because the employer is considered to be in substantial compliance with the standard, the Agency issues no citations or penalties, nor is the employer required to bring his or her workplace into compliance with the older standard.

[9] As explained in the note at the end of paragraph (a), OSHA deems equipment meeting the ASTM standards as being compliant with the OSHA standard. Thus, an employer could simply look for equipment labeled as meeting these standards. Manufacturers attest, through this label, that their equipment is capable of passing all the required tests, including the a-c or d-c proof tests.

from ASTM D120 and is valid for the proof-test currents listed in Table E–1.

The allowable proof-test current must be increased for proof-tests on gloves after a 16-hour water soak because the gloves absorb a small amount of water, which results in slightly increased current during the test. ASTM D120 allows an increase in the proof-test current of 2 milliamperes. If the proof-test current increases more than that, it would indicate that the gloves absorbed too much water. OSHA has proposed to allow a similar increase in proof-test current in paragraph (a)(2)(ii)(C).

Since the relatively high voltages used in testing electrical protective equipment for minimum breakdown voltage can actually damage the insulating material under test (even if it passes), proposed paragraph (a)(2)(iii) would prohibit protective equipment that has been subjected to such a test from being used to protect employees from electrical hazards. The intent of the proposal is to prohibit the use of equipment that has been tested under conditions equivalent to those in the ASTM standards for minimum breakdown voltage tests.

A note at the end of proposed § 1926.97(a) indicates that all the tests given in the paragraph are described in the listed ASTM standards, as follows:

> These [ASTM] standards contain specifications for conducting the various tests required in paragraph (a) of this section. For example, the a-c and d-c proof tests, the breakdown test, the water soak procedure, and the ozone test mentioned in this paragraph are described in detail in the ASTM standards.

This does not mean that OSHA is adopting the ASTM standards by reference. In enforcing proposed § 1926.97, the Agency would accept any test that meets the requirements of the OSHA standard. However, the proposal states explicitly that the ASTM tests listed in the note are acceptable; and, if the ASTM specifications are met, an employer has assurance that he or she is complying with proposed § 1926.97. If an employer uses other test methods, the Agency would determine, on a case-by-case basis, whether or not they meet the OSHA standard.

Around high-voltage lines and equipment, a luminous discharge, called electric corona, can occur due to ionization of the surrounding air caused by a voltage gradient which exceeds a certain critical value. The blue corona discharge is accompanied by a hissing noise and by ozone, which can cause damage to certain types of rubber insulating materials. Therefore, when there is a chance that ozone may be produced at a work location, electrical protective equipment made of ozone-resistant material is frequently used. To ensure that ozone-resistant material will, in fact, be resistant to the damaging effects of the gas, paragraph (a)(2)(iv) requires this type of material (Type II) to be capable of withstanding an ozone test that can reliably indicate that the material will resist ozone exposure in actual use. As noted earlier, standardized ozone tests are given in the ASTM specifications. The proposed rule also lists signs of failure of the test, such as checking,[10] cracking, breaks, and pitting.

Paragraph (a)(3) applies to the workmanship and finish of electrical protective equipment. Because physical irregularities can interfere with the insulating properties of the equipment, paragraph (a)(3)(i) prohibits the presence of harmful defects that can be detected by the tests or inspections required under § 1926.97. However, some minor irregularities are nearly unavoidable in the manufacture of rubber goods, and these imperfections may be present in the insulating materials without significantly affecting the insulation. Paragraph (a)(3)(ii) lists the types of imperfections that are permitted. Even with these imperfections, electrical protective equipment is still required to be capable of passing the electrical tests specified in paragraph (a)(2).

Since paragraph (a) of § 1926.97 is written in performance-oriented language, OSHA believes that it is important for employees, employers, and manufacturers to have some guidance in terms of what is acceptable under the proposed standard. OSHA also realizes that the current ASTM specifications on electrical protective equipment are accepted by employers and employees in the industry as providing safety to employees and that existing electrical protective equipment is normally made to these specifications. Furthermore, the proposal is based on the provisions of these national consensus standards, although the requirements are stated in performance terms. OSHA has therefore included a footnote at the end of paragraph (a) stating that rubber insulating equipment meeting the requirements of the listed ASTM standards for this equipment are considered as conforming to the requirements contained in § 1926.97(a). The lists of ASTM standards in the proposed rule (in the notes following paragraphs (a)(3)(ii)(B) and (c)(2)(ix)) contain the latest revisions of these standards. The Agency has reviewed these documents and has found them to provide suitable guidance for compliance with § 1926.97(a).[11] It should be noted that the listed consensus standards are the only ones with official recognition within the body of the standard. Future consensus standards are not automatically given the same recognition but will have to be reviewed by OSHA to determine whether they provide sufficient protection.

Paragraph (b). Paragraph (b) of the proposed § 1926.97 addresses electrical protective equipment other than the rubber insulating equipment addressed in paragraph (a). Equipment falling under this paragraph includes plastic guard equipment, insulating barriers, and other protective equipment intended to provide electrical protection to employees. Some of the equipment addressed in paragraph (b) is covered under a national consensus standard. For example, insulating plastic guard equipment is covered by ASTM F968, Specification for Electrically Insulating Plastic Guard Equipment for Protection of Workers. Other types of protective equipment are not covered by consensus specification.

Paragraph (b)(1) would require electrical protective equipment to be capable of withstanding any voltage that might be imposed on it. The voltage includes transient overvoltages as well as the nominal voltage that is present on an energized part of an electric circuit. Equipment withstands a voltage if it maintains its integrity without flashover or arc through. This paragraph would protect employees from failure of electrical protective equipment. Equipment conforming to a national consensus standard for that type of equipment will generally be considered as complying with this rule if that standard contains proof testing requirements for the voltage involved. For types of equipment not addressed by any consensus standard, OSHA is considering accepting electrical protective equipment that is capable of passing a test equivalent to that described in ASTM F712, Standard Test Methods for Electrically Insulating Plastic Guard Equipment for Protection

[10] ASTM F819–00 ^{e1}, Standard Terminology Relating to Electrical Protective Equipment for Workers, defines ''ozone cutting and checking'' as: ''cracks produced by ozone in a material under mechanical stress.''

[11] OSHA has also reviewed earlier versions of these ASTM standards and found them to afford protection equal to that of the OSHA standard. Thus, the Agency will accept electrical protective equipment meeting earlier versions of the consensus standards provided the equipment meets the edition of the standard that was in effect at the time of manufacture and provided the employer has followed the use and care provisions set out in proposed § 1926.97(c).

of Workers. Guidance for performing dielectric tests of electrical protective equipment is also given in IEEE Std. 516, IEEE Guide for Maintenance Methods on Energized Power-Lines. OSHA invites comments on whether these standards contain suitable test methods and whether equipment passing those tests should be acceptable under the OSHA standard.

The electrical test criteria set in ASTM F968 are summarized in Table IV–1 and Table IV–2. The Agency believes that the performance criteria proposed in paragraph (b)(1) minimize the necessity of setting or specifically including similar criteria in the OSHA standard. However, comments are invited on the need to set specific electrical performance values in the OSHA rule and on whether Table IV–1 and Table IV–2 could be applied to all types of electrical protective equipment that would be covered by proposed § 1926.97(b).

TABLE IV–1.—WITHSTAND VOLTAGE PROOF TEST

Class	Rating kV φ-φ	Maximum use kV φ-g (60 Hz)	Proof test withstand voltage (in service testing)			
			kV φ-g		Duration min.	Criteria
			60 Hz	D–C		
2	14.6	8.4	13	18	1.00	No flashover other than momentary as a result of too-close spacing of electrode.
3	26.4	15.3	24	34	1.00	
4	36.6	21.1	32	45	1.00	
5	48.3	27.0	42	60	0.50	
6	72.5	41.8	64	91	0.25	

TABLE IV–2.—MINIMUM FLASHOVER TEST

Class	Rating kV φ-φ	Maximum use kV φ-g (60 Hz)	Minimum flashover test kV φ-g		Criteria
			60 Hz	D–C	
2	14.6	8.4	14	20	No flashover other than momentary as a result of too-close spacing of electrode.
3	26.4	15.3	25	35	
4	36.6	21.1	34	48	
5	48.3	27.0	43	61	
6	72.5	41.8	67	95	

Proposed paragraph (b)(2) addresses the properties of insulating equipment that limit the amount of current seen by an employee. Paragraph (b)(2)(i) would require electrical protective equipment used as the primary insulation of employees from energized parts to be capable of passing a test for current (that is, a proof test) when subjected to the highest nominal voltage on which the equipment is to be used. Paragraph (b)(2)(ii) would limit the current encountered during the test to 1 microampere per kilovolt of applied voltage. This requirement is intended to prevent the use of poor insulating materials or good insulating materials that are contaminated with conductive substances (for example, fiberglass-reinforced plastic coated with a conductive finish), which could lead to electric shocks to employees using the equipment. The limit for current has been taken from IEEE Std. 516, and OSHA believes such a limit is reasonable and appropriate. The Agency invites comments, however, on whether another value would better protect employees.

When equipment is tested with ac voltage, the current measured during the test consists of three components: (1) Capacitive current caused by the dielectric properties of the equipment being tested, (2) conduction current through the equipment, and (3) leakage current passing along the surface of the equipment. The conduction current is negligible for materials typically used in insulating equipment, and the leakage current should be small for clean, dry insulating equipment. The capacitive component usually predominates when insulating equipment in good condition is tested. The second note to paragraph (b)(2) summarizes this information.

The tests required under proposed paragraphs (b)(1) and (b)(2) would normally be performed by the manufacturer initially during the design process and periodically during the manufacturing process. However, some employers might want to use equipment that is made of insulating materials but that is not intended by the manufacturer to be used as insulation. For example, a barrier made of rigid plastic may be intended for use as a general purpose barrier. An employer could test the barrier under proposed paragraphs (b)(1) and (b)(2). If the equipment passed the tests, it would be acceptable for use as insulating electrical protective equipment. Note 1 to paragraph (b)(2) makes clear that paragraph (b)(2) applies to equipment for primary insulation; it is not intended to apply to equipment used for secondary insulation or used for brush contact only.

Paragraph (c). Although existing § 1926.951(a)(1) does not contain provisions for the care and use of insulating equipment, OSHA believes provisions of this type can contribute greatly to employee safety. Electrical protective equipment is, in large part, manufactured in accordance with the latest ASTM standards. This would probably be the case even in the absence of OSHA regulation. However, improper use and care of this equipment can easily reduce, or even eliminate, the protection afforded by this equipment. Therefore, OSHA is proposing new requirements on the in-service care and use of electrical protective equipment to the design standards already contained in existing § 1926.951(a)(1). These new provisions will help ensure that these safety products retain their insulating properties.

Proposed paragraph (c)(1) would require electrical protective equipment to be maintained in a safe and reliable condition. This general, performance-oriented requirement, which would apply to all equipment addressed by

new § 1926.97, helps ensure that employees are fully protected from electric shock.

Detailed criteria for the use and care of specific types of electrical protective equipment are contained in the following ASTM standards:

ASTM F 478–92, Specification for In-Service Care of Insulating Line Hose and Covers.

ASTM F 479–95, Specification for In-Service Care of Insulating Blankets.

ASTM F 496–02a, Specification for In-Service Care of Insulating Gloves and Sleeves.

OSHA based the requirements proposed in paragraph (c)(2) on these standards.

Paragraph (c)(2) applies only to rubber insulating blankets, covers, line hose, gloves, and sleeves. These are the only types of electrical protective equipment addressed by consensus standards on the care and use of such equipment. Rubber insulating matting, which is addressed by the material design specifications in paragraph (a), is not covered by any ASTM standard on its in-service care or by § 1910.137(c)(2). This type of equipment is generally permanently installed to provide supplementary protection against electric shock. Employees stand on the matting, and they are insulated from ground, which protects them from phase-to-ground electric shock. However, because this type of equipment is normally left in place after it is installed and because it is not relied on for primary protection from electric shock (the primary protection is provided by other insulating equipment or by insulating tools), it is not tested on a periodic basis and is not subject to the careful inspection before use that other insulating equipment is required to receive. It should be noted, however, that rubber insulating matting is required to be maintained in a safe, reliable condition under paragraph (c)(1).

Although the rubber insulating equipment addressed in § 1926.97(a) is currently designed to be capable of withstanding voltages of up to 40 kilovolts, such equipment is actually intended to be used at lower voltages (see, for example, ASTM F 496 on the care and use of rubber insulating gloves and sleeves). The use of insulating equipment at voltages less than its actual breakdown voltage provides a margin of safety for the employee. In paragraph (c)(2)(i) and Table E–4, the proposal has adopted the margins of safety recognized in the ASTM standards, restricting the use of insulating equipment to voltages lower than the proof-test voltages given in Table E–1 and Table E–2.

Table E–4 contains the following note:

> The maximum use voltage is the a-c voltage (rms) classification of the protective equipment that designates the maximum nominal design voltage of the energized system that may be safely worked. The nominal design voltage is equal to the phase-to-phase voltage on multiphase circuits. However, the phase-to-ground potential is considered to be the nominal design voltage:
>
> (1) If there is no multiphase exposure in a system area and if the voltage exposure is limited to the phase-to-ground potential, or
>
> (2) If the electrical equipment and devices are insulated or isolated or both so that the multiphase exposure on a grounded wye circuit is removed.

In the general case, electrical protective equipment must be rated for the full phase-to-phase voltage of the lines or equipment on which work is being performed. This ensures that employees are protected against the most severe possible exposure, that is, contact between one phase conductor and another. However, if the employee is only exposed to phase-to-ground voltage, then the electrical protective equipment selected can be based on this lower voltage level (nominally, the phase-to-phase voltage divided by $\sqrt{3}$). For example, a three-phase, solidly grounded, Y-connected overhead distribution system could be run as three phase conductors with a neutral or as three single-phase circuits with one phase conductor and a neutral each. If only one phase conductor is present on a pole, there is no multiphase exposure. If all three phase conductors are present, the multiphase exposure can be removed by insulating two of the phases or by isolating [12] two of the phases. After the insulation is in place or while the employee is isolated from the other two phase conductors, there is no multiphase exposure, and electrical protective equipment rated for the phase-to-ground voltage could be used. (It should be noted that, until the multiphase exposure has actually been removed, the phase-to-phase voltage remains the maximum use voltage. Thus, the maximum use voltage of any insulation used to ''remove phase-to-phase exposure'' must be greater than or equal to the phase-to-phase voltage on the system.) OSHA requests comments on how employees can be insulated or isolated from multiphase exposure to ensure the safe use of electrical protective equipment.

Proposed paragraph (c)(2)(ii) would require insulating equipment to be visually inspected before use each day and immediately after any incident which might be suspected of causing damage. In this way, obvious defects can be detected before an accident occurs. Possible damage-causing incidents would include exposure to corona and exposure to possible direct physical damage. Additionally, rubber gloves would be required to be subjected to an air test along with the inspection. In the field, this test usually consists of rolling the cuff towards the palm so that air is entrapped within the glove. In a testing facility, a mechanical inflater may be used. In either case, punctures and cuts can easily be detected. The note following paragraph (c)(2)(ii) indicates that ASTM F 1236–96, *Standard Guide for Visual Inspection of Electrical Protective Rubber Products*, contains (1) information on how to inspect rubber insulating equipment and (2) descriptions and photographs of potential irregularities in the equipment.

During use, electrical protective equipment may become damaged and lose some of its insulating value. Paragraph (c)(2)(iii) of proposed § 1926.97 lists types of damage that would cause the insulating value to drop. The equipment may not be used if any of these defects are present.

Defects other than those listed in paragraph (c)(2)(iii) may develop during use of the equipment and could also affect the insulating and mechanical properties of the equipment. If such defects are found, proposed paragraph (c)(2)(iv) would require the equipment to be removed from service and tested in accordance with other requirements in paragraph (c)(2). The results of the tests determine if it is safe to return the items to service.

Foreign substances on the surface of rubber insulating equipment can degrade the material and lead to damage to the insulation. Paragraph (c)(2)(v) would require the equipment to be cleaned as needed to remove any foreign substances.

Over time, certain environmental conditions can also cause deterioration of rubber insulating equipment. Proposed paragraph (c)(2)(vi) would require insulating equipment to be stored so that it is protected from injurious conditions and substances, such as light, temperature extremes, excessive humidity, and ozone. This requirement helps the equipment retain its insulating properties as it ages.

[12] Depending on the configuration of the system, an employee could be isolated from two of the phases on the pole by approaching one of the outside phase conductors and working on it from a position where there is no possibility of coming too close to the other two phase conductors. Isolation of the employee may be impossible for some line configurations.

OSHA does not consider carrying the equipment on trucks for the use of employees during the course of work to be storage. However, the Agency does not believe that it is safe to store the equipment on trucks for extended periods between use if such storage would expose the equipment to extremes of temperature or humidity. It may be necessary, under some circumstances, to store equipment indoors during prolonged periods when employees would not be using it. Workers are dependent upon electrical protective equipment for their safety, and all reasonable means of protecting it from unnecessary damage must be employed.

Rubber insulating gloves are particularly sensitive to physical damage during use. Through handling conductors and other electrical equipment, an employee can damage the gloves and lose the protection they provide. For example, a sharp point on the end of a conductor could puncture the rubber. To protect against damage, protector gloves (made of leather) are worn over the rubber gloves. Proposed paragraph (c)(2)(vii) recognizes the extra protection afforded by leather gloves and would require their use over rubber gloves, except under limited conditions.

Protector gloves would not be required with Class 0 or Class 00 gloves if high finger dexterity is needed for small parts manipulation. The maximum voltage on which Class 0 and Class 00 gloves can be used is 1,000 volts and 500 volts, respectively. At these voltages, an employee is protected against electric shock as long as a live part does not puncture the rubber and contact the employee's hand. The type of small parts encountered in work on energized circuits, such as small nuts and washers, are not likely to do this. While the exception is necessary to allow work to be performed on small energized parts, extra care is needed in the visual examination of the glove and in the avoidance of handling sharp objects. (A note to this effect is included in the proposal.)

The other exception to the requirement for protector gloves is granted if the employer can demonstrate that the possibility for damage is low and if gloves at least one class higher than required for the voltage are used. For example, if a Class 2 glove is used at 7500 volts or less (the maximum use voltage for Class 1 equipment), if high dexterity is needed, and if the possibility of damage is low, then protector gloves need not be used. In this case, the additional thickness of insulation provides a measure of additional physical protection. This exception does not apply when the possibility of damage is significant, such as when an employee is using a knife to trim insulation from a conductor or when an employee has to handle moving parts, such as conductors being pulled into place. To ensure that no loss of insulation has occurred, paragraph (c)(2)(vii)(C) would require any gloves used under this exception to be tested before being used again.

Paragraph (c)(2)(viii), Table E–4, and Table E–5 would require insulating equipment to be tested periodically to verify that electrical protective equipment retains its insulating properties over time. Table E–4 lists the retest voltages that are required for the various classes of protective equipment, and Table E–5 presents the testing intervals for the different types of equipment. These test voltages and intervals were taken from the relevant ASTM standards.

Paragraph (c)(2)(ix) proposes a performance-oriented requirement that the method used for the periodic tests give a reliable indication of whether or not the electrical protective equipment can withstand the voltages involved. As this is a performance-oriented standard, OSHA does not spell out detailed procedures for the required tests, which vary depending on the type of equipment being tested. On the other hand, OSHA believes that it is important for employees, employers, and testing laboratories to have some guidance in terms of what is acceptable under the proposed standard. Therefore, following paragraph (c)(2)(ix), OSHA has included a note stating that electrical test methods given in the various ASTM standards on rubber insulating equipment meet the proposed performance requirement. The Agency believes that referencing acceptable test methods within the standard will benefit employees, employers, and testing laboratories. As noted earlier, this does not mean that OSHA is adopting the ASTM standards by reference. In enforcing § 1926.97(c)(2)(ix), the Agency would accept any test that meets the requirements of the OSHA standard. However, the proposal states explicitly that the listed ASTM tests would be acceptable; and, if the ASTM specifications are met, an employer has assurance that he or she would be complying with § 1926.97(c)(2)(ix). If an employer uses other test methods, the Agency will determine, on a case-by-case basis, whether or not they meet the Federal standard.

Once the equipment has undergone the in-service inspections and tests, it is important to ensure that any failed equipment is not returned to service. Paragraph (c)(2)(x) would prohibit electrical protective equipment that failed the required inspections and tests from being used by employees, unless the defects can be safely eliminated. Proposed paragraph (c)(2)(x) also lists acceptable means of eliminating defects and rendering the equipment fit for use. Sometimes defective portions of rubber line hose and blankets can be removed. The result would be a smaller blanket or a shorter length of line hose. Under the proposal, rubber insulating blankets may only be salvaged by severing the defective portions of the blanket if the resulting undamaged area is at least 560 mm by 560 mm (22 inches by 22 inches) for Class 1, 2, 3, and 4 blankets. (Smaller sizes cannot be reliably tested using standard test methods.) Obviously, gloves and sleeves cannot be repaired in this manner; however, there are methods of patching them if the defects are minor. Rubber blankets can also be patched. The patched area must have electrical and physical properties equal to those of the material being repaired. To minimize the possibility that a patch will loosen or fail, the proposal would not permit repairs to gloves outside the gauntlet area (the area between the wrist and the reinforced edge of the opening). OSHA stresses that the proposal would not permit repairs in the working area of the glove, where the constant flexing of the rubber during the course of work could loosen an ill-formed patch.

Once the insulating equipment has been repaired, it must be retested to ensure that any patches are effective and that there are no other defects present. Such retests would be required under paragraph (c)(2)(xi).

Employers, employees, and OSHA compliance staff must have a method of determining whether or not the tests required under proposed paragraphs (c)(2)(viii) and (c)(2)(xi) have been performed. Paragraph (c)(2)(xii) would require this to be accomplished by means of certification by the employer that equipment has been tested in accordance with the standard. The certification is required to identify the equipment that passed the test and the date it was tested. Typical means of meeting this requirement include logs and stamping test dates on the equipment. A note following paragraph (c)(2)(xii) explains that these means of certification are acceptable.

B. Electric Power Transmission and Distribution, Subpart V

OSHA is proposing to revise Subpart V of its construction standards. This subpart contains requirements for the prevention of injuries to employees

performing construction work on electric power transmission and distribution installations.

The proposed revision of Subpart V is based primarily on the general industry standard § 1910.269, Electric power generation, transmission, and distribution, which was promulgated in January 1994, rather than on existing Subpart V, which was promulgated in 1972. As noted earlier in this preamble, the existing Subpart V is technologically out of date and contains provisions that are poorly written. OSHA believes that basing the revision of Subpart V on the more recently promulgated § 1910.269 will produce a standard that will be easier for employees and employers to understand and will better protect employees than a revision based on the existing construction standard.

Section 1926.950, General

Section 1926.950, General, proposes the scope of revised Subpart V and proposes general requirements for training and the determination of existing conditions.

Paragraph (a)(1) of proposed § 1926.950 sets the scope of revised Subpart V. OSHA intends the revision of Subpart V to apply to the same types of work covered under the existing standard. Therefore, paragraph (a)(1) has been taken directly from existing § 1926.950(a) and (a)(1). As proposed, Subpart V would apply to the construction of electric power transmission and distribution installations. For the purposes of the proposal and the existing standard, ''construction'' includes the erection of new electric transmission and distribution lines and equipment, and the alteration, conversion, and improvement of existing electric transmission and distribution lines and equipment.

Paragraph (a)(2) of proposed § 1926.950 explains the application of the subpart with respect to the rest of Part 1926. The proposed provision reads as follows: ''This subpart applies in addition to all other applicable standards contained in this Part 1926. Employers covered under this subpart are not exempt from complying with other applicable provisions in Part 1926 by the operation of § 1910.5(c) of this chapter. Specific references in this subpart to other sections of Part 1926 are provided for emphasis only.'' All other construction industry standards would continue to apply to installations covered by the revised standard unless an exception is given in Subpart V. For example, § 1926.959(a)(2) would require the critical components of mechanical elevating and rotating equipment to be inspected before each shift. This provision would not supersede existing §§ 1926.500(a)(5) and (a)(6), which detail specific requirements for the inspection of cranes. Also, in a change that OSHA considers nonsubstantive, § 1910.269(a)(1)(iii) will be amended to include language equivalent to that of the new provision at § 1926.950(a)(2).[13]

In contrast to § 1910.269, Subpart V does not apply to work on electric power generation installations or to the installations themselves. The construction of an electric power generation station normally poses hazards more akin to those of general construction rather than those found in the operation and maintenance of the generation plant. The only exceptions would be during the final phase of construction of a generating station, when electrical and other acceptance testing of the installation is being performed, and during ''reconstruction'' phases, when other portions of the generating station would still be in operation. During these two operations, the work being performed resembles general industry work, and the appropriate work practices to follow are contained in the general industry standard § 1910.269. Therefore, rather than repeat the relevant portions of § 1910.269 in Subpart V, OSHA has simply stated in § 1926.950(a)(3) that such work shall comply with § 1910.269. The Agency requests comments on whether § 1910.269 should apply to all work involving electric power generation installations, as proposed, or whether the relevant requirements from § 1910.269 should be contained in Subpart V.

Similarly, line-clearance tree trimming is not normally performed as part of the construction of electric power transmission or distribution installations. One exception occurs when trees are trimmed along an existing overhead power line to provide clearance for a new transmission or distribution line being constructed. Even here, however, this work is not construction-like in nature. Therefore, OSHA is also applying § 1910.269 to line-clearance tree-trimming operations, regardless of whether the work is considered to be construction work. The Agency also requests comments on whether § 1910.269 should apply to all work involving line-clearance tree trimming, as proposed, or whether the relevant requirements from § 1910.269 should be contained in Subpart V.

Paragraph (b) of § 1926.950 addresses training for employees. Subpart V currently contains no general provisions related to training employees in the safety precautions necessary to perform electric power transmission and distribution work. It is widely recognized that electric-utility-type work requires special knowledge and skills. Additionally, both existing Subpart V and the proposed revision of Subpart V contain many safety-related work practice requirements that are necessary for the protection of employees. In order to gain the requisite knowledge and skills to employ these work practices, employees must be adequately trained. Therefore, in the proposed revision of Subpart V, OSHA has included training requirements based on those in § 1910.269.

Paragraph (b)(1) contains training requirements applying to all employees performing work covered by Subpart V. Paragraph (b)(1)(i) would require employees to be trained in the safety-related work practices, safety procedures, and other personnel safety requirements in the standard that pertain to their respective job assignments. This training is necessary to ensure that employees use the safety-related work practices outlined in proposed Subpart V.

Under paragraph (b)(1)(ii), employees would also be required to be trained in and familiar with any other safety practices necessary for their safety, including applicable emergency procedures. The proposed rule would require employees to be trained in safe work techniques that relate to his or her job. Additionally, if more than one set of work practices could be used to accomplish a task safely, the employee would need to be trained in only those work methods he or she is to use. For example, an insulator on a power line could be replaced through the use of live-line tools, through the use of rubber insulating equipment, or by deenergizing the line. The employee would only have to be trained in the method actually used to replace that insulator.

The proposal cannot specify requirements for every hazard the employee faces in performing electric power transmission or distribution work. Employers must fill in this gap by training their employees in hazards that are anticipated during the course of jobs they are expected to perform. The language of proposed § 1926.950(b)(1)(ii) imparts OSHA's intent that safety training be provided in areas that are not directly addressed by the standard but that are related to the employee's job.

[13] Paragraph (a)(1)(iii) of § 1910.269 presently states: ''This section applies in addition to all other applicable standards contained in this part 1910. Specific references in this section to other sections of part 1910 are provided for emphasis only.''

Under paragraph (b)(1)(iii), the training provided to an employee would have to be commensurate with the risk he or she faces. This provision is not contained in either existing Subpart V or § 1910.269. This proposed requirement, which has been taken from § 1910.332(c), is intended to ensure that an appropriate level of training is provided. Employees who face little risk in their job tasks need less training than those whose jobs expose them to the most danger. OSHA believes that this provision will ensure that employers direct their training resources where they will provide the greatest benefit. At the same time, all employees will receive adequate training to protect them against the hazards they face in their jobs. OSHA notes, however, for employees who are currently provided the training required by existing § 1910.269, this training will be considered sufficient for compliance with proposed paragraph (b)(1)(iii). Proposed paragraph (b)(1)(iii) does not require employers to make changes to their training programs; rather it provides employers with options to tailor their training programs and resources to employees with particularly high-risk jobs.

Paragraph (b)(2) of proposed § 1926.950 contains additional requirements for the training of qualified employees. Because qualified employees are allowed to work very close to electric power lines and equipment and because they face a high risk of electrocution, it is important that they be specially trained. OSHA believes that qualified employees need to be extensively trained for them to perform their work safely. Towards this end, the proposal would require that these employees be trained in distinguishing live parts from other parts of electric equipment, in determining nominal voltages of lines and equipment, in the minimum approach distances set forth in the proposal, in the techniques involved in working on or near live parts, and in the knowledge necessary to recognize electrical hazards and the techniques to avoid these hazards.

OSHA believes that there is a need for all employees to be trained on a continuing basis. Initial instruction in safe techniques for performing specific job tasks is not sufficient to ensure that employees will use safe work practices all of the time. At OSHA's hearing on § 1910.269, Dr. Heinz Ahlers of NIOSH spoke about the effect of training on accidents, as follows:

> * * * I think in a majority of those instances, the fatality involved the worker who had been appropriately trained for the exposure that he subsequently came in contact with and just was not following what the training and the company policy had involved. [269–DC Tr. 47–48]

Continual reinforcement of this initial guidance must be provided to ensure that the employee actually uses the procedures he or she has been taught. This reinforcement can take the form of supervision, safety meetings, pre-job briefings or conferences, and retraining. Typically, adequate supervision can detect unsafe work practices with respect to tasks that are routine and are performed on a daily or regular basis. However, if an employee has to use a technique that is applied infrequently or that is based on new technology, some follow-up is needed to ensure that the employee is actually aware of the correct procedure for accomplishing the task. A detailed job briefing, as required under proposed § 1926.952(d)(2), may be adequate if the employee has previously received some instruction, but training would be necessary if the employee has never been schooled in the techniques to be used.

For these reasons, OSHA has supplemented the basic training requirements proposed in § 1926.950(b)(1) and (b)(2) with two additional requirements: (1) a requirement for regular supervision (that is, supervision that takes place on a periodic basis throughout the year) and an annual inspection by the employer to determine whether or not each employee is complying with the safety-related work practices required by Subpart V and (2) a requirement for additional training whenever

- The regular supervision or annual inspection indicates that the employee is not following the safety-related work practices required by the standard,
- New technology, new types of equipment, or changes in procedures necessitate the use of safety-related work practices that are different from those that the employee would normally use, or
- The employee must use safety-related work practices that are not normally used during his or her regular job duties.

These two provisions are contained in paragraphs (b)(3) and (b)(4).

The proposal includes a note indicating that the Agency considers tasks performed less often than once per year to require retraining before the task is actually performed. Instruction provided in pre-job briefings is acceptable if it is detailed enough to fully inform the employee of the procedures involved in the job and to ensure that he or she can accomplish them in a safe manner. OSHA believes that this requirement will significantly improve safety for electric power transmission and distribution workers.

Under paragraph (b)(5), the proposal would require classroom or on-the-job training or a combination of both. This allows employers to continue the types of training programs that are currently in existence. (See the discussion of Note 2 to paragraph (b)(7) for an explanation of how employers may treat previous training.)

An employee who has attended a single training class on a procedure that is as complex as the lockout and tagging procedure used in an electric generating plant has generally not been fully trained in that procedure. Unless a training program establishes an employee's proficiency in safe work practices and unless that employee then demonstrates his or her ability to perform those work practices, there will be no assurance that safe work practices will result. To address this problem, the Agency is proposing paragraph (b)(6), which reads as follows:

> The training shall establish employee proficiency in the work practices required by this section and shall introduce the procedures necessary for compliance with this section.

The inclusion of paragraph (b)(6) and the demonstration of proficiency requirement contained in paragraph (b)(7), discussed later in this preamble, are intended to ensure that employers do not try to comply with § 1926.950(b) by simply handing training manuals to their employees. These provisions will require employers to take steps to assure that employees comprehend what they have been taught and that they are capable of performing the work practices mandated by the standard. OSHA believes that these two paragraphs will maximize the benefits of the training required under the standard.

The employer would be required, by paragraph (b)(7), to determine that each employee has demonstrated proficiency in the work practices involved. Until the employer makes this determination, the employee would not be considered as being trained. Employers relying on training provided by others are expected to take steps to verify that the employee has indeed received it. For example, an employer could call a previous employer or training facility or could check a union employee's journeyman lineman credentials. Alternatively, an employer could test the employee's knowledge of safe work practices. After these steps have been taken, the employer could then, based on visual

observation of the employee, determine that that employee has been trained in accordance with the standard and has demonstrated proficiency in the work practices involved. A note following this paragraph explains that employee training records, which are maintained by many employers but which are not required by the standard, are one way of tracking when an employee has demonstrated proficiency. OSHA requests comments on whether the standard should require employers to record employee training.

Note 2 to paragraph (b)(7) describes how an employer may treat training that the employee has received previously (for example, through previous employment). If an employer can demonstrate that an employee has already been trained, the employer does not have to duplicate previous instruction provided that the employer: (1) Confirms that the employee has the job experience appropriate to the work to be performed, (2) through an examination or interview, makes an initial determination that the employee is proficient in the relevant safety-related work practices before he or she performs any work covered by this subpart, and (3) supervises the employee closely until that employee has demonstrated proficiency in all the work practices he or she will employ. OSHA believes that it is unnecessary to require employers to duplicate training the employee has received in the past. However, the Agency believes that it is important for the employer to take steps to ensure that the previous training was adequate for the work practices the employee will be performing. It is possible, for example, that an employee who has received training through an apprenticeship program was not trained in the specific grounding practices used by his or her current employer. The employer must determine where the gaps in the employee's training are and provide supplemental training to cover them. Otherwise, employees may follow different practices that endanger not only themselves but their coworkers as well. For example, a previously trained employee may have been instructed to wear rubber gloves and sleeves, but his or her current employer's practices require only rubber gloves but with the extra insulation on conductors as required by proposed § 1926.960(c)(2). This employee will be unlikely to install all the necessary insulation, increasing the risk to the employee and his or her coworkers.

Existing § 1910.269(a)(2)(vii) requires employers to certify that employees have received the training required under that section. The certification must be made when the employee demonstrates proficiency in the work practices involved. To reduce unnecessary paperwork burdens placed on employers, OSHA is proposing to eliminate the requirement to certify training. The Agency believes that compliance with the training requirements can be determined through employee interviews; thus, the certification requirement is unnecessary. OSHA does believe, however, that it is essential for the employee to demonstrate proficiency in the work practices involved before he or she is considered as having been trained satisfactorily. Therefore, as described earlier, the proposal includes this as a requirement. Comments are requested on whether or not the existing certification requirement in existing § 1910.269(a)(2)(vii) is necessary and on whether or not the proposed alternative will better protect employees.

The work covered by Subpart V is frequently done by an employer working under contract to an electric utility. Traditionally, electric utilities [14] have had a workforce that was sufficient for the day-to-day maintenance of the electric power generation, transmission, and distribution system. Electric utilities would hire contractors when the work to be performed went beyond routine maintenance. Thus, contractors typically would perform the following types of work: new transmission and distribution line construction, extensive transmission and distribution line renovation (such as the replacement of a large number of utility poles or the upgrading of the line to a higher voltage), line-clearance tree trimming, generation plant overhauls, and repair of extensive storm damage.

Contractors performing electric power generation, transmission, and distribution work experience a disproportionate share of fatal accidents in comparison to electric utilities. Table IV–3 presents the number of fatalities experienced by electric utilities and their major electrical contractors.

TABLE IV–3.—FATALITIES BY SIC

SIC	Industry	Year	Number
783	Line-clearance tree-trimming contractors	1991	4
		1992	7
		1993	9
		1994	4
		1995	2
		1996	6
		1997	4
		1998	5
Total			41
1623	Power Line Contractors	1991	15
		1992	12
		1993	20
		1994	21
		1995	15
		1996	11
		1997	11
		1998	12
Total			117
1731	Electrical Contractors	1991	5

[14] For the purposes of the discussion of § 1926.950(c), OSHA is using the term ''electric utility'' to include any employer who hires a contractor to work on that employer's electric power generation, transmission, or distribution facility.

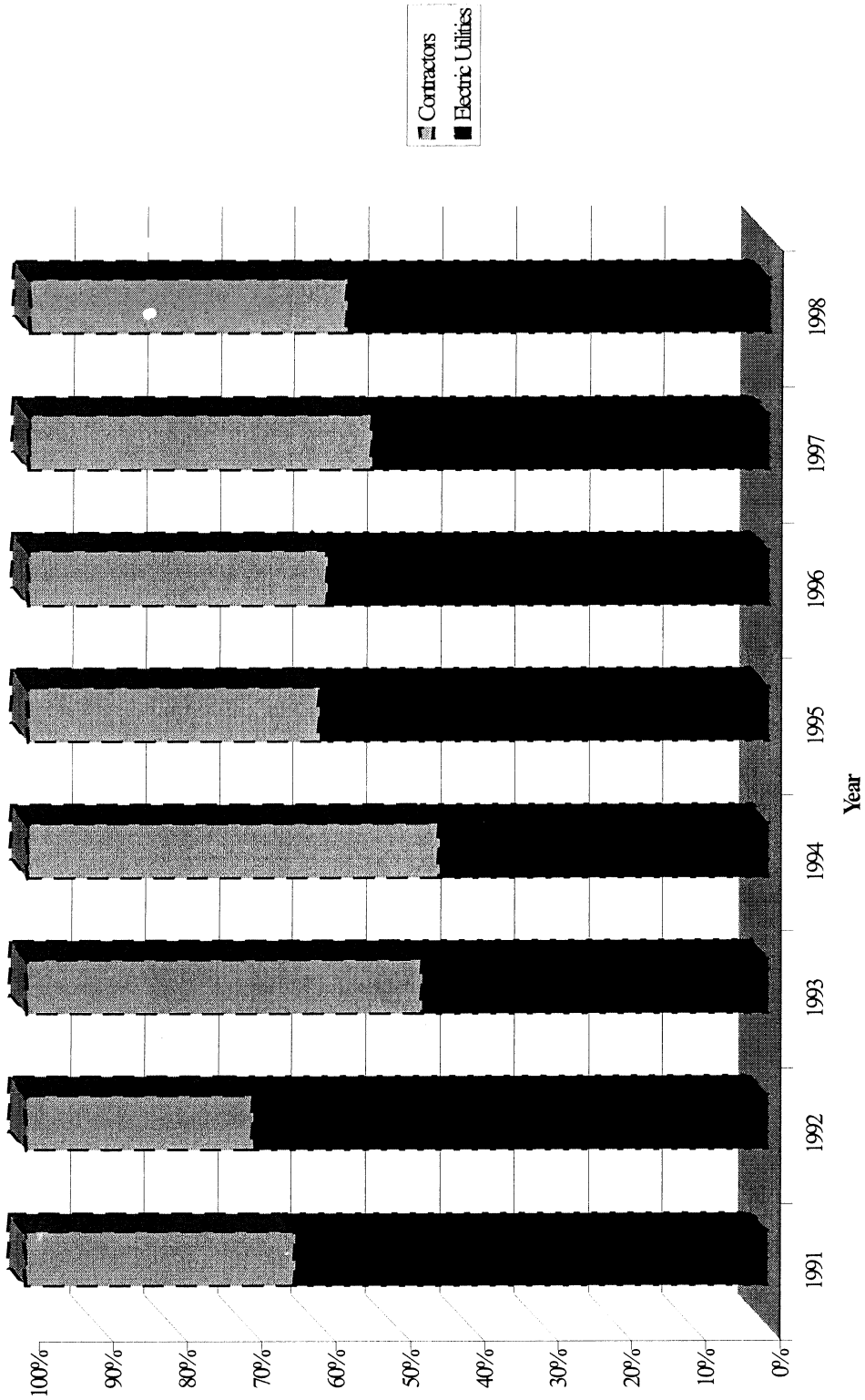
TABLE IV–3.—FATALITIES BY SIC—Continued

SIC	Industry	Year	Number
		1992	6
		1993	13
		1994	9
		1995	9
		1996	6
		1997	8
		1998	9
Total			65
4911	Electric Utilities	1991	33
		1992	34
		1993	28
		1994	23
		1995	36
		1996	23
		1997	20
		1998	27
Total			224
4931	Combination Utilities (e.g., Electric and Gas Utilities)	1991	2
		1992	7
		1993	1
		1994	1
		1995	1
		1996	2
		1997	2
		1998	1
Total			17
Grand total			464

Source: OSHA accident inspection data for the years 1991 through 1998.

BILLING CODE 4510–26–P

Figure 1—Percent Fatalities by Industry Type



BILLING CODE 4510–26–C

Figure 1 shows the percentages of fatalities for the two groups. These figures demonstrate that, while the overall number of fatalities has not changed significantly, the proportion of fatal accidents has shifted from electric utilities to their contractors, with nearly half of the fatalities involving contractors.

The number of fatalities for the two industry groups does not tell the full story. To determine the relative risk faced by employees, OSHA must look at fatality rates, which represent the number of deaths per 1000 employees. Using employment data for 1997 from Section V, Preliminary Regulatory Impact Analysis and Initial Regulatory Flexibility Analysis, later in this preamble, the Agency has calculated fatality rates for electric utilities and their major contractors, as shown in Table IV–4.

TABLE IV–4.—FATALITY RATE BY INDUSTRY

Year	Electric utilities		Electrical contractors		Line-clearance tree trimmers	
	124408 Employees [1]		43472 Employees [2]		35020 Employees [3]	
	Number of fatalities	Fatality rate	Number of fatalities	Fatality rate	Number of fatalities	Fatality rate
1991	35	0.28	20	0.46	4	0.11
1992	41	0.33	18	0.41	7	0.20
1993	29	0.23	33	0.76	9	0.26
1994	24	0.19	30	0.69	4	0.11
1995	37	0.30	24	0.55	2	0.06
1996	25	0.20	17	0.39	6	0.17
1997	22	0.18	19	0.44	4	0.11
1998	28	0.23	21	0.48	5	0.14
Total	241	0.24	182	0.52	41	0.15

[1] Source: "Analytical Support and Data Gathering for a Preliminary Economic Analysis for Proposed Standards for Work on Electric Power Generation, Transmission, and Distribution Lines and Equipment (29 CFR 1910.269 and 29 CFR 1926—Subpart V)," 2005, CONSAD Research Corp. (CONSAD), full-time equivalent employment for NAICS 221110, electric power generation, NAICS 221120, electric power transmission, control, and distribution, and NAICS 2211, publicly owned utilities, combined.

[2] Source: CONSAD, full-time equivalent employment for NAICS 234910, water, sewer, and pipeline construction, NAICS 234920, power and communication transmission line construction, and NAICS 235310, electrical contractors, combined.

[3] Source: CONSAD, full-time equivalent employment for SIC 0783, ornamental shrub and tree services.

As can be seen from this table, the fatality rates for contractors are more than double the comparable rate for electric utilities.

OSHA believes that, for the protection of all employees performing electric power generation,[15] transmission, and distribution work, it is essential that electric utilities hire contractors who have employees with the skills, knowledge, training, tools, and protective equipment necessary to perform this work safely. The safety of electric utility employees as well as the safety of contractor employees depends on this.

It is clear that the safety of contract employees is dependent on their skills, knowledge, training, tools, and protective equipment. The requirements of § 1926.950(b) generally ensure that all employees have the requisite skills and training. Other requirements in the standard, including §§ 1926.954, 1926.957, and 1926.960, address tools and protective equipment. However, these other provisions do not adequately address the employees' knowledge of the actual equipment they will be working on. For example, an employee might be trained in the climbing of concrete poles. Climbing these structures typically involves the attachment of temporary ladders into fittings on the concrete poles. An employee with the general type of training in climbing electric power transmission structures that contract employees typically receive might not be aware of the specific attachment and locking means used by the concrete poles and structures owned by the electric utility that hires the contractor. Without this knowledge, the employee could attach the temporary ladder incorrectly or fail to lock it in place properly with possibly fatal results.

In addition, several provisions in the standard would require the employer to assess certain hazards covered by the standard. For example, § 1926.960(g) would require employers to assess hazards associated with electric arcs. Contract employers need to have sufficient information about the electrical system so that they can perform these hazard assessments.

The facilities owned by an electric utility pose hazards to employees of contractors working on those facilities. For example, overhead electric power transmission and distribution lines and equipment owned by electric utilities pose serious fall, electrocution, and electric shock hazards. Employees exposed to such hazards need to be highly trained and skilled. If an electric utility hires a contractor who uses unqualified employees on those lines and equipment, the hazards posed by the utility's facilities will almost certainly lead to injuries. If the contract employees are working on a power line with the understanding that it is deenergized and if the contract employees do not fully understand the electric utility's procedures for deenergizing lines and equipment, then those employees could mistakenly believe that a line is deenergized when it is not, with possibly fatal results. Inadequate maintenance of an electric utility's facilities can also lead to unexpected hazards for contract employees.

The safety of electric utility employees is also affected by the contract employer's work. For example, a contractor's work could cause an overhead energized line to fall on a deenergized line on which an electric utility employee is working, creating hazards for the electric utility employee. Additionally, a contract employee who is not familiar with the utility's procedures for reenergizing lines and equipment might inadvertently remove a tag protecting an electric utility employee.

[15] Although Subpart V applies only to the construction of transmission and distribution installations, the same requirements on the duties of host and contract employers are being proposed in § 1910.269, which applies to the maintenance and operation of electric power generation installations in addition to transmission and distribution installations.

Although electric utility employees do not typically work with contract employees, sometimes they do work together. For example, it is common practice for contract employees and electric utility employees to work side-by-side during emergency restoration operations, such as those that follow a big storm. Additionally, contractors in electric power generation plants will be working near employees working full time in the plant.

It is clear from these examples that electric utility employers and contract employers must cooperate and communicate if all employees maintaining or constructing electric power generation, transmission, or distribution facilities are to be adequately protected. Thus, OSHA is proposing requirements in § 1926.950 for each type of employer to ensure the necessary exchange of information between electric utility and contract employers. The proposed requirements have been taken from similar provisions in the Agency's standard for Process Safety Management, § 1910.119(h).

Paragraph (c)(1) of proposed § 1926.950 would impose duties on host employers that hire contractors to perform work on the host employer's installations covered by Subpart V. Host employer is defined as ''[a]n employer who operates and maintains an electric power transmission or distribution installation covered by Subpart V of this Part and who hires a contract employer to perform work on that installation.'' This definition includes electric utilities and other employers who operate and maintain an electric power transmission or distribution installation. However, it does not include an employer who owns but does not operate and maintain such installations. The Agency believes that host employers who operate and maintain their electric power transmission and distribution installations have expertise in working safely on such installations. On the other hand, some entities may own but not operate or maintain these installations. These entities generally do not have the expertise necessary to work safely on transmission or distribution lines and equipment and would have little hazard-related knowledge to pass on to contractors. In addition, the employees of such entities would have little if any exposure to hazards created by a contract employer. Therefore, OSHA is proposing to exclude such entities from having to comply with proposed § 1926.950(c)(1). The Agency invites comments on whether excluding such employers from the host-contract employer provisions proposed in § 1926.950(c)(1) unduly jeopardizes employee safety and whether any of the provisions in that paragraph could reasonably be applied to such employers.

OSHA is also not proposing to extend the host-contract employer provisions to line-clearance tree-trimming contractors for work performed by line-clearance tree trimmers who are not qualified employees. Existing § 1910.269(a)(1)(i)(E) lists the paragraphs that apply to line-clearance tree-trimming, and OSHA is not proposing to add the host-contract employer provisions to that list. As noted earlier, the fatality rate for line-clearance tree-trimming contractors is lower than the rate for utilities. Thus, it appears that though line-clearance tree-trimming operations are relatively hazardous, they are still safer than power line construction, repair, and maintenance. On the other hand, if a line-clearance tree-trimming operation is performed by a qualified employee, then the host-contract employer provisions would apply. (*See* existing § 1910.269(a)(1)(i)(E)(1).) As long as they are using electrical protective equipment, these employees are permitted to come much closer to energized parts than unqualified employees, and the Agency believes that these employees face hazards similar to contract power line workers.[16] OSHA requests comments on whether excluding line-clearance tree-trimming contractors from the host-contract employer provisions proposed in § 1926.950(c)(1) unduly jeopardizes employee safety and whether any of the provisions in that paragraph could reasonably be applied to such employers.

Contract employer is defined as ''[a]n employer who performs work covered by Subpart V of this Part for a host employer.'' This includes painting contractors, line construction contractors, electrical contractors, and any other contractors working on the construction of electric power transmission and distribution lines.[17] It does not include contractors who might be present at a jobsite where some work performed is covered by Subpart V, but who are not performing any covered work.

Sometimes the host employer is aware of hazards that are present at its facilities of which the contractor might not be aware. For example, what appeared to be a static line on one electric utility's transmission system was energized at 4,000 volts. Static lines are typically grounded. An employee of a contractor, perhaps not understanding that the line was energized, contacted the static line and was electrocuted. Paragraph (c)(1)(i) of proposed § 1926.950 would address this problem by requiring the host employer to inform contract employers of any known hazards that the contractor or its employees might fail to recognize. This provision should ensure that the contractor will be able to take measures to protect its employees from hazards posed by the host employer's workplace. Although this provision would not require the host employer to inform the contract employer of hazards the contract employees should be expected to recognize, such as hazards posed by an overhead power line, the proposal would require the host employer to inform the contract employer of known hazards the contractor might not be aware of. For example, if a host employer knows that a particular manhole on its system is subject to periodic contamination from a nearby fuel tank, that information must be relayed to the contractor.

Proposed paragraph (c)(1)(i) also covers information that a contract employer would need to make any hazard assessments called for under the proposed standard. For example, proposed § 1926.950(d) would require employers to determine existing conditions related to the safety of the work being performed before work is started. Under paragraph (c)(1)(ii), the host employer would have to provide any system parameters that the contract employer would need to satisfy paragraph (d). These parameters could include such things as the nominal circuit voltage, maximum switching transient voltages, and the presence of any utility poles known by the host employer to have defects that could affect employee safety. This is the type of information that could affect the contractor's choice of work practices or could otherwise affect the safety of the contractor's employees. In addition, the contract employer would otherwise have difficulty obtaining much of this information, if it could be obtained at all.

Proposed paragraph (c)(1)(i) would not require the host employer to survey the contract work areas for hazards. For

[16] For a full discussion of why existing § 1910.269 applies different requirements to line-clearance tree-trimming operations depending on whether or not the operation is performed by a qualified employee, see the preamble to the final rule on electric power generation, transmission, and distribution work (January 31, 1994, 59 FR 4336).

[17] For § 1910.269, this definition also includes contractors working on an electric power generation installation covered by that section. This would include boiler maintenance contractors, conveyor servicing contractors, electrical contractors, and others.

example, this provision does not require the host employer to inspect utility poles for damage or defects before the contract employer starts working. The proposed rule would require instead that the host employer provide all relevant and known information to the contract employer. This paragraph does not require host employers to acquire additional unknown information but does require host employers to provide any information that was known by the host employer.

Proposed paragraph (c)(1)(ii) would require the host employer to report observed contract-employer-related violations of Subpart V to the contract employer. OSHA believes that host employers as a matter of course observe employees of the contract employer, from time to time, as they perform work under the contract. When the host employer observes contract employees violating this standard, it is important for the host employer to inform the contract employer so that the contractor can correct the violations and prevent them from occurring in the future. The contract employer is responsible for correcting these violations, but may not be aware of them. Thus, the proposal would require the host employer to report violations to the contract employer so that the contract employer will know to take corrective action.

Contracts between electric utilities and their contractors typically contain provisions requiring contractors to meet OSHA standards and other provisions addressing noncompliance with the terms of the contract. OSHA believes that host employers should take appropriate measures to enforce the terms of the contract with respect to safe work practices and get the contractor to fix any uncorrected violations. OSHA also believes that host employers should carefully review the contracts of contractors who fail to correct violations before renewing those contracts. The Agency requests comments on whether the standard should require these or other actions on the part of the host employer to promote compliance with OSHA standards.

Proposed paragraph (c)(2) addresses the responsibilities of the contract employer. Paragraph (c)(2)(i) would require the contract employer to instruct its employees in the hazards communicated to the contractor by the host employer. A note following this paragraph indicates that this instruction would be in addition to the training provided under § 1926.950(b). Proposed paragraph (c)(2)(i) would ensure that information on hazards the employees might face is conveyed to those employees. The hazard information provided by the host employer is essential to the safety of employees performing the work, especially because it includes information on hazards that the contract employees might not recognize. The contract employer would also be required, under proposed § 1926.950(b)(1)(ii), to train employees in work practices for their safety, as related to those hazards.

Proposed paragraph (c)(2)(ii) would require the contract employer to ensure that its employees follow the work practices required by the standard and the safety-related work rules imposed by the host employer. This proposed paragraph: (1) Recognizes that the contract employer has the responsibility for the actions of its employees, and (2) compels the contract employer to enforce compliance with safety and health rules imposed by the host employer as if they were requirements of the standard. The latter is particularly important. If the host employer has imposed safety-related work rules on its contractors, those rules are almost certain to impact the safety and health of employees of the host and contract employers. For example, electric utilities typically require contractors to follow the utilities' procedures for deenergizing electric circuits. If the contract employer's employees do not follow these procedures, a circuit the contractor's employees are working on might not be properly deenergized or a circuit the contractor was not working on might become reenergized. These hazards could cause the electrocution of the employees of either employer. OSHA invites comments on whether requiring a contractor to follow a host employer's safety-related work rules could possibly make the work more hazardous and, if so, how the standard should address this possibility.

Even work rules imposed primarily for reasons other than employee safety and health are likely to affect employee safety in one way or another. Work rules that address the way electric equipment is installed, for example, also affect the safety of the host employer's employees. If the equipment is installed improperly, it can fail when it is in use, possibly injuring an employee. Similarly, work rules imposed primarily for the protection of the public can also affect employee safety. For example, if a contractor's employees do not follow a rule that requires trailer loads to be tied down, employees at the host employer's facilities would be exposed to shifting or falling loads in the same way that members of the public would be. OSHA requests comments on whether host employers impose any work rules that do not significantly affect employee safety and examples of such work rules.

Proposed paragraph (c)(2)(iii) would require the contract employer to advise the host employer of: unique hazards posed by the contract employer's work; any unexpected hazards found while the contractor's employees were working; and the measures the contract employer took to correct host-employer-reported violations and to prevent them from recurring. This provision enables the host employer to take any necessary measures to protect its employees from hazards of which the host employer would not otherwise be aware. This will help protect the host employer's employees when they are working near the contractor's employees (for example, when responding to an emergency) and when the host employer's employees work on the same equipment after the contract employer departs. It will also provide essential feedback to the host employer on the safety performance of their contract employers. This feedback will also help host employers satisfy their obligations under the Agency's multiemployer enforcement policy (CPL 02–00–124).

OSHA's recognition of the need for employers on multiemployer worksites to share responsibility for workplace safety and health is reflected in the Agency's multiemployer enforcement policy. On multiemployer worksites, citations are normally issued not only to the employer whose employees are exposed to hazards (the exposing employer) but, depending on the actions the employer has taken to detect violations and protect employees, also to:

(1) The employer who creates the hazard (the creating employer);

(2) The employer who has the authority, by contract or practice, to ensure that the hazardous condition is corrected (the controlling employer); and

(3) The employer who has the responsibility for correcting the hazard (the correcting employer).

OSHA's proposed requirements concerning host employers and contractors do not affect the Agency's long-standing multiemployer enforcement policy. Neither § 1910.269(a)(4) nor § 1926.950(d) increase an employer's obligations or liability under that policy. Furthermore, nothing in the proposed rule changes OSHA's position'as expressed in CPL 02–00–124 and various court cases (*see,* for example, *Anning-Johnson* 94 O.S.H. Cas. (BNA) 1193), *Harvey Workover, Inc.* (7 O.S.H. Cas. (BNA) 1687))–that each employer is responsible for the health and safety of his or her own employees,

and under certain circumstances may be cited for endangering the safety of another's employees. Because the proposed requirements will help increase communication between host employers and contractors about known hazards, however, the proposed requirements may help employers on multiemployer worksites meet their obligations under CPL 02–00–124, as noted earlier. In determining who to hold responsible under its multiemployer enforcement policy, OSHA will look at who created the hazard, who controlled the hazard, and whether all reasonable means were taken to deal with the hazard.

OSHA is not proposing to require the host employer to evaluate contract employers' safety performance. However, contract employers with poor safety performances are likely to jeopardize not only their own employees but employees of the host employer as well. Even when a host employer hires a contractor to perform jobs where employees of the host will not be present under normal circumstances, employees of the host employer will be present in some circumstances, such as during quality control inspections, in the aftermath of an accident, and during emergency restoration situations. In addition, the work performed by a contractor can affect the safety of employees of the host employer after the contractor is gone. (For example, if the contractor fails to secure a crossarm to a utility pole properly the crossarm could come down while an employee of the host employer is working on the pole.) Therefore, OSHA requests comments on the need to require host employers to evaluate the safety performance of their contractors.

Frequently, the conditions present at a jobsite can expose employees to unexpected hazards. For example, the grounding system available at an outdoor site could have been damaged by the weather or by vehicular traffic, or communications cables in the vicinity could reduce the approach distance to an unacceptable level. To protect employees from such adverse situations, the conditions present in the work area should be known so that appropriate action can be taken. Paragraph (d) of § 1926.950 would address this problem by requiring conditions existing in the work area to be determined before work is started. The language for this paragraph was based upon language in current § 1926.950(b)(1). A similar requirement can be found in ANSI C2–2002 (the NESC), Section 420D.

The conditions found as a result of compliance with this proposed paragraph would affect the application of various requirements contained within Subpart V. For example, the voltage on equipment will determine the minimum approach distances required under proposed § 1926.960(c)(1). Similarly, the presence or absence of an equipment grounding conductor will affect the work practices required under proposed § 1926.960(j). If conditions to which no specific Subpart V provision applies are found, then the employee would be trained, as required by proposed § 1926.950(b)(1)(ii), to use appropriate safe work practices.

OSHA does not intend to require employers to take measurements on a routine basis in order to make the determinations required by proposed § 1926.950(d). For example, knowledge of the maximum transient voltage level is necessary to perform many routine transmission and distribution line jobs safely; however, no measurement is necessary in the determination of what the maximum level is. It can be determined by an analysis of the electric circuit, or the employer can assume the default maximum transient overvoltages as discussed under proposed § 1926.960(c)(1). Similarly, employers can make determinations of the presence of hazardous induced voltages and of the presence and condition of grounds without taking measurements.[18]

Section 1926.951, Medical Services and First Aid

Section 1926.951 proposes requirements for medical services and first aid. Paragraph (a) of § 1926.951 emphasizes that the requirements of § 1926.50 apply. (*See* § 1926.950(a)(2).) Existing section 1926.50 includes provisions for available medical personnel, first aid training and supplies, and facilities for drenching or flushing of the eyes and body in the event of exposure to corrosive materials.

Because of the hazard of electric shock when employees are performing work on or with energized lines and equipment, electric power transmission and distribution workers suffer electrocution on the job. Many electric shock victims suffer ventricular fibrillation. Ventricular fibrillation is an abnormal, chaotic heart rhythm that prevents the heart from pumping blood and, if unchecked, leads to death. Cardiopulmonary resuscitation (CPR) is necessary in the event of electric shock so that injured employees can be revived. CPR must be started within 4 minutes to be effective in reviving an employee whose heart has gone into fibrillation.

To protect employees performing work on or associated with exposed lines or equipment energized at 50 volts or more, OSHA is proposing to require employees with first aid and CPR training to be available to render assistance in an emergency. CPR training would be required for field crews of two or more employees (a minimum of two trained employees) and for fixed worksites (enough trained employees to provide assistance within 4 minutes) in paragraphs (b)(1)(i) and (b)(1)(ii), respectively.

Paragraph (b)(1)(i) would allow employers to train all employees in CPR within 3 months of being hired in lieu of having two CPR-trained persons on every field crew. If the employer chose this alternative for field work, then only one CPR-trained employee would be required. In practice, crews with more than one person would normally have two or more CPR-trained employees on the crew, since all employees who had been working for an employer more than 3 months would be trained. However, employers who rely on seasonal labor (for example, those hired only in the summer months) might have two-person crews with only one CPR-trained employee for 3 months out of every year. Worse, that trained employee would likely be the employee directly exposed to electrical hazards, because new employees are typically hired as helpers working on the ground away from most electrical hazards. OSHA requests comments on whether allowing employers the option of training all their employees in CPR if they are trained within 3 months of being hired is sufficiently protective. The Agency also requests comments on how this provision could be revised to minimize burdens on employers while providing adequate protection for employees.

Someone must defibrillate a victim of ventricular fibrillation quickly to allow a normal heart rhythm to resume. The sooner defibrillation is started, the better the victim's chances of survival. If defibrillation is provided within the

[18] It may be necessary for measurements to be made if there is doubt as to the condition of a ground or the level of induced or transient voltage and if the employer is relying on one of these conditions to meet other requirements in the standard. For example, an engineering analysis of a particular installation might reveal that voltage induced on a deenergized line is considerable, but should not be dangerous. A measurement of the voltage is warranted if the employer is using this analysis as a basis for claiming that the provisions of proposed § 1926.964(b)(4) or hazardous induced voltage do not apply. In another case, further investigation would be warranted if an equipment ground is found to be of questionable reliability, unless the equipment is treated as energized under proposed § 1926.960(j).

first 5 minutes of the onset of ventricular fibrillation, the odds are about 50 percent that the victim will recover. However, with each passing minute, the chance of successful resuscitation is reduced by 7 to 10 percent. After 10 minutes, there is very little chance of successful rescue.

OSHA has chosen a 50 volts as a widely recognized threshold for hazardous electric shock. Although it is theoretically possible to sustain a life-threatening shock at this voltage, it is considered extremely unlikely. In addition, other OSHA and national consensus standards recognize this 50-volt threshold. For example, OSHA's general industry and construction electrical standards require guarding of live parts energized at 50 volts or more (§§ 1910.303(g)(2)(i) and 1926.403(i)(2)(i)), and the general industry electrical safety-related work practices standard requires electric circuits to be deenergized starting at 50 volts or more if electric shock is the only hazard (§ 1910.333(a)(1)). Similarly, the National Electrical Code and the National Electrical Safety Code impose electrical safety requirements starting at 50 volts.

Paragraph (b)(1) of proposed § 1926.951 would require CPR training to ensure that electric shock victims survive long enough for defibrillation to be efficacious. This paragraph would allow the employer to rely on emergency responders to provide defibrillation, which is necessary to revive a victim who has suffered ventricular fibrillation. A device that enables a CPR-trained individual to perform defibrillation is now widely available. This device is called an automated external defibrillator (AED). (See the Automated External Defibrillator FAQ.) OSHA requests public comments on whether the standard should require the employer to provide AEDs and, if so, where they should be required. Commenters recommending a requirement for AEDs should submit information on costs, safety, and efficacy of and experience with these devices.

BILLING CODE 4510–26–P

Automated External Defibrillator FAQ

What is an automated external defibrillator (AED)?

An AED is a device about the size of a laptop computer that analyzes the heart's rhythm for any abnormalities and, if necessary, directs the rescuer to deliver an electric shock to the victim. This shock, called defibrillation, may help the heart to reestablish an effective rhythm of its own.

How does an AED work?

An AED is easy to operate. It uses prompts to instruct the rescuer. Once the machine is turned on, the rescuer will be prompted to apply two electrodes provided with the AED to the victim's chest. Once applied, the AED will begin to monitor the victim's heart rhythm. If a "shockable" rhythm is detected, the machine will charge itself and instruct the rescuer to stand clear of the victim and to press the shock button.

A microprocessor inside the defibrillator interprets (analyzes) the victim's heart rhythm through adhesive electrodes (some AED models require you to press an ANALYZE button). The computer analyzes the heart rhythm and advises the operator whether a shock is needed. AEDs advise a shock only to ventricular fibrillation and fast ventricular tachycardia. The electric current is delivered through the victim's chest wall through adhesive electrode pads.

Why isn't cardio-pulmonary resuscitation (CPR) sufficient?

Many electric shock victims suffer ventricular fibrillation (VF). VF is an abnormal, chaotic heart rhythm that prevents the heart from pumping blood. VF causes more cardiac arrests than any other rhythm (about 80 percent to 90 percent of cases). You must defibrillate a victim immediately to stop VF and allow a normal heart rhythm to resume. The sooner you provide defibrillation with an AED, the better the victim's chances of survival. If you provide defibrillation within the first 5 minutes of a cardiac arrest, the odds are about 50 percent that you can save the victim's life. However, with each passing minute during a cardiac arrest, the chance of successful resuscitation is reduced by 7 percent to 10 percent. After 10 minutes there is very little chance of successful rescue.

Who can use an AED?

In most cases, emergency medical technicians (EMTs) and first responders (police and firefighters) are required to know how to use an AED as part of their job responsibilities. Many CPR courses include AED training.

Automated External Defibrillator FAQ (Continued...)

Can I buy an AED for my workplace?

According to FDA rules, a physician prescription is needed in order to purchase an AED. This means that the medical director of a facility or a physician used by such facility must prescribe and oversee the AED program at any workplace or other facility that houses an AED.

Will an AED always resuscitate someone in cardiac arrest?

The AED treats only a heart in ventricular fibrillation (VF), an irregular heart rhythm. In cardiac arrest without VF, the heart does not respond to electric current but needs medication. The victim also needs breathing support. AEDs are less successful when the victim has been in cardiac arrest for more than a few minutes, especially if no CPR was provided.

Is an AED safe to use?

An AED is safe to use by anyone who has been trained to operate it. Studies have shown the devices to be 90 percent sensitive (able 90 percent of the time to detect a rhythm that should be defibrillated) and 99 percent specific (able 99 percent of the time to recommend not shocking when defibrillation is not indicated). Because of the wide variety of situations in which it will typically be used, the AED is designed with multiple safeguards and warnings before any energy is released. The AED is programmed to deliver a shock only when it has detected VF. However, potential dangers are associated with AED use. That is why training — including safety and maintenance — is important.

An AED will deliver a shock only when a shock is advised and the operator pushes the SHOCK button. This prevents a shock from being delivered accidentally.

Automated External Defibrillator FAQ (Continued...)

What is the current treatment for ventricular fibrillation?

The cardiac chain of survival is the current treatment for sudden cardiac arrest. The cardiac chain of survival is a series of four critical steps. All four steps of the chain must be present to help ensure survival from sudden cardiac arrest. The four steps are:

Step one: Early access to care (calling 911 or another emergency number);

Step two: Early cardiopulmonary resuscitation (CPR);

Step three: Early defibrillation;

Step four: Early advanced cardiac life support as needed.

The third step, early defibrillation, is recognized as the most critical step in restoring cardiac rhythm and resuscitating a victim of ventricular fibrillation.

Sources

This FAQ is based on information from the following sources:

American Heart Association: http://www.americanheart.org/presenter.jhtml?identifier=3011859

Red Cross: http://redcross.org/services/hss/courses/aed.html

OSHA has adopted guidelines for the evaluation of first aid training by competent professionals as well as by compliance staff in the context of workplace inspections (OSHA instruction CPL 02-02-053). Because these guidelines are already in place, the Agency is not proposing requirements related to the content or adequacy of first aid or CPR training. The Agency will continue to use the guidelines in CPL 02-02-053 to determine the adequacy of first aid training courses provided to employees.

BILLING CODE 4510–26–C

OSHA has adopted guidelines for the evaluation of first aid training by competent professionals as well as by compliance staff in the context of workplace inspections (OSHA instruction CPL 02–02–053). Because these guidelines are already in place, the Agency is not proposing requirements related to the content or adequacy of first aid or CPR training. The Agency will continue to use the guidelines in CPL 02–02–053 to determine the adequacy of first aid training courses provided to employees.

In § 1926.951(b)(2), OSHA is proposing that first aid supplies required by § 1926.50(d) be placed in weatherproof containers if they could be exposed to the weather. This provision is intended to ensure that first aid supplies do not get ruined by exposure to the weather.

Paragraph (b)(3) of proposed § 1926.951 would require first aid kits to be maintained ready for use and inspected frequently enough to ensure that expended items are replaced. In any event, they would have to be inspected at least once a year. OSHA is proposing this provision to ensure that first aid kits are maintained with all of the proper equipment.

Section 1926.952, Job Briefing

In § 1926.952, OSHA is proposing a requirement for a job briefing to be conducted before each job. This section, which has no counterpart in existing Subpart V, is based upon § 1910.269(c).

Most of the work performed under the proposal requires planning in order to ensure employee safety (as well as to protect equipment and the general public). Typically, electric power transmission and distribution work exposes employees to the hazards of exposed conductors energized at thousands of volts. If the work is not thoroughly planned ahead of time, the possibility of human error is increased greatly. To avoid problems, the task sequence is prescribed before work is started. For example, before climbing a pole, the employee must determine if the pole is capable of remaining in place and if minimum approach distances are sufficient, and he or she must determine what tools will be needed and what procedure should be used for performing the job. Without job planning, the worker may not know or recognize the minimum approach distance requirements or may have to reclimb the pole to retrieve a forgotten tool or perform an overlooked task, resulting in increased exposure to the hazards of falling and contact with energized lines.

When more than one employee is involved, the job plan must be communicated to all the affected employees. If the job is planned but the plan is not discussed with the workers, one employee may perform his or her duties out of order or may otherwise not coordinate activities with the rest of the crew, endangering the entire crew. Employers performing electric power generation, transmission, and distribution work use job briefings before each job to plan the work and communicate the job plan to employees. Therefore, OSHA is requiring a job briefing before work is started.

Paragraph (c) of existing § 1910.269 contains a requirement for the employee in charge of the job to conduct the job briefing. OSHA has found in enforcing this paragraph that some employers were placing the entire burden of compliance with this rule on the part of the employee in charge of the work, whether or not that employee was a supervisor. Therefore, the Agency is proposing, in § 1926.952(a)(1), that the employer provide the employee in charge of a job with available information necessary to perform the job safely. The note following this provision indicates that the information provided by the employer is intended to supplement the training requirements of § 1926.950(b) and is likely to be more general in nature than the job briefing provided by the employee in charge. The note also clarifies that information covering all jobs for a day may be disseminated at the beginning of the day. The information does not need to be provided at the start of each job. OSHA understands that some employers assign jobs through a dispatcher, who does not have the knowledge necessary to provide a job briefing. The Agency thus invites comments on the appropriateness of this requirement and welcomes suggested alternative ways of requiring the employer to impart relevant knowledge about hazards relating to specific assignments in the job briefing process.

Paragraph (a)(2) contains the proposed requirement for the employee in charge of the job to conduct a job briefing. Proposed paragraph (b) would require the briefing to cover: hazards and work procedures involved, special precautions, energy source controls, and requirements for personal protective equipment. These two requirements have been taken from the introductory text of § 1910.269(c).

Under proposed paragraph (c)(1), at least one briefing would be required before the start of each shift. Only one briefing in a shift is needed if all the jobs are similar in nature. Additional planning discussions would be required for work involving significant changes in routine (proposed paragraph (c)(2)). For example, if the first two jobs of the day involve working on a deenergized line and the third job involves working on energized lines with live-line tools, separate briefings must be conducted for each type of job.

Under proposed paragraph (d)(1), the required briefing would normally consist of a concise discussion outlining the tasks to be performed. However, if the work is particularly hazardous or if the employees may not be able to recognize the hazards involved, then a more thorough discussion would be required by paragraph (d)(2). With this provision, OSHA recognizes that employees are familiar with the tasks and hazards involved with routine work. However, it is important to take the time to carefully discuss unusual work situations that may pose additional or different hazards to workers. (See also the preamble discussion of § 1926.950(b)(4).) OSHA has included a note following this paragraph to clarify that, regardless of how short the discussion is, the briefing must still touch on all the topics listed in paragraph (b).

OSHA recognizes the importance of job planning for all employees. Although work procedure discussions would not have relevance for an employee working alone, the Agency does not believe that an employee who labors alone needs to plan his or her tasks any less than one who is assisting others. OSHA is aware of several fatalities involving a lone employee who could have benefitted from better job planning or perhaps a briefing with the supervisor before the job started. Therefore, OSHA has included a requirement in proposed paragraph (e) for job planning for these employees.

Section 1926.953, Enclosed Spaces

The requirements being proposed in § 1926.953 have been taken from § 1910.269(e). Paragraph (e) of § 1910.269 applies to maintenance work performed in enclosed spaces, and OSHA believes that the requirements for performing construction work in these spaces should be the same.

Section 1926.953 contains requirements for entry into and work in enclosed spaces. An ''enclosed space'' is defined to be a space that has a limited means of entry or egress, that is designed for periodic entry by employees under normal operating conditions, and that is not expected to contain a hazardous atmosphere, but may contain one under unusual conditions. In this section, OSHA

intends to cover only the types of enclosed spaces that are routinely entered by employees engaged in electric power transmission and distribution work and that are unique to underground utility work. Work in these spaces is part of the day-to-day activities performed by employees protected by this standard. Enclosed spaces include manholes and vaults that provide employees access to electric power transmission and distribution equipment. For reasons explained later, this section does not address other types of confined spaces, such as boilers, tanks, and coal bunkers, that are common to other industries as well. These locations are addressed in OSHA's generic permit-required confined space standard, § 1910.146, which applies to all of general industry, including industries engaged in electric power generation, transmission, and distribution work. OSHA is also developing a standard for confined space entry during construction work (RIN 1218–AB47).

Proposed § 1926.953 would apply to ''enclosed spaces.'' By definition, an enclosed space would be a permit-required confined space under § 1926.146. An enclosed space meets the definition of a confined space—it is large enough for an employee to enter; it has a limited means of access or egress; it is designed for periodic, rather than continuous, employee occupancy under normal operating conditions. An enclosed space also meets the definition of a permit space—although it is not expected to contain a hazardous atmosphere, it has the potential to contain one.

In the preamble to the permit-required confined spaces standard, OSHA acknowledged that ''the practices necessary to make confined spaces that merely have the potential to contain hazardous atmospheres (as opposed to one that contains a hazardous atmosphere under normal operating conditions) safe are widely recognized and used throughout various industries [58 FR 4486].'' The Agency recognized the electric power generation, transmission, and distribution industry as one of those industries (January 31, 1994, 58 FR 4489).

Section 1910.146 contains requirements that address hazards associated with entry into ''permit-required confined spaces'' (permit spaces). Section 1910.146 defines ''confined space'' and ''permit-required confined space'' as follows:

Confined space means a space that:

(1) Is large enough and so configured that an employee can bodily enter and perform assigned work; and

(2) Has limited or restricted means for entry or exit (for example, tanks, vessels, silos, storage bins, hoppers, vaults, and pits are spaces that may have limited means of entry.); and

(3) Is not designed for continuous employee occupancy.

Permit-required confined space (permit space) means a confined space that has one or more of the following characteristics:

(1) Contains or has a potential to contain a hazardous atmosphere;

(2) Contains a material that has the potential for engulfing an entrant;

(3) Has an internal configuration such that an entrant could be trapped or asphyxiated by inwardly converging walls or by a floor which slopes downward and tapers to a smaller cross-section; or

(4) Contains any other recognized serious safety or health hazard.

The permit-required confined space standard requires employers to implement a comprehensive confined space entry program. This standard covers the wide range of permit-required confined spaces encountered throughout general industry. Because the hazards posed by these spaces vary so greatly, § 1910.146 requires employers to implement a permit system for entry into them. The permit system must spell out the steps to be taken to make the space safe for entry and must include provisions for attendants stationed outside the spaces and for rescue of entrants, who could be disabled inside the space. However, an employer need not follow the permit-entry requirements of § 1910.146 for spaces where the hazards have been completely eliminated or for spaces where an alternative set of procedures are observed. The alternative procedures apply only where the space can be made safe for entry through the use of continuous forced air ventilation alone. The procedures, which are set forth in § 1910.146(c)(5)(ii), ensure that conditions within the permit space do not endanger an entrant's life or ability to rescue himself or herself.

OSHA believes that § 1910.146 is the proper place to regulate permit-required confined spaces other than enclosed spaces. The enclosed space requirements of the proposed rule are intended to regulate a portion of electric power transmission and distribution work that is routine and presents limited hazards to the qualified employees covered by Subpart V who are performing that work. An estimated 14,350 employees are engaged in underground transmission and distribution work (where most of the work covered by § 1926.953 occurs[19]).[20] Underground repair crews, in which these employees work, can typically expect to enter a manhole once or twice a day.[21] The enclosed space entry procedure addressed by § 1926.953 is a day-to-day part of the routine of these workers. This type of work is unique to underground utilities (such as electric, telephone, and water utilities), and the hazards presented by these spaces are widely recognized by these industries and their workers. Indeed, OSHA recognized this in promulgating § 1910.269 (January 31, 1994, 59 FR 4366).

Additionally, the hazards posed by the enclosed spaces covered in § 1926.953 are generally much more limited than the hazards posed by permit spaces addressed in § 1910.146 or in proposed § 1926.33. By definition, ''enclosed spaces'' are designed for employee occupancy during normal operating conditions. Electrical and other energy systems would not have to be shut down, nor would the space have to be drained of liquids for the employee to enter the space safely. On the other hand, other ''permit-required confined spaces,'' such as boilers, fuel tanks, and transformer and circuit breaker cases, are not designed for employee occupancy and require energy sources to be isolated and fluids to be drained from the space before an employee can safely enter.

The hazards posed by enclosed spaces consist of (1) limited access and egress, (2) possible lack of oxygen, (3) possible presence of flammable gases, and (4) possible presence of limited amounts of toxic chemicals. The potential atmospheric hazards are caused by an enclosed space's lack of adequate ventilation and can normally be controlled through the use of continuous forced air ventilation alone. Practices to control these hazards are widely recognized and are currently in use in electric, telecommunications, and other underground utility industries. Such practices include testing for the presence of flammable gases and vapors, testing for oxygen deficiency, ventilation of the enclosed space, controls on the use of open flames, and the use of an attendant outside the space. These practices are already

[19] Work in these spaces can be either maintenance work covered by Part 1910 or construction work covered by Part 1926. In fact, it is likely that both types of work are performed periodically over the course of time.

[20] ERG, ''Preparation of an Economic Impact Study for the Proposed OSHA Regulation Covering Electric Power Generation, Transmission, and Distribution,'' p. 8–8.

[21] *Id.*, p. 8–21.

required by § 1910.269(e) for the maintenance of electric power generation, transmission, and distribution installations. Section 1910.146, itself, recognizes permit spaces that are equivalent to enclosed spaces and sets separate provisions, similar to those contained in proposed § 1926.953, for those spaces.

Proposed paragraph (a) contains the scope of the enclosed space provisions. As previously noted, enclosed spaces are defined as spaces that have limited means of entry or egress, that are designed for periodic entry by employees under normal operating conditions, and that are not expected to contain hazardous atmospheres but may contain them under unusual conditions. These spaces include manholes and unvented vaults. This paragraph also notes (1) that § 1926.953 applies to routine entry into enclosed spaces in lieu of the permit-space entry requirements of § 1910.146, and (2) that the generic permit-required confined spaces standard, § 1910.146, applies to entries into enclosed spaces where the precautions taken under §§ 1926.953 and 1926.965 do not protect entrants.

The ventilation in vented vaults prevents a hazardous atmosphere from accumulating, so vented vaults are proposed to be excluded from coverage. However, the intake or exhaust of a vented vault could be clogged, limiting the flow of air through the vaults. The employee in such cases would be exposed to the same hazards as those presented by unvented vaults. Additionally, the mechanical ventilation for a vault may fail to operate. To ensure that the employee is protected from the hazards posed by lack of proper ventilation, the proposed rule exempts vented vaults only if a determination is made that the ventilation is in full operating condition. The determination must ensure that ventilation openings are clear and that any permanently installed mechanical ventilating equipment is in proper working order.

Some employers may want to comply with § 1910.146 for entry into enclosed spaces falling under § 1926.953. Because the provisions of § 1910.146 protect employees entering enclosed spaces to the same degree as § 1926.953, OSHA will accept compliance with § 1910.146 as meeting the enclosed space entry requirements of § 1926.953. A note to this effect has been included immediately following paragraph (a).

Paragraph (b) proposes the general requirement that employers ensure the use of safe work practices by their employees. These safe work practices must include procedures for complying with the specific regulations contained in paragraphs (e) through (o) and must include safe rescue procedures.

Proposed paragraph (c) would require employees who enter enclosed spaces or who serve as attendants to be trained in hazards associated with enclosed space entry, in the entry procedures, and in rescue procedures. This training will ensure that employees are trained to work safely in enclosed spaces and that they will be prepared in the event that an emergency arises within the space.

OSHA believes that there is a need for rescue equipment to be available in the event that an injured employee must be retrieved from the enclosed space. The Agency has decided to adopt a performance approach here and is proposing, in paragraph (d), that the employer provide equipment that will assure the prompt and safe rescue of injured employees. The equipment must enable a rescuer to remove an injured employee from the enclosed space quickly and without injury to the rescuer or further harm to the fallen employee. A harness, a lifeline, and a self-supporting winch can normally be used in this manner.

Some conditions within an enclosed space, such as high temperature and high pressure, make it hazardous to remove any cover from the space. For example, if high pressure is present within the space, the cover could be blown off in the process of removing it. To protect employees from such hazards, proposed paragraph (e) would require a determination of whether or not it is safe to remove the cover. This determination may take the form of a quick check of the conditions expected to be in the enclosed space. For example, the cover could be checked to see if it is hot and, if it is fastened in place, could be loosened gradually to release any residual pressure. An evaluation must also be made of whether conditions at the site could cause a hazardous atmosphere to accumulate in the space. Any conditions making it unsafe for employees to remove the cover are required to be eliminated (that is, reduced to the extent that it is no longer unsafe). This provision is intended to require a check of whether the cover is hot, a determination of whether there were conditions in the area conducive to the formation of a hazardous atmosphere within the enclosed space, and a check (typically by means of loosening the cover slightly) of whether there was a hazardous pressure differential between the two sides of the cover. A note to this effect is included following proposed paragraph (e).

Proposed paragraph (f) would require that openings to enclosed spaces be guarded to protect employees from falling into the space and to protect employees in the enclosed space from being injured by objects entering the space. The guard could be in the form of a railing, a temporary cover, or any other temporary barrier that provides the required protection.

Proposed paragraph (g) would prohibit employees from entering enclosed spaces that contain a hazardous atmosphere. Once the hazardous atmosphere is removed (for example, by ventilating the enclosed space), employees would be allowed to enter. If an entry is to be made while a hazardous atmosphere is present, the entry is required to conform to the generic permit-required confined spaces standard, § 1910.146. The use of the term ''entry'' in this paragraph of § 1926.953 is consistent with the use of that term in § 1910.146, and OSHA is proposing to include the § 1910.146 definition of ''entry'' in Subpart V.

Proposed paragraph (h) addresses the use of an attendant outside the enclosed space to provide assistance in an emergency. An attendant would be required if a hazard exists because of traffic patterns near the opening. The purpose of the attendant would be to protect the entrant from traffic hazards while the entrant is entering or exiting the space and to provide assistance in an emergency. However, the attendant would not be precluded from performing other duties outside the enclosed space, as long as those duties do not interfere with the person's function as an attendant. The attendant would be required to have the first aid training required under § 1926.951(b)(1).

This proposed provision would require the attendant to remain outside the enclosed space during the entire entry procedure. The intent of this paragraph is to require the presence of a person with first aid training outside the enclosed space if a hazard exists due to traffic patterns outside the space. If this person were to enter the enclosed space, he or she might be unable to assist the employee already within the space. For example, if traffic hazards are present in the area of the opening to the enclosed space and if the attendant entered the space, then both the attendant and the workers he or she is intended to protect would be vulnerable upon leaving. No one would be present to minimize or control the traffic hazards. Therefore, the proposed rule explicitly states that the attendant is required to remain outside the enclosed space.

On the other hand, if no traffic hazards are present, an attendant would still be required under proposed § 1926.965(d) while work is being performed in a manhole or vault containing energized conductors. The major, though not the only, hazard in this case is that of electric shock. Assistance can be provided to a victim of electric shock by another person in the manhole or vault. Therefore, the provisions of § 1926.965(d)(2) would permit the attendant required under that paragraph to enter the manhole or vault for brief periods of time in nonemergency conditions when no traffic hazards are present.

Proposed paragraph (i) would require test instruments used to monitor atmospheres in enclosed spaces to be kept in calibration, with a minimum accuracy of ±10 percent. This will ensure that test measurements are accurate so that hazardous conditions will be detected when they arise. OSHA considers ±10 percent to be the minimum accuracy needed to detect hazardous conditions reliably. However, because proposed paragraph (i) would require the test instrument to be kept in calibration at all times, a higher accuracy might be necessary to keep the test instrument in calibration.

As noted earlier, because of the lack of adequate ventilation, enclosed spaces can accumulate hazardous concentrations of flammable gases and vapors, or an oxygen deficient atmosphere could develop. It is important to keep concentrations of oxygen and flammable gases and vapors at safe levels; otherwise, an explosion could occur while employees are in the space, or an oxygen deficiency could lead to the suffocation of an employee. Toward these ends, paragraphs (j), (k), (l), (m), (n), and (o) address the testing of the atmosphere in the space and ventilation of the space.

Proposed paragraph (j) would require the atmosphere in an enclosed space to be tested for oxygen and would require that the testing be done with a direct-reading meter or similar instrument. However, continuous forced air ventilation is permitted as an alternative to testing. Such ventilation would ensure that there is sufficient oxygen [22] in the enclosed space. (See also paragraph (m) for requirements relating to the length of time ventilation must be provided before employees are allowed to enter the space.)

Proposed paragraph (k) would require the internal atmosphere of the enclosed space to be tested for flammable gases and vapors. The results of the test must indicate that the atmosphere is safe before employees can enter. So that the results are accurate and are relevant to the atmosphere in the space at the time of employee entry, testing is required to be performed with a direct reading meter or similar instrument. Test equipment that samples the atmosphere so that the samples can be forwarded to a laboratory for analysis does not meet the requirements of this paragraph. The flammability test must be undertaken after the steps taken under paragraph (j) ensure that the enclosed space has sufficient oxygen for accurate results.

If flammable gases or vapors are detected or if an oxygen deficiency is found, proposed paragraph (l) would require the employer to provide forced air ventilation to assure safe levels of oxygen and to prevent a hazardous concentration of flammable gases or vapors from accumulating. As an alternative, an employer could use a continuous monitoring system that ensures that no hazardous atmosphere develops and no increase in flammable gas or vapor concentration occurs. The definition of hazardous atmosphere contains guidelines for the determination of whether or not the concentration of a substance is at a hazardous level. OSHA is including a note to this effect after paragraph (l). An identical note appears after paragraph (o).

Paragraph (m) proposes specific requirements for the ventilation of enclosed spaces. When forced air ventilation is used, it is required to be maintained before entry for a period of time long enough to purge the atmosphere within the space of hazardous amounts of flammable gases and vapors and long enough to supply an adequate concentration of oxygen. After the ventilation has been maintained for this amount of time, employees can then safely enter the space.

OSHA has decided not to specify a minimum number of air changes before employee entry into the enclosed space is permitted. Instead, the Agency places the burden on the employer to ensure that the atmosphere is safe before entry. The employer can discharge this duty either by testing to determine the safety of the atmosphere in the space or by a thorough evaluation of the air flow required to make the atmosphere safe. In this way, the safety of employees working in enclosed spaces will not be dependent on speculation by a supervisor or an employee.

Paragraph (m) would also require the air provided by the ventilating equipment to be directed at the area within the enclosed space where employees are at work. The forced air ventilation would be required to be maintained the entire time the employees are present within the space. These provisions would ensure that a hazardous atmosphere does not reoccur where employees are working.

In order to ensure that the air supplied by the ventilating equipment will provide a safe atmosphere, proposed paragraph (n) would require the air supply to be from a clean source and would prohibit it from increasing the hazards in the enclosed space. For example, positioning the air intake for the ventilating equipment near the exhaust from a gasoline or diesel engine would contaminate the atmosphere in the enclosed space. This practice would not be allowed under the proposal.

The use of open flames in enclosed spaces is safe only when flammable gases or vapors are not present in hazardous quantities. For this reason, proposed paragraph (o) would require additional testing for flammable gases and vapors if open flames are to be used in enclosed spaces. The tests would have to be performed immediately before the open flame device is used and at least once per hour while the device is in use. More frequent testing would be required if conditions indicate the need for it. Examples of such conditions include the presence of volatile flammable liquids in the enclosed space and a history of hazardous quantities of flammable vapors or gases in a given space.

Section 1926.954, Personal Protective Equipment

Section 1926.954 proposes requirements for personal protective equipment (PPE), which includes eye and face protection, respiratory protection, head protection, foot protection, protective clothing, electrical protective equipment, and personal fall protection equipment. In accordance with § 1926.950(a)(2), paragraph (a) of proposed § 1926.954 emphasizes that the requirements of Subpart E of Part 1926 apply.

Paragraph (b) proposes requirements for personal fall protection systems. In paragraph (b)(1), OSHA is proposing that personal fall arrest systems meet the design, care, and use requirements of Subpart M of Part 1926. The note following proposed paragraph (b)(1) indicates that this provision applies to all personal fall arrest systems used in

[22] The definition of ''hazardous atmosphere'' determines what concentractions of oxygen are considered hazardous. (See the discussion of this term under the summary and explanation of § 1926.968 later in this preamble.) Paragraph (g) of proposed § 1926.953 would prohibit entry into an enclosed space while a hazardous atmosphere is present.

work covered by Subpart V. Thus, even if another construction standard requires the use of fall protection equipment, § 1926.954(b)(1) would require a personal fall arrest system to meet Subpart M when that form of fall protection is selected for use in work covered by Subpart V.

For example, § 1926.453(b)(2)(v) requires employees working from aerial lifts to wear a body belt with a lanyard attached to the boom or basket. Section 1926.453 sets the duty to provide fall protection but does not set criteria for the fall protection equipment to meet. Because the note following proposed § 1926.954(b)(1) would require fall arrest systems to meet Subpart M of Part 1926 and because Subpart M prohibits the use of body belts in fall arrest systems, a body belt worn by an employee performing electric power transmission or distribution work from an aerial lift could only be used as part of a restraint or tethering system, which would prevent the employee from falling.[23] (*See* the note following § 1926.453(b)(2)(v).)

The hazards of using a body belt as part of a fall arrest system are widely known and documented (54 FR 31449–31450; 59 FR 40703). Since the fall arrest forces are more concentrated for a body belt in comparison to a body harness, the risk of injury in a fall is much greater with a body belt. In addition, an employee can fall out of a body belt in a fall. Lastly, an employee faces an unacceptable risk of further injury while suspended in a body belt as he or she awaits rescue. Because of these hazards, paragraph (d) of § 1926.502, which sets requirements for personal fall arrest equipment in construction, has prohibited body belts from use in a personal fall arrest system since January 1, 1998; body harnesses must be used instead.

In paragraph (b)(2), OSHA is proposing revised requirements for work positioning equipment. Section 1926.959 of existing Subpart V contains requirements for body belts, safety straps, and lanyards. This equipment has traditionally been used as both work positioning equipment and fall arrest equipment in the maintenance and construction of electric power transmission and distribution installations. However, fall arrest equipment and work positioning equipment present significant differences in the way they are used and in the forces placed on an employee's body. With fall arrest equipment, an employee is given freedom of movement within an area restricted by the length of the lanyard or other device connecting the employee to the anchorage. In contrast, work positioning equipment is used to support an employee in position while he or she works. The employee ''leans'' into this equipment so that he or she can work with both hands free. If a fall occurs while an employee is wearing fall arrest equipment, the employee will free fall up to 1.8 meters (6 feet) before the slack is removed and the equipment begins to arrest the fall. In this case, the fall arrest forces can be very high, and they need to be spread over a relatively large area of the body to avoid injury to the employee. Additionally, the velocity at which an employee falls can reach up to 6.1 meters per second (20 feet per second). Work positioning equipment is normally used to prevent a fall from occurring in the first place. If the employee does slip and if the work positioning equipment is anchored, the employee will only fall a short distance (no more than 610 millimeters (2 feet)). This limits the forces on the employee and the maximum velocity. Additionally, because of the way the equipment is used, the employee should not be free falling. Instead, the work positioning equipment will be exerting some force on the employee to stop the fall. This will further limit the maximum force and velocity.

OSHA recognized the differences between the two types of equipment in Subpart M, Fall Protection for Construction. In this standard the two types of equipment are regulated separately, and different requirements apply to the two fall protection systems.

In this proposal, OSHA would again apply requirements to personal fall arrest systems that differ from those that apply to work positioning equipment. Personal fall arrest systems would have to meet Subpart M of Part 1926, as would be required by proposed § 1926.954(b)(1). Work positioning equipment would have to meet the requirements proposed in § 1926.954(b)(2). Employers engaged in electric power transmission and distribution work could use the same equipment for fall arrest and for work positioning provided the equipment met both sets of requirements. In fact, several manufacturers market combination body harness-body belts, which can be used as fall arrest systems by employees working on horizontal surfaces or as work positioning systems supporting employees working on vertical surfaces. OSHA requests comments on whether or not there are unique situations in electric power transmission and distribution work that warrant different requirements than those contained in existing Subpart M or in this proposal. Information is also requested on how any suggested changes will protect employees in an equivalent manner.

Proposed paragraph (b)(2) has been taken from existing § 1926.959 and from ASTM F887–04, *Standard Specifications for Personal Climbing Equipment,* which is the latest edition of the national consensus standard applicable to work positioning equipment. As in the proposed standard on electrical protective equipment (§ 1926.97) discussed earlier in this preamble, OSHA is proposing requirements derived from the ASTM standard but written in performance-oriented terms. Detailed specifications contained in the ASTM standard, which do not directly impact the safety of employees, have not been proposed. The Agency believes that this will retain the protection afforded by the ASTM standard, but will allow flexibility in meeting the OSHA standard and will accommodate changes in the ASTM standard without corresponding changes in the OSHA standard. Differences between the proposal and existing § 1926.959 are explained in the following discussion of paragraph (b)(2).

While the ASTM standard does not cover lanyards, proposed paragraph (b)(2) would apply many of the ASTM requirements to lanyards. Existing § 1926.959 imposes the same basic requirements on lanyards, and OSHA believes that lanyards used as work positioning equipment for electric power transmission and distribution work already meet these requirements. Comments are requested on whether or not any of the proposed requirements should not be applicable to lanyards used as work positioning equipment.

Proposed paragraph (b)(2)(i) would require hardware for body belts and positioning straps to be drop-forged, pressed, or formed steel or to be made of equivalent material. This hardware would also be required to have a corrosion-resistant finish. Surfaces would have to be smooth and free of sharp edges. This provision ensures that the hardware is strong enough to withstand the forces likely to be imposed, is durable, and is free of sharp

[23] The proposal would have a similar effect on work covered by § 1910.269. Paragraph (c)(2)(v) of § 1910.67 also contains a requirement for employees covered by the general industry standards to wear a body belt and lanyard when working from an aerial lift. Section 1910.67 sets the duty to provide fall protection but provides no criteria for the fall protection equipment to meet. The proposed note following § 1910.269(g)(1)(i) states that personal fall arrest systems used with aerial lifts must meet Subpart M of Part 1926. Thus, a body belt would not be permitted to be used as part of a personal fall arrest system for work from aerial lifts covered by § 1910.269.

edges that could damage attached positioning straps.

This requirement is equivalent to existing § 1926.959(a)(1), except that the existing standard does not permit hardware to be made of any material other than drop-forged or pressed steel. The ASTM standard requires hardware to be made of drop-forged steel. The drop-forged steel process produces hardware that more uniformly meets the required strength criteria and that is expected to retain its strength over a longer useful life. It is possible, however, for other processes to produce a product that is equivalent in terms of strength and durability. Additionally, § 1926.502(d)(1) and (e)(3) require ''connectors'' (that is, hardware) to be made of the same types of material as those specified in proposed § 1926.954(b)(2)(i). Therefore, OSHA is proposing to permit hardware to be made of alternative materials. Comments are invited on whether or not these alternative materials will provide adequate safety to employees.

Proposed paragraph (b)(2)(ii) would require buckles to be capable of withstanding an 8.9–kN (2,000-lbf) tension test with a maximum permanent deformation no greater than 0.4 millimeters (0.0156 inches). This is the same as existing § 1926.959(a)(2). The requirement is intended to ensure that buckles do not fail if a fall occurs.

Paragraph (b)(2)(iii) proposes that D rings be capable of withstanding a 22–kN (5,000-lbf) tensile test without cracking or breaking. This provision, which is equivalent to existing § 1926.959(a)(3), is intended to ensure that D rings do not fail if a fall occurs.

Proposed paragraph (b)(2)(iv) would require snaphooks to be capable of withstanding a 22–kN (5,000-lbf) tension test without failure. A note following this provision indicates that tensile failure is considered to be distortion of the snaphook sufficient to release the keeper.

Proposed paragraph (b)(2)(v) would prohibit the use of leather or leather substitutes from being used alone as a load bearing member in a body belt or positioning strap. Existing § 1926.959 contains no equivalent requirement. The proposed paragraph, which has been taken from ASTM F887–04, sections 14.2.1 and 15.2.1, is necessary because leather and leather substitutes do not retain their strength as they age. Because this loss in strength is not always easy to detect by visual inspection, it can lead to failure under fall conditions.

Proposed paragraph (b)(2)(vi) would require that plied fabric used in positioning straps and in load bearing portions of body belts be so constructed that raw edges are not exposed and that the plies do not separate. Existing § 1926.959 contains no similar requirement. Proposed paragraph (b)(2)(vi) has been taken from ASTM F887–04, sections 14.2.2 and 15.2.2. This requirement is intended to prevent plied fabric from separating, which could weaken a body belt or positioning strap and cause it to fail under load.

Although work positioning equipment used in electric power transmission and distribution work is not intended to be used as insulation from live parts, positioning straps could come into accidental contact with live parts while an employee is working. Thus, it is still important for this equipment to provide a certain level of insulation. Proposed paragraphs (b)(2)(vii)(A) and (b)(2)(vii)(B) would require positioning straps to be capable of passing dielectric and leakage current tests. This provision is equivalent to existing § 1926.959(b)(1). The voltages listed in these paragraphs are alternating current. The note following proposed paragraph (b)(2)(vii)(B) indicates that equivalent direct current tests would also be acceptable.

ASTM F887–04 does not require positioning straps to pass a withstand voltage test. Instead, it states in a note that the fabric used must pass a withstand voltage test.[24] OSHA invites comments on whether or not performing a withstand test on positioning straps is necessary for employee safety in electric transmission and distribution work.

Proposed paragraphs (b)(2)(vii)(C) and (b)(2)(vii)(D) would require positioning straps to be capable of passing tension tests and buckle tear tests. Existing § 1926.959 has no equivalent requirements. These tests, which have been taken from ASTM F887–04, sections 15.3.2 and 15.3.3, are intended to ensure that individual parts of positioning straps have adequate strength.

If an electric arc occurs while an employee is working, the work positioning equipment must be able to support the employee in case he or she loses consciousness. Additionally, the positioning strap or lanyard must be resistant to igniting, because, once ignited, it would quickly lose its strength and fail. Therefore, paragraph (b)(2)(vii)(E) would require positioning straps to be capable of passing a flammability test, which is described in Table V–1. This requirement and the test in Table V–1 itself has been taken from ASTM F887–04, section 15.3.4. Existing § 1926.959 contains no comparable provision.

Proposed paragraph (b)(2)(viii) would require the cushion part of a body belt to be at least 76 millimeters (3 inches) wide, with no exposed rivets on the inside. This requirement is essentially identical to existing § 1926.959(b)(2)(i) and (ii).

Existing § 1926.959(b)(2)(iii), which requires the cushion part of the body belt to be at least 0.15625 inches thick if made of leather, is not contained in the proposed rule. The strength of the body belt assembly, which is addressed by this existing specification, is adequately covered by the performance-based strength criteria contained in proposed § 1926.954(b)(2)(xii). Additionally, as noted previously, load bearing portions of the body belt would no longer be permitted to be constructed of leather alone under proposed paragraph (b)(2)(v).

Proposed paragraph (b)(2)(ix) would require that tool loops on a body belt be so situated that the 100 millimeters (4 inches) at the center of the back of the body belt are free of tool loops and any other attachments. This requirement, which has been taken from ASTM F887–04, section 14.4.3, is similar to existing § 1926.959(b)(3). It is intended to prevent spine injuries to employees who fall onto their backs while wearing a body belt.

Existing § 1926.959(b)(3) permits a maximum of four tool loops, and existing § 1926.959(b)(2)(iv) requires the belt to contain pocket tabs for the attachment of tool pockets. ASTM F887–04 contains a similar requirement for pocket tabs. OSHA does not believe that these two provisions are necessary for the protection of employees. These requirements ensure that body belts are suitable as tool belts and contribute to the usefulness of the body belt. However, they do not contribute significantly to the safety of employees; OSHA has thus not included similar requirements in the proposal.

Proposed paragraph (b)(2)(x) would require liners to be used around the bar of D rings. This provision, which is the same as existing § 1926.959(b)(4), is intended to prevent wear between the D ring and the body belt fabric. Such wear could contribute to failure of the body belt during use.

A snaphook has a keeper that is designed to prevent a D ring to which it is attached from coming out of the opening of the snaphook. (See Figure 2.) Nevertheless, if the design of the snaphook is not compatible with the design of the D ring, the D ring can roll

[24] It is not clear whether the ASTM provision is mandatory. Notes in ASTM standards are not supposed to contain requirements, but the particular note in question (Note 2 following section 15.3.1) uses the word ''shall,'' which normally indicates that the provision is mandatory.

around, press open the keeper, and free itself from the snaphook. (*See* Figure 3.)

Figure 2—Snaphook

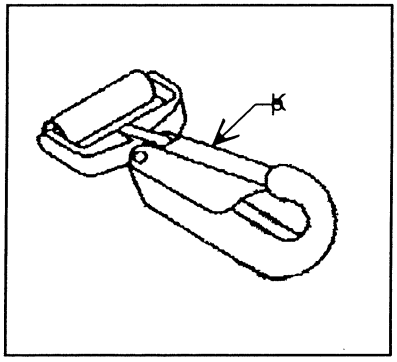
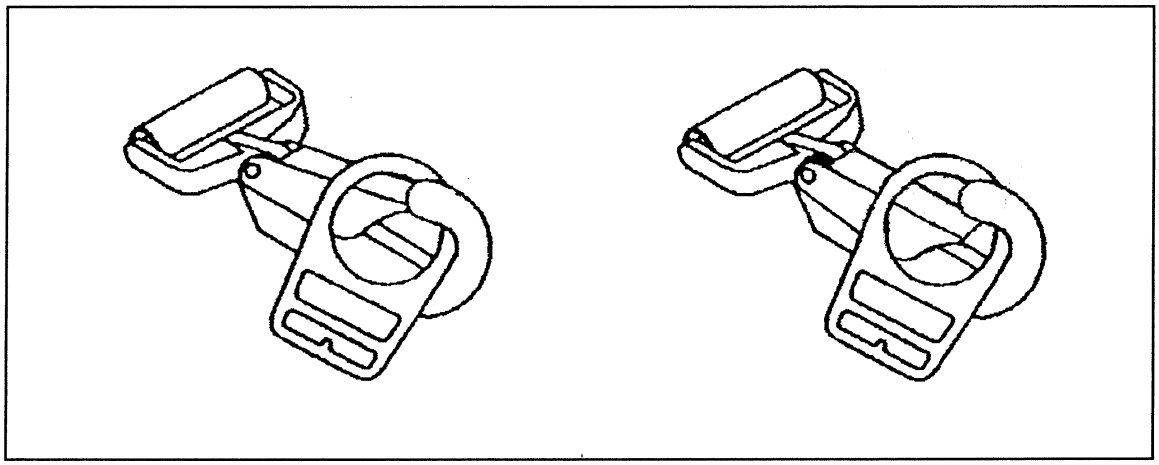


Figure 3—Snaphook Rollout



To address this problem, for many years, ASTM F887 had a requirement for snaphooks to be compatible with the D rings with which they are used. Even with this requirement, however, accidents resulting from snaphook roll-outs have still occurred. Several factors account for this. First, while one manufacturer can (and most do) thoroughly test its snaphooks and its D rings to ensure ''compatibility,'' no manufacturer can test its hardware in every conceivable combination with other manufacturers' hardware, especially since some models of snaphooks and D rings are no longer manufactured. While an employer might be able to test all the different hardware combinations possible with his or her existing equipment, the employer normally does not have the expertise necessary to run such tests in a comprehensive manner. Second, snaphook keepers can be depressed by objects other than the D rings to which they are attached. For example, a guy (a support line) could fall onto the keeper while an employee was repositioning himself or herself. This could allow the D ring to escape from the snaphook, and the employee would fall as soon as he or she leaned back into the work positioning equipment.

For these reasons, OSHA is proposing, in paragraph (b)(2)(xi), that snaphooks used as part of work positioning equipment be of the locking type. A locking-type snaphook will not open unless the employee releases its locking mechanism. Because their are thousands of existing non-locking snaphooks currently in use, OSHA is considering phasing in the requirement for older equipment or completely grandfathering existing equipment that otherwise complies with the proposal. The Agency requests comments on this.

OSHA is proposing three requirements for snaphooks to ensure that the keeper does not open without the intentional release of the employee using it. First, for the keeper to open, a locking mechanism would have to be released, or a destructive force would have to be placed on the keeper (paragraph (b)(2)(xi)(A)). Second, a force in the range of 6.6 N (1.5 lbf) to 17.6 N

(4 lbf) would be required to release the locking mechanism (paragraph (b)(2)(xi)(B)). Third, with a force on the keeper and with the locking mechanism released, the keeper would not be allowed to open with a force of 11.0 N (2.5 lbf) or less. Before the force exceeds 17.6 N (4 lbf), the keeper would have to begin to open (paragraph (b)(2)(xi)(C)). These requirements have been taken from ASTM F887–04, section 15.4.1. Paragraph (b)(2)(xi)(C), relating to the spring tension on the keeper, is the same as existing § 1926.959(b)(6).

Existing § 1926.959(b)(7) requires body belts, pole straps, and lanyards to be capable of passing a drop test, in which a test load is dropped from a specified height and the work positioning equipment arrests the fall. The test consists of dropping a 113.4-kg (250-lbm) bag of sand a distance of either 1.2 meters (4 feet) or 1.8 meters (6 feet), respectively for pole straps and lanyards.

The use of a bag of sand to represent a human body is one way to test work positioning equipment. However, because the bag of sand can be fitted with the body belt in different ways, the results of the test may not be consistent among different testing laboratories. To overcome this, ASTM 887–04 has adopted a drop test that uses a rigid steel mass of a specified design. To compensate for differences between a rigid mass and the more deformable human body, the ASTM standard uses a lower test mass, 100 kg (220 lbm), and a shorter drop height, 1 meter (39.4 inches). OSHA believes that the ASTM test is equivalent to the existing OSHA test. OSHA also believes that adoption of the ASTM test, because it will result in more uniform testing, will better protect employees. Therefore, the Agency is proposing to replace the sand bag drop test given in existing § 1926.959(b)(7) with a less-detailed version of the ASTM test in proposed § 1926.954(b)(2)(xii). OSHA requests comments on whether this change is reasonable and appropriate.

Proposed paragraph (b)(2)(xii)(A) would require the test mass to be constructed of steel or equivalent material having a mass of 100 kg (220.5 lbm). This mass is comparable to the 113.4-kg (250-lbm) bag of sand given in the existing OSHA standard. Even though the test mass is lighter than a heavy power line worker, the required test method places significantly more stress than an employee of the same mass because the test drop is 0.3 meters (1.28 feet) more than the maximum permitted free fall distance and because the test mass is rigid. OSHA believes that this test indicates that a body belt is sufficiently strong for the heaviest line worker who will use it, even those substantially heavier than the test mass. However, the Agency requests comments on whether the proposed test is adequate.

Proposed paragraphs (b)(2)(xii)(B) and (b)(2)(xii)(C) give the attachment means for body belts and for positioning straps, respectively. These provisions would ensure that the work positioning equipment being tested is properly attached to the test apparatus.

Proposed paragraph (b)(2)(xii)(D) would require the test mass to be dropped a distance of 1 meter (39.4 inches). This is equivalent (given the rigid test mass) to the existing standard's test distance of 1.2 meters (4 feet) for pole straps. Existing § 1926.959 requires lanyards to pass a 1.8-meter (6-foot) drop test. However, that standard sets no limit on the free fall distance required for the work positioning equipment covered under that standard. The drop distance was based primarily on the accepted practice of allowing a 1.8-meter (6-foot) maximum drop into a body belt-lanyard combination or a 0.6- or 0.9-meter (2-or 3-foot) maximum drop into a body belt-pole strap combination. Proposed paragraph (b)(3)(iv) specifies a 0.5-meter (2-foot) maximum free fall distance, eliminating the need to drop test lanyards at more than 1.2 meters (4 feet).

Proposed paragraphs (b)(2)(xii)(E) and (b)(2)(xii)(F) specify acceptance criteria for tested equipment. Body belts would have to arrest the fall successfully and be capable of supporting the test mass after the test. Positioning straps would have to arrest the fall successfully without allowing an arresting force exceeding 17.8 kN (4,000 lbf). Additionally, snaphooks on positioning straps would not be permitted to have distorted sufficiently to allow release of the keeper.

Three notes apply to paragraph (b)(2).[25] The first note indicates that paragraph (b)(2) applies to all work positioning equipment used in work covered by Subpart V.

The second note indicates that body belts and positioning straps that conform to ASTM F 887–04 are deemed to be in compliance with the manufacturing and construction requirements of paragraph (b)(2) of this section provided that the body belt or positioning strap also conforms to paragraphs (b)(2)(iv), which contains a more stringent strength requirement than ASTM F887–04, and (b)(2)(xi), which requires snaphooks to be of the locking type. OSHA's proposal is based on this ASTM standard; and, with the exception of those two provisions, is consistent with that consensus standard.

The third note indicates that body belts and positioning straps meeting existing § 1926.502(e) on positioning device systems are deemed to be in compliance with the manufacturing and construction requirements of paragraph (b)(2) of proposed § 1926.954 provided that the body belt or positioning strap also conforms to proposed § 1926.954(b)(2)(vii). This provision requires positioning straps to pass certain electrical and flame-resistance tests. It also requires positioning straps to withstand a tension test and a buckle tear test. These tests ensure that positioning straps have suitable electrical and mechanical properties to withstand the stresses that can be imposed by power line work. Body belts and positioning straps that are parts of positioning device systems addressed by § 1926.502(e) serve the same function as work positioning equipment in proposed Subpart V. OSHA believes that body belts and positioning straps that meet the design criteria specified by § 1926.502(e) will generally be sufficiently strong for power line work. However, to be fully suitable for power line work, positioning straps should also meet the electrical, flame-resistance, and other characteristics proposed in § 1926.954(b)(2)(vii).

The Agency believes that the last two notes to proposed § 1926.954(b)(2) will help manufacturers determine whether or not their equipment meets the OSHA standard. Employers will thus be able to determine, in most instances, whether or not work positioning equipment meets the OSHA standard without having to conduct their own tests.

Proposed paragraph (b)(3) addresses the care and use of fall protection equipment. Fall protection equipment provides the maximum intended safety only when it is properly used and maintained. Existing Subpart V recognizes this fact in § 1926.951(b)(3). Existing § 1926.951(b)(1) requires the use of fall protection equipment when employees are working at elevated locations on poles, towers, and similar structures; § 1926.951(b)(3) requires this equipment to be inspected before use each day. While it has carried these requirements forward into the proposal, OSHA believes that these requirements must be supplemented by additional requirements so that employees will be fully protected from fall hazards faced during electric power transmission and distribution work. Therefore, OSHA is proposing requirements from § 1910.269(g)(2) and from § 1926.502(e)

[25] These notes appear immediately after paragraph (b)(2)(xii)(F).

relating to the care and use of fall protection equipment.

Proposed paragraph (b)(3)(i) would require work positioning equipment to be inspected before use each day to determine if the equipment is safe for use. (Paragraph (d)(21) of § 1926.502 contains an equivalent requirement for fall arrest equipment to be inspected before use.) This paragraph would prohibit defective equipment from being used. This requirement helps ensure that the protective equipment in use will, in fact, be able to protect employees when called upon to do so. This requirement is equivalent to existing § 1926.951(b)(3), except that the prohibition on the use of defective equipment is stated explicitly rather than being implied. A thorough inspection of fall protection equipment can detect such defects as cracked snaphooks and D rings, frayed lanyards, loose snaphook keepers, and bent buckles. A guide to the inspection of this equipment is included in Appendix G.

Proposed paragraph (b)(3)(ii) would require personal fall arrest systems to be used in accordance with § 1926.502(d).

Personal fall arrest equipment is sometimes used as work positioning equipment during electric power transmission and distribution work. So that the employee can comfortably lean into the body harness when the equipment is used in this fashion, the normal attachment point would be at waist level. Paragraph (d)(17) of § 1926.502 requires the attachment point for body harnesses to be located in the center of the employee's back near shoulder level or located above his or her head. Such an attachment point would prevent the employee from performing his or her job. Therefore, OSHA is proposing to exempt personal fall arrest equipment used as work positioning equipment from this requirement, if the equipment is rigged so that the maximum free fall distance is 0.6 meters (2 feet). This exemption is proposed in paragraph (b)(3)(ii).

Proposed paragraph (b)(3)(iii) would require the use of a personal fall arrest system or work positioning equipment to be used to protect employees working at elevated locations more than 1.2 meters (4 feet) above the ground on poles, towers, and similar structures if other fall protection has not been provided. The term ''similar structures'' includes any structure that supports electric power transmission or distribution lines or equipment, such as lattice substation structures and H-frame wood transmission structures. The use of fall protection equipment would not be required while a qualified employee is climbing or changing location on a structure if the structure is safe to climb. The proposal lists examples illustrating when the structure would be unsafe to climb without fall protection: the presence of ice or high winds, structure designs that could cause the employee to fall, and the presence of contaminants on the structure that could cause the employee to lose his or her grip or footing.

Two informational notes follow proposed paragraph (b)(3)(iii) explain certain aspects of the proposed provision. The first note indicates that this requirement would not apply to portions of buildings, electric equipment, or aerial lifts. This note refers to the relevant portion of the construction standards that would apply in those instances (that is, Subpart M for walking and working surfaces generally and § 1926.453 for aerial lifts). The first note applies only to the ''duty'' requirement in paragraph (b)(3)(iii) to use fall protection equipment; it does not apply to other fall protection requirements in § 1926.954.

The second note indicates that employees who have not completed training in climbing or in the use of fall protection equipment would not be considered to be ''qualified'' for the purposes of paragraph (b)(3)(iii). These employees, who have not demonstrated that they can safely climb structures without using fall protection, would need fall protection anytime they are more than 1.2 meters (4 feet) above the ground.

Proposed paragraph (b)(3)(iii), which is comparable to existing § 1926.951(b)(1), is based on § 1910.269(g)(2)(v). After analyzing the extensive record built on fall protection during the § 1910.269 rulemaking, OSHA concluded that employees could safely climb and change location on poles, towers, and similar structures without the use of fall protection equipment. OSHA has carried the general industry standard's fall protection requirements forward into proposed Subpart V with two changes. First, the term ''fall arrest equipment'' has been changed to ''personal fall arrest system'' for consistency with other OSHA fall protection standards (notably Part 1926, Subpart M). Second, and more significantly, OSHA is proposing to omit the use of travel restricting equipment as a recognized fall protection system for electric power transmission and distribution work. OSHA originally proposed to recognize this equipment in § 1910.269(g)(2)(v); no comments in the rulemaking record suggested leaving it out of the final general industry standard. However, travel restricting equipment is more appropriate for work on open-sided platforms, where employees can walk around the working surface with the travel restricting equipment keeping them from approaching too close to an unguarded edge. The Agency does not believe that this type of working surface is found on poles, towers, or similar structures. Therefore, the inclusion of travel restricting equipment in fall protection requirements for work performed on these structures is inappropriate.[26] OSHA invites comments on whether or not travel restricting equipment should be recognized in § 1926.954(b)(3)(iii) and on whether or not electric power transmission and distribution structures contain open-sided platform-like working surfaces.

It should be noted that the conditions listed in paragraph (b)(3)(iii) are not the only ones warranting the use of fall protection. Other factors affecting the risk of an employee's falling include the level of competence of the employee, the condition of a structure, the configuration of attachments on a structure, and the need to have both hands free for climbing. In fact, OSHA believes that climbing without the use of fall protection is only safe if the employee is using his or her hands to hold onto the structure while he or she is climbing. If the employee is not holding onto the structure (for example, because the employee is carrying tools or equipment in his or her hands), fall protection is required under the final rule. Video tapes entered into the § 1910.269 rulemaking record by EEI (269–Ex. 12–6),[27] which they claimed represented typical, safe climbing practices in the utility industry, demonstrate employees using their hands to provide extra support and balance. Climbing in this manner will enable an employee to continue to hold onto the structure in case his or her foot slips. If the employee is not using his or her hands for additional support, he or she would be much more likely to fall as a result of a slip.

The general industry electric power generation, transmission, and distribution standard, in § 1910.269(g)(2)(v), requires the use of fall protection systems when work is performed at heights more than 1.2 meters (4 feet) above the ground. The existing standards in Subpart M of Part

[26] OSHA is also proposing to omit the use of travel restricting equipment as an acceptable form of fall protection in § 1910.269(g)(2) for employees working from poles, towers, and similar structures.

[27] Exhibits in the § 1910.269 rulemaking record (denoted as ''269–Ex'') can be found in Docket Number S–015.

1926 require fall protection (usually in the form of guard rails) for situations where employees are exposed to falls of more than 1.8 meters (6 feet). Additionally, in existing § 1926.951(b)(1), OSHA requires fall protection to be used by ''employees working at elevated locations'' without specifying the height at which such protection would be necessary. The Agency is proposing to retain the Subpart V requirement, but clarify it as requiring protection to be initiated at 1.2 meters (4 feet) to be consistent with § 1910.269(g)(2)(v), which deals with the same hazard. Comments are requested on whether or not the § 1910.269 distance of 1.2 meters (4 feet) is appropriate for electric power transmission and distribution construction work.

Work positioning equipment is intended to be used with the employee leaning into it, with the equipment supporting the employee and keeping him or her from falling. During work on towers and horizontal members on poles (such as crossarms), however, the employee sometimes stands or sits on a structural member, and the work positioning equipment is not providing any support for the employee. In such cases, the work positioning equipment is functioning more like personal fall arrest equipment. OSHA has previously concluded that body belts, which can be used as part of work positioning equipment, are not suitable for use as part of a personal fall arrest system.

Paragraph (e)(1) of § 1926.502 limits the maximum free fall distance for work positioning systems to 0.6 meters (2 feet). OSHA is adopting this same limit in § 1926.954. However, in electric power transmission and distribution work, anchorages are not always available. Many utility poles provide no attachment points lower than the lowest crossarm. If an employee is working below the crossarm, there will be nothing to which he or she can attach the work positioning equipment. The work positioning equipment is still providing a certain degree of fall protection, even in this case. The equipment holds the employee in a fixed work position and keeps him or her from falling. Therefore, proposed paragraph (b)(3)(iv) would require work positioning equipment to be rigged so that the employee can free fall no more than 0.6 meters (2 feet), unless no anchorage is available.

OSHA requests comments on whether or not this requirement will provide sufficient protection for employees, on what portable devices (such as a Pole Shark,[28] Pole Choker,[29] or similar devices) can be used as suitable anchorages, and on what alternative measures can be taken to protect employees.

Proposed paragraph (b)(3)(v) would require anchorages used with work positioning equipment to be capable of sustaining at least twice the potential impact load of an employee's fall or 13.3 kN (3,000 lbf), whichever is greater. This provision, which has been taken from § 1926.502(e)(2), is intended to ensure that an anchorage will not fail when called upon to stop an employee's fall. It should be noted that, under proposed paragraph (b)(3)(iv), the employee is not required to be tied to an anchorage if one is not available.

In paragraphs (b)(3)(vi), OSHA is proposing that snaphooks on work positioning equipment not be engaged to any of the following:

(1) Webbing, rope, or wire rope;

(2) Each other;

(3) A D ring to which another snaphook or other connector is attached;

(4) A horizontal lifeline; or

(5) Any object which is incompatibly shaped or dimensioned in relation to the snaphook such that unintentional disengagement could occur by the connected object being able to depress the snaphook keeper and release itself.

These provisions, which have been taken from § 1926.502(e)(8), prohibit methods of attachment that are considered unsafe because of the potential for accidental disengagement of the snaphooks during use.

Section 1926.955, Ladders and Platforms

Proposed § 1926.955 addresses ladders and platforms. Paragraph (a) notes that requirements for portable ladders are contained in Subpart X of the construction standards and apply to work covered by Subpart V, except as noted in proposed § 1926.955(b). This paragraph also proposes that the requirements for ladders in Subpart D of Part 1910 apply to fixed ladders used in electric power transmission and distribution construction work. Fixed ladders used in electric power transmission and distribution construction work are also considered fixed ladders under Subpart D of the General Industry Standards when used during normal maintenance activities. OSHA believes that the Part 1910, Subpart D standards should also apply during construction work. It should be noted that OSHA has proposed a revision of Subpart D of the General Industry Standards (April 10, 1990, 55 FR 13401). The Agency requests comments on whether the proposed incorporation of the general industry standard for fixed ladders is warranted, especially in light of the proposed revision of Subpart D.

Paragraph (b) proposes requirements for special ladders and platforms used for electrical work. Because of the nature of overhead line work and the limitations of structures available for ladder support, OSHA is proposing to exempt portable ladders and platforms used on structures or on overhead lines from the general provisions of §§ 1926.1053(b)(5)(i) and (b)(12), which deal with ladder support and placement. An example of these exempted ladders is a portable hook ladder used by power line workers to work on overhead power lines. These ladders are hooked over the line or other support member and are lashed in place at both ends to keep them steady while employees are working from them.

To provide employees with protection that approximates that afforded by the ''exempted'' Subpart X provisions, paragraphs (b)(1) through (b)(4) would apply to these special types of ladders and platforms. The proposed requirements provide that these special ladders and special platforms be secured, specify the acceptable loads and proper strength of this equipment, and provide that they be used only for the particular types of application for which they are designed. (The ratings and design of this equipment are specified by the manufacturer and can usually also be found in standard references, such as ASTM F 1564–95, *Standard Specification for Structure-Mounted Insulating Work Platforms for Electrical Workers.* See Appendix E to proposed Subpart V.) In the § 1910.269 rulemaking, OSHA concluded that these alternative criteria provide for the safe use of this special equipment, and the Agency is proposing to extend the application of these alternative criteria to work covered under Subpart V.

In § 1926.955(c), OSHA is proposing to prohibit the use of portable metal and other portable conductive ladders near exposed energized lines or equipment. This paragraph addresses the hazard to employees of contacting energized lines and equipment with conductive ladders. However, in specialized high-voltage work, the use of nonconductive ladders could present a greater hazard to employees than the use of conductive ladders. In such situations, the

[28] A Pole Shark is a device that uses jaws and a spur wheel to grip the pole and provide an anchorage for climbing wood poles.

[29] A Pole Choker is a pole strap with an integrated choker strap. The choker strap is tightened against the pole to prevent the pole strap from sliding down the pole.

clearances between live parts operating at differing voltages and between the live parts and grounded surfaces are large enough that it is relatively easy to maintain the minimum approach distances required by proposed § 1926.960(c)(1). Voltage is induced on objects in the vicinity of these high-voltage lines. Using a conductive ladder can minimize the voltage differences between objects [30] within an employee's reach, reducing the hazard to the employee. Therefore, the proposal would require a conductive ladder to be used where an employer can demonstrate that the use of a nonconductive ladder would present a greater hazard.

Section 1926.956, Hand and Portable Power Tools

Proposed § 1926.956 addresses hand and portable power tools, as stated in paragraph (a). Portable and vehicle-mounted generators supplying cord-and plug-connected equipment are also covered by this proposed section. These requirements have been taken from § 1910.269(i). Existing Subpart V contains requirements for hydraulic and pneumatic tools in §§ 1926.950(i) and 1926.951(f). These requirements have been retained in proposed § 1926.956(d).

Electric tools connected by cord and plug would be required to meet paragraph (b). If the equipment is supplied by the wiring of a building or other premises, existing Subpart K of Part 1926 would continue to apply, under proposed § 1926.956(b)(1), as it does now. If premises wiring is not involved (in which case Subpart K does not currently apply), paragraph (b)(2) would require that the tool frame be grounded or that the tool be double insulated or that the tool be supplied by an isolating transformer with ungrounded secondary. Any of these three methods can protect employees from electric shock, which could directly injure the employee or which could cause an involuntary reaction leading to a secondary injury. Given the widespread availability of double-insulated tools, OSHA requests comments on whether the option permitting tools to be supplied through an isolating transformer is still necessary.

Paragraph (c) of proposed § 1926.956 would require that portable and vehicle-mounted generators provide a means for grounding cord- and plug-connected equipment and allows the frame of the generator to serve as the grounding electrode (reference ground). Paragraph (c)(4) would require the neutral conductor to be bonded to the generator frame. These proposed requirements are based on existing § 1926.404(f)(3).

Proposed paragraph (d) would apply to pneumatic and hydraulic tools.

Paragraph (d)(1) of § 1926.302 requires hydraulic fluids to be fire resistant. Insulating hydraulic fluids are not inherently fire resistant and additives that could make them fire resistant generally make the hydraulic fluid unsuitable for use as insulation. Because of this and because hydraulic fluids must be insulating to protect employees performing power transmission and distribution work, existing § 1926.950(i) exempts insulating hydraulic fluids from § 1926.302(d)(1). OSHA is proposing to continue this exemption in § 1926.956(d)(1). The Agency requests information on whether or not fire-resistant insulating hydraulic fluids are available or are being developed.

Safe operating pressures would be required to be maintained by paragraph (d)(2). This protects employees from the harmful effects of tool failure. Of course, if hazardous defects are present, no operating pressure would be safe, and the tools could not be used. In the absence of defects, the maximum rated operating pressure (as specified by the manufacturer or by standard references) is the maximum safe pressure. A note to this effect has been included in the proposed rule.

If a pneumatic or hydraulic tool is used where it may contact exposed energized parts, the tool would be required to be designed and maintained for such use (paragraph (d)(3)). Hydraulic systems for tools used near live parts would need to provide protection against the formation of a partial vacuum in the hydraulic line (paragraph (d)(4)). A pneumatic tool would have to provide protection against the accumulation of moisture in the air supply (paragraph (d)(5)). These three requirements protect employees from electric shock by restricting current flow through hoses.

If hydraulic tools are used so that the highest point on the system is more than 10.7 meters (35 feet) above the oil reservoir, a partial vacuum can form inside the line. This can lead to loss of insulating value in tools used on high voltage lines and to the failure of the system while the employee is working on the power line. During the rulemaking process on § 1910.269, the IBEW reported that two accidents resulted from such an occurrence (269–DC Tr. 613). To stress the importance of the requirement proposed in paragraph (d)(4), OSHA has included a note following this paragraph stating that hydraulic lines without check valves having a separation of more than 10.7 meters (35 feet) between the oil reservoir and the upper end of the hydraulic system can promote the formation of a partial vacuum. Whether or not a partial vacuum will result in the loss of insulating value and trigger the need to take measures to prevent the formation of a partial vacuum will, of course, depend on the voltage involved.

Paragraphs (d)(6) and (d)(7) propose work-practice requirements to protect employees from the accidental release of pressure and from injection of hydraulic oil, which is under high pressure, through the skin and into the body. The first of these two provisions would require the release of pressure before connections in the lines are broken, unless the quick-acting, self-closing connectors commonly found on tools are used. In the case of hydraulic tools, the spraying hydraulic fluid itself, which is flammable, poses additional hazards. The other provision would prohibit employees from attempting to use their bodies in order to locate or stop a hydraulic leak.

Paragraph (d)(8) proposes that hoses not be kinked. Kinks in hydraulic and pneumatic hoses can lead to premature failure of the hose and to sudden loss of pressure. If this loss of pressure occurs while the employee is using the tool, an accident could result.

Section 1926.957, Live-Line Tools

Proposed § 1926.957 contains requirements for live-line tools, some of which are commonly called ''hot sticks.'' This type of tool is used by qualified employees to handle energized conductors. The tool insulates the employee from the energized line, allowing the employee to safely perform the task at hand. For example, a wire tong, a slender insulated pole with a clamp on one end, is used to hold a conductor at a distance while work is being performed. Common types of live-line tools include wire tongs, wire tong supports, tension links, and tie sticks.

Paragraph (a) would require live-line tools to be designed and constructed to be able to withstand 100,000 V/ft if made of fiberglass, 75,000 V/ft if made of wood, or other equivalent tests. (The voltage per unit length varies with material because the two different insulating materials are capable of withstanding different voltages over equal lengths. A higher design standard for wood would cause most wood to fail to meet the specification. A lower

[30] These voltages do not normally pose an electrocution hazard. However, the involuntary muscular reactions from contacting objects at different voltages can lead to falls.

design specification would allow substandard products into service. Paragraph (a), which contains the design criteria for materials used in live-line tools, is based on the capabilities of the materials in question.) Since the withstand voltages are consistent with those in existing § 1926.951(d), for fiberglass tools, and with ASTM F 711–02, *Standard Specification for Fiberglass-Reinforced Plastic (FRP) Rod and Tube Used in Live-Line Tools* (the material comprising the insulating portion of a live-line tool), tools complying with standards currently in use in the industry continue to be acceptable. A note to this effect is included after proposed § 1926.957(a)(1). Together with the minimum approach distances in § 1926.960(c)(1), paragraph (a) of proposed § 1926.957 protects employees from electric shock during use of these tools.

Paragraph (b) addresses the condition of tools. The requirements proposed in this paragraph are intended to ensure that live-line tools remain in a safe condition after they are put into service. Proposed paragraph (b)(1) would require live-line tools to be wiped clean and visually inspected before each day's use. Wiping the tool removes surface contamination that could lower the insulating value of the tool. Inspecting the tool will enable the employer and employee to discover any obvious defects that could also adversely affect the insulating value of the tool.

If any contamination or defect that could lower the insulating value or that could adversely affect the mechanical integrity of the live-line tool is present after the tool is wiped, it could be discovered during the inspection, and the tool would have to be removed from service, as required by paragraph (b)(2). This paragraph protects employees from the failure of live-line tools during use. Tools removed from service would have to be examined and tested under proposed paragraph (b)(3) before being returned to service.

The performance criteria given in paragraph (a) are intended to be ''design standards'' and are to be met at the time of manufacture. The test voltages and length of time that they are applied during the manufacturing process are not appropriate for periodic retesting of the hot sticks because the live-line tools could sustain damage during the test.

During the rulemaking on § 1910.269, OSHA found that, although no injuries related to the failure of a hot stick could be found in the record, evidence did indicate that these tools have failed in use (without injury to employees) and that employees do depend on their insulating value in using them to handle energized conductors (January 31, 1994, 59 FR 4378). The Agency believes that the fact that live-line tools are not typically used to provide protection for employees in the rain (when work is normally suspended) probably accounted for the lack of injuries in the record. Regardless, live-line tools might be used under wet conditions,[31] in which case it is important to ensure that these tools will retain their insulating qualities when they are wet. In addition, employee safety is dependent on the insulating integrity of the tool—the results of a failure of a live-line tool would almost certainly lead to serious injury or death whenever the tool is the only insulating barrier between the employee and a live part. Therefore, OSHA is proposing rules on the periodic examination and testing of live-line tools.

Although inspection can detect the presence of hazardous defects and contamination, the Agency is concerned about whether the daily inspections proposed in paragraph (b)(1) will, indeed, detect these problems. In fact, referring to live-line tools that had failed in use, a Georgia Power Company study submitted to the rulemaking record on § 1910.269 stated: ''Under visual inspection all the sticks appeared to be relatively clean with no apparent surface irregularities [269–Ex. 60].'' These tools also passed a ''dry'' voltage test, but failed a ''wet'' test. While the study further noted that the surface luster on the sticks had been reduced, apparently the normal visual inspection alone was not able to detect such defects as the ones that caused these tools to fail.

To address these concerns, OSHA is proposing requirements for the thorough examination, cleaning, repair, and testing of live-line tools on a periodic basis. The tools would undergo this process on a 2-year cycle and any time tools are removed from service on the basis of the daily inspection required by § 1926.957(b)(2). The proposed rule would first require a complete examination of the hot stick (paragraph (b)(3)(i)). After the examination, the tool would have to be cleaned and waxed, or it would have to be repaired and refinished if necessary (paragraph (b)(3)(ii)). According to proposed § 1926.957(b)(3)(iii), a test would also be required: (1) After the tool has been repaired or refinished, regardless of its composition; (2) after the examination if the tool is made of wood or hollow FRP; or (3) after the examination if the tool is solid FRP rod or foam-filled FRP tube, unless the employer could demonstrate that the examination has revealed no defects that could cause the tool to fail during use. The test method used would be required to be designed to verify the tool's integrity along its full length and, if made of FRP, its integrity under wet conditions (paragraph (b)(3)(iv)). The test voltages would be 75 kV/ft for FRP and 50 kV/ft for wood, and the voltage would have to be applied for a minimum of 1 minute (paragraph (b)(3)(v)). Other equivalent tests are permitted. The proposed rule also includes a note referring to IEEE Std. 516–2003, which contains an excellent guide to the inspection, care, and testing of live-line tools.

Section 1926.958, Materials Handling and Storage

Section 1926.958 proposes requirements for materials handling and storage. Paragraph (a) proposes that Subpart N of Part 1926 continue to apply.

Paragraph (b) addresses the storage of materials in the vicinity of energized lines and exposed parts of energized equipment. Paragraph (b)(1) proposes requirements for areas to which access is not restricted to qualified employees only. In general, materials are not allowed to be stored within 3.05 meters (10 feet) of the lines or exposed parts of equipment. This clearance distance must be increased by 0.10 meters (4 inches) for every 10 kilovolts over 50 kilovolts. The distance must also be increased to account for the maximum sag and side swing of any conductor and to account for the use of material handling equipment. Maintaining these clearances protects unqualified employees, who are not trained in the recognition and avoidance of the hazards involved, from contacting the energized lines or equipment with materials being handled.

However, the work practices these unqualified workers would employ in handling material stored near energized lines are addressed by Subpart K of Part 1926. The general approach taken in the proposed revision of Subpart V is to provide safety-related work practices for qualified employees to follow when they are performing electric power transmission and distribution work. Safe work practices for unqualified employees are not addressed in proposed Subpart V because these practices are already spelled out in Subpart K of the construction standards (*see* in particular § 1926.416 for work performed near electric power circuits). In addition, much of the work

[31] Neither the proposed rule nor § 1910.269 prohibits use of live-line tools under wet conditions.

performed by unqualified employees near overhead power lines falls outside the scope of Subpart V. For example, employees laying sewer lines or handling building materials on a housing project are not performing electric power transmission or distribution work, and their work operations would not be covered by Subpart V. OSHA believes it is more appropriate to address work practices used by unqualified employees working near overhead power lines in Subpart K, because that is the standard in which employers who are not involved in electric power transmission or distribution work would look to find requirements addressing electrical hazards.

Paragraph (b)(2) proposes to regulate the storage of materials in areas restricted to qualified employees. If the materials are stored where only qualified workers have access to them, the materials may be safely stored closer to the energized parts than 3.05 meters (10 feet), providing these employees have sufficient room to perform their work. To ensure that enough room is available, paragraph (b)(2) would prohibit material from being stored in the working space around energized lines or equipment. (See the discussion of § 1926.966(b) for an explanation of the proposed requirements for access and working space.)

The working space about electric equipment is the clear space to be provided around the equipment to enable qualified employees to work on the equipment. An employee enters this space to service or maintain the electric equipment. The minimum working space specifies the minimum distance an obstruction can be from the equipment. For example, if a switchboard is installed in a cabinet into which an employee will enter, the inside walls of the cabinet must provide a minimum working space to enable the employee to work safely within the cabinet.

The minimum approach distance to be maintained from a live part is the limit of the space about the equipment that a qualified employee is not permitted to enter. The minimum approach distance a qualified employee must maintain from an energized part (covered in proposed § 1926.960(c)(1)) is smaller than the working space that is required to be provided around the part. The employee must ''enter'' the working space and still maintain the minimum approach distance. Materials must be stored outside the working space so that employees are not tempted to work on energized equipment in cramped quarters if access is necessary in an emergency and so that there is sufficient room to allow an employee to move the materials without violating the minimum approach distance.

Section 1926.959, Mechanical Equipment

Requirements for mechanical equipment are proposed in § 1926.959. Paragraph (a) proposes general requirements for mechanical equipment used in the construction of electric power transmission or distribution lines and equipment. Paragraph (a)(1) serves as a reminder that Subparts N and O of the construction standards contain pertinent requirements for the operation of mechanical equipment. However, two requirements for the operation of mechanical equipment near energized power lines are contained in those two subparts—§§ 1926.550(a)(15) and 1926.600(a)(6)—that OSHA has determined not to apply to qualified employees. (Under the proposed rule, these two requirements would continue to apply to unqualified employees.) Proposed Subpart V contains appropriate requirements for the operation of mechanical equipment by qualified employees near energized power lines and equipment. While the proposed Subpart V provisions would allow qualified employees to operate equipment closer to energized lines and equipment than permitted by the two generic construction standards, the proposal also contains the relevant safeguards for protecting employees. These safeguards include special training for qualified employees (§ 1926.950(b)(2)) and the use of special safety procedures for such operations (§ 1926.959(d)). Because of this, OSHA believes that the proposal will provide more appropriate protection for electric power transmission and distribution workers than §§ 1926.550(a)(15) and 1926.600(a)(6).

Paragraph (a)(2) would require the critical safety components of mechanical elevating and rotating equipment to be inspected before use on each shift. A thorough visual inspection would be required. It is not necessary to disassemble equipment to perform this visual inspection. The note following this paragraph describes what parts OSHA considers to be critical safety components, that is, any part whose failure would result in a free fall or free rotation of the boom. These parts are critical to safety because their failure would immediately pose serious hazards to employees.

Paragraph (a)(3) would prohibit the operator of an electric line truck from leaving his or her position at the controls while a load is suspended, unless the employer can demonstrate that no employee, including the operator, might be endangered. This ensures that the operator will be at the controls if an emergency arises that necessitates moving the suspended load. For example, due to wind or unstable soil, the equipment might start to tip over. Having the operator at the controls ensures that corrective action can be taken quickly enough to prevent an accident.

Paragraph (b) proposes requirements for outriggers. Paragraph (b)(1) would require vehicular equipment provided with outriggers to be operated with the outriggers extended and firmly set as necessary for the stability of the equipment in the particular configuration involved. The stability of the equipment in various configurations is normally provided by the manufacturer, but it can also be derived through engineering analysis. This paragraph also prohibits the outriggers from being extended or retracted outside the clear view of the operator unless all employees are outside the range of possible equipment motion. Where the work area or terrain precludes the use of outriggers, paragraph (b)(2) would permit the operation of the equipment only within the maximum load ratings as specified by the manufacturer for the particular configuration without outriggers. These two paragraphs are intended to help ensure the stability of the equipment while loads are being handled and to prevent injuries caused by extending outriggers into employees.

Proposed paragraph (c) would require mechanical equipment used to lift or move lines or other material to be operated within its maximum load rating and other design limitations. It is important for mechanical equipment to be used within its design limitations so that the lifting equipment does not fail during use and so that employees are not otherwise endangered.

Even in electric-utility operations, contact with live parts through mechanical equipment causes many fatalities each year. A sample of typical accidents involving the operation of mechanical equipment near overhead lines is given in Table IV–5. Industry practice and existing rules in Subpart V of the construction standards require aerial lifts and truck-mounted booms to be kept away from exposed energized lines and equipment at distances greater than or approximately equal to those proposed in Table V–2 (A–C Live-Line Work Minimum Approach Distance). However, some contact with the energized parts does occur during the hundreds of thousands of operations carried out near overhead power lines

each year. If the equipment operator is distracted briefly or if the distances involved or the speed of the equipment towards the line is misjudged, contact with the lines is the expected result, rather than simple coincidence, especially when the minimum approach distances are relatively small. Because these types of contacts cannot be totally avoided, OSHA believes that additional requirements are necessary for operating mechanical devices near exposed energized lines. Paragraph (d) of proposed § 1926.959 addresses this problem.

TABLE IV–5.—ACCIDENTS INVOLVING THE OPERATION OF MECHANICAL EQUIPMENT NEAR OVERHEAD LINES

Type of equipment	Number of fatalities				Type of Accident
	Total	Grounded			
		Yes	No	?	
Boom Truck/Derrick Truck	9	2		7	Boom contact with energized line. Pole contact with energized line.
Aerial lift	8		1	7	Boom contact with energized line. Lower boom contact with energized line. Employee working on deenergized line when upper boom contaced energized line. Winch on lift used on energized line arced to nearby ground.
Vehicle	2		1	1	Line fell on vehicle. Unknown type of vehicle and type of accident.
Total	19	2	2	15	

Source: OSHA accident investigation data (269–Ex. 9–2 and 9–2A).

Proposed paragraph (d)(1) would require the minimum approach distances in Table V–2 through Table V–6 to be maintained between the mechanical equipment and the live parts while equipment was being operated near exposed energized lines or equipment. This provision would ensure that sufficient clearance is provided between the mechanical equipment and the energized part to prevent an electric arc from occurring and energizing the equipment. The requirement to maintain a minimum approach distance also lessens the chance that the mechanical equipment will strike the lines and knock them to the ground.

Aerial lifts are designed to enable an employee to position himself or herself at elevated locations with a high degree of accuracy. The aerial lift operator is in the bucket next to the energized lines and can easily judge the approach distance. This minimizes the chance that the equipment will contact an energized line and that the energized line will be struck down should contact actually occur. Furthermore, the employee operating the lift in the bucket would be protected from the hazards of contacting the live parts under the provisions of § 1926.960. As the aerial lift is insulated, employees on the ground are protected from electric shock in the case of contact with the lines. Lastly, proposed § 1926.959(c) and other provisions would protect against the possibility that the aerial lift would strike down the power line. Therefore, proposed paragraph (d)(1) would provide an exception to the requirement to maintain specific minimum approach distances for the insulated portion of an aerial lift operated by a qualified employee in the lift. It should be noted that the employee must still maintain the minimum approach distances required in proposed § 1926.960(c)(1). Paragraph (c)(1) of proposed § 1926.960 would still require the employee to maintain the required distance from conductive objects at potentials different from that on which he or she is working, and proposed § 1926.959(d)(1) would require the conductive portions of the boom to maintain the same distance from such objects. It should also be noted that the insulating portion of the boom can be bridged by improper positioning of the boom or by conductive objects suspended from the aerial lift platform. For example, the insulating portion of the boom will be bridged if it is resting against a grounded object, such as a utility pole or if the employee in an aerial bucket is holding onto a grounding jumper. For the purposes of proposed § 1926.959(d)(1), OSHA would not consider the aerial lift to be insulated when the insulation is bridged.

Determining the distance between objects that are themselves relatively far away from a mechanical equipment operator standing on the ground can sometimes be difficult. For example, different perspectives can lead to different estimates of the distance, and lack of a suitable reference can result in errors. In addition, an operator may not be in the best position to observe the clearance between an energized part and the mechanical equipment. For example, an obstruction may block his or her view of the clearance. An extra person would be required, by paragraph (d)(2), to observe the operation and give warnings when the specified minimum approach distance is approached unless the employer could demonstrate that the minimum approach distance could be accurately determined by the operator.

An aerial lift operator would not normally need to judge the distance between objects that are relatively far away. In most cases, an aerial lift operator is maintaining the minimum approach distance from energized parts relatively close to the employee, and it would be easy for the employee to stay far enough away. However, even an aerial lift operator may have difficulty maintaining the minimum approach distances in certain circumstances. Sometimes, congested configurations of overhead power lines may necessitate maintaining clearance from more than one conductor at a time. Other times, an aerial lift operator may need to judge the distance between the lower uninsulated portion of the boom and a conductor well below the employee. In situations like these, where the minimum approach distance may be difficult for an aerial lift operator to maintain, an observer would be required.

Proposed paragraph (d)(3) would require one of three alternative protective measures to be taken if the equipment could become energized. The first option (paragraph (d)(3)(i)) is for the energized lines exposed to contact to be covered with insulating protective material that will withstand the type of

contact that might be made during the operation. The second option (paragraph (d)(3)(ii)) is for the equipment to be insulated for the voltage involved. Under this option, the mechanical equipment would have to be positioned so that uninsulated portions of the equipment could not come within the specified minimum approach distance of the line. The third option (paragraph (d)(3)(iii)) is for each employee to be protected from the hazards that might arise from equipment contact with the energized lines. The measures used would have to ensure that employees would not be exposed to hazardous differences in potential. (The following paragraphs describe the types of measures that must be taken. The employer must take all of these measures unless he or she can demonstrate that the methods in use protect each employee from the hazards that might arise if the equipment contacts the energized line.) The proposal is intended to protect employees from electric shock in case contact is made.

On the basis of the § 1910.269 rulemaking record, OSHA concluded that vehicle grounding alone could not always be depended upon to provide sufficient protection against the hazards of mechanical equipment contact with energized power lines (January 31, 1994, 59 FR 4403). On the other hand, the Agency recognized the usefulness of grounding as a protective measure against electric shock, when used with all of the following techniques:

(1) Using the best available ground to minimize the time the lines remain energized,

(2) Bonding equipment together to minimize potential differences,

(3) Providing ground mats to extend areas of equipotential, and

(4) Using insulating protective equipment or barricades to guard against any remaining hazardous potential differences.

The proposed rule recognizes all these techniques, which (1) minimize differences in potential, (2) minimize the time employees would be exposed to hazardous potentials, and (3) protect against any remaining hazardous potentials. Paragraph (d)(3)(iii) of proposed § 1926.959 contains the performance-oriented requirement that would assure that employees are protected from the hazards that could arise if the equipment contacts the energized parts. The protective measures used would be required to ensure that employees are not exposed to hazardous differences in potential. Information in Appendix C to proposed Subpart V provides guidelines for employers and employees that explain the various measures and how they can be used. A note referencing this appendix has been included in the proposal.

Section 1926.960, Working on or Near Exposed Energized Parts

Proposed § 1926.960 covers the hazards of working on or near exposed parts of energized lines or equipment as noted in paragraph (a). The provisions of this section have been taken from § 1910.269(l).

Paragraph (b) proposes general requirements for working on or near live parts. Paragraph (b)(1) would require employees working on or with exposed live parts (at any voltage) of electric lines or equipment and employees working in areas containing unguarded, uninsulated live parts operating at more than 50 volts to be qualified. Without proper training in the construction and operation of the lines and equipment and in the electrical hazards involved, workers would likely be electrocuted attempting to perform this type of work and would also expose others to injury, as well. In areas containing unguarded live parts energized at more than 50 volts, untrained employees would not be familiar with the practices that are necessary to recognize and avoid contact with these parts.

The definition of ''qualified employee'' contains a note to indicate that employees who are undergoing on-the-job training are considered to be qualified if they have demonstrated an ability to perform duties safely and if they are under the immediate supervision of qualified employees. (See the definition of this term in proposed § 1926.968 and the discussion of this definition under the summary and explanation of § 1926.968.) Therefore, employees in training, under the direct supervision of a qualified employee, would be permitted to perform work on live parts and in areas containing unguarded live parts. OSHA believes that the close supervision of trainees will reveal errors ''in the act,'' before they cause accidents. Allowing these workers the experience of performing tasks under actual conditions may also better prepare the employees to work safely.

Paragraph (b)(2) would require lines and equipment to be considered as energized unless they have been deenergized under the provisions of § 1926.961. Existing § 1926.950(b)(2) requires electric lines and equipment to be considered as energized until determined to be deenergized by tests or other appropriate means. The existing standard does not spell out what those appropriate means are. Additionally, even if the line or equipment has been tested and found to be deenergized, it may become reenergized through contact with another source of electric energy or by someone reenergizing it at its points of control. Proposed section 1926.961 contains requirements for deenergizing electric power transmission and distribution lines and equipment. Unless the procedures contained in that section have been followed, lines and equipment cannot reliably be considered as deenergized. Proposed paragraph (b)(2) has been taken from the last sentence of the introductory text of § 1910.269(l)(1).

Two-person rule. If an employee working on or near energized electric power transmission or distribution lines or equipment is injured by an electric shock, a second employee will be needed to provide emergency care to the injured employee. As noted under the summary and explanation of § 1926.951(b)(1) discussed earlier in this preamble, CPR must begin within 4 minutes after an employee loses consciousness as a result of an electric shock. OSHA is proposing to require the presence of a second employee during certain types of work on or near electric power transmission or distribution lines or equipment to ensure that CPR begins as soon as possible and to help ensure that it starts within the 4-minute window. (Note that § 1926.951(b)(1) would require at least two people trained in emergency first aid procedures, including CPR, for field work involving two or more employees at a work location. Also, note that, in the discussion of that proposed paragraph, OSHA is requesting comments on whether to require AEDs along with training in CPR.)

Paragraph (b)(3)(i) of proposed § 1926.960 would require (unless exempted by paragraph (b)(3)(ii)) the presence of at least two employees during the following types of work involving exposed energized parts:

(1) Installation, removal, or repair of lines that are energized at more than 600 volts,

(2) Installation, removal, or repair of deenergized lines if an employee is exposed to contact with other parts energized at more than 600 volts,

(3) Installation, removal, or repair of equipment, such as transformers, capacitors, and regulators, if an employee is exposed to contact with parts energized at more than 600 volts,

(4) Work involving the use of mechanical equipment, other than insulated aerial lifts, near parts energized at more than 600 volts, and

(5) Other work that exposes an employee to electrical hazards greater than or equal to those posed by these operations.

This rule is based on § 1910.269(l)(1)(i). The first four work operations are those that expose employees to the greatest risk of electric shock as demonstrated by the § 1910.269 rulemaking record. OSHA has included the fifth category to cover types of work that, while not specifically identified in that record, pose equal or greater hazards. The operations covered under § 1910.269(l)(1)(i) are performed during construction as well as during maintenance. In fact, the construction operations are similar in nature to those performed during maintenance work, and the Agency believes that the hazards are the same. For example, using mechanical equipment near a 7200-volt overhead power line during the construction of a new line poses hazards that are equivalent to those posed during the use of mechanical equipment to replace a damaged pole on an existing line of the same voltage. Similarly, the installation of a new transformer near a 14.4-kilovolt line poses the same hazards as the replacement of a transformer near a 14.4-kilovolt line. Thus, OSHA is proposing to extend the general industry requirement to construction.

However, some work can be performed safely by a single employee or must be performed as quickly as possible for reasons of public safety. The proposal, in § 1926.960(b)(3)(ii), recognizes this type of work by granting exceptions to the two-person rule for the following operations:

(1) Routine switching of circuits, if the employer can demonstrate that conditions at the site allow this work to be performed safely,

(2) Work performed with live-line tools if the employee is positioned so that he or she is not within reach of or exposed to contact with energized parts, and

(3) Emergency repairs to the minimum extent necessary to safeguard the general public.

These exceptions are based on § 1910.269(l)(1)(ii). OSHA intends for these exceptions to be applied narrowly in view of the accidents that have occurred even under these limited conditions (269–Ex. 9–2). For example, accidents involving hot stick work have typically occurred only when the employee was using a live-line tool but was close enough to energized parts to be injured—sometimes through direct contact, other times by contact through conductors being handled. Employees have been injured during switching operations when unusual conditions, such as poor lighting, bad weather, and hazardous configuration or state of repair of the switching equipment, were present. Paragraph (b)(3)(ii)(A) addresses this scenario by requiring the employer to demonstrate that the operation can be performed in a manner to mitigate the hazards so that the work could be performed safely. For example, the employer could provide supplemental lighting for work performed where lighting was inadequate.

The requirement for at least two employees to be present during certain operations does not apply generally if the voltage of the energized parts involved is 600 volts or less. The § 1910.269 rulemaking record contained conflicting data regarding the safety of performing work at these voltages. Some witnesses and commenters said that it was safe to perform such work, but the data in the rulemaking record suggested that may not be true (269-Ex. 9–2). More recent accident data indicate little change. Table IV–6 shows the number of electrocutions for various voltage ranges for the years 1991 through 1998. In the years 1991 to 1994, an average of 3.0 fatalities occurred per year involving voltages of 600 volts or less. For the years 1995 to 1998, when § 1910.269 was fully in effect, the average dropped slightly to 2.5. Consequently, OSHA is requesting comments regarding the safety of employees working on lines and equipment operating at 600 volts or less. What types of work can be performed safely by an employee working alone? What additional precautions are necessary for an employee working on lines or equipment operating at 600 volts or less to make the work safe without the presence of a second employee?

TABLE IV–6.—FATALITIES BY VOLTAGE AND YEAR

Year	Less than 600 V	600 V to 20 kV	20 to 80 kV	100kV and higher
1991	3	24	2	1
1992	5	24	2	0
1993	3	23	3	1
1994	1	21	2	2
1995	2	22	4	5
1996	4	16	0	2
1997	1	16	3	1
1998	3	13	0	1

Source: OSHA database of electric power generation, transmission, and distribution accidents. These data include only cases involving electrocution in which the voltage was indicated in the accident abstract.

Minimum approach distances. Paragraph (c)(1) of proposed § 1926.960 would require employees to maintain minimum approach distances from exposed energized parts. The minimum approach distances are specified in Table V–2 through Table V–6. This provision has been taken from § 1910.269(l)(2).

Electric power systems operate at a given nominal voltage. However, the actual voltage on a power line varies above and below that nominal voltage. For very brief periods, the instantaneous voltage on a line can be 3 or more times its nominal value.

The safe minimum approach distance is intended to assure that an electric arc will not form, even under the most severe transient overvoltages that can occur on a system and even if the employee makes foreseeable errors in maintaining the minimum approach distance. To determine what this distance is for a given voltage, OSHA must first determine the size of the air gap that must be present so that an arc does not occur during the most severe overvoltage on a system. This gap is the electrical component of the minimum approach distance. To determine the minimum safe approach distance, OSHA must then add an extra distance to account for ergonomic considerations, or human error.

The electrical component depends on five factors:

(1) The maximum voltage,

(2) The wave shape of this voltage,

(3) The configuration of the ''electrodes'' forming the end points of the gap,

(4) The insulating medium in the gap, and

(5) The atmospheric conditions present.

The NESC subcommittee having responsibility for the ANSI C–2 minimum approach distance tables adopted a change in minimum approach distances for the 1993 edition of the National Electrical Safety Code. The NESC subcommittee developed the minimum approach distance tables using the following principles:

- ANSI/IEEE Standard 516 [32] was to be the electrical basis of the NESC Rules for approach distances: Table 4 (Alternating Current) and Table 5 (Direct Current) for voltages above 72.5 KV. Lower voltages were to be based on ANSI/IEEE Standard 4. The application of ANSI/IEEE Standard 516 was inclusive of the formula used by that standard to derive electrical clearance distances.
- Altitude correction factors were to be in accordance with ANSI/IEEE Standard 516, Table 1.
- The maximum design transient overvoltage data to be used in the development of the basic approach distance tables were:
  - 3.0 per unit for voltages of 362 KV and less
  - 2.4 per unit for 500 to 550 KV
  - 2.0 per unit for 765 to 800 KV
- All phase-to-phase values were to be calculated from the EPRI Transmission Line Reference Book for 115 to 138 KV.
- An inadvertent movement factor (ergonomic component) intended to account for errors in judging the approach distance was to be added to all basic electrical approach distances (electrical component) for all voltage ranges. A distance of 0.31 meters (1 foot) was to be added to all voltage ranges. An additional 0.3 meters (1 foot) was to be added to voltage ranges below 72.6 KV.
- The voltage reduction allowance for controlled maximum transient overvoltage was to be such that the minimum allowable approach distance was not less than the given approach distance specified for the highest voltage of the given range.
- The transient overvoltage tables were to be applied only at voltage ranges inclusive of 72.6 KV to 800 KV. All tables were to be established using the higher voltage of each separate voltage range.

Relevant data related to the determination of the ergonomic component of the minimum approach distance include a typical arm's reach of about 610 millimeters (2 feet) and a reaction time to a stimulus of 0.2 to more than 1.0 second (269–Ex. 8–19). To prevent an employee from breaching the air gap required for the electrical component, the ergonomic distance must be sufficient for the employee to be able to recognize a hazardous approach to an energized line and withdraw to a safe position. Thus, the distance should equal the response time multiplied by the average speed of an employee's movement plus ''braking'' distance. (This is comparable to the calculation of total braking distance for a motor vehicle. This distance equals the initial speed of the vehicle times the driver's reaction time plus the braking distance for the vehicle itself after the brakes have been applied.) The maximum reach (or range of movement) may place an upper bound on the ergonomic component, however.

For system voltages up to 72.5 kV, phase-to-phase, much of the work is performed using rubber gloves, and the employee is working within arm's reach of energized parts. The ergonomic component of the minimum approach distance must account for this since the employee may not have time to react and position himself or herself out of danger. A distance of 610 millimeters (2 feet) for the ergonomic component appears to meet this criterion and was, in fact, adopted by the NESC subcommittee. OSHA also accepts this value. Therefore, for voltages of 751 V to 72.5 kV, the minimum approach distances proposed in § 1926.960 adopt the electrical component of minimum approach distance plus an ergonomic component of 0.61 meters (2 feet).

For operations involving lines energized at voltages over 72.5 kV, the applicable work practices change. Generally, live-line tools are employed to perform the work while equipment is energized. These tools hold the energized part at a fixed distance from the employee, ensuring that the minimum approach distance is maintained during the work operation. Even when hot sticks are not used, as during live-line bare-hand work, employees use work methods that more tightly control their movements than when they perform rubber glove work, and it is usually easier to plan ahead of time how to keep employees from violating the minimum approach distance. For example, employees planning a job to replace spacers on a 500-kV overhead power line can use an envelope (or bounds) of anticipated movement for the job and ensure that the work procedure they use keeps this envelope entirely outside the minimum approach distance. All the employees' movements during the job would be kept within the envelope. Additionally, exposure to conductors at a potential different from the one on which work is being performed is limited or nonexistent. This is because the distance between conductors is much greater than the distance between conductors at lower voltages and because higher voltage systems do not present the types of congestion that are commonly found on lower voltage systems. Therefore, a smaller ergonomic component is appropriate for the higher voltages. The NESC subcommittee accepted a value of 0.31 meters (1 foot) for this component. OSHA has adopted this distance as well. Therefore, for voltages over 72.5 kV, the minimum approach distances proposed in § 1926.960 adopt the electrical component of the minimum approach distance plus an ergonomic component of 0.31 meters (1 foot).

The ergonomic component of the minimum approach distance is only considered a safety factor that protects employees in case of errors in judging and maintaining the full minimum approach distance, so that the employee does not breach the electrical component of the minimum approach distance. The actual working position selected must account for the full range of movements that could normally be anticipated [33] while an employee is working. Otherwise, the employee would violate the minimum approach distance while he or she is working.

The design of electric power circuits over 72.5 kV sometimes does not provide sufficient clearance between energized parts at different potential or between energized parts and grounded surfaces to permit employees to maintain the base minimum approach distances given in proposed Table V–2. The Agency has adopted the approach of the NESC subcommittee in the proposal to permit work on such systems so long as additional measures are taken to reduce the required minimum approach distance. Proposed

[32] ANSI/IEEE Std. 516–1987 (the edition in effect when the NESC subcommittee revised the minimum approach distances) listed values for the electrical component of the minimum approach distance, both for air alone as an insulating medium and for live-line tool sticks in air, that were accepted as being accurate when the standard was adopted (by IEEE) in 1987.

[33] Anticipated movements include those necessary to perform the work as well as ''unexpected'' movements that an employee could reasonably be anticipated to perform, such as adjusting his or her hard hat, clothing, or equipment. See Appendix B to Subpart V for a discussion of the selection of working position with respect to minimum approach distances.

Table V–3, Table V–4, and Table V–5 recognize the use of gaps and other means of decreasing the surge factor on energized lines as acceptable methods of reducing the required minimum approach distance.[34] These tables list minimum approach distances for various surge factors and phase-to-phase voltages.

The proposal thus provides smaller minimum approach distances for systems with surge factors that are limited by means such as system design, switching controls, and temporary protective gaps. Frequently, built-in or temporary limits on the surge factor on a system can result in a minimum approach distance that is small enough to permit work to be performed without additional protective measures. Because the line worker cannot determine surge factors at the jobsite, surge factor reduction is permitted only when the employer can demonstrate, through engineering analysis, that the possible surges on the line will be held to values no more than permitted under Table V–3, Table V–4, and Table V–5. Methods of controlling and determining the surge factor for a system are given in Appendix B to proposed Subpart V.

OSHA accepted the principles adopted by the NESC subcommittee in forming the minimum approach distance tables in final § 1910.269. OSHA reviewed the technical information supporting the subcommittee's action and found that the data justify the NESC criteria. After the adoption of final § 1910.269, the NESC Committee issued a tentative interim amendment correcting some errors in calculating the minimum approach distances published in ANSI C2–1993. The same minimum approach distances are contained in the latest edition of that standard, ANSI C2–2002. In Table V–2 through Table V–6, OSHA is proposing to adopt the NESC minimum approach distances, as corrected.[35] The Agency believes that this will protect employees from all likely exposure conditions.

Proposed Table V–5 contains minimum approach distances for d-c voltages between 250 and 750 kilovolts, nominal. These distances have been taken directly from Table R–9 of § 1910.269. Since systems of d-c voltages other than those listed are rare, no distances were presented for them in the table.

As noted earlier, proposed Table V–3 through Table V–5 permit reduced minimum approach distances for systems having known maximum transient overvoltages. These tables are based on Table R–7 through Table R–9 of § 1910.269.

The minimum approach distances proposed in Subpart V for voltages over 750 volts are intended to provide a sufficient gap between the worker and the line so that current could not arc to the employee under the most adverse transient voltage that could be imposed on the line, plus an extra amount for inadvertent movement on the part of the employee. The electrical component of these distances is based on scientific and engineering test data, and the ergonomic component is based on the conditions likely to be present for the different types of work to be performed on electric power generation, transmission, and distribution circuits. By contrast, the minimum approach distances in existing Subpart V were based on standard industry practice in effect in 1972, when that standard was promulgated. OSHA believes that the proposed minimum approach distances, which are based on sound engineering principles, will provide significantly better protection for employees than the existing standard.

Table R–6 in existing § 1910.269 specifies ''avoid contact'' as the minimum approach distance for voltages between 50 and 1,000 volts. To make the proposal consistent with ANSI C2, OSHA is proposing to adopt minimum approach distances of 0.31 meters (1 foot) for voltages between 301 volts and 750 volts and 0.65 meters (2 feet, 2 inches) for voltages between 751 volts and 15 kilovolts. This increase in the minimum approach distance at the lower voltages should help prevent employees from contacting circuit parts energized at these still dangerous levels.[36]

The proposal allows employees to come closer than the minimum approach distance to energized parts under certain conditions, as listed in proposed § 1926.960(c)(1)(i) through (c)(1)(iii). Existing § 1926.950(c)(1)(i), from which proposed § 1926.960(c)(1)(i) has been taken, permits the employee to be insulated, guarded, or isolated from the live parts. The language specifically recognizing guarding and isolation has been omitted from the proposal. However, it should be noted that the introductory language in final § 1926.960(c)(1) requires minimum approach distances to be maintained from ''exposed'' energized parts. Guarded live parts, whether they are guarded by enclosures or barriers or are guarded by position (isolated), are not addressed by this requirement as they would not be considered ''exposed.'' Including language exempting live parts that are ''guarded'' or ''isolated'' would be redundant and could lead to misinterpretation of the rule. Additionally, similar redundancies in paragraphs (c)(1)(ii) and (iii) of § 1926.950 have not been carried forward into paragraphs (c)(1)(ii) and (c)(1)(iii) of proposed § 1926.960. To clarify the rule, however, a note has been included following paragraph (c)(1)(iii) to indicate that parts of electric circuits meeting paragraph (f)(1) of § 1926.966 are not considered as ''exposed'' unless a guard is removed or an employee enters the space intended to provide isolation from the live parts.

Proposed § 1926.960(c)(1)(i) contains the first exception to maintaining the minimum approach distances—insulating the employee from the energized part. This insulation, for example, can take the form of rubber insulating gloves and rubber insulating sleeves. This equipment protects the employee from electric shock as he or she works on the line or equipment. Even though uninsulated parts of the employee's body may come closer to the live part being worked on than would otherwise be permitted by Table V–2 through Table V–6, the employee's hand and arm would be insulated from the live part, and the working distances involved would be sufficient protection against arc-over. As noted earlier, the minimum approach distance tables include a component for inadvertent movement, which is unnecessary for employees using rubber insulating equipment. In the worst case situation, an employee would be working on a line requiring a 0.84-meter (2-foot, 9-inch) minimum approach distance. The electrical component of this minimum approach distance is 0.23 meters (9 inches).[37] The distance from the hand to the elbow is about 0.3 meters (1 foot), and it would be nearly impossible to work closer than this distance to a line being held in the hand. Therefore, the employee would be about 0.3 meters (1 foot) away from the conductor at a minimum, and, thus, in the worst case would still be more than the electrical

[34] The decreased surge factor reduces the maximum transient voltage on the line and thus reduces the electrical component of the minimum approach distance.

[35] OSHA is also proposing to make similar changes to § 1910.269.

[36] OSHA is also proposing to make similar changes to § 1910.269.

[37] The minimum approach distance for 36.1 to 46.0 kV, the highest voltage range that can be worked using rubber insulating gloves, is 0.84 meters (2 feet, 9 inches). The electrical component of the minimum approach distance is the minimum approach distance minus the ergonomic component, 0.65 meters (2 feet), which equals 0.23 meters (9 inches).

component of the minimum approach distance from the conductor. This would protect the employee from sparkover. In any event, the accident data in the record show that the overriding hazard to employees is posed by other energized conductors in the work area, to which the minimum approach distances still apply. The rubber gloves, of course, provide protection only for the line on which work is being performed.

It is important to ensure that conductors on which the employee is working cannot move unexpectedly while the employee is protected against contact only by rubber insulating gloves and sleeves. It would be considered a violation of the minimum approach distance requirement proposed in § 1926.960(c)(1) for an employee to be insulated from an energized part only by rubber insulating gloves and sleeves if the part is not under the full control of the employee at all times. OSHA is making this explicit in the parenthetical text in proposed § 1926.960(c)(1)(i) (and also in proposed § 1910.269(l)(2)(i)). For example, if an employee were cutting a conductor, that conductor would either need to be restrained from moving toward the employee after being cut or additional insulation would have to be used to protect the conductor from striking uninsulated parts of the employee's body.

The insulation used would have to be designed for the voltage. (Proposed new § 1926.97 gives use voltages for electrical protective equipment.) As a clarification, paragraph (c)(1)(i) notes that the insulation is considered as protection only against parts upon which work is being performed; the required minimum approach distances would have to be maintained from other exposed energized parts.

As a second exception to maintaining the minimum approach distances, paragraph (c)(1)(ii) of proposed § 1926.960 allows the energized part to be insulated from the employee. Such insulation could be in the form of insulating blankets or line hose or other suitable insulating equipment. Again, the insulation would have to be adequate for the voltage.

Paragraphs (c)(1)(i) and (c)(1)(ii) recognize the protection afforded to the employee by an insulating barrier between the employee and the energized part. As long as the insulation is appropriate and is in good condition, current will not flow through the worker, and he or she is protected.

The third exception (paragraph (c)(1)(iii)) to the maintenance of the minimum approach distances is to insulate the employee from exposed conductive objects other than the live part upon which work is to be performed. Much of the work performed under this option is called ''live-line bare-hand'' work. (For specific practices for this type of work, see the discussion of proposed § 1926.964(c).) In this type of work, the employee is in contact with the energized line, like a bird on a wire, but is not contacting another conductive object at a different potential. Because there is no complete circuit, current cannot flow through the worker, and he or she is protected.

Paragraph (c)(1) requires employees to maintain minimum approach distances from ''exposed'' energized parts, except as noted above. A note following paragraph (c)(1)(iii) clarifies that parts of electric circuits meeting paragraph (f)(1) of § 1926.966 are not considered as ''exposed'' unless a guard is removed or an employee enters the space intended to provide isolation from the live parts.

Several accidents occurred when employees working from aerial lifts, either insulated or uninsulated, grabbed an energized conductor. OSHA is concerned that some employers may believe that this practice is safe without following the procedures outlined in proposed § 1926.964(c) on live-line bare-hand work. OSHA requests comments on whether or not the proposed rule will adequately protect employees from this type of accident and on what additional requirements, if any, are needed to prevent this type of accident.

According to testimony in the § 1910.269 rulemaking, between five and six percent of accidents experienced by power line workers were caused when the upper arm of an employee wearing rubber insulating gloves without sleeves contacted an energized part (269-DC Tr. 558–561).[38] This is a significant portion of the total number of serious accidents occurring among electric line workers. The Agency believes that these injuries and fatalities are clearly preventable.

The use of rubber insulating sleeves would certainly have prevented most of these accidents. However, as demonstrated by the safety record of some electric utility companies, the extensive use of insulating equipment to cover energized parts in the employee's work area would also appear to prevent employees' upper arms and shoulders from contacting live parts (269-Ex. 46). In fact, if every energized part within reach of an employee was insulated, electrical contacts involving other parts of the body, such as an employee's head or back, would be averted as well. The NESC subcommittee on work rules also recognized this method as providing protection to employees.

Existing Subpart V does not require any protection for employees working on or near exposed live parts beyond the use of rubber insulating gloves. To prevent the types of accidents described above from occurring in the future, the Agency has decided to require protection in addition to that required by existing Subpart V.

The proposal includes a provision, § 1926.960(c)(2)(i), that would require the use of rubber insulating sleeves (in addition to rubber insulating gloves), unless live parts that could contact an employee's upper arm or shoulder are insulated. Employees would be able to work without sleeves by installing rubber line hose, rubber blankets, and plastic guard equipment on energized equipment. However, an employee installing such protective equipment on energized lines would have to wear rubber sleeves unless his or her upper arms and shoulders are not exposed to contact with other live parts during this operation.

OSHA believes that paragraph (c)(2)(i) incorporates the most effective approach to preventing accidents involving work on or near exposed live parts.

Several accidents have occurred while employees were performing work (generally on deenergized lines) near energized parts without using rubber insulating equipment. Because the employees were concentrating on their work, which did not involve the energized parts, the employees did not pay attention to the distance between them and the energized parts and violated the minimum approach distance. When OSHA cited the employers for violations of existing § 1926.950(c), the employers successfully argued that the standard permits employees to work near energized parts without the use of electrical protective equipment, as long as they maintain the minimum approach distance involved. They further argued that, because they require their employees to maintain these distances and because their employees have been trained, the accidents were a result of unpreventable employee misconduct. (See, for example, *Central*

[38] OSHA believes that most, if not all, of these accidents involved contact with conductors and equipment other than the one on which the employee had been working. It would be very unlikely that an employee would touch his upper arm or shoulder against the part on which he or she was working with his or her hands. On the other hand, it would be more likely that the employee touched his or her upper arm or shoulder against a different live part than the one on which he or she is working. The employee's attention would be on the live part on which work is being performed but might not be on other nearby live parts.

Kansas Power Co., Inc., 6 OSHC (BNA) 2118, 1978 WL 6886 (No. 77–3127, 1978).)

OSHA does not believe that working very close to, but not on, energized parts without the use of electrical protective equipment is a safe practice. The Agency further believes that § 1910.269, which also allows this practice, is not effective in preventing these accidents and has concluded that further regulation is warranted. Toward this end, OSHA has gone beyond § 1910.269 by proposing two additional requirements:[39]

(1) If work is performed near exposed parts energized at more than 600 volts but not more than 72.5 kilovolts and if the employee is not insulated from the energized parts or performing live-line bare-hand work, the employee would have to work from a position where the employee would not be able to reach into the minimum approach distance (proposed § 1926.960(d)(2)), and

(2) If the employee is to be insulated from energized parts by the use of insulating gloves or insulating gloves with sleeves, the insulating gloves and sleeves would have to be put on and removed in a position where the employee would not be able to reach into the minimum approach distance (proposed § 1926.960(c)(2)(ii)).

These two provisions taken together will ensure that an employee working near energized parts will not be able to reach within the minimum approach distance unless using rubber insulating equipment. Thus, any time an employee is within reach of the minimum approach distance, he or she would need to be wearing rubber insulating gloves or the energized parts would need to be insulated from the employee, and any employee who is not protected by insulating equipment would need to stay far enough away from energized parts that he or she could not reach within the minimum approach distance.

Proposed paragraph (c)(2)(ii) would ensure that employees don rubber insulating gloves and sleeves from a safe position. OSHA is aware that some employers have a ground-to-ground rule requiring their employees to wear rubber insulating gloves before leaving the ground to work on energized lines or equipment and to leave the gloves and sleeves on until the employees return to the ground. This practice ensures that employees are indeed wearing the rubber gloves and sleeves before they reach the energized area and eliminates the chance that an employee will forget to don the protective equipment once he or she reaches the work position. Other employers simply require their employees to put their gloves and sleeves on before they enter the energized area. This practice normally requires the employee to use his or her judgment in determining where to begin wearing the protective equipment. The proposal recognizes both methods of protecting employees, but ensures that the rubber gloves and sleeves are being worn once the employee reaches a position from which he or she can reach into the minimum approach distance. The Agency requests comments on the need for this requirement and on whether or not the provision as proposed will protect employees from the hazards involved.

Proposed paragraph (d)(2) would ensure that an employee who is not insulated from parts energized between 600 volts and 72.5 kilovolts is working at a safe distance from the parts. This provision does not apply to voltages of 600 volts and less to permit work on equipment without requiring the employee to cover energized parts unnecessarily. Much of the work performed at these lower voltages involves the use of insulating hand tools in a panelboard or cabinet. The chance of contacting a live part with the shoulder is extremely low because of the layout of live parts within the enclosure. The electrical clearances between energized parts for voltages in this range are small enough that all energized circuit parts will normally be in front of the employee, enabling the worker to maintain the required minimum approach distance easily. The proposed paragraph does not apply when the voltage exceeds 72.5 kilovolts, because the minimum approach distances generally become greater beyond this voltage and because rubber insulating equipment cannot be used for these higher voltages.[40] OSHA requests comments on the need for this requirement and on whether there are other effective means of protecting employees from the hazard involved.

Paragraph (d)(1) of proposed § 1926.960 would require employees to position themselves, to the extent that other safety-related conditions at the worksite permit, so that a shock or slip would not cause the worker's body to move towards exposed parts at a potential different from that of the employee. Since slips, and even electric shocks, are not entirely preventable, it is important for the employee to take a working position so that such an event will not increase the severity of any incurred injury. This proposed requirement was taken from § 1910.269(l)(3). There is no counterpart to this requirement in existing Subpart V.

The Agency believes that it is important for an employee to work from a position where a slip or a shock will not bring him or her into contact with an energized part unless other conditions, such as the configuration of the lines involved, would make another working position safer. The position taken must be the most protective available to accomplish the task. In certain situations, this work position may not be the most efficient one. The language proposed in § 1926.960(d)(1) recognizes situations that preclude working from a position from which a slip would bring the employee into contact with a live part. The language contained in this provision also allows such options as guarding or insulating the live part as alternative means of compliance.

Connecting and disconnecting lines and equipment. Paragraph (e) addresses the practices of connecting and disconnecting lines and equipment. Common industry practice, as reflected in ANSI C2–2002, Section 443F, is to make a connection so that the source is connected as the last item in sequence and to break a connection so that the source is removed as the first item in sequence. In this way, conducting wires and devices used to make and break the connection are deenergized during almost the entire procedure. These practices would be required by paragraphs (e)(1) and (e)(2). Since these wires and devices must be handled during the procedure, the proposed requirements would reduce the chance for an electrical accident. Also, to prevent the disconnected conductors from being energized, loose ends of conductors must be kept away from live parts, as would be required by paragraph (e)(3). These three proposed provisions, which have no counterparts in existing Subpart V, have been taken from § 1910.269(l)(5).

Paragraph (f) of proposed § 1926.960, which was taken from § 1910.269(l)(6)(i), would prohibit the wearing of conductive articles by employees working within reach of exposed live parts of equipment if these articles would increase the hazards associated with accidental contact with the live parts. If an employee wants to wear metal jewelry, he or she can cover the jewelry so as to eliminate the contact hazard. This requirement is not

[39] OSHA is also proposing to make similar changes to § 1910.269.

[40] The maximum use voltage for Class 4 rubber insulating equipment is 36 kilovolts. The highest voltage on which this equipment can be used is 62 kilovolts if there is no multiphase exposure. This voltage falls in the Table V–1 range of 46.1 to 72.5 kV.

intended to preclude workers from wearing metal rings or watch bands if the work being performed already exposes them to electric shock hazards and if the wearing of metal would not increase the hazards. (For example, for work performed on an overhead line, the wearing of a ring does not increase the likelihood that an employee would contact the line, nor would it increase the severity of the injury should contact occur.) However, this requirement would protect employees working on energized circuits with small clearances and high current capacities (such as some battery-supplied circuits) from severe burn hazards to which they would otherwise be exposed. The rule also protects workers who are only minimally exposed to shock hazards from being injured as a result of a dangling chain's making contact with a energized part. This provision has no counterpart in existing Subpart V.

Protection from electric arcs. Proposed paragraph (g) addresses clothing worn by an employee. After reviewing the rulemaking record on § 1910.269, OSHA determined that electric power generation, transmission, and distribution workers face a significant risk of injury from burns due to electric arcs (January 31, 1994, 59 FR 4388–4389). OSHA also concluded that certain fabrics increase the extent of injuries to employees caught in an electric arc or otherwise exposed to flames. Therefore, the Agency adopted two rules: (1) paragraph (l)(6)(ii) of § 1910.269, which requires that employees exposed to flames and electric arcs be trained in the hazards related to the clothing that they wear, and (2) paragraph (l)(6)(iii) which prohibits apparel that could increase the extent of injuries received by a worker who is exposed to a flame or electric arc. OSHA also included a note following paragraph (l)(6)(iii) to indicate the types of clothing fabrics that the § 1910.269 rulemaking record demonstrated were hazardous to wear by employees exposed to electric arcs.

Since § 1910.269(l)(6)(iii) became effective on November 1, 1994, employees have continued to suffer burn injuries working on energized lines and equipment. From January 1, 1990, to October 30, 1994, there were 46 accidents investigated by Federal or State OSHA involving burns that would have been addressed by § 1910.269(l)(6)(iii). These 46 accidents resulted in 71 total injuries. Averaged over this period, there were 9.5 accidents and 14.7 injuries per year. From November 1, 1994, to December 31, 1998, there were 17 such accidents resulting in 26 injuries. Averaged over this period, there were 4.0 accidents and 6.2 injuries per year. Thus, while the clothing rule in § 1910.269 appears to have helped reduce the number of accidents and injuries by more than 50 percent, for two reasons, OSHA believes that the remaining risk of burn injury is still serious and significant. First, these accidents represent only a small fraction of those that have actually occurred during this time. Employers are only required to report to the Agency accidents involving fatalities or three or more hospitalized injuries. OSHA does not investigate accidents that are not reported by employers (that is, those involving two or fewer hospitalized employees and no deaths) unless it results in extensive property damage or presents potential worker injury and generates widespread media interest. (*See* OSHA directives CPL 02–00–103 and CPL 02–00–094.) Consequently, most injury-producing accidents, even serious ones, are not investigated by the Agency. Second, the reported burn injuries are very serious and costly. Eighty-four percent of the burn injuries were fatalities or required hospitalization. Eighty-seven percent of the accidents for which the severity of the injury was noted involved third-degree burns. Such burns are extremely painful and costly, typically requiring skin grafts and leaving permanent scars.

OSHA's existing clothing requirement in § 1910.269 does not require employers to protect employees from electric arcs through the use of flame-resistant clothing. It simply requires that an employee's clothing do no greater harm. Because of the serious nature of the still remaining risk to power workers from electric arcs, the Agency believes that the standard should be revised to require the use of flame-resistant clothing, under certain circumstances, to protect employees from the most severe burns. The electric power industry is beginning to recognize this need as evidenced by the many employers who provide flame-resistant clothing to employees, by the work of ASTM in writing standards that provide for arc ratings of protective clothing, and by the ongoing work towards a protective standard by the committee responsible for writing work rules for the NESC. The National Fire Protection Association also recognizes the need to protect employees working on energized equipment from the hazards posed by electric arcs.

In addition, when § 1910.269 was promulgated, there were no standards for clothing to protect employees from the thermal hazards resulting from electric arcs. Since then, ASTM has adopted such standards. These standards ensure not only that clothing does not ignite but that it is rated to provide protection against a given level of heat energy. Apparel that meets the ASTM standards is labeled with the amount of heat energy that it can absorb under laboratory test conditions without letting through sufficient heat to cause a second-degree burn. Clothing is currently widely available in ratings from about 4 cal/cm^2 to over 50 cal/cm^2. In general, the higher the rating, the heavier the clothing.

As described more fully below, OSHA has decided to propose a rule that would require employers to estimate the heat energy from electric arcs that may be encountered by employees and to provide clothing that will be flame resistant if it could be ignited when an electrical fault occurs and that can protect against the estimated level of energy when an electric arc occurs. The Agency believes that this rule, which is proposed in § 1926.960(g), will ensure that employees wear protective clothing that is reasonably protective for the hazards they are facing.[41]

Paragraph (g)(1) of proposed § 1926.960 would require the employer to assess the workplace to determine if employees are exposed to hazards from flames or electric arcs. This provision ensures that the employer evaluates employee exposure to flames and electric arcs so that employees who do face such exposures can be protected. Because § 1926.960 applies to work performed on or near energized parts of electric circuits, employers can base a portion of the assessment required by paragraph (g)(1) on a determination of which employees perform energized work covered by this section. It should be noted, however, that until a line or part of an electric circuit has been completely deenergized following the procedures required by § 1926.961, including any required testing and grounding, the line or part would have to be treated as energized.

Once an employer determines who is exposed to hazards from flames or electric arcs, the next step in protecting these employees is a determination of the extent of the hazard. Paragraph (g)(2) would require the employer to estimate the maximum amount of heat energy to which employees would be exposed. This estimate can be used in the selection of protective clothing, as discussed later.

OSHA is aware of various methods of calculating values of available heat energy from an electric circuit. These methods are listed in Table IV–7. Each

[41] OSHA is also proposing to make similar changes in § 1910.269.

method requires the input of various parameters, such as fault current, the expected length of the electric arc, the distance from the arc to the employee, and the clearing time for the fault (that is, the time the circuit protective devices take to open the circuit and clear the fault). Some of these parameters, such as the fault current and the clearing time, are known quantities for a given system. Other parameters, such as the length of the arc and the distance between the arc and the employee, vary widely and can only be estimated. OSHA is not endorsing any of the methods listed in Table IV–7. The Agency requests comments and information on these and any other available methods of calculating incident heat energy from electric arcs.

TABLE IV–7.—METHODS OF CALCULATING INCIDENT HEAT ENERGY FROM AN ELECTRIC ARC

1. Standard for Electrical Safety Requirements for Employee Workplaces, NFPA 70E–2004, Annex D, ''Sample Calculation of Flash Protection Boundary.''
2. Doughty, T.E., Neal, and Floyd II, H.L., ''Predicting Incident Energy to Better Manage the Electric Arc Hazard on 600 V Power Distribution Systems,'' Record of Conference papers IEEE IAS 45th Annual Petroleum and Chemical Industry Conference, September 28–30, 1998.
3. Guide for Performing Arc Flash Hazard Calculations, IEEE 1584–2002.
4. Heat Flux Calculator, a free software program created by Alan Privette (widely available on the Internet).
5. ARCPRO, a commercially available software program developed by Kinectrics, Toronto, ON, CA.

The amount of heat energy calculated by any of the methods is approximately proportional to the square of the distance between the employee and the arc. In other words, if the employee is very close to the arc, the heat energy is very high; but if he or she is just a few more centimeters away, the heat energy drops substantially.

In addition, the fault current and clearing time are interdependent. Typically, the higher the fault current, the shorter the clearing time. It is quite possible that the maximum heat energy will result from a fault current that is well below maximum but that results in a relatively long clearing time. In order to calculate the worst case heat energy, an employer would have to perform a range of calculations for each system area.

Furthermore, the method of calculation can affect the results. Each method yields somewhat different values using the same input parameters. This is partly because of the unpredictability of an electric arc and partly because of the different ways the methods were developed. Some, like the NFPA 70E method, are based in theory. Others, like the IEEE 1584 method, are based on empirical data. Whichever method is used, it is important to use it within its limitations. For example, the values produced by the Heat Flux Calculator must be adjusted if employees are exposed to energy from a multiphase fault or if the heat energy would be reflected by nearby surfaces.[42]

Because of the variability imposed by these factors, OSHA has preliminarily concluded that it is not possible to predict exactly how much energy an employee would face if an electric arc occurs. On the other hand, it is clear that when more electrical energy is available more heat will be generated by an electric arc and the potential for severe injury is greater. The Agency believes that greater protection is warranted when greater hazards exist. Thus, OSHA is proposing a standard that requires reasonable, but not exact, estimates of the heat energy to which an employee could be exposed.

Additionally, OSHA is not proposing a standard based entirely on worst-case exposure. The worst case occurs when an electric arc powered by the maximum available fault current is against an employee's skin. In such cases, the distance between the employee and the arc is zero, and the energy is extremely high even for relatively low-current arcs. The Agency does not believe it is reasonable to require a correspondingly high degree of protection for relatively low-energy arcs, which would put employees in very heavy clothing.

On the other hand, OSHA believes that it is appropriate for the employer to provide a level of protection that is reasonably related to the thermal hazard involved. A 50-cal/cm^2 exposure calls for more protection than a 5-cal/cm^2 exposure. Although none of the methods can predict precisely how much heat energy an employee will face, they do provide a good indication of the relative severity of the exposure and the approximate level of protection needed. Thus, the Agency is proposing a rule that it believes requires reasonable estimates of the amount of heat energy an employee is likely to face and to provide a corresponding level of protection. OSHA requests comments on whether the proposed rule requires an appropriate level of protection and clearly defines employer obligations with respect to the estimates of the maximum available heat energy.

Two notes following proposed § 1926.960(g)(2) help explain how to comply with the rule. The first note states that Appendix F to Subpart V provides guidance on the estimation of available heat energy. This appendix discusses various methods of estimating electric arc heat energy levels and provides tables that can also be used for this purpose. OSHA requests comments on this appendix and on whether additional information is available to help employers and employees estimate available heat energy. The second note indicates that the employer may use broad estimates representing multiple system areas if the employer uses reasonable assumptions about the exposure distribution throughout the system and if those estimates represent the maximum exposure for those particular areas. This note clarifies that the rule is not intended to require separate calculations for each job or task.

Much of the flame-resistant clothing available today comes with an arc rating.[43] In basic terms, an arc rating indicates that a fabric is not expected to transfer sufficient thermal energy to cause a second-degree burn when tested under standard laboratory conditions exposing the fabric to an electric arc that radiates an energy at or below the rating.[44] Proposed paragraph (g)(5) would require that employees who are exposed to hazards from electric arcs wear clothing with an arc rating greater than or equal to the heat energy estimated under proposed paragraph (g)(2). This clothing will protect employees exposed to various levels of heat energy from sustaining severe burn injuries in areas covered by the clothing. The note following paragraph (g) explains that Appendix F to Subpart V contains information on the selection of appropriate clothing. This appendix

[42] This exposure is known as ''arc in a box.''

[43] The ASTM standards governing arc rating require the fabric being tested to be flame resistant. Thus, no nonflame-resistant clothing has an arc rating.

[44] Arc rating is defined in ASTM F1506–02a^{e1}, Standard Performance Specification for Flame Resistant Textile Materials for Wearing Apparel for Use by Electrical Workers Exposed to Momentary Electric Arc and Related Thermal Hazards: ''a value that indicates the arc performance of a material or system of materials. It is either the arc thermal performance value (ATPV) or breakdown threshold energy (E_{BT}), when the ATPV cannot be determined by Test Method F1959.'' ASTM F1959–99 defines ATPV as ''in arc testing, the incident energy on a fabric or material that results in sufficient heat transfer through the fabric or material to cause the onset of a second-degree burn based on the Stoll curve.'' That same standard defines E_{BT} as ''the average of the five highest incident energy exposure values below the Stoll curve where the specimens do not exhibit breakopen.''

contains information on the ignition threshold of various fabrics, the thermal performance of typical arc-rated clothing, ways of estimating available heat energy, and ways of selecting clothing to protect employees from burn injuries resulting from electric arcs.

Even with the requirements for the employer to assess hazards (proposed paragraph (g)(2)) and for employees to wear clothing with a rating appropriate for this assessment (proposed paragraph (g)(5)), there are still situations that could arise under which an employee's clothing could ignite and lead to severe burn injuries. For example, an employee wearing a cotton-polyester blend jacket over his or her arc-rated shirt could be injured if the jacket ignites or melts when an electric arc occurs. Thus, OSHA is proposing, in paragraphs (g)(3) and (g)(4), additional provisions intended to prevent the ignition or melting of an employee's clothing.

Proposed § 1926.960(g)(3) would prohibit clothing that could either melt onto an employee's skin or ignite and continue to burn. This rule is equivalent to existing § 1910.269(l)(6)(iii).[45] This proposed provision would ensure that employees exposed to electric arcs do not wear clothing presenting the most severe burn hazards. A note following this provision lists fabrics that are specifically prohibited unless the employer demonstrates that the clothing is treated or worn to eliminate the hazard. This note is the same as the note following existing § 1910.269(l)(6)(iii). OSHA requests comments on whether additional fabrics pose similar hazards and should be added to the note.

Proposed paragraph (g)(4) would require employees to wear flame-resistant clothing whenever: (1) The employee is exposed to contact with live parts energized at more than 600 volts (paragraph (g)(4)(i)); (2) the employee's clothing could be ignited by nearby flammable material that could be ignited by an electric arc (paragraph (g)(4)(ii)); or (3) the employee's clothing could be ignited by molten metal or electric arcs from faulted conductors in the work area (paragraph (g)(4)(iii)). (A note to proposed paragraph (g)(4)(iii) indicates that this provision does not apply to conductors capable of carrying the maximum available fault current. The design of the installation is intended to prevent these conductors from melting.) The listed conditions are those in which employees' clothing has been ignited in several of the burn accidents examined by OSHA.

OSHA could have, more simply, required clothing that could not ignite and continue to burn under the heat energy conditions estimated pursuant to proposed paragraph (g)(2). However, as noted earlier, these estimates do not entirely reflect the heat energy produced by worst case conditions. If the other parameters affecting the energy in an arc are held constant, the heat energy rises exponentially with decreasing distance between the arc and the employee. Thus, an electric arc that touches an employee's clothing releases much more energy than the same arc at a distance equal to the minimum approach distance. For example, the heat energy from a 51-millimeter-long arc, generated by 20 kiloamperes of fault current at 15 kilovolts, and clearing in 6 cycles is 1.23 cal/cm^2 if the arc is 650 millimeters away, but is 1971 cal/cm^2 if the arc is 10 millimeters away.[46] None of the common fabrics listed in Table 11 in Appendix F to Subpart V (explained below) would ignite if the arc was 650 millimeters away from the employee, but every one would ignite if the arc was only 10 millimeters away.

The closest an electric arc was to an employee in electric power accidents over the years 1991 to 1998 occurred in 17 cases in which an employee contacted an energized conductor or was touching the electric arc. In eight of those cases, an employee's clothing apparently ignited.[47] On the other hand, none of the accidents involved contact with circuit parts energized at 600 volts or less. OSHA believes that the cases that have occurred demonstrate a significant risk that an employee's clothing could ignite and cause serious, even fatal, burn injuries from ignited clothing when an employee contacts circuit parts energized at more than 600 volts. Therefore, OSHA has preliminarily concluded that an employee must wear flame-resistant clothing any time he or she is subject to contact with live parts energized at more than 600 volts. The Agency requests comments on whether the requirements for flame-resistant clothing in proposed § 1926.960(g)(4) are reasonable and appropriate.

OSHA is not proposing to require a specific level of protection for skin that is not covered by clothing. Employees' hands, which are frequently the closest body part to an electric arc, would typically be protected by rubber insulating gloves and leather protectors when the employee's hands are at greatest risk of injury. Although neither rubber insulating gloves nor leather protectors have arc ratings, because of their weight and thickness, they typically provide greater protection from electric arcs than light-weight flame-resistant clothing. Their protective value is borne out in the accident data—none of the burn injuries to employees hands involved an employee wearing rubber insulating gloves. OSHA requests comments on whether the standard should require complete protection for an employee's entire body.

Payment for Protective Clothing. As described earlier, OSHA is requiring employers to ensure that their employees (1) wear flame-resistant clothing under certain hazardous conditions, and (2) when working on energized parts of the electric power system, wear clothing with an arc rating greater than or equal to potential heat energy exposures estimated for those parts. OSHA considers the protective clothing required by paragraph (g) to be PPE. The protective clothing would reduce the degree of injury sustained by an employee when an electric arc occurs. In some cases, the clothing would prevent injury altogether. Unlike many OSHA standards, the proposal would not require that employers provide protective clothing at no cost to employees. However, OSHA is considering including an employer-payment requirement in the final rule and is seeking comments on the issue.

OSHA has a longstanding policy that employers must provide and pay for PPE, except, in some cases, where the PPE is personal in nature and usable by the employee off of the job. This policy is supported by the plain language of the OSH Act and its legislative history. (For a complete discussion of OSHA's policy, see OSHA's preamble to the employer payment for PPE proposal, 64 FR 15402 (March 31, 1999).) Many OSHA health standards include language explicitly stating that employers must provide PPE "at no cost" to employees. See, for example, 29 CFR 1910.1018(h)(2)(i) and (j) (inorganic

[45] The existing rule prohibits clothing that could increase the extent of injuries to an employee if an electric arc occurs. The Agency interprets this rule as prohibiting clothing that could melt or that could ignite and continue to burn in the presence of an electric arc faced by an employee (Memorandum to the Field from James W. Stanley, "Guidelines for the Enforcement of the Apparel Standard, 29 CFR 1910.269(l)(6), of the Electric Power Generation, Transmission, and Distribution Standard").

[46] These heat energy estimates are calculated using ARCPRO.

[47] The accident description indicated that the clothing ignited or stated that the extent of the burns or the location of the burns was such that clothing ignition was likely to have occurred. For example, in one case, a 4100-volt conductor fell onto an employee's chest. The employee survived the electric shock but died from second- and third-degree burns over 60 percent of his body. The electrical burns from the contact were probably localized to the area near the point of contact. It is likely that the employee's clothing ignited to cause burns that were spread over 60 percent of his body though the accident description did not state that clothing ignition occurred.

arsenic); 29 CFR 1910.1025(f)(1) and (g)(1) (lead); and 29 CFR 1910.1048(g)(1) and (h) (formaldehyde). The regulatory text and preamble of some safety standards also make clear that employers must pay for PPE. See 29 CFR 1910.146(d)(4)(iv) (confined spaces); and 29 CFR 1910.266(d)(1)(iii) (logging).

Because not every OSHA standard explicitly states that employers must pay for PPE, in 1999, OSHA proposed regulatory language to clarify that employers are responsible for the cost of PPE, with only a few exceptions (64 FR 15402). The proposal added language to OSHA's general industry, shipyard, construction, marine terminal, and longshoring standards that ''[a]ll protective equipment, including [PPE] * * * shall be provided by the employer at no cost to employees [64 FR 15441 (emphasis added)].'' Exceptions were given for safety-toe protective footwear and prescription safety eyewear, provided that the employer permits them to be worn off of the job site, they are not used in a manner that makes them unsafe for use off of the job site, and they are not designed for special use on the job (64 FR 15441). OSHA recently reopened the rulemaking record on its employer payment for PPE proposal. to solicit comment on PPE that might be considered tools of the trade. See 69 FR 41221 (July 8, 2004).

OSHA also recently proposed that employers in general industry, maritime, and construction, pay for protective clothing for employees exposed to hexavalent chromium (Cr(VI)). See 69 FR 59465–59466 (Oct. 4, 2004) (''Where a hazard is present or is likely to be present from skin or eye contact with chromium (VI), the employer shall provide appropriate personal protective clothing and equipment at no cost to employees, and shall ensure that employees use such clothing and equipment.''). The Agency said that employers are in the best position to select and obtain the appropriate protective clothing and that by providing and owning protective clothing, the employer will better maintain the integrity of it (69 FR 59456). The proposal also prohibits employees from taking contaminated protective clothing home; employers are responsible for laundering or disposing of contaminated protective clothing (69 FR 59456).

OSHA believes that requiring employers to pay for the protective clothing that would be required by this proposal may also improve the safety of employees. Like Cr(VI), the purchase of protective clothing may be best handled by electric power generation, transmission, and distribution employers, who have all of the information related to the parameters of the electric power system and are in the best position to select and purchase clothing necessary to protect employees from injury. Moreover, an employer-payment requirement could also help ensure that protective clothing is replaced promptly when its protective qualities erode. Some stakeholders have told OSHA that employees, if required to pay for their own protective clothing, may delay replacing damaged protective clothing for financial reasons. Any delay in replacing an article of protective clothing that has worn thin, or that contains holes or other openings, could endanger employees. Such damaged clothing does not provide adequate protection to employees exposed to electric arcs.

Unlike Cr(VI), however, this proposal contains no prohibition on employees' taking certain protective clothing home, wearing certain protective clothing off of the job, and laundering such clothing. OSHA has not included an employer-payment requirement in this proposal because it does not have enough information at this time on the types and weights of protective clothing, if any, that may be routinely worn outside of work.[48] There may be certain types of lightweight protective clothing that employees wear both at work and at home. OSHA believes it needs more information from the public on this clothing before including a general requirement that employers pay for protective clothing. In the PPE payment proposal, OSHA expressly exempted safety shoes and prescription eyewear from the general employer-payment requirement, in part because such equipment was personal in nature and could be used outside of work. See 64 FR 15402. OSHA is seeking information from the public as to whether protective clothing worn by employees performing power generation, transmission, and distribution work falls into this same category of PPE. OSHA is also incorporating the record of the employer payment for PPE rulemaking into the record of this rulemaking and will give due consideration to all relevant comments.

[48] OSHA notes that, for ease of analysis only, it has included a cost to employers for providing protective clothing in its economic feasibility analysis—in addition to its economic impact analysis under Executive Order 12866 and the RFA—even though such a requirement is not expressly included in the proposal. See Section V, Preliminary Regulatory Impact Analysis and Initial Regulatory Flexibility Analysis, later in this preamble.

OSHA is seeking comments on its findings on protective clothing generally in addition to the following specific questions:

1. Are there types or weights of protective clothing that employees typically wear outside of work? Do employers restrict the types or weights of protective clothing that employees are allowed to wear outside of work?

2. Do employers typically provide the types of protective clothing required by the proposal at no cost to employees? Do some employers provide certain types or weights of protective clothing at no cost to employees, while requiring other types or weights of protective clothing to be paid for by employees? Should OSHA include an employer-payment requirement for heavier weights or particular types of protective clothing, but not lighter weights or other types? If so, please specify what weights or types of protective clothing should be exempt from an employer-payment requirement.

3. OSHA realizes that in the construction industry crews of employees are sometimes hired through local unions. This results in a variable workforce for many contractors. A contractor that hires employees in this manner may have to buy protective clothing for more employees than would an employer with a more stable workforce, particularly for protective clothing that only fits one employee. OSHA requests comment on whether, given this hiring practice, an employer-payment requirement is appropriate in the construction industry. Are there any alternative approaches that would be responsive to this variable workforce situation and would also be protective of construction workers performing electric power generation, transmission, and distribution work?

4. Should OSHA not address the payment for protective clothing specifically in the final rule and, instead, follow the outcome of the general employer payment for PPE rulemaking?

To protect employees from contacting energized parts, paragraph (h) of proposed § 1926.960 would require fuses to be installed and removed using insulated tools or gloves when a terminal is energized at over 300 volts or when live parts are exposed at any voltage over 50 volts. When an expulsion fuse operates on a fault or overload, the arc from the fault current erodes the tube of the fuse holder. This produces a gas that blasts the arc out through the fuse tube vent or vents, and with it any loose material in the way. Employees could be injured by the arc blast or by particles blown, by the blast,

in their eyes. Employees should never install or remove such fuses using gloves alone. Therefore, paragraph (h) would also require employees installing expulsion-type fuses energized at 300 volts or more to wear eye protection, would have to use a tool rated for the voltage, and would have to stand clear of the fuse's exhaust path. This paragraph, which has no counterpart in existing Subpart V, has been taken from § 1910.269(l)(7).

Paragraph (i) explains that covered conductors are treated under the standard as uninsulated. (See the definition of ''covered conductor'' in § 1926.968.) The covering on this type of wire protects the conductor from the weather but does not provide adequate insulating value. This provision, which has no counterpart in existing Subpart V, has been taken from § 1910.269(l)(8).

Paragraph (j) proposes a requirement that noncurrent-carrying metal parts of equipment or devices be treated as energized at the highest voltage to which they are exposed unless the installation is inspected and these parts are determined to be grounded. Grounding these parts, whether by permanent grounds or by the installation of temporary grounds, would provide protection against ground faults. This requirement, which has no counterpart in existing Subpart V, is based on § 1910.269(l)(9).

Paragraph (k) would require devices used to open circuits under load conditions to be designed to interrupt the current involved. It is hazardous to open a circuit with a device that is not designed to interrupt current if that circuit is carrying current. Non-load-break switches used to open a circuit while it is carrying load current could fail catastrophically, severely injuring or killing any nearby employee. This requirement, which has no counterpart in existing Subpart V, has been taken from § 1910.269(l)(10).

Section 1926.961, Deenergizing Lines and Equipment for Employee Protection

Proposed § 1926.961 addresses the deenergizing of electric transmission and distribution lines and equipment for the protection of employees. Transmission and distribution systems are different from other energy systems found in general industry or even in the electric utility industry itself. The hazardous energy control methods for these systems are necessarily different from those covered under the general industry generic standard on the control of hazardous energy sources (§ 1910.147). Transmission and distribution lines and equipment are installed outdoors and are subject to being reenergized by means other than the normal energy sources. For example, lightning can strike a line and energize an otherwise deenergized conductor, or a line could be energized by unknown cogeneration sources not under the control of the employer. Additionally, some deenergized transmission and distribution lines are subject to being reenergized by induced voltage from nearby energized conductors or by contact with other energized sources of electrical energy. Another difference is that energy control devices are often very remote from the worksite and are frequently under the centralized control of a system operator.

For these reasons, OSHA is proposing to cover the control of hazardous energy sources related to transmission and distribution systems. This is the same approach used in § 1910.269. In fact, the requirements proposed in § 1926.961 have been taken from § 1910.269(m). Existing Subpart V also contains procedures for deenergizing transmission and distribution installations. The differences between the existing requirements, which are contained in § 1926.950(d), and those proposed in § 1926.961 are discussed later in this preamble.

In addition to setting forth the application of § 1926.961, paragraph (a) explains that conductors and equipment that have not been deenergized under the procedures of § 1926.961 have to be treated as energized. As noted earlier in this preamble under the summary and explanation of proposed § 1926.960(b)(2), existing § 1926.950(b)(2) requires electric equipment and lines to be considered as energized until determined to be deenergized by tests or other appropriate means. OSHA believes that the appropriate procedures for assuring that lines and equipment are deenergized are contained in proposed § 1926.961 and that a simple test for a deenergized condition cannot be relied upon to ensure that lines and equipment remain deenergized.

Some systems are under the direction of a central system operator who controls all switching operations. Other systems (mostly distribution installations) are not under any centralized control. These systems are energized and deenergized in the field without the direct intervention of a system operator. Paragraph (b)(1) of proposed § 1926.961 states that all of the requirements of proposed paragraph (c) would apply if a system operator is in charge of the lines and equipment and of their means of disconnection. Paragraph (b)(2) defines the general rule for crews working on lines that are not under the control of a system operator. In the usual case, one employee is designated to be in charge of the clearance. In general, all of the requirements in paragraph (c) would apply, with the employee in charge of the clearance taking the place of the system operator. In this manner, the proposal provides protection against the unintended energizing of transmission and distribution lines without requiring all lines to be under the control of one employee. One employee in a crew will be in charge of the clearance for the crew; procedures will be followed to ensure that the lines are truly deenergized; tags will be placed on the lines; and procedures will be followed to remove the tags and reenergize the lines.

However, in some cases, certain requirements contained in paragraph (c) are not necessary for the safety of employees. If only one crew will be working on transmission or distribution lines and if the means of deenergizing the lines is accessible and visible to and under the sole control of the employee in charge of the clearance, the provisions requiring tags on the disconnecting means are unnecessary. Therefore, proposed paragraph (b)(3)(i) would exempt a portion of the requirements of paragraph (c) from applying to work that is performed by a single crew of employees,[49] if the means of disconnection of the lines and equipment are accessible and visible to and under the sole control of the employee in charge of the clearance. The provisions of paragraph (c) that would not apply are those relating to (1) requesting the system operator to deenergize the lines, (2) automatic and remote control of the lines, (3) the wording on tags, (4) two crews working on the same line, and (5) tag removal. It is not necessary to request the system operator to deenergize the lines because he or she would not be in control of the disconnecting means for the lines. Only one person would be in charge of the clearance for the crew, and the means of disconnection for the lines would be accessible and visible to and under the control of that person.[50] Thus, tags would not be needed for the protection of the crew. Further, remote and automatic switching of lines and work performed by two crews working on lines or equipment controlled by the same disconnecting means would not be

[49] An employee working alone is considered to be a ''crew'' of one.

[50] The means of disconnection is under the sole control of the employee in charge of the clearance, and it need only be assessible and visible to that employee. Other employees in the crew have no control whatsoever over the disconnecting means.

recognized under paragraph (b)(3)(i). (A group of employees made up of several ''crews'' of employees who are under the direction of a single employee and who are working in a coordinated manner to accomplish a task on the same lines or equipment are considered to be a single crew, rather than as multiple independent crews, for the purposes of paragraph (b)(3)(i). In such cases, all operations that could energize or deenergize a circuit would have to be coordinated through the single employee in charge.) If the crews are independent, each crew would need an employee-in-charge of its clearance (see the discussion of proposed paragraph (b)(3)(ii), later in this section of the preamble). Therefore, no one could be considered as having sole control over the disconnecting means protecting the crews, and the exceptions listed in paragraph (b)(3)(i) would not apply.

Paragraph (d) of existing § 1926.950 also recognizes separate procedures for lines that are ''visibly open.'' However, only two requirements apply. First, paragraph (d)(2)(i) requires guards or barriers to be installed to protect against contact with adjacent lines. Second, upon completion of work, the designated employee in charge must determine that all employees in his crew are clear and that protective grounds installed by his crew have been removed, and he or she must report to the designated authority that all tags protecting the crew may be removed (paragraph (d)(2)(ii)).

The existing Subpart V provisions relating to working on lines or equipment that have their disconnecting means ''visibly open'' are insufficient to protect employees. Other requirements relating to deenergizing, testing, grounding, and reenergizing procedures are necessary for the protection of employees. While existing Subpart V does cover reenergizing procedures, it includes no provisions for deenergizing, testing, or grounding. OSHA believes that this proposal corrects these deficiencies.

If more than one independent crew is working on a line, paragraph (b)(3)(ii) would require each crew to follow the steps outlined in § 1926.961(c) separately, to ensure that a group of workers does not make faulty assumptions about what steps have been or will be taken by another group to deenergize lines or equipment. Paragraph (c) of proposed § 1926.961 would not require a separate tag for each crew; it does require, however, separate clearances for each crew. There would have to be one employee in charge of the clearance for each crew, and the clearance for a crew would be held by this employee. In complying with paragraph (b)(3)(ii), the employer would have to ensure that no tag is removed unless its associated clearances are released (paragraph (c)(11)) [51] and that no action is taken at a given point of disconnection until all protective grounds have been removed, until all crews have released their clearances, until all employees are clear of the lines or equipment, and until all tags have been removed at that point of disconnection (paragraph (c)(12)). OSHA requests comments on whether the standard should require each crew to have a separate tag and, if so, on ways to incorporate such a requirement in the standard.

Where there is a system operator, who is in charge of energizing and deenergizing lines and equipment, that person keeps track of clearances for different crews working on the same lines or equipment. When there is no system operator, the crews will need to coordinate their activities to ensure that the lines or equipment are not reenergized while an employee is still working on them. Proposed paragraph (b)(3)(ii) would require such coordination when there is no system operator.

Proposed paragraph (b)(3)(ii) has been taken from § 1910.269(m)(3)(viii). Existing Subpart V contains a comparable requirement in § 1926.950(d)(1)(vi). However, the existing requirement would simply require a tag for each independent crew. As noted earlier, the proposal would not require separate tags for each crew. However, each crew would hold a separate clearance that could not be released without authorization from the employee in charge of the clearance. Additionally, the proposal would require that each crew independently perform all the steps outlined in proposed paragraph (c) and that the crews coordinate deenergizing and reenergizing the lines or equipment if no system operator is in charge. The existing standard contains no such requirement. OSHA believes that the proposed approach better protects employees than the existing standard.

Disconnecting means that are accessible to people not under the employer's control would have to be rendered inoperable. For example, a switch handle mounted at the bottom of a utility pole that is not on the employer's premises must be locked in the open position while the overhead line is deenergized. This requirement, which is contained in paragraph (b)(4) would prevent a member of the general public or an employee (of a contractor, for example) who is not under the employer's control from closing the switch and energizing the line. This requirement, which has no counterpart in existing Subpart V, has been taken from § 1910.269(m)(2)(iv).

Paragraph (c) of proposed § 1926.961 sets forth the exact procedure for deenergizing transmission and distribution lines and equipment. The procedure must be followed in the order presented in the rule. Except as noted, the rules are consistent with existing § 1926.950(d)(1), although the language has been taken from § 1910.269(m)(3). The Agency has attempted to propose simplified language and has written the requirements in performance-oriented terms whenever possible.

Paragraph (c)(1) would require an employee to request the system operator to deenergize a particular section of line or equipment. So that control is vested in one authority, a single designated employee would be assigned this task. This designated employee thus becomes the employee in charge of and responsible for the clearance for work. This provision, which has no counterpart in existing Subpart V, has been taken from § 1910.269(m)(3)(i). The designated employee who requests the clearance need not be in charge of other aspects of the work; the proposal intends for this designated employee to be in charge of the clearance. He or she is responsible for requesting the clearance, for informing the system operator of changes in the clearance (such as transfer of responsibility), and for insuring that it is safe for the circuit to be reenergized before the clearance is released. If someone other than an employee at the worksite requests the clearance and if that clearance is in place before the employee arrives at the site, then clearance must be transferred under § 1926.961(c)(8). The Agency believes that the person requesting the clearance, once the lines are indeed deenergized, must be the one to contact in case alterations in the clearance are necessary. The employees who will be performing the actual work at some time in the future would not necessarily be aware that a clearance has been requested and would not be in position to answer questions about the clearance.

The second step (proposed § 1926.961(c)(2)) is to open all switches through which electrical energy could flow to the section of line or equipment. The disconnecting means would then be made inoperable if the design of the device permits. For example, the

[51] Unless the employer has only one crew, a tracking mechanism may be necessary so that the employer can determine what crew is protected by a tag.

removable handle of a switch could be detached. Also, the switches would have to be tagged to indicate that employees are at work. This paragraph would ensure that the lines are disconnected from their sources of supply and protects against the accidental reclosing of the switches. This rule is intended to require the disconnection of known sources of electric energy only. Hazards related to the presence of unexpected energy sources would be controlled by testing for voltage and by grounding the circuit, as proposed under paragraphs (c)(5) and (c)(6), respectively.

Proposed paragraph (c)(2) has been taken from § 1910.269(m)(3)(ii). Existing Subpart V contains comparable requirements in § 1926.950(d)(1)(i), (d)(1)(ii)(*a*), and (d)(1)(ii)(*b*). The existing provisions require: (1) the line or equipment to be identified and isolated from sources of energy (paragraph (d)(1)(i)), and (2) notification and assurance of the designated employee that all disconnecting means have been opened and tagged (paragraphs (d)(1)(ii)(*a*) and (d)(1)(ii)(*b*)). OSHA believes that the proposed language more accurately reflects the actual steps taken to deenergize lines and equipment.

Proposed § 1926.961(c)(3) would require the tagging of automatically and remotely controlled switches. An automatically or remotely controlled switch would also have to be rendered inoperable if the design of the switch allows for it to be made inoperable. This provision which has been taken from § 1910.269(m)(3)(iii), would also protect employees from being injured as a result of the automatic operation of such switches. Existing Subpart V contains an equivalent requirement in §§ 1926.950(d)(1)(ii)(*b*) and (d)(1)(ii)(*c*).

Paragraph (c)(4) of proposed § 1926.961 would require tags to prohibit operation of the switches to which they are attached. They would also be required to state that employees are at work. This requirement has been taken from § 1910.269(m)(3)(iv). Existing § 1926.950(d)(1)(ii)(*b*) contains a requirement for tags to indicate that employees are working; however, it does not require the tags to prohibit operation of the disconnecting means. The Agency believes that it is essential for the tags to contain this prohibition so that the meaning of the tag is clear.

After the previous four requirements have been met and after the employee in charge of the work has been given a clearance by the system operator, proposed paragraph (c)(5) would require the lines or equipment to be tested. This test would ensure that the lines have in fact been deenergized and is intended to prevent accidents resulting from someone's opening the wrong disconnect. It also protects employees from hazards associated with unknown sources of electric energy. This paragraph is based on § 1910.269(m)(3)(v). Existing § 1926.950(d)(1)(iii) requires a test or a visual inspection to be performed to ensure that the lines or equipment are deenergized. Visual inspection alone cannot determine whether a line or equipment is deenergized. Voltage backfeed, induced current, and leakage current can all energize electric lines and equipment without the employee being able to ''see'' it. Additionally, the § 1910.269 rulemaking showed the lack of testing to be a cause of accidents (269-Ex. 9–2, 12–12). Therefore, the proposal would require an actual test to determine whether the lines or equipment was energized. OSHA has not specified the type of test but expects employers to use testing procedures that will reliably indicate whether or not the part in question is energized. For example, using a voltage detector on the part would be one way to do this. OSHA requests comments on when and if other methods, such as fuzzing a line,[52] are acceptable testing methods.

Proposed paragraph (c)(6) would require the installation of any protective grounds required by § 1926.962 at this point in the sequence of events. Since the lines or equipment have been deenergized and tested in accordance with the previous provisions, it would now be safe to install a protective ground. This requirement is based on § 1910.269(m)(3)(vi). An equivalent requirement is contained in existing § 1926.950(d)(1)(iv).

After the six previous rules have been followed, paragraph (c)(7) would permit the lines or equipment to be treated as deenergized. This provision, which has no counterpart in existing Subpart V, is based on § 1910.269(m)(3)(vii).

In some cases, as when an employee in charge has to leave the job because of illness, it may be necessary to transfer a clearance. Under such conditions, proposed paragraph (c)(8) would require that the employee in charge inform the system operator and that the employees in the crew be informed of the transfer. If the employee holding the clearance is forced to leave the worksite due to illness or other emergency, the employee's supervisor could inform the system operator of the transfer in clearance. This requirement, which is based on § 1910.269(m)(3)(ix), has no counterpart in existing Subpart V.

After the clearance is transferred, the new employee in charge would then be responsible for the clearance. It is important that only one employee at a time be responsible for any clearance; otherwise, independent action by any worker could endanger the entire crew.

Once work is completed, the clearance will have to be released so that the lines or equipment can be reenergized. Paragraph (c)(9) of proposed § 1926.961 covers this procedure. To ensure that it is safe to release the clearance, the employee in charge would have to: (1) Notify workers in the crew of the release, (2) determine that they are clear of the lines and equipment, (3) determine that grounds have been removed, and (4) notify the system operator that the clearance is to be released. This provision is based on § 1910.269(m)(3)(x). An equivalent requirement is contained in existing § 1926.950(d)(1)(viii).

Proposed paragraph (c)(10) would require the person who is releasing the clearance to be the one who requested it, unless responsibility has been transferred. This provision would ensure that no clearance is released without the authorization of the employee who is in charge of the clearance. This proposed paragraph, which has no counterpart in existing Subpart V, is based on § 1910.269(m)(3)(xi).

Proposed paragraph (c)(11) would prohibit the removal of a tag unless its associated clearance has been released. Because the persons who place and remove the tags may not be the same, it is important for the regulation to prohibit removing a tag without the release of the clearance by the employee who is responsible for it. This provision, which has no counterpart in existing Subpart V, is based on § 1910.269(m)(3)(xii).

According to proposed paragraph (c)(12), action would be permitted to be taken to reenergize the lines or equipment only after grounds and tags have been removed, after all clearances have been released, and after all employees are in the clear. This protects employees from the possibility that the line or equipment could be reenergized while employees are still at work. The Agency does not intend for this provision to require the removal of all tags from all disconnecting means before any of them could be reclosed. It

[52] Fuzzing, or buzzing, a line involves using a live-line tool to hold a wrench or similar tool near a line and listening for the buzzing sound given off as the tool approaches a circuit part energized at a high voltage. This method has obvious disadvantages when ambient noise levels are excessive, and it is only reliable above certain voltage levels.

is intended to require that all tags for any particular switch be removed before that switch is closed. It is very important in a tagging system that no energy isolating device be returned to a position allowing energy flow if there are any tags on it that are protecting employees. For example, in the case of a 5-mile section of line that is deenergized by opening switches at both ends of the line, after all the tags are removed from any one switch that one switch could then be closed.

Proposed paragraph (c)(12), which has no counterpart in Subpart V, has been taken from § 1910.269(m)(3)(xiii).

Section 1926.962, Grounding for the Protection of Employees

Sometimes, normally energized lines and equipment that have been deenergized to permit employees to work become accidentally energized. This can happen in several ways, for example, by contact with another energized circuit, by voltage backfeed from a customer's cogeneration installation, by lightning contact, or by failure of the clearance system outlined in § 1926.961.

Transmission and distribution lines and equipment are normally installed outdoors where they are exposed to damage from the weather and from actions taken by members of the general public. Many utility poles are installed alongside roadways where they may be struck by motor vehicles. Distribution lines have been damaged by falling trees, and transmission line insulators have been used for target practice. Additionally, customers fed by a utility company's distribution line may have cogeneration or backup generation capability, sometimes without the utility company's knowledge. All these factors can reenergize a deenergized transmission or distribution line or equipment. Energized lines can be knocked down onto deenergized lines. A backup generator or a cogenerator can cause voltage backfeed on the deenergized power line. Lastly, lightning, even miles from the worksite, can reenergize a line. All of these problems pose hazards to employees working on deenergized transmission and distribution lines and equipment. In fact, these problems were a factor in 14 of the accidents in 269–Exhibit 9–2.

Grounding the lines and equipment is used to protect employees from injury should such reenergizing occur. Grounding also provides protection against induced voltages and static charges on a line. (These induced and static voltages can be high enough to endanger employees, either directly from electric shock or indirectly from involuntary reaction.)

Grounding, as a temporary protective measure, involves connecting the deenergized lines and equipment to earth through conductors. As long as the conductors remain deenergized, this maintains the lines and equipment at the same potential as the earth. However, if voltage is impressed on a line, the voltage on the grounded line rises to a value dependent upon the impressed voltage, the impedance between its source and the grounding point, and the impedance of the grounding conductor.

Various techniques are used to limit the voltage to which an employee working on a grounded line would be exposed. Bonding is one of these techniques. Conductive objects within the reach of the employee are bonded together to create an equipotential work area for the employee. Within this area of equal potentials, voltage differences are limited to a safe value.

The requirements proposed in § 1926.962 have been taken directly from § 1910.269(n). Existing § 1926.954 contains current provisions related to grounding for the protection of employees. OSHA has reviewed existing § 1926.954 and has found that it is not as protective as § 1910.269(n) and contains redundant and unnecessary requirements. For example, as noted under the summary and explanation of proposed § 1926.960(b)(2), existing § 1926.950(b)(2) requires electric lines and equipment to be considered as energized until determined to be deenergized by tests or other appropriate methods or means. Existing § 1926.954(a) similarly requires all conductors and equipment to be treated as energized until tested or otherwise determined to be deenergized or until grounded. These two provisions do not adequately protect employees from accidentally reenergized lines and equipment. As noted in the earlier discussion, electric power transmission and distribution lines and equipment can become reenergized even after they have been deenergized. Therefore, OSHA concluded in the § 1910.269 rulemaking that grounding deenergized lines and equipment is essential except under limited circumstances. The Agency is proposing to continue that approach here. In developing proposed § 1926.962, OSHA eliminated redundant requirements from existing § 1926.954, consolidated related requirements from the existing standard, and strengthened the current requirements to protect employees better.[53]

Proposed § 1926.962 addresses protective grounding and bonding.[54] As noted in paragraph (a), entire § 1926.962 applies to the grounding of deenergized transmission and distribution lines and equipment for the purpose of protecting employees. Additionally, paragraph (a) indicates that paragraph (d) of proposed § 1926.962 would apply to the protective grounding of other equipment, such as aerial lift trucks, as well. Under normal conditions, such equipment would not be connected to a source of electric energy. However, to protect employees in case of accidental contact of the equipment with live parts, protective grounding is required elsewhere in the standard (in § 1926.964(c)(11), for example); to ensure the adequacy of this grounding, the provisions of paragraph (d) must be followed.

The general requirement contained in paragraph (b) of proposed § 1926.962 states the conditions under which lines and equipment must be grounded. Basically, in order for lines or equipment to be treated as deenergized, they must be deenergized under

[53] As previously noted, existing § 1926.954(a) requires conductors and equipment to be considered as energized until determined to be deenergized or until grounded. Paragraph (c) of existing § 1926.954 requires bare communications conductors on poles or structures to be treated as energized unless they are protected by insulating materials. The hazard addressed by these requirements is covered by proposed § 1926.960(b)(2), discussed earlier in this preamble.

When equipment is being installed, it poses the same hazard to an employee that any other conductive object being manipulated near exposed energized parts does. Requirements contained in proposed § 1926.960(c) and (d) adequately address this hazard. The installation of lines however does pose additional hazards. First, the lines may be subject to hazardous induced voltage. Second, because of their length, new overhead lines are much more likely to contact existing energized lines than new equipment is. This can happen, for example, through failure of the stringing and tensioning equipment being used to install the new lines or through failure of the existing lines or support structures. These hazards are addressed in proposed § 1926.964(b), which specifically covers the installation and removal of overhead lines. Lastly, new underground lines, which are run as insulated cable, do not pose electrical hazards.

For these reasons, OSHA is not proposing to carry existing § 1926.954(b) forward. However, comments are requested on whether or not the proposal adequately protects employees from hazards associated with the installation of new lines and equipment.

[54] As used throughout the rest of this discussion and within proposed § 1926.962, the term ''grounding'' includes bonding. Technically, grounding refers to the connection of a conductive part to ground, whereas bonding refers to connecting conductive parts to each other. However, for convenience, OSHA is using the term ''grounding'' to refer to both techniques of minimizing voltages to which an employee will be exposed.

proposed § 1926.961 and grounded. Grounding could be omitted only if the installation of a ground is impracticable (such as during the initial stages of work on underground cables, when the conductor is not exposed for grounding) or if the conditions resulting from the installation of a ground would introduce more serious hazards than work without grounds. It is expected that conditions warranting the absence of protective grounds would be rare.

If grounds are not installed and the lines and equipment are to be treated as deenergized, however, precautions have to be observed, and certain conditions must be met. Obviously, the lines and equipment would still have to be deenergized by the procedures of § 1926.961. Also, there would have to be no possibility of contact with another source of voltage and no hazard of induced voltage present. Since these precautions and conditions do not protect against the possible reenergizing of the lines or equipment under all conditions, the omission of grounding is permitted only in very limited circumstances.

Paragraph (f) of existing § 1926.954 allows grounds to be omitted without the additional restrictions proposed in § 1926.962(b)(1) through (b)(3). However, the existing standard requires the lines or equipment to be treated as energized in such cases. While the proposal does not specifically permit omitting grounds for conductors that are treated as energized, it does not require grounding unless the equipment is to be considered as deenergized. (See the discussion of proposed § 1926.960(b)(2), earlier in this section of the preamble.)

Paragraph (f) of existing § 1926.954 also addresses where grounds must be placed. The existing standard requires grounds to be placed between the work location and all sources of energy and as close as practicable to the work location. Alternatively, grounds could be placed at the work location. If work is to be performed at more than one location, the existing standard would require the line section to be grounded and short circuited at one location and would require the conductor on which work is being performed to be grounded at the work location. Although these requirements are intended to protect employees in case the line on which they are working is accidentally reenergized, the existing provisions do not ensure that the grounding practices and equipment are adequate to provide this protection.

OSHA proposed requirements similar to those in existing § 1926.954(f) when it proposed § 1910.269(n). In developing final § 1910.269(n), OSHA reviewed the accidents in 269–Ex. 9–2 and 269–Ex. 9–2A for those involving improper protective grounding. There were nine accidents in these two exhibits related to protective grounding. In three cases, inadequate grounds were present. Based on the fact that grounding is a backup measure, intended to provide protection only when all other safety-related work practices fail, OSHA concluded that this was a significant incidence of faulty grounding.

Grounding practices that do not provide an equipotential zone in which an employee is safeguarded from voltage differences do not provide complete protection. In case the line is accidentally reenergized, voltages to which an employee would be exposed due to inadequate grounding would be lethal, as can be seen by some of the exhibits in the § 1910.269 rulemaking record (269–Ex. 6–27, 57). The employee would be protected only if he or she is not in contact with the line until the energy source is cleared by circuit protective devices.

For these reasons, OSHA is proposing to require grounds that will protect employees in the event that the line or equipment on which they are working is reenergized. Proposed § 1926.962(c) would require protective grounds to be so located and arranged that employees are not exposed to hazardous differences in potential. The proposal would allow employers and employees to use whatever grounding method they prefer as long as employees are protected. For employees working at elevated positions on poles and towers, single point grounding may be necessary, together with grounding straps to provide an equipotential zone for the worker. Employees in insulated aerial lifts working at midspan between two conductor supporting structures may be protected by grounding at convenient points on both sides of the work area. Bonding the aerial lift to the grounded conductor would ensure that the employee remains at the potential of the conductor in case of a fault. Other methods may be necessary to protect workers on the ground, including grounding mats and insulating platforms. The Agency believes that this performance-oriented approach would provide the flexibility needed by employers, but would also afford the best protection to employees.

Paragraph (d) of proposed § 1926.962 contains requirements that grounding equipment would have to meet. So that the protective grounding equipment does not fail, it would be required to have an ampacity high enough so that the fault current could be carried for the amount of time necessary to allow protective devices to interrupt the circuit. This provision, which has been taken from the first sentence of § 1910.269(n)(4)(i), is contained in paragraph (d)(1)(i) of proposed § 1926.962.

The design of electric power distribution lines operating at 600 volts or less frequently provides a maximum fault current and fault interrupting time that exceeds the current carrying capability of the circuit conductors. In other words, the maximum fault current on distribution secondaries of 600 volts or less is typically high enough to melt the phase conductors carrying the fault current. If protective grounding equipment were required to carry the maximum amount of fault current without regard to whether the phase conductors would fail, the size of the grounding equipment would be impractical. However, OSHA does not interpret § 1910.269(n)(4)(i) to require protective grounding equipment to be capable of carrying more current than necessary to allow the phase conductors to fail. A protective grounding jumper sized slightly larger than a phase conductor would be sufficient to meet the general industry standard, although the language of the first sentence of § 1910.269(n)(4)(i) does not make this clear.

To clarify this requirement, OSHA is proposing, in § 1926.962(d)(1)(ii), to permit, specifically, the use of protective grounding equipment that would not be large enough to carry the maximum fault current indefinitely but that would be large enough to carry this current until the phase conductor fails.[55] This would be permitted only under certain conditions. First, the grounding equipment must be able to carry the maximum fault current until the conductor being protected fails. Second, the conductor must only be considered as grounded where it is protected by the grounding equipment. In other words, the portion of the phase conductor between the grounding equipment and the employee being protected must remain intact under fault conditions. Third, since the phase conductor will likely fall once it fails, no employee must be in a position where they would be endangered by any failed conductor. OSHA has not restricted this provision to lines and equipment operating at 600 volts or less because the Agency believes that employees would be protected with these provisions regardless of voltage. However, OSHA requests comments on the issue of whether or not proposed

[55] OSHA is also proposing to make a similar change in § 1910.269.

§ 1926.962(d)(1)(ii) should be restricted to lines and equipment operating at 600 volts or less.

Paragraph (d)(1)(iii) of § 1926.962 would require protective grounding equipment to have an ampacity of at least No. 2 AWG copper. This provision would ensure that protective grounding equipment has a suitable minimum ampacity and mechanical strength.

Under paragraph (d)(2), the impedance of the grounding equipment would be required to be low enough to ensure the quick operation of the protective devices.

Paragraphs (d)(1) and (d)(2) help ensure the prompt clearing of the circuit supplying voltage to the point where the employee is working. Thus, the grounding equipment limits the duration and reduces the severity of any electric shock, though it does not itself prevent shock from occurring. (As discussed earlier, proposed § 1926.962(c) requires employees to be protected from hazardous differences in electrical potential.) OSHA has included a note referencing the ASTM standard on protective grounding equipment (ASTM F855–03) so that employers will be able to find additional information that may be helpful in their efforts to comply with the standard.

Existing § 1926.954(h), (i), and (j) contain requirements relating to the impedance and ampacity of personal protective grounds. Paragraph (i) requires tower clamps to have adequate ampacity, and paragraph (j) contains the same requirement for ground leads with an additional restriction that they be no smaller than No. 2 AWG copper. Paragraph (i) requires the impedance of a grounding electrode (if one is used) to be low enough to remove the danger of harm to employees or to permit prompt operation of protective devices.

OSHA believes that the entire grounding system should be capable of carrying the maximum fault current and should have an impedance low enough to protect employees. The existing standard contains no requirements for the impedance of grounding conductors or clamps, nor does it contain requirements relating to the ampacity of grounding clamps other than tower clamps. By addressing specific portions of the grounding systems but not addressing others, the existing standard does not require complete protection for employees. Because the proposal's grounding requirements apply to the entire grounding system, OSHA believes that the proposal will provide better protection for employees than the existing rule.

Paragraph (e) of § 1926.962 would require lines and equipment that are to be grounded to be tested for voltage before a ground is installed. If a previously installed ground is evident, no test would need to be conducted. This requirement would prevent energized equipment from being grounded, which could result in injury to the employee installing the ground. This requirement is the same as existing § 1926.954(d).

Paragraphs (f)(1) and (f)(2) propose procedures for installing and removing grounds. To protect employees in the event that the ''deenergized'' equipment to be grounded is or becomes energized, the proposal would require the ''equipment end'' of the grounding device to be applied last and removed first and that a live-line tool be used for both procedures in order to protect workers.

These provisions are similar to existing § 1926.954(e)(1) and (e)(2), except that the existing standard recognizes the use of a ''suitable device'' in addition to a live-line tool. OSHA is concerned that this language implies that rubber insulating gloves could be used to install and remove grounds under any circumstance. It should be noted that it is unsafe for an employee to be too close when connecting or disconnecting a ground. Therefore, OSHA is proposing to eliminate the phrase ''or other insulated device'' from the rule. OSHA will, however, consider any device that is insulated for the voltage and that allows an employee to apply or remove the ground from a safe position to be a live-line tool for the purposes of § 1926.962(f)(1) and (f)(2).

These two paragraphs in the proposal are based on existing § 1910.269(n)(6) and (n)(7). The proposal, however, would permit the use of insulated equipment other than live-line tools to attach protective grounds to, and to remove them from, lines and equipment operating at 600 volts or less, if the employer ensures that the line or equipment is not energized at the time or if the employer can demonstrate that the employee would be protected from any hazard that could develop if the line or equipment is energized. For example, test equipment could be connected to a line that is to be grounded, and the protective ground could be applied by an employee wearing rubber gloves while the test equipment indicated that the line was deenergized. After the ground was in place the test equipment could be removed.

Some electric utilities have complained that lines and equipment operating at 600 volts or less cannot always accommodate the placement and removal of a protective ground by a line-line tool. OSHA is proposing these alternatives to enable protective grounds to be placed on this equipment in a manner that will still protect employees.[56]

It should be noted that, during the periods before the ground is installed and after it is removed, the line or equipment involved must be considered as energized (under proposed § 1926.960(b)(2)). As a result, the minimum approach distances specified in proposed § 1926.960(c)(1) would apply when grounds are installed or removed.

With certain underground cable installations, a fault at one location along the cable can create a substantial potential difference between the earth at that location and the earth at other locations. Under normal conditions, this is not a hazard. However, if an employee is in contact with a remote ground (by being in contact with a conductor that is grounded at a remote station), he or she can be exposed to the difference in potential (because he or she is also in contact with the local ground). To protect employees in such situations, proposed § 1926.962(g) would prohibit grounding cables at remote locations if a hazardous potential transfer could occur under fault conditions. This proposed provision has no counterpart in existing Subpart V.

Proposed § 1926.962(h) addresses the removal of grounds for test purposes. Under the proposal, grounds would be permitted to be removed for test purposes. Existing Subpart V contains a comparable requirement in § 1926.954(g). However, the existing standard simply requires employees to take extreme caution when grounds are removed for testing. OSHA does not believe that the existing language contains sufficient safeguards for employees. Therefore, the Agency is proposing performance criteria that testing procedures would be required to meet. During the test procedure, the employer would be required to ensure that each employee uses insulating equipment and is isolated from any hazards involved, and the employer would be required to institute any additional measures as may be necessary to protect each exposed employee in case the previously grounded lines and equipment become energized. OSHA believes that the proposal would protect employees better than the existing rule.

[56] OSHA is also proposing to make similar changes in § 1910.269.

Section 1926.963, Testing and Test Facilities

Proposed § 1926.963 contains safety work practices covering electrical hazards arising out of the special testing of lines and equipment (namely, in-service and out-of-service, as well as new, lines and equipment) to determine maintenance needs and fitness for service. Generally, the need to conduct tests on new and idle lines and equipment as part of normal checkout procedures, in addition to maintenance evaluation, is specified in the National Electrical Safety Code (ANSI C2). Basically, as stated in paragraph (a), the rules would apply only to testing involving interim measurements utilizing high voltage, high power, or combinations of both, as opposed to testing involving continuous measurements as in routine metering, relaying and normal line work.

Proposed § 1926.963 has been taken directly from § 1910.269(o). Existing Subpart V has no counterpart to these proposed requirements. The Agency believes that these high-voltage and high-current tests are performed during construction work and that employers would benefit by the inclusion of these provisions within the construction standard in place of a reference to § 1910.269. However, it may be that this type of work is performed too infrequently to warrant repeating the requirements in Subpart V. OSHA requests comments on the need to include proposed § 1926.963 in Subpart V.

For the purposes of these proposed requirements, high-voltage testing is assumed to involve voltage sources having sufficient energy to cause injury and having magnitudes generally in excess of 1,000 volts, nominal. High-power testing involves sources where fault currents, load currents, magnetizing currents, or line dropping currents are used for testing, either at the rated voltage of the equipment under test or at lower voltages. Proposed § 1926.963 covers such testing in laboratories, in shops and substations, and in the field and on transmission and distribution lines.

Examples of typical special tests in which either high-voltage sources or high-power sources are used as part of operation and maintenance of electric power transmission and distribution systems include cable-fault locating, large capacitive load tests, high current fault-closure tests, insulation resistance and leakage tests, direct-current proof tests, and other tests requiring direct connection to power lines.

Excluded from the scope of proposed § 1926.963 are routine inspection and maintenance measurements made by qualified employees in accordance with established work practice rules where the hazards associated with the use of intrinsic high-voltage or high-power sources require only those normal precautions peculiar to such periodic work. Obviously, the work practices for these routine tests would have to comply with the rest of proposed Subpart V. Because this type of testing poses hazards that are identical to other types of routine electric power transmission and distribution work, OSHA believes that the requirements of proposed Subpart V excluding § 1926.963 adequately protect employees performing these tests. Two typical examples of such excluded test work procedures would be ''phasing-out'' testing and testing for a ''no voltage'' condition. To clarify the scope of this section, a note to this effect is included after paragraph (a).

Paragraph (b)(1) of proposed § 1926.963 would require employers to establish work practices governing employees engaged in certain testing activities. These work practices are intended to delineate precautions that employees must observe for protection from the hazards of high-voltage or high-power testing. For example, if high-voltage sources are used in the testing, employees would be required to follow the safety practices established under paragraph (b)(1) to protect against such typical hazards as inadvertent arcing or voltage overstress destruction, as well as accidental contact with objects that have become residually charged by induced voltage from electric field exposure. If high-power sources are used in the testing, employees would be required to follow established safety practices to protect against such typical hazards as ground voltage rise as well as exposure to excessive electromagnetically-caused physical forces associated with the passage of heavy current.

These practices would apply to work performed at both permanent and temporary test areas (that is, areas permanently located in the controlled environment of a laboratory or shop and in areas temporarily located in a non-controlled field environment). At a minimum, the safety work practices include:

(1) Guarding the test area to prevent inadvertent contact with energized parts,

(2) Safe grounding practices to be observed,

(3) Precautions to be taken in the use of control and measuring circuits, and

(4) Periodic checks of field test areas.

Paragraph (b)(2) complements the general rule on the use of safe work practices in test areas with a proposed requirement that all employees involved in this type of work be trained in these safety test practices. This paragraph, which makes explicit the types of training required by the general training provisions in proposed § 1926.950(b), would further require a periodic review of these practices to be conducted from time to time as a means of providing reemphasis and updating.

Although specific work practices used in test areas are generally unique to the particular test being conducted, three basic elements affecting safety are commonly found to some degree at all test sites: guarding, grounding, and the safe utilization of control and measuring circuits. By considering safe work practices in these three categories, OSHA has attempted to achieve a performance-oriented standard applicable to high-voltage and high-power testing and test facilities.

OSHA believes that guarding can best be achieved when it is provided both around and within test areas. By controlling access to all parts that are likely to become energized by either direct or inductive coupling, the standard will prevent accidental contact by employees. Within test areas, whether temporary or permanent, a degree of safety can be achieved by observing guarding practices that control access to test areas. Paragraph (c)(1) would therefore require that such guarding be provided if the test equipment or apparatus under test may become energized as part of the testing by either direct or inductive coupling. A combination of guards and barriers is intended to provide protection to all employees in the vicinity.

Paragraph (c)(2) would require permanent test areas to be guarded by having them completely enclosed by walls or some other type of physical barrier. In the case of field testing, paragraph (c)(3) attempts to achieve a level of safety for temporary test sites comparable to that achieved in laboratory test areas. For these areas, a barricade of tapes and cones or observation by an attendant would be acceptable methods of guarding. Proposed paragraph (c)(3) would accept any barrier or barricade that provides a means of limiting access to the test area physically and visually equivalent to safety tape with signs or would accept guarding by means of a test observer stationed where the entire test area could be monitored.

Since the effectiveness of the temporary guarding means can be

severely compromised by failing to remove it when it is not required, frequent safety checks must be made to monitor its use. For example, leaving barriers in place for a week at a time when testing is performed only an hour or two per day is likely to result in disregard for the barriers. For this reason, paragraph (c)(4) would require the temporary barriers to be removed when they are no longer needed.

Suitable grounding is another important work practice that can be employed for the protection of personnel from the hazards of high-voltage or high-power testing. If high currents are intentionally employed in the testing, an isolated ground-return conductor, adequate for the service, is required so that no intentional passage of heavy current, with its attendant voltage rise, will occur in the ground grid or in the earth. Another safety consideration involving grounding is that all conductive parts accessible to the test operator during the time that the equipment is operating at high voltage be maintained at ground potential, except portions of the equipment that are isolated from the test operator by suitable guarding. Paragraph (d) proposes requirements for proper grounding at test sites.

Paragraph (d)(1) would require that grounding practices be established and implemented for test facilities to ensure that unguarded conductive parts accessible to the operator are grounded and that all ungrounded terminals of test equipment or apparatus under test are treated as energized until reliably determined otherwise. Paragraph (d)(2) would require visible grounds to be properly applied before work is performed on the circuit or item or apparatus under test.

Paragraph (d)(3) addresses hazards resulting from the use of inadequate ground-returns in which a voltage rise in the ground grid or in the earth can result whenever high currents are employed in the testing. Test personnel who may be exposed to such potentials would be required to be protected from the hazards involved. This paragraph would require the use of an isolated ground return so that no intentional passage of current, with its attendant voltage rise, could occur in the ground grid or in the earth. However, under some conditions (such as system fault testing), it may be necessary to perform the test under actual operating conditions, or it may otherwise be impractical to provide an isolated ground return. In such cases, it would not be reasonable to require an isolated ground-return conductor system. Therefore, paragraph (d)(3) would provide an exception to the requirement for such an isolated ground return. The exception would apply if the isolated ground-return cannot be provided because of the distance involved and if employees are protected from hazardous step and touch potentials that may develop. Consideration must always be given to the possibility of voltage gradients developing in the earth during impulse, short-circuit, inrush, or oscillatory conditions. Such voltages may appear between the feet of an observer, or between his or her body and a grounded object, and are usually referred to as ''step'' and ''touch'' potentials. Examples of acceptable protection from step and touch potentials include suitable electrical protective equipment and the removal of employees from areas that may expose them to hazardous potentials.

Another grounding situation is recognized by paragraph (d)(4) in which grounding through the power cord of test equipment may be inadequate and actually increase the hazard to test operators. Normally, an equipment grounding conductor is required in the power cord of test equipment to connect it to a grounding connection in the power receptacle. However, in some circumstances, this practice can prevent satisfactory measurements, or current induced in the grounding conductor can cause a hazard to personnel. If these conditions exist, the use of the equipment grounding conductor within the cord would not be mandatory, and paragraph (d)(4) would require that an equivalent safety ground be provided.

Paragraph (d)(5) would further require that a ground be placed on the high-voltage terminal and any other exposed terminals when the test area is entered after equipment is deenergized. In the case of high capacitance equipment or apparatus, before a direct ground can be applied, the initial grounding discharge would have to be accomplished through a resistor having an adequate energy rating.

Paragraph (d)(6) recognizes the hazards associated with field testing in which test trailers or test vehicles are used. In addition to proposing that the chassis of such vehicles be grounded, paragraph (d)(6) provides for a performance-oriented approach by proposing that protection be provided against hazardous touch potentials by bonding, by insulation, or by isolation. The protection provided by each of these methods is described in the following examples:

(1) Protection by bonding can be effected by providing, around the vehicle, an area covered by a metallic mat or mesh of substantial cross-section and low impedance which is bonded to the vehicle at several points and is also bonded to an adequate number of driven ground rods or, where available, to an adequate number of accessible points on the station ground grid. All bonding conductors must be of sufficient electrical size to keep the voltage developed during maximum anticipated current tests at a safe value. The mat must be of a size that precludes simultaneous contact with the vehicle and with the earth or with metallic structures not adequately bonded to the mat.

(2) Protection by insulation can be accomplished, for example, by providing around the vehicle an area of dry wooden planks covered with rubber insulating blankets. The physical extent of the insulated area must be sufficient to prevent simultaneous contact with the vehicle, or the ground lead of the vehicle, and with the earth or with metallic structures in the vicinity.

(3) Protection by isolation can be implemented by providing an effective means to exclude personnel from any area where simultaneous contact could be made with the vehicle (or conductive parts electrically connected to the vehicle) and with other conductive materials. A combination of barriers together with effective, interlocked gates may be employed to ensure that the system is deenergized when an employee is entering or leaving the test area.

Finally, a third category of safe work practices applicable to employees performing testing work, which complements the first two safety work practices of guarding and grounding, involves work practices associated with the installation of control and measurement circuits utilized at test facilities. Practices necessary for the protection of personnel and equipment from the hazards of high-voltage or high-power testing must be observed for every test where special signal-gathering equipment is used (that is, meters, oscilloscopes, and other special instruments). In addition, special settings of protective relays and the reexamination of backup schemes may be necessary to ensure an adequate level of safety during the tests or to minimize the effects of the testing on other parts of the system under test. As a consequence, paragraphs (e)(1) through (e)(3) address the principal safe work practices involving control and measuring circuit utilization within the test area.

Generally, control and measuring circuit wiring should remain within the test area. If this is not possible, however, paragraph (e)(1) proposes requirements

to minimize hazards should it become necessary to have the test wiring routed outside the test area. Cables and other wiring would have to be contained within a grounded metallic sheath and terminated in a grounded metal enclosure, or other precautions would have to be taken to provide equivalent safety, such as guarding the area so that employees do not have access to parts that might rise to hazardous potentials.

Paragraph (e)(2) covers the avoidance of possible hazards arising from inadvertent contact with energized accessible terminals or parts of meters and other test instruments. Meters with such terminals or parts would have to be isolated from test personnel.

Work practices involving the proper routing and connection of temporary wiring to protect against damage are covered in paragraph (e)(3). This paragraph would also require the various functional wiring used for the test set-up to be kept separate, to the maximum extent possible, in order to minimize the coupling of hazardous voltages into the control and measuring circuits.

A final safety work practice requirement related to control circuits is addressed by paragraph (e)(4). This paragraph would require the presence of a test observer who can, in cases of emergency, immediately deenergize all test circuits for safety purposes.

Since the environment in which field tests are conducted differs in important respects from that of laboratory tests, extra care must be taken to ensure appropriate levels of safety. Permanent fences and gates for isolating the field test area are not usually provided, nor is there a permanent conduit for the instrumentation and control wiring. As a further hazard, there may be other sources of high-voltage electric energy in the vicinity in addition to the source of test voltage.

It is not always possible in the field to prevent ingress of persons into a test area physically, as is accomplished by the fences and interlocked gates of the laboratory environment. Consequently, readily recognizable means are required to discourage such ingress; and, before test potential or current is applied to a test area, the test operator in charge must ensure that all necessary barriers are in place.

As a consequence of these safety considerations, paragraph (f)(1) would call for a safety check to be made at temporary or field test areas at the beginning of each group of continuous tests (that is, a series of tests conducted one immediately after another). Paragraph (f)(2) would require that, as a minimum for the safety check, the person responsible for the testing verify, before the initiation of a continuous period of testing, the status of a general group of safety conditions. These conditions include the state of guards and status signals, the marking and availability of disconnects, the provision of ground connections and personal protective equipment, and the separation of circuits.

Section 1926.964, Overhead Lines

Proposed § 1926.964 would apply to work involving overhead lines or equipment. The types of work performed on overhead lines and addressed by this paragraph include the installation and removal of overhead lines, live-line bare-hand work, and work on towers and structures. While performing this type of work, employees are typically exposed to the hazards of falls and electric shock.

Section 1926.955 of existing Subpart V covers overhead lines. Several requirements in the existing standard are redundant, and OSHA believes that the existing section is poorly organized. For example, paragraphs (c) and (d) both apply to the installation of lines parallel to existing lines. Existing paragraph (c)(3) requires lines being installed where there is a danger of hazardous induced voltage to be grounded unless provisions are made to isolate or insulate employees. Paragraph (d)(1) of existing § 1926.955 contains a similar requirement, and the rest of paragraph (d) specifies exactly how the grounding is to be installed.

Paragraph (q) of § 1910.269 also addresses work on overhead lines. OSHA believes that the newer standard is much better organized, contains no redundancies, and better protects employees than the older construction standard. Therefore, the Agency has used § 1910.269(q), rather than § 1926.955, as the base document in developing proposed § 1926.964. OSHA has, however, taken requirements that pertain specifically to construction work from existing § 1926.955 and incorporated them into the proposal. Paragraph (q) of § 1910.269 does not contain these requirements, because it does not apply to construction. For example, existing § 1926.955(b) applies to metal tower construction, and no comparable provisions are contained in § 1910.269. OSHA is therefore proposing requirements from § 1926.955(b).

Paragraph (a)(2) of proposed § 1926.964 would require the employer to determine that elevated structures such as poles and towers are of adequate strength to withstand the stresses that will be imposed by the work to be performed. For example, if the work involves removing and reinstalling an existing line on a utility pole, the pole will be subjected to the weight of the employee (a vertical force) and to the release and replacement of the force imposed by the overhead line (a vertical and possibly a horizontal force). The additional stress involved may cause the pole to break, particularly if the pole has rotted at its base. If the pole or structure cannot withstand the loads to be imposed, it would have to be reinforced so that failure does not occur. This rule would protect employees from hazards posed by the failure of the pole or other elevated structure. This requirement, which is equivalent to existing § 1926.955(a)(2), (a)(3), and (a)(4), has been taken from § 1910.269(q)(1)(i).

As the last step in ascertaining whether a wood pole is safe to climb, as would be required under paragraph (a)(2), checking the actual condition of the pole is important because of the possibility of decay and other conditions adversely affecting the strength of the pole. Appendix D of final § 1910.269 contains methods of inspecting and testing the condition of wood structures before they are climbed. These methods, which can be used in ascertaining whether a wood pole is capable of sustaining the forces imposed by an employee climbing it, have been taken from Appendix D to § 1910.269. It should be noted that the employer would also be required to ascertain whether the pole is capable of sustaining any additional forces that will be imposed during the work.

OSHA realizes that the employee at the worksite will be the one to inspect the structure for deterioration and will also determine whether it is safe to climb. However, it is the employer's responsibility to ensure that this is accomplished, regardless of who performs the work. Additionally, some work might involve changing the loading on the structure. For example, replacement transformers might be heavier, and the equipment needed to perform the work will impose extra stress on the pole. The employee in the field is not necessarily skilled in structural engineering, and a determination as to whether or not the pole could withstand the stresses involved would almost always need to be performed by the employer's engineering staff. (Typically, this task is performed in the initial design of the system or when changes are made.) For this reason, OSHA believes it is necessary to specify in the standard the employer's responsibility in this regard. However, the Agency expects the determination of the condition of the

pole or structure to be made at the worksite by an employee who is capable of making this determination. The employer fulfills the obligation imposed by the standard by ensuring that the design of support structures is sound, by training his or her employees in proper inspection and evaluation techniques, and by enforcing company rules that adhere to the standard.

When poles are handled near overhead lines, it is necessary to protect the pole from contact with the lines. Paragraph (a)(3)(i) of proposed § 1926.964 would prohibit letting the pole come into direct contact with the overhead lines. Measures commonly used to prevent such contact include installation of insulating guards on the pole and pulling conductors away from the area where the pole will go. This provision, which is equivalent to existing § 1926.955(a)(5)(i), has been taken from § 1910.269(q)(1)(ii).

Paragraph (a)(3)(ii) of proposed § 1926.964 would require employees handling the poles to be insulated from the pole. This provision has been taken from § 1910.269(q)(1)(iii). The comparable provision in § 1926.955(a)(6)(i) prohibits employees from contacting mechanized equipment used to set, move, or remove poles, unless the employees are using electrical protective equipment. OSHA has proposed to cover hazards of using mechanical equipment near energized parts in § 1926.958, discussed earlier in this section of the preamble. The Agency believes that the proposal will eliminate the redundant and conflicting requirements contained in existing Subpart V. Similarly, existing § 1926.955(a)(5)(ii), (a)(6)(ii), and (a)(8) are not being carried forward into this proposal, because the hazards they address (those related to operation of mechanical equipment near energized parts) are already adequately covered under proposed § 1926.958.

Paragraphs (a)(3)(i) and (a)(3)(ii) would protect employees from hazards caused by falling power lines and by contact of the pole with the line. They would be in addition to the requirements in proposed § 1926.958(d) for operations involving mechanical equipment.

To protect employees from falling into holes into which poles are to be placed, paragraph (a)(3)(iii) would require the holes to be guarded by barriers or attended by employees. This provision, which is equivalent to existing § 1926.955(a)(7), has been taken from § 1910.269(q)(1)(iv).

Paragraph (b) of proposed § 1926.964 addresses the installation and removal of overhead lines. The provisions contained in this paragraph have been taken from § 1910.269(q)(2), which was based in large part on existing § 1926.955(c) (stringing and removing lines) and § 1926.955(d) (stringing adjacent to energized lines). However, the proposed rule, like § 1910.269(q)(2), combines these provisions into a single paragraph (b). OSHA believes that the proposed provisions, which combine and simplify the construction requirements for stringing overhead lines, will be easier for employers and employees to understand.

Proposed § 1926.964(b)(1) would require precautions to be taken to prevent the line being installed or removed from contacting existing energized power lines. Common methods of accomplishing this include the use of the following techniques: stringing conductors by means of the tension stringing method (which keeps the conductors off the ground and clear of energized circuits) and the use of rope nets and guards (which physically prevent one line from contacting another). These precautions, or equivalent measures, are necessary to protect employees against electric shock and against the effects of equipment damage resulting from accidental contact of the line being installed with energized parts.

Even though the precautions taken under paragraph (b)(1) minimize the possibility of accidental contact, there is still a significant risk that the line being installed or removed could contact energized lines. OSHA believes that the hazards posed during line installation or removal are equivalent to those posed during the operations of mechanical equipment near energized parts. Employees are exposed to hazardous differences in potential if the conductor being installed or equipment being used makes contact with an energized line. The methods of protection that can be applied are also the same in both cases. Therefore, the Agency believes that the approach used for the hazard of contact between mechanical equipment and overhead lines should also be used for the hazard of contact between a line being installed or removed and an existing energized conductor. To accomplish this, paragraph (b)(2) of proposed § 1926.964 simply adopts the requirements of § 1926.958(d)(3) by reference when conductors are installed or removed close enough to energized conductors that certain failures could energize the pulling or tensioning equipment in use or the cable being installed or removed. Basically, the employer would be required to institute measures to protect employees from hazardous differences in potential at the work location. (See the discussion of proposed § 1926.958(d)(3) and Appendix C to Subpart V for acceptable methods of compliance.)

Paragraph (b)(3) of proposed § 1926.964 would require the disabling of the automatic-reclosing feature of the devices protecting any circuit that operates at more than 600 volts and that passes under conductors being installed. If it is not made inoperative, this feature would cause the circuit protective devices to reenergize the circuit after they had tripped, exposing the employees to additional or more severe injury.

Paragraph (b)(1) of proposed § 1926.964 would require the use of techniques that minimize the possibility of contact between the existing and new conductors. Paragraph (b)(2) of proposed § 1926.964 would require the use of measures that protect employees from hazardous differences in potential. These two paragraphs provide the primary protection to employees installing conductors. Paragraph (b)(3) is a redundant form of protection; it provides an additional measure of safety in case the first two provisions are violated.[57] Therefore, this paragraph would apply only to circuit reclosing devices that are designed to permit the disabling of the automatic reclosing feature. The Agency believes that the combination of these three paragraphs in proposed § 1926.964 will provide effective protection against the electrical hazards associated with installing or removing lines near energized parts.

Paragraph (b)(4) proposes rules protecting workers from the hazard of voltage induced on lines being installed near (and usually parallel to) other energized lines. These rules, which provide supplemental provisions on grounding, would be in addition to those elsewhere in the standard. In general, when employees may be exposed to the hazard of induced voltage on overhead lines, the lines being installed must be grounded to minimize the voltage and to protect employees handling the lines from electric shock.

Paragraph (b)(4) of proposed § 1926.964 would require a determination of the ''approximate'' voltage, unless the line being installed is assumed to carry a hazardous induced voltage. Additionally, workers would be

[57] Disabling the reclosing feature of circuit protective devices does not provide any protection against the initial contact with the energized circuit involved. It only prevents the devices from reenergizing the circuit after they open it on a fault condition as would occur, for example, when a line being strung by employee drops onto an energized conductor.

able to treat the line as energized rather than comply with the additional grounding requirements contained in this paragraph.

The proposal does not provide specific guidance for determining whether or not a hazard exists due to induced voltage. The hazard depends not only on the voltage of the existing line, but also on the length of the line being installed and the distance between the existing line and the new one. Electric shock, whether caused by induced or other voltage, poses two different hazards. First, the electric shock could cause an involuntary reaction, which could cause a fall or other injury. Second, the electric shock itself could cause respiratory or cardiac arrest. If no precautions are taken to protect employees from hazards associated with involuntary reactions from electric shock, a hazard is presumed to exist if the induced voltage is sufficient to pass a current of 1 milliampere through a 500-ohm resistor. (The 500-ohm resistor represents the resistance of an employee. The 1 milliampere current is the threshold of perception.) If employees are protected from injury due to involuntary reactions from electric shock, a hazard is presumed to exist if the resultant current would be more than 6 milliamperes (the let-go threshold for women). It would be up to the employer to ensure that employees are protected against serious injury from any voltages induced on lines being installed and to determine whether the voltages are high enough to warrant the adoption of the additional provisions on grounding spelled out in paragraphs (b)(4)(i) through (b)(4)(v) of proposed § 1926.964. These rules propose the following requirements:

(1) Grounds must be installed in increments of no more than 2 miles (paragraph (b)(4)(i));

(2) Grounds must remain in place until the installation is completed between dead ends (paragraph (b)(4)(ii));

(3) Grounds must be removed as the last phase of aerial cleanup (paragraph (b)(4)(iii));

(4) Grounds must be installed at each work location and at all open dead-end or catch-off points or the next adjacent structure (paragraph (b)(4)(iv)) if employees are working on bare conductors; and

(5) Bare conductors being spliced must be bonded and grounded (paragraph (b)(4)(v)).

Paragraph (b)(5) would require reel handling equipment to be in safe operating condition and to be leveled and aligned. Proper alignment of the stringing machines will help prevent failure of the equipment, conductors, and supporting structures, which could result in injury to workers.

Prevention of the failure of the line pulling equipment and accessories is also the purpose of paragraphs (b)(6), (b)(7), and (b)(8). These provisions, respectively, would require the operation to be performed within the load limits of the equipment, would require the repair or replacement of defective apparatus, and would prohibit the use of conductor grips not specifically designed for use in pulling operations. Equipment that has been damaged beyond manufacturing specifications or that has been damaged to the extent that its load ratings would be reduced are considered to be defective. Load limits and design specifications are normally provided by the manufacturer, but they can also be found in engineering and materials handbooks (*see,* for example, *The Lineman's and Cableman's Handbook,* 269–Ex. 8–5).

When the tension stringing method is used, the pulling rig (which takes up the pulling rope and thereby pulls the conductors into place) is separated from the reel stands and tensioner (which pay out the conductors and apply tension to them) by one or more spans (the distance between the structures supporting the conductors). In an emergency, the pulling equipment operator may have to shut down the operation. Paragraph (b)(9) of proposed § 1926.964 would require communication to be maintained between the reel tender and the pulling rig operator, so that in case of emergency at the conductor supply end, the pulling rig operator can shut the equipment down before injury-causing damage occurs.

Paragraph (b)(10) would prohibit the operation of the pulling rig under unsafe conditions. OSHA has included an explanatory note following paragraph (b)(10) providing examples of unsafe conditions.

Paragraph (b)(11) would prohibit employees from unnecessarily working directly beneath overhead operations or on the cross arm. This provision would minimize exposure of employees to injury resulting from the failure of equipment, conductors, or supporting structures during pulling operations.

Under certain conditions, work must be performed on transmission and distribution lines while they remain energized. Sometimes, this work is accomplished using rubber insulating equipment or live-line tools. However, this equipment has voltage and other limitations which make it impossible to insulate the employee performing work on live lines under all conditions. In such cases, usually on medium- and high-voltage transmission lines, the work is performed using the live-line bare-hand technique. If work is to be performed ''bare handed,'' the employee works from an insulated aerial platform and is electrically bonded to the energized line. Since there is essentially no potential difference across the worker's body, he or she is protected from electric shock. Paragraph (c) of proposed § 1926.964 addresses the live-line bare-hand technique.

Proposed § 1926.964(c) has been taken directly from § 1910.269(q)(3). Existing § 1926.955(e) contains similar requirements for live-line bare hand work. Substantive differences between the proposal and the existing rule are outlined in the following summary and explanation of proposed § 1926.964(c). Because live-line bare-hand work is performed on overhead lines, OSHA has proposed to place requirements for this type of work in the section relating to work on overhead lines. This is consistent with existing Subpart V. However, it is technically possible to perform live-line bare-hand work on other types of installations as well (in substations, for example). OSHA requests comments on whether or not the live-line bare-hand requirements should be consolidated with the other regulations relating to work on energized lines contained in proposed § 1926.960.

Paragraph (c)(1) would require employees using or supervising the use of the live-line bare-hand method on energized lines to be trained in the use of the technique. Periodic retraining would have to be provided as required under paragraph (b) of proposed § 1926.950. Without this training, employees would not be able to perform the highly specialized work safely.

Before work can be started, the voltage of the lines on which work is to be performed must be known. This voltage determines the minimum approach distances and the types of equipment which can be used. If the voltage is higher than expected, the minimum approach distance will be too small and the equipment may not be safe for use. Therefore, paragraph (c)(2) of proposed § 1926.964 would require a determination to be made of the voltage of the circuit, of the minimum approach distances to ground of lines and other energized parts on which work is to be performed, and of the voltage limitations of equipment to be used.

Because an employee performing live-line bare-hand work is at the same potential as the line on which he or she is working, the employee has exposure

to two different voltages. First, the employee is exposed to the phase-to-ground voltage with respect to any grounded object, such as a pole or tower. Second, the employee is exposed to the full phase-to-phase voltage with respect to the other phases on the circuit. Thus, there are two sets of minimum approach distances applicable to live-line bare-hand work-one for the phase-to-ground exposure (the distance from the employee to a grounded object) and one for the phase-to-phase exposure (the distance from the employee to another phase). The phase-to-phase voltage is higher than the phase-to-ground voltage. Consequently, the phase-to-phase-based minimum approach distance is greater than the phase-to-ground-based minimum approach distance.

Paragraph (c)(3) would require insulated tools and equipment to be designed, tested, and intended for live-line bare-hand work and that they be kept clean and dry. This requirement is important to ensure that equipment does not fail under constant contact with high voltage sources. The proposed rule would apply to insulated tools (such as live-line tools), insulated equipment (such as insulated ladders), and aerial devices and platforms used in live-line work. The Agency considers insulated equipment that is designed for long-duration contact with energized parts at the voltage on which it is used (such as a live-line tool) to meet this requirement. Insulating equipment designed for brush contact only is not suitable for live-line bare-hand work.

Paragraph (c)(4) would require the automatic-reclosing feature of circuit protective devices to be made inoperative if the design of those devices permits. In case of a fault at the worksite, it is important for the circuit to be deenergized as quickly as possible and for it to remain deenergized once the protective devices have opened the circuit.[58] This prevents any possible injuries from becoming more severe. Additionally, this measure helps limit the possible switching surge voltage, which provides an extra measure of safety. This provision is comparable to existing § 1926.955(e)(5), which requires this feature to be rendered inoperable ''where practical.'' The proposal eliminates this phrase because OSHA believes that it is essential that a line which becomes deenergized on a fault not be reenergized if it is possible to do so. During live-line bare-hand work, employees have no other back-up system providing for their safety as they would for work on deenergized lines.[59] Thus, if the employee causes a fault on the line, the line must not become reenergized automatically.

Sometimes the weather makes live-line bare-hand work unsafe. For example, lightning strikes on lines being worked can create severe transient voltages, against which the minimum approach distances required by proposed § 1926.960(c)(1) may not provide complete protection. Additionally, the wind can reduce the minimum approach distance below acceptable values. To provide protection against environmental conditions that can increase the hazards by an unacceptable degree, proposed paragraph (c)(5) would prohibit live-line bare-hand work under conditions that make the work hazardous in spite of the precautions taken under the proposed rule. Also, work would not be allowed under any conditions that reduce the minimum approach distances below required values. If insulating guards are provided to prevent hazardous approach to other energized parts and to ground, then work could be performed under conditions reducing the minimum approach distances.

Existing § 1926.955(e)(6) prohibits live-line bare-hand work only during thunderstorms. OSHA believes that expanding the prohibition to include any weather condition making it unsafe to perform this type of work will better protect employees. The language for the proposed rule has been taken from § 1910.269(q)(3)(v).

Proposed § 1926.964(c)(6) would require the use of a conductive device, usually in the form of a conductive bucket liner, which creates an area of equipotential in which the employee can work safely. The employee must be bonded to this device by means of conductive shoes or leg clips or by another effective method. Additionally, if necessary to protect employees further (that is, if differences in electrical potential at the worksite pose a hazard to employees), electrostatic shielding would be required. Proposed § 1926.964(c)(6), which has been taken from § 1910.269(q)(3)(vi), is essentially identical to existing § 1926.955(e)(7).

To avoid receiving a shock caused by charging current, the employee must bond the conductive bucket liner (or other conductive device) to the energized conductor before he or she touches the conductor. Typically, a hot stick is used to bring a bonding jumper (already connected to the conductive bucket liner) into contact with the live line. This connection brings the equipotential area surrounding the employee to the same voltage as that of the line. Proposed § 1926.964(c)(7) would require the conductive device to be bonded to the energized conductor before any employee contacts the energized conductor and would require this connection to be maintained until work is completed. Proposed § 1926.964(c)(7), which has been taken from § 1910.269(q)(3)(vii), is essentially identical to existing § 1926.955(e)(14).

Proposed § 1926.964(c)(8) would require aerial lifts used for live-line bare-hand work to be equipped with upper controls that are within reach of any employee in the bucket and with lower controls that permit override operation at the base of the boom. Upper controls are necessary so that employees in the bucket can precisely control the lift's direction and speed of approach to the live line. Control by workers on the ground responding to directions from those in the bucket could lead to contact by an employee in the lift with the energized conductor before the bonding jumper is in place. Controls are needed at ground level, however, so that employees in the lift who might be disabled as a result of an accident or illness could be promptly lowered and assisted. For this reason, paragraph (c)(9) would prohibit operation of the ground level controls except in case of emergency. Proposed paragraphs (c)(8) and (c)(9), which have been taken from § 1910.269(q)(3)(viii) and (q)(3)(ix), are essentially identical to existing § 1926.955(e)(12) and (e)(13).

Proposed § 1926.964(c)(10) would require all aerial lift controls to be checked to ensure that they are in proper working order before any employee is lifted into the working position. This paragraph, which has been taken from § 1910.269(q)(3)(x), is essentially identical to existing § 1926.955(e)(10).

To protect employees on the ground from the electric shock that would be received upon touching the truck supporting the aerial lift, proposed § 1926.964(c)(11) would require the truck to be grounded or barricaded and treated as energized. If the truck is grounded, the insulation of the lift limits the voltage on the body of the truck to a safe level. The proposed rule, which has been taken from § 1910.269(q)(3)(xi), is similar to existing § 1926.955(e)(9). The existing requirement in Subpart V, however, also includes a provision for using the outriggers on the aerial lift to stabilize

[58] If the circuit protective devices do not provide an autoreclosing feature, the circuit will remain deenergized by design. In addition, voltage surges caused by circuit reclosing would not occur.

[59] Personal protective grounding provides supplementary protection in case the deenergized line is reenergized.

the equipment. The hazard addressed by this provision is covered in proposed § 1926.959(b)(1), discussed earlier in this section of the preamble.

Aerial lifts that are used in live-line bare-hand work are exposed to the full line-to-ground voltage of the circuit for the duration of the job. To ensure that the insulating value of the lift being used is high enough to protect employees, proposed § 1926.964(c)(12) would require a boom-current test to be made before work is started each day. The test would also be required when a higher voltage is encountered and when conditions change to a degree that warrants retesting the equipment.

Under the standard, the test consists of placing the bucket in contact with a source of voltage equal to that being encountered during the job and keeping it there for at least 3 minutes. This is normally accomplished at the worksite by placing the bucket in contact with the energized line on which work is to be performed (without anyone in it, of course).

Paragraph (c)(12), which has been taken from § 1910.269(q)(3)(xii), is similar to existing § 1926.955(e)(11). To provide employees with a level of protection equivalent to that provided by American National Standard for Vehicle-Mounted Elevating and Rotating Aerial Devices (ANSI A92.2–2001), § 1926.964(c)(12) proposes to permit a leakage current of up to 1 microampere per kilovolt of nominal phase-to-*ground* voltage. In contrast, the corresponding provision in existing § 1926.955(e)(11) allows up to 1 microampere of current for every kilovolt of phase-to-*phase* voltage. (For a three-phase, Y-connected system, the phase-to-phase voltage equals 1.73 times the phase-to-ground voltage.) Because the national consensus standard and § 1910.269(q)(3)(xii) contain the more protective language, OSHA is proposing the maximum leakage current of 1 microampere per kilovolt of phase-to-*ground* voltage from the general industry standard.

Proposed § 1926.964(c)(12) would also require the suspension of related work activity any time (not only during tests) a malfunction of the equipment is evident. This proposed requirement is intended to prevent the failure of insulated aerial devices during use. Only work from an aerial lift is affected. Work not involving an aerial lift could be continued. Halting work from the lift will protect employees in the lift, as well as those on the ground, from the electrical hazards involved.

Proposed paragraphs (c)(13), (c)(14), and (c)(15) of proposed § 1926.964 would require the minimum approach distances specified in Table V–2 through Table V–6 to be maintained from grounded objects and from objects at a potential different from that at which the bucket is energized. These provisions, which are based on § 1910.269(q)(3)(xiii), (q)(3)(iv), and (q)(3)(v), are essentially identical to existing § 1926.955(e)(15), (e)(16), and (e)(17), except for the change in the minimum approach distances. (See the summary and explanation of proposed § 1926.960(c)(1) for a discussion of the derivation of minimum approach distances.) Paragraph (c)(13) would apply to minimum approach distances in general; paragraph (c)(14) would cover minimum approach distances to be used as the employee approaches or leaves the energized conductor; and paragraph (c)(15) relates to the distance between the bucket and the end of a bushing or insulator string. The latter two paragraphs clarify that the employee and the bucket are considered to be at phase potential as the employee is approaching the energized part and that the phase-to-ground minimum approach distance must be maintained from grounded objects. Similarly, the employee must maintain the phase-to-phase minimum approach distance from the other phases on the system. OSHA requests comments on whether proposed paragraphs (c)(14) and (c)(15) should address objects at different phase potential in addition to objects at ground potential.

Proposed paragraph (c)(16) would prohibit the use of hand lines between the bucket and boom and between the bucket and ground. Such use of lines could set up a potential difference between the employee in the bucket and the power line when the employee contacts the hand line. If the hand line is a nonconductive type and if it is not supported from the bucket, it may be used from the conductor to ground. Unless the rope is insulated for the voltage, employees on the ground must treat it as energized. Lastly, ropes used for live-line bare-hand work may not be used for other purposes.

This provision, which has been taken from § 1910.269(q)(3)(xvi), is similar to existing § 1926.955(e)(18). However, the existing standard, in § 1926.955(e)(18)(ii), prohibits conductive materials over 36 inches long from being placed in the aerial lift bucket. Exceptions are made for ''appropriate length jumpers, armor rods, and tools.'' OSHA is proposing to revoke this requirement. The proposal would require the minimum approach distance to be maintained regardless of the length of any conductive object. Thus, existing § 1926.955(e)(18)(ii) is unnecessary.

Proposed §§ 1926.964(c)(17) would prohibit passing uninsulated equipment or materials to an employee bonded to an energized part. Passing uninsulated objects to an employee who is bonded to an energized conductor would bridge the insulation to ground and endanger the employee. This proposed provision, which is based on § 1910.269(q)(3)(xvii), has no counterpart in existing § 1926.955(e).

Proposed § 1926.964(c)(18) would require a durable nonconductive chart reflecting the minimum approach distances prescribed by Table V–2 through Table V–6 to be mounted so that it is visible to the operator of the boom. Of course, a table prescribing minimum approach distances greater than those required would also be acceptable. This provision, which has been taken from § 1910.269(q)(3)(xviii), is essentially identical to existing § 1926.955(e)(20)(i).

Proposed § 1926.964(c)(19) would require a non-conductive measuring device to be available and readily accessible to the employee in the lift. This provision has been taken from § 1910.269(q)(3)(xix). Existing § 1926.955(e)(20)(ii) recommends, but does not require, an insulating measuring device. OSHA believes that this should be a requirement, rather than a recommendation, so that employees can accurately determine whether the required minimum approach distances are being maintained. Under the existing standard, an employee might be required by the employer to estimate the distance. Compliance with paragraphs (c)(18) and (c)(19) in proposed § 1926.964 would assist the employee in accurately determining the minimum approach distances required by the standard.

Existing § 1926.955(e)(19) prohibits an aerial lift used in live-line bare-hand work from being overstressed while lifting or supporting weights. OSHA has not proposed to include this requirement under § 1926.964. The hazard addressed by the existing requirement is a general hazard, which is present any time the aerial lift is used, not just during live-line bare-hand work. OSHA believes that this hazard is better treated in proposed § 1926.959(c), which would require mechanical equipment to be operated within its design limitations.

Paragraph (d) of proposed § 1926.964 addresses hazards associated with towers and other structures supporting overhead lines. This paragraph has been taken from § 1910.269(q)(4).

Paragraph (b) of existing § 1926.955 addresses metal tower construction.

Many of the requirements in the existing rules cover the same hazards as other provisions in the construction standards. For example, § 1926.955(b)(1), (b)(2), and (b)(3) address hazards associated with footing excavations. Power transmission and distribution workers are fully protected from these hazards by Subpart P of Part 1926.[60] Therefore, the proposed revision of Subpart V contains no counterparts to these existing requirements. Existing paragraphs (b)(5)(i) and (b)(7) contain simple references to other Part 1926 requirements. Existing paragraphs (b)(5)(iii), (b)(6)(i), (b)(6)(v), and (b)(8), which address a few of the hazards associated with mechanical equipment, contain requirements that are equivalent to provisions in existing Subpart N of Part 1926 or proposed § 1926.959. The proposed revision of Subpart V contains counterparts to none of these six paragraphs. OSHA believes that eliminating these provisions will reduce redundancy and will eliminate the potential for conflicts between different standards.

To protect employees on the ground from hazards presented by falling objects, proposed § 1926.964(d)(1) would prohibit workers from standing under a tower or other structure, unless their presence is necessary to assist employees working above. This provision, which has been taken from § 1910.269(q)(4)(i), is equivalent to existing § 1926.955(b)(4)(i) and (b)(5)(ii). The proposal eliminates the redundancy presented by these two existing requirements.

Paragraph (d)(2) of proposed § 1926.964 relates to operations that involve lifting and positioning tower sections. This provision requires tag lines or other similar devices to be used to control tower sections being positioned, unless the employer can demonstrate that the use of such devices would create a greater hazard. The use of tag lines protects employees from being struck by tower sections that are in motion. This provision, which has been taken from § 1910.269(q)(4)(ii), is the same as § 1926.955(b)(4)(ii) and (b)(6)(ii). The proposal eliminates the redundancy presented by these two existing requirements.

Paragraph (d)(3) of proposed § 1926.964 would require loadlines to remain in place until the load is secured so that it cannot topple and injure an employee. This provision, which has been taken from § 1910.269(q)(4)(iii), is essentially identical to § 1926.955(b)(4)(iii) and (b)(6)(iii). The proposal eliminates the redundancy presented by these two existing requirements.

Some weather conditions can make work from towers and other overhead structures more hazardous than usual. For example, icy conditions may make slips and falls much more likely, in fact even unavoidable. Under such conditions, work from towers and other structures would generally be prohibited by proposed § 1926.964(d)(4). However, when emergency restoration work[61] is involved, the additional risk may be necessary for public safety, and the standard permits such work to be performed even in bad weather. This provision, which has been taken from § 1910.269(q)(4)(iv), is essentially identical to existing § 1926.955(b)(6)(iv).

Section 1926.965, Underground Electrical Installations

In many electric distribution systems, electric equipment is installed in enclosures, such as manholes and vaults, set beneath the earth. Proposed § 1926.965 addresses safety for these underground electrical installations. As noted in § 1926.965(a), the requirements proposed in this section are in addition to requirements contained elsewhere in the standard (and elsewhere in Part 1926) because § 1926.965 only contains considerations unique to underground facilities. For example, proposed § 1926.953, relating to enclosed spaces, also applies to underground operations involving entry into an enclosed space.

Proposed § 1926.965 has been taken from § 1910.269(t). Existing Subpart V contains requirements for work on underground lines in § 1926.956. Differences between the existing rules and the proposed rules are explained in the following summary and explanation of proposed § 1926.965.

Paragraph (b) of proposed § 1926.965 would require the use of ladders or other climbing devices for entrance into and exit from manholes and subsurface vaults that are more than 1.22 meters (4 feet) deep. Because employees can easily be injured in the course of jumping into subsurface enclosures or in climbing on the cables and hangers which have been installed in these enclosures, the standard requires the use of appropriate devices for employees entering and exiting manholes and vaults. The practice of climbing on equipment such as cables and cable hangers is specifically prohibited by paragraph (b). This proposed provision has been taken from § 1910.269(t)(1). Subpart V contains no counterpart to this requirement.

Paragraph (c) of proposed § 1926.965 would require equipment used to lower materials and tools into manholes or vaults to be capable of supporting the weight and requires this equipment to be checked for defects before use. Paragraph (c) would also require employees to be in the clear when tools or materials are lowered into the enclosure. This provision protects employees against being injured by falling tools and material. It should be noted that, because work addressed by this paragraph exposes employees to the danger of head injury, § 1926.95(a) requires employees to wear head protection when they are working in underground electrical installations. Proposed paragraph (c) has been taken from § 1910.269(t)(2). Subpart V contains no counterpart to this requirement.

Paragraph (d) of proposed § 1926.965 would require attendants for manholes. During the time work is being performed in a manhole that contains energized electric equipment, an employee would be required to be available in the immediate vicinity (but not normally in the manhole) to render emergency assistance. However, the attendant would be allowed to enter the manhole, for brief periods, to provide other than emergency assistance to those inside.

The provisions in paragraph (d) are being proposed so that emergency assistance can be provided to employees working in manholes, where the employees work unobserved and where undetected injury could occur. Taken from § 1910.269(t)(3) and from existing § 1926.956(b)(1), these proposed requirements are intended to protect employees within the manhole without exposing the attendants outside to a risk of injury greater than that faced by those inside.

Because the hazards addressed by paragraph (t)(3) are primarily related to electric shock, allowing the attendant to

[60] Two of the requirements in the existing paragraphs are covered in other places. Under the last sentence of existing § 1926.955(b)(1), ladders must be used to provide access for pad- or pile-type footing excavations more than 4 feet deep. This hazard is already addressed in § 1926.1051(a), which requires a stairway or a ladder to be provided for access to breaks in elevation of more than 48 cm, unless a ramp, runway, sloped embankment, or personnel hoist is available. Existing § 1926.955(b)(3)(iii) addresses the stability of equipment used near excavations. Proposed § 1926.959(b) and (c) cover hazards associated with instability of mechanical equipment.

[61] Emergency restoration work is considered to be that work needed to restore an electric power transmission or distribution installation to an operating condition to the extent necessary to safeguard the general public.

enter the manhole briefly[62] has no significant effect on the safety of the employee he or she is protecting. In case of electric shock, the attendant would still be able to provide assistance. The proposed rule would require the attendant to be trained in first aid and in CPR to ensure that emergency treatment will be available if needed.

If other hazards are believed to endanger the employee in the manhole, paragraph (h) of proposed § 1926.953 would also apply.[63] This provision would require attendants for work in an enclosed space (for example, a manhole) if a hazard exists because of traffic patterns in the area of the opening to the enclosed space. Thus, an attendant would be required when traffic patterns in the area around the manhole opening endanger an entrant exiting the manhole. In such situations, the employee on the surface would be exposed to the same hazards against which he or she is trying to protect the original entrant if the attendant were to enter the manhole or vault. Therefore, the proposal would not permit attendants required under § 1926.953(h) to enter the manhole. To clarify the application of the two different attendant requirements, a note has been included following § 1926.965(d)(2). The note indicates that if an attendant is also required under § 1926.953(h), one person may serve to satisfy both requirements, but is not permitted to enter the manhole.

OSHA has included a second note following § 1926.965(d)(2). This note serves as a reminder that § 1926.960(b) would prohibit unqualified employees from working in areas containing unguarded, uninsulated energized lines or parts of equipment operating at 50 volts or more.

Paragraph (d)(3) of proposed § 1926.965 would permit an employee working alone to enter a manhole or vault for the purpose of inspection, housekeeping, taking readings, or similar work. As noted earlier, the purpose of requiring an attendant under proposed § 1926.965(d) is to provide assistance in case an electric shock occurs. When an employee is performing the types of work listed in this provision, there is very little chance that he or she would suffer an electric shock. Thus, the Agency believes it is safe for an employee to perform duties such as housekeeping and inspection without the presence of an attendant.

Under paragraph (d)(4) of proposed § 1926.965, reliable communications would be required to be maintained among all employees involved in the job, including any attendants, the employees in the manhole, and employees in separate manholes working on the same job. This requirement, which has been taken from § 1910.269(t)(3)(iv), has no counterpart in § 1926.956(b)(1).

To install cables into the underground ducts, or conduits, that will contain them, employees use a series of short jointed rods or a long flexible rod inserted into the ducts. The insertion of these rods into the ducts is known as ''rodding.'' The rods are used to thread the cable-pulling rope through the conduit. After the rods have been withdrawn and the cable-pulling ropes have been inserted, the cables can then be pulled through by mechanical means.

Paragraph (e) of proposed § 1926.965 would require duct rods to be inserted in the direction presenting the least hazard to employees. To make sure that a rod does not contact live parts at the far end of the duct line being rodded, which would be in a different manhole or vault, the proposal would also require an employee to be stationed at the remote end of the rodding operation to ensure that the required minimum approach distances are maintained. This provision, which has been taken from § 1910.269(t)(4), has no counterpart in existing Subpart V.

To prevent accidents resulting from working on the wrong cable, one that may be energized, proposed § 1926.965(f) would require the identification of the proper cable when multiple cables are present in a work area. The identification must be made by electrical means (for example, a meter), unless the proper cable is obvious because of appearance, location, or other means of readily identifying the proper cable. This proposed paragraph, which has been taken from § 1910.269(t)(5), is similar to existing § 1926.956(c)(4), (c)(5), and (c)(6); however, existing § 1926.956(c)(4) and (c)(5) apply only to excavations. The proposal would apply the requirements to all underground installations.

If any energized cables are to be moved during underground operations, paragraph (g) of proposed § 1926.965 would require them to be inspected for possible defects that could lead to a fault. (If a defect is found, paragraph (h) would apply.) These provisions protect employees against possibly defective cables, which could fault upon being moved, leading to serious injury. This paragraph in the proposal, which has been taken from § 1910.269(t)(6), has no counterpart in existing Subpart V.

Since defective energized cables may fail with an enormous release of energy, precautions must be taken to minimize the possibility of such an occurrence while an employee is working in a manhole. Therefore, paragraph (h) of proposed § 1926.965 would, in general, prohibit employees from working in a manhole which contains an energized cable with a defect that could lead to a fault. The proposal lists typical abnormalities that could expose employees to injury as: oil or compound leaking from a cable or joint (splice), a broken cable sheath or joint sleeve, hot localized surface temperatures on a cable or joint, or a joint that is swollen beyond normal tolerances. Examples of abnormalities are listed in a note following § 1926.965(h). The note states that the listed conditions are presumed to lead to or be an indication of a possible impending fault. An employer could demonstrate that any one of these conditions, in a particular case, is not indicative of an impending fault, in which case proposed § 1926.965(h) would not require protective measures to be taken. This provision, which has been taken from § 1910.269(t)(7), has no counterpart in existing Subpart V.

In the § 1910.269 rulemaking, OSHA concluded that employees may work in a manhole that contains an energized cable with abnormalities only when service load conditions and feasible alternatives prevent deenergizing the cable and only when the employees are protected from a failure (January 31, 1994, 59 FR 4416).

Under some service load conditions, it may not be feasible for the electric utility to deenergize the cable with the defect at the same time that another line is deenergized for maintenance work. In such cases, paragraph (h)(1) of proposed § 1926.965 would allow the defective cable or splice to remain energized as long as the employees in the manhole are protected against the possible effects of a failure by shields or other devices capable of containing the adverse effects of a failure. For example, a ballistic blanket wrapped around a defective

[62] The attendant would be permitted to remain within the manhole only for the short period of time necessary to assist the employee inside the manhole with a task that one employee cannot perform alone. For example, if a second employee is needed to help lift a piece of equipment into place, the attendant could enter only for the amount of time that is needed to accomplish this task. However, if significant portions of the job require the assistance of a second worker in the manhole, the attendant would not be permitted to remain in the manhole for the length of time that would be necessary, and a third employee would be required.

[63] Additionally, as noted in the discussion of proposed § 1926.953, earlier in this preamble, the entry would have to be conducted in accordance with § 1910.146, the generic permit-required confined spaces standard, if proposed §§ 1926.953 and 1926.965 would not adequately protect the entrants.

splice can protect against injury from the effects of a fault in the splice. The energy that could be released in case of a fault is known, and the energy absorbing capability of a shield or other device can be obtained from the manufacturer or can be calculated. As long as the energy absorbing capability of the shield or other device exceeds the available fault energy, employees will be protected. The proposal would require employees to be protected, regardless of the type of device used and of how it is applied. Additionally, the proposal would permit this option to be used only ''when service load conditions and a lack of feasible alternatives require that the cable remain energized.'' Employers are required to use alternatives, such as the use of shunts or other means of supplying areas with power, whenever feasible before allowing access.

Paragraph (h)(2) addresses work that could itself cause a fault in a cable, such as removing asbestos covering on a cable or using a power tool to break concrete encasing a cable. This type of work can damage the cable and create an internal fault. The energy released by the fault could injure not only the employee performing the work but any other employees nearby. Paragraph (h)(2) would require the same protective measures in those situations as paragraph (h)(1), that is, deenergizing the cable or, under certain conditions, using shields or other protective devices capable of containing the effects of the fault.

Paragraph (i) of proposed § 1926.965 would require metallic sheath continuity to be maintained while work is performed on underground cables. Bonding across an opening in a cable's sheath protects employees against shock from a difference in potential between the two sides of the opening. As an alternative to bonding, the cable sheath could be treated as energized. (The voltage to which the sheath is to be considered energized is equal to the maximum voltage that could be seen across the sheath under fault conditions.) This requirement, which has been taken from § 1910.269(t)(8), is essentially identical to existing § 1926.956(c)(7), except that the proposal would allow the cable sheath to be treated as energized in lieu of bonding. This is consistent with other parts of the proposal, such as proposed § 1926.960(j), which recognize treating objects as energized as an alternative to grounding.

Section 1926.966, Substations

Proposed § 1926.966 addresses work performed in substations. As is the case elsewhere in the standard, the provisions of this paragraph are intended to supplement (rather than modify) the more general requirements contained in other portions of Subpart V, such as § 1926.960 on working on or near live parts.

Proposed § 1926.966(b) would require enough space to be provided around electric equipment to allow ready and safe access to and operation and maintenance of the equipment. This rule would prevent employees from contacting exposed live parts as a result of insufficient maneuvering room. A note has been included to recognize, as constituting compliance, the provisions of ANSI C2–2002 for the design of workspace for electric equipment. This provision, which has been taken from § 1910.269(u)(1), has no counterpart in existing Subpart V.

OSHA realizes that older installations may not meet the dimensions set forth in the latest version of the national consensus standard. The Agency believes that the language of proposed § 1926.966(b) is sufficiently performance oriented that older installations built to specifications in the standards that were in effect at the time they were constructed would meet the requirement for sufficient workspace provided that the installation and work practices used enable employees to perform work safely within the space and to maintain the minimum approach distances specified in proposed § 1926.960(c)(1). In fact, the note for this provision states that the NESC specifications are guidelines. The ANSI standard is specifically not being incorporated by reference here. However, OSHA has included the following language in the note to proposed § 1926.966(b):

Note to paragraph (b) of this section: Guidelines for the dimensions of access and workspace about electric equipment in substations are contained in American National Standard National Electrical Safety Code, ANSI C2–2002. Installations meeting the ANSI provisions comply with paragraph (b) of this section. An installation that does not conform to this ANSI standard will, nonetheless, be considered as complying with paragraph (b) of this section if the employer can demonstrate that the installation provides ready and safe access based on the following evidence:

(1) That the installation conforms to the edition of ANSI C2 that was in effect at the time the installation was made,

(2) That the configuration of the installation enables employees to maintain the minimum approach distances required by § 1926.960(c)(1) of this Part while they working on exposed, energized parts, and

(3) That the precautions taken when work is performed on the installation provide protection equivalent to the protection that would be provide by access and working space meeting ANSI C2–2002.

This language accomplishes three goals. First, it explains that an installation need not be in conformance with ANSI C2–2002 in order to be considered as complying with proposed § 1926.966(b). Second, it informs employers whose installations do not conform to the latest ANSI standard of how they can demonstrate compliance with the OSHA standard. Third, it ensures that, however old an installation is, it provides sufficient space to enable employees to work within the space without significant risk of injury.

Proposed § 1926.966(c) would require draw-out-type circuit breakers to be inserted and removed while the breaker is in the open position. (A draw-out-type circuit breaker is one in which the removable portion may be withdrawn from the stationary portion without the necessity of unbolting connections or mounting supports.) Additionally, if the design of the control devices permits, the control circuit for the circuit breaker would have to be rendered inoperative. (Some circuit breaker and control device designs do not incorporate a feature allowing the control circuit for the breaker to be rendered inoperative.) These provisions are intended to prevent arcing which could injure employees. This proposed paragraph, which has been taken from § 1910.269(u)(2), has no counterpart in existing Subpart V.

Because voltages can be impressed or induced on large metal objects near substation equipment, proposed § 1926.966(d) would require conductive fences around substations to be grounded. Continuity across openings is also required in order to eliminate voltage differences between adjacent parts of the fence.

This provision has been taken from § 1910.269(u)(3). Existing § 1926.957(g)(1) requires ''[a]dequate interconnection with ground'' to be maintained between temporary and permanent fences. Existing Subpart V does not require permanent substation fences to be grounded. However, OSHA believes that grounding metal fences, whether they are temporary or permanent, is essential to the safety of employees working near the fences.

Proposed § 1926.966(e) addresses the guarding of rooms containing electric supply equipment. This paragraph has been taken from § 1910.269(u)(4). The only provisions in existing Subpart V addressing guarding of live parts in substations are contained in

§ 1926.957(c) and (g). These two provisions require barricades or barriers to be installed (paragraph (c)) and for temporary fences to be installed if sections of permanent fencing are removed (paragraph (g)). Existing § 1926.957(g)(2) also requires gates to unattended substations to be locked.

The existing requirements only address temporary guarding measures. Permanent guarding of live parts, which is generally more substantial than the tape and cone barricades permitted under the existing rule, is never mentioned in existing § 1926.957. OSHA's proposed revision of the substation rules addresses guarding of live parts in substations in a more comprehensive manner and should provide better protection for employees.

OSHA believes that it is important to prohibit unqualified persons from areas containing energized electric supply equipment regardless of the work they would be performing. Employees working in these areas must be trained in the hazards involved and in the appropriate work practices, as would be required by proposed § 1926.950(b)(2). Otherwise, they would not be able to distinguish hazardous circuit parts from non-hazardous equipment and would not be familiar with the appropriate work practices, regardless of the jobs they are performing. There have been accidents that involve contact of unqualified persons with energized parts in such areas.

Subpart V is intended to apply to electrical installations for which OSHA has few design requirements. The Subpart K electrical installation standards typically do not apply to electric power transmission and distribution installations, and such installations may pose hazards in addition to those of exposed live parts. For example, equipment enclosures may be ungrounded. If the requirements of Subpart K are not being met, then it is important to prevent unqualified persons from gaining access to areas containing electric power transmission and distribution equipment.

If, on the other hand, the installation conforms to Subpart K, at least with respect to the guarding of live parts and to the grounding of enclosures for these parts, unqualified employees may safely access substation areas. In Subpart K, suitable protection is provided by §§ 1926.403(j)(2), 1926.403(i)(2), and 1926.404(f)(7) for employees working in substations. These provisions prohibit unqualified persons from accessing areas containing exposed live parts operating at 50 volts through 600 volts and located less than 8 feet above the floor or other working surface. Unqualified persons are also prohibited from areas containing live parts operating at more than 600 volts, unless the live parts are completely enclosed in metal enclosures or are installed at an elevation of at least 8 feet, 6 inches. The metal enclosures must be grounded, and the minimum height increases with increasing voltage.

OSHA is proposing to adopt requirements here that follow the Subpart K approach. Proposed § 1926.966(e) sets forth criteria for access by unqualified persons to spaces containing electric supply lines or equipment. Paragraph (e)(1) divides areas containing electric supply equipment into three categories as follows:

(1) Areas where exposed live parts operating at 50 to 150 volts to ground are located within 2.4 meters (8 feet) of the ground or other working surface,

(2) Areas where live parts operating at between 150 and 601 volts and located within 2.4 meters (8 feet) of the ground or other working surface are guarded only by location, as permitted under paragraph (f)(1), and

(3) Areas where live parts operating at more than 600 volts are located, unless:

(a) The live parts are enclosed within grounded, metal-enclosed equipment whose only openings are designed so that foreign objects inserted in these openings will be deflected from energized parts, or

(b) The live parts are installed at a height above ground and any other working surface that provides protection at least equivalent to an 2.4-meter (8-foot) height at 50 volts.

Proposed § 1926.966(e)(2) through (e)(5) propose requirements that would apply to these areas. The areas would have to be so enclosed as to minimize the possibility that unqualified persons will enter; warning signs would have to be displayed; and entrances not under the observation of an attendant would have to be kept locked. Additionally, unqualified persons would not be permitted to enter these areas while the electric supply lines or equipment are energized.

Proposed § 1926.966(f) also addresses guarding of live parts. This paragraph, which has been taken from § 1910.269(u)(5), has no counterpart in existing Subpart V.

Proposed § 1926.966(f)(1) would require live parts operating at more than 150 volts to be guarded (by physical guards or by location) or insulated. This provision protects qualified employees from accidentally contacting energized parts. Guidance for clearance distances appropriate for guarding by location can be found in ANSI C2. Installations meeting ANSI C2–2002 are considered to meet paragraph (f)(1), which is based on Section 124A.1 of that standard.

OSHA will consider installations that do not meet ANSI C2–2002 as meeting proposed paragraph (f)(1) provided the employer can demonstrate that the installation provides sufficient clearance based on the following evidence:

(1) That the installation meets the requirements of the edition of ANSI C2 that was in effect at the time the installation was made,

(2) That each employee is isolated from live parts at the point of closest approach, and

(3) That the precautions taken protect employees to the same degree as the clearances specified in ANSI C2–2002.

This approach would afford employers flexibility in complying with the standard and would afford employees protection from injury due to sparkover from live circuit parts.

Proposed § 1926.966(f)(2) would require the guarding of live parts within a compartment to be maintained during operation and maintenance functions. This guarding is intended to prevent accidental contact with energized parts and to prevent objects from being dropped on energized parts. However, since access must be gained to energized equipment by qualified employees, an exception to this proposed requirement allows the removal of guards for fuse replacement and other necessary access by qualified persons. In such cases, proposed paragraph (f)(3) would protect other employees working nearby by requiring the installation of protective barriers around the work area.

So that employees can receive pertinent information on conditions that affect safety at the substation, paragraph (g)(1) would require employees who do not regularly work at the station to report their presence to the employee in charge. Typical conditions affecting safety in substations include the location of energized equipment in the area and the limits of any deenergized work area. Proposed paragraph (g)(2) would require this specific information to be communicated to employees during the job briefing required by proposed § 1926.952. These two requirements have been taken from § 1910.269(u)(6).

Existing § 1926.957(a)(1) requires authorization to be obtained from the person in charge of the substation before work is performed. The proposal would not require authorization. OSHA does not believe that such a requirement is necessary. As noted, proposed § 1926.966(g)(1) would require employees who do not regularly work in

the substation to report their presence to the employee in charge. The main purpose of this rule is for the flow of important safety-related information from the employee in charge to employees about to work in the substation. As long as this information is imparted to the employees performing the work and as long as the requirements proposed in the revision of Subpart V are followed, the work can be performed safely. The Agency does not believe that the requirement that the work be authorized is necessary for employee safety; however, OSHA requests comments on whether or not the lack of authorization to perform work can lead to accidents.

Existing § 1926.957(a)(2) is essentially identical to proposed § 1926.966(g)(2), except that the existing rule, in paragraph (a)(2)(ii), also requires the determination of what protective equipment and precautions are necessary. Since the job briefing is already required to cover these areas under proposed § 1926.952(b), existing § 1926.957(a)(2)(ii), which applies only to work in energized substations, would no longer be necessary.

Section 1926.967, Special Conditions

Proposed § 1926.967 proposes requirements for special conditions that are encountered during electric power transmission and distribution work.

Since capacitors store electric charge and can release electrical energy even when disconnected from their sources of supply, some precautions may be necessary—in addition to those proposed in § 1926.961 (deenergizing lines and equipment) and § 1926.962 (grounding)—when work is performed on capacitors or on lines that are connected to capacitors. Proposed § 1926.967(a), which has been taken from § 1910.269(w)(1), contains precautions which will enable this equipment to be considered as deenergized. This proposed paragraph has no counterpart in existing Subpart V.

Under proposed § 1926.967(a)(1), capacitors on which work is to be performed would have to be disconnected from their sources of supply and, after a 5-minute wait, short-circuited. This not only removes the sources of electric current but relieves the capacitors of their charge as well. It should be noted that ANSI/IEEE Standard No. 18–2002 requires all capacitors to have an internal resistor across its terminals to reduce the voltage to 50 volts or less within 5 minutes after the capacitor is disconnected from an energized source.

For work on individual capacitors in a series-parallel capacitor bank, each unit must be short-circuited between its terminals and the capacitor tank or rack, and the rack must be grounded; otherwise, individual capacitors could retain a charge. These considerations are proposed in paragraph (a)(2). Lastly, paragraph (a)(3) also requires lines to which capacitors are connected to be short-circuited before the lines can be considered deenergized.

A note referring to the requirements for deenergizing electric transmission and distribution lines and equipment (proposed § 1926.961) and for grounding (proposed § 1926.962) has been included following § 1926.967(a) to alert readers to the appropriate requirements for deenergizing and grounding.

Although the magnetic flux density in the core of a current transformer is usually very low, resulting in a low secondary voltage, it will rise to saturation if the secondary circuit is opened while the transformer primary is energized. If this occurs, the magnetic flux will induce a voltage in the secondary winding high enough to be hazardous to the insulation in the secondary circuit and to personnel. Because of this hazard to workers, proposed § 1926.967(b) would prohibit the opening of the secondary circuit of a current transformer while the primary is energized. If the primary cannot be deenergized for work to be performed on the secondary, then the secondary circuit would have to be bridged so that an open-circuit condition does not result. This provision, which has been taken from § 1910.269(w)(2), has no counterpart in existing Subpart V.

In a series streetlighting circuit, the lamps are connected in series, and the same current flows in each lamp. This current is supplied by a constant-current transformer, which provides a constant current at a variable voltage from a source of constant voltage and variable current. Like the current transformer, the constant current source attempts to supply current even when the secondary circuit is open. The resultant open-circuit voltage can be very high and hazardous to employees. For this reason, § 1926.967(c)(2) proposes a requirement, similar to that in proposed paragraph (b), that either the streetlighting transformer be deenergized or the circuit be bridged to avoid an open-circuit condition. In addition, proposed § 1926.967(c)(1) would require streetlighting circuits with an open circuit voltage of more than 600 volts to be worked in accordance with the requirements on overhead lines in proposed § 1926.964 or on underground electrical installations in proposed § 1926.965, as appropriate. These provisions, which have been taken from § 1910.269(w)(3), have no counterpart in existing Subpart V.

Frequently, electric power transmission and distribution employees must work at night or in enclosed places, such as manholes, that are not illuminated by the sun. Since inadvertent contact with live parts can be fatal, good lighting is important to the safety of these workers. Therefore, proposed § 1926.967(d) would require sufficient illumination to be provided so that work can be performed safely. This provision, which has been taken from § 1910.269(w)(4), is comparable to existing § 1926.950(f). The existing requirement, however, applies only at night. OSHA believes that it is important for employees to have sufficient lighting to perform the work safely no matter what the time of day is. The note following proposed § 1926.967(d) refers to § 1926.56 for specific levels of illumination that are required under various conditions.

To protect employees working in areas that expose them to the hazards of drowning, proposed § 1926.967(e) would require the provision and use of personal flotation devices. Additionally, to ensure that these devices would provide the necessary protection upon demand, they would have to be approved by the U.S. Coast Guard, be maintained in safe condition, and be inspected frequently enough to ensure that they do not have defects or other conditions that would render them unsuitable for use. Lastly, employees would not be permitted to cross streams unless a safe means of passage is provided. This provision, which has been taken from § 1910.269(w)(5), would replace existing § 1926.950(g). The existing rule simply references other construction standards on body belts, safety straps, and lanyards, on safety nets, and on protection for working near water, namely §§ 1926.104, 1926.105, and 1926.106. OSHA is proposing language identical to that contained in § 1910.269 for consistency with that standard, which the Agency believes affords better protection for electric power transmission and distribution employees. However, comments are invited on whether or not existing § 1926.950(g) would better protect employees.

Proposed § 1926.967(f) references Subpart P of Part 1926 for requirements on excavations. This provision is equivalent to existing § 1926.956(c)(2), which references §§ 1926.651 and 1926.652 of that subpart. The proposed

rule clearly indicates that all of the requirements of Subpart P apply.

Employees working in areas with pedestrian or vehicular traffic are exposed to additional hazards compared to employees working on an employer's premises, where public access is restricted. One serious additional hazard faced by workers exposed to the public is that of being struck by a vehicle (or even by a person). To protect employees against being injured as a result of traffic mishaps, proposed § 1926.967(g) would require the placement of warning signs or flags or other warning devices to channel approaching traffic away from the work area if the conditions in the area pose a hazard to employees. If warning signs are not sufficient protection or if employees are working in an area in which there are excavations, barricades must be erected. Additionally, warning lights are required for night work. This proposed paragraph also references § 1926.200(g)(2), which covers traffic control devices. This provision in OSHA's construction standards incorporates Part VI of the Manual of Uniform Traffic Control Devices, 1988 Edition, Revision 3, September 3, 1993, FHWA–SA–94–027, or Part VI of the Manual on Uniform Traffic Control Devices, Millennium Edition, December 2000, Federal Highway Administration, by reference. Proposed § 1926.967, which has been taken from § 1910.269(w)(6), has no counterpart in existing Subpart V.

Proposed § 1926.967(h) addresses the hazards of voltage backfeed due to sources of cogeneration or due to the configuration of the circuit involved. Under conditions of voltage backfeed, the lines upon which work is to be performed remain energized after the main source of power has been disconnected. According to this proposed provision, the lines would have to be worked as energized, under proposed § 1926.960, or could be worked as deenergized, following proposed §§ 1926.961 and 1926.962. The referenced requirements contain the appropriate controls and work practices to be taken in case of voltage backfeed. This proposed paragraph, which has been taken from § 1910.269(w)(7), has no counterpart in existing Subpart V.

Sometimes, electric power transmission and distribution work involves the use of lasers. Appropriate requirements for the installation, operation, and adjustment of lasers are contained in existing § 1926.54 of the construction standards. Rather than develop different requirements for electric power transmission and distribution work, OSHA has decided to reference § 1926.54 in paragraph (i) of proposed § 1926.967. This proposed paragraph, which has been taken from § 1910.269(w)(8), has no counterpart in existing Subpart V.

To ensure that hydraulic equipment retains its insulating value, paragraph (j) of proposed § 1926.967 would require the hydraulic fluid used in insulated sections of such equipment to be of the insulating type. Paragraph (d)(1) of § 1926.302 requires hydraulic fluid used in hydraulic powered tools to be fire-resistant. Because available insulating fluids are not fire-resistant, proposed § 1926.967(j) would exempt insulating hydraulic fluid from § 1926.302(d)(1). Proposed § 1926.967(j) is essentially identical to existing § 1926.950(i).

Proposed § 1926.967(k) addresses communication facilities associated with electric power transmission and distribution systems. Typical communications installations include those for microwave signaling and power line carriers. This proposed paragraph, which has been taken from § 1910.269(s), has no counterpart in existing Subpart V.

Microwave signaling systems are addressed by paragraph (k)(1) of proposed § 1926.967. To protect employees' eyes from being injured by microwave radiation, paragraph (k)(1)(i) would require employers to ensure that employees do not look into an open waveguide or antenna that is connected to an energized source of microwave radiation.

Existing § 1910.97, which covers non-ionizing radiation, prescribes a warning sign with a special symbol indicating non-ionizing radiation hazards. Paragraph (k)(1)(ii) of proposed § 1926.967 would require areas that contain radiation in excess of the radiation protection guide set forth in § 1910.97 to be posted with the warning sign. Also, the proposal would require the lower half of that sign to be labeled as follows:

> Radiation in this area may exceed hazard limitations and special precautions are required. Obtain specific instruction before entering.

The sign is intended to warn employees about the hazards present in the area and to inform them that special instructions are necessary to enter the area.

In § 1910.97, the radiation protection guide is advisory only. Paragraph (k)(1)(iii) of proposed § 1926.967 would make the guide mandatory for electric power transmission and distribution work by requiring the employer to institute measures that prevent any employee's exposure from being greater than that set forth in the guide. These measures may be of an administrative nature (such as limitations on the duration of exposure) or of an engineering nature (such as a design of the system that limits the emitted radiation to that permitted by the guide) or may involve the use of personal protective equipment. This proposed provision would not require employers to follow the hierarchy of controls normally required for the protection of employees from occupational hazards. Employees exposed to radiation levels beyond that permitted by the radiation protection guide are typically performing maintenance tasks. OSHA typically permits the use of personal protective equipment in these situations. No employees are exposed to these levels on a routine basis. The Agency requests comments on whether the proposal adequately protects employees and whether the standard should require employers to follow the hierarchy of controls.

Power line carrier systems use the power line itself to carry signals between equipment at different points on the line. Because of this, the proposal would require, in § 1926.967(k)(2), that work associated with power line carrier installations be performed according to the requirements for work on energized lines.

Section 1926.968, Definitions

Proposed § 1926.968 contains definitions of terms used in the standard. Since these definitions have been taken, in large part, from consensus standards and existing OSHA rules and since the definitions included are generally self-explanatory, OSHA expects these terms to be well understood, and no explanation is given here, except for the definition of the term ''qualified employee.'' For other terms whose meaning may not be readily apparent, the Agency has provided an explanation in the discussion of the provision in which the term first appears. (For example, the explanation of the definitions of ''host employer'' is given in the discussion of proposed § 1926.950(c)(1), earlier in this section of the preamble.)

The definition of ''qualified employee'' is based on the definition of that term as set forth in § 1910.269(x). This definition reads as follows:

> One knowledgeable in the construction and operation of the electric power generation, transmission, and distribution equipment involved, along with the associated hazards.

OSHA does not intend to require employees to be knowledgeable in all

aspects of electric power generation, transmission, and distribution equipment in order to be considered as ''qualified.'' OSHA believes that the proposed definition will convey the Agency's true intent. It should be noted that the proposal uses the term ''qualified employee'' to refer only to employees who have the training to work on energized electric power transmission and distribution installations. Paragraph (b)(2) of proposed § 1926.950 sets out the training an employee would have to have to be considered a qualified employee. A note to this effect has been included following the definition of this term.

Appendices. OSHA is including seven appendices to proposed Subpart V.

Appendix A refers to Appendix A to § 1910.269, which contains flow charts depicting the interface between § 1910.269 and the following standards: § 1910.146, Permit-required confined spaces; § 1910.147, The control of hazardous energy (lockout/tagout); and Part 1910, Subpart S, Electrical. While these general industry standards are not applicable to construction work, employers will still need this information when the construction work performed under Subpart V interfaces with general industry work. Thus, Appendix A will assist employers in determining which of these standards applies in different situations.

Appendix B provides information relating to the determination of appropriate minimum approach distances as proposed by § 1926.950(c)(1) and § 1926.964(c). This appendix is based on Appendix B to § 1910.269, with revisions necessary to reflect the changes to the minimum approach distances proposed for § 1910.269 and Subpart V. OSHA requests information on whether Appendix B requires additional changes, beyond what the Agency is proposing, to make it consistent with current technology. (See the summary and explanation of proposed § 1926.960(c)(1).) OSHA intends to revise the explanatory material in Appendix B similarly when the Agency issues the final rule.

Appendix C provides information relating to the protection of employees from hazardous step and touch potentials as addressed in § 1926.959(d)(3)(iii)(D), § 1926.963(d)(3)(ii), and § 1926.964(b)(2).

Appendix D contains information on the inspection and testing of wood poles addressed in § 1926.964(a)(2).

Appendix E contains references to additional sources of information that may be used to supplement the requirements of proposed Subpart V. The national consensus standards referenced in this appendix contain detailed specifications to which employers may refer in complying with the more performance-oriented requirements of OSHA's proposed rule. Except as specifically noted in Subpart V, however, compliance with the national consensus standards would not be a substitute for compliance with the provisions of the OSHA standard.

Appendix F provides guidance on the selection of protective clothing for employees exposed to electric arcs as addressed in proposed § 1926.960(g).

Appendix G contains guidelines for the inspection of work positioning equipment to assist employers in complying with proposed § 1926.954(b)(3)(i).

C. Part 1910 Revisions

The construction of electric power transmission and distribution lines and equipment nearly always exposes employees to the same hazards as the maintenance of electric power lines and equipment. Power line workers use the same protective equipment and safety techniques in both types of work. During the course of a workday, these employees can perform both types of work.

For example, a power line crew could be assigned to replace two transformers that have failed. In one case, the transformer is replaced with an equivalent one; in the other case, it is replaced with a transformer with a different kilovolt-ampere rating. When the employees perform the first job, they are performing maintenance work covered by Part 1910. However, the second job is considered to be construction and is covered by Part 1926. The employees would almost certainly use identical work practices and protective equipment for both jobs.

Because of this, OSHA believes that it is important to have the same requirements apply regardless of the type of work being performed. If the corresponding Part 1910 and Part 1926 standards are the same, employers can adopt one set of work rules covering all types of work. Employers and employees would not be faced with having to decide whether a particular job was construction or maintenance—a factor that in virtually every instance has no bearing on the safety of employees.

Therefore, in this rulemaking, OSHA is proposing revisions to §§ 1910.137 and 1910.269 so that the construction and maintenance standards will be the same.[64] The following distribution table presents the major revisions and OSHA's rationale for proposing them.

Proposed part 1910 revision	Proposed part 1926 revision	Rationale and comments
§ 1910.137(A)(1)(ii), (b)(2)(vii), and Tables I–2, I–3, I–4, and I–5.	§ 1926.97(a)(1)(ii), (c)(2)(vii), and Tables E–1, E–2, E–3, and E–4.	Section 1910.137 would be revised to include Class 00 rubber insulating gloves.
The note following § 1910.137(a)(3)(ii)(B).	The note following § 1926.97(a)(3)(ii)(B).	The note would be revised to include the latest ASTM standards. References to ASTM definition and to an ASTM guide for visual inspection of rubber insulating equipment have been included to provide additional useful information for complying with the OSHA standard.
A new note following § 1910.137(b)(2)(ii).	The note following § 1926.97(b)(2)(ii).	A reference to an ASTM guide for visual inspection of rubber insulating equipment has been included to provide additional useful information for complying with the OSHA standard.

[64] Subpart V does not contain requirements for electric power generation installations or for line-clearance tree-trimming work. See the summary and explanation of proposed § 1926.950(a)(3), earlier in this preamble.

Proposed part 1910 revision	Proposed part 1926 revision	Rationale and comments
§ 1910.137(b)(2)(vii)(B) and (C)	§ 1926.97(c)(2)(vii)(B) and (C)	Existing § 1910.137(b)(2)(vii)(B) would be split into two separate CFR units.
§ 1901.137(c) [New]	§ 1926.97(b)	A new paragraph would be added to cover electrical protective equipment that is not made of rubber. See the summary and explanation of proposed § 1926.97(b).
§ 1910.269(a)(2)(i)	§ 1926.950(b)(1)	Existing § 1910.269(a)(2)(i) would be split into three separate CFR units. The last of those units, paragraph (a)(2)(i)(c), would introduce a new requirement that the degree of training be determined by the risk to the employee. See the discussion of proposed § 1926.950(b)(1)(iii).
§ 1910.269(a)(2)(ii)(E) [New]	§ 1926.950(b)(2)(v)	A new paragraph would be added to require qualified employees to be trained to recognize and to control or avoid electrical hazards. See the discussion of proposed § 1926.950(b)(2)(v).
§ 1910.269(a)(2)(vii)	§ 1926.950(b)(7)	The existing requirement for employers to certify that employees have been trained would be replaced with a requirement for employers to determine that employees have demonstrated proficiency in the work practices involved. In addition, a new note would be added to clarify how training received in a previous job would satisfy the training requirements. See the discussion of proposed § 1926.950(b)(7).
§ 1910.269(a)(4) [New]	§ 1926.950(c)	A new paragraph would be added to require host and contract employers to share information on safety-related matters. See the discussion of proposed § 1926.950(c).
§ 1910.269(c)	§ 1926.952	The existing provision would be reorganized and renumbered. A new requirement would be added to ensure that employers provide the employee in charge with sufficient information to be able to complete the job safely. See the discussion of proposed § 1926.952.
The note following § 1910.269(e)(6)	None	This note would be removed. It currently references § 1910.146 for the definition of ''entry.'' OSHA is proposing to add a definition of this term to § 1910.269, so this note would be unnecessary.
§ 1910.269(e)(8)	§ 1926.952(h)	OSHA is proposing to remove the requirement to provide an attendant if there is reason to believe a hazard exists in the enclosed space. Paragraph (e)(1) of § 1910.269 requires the entry to conform to § 1910.146 if there are hazards for which the requirements of § 1910.269(e) and (t) do not provide adequate protection. Thus, if an employer has reason to believe that a hazard exists despite the precautions taken under § 1910.269(e) and (t), then § 1910.146 applies, and an attendant would be required by that standard.
§ 1910.269(e)(8)	§ 1926.953(i)	The existing requirement would be revised to clarify that the test instrument must have an accuracy of ±10 percent.
§ 1910.269(e)(12)	§ 1926.953(m)	The existing requirement would be revised to require the employer to be able to demonstrate that ventilation was maintained long enough to ensure that a safe atmosphere exists before employees enter an enclosed space.
§ 1910.269(g)(2)	§ 1926.954(b)	The existing requirements would be revised to maintain consistency with the construction provisions. See the discussion of proposed § 1926.954(b).
§ 1910.269(l)(2)(i)	§ 1926.960(c)(1)(i)	The existing requirement would be clarified to indicate that an energized part must be under the full control of the employee for rubber insulating gloves or rubber insulating gloves and sleeves to be considered as sufficient insulation from that part. See the discussion of proposed § 1926.960(c)(1).
§ 1910.269(l)(3) and (4)	§ 1926.960(c)(2) and (d)	OSHA is proposing to revise the existing requirements to ensure that employees use electrical protective equipment whenever they can reach within the minimum approach distance of an energized part. See the discussion of § 1926.960(c)(2) and (d).
§ 1910.269(l)(6) [Revised] and (12) [New].	§ 1926.960(f) and (g)	OSHA is proposing to revise the existing requirements on clothing in § 1910.269(l)(6)(ii) and (iii) to require employees to be protected from electric arcs. See the discussion of proposed § 1926.960(g).
Table R–6	Table V–2	The existing table would be revised so that it contains the same minimum approach distances as ANSI C2 (on which it is based). See the discussion of proposed § 1926.960(c)(1).
§ 1910.269(m)(3)(viii)	§ 1926.961(c)(3)(ii)	The existing provision would be revised to require independent crews to coordinate energizing and deenergizing lines and equipment if no system operator is in charge. The new provision would prevent one crew from energizing a line or equipment that another crew was working on.
§ 1910.269(n)(4)	§ 1926.962(d)	The existing requirement would be revised to allow smaller protective grounds under certain conditions. See the discussion of proposed § 1926.962(d).

Proposed part 1910 revision	Proposed part 1926 revision	Rationale and comments
§ 1910.269(n)(6) and (n)(7)	§ 1926.962(f)	The existing requirement would be revised to allow insulating equipment other than a live-line tool to place grounds on or remove them from circuits of 600 volts or less under certain conditions. See the discussion of § 1926.962(f).
§ 1910.269(p)(4)(i)	§ 1926.959(d)(1)	OSHA is proposing to clarify the existing provision to indicate that, if an insulated aerial lift comes closer to an energized part than the minimum approach distance, the aerial lift must maintain the minimum approach distance from objects at a different potential. See the discussion of § 1926.959(d)(1).
§ 1910.269(t)(3), (7), and (8)	§ 1926.965(d), (h), and (i)	OSHA is proposing to apply these requirements to vaults as well as manholes. Additionally, OSHA is proposing to add a requirement to address work that could cause a cable to fail. See the discussion of proposed § 1926.965(d), (h), and (i).
The notes following § 1910.269(u)(1), (u)(5)(i), (v)(3), and (v)(5).	The notes following and § 1926.966(b) (f)(1).	The references in these notes to ANSI C2–1987 would be updated to ANSI C2–2002.
§ 1910.269(x)	§ 1926.968	OSHA is proposing to add definitions of ''contract employer,'' ''host employer,'' and ''entry.'' See the discussion of proposed §§ 1926.950(c) and 1926.953.
Appendix F to § 1910.269 [New]	Appendix F to Subpart V	OSHA is proposing to add a new appendix containing information on protecting employees from electric arcs.
Appendix G to § 1910.269 [New]	Appendix G to Subpart V	OSHA is proposing to add a new appendix containing guidelines for the inspection of work positioning equipment.

There are some differences in language between proposed Subpart V and existing § 1910.269. Some of these differences are because § 1910.269 applies to electric power generation installations and related work practices but Subpart V does not. For example, existing § 1910.269(b)(1)(ii) addresses CPR training requirements for fixed work locations ''such as generating stations.'' The corresponding construction provision in proposed § 1926.951(b)(1)(ii) contains the exact same requirement, but lists ''substations'' as examples of fixed work locations. OSHA intends to retain such differences in the final rule.

Other differences result from the application of construction standards when construction work is performed instead of general industry standards when maintenance work is performed. For example, proposed § 1926.969(a)(1) contains exemptions from §§ 1926.550(a)(15) and 1926.600(a)(6) [65] for the operation of mechanical equipment by qualified employees near overhead power lines. Existing § 1910.269 contains no similar requirement because the corresponding general industry provision, § 1910.333(c)(3), does not apply to qualified employees performing work covered by § 1910.269. In a similar fashion, proposed § 1926.953(a) does not contain § 1910.269(e)'s exemption from paragraphs (d) through (k) of § 1910.146 dealing with permit-space entries, as that general industry standard does not apply to construction work. OSHA intends to retain such differences in the final rule.

On the other hand, OSHA has identified several nonsubstantive differences between the existing language in §§ 1910.137 and 1910.269 and the language proposed in § 1926.97 and Subpart V. Table IV–8 identifies these differences. The Agency intends to carry those changes into final §§ 1910.137 and 1910.269. OSHA invites comments and questions on any differences between the proposed standards and existing §§ 1910.137 and 1910.269 and on how the respective final rules should be made consistent.

TABLE IV–8.—PROVISIONS WITH NONSUBSTANTIVE CHANGES

Section 1926.97 provisions with nonsubstantive changes in language	Correspondong provisions in existing § 1910.137
1926.97(c)(2)(xii), Note.	
1910.137(b)(2)(xii), Note.	
Subpart V Provisions with Nonsubstantive Changes in Language	**Corresponding provisions in Existing § 1910.269**
1926.950(a)(2)	1910.269(a)(1)(iii).
1926.950(b)(2), introductory text	1910.269(a)(2)(ii), introductory text.
1926.950(b)(2), Note	1910.269(a)(2)(ii), Note.
1926.950(b)(4)(i)	1910.269(a)(2)(iv)(A).
1926.955(b)(4)	1910.269(h)(2)(iii).
1926.956(d)(3)	1910.269(i)(4)(ii).
1926.957(a)	1910.269(j)(1).
1926.961(c)(9)(i)	1910.269(m)(3)(x)(A).
1926.961(c)(10)	1910.269(m)(3)(xi).
1926.962(b), introductory text	1910.269(n)(2), introductory text.
1926.966(e)(1)(iii), introductory text.	1910.269(u)(4)(i)(C), introductory text.
1926.968, definition of ''designated employee''.	1910.269(x), definition of ''designated employee''.

[65] These provisions generally require that a 3.05-meter (10-foot) minimum clearance be provided between mechanical equipment and overhead power lines.

TABLE IV–8.—PROVISIONS WITH NONSUBSTANTIVE CHANGES—Continued

Section 1926.97 provisions with nonsubstantive changes in language	Correspondong provisions in existing § 1910.137
1926.968, Note to the definition of "guarded".	1910.269(x), Note to the definition of "guarded".

Notes:
(1) This table does not list provisions in which the only change was to break up paragraphs with multiple requirements into separately numbered paragraphs. See, for example, proposed § 1926.960(b)(1)(i), (b)(1)(ii), and (b)(2), which were taken from the introductory text to existing § 1910.269(1)(1).
(2) This table also does not list provisions in which the only change was a conversion to international standard (SI) units. See, for example, proposed § 1926.966 (e)(1)(iii)(B), which was taken from existing § 1910.269(u)(4)(i)(C)(2).

OSHA expects that final Subpart V will differ from proposed Subpart V because of changes adopted based on the rulemaking record. When the final rule is published, the Agency intends to make corresponding changes to § 1910.269 to keep the two rules the same, except to the extent that substantial differences between construction work and general industry work warrant different standards. Similarly, the Agency intends to adopt changes to § 1910.137 so that it is the same as § 1926.97. Therefore, OSHA is seeking comment on entire §§ 1910.137 and 1910.269. Comments received on the general industry standards will be considered in adopting the final construction standards and vice versa. In particular, the Agency has requested comments on several issues in the proposed revision of Subpart V and in proposed new § 1926.97. Some of these issues are directed towards requirements in those construction standard that are taken from general industry provisions that OSHA is not proposing to revise. For example, earlier in this section of the preamble, the Agency requests comments on whether AEDs should be required as part of the medical and first aid requirements in proposed § 1926.951. (See the summary and explanation of proposed § 1926.951(b)(1).) Although OSHA has not proposed to revise the corresponding general industry provision, existing § 1910.269(b)(1), the Agency intends to revise that general industry provision if the rulemaking record supports a requirement for AEDs. Therefore, OSHA encourages all rulemaking participants to respond to these issues regardless of whether the participants are covered by the construction standards. Table IV–9 is a cross-reference table to help interested parties to find the section in Subpart V that corresponds to a particular paragraph in § 1910.269.

TABLE IV–9.—PROVISIONS IN SUBPART V CORRESPONDING TO PARAGRAPHS IN § 1910.269

Paragraph in § 1910.269	Corresponding section in subpart V	Topic
(a)	§ 1926.950	General, scope, and training.
(b)	§ 1926.951	Medical services and first aid.
(c)	§ 1926.952	Job briefing.
(e)	§ 1926.953	Enclosed spaces.
(f)	§ 1926.967(f)	Excavations.
(g)	§ 1926.954	Personal protective equipment.
(h)	§ 1926.955	Ladders and platforms.
(i)	§ 1926.956	Hand and portable power tools.
(j)	§ 1926.957	Live-line tools.
(k)	§ 1926.958	Materials handling and storage.
(l)	§ 1926.960	Working on or near exposed energized parts.
(m)	§ 1926.961	Deenergizing lines and equipment for employee protection.
(n)	§ 1926.962	Grounding for the protection of employees.
(o)	§ 1926.963	Testing and test facilities.
(p)	§ 1926.959	Mechanical equipment.
(q)	§ 1926.964	Overhead lines.
(s)	§ 1926.967(k)	Communication facilities.
(t)	§ 1926.965	Underground electrical installations.
(u)	§ 1926.966	Substations.
(w)	§ 1926.967	Special conditions.
(x)	§ 1926.968	Definitions.

Note: Paragraphs (d), (r), and (v) have no counterparts in Subpart V.

Foot protection for electrical hazards. OSHA is also proposing to revise § 1910.136(a). Existing § 1910.136(a) reads as follows:

(a) *General requirements.* The employer shall ensure that each affected

employee uses protective footwear when working in areas where there is a danger of foot injuries due to falling or rolling objects, or objects piercing the sole, and where such employee's feet are exposed to electrical hazards.

The Agency is concerned that this language is being interpreted to recognize the use of electrical hazard footwear as a primary form of electrical protection. Electrical hazard footwear is constructed to provide insulation of the wearer's feet from ground. This can provide a small degree of protection from electric shock for the wearer. This protection is limited to voltages of 600 volts or less under dry conditions and is intended to be a secondary form of electrical insulation.[66] Conductive footwear, which is not electrical hazard footwear, is designed to prevent static electricity buildup. This is one method of protecting against static electrical discharges that can damage equipment or, in hazardous locations, could possibly lead to fires or explosions.

Interpreting existing § 1910.136(a) so as to recognize electrical hazard footwear as a primary form of electrical protection could expose employees to electric shock hazards if they believe that the real primary form of electrical protection (for example, rubber insulating gloves or blankets) is no longer necessary. This is true for several reasons. First, electrical hazard footwear only insulates an employee's feet from ground. The employee can still be grounded through other parts of his or her body. Second, the insulation provided by electrical hazard footwear is good only under dry conditions. This footwear provides little if any protection once it becomes wet or damp. Lastly, the voltage rating on electrical hazard footwear is only 600 volts.

OSHA believes that, because of these limitations, electrical hazard footwear should not be addressed by § 1910.136, which is designed to provide protection to employees' feet. The Agency also believes that the need for conductive footwear, whether or not it provides protection for the foot, is adequately addressed by the general requirement in § 1910.132(a) to provide personal protection equipment. Therefore, OSHA is proposing to delete language relating to electrical hazards from § 1910.136(a).

Paragraph (d) of § 1910.132 addresses hazard assessment and selection of personal protective equipment. Paragraph (f) of § 1910.132 addresses training in the use of personal protective equipment. As noted in § 1910.132(g), paragraphs (d) and (f) of existing § 1910.132 do not apply to electrical protective equipment covered by § 1910.137. While training is covered in other electrical standards (for example, in § 1910.268, telecommunications, in § 1910.269, electric power generation, transmission, and distribution, and in § 1910.332, training in electrical safety-related work practices), many of the hazard assessment requirements in § 1910.132(d) are not addressed in any other OSHA electrical standard. OSHA requests comments on whether electrical protective equipment should be added to the scope of § 1910.132(d) or § 1910.132(f) or both.

D. Effective Date

When a final rule is promulgated, OSHA typically provides a delay in effective date to allow employers to become familiar with the rule and to come into compliance. Some of the provisions in the proposal would require some employers to purchase new equipment. For example, the requirements proposed in §§ 1910.269(l)(11) and 1926.960(g) would require some employers to purchase flame-resistant clothing. OSHA requests comments generally on what an appropriate delay in effective date should be and specifically on how long employers will need to make purchases necessary for compliance with the proposed rule.

Some of the proposed provisions would require employers to replace existing noncomplying equipment with equipment that meets the proposal. For example, proposed § 1926.954(b)(2)(xi) would require snaphooks used with work positioning equipment to be of the locking type. Some employers may still use nonlocking snaphooks with work positioning equipment. OSHA requests information on the extent to which nonlocking snaphooks are used. The Agency also requests information on the useful life of such equipment and on whether OSHA should allow sufficient time for noncomplying equipment to be replaced as it wears out. Such a delay would minimize the costs incurred by employers but would expose employees to hazards for a longer period.

V. Preliminary Regulatory Impact Analysis and Initial Regulatory Flexibility Analysis

A. Executive Summary

Introduction

OSHA is required by the OSH Act to ensure and demonstrate that standards promulgated under the Act are technologically and economically feasible. Executive Order 12866, the Regulatory Flexibility Act, and the Unfunded Mandates Reform Act also require OSHA to estimate the costs, assess the benefits, and analyze the impacts of the rules that the Agency promulgates.

Accordingly, OSHA has prepared this Preliminary Regulatory Impact Analysis (PRIA) for OSHA's proposal to update its standards addressing electric power generation, transmission, and distribution work, and the use of electrical protective equipment. For purposes of this analysis, the terms ''proposal'' and ''proposed standard'' include all elements of this proposed rulemaking, including proposed changes to 29 CFR 1910.269, proposed changes to 29 CFR 1926, proposed changes involving electrical protective equipment requirements, and other associated revisions and additions. The consolidated set of proposed actions was analyzed in its entirety; only those parts that were identified as involving nonnegligible costs are explicitly reflected in the analysis of compliance costs and impacts.

In some past notices of proposed rulemakings, OSHA has included only an Executive Summary of the PRIA in the preamble to the proposal. For this rulemaking, OSHA is including the entire PRIA in this **Federal Register** notice for the convenience of the public.

Need for Regulation

Employees in work environments addressed by the proposed standards are exposed to a variety of significant hazards that can and do cause serious injury and death. The risks to employees are excessively large due to the existence of market failures, and existing and alternative methods of alleviating these negative consequences have been shown to be insufficient. After carefully weighing the various potential advantages and disadvantages of using a regulatory approach to improve upon the current situation, OSHA preliminarily concludes that in this case the proposed mandatory standards represent the best choice for reducing the risks to employees. In addition, rulemaking is necessary in this case in order to replace older existing

[66] Primary insulation normally insulates an employee directly from an energized part. Rubber insulating gloves and rubber insulating blankets are examples of primary electrical protection. Secondary insulation normally insulates an employee's feet from a grounded surface. Electrical hazard footwear and rubber insulating matting are examples of secondary electrical protection.

standards with updated, clear, and consistent safety standards.

Affected Establishments

The proposal affects establishments in a variety of different industries involving electric power generation, transmission, and distribution. The proposed standards primarily affect firms that construct, operate, maintain, or repair electric power generation, transmission, or distribution systems. These firms include electric utilities as well as contractors who are hired by utilities and who are primarily classified in the construction industry. In addition, potentially affected firms are found in a variety of manufacturing and other industries which own or operate their own electric power generation, transmission, or distribution systems as a secondary part of their business operations. The proposal also potentially affects establishments performing line-clearance tree-trimming operations.

Benefits, Net Benefits, and Cost Effectiveness

The proposed revisions to the OSHA standards addressing electric power generation, transmission, and distribution work, as comprised by the proposed rulemaking, are expected to result in an increased degree of safety for the affected employees. These changes are expected to reduce the numbers of accidents, fatalities, and injuries associated with the relevant tasks, as well as reducing the severity of certain injuries, such as burns or injuries that could be sustained as a result of an arrested fall, that may still occur while performing some of the affected procedures.

An estimated 74 fatalities and 444 injuries occur annually among employees involved in electric power generation, transmission, and distribution work addressed by the provisions of this rulemaking. Based on a review and analysis of the incident reports associated with the reported injuries and fatalities, full compliance with the proposed standards would prevent 79.0 percent of the relevant injuries and fatalities, compared with 52.9 percent prevented with full compliance with the existing standards. Thus, the increase in safety that would be provided by the proposed standards is represented by the prevention of an additional 19 fatalities and 116 injuries annually. Applying an average monetary value of $50,000 per prevented injury, and a value of $6.8 million per prevented fatality, results in an estimated monetized benefit of about $135 million annually.

The net monetized benefits of the proposed standard are estimated to be about $101.1 million annually ($135 million in benefits and $33.9 million in costs). Note that these net benefits exclude any unquantified benefits associated with revising the standards to provide updated, clear, and consistent regulatory requirements to the public.

Additional benefits associated with this rulemaking involve providing updated, clear, and consistent safety standards regarding electric power generation, transmission, and distribution work to the relevant employers, employees, and interested members of the public. OSHA believes that the updated standards enhance worker safety and are easier to understand and to apply. They will benefit employers and employees by facilitating compliance while improving safety. The benefits associated with providing updated, clear, and consistent safety standards have not been monetized or quantified.

Table V–1 summarizes the costs, benefits, net benefits, and cost effectiveness of the proposed standard.

TABLE V–1.—NET BENEFITS AND COST EFFECTIVENESS

Annualized Costs:	
Determination of Appropriate Protective Clothing	$11.0 million.
Provision of Appropriate Protective Clothing	$8.4 million.
Host/Contractor Communications	$7.8 million.
Expanded Job Briefings	$5.1 million.
Additional Training	$1.2 million.
Other Costs	$0.4 million.
Total Annual Costs	$33.9 million.
Annual Benefits:	
Number of Injuries Prevented	116.
Number of Fatalities Prevented	19.
Monetized Benefits (Assuming $50,000 per Injury and $6.8 million per Fatality Prevented)	135 million.
OSHA standards that are updated and consistent	Unquantified.
Total Annual Benefits	116 injuries and 19 fatalities prevented.

Net Benefits (Benefits Minus Costs): $101 million annually.

Cost Effectiveness

Compliance with the proposed standards would result in the prevention of 1 fatality and 6 injuries per $1.8 million in costs, or, alternatively, $4.00 of benefits per dollar of cost.

Compliance Costs

The estimated costs of compliance for this rulemaking represent the additional costs necessary for employers to achieve full compliance. They do not include costs associated with current compliance with the new requirements imposed by the rulemaking; nor do they include costs associated with achieving full compliance with existing applicable requirements. The total annualized cost of compliance with the proposed rulemaking is estimated to be about $33.9 million.

The largest component of the compliance costs, at $11.0 million annually, is comprised of the costs necessary to comply with the requirement for the employer to make a determination regarding the type and extent of flame-resistant apparel necessary to protect employees in the event that employees may be exposed to an electric arc.

Other provisions of the proposed standards involving compliance costs include requirements for more protective clothing ($8.4 million), requirements for various communications between host employers and contractors ($7.8 million), expanded requirements for conducting job briefings ($5.1 million), and revised training requirements ($1.2 million).

Economic Impacts

To assess the nature and magnitude of the economic impacts associated with

compliance with the proposed rulemaking, OSHA developed quantitative estimates of the potential economic impact of the requirements on entities in each of the affected industry sectors. The estimated costs of compliance were compared with industry revenues and profits to provide an assessment of potential economic impacts.

The costs of compliance with the proposed rulemaking are not large in relation to the corresponding annual financial flows associated with the regulated activities. The estimated costs of compliance represent about 0.01 percent of revenues and 0.14 percent of profits on average across all entities; compliance costs do not represent more than 0.24 percent of revenues or more than 4.03 percent of profits in any affected industry.

The economic impact of the proposed rulemaking is most likely to consist of a small increase in prices for electricity, of about 0.01 percent on average. It is unlikely that a price increase on the magnitude of 0.01 percent will significantly alter the services demanded by the public or any other affected customers or intermediaries. If the compliance costs of the proposed rulemaking can be substantially recouped with such a minimal increase in prices, there may be little effect on profits.

In general, for most establishments, it would be very unlikely that none of the compliance costs could be passed along in the form of increased prices. In the event that unusual circumstances may inhibit even a price increase of 0.01 percent to be realized, profits in any of the affected industries would be reduced by a maximum of about 4 percent.

OSHA concludes that compliance with the requirements of the proposed rulemaking is economically feasible in every affected industry sector.

In addition, based on an analysis of the costs and economic impacts associated with this rulemaking, OSHA preliminarily concludes that the effects of the proposed standards on international trade, employment, wages, and economic growth for the United States would be negligible.

Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act, as amended in 1996 by the Small Business Regulatory Enforcement Fairness Act, requires the preparation of an Initial Regulatory Flexibility Analysis for certain proposed rules promulgated by agencies (5 U.S.C. 601–612). Under the provisions of the law, each such analysis shall contain: (1) A description of the impact of the proposed rule on small entities; (2) a description of the reasons why action by the agency is being considered; (3) a succinct statement of the objectives of, and legal basis for, the proposed rule; (4) a description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply; (5) a description of the projected reporting, recordkeeping and other compliance requirements of the proposed rule; (6) an identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap or conflict with the proposed rule; and (7) a description and discussion of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities.

OSHA has analyzed the potential impact of the proposed rule on small entities. As a result of this analysis, OSHA preliminarily concludes that the compliance costs are equivalent to over 5 percent of profits for some groups of affected small entities (as identified later in this analysis). Therefore, OSHA has prepared an Initial Regulatory Flexibility Analysis in conjunction with this rulemaking to describe the potential effects on small entities and to enable the Agency and the public to fully consider alternatives to the proposal.

B. Need for Rule

Employees performing work involving electric power generation, transmission, and distribution are exposed to a variety of significant hazards, such as fall, electric shock, and burn hazards, that can and do cause serious injury and death. As detailed below, OSHA estimates that, on average, 444 serious injuries and 74 fatalities occur annually among these workers.

Although some of these incidents may have been prevented with better compliance with existing safety standards, research and analyses conducted by OSHA have found that many preventable injuries and fatalities would continue to occur even if full compliance with the existing standards were achieved. Relative to full compliance with the existing standards, an estimated additional 116 injuries and 19 fatalities would be prevented through full compliance with the proposed standards.

Additional benefits associated with this rulemaking involve providing updated, clear, and consistent safety standards regarding electric power generation, transmission, and distribution work. The existing OSHA standards for the construction of electric power transmission and distribution systems are over 30 years old and inconsistent with the more recently promulgated OSHA standards addressing repair and maintenance work.

OSHA has different standards covering construction work on electric power transmission and distribution systems and general industry work on the same systems. In most instances, the work practices used by employees to perform construction or general industry work on these systems are the same. The application of OSHA's construction or general industry standards to a particular job depends upon whether the employer is altering the system (construction work) or maintaining the system (general industry work). For example, employers changing a cutout (disconnect switch) on a transmission and distribution system would be performing construction work if they were upgrading the cutout, but general industry work if they were simply replacing the cutout with the same model.

Since the work practices used by the employees would most likely be identical, the applicable OSHA standards should be identical. OSHA's existing requirements are not, however. Conceivably, for work involving two or more cutouts, different and conflicting OSHA standards might apply. The inconsistencies between the two standards create difficulties for employers attempting to develop appropriate work practices for their employees. For this reason, employers and employees have told OSHA that it should make the two standards identical. This proposal does so.

OSHA has preliminarily determined that the proposal is needed to reduce the number of fatalities and injuries occurring among workers involved in electric power generation, transmission, and distribution and to make the relevant standards clear and consistent. Before reaching this preliminary conclusion, many alternatives were considered, including regulatory alternatives and alternative approaches that would not involve the promulgation of revised standards.

C. Examination of Alternative Approaches

Alternative Regulatory Approaches

To determine the appropriate regulatory requirements to address occupational risks for employees working on electric power generation, transmission, and distribution systems,

OSHA considered many different factors and potential alternatives. The Agency examined the incidence of injuries and fatalities and their direct and underlying causes to ascertain where existing standards needed to be strengthened. These standards were reviewed, current practices in the industry were assessed, information and comments from experts were collected, and the available data and research were scrutinized.

OSHA faces several constraints in determining which regulatory requirements should apply. As required under Section 3(8) of the OSH Act, the requirements of an OSHA standard must be ''reasonably necessary or appropriate to provide safe or healthful employment and places of employment.'' Also, as required under Section 6(b)(8) of the OSH Act, the requirements of an OSHA standard may only differ substantially from existing national consensus standards to the extent that the OSHA standard will better effectuate the purposes of the OSH Act than the corresponding national consensus standards. OSHA standards must also be technologically and economically feasible, as noted earlier, and be cost-effective.

A full discussion of the basis for the particular regulatory requirements chosen is provided in Section IV, Summary and Explanation of Proposed Rule, earlier in this preamble. The regulatory alternatives considered by OSHA are discussed in the Initial Regulatory Flexibility Analysis later in this section of the preamble.

Alternative Nonregulatory Approaches

Introduction. The stated purpose of the OSH Act is to ''assure so far as possible every working man and woman in the Nation safe and healthful working conditions and to preserve our human resources.'' This congressional mandate provides the basis for OSHA's proposed rulemaking on electric power generation, transmission, and distribution, which is designed to mitigate the occupational hazards associated with work on electric power systems.

Before issuing a standard, OSHA must assess whether there are other, nonregulatory approaches available that may provide an equal or higher level of benefits. Executive Order 12866 directs regulatory agencies to assess whether an unregulated private market can achieve the same level of social benefits as that expected to result from Federal regulation:

Section 1. Statement of Regulatory Philosophy and Principles.

(a) *The Regulatory Philosophy.* Federal Agencies should promulgate only such regulations as are required by law, are necessary to interpret the law, or made necessary by compelling public need, such as material failures of private markets to protect or improve the health and safety of the public, the environment, or the well-being of the American people. In deciding whether and how to regulate, agencies should assess all costs and benefits of available regulatory alternatives, including the alternative of not regulating.

The discussion below considers several nonregulatory alternatives to OSHA's proposed rulemaking: Private market incentives, information dissemination programs, tort liability options, and workers' compensation programs.

Private Market Incentives. Economic theory suggests that the need for government regulations would be greatly reduced if private markets worked efficiently and effectively to provide health and safety protections for employees. At issue is whether the private market will be able to produce a level of safety and health for employees that will be equal to or greater than that potentially afforded by the proposed OSHA standards. In particular, OSHA examined whether the level of risk of experiencing an injury caused by workplace hazards that would be provided by an unregulated market would be at least as protective of employee safety as the proposed electric power rulemaking.

Theoretically, unregulated markets are capable of achieving an efficient allocation of resources if certain assumptions are satisfied. Necessary assumptions include elements such as perfect and free information, perfect and costless mobility of labor and other factors of production, and an absence of any externalities.

A major conclusion of the ''perfect competition model'' of economic theory is that, in the presence of full information about market choices and outcomes and with complete mobility of the factors of production, the private market would produce an efficient allocation of resources.

In the presence of perfect and complete information regarding occupational risks, labor markets would reflect the presence of different degrees of risk across different industries, firms, and occupations. In such a market, wage premiums would be paid to compensate workers engaged in hazardous occupations for the added risk they confront on the job.

In this theoretical framework, wages would vary directly with the riskiness of a job (other things being equal), and employers would have an incentive to make investments to reduce occupational health and safety risks to the extent workers would demand compensation for being exposed to such risks. In other words, because employers would have to pay their workers a premium to induce them to work in a risky environment, employers would be willing to pay to make that environment less risky by introducing technologies and practices that lower risks to workers.

In addition, a perfectly competitive market will theoretically lead to the efficient allocation of resources only if all of the costs and benefits (pecuniary and nonpecuniary) associated with the behavior of market participants and with market transactions are fully borne by those directly involved. In economic terms, this implies that there will not be any negative externalities associated with economic activities.

If all of the costs associated with occupational safety and health risks would in fact be internalized, then market decisions about occupational safety and health conditions made by employers and workers would be based on a consideration of the full social costs of their economic actions. However, if some of the effects of these actions are externalized (that is, some costs are not borne by employers and employees but by other parties who are external to the transaction), then those costs will not be adequately incorporated into the decisions of managers and workers. The resultant market allocation of resources can then be expected to be less efficient.

Costs and other impacts that are imposed on society and are not borne directly by the economic participants involved in an activity or transaction are referred to as externalities. The existence of such externalities is one reason why an unregulated private market often fails to produce an efficient allocation of resources. The presence of these externalities also implies that economic efficiency can potentially be improved with regulatory interventions.

In a theoretically perfect market without externalities, firms would decide how much to spend on reducing safety and health risks based on the full costs associated with the presence of such risks. The costs include pain and suffering, impacts on the quality of the lives of families, and effects on society as a whole. Workers would decide whether they were willing to work in a particular job based on the relative riskiness of the job and the extent to which they believe the wages offered to

them provide adequate compensation for these risks.

Research conducted by OSHA and information from several other sources show that many firms have responded to the risks posed to workers by electric power systems. Employers have increasingly recognized the costs associated with these risks and have implemented measures to reduce the occupational risks faced by their employees.

In fact, many risk control programs already implemented by employers go beyond the provisions required by the existing OSHA standards or by the proposed OSHA standards. The fact that employers are implementing these programs demonstrates that economic incentives do exist at least to some degree to motivate employers in the direction of reducing the risks associated with occupational exposures to the hazards of electric power work.

However, OSHA notes that many other employers continue to fall short of their obligations to provide even minimum safety protections for their employees. Such circumstances persist despite ongoing attempts by OSHA and other groups to provide information and assistance to employers to increase awareness and reduce the risks involved with work involving electric power systems.

The benefits section of this preliminary analysis shows that preventable injuries and fatalities continue to occur every year. The evidence indicates that market forces cannot alone curb occupational risks adequately.

Among employees engaged in work involving electric power generation, transmission, and distribution systems, there does not appear to be any risk premium reflected in wage rates that would differentiate between employers based on the extent of risks faced by employees. In fact, as presented in Section IV, Summary and Explanation of Proposed Rule, earlier in this preamble, there is some evidence that in these industries, wages for workers in similar jobs performing similar types of work are negatively correlated with the degree of risk involved: Employees of utilities tend to earn more than their counterparts working for contractors, and yet the fatality and injury rate is higher among employees of the contractors.

There are a variety of reasons why workers may not be paid the risk premiums that would theoretically be necessary to ensure that markets provide efficient levels of expenditures on safety and health. Workers have imperfect knowledge about the nature and magnitude of occupational risk factors. Many workers are not likely to be fully aware of the extent and nature of occupational risks associated with various different jobs and different employers at different points in time.

Even if workers have adequate information regarding the risks of occupational injuries, they may be unable to adequately incorporate this information into their decisions about choosing a job or staying on the job. Other factors and circumstances may affect employment choices, and decisions cannot be changed easily. There are also significant costs associated with job searches and changing jobs.

Assessing occupational risks for the purpose of determining the acceptability of wages offered is made even more difficult when differences in risk between two firms are significant but cannot be readily observed or predicted over the pertinent time periods. If differences in occupational risk between various establishments are not fully incorporated into the employment decisions of workers, the wage premiums paid for risky jobs will not accurately reflect the relative occupational risks associated with specific jobs in different firms. Thus, firms will have little incentive to individually reduce risk beyond levels present in other firms.

In addition, many employers may simply be unaware of the direct and indirect costs associated with occupational risks. Some employers may regard these costs as beyond their control or as part of general overhead costs. Employers may also not be fully aware of the availability of cost-effective ways of ameliorating or eliminating these risks and reducing the corresponding costs.

A significant problem that prevents risk premiums in an unregulated market from achieving the theoretical results that may potentially reduce occupational risks involves imperfections in the operation of labor markets. Changing jobs can be costly, and in some circumstances the costs may preclude a decision to change jobs solely on the basis of the occupational health risks involved. Factors that may make job changes particularly costly include nontransferability of occupational skills or seniority within a company, the difficulty of acquiring sufficient human capital to seek alternative employment opportunities, the costs and uncertainty associated with relocating to take advantage of better employment opportunities, the existence of institutional factors such as the nontransferability of pension plans and seniority rights, and the risk of prolonged periods of unemployment.

Often, differences in occupational risk between two firms must be very marked before a worker will change jobs on that basis. Therefore, wage rates determined by a market in which the protection of occupational safety and health is unregulated are unlikely to fully compensate workers for occupational health and safety risks, including those related to the risks of concern here.

Information Dissemination Programs. OSHA and other organizations currently produce and disseminate a considerable amount of information regarding the risks associated with work involving electric power generation, transmission, and distribution and the methods that can be used to reduce these risks. The dissemination of such information would continue in conjunction with the promulgation of the proposed standards; alternatively, in lieu of issuing mandatory standards, OSHA could rely on current or expanded information dissemination programs to generate the incentives necessary to produce further reductions in injuries and fatalities. Better informed workers can more accurately assess the occupational risks associated with different jobs, thereby facilitating those market interactions that result in wage premiums for relatively risky occupations.

There are several reasons, however, why reliance on information dissemination programs will not yield the level of social benefits achievable through compliance with the proposed electric power rules. First, there are no reliable incentives or mechanisms that would ensure that appropriate and sufficiently detailed information could be produced, or that such information would actually be distributed among and relied upon by workers. Furthermore, hazards associated with work on electric power systems are highly specific to individual tasks and work environments. The development of accurate knowledge about these occupational risks would require each employer to make available specific information about the risks present in his or her projects expected to be undertaken in the future. The lack of adequate incentives or mechanisms and the potentially large costs associated with the collection and reporting of the necessary information makes effective information dissemination difficult to implement in practice.

In addition, even if workers are better informed about workplace risks and hazards, other factors, such as barriers to labor mobility, that contribute to market failure would still remain. Finally, as argued above, workers may

not be able to evaluate information about long-term risks accurately when making employment decisions. Better information, therefore, will not ensure that the market will produce wage risk premiums in a manner that is consistent with an efficient allocation of resources.

Currently, in addition to the applicable OSHA standards, there are consensus standards, voluntary guidelines, and other information sources for preventing injuries and fatalities while working on electric power generation, transmission, and distribution systems. Although many employers have adopted many of the practices and procedures recommended by these sources, many other employers have been less successful in the widespread implementation of all of the recommendations of these voluntary guidelines. The Costs of Compliance section of this preliminary analysis provides further information regarding current compliance with specific elements in sectors covered by the proposal.

Thus, the experience and observations regarding electric power generation, transmission, and distribution work show that, while improved access to information about occupational risks can provide for more rational decision-making in the private market, voluntary information programs will not produce an adequately low level of occupational risk.

Tort Liability Options. Employees currently are generally restricted from using tort law to force employers to pay for costs and damages associated with fatalities and injuries that occur on the job. Greater worker use of tort law in seeking redress from injuries associated with occupational risks involving work on electric power generation, transmission, and distribution is another example of a possible nonregulatory alternative to the proposed rule. If employees were able to effectively sue their employers for damages caused by work-related hazards, and if other conditions regarding the cost and availability of information, knowledge and mobility of workers, and externalities are satisfied, then the need for an OSHA standard would potentially be reduced or eliminated.

A tort may be described, in part, as a civil wrong (other than breach of contract) for which the courts provide a remedy in the form of an action for damages. The application of the tort system to occupationally related injuries and illnesses would mean that a worker whose disability resulted from exposure to a work place risk would sue the employer to recover damages. The tort system could thus shift the liability for the direct costs of occupational injury from the worker to the employer, at least under certain specific circumstances.

With limited exceptions, however, the tort system has not been a viable alternative to regulation in dealings between employees and employers, for a number of reasons. All States have legislation making workers' compensation either the exclusive or principal legal remedy available to employees. Generally, tort law can be applied only to third-party producers or suppliers of hazardous products or equipment, for example, asbestos products. It is often difficult, however, to demonstrate that workplace injuries have been caused by defective or negligently designed products or equipment.

Moreover, legal proceedings generally fail to fully internalize costs because of the substantial legal fees and uncertainties associated with bringing court actions. In deciding whether or not to sue, the victim must be sure that the potential award will exceed both the expense and hardship of bringing the lawsuit. Legal expenses commonly include a contingency fee for the plaintiff's lawyer, plus court fees and the costs of accumulating evidence and witnesses. The accused firm must also pay for its defense.

In sum, the use of legal action as an alternative to regulation is limited because of the expense, delays, and uncertainties involved, and because under current State laws, workers' compensation will normally be an exclusive remedy that will prevent a worker from filing a suit at all. The tort system, therefore, does not serve adequately to protect workers from exposure to risks in the workplace.

Workers' Compensation Programs. The existing workers' compensation programs serve to partially address the market failures that result in insufficient reductions in occupational risks. An alternative to a mandatory standard would be a continued reliance on these and other existing programs (including possible modifications or enhancements to these programs) to address occupational risk. The workers' compensation system was implemented in part as a result of the perceived failure of the unregulated market to compel employers to sufficiently reduce occupational health and safety risks and to compensate employees for bearing those risks. The system seeks to shift some of the burden of the costs associated with occupational injuries and illnesses from workers to employers. By so doing, workers' compensation requirements can ensure that more of the costs of occupational injuries and illnesses are incorporated into decisions of employers even if employees do not have full information regarding their risks or are unable to receive full wage compensation for such risks. Originally designed to force more of the social costs of occupational injuries and illnesses to be internalized, the workers' compensation program has in practice fallen short of fully achieving this goal and does not fully compensate workers for occupationally related injuries and illnesses.

Compensation tends to be especially inadequate in permanent disability cases, in part because of time limits on benefit entitlements and in part because of the failure of the system to adjust benefits for changes in a worker's expected earnings over time. Several States restrict permanent, partial, and total disability benefits either by specifying a maximum number of weeks for which benefits can be paid, or by imposing a ceiling on dollar benefits. Both temporary and permanent disability payments are commonly limited by imposing a ceiling on the income per week that can be paid. In addition, under workers' compensation, no award is made for pain and suffering.

The extent to which income is replaced by each type of indemnity payment (that is, temporary or permanent partial) differs. First, although rules vary by State, temporary disability income is designed in most states to replace two-thirds of the worker's before-tax income. However, most States place a maximum and a minimum on the amount of money paid out to the worker, regardless of his or her actual former income.

The Worker Compensation Research Institute (WCRI) has studied the extent to which workers' compensation replaces after-tax income in 19 states. These studies show that temporary total disability payments replace between 80 and 100 percent of the after-tax income of the majority of workers in all of the States examined [5].[67] From 3 to 44 percent of workers receive less than 80 percent of their after-tax income, and from 0 to 16 percent receive more than 100 percent of their previous after-tax income (as a result of the ''floor'' on payments). In 15 of the 19 States examined, more workers receive less than 80 percent of their former after-tax income than receive more than 100 percent of their former income. WCRI does not provide estimates of the average replacement rates for all workers in a State. However, based on

[67] References appear at the end of this section of the preamble.

these data, it seems reasonable to assume that, on average, workers receive no more than 90 percent of their after-tax income while on temporary disability.

In addition to not fully replacing after tax income, workers' compensation payments, which are not taxable, provide no replacement for tax losses to the Federal, State or local government as a result of an illness. This loss is properly considered part of the social losses associated with an illness or injury. Typically taxes, including State and Federal income taxes and employee and employer contribution to social security taxes will be approximately 30 percent of income. The taxes not paid when an individual is unable to work thus add an additional 30 percent of worker income as losses associated with injuries and illnesses not covered by workers' compensation.

In summary, workers' compensation often covers less than 65 percent of the financial losses associated with the costs of injuries, and does not cover any portion of losses due to pain and suffering. Thus, even if the financial costs were fully internalized by employers, workers' compensation would be insufficient to assure adequate economic incentives to address work-related injuries and illnesses.

For workers' compensation to be able to internalize costs of work-related injuries and illnesses, it would be necessary for the costs an employer pays for workers' compensation to be directly related to the employer's risk of causing work-related injuries or illnesses.

Most workers' compensation programs nominally include the employer's injury experience as a factor in determining the level of the employer's insurance premiums. However, the majority of firms are not rated individually for their safety and health record; that is, they are not ''experience rated.'' For example, small firms often are ineligible for experience rating because of the high year-to-year variance in their claim rates. Such firms are class rated, and rate reductions are granted only if the experience of the entire class improves. Segregation of loss experience into classes is somewhat arbitrary, and an individual firm may be classified with other firms that have substantially different accident rates. Even when firms have an experience rating, the premiums paid may not accurately reflect their true degree of risk. In addition, a firm's experience rating is generally based on the benefits paid to ill or injured workers, not on the firm's safety and health record or on the actual risks faced by employees. Thus, in some cases employers may have more of an incentive to reduce premiums by contesting claims than by initiating safety and health measures.

For employers who rely on workers' compensation insurance, the payment of premiums represents the employer's major cost for the occurrence of occupational injuries and illnesses. However, the mechanism for determining an employer's workers' compensation premium frequently fails to reflect the real costs associated with a particular employer's record. As a result, efforts made by an employer to reduce the incidence of occupational injuries and illnesses are not necessarily reflected in reduced workers' compensation premiums. Similarly, firms that devote fewer resources to promoting worker safety and health often may not incur commensurately higher workers' compensation costs. Consequently, the program does not provide direct incentives for most employers to reduce the occupational health and safety risks in their workplaces.

Finally, workers' compensation is an insurance mechanism through which participants spread and share the risk of injury and illness claims, and the costs associated with occupational injuries and illnesses are often spread throughout the economy through risk sharing stemming from participation in health insurance programs. For example, some direct costs may not be incurred or attributed to employers because many workers go to their private physician rather than the company's physician for work-related injuries and illnesses, even though there are systemic mechanisms in place to ensure that work-related injuries are treated through the workers' compensation system. The social burden of adverse health effects is also shared by taxpayer-supported programs such as welfare, social security disability and death benefits, and Medicare. Employers have, therefore, less incentive to avoid such losses than they would if they were directly liable for all such claims. This transfer of risk is another reason why the market does not fully internalize the social costs of occupationally related injuries and illnesses.

The workers' compensation system does provide economic incentives for larger firms, especially those that self-insure for workers' compensation, because these firms internalize a greater portion of the true costs of the work-related injuries and illnesses incurred by their workers. Thus, larger firms can generally be expected to have done more to reduce the costs associated with occupational risks than smaller firms.

In summary, the workers' compensation system suffers from several defects that seriously reduce its effectiveness in providing incentives for firms to create safe and healthful workplaces. First, because the scheduled benefits are often significantly less than the actual losses experienced by injured or ill workers and the social losses experienced by tax payers, the existence of workers' compensation programs limits an employer's liability to levels significantly below the actual costs of the injury or illness. Second, premiums for individual firms are often unrelated or only loosely related to that firm's risk environment. The firm, therefore, does not receive the proper economic incentives and consequently fails to invest sufficient resources in reducing workplace injuries and illnesses. The economic costs not borne by the employer are imposed on the employee directly or on society through social welfare programs.

Summary. OSHA has determined that certain workers are exposed to occupational risks associated with work on electric power generation, transmission, and distribution systems. The private market has not been effective in sufficiently reducing this level of risk due to a lack of complete information about safety risks in specific work environments, limits on worker mobility, and other factors that contribute to the failure of markets to provide an efficient allocation of resources. Options for improving the operations of markets include information dissemination programs, tort liability options, and workers' compensation programs. After considering each of these options, OSHA has concluded that none of them will provide the level of benefits achievable by the proposed electric power systems rules.

D. Profile of Affected Industries

The proposal affects establishments in a variety of different industries involving electric power generation, transmission, and distribution. The proposal primarily affects firms that construct, operate, maintain, or repair electric power generation, transmission, or distribution systems. These firms include electric utilities as well as contractors who are hired by utilities and who are primarily classified in the construction industry. In addition, potentially affected firms are found in a variety of manufacturing and other industries that own or operate their own electric power generation, transmission, or distribution systems as a secondary part of their business operations. The

proposal also potentially affects establishments performing line-clearance tree-trimming operations.

Table V–2 presents data on the numbers of establishments and numbers of employees for each affected industry. Across all industries, an estimated 20,765 establishments and 227,683 employees may be affected by the proposed standards.

TABLE V–2.—PROFILE OF POTENTIALLY AFFECTED ESTABLISHMENTS AND EMPLOYEES

Industry code	Industry name	Potentially affected establishments	Potentially affected full-time equivalent (FTE) employees
NAICS 234910	Water, sewer, and pipeline construction	847	951
NAICS 234920	Power and communication transmission line construction	2829	26179
NAICS 234930	Industrial nonbuilding structure construction	266	1391
NAICS 234990	All other heavy construction	656	5573
NAICS 235310	Electrical contractors	1613	16342
NAICS 235910	Structural steel erection contractors	652	300
NAICS 235950	Building equipment and other machine installation contractors	952	281
NAICS 235990	All other special trade contractors	2612	734
NAICS 221110	Electric power generation	1745	43103
NAICS 221120	Electric power transmission, control, and distribution	6190	71441
NAICS 2211	Publicly owned utilities	923	9864
Various	Industrial power generators	933	16504
SIC 0783	Ornamental shrub and tree services	547	35020
Total		20765	227683

Source: CONSAD [2], Appendix C, pages 1–2.

As shown in Table V–2, the construction industries with the largest numbers of affected employees are Power and Communication Transmission Line Construction and Electrical Contractors, which together account for over 42,000 employees of the affected work force. Other potentially affected construction industries include Water, Sewer, and Pipeline Construction, Industrial Nonbuilding Structure Construction, All Other Heavy Construction, Structural Steel Erection Contractors, Building Equipment and Other Machine Installation Contractors, and All Other Special Trade Contractors.

Table V–2 also shows that firms classified as utilities account for over 8,000 of the potentially affected establishments, and for over 120,000 of the potentially affected employees. Utilities include establishments classified in the Electric Power Generation industry and in the Electric Power Transmission, Control, and Distribution industry.

The U.S. Department of Commerce Census data on the numbers of utilities and the numbers of workers employed by utilities do not include utilities that are owned by public sector entities. Thus, data for utilities owned by the public sector are shown separately in Table V–2.

Potentially affected utilities include publicly-owned utilities that operate in OSHA State-plan States. (State-plan States, representing about half of total U.S. employment, are States that operate their own occupational safety and health programs; these States are obligated, under formal agreements with OSHA, to impose OSHA-equivalent State regulatory requirements on public employees within their jurisdiction.) The number of potentially affected public entities and the corresponding number of employees are shown separately in Table V–2. Over 900 establishments and over 9,000 employees are part of publicly-owned utilities potentially affected by the proposed standards.

Table V–2 further shows the numbers of potentially affected establishments and employees that are part of firms in a variety of manufacturing and other industries who own or operate their own electric power generation, transmission, or distribution systems as a secondary part of their business operations. Over 900 establishments and 16,000 employees potentially affected by the proposed standards are accounted for by these firms. Based on their primary business activity, these establishments are classified as part of the following industry sectors: Oil and Gas Extraction; Mining; Water, Sewer, and Other Systems; Food Manufacturing; Wood Product Manufacturing; Paper Manufacturing; Petroleum and Coal Products Manufacturing; Chemical Manufacturing; Primary Metal Manufacturing; Wholesale Trade, Durable Goods; Educational Services; and Hospitals.

Finally, Table V–2 presents figures for the numbers of potentially affected establishments and employees in the Ornamental Shrub and Tree Services industry. OSHA estimates that over 500 establishments and over 35,000 employees in this industry are potentially affected by the provisions in the proposal involving requirements associated with providing fall protection while working in aerial lifts.

E. Benefits, Net Benefits, and Cost Effectiveness

The proposed revisions to the OSHA standards addressing electric power generation, transmission, and distribution work are expected to result in an increased degree of safety for the affected employees. These changes are expected to reduce the numbers of accidents, fatalities, and injuries associated with the relevant tasks, as well as reducing the severity of certain injuries, such as burns or injuries that could be sustained as a result of an arrested fall, that may still occur while performing some of the affected procedures.

To develop estimates of the potential benefits associated with this proposal, CONSAD Corp., under contract to OSHA, researched and reviewed potential sources of useful data. CONSAD, in consultation with the Agency, determined that the most reliable data sources for this purpose included OSHA's Integrated Management Information System (IMIS), and the Census of Fatal Occupational Injuries developed by the Bureau of Labor Statistics (BLS).

From these sources, CONSAD identified and analyzed injuries and

fatalities that would be addressed by this proposal. This analysis was based on over 9 years of data contained in these databases. CONSAD identified relevant cases in the databases by determining the criteria provided in the databases that would apply to such cases, such as the nature of the injury, the occupation of the employee, the source of the injury, and the industry classification of the employer. CONSAD then reviewed individual accident abstracts to make a final determination whether to include the accident as one addressed by the proposed standards. A description of the methodological approach used for analyzing these data is included in the final report submitted to OSHA by CONSAD Corporation [1].

CONSAD's analysis found that an average of 74 fatalities and 25 injuries involving circumstances directly addressed by the existing or proposed standards are recorded annually in the relevant databases. These figures represent minimums since they are associated with documented cases.

The actual number of fatalities addressed by this rulemaking may be somewhat higher, but OSHA does not currently have a basis for estimating how many pertinent fatalities may have occurred that would not be represented by the relevant data sources. OSHA requests information and comments from the public regarding this issue.

The actual number of injuries addressed by this rulemaking is almost certainly much greater than the number included in the data sources. OSHA requires data to be included in its IMIS database only if an incident involves at least one fatality or three or more hospitalized injuries. However, some individual States have more stringent reporting requirements and thus include some additional injuries among the cases submitted to the IMIS database.

CONSAD performed an analysis of the IMIS fatality and injury data by State that were relevant to this rulemaking. This analysis found that the ratio of injuries to fatalities in California, which requires all hospitalized injuries to be reported, was over six.

Applying this ratio to the number of known fatalities addressed by this rulemaking results in an estimated 444 injuries occurring annually. It should be noted that even this figure excludes injuries that for various reasons may not be reported to or included in the IMIS database, such as single injuries that result in no hospitalizations. OSHA requests any information and comments from the public that may help improve the accuracy of this estimate.

Thus, OSHA estimates that 74 fatalities and 444 injuries occur annually among employees involved in electric power generation, transmission, and distribution work addressed by the provisions of this rulemaking.

Based on a review and analysis of the incident reports associated with the reported injuries and fatalities, OSHA estimates that full compliance with the existing standards would have prevented about 53 percent of the injuries and fatalities. In comparison, full compliance with the proposed standards would have prevented 79.0 percent of the relevant injuries and fatalities. Thus, the increase in safety that would be provided by the proposed standards is represented by the prevention of an additional 19 fatalities and 116 injuries annually.

Applying an average monetary value of $50,000 per prevented injury and a value of $6.8 million per prevented fatality results in an estimated monetized benefit of $135 million. In estimating the value of preventing a fatality, OSHA has followed the approach established by the U.S. Environmental Protection Agency (EPA). EPA's approach is detailed in Chapter 7 of EPA's *Guidelines for Preparing Economic Analyses,* which provides a detailed review of the methods for estimating mortality risk values and summarizes the values obtained in the literature [6]. Synthesizing the results from 26 relevant studies, EPA arrived at a mean value of a statistical life (VSL) of $4.8 million (in 1990 dollars). EPA recommends this central estimate, updated for inflation (the value is $6.8 million in 2003 dollars) for application in regulatory analyses. This VSL estimate is also within the range of the substantial majority of such estimates in the literature of $1 million to $10 million per statistical life, as discussed in OMB Circular A–4.

In estimating the value of preventing an injury, OSHA reviewed the available research literature. A critical review of 39 different studies estimating the value of a statistical injury is provided by Kip Viscusi and Joseph Aldy in their 2003 study [7]. Viscusi and Aldy found that most studies have estimates in the range of $20,000 to $70,000 per injury, and several studies have even higher values. The range of values is partly explained by the measure of nonfatal job risks used: some studies use an overall injury rate, and other studies use only injuries resulting in lost workdays. The injuries that would be prevented by this proposed electric power standard are hospitalized injuries, which are likely to be more severe, on average, than lost workday injuries. In addition, the proposed standard is expected to reduce the incidence of burn injuries, which tend to be more severe injuries, involving more pain and suffering, more expensive treatments, and generally longer recovery periods than lost workday injuries. Thus, for this rulemaking, an estimated value of a statistical injury in the upper part of the reported range of estimates would be supported. In their paper, Viscusi and Aldy reviewed the available willingness to pay (WTP) literature to identify their range of estimates; using WTP to value non-fatal injury and illness is the recommended approach, as discussed in OMB Circular A–4.

The net monetized benefits of the proposed standard are estimated to be about $101.1 million annually ($135 million in benefits and $33.9 million in costs). Note that these net benefits exclude any unquantified benefits associated with revising the standards to provide updated, clear, and consistent regulatory requirements to the public.

Table V–4 provides an overview of the estimated benefits associated with this proposed rulemaking. OSHA requests comments from the public regarding these figures and any other aspects of the estimation of the benefits associated with this rulemaking. Table V–3 summarizes the costs, benefits, net benefits, and cost effectiveness of the proposed standard.

TABLE V–3.—NET BENEFITS AND COST EFFECTIVENESS

Annualized Costs	
Determination of Appropriate Protective Clothing	$11.0 million.
Provision of Appropriate Protective Clothing	$8.4 million.
Host/Contractor Communications	$7.8 million.
Expanded Job Briefings	$5.1 million.
Additional Training	$1.2 million.
Other Costs	$0.4 million.
Total Annual Costs	$33.9 million.

TABLE V–3.—NET BENEFITS AND COST EFFECTIVENESS—Continued

Annual Benefits	
Number of Injuries Prevented	116
Number of Fatalities Prevented	19
Monetized Benefits (Assuming $50,000 per Injury and $6.8 million per Fatality Prevented)	$135 million.
OSHA standards that are updated and consistent	unquantified.
Total Annual Benefits	116 injuries and 19 fatalities prevented.
Net Benefits (Benefits Minus Costs): $101 million annually Cost Effectiveness	
Compliance with the proposed standards would result in the prevention of 1 fatality and 6 injuries per $1.8 million in costs, or, alternatively, $4.00 of benefits per dollar of costs.	

Additional benefits associated with this proposal involve providing updated, clear, and consistent safety standards regarding electric power generation, transmission, and distribution work to the relevant employers, employees, and interested members of the public. The existing OSHA standards for the construction of electric power transmission and distribution systems are over 30 years old and inconsistent with the more recently promulgated standards addressing repair and maintenance work. OSHA believes that the updated standards are easier to understand and to apply and will benefit employers by facilitating compliance while improving safety.

As explained earlier, the inconsistencies between OSHA's existing standards related to electric power generation, transmission, and distribution for construction and general industry work create numerous difficulties for employers and employees. The benefits associated with providing updated, clear, and consistent safety standards are great, but they have not been monetized or quantified. OSHA requests comments regarding how these benefits can or should be estimated.

With particular regard to the benefits associated with requirements for protective clothing, OSHA estimates that an average of at least 8 electric utility burn accidents occur each year, leading to 12 nonfatal injuries and 2 fatalities per year. Of the reports indicating the extent of the burn injury, 75 percent reported third degree burns. Proper protective clothing is expected to reduce the number of fatalities and the severity of these injuries.

Requiring the use of body harnesses instead of body belts is also expected to reduce fatalities and injuries among affected workers. There are several problems with body belts. First, they are more likely to result in serious injury during a fall because they place greater stress on the workers' body. Second, body belts virtually eliminate the possibility of self rescue after the fall, and increase the probability of serious internal injuries as the worker hangs suspended. Studies performed in Europe and by the U.S. Air Force indicate high risks associated with the body belt both in fall arrest and suspension modes. Third, it is harder for supervisors to determine visually if the worker is using appropriate fall protection when belts are used. By contrast, it can easily be seen from a distance whether a harness is being worn. Finally, there is a greater risk that a worker could slip out of a body belt than out of a harness. As a result of these considerations, many employers have already switched to requiring harnesses rather than belts. French and German worker safety standards prohibit the use of body belts, and British standards impose major restrictions on their use. Studies documenting the inappropriateness of and the safety risks associated with the use of body belts as part of a fall arrest system include Exhibits 2–36, 3–7, 3–9, 3–10, and 3–13 in OSHA docket S–206 (Fall Protection), and Exhibits 9–33, 11–3, 11–4, 11–5, and 11–6 in OSHA docket S–700 (Powered Platforms).

An average of about fifteen fatalities annually involve falls from aerial lifts; in these cases, the employees were generally not wearing a belt or a harness. Since most employees do, in fact, wear a belt or a harness (according to the CONSAD report, current compliance is over 80 percent), there are likely to be at least 60 falls annually in which a belt or harness was relied upon to arrest a fall.

Employees who rely only on a belt for fall protection have been determined to be at significant risk of serious injury, and the use of body belts as part of a fall arrest system has been determined to be generally inappropriate, as OSHA has already established with an extensive record on the subject as part of the final rule for fall protection in construction. For a complete discussion of this issue, see the Summary and Explanation section of the preamble to the final OSHA rule on fall protection in construction (59 FR 40672, August 9, 1994).

TABLE V–4.—OVERVIEW OF ANNUAL BENEFITS

	Injuries	Fatalities
Total Addressed by the Proposed Rulemaking	444	74
Preventable Through Full Compliance with Existing Standards (52.9 percent)	235	39
Additional Preventable with Full Compliance with Proposed Standards (26.1 percent)	116	19
Monetized Benefits, Assuming Value of $50,000 per injury, $6.8 million per fatality	$5.8 million	$129.2 million
Total Monetized Benefits	$135 million	

Note: Additional benefits associated with this rulemaking involve providing OSHA standards that are updated, clear, and consistent.
Sources: CONSAD [1]; OSHA, Office of Regulatory Analysis.

F. Technological Feasibility

In accordance with the OSH Act, OSHA is required to demonstrate that occupational safety and health standards promulgated by the Agency are technologically feasible. In fulfillment of this requirement, OSHA has reviewed the requirements that would be imposed by the proposal, and has assessed their technological feasibility. As a result of this review,

OSHA has determined that compliance with the requirements of the proposal is technologically feasible for all affected industries.

The proposal would require employers to provide protective equipment and clothing, to provide training, and to implement work practices to reduce the hazards associated with work involving electric power generation, transmission, and distribution. Compliance with all of the proposed requirements can be achieved with readily and widely available technologies. OSHA believes that there are no technological constraints associated with compliance with any of the proposed requirements, and requests comments regarding this conclusion.

G. Costs of Compliance

Introduction

This section of the preliminary analysis presents the estimated costs of compliance for the proposed electric power generation, transmission, and distribution rulemaking. The estimated costs of compliance represent the additional costs necessary for employers to achieve full compliance. They do not include costs associated with current compliance with the new requirements; nor do they include costs associated with achieving full compliance with existing applicable requirements.

For purposes of this analysis, the terms ''proposal'' and ''proposed standard'' include all elements of this proposed rulemaking, including proposed changes to 29 CFR 1910.269, proposed changes to 29 CFR 1926, proposed changes involving electrical protective equipment requirements, and other associated revisions and additions. The consolidated set of proposed actions was analyzed in its entirety; only those parts that were identified as involving nonnegligible costs are explicitly reflected in the analysis of compliance costs and impacts.

Table V–5 presents the total annualized estimated costs by provision and by industry sector. As shown in Table V–5, the total annualized cost of compliance with the proposed rulemaking is estimated to be about $33.9 million.

The largest component of the compliance costs, at $11.0 million annually, is comprised of the costs necessary to comply with the requirement for the employer to make a determination regarding the type and extent of flame-resistant apparel necessary to protect employees in the event that employees may be exposed to an electric arc. For purposes of estimating costs of compliance with this provision, OSHA expects generally that utilities will conduct system-wide analyses of the extent of potential hazards in various parts of the system and will communicate the relevant information to contractors. The contractors, in turn, will use the information provided by the utilities to determine the appropriate type and extent of flame-resistant apparel that employees on a particular project must wear.

TABLE V–5.—SUMMARY OF COMPLIANCE COST BY INDUSTRY AND BY PROVISION

Industry code	Industry name	Revised training requirements	Existing 1910.269 for construction (except training)	Host-contractor communication requirements	Expanded job briefing requirements	Determination of appropriate protective clothing	Provision of appropriate clothing	Use of harnesses in aerial lifts	Total annual compliance costs
NAICS 234910	Water, Sewer, and Pipeline Construction	$25,850	$3,043	$84,325	$37,642	$23,055	$79,174	$0	$253,089
NAICS 234920	Power and Communication Transmission Line Construction	614,829	83,773	1,062,275	945,140	581,517	2,071,169	0	5,358,702
NAICS 234930	Industrial Nonbuilding Structure Construction	2,358	0	114,887	42,827	47,048	94,957	0	302,077
NAICS 234990	All Other Heavy Construction	138,029	17,834	508,846	270,538	228,773	499,701	0	1,663,721
NAICS 235310	Electrical Contractors	334,494	52,294	1,629,823	829,851	611,134	1,517,936	0	4,975,533
NAICS 235910	Structural Steel Erection Contractors	3,856	0	29,071	16,637	16,448	25,664	0	91,676
NAICS 235950	Building Equipment and Other Machine Installation Contractors	5,481	0	27,230	15,584	15,407	24,039	0	87,741
NAICS 235990	All Other Special Trade Contractors	16,094	0	77,081	55,111	54,532	76,318	0	279,136
NAICS 221110	Electric Power Generation	11,645	0	1,021,719	662,584	2,106,375	1,224,001	0	5,026,324
NAICS 221120	Electric Power Transmission, Control, and Distribution	25,205	0	2,725,314	1,102,340	5,900,695	2,033,643	0	11,787,197
NAICS 2211	Publicly Owned Utilities	3,559	0	280,791	145,737	676,998	273,101	0	1,380,186
Various	Industrial Power Generators	3,986	0	232,289	235,334	778,076	444,284	67,422	1,761,391
SIC 0783	Ornamental Shrub and Tree Services	59,968	0	0	700,013	0	0	216,578	976,559
Total		$1,245,355	$156,944	$7,793,651	$5,059,338	$11,040,058	$8,363,987	$284,000	$33,943,333

Source: CONSAD [2], Appendix C; OSHA estimates.

As shown in Table V–5, other provisions of the proposed standards involving compliance costs include requirements for protective clothing ($8.4 million), requirements for various communications between host employers and contractors ($7.8 million), expanded requirements for conducting job briefings ($5.1 million), and revised training requirements ($1.2 million).

The remainder of this section provides and explains the details underlying the calculations of the compliance costs associated with the proposal. OSHA estimated compliance costs for each provision of the proposal that involves nonnegligible costs and for each affected industry sector. Total annualized costs were calculated by annualizing nonrecurring first-year costs (at 7 percent over 10 years) and then adding these to recurring annual costs.

The calculations of the estimated costs associated with compliance are intended to be representative of the average resources necessary to achieve compliance with the proposed standards. Affected establishments may achieve compliance through other means with an equivalent amount of resources.

Labor costs are based on industry-specific wage rates published by BLS, adjusted upwards by 37 percent to account for benefits and other employee-related costs and are presented in Table V–6. Supervisory wage rates, including benefits, are estimated to be $22.45 per hour in the Ornamental Shrub and Tree Services industry, and are estimated to range from $31.56 to $41.00 in all other affected industries. Employee wage rates (except those for engineers), including benefits, are estimated to be $16.66 per hour in the Ornamental Shrub and Tree Services industry, and are estimated to range from $24.00 to $34.84 in all other affected industries. Wage rates for engineers, including benefits, are estimated to be $41.00 per hour. Clerical wage rates, including benefits, are estimated to be $16.78 per hour in the Ornamental Shrub and Tree Services industry, and are estimated to range from $17.91 to $23.70 in all other affected industries. [1, Table 5.3]

TABLE V–6.—SUMMARY OF WAG RATES FOR CALCULATING COMPLIANCE COSTS, BY INDUSTRY

Wage rates						
Industry code	Industry description	Salaries (including Fringe Benefits [1]) Based on Jobs Description				
		Supervisor	Clerical	Power generation-power line construction/maintenance/repair worker [2]	Utility/other power plant supervisor	Utility/other power plant engineer
SIC 0783	Ornamental Shrub and Tree Services	$22.45	$16.78	$16.66	.....	.....
NAICS 2211–10	Electric Power Generation	41.00	23.70	32.66	$41.00	$44.37
NAICS 2211–20	Electric Power Transmission, Control, and Distribution	41.00	23.70	32.66	41.00	44.37
NAICS 2349–10	Water, Sewer, and Pipeline Construction	31.56	19.11	24.00	.....	.....
NAICS 2349–20	Power and Communication Transmission Line Const	31.56	19.11	24.00	.....	.....
NAICS 2349–30	Industrial Nonbuilding Structure Construction	31.56	19.11	28.28	.....	.....
NAICS 2349–90	All Other Heavy Construction	31.56	19.11	26.85	.....	.....
NAICS 2353–10	Electrical Contractors	33.99	17.91	25.46	.....	;
NAICS 2359–10	Structural Steel Erection Contractors	34.13	18.08	34.84	.....	.....
NAICS 2359–50	Building Equipment and Other Machine Installation Contr.	34.13	18.08	34.84	.....	.....
NAICS 2359–90	All Other Special Trade Contractors	34.13	18.08	34.84	.....	.....
	Major Publicly Owned Utilities	41.00	23.70	32.66	41.00	44.37
	Industrial Generators	41.00	23.70	33.02	41.00	44.37

[1] Assumes an additional 37 percent of base salary for fringe benefit costs.

[2] Depending upon the industry and the type of work performed (that is, power generation, power line, or both), these workers include line workers, tree-trimming crew members, power plant workers, and substation workers.

Source: CONSAD Research Corporation, "Analytical Support and Data Gathering for a Preliminary Economic Analysis for Proposed Standards for Work on Electric Power Generation, Transmission, and Distribution Lines and Equipment (29 CFR 1910.269 and 29 CFR 1926—Subpart V)," 2005, prepared for the U.S. Department of Labor, Occupational Safety and Health Administration, Office of Regulatory Analysis under Contract No. J9–F9–0013, Task Order Number 31, Pittsburgh, PA.

First-Year Costs for Revising Training Programs

The proposed revisions to the OSHA standards addressing electric power generation, transmission, and distribution work would require establishments covered by 29 CFR 1910.269 to revise existing training programs.

The costs associated with such a revision were estimated as involving 8 hours of supervisory time plus an hour of clerical time for all industries except Ornamental Shrub and Tree Services. Due to the more limited and less complex nature of the training for employees in the Ornamental Shrub and Tree industry, the costs associated with revising a training program in this industry were estimated to involve 4 hours of supervisory time plus half an hour of clerical time. [2, Appendix C, pages 3–4]

Thus, OSHA estimates that the average cost of compliance per affected establishment covered by 29 CFR 1910.269 for revising existing training programs would be $196 for establishments in the Ornamental Shrub and Tree Services industry, and would range from $272 to $351 in all other affected industries.

Most establishments in all affected industries either already have training programs that meet the requirements of the proposed standards, or regularly revise their training programs to account for new information or work practices. For these establishments, no additional costs would be necessary to achieve compliance with the proposed standards.

Rates of current compliance were estimated for each affected industry. Within each industry, rates of current

compliance were estimated separately for establishments based on their size and based on whether their work force was unionized or not. In the Ornamental Shrub and Tree Services industry, estimated rates of current compliance ranged from 50 to 75 percent. In all other affected industries, rates of current compliance were estimated to range from 75 to 98 percent. [2, Appendix C, pages 3–4]

The total estimated first-year cost of compliance for revising training programs was thus estimated to be $516,000, as shown in Table V–7. Table V–7 also shows the costs of compliance for each affected industry. In calculating the total annual cost associated with all of the revised training requirements, this nonrecurring first-year cost was annualized at a rate of 7 percent over 10 years and was then added to the other annual costs.

TABLE V–7.—FIRST-YEAR COSTS FOR REVISING TRAINING PROGRAMS

Industry code	Industry name	Establishments affected (%)	Average cost per affected establishment	Compliance rate (%) low/high	First-year compliance costs
NAICS 234910	Water, Sewer, and Pipeline Construction	95	$272	75/95	$28,036
NAICS 234920	Power and Communication Transmission Line Construction.	95	272	75/95	95,269
NAICS 234930	Industrial Nonbuilding Structure Construction	100	272	75/95	7,859
NAICS 234990	All Other Heavy Construction	95	272	75/95	23,120
NAICS 235310	Electrical Contractors	95	290	75/95	61,211
NAICS 235910	Structural Steel Erection Contractors	100	291	75/95	24,714
NAICS 235950	Building Equipment and Other Machine Installation Contractors.	100	291	75/95	36,315
NAICS 235990	All Other Special Trade Contractors	100	291	75/95	106,576
NAICS 221110	Electric Power Generation	100	351	95/98	21,793
NAICS 221120	Electric Power Transmission, Control, and Distribution.	100	351	95/98	77,343
NAICS 2211	Publicly Owned Utilities	100	351	95/98	11,790
Various	Industrial Power Generators	100	351	98/98	6,563
SIC 0783	Ornamental Shrub and Tree Services	100	196	50/75	15,885
Total					516,474

Source: CONSAD [1], Table 5.3 and CONSAD [2], Appendix C, pages 3–4.

First-Year Costs for Provision of Additional Training for Employees Already Covered by 29 CFR 1910.269

The proposed revisions to the OSHA standards addressing electric power generation, transmission, and distribution work may involve costs for providing additional training.

The costs associated with the provision of additional training were estimated as involving resources (including labor costs or other expenditures) equivalent to 1.5 hours of employee time, plus 12 minutes of supervisory time, plus 3 minutes of clerical time per employee for all affected industries except Ornamental Shrub and Tree Services. For establishments in the Ornamental Shrub and Tree Services industry, the provision of additional training was estimated as involving resources (including labor costs or other expenditures) equivalent to 0.75 hours of employee time, plus 6 minutes of supervisory time, plus 3 minutes of clerical time per employee. [2, Appendix C, pages 5–6]

Half of the incremental cost of this additional training is attributable to the need to train current employees on the changes in requirements that would be associated with the adoption of the proposed standards and that would substitute for previous training. This part of the cost would only need to be incurred in the first year; in subsequent years, the corresponding part of the training would be substituted for the previous training. The other half of the additional training in the first year represents additional training that may be necessary to fully comply with the revised training requirements of the proposal.

OSHA estimates that the average cost of compliance for providing the additional training would be $40 per employee for establishments in the Ornamental Shrub and Tree Services industry, and would range from $50 to $67 per employee in all other affected industries.

Based on research conducted by CONSAD, most establishments in all affected industries are estimated to already provide training that fully complies with the requirements of the proposed standards [2, Appendix C, pages 5–6]. For these establishments, no additional costs would be necessary to achieve compliance.

Rates of current compliance with the proposed requirements were estimated for each affected industry. Within each industry, rates of current compliance were estimated separately for establishments based on their size and based on whether their work force was unionized or not. In the Ornamental Shrub and Tree Services industry, estimated rates of current compliance ranged from 50 to 75 percent. In all other affected industries, rates of current compliance were estimated to range from 75 to 98 percent [2, Appendix C, pages 5–6].

The total estimated first-year cost of compliance for providing training meeting the requirements of the proposed standards was thus estimated to be $572,000, as shown in Table V–8. Table V–8 also shows the costs of compliance for each affected industry. In calculating the total annual cost associated with all of the revised training requirements, this nonrecurring first-year cost (less the corresponding annual cost shown in Table V–10) was annualized at a rate of 7 percent over 10 years and was then added to the recurring annual costs.

TABLE V–8.—FIRST-YEAR COSTS FOR PROVIDING ADDITIONAL TRAINING TO EMPLOYEES ALREADY COVERED BY § 1910.269

Industry code	Industry name	Employees affected (%)	Average cost per affected employee	Compliance rate (%) low/high	First-year compliance costs
NAICS 234910	Water, Sewer, and Pipeline Construction	95	$50	75/95	$4,028
NAICS 234920	Power and Communication Transmission Line Construction.	95	50	75/95	106,246
NAICS 234930	Industrial Nonbuilding Structure Construction	100	58	75/95	6,041
NAICS 234990	All Other Heavy Construction	95	55	75/95	27,622
NAICS 235310	Electrical Contractors	95	51	75/95	78,696
NAICS 235910	Structural Steel Erection Contractors	100	67	75/95	1,854
NAICS 235950	Building Equipment and Other Machine Installation Contractors.	100	67	75/95	1,736
NAICS 235990	All Other Special Trade Contractors	100	67	75/95	5,071
NAICS 221110	Electric Power Generation	100	60	95/98	55,278
NAICS 221120	Electric Power Transmission, Control, and Distribution.	100	60	95/98	91,945
NAICS 2211	Publicly Owned Utilities	100	60	95/98	12,187
Various	Industrial Power Generators	100	61	98/98	19,744
SIC 0783	Ornamental Shrub and Tree Services	100	40	50/75	162,035
Total					572,483

Source: CONSAD [1], Table 5.3 and CONSAD [2], Appendix C, pages 5–6.

First-Year Costs for Additional Training for Employees Not Already Covered by 29 CFR 1910.269

The proposed revisions to the OSHA standards addressing electric power generation, transmission, and distribution work include revisions to the existing training requirements in 29 CFR 1910.269 and more substantial revisions to the training requirements applicable to construction work.

Companies that perform construction work associated with electric power generation, transmission, and distribution systems would also be able and willing to perform (and, in fact, do perform) similar work involving the repair and maintenance of such systems. The distinction between construction work and repair or maintenance work can be difficult to make in some situations. For example, the distinction may hinge on whether a particular piece of equipment is regarded as an upgrade or a ''replacement-in-kind.''

Since the nature of the work is often almost identical, companies are not likely to restrict themselves to only repair or maintenance work or to only construction work with regard to potential jobs involving electric power generation, transmission, and distribution. Thus, it would be reasonable to assume that any company involved in such work would have their employees trained in accordance with accepted industry safety practices, as required by the existing OSHA standard addressing this type of work in general industry in 29 CFR 1910.269.

Small business representatives from the affected industries providing comments to OSHA on a draft of the proposal generally indicated that construction contractors follow and comply with the standards applicable to general industry work (29 CFR 1910.269) for all of their work, including construction work. But some small business representatives indicated that there are some companies who follow the standards for construction work in 29 CFR 1926, rather than the standards for general industry work in 29 CFR 1910.269. [3, p. 14]

For certain aspects of a particular construction job, it may be possible to avoid some expenses associated with compliance with some of the requirements of 29 CFR 1910.269 not dealing with training. However, if the employees of the company ever do any work considered repair or maintenance, or any other work covered by 29 CFR 1910.269, then they must have been trained in accordance with that standard. Thus, compliance with the training requirements of 29 CFR 1910.269 in particular is likely, even if a specific job involves only construction work and the employer follows the relevant provisions of the Construction Standard, Subpart V.

The number of firms, if any, who actually limit themselves to construction work as defined by OSHA, and therefore avoid providing a basic training regimen for employees under 29 CFR 1910.269, is difficult to estimate. One small entity representative estimated that about 10 to 30 percent of contractors involved in electric power transmission and distribution work may exclusively do construction; another representative stated that they do not know of any contractor firms that do exclusively construction work [3, p. 15].

It is not clear to what extent it is understood by potentially affected firms that much work that is commonly regarded as construction or that is commonly performed by construction companies does in fact fall under OSHA's definition of general industry work, which includes repair and maintenance. Thus, it would be easy for firms or people to mistakenly believe that they (or others) are only involved in construction work when in fact some of their work falls under the scope of OSHA's general industry standards.

It is very unlikely that contractors performing electric power generation, transmission, or distribution work meet both of the following criteria: (1) They know and expect that for all projects performed, only construction work will be done such that the training required by 29 CFR 1910.269 would not be required to be provided, and (2) they have employees perform such work without providing them with what many consider to be a minimum amount of basic safety training applicable to this type of work, as reflected in the training requirements of 29 CFR 1910.269. Only contractors meeting both of these criteria would experience additional training costs due to the formal extension of the training requirements in 29 CFR 1910.269 to the construction industry.

Nevertheless, for purposes of estimating the potential costs of compliance that may be associated with this proposal, OSHA estimates that 5

percent of the work force in several construction industries would need to be provided with the training currently required by 29 CFR 1910.269 in order to achieve full compliance with the proposed standards.

In the development of the proposal, OSHA was not able to identify any employers that performed work covered by Subpart V of Part 1926, but no work covered by 29 CFR 1910.269. However, OSHA has calculated costs based on an estimate that 5 percent of the affected construction work force performs no work covered by 29 CFR 1910.269, primarily in response to the recommendations of the SBREFA Panel, as discussed in the Initial Regulatory Flexibility Analysis.

Specifically, OSHA estimates that 5 percent of the relevant work force would be affected in the following industries: Water, Sewer, and Pipeline Construction; Power and Communication Transmission Line Construction; All Other Heavy Construction; and Electrical Contractors. OSHA requests comments and information from the public regarding this issue and the associated estimates.

The costs associated with the additional training that may be necessary to achieve full compliance with the new training provisions for employees not already covered by 29 CFR 1910.269 were estimated as involving resources (including labor costs or other expenditures) equivalent to 24.75 hours of employee time, plus 3 minutes of clerical time per employee in the affected industries.

Thus, OSHA estimates that the average cost of compliance per affected employee for the required training would range from $690 to $772 in the affected industries.

For the establishments and employees considered to be affected by the expansion of the scope of applicability of this training requirement, current compliance was estimated to be zero. [2, Appendix C, pages 5–6]

The total estimated first-year cost of compliance for providing additional training for employees not already covered by 29 CFR 1910.269 (and not already provided with such training) was thus estimated to be $4.1 million, as shown in Table V–9. Table V–9 also shows the costs of compliance for each affected industry. In calculating the total annual cost associated with all the revised training requirements, this nonrecurring first-year cost (less the corresponding annual cost shown in Table V–11) was annualized at a rate of 7 percent over 10 years and was then added to the recurring annual costs.

TABLE V–9.—FIRST-YEAR COSTS FOR ADDITIONAL TRAINING FOR EMPLOYEES NOT ALREADY COVERED BY § 1910.269

Industry code	Industry name	Employees affected (%)	Average cost per affected employee	Compliance rate (%) low high	First-year compliance costs
NAICS 234910	Water, Sewer, and Pipeline Construction	5	$690	0	$78,184
NAICS 234920	Power and Communication Transmission Line Construction.	5	690	0	2,153,238
NAICS 234930	Industrial Nonbuilding Structure Construction	0			0
NAICS 234990	All Other Heavy Construction	5	772	0	479,611
NAICS 235310	Electrical Contractors	5	700	0	1,344,110
NAICS 235910	Structural Steel Erection Contractors	0			0
NAICS 235950	Building Equipment and Other Machine Installation Contractors.	0			0
NAICS 235990	All Other Special Trade Contractors	0			0
NAICS 221110	Electric Power Generation	0			0
NAICS 221120	Electric Power Transmission, Control, and Distribution.	0			0
NAICS 2211	Publicly Owned Utilities	0			0
Various	Industrial Power Generators	0			0
SIC 0783	Ornamental Shrub and Tree Services	0			0
Total					4,055,143

Source: CONSAD [1], Table 5.3; CONSAD [2], Appendix C, pages 5–6; OSHA estimates.

Annual Costs for Provision of Additional Training for Employees Already Covered by 29 CFR 1910.269

The proposed revisions to the OSHA standards addressing electric power generation, transmission, and distribution work may involve annual costs for providing additional training due to workforce turnover.

The costs associated with the provision of additional training were estimated as involving resources (including labor costs or other expenditures) equivalent to 0.75 hours of employee time, plus 6 minutes of supervisory time, plus 3 minutes of clerical time per employee for all affected industries except Ornamental Shrub and Tree Services. For establishments in the Ornamental Shrub and Tree Services industry, the provision of additional training was estimated as involving resources (including labor costs or other expenditures) equivalent to 0.375 hours of employee time, plus 3 minutes of supervisory time, plus 3 minutes of clerical time per employee.

OSHA estimates that the average cost of compliance for providing the additional training would be $20 per affected employee for establishments in the Ornamental Shrub and Tree Services industry and would range from $25 to $34 per affected employee in all other affected industries.

The number of affected employees in each establishment was estimated by determining the corresponding work force turnover rate. The work force turnover rate associated with the relevant occupational category was estimated for each potentially affected industry. The turnover rates among employees performing electric power generation, transmission, and distribution work were estimated to range from 11 to 16 percent in the construction industries, were estimated to be 3 percent in generation and utility industries, and were estimated to be 31 percent for establishments in the Ornamental Shrub and Tree Services industry [2, Appendix C, p. 7–8].

Based on research conducted by CONSAD, OSHA estimates that most establishments in all affected industries already provide training that fully complies with the requirements of the

proposed standards [2, Appendix C, pages 7–8]. For these establishments, no additional costs would be necessary to achieve compliance.

Rates of current compliance with the proposed requirements were estimated for each affected industry. Within each industry, rates of current compliance were estimated separately for establishments based on their size and based on whether their work force was unionized or not. In the Ornamental Shrub and Tree Services industry, estimated rates of current compliance ranged from 50 to 75 percent. In all other affected industries, rates of current compliance were estimated to range from 75 to 98 percent [2, Appendix C, pages 7–8].

The total estimated annual cost of compliance for providing training meeting the requirements of the proposed standards was thus estimated to be about $58,000, as shown in Table V–10. Table V–10 also shows the costs of compliance for each affected industry.

TABLE V–10.—ANNUAL COSTS FOR PROVIDING ADDITIONAL TRAINING FOR EMPLOYEES ALREADY COVERED BY § 1910.269

Industry code	Industry name	Employees affected (%)	Average cost per affected employee	Compliance rate (%) low/high	Annual compliance costs
NAICS 234910	Water, Sewer, and Pipeline Construction	15	$25	75/95	$299
NAICS 234920	Power and Communication Transmission Line Construction.	15	25	75/95	7,870
NAICS 234930	Industrial Nonbuilding Structure Construction	16	29	75/95	448
NAICS 234990	All Other Heavy Construction	15	28	75/95	2,046
NAICS 235310	Electrical Contractors	10	26	75/95	4,103
NAICS 235910	Structural Steel Erection Contractors	11	34	75/95	97
NAICS 235950	Building Equipment and Other Machine Installation Contractors.	11	34	75/95	91
NAICS 235990	All Other Special Trade Contractors	11	34	75/95	280
NAICS 221110	Electric Power Generation	3	30	95/98	817
NAICS 221120	Electric Power Transmission, Control, and Distribution.	3	30	95/98	1,359
NAICS 2211	Publicly Owned Utilities	3	30	95/98	180
Various	Industrial Power Generators	3	31	98/98	292
SIC 0783	Ornamental Shrub and Tree Services	31	20	50/75	40,447
Total					58,329

Source: CONSAD [1], Table 5.3; CONSAD [2], Appendix C, pages 7–8; OSHA estimates.

Annual Costs for Additional Training for Employees Not Already Covered by 29 CFR 1910.269

As noted earlier, OSHA has included training costs based on an estimate that 5 percent of the affected construction work force performs no work covered by 29 CFR 1910.269. Specifically, OSHA estimates that 5 percent of the relevant work force would be affected in the following industries: Water, Sewer, and Pipeline Construction; Power and Communication Transmission Line Construction; All Other Heavy Construction; and Electrical Contractors.

The annual costs associated with this additional training were estimated for new affected employees as involving resources (including labor costs or other expenditures) equivalent to 24.75 hours of employee time, plus 3 minutes of clerical time per employee. OSHA estimates that the average cost of compliance per affected employee for the required training would range from $690 to $772 in the affected industries.

The number of affected employees in each establishment was estimated by determining the corresponding work force turnover rate. The work force turnover rate associated with the relevant occupational category was estimated for each potentially affected industry. The turnover rates among employees performing electric power generation, transmission, and distribution work were estimated to range from 11 to 16 percent in the affected construction industries [2, Appendix C, p. 9–10].

For the establishments and employees considered to be affected by the expansion of the scope of applicability of this training requirement, current compliance was estimated to be zero [2, Appendix C, pages 9–10].

The total estimated annual cost of compliance for providing additional training for employees not already covered by 29 CFR 1910.269 (and not already provided with such training) was thus estimated to be about $542,000, as shown in Table V–11. Table V–11 also shows the costs of compliance for each affected industry.

TABLE V–11.—ANNUAL COSTS FOR PROVISION OF ADDITIONAL TRAINING FOR EMPLOYEES NOT ALREADY COVERED BY § 1910.269

Industry code	Industry name	Employees affected (%)	Average cost per affected employee	Compliance rate (%) low/high	Annual compliance costs
NAICS 234910	Water, Sewer, and Pipeline Construction	1	$690	0	$11,583
NAICS 234920	Power and Communication Transmission Line Construction.	1	690	0	318,999
NAICS 234930	Industrial Nonbuilding Structure Construction	0			0
NAICS 234990	All Other Heavy Construction	1	772	0	71,053
NAICS 235310	Electrical Contractors	1	700	0	140,144

TABLE V–11.—ANNUAL COSTS FOR PROVISION OF ADDITIONAL TRAINING FOR EMPLOYEES NOT ALREADY COVERED BY § 1910.269—Continued

Industry code	Industry name	Employees affected (%)	Average cost per affected employee	Compliance rate (%) low/high	Annual compliance costs
NAICS 235910	Structural Steel Erection Contractors	0			0
NAICS 235950	Building Equipment and Other Machine Installation Contractors.	0			0
NAICS 235990	All Other Special Trade Contractors	0			0
NAICS 221110	Electric Power Generation	0			0
NAICS 221120	Electric Power Transmission, Control, and Distribution.	0			0
NAICS 2211	Publicly Owned Utilities	0			0
Various	Industrial Power Generators	0			0
SIC 0783	Ornamental Shrub and Tree Services	0			0
Total					541,779

Source: CONSAD [1], Table 5.3; CONSAD [2], Appendix C, pages 9–10; OSHA estimates.

Costs To Comply With Existing 29 CFR 1910.269 (Other Than Training) for Employees Not Already Covered by 29 CFR 1910.269

As described earlier, OSHA believes that construction contractors who perform work involving electric power generation, transmission, or distribution generally comply with the requirements of the OSHA general industry standard 29 CFR 1910.269. Nevertheless, for purposes of estimating the potential costs of compliance associated with this rulemaking, costs associated with complying with existing requirements in 29 CFR 1910.269 were estimated for some construction establishments. For purposes of calculating a cost estimate, OSHA estimates that the equivalent of 5 percent of the work force in several construction industries currently are not provided with any of the additional safety protections that were newly provided by the existing 29 CFR 1910.269 when that standard was updated by OSHA in 1994.

Specifically, OSHA estimates that the compliance costs associated with achieving full compliance with the requirements of the existing 29 CFR 1910.269 for the construction industry would be equivalent to that represented by 5 percent of the relevant work force being out of compliance with the requirements of the existing 29 CFR 1910.269 that were newly introduced in general industry in 1994. The relevant work force would be the affected employees in the following industries: Water, Sewer, and Pipeline Construction; Power and Communication Transmission Line Construction; All Other Heavy Construction; and Electrical Contractors.

The costs necessary to achieve full compliance with the relevant nontraining requirements of 29 CFR 1910.269 were estimated based on those associated with the final rule promulgated by OSHA in 1994. Many of these requirements have become standard industry practice and thus would no longer involve additional costs. Thus, the estimate of compliance costs would allow for more widespread noncompliance among other requirements, or for the incorporation of other aspects of achieving compliance.

The resources necessary to achieve compliance with the relevant requirements were estimated to be represented by an average of $64 per employee. This cost is equivalent to that associated with compliance with the revised 29 CFR 1910.269, as supported by the public record corresponding to the promulgation of that standard.

The total estimated annual costs associated with achieving compliance with the nontraining requirements of the existing 29 CFR 1910.269 for the construction industry was thus estimated to be $157,000, as shown in Table V–12. Table V–12 also shows the costs of compliance for each affected industry.

TABLE V–12.—COSTS TO COMPLY WITH EXISTING 1910.269 (OTHER THAN TRAINING) FOR EMPLOYEES NOT ALREADY COVERED BY § 1910.269

Industry code	Industry name	Employees affected (%)	Employees affected (%)	Average cost per affected employee	Compliance rate (%) low/high
NAICS 234910	Water, Sewer, and Pipeline Construction	5	$64	0	$3,043
NAICS 234920	Power and Communication Transmission Line Construction.	5	64	0	83,773
NAICS 234930	Industrial Nonbuilding Structure Construction	0			0
NAICS 234990	All Other Heavy Construction	5	64	0	17,834
NAICS 235310	Electrical Contractors	5	64	0	52,294
NAICS 235910	Structural Steel Erection Contractors	0			0
NAICS 235950	Building Equipment and Other Machine Installation Contractors.	0			0
NAICS 235990	All Other Special Trade Contractors	0			0
NAICS 221110	Electric Power Generation	0			0
NAICS 221120	Electric Power Transmission, Control, and Distribution.	0			0
NAICS 2211	Publicly Owned Utilities	0			0
Various	Industrial Power Generators	0			0

TABLE V–12.—COSTS TO COMPLY WITH EXISTING 1910.269 (OTHER THAN TRAINING) FOR EMPLOYEES NOT ALREADY COVERED BY § 1910.269—Continued

Industry code	Industry name	Employees affected (%)	Employees affected (%)	Average cost per affected employee	Compliance rate (%) low/high
SIC 0783	Ornamental Shrub and Tree Services	0			0
Total					156,944

Source: OSHA, Office of Regulatory Analysis.

Annual Costs for Required Communications Between Host Employers and Contractors

The proposed revisions to the OSHA standards addressing electric power generation, transmission, and distribution work would require certain communications to take place between host employers and contractors. These requirements would apply for each project that is performed by a contractor for a host employer.

Under the proposed standards, the host employer would be required to provide to the contractor information on hazards that the contract employer might not be able to recognize. However, the proposed standards would not require the host employer to survey the work area for hazards, and would not require the host employer to acquire additional unknown information.

The proposed standards would also require the host employer to report to the contractor any violations of the applicable OSHA standards that may happen to be observed by the host employer. This requirement would not impose any additional costs on host employers or on contractors to the extent that contractors are in compliance with the applicable standards.

Contractors are also required under the proposed standards to inform the host employer about any unique hazards posed by the work of the contractor, about any unexpected hazards found in the course of performing the contracted work, and about the measures taken by the contractor to correct violations reported by the host employer and the measures taken to prevent such violations from recurring. These communications are generally considered to be consistent with current industry practices for projects involving contracted work on electric power generation, transmission, and distribution systems.

An estimated 2.7 million projects are performed by contractors for host employers annually. Of these, about 1.3 million are performed by contractors classified in the Power and Communication Transmission Line Construction industry, and another 0.9 million are performed by establishments classified in the Electrical Contractors industry. [2, Appendix C, p. 1]

Projects performed by the host employers themselves would not be affected by the proposed new requirements. Also, projects for which there is no host employer would not be affected by these requirements. Host employer is defined in the proposal as ''[a]n employer who operates and maintains'' an electric power system and who hires a contract employer to perform work on the system. Furthermore, the requirements do not apply to line-clearance tree trimmers. OSHA requests comments regarding the scope and application of these requirements, and regarding additional costs, if any, that would need to be incurred by tree trimmers if they were to be covered by this requirement.

Some projects would be sufficiently small and straightforward to preclude the need for any required communication. An estimated 50 percent of the projects performed by establishments with fewer than 20 employees would be unaffected by the proposed new communication requirements. All projects performed by establishments with 20 or more employees are considered affected by these requirements. [2, Appendix C, p. 11–12]

The costs associated with these provisions were estimated as involving resources (including labor costs or other expenditures) equivalent to 10 minutes of supervisory time each for the host employer and for the contractor on affected projects involving establishments with fewer than 20 employees, and resources equivalent to 15 minutes of supervisory time each for the host employer and for the contractor on affected projects involving establishments with 20 or more employees. [2, Appendix C, pages 11–12]

Thus, OSHA estimates that the average cost of compliance to contractors associated with the requirements for communications between host employers and contractors would be $5 to $6 per affected project performed by a smaller establishment, and $8 to $9 per affected project performed by a larger establishment. The corresponding cost of compliance to utilities associated with these requirements would range from $7 to $10 per affected project.

Based on research conducted by CONSAD, OSHA believes that the communications that would be required by the proposed standards already occur for most affected projects. Employers involved in an estimated 50 percent of the affected projects performed by smaller establishments are already in compliance with the proposed requirements. Depending on the construction contractor involved, an estimated 75 to 90 percent of the affected projects performed by larger contractors are also already in compliance. For these projects, no additional costs would be necessary to achieve compliance with the proposed standards. [2, Appendix C, p. 11–12]

The total estimated annual cost of compliance associated with the proposed requirements involving communications between host employers and contractors was thus estimated to be $7.8 million, as shown in Table V–13. Table V–13 also shows the costs of compliance for each affected industry.

TABLE V–13.—COSTS FOR REQUIRED COMMUNICATIONS BETWEEN HOST EMPLOYERS AND CONTRACTORS

Industry code	Industry name	Projects performed annually	Projects affected (%) small/large	Cost per project small/large	Compliance rate (%) low/high	Annual compliance costs
NAICS 234910	Water, Sewer, and Pipeline Construction.	49,019	50/100	$5/$8	50/75	$84,325
NAICS 234920	Power and Communication Transmission Line Construction.	1,282,310	50/100	5/8	65/90	1,062,275
NAICS 234930	Industrial Nonbuilding Structure Construction.	58,790	50/100	5/8	50/75	114,887
NAICS 234990	All Other Heavy Construction	309,377	50/100	5/8	50/75	508,846
NAICS 235310	Electrical Contractors	939,790	50/100	6/9	50/75	1,629,823
NAICS 235910	Structural Steel Erection Contractors.	15,889	50/100	6/9	50/75	29,071
NAICS 235950	Building Equipment and Other Machine Installation Contractors.	14,883	50/100	6/9	50/75	27,230
NAICS 235990	All Other Special Trade Contractors	47,250	50/100	6/9	50/75	77,081
NAICS 221110	Electric Power Generation	1,894,521	[1] 0	7/10		1,021,719
NAICS 221120	Electric Power Transmission, Control, and Distribution.	3,147,692	[1] 0	7/10		2,725,314
NAICS 2211	Publicly Owned Utilities	422,708	[1] 0	7/10		280,791
Various	Industrial Power Generators	687,667	[1] 0	7/10		232,289
SIC 0783	Ornamental Shrub and Tree Services.	2,251,278	0			0
Total						7,793,651

[1] **Note:** Projects performed directly by utilities are excluded; costs to utilities reflect costs of communication on projects contracted out.
Source: CONSAD [1], Table 5.3 and CONSAD [2], appendix C, pages 11–12.

Annual Costs Associated With Expanded Requirements for Job Briefings

The proposed revisions to the OSHA standards would expand the requirements for employers to conduct job briefings prior to beginning work on affected electric power projects. Specifically, in addition to existing requirements to provide a job briefing for employees, affected employers would be required to provide the employee in charge of the job with available information to perform the job safely.

An estimated 11.1 million projects are performed by construction contractors, utilities, other power generators, and line-clearance tree trimmers annually. Of these, about 6.2 million projects are performed by utilities and power generators, 2.7 million projects are performed by contractors classified in the construction industry, and another 2.3 million projects are performed by establishments classified in the Ornamental Shrub and Tree Services industry. All of these projects would be potentially affected by the proposed new requirements [2, Appendix C, p. 1 and p. 13–14].

Compliance with the proposed standards would be expected to be achieved through a small addition to routine communications that already take place regularly between and among employers and employees involved in the affected projects. The costs of compliance associated with the revised job briefing provisions were estimated as involving resources (including labor costs or other expenditures) equivalent to 5 minutes of supervisory time and 5 minutes of employee time for each affected project [2, Appendix C, pages 11–12].

Thus, OSHA estimates that the average cost of compliance associated with the revised requirements for job briefings would be $5 to $6 per affected project performed by utilities, other power generators, and construction contractors. The estimated average cost of compliance for projects performed by establishments in the Ornamental Shrub and Tree Services industry would be about $3 per project.

Based on research conducted by CONSAD, OSHA estimates that the job briefings that would be required by the proposed standards are already provided for most affected projects. Employers involved in an estimated 85 percent of the affected projects performed by establishments with fewer than 20 employees are already in compliance with the proposed requirements. Employers involved in an estimated 95 percent of the affected projects performed by establishments with 20 or more employees are also already in compliance with the proposed requirements. Among utilities and other power generators, an estimated 95 percent to 98 percent of the potentially affected projects involve employers already fully in compliance with the proposed job briefing provisions. For these projects, no additional costs would be necessary to achieve compliance with the proposed standards. [2, Appendix C, pages 13–14]

The total estimated annual cost of compliance associated with the proposed requirements regarding job briefings was thus estimated to be $5.1 million, as shown in Table V–14. Table V–14 also shows the costs of compliance for each affected industry.

TABLE V–14.—COSTS ASSOCIATED WITH EXPANDED REQUIREMENTS FOR JOB BRIEFINGS

Industry code	Industry name	Projects performed annually	Projects affected (%)	Cost per project	Compliance rate (%) low high	Annual compliance costs
NAICS 234910	Water, Sewer, and Pipeline Construction.	49,019	100	5	85/95	$37,642

TABLE V–14.—COSTS ASSOCIATED WITH EXPANDED REQUIREMENTS FOR JOB BRIEFINGS—Continued

Industry code	Industry name	Projects performed annually	Projects affected (%)	Cost per project	Compliance rate (%) low high	Annual compliance costs
NAICS 234920	Power and Communication Transmission Line Construction.	1,282,310	100	5	85/95	945,140
NAICS 234930	Industrial Nonbuilding Structure Construction.	58,790	100	5	85/95	42,827
NAICS 234990	All Other Heavy Construction	309,377	100	5	85/95	270,538
NAICS 235310	Electrical Constructors	939,790	100	5	85/95	829,851
NAICS 235910	Structural Steel Erection Constructors.	15,889	100	6	85/95	16,637
NAICS 235950	Building Equipment and Other Machine Installation Constructors.	14,883	100	6	85/95	15,584
NAICS 235990	All Other Special Trade Constructors.	47,250	100	6	85/95	55,111
NAICS 221110	Electric Power Generation	1,894,521	100	6	95/98	662,584
NAICS 221120	Electric Power Transmission, Control, and Distribution.	3,147,692	100	6	95/98	1,102,340
NAICS 2211	Publicly Owned Utilities	422,708	100	6	95/98	145,737
Various	Industrial Power Generators	687,667	100	6	98/98	235,334
SIC 0783	Ornamental Shrub and Tree Services.	2,251,278	100	3	85/95	700,013
Total						5,059,338

Source: CONSAD [1], Table 5.3 and CONSAD [2], Appendix C, pages 13–14.

Annual Costs Associated With Determinations Regarding Electric Arc Hazards and Appropriate Employee Protection

Under OSHA's proposed revisions, employers are required to determine whether employees may be exposed to hazards from flames or from electric arcs. For employees exposed to hazards from electric arcs, the employer must estimate the available heat energy to which the employee would be exposed. Where the covered hazards exist, the employer must determine the corresponding appropriate clothing or other protection for employees.

As noted in the proposal, the calculations of potential heat energy exposures do not need to be made separately or repeated for each individual project performed. Estimates that cover multiple system areas can be developed initially, and then information from the resulting system-wide analysis can be used repeatedly as needed. The relevant information applicable for a specific project can be identified and communicated to contractors by referring to the results of the system-wide assessment or by providing the relevant system area parameters (such as maximum fault current and clearing times) so that the contractor can perform the calculations.

An estimated 11.1 million projects are performed by construction contractors, utilities, other power generators, and line-clearance tree trimmers annually. Of these, about 6.2 million projects are performed by utilities and power generators, 2.7 million projects are performed by contractors classified in the construction industry, and another 2.3 million projects are performed by establishments classified in the Ornamental Shrub and Tree Services industry. [2, Appendix C, p. 1].

The requirements involving determinations associated with electric arc hazards do not apply to projects performed by establishments classified in the Ornamental Shrub and Tree Services industry. In addition, the requirements do not apply to projects involving only deenergized lines and equipment, even if these could involve potential electric arc hazards.

An estimated 50 percent of the projects involving electric power transmission and distribution involve work on deenergized lines and equipment; all projects involving electric power generation were assumed to involve energized lines or equipment. Thus, the percent of projects potentially affected by the requirements involving determinations associated with electric arc hazards ranges from 50 percent to 100 percent across affected industries depending on the proportion of the work in each industry that involves energized lines or equipment. [2, Appendix C, p. 13–14]

Compliance with the proposed standards would be expected to be achieved through the completion of a single system-wide assessment for each of the affected electric power generation, transmission, or distribution systems, in conjunction with the communication of the relevant results of that assessment to the appropriate persons in charge of specific projects. Contractors would use the necessary information from the system-wide analysis relevant to each particular project to make a determination regarding the appropriate protection to provide employees for each project.

The costs of compliance associated with the proposed requirements to make determinations associated with electric arc hazards were estimated as involving resources (including labor costs or other expenditures) for two activities. First, costs were estimated for conducting and updating a system-wide assessment of potential energy for each utility and other power generator. Second, costs were estimated for making a determination regarding appropriate employee protection, using information from a system-wide assessment, for each affected project.

The cost associated with conducting a system-wide assessment would depend on the size and complexity of the system, which tends to correspond closely to the number of employees working for the company that operates the system. Thus, the costs were estimated on a per-employee basis for each affected utility. The annual cost for each system was estimated as involving resources (including labor costs or other expenditures) equivalent to the cost of 2 hours of an electric power system engineer's time plus 6 minutes of clerical time, per employee of the utility. In their report, CONSAD had estimated that on a per-employee basis the cost of conducting a system-wide

assessment would be equivalent to the cost of 3 hours of an engineer's time plus 9 minutes of clerical time [2, Appendix C, pages 13–14]. OSHA revised these estimates downwards by one third to reflect subsequent changes to the proposal that reduced the associated costs.[68] For example, for a utility with 1,000 employees, the estimated annual cost would be equivalent to the cost of 2,000 hours of an engineer's time plus 6,000 minutes of clerical time. OSHA requests comments on the use and accuracy of this approach for purposes of estimating these costs. In particular, the Agency requests comments on whether employers will incur these costs on an annual basis or on a one-time basis, with smaller periodic updates.

Thus, the estimated average cost associated with conducting a system-wide assessment would be about $91 per system employee. For example, the estimated average annual cost for a utility with 100 employees would be $9,100, and the average annual cost for a utility with 1,000 employees would be $91,000.

The cost associated with making a determination regarding the appropriate employee protection, using information from a system-wide assessment, was estimated as involving resources (including labor costs or other expenditures) equivalent to 3 minutes of supervisor time for affected contractors and for each affected project [2, Appendix C, pages 13–14].

Thus, the estimated average cost associated with making a determination regarding the appropriate employee protection, using information from a system-wide assessment, was estimated to $2 per project.

Based on research conducted by CONSAD, OSHA estimates that the determinations that would be required by the proposed standards are already made for most affected projects. An estimated 75 percent of the establishments of utilities and other generators with fewer than 20 employees already perform system-wide assessments regarding the available heat energy to which employees may be exposed. An estimated 85 percent of the establishments of utilities and other generators with 20 or more employees already perform system-wide assessments regarding the available heat energy to which employees may be exposed. For these utilities, no additional costs would be necessary to achieve compliance with the proposed standard's requirement for determining heat energy estimates. [2, Appendix C, p. 13–14]

Among construction contractors, determinations regarding appropriate employee protection are made for an estimated 25 percent of the projects performed by smaller establishments and for an estimated 50 percent of the projects performed by larger contractors. For these projects, no additional costs would be necessary to achieve compliance with the proposed standards. [2, Appendix C, p. 13–14]

The total estimated annual cost of compliance associated with the proposed requirements regarding the determinations associated with electric arc hazards and the corresponding appropriate employee protection was thus estimated to be $11.0 million, as shown in Table V–15. Table V–15 also shows the costs of compliance for each affected industry.

TABLE V–15.—COSTS ASSOCIATED WITH DETERMINING MAXIMUM POTENTIAL HEAT ENERGY AND CORRESPONDING APPROPRIATE EMPLOYEE PROTECTION

Industry code	Industry name	Projects performed annually	Projects affected (%)	Cost per project	Compliance rate (%) low/high	Annual compliance costs
NAICS 234910	Water, Sewer, and Pipeline Construction.	49,019	50	$2	25/50	23,055
NAICS 234920	Power and Communication Transmission Line Construction.	1,282,310	50	2	25/50	581,517
NAICS 234930	Industrial Nonbuilding Structure Construction.	58,790	100	2	25/50	47,048
NAICS 234990	All Other Heavy Construction	309,377	75	2	25/50	228,773
NAICS 235310	Electrical Contractors	939,790	60	2	25/50	611,134
NAICS 235910	Structural Steel Erection Contractors.	15,889	100	2	25/50	16,448
NAICS 235950	Building Equipment and Other Machine Installation Contractors.	14,883	100	2	25/50	15,407
NAICS 235990	All Other Special Trade Contractors	47,250	100	2	25/50	54,532
NAICS 221110	Electric Power Generation	1,894,521	75	(1)	75/85	2,106,375
NAICS 221120	Electric Power Transmission, Control, and Distribution.	3,147,692	55	(1)	75/85	5,900,695
NAICS 2211	Publicly Owned Utilities	422,708	75	(1)	75/85	676,998
Various	Industrial Power Generators	687,667	100	(1)	85/85	778,076
SIC 0783	Ornamental Shrub and Tree Services.	2,251,278	0			0
Total						11,040,058

[1] **Note:** Costs for utilities include labor costs for performing system-wide assessments regarding potential arc hazards, estimated as $91 per utility employee annually. Costs for contractors reflect labor costs for determining appropriate clothing based on information provided by utilities.

Source: CONSAD [1], Table 5.3 and CONSAD [2], Appendix C, pages 13–14, and OSHA estimates.

[68] After CONSAD completed its report, OSHA added tables to the appendices explaining the proposed protective clothing requirements. Employers may use the heat exposure levels in these tables rather than perform an engineering assessment for portions of their systems that fall within the ranges covered by the tables.

Annual Costs for Providing Flame-Resistant Apparel (FRA) and Other Protective Clothing

The proposed revisions to the OSHA standards addressing electric power generation, transmission, and distribution work include revisions to the requirements addressing the extent of protective clothing that employees must wear. Under the proposed standards, affected employers must provide appropriate protective clothing to employees based on the determination of the hazards that the employees may face.[69]

The average costs associated with providing the clothing that would be necessary to achieve full compliance with the proposed standards were estimated as involving resources equivalent to those associated with the following illustrative case example. An employer could generally be expected to achieve compliance with the proposed standard's clothing provisions by purchasing eight sets of flame-resistant apparel per employee and one switching coat or flash jacket for every three employees.

A single set of flame-resistant apparel is estimated to cost about $110, and with 8 sets provided for each employee, the useful life of this apparel is expected to be 4 years. A switching coat or flash jacket is estimated to cost about $200 and to have an expected life of 10 years. [2, Appendix C, p. 15–16]

The flame-resistant apparel will generally be substituted for clothing that the employee or the employer would already be providing. The savings associated with no longer needing to purchase and launder the clothing that would otherwise be worn by employees were not included in this analysis.

The flame-resistant apparel provided to employees is generally worn in lieu of clothing that would otherwise be provided by and cared for by the employees themselves, and typically does not require special laundering. Thus, the proposed requirement to provide flame-resistant apparel would not create additional burdens associated with laundering. Employers would not be required under the proposal to launder clothes for employees. To the extent that employers choose to begin laundering clothes or providing laundering services for employees in conjunction with providing flame-resistant apparel for them, the cost would not be attributable to the proposed regulatory requirements, and any such costs would be regarded as transfers from employers to employees rather than additional costs to society.

Based on research conducted by CONSAD, OSHA estimates that most establishments in all affected industries already provide employees with flame-resistant apparel and other required protective clothing that fully complies with the requirements of the proposed standards. [2, Appendix C, pages 15–16] For these establishments, no additional costs would be necessary to achieve compliance.

Rates of current compliance with the proposed requirements were estimated for each affected industry. Within each industry, rates of current compliance were estimated separately for establishments based on their size. Among construction contractors, the estimated average rate of current compliance for establishments with fewer than 20 employees was 50 percent. The average rate of current compliance among construction contractor establishments with 20 or more employees was estimated to be 75 percent. Among electric utilities and other electric power generators, current compliance was estimated to be 80 percent for establishments with fewer than 20 employees and 90 percent for establishments with 20 or more employees. [2, Appendix C, p. 15–16]

The total estimated annual cost of compliance for providing flame-resistant apparel and other protective clothing was thus estimated to be $8.4 million, as shown in Table V–16. Table V–16 also shows the costs of compliance for each affected industry.

[69] OSHA has not proposed to require employers to purchase the FRA needed to meet the clothing-related provisions of the proposal. However, for costs purposes, the Agency is assuming that all costs of purchasing FRA will be borne by employers. See the discussion of the issue of whether employers should purchase this clothing in the discussion of proposed § 1926.960(g)(4) in Section IV, Summary and Explanation of Proposed Rule, earlier in this preamble.

TABLE V–16.—COSTS ASSOCIATED WITH PROVIDING FLAME-RESISTANT APPAREL (FRA), SWITCHING COATS, AND FLASH JACKETS

Industry code	Industry name	Employees affected (%)	Sets of FRA provided per employee	Cost per set of FRA	Useful life of FRA with 8 sets/employee (years)	Switching coat/flash jacket per employee	Cost per switching coat/flash jacket	Useful life of switching coat/flash jacket (years)	Compliance rate (%) low/high	Annual compliance costs
NAICS 234910	Water, Sewer, and Pipeline Construction	100	8	$110	4	0.33	$200	10	50/75	$79,174
NAICS 234920	Power and Communication Transmission Line Construction	100	8	110	4	0.33	200	10	50/75	2,071,169
NAICS 234930	Industrial Nonbuilding Structure Construction	100	8	110	4	0.33	200	10	50/75	94,957
NAICS 234990	All Other Heavy Construction	100	8	110	4	0.33	200	10	50/75	499,701
NAICS 235310	Electrical Contractors	100	8	110	4	0.33	200	10	50/75	1,517,936
NAICS 235910	Structural Steel Erection Contractors	100	8	110	4	0.33	200	10	50/75	25,664
NAICS 235950	Building Equipment and Other Machine Installation Contractors.	100	8	110	4	0.33	200	10	50/75	24,039
NAICS 235990	All Other Special Trade Contractors	100	8	110	4	0.33	200	10	50/75	76,318
NAICS 221110	Electric Power Generation	100	8	110	4	0.33	200	10	80/90	1,224,001
NAICS 221120	Electric Power Transmission, Control, and Distribution	100	8	110	4	0.33	200	10	80/90	2,033,643
NAICS 2211	Publicly Owned Utilities	100	8	110	4	0.33	200	10	80/90	273,101
Various	Industrial Power Generators	100	8	110	4	0.33	200	10	90/90	444,284
SIC 0783	Ornamental Shrub and Tree Services	0								0
Total										8,363,987

Source: CONSAD [2], Appendix 1P. 15–16

Annual Costs for Providing Harnesses for Fall Protection in Aerial Lifts

The proposal includes provisions addressing the equipment that must be used as part of fall arrest systems, fall restraint systems, and work positioning systems. Under the proposal, employees in aerial lifts performing work covered by 29 CFR 1910.269 would no longer be able to use body belts as part of fall arrest systems and would be required to use harnesses; belts would still be allowed to be used under certain circumstances, as part of work positioning systems and fall restraint systems.

The average costs associated with providing harnesses in lieu of belts were estimated to be about $100 per affected employee [2, Appendix C, pages 17–18].

The percentage of the work force that would potentially be affected by the proposed regulatory changes was estimated for each industry. For construction contractors, utilities, and other electric power generators, an estimated 67 percent of the employees who perform electric power generation, transmission, and distribution work are potentially affected. Among employees in the Ornamental Shrub and Tree Services industry who perform line-clearance tree-trimming operations, an estimated 50 percent of the work force would be potentially affected. [2, Appendix C, pages 17–18]

Based on research conducted by CONSAD, OSHA estimates that many establishments in all affectd industries already provide employees with harnesses as required by the applicable provisions in the proposal [2, Appendix C, pages 17–18]. For these establishments, no additional costs would be necessary to achieve compliance with the proposal.

Rates of current compliance with the proposed requirements were estimated for each affected industry. Among construction contractors and utilities, current compliance with the requirement to provide harnesses was estimated to be 100 percent. OSHA already requires the use of harnesses for fall arrest for construction work. The average rate of current compliance among industrial power generators was estimated to be 75 percent. Among employees performing line-clearance tree-trimming operations, current compliance was estimated to be 25 percent for establishments with fewer than 20 employees and 50 percent for establishments with 20 or more employees. [2, Appendix C, p. 17–18]

The total estimated annual cost of compliance for providing harnesses for fall protection in aerial lifts was thus estimated to be $284,000, as shown in Table V–17. Table V–17 also shows the costs of compliance for each affected industry.

TABLE V–17.—COSTS FOR PROVIDING HARNESSES FOR FALL PROTECTION IN AERIAL LIFTS

Industry code	Industry name	Employees affected (%)	Incremental cost of harness in lieu of belt	Compliance rate (%) low/high	Annual compliance costs
NAICS 234910	Water, Sewer, and Pipeline Construction	67	$100	100/100	$0
NAICS 234920	Power and Communication Transmission Line Construction	67	100	100/100	0
NAICS 234930	Industrial Nonbuilding Structure Construction	67	100	100/100	0
NAICS 234990	All Other Heavy Construction	67	100	100/100	0
NAICS 235310	Electrical Contractors	67	100	100/100	0
NAICS 235910	Structural Steel Erection Contractors	67	100	100/100	0
NAICS 235950	Building Equipment and Other Machine Installation Contractors	67	100	100/100	0
NAICS 235990	All Other Special Trade Contractors	67	100	100/100	0
NAICS 221110	Electric Power Generation	67	100	100/100	0
NAICS 221120	Electric Power Transmission, Control, and Distribution	67	100	100/100	0
NAICS 2211	Publicly Owned Utilities	67	100	100/100	0
Various	Industrial Power Generators	67	100	75/75	67,422
SIC 0783	Ornamental Shrub and Tree Services	50	100	25/50	216,578
Total					284,000

[1] Source: CONSAD [2], Appendix C, p. 17–18.

H. Economic Feasibility and Impacts

This section of the preliminary analysis presents OSHA's analysis of the economic impacts of the proposal, and an assessment of the economic feasibility of compliance with the requirements imposed by the rulemaking.

A separate analysis of the potential economic impacts on small entities (as defined in accordance with the criteria established by the Small Business Administration (SBA)) and on very small establishments (defined as those with fewer than 20 employees) is presented in the following section as part of the Initial Regulatory Flexibility Analysis, as required by the Regulatory Flexibility Act.

In order to assess the nature and magnitude of the economic impacts associated with compliance with the proposal, OSHA developed quantitative estimates of the potential economic impact of the requirements on entities in each of the affected industry sectors. The estimated costs of compliance presented previously in this economic analysis were compared with industry revenues and profits to provide an assessment of potential economic impacts.

Table V–18 presents data on the revenues associated with electric power generation, transmission, and distribution work for each affected industry sector, along with the corresponding industry profits and the estimated costs of compliance in each sector.

TABLE V–18.—POTENTIAL ECONOMIC IMPACTS

Industry code	Industry name	Compliance costs	Comparable industry revenues	Comparable industry profits	Costs as a percent of revenues	Costs as a percent of profits
NAICS 234910	Water, Sewer, and Pipeline Construction.	$253,089	$157,458,000	$8,817,648	0.16	2.87

TABLE V–18.—POTENTIAL ECONOMIC IMPACTS—Continued

Industry code	Industry name	Compliance costs	Comparable industry revenues	Comparable industry profits	Costs as a percent of revenues	Costs as a percent of profits
NAICS 234920	Power and Communication Transmission Line Construction.	5,358,702	3,118,256,000	174,622,336	0.17	3.07
NAICS 234930	Industrial Nonbuilding Structure Construction.	302,077	1,732,944,000	84,914,256	0.02	0.36
NAICS 234990	All Other Heavy Construction	1,663,721	1,033,946,000	50,663,354	0.16	3.28
NAICS 235310	Electrical Contractors	4,975,533	2,055,435,000	123,326,100	0.24	4.03
NAICS 235910	Structural Steel Erection Contractors.	91,676	119,735,000	6,226,000	0.08	1.47
NAICS 235950	Building Equipment and Other Machine Installation Contractors.	87,741	113,999,000	3,647,968	0.08	2.41
NAICS 235990	All Other Special Trade Contractors.	279,136	160,909,000	7,401,814	0.17	3.77
NAICS 221110	Electric Power Generation	5,026,324	69,385,043,000	6,730,349,171	0.01	0.07
NAICS 221120	Electric Power Transmission, Control, and Distribution.	11,787,197	176,509,052,000	17,121,378,044	0.01	0.07
NAICS 2211	Publicly Owned Utilities	1,380,186	25,075,725,000		0.01	
Various	Industrial Power Generators	1,761,391	2,630,428,000		0.07	
SIC 0783	Ornamental Shrub and Tree Services.	976,559	2,100,129,000	149,109,159	0.05	0.65
Total		33,943,333	284,193,059,000	24,460,456,070	0.01	0.14

Source: CONSAD [2], Table 6.3 and Appendix C, adjusted for revised cost estimates.

As evident from the data presented in Table V–18, the costs of compliance with the proposed rulemaking are not large in relation to the corresponding annual financial flows associated with the regulated activities. The estimated costs of compliance represent about 0.01 percent of revenues and 0.14 percent of profits on average across all entities; compliance costs do not represent more than 0.24 percent of revenues or more than 4.03 percent of profits in any affected industry.

The economic impact of the proposal is most likely to consist of a small increase in prices for electricity, of about 0.01 percent on average. It is unlikely that a price increase on the magnitude of 0.01 percent will significantly alter the services demanded by the public or any other affected customers or intermediaries. If the compliance costs of the proposal can be substantially recouped with such a minimal increase in prices, there may be little effect on profits.

In general, for most establishments, it would be very unlikely that none of the compliance costs could be passed along in the form of increased prices. In the event that unusual circumstances may inhibit even a price increase of 0.01 percent to be realized, profits in any of the affected industries would be reduced by a maximum of about 4 percent.

In profit-earning entities, compliance costs can generally be expected to be absorbed through a combination of increases in prices or reduction in profits. The extent to which the impacts of cost increases affect prices or profits depends on the price elasticity of demand for the products or services produced and sold by the entity.

Price elasticity of demand refers to the relationship between changes in the price charged for a product and the resulting changes in the demand for that product. A greater degree of elasticity of demand implies that an entity or industry is less able to pass increases in costs through to its customers in the form of a price increase and must absorb more of the cost increase through a reduction in profits.

In the case of cost increases that may be incurred due to the requirements of the proposal, all businesses within each of the covered industry sectors would be subject to the same requirements. Thus, to the extent potential price increases correspond to costs associated with achieving compliance with the standards, the elasticity of demand for each entity will approach that faced by the industry as a whole.

Given the small incremental increases in prices potentially resulting from compliance with the proposed standards and the lack of readily available substitutes for the products and services provided by the covered industry sectors, demand is expected to be sufficiently inelastic in each affected industry to enable entities to substantially offset compliance costs through minor price increases without experiencing any significant reduction in total revenues or in net profits.

For the economy as a whole, OSHA expects the economic impact of the proposed rulemaking to be both an increase in the efficiency of production of goods and services and an improvement in the welfare of society.

First, as demonstrated by the analysis of costs and benefits associated with compliance with the requirements of the rule, OSHA expects that societal welfare will increase as a result of these standards, as the benefits achieved clearly and strongly justify the relatively small costs necessary. The impacts of the proposal involve net benefits of over $100 million that are achieved in a relatively cost-effective manner.

Second, many of the costs associated with the injuries and fatalities resulting from the risks addressed by the proposal have until now been externalized. That is, the costs incurred by society to supply certain products and services associated with electric power generation, transmission, and distribution work have not been fully reflected in the prices of those products and services. The costs of production have been partly borne by workers who suffer the consequences associated with the activities causing the risks. To the extent that fewer of these costs are externalized, the price mechanism will enable the market to result in a more efficient allocation of resources. It should be noted that reductions in externalities by themselves do not necessarily increase efficiency or social welfare unless the costs of achieving the reductions are outweighed by the associated benefits.

OSHA concludes that compliance with the requirements of the proposal is economically feasible in every affected industry sector. This conclusion is based on the criteria established by the OSH Act, as interpreted in relevant case law.

In general, the courts have held that a standard is economically feasible if there is a reasonable likelihood that the estimated costs of compliance ''will not

threaten the existence or competitive structure of an industry, even if it does portend disaster for some marginal firms'' [*United Steelworkers of America* v. *Marshall,* 647 F.2d 1189, 1272 (D.C. Cir. 1980)]. As demonstrated by this preliminary regulatory impact analysis and the supporting evidence, the potential impacts associated with achieving compliance with the proposal fall far within the bounds of economic feasibility in each industry sector. OSHA does not expect compliance with the requirements of the proposal to threaten the viability of entities or the existence or competitive structure of any of the affected industry sectors.

In addition, based on an analysis of the costs and economic impacts associated with this rulemaking, OSHA preliminarily concludes that the effects of the proposal on international trade, employment, wages, and economic growth for the United States would be negligible.

Statement of Energy Effects

As required by Executive Order 13211, and in accordance with the guidance for implementing Executive Order 13211 and with the definitions provided therein as prescribed by the Office of Management and Budget, OSHA has analyzed the proposed standard with regard to its potential to have a significant adverse effect on the supply, distribution, or use of energy.

As a result of this analysis, OSHA has determined that this action is not a significant energy action as defined by the relevant OMB guidance.

I. Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act, as amended in 1996, requires the preparation of an Initial Regulatory Flexibility Analysis (IRFA) for certain proposed rules (5 U.S.C. 601–612). Under the provisions of the law, each such analysis shall contain:

1. A description of the impact of the proposed rule on small entities;
2. A description of the reasons why action by the agency is being considered;
3. A succinct statement of the objectives of, and legal basis for, the proposed rule;
4. A description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply;
5. A description of the projected reporting, recordkeeping and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirements and the type of professional skills necessary for preparation of the report or record;
6. An identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap or conflict with the proposed rule; and
7. A description and discussion of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities, including

(a) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;

(b) The clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities;

(c) The use of performance rather than design standards; and

(d) An exemption from coverage of the rule, or any part thereof, for such small entities.

The Regulatory Flexibility Act further states that the required elements of the IRFA may be performed in conjunction with or as part of any other agenda or analysis required by any other law if such other analysis satisfies the relevant provisions.

1. Impact of the proposed rule on small entities.

OSHA has analyzed the potential impact of the proposed standards on small entities, as described below.

The total annual cost of compliance with the proposal for small entities is estimated to be $15.2 million [2, Table 5.7]. These costs were calculated by provision, by industry, and by size of establishment, as described in the cost of compliance section of this economic analysis.

To assess the potential economic impact of the proposal on small entities, OSHA calculated the ratios of compliance costs to profits and to revenues. These ratios are presented for each affected industry in Table V–19. OSHA expects that among small entities potentially affected by the proposal, the average increase in prices necessary to completely offset the compliance costs would be less than 0.3 percent in each affected industry.

TABLE V–19.—POTENTIAL ECONOMIC IMPACTS ON SMALL ENTITIES

Industry code	Industry name	Compliance costs per firm	Compliance costs as a percent of sales	Compliance costs as a percent of profits
NAICS 234910	Water, Sewer, and Pipeline Construction	$179	0.15	4.27
NAICS 234920	Power and Communication Transmission Line Construction	1,142	0.16	4.58
NAICS 234930	Industrial Nonbuilding Structure Construction	590	0.02	0.30
NAICS 234990	All Other Heavy Construction	1,377	0.15	2.34
NAICS 235310	Electrical Contractors	2,085	0.24	5.31
NAICS 235910	Structural Steel Erection Contractors	89	0.07	1.45
NAICS 235950	Building Equipment and Other Machine Installation Contractors	51	0.08	.....
NAICS 235990	All Other Special Trade Contractors	79	0.16	3.35
NAICS 221110	Electric Power Generation	1,917	0.01	0.09
NAICS 221120	Electric Power Transmission, Control, and Distribution	1,917	0.01	0.09
NAICS 2211	Publicly Owned Utilities	2,444	0.00	.....
Various	Industrial Power Generators	2,655	0.07	.....
SIC 0783	Ornamental Shrub and Tree Services	545	0.04	0.62

Source: CONSAD [2], Table 6.4, adjusted for revised cost estimates.

Only to the extent that such price increases are not possible would there be any effect on the average profits of small entities. Even in the unlikely event that no costs could be passed through, the compliance costs could be completely absorbed through an average reduction in profits of less than 3 percent in most affected industries, and through an average reduction in profits of less than 6 percent in all affected industries.

In order to further ensure that potential impacts on small entities were fully analyzed and considered, OSHA also separately examined the potential impacts of the proposed standards on very small entities, defined as those with fewer than 20 employees.

To assess the potential economic impact of the proposed standards on very small entities, OSHA calculated the ratios of compliance costs to profits and to revenues. These ratios are presented for each affected industry in Table V–20. OSHA expects that among very small entities potentially affected by the proposed standards, the average increase in prices necessary to completely offset the compliance costs would be 0.4 percent or less in each affected industry.

TABLE V–20.—POTENTIAL ECONOMIC IMPACTS ON VERY SMALL ENTITIES

[Those with fewer than 20 employees]

Industry code	Industry name	Compliance costs per firm	Compliance costs as a percent of sales	Compliance costs as a percent of profits
NAICS 234910	Water, Sewer, and Pipeline Construction	$131	0.24	4.49
NAICS 234920	Power and Communication Transmission Line Construction	679	0.28	5.63
NAICS 234930	Industrial Nonbuilding Structure Construction	70	0.03	3.43
NAICS 234990	All Other Heavy Construction	1,236	0.26	31.67
NAICS 235310	Electrical Contractors	1,623	0.35	4.84
NAICS 235910	Structural Steel Erection Contractors	72	0.12	11.00
NAICS 235950	Building Equipment and Other Machine Installation Contractors	48	0.13	7.39
NAICS 235990	All Other Special Trade Contractors	74	0.20	6.25
NAICS 221110	Electric Power Generation	546	0.01	0.09
NAICS 221120	Electric Power Transmission, Control, and Distribution	392	0.01	0.09
NAICS 2211	Publicly Owned Utilities	160	0.00	.....
Various	Industrial Power Generators	.....	.....	.....
SIC 0783	Ornamental Shrub and Tree Services	664	0.11	1.41

Source: CONSAD [2], Table 6.3, adjusted for revised cost estimates.

Only to the extent that such price increases are not possible would there be any effect on the average profits of small entities. Even in the unlikely event that no costs could be passed through, the compliance costs could be completely absorbed through an average reduction in profits of 11 percent or less in all affected industries except NAICS 2349–90, All Other Heavy Construction.

In the All Other Heavy Construction industry, the reported profit rate for very small entities is extraordinarily low, which causes the compliance costs to appear relatively large in relation to profits. The average costs of compliance for very small entities in this industry represent less than 0.3 percent of corresponding revenues. OSHA anticipates that the compliance costs will be recouped through price increases of less than 0.3 percent, leaving profits unaffected. OSHA requests comments regarding the estimated economic impacts of the proposed standard on this industry.

2. A description of the reasons why action by the agency is being considered.

Employees performing work involving electric power generation, transmission, and distribution are exposed to a variety of significant hazards, such as electric shock, fall, and burn hazards, that can and do cause serious injury and death. OSHA estimates that 444 serious injuries and 74 fatalities occur annually among these workers.

Although some of these incidents may have been prevented with better compliance with existing safety standards, research and analyses conducted by OSHA have found that many preventable injuries and fatalities would continue to occur even if full compliance with the existing standards were achieved. Without counting incidents that would potentially have been prevented with compliance with existing standards, an estimated additional 116 injuries and 19 fatalities would be prevented annually through full compliance with the proposed standards.

As explained above, additional benefits associated with this rulemaking involve providing updated, clear, and consistent safety standards regarding electric power generation, transmission, and distribution work to the relevant employers, employees, and interested members of the public. The existing OSHA standards for the construction of electric power transmission and distribution systems are over 30 years old and inconsistent with the more recently promulgated standards addressing repair and maintenance work. OSHA believes that the proposed updated standards are easier to understand and to apply and will benefit employers and employees by facilitating compliance while improving safety.

3. Statement of the objectives of, and legal basis for, the proposed rule.

The primary objective of the proposed standards is to provide an increased degree of occupational safety for employees performing electric power generation, transmission, and distribution work. As stated above, an estimated 116 injuries and 19 fatalities would be prevented annually through compliance with the proposed standards in addition to those that may be prevented through compliance with existing standards.

Another objective of the proposed rulemaking is to provide updated, clear, and consistent safety standards regarding electric power generation, transmission, and distribution work to the relevant employers, employees, and interested members of the public. The proposed updated standards are easier to understand and to apply, and they will benefit employers by facilitating compliance while improving safety.

The legal basis for the rule is the responsibility given the Department of Labor through the Occupational Safety and Health (OSH) Act of 1970. The OSH Act authorizes and obligates the Secretary of Labor to promulgate mandatory occupational safety and health standards as necessary ''to assure so far as possible every working man and woman in the Nation safe and healthful working conditions and to preserve our human resources.'' 29 U.S.C. 651(b). The legal authority can also be cited as 29 U.S.C. 655(b); 40 U.S.C. 333.

4. Description of and estimate of the number of small entities to which the proposed rule will apply.

OSHA has completed a preliminary analysis of the impacts associated with this proposal, including an analysis of the type and number of small entities to which the proposed rule would apply. In order to determine the number of small entities potentially affected by this rulemaking, OSHA used the definitions of small entities developed by the SBA for each industry.

For the construction industry, SBA defines small businesses using revenue-based criteria. Specifically, for the four heavy construction industries (NAICS 2349–10, 2349–20, 2349–30, and 2349–90), firms with annual revenues of less than $28.5 million are classified as small businesses. For specialty contractors (NAICS 2353–10, 2359–10, 2359–50, and 2359–90), firms with annual revenues of less than $12 million are considered to be small businesses. For SIC 0783, Ornamental Shrub and Tree Services, firms with annual revenues of less than $5 million are considered to be small businesses. For electric utilities (NAICS 2211), the SBA defines small businesses using power production or transmission-based criteria. Specifically, firms that produce or transmit less than 4 million megawatt hours annually are considered to be small businesses.

The proposed standards would primarily impact firms performing construction, maintenance, and repair work on power generation, transmission, and distribution facilities, lines, and equipment. Based on the definitions of small entities developed by SBA for each industry, the proposal is estimated to potentially affect a total of 12,619 small entities.

The estimated number of potentially affected small entities in each industry is presented in Table V–21. As shown in this table, of the 12,619 small entities potentially affected, an estimated 2,661 entities are in the Power and Communication Transmission Line Construction industry, an estimated 2,552 entities are in the All Other Special Trade Contractors industry, an estimated 1,577 entities are in the Electrical Contractors industry, and an estimated 1,336 entities are in the Electric Power Transmission, Control, and Distribution industry.

TABLE V–21.—PROFILE OF POTENTIALLY AFFECTED SMALL ENTITIES

Industry code	Industry name	Potentially affected small entities (SBA definitions)	Potentially affected establishments with fewer than 20 employees
NAICS 234910	Water, Sewer, and Pipeline Construction	797	629
NAICS 234920	Power and Communication Transmission Line Construction	2,661	2,198
NAICS 234930	Industrial Nonbuilding Structure Construction	253	118
NAICS 234990	All Other Heavy Construction	624	571
NAICS 235310	Electrical Contractors	1,577	1,435
NAICS 235910	Structural Steel Erection Contractors	621	504
NAICS 235950	Building Equipment and Other Machine Installation Contractors.	714	748
NAICS 235990	All Other Special Trade Contractors	2,552	2,418
NAICS 221110	Electric Power Generation	376	902
NAICS 221120	Electric Power Transmission, Control, and Distribution	1,336	3,203
NAICS 2211	Publicly Owned Utilities	262	33
Various	Industrial Power Generators	594	0
SIC 0783	Ornamental Shrub and Tree Services	252	100
Total		12,619	12,859

Source: CONSAD [1]. Table 6.2 and Appendix C, pages 1–2.

5. Description of the projected reporting, recordkeeping and other compliance requirements of the proposed rule.

OSHA is proposing to revise the standards addressing the work practices to be used, and other requirements to be followed, for the operation and maintenance of, and for construction work involving, electric power generation, transmission, and distribution installations. The existing rules for this type of work were issued in 1972 for construction work and in 1994 for work covered by general industry standards. The construction standards, in particular, are out of date and are not consistent with the more recent, corresponding general industry rules for the operation and maintenance of electric power generation, transmission, and distribution systems. As described in detail earlier, this proposal will make the construction and general industry standards for this type of work the same.

Existing § 1910.269 contains requirements for the maintenance and operation of electric power generation, transmission, and distribution installations. Section 29 CFR 1910.269 is primarily a work-practices standard. Its requirements are based on recognized safe industry practices as reflected in current national consensus standards covering this type of work, such as the National Electrical Safety Code (ANSI/IEEE C2). OSHA promulgated this standard in 1994.

Section 29 CFR 1910.269 contains provisions intended to protect employees from the most serious hazards they face in performing this type of work, primarily, those causing falls, burns, and electric shocks. The requirements in this standard cover training and job briefings, working near energized parts, deenergizing lines and equipment and grounding them for employee protection, work on underground and overhead installations, work in power generating stations and substations, work in enclosed spaces, and other special conditions and equipment unique to the generation, transmission, and distribution of electric energy.

OSHA is also proposing to extend its general industry standard on electrical protective equipment to the construction industry. The current construction standards for the design of electrical protective equipment, which apply only to electric power transmission and distribution work, adopt several national consensus standards by reference. The proposed new standard would replace the incorporation of these out-of-date

consensus standards with a set of performance-oriented requirements that are consistent with the latest revisions of these consensus standards and with the corresponding standard for general industry. Additionally, OSHA is proposing new requirements for the safe use and care of electrical protective equipment to complement the equipment design provisions. The new standard, which will apply to all construction work, will update the existing OSHA industry-specific standards and will prevent accidents caused by inadequate electrical protective equipment.

As discussed in detail earlier, this transfer to the construction standards of the existing general industry standards (electrical protective equipment and 29 CFR 1910.269) is not expected to impose a significant burden on employers. Generally, many employers doing construction work also do general industry work, and thus OSHA believes that they would already be following the updated general industry standards in all of their work. The proposed standards for construction are also consistent with the latest national consensus standards.

OSHA is also proposing miscellaneous changes to the two corresponding general industry standards. These changes address: Class 00 rubber insulating gloves; electrical protective equipment made from materials other than rubber; training for electric power generation, transmission, and distribution workers; host-contractor responsibilities; job briefings; fall protection; insulation and working position of employees working on or near live parts; protective clothing; minimum approach distances; deenergizing transmission and distribution lines and equipment; protective grounding; operating mechanical equipment near overhead power lines; and working in manholes and vaults.

These changes to the general industry standards, because they apply also to construction, would ensure that employers, where appropriate, face consistent requirements for work performed under the construction and general industry standards and would further protect employees performing electrical work covered under the general industry standards. The proposal would also update references to consensus standards in 29 CFR 1910.137 and 29 CFR 1910.269 and would add a new appendix to help employers comply with the new clothing provisions.

Section IV, Summary and Explanation of Proposed Rule, earlier in this preamble, provides further detail regarding the new and revised provisions of the proposed rulemaking in. A description of the classes of small entities which would be subject to the new and revised requirements, and the type of professional skills necessary for compliance with the requirements, is presented in the preceding sections of this economic analysis.

6. Federal rules which may duplicate, overlap or conflict with the proposed rule.

OSHA has not identified any Federal rules which may duplicate, overlap, or conflict with the proposal, and requests comments from the public regarding this issue.

OSHA does not believe that the proposed provisions on host-contractor responsibilities duplicate or overlap OSHA's multi-employer citation policy (CPL 02–00–124). Section IV, Summary and Explanation of Proposed Rule, earlier in this preamble, provides clarification of the intent and application of the host-contractor requirements and their relationship to OSHA's multi-employer citation policy.

It is not OSHA's intent that the provisions on host-contractor responsibilities would affect in any way the employer-employee relationship under the Fair Labor Standards Act or under the Internal Revenue Service regulations. The OSHA requirements are not intended to establish an employer-employee relationship with contractors or employees of contractors, as defined by the relevant statutes and regulations.

7. Alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities.

OSHA evaluated many alternatives to the proposed standards to ensure that the proposed requirements would accomplish the stated objectives of applicable statutes and would minimize any significant economic impact of the proposal on small entities.

In developing the proposal, and especially in establishing compliance or reporting requirements or timetables that affect small entities, the resources available to small entities were taken into account. Compliance and reporting requirements under the proposal applicable to small entities were clarified, consolidated, and simplified to the extent practicable. Wherever possible, OSHA has proposed the use of performance rather than design standards. An exemption from coverage of the rule for small entities was not considered to be a viable option because the safety and health of the affected employees would be unduly jeopardized.

Many other specific alternatives to the proposed requirements were considered. Section IV, Summary and Explanation of Proposed Rule, earlier in this preamble, provides discussion and explanation of the particular requirements of the proposal.

Other regulatory alternatives considered were those raised by the Small Business Advocacy Review Panel, which was convened for purposes of soliciting comments on the proposal from affected small entities. A discussion of these alternatives is provided later in this economic analysis.

Nonregulatory alternatives were also considered in determining the appropriate approach to reducing occupational hazards associated with electric power generation, transmission, and distribution work. These alternatives were discussed in the section of this economic analysis entitled ''Examination of Alternative Approaches,'' earlier in this preamble.

Alternatives Considered and Changes Made in Response to Comments From Small Entity Representatives and Recommendations From the Small Business Advocacy Review Panel

On May 1, 2003, OSHA convened a Small Business Advocacy Review Panel (SBAR Panel or Panel) for this rulemaking in accordance with the provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), as codified at 5 U.S.C. 601 *et seq.*

The SBAR Panel consisted of representatives of OSHA, of the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget, and of the Office of Advocacy within the U.S. Small Business Administration. The Panel received oral and written comments on a draft proposal and a draft economic analysis from small entities that would potentially be affected by this rulemaking. The Panel, in turn, prepared a written report, which was delivered to the Assistant Secretary for Occupational Safety and Health [3]. The report summarized the comments received from the small entities, and included recommendations from the Panel to OSHA regarding the proposal and the associated analysis of compliance costs.

Table V–22 lists each of the recommendations made by the Panel and describes the corresponding answers or changes made by OSHA in response to the issues raised.

TABLE V–22.—PANEL RECOMMENDATIONS AND OSHA RESPONSES

Panel recommendations	OSHA responses
1. The Small Entity Representatives (SERs) generally felt that OSHA had underestimated the costs and may have overestimated the benefits in its preliminary economic analysis. The Panel recommends that OSHA revise its economic and regulatory flexibility analysis as appropriate, and that OSHA specifically discuss the alternative estimates and assumptions provided by SERs and compare them to OSHA's revised estimates.	OSHA revised its economic and regulatory flexibility analysis as appropriate in light of the additional information received from the SERs. Many of the comments from the SERs asserting deficiencies in the estimates of the compliance costs were the result of differing interpretations of what would have to be done in order to achieve compliance with particular requirements. Some SERs felt that OSHA had underestimated the time and resources that would be necessary to develop and maintain written records associated with requirements for making determinations regarding training and protective clothing, for documenting employee training, and for communicating with host employers or contractors about hazards and appropriate safety practices. OSHA has clarified that written records are not in fact required to achieve compliance with these provisions of the proposed standards. In some cases, the SERs also interpreted the draft requirements associated with job briefings, host/contractor responsibilities, and electric arc hazard calculations in ways that would involve higher compliance costs than those estimated by OSHA, but that were not consistent with the way in which OSHA intended for compliance to be achieved. In these cases, OSHA clarified what would be necessary to comply with the standards such that the corresponding potential cost and impact concerns raised by the SERs would be alleviated. With regard to the cost of training that would be necessary for employees who currently are not covered by the existing training requirements in 29 CFR 1910.269, OSHA revised its compliance cost calculations to reflect that an additional 24.75 hours of training per employee newly covered by the training currently required by 29 CFR 1910.269 would be necessary to comply with the proposed standard for construction. The SERs generally indicated that the job briefing requirements of the proposed standards are generally consistent with current practices, and that 5 minutes for the additional job briefing requirements per project would be a reasonable estimate for the amount of time that would be involved. For purposes of estimating compliance costs with the proposal in this preliminary analysis, OSHA used estimates of current compliance of 85 percent to 95 percent, and estimated that 5 minutes of supervisor time and 5 minutes of employee time would be involved per affected project. With regard to the cost associated with providing flame resistant apparel to employees, in general the SERs suggested that OSHA's estimate of two sets per employee per year for small establishments, and five sets per employees every five years for large establishments, was an underestimate. The SERs also gave OSHA broad estimates of FRA, ranging from $50 per shirt to $150 for switching flash jackets. Several SERs agreed that many companies contract out clothing supplies and laundering with uniform companies. In this preliminary analysis of compliance costs associated with the requirements to provide FRA, OSHA estimates that, on average, 8 sets of FRA clothing would be provided per employee, and that with 8 sets per employee the useful life of the FRA would average 4 years. The cost per set of FRA was estimated to be $110. Laundering costs were excluded since the FRA is worn in lieu of street clothes, and laundering would be needed whether the clothing was FRA, street clothing, or any other type of clothing. Additionally, the proposal does not require employers to launder the FRA. For employees who are currently provided the training required by the existing 29 CFR 1910.269 standard, OSHA notes and has clarified that training that was deemed sufficient for compliance with 29 CFR 1910.269 will be considered sufficient for compliance with the proposal to allow employers to tailor their training to the risk faced by employees. OSHA has included, however, the cost of providing 1.5 hours of additional training per employee in the first year for current employees and 0.75 hours of additional training for new employees in the estimation of the compliance costs associated with the proposed standards.

TABLE V–22.—PANEL RECOMMENDATIONS AND OSHA RESPONSES—Continued

Panel recommendations	OSHA responses
2. In its economic and RFA analyses, OSHA assumed that all affected firms apply existing 29 CFR 1910.269 to construction related activities, even though not required to do so. The reason OSHA made this assumption is OSHA though that all affected firms are either covered solely by 29 CFR 1910, or engage in both 29 CFR 1910 and 29 CFR 1926 activities, and find it easiest to adopt the general industry standard for all activities. SERs confirmed that most firms do in fact follow 29 CFR 1910.269. However, they also pointed out that there are some firms that are engaged solely in construction activities and thus may not be following the 29 CFR 1910 standards. The Panel recommends that OSHA revise its economic and regulatory flexibility analyses to reflect the costs associated with some firms coming into compliance with 29 CFR 1910.269. The SERs also reported that compliance training under 29 CFR 1910.269 is extensive. One SER estimated that in excess of 30 hours per employee is necessary in the first year. The Panel recommends that OSHA consider the SER comments on training and revise its estimate of training costs as necessary.	OSHA has revised its economic and regulatory flexibility analyses to reflect the costs associated with some firms coming into compliance with 29 CFR 1910.269. Specifically, OSHA estimated that these firms would incur compliance costs equivalent to those incurred by firms who were affected by the new requirements of 29 CFR 1910.269 when it was originally promulgated in 1994. In addition, OSHA considered the SER comments on training and revised its estimate of training costs accordingly. OSHA added a separate training cost for firms who are not currently covered by the existing training requirements in 29 CFR 1910.269, as presented in the compliance cost chapter of this economic analysis.
3. Most SERs were concerned that a ''performance standard'' such as this means that even in cases where OSHA does not require recordkeeping, such as for training, many small entities will find recordkeeping (1) useful for internal purposes and (2) virtually the only way they will be able to demonstrate compliance with the rule. The Panel recommends that OSHA consider whether recordkeeping is necessary to demonstrate compliance with the standard, and, if not, that OSHA explicitly discuss ways in which employers can demonstrate compliance without using recordkeeping.	The proposal would not require employers to maintain records of training. Employees themselves can attest to the training they have received, and OSHA will determine compliance with the training requirements primarily through employee interviews.
4. SERs pointed out that the requirements for observation and follow-up would result in paperwork and reporting requirements not presented in the cost analysis. The Panel recommends that OSHA include such costs and paperwork burdens in its economic analysis as appropriate.	The proposal would not require host employers to observe contract employees. Rather, it would require host employers to report to the contract employer violations of the standard's work practice requirements by contract employees that the host employer observes in the normal course of conducting their own operations. For example, a host employer may observe contract employees during a quality control check of the contractor's work or while employees of the host employer are working on a project alongside employees of the contract employer. Consequently, OSHA has not included a cost for conducting observations. OSHA has eliminated the draft requirement for the host employer ''to note any failures of the contract employer to correct such violations, take appropriate measures to correct the violations, and consider the contract employer's failure to correct violations in evaluating the contract employer.'' The proposal would require the contract employer to report to the host contractor any measures taken to correct reported violations. Thus, OSHA has not included costs for the host employer to follow up to ensure that the contract employer has corrected any violations. OSHA has included estimates of the costs of information collection requirements and of the associated paperwork burdens in the paperwork analysis for the proposal.
5. Several SERs argued that requiring consideration of safety records would restrict the number of eligible contractors, resulting in both increased costs and potential impacts on small firms. Several SERs also were concerned that the draft requirement would result in the increased use of methods such as pre-qualification in the hiring of contractors or would increase reliance on favored contractors; the SERs said that both of these effects could result in increased costs and restricted business opportunities, especially for small businesses. The Panel recommends that OSHA study the extent of such costs and impacts and solicit comment on them.	OSHA has eliminated the draft requirement for the host employer to obtain and evaluate information on contractors' safety performance and programs. Consequently, the preliminary regulatory flexibility analysis does not include costs associated with this draft provision. However, the Agency requests comments on the need for such a requirement and on the associated costs and restricted business opportunities, particularly with respect to small businesses.
6. Several SERs questioned OSHA's estimates of the number of sets of flame resistant clothing an employee would need, and its assumptions and cost estimates. The panel recommends that OSHA reexamine its assumptions and cost estimates in light of these comments.	OSHA has reexamined its assumptions and cost estimates with regard to the requirements to provide flame-resistant clothing. The comments from the SERs and OSHA's revised estimates are described in response to Panel recommendation 1 above.

TABLE V–22.—PANEL RECOMMENDATIONS AND OSHA RESPONSES—Continued

Panel recommendations	OSHA responses
7. Many SERs questioned whether the new revisions to 29 CFR 1910.269 would in fact save any lives or prevent any accidents. Some commented that they had never seen an accident that would have been prevented by any of the new provisions. Some SERs suggested that OSHA's analysis might have included fatalities in municipal facilities that may not be covered by the standard. Others suggested OSHA should discuss the extent to which the existing general industry standard had resulted in reduced fatalities and injuries, and how this compares with OSHA estimates of how many fatalities and injuries would be prevented by the proposal. The Panel recommends that OSHA provide more documentation regarding the sources and nature of the anticipated benefits attributed to the draft proposal. The estimated benefits should also be reexamined in light of the SER comments and experiences regarding the perceived effectiveness of the new provisions. In particular, OSHA should focus attention on the benefits associated with the provisions on flame retardant apparel, training, host/contractor responsibilities, and fall protection.	OSHA has collected and compiled information from a variety of sources to document and support the need for the provisions of the proposed standards. Data on the fatalities and injuries that have occurred among the affected work force over the past decade has been analyzed specifically with regard to the effectiveness of both the existing and proposed requirements in preventing such incidents. This evaluation is summarized in the benefits chapter of this preliminary analysis; a detailed explanation of this evaluation is provided in the corresponding research report [1]. In order to quantitatively determine the effectiveness of the existing and proposed standards in preventing injuries and fatalities, a detailed review of the descriptions of accidents was performed. For each accident reviewed, the detailed description of the accident, along with the citations issued, the nature of the injuries incurred, and the causes associated with the accident, were analyzed to estimate the likelihood that the accident would have been preventable under, first, the existing applicable standards, and second, under the proposed standard. Based on these analyses, CONSAD found that full compliance with the existing standards would have prevented 52.9 percent of the injuries and fatalities; compliance with the proposed standards, however, would prevent 79.0 percent of the relevant injuries and fatalities. The increase in safety that would be provided by the proposed standards is represented by the prevention of an additional 19 fatalities and 116 injuries annually. In addition, the proposed revisions improve safety by clarifying and updating the existing standards to reflect modern technologies, work practices, and terminology, and by making the standards consistent with current consensus standards and other related standards and documents. By facilitating the understanding of and compliance with these important safety standards, the proposal also achieves better protection of employee safety while reducing uncertainty, confusion, and compliance burdens on employers. Section IV, Summary and Explanation of Proposed Rule, earlier in this preamble, includes explanations of the need for, and the expected benefit associated with particular with, particular provisions of the proposed standard. In particular, see the summary and explanation of §§ 1926.950(c) (host-contractor responsibilities), 1926.954(b) (fall protection), and 1926.960(g) (flame-resistant apparel) for a discussion of the need for and a qualitative explanation of the benefits of these provisions.
8. There were no comments from the SERs on OSHA's estimates of the number and type of small entities affected by the proposal. However, some SERs pointed out that there may be some small entities that engage in only construction related activities. The Panel recommends that OSHA's estimates of current baseline activities and OHSA's cost estimates reflect such firms.	As presented in the chapter on compliance costs in this preliminary analysis, OSHA has revised its analysis, including its estimates of baseline activities and its cost estimates, to reflect the possible existence of some firms that are not currently covered by the existing 29 CFR 1910.269 and that do not comply with these provisions when performing construction work on electric power generation, transmission, or distribution installations.

TABLE V–22.—PANEL RECOMMENDATIONS AND OSHA RESPONSES—Continued

Panel recommendations	OSHA responses
9. Most SERs were uncertain about how to comply with performance oriented provisions of the proposal, and further, some felt that additional expenses might be required to be confident that they were in compliance with such provisions. The Panel recommends that OSHA study and address these issues and consider the use of guidance material (e.g. non-mandatory appendices) to describe specific ways of meeting the standard, which will help small employers comply, without making the standard more prescriptive.	OSHA has added appendices containing guidelines on the inspection of work positioning equipment to assist employers in complying with the requirement to conduct such inspections proposed in 29 CFR 1910.269(g)(2)(iii)(a) and 29 CFR 1926.954(b)(3)(i). The proposal also includes appendices on clothing in 29 CFR 1910.269 and Subpart V of 29 CFR Part 1926. These appendices should help employers comply with the clothing provisions proposed in 29 CFR 1910.269(1)(11) and 29 CFR 1926.960(g). The proposal also includes many references to consensus standards that contain information helping employers comply with various provisions of the proposed standards. For example, the note to proposed 29 CFR 1926.957(b) directs empl9yers to the Institute of Electrical and Electronics Engineers' IEEE Guide for Maintenance Methods on Energized Power Lines, IEEE Std. 516–2003 for guidance on the examination, cleaning, repairing, and in-service testing of live-line tools to help employers comply with that provision in the OSHA standards. Lastly, Appendix E to 29 CFR 1910.269 and Appendix E to Subpart V of 29 CFR Part 1926 contain lists of reference documents to which employers can turn for help in complying with OSHA's proposal. The preamble to the proposed standards and this preliminary analysis both contain additional descriptions of what would be considered necessary and sufficient for purposes of achieving compliance with the requirements of the proposed standards. OSHA requests comments regarding which provisions, if any, require further clarification on what specific measures would or would not constitute compliance with the standards. The Agency also requests comments on what additional guidance material is needed to assist employers in complying with the standards. OSHA also encourages interested parties to submit such guidance material for possible inclusion in the final rule.
10. Most SERs were highly critical of the host contractor provisions and had trouble understanding what OSHA required. If these provisions are to be retained, the Panel recommends that they be revised. The Panel recommends that OSHA clarify what constitutes adequate consideration of contractor safety performance, clarify what is meant by ''observation,'' clarify how the multi-employer citation policy is related to the proposal, and clarify whether the requirement to communicate hazards does or does not represent a requirement for the host employer to conduct their own risk assessment. The Panel also recommends that OSHA examine the extent to which state contractor licensing could make the host contractor provisions in the proposal unnecessary.	OSHA has modified the provisions on host-contractor responsibilities substantially from the draft requirements reviewed by the SERs. The Agency believes that the changes address the concerns expressed by the SERs. The summary and explanation of proposed 29 CFR 1926.950(c), earlier in the preamble, provides clarification of the intent and application of the host-contractor requirements and their relationship to OSHA's multiemployer citation policy. The proposal includes a requirement in 29 CFR 1910.269(a)(4)(i)(A)(1) and 29 in CFR 1926.950(c)(1)(i)(A) that host employers inform contract employers of known hazards that are covered by the standards, that are related to the contract employer's work, and that might not be recognized by the contract employer or its employees. This provision does not require host employers to conduct a risk assessment of the work to be performed by the contract employer. However, proposed 29 CFR 1910.269(a)(4)(i)(A)(2) and 29 CFR 1926.950(c)(1)(i)(B) would require the host employer to provide information about the employer's installation to the contract employer to enable the contract employer to make the assessments required by the standards. This change should clarify that OSHA intends for the contract employer to conduct appropriate hazard identification and assessment for his or her own employees. OSHA does not believe that State contractor licensing makes the proposed host-contractor provisions unnecessary. Not all States require electric power generation, transmission, and distribution contractors to be licensed. For example, Illinois and New York do not require licensing at the State level. (See *http://www.electric-find.com/licnese.htm*) Additionally, the States with such licensing requirements judge primarily the contractors' ability to install electric equipment in accordance with State or national installation codes and not their ability to perform electric power generation, transmission, and distribution work safely.
11. Some SERs questioned the need for flame resistant clothing beyond the existing clothing provisions in 29 CFR 1910.269. Some argued that there was a trade-off between possible decreased injuries from burns and heat stress injuries as a result of using flame resistant clothing. The Panel recommends that OSHA consider and solicit comments on these issues.	OSHA has considered these issues in the development of the clothing requirements proposed in 29 CFR 1910.269(1)(11) and 29 CFR 1926.960(g), as explained in the summary and explanation of proposed 29 CFR 1926.960(g) earlier in the preamble. In that section of the preamble, the Agency has solicited comments on a wide range of issues related to protection of employees from the hazards posed by electric arcs.

TABLE V–22.—PANEL RECOMMENDATIONS AND OSHA RESPONSES—Continued

Panel recommendations	OSHA responses
12. Many SERs were uncertain whether OSHA's requirements for determining the need for flame resistant clothing would allow the use of such methods as (1) "worst case" analysis or (2) specifying minimum levels of protection for use when a system does not exceed certain limits. The Panel recommends that OSHA clarify what methods are acceptable to meet these requirements, and specify these methods in such a way that small entities can be confident that they have met the requirements of the standards.	OSHA has revised the clothing requirements in proposed 29 CFR 1910.269(1)(11) and 29 CFR 1926.960(g) to provide additional guidance explaining ways an employer can comply. For example, the Agency has included two notes and additional appendix material explaining how an employer can calculate estimates of available heat energy. For additional information, see the summary and explanation of proposed 29 CFR 1926.960(g), earlier in the preamble.
13. OSHA made some changes to the training provisions in 29 CFR 1910.269, including dropping certification requirements and allowing training to vary with risk. OSHA stated that both of these changes were designed to give the rules a greater performance orientation and to ease compliance. Some SERs felt that these changes might make compliance more complicated by making it less clear what needs to be done. The panel recommends that OSHA clarify the performance orientation of these changes and consider explaining that existing compliance methods would still be considered adequate under the new rules. The Panel further recommends that OSHA examine the requirement that employees demonstrate proficiency and provide examples of how that can be accomplished. The Panel also recommends that OSHA consider the possibility that the proposed draft may introduce costs to small businesses that are uncertain of how to comply with the new performance oriented training provisions.	OSHA believes that the proposed changes to the training requirements contained in 29 CFR 1910.269 clarify the standard and reduce burdens on employers. If employees are trained as required under the existing general industry standard, then no additional training would be required by the proposed requirement to provide a level of training based on the risk to the employer or by the proposal to remove the requirement that training be certified. Moreover, no additional costs would be incurred. Existing 29 CFR 1910.269(a)(2)(vii) already requires employees to demonstrate proficiency in the work practices involved. OSHA believes that most employers are already complying with this requirement in various ways. For example, some employers have employees demonstrate proficiency in climbing after completing a pole climbing class that includes climbing on practice poles as part of the curriculum. In addition, many employers use an apprenticeship program, in which journeyman line workers acting as crew leaders observe trainees over the course of the program. The trainees pass through the apprenticeship program by successfully completing each step, demonstrating proficiency in various tasks along the way, until the trainees reach the journeyman level.
14. Several SERS argued that the proposal placed restrictions on the length of the lanyard and that these restrictions were unworkable. The Panel recommends that OSHA clarify the intent of the fall protection provisions. Other SERs argued that fall fatalities from aerial lifts were either the result of catastrophic failures in which case fall protection would not have prevented the death, or the result of failure to use any form of fall arrest or fall restraint. Some SERs argued that some workers might find harnesses more awkward than belts and be less likely to wear them. The Panel recommends that OSHA consider and solicit comment on these issues.	OSHA has clarified the intent of the proposed changes to the fall protection requirements proposed in 29 CFR 1910.269(g)(2)(i) and (ii) in the summary and explanation of those provisions earlier in the preamble. It is easy for an employer to enforce the use of fall arrest equipment, which incorporates a harness, by employees working from aerial lifts. It is relatively easy for an employer to observe that an employee is wearing a harness, which extends over the employee's shoulders, and that a lanyard is attached to the connector between the employee's shoulders and to the anchorage on the boom of the aerial lift. Body belts, which were the predominant form of protection used in the time period represented by the accidents, are worn near an employee's hips. It is not usually possible to determine whether an employee in an aerial lift bucket is wearing a body belt or, if he or she is, whether the lanyard is attached to the D-ring on the body belt. It would be much easier for an employer to enforce the use of personal fall arrest equipment than to enforce the use of body belts even if employees do not want to wear them. Thus, to the extent that fall injuries are the result of the failure of an employee to use any form of fall protection equipment, the proposal would help prevent many of those injuries. Neither personal fall arrest systems nor work positioning equipment will protect against catastrophic failure of the boom of an aerial lift; the employee would fall with the bucket or platform. However, a personal fall arrest system, and in some cases work positioning equipment, can protect an employee if the bucket or platform detaches from the boom as long as the fall protection equipment is attached to the boom and not to the bucket or platform. In the hopes of further clarifying the standard, OSHA requests comments on the fall protection issues raised by the SERs.

TABLE V–22.—PANEL RECOMMENDATIONS AND OSHA RESPONSES—Continued

Panel recommendations	OSHA responses
15. This rule was designed by OSHA to eliminate confusing differences between the applicable construction and general industry standards, by making the standards consistent. Several SERs felt this was a worthwhile goal. Some SERs felt that the host contractor provisions of the rule could result in causing contractor employees to be considered employees of the host employer under the Fair Labor Standards Act and under the Internal Revenue Service regulations. In addition, the SERs identified OSHA's multi-employer citation policy as duplicative and overlapping of the host contractor provisions in the proposal. The Panel recommends that, if this provision is retained, OSHA investigate this issue and clarify these provisions to assure that contractor employees do not become direct employees of the host employer as a result of complying with possible OSHA requirements.	OSHA does not believe that the proposed provisions on host-contractor responsibilities duplicate or overlap the Agency's multiemployer policy. See the summary and explanation of proposed § 1926.950(c) earlier in this preamble for clarification of the intent and application of the host-contractor requirements and their relationship to OSHA's multiemployer citation policy. It is not OSHA's intent that the provisions on host-contractor responsibilities would affect in any way of the employer-employee relationship under the Fair Labor Standards Act or under the Internal Revenue Service regulations. The OSHA requirements are not intended to establish an employer-employee relationship with contractors or employees of contractors, as defined by the relevant statutes and regulations.
16. Some SERs were unconvinced about the need for revisions to the existing 29 CFR 1910.269 standard in light of their potential to improve safety beyond what compliance with the requirements in existing 29 CFR 1910.269 would achieve. The Panel recommends that OSHA consider and solicit comment on the regulatory alternative of extending the requirements of 29 CFR 1910.269 to construction, without further modification.	OSHA requests comments on the regulatory alternative of extending the requirements of 29 CFR 1910.269 to construction, without further modification. Commenters should explain how, if the Agency adopted this option, it could comply with section 6(b)(8) of the OSHA Act, which requires OSHA to explain why a promulgated rule that differs substantially from a national consensus standard will better effectuate the purposes of the Act than the national consensus standard. Furthermore, as explained fully above, OSHA's analysis preliminarily finds that the additional changes to both 29 CFR 1910.269 and Subpart V will prevent a significant number of fatalities and injuries each year.
17. The Panel notes that the host/contractor provisions were particularly troublesome for almost all SERs, and that as a result, OSHA should provide either some change or provide extensive clarification to these provisions. The Panel recommends that OSHA consider, analyze, and solicit comment on a variety of alternatives to these provisions, including: 1. Dropping all or some of these provisions 2. Specifying in detail methods that would be considered adequate for purposes of compliance for those provisions retained 3. Changing the provision for consideration of safety performance to indicate how employers can be sure they have complied with the provision 4. Changing the provisions concerning observed violations by: • Dropping the provision concerning observed violations entirely; • Changing the provision concerning observed violations to clearly indicate that "inspections" are not required; • Minimizing the amount of follow-up and responsibility placed on the host employer when a violation is observed; • Requiring only that the contractor be notified of observed violations (no requirement for subsequent monitoring of evaluation); • Changing the provision to require observation for the purpose of determining if the contractor is performing safe work practices, requiring observed violations to be reported to the contractor (no requirement for subsequent monitoring or evaluation); • Providing explicit language that line clearance tree trimmers are not covered by this provision; • Specifying that only observations made by a "safety professional" or other individual qualified to identify hazards must be reported to the contractor 5. Changing the provision for hazard communication to make clear that the host employer is not required to conduct his or her own hazard analysis, but only to communicate such hazards of which the host employer may be aware	OSHA has considered these options and has adopted several of them. The Agency has dropped the draft requirement for host employers to obtain and evaluate information on contractor safety performance and programs. OSHA has also eliminated draft provisions that would have required the host employer to follow up on observed violations. Instead, the proposal, in 29 CFR 1910.269(a)(4)(ii)(C)(3) and in 29 CFR 1926.950(c)(2)(iii)(C), would require the contract employer to report what measures the contractor took to correct any violations and to prevent their recurrence. OSHA requests comments on whether the changes, along with the accompanying summary and explanation of the proposal, adequately clarify the host-contractor requirements, whether there are other options that the Agency should consider, and whether the proposed provisions will adequately protect employees.

TABLE V–22.—PANEL RECOMMENDATIONS AND OSHA RESPONSES—Continued

Panel recommendations	OSHA responses
18. The Panel recommends that OSHA consider and solicit comment on two kinds of options with respect flame resistant clothing. First, OSHA should consider the alternative of no further requirements beyond existing 29 CFR 1910.269 for the use of flame resistant clothing. Second, should the draft requirement be retained in some manner, OSHA should consider and solicit comment on one or a combination of alternative means of determining how much protection is needed or required. These alternatives should include: 1. Allowing the employer to estimate the exposure assuming that the distance from the employee to the electric arc is equal to the minimum approach distance 2. Providing tables showing heat energy for different exposure conditions as an alternative assessment method 3. Specifying a minimum level of protection for overhead line work (for example, 10 cal/cm^2) for use when the system does not exceed certain limits as an alternative to hazard assessment 4. Allowing the employer to reduce protection when other factors interfere with the safe performance of the work (for example, severe heat stress) after the employer has considered alternative methods of performing the work, including the use live-line tools and deenergizing the lines and equipment, and has found them to be unacceptable 5. Allowing employers to base their assessments on a ''worst case analysis.'' 6. Requiring employers to use appropriate flame retardant clothing without specifying any assessment method.	OSHA has considered the options recommended by the panel. The Agency has adopted the second option suggested by the Panel. Appendix F to 29 CFR 1910.269 and Appendix F to 29 CFR Part 1926, Subpart V propose tables that employers may use to estimate available heat energy. Although these tables do not cover every circumstance, they do address many exposure conditions found in overhead electric power transmission and distribution work. Other assessment aids are available, and also are listed in Appendix F, for other exposure conditions, including typical electric power generation exposures. There is less need for an underground assessment aid since most underground work is performed on deenergized lines. OSHA has not incorporated any of the other Panel-recommended options into the proposal because the Agency either currently believes that they are not sufficiently protective or has insufficient information to incorporate them. However, the Agency does wish to facilitate compliance with the provisions proposed in 29 CFR 1910.269(1)(11) and 29 CFR 1926.960(g) requiring employees to be protected from electric arcs. OSHA also wishes to promulgate a rule that will protect employees from electric arcs in the most cost-effective manner possible. The Agency encourages interested parties to provide information that can help simplify the rule or make it more cost effective or that can assist in the development of compliance assistance materials.
19. Some SERs were concerned that the revised training requirements complicated the question of demonstrating that training had been provided, and that the requirement that training be related to the risk would require additional training, additional documentation, or both. The Panel recommends that OSHA consider making it clear that employers that follow the existing training provisions in 29 CFR 1910.269 will be in compliance with the new rules, and that OSHA clarify alternative methods that would be considered acceptable for demonstrating adequacy of training and the relation of the training to risk.	See the response to Panel recommendation 13 above.
20. In response to comment by some SERs, the Panel recommends that OSHA consider and solicit comment on the issues of whether the additional job briefing requirements are needed and how they can be met in situations in which the employee is working at a distant location.	OSHA is proposing only one new requirement on job briefings, the requirement in 29 CFR 1910.269(c)(1)(i) and in 29 CFR 1926.952(a)(1). This provision requires that, in assigning an employee or a group of employees to perform a job, the employer provide the employee in charge of the job with available information necessary to perform the job safely. The remainder of the changes to the job briefing requirements in 29 CFR 1910.269(c) simply reorganize the existing provisions into individual paragraphs. (For additional discussion of this provision, see the summary and explanation of proposed 29 CFR 1926.952(a)(1) earlier in this preamble.) The Agency believes that many employers are already providing relevant information about a job when they assign that job to a crew of employees or to an employee working alone. (For additional discussion of this provision, see the summary and explanation of proposed 29 CFR 1926.952(a)(1) earlier in this preamble.) However, to make sure that all employers do so, OSHA believes that the standard should require that the employer provide relevant hazard-related information to the employees performing the work to the extent the employer knows, or can reasonably be expected to know, that information. It should be noted that this is a requirement to communicate information, not to gather information. OSHA anticipates that employers will pass along this information when they assign jobs to employees. Where the employees are working has no effect on the employer's ability to communicate the information. The Agency requests comments on whether the additional job briefing requirement is necessary and on how this provision can be met for an employee working at distant locations.

TABLE V–22.—PANEL RECOMMENDATIONS AND OSHA RESPONSES—Continued

Panel recommendations	OSHA responses
21. All of the affected SERs felt that the provisions of the rule with respect to fall restraint systems would make it difficult for a person using a fall restraint system to perform the necessary work. The SERs also raised the possibility of safety problems associated with wearing a safety harness as opposed to a safety belt, such as an increased likelihood of the harness being snagged and as a result the employee being either pulled into a wood chipper while on the ground or pulled out of the bucket when it is lowered. The Panel recommends that OSHA consider and solicit comment on the alternative of making no changes to its existing fall protection requirements. If the provision is retained, OSHA should carefully examine the issue of whether the fall restraint system requirements in the draft make use of fall restraint systems unworkable in aerial lifts. OSHA should also consider the nonregulatory alternative of working with aerial device manufacturers and aerial device users (for example, electric and telecommunications utilities, painting and electrical contractors, tree-trimming firms) in the development of improved fall restraint systems that are more comfortable than existing systems and maintain the appropriate degree of protection for employees.	Over the course of the rulemaking, OSHA will examine the issue of whether using fall restraint systems to protect employees working from aerial lifts is workable. In this regard, the Agency requests comments on alternatives to the fall protection requirements proposed in 29 CFR 1910.269(g)(2) and 29 CFR 1926.954(b) as they relate to aerial lifts, including the alternative of making no changes to the rule. OSHA will also explore with manufacturers the nonregulatory option of improving fall protection systems for use in aerial lifts.

J. References

1. CONSAD Research Corporation, ''Analytical Support and Data Gathering for a Preliminary Economic Analysis for Proposed Standards for Work on Electric Power Generation, Transmission, and Distribution Lines and Equipment (29 CFR 1910.269 and 29 CFR 1926—Subpart V),'' 2005, prepared for the U.S. Department of Labor, Occupational Safety and Health Administration, Office of Regulatory Analysis under Contract No. J9–F9–0013, Task Order Number 31, Pittsburgh, PA.

2. CONSAD Research Corporation, ''Compliance Cost and Economic Impact Estimates Including All Publicly-owned Utilities in OSHA State-plan States and Excluding Laundering Costs for Flame Resistant Apparel (FRA),'' Memorandum to the Office of Regulatory Analysis (ORA), Occupational Safety and Health Administration (OSHA), February 25, 2004.

3. OSHA Small Business Advocacy Review Panel, ''Report of the Small Business Advocacy Review Panel on the Draft OSHA Standard for Electric Power Generation, Transmission, and Distribution,'' submitted to Mr. John Henshaw, Assistant Secretary for Occupational Safety and Health, U.S. Department of Labor, Occupational Safety and Health Administration, June 27, 2003.

4. U.S. Office of Management and Budget, ''Informing Regulatory Decisions: 2004 Draft Report to Congress on the Costs and Benefits of Federal Regulations and Unfunded Mandates on State, Local, and Tribal Entities.''

5. Workers' Compensation Research Institute, ''WCRI Research Brief, Special Edition,'' Volume 9, Number 4S, Cambridge, MA, December 1993. Also available in OSHA Docket S–777, Exhibit 26–1608, and discussed in Exhibit 900, p. IV–56.

6. U.S. Environmental Protection Agency. Guidelines for Preparing Economic Analyses. EPA 240-R–00–003. September 2000. Internet address: *http://yosemite1.epa.gov/ee/epa/eed.nsf/webpages/Guidelines.html;* also available in OSHA Docket No. H–0054a, Exhibit 35–334.

7. Viscusi, Kip and Aldy, Joseph, ''The Value of a Statistical Life: A Critical Review of Market Estimates Throughout the World'', The Journal of Risk and Uncertainty, 27:1; 5–76, 2003.

8. U.S. Office of Management and Budget, Office of Information and Regulatory Affairs, ''Progress in Regulatory Reform: 2004 Report to Congress on the Costs and Benefits of Federal Regulations and Unfunded Mandates on State, Local, and Tribal Entities' December, 2004.

VI. State Plan Standards

The 26 States or territories with OSHA-approved occupational safety and health plans must adopt an equivalent amendment or one that is at least as protective to employees within 6 months of the publication date of the final standard. These are: Alaska, Arizona, California, Connecticut (for State and local government employees only), Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, New Jersey (for State and local government employees only), New York (for State and local government employees only), North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Virgin Islands, Washington, and Wyoming.

VII. Environmental Impact Analysis

The provisions of this proposal have been reviewed in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321, *et seq.*), the Council on Environmental Quality NEPA regulations (40 CFR Parts 1500–1508), and the Department of Labor's NEPA Procedures (29 CFR Part 11). As a result of this review, OSHA has determined that the proposed standards will have no significant adverse effect on air, water, or soil quality, plant or animal life, use of land, or other aspects of the environment.

VIII. Unfunded Mandates

Section 3 of the Occupational Safety and Health Act makes clear that OSHA cannot enforce compliance with its regulations or standards on the U.S. government ''or any State or political subdivision of a State.'' Under voluntary agreement with OSHA, some States enforce compliance with their State standards on public sector entities, and these agreements specify that these State standards must be equivalent to OSHA standards. Thus, although OSHA has included compliance costs for the affected public sector entities in its analysis of the expected impacts associated with the proposal, the proposal would not involve any unfunded mandates being imposed on any State or local government entity. OSHA also concludes that the proposal would not impose an unfunded mandate on the private sector in excess of $100 million in expenditures in any one year.

IX. Federalism

OSHA has reviewed this proposed rule in accordance with the Executive Order on Federalism (Executive Order 13132, 64 FR 43255, August 10, 1999), which requires that agencies, to the extent possible, refrain from limiting State policy options, consult with States prior to taking any actions that would restrict State policy options, and take such actions only when there is clear constitutional authority and the presence of a problem of national scope. The Order provides for preemption of State law only if there is a clear

Congressional intent for the Agency to do so. Any such preemption is to be limited to the extent possible.

Section 18 of the OSH Act expresses Congress's intent to preempt State laws where OSHA has promulgated occupational safety and health standards. A State can avoid preemption on issues covered by Federal standards only if it submits, and obtains Federal approval of, a plan for the development of such standards and their enforcement. 29 U.S.C. 667, Gade v. National Solid Wastes Management Association, 505 U.S. 88 (1992). Occupational safety and health standards developed by such Plan States must, among other things, be at least as effective in providing safe and healthful employment and places of employment as the Federal standards. Subject to the statutory limitations of the OSH Act, State-Plan States are free to develop and enforce their own requirements for occupational safety and health protections related to the maintenance and construction of electric power generation, transmission, and distribution installations. Therefore, OSHA concludes that this action does not significantly limit State policy options.

X. OMB Review Under the Paperwork Reduction Act of 1995

The proposed revisions of the general industry and construction standards for electric power generation, transmission, and distribution and for electrical protective equipment contain collection-of-information (paperwork) requirements that are subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (PRA–95), 44 U.S.C. 3501 *et seq.*, and OMB's regulations at 5 CFR part 1320. The Paperwork Reduction Act defines ''collection of information'' as ''the obtaining, causing to be obtained, soliciting, or requiring the disclosure to third parties or the public, of facts or opinions by or for an agency, regardless of form or format * * * (44 U.S.C. 3502(3)(A)). OMB is currently reviewing OSHA's request for approval of the proposed collections.

The pending Information Collection Request (ICR) discusses the new paperwork requirements found in the proposed rule, as well as the removal of the existing collection of information for training certification in the Electric Power Generation, Transmission, and Distribution Standard (§ 1910.269(a)(2)(vii)) under OMB Control Number 1218–0190. Since this package contains a full discussion of removing the training certification, reviewers do not need to obtain ICR 1218–0190. Commenters may submit comments on the new collections, as well as the removal of the § 1910.269(a)(2)(vii) training certification requirement, under ICR number 1218–0NEW.

The title, description of the need for and proposed use of the information, summary of the collections of information, description of respondents, and frequency of response of the information collection are described below with an estimate of the annual cost and reporting burden as required by § 1320.5(a)(1)(iv). The reporting burden includes the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information.

OSHA invites comments on the collection-of-information requirements and the estimated burden hours associated with these collections, including comments on the following:

- Whether the proposed information-collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and cost) of the information-collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply, for example, by using automated or other technological techniques for collecting and transmitting information.

Title: Electric Power Transmission and Distribution Standard for construction (§§ 1926.950 through 1926.968); and Electrical Protective Equipment Standard (§ 1926.97).

Description and Proposed Use of the Collections of Information: The proposed standards would impose new information collection requirements for purposes of the PRA and would remove one existing information collection requirement. These collection of information requirements (§§ 1926.97(c)(2)(xii), 1926.950(c)(1)(i), 1926.950(c)(1)(ii), 1926.950(c)(2)(iii), 1926.953(a), 1910.269(a)(4)(i)(A), 1910.269(a)(4)(i)(B), and 1910.269(a)(4)(ii)(C)) are being reviewed by OMB. OSHA is proposing to remove the training certification requirement contained in § 1910.269(a)(2)(vii) under control number 1218–0190.

These provisions are needed to protect employees against the electric shock hazards that might be present in the workplace and against other hazards that might be present during electric power generation, transmission, and distribution work. The new information collection requirements, including those related to certification of rubber insulated gloves and rubber blankets, the host employer informing the contract employer of any known job related hazards that might be present on the job, the contract employer communicating all the hazards to his or her employees, and the use of a permit that will control access to an enclosed space after it has been determined that the space may endanger the life of employees, are important tools for controlling or eliminating hazards faced by employees. The employer's failure to generate and disclose the information required in these standards would significantly affect OSHA's effort to reduce the number of injuries and fatalities related to hazards posed by electric power generation, transmission, and distribution work.

Summary of the Collections of Information: The following are new collections of information contained in the Electric Power Generation, Transmission, and Distribution Standard for general industry (§ 1910.269); the Electric Power Transmission and Distribution Standard for construction (§§ 1926.950 through 1926.968); and the Electrical Protective Equipment Standard for construction (§ 1926.97).

Section 1926.97—Electrical Protective Equipment—Special Requirements.

Paragraph (c)(2)(xii) of § 1926.97 requires the employer to certify that equipment has been tested in accordance with the requirements of paragraphs (c)(2)(iv), (c)(2)(vii)(C), (c)(2)(viii), (c)(2)(ix), and(c)(2)(xi) of that section. The certification must identify the equipment that passed the test and the date it was tested. Marking of equipment and entering the results of the tests and the dates of testing onto logs are two acceptable means of meeting this requirement.

Section 1926.950, § 1910.269—Host Employer-Contract Employer Responsibilities.

Paragraph (c)(1)(i) of § 1926.950 and paragraph (a)(4)(i)(A) of § 1910.269 require the host employer to inform the contractor of any known hazards that might be related to his work and that might not be recognized by the contractor. The host employer must also inform the contractor of any information needed to do assessments required by the standard.

Paragraph (c)(1)(ii) of § 1926.950 and paragraph (a)(4)(i)(B) of § 1910.269 require the host employer to report any observed contract-employer related

violations of the standards to the contract employer.

Paragraph (c)(2)(iii) of § 1926.950 and paragraph (a)(4)(ii)(C) of § 1910.269 require the contract employer to advise the host employer of unique hazards presented by the contract employer's work, unanticipated hazards found during the contract employer's work that the host employer did not mention, and measures the contractor took to correct and prevent recurrences of violations reported by the host employer.

Section 1926.953—Enclosed Spaces—General

Paragraph (a) of § 1926.953 covers enclosed spaces that may be entered by employees. This paragraph applies to routine entry into enclosed spaces. If, after the precautions given in §§ 1926.953 and 1926.965 are taken, the hazards remaining in the enclosed space endanger the life of an entrant or could interfere with escape from the space, then entry into the enclosed space must meet the permit-space entry requirements of paragraphs (d) through (k) of § 1910.146, some of which involve collections of information aimed at protecting employees from the hazards of entry into confined spaces. These provisions contain practices and procedures to protect employees from the hazards of entry into permit-required confined spaces. Section 1910.146 already has a control number.

Section 1910.269(a)(2)(vii)—Training—Certification. [Amendment]

Paragraph (a)(2)(vii) of existing § 1910.269 requires the employer to certify that each employee has received the training required by paragraph (a)(2). This certification must be made when the employee demonstrates proficiency in the work practices involved and must be maintained for the duration of the employee's employment. OSHA is proposing to remove the certification requirement contained in § 1910.269(a)(2)(vii).

Respondents: Employers who construct, install, or repair electric power lines and equipment outside of or on buildings, structures, and other premises. See section V, Preliminary Regulatory Impact Analysis and Initial Regulatory Flexibility Analysis, earlier in this preamble, for the number of employers (respondents) covered by the proposed collection of information requirements.

Frequency of Response: On occasion. The collections of information involved include the host employer communicating the potentially known hazards to the contract employer and certifying tests performed on electrical protective equipment. This information will provide protection for employees against the electric shock hazards that might be present in the workplace.

Average Time per Response: Time per response ranges from 5 minutes for the host employer to inform a contract employer of the hazards to 10 minutes for the contract employer to instruct his or her employees of the potential hazards known on the jobsite.

Total Burden Hours: 122,276. The estimated total cost of these burden hours is approximately $4,800,000.

Estimated Costs (Operating and Maintenance): 0.

In summary, the new collections of information (1218–0NEW) will add 122,276 hours, while the removal of the training certification will result in a reduction of 11,520 hours (1218–0190). The proposal will yield a net increase of 110,756 hours.

Interested parties who wish to comment on the paperwork requirements in this proposal must send their written comments to the OSHA Docket Office, Docket No. S–215, Occupational Safety and Health, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210, and to the Office of Information and Regulatory Affairs, New Executive Office Building, Office of Management and Budget, Room 10235, 725 17th Street, NW., Washington, DC 20503, Attn: OSHA Desk Officer (RIN 1218–AB67). The Agency also encourages commenters to include their comments on paperwork requirements with their other comments on the proposed rule submitted to OSHA.

Copies of the referenced information collection request are available for inspection and copying in the OSHA Docket Office and will be provided to persons who request copies by telephoning Todd Owen at (202) 693–1941. For electronic copies of the information collection request, contact the OSHA Web page on the Internet at *http://www.osha.gov/.*

XI. Public Participation—Comments and Hearings

OSHA encourages members of the public to participate in this rulemaking by submitting comments on the proposal, and by providing oral testimony and documentary evidence at the informal public hearing that the Agency will convene after the comment period ends. In this regard, the Agency invites interested parties having knowledge of, or experience with, safety related to working on electric power generation, transmission, or distribution installations to participate in this process, and welcomes any pertinent data and cost information that will provide it with the best available evidence on which to develop the final standard.

This section describes the procedures the public must use to submit their comments to the docket in a timely manner, and to schedule an opportunity to deliver oral testimony and provide documentary evidence at the informal public hearings. Comments, notices of intention to appear, hearing testimony, and documentary evidence will be available for inspection and copying at the OSHA Docket Office. You also should read the earlier sections titled **DATES** and **ADDRESSES** for additional information on submitting comments, documents, and requests to the Agency for consideration in this rulemaking.

Written Comments. OSHA invites interested parties to submit written data, views, and arguments concerning this proposal. In particular, OSHA encourages interested parties to comment on the various issues raised in the summary and explanation of the proposed rule (*see* Section IV, Summary and Explanation of Proposed Rule, earlier in this preamble). When submitting comments, parties must follow the procedures specified earlier in the sections titled DATES and **ADDRESSES.** The comments must clearly identify the provision of the proposal you are addressing, the position taken with respect to each issue, and the basis for that position. Comments, along with supporting data and references, received by the end of the specified comment period will become part of the proceedings record, and will be available for public inspection and copying at the OSHA Docket Office.

Informal Public Hearing. Pursuant to section 6(b)(3) of the Act, members of the public will have an opportunity at an informal public hearing to provide oral testimony concerning the issues raised in this proposal. The hearings will commence at 10 A.M. on December 6, 2005. At that time, the presiding administrative law judge (ALJ) will resolve any procedural matters relating to the proceeding. The hearings will reconvene on subsequent days at 9 A.M.

The legislative history of section 6 of the OSH Act, as well as OSHA's regulation governing public hearings (29 CFR 1911.15), establish the purpose and procedures of informal public hearings. Although the presiding officer of such hearings is an ALJ, and questioning by interested parties is allowed on crucial issues, the proceeding is informal and legislative in purpose. Therefore, the hearing provides interested parties with an opportunity to make effective and

expeditious oral presentations in the absence of procedural restraints or rigid procedures that could impede or protract the rulemaking process. In addition, the hearing is an informal administrative proceeding, rather than adjudicative one in which the technical rules of evidence would apply, because its primary purpose is to gather and clarify information. The regulations that govern public hearings, and the prehearing guidelines issued for this hearing, will ensure participants fairness and due process, and also will facilitate the development of a clear, accurate, and complete record. Accordingly, application of these rules and guidelines will be such that questions of relevance, procedure, and participation generally will favor development of the record.

Conduct of the hearing will conform to the provisions of 29 CFR part 1911, ''Rules of Procedure for Promulgating, Modifying, or Revoking Occupational Safety and Health Standards.'' The regulation at 29 CFR 1911.4, ''Additional or Alternative Procedural Requirements,'' specifies that the Assistant Secretary may, on reasonable notice, issue alternative procedures to expedite proceedings or for other good cause. Although the ALJs who preside over these hearings make no decision or recommendation on the merits of OSHA's proposal, they do have the responsibility and authority to ensure that the hearing progresses at a reasonable pace and in an orderly manner.

To ensure that interested parties receive a full and fair informal hearing as specified by 29 CFR part 1911, the ALJ has the authority and power to: Regulate the course of the proceedings; dispose of procedural requests, objections, and comparable matters; confine the presentations to matters pertinent to the issues raised; use appropriate means to regulate the conduct of the parties who are present at the hearing; question witnesses, and permit others to question witnesses; and limit the time for such questioning. At the close of the hearing, the ALJ will establish a post-hearing comment period for parties who participated in the hearing. During the first part of this period, the participants may submit additional data and information to OSHA; during the second part of this period, they may submit briefs, arguments, and summations.

Notice of Intention to Appear to Provide Testimony at the Informal Public Hearing. Interested parties who intend to provide oral testimony at the informal public hearings must file a notice of intention to appear by using the procedures specified earlier in the sections titled **DATES** and **ADDRESSES.** This notice must provide the: Name, address, and telephone number of each individual who will provide testimony, and their preferred hearing location; capacity (for example, the name of the establishment or organization the individual is representing and the individual's occupational title and position) in which each individual will testify; approximate amount of time required for each individual's testimony; specific issues each individual will address, including a brief statement of the position that the individual will take with respect to each of these issues; and a brief summary of any documentary evidence the individual intends to present.

OSHA emphasizes that the hearings are open to the public, and that interested parties are welcome to attend. However, only a party who files a complete notice of intention to appear may ask questions and participate fully in the proceedings. While a party who did not file a notice of intention to appear may be allowed to testify at the hearing if time permits, this determination is at the discretion of the presiding ALJ.

Hearing Testimony and Documentary Evidence. Any party requesting more than 10 minutes to testify at the informal public hearing, or who intends to submit documentary evidence at the hearing, must provide the complete text of the testimony and the documentary evidence as specified earlier in the sections titled **DATES** and **ADDRESSES**. The Agency will review each submission and determine if the information it contains warrants the amount of time requested. If OSHA believes the requested time is excessive, it will allocate an appropriate amount of time to the presentation, and will notify the participant of this action, and the reasons for the action, before the hearing. The Agency may limit to 10 minutes the presentation of any participant who fails to comply substantially with these procedural requirements; in such instances, OSHA may request the participant to return for questioning at a later time.

Certification of the Record and Final Determination after the Informal Public Hearing. Following the close of the hearing and post-hearing comment period, the presiding ALJ will certify the record to the Assistant Secretary of Labor for Occupational Safety and Health; the record will consist of all of the written comments, oral testimony, and documentary evidence received during the proceeding. However, the ALJ does not make or recommend any decisions as to the content of the final standard. Following certification of the record, OSHA will review the proposed provisions in light of all the evidence received as part of the record, and then will issue the final rule based on the entire record.

XII. List of Subjects in 29 CFR Parts 1910 and 1926

Electric power, Fire prevention, Hazardous substances, Occupational safety and health, Safety.

XIII. Authority and Signature

This document was prepared under the direction of Jonathan L. Snare, Acting Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue, NW., Washington, DC 20210.

This action is taken pursuant to sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), Secretary of Labor's Order No. 5–2002 (67 FR 65008), and 29 CFR part 1911.

Signed at Washington, DC this 7th day of June, 2005.

Jonathan L. Snare,

Acting Assistant Secretary of Labor.

Accordingly, the Occupational Safety and Health Administration proposes that parts 1910 and 1926 of Title 29 of the Code of Federal Regulations be amended as follows:

PART 1910—[AMENDED]

Subpart I—Personal Protective Equipment

1. The authority citation for Subpart I of Part 1910 would be revised to read as follows:

Authority: Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), or 5–2002 (67 FR 65008) as applicable, and 29 CFR Part 1911.

Sections 29 CFR 1910.133, 1910.135, and 1910.136 also issued under 5 U.S.C. 553.

2. Paragraph (a) of § 1910.136 would be revised to read as follows:

§ 1910.136 Foot protection.

(a) *General requirements.* The employer shall ensure that each affected employee uses protective footwear when working in areas where there is a danger of foot injuries due to falling or rolling objects or due to objects piercing the sole.

* * * * *

3. Section 1910.137 would be amended as follows:

a. Paragraph (a)(1)(ii) and the note following paragraph (a)(3)(ii)(B) would be revised to read as follows:

§ 1910.137 Electrical protective equipment.

(a) * * *

(1) * * *

(ii) Each item shall be clearly marked as follows:

(A) Class 00 equipment shall be marked Class 00.

(B) Class 0 equipment shall be marked Class 0.

(C) Class 1 equipment shall be marked Class 1.

(D) Class 2 equipment shall be marked Class 2.

(E) Class 3 equipment shall be marked Class 3.

(F) Class 4 equipment shall be marked Class 4.

(G) Non-ozone-resistant equipment other than matting shall be marked Type I.

(H) Ozone-resistant equipment other than matting shall be marked Type II.

(I) Other relevant markings, such as the manufacturer's identification and the size of the equipment, may also be provided.

* * * * *

(3) * * *

(ii) * * *

(B) * * *

Note to paragraph (a) of this section: Rubber insulating equipment meeting the following national consensus standards is deemed to be in compliance with paragraph (a) of this section:

American Society for Testing and Materials (ASTM) D 120–02a, Standard Specification for Rubber Insulating Gloves.

ASTM D 178–01^{el}, Standard Specification for Rubber Insulating Matting.

ASTM D 1048–99, Standard Specification for Rubber Insulating Blankets.

ASTM D 1049–98^{el}, Standard Specification for Rubber Insulating Covers.

ASTM D 1050–90, Standard Specification for Rubber Insulating Line Hose.

ASTM D 1051–02, Standard Specification for Rubber Insulating Sleeves.

These standards contain specifications for conducting the various tests required in paragraph (a) of this section. For example, the a-c and d-c proof tests, the breakdown test, the water soak procedure, and the ozone test mentioned in this paragraph are described in detail in the ASTM standards.

ASTM F 1236–96, Standard Guide for Visual Inspection of Electrical Protective Rubber Products, presents methods and techniques for the visual inspection of electrical protective equipment made of rubber. This guide also contains descriptions and photographs of irregularities that can be found in this equipment.

ASTM F 819–00^{el}, Standard Terminology Relating to Electrical Protective Equipment for Workers, sets definitions of terms relating to the electrical protective equipment covered under this section.

* * * * *

b. A new note would be added following paragraph (b)(2)(ii) to read as follows:

* * * * *

(b) * * *

(2) * * *

(ii) * * *

Note to paragraph (b)(2)(ii) of this section: ASTM F 1236–96, Standard Guide for Visual Inspection of Electrical Protective Rubber Products, presents methods and techniques for the visual inspection of electrical protective equipment made of rubber. This guide also contains descriptions and photographs of irregularities that can be found in this equipment.

* * * * *

c. Paragraph (b)(2)(vii) would be revised to read as follows:

* * * * *

(b) * * *

(2) * * *

(vii) Protector gloves shall be worn over insulating gloves, except as follows:

(A) Protector gloves need not be used with Class 0 or Class 00 gloves, under limited-use conditions, where small equipment and parts manipulation necessitate unusually high finger dexterity.

Note to paragraph (b)(2)(vii)(A) of this section: Extra care is needed in the visual examination of the glove and in the avoidance of handling sharp objects.

(B) Any other class of glove may be used for similar work without protector gloves if the employer can demonstrate that the possibility of physical damage to the gloves is small and if the class of glove is one class higher than that required for the voltage involved.

(C) Insulating gloves that have been used without protector gloves may not be reused until they have been tested under the provisions of paragraphs (b)(2)(viii) and (b)(2)(ix) of this section.

* * * * *

d. Tables I–2, I–3, I–4, and I–5 would be revised to read as follows:

* * * * *

TABLE I–2.—A–C PROOF-TEST REQUIREMENTS

Class of equipment	Proof-test voltage rms V	Maximum proof-test current, mA (gloves only)			
		267-mm (10.5-in) glove	356-mm (14-in) glove	406-mm (16-in) glove	457-mm (18-in) glove
00	2,500	8	12	.....	.....
0	5,000	8	12	14	16
1	10,000	.....	14	16	18
2	20,000	.....	16	18	20
3	30,000	.....	18	20	22
4	40,000	.....	.....	22	24

TABLE I–3.—D–C PROOF-TEST REQUIREMENTS

Class of equipment	Proof-test voltage
00	10,000
0	20,000
1	40,000
2	50,000
3	60,000

TABLE I–3.—D–C PROOF-TEST REQUIREMENTS—Continued

Class of equipment	Proof-test voltage
4	70,000

Note: The d-c voltages listed in this table are not appropriate for proof testing rubber insulating line hose or covers. For this equipment, d-c proof tests shall use a voltage high enough to indicate that the equipment can be safely used at the voltages listed in Table I–5. See ASTM D 1050–90 and ASTM D 1049–98[cl] for further information on proof tests for rubber insulating line hose and covers, respectively.

TABLE I–4.—GLOVE TESTS—WATER LEVEL [1, 2]

Class of glove	A–C proof test		D–C proof test	
	mm	in	mm	in
00	38	1.5	38	1.5
0	38	1.5	38	1.5
1	38	1.5	51	2.0
2	64	2.5	76	3.0
3	89	3.5	102	4.0
4	127	5.0	153	6.0

[1] The water level is given as the clearance from the cuff of the glove to the water line, with a tolerance of ±13 mm. (±0.5 in.).
[2] If atmospheric conditions make the specified clearances impractical, the clearances may be increased by a maximum of 25 mm. (1 in.).

TABLE I–5.—RUBBER INSULATING EQUIPMENT VOLTAGE REQUIREMENTS

Class of equipment	Maximum use voltage [1] A–C rms	Retest voltage [2] A–C rms	Retest voltage [2] D–C avg
00	500	2,500	10,000
0	1,000	5,000	20,000
1	7,500	10,000	40,000
2	17,000	20,000	50,000
3	26,000	30,000	60,000
4	36,000	40,000	70,000

[1] The maximum use voltage is the A–C voltage (rms) classification of the protective equipment that designates the maximum nominal design voltage of the energized system that may be safely worked. The nominal design voltage is equal to the phase-to-phase voltage on multiphase circuits. However, the phase-to-ground potential is considered to be the nominal design voltage:
(1) If there is no multiphase exposure in a system area and if the voltage exposure is limited to the phase-to-ground potential, or
(2) If the electrical equipment and devices are insulated or isolated or both so that the multiphase exposure on a grounded wye circuit is removed.
[2] The proof-test voltage shall be applied continuously for at least 1 minute, but no more than 3 minutes.

* * * * *

e. A new paragraph (c) would be added to read as follows:

* * * * *

(c) *Requirements for other types of electrical protective equipment.* The following requirements apply to the design and manufacture of electrical protective equipment that is not covered by paragraph (a) of this section:

(1) *Voltage withstand.* Insulating equipment used for the protection of employees shall be capable of withstanding, without failure, the voltages that may be imposed upon it.

Note to paragraph (c)(1) of this section: Such voltages include transient overvoltages, such as switching surges, as well as nominal line voltage. See Appendix B to § 1910.269 for a discussion of transient overvoltages on electric power transmission and distribution systems.

(2) *Equipment current.* (i) Protective equipment used for the primary insulation of employees from energized circuit parts shall be capable of passing a current test when subjected to the highest nominal voltage on which the equipment is to be used.

(ii) When insulating equipment is tested in accordance with paragraph (c)(2)(i) of this section, the equipment current may not exceed 1 microampere per kilovolt of phase-to-phase applied voltage.

Note 1 to paragraph (c)(2) of this section: This paragraph applies to equipment that provides primary insulation of employees from energized parts. It is not intended to apply to equipment used for secondary insulation or equipment used for brush contact only.

Note 2 to paragraph (c)(2) of this section: For a-c excitation, this current consists of three components:

(1) Capacitive current because of the dielectric properties of the insulating material itself,

(2) Conduction current through the volume of the insulating equipment, and

(3) Leakage current along the surface of the tool or equipment.

The conduction current is normally negligible. For clean, dry insulating equipment, the leakage current is small, and the capacitive current predominates.

Subpart R—Special Industries

4. The authority citation for Subpart R would be revised to read as follows:

Authority: Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), 5–2002 (67 F.R. 65008) as applicable; 29 CFR part 1911.

Section 1910.272 also issued under 5 U.S.C. 553.

5. Section 1910.269 would be amended as follows:

a. Paragraphs (a)(2)(i) and (a)(2)(vii) would be revised and new paragraphs (a)(2)(ii)(E) and (a)(4) would be added to read as follows:

§ 1910.269 Electric power generation, transmission, and distribution.

* * * * *

(a) * * *

(2) *Training.* (i) All employees shall be trained as follows:

(A) Employees shall be trained in and familiar with the safety-related work practices, safety procedures, and other safety requirements in this subpart that pertain to their respective job assignments.

(B) Employees shall also be trained in and familiar with any other safety practices, including applicable emergency procedures (such as pole top and manhole rescue), that are not specifically addressed by this subpart but that are related to their work and are necessary for their safety.

(C) The degree of training shall be determined by the risk to the employee for the task involved.

(ii) * * *

(E) The recognition of electrical hazards to which the employee may be exposed and the skills and techniques necessary to control or avoid those hazards.

* * * * *

(vii) *Demonstration of proficiency.* The employer shall determine that each employee has demonstrated proficiency in the work practices involved before that employee is considered as having completed the training required by paragraph (a)(2) of this section.

Note 1 to paragraph (a)(2)(vii) of this section: Though they are not required by this paragraph, employment records that indicate that an employee has successfully completed the required training are one way of keeping track of when an employee has demonstrated proficiency.

Note 2 to paragraph (a)(2)(vii) of this section: Employers may rely on an employee's previous training as long as the employer: (1) Confirms that the employee has the job experience appropriate to the work to be performed, (2) through an examination or interview, makes an initial determination that the employee is proficient in the relevant safety-related work practices before he or she performs any work covered by this subpart, and (3) supervises the employee closely until that employee has demonstrated proficiency in all the work practices he or she will employ.

* * * * *

(4) *Contractors.* (i) *Host employer responsibilities.* (A) The host employer shall inform contract employers of:

(1) Known hazards that are covered by this section, that are related to the contract employer's work, and that might not be recognized by the contract employer or its employees; and

(2) Information about the employer's installation that the contract employer needs to make the assessments required by this section.

(B) The host employer shall report observed contract-employer-related violations of this section to the contract employer.

(ii) *Contract employer responsibilities.* (A) The contract employer shall ensure that each of his or her employees is instructed in the hazards communicated to the contract employer by the host employer.

Note to paragraph (a)(4)(ii)(A) of this section: This instruction is in addition to the training required by paragraph (a)(2) of this section.

(B) The contract employer shall ensure that each of his or her employees follows the work practices required by this section and safety-related work rules required by the host employer.

(C) The contract employer shall advise the host employer of:

(1) Any unique hazards presented by the contract employer's work,

(2) Any unanticipated hazards found during the contract employer's work that the host employer did not mention, and

(3) The measures the contractor took to correct any violations reported by the host employer under paragraph (a)(4)(i)(B) of this section and to prevent such violations from recurring in the future.

* * * * *

b. Paragraph (c) would be revised to read as follows:

* * * * *

(c) *Job briefing.* (1) *Before each job.* (i) In assigning an employee or a group of employees to perform a job, the employer shall provide the employee in charge of the job with available information necessary to perform the job safely.

Note to paragraph (c)(1)(i) of this section: The information provided by the employer to the employee in charge is intended to supplement the training required under § 1910.269(a)(2). It may be provided at the beginning of the day for all jobs to be performed that day rather than at the start of each job. The information is also intended to be general in nature, with work-site specific information to be provided by the employee in charge after the crew arrives at the work site.

(ii) The employer shall ensure that the employee in charge conducts a job briefing meeting paragraphs (c)(2), (c)(3), and (c)(4) of this section with the employees involved before they start each job.

(2) *Subjects to be covered.* The briefing shall cover at least the following subjects: hazards associated with the job, work procedures involved, special precautions, energy source controls, and personal protective equipment requirements.

(3) *Number of briefings.* (i) If the work or operations to be performed during the work day or shift are repetitive and similar, at least one job briefing shall be conducted before the start of the first job of each day or shift.

(ii) Additional job briefings shall be held if significant changes, which might affect the safety of the employees, occur during the course of the work.

(4) *Extent of briefing.* (i) A brief discussion is satisfactory if the work involved is routine and if the employees, by virtue of training and experience, can reasonably be expected to recognize and avoid the hazards involved in the job.

(ii) A more extensive discussion shall be conducted:

(A) If the work is complicated or particularly hazardous, or

(B) If the employee cannot be expected to recognize and avoid the hazards involved in the job.

Note to paragraph (c)(4) of this section: The briefing must always touch on all the subjects listed in paragraph (c)(2) of this section.

(5) *Working alone.* An employee working alone need not conduct a job briefing. However, the employer shall ensure that the tasks to be performed are planned as if a briefing were required.

* * * * *

c. The note following paragraph (e)(6) would be removed and paragraphs (e)(7), (e)(8), and (e)(12) would be revised to read as follows:

* * * * *

(e) * * *

(7) *Attendants.* While work is being performed in the enclosed space, a person with first aid training meeting paragraph (b) of this section shall be immediately available outside the enclosed space to provide assistance if a hazard exists because of traffic patterns in the area of the opening used for entry. That person is not precluded from performing other duties outside the enclosed space if these duties do not distract the attendant from monitoring employees within the space.

Note to paragraph(e)(7) of this section: See paragraph (t)(3) of this section for additional requirements on attendants for work in manholes.

(8) *Calibration of test instruments.* Test instruments used to monitor atmospheres in enclosed spaces shall be kept in calibration and shall have a minimum accuracy of ±10 percent.

* * * * *

(12) *Specific ventilation requirements.* If continuous forced air ventilation is used, it shall begin before entry is made and shall be maintained long enough for the employer to be able to demonstrate that a safe atmosphere exists before employees are allowed to enter the work area. The forced air ventilation shall be so directed as to ventilate the immediate area where employees are present within the enclosed space and shall continue until all employees leave the enclosed space.

* * * * *

d. Paragraph (g)(2) would be revised to read as follows:

* * * * *

(g) * * *

(2) *Fall protection.* (i) Personal fall arrest systems shall meet the requirements of Subpart M of Part 1926 of this Chapter.

Note to paragraph (g)(2)(i) of this section: This paragraph applies to all personal fall arrest systems used in work covered by this section.

(ii) Body belts and positioning straps for work positioning shall meet the requirements of § 1926.954(b)(2) of this Chapter.

Note to paragraph (g)(2)(ii) of this section: This paragraph applies to all work positioning equipment used in work covered by this section.

(iii) The following requirements apply to the care and use of personal fall protection equipment:

(A) Work positioning equipment shall be inspected before use each day to determine that the equipment is in safe working condition. Defective equipment may not be used.

Note to paragraph (g)(2)(iii)(A) of this section: Appendix G to this section contains guidelines for the inspection of work positioning equipment.

(B) Personal fall arrest systems shall be used in accordance with § 1926.502(d) of this chapter. However, the attachment point need not be located as required by § 1926.502(d)(17) of this chapter if the body harness is being used as work positioning equipment and if the maximum free fall distance is limited to 0.6 m (2 ft).

(C) A personal fall arrest system or work positioning equipment shall be used by employees working at elevated locations more than 1.2 m (4 ft) above the ground on poles, towers, or similar structures if other fall protection has not been provided. Fall protection equipment is not required to be used by a qualified employee climbing or changing location on poles, towers, or similar structures, unless conditions, such as, but not limited to, ice, high winds, the design of the structure (for example, no provision for holding on with hands), or the presence of contaminants on the structure, could cause the employee to lose his or her grip or footing.

Note 1 to paragraph (g)(2)(iii)(C) of this section: This paragraph applies to structures that support overhead electric power generation, transmission, and distribution lines and equipment. It does not apply to portions of buildings, such as loading docks, to electric equipment, such as transformers and capacitors, nor to aerial lifts. The duty to provide fall protection associated with walking and working surfaces is contained in Subpart M of Part 1926 of this chapter; the duty to provide fall protection associated with aerial lifts is contained in § 1910.67.

Note 2 to paragraph (g)(2)(iii)(C) of this section: Employees who have not completed training in climbing and the use of fall protection are not considered ''qualified employees'' for the purposes of this provision. Unqualified employees (including trainees) are required to use fall protection any time they are more than 1.2 m (4 ft) above the ground.

(D) Work positioning systems shall be rigged so that an employee can free fall no more than 0.6 m (2 ft) unless no anchorage is available.

(E) Anchorages for work positioning equipment shall be capable of supporting at least twice the potential impact load of an employee's fall or 13.3 kN (3,000 lbf), whichever is greater.

(F) Unless the snaphook is a locking type and designed specifically for the following connections, snaphooks on work positioning equipment may not be engaged:

(1) Directly to webbing, rope, or wire rope;

(2) To each other;

(3) To a D ring to which another snaphook or other connector is attached;

(4) To a horizontal lifeline; or

(5) To any object which is incompatibly shaped or dimensioned in relation to the snaphook such that unintentional disengagement could occur by the connected object being able to depress the snaphook keeper and release itself.

* * * * *

e. The heading to paragraph (h) would be revised to read as follows:

* * * * *

(h) *Ladders and platforms.* * * *

* * * * *

f. Paragraphs (l)(2)(i), (l)(3), (l)(4), and (l)(6) would be revised and a new paragraph (l)(11) would be added to read as follows:

* * * * *

(l) * * *

(2) * * *

(i) The employee is insulated from the energized part (insulating gloves or insulating gloves and sleeves worn in accordance with paragraph (l)(3) of this section are considered insulation of the employee from the energized part upon which the employee is working provided that the employee has control of the part in a manner sufficient to prevent exposure to uninsulated portions of the body), or

* * * * *

(3) *Type of insulation.* (i) If the employee is to be insulated from energized parts by the use of insulating gloves (under paragraph (l)(2)(i) of this section), insulating sleeves shall also be used. However, insulating sleeves need not be used under the following conditions:

(A) If exposed energized parts on which work is not being performed are insulated from the employee and

(B) If such insulation is placed from a position not exposing the employee's upper arm to contact with other energized parts.

(ii) If the employee is to be insulated from energized parts by the use of insulating gloves or insulating gloves with sleeves:

(A) The insulating equipment shall be put on in a position where the employee cannot reach into the minimum approach distance given in paragraph (l)(2) of this section; and

(B) The insulating equipment may not be removed until the employee is in a position where he or she cannot reach into the minimum approach distance given in paragraph (l)(2) of this section.

(4) *Working position.* (i) The employer shall ensure that each employee, to the extent that other safety-related conditions at the worksite permit, works in a position from which a slip or shock will not bring the employee's body into contact with exposed, uninsulated parts energized at a potential different from the employee.

(ii) If work is performed near exposed parts energized at more than 600 volts but not more than 72.5 kilovolts and if the employee is not insulated from the energized parts or performing live-line bare-hand work, the employee shall work from a position where the employee cannot reach into the minimum approach distance given in paragraph (l)(2) of this section.

* * * * *

(6) *Conductive articles.* When work is performed within reaching distance of exposed energized parts of equipment, the employer shall ensure that each employee removes or renders nonconductive all exposed conductive

articles, such as key or watch chains, rings, or wrist watches or bands, unless such articles do not increase the hazards associated with contact with the energized parts.

* * * * *

(11) *Clothing.* (i) The employer shall assess the workplace to determine if each employee is exposed to hazards from flames or from electric arcs.

(ii) For each employee exposed to hazards from electric arcs, the employer shall make a reasonable estimate of the maximum available heat energy to which the employee would be exposed.

Note 1 to paragraph (l)(11)(ii) of this section: Appendix F to this section provides guidance on the estimation of available heat energy.

Note 2 to paragraph (l)(11)(ii) of this section: This paragraph does not require the employer to estimate the heat energy exposure for every job task performed by each employee. The employer may make broad estimates that cover multiple system areas provided the employer uses reasonable assumptions about the energy exposure distribution throughout the system and provided the estimates represent the maximum exposure for those areas. For example, the employer could estimate the heat energy just outside a substation feeding a radial distribution system and use that estimate for all jobs performed on that radial system.

(iii) The employer shall ensure that each employee who is exposed to hazards from electric arcs does not wear clothing that could melt onto his or her skin or that could ignite and continue to burn when exposed to the heat energy estimated under paragraph (l)(11)(ii) of this section.

Note to paragraph (l)(11)(iii) of this section: Clothing made from the following types of fabrics, either alone or in blends, is prohibited by this paragraph, unless the employer can demonstrate that the fabric has been treated to withstand the conditions that may be encountered or that the clothing is worn in such a manner as to eliminate the hazard involved: acetate, nylon, polyester, rayon.

(iv) The employer shall ensure that an employee wears clothing that is flame resistant under any of the following conditions:

(A) The employee is subject to contact with energized circuit parts operating at more than 600 volts,

(B) The employee's clothing could be ignited by flammable material in the work area that could be ignited by an electric arc, or

(C) The employee's clothing could be ignited by molten metal or electric arcs from faulted conductors in the work area.

Note to paragraph (l)(11)(iv)(C) of this section: This paragraph does not apply to conductors that are capable of carrying, without failure, the maximum available fault current for the time the circuit protective devices take to interrupt the fault.

(v) The employer shall ensure that each employee who is exposed to hazards from electric arcs wears clothing with an arc rating greater than or equal to the heat energy estimated under paragraph (l)(11)(ii) of this section.

Note to paragraph (l)(11) of this section: See Appendix F to this section for further information on the selection of appropriate clothing.

* * * * *

g. Table R–6 would be revised to read as follows:

* * * * *

TABLE R–6—A–C LIVE-LINE WORK MINIMUM APPROACH DISTANCE

Nominal voltage in kilovolts phase to phase	Distance			
	Phase-to-ground exposure		Phase-to-phase exposure	
	m	ft-in	m	ft-in
0.051 to 0.300 [1]	Avoid Contact		Avoid Contact	
0.301 to 0.750 [1]	0.31	1–0	0.31	1–0
0.751 to 15.0	0.65	2–2	0.67	2–3
15.1 to 36.0	0.77	2–7	0.86	2–10
36.1 to 46.0	0.84	2–9	0.96	3–2
46.1 to 72.5	1.00	3–3	1.20	3–11
72.6 to 121	0.95	3–2	1.29	4–3
138 to 145	1.09	3–7	1.50	4–11
161 to 169	1.22	4–0	1.71	5–8
230 to 242	1.59	5–3	2.27	7–6
345 to 362	2.59	8–6	3.80	12–6
500 to 550	3.42	11–3	5.50	18–1
765 to 800	4.53	14–11	7.91	26–0

[1] For single-phase systems, use the voltage to ground.

Note 1: These distances take into consideration the highest surge an employee will be exposed to on any system with air as the insulating medium and the maximum voltages shown.

Note 2: The clear live-line tool distance shall equal or exceed the values for the indicated voltage ranges.

Note 3: See Appendix B to this section for information on how the mimimum approach distances listed in the tables were derived.

* * * * *

h. Paragraph (m)(3)(viii) would be revised to read as follows:

* * * * *

(m) * * *

(3) * * *

(viii) If two or more independent crews will be working on the same lines or equipment, each crew shall independently comply with the requirements in this paragraph (m)(3). The independent crews shall coordinate deenergizing and reenergizing the lines or equipment if there is no system operator in charge of the lines or equipment.

* * * * *

i. Paragraphs (n)(4), (n)(6), and (n)(7) would be revised to read as follows:

* * * * *

(n) * * *

(4) *Protective grounding equipment.* (i) Protective grounding equipment shall be capable of conducting the maximum fault current that could flow at the point of grounding for the time necessary to clear the fault.

(ii) If the protective grounding equipment required under paragraph (n)(4)(i) of this section would be larger than the conductor to which it is attached, this equipment may be

reduced in size provided that it is sized and placed so that:

(A) The conductor being grounded will fail before the protective grounding equipment,

(B) The conductor is only considered as grounded where it is protected against failure by the protective grounding equipment, and

(C) No employees would be endangered by the failed conductor.

(iii) This equipment shall have an ampacity greater than or equal to that of No. 2 AWG copper.

(iv) Protective grounds shall have an impedance low enough so that they do not delay the operation of protective devices in case of accidental energizing of the lines or equipment.

Note to paragraph (n)(4) of this section: Guidelines for protective grounding equipment are contained in American Society for Testing and Materials Standard Specifications for Temporary Protective Grounds to Be Used on De-Energized Electric Power Lines and Equipment, ASTM F 855–03.

* * * * *

(6) *Order of connection.* When a ground is to be attached to a line or to equipment, the ground-end connection shall be attached first, and then the other end shall be attached by means of a live-line tool. For lines or equipment operating at 600 volts or less, insulating equipment other than a live-line tool may be used if the employer ensures that the line or equipment is not energized at the time the ground is connected or if the employer can demonstrate that each employee would be protected from hazards that may develop if the line or equipment is energized.

(7) *Order of removal.* When a ground is to be removed, the grounding device shall be removed from the line or equipment using a live-line tool before the ground-end connection is removed. For lines or equipment operating at 600 volts or less, insulating equipment other than a live-line tool may be used if the employer ensures that the line or equipment is not energized at the time the ground is disconnected or if the employer can demonstrate that each employee would be protected from hazards that may develop if the line or equipment is energized.

* * * * *

j. Paragraph (p)(4)(i) would be revised to read as follows:

* * * * *

(p) * * *

(4) *Operations near energized lines or equipment.* (i) Mechanical equipment shall be operated so that the minimum approach distances of Table R–6 through Table R–10 are maintained from exposed energized lines and equipment. However, the insulated portion of an aerial lift operated by a qualified employee in the lift is exempt from this requirement if the applicable minimum approach distance is maintained between the uninsulated portions of the aerial lift and exposed objects at a different potential.

* * * * *

k. Paragraphs (t)(3), (t)(7), and (t)(8) would be revised to read as follows:

* * * * *

(t) * * *

(3) *Attendants for manholes and vaults.* (i) While work is being performed in a manhole or vault containing energized electric equipment, an employee with first aid and CPR training meeting paragraph (b)(1) of this section shall be available on the surface in the immediate vicinity of the manhole or vault entrance to render emergency assistance.

(ii) Occasionally, the employee on the surface may briefly enter a manhole or vault to provide assistance, other than emergency.

Note 1 to paragraph (t)(3)(ii) of this section: An attendant may also be required under paragraph (e)(7) of this section. One person may serve to fulfill both requirements. However, attendants required under paragraph (e)(7) of this section are not permitted to enter the manhole or vault.

Note 2 to paragraph (t)(3)(ii) of this section: Employees entering manholes or vaults containing unguarded, uninsulated energized lines or parts of electric equipment operating at 50 volts or more are required to be qualified under paragraph (l)(1) of this section.

(iii) For the purpose of inspection, housekeeping, taking readings, or similar work, an employee working alone may enter, for brief periods of time, a manhole or vault where energized cables or equipment are in service, if the employer can demonstrate that the employee will be protected from all electrical hazards.

(iv) Reliable communications, through two-way radios or other equivalent means, shall be maintained among all employees involved in the job.

* * * * *

(7) *Protection against faults.* (i) Where a cable in a manhole or vault has one or more abnormalities that could lead to or be an indication of an impending fault, the defective cable shall be deenergized before any employee may work in the manhole or vault, except when service load conditions and a lack of feasible alternatives require that the cable remain energized. In that case, employees may enter the manhole or vault provided they are protected from the possible effects of a failure by shields or other devices that are capable of containing the adverse effects of a fault.

Note to paragraph (t)(7)(i) of this section: Abnormalities such as oil or compound leaking from cable or joints, broken cable sheaths or joint sleeves, hot localized surface temperatures of cables or joints, or joints that are swollen beyond normal tolerance are presumed to lead to or be an indication of an impending fault.

(ii) If the work being performed in a manhole or vault could cause a fault in a cable, that cable shall be deenergized before any employee may work in the manhole or vault, except when service load conditions and a lack of feasible alternatives require that the cable remain energized. In that case, employees may enter the manhole or vault provided they are protected from the possible effects of a failure by shields or other devices that are capable of containing the adverse effects of a fault.

(8) *Sheath continuity.* When work is performed on buried cable or on cable in a manhole or vault, metallic sheath continuity shall be maintained or the cable sheath shall be treated as energized.

* * * * *

l. In the Notes following paragraphs (u)(1), (u)(5)(i), (v)(3), and (v)(5)(i), ''ANSI C2–1987'' would be revised to read ''ANSI C2–2002'' wherever it appears.

m. Definitions of ''Contract employer,'' ''Entry,'' and ''Host employer'' would be added, in alphabetical order, to § 1910.269(x), to read as follows:

* * * * *

(x) * * *

Contract employer. An employer who performs work covered by this section for a host employer.

* * * * *

Entry (as used in paragraph (e) of this section). The action by which a person passes through an opening into an enclosed space. Entry includes ensuing work activities in that space and is considered to have occurred as soon as any part of the entrant's body breaks the plane of an opening into the space.

* * * * *

Host employer. An employer who operates and maintains an electric power generation, transmission, or distribution installation covered by this section and who hires a contract employer to perform work on that installation.

* * * * *

n. A new Appendix F would be added to § 1910.269 to read as follows:

* * * * *

Appendix F to Section 1910.269—Clothing

I. Introduction

Paragraph (1)(11) of § 1910.269 addresses clothing worn by an employee. This paragraph requires employers to: (1) Assess the workplace for flame and arc hazards (paragraph (1)(11)(i)); (2) estimate the available heat energy from electric arcs to which employees could be exposed (paragraph (1)(11)(ii)), (3) ensure that employees wear clothing that has an arc rating greater than or equal to the available heat energy (paragraph (1)(11)(v)), (4) ensure that employees wear clothing that could not melt or ignite and continue to burn in the presence of electric arcs to which an employee could be exposed (paragraph (1)(11)(iii)), and (5) ensure that employees wear flame-resistant clothing [1] under certain conditions (paragraph (1)(11)(iv)). This appendix contains information to help employers estimate available heat energy as required by § 1910.269(1)(11)(ii), select clothing with an arc rating suitable for the available heat energy as required by § 1910.269(1)(11)(v), and ensure that employees do not wear flammable clothing that could lead to burn injury as addressed by §§ 1910.269(1)(11)(iii) and (1)(11)(iv).

II. Protection Against Burn Injury

A. Estimating Available Heat Energy

The first step in protecting employees from burn injury resulting from an electric arc is to estimate the potential heat energy if an arc does occur. There are various methods of calculating values of available heat energy from an electric circuit. These methods are listed in Table 7. Each method requires the input of various parameters, such as fault current, the expected length of the electric arc, the distance from the arc to the employee, and the clearing time for the fault (that is, the time the circuit protective devices take to open the circuit and clear the fault). Some of these parameters, such as the fault current and the clearing time, are known quantities for a given system. Other parameters, such as the length of the arc and the distance between the arc and the employee, vary widely and can only be estimated.

[1] Flame-resistant clothing includes clothing that is inherently flame resistant and clothing that has been chemically treated with a flame retardant. (See ASTM F1506–02a, *Standard Performance Specification for Textile Materials for Wearing Apparel for Use by Electrical Workers Exposed to Momentary Electric Arc and Related Thermal Hazards.*)

TABLE 7.—METHODS OF CALCULATING INCIDENT HEAT ENERGY FROM AN ELECTRIC ARC

1. Standard for Electrical Safety Requirements for Employee Workplaces, NFPA 70E–2004, Annex D, ''Sample Calculation of Flash Protection Boundary.''
2. Doughty, T.E., Neal, T.E., and Floyd II, H.L., ''Predicting Incident Energy to Better Manage the Electric Arc Hazard on 600 V Power Distribution Systems,'' Record of Conference Papers IEEE IAS 45th Annual Petroleum and Chemical Industry Conference, September 28–30, 1998.
3. Guide for Performing Arc Flash Hazard Calculations, IEEE 1584–2002.
4. Heat Flux Calculator, a free software program created by Alan Privette (widely available on the Internet).
5. ARCPRO, a commercially available software program developed by Kinectrics, Toronto, ON, CA.

The amount of heat energy calculated by any of the methods is approximately directly proportional to the square of the distance between the employee and the arc. In other words, if the employee is very close to the arc, the heat energy is very high; but if he or she is just a few more centimeters away, the heat energy drops substantially. Thus, estimating the distance from the arc to the employee is key to protecting employees.

In estimating available heat energy, the employer must make some reasonable assumptions about how far the employee will be from the electric arc. In some instances, such as during some work performed using live-line tools, the employee will be at least the minimum approach distance from an energized part. However, in this situation, the arc could still extend towards the employee. Thus, in this case, a reasonable estimate of the distance between the employee and the arc would be the minimum approach distance minus twice the sparkover distance.[2]

In other cases, as during rubber glove work, parts of the employee's body will be closer to an energized part than the minimum approach distance. An employee's chest will be about 380 millimeters (15 in.) from an energized conductor during rubber glove work on that conductor. Because there should not be any surfaces at a potential other than the conductor between the employee and the conductor, it is reasonable to assume that the arc will not extend towards the employee. Thus, in this situation, it would be reasonable to use 380 millimeters (15 in.) as the distance between the employee and the arc.

[2] The sparkover distance equals the shortest possible arc length.

The standard permits an employer to make broad estimates of available heat energy covering multiple system areas using reasonable assumptions about the energy exposure distribution. For example, the employer can use the maximum fault current and clearing time to cover several system areas at once. Table 8 presents estimates of available energy for different parts of an electrical system operating at 4 to 46 kV. The table is for open-air, phase-to-ground electric arc exposures typical for overhead systems operating at these voltages. The table assumes that the employee will be 380 millimeters (15 in.) from the electric arc, which is a reasonable estimate for rubber glove work. To use the table, an employer would use the voltage, maximum fault current, and maximum clearing time for a system area and select the appropriate heat energy (5, 8, or 12 calories) from the table. For example, an employer might have a 12,470-volt power line supplying a system area. The power line can supply a maximum fault current of 8 kiloamperes with a maximum clearing time of 10 cycles. This system falls in the 4.0-to-15.0-kV range; the fault current is less than 10 kA (the second row in that voltage range); and the clearing time is under 14.5 cycles (the first column to the right of the fault current column). Thus, the available heat energy for this part of the system will be 5 calories or less (from the column heading), and the employer could select clothing with a 5-calorie rating to meet § 1910.269(l)(11)(v).

Table 9 presents similar estimates for systems operating at voltages of 46.1 to 800 kV. This table is also for open-air, phase-to-ground electric arc exposures typical for overhead systems operating at these voltages. The table assumes that the arc length will be equal to the sparkover distance [3] and that the employee will be a distance from the arc equal to the minimum approach distance minus twice the arc length.

The employer will need to use other methods for estimating available heat energy in situations not addressed by Table 8 or Table 9. The calculation methods listed in Table 7 will help employers do this. In addition, employers can use Table 130.7(C)(9)(a), Table 130.7(C)(10), and Table 130.7(C)(11) of NFPA 70E–2004 to estimate the available heat energy (and to select appropriate protective clothing) for many situations not addressed in the tables in this appendix, including lower-voltage, phase-to-phase arc, and enclosed arc exposures.

[3] The dielectric strength of air is about 10 kV for every 25.4 mm (1 in.). Thus, the arc length can be estimated to be the phase-to-ground voltage divided by 10.

TABLE 8.—AVAILABLE HEAT ENERGY FOR VARIOUS FAULT CURRENTS, CLEARING TIMES, AND VOLTAGES OF 4.0 TO 46.0 kV

Voltage range (kV)	Fault current (kV)	5-cal maximum clearing time (cycles)	8-cal maximum clearing time (cycles)	12-cal maximum clearing time (cycles)
4.0 to 15.0	5	37.3	59.6	89.4
	10	14.5	23.2	34.8
	15	8.0	12.9	19.3
	20	5.2	8.3	12.5
15.1 to 25.0	5	34.5	55.2	82.8
	10	14.2	22.7	34.1
	15	8.2	13.2	19.8
	20	5.5	8.8	13.2
25.1 to 36.0	5	16.9	27.0	40.4
	10	7.1	11.4	17.1
	15	4.2	6.8	10.1
	20	2.9	4.6	6.9
36.1 to 46.0	5	13.3	21.2	31.9
	10	5.7	9.1	13.7
	15	3.5	5.6	8.4
	20	2.5	4.0	6.0

Notes:
(1) This table is for open-air, phase-to-ground electric arc exposures. It is not intended for phase-to-phase arcs or enclosed arcs (arc in a box).
(2) The table assumes that the employee will be 380 mm (15 in.) from the electric arc. The table also assumes the arc length to be the sparkover distance for the maximum voltage of each voltage range, as follows:
4.0 to 15.0 kV 51 mm (2 in.).
15.1 to 25.0 kV 102 mm (4 in.).
25.1 to 36.0 kV 152 mm (6 in.).
36.1 to 46.0 kV 229 mm (9 in.).

TABLE 9.—AVAILABLE HEAT ENERGY FOR VARIOUS FAULT CURRENTS, CLEARING TIMES, AND VOLTAGES OF 46.1 TO 800 kV

Voltage range (kV)	Fault current (kV)	5-cal maximum clearing time (cycles)	8-cal maximum clearing time (cycles)	12-cal maximum clearing time (cycles)
46.1 to 72.5	20	10.6	17.0	25.5
	30	6.6	10.5	15.8
	40	4.6	7.3	11.0
	50	3.4	5.5	8.3
72.6 to 121	20	10.3	16.5	24.7
	30	5.9	9.4	14.1
	40	3.9	6.2	9.3
	50	2.7	4.4	6.6
138 to 145	20	12.2	19.5	29.3
	30	7.0	11.2	16.8
	40	4.6	7.4	11.1
	50	3.3	5.3	7.9
161 to 169	20	11.6	18.6	27.9
	30	7.2	11.5	17.2
	40	5.0	8.0	12.0
	50	3.8	6.0	9.0
230 to 242	20	13.0	20.9	31.3
	30	8.0	12.9	19.3
	40	5.6	9.0	13.5
	50	4.2	6.8	10.1
345 to 362	20	28.3	45.3	67.9
	30	17.5	28.1	42.1
	40	12.2	19.6	29.4
	50	9.2	14.7	22.1
500 to 550	20	23.6	37.8	56.7
	30	14.6	23.3	35.0
	40	10.2	16.3	24.4
	50	7.6	12.2	18.3
765 to 800	20	54.5	87.3	130.9
	30	33.7	53.9	80.9
	40	23.6	37.8	56.7
	50	17.8	28.4	42.6

Notes:
(1) This table is for open-air, phase-to-ground electric are exposures. It is not intended for phase-to-phase arcs or enclosed arcs (arc in a box)

(2) The table assumes that the arc length will be the phase-to-ground voltage divided by 10 and that the distance from the arc to the employee is the minumum approach distance minus twice the arc length.

B. Selecting protective clothing

Table 10 presents protective clothing guidelines for exposure to electric arcs. Protective clothing meeting the guidelines in this table are expected, based on extensive laboratory testing, to be capable of preventing second-degree burn injury to an employee exposed to the corresponding range of calculated incident heat energy from an electric arc. It should be noted that actual electric arc exposures may be more or less severe than the laboratory exposures because of factors such as arc movement, arc length, arcing from reclosing of the system, secondary fires or explosions, and weather conditions. Therefore, it is possible that an employee will sustain a second-degree or worse burn wearing clothing conforming to the guidelines in Table 10 under certain circumstances. Such clothing will, however, provide an appropriate degree of protection for an employee who is exposed to electric arc hazards.

TABLE 10.—PROTECTIVE CLOTHING GUIDELINES FOR ELECTRIC ARC HAZARDS

Range of calculated incident energy cal/cm^2	Clothing description (number of layers)	Clothing weight oz/yd^2	Arc thermal performance value (ATPV)
0–2	Untreated Cotton (1)	4.5–7	N/A
2–5	FR Shirt (1)	4.5–8	5–7
5–10	T-Shirt plus FR Shirt and FR Pants (2)	9–12	10–17
10–20	T-Shirt plus FR Shirt plus FR Coverall (3)	16–20	22–25
20–40	T-Shirt plus FR Shirt plus Double Layer Switching Coat (4)	24–30	55

FR—Flame resistant.

ATPV—Arc Thermal Performance Value based on ASTM F1959 test method. (The method was modified as necessary to test the performance of the three- and four-layer systems.)

Source: "Protective Clothing Guidelines for Electric Arc Exposure," Neal, T. E. Bingham, A. H., Doughty, R. L., IEEE Petroleum and Chemical Industry Conference Record, September 1996, p. 294.

It should be noted that Table 10 permits untreated cotton clothing for exposures of 2-cal/cm^2 or less. Cotton clothing will reduce a 2-cal/cm^2 exposure below the 1.6-cal/cm^2 level necessary to cause burn injury and is not expected to ignite at such low heat energy levels. Although untreated cotton clothing is deemed to meet the requirement for suitable arc ratings in § 1910.269(l)(11)(v) and the prohibition against clothing that could ignite and continue to burn in § 1910.269(l)(11)(iii) when the available heat energy is 2 cal/cm^2 or less, this type of clothing is still prohibited under certain conditions by § 1910.269(l)(11)(iv), as discussed further below.

Protective performance of any particular fabric type generally increases with fabric weight, as long as the fabric does not ignite and continue to burn. Multiple layers of clothing usually block more heat and are normally more protective than a single layer of the equivalent weight.

Exposed skin is expected to sustain a second-degree burn for incident energy levels of 1.6 cal/cm^2 or more. Though it is not required by the standard, if the heat energy estimated under § 1910.269(l)(11)(ii) is greater than or equal to 1.6 cal/cm^2, the employer should require each exposed employee to have no more than 10 percent of his or her body unprotected. Due to the unpredictable nature of electric arcs, the employer should also consider requiring the protection of bare skin from any exposure exceeding 0.8 cal/cm^2 so as to minimize the risk of burn injury.

III. Protection Against Ignition

Paragraph (l)(11)(iii) of § 1910.269 prohibits clothing that could melt onto an employee's skin or that could ignite and continue to burn when exposed to the available heat energy estimated by the employer. Meltable fabrics, such as acetate, nylon, and polyester, even in blends, must be avoided. When these fibers melt, they can adhere to the skin, transferring heat more rapidly, exacerbating any burns, and complicating treatment. This can be true even if the meltable fabric is not directly next to the skin. The remainder of this section focuses on the prevention of ignition.

Paragraph (l)(11)(v) of § 1910.269 requires clothing with an arc rating greater than or equal to the employer's estimate of available heat energy. As explained earlier, untreated cotton is acceptable for exposures of 2 cal/cm^2 or less. If the exposure is greater than that, the employee must wear flame-resistant clothing with a suitable arc rating. However, even though an employee is wearing a layer of flame-resistant clothing, there are circumstances under which flammable layers of clothing would be exposed and subject to ignition. For example, if the employee is wearing flammable clothing (for example, winter coveralls) over the layer of flame-resistant clothing, the outer flammable layer can ignite. Similarly, clothing ignition is possible if the employee is wearing flammable clothing under the flame-resistant clothing and the underlayer is exposed by an opening in the flame-resistant clothing. Thus, it is important for the employer to consider the possibility of clothing ignition even when an employee is wearing clothing with a suitable arc rating.

Table 11 lists the minimum heat energy under electric arc conditions that can reasonably be expected to ignite different weights and colors of cotton fabrics. The values listed, expressed in calories per square centimeter, represent a 10 percent probability of ignition with a 95 percent confidence level. If the heat energy estimated under § 1910.269(l)(11)(ii) does not exceed the values listed in Table 11 for a particular weight and color of cotton fabric, then an outer layer of that material would not be expected to ignite and would be considered as being permitted under § 1910.269(l)(11)(iii).[4] Conversely, if the heat energy estimated under § 1910.269(l)(11)(ii) exceeds the values listed in Table 11 for a particular weight and color of cotton fabric, that material may not be worn as an outer layer of garment and may not be otherwise exposed due to an opening in the flame-resistant clothing.

For white cotton fabrics of a different weight from those listed, choose the next lower weight of white cotton fabric listed in Table 11. For cotton fabrics of a different color and weight combination than those listed, select a value from the table corresponding to an equal or lesser weight of blue cotton fabric. For example, for a 6.0-oz/yd^2 brown twill fabric, select 4.6 cal/cm^2 for the ignition threshold, which corresponds to 5.2-oz/yd^2 blue twill. If a white garment has a silkscreen logo, insignia, or other similar design included on it, then the entire garment will be considered as being of a color other than white. (The darker portion of the garment can ignite earlier than the rest of the garment, which would cause the entire garment to burn.)

Employers may choose to test samples of genuine garments rather than rely on the values given in Table 11. The appropriate electric arc ignition test method is given in ASTM F 1958/F 1958M–99, Standard Test Method for Determining the Ignitability of Non-flame-Resistant Materials for Clothing by Electric Arc Exposure Method Using Mannequins. Using this test method, employers may substitute actual test data analysis results representing an energy level that is reasonably certain not to be capable

[4] An underlayer of clothing with an arc rating greater than or equal to the estimate of available heat energy would still be required under § 1910.269(l)(11)(v).

of igniting the fabric. For example, based on test data, the employer may select a level representing a 10 percent probability of ignition with a 95 percent confidence level, representing a 1 percent probability of ignition according to actual test results, or representing an energy level that is two standard deviations below the mean ignition threshold. The employer may also select some other comparable level.

TABLE 11.—IGNITION THRESHOLD FOR COTTON FABRICS

Fabric description			Ignition threshold (cal/cm²)
Weight (oz/yd²)	Color	Weave	
4.6	White	Jersey knit	4.3
5.2	Blue	Twill	4.6
6.2	White	Fleece	6.4
6.9	Blue	Twill	5.3
8.0	Black	Twill	6.1
8.3	White	Sateen	11.6
11.9	Tan	Duck	11.3
12.8	Blue	Denim	15.5
13.3	Blue	Denim	15.9

Source: ''Testing Update on Protective Clothing & Equipment for Electric Arc Exposure,'' IEEE Paper No. PCIC–97–35.

Clothing loses weight as it wears. This can lower the ignition threshold, especially if the garment has threadbare areas or is torn.

Adding layers of clothing beneath an outer layer of flammable fabric has no significant effect on the heat energy needed to ignite the outer fabric layer. Therefore, the outer layer of clothing must be treated as if it were a single layer to determine the proper ignition threshold.

Flammable clothing worn in conjunction with flame-resistant clothing is not permitted to pose an ignition hazard.[5] Flammable clothing may not be worn as an outer layer if it could be exposed to heat energy above the ignition threshold. Outer flame-resistant layers may not have openings that expose flammable inner layers that could be ignited.

When an outer flame-resistant layer would be unable to resist breakopen,[6] the next (inner) layer should be flame-resistant.

Grounding conductors can become a source of electric arcing if they cannot carry fault current without failure. These possible sources of electric arcs[7] must be considered in determining whether the employee's clothing could ignite under § 1910.269(l)(11)(iv)(C).

Flammable clothing can also be ignited by arcing that occurs when a conductor contacts an employee or by nearby material that ignites upon exposure to an electric arc. These sources of ignition must be considered in determining whether the employee's clothing could ignite under § 1910.269(l)(11)(iv)(A) and (l)(11)(iv)(C).

o. A new Appendix G would be added to § 1910.269 to read as follows:

Appendix G to Section 1910.269—Work Positioning Equipment Inspection Guidelines

I. Body Belts

Inspect body belts to ensure that:

A. Hardware has no cracks, nicks, distortion, or corrosion;

B. No loose or worn rivets are present;

C. The waist strap has no loose grommets;

D. The fastening straps are not made of 100 percent leather;

E. No worn materials that could affect the safety of the user are present; and

F. D-rings are compatible with the snaphooks with which they will be used.

Note: An incompatibility between a snaphook and a D-ring may cause snaphook rollout, or unintentional disengagement of the snaphook from the D-ring. Employers should take extra precaution when determining compatibility between snaphooks and D-rings of different manufacturers.

II. Positioning Straps

Inspect positioning straps to ensure that:

A. The warning center of the strap material is not exposed;

B. No cuts, burns, extra holes, or fraying of strap material is present;

C. Rivets are properly secured;

D. Straps are not made from 100 percent leather; and

E. Snaphooks do not have cracks, burns, or corrosion.

III. Climbers

Inspect pole and tree climbers to ensure that:

A. Gaffs on pole climbers are no less than 32 millimeters in length measured on the underside of the gaff;

B. Gaffs on tree climbers are no less than 51 millimeters in length measured on the underside of the gaff;

C. Gaffs and leg irons are not fractured or cracked;

D. Stirrups and leg irons are free of excessive wear;

E. Gaffs are not loose;

F. Gaffs are free of deformation that could adversely affect use;

G. Gaffs are properly sharpened; and

H. There are no broken straps or buckles.

PART 1926—[Amended]

Subpart E—Personal Protective and Life Saving Equipment

6. The authority citation for Subpart E of Part 1926 would be revised to read as follows:

Authority: Sec. 107, Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 333); Secs. 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), or 5–2002 (67 F.R. 65008) as applicable; and 29 CFR Part 1911.

7. Section 1926.97 would be added to read as follows:

§ 1926.97 Electrical protective equipment.

(a) *Design requirements.* Insulating blankets, matting, covers, line hose, gloves, and sleeves made of rubber shall meet the following requirements:

(1) *Manufacture and marking of rubber insulating equipment.* (i) Blankets, gloves, and sleeves shall be produced by a seamless process.

(ii) Each item shall be clearly marked as follows:

(A) Class 00 equipment shall be marked Class 00.

(B) Class 0 equipment shall be marked Class 0.

(C) Class 1 equipment shall be marked Class 1.

(D) Class 2 equipment shall be marked Class 2.

(E) Class 3 equipment shall be marked Class 3.

(F) Class 4 equipment shall be marked Class 4.

[5] Paragraph (l)(11)(iii) of § 1910.269 prohibits clothing that could ignite and continue to burn when exposed to the heat energy estimated under paragraph (l)(11)(ii).

[6] Breakopen is the creation of holes, tears, or cracks in the exposed fabric such that incident energy is not longer effectively blocked.

[7] Static wires and pole ground are examples of grounding conductors that might not be capable of carrying fault current without failure. Grounds that can carry the maximum available fault current are not a concern and need not be considered a possible electric arc souce.

(G) Nonozone-resistant equipment other than matting shall be marked Type I.

(H) Ozone-resistant equipment other than matting shall be marked Type II.

(I) Other relevant markings, such as the manufacturer's identification and the size of the equipment, may also be provided.

(iii) Markings shall be nonconducting and shall be applied in such a manner as not to impair the insulating qualities of the equipment.

(iv) Markings on gloves shall be confined to the cuff portion of the glove.

(2) *Electrical requirements.* (i) Equipment shall be capable of withstanding the a-c proof-test voltage specified in Table E–1 or the d-c proof-test voltage specified in Table E–2.

(A) The proof test shall reliably indicate that the equipment can withstand the voltage involved.

(B) The test voltage shall be applied continuously for 3 minutes for equipment other than matting and shall be applied continuously for 1 minute for matting.

(C) Gloves shall also be capable of withstanding the a-c proof-test voltage specified in Table E–1 after a 16-hour water soak. (See the note following paragraph (a)(3)(ii)(B) of this section.)

(ii) When the a–c proof test is used on gloves, the 60-hertz proof-test current may not exceed the values specified in Table E–1 at any time during the test period.

(A) If the a–c proof test is made at a frequency other than 60 hertz, the permissible proof-test current shall be computed from the direct ratio of the frequencies.

(B) For the test, gloves (right side out) shall be filled with tap water and immersed in water to a depth that is in accordance with Table E–3. Water shall be added to or removed from the glove, as necessary, so that the water level is the same inside and outside the glove.

(C) After the 16-hour water soak specified in paragraph (a)(2)(i)(C) of this section, the 60-hertz proof-test current may exceed the values given in Table E–1 by not more than 2 milliamperes.

(iii) Equipment that has been subjected to a minimum breakdown voltage test may not be used for electrical protection. (See the note following paragraph (a)(3)(ii)(B) of this section.)

(iv) Material used for Type II insulating equipment shall be capable of withstanding an ozone test, with no visible effects. The ozone test shall reliably indicate that the material will resist ozone exposure in actual use. Any visible signs of ozone deterioration of the material, such as checking, cracking, breaks, or pitting, is evidence of failure to meet the requirements for ozone-resistant material. (See the note following paragraph (a)(3)(ii)(B) of this section.)

(3) *Workmanship and finish.* (i) Equipment shall be free of harmful physical irregularities that can be detected by the tests or inspections required under this section.

(ii) Surface irregularities that may be present on all rubber goods because of imperfections on forms or molds or because of inherent difficulties in the manufacturing process and that may appear as indentations, protuberances, or imbedded foreign material are acceptable under the following conditions:

(A) The indentation or protuberance blends into a smooth slope when the material is stretched.

(B) Foreign material remains in place when the insulating material is folded and stretches with the insulating material surrounding it.

Note to paragraph (a) of this section: Rubber insulating equipment meeting the following national consensus standards is deemed to be in compliance with paragraph (a) of this section:

American Society for Testing and Materials (ASTM) D 120–02a, Standard Specification for Rubber Insulating Gloves.

ASTM D 178–01 ^{e1}, Standard Specification for Rubber Insulating Matting.

ASTM D 1048–99, Standard Specification for Rubber Insulating Blankets.

ASTM D 1049–98e1, Standard Specification for Rubber Insulating Covers.

ASTM D 1050–90, Standard Specification for Rubber Insulating Line Hose.

ASTM D 1051–02, Standard Specification for Rubber Insulating Sleeves.

These standards contain specifications for conducting the various tests required in paragraph (a) of this section. For example, the a–c and d–c proof tests, the breakdown test, the water soak procedure, and the ozone test mentioned in this paragraph are described in detail in the ASTM standards.

ASTM F 1236–96, Standard Guide for Visual Inspection of Electrical Protective Rubber Products, presents methods and techniques for the visual inspection of electrical protective equipment made of rubber. This guide also contains descriptions and photographs of irregularities that can be found in this equipment.

ASTM F 819–00 ^{e1}, Standard Terminology Relating to Electrical Protective Equipment for Workers, includes definitions of terms relating to the electrical protective equipment covered under this section.

(b) *Requirements for other types of electrical protective equipment.* The following requirements apply to the design and manufacture of electrical protective equipment that is not covered by paragraph (a) of this section:

(1) *Voltage withstand.* Insulating equipment used for the protection of employees shall be capable of withstanding, without failure, the voltages that may be imposed upon it.

Note to paragraph (b)(1) of this section: Such voltages include transient overvoltages, such as switching surges, as well as nominal line voltage. See Appendix B to Subpart V of this Part for a discussion of transient overvoltages on electric power transmission and distribution systems.

(2) *Equipment current.* (i) Protective equipment used for the primary insulation of employees from energized circuit parts shall be capable of passing a current test when subjected to the highest nominal voltage on which the equipment is to be used.

(ii) When insulating equipment is tested in accordance with paragraph (b)(2)(i) of this section, the equipment current may not exceed 1 microampere per kilovolt of phase-to-phase applied voltage.

Note 1 to paragraph (b)(2) of this section: This paragraph applies to equipment that provides primary insulation of employees from energized parts. It is not intended to apply to equipment used for secondary insulation or equipment used for brush contact only.

Note 2 to paragraph (b)(2) of this section: For a-c excitation, this current consists of three components:

1. Capacitive current because of the dielectric properties of the insulating material itself,
2. Conduction current through the volume of the insulating equipment, and
3. Leakage current along the surface of the tool or equipment.

The conduction current is normally negligible. For clean, dry insulating equipment, the leakage current is small, and the capacitive current predominates.

(c) *In-service care and use of rubber insulating equipment.* (1) *General.* Electrical protective equipment shall be maintained in a safe, reliable condition.

(2) *Specific requirements.* The following specific requirements apply to insulating blankets, covers, line hose, gloves, and sleeves made of rubber:

(i) Maximum use voltages shall conform to those listed in Table E–4.

(ii) Insulating equipment shall be inspected for damage before each day's

use and immediately following any incident that can reasonably be suspected of having caused damage. Insulating gloves shall be given an air test, along with the inspection.

Note to paragraph (c)(2)(ii) of this section: ASTM F 1236–96, Standard Guide for Visual Inspection of Electrical Protective Rubber Products, presents methods and techniques for the visual inspection of electrical protective equipment made of rubber. This guide also contains descriptions and photographs of irregularities that can be found in this equipment.

(iii) Insulating equipment with any of the following defects may not be used:

(A) A hole, tear, puncture, or cut;

(B) Ozone cutting or ozone checking (the cutting action produced by ozone on rubber under mechanical stress into a series of interlacing cracks);

(C) An embedded foreign object;

(D) Any of the following texture changes: swelling, softening, hardening, or becoming sticky or inelastic.

(E) Any other defect that damages the insulating properties.

(iv) Insulating equipment found to have other defects that might affect its insulating properties shall be removed from service and returned for testing under paragraphs (c)(2)(viii) and (c)(2)(ix) of this section.

(v) Insulating equipment shall be cleaned as needed to remove foreign substances.

(vi) Insulating equipment shall be stored in such a location and in such a manner as to protect it from light, temperature extremes, excessive humidity, ozone, and other injurious substances and conditions.

(vii) Protector gloves shall be worn over insulating gloves, except as follows:

(A) Protector gloves need not be used with Class 0 or Class 00 gloves, under limited-use conditions, where small equipment and parts manipulation necessitate unusually high finger dexterity.

Note to paragraph (c)(2)(vii)(A) of this section: Extra care is needed in the visual examination of the glove and in the avoidance of handling sharp objects.

(B) Any other class of glove may be used for similar work without protector gloves if the employer can demonstrate that the possibility of physical damage to the gloves is small and if the class of glove is one class higher than that required for the voltage involved.

(C) Insulating gloves that have been used without protector gloves may not be reused until they have been tested under the provisions of paragraphs (c)(2)(viii) and (c)(2)(ix) of this section.

(viii) Electrical protective equipment shall be subjected to periodic electrical tests. Test voltages and the maximum intervals between tests shall be in accordance with Table E–4 and Table E–5.

(ix) The test method used under paragraphs (c)(2)(viii) and (c)(2)(xi) of this section shall reliably indicate whether the insulating equipment can withstand the voltages involved.

Note to paragraph (c)(2)(ix) of this section: Standard electrical test methods considered as meeting this requirement are given in the following national consensus standards:

American Society for Testing and Materials (ASTM) D 120–02a, Standard Specification for Rubber Insulating Gloves.

ASTM D 1048–99, Standard Specification for Rubber Insulating Blankets.

ASTM D 1049–98^{e1}, Standard Specification for Rubber Insulating Covers.

ASTM D 1050–90, Standard Specification for Rubber Insulating Line Hose.

ASTM D 1051–02, Standard Specification for Rubber Insulating Sleeves.

ASTM F 478–92, Standard Specification for In-Service Care of Insulating Line Hose and Covers.

ASTM F 479–95, Standard Specification for In-Service Care of Insulating Blankets.

ASTM F 496–02a, Standard Specification for In-Service Care of Insulating Gloves and Sleeves.

(x) Insulating equipment failing to pass inspections or electrical tests may not be used by employees, except as follows:

(A) Rubber insulating line hose may be used in shorter lengths with the defective portion cut off.

(B) Rubber insulating blankets may be salvaged by severing the defective area from the undamaged portion of the blanket. The resulting undamaged area may not be smaller than 560 mm by 560 mm (22 inches by 22 inches) for Class 1, 2, 3, and 4 blankets.

(C) Rubber insulating blankets may be repaired using a compatible patch that results in physical and electrical properties equal to those of the blanket.

(D) Rubber insulating gloves and sleeves with minor physical defects, such as small cuts, tears, or punctures, may be repaired by the application of a compatible patch. Also, rubber insulating gloves and sleeves with minor surface blemishes may be repaired with a compatible liquid compound. The repaired area shall have electrical and physical properties equal to those of the surrounding material. Repairs to gloves are permitted only in the area between the wrist and the reinforced edge of the opening.

(xi) Repaired insulating equipment shall be retested before it may be used by employees.

(xii) The employer shall certify that equipment has been tested in accordance with the requirements of paragraphs (c)(2)(iv), (c)(2)(vii)(C), (c)(2)(viii), (c)(2)(ix), and (c)(2)(xi) of this section. The certification shall identify the equipment that passed the test and the date it was tested.

Note to paragraph (c)(2)(xii) of this section: Marking of equipment and entering onto logs the results of the tests and the dates of testing are two acceptable means of meeting this requirement.

TABLE E–1.—A–C PROOF-TEST REQUIREMENTS

Class of equipment	Proof-test voltage rms V	Maximum proof-test current, mA (gloves only)			
		267-mm (10.5-in) glove	356-mm (14-in) glove	406-mm (16-in) glove	457-mm (18-in) glove
00	2,500	8	12	.....	.....
0	5,000	8	12	14	16
1	10,000	.....	14	16	18
2	20,000	.....	16	18	20
3	30,000	.....	18	20	22
4	40,000	.....	.....	22	24

TABLE E–2.—D–C PROOF-TEST REQUIREMENTS

Class of equipment	Proof-test voltage
00	10,000
0	20,000
1	40,000
2	50,000
3	60,000
4	70,000

Note: The d-c voltages listed in this table are not appropriate for proof testing rubber insulating line hose or covers. For this equipment, d-c proof tests shall use a voltage high enough to indicate that the equipment can be safely used at the voltages listed in Table E–4. See ASTM D 1050–90 and ASTM D 1049–98[c1] for further information on proof tests for rubber insulating line hose and covers, respectively.

TABLE E–3.—GLOVE TESTS—WATER LEVEL [1] [2]

Class of glove	A–C proof test		D–C proof test	
	mm	in	mm	in
00	38	1.5	38	1.5
0	38	1.5	38	1.5
1	38	1.5	51	2.0
2	64	2.5	76	3.0
3	89	3.5	102	4.0
4	127	5.0	153	6.0

[1] The water level is given as the clearance from the cuff of the glove to the water line, with a tolerance of ±13 mm. (±0.5 in.).
[2] If atmospheric conditions make the specified clearances impractical, the clearances may be increased by a maximum of 25 mm. (1 in.).

TABLE E–4.—RUBBER INSULATING EQUIPMENT VOLTAGE REQUIREMENTS

Class of equipment	Maximum use voltage [1] A–C rms	Retest voltage [2] A–C rms	Retest voltage [2] D–C avg
00	500	2,500	10,000
0	1,000	5,000	20,000
1	7,500	10,000	40,000
2	17,000	20,000	50,000
3	26,000	30,000	60,000
4	36,000	40,000	70,000

[1] The maximum use voltage is the a-c voltage (rms) classification of the protective equipment that designates the maximum nominal design voltage of the energized system that may be safely worked. The nominal design voltage is equal to the phase-to-phase voltage on multiphase circuits. However, the phase-to-ground potential is considered to be the nominal design voltage:
(1) If there is no multiphase exposure in a system area and if the voltage exposure is limited to the phase-to-ground potential, or
(2) If the electrical equipment and devices are insulated or isolated or both so that the multiphase exposure on a grounded wye circuit is removed.
[2] The proof-test voltage shall be applied continuously for at least 1 minute, but no more than 3 minutes.

TABLE E–5.—RUBBER INSULATING EQUIPMENT TEST INTERVALS

Type of equipment	When to test
Rubber insulating line hose	Upon indication that insulating value is suspect and after repair.
Rubber insulating covers	Upon indication that insulating value is suspect and after repair.
Rubber insulating blankets	Before first issue and every 12 months thereafter; [1] upon indication that insulating value is suspect; and after repair.
Rubber insulating gloves	Before first issue and every 6 months thereafter; [1] upon indication that insulating value is suspect; after repair; and after use without protectors.
Rubber insulating sleeves	Before first issue and every 12 months thereafter; [1] upon indication that insulating value is suspect; and after repair.

[1] If the insulating equipment has been electrically tested but not issued for service, it may not be placed into service unless it has been electrically tested within the previous 12 months.

8. The authority citation for Subpart V of Part 1926 would be revised to read as follows:

Authority: Sec. 107, Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 333); Secs. 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), or 5–2002 (67 F.R. 65008) as applicable; and 29 CFR Part 1911.

9. Subpart V of Part 1926 would be revised to read as follows:

Subpart V—Electric Power Transmission and Distribution

Sec.
1926.950 General.
1926.951 Medical services and first aid.
1926.952 Job briefing.
1926.953 Enclosed spaces.
1926.954 Personal protective equipment.
1926.955 Ladders and platforms.
1926.956 Hand and portable power tools.
1926.957 Live-line tools.
1926.958 Materials handling and storage.
1926.959 Mechanical equipment.
1926.960 Working on or near exposed energized parts.
1926.961 Deenergizing lines and equipment for employee protection.
1926.962 Grounding for the protection of employees.
1926.963 Testing and test facilities.
1926.964 Overhead lines.
1926.965 Underground electrical installations.
1926.966 Substations.
1926.967 Special conditions.
1926.968 Definitions applicable to this subpart.

Subpart V—Electric Power Transmission and Distribution

§ 1926.950 General.

(a) *Application*. (1) *Scope*. This subpart, except for paragraph (a)(3) of this section, covers the construction of electric power transmission and distribution lines and equipment. As used in this subpart the term ''construction'' includes the erection of new electric transmission and distribution lines and equipment, and the alteration, conversion, and improvement of existing electric transmission and distribution lines and equipment.

(2) *Other Part 1926 standards*. This subpart applies in addition to all other applicable standards contained in this Part 1926. Employers covered under this subpart are not exempt from complying with other applicable provisions in Part 1926 by the operation of § 1910.5(c) of this chapter. Specific references in this subpart to other sections of Part 1926 are provided for emphasis only.

(3) *Applicable Part 1910 requirements*. Line-clearance tree-trimming operations and work involving electric power generation installations shall comply with § 1910.269 of this chapter.

(b) *Training*. (1) *All employees*. (i) Employees shall be trained in and familiar with the safety-related work practices, safety procedures, and other safety requirements in this subpart that pertain to their respective job assignments.

(ii) Employees shall also be trained in and familiar with any other safety practices, including applicable emergency procedures (such as pole top and manhole rescue), that are not specifically addressed by this subpart but that are related to their work and are necessary for their safety.

(iii) The degree of training shall be determined by the risk to the employee for the task involved.

(2) *Qualified employees*. Each qualified employee shall also be trained and competent in:

(i) The skills and techniques necessary to distinguish exposed live parts from other parts of electric equipment,

(ii) The skills and techniques necessary to determine the nominal voltage of exposed live parts,

(iii) The minimum approach distances specified in this subpart corresponding to the voltages to which the qualified employee will be exposed,

(iv) The proper use of the special precautionary techniques, personal protective equipment, insulating and shielding materials, and insulated tools for working on or near exposed energized parts of electric equipment, and

(v) The recognition of electrical hazards to which the employee may be exposed and the skills and techniques necessary to control or avoid those hazards.

Note to paragraph (b)(2) of this section: For the purposes of this subpart, a person must have the training required by paragraph (b)(2) of this section in order to be considered a qualified person.

(3) *Supervision and annual inspection*. The employer shall determine, through regular supervision and through inspections conducted on at least an annual basis, that each employee is complying with the safety-related work practices required by this subpart.

(4) *Additional training*. An employee shall receive additional training (or retraining) under any of the following conditions:

(i) If the supervision or annual inspections required by paragraph (b)(3) of this section indicate that the employee is not complying with the safety-related work practices required by this subpart, or

(ii) If new technology, new types of equipment, or changes in procedures necessitate the use of safety-related work practices that are different from those which the employee would normally use, or

(iii) If he or she must employ safety-related work practices that are not normally used during his or her regular job duties.

Note to paragraph (b)(4)(iii) of this section: OSHA would consider tasks that are performed less often than once per year to necessitate retraining before the performance of the work practices involved.

(5) *Type of training*. The training required by paragraph (b) of this section shall be of the classroom or on-the-job type.

(6) *Training goals*. The training shall establish employee proficiency in the work practices required by this subpart and shall introduce the procedures necessary for compliance with this subpart.

(7) *Demonstration of proficiency*. The employer shall determine that each employee has demonstrated proficiency in the work practices involved before that employee is considered as having completed the training required by paragraph (b) of this section.

Note 1 to paragraph (b)(7) of this section: Though they are not required by this paragraph, employment records that indicate that an employee has successfully completed the required training are one way of keeping track of when an employee has demonstrated proficiency.

Note 2 to paragraph (b)(7) of this section: Employers may rely on an employee's previous training as long as the employer: (1) Confirms that the employee has the job experience appropriate to the work to be performed, (2) through an examination or interview, makes an initial determination that the employee is proficient in the relevant safety-related work practices before he or she performs any work covered by this subpart, and (3) supervises the employee closely until that employee has demonstrated proficiency in all the work practices he or she will employ.

(c) *Contractors*. (1) *Host employer responsibilities*. (i) The host employer shall inform contract employers of:

(A) Known hazards that are covered by this section, that are related to the contract employer's work, and that might not be recognized by the contract employer or its employees; and

(B) Information about the employer's installation that the contract employer needs to make the assessments required by this subpart.

(ii) The host employer shall report observed contract-employer-related violations of this section to the contract employer.

(2) *Contract employer responsibilities*. (i) The contract employer shall ensure that each of his or her employees is instructed in the hazards communicated to the contract employer by the host employer.

Note to paragraph (c)(2)(i) of this section: This instruction is in addition to the training required by paragraph (b) of this section.

(ii) The contract employer shall ensure that each of his or her employees follows the work practices required by this subpart and safety-related work rules required by the host employer.

(iii) The contract employer shall advise the host employer of:

(A) Any unique hazards presented by the contract employer's work,

(B) Any unanticipated hazards found during the contract employer's work that the host employer did not mention, and

(C) The measures the contractor took to correct any violations reported by the host employer under paragraph (c)(1)(ii) of this section and to prevent such violations from recurring in the future.

(d) *Existing conditions.* Existing conditions related to the safety of the work to be performed shall be determined before work on or near electric lines or equipment is started. Such conditions include, but are not limited to, the nominal voltages of lines and equipment, the maximum switching transient voltages, the presence of hazardous induced voltages, the presence and condition of protective grounds and equipment grounding conductors, the condition of poles, environmental conditions relative to safety, and the locations of circuits and equipment, including power and communication lines and fire protective signaling circuits.

§ 1926.951 Medical services and first aid.

(a) *General.* The employer shall provide medical services and first aid as required in § 1926.50.

(b) *Additional requirements.* In addition to the requirements of § 1926.50, the following requirements also apply:

(1) *Cardiopulmonary resuscitation and first aid training.* When employees are performing work on or associated with exposed lines or equipment energized at 50 volts or more, persons trained in first aid including cardiopulmonary resuscitation (CPR) shall be available as follows:

(i) For field work involving two or more employees at a work location, at least two trained persons shall be available. However, only one trained person need be available if all new employees are trained in first aid, including CPR, within 3 months of their hiring dates.

(ii) For fixed work locations such as substations, the number of trained persons available shall be sufficient to ensure that each employee exposed to electric shock can be reached within 4 minutes by a trained person. However, where the existing number of employees is insufficient to meet this requirement (at a remote substation, for example), all employees at the work location shall be trained.

(2) *First aid supplies.* First aid supplies required by § 1926.50(d) shall be placed in weatherproof containers if the supplies could be exposed to the weather.

(3) *First aid kits.* Each first aid kit shall be maintained, shall be readily available for use, and shall be inspected frequently enough to ensure that expended items are replaced, but at least once per year.

§ 1926.952 Job briefing.

(a) *Before each job.* (1) *Initial briefing by the employer.* In assigning an employee or a group of employees to perform a job, the employer shall provide the employee in charge of the job with available information necessary to perform the job safely.

Note to paragraph (a)(1) of this section: The information provided by the employer to the employee in charge is intended to supplement the training required under § 1926.950(b). It may be provided at the beginning of the day for all jobs to be performed that day rather than at the start of each job. The information is also intended to be general in nature, with work-site specific information to be provided by the employee in charge after the crew arrives at the work site.

(2) *Briefing by the employee in charge.* The employer shall ensure that the employee in charge conducts a job briefing meeting paragraphs (b), (c), and (d) of this section with the employees involved before they start each job.

(b) *Subjects to be covered.* The briefing shall cover at least the following subjects: hazards associated with the job, work procedures involved, special precautions, energy source controls, and personal protective equipment requirements.

(c) *Number of briefings.* (1) *One before each shift.* If the work or operations to be performed during the work day or shift are repetitive and similar, at least one job briefing shall be conducted before the start of the first job of each day or shift.

(2) *Additional briefings.* Additional job briefings shall be held if significant changes, which might affect the safety of the employees, occur during the course of the work.

(d) *Extent of briefing.* (1) *Short discussion.* A brief discussion is satisfactory if the work involved is routine and if the employees, by virtue of training and experience, can reasonably be expected to recognize and avoid the hazards involved in the job.

(2) *Detailed discussion.* A more extensive discussion shall be conducted:

(i) If the work is complicated or particularly hazardous, or

(ii) If the employee cannot be expected to recognize and avoid the hazards involved in the job.

Note to paragraph (d) of this section: The briefing must always touch on all the subjects listed in paragraph (b) of this section.

(e) *Working alone.* An employee working alone need not conduct a job briefing. However, the employer shall ensure that the tasks to be performed are planned as if a briefing were required.

§ 1926.953 Enclosed spaces.

(a) *General.* This paragraph covers enclosed spaces that may be entered by employees. It does not apply to vented vaults if a determination is made that the ventilation system is operating to protect employees before they enter the space. This paragraph applies to routine entry into enclosed spaces. If, after the precautions given in this section and in § 1926.965 are taken, the hazards remaining in the enclosed space endanger the life of an entrant or could interfere with escape from the space, then entry into the enclosed space shall meet the permit-space entry requirements of paragraphs (d) through (k) of § 1910.146 of this chapter.

Note to paragraph (a) of this section: Entries into enclosed spaces conducted in accordance with the permit-space entry requirements of paragraphs (d) through (k) of § 1910.146 of this chapter are considered as complying with this section.

(b) *Safe work practices.* The employer shall ensure the use of safe work practices for entry into and work in enclosed spaces and for rescue of employees from such spaces.

(c) *Training.* Employees who enter enclosed spaces or who serve as attendants shall be trained in the hazards of enclosed space entry, in enclosed space entry procedures, and in enclosed space rescue procedures.

(d) *Rescue equipment.* Employers shall provide equipment to ensure the prompt and safe rescue of employees from the enclosed space.

(e) *Evaluation of potential hazards.* Before any entrance cover to an enclosed space is removed, the employer shall determine whether it is safe to do so by checking for the presence of any atmospheric pressure or temperature differences and by evaluating whether there might be a hazardous atmosphere in the space. Any conditions making it unsafe to remove the cover shall be eliminated before the cover is removed.

Note to paragraph (e) of this section: The evaluation called for in this paragraph may take the form of a check of the conditions expected to be in the enclosed space. For example, the cover could be checked to see if it is hot and, if it is fastened in place, could be loosened gradually to release any residual pressure. A determination must also be made of whether conditions at the site could cause a hazardous atmosphere, such as an oxygen deficient or flammable atmosphere, to develop within the space.

(f) *Removal of covers.* When covers are removed from enclosed spaces, the opening shall be promptly guarded by a railing, temporary cover, or other barrier intended to prevent an accidental fall through the opening and to protect employees working in the space from objects entering the space.

(g) *Hazardous atmosphere.* Employees may not enter any enclosed space while it contains a hazardous atmosphere, unless the entry conforms to the generic permit-required confined spaces standard in § 1910.146 of this chapter.

(h) *Attendants.* While work is being performed in the enclosed space, a person with first aid training meeting § 1926.951(b)(1) shall be immediately available outside the enclosed space to provide assistance if a hazard exists because of traffic patterns in the area of the opening used for entry. That person is not precluded from performing other duties outside the enclosed space if these duties do not distract the attendant from monitoring employees within the space.

Note to paragraph (h) of this section: See § 1926.965 for additional requirements on attendants for work in manholes and vaults.

(i) *Calibration of test instruments.* Test instruments used to monitor atmospheres in enclosed spaces shall be kept in calibration and shall have a minimum accuracy of ±10 percent.

(j) *Testing for oxygen deficiency.* Before an employee enters an enclosed space, the internal atmosphere shall be tested for oxygen deficiency with a direct-reading meter or similar instrument, capable of collection and immediate analysis of data samples without the need for off-site evaluation. If continuous forced air ventilation is provided, testing is not required provided that the procedures used ensure that employees are not exposed to the hazards posed by oxygen deficiency.

(k) *Testing for flammable gases and vapors.* Before an employee enters an enclosed space, the internal atmosphere shall be tested for flammable gases and vapors with a direct-reading meter or similar instrument capable of collection and immediate analysis of data samples without the need for off-site evaluation. This test shall be performed after the oxygen testing and ventilation required by paragraph (j) of this section demonstrate that there is sufficient oxygen to ensure the accuracy of the test for flammability.

(l) *Ventilation and monitoring.* If flammable gases or vapors are detected or if an oxygen deficiency is found, forced air ventilation shall be used to maintain oxygen at a safe level and to prevent a hazardous concentration of flammable gases and vapors from accumulating. A continuous monitoring program to ensure that no increase in flammable gas or vapor concentration occurs may be followed in lieu of ventilation, if flammable gases or vapors are detected at safe levels.

Note to paragraph (l) of this section: See the definition of ''hazardous atmosphere'' for guidance in determining whether or not a given concentration of a substance is considered to be hazardous.

(m) *Specific ventilation requirements.* If continuous forced air ventilation is used, it shall begin before entry is made and shall be maintained long enough for the employer to be able to demonstrate that a safe atmosphere exists before employees are allowed to enter the work area. The forced air ventilation shall be so directed as to ventilate the immediate area where employees are present within the enclosed space and shall continue until all employees leave the enclosed space.

(n) *Air supply.* The air supply for the continuous forced air ventilation shall be from a clean source and may not increase the hazards in the enclosed space.

(o) *Open flames.* If open flames are used in enclosed spaces, a test for flammable gases and vapors shall be made immediately before the open flame device is used and at least once per hour while the device is used in the space. Testing shall be conducted more frequently if conditions present in the enclosed space indicate that once per hour is insufficient to detect hazardous accumulations of flammable gases or vapors.

Note to paragraph (o) of this section: See the definition of ''hazardous atmosphere'' for guidance in determining whether or not a given concentration of a substance is considered to be hazardous.

§ 1926.954 Personal protective equipment.

(a) *General.* Personal protective equipment shall meet the requirements of Subpart E of this Part.

(b) *Fall protection.* (1) *Personal fall arrest systems.* Personal fall arrest systems shall meet the requirements of Subpart M of this part.

Note to paragraph (b)(1) of this section: This paragraph applies to all personal fall arrest systems used in work covered by this Subpart.

(2) *Work positioning equipment.* Body belts and positioning straps for work positioning shall meet the following requirements:

(i) Hardware for body belts and positioning straps shall meet the following requirements:

(A) Hardware shall be made of drop-forged, pressed, or formed steel or equivalent material.

(B) Hardware shall have a corrosion-resistant finish.

(C) Hardware surfaces shall be smooth and free of sharp edges.

(ii) Buckles shall be capable of withstanding an 8.9-kN (2,000-lbf) tension test with a maximum permanent deformation no greater than 0.4 mm (0.0156 in.).

(iii) D rings shall be capable of withstanding a 22-kN (5,000-lbf) tensile test without cracking or breaking.

(iv) Snaphooks shall be capable of withstanding a 22-kN (5,000-lbf) tension test without failure.

Note to paragraph (b)(2)(iv) of this section: Tensile failure of a snaphook is indicated by distortion of the snaphook sufficient to release the keeper.

(v) Top grain leather or leather substitute may be used in the manufacture of body belts and positioning straps; however, leather and leather substitutes may not be used alone as a load bearing component of the assembly.

(vi) Plied fabric used in positioning straps and in load bearing parts of body belts shall be so constructed in such a way that no raw edges are exposed and that the plies do not separate.

(vii) Positioning straps shall be capable of withstanding the following tests:

(A) A dielectric test of 819.7 volts, AC, per centimeter (25000 volts per foot) for 3 minutes without visible deterioration;

(B) A leakage test of 98.4 volts, AC, per centimeter (3000 volts per foot) with a leakage current of no more than 1 mA;

Note to paragraphs (b)(2)(vii)(A) and (b)(2)(vii)(B) of this section: Positioning straps that pass direct current tests at equivalent voltages are considered as meeting this requirement.

(C) Tension tests of 20 kN (4500 lbf) for sections free of buckle holes and of 15 kN (3500 lbf) for sections with buckle holes;

(D) A buckle tear test with a load of 4.4 kN (1000 lbf); and

(E) A flammability test in accordance with Table V–1.

TABLE V–1.—FLAMMABILITY TEST

Test method	Criteria for passing the test
Vertically suspend a 500-mm (19.7-inch) length of strapping holding up a 100-kg (200.5-lb) weight.	Any flames on the positioning strap shall self extinguish.
Use a butane or propane burner with a 76-mm (3-inch) flame	The positioning strap shall continue to support the 100-kg (220.5-lb) mass.
Direct the flame to an edge of the strapping at a distance of 25 mm (1 inch).	
Remove the flame after 5 seconds.	
Wait until any flames on the positioning strap go out.	

(viii) The cushion part of the body belt shall contain no exposed rivets on the inside and shall be at least 76 mm (3 in.) in width.

(ix) Tool loops shall be so situated on the body of a body belt that 100 mm (4 in.) of the body belt in the center of the back, measuring from D ring to D ring, is free of tool loops and any other attachments.

(x) Copper, steel, or equivalent liners shall be used around the bars of D rings to prevent wear between these members and the leather or fabric enclosing them.

(xi) Snaphooks shall be of the locking type meeting the following requirements:

(A) The locking mechanism shall first be released or a destructive force shall be placed on the keeper before the keeper will open.

(B) A force in the range of 6.6 N (1.5 lbf) to 17.6 N (4 lbf) shall be required to release the locking mechanism.

(C) With the locking mechanism released and with a force applied on the keeper against the face of the nose, the keeper may not begin to open with a force of 11.0 N (2.5 lbf) or less and shall begin to open with a maximum force of 17.6 N (4 lbf).

(xii) Body belts and positioning straps shall be capable of withstanding a drop test as follows:

(A) The test mass shall be rigidly constructed of steel or equivalent material with a mass of 100 kg (220.5 lbm).

(B) For body belts, the body belt shall be fitted snugly around the test mass and shall be attached to the test structure anchorage point by means of a wire rope.

(C) For positioning straps, the strap shall be adjusted to its shortest length to permit the test and connected to the test structure anchorage point at one end and to the test mass on the other.

(D) The test mass shall be dropped an unobstructed distance of 1 m (39.4 in.) from a supporting structure that will sustain minimal deflection during the test.

(E) Body belts shall successfully arrest the fall of the test mass and shall be capable of supporting the mass after the test.

(F) Positioning straps shall successfully arrest the fall of the test mass without breaking and the arrest force may not exceed 17.8 kN (4000 lbf). Additionally, snaphooks on positioning straps may not have distorted sufficiently to allow the keeper to be released.

Note 1 to paragraph (b)(2) of this section: This paragraph applies to all work positioning equipment used in work covered by this Subpart.

Note 2 to paragraph (b)(2) of this section: Body belts and positioning straps that conform to American Society of Testing and Materials Standard Specifications for Personal Climbing Equipment, ASTM F 887–04, are deemed to be in compliance with the manufacturing and construction requirements of paragraph (b)(2) of this section provided that the body belt or positioning strap also conforms to paragraphs (b)(2)(iv) and (b)(2)(xi) of this section.

Note 3 to paragraph (b)(2) of this section: Body belts and positioning straps that conform to § 1926.502(e) on positioning device systems are deemed to be in compliance with the manufacturing and construction requirements of paragraph (b)(2) of this section provided that the positioning strap also conforms to paragraph (b)(2)(vii) of this section.

(3) *Care and use of personal fall protection equipment.* (i) Work positioning equipment shall be inspected before use each day to determine that the equipment is in safe working condition. Defective equipment may not be used.

Note to paragraph (b)(3)(i) of this section: Appendix G to this subpart contains guidelines for the inspection of work positioning equipment.

(ii) Personal fall arrest systems shall be used in accordance with § 1926.502(d). However, the attachment point need not be located as required by § 1926.502(d)(17) if the body harness is being used as work positioning equipment and if the maximum free fall distance is limited to 0.6 m (2 ft).

(iii) A personal fall arrest system or work positioning equipment shall be used by employees working at elevated locations more than 1.2 m (4 ft) above the ground on poles, towers, or similar structures if other fall protection has not been provided. Fall protection equipment is not required to be used by a qualified employee climbing or changing location on poles, towers, or similar structures, unless conditions, such as, but not limited to, ice, high winds, the design of the structure (for example, no provision for holding on with hands), or the presence of contaminants on the structure, could cause the employee to lose his or her grip or footing.

Note 1 to paragraph (b)(3)(iii) of this section: This paragraph applies to structures that support overhead electric power transmission and distribution lines and equipment. It does not apply to portions of buildings, such as loading docks, to electric equipment, such as transformers and capacitors, nor to aerial lifts. The duty to provide fall protection associated with walking and working surfaces is contained in Subpart M of this Part; the duty to provide fall protection associated with aerial lifts is contained in § 1926.453.

Note 2 to paragraph (b)(3)(iii) of this section: Employees who have not completed training in climbing and the use of fall protection are not considered ''qualified employees'' for the purposes of this provision. Unqualified employees (including trainees) are required to use fall protection any time they are more than 1.2 m (4 ft) above the ground.

(iv) Work positioning systems shall be rigged so that an employee can free fall no more than 0.6 m (2 ft) unless no anchorage is available.

(v) Anchorages for work positioning equipment shall be capable of supporting at least twice the potential impact load of an employee's fall or 13.3 kN (3,000 lbf), whichever is greater.

(vi) Unless the snaphook is a locking type and designed specifically for the following connections, snaphooks on work positioning equipment may not be engaged:

(A) Directly to webbing, rope, or wire rope;

(B) To each other;

(C) To a D ring to which another snaphook or other connector is attached;

(D) To a horizontal lifeline; or

(E) To any object which is incompatibly shaped or dimensioned in relation to the snaphook such that unintentional disengagement could occur by the connected object being able to depress the snaphook keeper and release itself.

§ 1926.955 Ladders and platforms.

(a) *General.* Requirements for portable ladders contained in Subpart X of this Part apply, except as specifically noted in paragraph (b) of this section. Fixed ladders shall meet Part 1910, Subpart D of this chapter.

(b) *Special ladders and platforms.* Portable ladders and platforms used on structures or conductors in conjunction with overhead line work need not meet paragraphs (b)(5)(i) and (b)(12) of § 1926.1053. However, these ladders and platforms shall meet the following requirements:

(1) *Design load.* In the configurations in which they are used, ladders and platforms shall be capable of supporting without failure at least 2.5 times the maximum intended load.

(2) *Maximum load.* Ladders and platforms may not be loaded in excess of the working loads for which they are designed.

(3) *Secured in place.* Ladders and platforms shall be secured to prevent their becoming accidentally dislodged.

(4) *Intended use.* Ladders and platforms may be used only in applications for which they are designed.

(c) *Conductive ladders.* Portable metal ladders and other portable conductive ladders may not be used near exposed energized lines or equipment. However, in specialized high-voltage work, conductive ladders shall be used where the employer can demonstrate that nonconductive ladders would present a greater hazard than conductive ladders.

§ 1926.956 Hand and portable power tools.

(a) *General.* Paragraph (b) of this section applies to electric equipment connected by cord and plug. Paragraph (c) of this section applies to portable and vehicle-mounted generators used to supply cord- and plug-connected equipment. Paragraph (d) of this section applies to hydraulic and pneumatic tools.

(b) *Cord- and plug-connected equipment.* (1) *Supplied by premises wiring.* Cord- and plug-connected equipment supplied by premises wiring is covered by Subpart K of this Part.

(2) *Supplied by other than premises wiring.* Any cord- and plug-connected equipment supplied by other than premises wiring shall comply with one of the following in lieu of § 1926.302(a)(1):

(i) It shall be equipped with a cord containing an equipment grounding conductor connected to the tool frame and to a means for grounding the other end (however, this option may not be used where the introduction of the ground into the work environment increases the hazard to an employee); or

(ii) It shall be of the double-insulated type conforming to Subpart K of this Part; or

(iii) It shall be connected to the power supply through an isolating transformer with an ungrounded secondary.

(c) *Portable and vehicle-mounted generators.* Portable and vehicle-mounted generators used to supply cord- and plug-connected equipment shall meet the following requirements:

(1) *Equipment to be supplied.* The generator may only supply equipment located on the generator or the vehicle and cord- and plug-connected equipment through receptacles mounted on the generator or the vehicle.

(2) *Equipment grounding.* The noncurrent-carrying metal parts of equipment and the equipment grounding conductor terminals of the receptacles shall be bonded to the generator frame.

(3) *Bonding the frame.* In the case of vehicle-mounted generators, the frame of the generator shall be bonded to the vehicle frame.

(4) *Bonding the neutral conductor.* Any neutral conductor shall be bonded to the generator frame.

(d) *Hydraulic and pneumatic tools.* (1) *Hydraulic fluid in insulating tools.* Paragraph (d)(1) of § 1926.302 does not apply to hydraulic fluid used in insulating sections of hydraulic tools.

(2) *Operating pressure.* Safe operating pressures for hydraulic and pneumatic tools, hoses, valves, pipes, filters, and fittings may not be exceeded.

Note to paragraph (d)(2) of this section: If any hazardous defects are present, no operating pressure would be safe, and the hydraulic or pneumatic equipment involved may not be used. In the absence of defects, the maximum rated operating pressure is the maximum safe pressure.

(3) *Work near energized parts.* A hydraulic or pneumatic tool used where it may contact exposed energized parts shall be designed and maintained for such use.

(4) *Protection against vacuum formation.* The hydraulic system supplying a hydraulic tool used where it may contact exposed live parts shall provide protection against loss of insulating value for the voltage involved due to the formation of a partial vacuum in the hydraulic line.

Note to paragraph (d)(4) of this section: Hydraulic lines without check valves having a separation of more than 10.7 m (35 ft) between the oil reservoir and the upper end of the hydraulic system promote the formation of a partial vacuum.

(5) *Protection against the accumulation of moisture.* A pneumatic tool used on energized electric lines or equipment or used where it may contact exposed live parts shall provide protection against the accumulation of moisture in the air supply.

(6) *Breaking connections.* Pressure shall be released before connections are broken, unless quick acting, self-closing connectors are used.

(7) *Leaks.* Employees may not use any part of their bodies to locate or attempt to stop a hydraulic leak.

(8) *Hoses.* Hoses may not be kinked.

§ 1926.957 Live-line tools.

(a) *Design of tools.* Live-line tool rods, tubes, and poles shall be designed and constructed to withstand the following minimum tests:

(1) *Fiberglass-reinforced plastic.* If the tool is made of fiberglass-reinforced plastic (FRP), it shall withstand 328100 volts per meter (100,000 volts per foot) of length for 5 minutes, or

Note to paragraph (a)(1) of this section: Live-line tools using rod and tube that meet ASTM F 711–02, Standard Specification for Fiberglass-Reinforced Plastic (FRP) Rod and Tube Used in Live Line Tools, conform to paragraph (a)(1) of this section.

(2) *Wood.* If the tool is made of wood, it shall withstand 246100 volts per meter (75,000 volts per foot) of length for 3 minutes, or

(3) *Equivalent tests.* The tool shall withstand other tests that the employer can demonstrate are equivalent.

(b) *Condition of tools.* (1) *Daily inspection.* Each live-line tool shall be wiped clean and visually inspected for defects before use each day.

(2) *Defects.* If any defect or contamination that could adversely affect the insulating qualities or mechanical integrity of the live-line tool is present after wiping, the tool shall be removed from service and examined and tested according to paragraph (b)(3) of this section before being returned to service.

(3) *Biennial* inspection and testing. Live-line tools used for primary employee protection shall be removed from service every 2 years and whenever required under paragraph (b)(2) of this section for examination, cleaning, repair, and testing as follows:

(i) Each tool shall be thoroughly examined for defects.

(ii) If a defect or contamination that could adversely affect the insulating qualities or mechanical integrity of the live-line tool is found, the tool shall be repaired and refinished or shall be permanently removed from service. If no such defect or contamination is found, the tool shall be cleaned and waxed.

(iii) The tool shall be tested in accordance with paragraphs (b)(3)(iv) and (b)(3)(v) of this section under the following conditions:

(A) After the tool has been repaired or refinished; and

(B) After the examination if repair or refinishing is not performed, unless the tool is made of FRP rod or foam-filled FRP tube and the employer can demonstrate that the tool has no defects that could cause it to fail in use.

(iv) The test method used shall be designed to verify the tool's integrity along its entire working length and, if the tool is made of fiberglass-reinforced plastic, its integrity under wet conditions.

(v) The voltage applied during the tests shall be as follows:

(A) 246,100 volts per meter (75,000 volts per foot) of length for 1 minute if the tool is made of fiberglass, or

(B) 164,000 volts per meter (50,000 volts per foot) of length for 1 minute if the tool is made of wood, or

(C) Other tests that the employer can demonstrate are equivalent.

Note to paragraph (b) of this section: Guidelines for the examination, cleaning, repairing, and in-service testing of live-line tools are contained in the Institute of Electrical and Electronics Engineers' IEEE Guide for Maintenance Methods on Energized Power Lines, IEEE Std. 516–2003.

§ 1926.958 Materials handling and storage.

(a) *General.* Materials handling and storage shall conform to the requirements of Subpart N of this Part.

(b) *Materials storage near energized lines or equipment.* (1) Unrestricted areas. In areas not restricted to qualified persons only, materials or equipment may not be stored closer to energized lines or exposed energized parts of equipment than the following distances plus an amount providing for the maximum sag and side swing of all conductors and providing for the height and movement of material handling equipment:

(i) For lines and equipment energized at 50 kV or less, the distance is 3.05 m (10 ft).

(ii) For lines and equipment energized at more than 50 kV, the distance is 3.05 m (10 ft) plus 0.10 m (4 in.) for every 10 kV over 50 kV.

(2) *Restricted areas.* In areas restricted to qualified employees, material may not be stored within the working space about energized lines or equipment.

Note to paragraph (b)(2) of this section: Requirements for the size of the working space are contained in § 1926.966(b).

§ 1926.959 Mechanical equipment.

(a) *General requirements.* (1) *Other applicable requirements.* Mechanical equipment shall be operated in accordance with Subparts N and O of this Part, except that §§ 1926.550(a)(15) and 1926.600(a)(6) do not apply to operations performed by qualified employees.

(2) *Inspection before use.* The critical safety components of mechanical elevating and rotating equipment shall receive a thorough visual inspection before use on each shift.

Note to paragraph (a)(2) of this section: Critical safety components of mechanical elevating and rotating equipment are components whose failure would result in a free fall or free rotation of the boom.

(3) *Operator.* The operator of an electric line truck may not leave his or her position at the controls while a load is suspended, unless the employer can demonstrate that no employee (including the operator) might be endangered.

(b) *Outriggers.* (1) *Extend outriggers.* Vehicular equipment, if provided with outriggers, shall be operated with the outriggers extended and firmly set as necessary for the stability of the specific configuration of the equipment. Outriggers may not be extended or retracted outside of clear view of the operator unless all employees are outside the range of possible equipment motion.

(2) *Operation without outriggers.* If the work area or the terrain precludes the use of outriggers, the equipment may be operated only within its maximum load ratings for the particular configuration of the equipment without outriggers.

(c) *Applied loads.* Mechanical equipment used to lift or move lines or other material shall be used within its maximum load rating and other design limitations for the conditions under which the work is being performed.

(d) *Operations near energized lines or equipment.* (1) *Minimum approach distance.* Mechanical equipment shall be operated so that the minimum approach distances of Table V–2 through Table V–6 are maintained from exposed energized lines and equipment. However, the insulated portion of an aerial lift operated by a qualified employee in the lift is exempt from this requirement if the applicable minimum approach distance is maintained between the uninsulated portions of the aerial lift and exposed objects at a different potential.

(2) *Observer.* A designated employee other than the equipment operator shall observe the approach distance to exposed lines and equipment and give timely warnings before the minimum approach distance required by paragraph (d)(1) of this section is reached, unless the employer can demonstrate that the operator can accurately determine that the minimum approach distance is being maintained.

(3) *Extra precautions.* If, during operation of the mechanical equipment, the equipment could become energized, the operation shall also comply with at least one of paragraphs (d)(3)(i) through (d)(3)(iii) of this section.

(i) The energized lines exposed to contact shall be covered with insulating protective material that will withstand the type of contact that might be made during the operation.

(ii) The equipment shall be insulated for the voltage involved. The equipment shall be positioned so that its uninsulated portions cannot approach the lines or equipment any closer than the minimum approach distances specified in Table V–2 through Table V–6 in § 1926.960.

(iii) Each employee shall be protected from hazards that might arise from equipment contact with the energized lines. The measures used shall ensure that employees will not be exposed to hazardous differences in potential. Unless the employer can demonstrate that the methods in use protect each employee from the hazards that might arise if the equipment contacts the energized line, the measures used shall include all of the following techniques:

(A) Using the best available ground to minimize the time the lines remain energized,

(B) Bonding equipment together to minimize potential differences,

(C) Providing ground mats to extend areas of equipotential, and

(D) Employing insulating protective equipment or barricades to guard against any remaining hazardous potential differences.

Note to paragraph (d)(3)(iii) of this section: Appendix C to this Subpart contains information on hazardous step and touch potentials and on methods of protecting employees from hazards resulting from such potentials.

§ 1926.960 Working on or near exposed energized parts.

(a) *Application.* This section applies to work on exposed live parts, or near enough to them, to expose the employee to any hazard they present.

(b) *General.* (1) *Qualified employees only.* (i) Only qualified employees may work on or with exposed energized lines or parts of equipment.

(ii) Only qualified employees may work in areas containing unguarded, uninsulated energized lines or parts of equipment operating at 50 volts or more.

(2) *Treat as energized.* Electric lines and equipment shall be considered and treated as energized unless they have been deenergized in accordance with § 1926.961.

(3) *At least two employees.* (i) Except as provided in paragraph (b)(3)(ii) of this section, at least two employees shall be present while the following types of work are being performed:

(A) Installation, removal, or repair of lines that are energized at more than 600 volts,

(B) Installation, removal, or repair of deenergized lines if an employee is exposed to contact with other parts energized at more than 600 volts,

(C) Installation, removal, or repair of equipment, such as transformers, capacitors, and regulators, if an employee is exposed to contact with parts energized at more than 600 volts,

(D) Work involving the use of mechanical equipment, other than insulated aerial lifts, near parts energized at more than 600 volts, and

(E) Other work that exposes an employee to electrical hazards greater than or equal to those posed by operations that are specifically listed in paragraphs (b)(3)(i)(A) through (b)(3)(i)(D) of this section.

(ii) Paragraph (b)(3) of this section does not apply to the following operations:

(A) Routine switching of circuits, if the employer can demonstrate that conditions at the site allow this work to be performed safely,

(B) Work performed with live-line tools if the employee is positioned so that he or she is neither within reach of nor otherwise exposed to contact with energized parts, and

(C) Emergency repairs to the extent necessary to safeguard the general public.

(c) *Live work.* (1) *Minimum approach distances.* The employer shall ensure that no employee approaches or takes any conductive object closer to exposed energized parts than set forth in Table V–2 through Table V–6, unless:

(i) The employee is insulated from the energized part (insulating gloves or insulating gloves and sleeves worn in accordance with paragraph (c)(2) of this section are considered insulation of the employee from the energized part upon which the employee is working provided that the employee has control of the part in a manner sufficient to prevent exposure to uninsulated portions of the body), or

(ii) The energized part is insulated from the employee and from any other conductive object at a different potential, or

(iii) The employee is insulated from any other exposed conductive object, as during live-line bare-hand work.

Note to paragraph (c)(1) of this section: Paragraph (f)(1) of § 1926.966 contains requirements for the guarding and isolation of live parts. Parts of electric circuits that meet these two provisions are not considered as ''exposed'' unless a guard is removed or an employee enters the space intended to provide isolation from the live parts.

(2) *Type of insulation.* (i) If the employee is to be insulated from energized parts by the use of insulating gloves (under paragraph (c)(1)(i) of this section), insulating sleeves shall also be used. However, insulating sleeves need not be used under the following conditions:

(A) If exposed energized parts on which work is not being performed are insulated from the employee and

(B) If such insulation is placed from a position not exposing the employee's upper arm to contact with other energized parts.

(ii) If the employee is to be insulated from energized parts by the use of insulating gloves or insulating gloves with sleeves,

(A) The insulating gloves and sleeves shall be put on in a position where the employee cannot reach into the minimum approach distance given in paragraph (c)(1) of this section; and

(B) The insulating gloves and sleeves may not be removed until the employee is in a position where he or she cannot reach into the minimum approach distance given in paragraph (c)(1) of this section.

(d) *Working position.* (1) *Working from below.* The employer shall ensure that each employee, to the extent that other safety-related conditions at the worksite permit, works in a position from which a slip or shock will not bring the employee's body into contact with exposed, uninsulated parts energized at a potential different from the employee.

(2) *Working without electrical protective equipment.* If work is performed near exposed parts energized at more than 600 volts but not more than 72.5 kilovolts and if the employee is not insulated from the energized parts or performing live-line bare-hand work, the employee shall work from a position where the employee cannot reach into the minimum approach distance given in paragraph (c)(1) of this section.

(e) *Making connections.* The employer shall ensure that connections are made as follows:

(1) *Connecting.* In connecting deenergized equipment or lines to an energized circuit by means of a conducting wire or device, an employee shall first attach the wire to the deenergized part;

(2) *Disconnecting.* When disconnecting equipment or lines from an energized circuit by means of a conducting wire or device, an employee shall remove the source end first; and

(3) *Loose conductors.* When lines or equipment are connected to or disconnected from energized circuits, loose conductors shall be kept away from exposed energized parts.

(f) *Conductive articles.* When work is performed within reaching distance of exposed energized parts of equipment, the employer shall ensure that each employee removes or renders nonconductive all exposed conductive articles, such as key or watch chains, rings, or wrist watches or bands, unless such articles do not increase the hazards associated with contact with the energized parts.

(g) *Clothing.* (1) *Hazard assessment.* The employer shall assess the workplace to determine if each employee is exposed to hazards from flames or from electric arcs.

(2) *Estimate of available heat energy.* For each employee exposed to hazards from electric arcs, the employer shall make a reasonable estimate of the maximum available heat energy to which the employee would be exposed.

Note 1 to paragraph (g)(2) of this section: Appendix F to this Subpart provides guidance on the estimation of available heat energy.

Note 2 to paragraph (g)(2) of this section: This paragraph does not require the employer to estimate the heat energy exposure for every job task performed by each employee. The employer may make broad estimates that cover multiple system areas provided the employer uses reasonable assumptions about the energy exposure distribution throughout the system and provided the estimates represent the maximum exposure for those areas. For example, the employer could

estimate the heat energy just outside a substation feeding a radial distribution system and use that estimate for all jobs performed on that radial system.

(3) *Prohibited clothing*. The employer shall ensure that each employee who is exposed to hazards from electric arcs does not wear clothing that could melt onto his or her skin or that could ignite and continue to burn when exposed to the heat energy estimated under paragraph (g)(2) of this section.

Note to paragraph (g)(3) of this section: Clothing made from the following types of fabrics, either alone or in blends, is prohibited by this paragraph, unless the employer can demonstrate that the fabric has been treated to withstand the conditions that may be encountered or that the clothing is worn in such a manner as to eliminate the hazard involved: acetate, nylon, polyester, rayon.

(4) *Flame-resistant clothing*. The employer shall ensure that an employee wears clothing that is flame resistant under any of the following conditions:

(i) The employee is subject to contact with energized circuit parts operating at more than 600 volts,

(ii) The employee's clothing could be ignited by flammable material in the work area that could be ignited by an electric arc, or

(iii) The employee's clothing could be ignited by molten metal or electric arcs from faulted conductors in the work area.

Note to paragraph (g)(4)(iii) of this section: This paragraph does not apply to conductors that are capable of carrying, without failure, the maximum available fault current for the time the circuit protective devices take to interrupt the fault.

(5) *Clothing rating*. The employer shall ensure that each employee who is exposed to hazards from electric arcs wears clothing with an arc rating greater than or equal to the heat energy estimated under paragraph (g)(2) of this section.

Note to paragraph (g) of this section: See Appendix F to this subpart for further information on the selection of appropriate clothing.

(h) *Fuse handling*. When fuses must be installed or removed with one or both terminals energized at more than 300 volts or with exposed parts energized at more than 50 volts, the employer shall ensure that tools or gloves rated for the voltage are used. When expulsion-type fuses are installed with one or both terminals energized at more than 300 volts, the employer shall ensure that each employee wears eye protection meeting the requirements of Subpart E of this Part, uses a tool rated for the voltage, and is clear of the exhaust path of the fuse barrel.

(i) *Covered (noninsulated) conductors*. The requirements of this section which pertain to the hazards of exposed live parts also apply when work is performed in the proximity of covered (noninsulated) wires.

(j) *Noncurrent-carrying metal parts*. Noncurrent-carrying metal parts of equipment or devices, such as transformer cases and circuit breaker housings, shall be treated as energized at the highest voltage to which they are exposed, unless the employer inspects the installation and determines that these parts are grounded before work is performed.

(k) *Opening circuits under load*. Devices used to open circuits under load conditions shall be designed to interrupt the current involved.

TABLE V–2.—A–C LIVE-LINE WORK MINIMUM APPROACH DISTANCE

Nominal voltage in kilovolts phase to phase	Distance			
	Phase-to-ground exposure		Phase-to-phase exposure	
	m	ft-in	m	ft-in
0.051 to 0.300 [1]	Avoid contact		Avoid contact	
0.301 to 0.750 [1]	0.31	1–0	0.31	1–0
0.751 to 15.0	0.65	2–2	0.67	2–3
15.1 to 36.0	0.77	2–7	0.86	2–10
36.1 to 46.0	0.84	2–9	0.96	3–2
46.1 to 72.5	1.00	3–3	1.20	3–11
72.6 to 121	0.95	3–2	1.29	4–3
138 to 145	1.09	3–7	1.50	4–11
161 to 169	1.22	4–0	1.71	5–8
230 to 242	1.59	5–3	2.27	7–6
345 to 362	2.59	8–6	3.80	12–6
500 to 550	3.42	11–3	5.50	18–1
765 to 800	4.53	14–11	7.91	26–0

[1] For single-phase systems, use the voltage to ground.

Note 1: These distances take into consideration the highest switching surge an employee will be exposed to on any system with air as the insulating medium and the maximum voltages shown.

Note 2: The clear live-line tool distance shall equal or exceed the values for the indicated voltage ranges.

Note 3: See Appendix B to this subpart for information on how the minimum approach distances listed in the tables were derived.

TABLE V–3.—A–C LIVE-LINE WORK MINIMUM APPROACH DISTANCE WITH OVERVOLTAGE FACTOR PHASE-TO-GROUND EXPOSURE

Maximum anticipated per-unit transient overvoltage	Distance in meters						
	Maximum phase-to-phase voltage in kilovolts						
	121	145	169	242	362	552	800
1.5	.....	.....	.....	.....	.....	1.82	2.95
1.6	.....	.....	.....	.....	.....	1.97	3.23
1.7	.....	.....	.....	.....	.....	2.13	3.54
1.8	.....	.....	.....	.....	.....	2.29	3.86
1.9	.....	.....	.....	.....	.....	2.47	4.19

TABLE V–3.—A–C LIVE-LINE WORK MINIMUM APPROACH DISTANCE WITH OVERVOLTAGE FACTOR PHASE-TO-GROUND EXPOSURE

Maximum anticipated per-unit transient overvoltage	Distance in meters						
	Maximum phase-to-phase voltage in kilovolts						
	121	145	169	242	362	552	800
2.0	0.74	0.83	0.92	1.16	1.59	2.65	4.53
2.1	0.76	0.85	0.95	1.21	1.65	2.83	.....
2.2	0.78	0.88	0.98	1.25	1.74	3.01	.....
2.3	0.80	0.91	1.01	1.29	1.84	3.20	.....
2.4	0.82	0.93	1.04	1.33	1.94	3.42	.....
2.5	0.84	0.96	1.07	1.38	2.04	.....	.....
2.6	0.86	0.98	1.10	1.42	2.14	.....	.....
2.7	0.88	1.01	1.13	1.45	2.25	.....	.....
2.8	0.91	1.03	1.16	1.50	2.36	.....	.....
2.9	0.93	1.06	1.19	1.54	2.47	.....	.....
3.0	0.95	1.09	1.22	1.59	2.59	.....	.....

Note 1: The distances specified in this table may be applied only where the maximum anticipated per-unit transient overvoltage has been determined by engineering analysis and has been supplied by the employer. Table V–2 applies otherwise.
Note 2: The distances specified in this table are the air, bare-hand, and live-line tool distances.
Note 3: See Appendix B to this subpart for information on how the minimum approach distances listed in the tables were derived and on how to calculate revised minimum approach distances based on the control of transient overvoltages.

TABLE V–3.—A–C LIVE-LINE WORK MINIMUM APPROACH DISTANCE WITH OVERVOLTAGE FACTOR PHASE-TO-GROUND EXPOSURE (CONTINUED)

Maximum anticipated per-unit transient overvoltage	Distance in feet-inches						
	Maximum phase-to-phase voltage in kilovolts						
	121	145	169	242	362	552	800
1.5	.....	.....	.....	.....	.....	6–0	9–8
1.6	.....	.....	.....	.....	.....	6–6	10–8
1.7	.....	.....	.....	.....	.....	7–0	11–8
1.8	.....	.....	.....	.....	.....	7–7	12–8
1.9	.....	.....	.....	.....	.....	8–1	13–9
2.0	2–5	2–9	3–0	3–10	5–3	8–9	114–11
2.1	2–6	2–10	3–2	4–0	5–5	9–4	.....
2.2	2–7	2–11	3–3	4–1	5–9	9–11	.....
2.3	2–8	3–0	3–4	4–3	6–1	10–6	.....
2.4	2–9	3–1	3–5	4–5	6–4	11–3	.....
2.5	2–9	3–2	3–6	4–6	6–8	.....	.....
2.6	2–10	3–3	3–8	4–8	7–1	.....	.....
2.7	2–11	3–4	3–9	4–10	7–5	.....	.....
2.8	3–0	3–5	3–10	4–11	7–9	.....	.....
2.9	3–1	3–6	3–11	5–1	8–2	.....	.....
3.0	3–2	3–7	4–0	5–3	8–6	.....	.....

Note 1: The distances specified in this table may be applied only where the maximum anticipated per-unit transient overvoltage has been determined by engineering analysis and has been supplied by the employer. Table V–2 applies otherwise.
Note 2: The distances specified in this table are the air, bare-hand, and live-line tool distances.
Note 3: See Appendix B to this Subpart for information on how the minimum approach distances listed in the tables were derived and on how to calculate revised minimum approach distances based on the control of transient overvoltages.

TABLE V–4.—A–C LIVE-LINE WORK MINIMUM APPROACH DISTANCE WITH OVERVOLTAGE FACTOR PHASE-TO-PHASE EXPOSURE

Maximum anticipated per-unit transient overvoltage	Distance in meters						
	Maximum phase-to-phase voltage in kilovolts						
	121	145	169	242	362	552	800
1.5	.....	.....	.....	.....	.....	2.24	3.67
1.6	.....	.....	.....	.....	.....	2.65	4.42
1.7	.....	.....	.....	.....	.....	3.08	5.23
1.8	.....	.....	.....	.....	.....	3.53	6.07
1.9	.....	.....	.....	.....	.....	4.01	6.97
2.0	1.08	1.24	1.41	1.85	2.61	4.52	7.91
2.1	1.10	1.27	1.44	1.89	2.68	4.75	.....

TABLE V–4.—A–C LIVE-LINE WORK MINIMUM APPROACH DISTANCE WITH OVERVOLTAGE FACTOR PHASE-TO-PHASE EXPOSURE

Maximum anticipated per-unit transient overvoltage	Distance in meters						
	Maximum phase-to-phase voltage in kilovolts						
	121	145	169	242	362	552	800
2.2	1.12	1.29	1.47	1.93	2.78	4.98	.....
2.3	1.14	1.32	1.50	1.97	2.90	5.21	.....
2.4	1.16	1.35	1.53	2.01	3.02	5.50	.....
2.5	1.18	1.37	1.56	2.06	3.14	.....	.....
2.6	1.21	1.40	1.59	2.10	3.27	.....	.....
2.7	1.23	1.43	1.62	2.13	3.40	.....	.....
2.8	1.25	1.45	1.65	2.19	3.53	.....	.....
2.9	1.27	1.48	1.68	2.22	3.67	.....	.....
3.0	1.29	1.50	1.71	2.27	3.80	.....	.....

Note 1: The distances specified in this table may be applied only where the maximum anticipated per-unit transient overvoltage has been determined by engineering analysis and has been supplied by the employer. Table V–2 applies otherwise.

Note 2: The distances specified in this table are the air, bare-hand, and live-line tool distances.

Note 3: See Appendix B to this Subpart for information on how the minimum approach distances listed in the tables were derived and on how to calculate revised minimum approach distances based on the control of transient overvoltages.

TABLE V–4.—A–C LIVE-LINE WORK MINIMUM APPROACH DISTANCE WITH OVERVOLTAGE FACTOR PHASE-TO-PHASE EXPOSURE (CONTINUED)

Maximum anticipated per-unit transient overvoltage	Distance in Meters						
	Maximum phase-to-phase voltage in kilovolts						
	121	145	169	242	362	552	800
1.5	.....	.....	.....	.....	.....	7–4	12–1
1.6	.....	.....	.....	.....	.....	8–9	14–6
1.7	.....	.....	.....	.....	.....	10–2	17–2
1.8	.....	.....	.....	.....	.....	11–7	19–11
1.9	.....	.....	.....	.....	.....	13–2	22–11
2.0	3–7	4–1	4–8	6–1	8–7	14–10	26–0
2.1	3–7	4–1	4–9	6–3	8–10	15–7	.....
2.2	3–8	4–3	4–10	6–4	9–2	16–4	.....
2.3	3–9	4–4	4–11	6–6	9–6	17–2	.....
2.4	3–10	4–5	5–0	6–7	9–11	18–1	.....
2.5	3–11	4–6	5–2	6–9	10–4	.....	.....
2.6	4–0	4–7	5–3	6–11	10–9	.....	.....
2.7	4–1	4–8	5–4	7–0	11–2	.....	.....
2.8	4–1	4–9	5–5	7–2	11–7	.....	.....
2.9	4–2	4–10	5–6	7–4	12–1	.....	.....
3.0	4–3	4–11	5–8	7–6	12–6	.....	.....

Note 1: The distances specified in this table may be applied only where the maximum anticipated per-unit transient overvoltage has been determined by engineering analysis and has been supplied by the employer. Table V–2 applies otherwise.

Note 2: The distances specified in this table are the air, bare-hand, and live-line tool distances.

Note 3: See Appendix B to this Subpart for information on how the minimum approach distances listed in the tables were derived and on how to calculate revised minimum approach distances based on the control of transient overvoltages.

TABLE V–5.—D–C LIVE-LINE MINIMUM APPROACH DISTANCE WITH OVERVOLTAGE FACTOR

Maximum anticipated per-unit transient overvoltage	Distance in meters (feet-inches) Maximum line-to-ground voltage in kilovolts									
	250		400		500		600		750	
1.5 or lower	1.12	(3–8)	1.60	(5–3)	2.06	(6–9)	2.62	(8–7)	3.61	(11–10)
1.6	1.17	(3–10)	1.69	(5–7)	2.24	(7–4)	2.86	(9–5)	3.98	(13–1)
1.7	1.23	(4–1)	1.82	(6–0)	2.42	(7–11)	3.12	(10–3)	4.37	(14–4)
1.8	1.28	(4–3)	1.95	(6–5)	2.62	(8–7)	3.39	(11–2)	4.79	(15–9)

Note 1: The distance specified in this table may be applied only where the maximum anticipated per-unit transient overvoltage has been determined by engineering analysis and has been supplied by the employer. However, if the transient overvoltage factor is not known, a factor of 1.8 shall be assumed.

Note 2: The distances specified in this table are the air, bare-hand, and live-line tool distances.

TABLE V–6.—ALTITUDE CORRECTION FACTOR

Altitude		Correction factor
m	ft	
900	3000	1.00
1200	4000	1.02
1500	5000	1.05
1800	6000	1.08
2100	7000	1.11
2400	8000	1.14
2700	9000	1.17
3000	10000	1.20
3600	12000	1.25
4200	14000	1.30
4800	16000	1.35
5400	18000	1.39
6000	20000	1.44

Note: If the work is performed at elevations greater than 900 m (3000 ft) above mean sea level, the minimum approach distance shall be determined by multiplying the distances in Table V–2 through Table V–5 by the correction factor corresponding to the altitude at which work is performed.

§ 1926.961 Deenergizing lines and equipment for employee protection.

(a) *Application.* This section applies to the deenergizing of transmission and distribution lines and equipment for the purpose of protecting employees. Conductors and parts of electric equipment that have been deenergized under procedures other than those required by this section shall be treated as energized.

(b) *General.* (1) *System operator.* If a system operator is in charge of the lines or equipment and their means of disconnection, all of the requirements of paragraph (c) of this section shall be observed, in the order given.

(2) *No system operator.* If no system operator is in charge of the lines or equipment and their means of disconnection, one employee in the crew shall be designated as being in charge of the clearance. All of the requirements of paragraph (c) of this section apply, in the order given, except as provided in paragraph (b)(3)(i) of this section. The employee in charge of the clearance shall take the place of the system operator, as necessary.

(3) *Number of crews working.* (i) If only one crew will be working on the lines or equipment and if the means of disconnection is accessible and visible to and under the sole control of the employee in charge of the clearance, paragraphs (c)(1), (c)(3), (c)(4), and (c)(11) of this section do not apply. Additionally, tags required by the remaining provisions of paragraph (c) of this section need not be used.

(ii) If two or more independent crews will be working on the same lines or equipment, each crew shall independently comply with the requirements in paragraph (c) of this section. The independent crews shall coordinate deenergizing and reenergizing the lines or equipment if there is no system operator in charge of the lines or equipment.

(4) *Disconnecting means accessible to general public.* Any disconnecting means that are accessible to persons outside the employer's control (for example, the general public) shall be rendered inoperable while they are open for the purpose of protecting employees.

(c) *Deenergizing lines and equipment.* (1) *Request to deenergize.* A designated employee shall make a request of the system operator to have the particular section of line or equipment deenergized. The designated employee becomes the employee in charge (as this term is used in paragraph (c) of this section) and is responsible for the clearance.

(2) *Open disconnecting means.* All switches, disconnectors, jumpers, taps, and other means through which known sources of electric energy may be supplied to the particular lines and equipment to be deenergized shall be opened. Such means shall be rendered inoperable, unless its design does not so permit, and tagged to indicate that employees are at work.

(3) *Automatically and remotely controlled switches.* Automatically and remotely controlled switches that could cause the opened disconnecting means to close shall also be tagged at the point of control. The automatic or remote control feature shall be rendered inoperable, unless its design does not so permit.

(4) *Tags.* Tags shall prohibit operation of the disconnecting means and shall indicate that employees are at work.

(5) *Test for energized condition.* After the applicable requirements in paragraphs (c)(1) through (c)(4) of this section have been followed and the employee in charge of the work has been given a clearance by the system operator, the lines and equipment to be worked shall be tested to ensure that they are deenergized.

(6) *Install grounds.* Protective grounds shall be installed as required by § 1926.962.

(7) *Consider lines and equipment deenergized.* After the applicable requirements of paragraphs (c)(1) through (c)(6) of this section have been followed, the lines and equipment involved may be worked as deenergized.

(8) *Transferring clearances.* To transfer the clearance, the employee in charge (or, if the employee in charge is forced to leave the worksite due to illness or other emergency, the employee's supervisor) shall inform the system operator; employees in the crew shall be informed of the transfer; and the new employee in charge shall be responsible for the clearance.

(9) *Releasing clearances.* To release a clearance, the employee in charge shall:

(i) Notify each employee under his or her direction that the clearance is to be released;

(ii) Determine that all employees in the crew are clear of the lines and equipment;

(iii) Determine that all protective grounds installed by the crew have been removed; and

(iv) Report this information to the system operator and release the clearance.

(10) *Person releasing clearance.* The person releasing a clearance shall be the same person who requested the clearance, unless responsibility has been transferred under paragraph (c)(8) of this section.

(11) *Removal of tags.* Tags may not be removed unless the associated clearance has been released under paragraph (c)(9) of this section.

(12) *Reenergizing lines and equipment.* Only after all protective grounds have been removed, after all crews working on the lines or equipment have released their clearances, after all employees are clear of the lines and equipment, and after all protective tags have been removed from a given point of disconnection, may action be initiated to reenergize the lines or equipment at that point of disconnection.

§ 1926.962 Grounding for the protection of employees.

(a) *Application.* This section applies to the grounding of transmission and distribution lines and equipment for the purpose of protecting employees. Paragraph (d) of this section also applies to the protective grounding of other equipment as required elsewhere in this Subpart.

(b) *General.* For any employee to work lines or equipment as deenergized, the lines or equipment shall be deenergized under the provisions of § 1926.961 and shall be grounded as specified in paragraphs (c) through (h) of this section. However, if the employer can demonstrate that installation of a ground is impracticable or that the conditions resulting from the installation of a ground would present greater hazards than working without grounds, the lines and equipment may be treated as deenergized provided all of the following conditions are met:

(1) *Deenergized.* The lines and equipment have been deenergized under the provisions of § 1926.961.

(2) *No possibility of contact.* There is no possibility of contact with another energized source.

(3) *No induced voltage.* The hazard of induced voltage is not present.

(c) *Equipotential zone.* Temporary protective grounds shall be placed at such locations and arranged in such a manner as to prevent each employee from being exposed to hazardous differences in electrical potential.

(d) *Protective grounding equipment.* (1) *Ampacity.* (i) Protective grounding equipment shall be capable of conducting the maximum fault current that could flow at the point of grounding for the time necessary to clear the fault.

(ii) If the protective grounding equipment required under paragraph (d)(1)(i) of this section would be larger than the conductor to which it is attached, this equipment may be reduced in size provided that it is sized and placed so that:

(A) The conductor being grounded will fail before the protective grounding equipment,

(B) The conductor is only considered as grounded where it is protected against failure by the protective grounding equipment, and

(C) No employees would be endangered by the failed conductor.

(iii) This equipment shall have an ampacity greater than or equal to that of No. 2 AWG copper.

(2) *Impedance.* Protective grounds shall have an impedance low enough so that they do not delay the operation of protective devices in case of accidental energizing of the lines or equipment.

Note to paragraph (d) of this section: Guidelines for protective grounding equipment are contained in American Society for Testing and Materials Standard Specifications for Temporary Protective Grounds to Be Used on De-Energized Electric Power Lines and Equipment, ASTM F 855–03.

(e) *Testing.* Before any ground is installed, lines and equipment shall be tested and found absent of nominal voltage, unless a previously installed ground is present.

(f) *Connecting and removing grounds.* (1) *Order of connection.* When a ground is to be attached to a line or to equipment, the ground-end connection shall be attached first, and then the other end shall be attached by means of a live-line tool. For lines or equipment operating at 600 volts or less, insulating equipment other than a live-line tool may be used if the employer ensures that the line or equipment is not energized at the time the ground is connected or if the employer can demonstrate that each employee would be protected from hazards that may develop if the line or equipment is energized.

(2) *Order of removal.* When a ground is to be removed, the grounding device shall be removed from the line or equipment using a live-line tool before the ground-end connection is removed. For lines or equipment operating at 600 volts or less, insulating equipment other than a live-line tool may be used if the employer ensures that the line or equipment is not energized at the time the ground is disconnected or if the employer can demonstrate that each employee would be protected from hazards that may develop if the line or equipment is energized.

(g) *Additional precautions.* When work is performed on a cable at a location remote from the cable terminal, the cable may not be grounded at the cable terminal if there is a possibility of hazardous transfer of potential should a fault occur.

(h) *Removal of grounds for test.* Grounds may be removed temporarily during tests. During the test procedure, the employer shall ensure that each employee uses insulating equipment and is isolated from any hazards involved, and the employer shall institute any additional measures as may be necessary to protect each exposed employee in case the previously grounded lines and equipment become energized.

§ 1926.963 Testing and test facilities.

(a) *Application.* This section provides for safe work practices for high-voltage and high-power testing performed in laboratories, shops, and substations, and in the field and on electric transmission and distribution lines and equipment. It applies only to testing involving interim measurements utilizing high voltage, high power, or combinations of both, and not to testing involving continuous measurements as in routine metering, relaying, and normal line work.

Note to paragraph (a) of this section: Routine inspection and maintenance measurements made by qualified employees are considered to be routine line work and are not included in the scope of this section, as long as the hazards related to the use of intrinsic high-voltage or high-power sources require only the normal precautions associated with routine operation and maintenance work required in the other paragraphs of this section. Two typical examples of such excluded test work procedures are ''phasing-out'' testing and testing for a ''no-voltage'' condition.

(b) *General requirements.* (1) *Safe work practices.* The employer shall establish and enforce work practices for the protection of each worker from the hazards of high-voltage or high-power testing at all test areas, temporary and permanent. Such work practices shall include, as a minimum, test area guarding, grounding, and the safe use of measuring and control circuits. A means providing for periodic safety checks of field test areas shall also be included. (See paragraph (f) of this section.)

(2) *Training.* Employees shall be trained in safe work practices upon their initial assignment to the test area, with periodic reviews and updates provided as required by § 1926.950(b).

(c) *Guarding of test areas.* (1) *Guarding.* Guarding shall be provided within test areas to control access to test equipment or to apparatus under test that may become energized as part of the testing by either direct or inductive coupling, in order to prevent accidental employee contact with energized parts.

(2) *Permanent test areas.* Permanent test areas shall be guarded by walls, fences, or barriers designed to keep employees out of the test areas.

(3) *Temporary test areas.* In field testing, or at a temporary test site where permanent fences and gates are not provided, one of the following means shall be used to prevent unauthorized employees from entering:

(i) The test area shall be guarded by the use of distinctively colored safety tape that is supported approximately waist high and to which safety signs are attached,

(ii) The test area shall be guarded by a barrier or barricade that limits access to the test area to a degree equivalent, physically and visually, to the barricade specified in paragraph (c)(3)(i) of this section, or

(iii) The test area shall be guarded by one or more test observers stationed so that the entire area can be monitored.

(4) *Removal of barriers.* The barriers required by paragraph (c)(3) of this section shall be removed when the protection they provide is no longer needed.

(d) *Grounding practices.* (1) *Establish and implement practices.* The employer shall establish and implement safe grounding practices for the test facility.

(i) All conductive parts accessible to the test operator during the time the equipment is operating at high voltage shall be maintained at ground potential except for portions of the equipment that are isolated from the test operator by guarding.

(ii) Wherever ungrounded terminals of test equipment or apparatus under test may be present, they shall be treated as energized until determined by tests to be deenergized.

(2) *Installation of grounds.* Visible grounds shall be applied, either automatically or manually with properly insulated tools, to the high-voltage circuits after they are deenergized and before work is performed on the circuit or item or apparatus under test. Common ground connections shall be solidly connected to the test equipment and the apparatus under test.

(3) *Isolated ground return.* In high-power testing, an isolated ground-return conductor system shall be provided so that no intentional passage of current, with its attendant voltage rise, can occur in the ground grid or in the earth. However, an isolated ground-return conductor need not be provided if the employer can demonstrate that both the following conditions are met:

(i) An isolated ground-return conductor cannot be provided due to the distance of the test site from the electric energy source, and

(ii) Employees are protected from any hazardous step and touch potentials that may develop during the test.

Note to paragraph (d)(3)(ii) of this section: See Appendix C to this Subpart for information on measures that can be taken to protect employees from hazardous step and touch potentials.

(4) *Equipment grounding conductors.* In tests in which grounding of test equipment by means of the equipment grounding conductor located in the equipment power cord cannot be used due to increased hazards to test personnel or the prevention of satisfactory measurements, a ground that the employer can demonstrate affords equivalent safety shall be provided, and the safety ground shall be clearly indicated in the test set-up.

(5) *Grounding after tests.* When the test area is entered after equipment is deenergized, a ground shall be placed on the high-voltage terminal and any other exposed terminals.

(i) High capacitance equipment or apparatus shall be discharged through a resistor rated for the available energy.

(ii) A direct ground shall be applied to the exposed terminals when the stored energy drops to a level at which it is safe to do so.

(6) *Grounding test vehicles.* If a test trailer or test vehicle is used in field testing, its chassis shall be grounded. Protection against hazardous touch potentials with respect to the vehicle, instrument panels, and other conductive parts accessible to employees shall be provided by bonding, insulation, or isolation.

(e) *Control and measuring circuits.* (1) *Control wiring.* Control wiring, meter connections, test leads and cables may not be run from a test area unless they are contained in a grounded metallic sheath and terminated in a grounded metallic enclosure or unless other precautions are taken that the employer can demonstrate as ensuring equivalent safety.

(2) *Instruments.* Meters and other instruments with accessible terminals or parts shall be isolated from test personnel to protect against hazards arising from such terminals and parts becoming energized during testing. If this isolation is provided by locating test equipment in metal compartments with viewing windows, interlocks shall be provided to interrupt the power supply if the compartment cover is opened.

(3) *Routing temporary wiring.* The routing and connections of temporary wiring shall be made secure against damage, accidental interruptions, and other hazards. To the maximum extent possible, signal, control, ground, and power cables shall be kept separate.

(4) *Test observer.* If employees will be present in the test area during testing, a test observer shall be present. The test observer shall be capable of implementing the immediate deenergizing of test circuits for safety purposes.

(f) *Safety check.* (1) *Before each test.* Safety practices governing employee work at temporary or field test areas shall provide for a routine check of such test areas for safety at the beginning of each series of tests.

(2) *Conditions to be checked.* The test operator in charge shall conduct these routine safety checks before each series of tests and shall verify at least the following conditions:

(i) That barriers and guards are in workable condition and are properly placed to isolate hazardous areas;

(ii) That system test status signals, if used, are in operable condition;

(iii) That test power disconnects are clearly marked and readily available in an emergency;

(iv) That ground connections are clearly identifiable;

(v) That personal protective equipment is provided and used as required by Subpart E of this Part and by this section; and

(vi) That signal, ground, and power cables are properly separated.

§ 1926.964 Overhead lines.

(a) *General.* (1) *Application.* This section provides additional requirements for work performed on or near overhead lines and equipment.

(2) *Checking structure before climbing.* Before elevated structures, such as poles or towers, are subjected to such stresses as climbing or the installation or removal of equipment may impose, the employer shall ascertain that the structures are capable of sustaining the additional or unbalanced stresses. If the pole or other structure cannot withstand the loads which will be imposed, it shall be braced or otherwise supported so as to prevent failure.

Note to paragraph (a)(2) of this section: Appendix D to this Subpart contains test methods that can be used in ascertaining whether a wood pole is capable of sustaining the forces that would be imposed by an employee climbing the pole. This paragraph also requires the employer to ascertain that the pole can sustain all other forces that will be imposed by the work to be performed.

(3) *Setting and moving poles.* (i) When poles are set, moved, or removed near exposed energized overhead conductors, the pole may not contact the conductors.

(ii) When a pole is set, moved, or removed near an exposed energized overhead conductor, the employer shall ensure that each employee wears

electrical protective equipment or uses insulated devices when handling the pole and that no employee contacts the pole with uninsulated parts of his or her body.

(iii) To protect employees from falling into holes into which poles are to be placed, the holes shall be attended by employees or physically guarded whenever anyone is working nearby.

(b) *Installing and removing overhead lines*. The following provisions apply to the installation and removal of overhead conductors or cable.

(1) *Tension stringing method*. The employer shall use the tension stringing method, barriers, or other equivalent measures to minimize the possibility that conductors and cables being installed or removed will contact energized power lines or equipment.

(2) *Conductors, cables, and pulling and tensioning equipment*. The protective measures required by § 1926.959(d)(3) for mechanical equipment shall also be provided for conductors, cables, and pulling and tensioning equipment when the conductor or cable is being installed or removed close enough to energized conductors that any of the following failures could energize the pulling or tensioning equipment or the wire or cable being installed or removed:

(i) Failure of the pulling or tensioning equipment,

(ii) Failure of the wire or cable being pulled, or

(iii) Failure of the previously installed lines or equipment.

(3) *Disable automatic-reclosing feature*. If the conductors being installed or removed cross over energized conductors in excess of 600 volts and if the design of the circuit-interrupting devices protecting the lines so permits, the automatic-reclosing feature of these devices shall be made inoperative.

(4) *Induced voltage*. Before lines are installed parallel to existing energized lines, the employer shall make a determination of the approximate voltage to be induced in the new lines, or work shall proceed on the assumption that the induced voltage is hazardous. Unless the employer can demonstrate that the lines being installed are not subject to the induction of a hazardous voltage or unless the lines are treated as energized, the following requirements also apply:

(i) Each bare conductor shall be grounded in increments so that no point along the conductor is more than 3.22 km (2 miles) from a ground.

(ii) The grounds required in paragraph (b)(4)(i) of this section shall be left in place until the conductor installation is completed between dead ends.

(iii) The grounds required in paragraph (b)(4)(i) of this section shall be removed as the last phase of aerial cleanup.

(iv) If employees are working on bare conductors, grounds shall also be installed at each location where these employees are working, and grounds shall be installed at all open dead-end or catch-off points or the next adjacent structure.

(v) If two bare conductors are to be spliced, the conductors shall be bonded and grounded before being spliced.

(5) *Safe operating condition*. Reel handling equipment, including pulling and tensioning devices, shall be in safe operating condition and shall be leveled and aligned.

(6) *Load ratings*. Load ratings of stringing lines, pulling lines, conductor grips, load-bearing hardware and accessories, rigging, and hoists may not be exceeded.

(7) *Defective pulling lines*. Pulling lines and accessories shall be repaired or replaced when defective.

(8) *Conductor grips*. Conductor grips may not be used on wire rope, unless the grip is specifically designed for this application.

(9) *Communications*. Reliable communications, through two-way radios or other equivalent means, shall be maintained between the reel tender and the pulling rig operator.

(10) *Operation of pulling rig*. The pulling rig may only be operated when it is safe to do so.

Note to paragraph (b)(10) of this section: Examples of unsafe conditions include: employees in locations prohibited by paragraph (b)(11) of this section, conductor and pulling line hang-ups, and slipping of the conductor grip.

(11) *Working under overhead operations*. While the conductor or pulling line is being pulled (in motion) with a power-driven device, employees are not permitted directly under overhead operations or on the cross arm, except as necessary to guide the stringing sock or board over or through the stringing sheave.

(c) *Live-line bare-hand work*. In addition to other applicable provisions contained in this section, the following requirements apply to live-line bare-hand work:

(1) *Training*. Before using or supervising the use of the live-line bare-hand technique on energized circuits, employees shall be trained in the technique and in the safety requirements of paragraph (c) of this section. Employees shall receive refresher training as required by § 1926.950(b).

(2) *Existing conditions*. Before any employee uses the live-line bare-hand technique on energized high-voltage conductors or parts, the following information shall be ascertained:

(i) The nominal voltage rating of the circuit on which the work is to be performed,

(ii) The minimum approach distances to ground of lines and other energized parts on which work is to be performed, and

(iii) The voltage limitations of equipment to be used.

(3) *Insulated tools and equipment*. The insulated equipment, insulated tools, and aerial devices and platforms used shall be designed, tested, and intended for live-line bare-hand work. Tools and equipment shall be kept clean and dry while they are in use.

(4) *Disable automatic-reclosing feature*. The automatic-reclosing feature of circuit-interrupting devices protecting the lines shall be made inoperative, if the design of the devices permits.

(5) *Adverse weather conditions*. Work may not be performed when adverse weather conditions would make the work hazardous even after the work practices required by this section are employed. Additionally, work may not be performed when winds reduce the phase-to-phase or phase-to-ground minimum approach distances at the work location below that specified in paragraph (c)(13) of this section, unless the grounded objects and other lines and equipment are covered by insulating guards.

Note to paragraph (c)(5) of this section: Thunderstorms in the immediate vicinity, high winds, snow storms, and ice storms are examples of adverse weather conditions that are presumed to make live-line bare-hand work too hazardous to perform safely.

(6) *Bucket liners and electrostatic shielding*. A conductive bucket liner or other conductive device shall be provided for bonding the insulated aerial device to the energized line or equipment.

(i) The employee shall be connected to the bucket liner or other conductive device by the use of conductive shoes, leg clips, or other means.

(ii) Where differences in potentials at the worksite pose a hazard to employees, electrostatic shielding designed for the voltage being worked shall be provided.

(7) *Bonding the employee to the energized part*. Before the employee contacts the energized part, the conductive bucket liner or other conductive device shall be bonded to the energized conductor by means of a

positive connection. This connection shall remain attached to the energized conductor until the work on the energized circuit is completed.

(8) *Aerial lift controls.* Aerial lifts to be used for live-line bare-hand work shall have dual controls (lower and upper) as follows:

(i) The upper controls shall be within easy reach of the employee in the bucket. On a two-bucket-type lift, access to the controls shall be within easy reach from either bucket.

(ii) The lower set of controls shall be located near the base of the boom, and they shall be so designed that they can override operation of the equipment at any time.

(9) *Operation of lower controls.* Lower (ground-level) lift controls may not be operated with an employee in the lift, except in case of emergency.

(10) *Check controls.* Before employees are elevated into the work position, all controls (ground level and bucket) shall be checked to determine that they are in proper working condition.

(11) *Body of aerial lift truck.* Before the boom of an aerial lift is elevated, the body of the truck shall be grounded, or the body of the truck shall be barricaded and treated as energized.

(12) *Boom-current test.* A boom-current test shall be made before work is started each day, each time during the day when higher voltage is encountered, and when changed conditions indicate a need for an additional test. This test shall consist of placing the bucket in contact with an energized source equal to the voltage to be encountered for a minimum of 3 minutes. The leakage current may not exceed 1 microampere per kilovolt of nominal phase-to-ground voltage. Work from the aerial lift shall be immediately suspended upon indication of a malfunction in the equipment.

(13) *Minimum approach distance.* The minimum approach distances specified in Table V–2 through Table V–6 in § 1926.960 shall be maintained from all grounded objects and from lines and equipment at a potential different from that to which the live-line bare-hand equipment is bonded, unless such grounded objects and other lines and equipment are covered by insulating guards.

(14) *Approaching, leaving, and bonding to energized part.* While an employee is approaching, leaving, or bonding to an energized circuit, the minimum approach distances in Table V–2 through Table V–6 shall be maintained between the employee and any grounded parts, including the lower boom and portions of the truck.

(15) *Positioning bucket near energized bushing or insulator string.* While the bucket is positioned alongside an energized bushing or insulator string, the phase-to-ground minimum approach distances of Table V–2 through Table V–6 shall be maintained between all parts of the bucket and the grounded end of the bushing or insulator string or any other grounded surface.

(16) *Hand lines.* Hand lines may not be used between the bucket and the boom or between the bucket and the ground. However, nonconductive-type hand lines may be used from conductor to ground if not supported from the bucket. Ropes used for live-line bare-hand work may not be used for other purposes.

(17) *Passing objects to employee.* Uninsulated equipment or material may not be passed between a pole or structure and an aerial lift while an employee working from the bucket is bonded to an energized part.

(18) *Table of minimum approach distances.* A minimum approach distance table reflecting the minimum approach distances listed in Table V–2 through Table V–6 shall be printed on a plate of durable nonconductive material. This table shall be mounted so as to be visible to the operator of the boom.

(19) *Nonconductive measuring device.* A nonconductive measuring device shall be readily accessible to assist employees in maintaining the required minimum approach distance.

(d) *Towers and structures.* The following requirements apply to work performed on towers or other structures that support overhead lines.

(1) *Working beneath towers and structures.* The employer shall ensure that no employee is under a tower or structure while work is in progress, except where the employer can demonstrate that such a working position is necessary to assist employees working above.

(2) *Tag lines.* Tag lines or other similar devices shall be used to maintain control of tower sections being raised or positioned, unless the employer can demonstrate that the use of such devices would create a greater hazard.

(3) *Disconnecting load lines.* The loadline may not be detached from a member or section until the load is safely secured.

(4) *Adverse weather conditions.* Except during emergency restoration procedures, work shall be discontinued when adverse weather conditions would make the work hazardous in spite of the work practices required by this section.

Note to paragraph (d)(4) of this section: Thunderstorms in the immediate vicinity, high winds, snow storms, and ice storms are examples of adverse weather conditions that are presumed to make this work too hazardous to perform, except under emergency conditions.

§ 1926.965 Underground electrical installations.

(a) *Application.* This section provides additional requirements for work on underground electrical installations.

(b) *Access.* A ladder or other climbing device shall be used to enter and exit a manhole or subsurface vault exceeding 1.22 m (4 feet) in depth. No employee may climb into or out of a manhole or vault by stepping on cables or hangers.

(c) *Lowering equipment into manholes.* Equipment used to lower materials and tools into manholes or vaults shall be capable of supporting the weight to be lowered and shall be checked for defects before use. Before tools or material are lowered into the opening for a manhole or vault, each employee working in the manhole or vault shall be clear of the area directly under the opening.

(d) *Attendants for manholes and vaults.* (1) *When required.* While work is being performed in a manhole or vault containing energized electric equipment, an employee with first aid and CPR training meeting § 1926.951(b)(1) shall be available on the surface in the immediate vicinity of the manhole or vault entrance to render emergency assistance.

(2) *Brief entries allowed.* Occasionally, the employee on the surface may briefly enter a manhole or vault to provide assistance, other than emergency.

Note 1 to paragraph (d)(2) of this section: An attendant may also be required under § 1926.953(h). One person may serve to fulfill both requirements. However, attendants required under § 1926.953(h) are not permitted to enter the manhole or vault.

Note 2 to paragraph (d)(2) of this section: Employees entering manholes or vaults containing unguarded, uninsulated energized lines or parts of electric equipment operating at 50 volts or more are required to be qualified under § 1926.960(b).

(3) *Entry without attendant.* For the purpose of inspection, housekeeping, taking readings, or similar work, an employee working alone may enter, for brief periods of time, a manhole or vault where energized cables or equipment are in service, if the employer can demonstrate that the employee will be protected from all electrical hazards.

(4) *Communications.* Reliable communications, through two-way

radios or other equivalent means, shall be maintained among all employees involved in the job.

(e) *Duct rods.* If duct rods are used, they shall be installed in the direction presenting the least hazard to employees. An employee shall be stationed at the far end of the duct line being rodded to ensure that the required minimum approach distances are maintained.

(f) *Multiple cables.* When multiple cables are present in a work area, the cable to be worked shall be identified by electrical means, unless its identity is obvious by reason of distinctive appearance or location or by other readily apparent means of identification. Cables other than the one being worked shall be protected from damage.

(g) *Moving cables.* Energized cables that are to be moved shall be inspected for defects.

(h) *Protection against faults.* (1) *Defective cables.* Where a cable in a manhole or vault has one or more abnormalities that could lead to or be an indication of an impending fault, the defective cable shall be deenergized before any employee may work in the manhole or vault, except when service load conditions and a lack of feasible alternatives require that the cable remain energized. In that case, employees may enter the manhole or vault provided they are protected from the possible effects of a failure by shields or other devices that are capable of containing the adverse effects of a fault.

Note to paragraph (h)(1) of this section: Abnormalities such as oil or compound leaking from cable or joints, broken cable sheaths or joint sleeves, hot localized surface temperatures of cables or joints, or joints that are swollen beyond normal tolerance are presumed to lead to or be an indication of an impending fault.

(2) *Work-related faults.* If the work being performed in a manhole or vault could cause a fault in a cable, that cable shall be deenergized before any employee may work in the manhole or vault, except when service load conditions and a lack of feasible alternatives require that the cable remain energized. In that case, employees may enter the manhole or vault provided they are protected from the possible effects of a failure by shields or other devices that are capable of containing the adverse effects of a fault.

(i) *Sheath continuity.* When work is performed on buried cable or on cable in a manhole or vault, metallic sheath continuity shall be maintained or the cable sheath shall be treated as energized.

§ 1926.966 Substations.

(a) *Application.* This section provides additional requirements for substations and for work performed in them.

(b) *Access and working space.* Sufficient access and working space shall be provided and maintained about electric equipment to permit ready and safe operation and maintenance of such equipment.

Note to paragraph (b) of this section: Guidelines for the dimensions of access and working space about electric equipment in substations are contained in American National Standard National Electrical Safety Code, ANSI C2–2002. Installations meeting the ANSI provisions comply with paragraph (b) of this section. An installation that does not conform to this ANSI standard will, nonetheless, be considered as complying with paragraph (b) of this section if the employer can demonstrate that the installation provides ready and safe access based on the following evidence:

(1) That the installation conforms to the edition of ANSI C2 that was in effect at the time the installation was made,

(2) That the configuration of the installation enables employees to maintain the minimum approach distances required by § 1926.960(c)(1) while they working on exposed, energized parts, and

(3) That the precautions taken when work is performed on the installation provide protection equivalent to the protection that would be provide by access and working space meeting ANSI C2–2002.

(c) *Draw-out-type circuit breakers.* When draw-out-type circuit breakers are removed or inserted, the breaker shall be in the open position. The control circuit shall also be rendered inoperative, if the design of the equipment permits.

(d) *Substation fences.* Conductive fences around substations shall be grounded. When a substation fence is expanded or a section is removed, fence grounding continuity shall be maintained, and bonding shall be used to prevent electrical discontinuity.

(e) *Guarding of rooms containing electric supply equipment.* (1) *When guarding of rooms is required.* Rooms and spaces in which electric supply lines or equipment are installed shall meet the requirements of paragraphs (e)(2) through (e)(3) of this section under the following conditions:

(i) If exposed live parts operating at 50 to 150 volts to ground are located within 8 feet of the ground or other working surface inside the room or space,

(ii) If live parts operating at 151 to 600 volts to ground and located within 8 feet of the ground or other working surface inside the room or space are guarded only by location, as permitted under paragraph (f)(1) of this section, or

(iii) If live parts operating at more than 600 volts to ground are located within the room or space, unless:

(A) The live parts are enclosed within grounded, metal-enclosed equipment whose only openings are designed so that foreign objects inserted in these openings will be deflected from energized parts, or

(B) The live parts are installed at a height above ground and any other working surface that provides protection at the voltage to which they are energized corresponding to the protection provided by a 2.4-meter (8-foot) height at 50 volts.

(2) *Prevent access by unqualified persons.* The rooms and spaces shall be so enclosed within fences, screens, partitions, or walls as to minimize the possibility that unqualified persons will enter.

(3) *Restricted entry.* Unqualified persons may not enter the rooms or spaces while the electric supply lines or equipment are energized.

(4) *Warning signs.* Signs warning unqualified persons to keep out shall be displayed at entrances to the rooms and spaces.

(5) *Entrances to rooms.* Entrances to rooms and spaces that are not under the observation of an attendant shall be kept locked.

(f) *Guarding of energized parts.* (1) *Type of guarding.* Guards shall be provided around all live parts operating at more than 150 volts to ground without an insulating covering, unless the location of the live parts gives sufficient horizontal or vertical or a combination of these clearances to minimize the possibility of accidental employee contact.

Note to paragraph (f)(1) of this section: Guidelines for the dimensions of clearance distances about electric equipment in substations are contained in American National Standard National Electrical Safety Code, ANSI C2–2002. Installations meeting the ANSI provisions comply with paragraph (f)1. of this section. An installation that does not conform to this ANSI standard will, nonetheless, be considered as complying with paragraph (f)(1) of this section if the employer can demonstrate that the installation provides sufficient clearance based on the following evidence:

1. That the installation conforms to the edition of ANSI C2 that was in effect at the time the installation was made,

2. That each employee is isolated from energized parts at the point of closest approach, and

3. That the precautions taken when work is performed on the installation provide protection equivalent to the protection that would be provide by horizontal and vertical clearances meeting ANSI C2–2002.

(2) *Maintaining guards during operation.* Except for fuse replacement and other necessary access by qualified persons, the guarding of energized parts within a compartment shall be maintained during operation and maintenance functions to prevent accidental contact with energized parts and to prevent tools or other equipment from being dropped on energized parts.

(3) *Temporary removal of guards.* When guards are removed from energized equipment, barriers shall be installed around the work area to prevent employees who are not working on the equipment, but who are in the area, from contacting the exposed live parts.

(g) *Substation entry.* (1) *Report upon entering.* Upon entering an attended substation, each employee other than those regularly working in the station shall report his or her presence to the employee in charge in order to receive information on special system conditions affecting employee safety.

(2) *Job briefing.* The job briefing required by § 1926.952 shall cover such additional subjects as the location of energized equipment in or adjacent to the work area and the limits of any deenergized work area.

§ 1926.967 Special conditions.

(a) *Capacitors.* The following additional requirements apply to work on capacitors and on lines connected to capacitors.

Note to paragraph (a) of this section: See §§ 1926.961 and 1926.962 for requirements pertaining to the deenergizing and grounding of capacitor installations.

(1) *Disconnect from energized source.* Before employees work on capacitors, the capacitors shall be disconnected from energized sources and, after a wait of at least 5 minutes from the time of disconnection, short-circuited.

(2) *Short circuiting units.* Before the units are handled, each unit in series-parallel capacitor banks shall be short-circuited between all terminals and the capacitor case or its rack. If the cases of capacitors are on ungrounded substation racks, the racks shall be bonded to ground.

(3) *Short circuiting connected lines.* Any line to which capacitors are connected shall be short-circuited before it is considered deenergized.

(b) *Current transformer secondaries.* The secondary of a current transformer may not be opened while the transformer is energized. If the primary of the current transformer cannot be deenergized before work is performed on an instrument, a relay, or other section of a current transformer secondary circuit, the circuit shall be bridged so that the current transformer secondary will not be opened.

(c) *Series streetlighting.* (1) *Applicable requirements.* If the open-circuit voltage exceeds 600 volts, the series streetlighting circuit shall be worked in accordance with § 1926.964 or § 1926.965, as appropriate.

(2) *Opening a series loop.* A series loop may only be opened after the streetlighting transformer has been deenergized and isolated from the source of supply or after the loop is bridged to avoid an open-circuit condition.

(d) *Illumination.* Sufficient illumination shall be provided to enable the employee to perform the work safely.

Note to paragraph (d) of this section: See § 1926.56 for specific levels of illumination.

(e) *Protection against drowning.* (1) *Personal flotation devices.* Whenever an employee may be pulled or pushed or may fall into water where the danger of drowning exists, the employee shall be provided with and shall use personal flotation devices meeting § 1926.106.

(2) *Maintaining flotation devices in safe condition.* Each personal flotation device shall be maintained in safe condition and shall be inspected frequently enough to ensure that it does not have rot, mildew, water saturation, or any other condition that could render the device unsuitable for use.

(3) *Crossing bodies of water.* An employee may cross streams or other bodies of water only if a safe means of passage, such as a bridge, is provided.

(f) *Excavations.* Excavation operations shall comply with Subpart P of this Part.

(g) *Employee protection in public work areas.* (1) *Traffic control devices.* Traffic control signs and traffic control devices used for the protection of employees shall meet the requirements of § 1926.200(g)(2).

(2) *Controlling traffic.* Before work is begun in the vicinity of vehicular or pedestrian traffic that may endanger employees, warning signs or flags and other traffic control devices shall be placed in conspicuous locations to alert and channel approaching traffic.

(3) *Barricades.* Where additional employee protection is necessary, barricades shall be used.

(4) *Excavated areas.* Excavated areas shall be protected with barricades.

(5) *Warning lights.* At night, warning lights shall be prominently displayed.

(h) *Backfeed.* If there is a possibility of voltage backfeed from sources of cogeneration or from the secondary system (for example, backfeed from more than one energized phase feeding a common load), the requirements of § 1926.960 apply if the lines or equipment are to be worked as energized, and the requirements of §§ 1926.961 and 1926.962 apply if the lines or equipment are to be worked as deenergized.

(i) *Lasers.* Laser equipment shall be installed, adjusted, and operated in accordance with § 1926.54.

(j) *Hydraulic fluids.* Hydraulic fluids used for the insulated sections of equipment shall provide insulation for the voltage involved. These fluids need not meet § 1926.302(d)(1).

(k) *Communication facilities.* (1) *Microwave transmission.* (i) The employer shall ensure that no employee looks into an open waveguide or antenna that is connected to an energized microwave source.

(ii) If the electromagnetic radiation level within an accessible area associated with microwave communications systems exceeds the radiation protection guide given in § 1910.97(a)(2) of this chapter, the area shall be posted with the warning symbol described in § 1910.97(a)(3) of this chapter. The lower half of the warning symbol shall include the following statements or ones that the employer can demonstrate are equivalent:

Radiation in this area may exceed hazard limitations and special precautions are required. Obtain specific instruction before entering.

(iii) When an employee works in an area where the electromagnetic radiation could exceed the radiation protection guide, the employer shall institute measures that ensure that the employee's exposure is not greater than that permitted by that guide. Such measures may include administrative and engineering controls and personal protective equipment.

(2) *Power line carrier.* Power line carrier work, including work on equipment used for coupling carrier current to power line conductors, shall be performed in accordance with the requirements of this section pertaining to work on energized lines.

§ 1926.968 Definitions applicable to this subpart.

Affected employee. An employee whose job requires him or her to operate or use a machine or equipment on which servicing or maintenance is being performed under lockout or tagout, or whose job requires him or her to work in an area in which such servicing or maintenance is being performed.

Attendant. An employee assigned to remain immediately outside the entrance to an enclosed or other space

to render assistance as needed to employees inside the space.

Authorized employee. An employee who locks out or tags out machines or equipment in order to perform servicing or maintenance on that machine or equipment. An affected employee becomes an authorized employee when that employee's duties include performing servicing or maintenance covered under this section.

Automatic circuit recloser. A self-controlled device for interrupting and reclosing an alternating current circuit with a predetermined sequence of opening and reclosing followed by resetting, hold-closed, or lockout operation.

Barricade. A physical obstruction such as tapes, cones, or A-frame type wood or metal structures intended to provide a warning about and to limit access to a hazardous area.

Barrier. A physical obstruction which is intended to prevent contact with energized lines or equipment or to prevent unauthorized access to a work area.

Bond. The electrical interconnection of conductive parts designed to maintain a common electrical potential.

Bus. A conductor or a group of conductors that serve as a common connection for two or more circuits.

Bushing. An insulating structure, including a through conductor or providing a passageway for such a conductor, with provision for mounting on a barrier, conducting or otherwise, for the purposes of insulating the conductor from the barrier and conducting current from one side of the barrier to the other.

Cable. A conductor with insulation, or a stranded conductor with or without insulation and other coverings (single-conductor cable), or a combination of conductors insulated from one another (multiple-conductor cable).

Cable sheath. A conductive protective covering applied to cables.

Note: A cable sheath may consist of multiple layers of which one or more is conductive.

Circuit. A conductor or system of conductors through which an electric current is intended to flow.

Clearance (between objects). The clear distance between two objects measured surface to surface.

Clearance (for work). Authorization to perform specified work or permission to enter a restricted area.

Communication lines. (See *Lines, communication.*)

Conductor. A material, usually in the form of a wire, cable, or bus bar, used for carrying an electric current.

Contract employer. An employer who performs work covered by Subpart V of this Part for a host employer.

Covered conductor. A conductor covered with a dielectric having no rated insulating strength or having a rated insulating strength less than the voltage of the circuit in which the conductor is used.

Current-carrying part. A conducting part intended to be connected in an electric circuit to a source of voltage. Noncurrent-carrying parts are those not intended to be so connected.

Deenergized. Free from any electrical connection to a source of potential difference and from electric charge; not having a potential different from that of the earth.

Note: The term is used only with reference to current-carrying parts, which are sometimes energized (alive).

Designated employee (designated person). An employee (or person) who is assigned by the employer to perform specific duties under the terms of this section and who has sufficient knowledge of the construction and operation of the equipment and the hazards involved to perform his or her duties safely.

Electric line truck. A truck used to transport personnel, tools, and material for electric supply line work.

Electric supply equipment. Equipment that produces, modifies, regulates, controls, or safeguards a supply of electric energy.

Electric supply lines. (See *Lines, electric supply.*)

Electric utility. An organization responsible for the installation, operation, or maintenance of an electric supply system.

Enclosed space. A working space, such as a manhole, vault, tunnel, or shaft, that has a limited means of egress or entry, that is designed for periodic employee entry under normal operating conditions, and that under normal conditions does not contain a hazardous atmosphere, but that may contain a hazardous atmosphere under abnormal conditions.

Note: Spaces that are enclosed but not designed for employee entry under normal operating conditions are not considered to be enclosed spaces for the purposes of this section. Similarly, spaces that are enclosed and that are expected to contain a hazardous atmosphere are not considered to be enclosed spaces for the purposes of this section. Such spaces meet the definition of permit spaces in § 1910.146 of this chapter, and entry into them must be performed in accordance with that standard.

Energized (alive, live). Electrically connected to a source of potential difference, or electrically charged so as to have a potential significantly different from that of earth in the vicinity.

Energy isolating device. A physical device that prevents the transmission or release of energy, including, but not limited to, the following: a manually operated electric circuit breaker, a disconnect switch, a manually operated switch, a slide gate, a slip blind, a line valve, blocks, and any similar device with a visible indication of the position of the device. (Push buttons, selector switches, and other control-circuit-type devices are not energy isolating devices.)

Energy source. Any electrical, mechanical, hydraulic, pneumatic, chemical, nuclear, thermal, or other energy source that could cause injury to personnel.

Entry (as used in § 1926.953). The action by which a person passes through an opening into an enclosed space. Entry includes ensuing work activities in that space and is considered to have occurred as soon as any part of the entrant's body breaks the plane of an opening into the space.

Equipment (electric). A general term including material, fittings, devices, appliances, fixtures, apparatus, and the like used as part of or in connection with an electrical installation.

Exposed. Not isolated or guarded.

Ground. A conducting connection, whether intentional or accidental, between an electric circuit or equipment and the earth, or to some conducting body that serves in place of the earth.

Grounded. Connected to earth or to some conducting body that serves in place of the earth.

Guarded. Covered, fenced, enclosed, or otherwise protected, by means of suitable covers or casings, barrier rails or screens, mats, or platforms, designed to minimize the possibility, under normal conditions, of dangerous approach or accidental contact by persons or objects.

Note: Wires that are insulated, but not otherwise protected, are not considered as guarded.

Hazardous atmosphere. An atmosphere that may expose employees to the risk of death, incapacitation, impairment of ability to self-rescue (that is, escape unaided from an enclosed space), injury, or acute illness from one or more of the following causes:

(1) Flammable gas, vapor, or mist in excess of 10 percent of its lower flammable limit (LFL);

(2) Airborne combustible dust at a concentration that meets or exceeds its LFL;

Note: This concentration may be approximated as a condition in which the dust obscures vision at a distance of 1.52 m (5 feet) or less.

(3) Atmospheric oxygen concentration below 19.5 percent or above 23.5 percent;

(4) Atmospheric concentration of any substance for which a dose or a permissible exposure limit is published in Subpart G, Occupational Health and Environmental Control, or in Subpart Z, Toxic and Hazardous Substances, of this Part and which could result in employee exposure in excess of its dose or permissible exposure limit;

Note: An atmospheric concentration of any substance that is not capable of causing death, incapacitation, impairment of ability to self-rescue, injury, or acute illness due to its health effects is not covered by this provision.

(5) Any other atmospheric condition that is immediately dangerous to life or health.

Note: For air contaminants for which OSHA has not determined a dose or permissible exposure limit, other sources of information, such as Material Safety Data Sheets that comply with the Hazard Communication Standard, § 1926.1200, published information, and internal documents can provide guidance in establishing acceptable atmospheric conditions.

High-power tests. Tests in which fault currents, load currents, magnetizing currents, and line-dropping currents are used to test equipment, either at the equipment's rated voltage or at lower voltages.

High-voltage tests. Tests in which voltages of approximately 1000 volts are used as a practical minimum and in which the voltage source has sufficient energy to cause injury.

High wind. A wind of such velocity that the following hazards would be present:

(1) An employee would be exposed to being blown from elevated locations, or

(2) An employee or material handling equipment could lose control of material being handled, or

(3) An employee would be exposed to other hazards not controlled by the standard involved.

Note: Winds exceeding 64.4 kilometers per hour (40 miles per hour), or 48.3 kilometers per hour (30 miles per hour) if material handling is involved, are normally considered as meeting this criteria unless precautions are taken to protect employees from the hazardous effects of the wind.

Host employer. An employer who operates and maintains an electric power transmission or distribution installation covered by Subpart V of this Part and who hires a contract employer to perform work on that installation.

Immediately dangerous to life or health (IDLH). Any condition that poses an immediate or delayed threat to life or that would cause irreversible adverse health effects or that would interfere with an individual's ability to escape unaided from a permit space.

Note: Some materials—hydrogen fluoride gas and cadmium vapor, for example—may produce immediate transient effects that, even if severe, may pass without medical attention, but are followed by sudden, possibly fatal collapse 12–72 hours after exposure. The victim ''feels normal'' from recovery from transient effects until collapse. Such materials in hazardous quantities are considered to be ''immediately'' dangerous to life or health.

Insulated. Separated from other conducting surfaces by a dielectric (including air space) offering a high resistance to the passage of current.

Note: When any object is said to be insulated, it is understood to be insulated for the conditions to which it is normally subjected. Otherwise, it is, within the purpose of this section, uninsulated.

Insulation (cable). That which is relied upon to insulate the conductor from other conductors or conducting parts or from ground.

Line-clearance tree trimming. The pruning, trimming, repairing, maintaining, removing, or clearing of trees or the cutting of brush that is within 3.05 m (10 feet) of electric supply lines and equipment.

Lines. (1) *Communication lines.* The conductors and their supporting or containing structures which are used for public or private signal or communication service, and which operate at potentials not exceeding 400 volts to ground or 750 volts between any two points of the circuit, and the transmitted power of which does not exceed 150 watts. If the lines are operating at less than 150 volts, no limit is placed on the transmitted power of the system. Under certain conditions, communication cables may include communication circuits exceeding these limitations where such circuits are also used to supply power solely to communication equipment.

Note: Telephone, telegraph, railroad signal, data, clock, fire, police alarm, cable television, and other systems conforming to this definition are included. Lines used for signaling purposes, but not included under this definition, are considered as electric supply lines of the same voltage.

(2) *Electric supply lines.* Conductors used to transmit electric energy and their necessary supporting or containing structures. Signal lines of more than 400 volts are always supply lines within this section, and those of less than 400 volts are considered as supply lines, if so run and operated throughout.

Manhole. A subsurface enclosure which personnel may enter and which is used for the purpose of installing, operating, and maintaining submersible equipment or cable.

Manhole steps. A series of steps individually attached to or set into the walls of a manhole structure.

Minimum approach distance. The closest distance an employee is permitted to approach an energized or a grounded object.

Qualified employee (qualified person). One knowledgeable in the construction and operation of the electric power generation, transmission, and distribution equipment involved, along with the associated hazards.

Note 1: An employee must have the training required by § 1926.950(b)(2) in order to be considered a qualified employee.

Note 2: Except under § 1926.954(b)(3)(iii), an employee who is undergoing on-the-job training and who, in the course of such training, has demonstrated an ability to perform duties safely at his or her level of training and who is under the direct supervision of a qualified person is considered to be a qualified person for the performance of those duties.

Step bolt. A bolt or rung attached at intervals along a structural member and used for foot placement during climbing or standing.

Switch. A device for opening and closing or for changing the connection of a circuit. In this section, a switch is understood to be manually operable, unless otherwise stated.

System operator. A qualified person designated to operate the system or its parts.

Vault. An enclosure, above or below ground, which personnel may enter and which is used for the purpose of installing, operating, or maintaining equipment or cable.

Vented vault. A vault that has provision for air changes using exhaust flue stacks and low level air intakes operating on differentials of pressure and temperature providing for airflow that precludes a hazardous atmosphere from developing.

Voltage. The effective (rms) potential difference between any two conductors or between a conductor and ground. Voltages are expressed in nominal values unless otherwise indicated. The nominal voltage of a system or circuit is the value assigned to a system or circuit of a given voltage class for the purpose

of convenient designation. The operating voltage of the system may vary above or below this value.

Appendix A to Subpart V—Flow Charts

For information, in the form of flow charts, that helps illustrate the scope and application of subpart V of this part, see Appendix A to § 1910.269 of this chapter. That appendix addresses the interface between § 1910.269 of this chapter and subpart S of part 1910 of this chapter (Electrical), between § 1910.269 and § 1910.146 of this chapter (Permit-required confined spaces), and between § 1910.269 and § 1910.147 of this chapter (the control of hazardous energy (lockout/tagout)). The flow charts presented in that Appendix provide guidance for employers trying to implement the requirements of § 1910.269 in combination with other General Industry Standards contained in part 1910 of this chapter. Because subpart V of this part also interfaces these general industry standards, Appendix A to § 1910.269 of this chapter will assist employers in determining which of these standards applies in different situations.

Appendix B to Subpart V—Working on Exposed Energized Parts

I. Introduction

Electric transmission and distribution line installations have been designed to meet National Electrical Safety Code (NESC), ANSI C2, requirements and to provide the level of line outage performance required by system reliability criteria. Transmission and distribution lines are also designed to withstand the maximum overvoltages expected to be impressed on the system. Such overvoltages can be caused by such conditions as switching surges, faults, or lightning. Insulator design and lengths and the clearances to structural parts (which, for low voltage through extra-high voltage, or EHV, facilities, are generally based on the performance of the line as a result of contamination of the insulation or during storms) have, over the years, come closer to the minimum approach distances used by workers (which are generally based on non-storm conditions). Thus, as minimum approach (working) distances and structural distances (clearances) converge, it is increasingly important that basic considerations for establishing safe approach distances for performing work be understood by the designers and the operating and maintenance personnel involved.

The information in this Appendix will assist employers in complying with the minimum approach distance requirements contained in § 1926.960(c)(1) and § 1926.964(c). The technical criteria and methodology presented herein is mandatory for employers using reduced minimum approach distances as permitted in Table V–2 and Table V–3 in § 1926.960. This Appendix is intended to provide essential background information and technical criteria for the development or modification, if possible, of the safe minimum approach distances for electric transmission and distribution live-line work. The development of these safe distances must be undertaken by persons knowledgeable in the techniques discussed in this appendix and competent in the field of electric transmission and distribution system design.

II. General

A. *Definitions.* The following definitions from § 1926.968 of this part relate to work on or near transmission and distribution lines and equipment and the electrical hazards they present.

Exposed. Not isolated or guarded.

Guarded. Covered, fenced, enclosed, or otherwise protected, by means of suitable covers or casings, barrier rails or screens, mats, or platforms, designed to minimize the possibility, under normal conditions, of dangerous approach or accidental contact by persons or objects.

Note: Wires which are insulated, but not otherwise protected, are not considered as guarded.

Insulated. Separated from other conducting surfaces by a dielectric (including air space) offering a high resistance to the passage of current.

Note: When any object is said to be insulated, it is understood to be insulated for the conditions to which it is normally subjected. Otherwise, it is, within the purpose of this section, uninsulated.

B. *Installations energized at 50 to 300 volts.* The hazards posed by installations energized at 50 to 300 volts are the same as those found in many other workplaces. That is not to say that there is no hazard, but the complexity of electrical protection required does not compare to that required for high voltage systems. The employee must avoid contact with the exposed parts, and the protective equipment used (such as rubber insulating gloves) must provide insulation for the voltages involved.

C. Exposed energized parts over 300 volts AC. Table V–1, Table V–2, Table V–3, and Table V–4 of § 1926.960 of this part provide minimum approach distances in the vicinity of energized electric apparatus so that work can be done safely without risk of electrical flashover.

The distance between the employee and an energized part must withstand the maximum transient overvoltage that can reach the work site under the working conditions and practices in use. Normal system design may provide or include a means to control transient overvoltages, or temporary devices may be employed to achieve the same result. The use of technically correct practices or procedures to control overvoltages (for example, portable gaps or preventing the automatic control from initiating breaker reclosing) enables line design and operation to be based on reduced transient overvoltage values. Technical information for U.S. electrical systems indicates that current design provides for the following maximum transient overvoltage values (usually produced by switching surges):

362 kV and less—3.0 per unit
552 kV—2.4 per unit
800 kV—2.0 per unit

Additional discussion of maximum transient overvoltages can be found in paragraph III.A.2, later in this Appendix.

III. Determination of the Electrical Component of Minimum Approach Distances

A. *Voltages of 1.1 kV to 72.5 kV.* For voltages of 1.1 kV to 72.5 kV, the electrical component of minimum approach distances is based on American National Standards Institute (ANSI)/American Institute of Electrical Engineers (AIEE) Standard No.4, March 1943, Tables III and IV. (AIEE is the predecessor technical society to the Institute of Electrical and Electronic Engineers (IEEE).) These distances are represented by the following formula:

Equation (1)—For voltages of 1.1 kV to 72.5 kV:

$$D = \left(\frac{V_{max} \times pu}{95} \right)^{1.63}$$

Where: D = Electrical component of the minimum approach distance in air in feet

V_{max} = Maximum rated line-to-ground rms voltage in kV

pu = Maximum transient overvoltage factor in per unit

Source: AIEE Standard No. 4, 1943.

Table 1 shows the electrical component of the minimum approach distances based on that AIEE standard.

TABLE 1.—A–C ENERGIZED LINE WORK PHASE-TO-GROUND ELECTRICAL COMPONENT OF THE MINIMUM APPROACH DISTANCE 1.1 TO 72.5 KV

Maximum anticipated per-unit transient overvoltage	Phase-to-phase voltage							
	15,000		36,000		46,000		72,500	
	m	ft	m	ft	m	ft	m	ft
3.0	0.04	0.17	0.16	0.58	0.23	0.75	0.39	1.25

Note: The distances given are for air as the insulating medium and provide no additional clearance for inadvertent movement.

B. *Voltages of 72.6 kV to 800 kV.* For voltages of 72.6 kV to 800 kV, the electrical component of minimum approach distances is based on ANSI/IEEE Standard 516–1987, ''IEEE Guide for Maintenance Methods on Energized Power Lines.'' This standard gives the electrical component of the minimum approach distance based on power frequency rod-gap data, supplemented with transient overvoltage information and a saturation factor for high voltages. The distances listed in ANSI/IEEE Standard 516 have been calculated according to the following formula:

Equation (2)—For voltages of 72.6 kV to 800 kV:

$$D = (C + a) \times pu \times V_{max}$$

Where: D = Electrical component of the minimum approach distance in air in feet

C = 0.01 to take care of correction factors associated with the variation of gap sparkover with voltage

a = A factor relating to the saturation of air at voltages of 345 kV or higher

pu = Maximum anticipated transient overvoltage, in per unit (p.u.)

V_{max} = Maximum rms system line-to-ground voltage in kilovolts—it should be the ''actual'' maximum, or the normal highest voltage for the range (for example, 10 percent above the nominal voltage)

Source: Formula developed from ANSI/IEEE Standard No. 516, 1987.

This formula is used to calculate the electrical component of the minimum approach distances in air and is used in the development of Table 2 and Table 3.

TABLE 2.—A–C ENERGIZED LINE WORK PHASE-TO-GROUND ELECTRICAL COMPONENT OF THE MINIMUM APPROACH DISTANCE 121 TO 242 KV

Maximum anticipated per-unit transient overvoltage	Phase-to-phase voltage							
	121,000		145,000		169,000		242,000	
	m	ft	m	ft	m	ft	m	ft
2.0	0.44	1.40	0.53	1.70	0.62	2.00	0.86	2.80
2.1	0.46	1.47	0.55	1.79	0.65	2.10	0.91	2.94
2.2	0.48	1.54	0.58	1.87	0.68	2.20	0.95	3.08
2.3	0.50	1.61	0.61	1.96	0.71	2.30	0.99	3.22
2.4	0.52	1.68	0.63	2.04	0.74	2.40	1.03	3.35
2.5	0.54	1.75	0.66	2.13	0.77	2.50	1.08	3.50
2.6	0.56	1.82	0.68	2.21	0.80	2.60	1.12	3.64
2.7	0.58	1.89	0.71	2.30	0.83	2.70	1.15	3.76
2.8	0.61	1.96	0.73	2.38	0.86	2.80	1.20	3.92
2.9	0.63	2.03	0.76	2.47	0.89	2.90	1.24	4.05
3.0	0.65	2.10	0.79	2.55	0.92	3.00	1.29	4.20

TABLE 3.—A–C ENERGIZED LINE WORK PHASE-TO-GROUND ELECTRICAL COMPONENT OF THE MINIMUM APPROACH DISTANCE 362 TO 800 KV

Maximum anticipated per-unit transient overvoltage	Phase-to-phase voltage					
	362,000		552,000		800,000	
	m	ft	m	ft	m	ft
1.5	.....	.....	1.52	4.97	2.65	8.66
1.6	.....	.....	1.67	5.46	2.93	9.60
1.7	.....	.....	1.83	5.98	3.24	10.60
1.8	.....	.....	1.99	6.51	3.56	11.64
1.9	.....	.....	2.17	7.08	3.89	12.73
2.0	1.29	4.20	2.35	7.68	4.23	13.86
2.1	1.35	4.41	2.53	8.27		
2.2	1.44	4.70	2.71	8.87		
2.3	1.54	5.01	2.9	9.49		
2.4	1.64	5.34	3.12	10.21		
2.5	1.74	5.67				
2.6	1.84	6.01				
2.7	1.95	6.36				
2.8	2.06	6.73				
2.9	2.17	7.10				
3.0	2.29	7.48				

Note: The distances given are for air as the insulating medium and provide no additional clearance for inadvertent movement.

C. *Provisions for inadvertent movement.* The minimum approach distances (working distances) must include an ''adder'' to compensate for the inadvertent movement of the worker relative to an energized part or the movement of the part relative to the worker. A certain allowance must be made to account for this possible inadvertent movement and to provide the worker with a comfortable and safe zone in which to work. A distance for inadvertent movement (called the ''ergonomic component of the minimum approach distance'') must be added to the electrical component to determine the total safe minimum approach distances used in live-line work.

One approach that can be used to estimate the ergonomic component of the minimum approach distance is response time-distance analysis. When this technique is used, the total response time to a hazardous incident is estimated and converted to distance traveled. For example, the driver of a car takes a given amount of time to respond to a ''stimulus'' and stop the vehicle. The elapsed time involved results in a distance

being traveled before the car comes to a complete stop. This distance is dependent on the speed of the car at the time the stimulus appears.

In the case of live-line work, the employee must first perceive that he or she is approaching the danger zone. Then, the worker responds to the danger and must decelerate and stop all motion toward the energized part. During the time it takes to stop, a distance will have been traversed. It is this distance that must be added to the electrical component of the minimum approach distance to obtain the total safe minimum approach distance.

At voltages below 72.5 kV, the electrical component of the minimum approach distance is smaller than the ergonomic component. At 72.5 kV the electrical component is only a little more than 0.3 m (1 foot). An ergonomic component of the minimum approach distance is needed that will provide for all the worker's unexpected movements. The usual live-line work method for these voltages is the use of rubber insulating equipment, frequently rubber gloves. The energized object needs to be far enough away to provide the worker's face with a safe approach distance, as his or her hands and arms are insulated. In this case, 0.61 m (2 feet) has been accepted as a sufficient and practical value.

For voltages between 72.6 and 800 kV, there is a change in the work practices employed during energized line work. Generally, live-line tools (hot sticks) are employed to perform work while equipment is energized. These tools, by design, keep the energized part at a constant distance from the employee and thus maintain the appropriate minimum approach distance automatically.

The length of the ergonomic component of the minimum approach distance is also influenced by the location of the worker and by the nature of the work. In these higher voltage ranges, the employees use work methods that more tightly control their movements than when the workers perform rubber glove work. The worker is farther from energized line or equipment and needs to be more precise in his or her movements just to perform the work.

For these reasons, a smaller ergonomic component of the minimum approach distance is needed, and a distance of 0.30 m (1 foot) has been selected for voltages between 72.6 and 800 kV.

Table 4 summarizes the ergonomic component of the minimum approach distance for the two voltage ranges.

TABLE 4.—ERGONOMIC COMPONENT OF MINIMUM APPROACH DISTANCE

Voltage range (kV)	Distance	
	m	ft
1.1 to 72.5	0.61	2.0
72.6 to 800	0.30	1.0

Note: This distance must be added to the electrical component of the minimum approach distance to obtain the full minimum approach distance.

It must be noted that the ergonomic component of the minimum approach distance is intended to account only for unexpected movements of the employee. The working position selected must account for all the employee's anticipated movements and still enable the employee to maintain the safe minimum approach distance. (*See* Figure 1.) Anticipated movements include: An employee's adjustments to tools, equipment, and working positions; expected errors in positioning tools and equipment; and all movements needed to perform the work. For example, the employee should be able to perform all of the following actions without straying into the minimum approach distance:

- Adjust his or her hard hat,
- Maneuver a tool onto an energized part with a certain amount of over or underreaching,
- Reach out for and handle tools, material, and equipment being passed to the employee in the working position, and
- Adjust tools and replace components on them, if necessary during the work procedure.

The training of qualified employees required under § 1926.950 and the job planning and briefing required under § 1926.952 must address selection of the proper working position.

BILLING CODE 4510–26–P

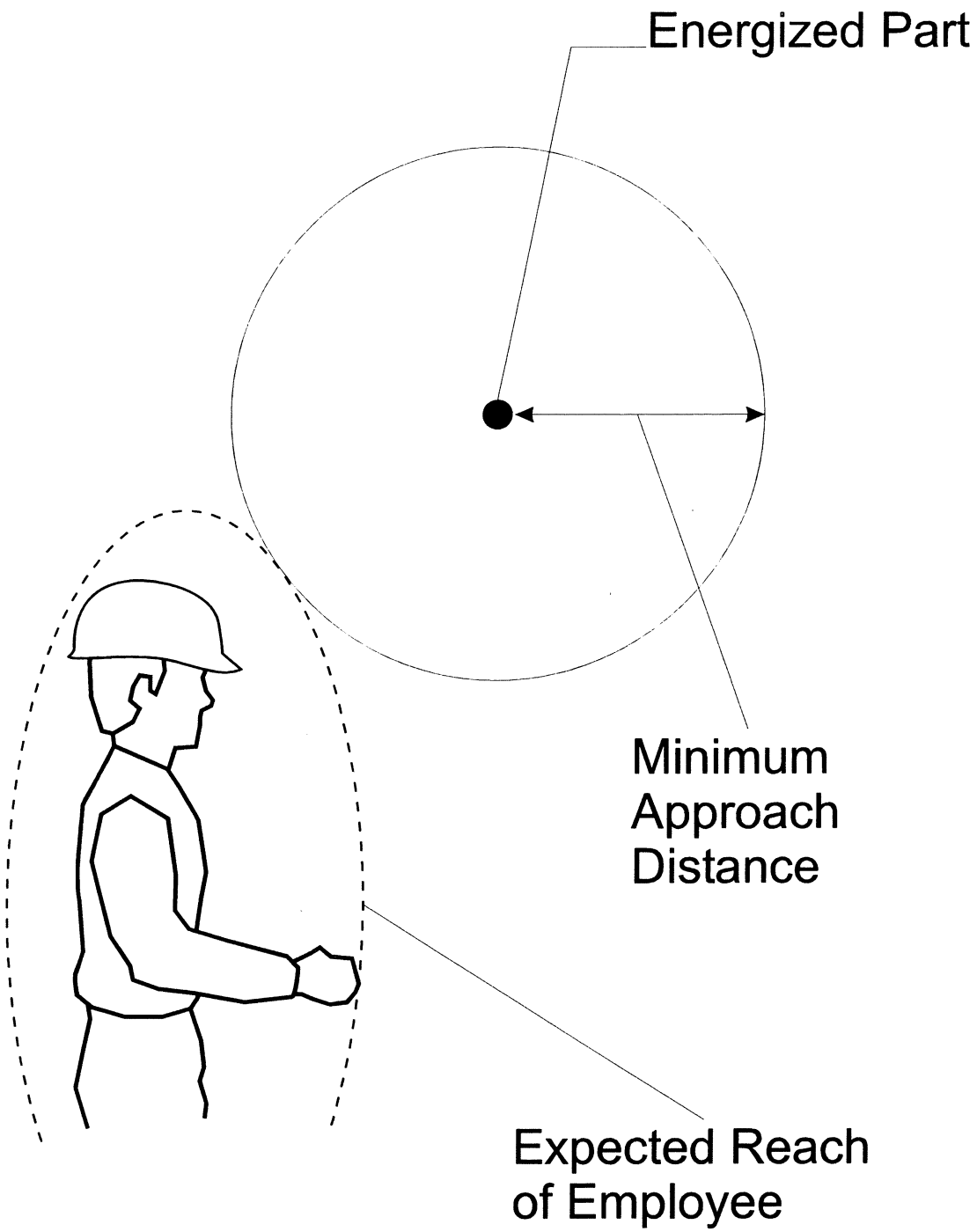


Figure 1—Maintaining the Minimum Approach Distance

BILLING CODE 4510–26–C

D. *Bare-Hand Live-Line Minimum Approach Distances.* Calculating the strength of phase-to-phase transient overvoltages is complicated by the varying time displacement between overvoltages on parallel conductors (electrodes) and by the varying ratio between the positive and negative voltages on the two electrodes. The time displacement causes the maximum voltage between phases to be less than the sum of the phase-to-ground voltages. The International Electrotechnical Commission (IEC) Technical Committee 28, Working Group 2, has developed the following formula for determining the phase-to-phase maximum transient overvoltage based on the per unit (p.u.) of the system nominal voltage phase-to-ground crest:

$pu_p = pu_g + 1.6.$

Where: pu_g = p.u. phase-to-ground maximum transient overvoltage

pu_p = p.u. phase-to-phase maximum transient overvoltage

This value of maximum anticipated transient overvoltage must be used in Equation (2) to calculate the phase-to-phase minimum approach distances for live-line bare-hand work.

E. *Compiling the minimum approach distance tables.* For each voltage involved, the distance in Table 4 in this appendix has been added to the distance in Table 1, Table 2, or Table 3 in this appendix to determine the resulting minimum approach distances in Table V–1, Table V–2, and Table V–3 in § 1926.960 of this part.

F. *Miscellaneous correction factors.* The strength of an air gap is influenced by the changes in the air medium that forms the insulation. A brief discussion of each factor follows, with a summary at the end.

1. *Dielectric strength of air.* The dielectric strength of air in a uniform electric field at standard atmospheric conditions is approximately 31 kV (crest) per cm at 60 Hz. The disruptive gradient is affected by the air pressure, temperature, and humidity, by the shape, dimensions, and separation of the electrodes, and by the characteristics of the applied voltage (wave shape).

2. *Atmospheric effect.* Flashover for a given air gap is inhibited by an increase in the density (humidity) of the air. The empirically determined electrical strength of a given gap is normally applicable at standard atmospheric conditions (20 C, 101.3 kPa, 11 g/cm ^{3} humidity).

The combination of temperature and air pressure that gives the lowest gap flashover voltage is high temperature and low pressure. These are conditions not likely to occur simultaneously. Low air pressure is generally associated with high humidity, and this causes increased electrical strength. An average air pressure is more likely to be associated with low humidity. Hot and dry working conditions are thus normally associated with reduced electrical strength.

The electrical component of the minimum approach distances in Table 1, Table 2, and Table 3 has been calculated using the maximum transient overvoltages to determine withstand voltages at standard atmospheric conditions.

3. *Altitude.* The electrical strength of an air gap is reduced at high altitude, due principally to the reduced air pressure. An increase of about 3 percent per 300 meters in the minimum approach distance for altitudes above 900 meters is required. Table V–5 of § 1926.960 of this Part presents this information in tabular form.

Summary. After taking all these correction factors into account and after considering their interrelationships relative to the air gap insulation strength and the conditions under which live work is performed, one finds that only a correction for altitude need be made. An elevation of 900 meters is established as the base elevation, and the values of the electrical component of the minimum approach distances has been derived with this correction factor in mind. Thus, the values used for elevations below 900 meters are conservative without any change; corrections have to be made only above this base elevation.

IV. Determination of Reduced Minimum Approach Distances

A. Factors Affecting Voltage Stress at the Work Site

1. *System voltage (nominal).* The nominal system voltage range sets the absolute lower limit for the minimum approach distance. The highest value within the range, as given in the relevant table, is selected and used as a reference for per unit calculations.

2. *Transient overvoltages.* Transient overvoltages may be generated on an electrical system by the operation of switches or breakers, by the occurrence of a fault on the line or circuit being worked or on an adjacent circuit, and by similar activities. Most of the overvoltages are caused by switching, and the term ''switching surge'' is often used to refer generically to all types of overvoltages. However, each overvoltage has an associated transient voltage wave shape. The wave shape arriving at the site and its magnitude vary considerably.

The information used in the development of the minimum approach distances takes into consideration the most common wave shapes; thus, the required minimum approach distances are appropriate for any transient overvoltage level usually found on electric power generation, transmission, and distribution systems. The values of the per unit (p.u.) voltage relative to the nominal maximum voltage are used in the calculation of these distances.

3. *Typical magnitude of overvoltages.* The magnitude of typical transient overvoltages is given in Table 5.

TABLE 5.—MAGNITUDE OF TYPICAL TRANSIENT OVERVOLTAGES

Cause	Magnitude (per unit)
Energized 200-mile line without closing resistors.	3.5
Energized 200-mile line with one-step closing resistor.	2.1
Energized 200-mile line with multi-step resistor.	2.5
Reclosed with trapped charge one-step resistor.	2.2
Opening surge with single restrike.	3.0
Fault initiation unfaulted phase.	2.1
Fault initiation adjacent circuit	2.5
Fault clearing	1.7 to 1.9

Source: ANSI/IEEE Standard No. 516, 1987.

4. *Standard deviation—air-gap withstand.* For each air gap length, and under the same atmospheric conditions, there is a statistical variation in the breakdown voltage. The probability of the breakdown voltage is assumed to have a normal (Gaussian) distribution. The standard deviation of this distribution varies with the wave shape, gap geometry, and atmospheric conditions. The withstand voltage of the air gap used in calculating the electrical component of the minimum approach distance has been set at three standard deviations (3σ[1]) below the critical flashover voltage. (The critical flashover voltage is the crest value of the impulse wave that, under specified conditions, causes flashover on 50 percent of the applications. An impulse wave of three standard deviations below this value, that is, the withstand voltage, has a probability of flashover of approximately 1 in 1000.)

5. *Broken Insulators.* Tests have shown that the insulation strength of an insulator string with broken skirts is reduced. Broken units may have lost up to 70% of their withstand capacity. Because the insulating capability of a broken unit cannot be determined without testing it, damaged units in an insulator are usually considered to have no insulating value. Additionally, the overall insulating strength of a string with broken units may be further reduced in the presence of a live-line tool alongside it. The number of good units that must be present in a string is based on the maximum overvoltage possible at the worksite.

B. Minimum Approach Distances Based on Known Maximum Anticipated Per-Unit Transient Overvoltages

1. *Reduction of the minimum approach distance for AC systems.* When the transient overvoltage values are known and supplied by the employer, Table V–2 and Table V–3 of § 1926.960 of this Part allow the minimum approach distances from energized parts to be reduced. In order to determine what this maximum overvoltage is, the employer must undertake an engineering analysis of the system. As a result of this engineering study, the employer must provide new live work procedures, reflecting the new minimum approach distances, the conditions and limitations of application of the new minimum approach distances, and the specific practices to be used when these procedures are implemented.

2. *Calculation of reduced approach distance values.* The following method of calculating reduced minimum approach

[1] Sigma (σ) is the symbol for standard deviation.

distances is based on ANSI/IEEE Standard 516:

Step 1. Determine the maximum voltage (with respect to a given nominal voltage range) for the energized part.

Step 2. Determine the maximum transient overvoltage (normally a switching surge) that can be present at the work site during work operation.

Step 3. Determine the technique to be used to control the maximum transient overvoltage. (See paragraphs III.C and III.D of this appendix.) Determine the maximum voltage that can exist at the work site with that form of control in place and with a confidence level of 3 . This voltage is considered to be the withstand voltage for the purpose of calculating the appropriate minimum approach distance.

Step 4. Specify in detail the control technique to be used, and direct its implementation during the course of the work.

Step 5. Using the new value of transient overvoltage in per unit (p.u.), determine the required phase-to-ground minimum approach distance from Table V–2 or Table V–3 of § 1926.960 of this Part.

C. Methods of Controlling Possible Transient Overvoltage Stress Found on a System.

1. *Introduction.* There are several means of controlling overvoltages that occur on transmission systems. First, the operation of circuit breakers or other switching devices may be modified to reduce switching transient overvoltages. Second, the overvoltage itself may be forcibly held to an acceptable level by means of installation of surge arresters at the specific location to be protected. Third, the transmission system may be changed to minimize the effect of switching operations.

2. *Operation of circuit breakers.*[2] The maximum transient overvoltage that can reach the work site is often due to switching on the line on which work is being performed. If the automatic-reclosing is removed during energized line work so that the line will not be reenergized after being opened for any reason, the maximum switching surge overvoltage is then limited to the larger of the opening surge or the greatest possible fault-generated surge, provided that the devices (for example, insertion resistors) are operable and will function to limit the transient overvoltage. It is essential that the operating ability of such devices be assured when they are employed to limit the overvoltage level. If it is prudent not to remove the reclosing feature (because of system operating conditions), other methods of controlling the switching surge level may be necessary.

Transient surges on an adjacent line, particularly for double circuit construction, may cause a significant overvoltage on the line on which work is being performed. The coupling to adjacent lines must be accounted for when minimum approach distances are calculated based on the maximum transient overvoltage.

3. *Surge arresters.* The use of modern surge arresters has permitted a reduction in the basic impulse-insulation levels of much transmission system equipment. The primary function of early arresters was to protect the system insulation from the effects of lightning. Modern arresters not only dissipate lightning-caused transients, but may also control many other system transients that may be caused by switching or faults.

It is possible to use properly designed arresters to control transient overvoltages along a transmission line and thereby reduce the requisite length of the insulator string. On the other hand, if the installation of arresters has not been used to reduce the length of the insulator string, it may be used to reduce the minimum approach distance instead.[3]

4. *Switching Restrictions.* Another form of overvoltage control is the establishment of switching restrictions, under which breakers are not permitted to be operated until certain system conditions are satisfied. Restriction of switching is achieved by the use of a tagging system, similar to that used for a ''permit'', except that the common term used for this activity is a ''hold-off'' or ''restriction''. These terms are used to indicate that operation is not prevented, but only modified during the live-work activity.

D. Minimum Approach Distance Based on Control of Voltage Stress (Overvoltages) at the Work Site

Reduced minimum approach distances can be calculated as follows:

1. *First Method—Determining the reduced minimum approach distance from a given withstand voltage.*[4]

Step 1. Select the appropriate withstand voltage for the protective gap based on system requirements and an acceptable probability of actual gap flashover.

Step 2. Determine a gap distance that provides a withstand voltage[5] greater than or equal to the one selected in the first step.[6]

Step 3. Using 110 percent of the gap's critical flashover voltage, determine the electrical component of the minimum approach distance from Equation (2) or Table 6, which is a tabulation of distance vs. withstand voltage based on Equation (2).

TABLE 6.—WITHSTAND DISTANCES FOR TRANSIENT OVERVOLTAGES

Crest voltage (kV)	Withstand distance air gap	
	m	ft
100	0.22	0.71
150	0.32	1.06
200	0.43	1.41
250	0.54	1.77
300	0.65	2.12
350	0.75	2.47
400	0.86	2.83
450	0.97	3.18
500	1.08	3.54
550	1.19	3.89
600	1.29	4.24
650	1.40	4.60
700	1.58	5.17
750	1.75	5.73
800	1.92	6.31
850	2.11	6.91
900	2.31	7.57
950	2.51	8.23
1000	2.72	8.94
1050	2.94	9.65
1100	3.18	10.42
1150	3.41	11.18
1200	3.67	12.05
1250	3.93	12.90
1300	4.20	13.79
1350	4.48	14.70
1400	4.77	15.64
1450	5.06	16.61
1500	5.37	17.61
1550	5.68	18.63

Note: The air gap is based on the 60-Hz rod-gap withstand distance.

Source: Calculations are based on Equation (2).

Step 4. Add the 0.30-m (1-foot) ergonomic component to obtain the total minimum approach distance to be maintained by the employee.

2. *Second Method—Determining the necessary protective gap length from a desired (reduced) minimum approach distance.*

Step 1. Determine the desired minimum approach distance for the employee. Subtract the 0.30-m (1-foot) ergonomic component of the minimum approach distance.

Step 2. Using this distance, calculate the air gap withstand voltage from Equation (2). Alternatively, find the voltage corresponding to the distance in Table 6.[7]

Step 3. Select a protective gap distance corresponding to a critical flashover voltage that, when multiplied by 110 percent, is less than or equal to the withstand voltage from Step 2.

Step 4. Calculate the withstand voltage of the protective gap (85 percent of the critical

[2] The detailed design of a circuit interrupter, such as the design of the contacts, of resistor insertion, and of breaker timing control, are beyond the scope of this appendix. These features are routinely provided as part of the design for the system. Only features that can limit the maximum switching transient overvoltage on a system are discussed in this appendix.

[3] Surge arrester application is beyond the scope of this appendix. However, if the arrester is installed near the work site, the application would be similar to protective gaps as discussed in paragraph III.D of this appendix.

[4] Since a given rod gap of a given configuration corresponds to a certain withstand voltage, this method can also be used to determine the minimum approach distance for a known gap.

[5] The withstand voltage for the gap is equal to 85 percent of its critical flashover voltage.

[6] Switch steps 1 and 2 if the length of the protective gap is known. The withstand voltage must then be checked to ensure that it provides an acceptable probability of gap flashover. In general, it should be at least 1.25 times the maximum crest operating voltage.

[7] Since the value of the saturation factor, a, in Equation (2) is dependent on the maximum voltage, several iterative computations may be necessary to determine the correct withstand voltage using the equation. A graph of withstand voltage vs. distance is given in ANSI/IEEE Std. No. 516–1987. This graph could also be used to determine the appropriate withstand voltage for the minimum approach distance involved.

flashover voltage) to ensure that it provides an acceptable risk of flashover during the time the gap is installed.

3. *Sample protective gap calculations.*

Problem 1: Work is to be performed on a 500-kV transmission line that is subject to transient overvoltages of 2.4 p.u. The maximum operating voltage of the line is 552 kV. Determine the length of the protective gap that will provide the minimum practical safe approach distance. Also, determine what that minimum approach distance is.

Step 1. Calculate the smallest practical maximum transient overvoltage (1.25 times the crest line-to-ground voltage):[8]

$$552\ \text{kV} \times \frac{\sqrt{2}}{\sqrt{3}} \times 1.25 = 563\ \text{kV}$$

This will be the withstand voltage of the protective gap.

Step 2. Using test data for a particular protective gap, select a gap that has a critical flashover voltage greater than or equal to:

$$563\ \text{kV} \div 0.85 = 662\ \text{kV}.$$

For example, if a protective gap with a 1.22-m (4.0-foot) spacing tested to a critical flashover voltage of 665 kV, crest, select this gap spacing.

Step 3. This protective gap corresponds to a 110 percent of critical flashover voltage value of:

$$665\ \text{kV} \times 1.10 = 732\ \text{kV}.$$

This corresponds to the withstand voltage of the electrical component of the minimum approach distance.

Step 4. Using this voltage in Equation (2) results in an electrical component of the minimum approach distance of:

$$D = (0.01 + 0.0006) \times \frac{732\ \text{kV}}{\sqrt{2}} = 5.5\ \text{ft}\ (1.68\ \text{m}).$$

Step 5. Add 0.30 m (1 foot) to the distance calculated in Step 4, resulting in a total minimum approach distance of 1.98 m (6.5 feet).

Problem 2: For a line operating at a maximum voltage of 552 kV subject to a maximum transient overvoltage of 2.4 p.u., find a protective gap distance that will permit the use of a 2.74-m (9.0-foot) minimum approach distance. (A minimum approach distance of 3.42 m (11 feet, 3 inches) is normally required.)

Step 1. Subtracting the 0.30-m (1-foot) ergonomic component of the minimum approach distance yields an electrical component of the minimum approach distance of 2.44 m (8.0 feet).

Step 2. From Table 6, select the withstand voltage corresponding to a distance of 2.44 m (8.0 feet). By interpolation:

$$900\ \text{kV} + \left[50 \times \frac{(8.00 - 7.57)}{(8.23 - 7.57)}\right] = 933\ \text{kV}.$$

Step 3. The voltage calculated in Step 2 corresponds to 110 percent of the critical flashover voltage of the gap that should be employed. Using test data for a particular protective gap, select a gap that has a critical flashover voltage less than or equal to:

$$933\ \text{kV} \div 1.10 = 848\ \text{kV}.$$

For example, if a protective gap with a 1.77-m (5.8-foot) spacing tested to a critical flashover voltage of 820 kV, crest, select this gap spacing.

Step 4. The withstand voltage of this protective gap would be:

$$820\ \text{kV} \times 0.85 = 697\ \text{kV}.$$

The maximum operating crest voltage would be:

$$552\ \text{kV} \times \frac{\sqrt{2}}{\sqrt{3}} = 449\ \text{kV}.$$

The crest withstand voltage of the protective gap in per unit is thus:

$$697\ \text{kV} \div 449\ \text{kV} = 1.55\ \text{p.u.}$$

If this is acceptable, the protective gap could be installed with a 1.77-m (5.8-foot) spacing, and the minimum approach distance could then be reduced to 2.74 m (9.0 feet).

4. *Comments and variations.* The 0.30-m (1-foot) ergonomic component of the minimum approach distance must be added to the electrical component of the minimum approach distance calculated under paragraph III.D of this appendix. The calculations may be varied by starting with the protective gap distance or by starting with the minimum approach distance.

E. Location of Protective Gaps

1. *Adjacent structures.* Installation of the protective gap on a structure adjacent to the work site is an acceptable practice, as this does not significantly reduce the protection afforded by the gap.

2. *Terminal stations.* Gaps installed at terminal stations of lines or circuits provide a given level of protection. The level may not, however, extend throughout the length of the line to the worksite. The use of gaps at terminal stations must be studied in depth. The use of substation terminal gaps raises the possibility that separate surges could enter the line at opposite ends, each with low enough magnitude to pass the terminal gaps without flashover. When voltage surges are initiated simultaneously at each end of a line and travel toward each other, the total voltage on the line at the point where they meet is the arithmetic sum of the two surges. A gap that is installed within 0.8 km (0.5 mile) of the work site will protect against such intersecting waves. Engineering studies of a particular line or system may indicate that adequate protection can be provided by even more distant gaps.

3. *Work site.* If protective gaps are used at the work site, the work site impulse insulation strength is established by the gap setting. Lightning strikes as much as 6 miles away from the worksite may cause a voltage surge greater than the insulation withstand voltage, and a gap flashover may occur. The flashover will not occur between the employee and the line, but across the protective gap instead.

F. Disabling Automatic Reclosing

There are two reasons to disable the automatic-reclosing feature of circuit-interrupting devices while employees are performing live-line maintenance:

- To prevent the reenergizing of a circuit faulted by actions of a worker, which could possibly create a hazard or compound injuries or damage produced by the original fault;
- To prevent any transient overvoltage caused by the switching surge that would occur if the circuit were reenergized.

However, due to system stability considerations, it may not always be feasible to disable the automatic-reclosing feature.

Appendix C to Subpart V—Protection From Step and Touch Potentials

I. Introduction

When a ground fault occurs on a power line, voltage is impressed on the ''grounded'' object faulting the line. The voltage to which this object rises depends largely on the voltage on the line, on the impedance of the faulted conductor, and on the impedance to ''true,'' or ''absolute,'' ground represented by the object. If the object causing the fault represents a relatively large impedance, the voltage impressed on it is essentially the phase-to-ground system voltage. However, even faults to well grounded transmission towers or substation structures can result in hazardous voltages.[1] The degree of the hazard depends upon the magnitude of the fault current and the time of exposure.

II. Voltage-Gradient Distribution

A. Voltage-Gradient Distribution Curve.

The dissipation of voltage from a grounding electrode (or from the grounded end of an energized grounded object) is called the ground potential gradient. Voltage drops associated with this dissipation of voltage are called ground potentials. Figure 2

[8] To eliminate unwanted flashovers due to minor system disturbances, it is desirable to have the crest withstand voltage no lower than 1.25 p.u.

[1] This appendix provides information primarily with respect to employee protection from contact between equipment being used and an energized power line. The information presented is also relevant to ground faults to transmission towers and substation structures; however, grounding systems for these structures should be designed to minimize the step and touch potentials involved.

is a typical voltage-gradient distribution curve (assuming a uniform soil texture). This graph shows that voltage decreases rapidly with increasing distance from the grounding electrode.

BILLING CODE 4501–26–P

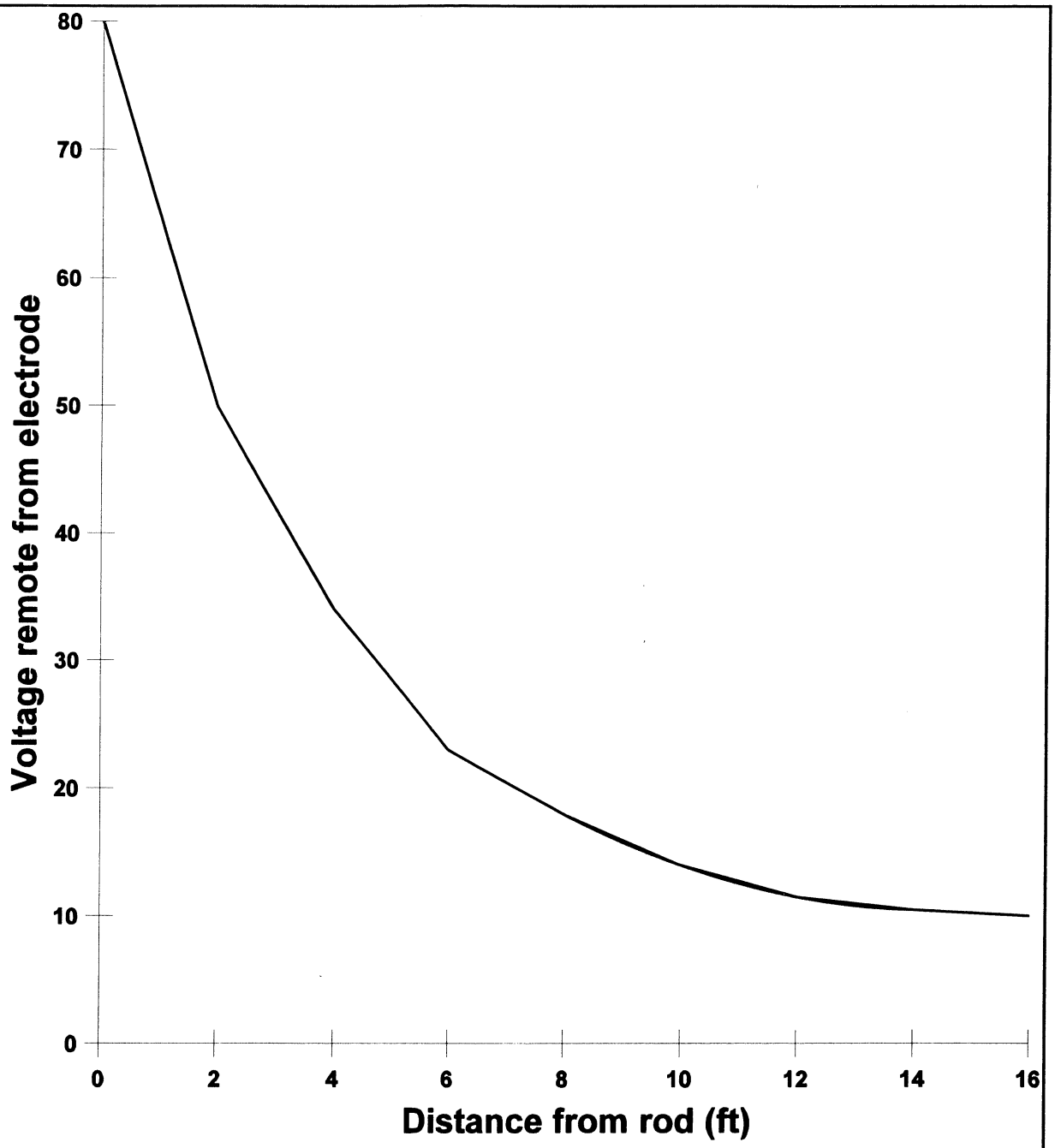


Figure 2—Typical Voltage-Gradient Distribution Curve

B. Step and Touch Potentials

''Step potential'' is the voltage between the feet of a person standing near an energized grounded object. It is equal to the difference in voltage, given by the voltage distribution curve, between two points at different distances from the ''electrode.'' A person could be at risk of injury during a fault simply by standing near the grounding point.

''Touch potential'' is the voltage between the energized object and the feet of a person in contact with the object. It is equal to the difference in voltage between the object (which is at a distance of 0 feet) and a point some distance away. It should be noted that the touch potential could be nearly the full voltage across the grounded object if that object is grounded at a point remote from the place where the person is in contact with it. For example, a crane that was grounded to the system neutral and that contacted an energized line would expose any person in contact with the crane or its uninsulated load line to a touch potential nearly equal to the full fault voltage.

Step and touch potentials are illustrated in Figure 3.

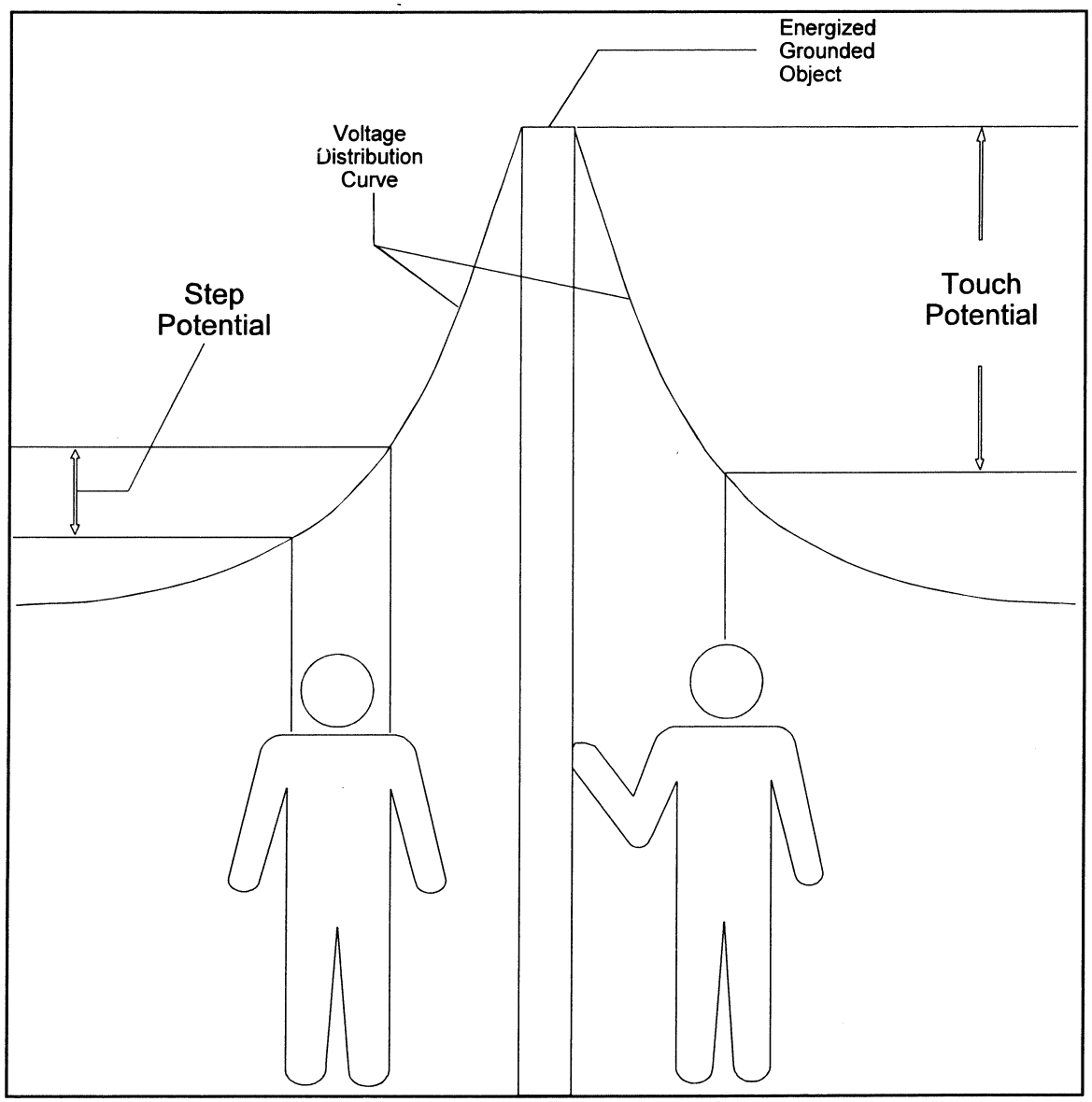


Figure 3—Step and Touch Potentials

C. Protection From the Hazards of Ground-Potential Gradients

An engineering analysis of the power system under fault conditions can be used to determine whether or not hazardous step and touch voltages will develop. The result of this analysis can ascertain the need for protective measures and can guide the selection of appropriate precautions.

Several methods may be used to protect employees from hazardous ground-potential gradients, including equipotential zones, insulating equipment, and restricted work areas.

1. The creation of an equipotential zone will protect a worker standing within it from hazardous step and touch potentials. (*See* Figure 4.) Such a zone can be produced through the use of a metal mat connected to the grounded object. In some cases, a grounding grid can be used to equalize the voltage within the grid. Equipotential zones will not, however, protect employees who are either wholly or partially outside the protected area. Bonding conductive objects in the immediate work area can also be used to minimize the potential between the objects and between each object and ground. (Bonding an object outside the work area can increase the touch potential to that object in some cases, however.)

2. The use of insulating equipment, such as rubber gloves, can protect employees handling grounded equipment and conductors from hazardous touch potentials. The insulating equipment must be rated for the highest voltage that can be impressed on the grounded objects under fault conditions (rather than for the full system voltage).

3. Restricting employees from areas where hazardous step or touch potentials could arise can protect employees not directly involved in the operation being performed. Employees on the ground in the vicinity of transmission structures should be kept at a distance where step voltages would be insufficient to cause injury. Employees should not handle grounded conductors or equipment likely to become energized to hazardous voltages unless the employees are within an equipotential zone or are protected by insulating equipment.

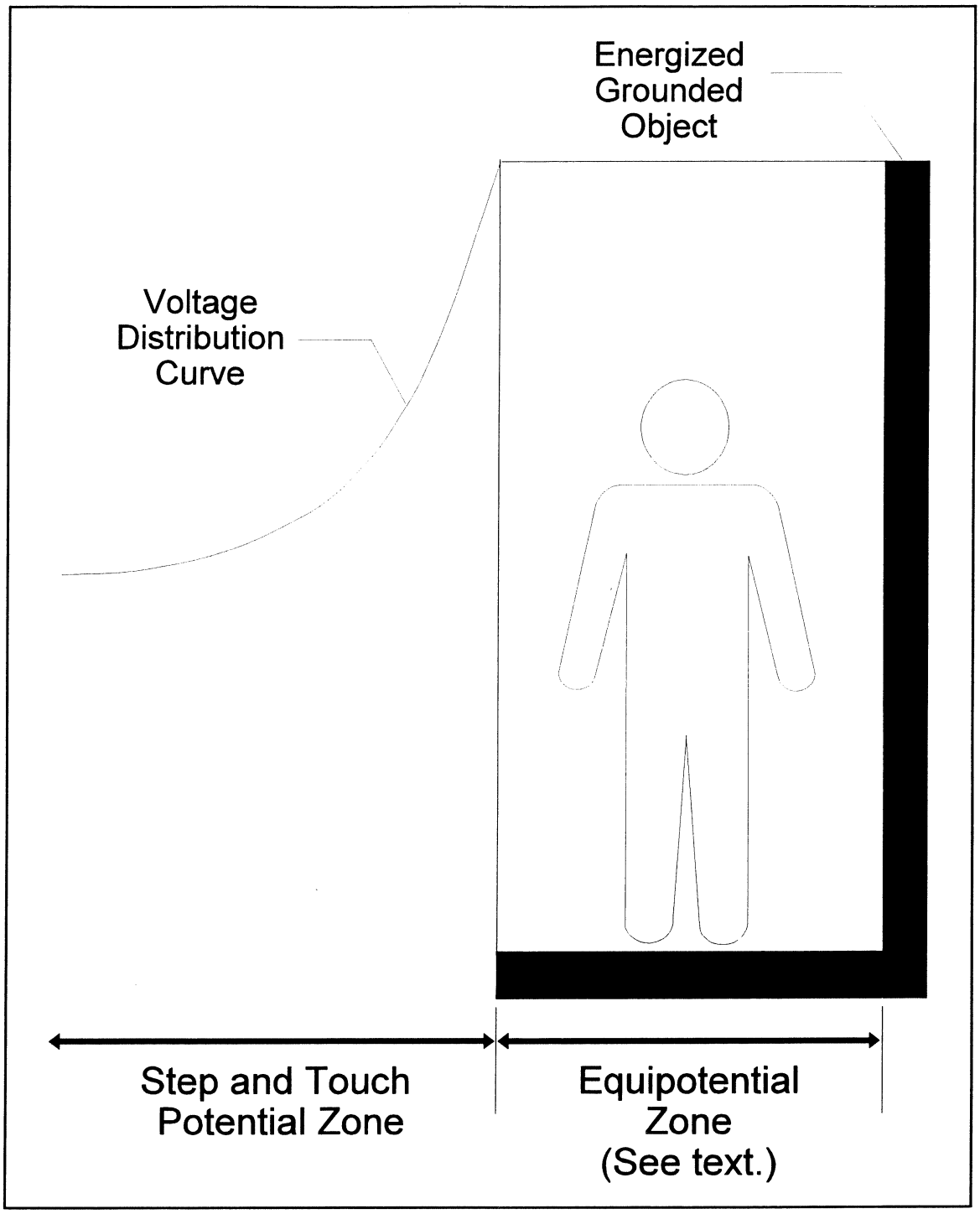


Figure 4—Protection from Ground-Potential Gradients

Appendix D to Subpart V—Methods of Inspecting and Testing Wood Poles

I. Introduction

When work is to be performed on a wood pole, it is important to determine the condition of the pole before it is climbed. The weight of the employee, the weight of equipment being installed, and other working stresses (such as the removal or retensioning of conductors) can lead to the failure of a defective pole or one that is not designed to handle the additional stresses.[1] For these reasons, it is essential that an inspection and test of the condition of a wood pole be performed before it is climbed.

If the pole is found to be unsafe to climb or to work from, it must be secured so that it does not fail while an employee is on it. The pole can be secured by a line truck boom, by ropes or guys, or by lashing a new pole alongside it. If a new one is lashed alongside the defective pole, work should be performed from the new one.

II. Inspection of Wood Poles

Wood poles should be inspected by a qualified employee for the following conditions:[2]

A. *General condition.* The pole should be inspected for buckling at the ground line and for an unusual angle with respect to the ground. Buckling and odd angles may indicate that the pole has rotted or is broken.

B. *Cracks.* The pole should be inspected for cracks. Horizontal cracks perpendicular to the grain of the wood may weaken the pole. Vertical ones, although not considered to be a sign of a defective pole, can pose a hazard to the climber, and the employee should keep his or her gaffs away from them while climbing.

C. *Holes.* Hollow spots and woodpecker holes can reduce the strength of a wood pole.

D. *Shell rot and decay.* Rotting and decay are cutout hazards and possible indications of the age and internal condition of the pole.

E. *Knots.* One large knot or several smaller ones at the same height on the pole may be evidence of a weak point on the pole.

F. *Depth of setting.* Evidence of the existence of a former ground line substantially above the existing ground level may be an indication that the pole is no longer buried to a sufficient extent.

G. *Soil conditions.* Soft, wet, or loose soil may not support any changes of stress on the pole.

H. *Burn marks.* Burning from transformer failures or conductor faults could damage the pole so that it cannot withstand mechanical stress changes.

III. Testing of Wood Poles

The following tests, which have been taken from § 1910.268(n)(3) of this chapter, are recognized as acceptable methods of testing wood poles:

A. *Hammer test.* Rap the pole sharply with a hammer weighing about 1.4 kg (3 pounds), starting near the ground line and continuing upwards circumferentially around the pole to a height of approximately 1.8 m (6 feet). The hammer will produce a clear sound and rebound sharply when striking sound wood. Decay pockets will be indicated by a dull sound or a less pronounced hammer rebound. Also, prod the pole as near the ground line as possible using a pole prod or a screwdriver with a blade at least 127 mm (5 inches) long. If substantial decay is encountered, the pole is considered unsafe.

B. *Rocking test.* Apply a horizontal force to the pole and attempt to rock it back and forth in a direction perpendicular to the line. Caution must be exercised to avoid causing power lines to swing together. The force may be applied either by pushing with a pike pole or pulling with a rope. If the pole cracks during the test, it shall be considered unsafe.

Appendix E to Subpart V—Reference Documents

The references contained in this appendix provide information that can be helpful in understanding and complying with the requirements contained in subpart V of this part. The national consensus standards referenced in this appendix contain detailed specifications that employers may follow in complying with the more performance-oriented requirements of OSHA's final rule. Except as specifically noted in subpart V of this part, however, compliance with the national consensus standards is not a substitute for compliance with the provisions of the OSHA standard.

ANSI/SIA A92.2–2001, American National Standard for Vehicle-Mounted Elevating and Rotating Aerial Devices.

ANSI C2–2002, National Electrical Safety Code.

ANSI Z133.1–2000, American National Standard Safety Requirements for Pruning, Trimming, Repairing, Maintaining, and Removing Trees, and for Cutting Brush.

ANSI/ASME B20.1–2003, Safety Standard for Conveyors and Related Equipment.

ANSI/IEEE Std. 4–1995, IEEE Standard Techniques for High-Voltage Testing.

ANSI/IEEE Std. 100–2000, The Authoritative Dictionary of IEEE Standards Terms, 7th Edition.

ANSI/IEEE Std. 516–2003, IEEE Guide for Maintenance Methods on Energized Power Lines.

ANSI/IEEE Std. 935–1989, IEEE Guide on Terminology for Tools and Equipment To Be Used in Live Line Working.

ANSI/IEEE Std. 957–1995, IEEE Guide for Cleaning Insulators.

ASTM D 120–02a, Standard Specification for Rubber Insulating Gloves.

ASTM D 149–97a, Standard Test Method for Dielectric Breakdown Voltage and Dielectric Strength of Solid Electrical Insulating Materials at Commercial Power Frequencies.

ASTM D 178–01^{e1}, Standard Specification for Rubber Insulating Matting.

ASTM D 1048–99, Standard Specification for Rubber Insulating Blankets.

ASTM D 1049–98^{e1}, Standard Specification for Rubber Insulating Covers.

ASTM D 1050–90, Standard Specification for Rubber Insulating Line Hose.

ASTM D 1051–02, Standard Specification for Rubber Insulating Sleeves.

ASTM F 478–92, Standard Specification for In-Service Care of Insulating Line Hose and Covers.

ASTM F 479–95, Standard Specification for In-Service Care of Insulating Blankets.

ASTM F 496–02a, Standard Specification for In-Service Care of Insulating Gloves and Sleeves.

ASTM F 711–02, Standard Specification for Fiberglass-Reinforced Plastic (FRP) Rod and Tube Used in Live Line Tools.

ASTM F 712–88, Standard Test Methods for Electrically Insulating Plastic Guard Equipment for Protection of Workers.

ASTM F 819–00^{e1}, Standard Terminology Relating to Electrical Protective Equipment for Workers.

ASTM F 855–03, Standard Specifications for Temporary Protective Grounds to Be Used on De-Energized Electric Power Lines and Equipment.

ASTM F 887–04, Standard Specifications for Personal Climbing Equipment.

ASTM F 914–03, Standard Test Method for Acoustic Emission for Insulated and Non-Insulated Aerial Personnel Devices Without Supplemental Load Handling Attachments.

ASTM F 968–93^{e1}, Standard Specification for Electrically Insulating Plastic Guard Equipment for Protection of Workers.

ASTM F 1116–03, Standard Test Method for Determining Dielectric Strength of Dielectric Footwear.

ASTM F 1117–03, Standard Specification for Dielectric Footwear.

ASTM F 1236–96, Standard Guide for Visual Inspection of Electrical Protective Rubber Products.

ASTM F 1430–03, Standard Test Method for Acoustic Emission Testing of Insulated and Non-Insulated Aerial Personnel Devices with Supplemental Load Handling Attachments.

ASTM F 1505–01, Standard Specification for Insulated and Insulating Hand Tools.

ASTM F 1506–02a^{e1}, Standard Performance Specification for Flame Resistant Textile Materials for Wearing Apparel for Use by Electrical Workers Exposed to Momentary Electric Arc and Related Thermal Hazards.

ASTM F 1564–95, Standard Specification for Structure-Mounted Insulating Work Platforms for Electrical Workers.

ASTM F 1701–96, Standard Specification for Unused Polypropylene Rope with Special Electrical Properties.

ASTM F 1742–03, Standard Specifications for PVC Insulating Sheeting.

ASTM F 1796–97, Standard Specification for High Voltage Detectors—Part 1 Capacitive Type to be Used for Voltages Exceeding 600 Volts AC.

ASTM F 1797–98, Standard Test Method for Acoustic Emission Testing of Insulated Digger Derricks.

ASTM F1825–03, Standard Specification for Clampstick Type Live Line Tools.

ASTM F1826–00, Standard Specification for Live Line and Measuring Telescoping Tools.

[1] A properly guyed pole in good condition should, at a minimum, be able to handle the weight of an employee climbing it.

[2] The presence of any of these conditions is an indication that the pole may not be safe to climb or to work from. The employee performing the inspection must be qualified to make a determination as to whether or not it is safe to perform the work without taking additional precautions.

ASTM F 1891–02b, Standard Specification for Arc and Flame Resistant Rainwear.

ASTM F 1958/F 1958M–99, Standard Test Method for Determining the Ignitability of Non-flame-Resistant Materials for Clothing by Electric Arc Exposure Method Using Mannequins.

ASTM F1959/F 1959M–99, Standard Test Method for Determining the Arc Thermal Performance Value of Materials for Clothing.

IEEE Std. 62–1995, IEEE Guide for Diagnostic Field Testing of Electric Power Apparatus

IEEE Std. 524–2003, IEEE Guide to the Installation of Overhead Transmission Line Conductors.

IEEE Std. 1048–2003, IEEE Guide for Protective Grounding of Power Lines.

IEEE Std. 1067–1996, IEEE Guide for the In-Service Use, Care, Maintenance, and Testing of Conductive Clothing for Use on Voltages up to 765 kV AC and ±750 kV DC.

NFPA 70E–2004, Standard for Electrical Safety in the Workplace.

Appendix F to Subpart V—Clothing

I. Introduction

Paragraph (g) of § 1926.960 addresses clothing worn by an employee. This paragraph requires employers to: (1) Assess the workplace for flame and arc hazards (paragraph (g)(1)); (2) estimate the available heat energy from electric arcs to which employees could be exposed (paragraph (g)(2)), (3) ensure that employees wear clothing that has an arc rating greater than or equal to the available heat energy (paragraph (g)(5)), (4) ensure that employees wear clothing that could not melt or ignite and continue to burn in the presence of electric arcs to which an employee could be exposed (paragraph (g)(3)), and (5) ensure that employees wear flame-resistant clothing [1] under certain conditions (paragraph (g)(4)). This appendix contains information to help employers estimate available heat energy as required by § 1926.960(g)(2), select clothing with an arc rating suitable for the available heat energy as required by § 1926.960(g)(5), and ensure that employees do not wear flammable clothing that could lead to burn injury as addressed by §§ 1926.960(g)(3) and (g)(4).

II. Protection Against Burn Injury

A. Estimating Available Heat Energy

The first step in protecting employees from burn injury resulting from an electric arc is to estimate the potential heat energy if an arc does occur. Table 7 lists various methods of calculating values of available heat energy from an electric circuit. OSHA does not endorse any of these specific methods. Each method requires the input of various parameters, such as fault current, the expected length of the electric arc, the distance from the arc to the employee, and the clearing time for the fault (that is, the time the circuit protective devices take to open the circuit and clear the fault). Some of these parameters, such as the fault current and the clearing time, are known quantities for a given system. Other parameters, such as the length of the arc and the distance between the arc and the employee, vary widely and can only be estimated.

TABLE 7.—METHODS OF CALCULATING INCIDENT HEAT ENERGY FROM AN ELECTRIC ARC

1. Standard for Electrical Safety Requirements for Employee Workplaces, NFPA 70E–2004, Annex D, "Sample Calculation of Flash Protection Boundary."
2. Doughty, T.E., Neal, T.E., and Floyd II, H.L., "Predicting Incident Energy to Better Manage the Electric Arc Hazard on 600 V Power Distribution Systems," Record of Conference Papers IEEE IAS 45th Annual Petroleum and Chemical Industry Conference, Septebmer 28–30, 1998.
3. Guide for Performing Arc Flash Hazard Calculations, IEEE 1584–2002.
4. Heat Flux Calculator, a free software program created by Alan Privette (widely available on the Internet).
5. ARCPRO, a commercially available software program developed by Kinectrics, Toronto, ON, CA.

The amount of heat energy calculated by any of the methods is approximately directly proportional to the square of the distance between the employee and the arc. In other words, if the employee is very close to the arc, the heat energy is very high; but if he or she is just a few more centimeters away, the heat energy drops substantially. Thus, estimating the distance from the arc to the employee is key to protecting employees.

In estimating available heat energy, the employer must make some reasonable assumptions about how far the employee will be from the electric arc. In some instances, such as during some work performed using live-line tools, the employee will be at least the minimum approach distance from an energized part. However, in this situation, the arc could still extend towards the employee. Thus, in this case, a reasonable estimate of the distance between the employee and the arc would be the minimum approach distance minus twice the sparkover distance.[2]

In other cases, as during rubber glove work, parts of the employee's body will be closer to an energized part than the minimum approach distance. An employee's chest will be about 380 millimeters (15 in.) from an energized conductor during rubber glove work on that conductor. Because there should not be any surfaces at a potential other than the conductor between the employee and the conductor, it is reasonable to assume that the arc will not extend towards the employee. Thus, in this situation, it would be reasonable to use 380 millimeters (15 in.) as the distance between the employee and the arc.

The standard permits an employer to make broad estimates of available heat energy covering multiple system areas using reasonable assumptions about the energy exposure distribution. For example, the employer can use the maximum fault current and clearing time to cover several system areas at once. Table 8 presents estimates of available energy for different parts of an electrical system operating at 4 to 46 kV. The table is for open-air, phase-to-ground electric arc exposures typical for overhead systems operating at these voltages. The table assumes that the employee will be 380 millimeters (15 in.) from the electric arc, which is a reasonable estimate for rubber glove work. To use the table, an employer would use the voltage, maximum fault current, and maximum clearing time for a system area and select the appropriate heat energy (5, 8, or 12 calories) from the table. For example, an employer might have a 12,470-volt power line supplying a system area. The power line can supply a maximum fault current of 8 kiloamperes with a maximum clearing time of 10 cycles. This system falls in the 4.0-to-15.0-kV range; the fault current is less than 10 kA (the second row in that voltage range); and the clearing time is under 14.5 cycles (the first column to the right of the fault current column). Thus, the available heat energy for this part of the system will be 5 calories or less (from the column heading), and the employer could select clothing with a 5-calorie rating to meet § 1926.960(g)(5).

Table 9 presents similar estimates for systems operating at voltages of 46.1 to 800 kV. This table is also for open-air, phase-to-ground electric arc exposures typical for overhead systems operating at these voltages. The table assumes that the arc length will be equal to the sparkover distance [3] and that the employee will be a distance from the arc equal to the minimum approach distance minus twice the arc length.

The employer will need to use other methods for estimating available heat energy in situations not addressed by Table 8 or Table 9. The calculation methods listed in Table 7 will help employers do this. For example, employers can use Table 130.7(C)(9)(a), Table 130.7(C)(10), and Table 130.7(C)(11) of NFPA 70E–2004 to estimate

[1] Flame-resistant clothing includes clothing that is inherently flame resistant and clothing that has been chemically treated with a flame retardant. (See ASTM F1506–02a, Standard Performance Specification for Textile Materials for Wearing Apparel for Use by Electrical Workers Exposed to Momentary Electric Arc and Related Thermal Hazards.)

[2] The sparkover distance equals the shortest possible arc length.

[3] The dielectric strength of air is about 10 kV for every 25.4 mm (1 in.). Thus, the arc length can be estimated to be the phase-to-ground voltage divided by 10.

the available heat energy (and to select appropriate protective clothing) for many specific situations, including lower-voltage, phase-to-phase arc, and enclosed arc exposures.

TABLE 8.—AVAILABLE HEAT ENERGY FOR VARIATIONS FAULT CURRENTS, CLEARING TIMES, AND VOLTAGES OF 4.0 TO 46.0 kV

Voltage range (kV)	Fault current (kA)	5-cal maximum clearing time (cycles)	8-cal maximum clearing time (cycles)	12-cal maximum clearing time (cycles)
4.0 to 15.0	5	37.3	59.6	89.4
	10	14.5	23.2	34.8
	15	8.0	12.9	19.3
	20	5.2	8.3	12.5
15.1 to 25.0	5	34.5	55.2	82.8
	10	14.2	22.7	34.1
	15	8.2	13.2	19.8
	20	5.5	8.8	13.2
25.1 to 36.0	5	16.9	27.0	40.4
	10	7.1	11.4	17.1
	15	4.2	6.8	10.1
	20	2.9	4.6	6.9
36.1	5	13.3	21.2	31.9
	10	5.7	9.1	13.7
	15	3.5	5.6	8.4
	20	2.5	4.0	6.0

Notes:

(1) This table is for open-air, phase-to-ground electric arc exposures. It is not intended for phase-to-phase arcs or enclosed arcs (arc in a box).

(2) The table assumes that the employee will be 380 mm (15 in.) from the electric arc. The table also assumes the arc length to be the sparkover distance for the maximum voltage of each voltage range, as follows:

4.0 to 15.0 kV 51 mm (2 in.).
15.1 to 25.0 kV 102 mm (4 in.).
25.1 to 36.0 kV 152 mm (6 in.).
36.1 to 46.0 kV 229 mm (9 in.).

TABLE 9.—AVAILABLE HEAT ENERGY FOR VARIOUS FAULT CURRENTS, CLEARING TIMES, AND VOLTAGES OF 46.1 TO 800 kV

Voltage range (kV)	Fault current (kA)	5-cal maximum clearing time (cycles)	8-cal maximum clearing time (cycles)	12-cal maximum clearing time (cycles)
46.1 to 72.5	20	10.6	17.0	25.5
	30	6.6	10.5	15.8
	40	4.6	7.3	11.0
	50	3.4	5.5	8.3
72.6 to 121	20	10.3	16.5	24.7
	30	5.9	9.4	14.1
	40	3.9	6.2	9.3
	50	2.7	4.4	6.6
138 to 145	20	12.2	19.5	29.3
	30	7.0	11.2	16.8
	40	4.6	7.4	11.1
	50	3.3	5.3	7.9
161 to 169	20	11.6	18.6	27.9
	30	7.2	11.5	17.2
	40	5.0	8.0	12.0
	50	3.8	6.0	9.0
230 to 242	20	13.0	20.9	31.3
	30	8.0	12.9	19.3
	40	5.6	9.0	13.5
	50	4.2	6.8	10.1
345 to 362	20	28.3	45.3	67.9
	30	17.5	28.1	42.1
	40	12.2	19.6	29.4
	50	9.2	14.7	22.1
500 to 550	20	23.6	37.8	56.7
	30	14.6	23.3	35.0
	40	10.2	16.3	24.4
	50	7.6	12.2	18.3
765 to 800	20	54.5	87.3	130.9
	30	33.7	53.9	80.9
	40	23.6	37.8	56.7

TABLE 9.—AVAILABLE HEAT ENERGY FOR VARIOUS FAULT CURRENTS, CLEARING TIMES, AND VOLTAGES OF 46.1 TO 800 kV

Voltage range (kV)	Fault current (kA)	5-cal maximum clearing time (cycles)	8-cal maximum clearing time (cycles)	12-cal maximum clearing time (cycles)
	50	17.8	28.4	42.6

Notes:
(1) This table is for open-air, phase-to-ground electric arc exposures. It is not intended for phase-to-phase arcs or enclosed arcs (arc in a box).
(2) The table assumes that the arc length will be the phase-to-ground voltage divided by 10 and that the distance from the arc to the employee is the minimum approach distance minus twice the arc length.

B. Selecting Protective Clothing

Table 10 presents protective clothing guidelines for exposure to electric arcs. Protective clothing meeting the guidelines in this table are expected, based on extensive laboratory testing, to be capable of preventing second-degree burn injury to an employee exposed to the corresponding range of calculated incident heat energy from an electric arc. It should be noted that actual electric arc exposures may be more or less severe than the laboratory exposures because of factors such as arc movement, arc length, arcing from reclosing of the system, secondary fires or explosions, and weather conditions. Therefore, it is possible that an employee will sustain a second-degree or worse burn wearing clothing conforming to the guidelines in Table 10 under certain circumstances. Such clothing will, however, provide an appropriate degree of protection for an employee who is exposed to electric arc hazards.

TABLE 10.—PROTECTION CLOTHING GUIDELINES FOR ELECTRIC ARC HAZARDS

Range of calculated incident energy cal/cm^3	Clothing description (number of layers)	Clothing weight oz/yd^2	Arc thermal performance value (ATPV)
0–2	Untreated Cotton (1)	4.5–7	N/A
2–5	FR Shirt (1)	4.5–8	5–7
5–10	T-Shirt plus FR Shirt and FR Pants (2)	9–12	10–17
10–20	T-Shirt plus FR Shirt plus FR Coverall (3)	16–20	22–25
20–40	T-Shirt plus FR Shirt plus Double Layer Switching Coat (4)	24–30	55

FR—Flame resistant.
ATPV—Arc Thermal Performance Value based on ASTM F1959 test method. (The method was modified as necessary to test the performance of the three- and four-layer systems.)
Source: "Protective Clothing Guidelines for Electric Arc Exposure," Neal, T. E., Bingham, A. H. Doughty, R. L., *IEEE Petroleum and Chemical Industry Conference Record,* September 1996, p. 294.

It should be noted that Table 10 permits untreated cotton clothing for exposures of 2 cal/cm^2 or less. Cotton clothing will reduce a 2-cal/cm^2 exposure below the 1.6-cal/cm^2 level necessary to cause burn injury and is not expected to ignite at such low heat energy levels. Although untreated cotton clothing is deemed to meet the requirement for suitable arc ratings in § 1926.960(g)(5) and the prohibition against clothing that could ignite and continue to burn in § 1926.960(g)(3) when the available heat energy is 2 cal/cm^2 or less, this type of clothing is still prohibited under certain conditions by § 1926.960(g)(4), as discussed further below.

Protective performance of any particular fabric type generally increases with fabric weight, as long as the fabric does not ignite and continue to burn. Multiple layers of clothing usually block more heat and are normally more protective than a single layer of the equivalent weight.

Exposed skin is expected to sustain a second-degree burn for incident energy levels of 1.6 cal/cm^2 or more. Though it is not required by the standard, if the heat energy estimated under § 1926.960(g)(2) is greater than or equal to 1.6 cal/cm^2, the employer should require each exposed employee to have no more than 10 percent of his or her body unprotected. Due to the unpredictable nature of electric arcs, the employer should also consider requiring the protection of bare skin from any exposure exceeding 0.8 cal/cm^2 so as to minimize the risk of burn injury.

III. Protection Against Ignition

Paragraph (g)(3) of § 1926.960 prohibits clothing that could melt onto an employee's skin or that could ignite and continue to burn when exposed to the available heat energy estimated by the employer. Meltable fabrics, such as acetate, nylon, and polyester, even in blends, must be avoided. When these fibers melt, they can adhere to the skin, transferring heat more rapidly, exacerbating any burns, and complicating treatment. This can be true even if the meltable fabric is not directly next to the skin. The remainder of this section focuses on the prevention of ignition.

Paragraph (g)(5) of § 1926.960 requires clothing with an arc rating greater than or equal to the employer's estimate of available heat energy. As explained earlier, untreated cotton is acceptable for exposures of 2 cal/cm^2 or less. If the exposure is greater than that, the employee must wear flame-resistant clothing with a suitable arc rating. However, even though an employee is wearing a layer of flame-resistant clothing, there are circumstances under which flammable layers of clothing would be exposed and subject to ignition. For example, if the employee is wearing flammable clothing (for example, winter coveralls) over the layer of flame-resistant clothing, the outer flammable layer can ignite. Similarly, clothing ignition is possible if the employee is wearing flammable clothing under the flame-resistant clothing and the underlayer is exposed by an opening in the flame-resistant clothing. Thus, it is important for the employer to consider the possibility of clothing ignition even when an employee is wearing clothing with a suitable arc rating.

Table 11 lists the minimum heat energy under electric arc conditions that can reasonably be expected to ignite different weights and colors of cotton fabrics. The values listed, expressed in calories per square centimeter, represent a 10 percent probability of ignition with a 95 percent confidence level. If the heat energy estimated under § 1926.960(g)(2) does not exceed the values listed in Table 11 for a particular weight and color of cotton fabric, then an outer layer of that material would not be expected to ignite and would be considered as being permitted under § 1926.960(g)(3).[4] Conversely, if the heat energy estimated under § 1926.960(g)(2) exceeds the values listed in Table 11 for a particular weight and color of cotton fabric, that material may not be worn as an outer

[4] An underlayer of clothing with an arc rating greater than or equal to the estimate of available heat energy would still be required under § 1926.960(g)(5).

layer of garment and may not be otherwise exposed due to an opening in the flame-resistant clothing.

For white cotton fabrics of a different weight from those listed, choose the next lower weight of white cotton fabric listed in Table 11. For cotton fabrics of a different color and weight combination than those listed, select a value from the table corresponding to an equal or lesser weight of blue cotton fabric. For example, for a 6.0-oz/yd^2 brown twill fabric, select 4.6 cal/cm^2 for the ignition threshold, which corresponds to 5.2-oz/yd^2 blue twill. If a white garment has a silkscreen logo, insignia, or other similar design included on it, then the entire garment will be considered as being of a color other than white. (The darker portion of the garment can ignite earlier than the rest of the garment, which would cause the entire garment to burn.)

Employers may choose to test samples of genuine garments rather than rely on the values given in Table 11. The appropriate electric arc ignition test method is given in ASTM F 1958/F 1958M–99, *Standard Test Method for Determining the Ignitability of Non-flame-Resistant Materials for Clothing by Electric Arc Exposure Method Using Mannequins.* Using this test method, employers may substitute actual test data analysis results representing an energy level that is reasonably certain not to be capable of igniting the fabric. For example, based on test data, the employer may select a level representing a 10 percent probability of ignition with a 95 percent confidence level, representing a 1 percent probability of ignition according to actual test results, or representing an energy level that is two standard deviations below the mean ignition threshold. The employer may also select some other comparable level.

TABLE 11.—IGNITION THRESHOLD FOR COTTON FABRICS

Fabric description			Ignition threshold (cal/cm^2)
Weight (oz/yd^2)	Color	Weave	
46	White	Jersey Kit	4.3
5.2	Blue	Twill	4.6
6.2	White	Fleece	6.4
6.9	Blue	Twill	5.3
8.0	Black	Twill	6.1
8.3	White	Sateen	11.6
11.9	Tan	Duck	11.3
12.8	Blue	Denim	15.5
13.3	Blue	Denim	15.9

Source: "Testing Update on Protective Clothing & Equipment for Electric Arc Exposure," IEEE Paper No. PCIC–97–35.

Clothing loses weight as it wears. This can lower the ignition threshold, especially if the garment has threadbare areas or is torn.

Adding layers of clothing beneath an outer layer of flammable fabric has no significant effect on the heat energy needed to ignite the outer fabric layer. Therefore, the outer layer of clothing must be treated as if it were a single layer to determine the proper ignition threshold.

Flammable clothing worn in conjunction with flame-resistant clothing is not permitted to pose an ignition hazard.[5] Flammable clothing may not be worn as an outer layer if it could be exposed to heat energy above the ignition threshold. Outer flame-resistant layers may not have openings that expose flammable inner layers that could be ignited.

When an outer flame-resistant layer would be unable to resist breakopen,[6] the next (inner) layer should be flame-resistant.

Grounding conductors can become a source of electric arcing if they cannot carry fault current without failure. These possible sources of electric arcs [7] must be considered in determining whether the employee's clothing could ignite under § 1926.960(g)(4)(iii).

Flammable clothing can also be ignited by arcing that occurs when a conductor contacts an employee or by nearby material that ignites upon exposure to an electric arc. These sources of ignition must be considered in determining whether the employee's clothing could ignite under § 1926.960(g)(4)(i) and (g)(4)(ii).

Appendix G to Subpart V—Work Positioning Equipment Inspection Guidelines

I. Body Belts

Inspect body belts to ensure that:

A. Hardware has no cracks, nicks, distortion, or corrosion;

B. No loose or worn rivets are present;

C. The waist strap has no loose grommets;

D. The fastening straps are not made of 100 percent leather;

E. No worn materials that could affect the safety of the user are present; and

F. D-rings are compatible with the snaphooks with which they will be used.

Note: An incompatibility between a snaphook and a D-ring may cause snaphook rollout, or unintentional disengagement of the snaphook from the D-ring. Employers should take extra precaution when determining compatibility between snaphooks and D-rings of different manufacturers.

II. Positioning Straps

Inspect positioning straps to ensure that:

A. The warning center of the strap material is not exposed;

B. No cuts, burns, extra holes, or fraying of strap material is present;

C. Rivets are properly secured;

D. Straps are not made from 100 percent leather; and

E. Snaphooks do not have cracks, burns, or corrosion.

III. Climbers

Inspect pole and tree climbers to ensure that:

A. Gaffs on pole climbers are no less than 32 millimeters in length measured on the underside of the gaff;

B. Gaffs on tree climbers are no less than 51 millimeters in length measured on the underside of the gaff;

C. Gaffs and leg irons are not fractured or cracked;

D. Stirrups and leg irons are free of excessive wear;

E. Gaffs are not loose;

F. Gaffs are free of deformation that could adversely affect use;

G. Gaffs are properly sharpened; and

H. There are no broken straps or buckles.

[FR Doc. 05–11585 Filed 6–14–05; 8:45 am]

BILLING CODE 4510–26–P

[5] Paragraph (g)(3) of § 1926.960 prohibits clothing that could ignite and continue to burn when exposed to the heat energy estimated under paragraph (g)(2).

Paragraph (g)(3) of § prohibits clothing that could ignite and continue to burn when exposed to the heat energy estimated under paragraph (g)(2).

[6] Breakopen is the creation of holes, tears, or cracks in the exposed fabric such that incident energy is no longer effectively blocked.

[7] Static wires and pole grounds are examples of grounding conductors that might not be capable of carrying fault current without failure. Grounds that can carry the maximum available fault current are not a concern and need not be considered a possible electric arc source.

Federal Register

Wednesday,
June 15, 2005

Part III

The President

Proclamation 7910—Flag Day and National Flag Week, 2005

Federal Register
Vol. 70, No. 114
Wednesday, June 15, 2005

Presidential Documents

Title 3—

The President

Proclamation 7910 of June 10, 2005

Flag Day and National Flag Week, 2005

By the President of the United States of America

A Proclamation

For more than two centuries, the flag of the United States has been a symbol of hope and pride. The flag has inspired our citizens during times of conflict and comforted us during moments of sorrow and loss. On Flag Day and throughout National Flag Week, we celebrate the proud legacy of Old Glory and reflect on this enduring symbol of freedom.

On June 14, 1777, the Second Continental Congress passed a resolution stating that ''the flag of the United States be thirteen stripes, alternate red and white; that the union be thirteen stars, white in a blue field.'' As States have been added to the Union, the flag has been modified to reflect their addition to our Nation. Today, the appearance of our flag is based on President Eisenhower's Executive Order of August 21, 1959, to include a star for all 50 States together with 13 stripes representing the original 13 American colonies.

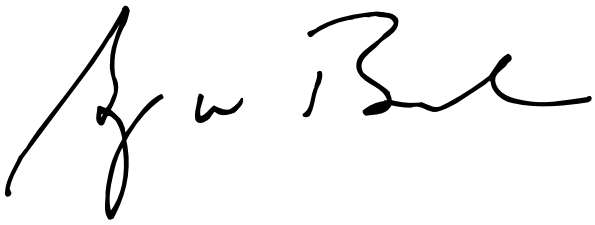
Generations of Americans in uniform have carried the Stars and Stripes into battle so that our citizens can live in freedom. Across the globe, a new generation of Soldiers, Sailors, Airmen, Marines, and Coast Guardsmen has stepped forward to serve under our flag, defending America from our enemies. We are grateful to them and their families for defending our flag and the values of our great Nation.

On this Flag Day, we recall the rich history of Old Glory, and we remember our duty to carry our heritage of freedom into the future.

To commemorate the adoption of our flag, the Congress, by joint resolution approved August 3, 1949, as amended (63 Stat. 492), designated June 14 of each year as ''Flag Day'' and requested that the President issue an annual proclamation calling for its observance and for the display of the flag of the United States on all Federal Government buildings. The Congress also requested, by joint resolution approved June 9, 1966, as amended (80 Stat. 194), that the President issue annually a proclamation designating the week in which June 14 occurs as ''National Flag Week'' and calling upon all citizens of the United States to display the flag during that week.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim June 14, 2005, as Flag Day and the week beginning June 12, 2005, as National Flag Week. I direct the appropriate officials to display the flag on all Federal Government buildings during that week, and I urge all Americans to observe Flag Day and National Flag Week by flying the Stars and Stripes from their homes and other suitable places. I also call upon the people of the United States to observe with pride and all due ceremony those days from Flag Day through Independence Day, also set aside by the Congress (89 Stat. 211), as a time to honor America, to celebrate our heritage in public gatherings and activities, and to publicly recite the Pledge of Allegiance to the Flag of the United States of America.

IN WITNESS WHEREOF, I have hereunto set my hand this tenth day of June, in the year of our Lord two thousand five, and of the Independence of the United States of America the two hundred and twenty-ninth.



[FR Doc. 05–11939
Filed 6–14–05; 9:04 am]
Billing code 3195–01–P

Reader Aids

Federal Register

Vol. 70, No. 114

Wednesday, June 15, 2005

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	**202–741–6000**
Laws	**741–6000**
Presidential Documents	
Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**
Other Services	
Electronic and on-line services (voice)	**741–6020**
Privacy Act Compilation	**741–6064**
Public Laws Update Service (numbers, dates, etc.)	**741–6043**
TTY for the deaf-and-hard-of-hearing	**741–6086**

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **http://www.gpoaccess.gov/nara/index.html**

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access are located at: **http://www.archives.gov/federal_register/**

E-mail

FEDREGTOC-L (Federal Register Table of Contents LISTSERV) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **http://listserv.access.gpo.gov** and select *Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings);* then follow the instructions.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html** and select *Join or leave the list (or change settings);* then follow the instructions.

FEDREGTOC-L and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **fedreg.info@nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATE, JUNE

31321–32218 1
32219–32480 2
32481–32708 3
32709–32976 6
32977–33334 7
33335–33688 8
33689–33796 9
33797–34054 10
34055–34302 13
34303–34626 14
34627–34984 15

CFR PARTS AFFECTED DURING JUNE

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7907 32971
7908 32973
7909 33333
7910 34983

Executive Orders:
13000 (See Memorandum of June 2, 2005) 32975

Administrative Orders:
Memorandums:
Memorandum of June 2, 2005 32975

5 CFR

842 32709
890 33797
1600 32206
1601 32206
1604 32206
1605 32206
1606 32206
1620 32206
1640 32206
1645 32206
1650 32206
1651 32206
1653 32206
1655 32206
1690 32206

7 CFR

6 32219
210 34627
220 34627
226 34630
300 33264
301 33264
305 33264
318 33264
319 33264
958 32481
1030 31321
1421 33798
1738 32711

Proposed Rules:
301 .....32733, 33857
305 33857
318 33857
319 33857
1405 33043

9 CFR

94 33803
319 33803
381 33803

10 CFR

9 34303
25 32224
72 32977
95 32224
170 33819
171 33819

Proposed Rules:
20 34699
54 34700

11 CFR

111 34633
9004 33689

12 CFR

41 33958
222 33958
232 33958
330 33689
334 33958
568 32228
571 33958
617 31322
717 33958

14 CFR

23 .....32711, 34310
25 .....33335, 33337
39 .....32483, 32982, 32984, 32986, 32988, 32990, 32992, 32996, 32998, 33339, 33340, 33344, 33692, 33820, 34188, 34312, 34313, 34316, 34323, 34325, 34329, 34334, 34336, 34636, 34638, 34641, 34642, 34644, 34646
71 .....32229, 32231, 32484, 33346, 33347, 33348, 34339, 34649
73 .....33692, 34650

Proposed Rules:
25 .....33720, 34702
27 33399
39 .....31393, 31395, 32273, 32524, 32527, 32534, 32537, 32540, 32542, 32544, 32547, 32738, 33045, 33720, 33724, 34401, 34405, 34409, 34411, 34714
71 .....32275, 33401, 33402, 33403, 34416
414 32192

15 CFR

335 33825
340 33825
744 33693
902 .....31323, 34055

16 CFR

305 32484

17 CFR

1 32866

18 CFR

4 33825

35 ..... 34190, 34340
347 34343
357 34343
375 34651
Proposed Rules:
37 34417
260 33873
284 ..... 33873, 34421

19 CFR

Proposed Rules:
146 33046

20 CFR

1 33590
30 33590
Proposed Rules:
404 32550
416 32550

21 CFR

165 33694
510 32487
520 32488
522 32488
558 32488
803 34652
1020 33998
Proposed Rules:
1 33404

22 CFR

120 34652
123 34652
124 34652
126 34652
127 34652

24 CFR

320 33650
Proposed Rules:
598 33642

25 CFR

39 33701

26 CFR

1 32489
301 32489
Proposed Rules:
1 32552

27 CFR

9 31342
Proposed Rules:
9 31396

29 CFR

4022 34655
4044 34655
Proposed Rules:
1910 34822
1926 ..... 32739, 34822

30 CFR

57 32867
Proposed Rules:
946 34431

31 CFR

50 34348
103 33702
501 34060
538 34060

32 CFR

311 34656

33 CFR

100 ..... 33718, 33828, 33830, 34658
110 32231
117 ..... 32233, 32235, 33349, 33351, 33719, 33832, 33834, 34351
148 33351
149 33351
150 33351
165 ..... 32235, 32239, 32241, 33352, 34064, 34353, 34355
Proposed Rules:
117 ..... 32276, 32278, 33405
165 ..... 33047, 34078

36 CFR

7 31345
228 32713
401 32490
402 32490
403 32490

39 CFR

111 33836
3001 32492

40 CFR

9 ..... 33354, 34594
23 33354
51 33838
52 ..... 33363, 33364, 33838, 33850, 34357, 34358, 34362, 34660
63 ..... 33000, 34538
70 32243
81 ..... 31353, 33364, 34362, 34660
86 34594
93 31354
163 33354
177 33354
178 33354
179 33354
180 ..... 31355, 31359, 31365, 33354
228 32498
258 34538
260 34538
261 34538
264 34538
265 34538
266 34538
268 34538
270 34538
271 ..... 32247, 33852, 34371, 34538
279 34538
300 ..... 33368, 34380
Proposed Rules:
52 ..... 33408, 33771, 33877, 34435
81 ..... 33408, 33409
152 33414
158 33414
180 31401
271 ..... 32280, 33878
300 33415
372 34437

42 CFR

Proposed Rules:
50 33053

44 CFR

64 32520
65 33002

46 CFR

531 31370
Proposed Rules:
401 33415

47 CFR

1 31372
23 31372
25 ..... 31372, 32249, 33373, 34665
64 ..... 32258, 34665
73 ..... 31372, 33377, 33378
74 31372
78 31372
90 34666
95 31372
97 31372
Proposed Rules:
Ch. I 33416, 34724
25 33426
52 31405
64 ..... 31405, 31406, 34725
73 ..... 31409, 33429
76 33680
90 34726

48 CFR

Ch. 1 ..... 33654, 33676
2 ..... 33655, 33657
4 33657
7 33656
11 33656
12 33657
13 33656
15 ..... 33656, 33659
19 33661
22 ..... 33655, 33662
31 ..... 33671, 33973
37 33657
52 ..... 33655, 33657, 33661, 33662, 33671
53 33662
552 32522
1601 31374
1602 31374
1604 31374
1615 31374
1631 ..... 31374, 31389
1632 31374
1644 31374
1646 31374
1652 31374
1699 31389
Proposed Rules:
19 32553
31 34080
52 32553
53 32553
208 32280
216 32280
1823 33726
1852 33726

49 CFR

171 ..... 33378, 34066
172 ..... 34066, 34381
173 ..... 34066, 34381
175 34381
176 34381
178 ..... 34066, 34381
179 34066
180 ..... 34066, 34381
192 34693
195 34693
209 33380
213 33380
214 33380
215 33380
216 33380
217 33380
218 33380
219 33380
220 33380
221 33380
222 33380
223 33380
225 33380
228 33380
229 33380
230 33380
231 33380
232 33380
233 33380
234 33380
235 33380
236 33380
238 33380
239 33380
240 33380
241 33380
244 33380
1507 33383
Proposed Rules:
171 34729
172 34729
173 34729
175 34729
393 33430

50 CFR

17 ..... 32732, 33015, 33774
21 34695
622 ..... 32266, 33033, 33385, 34400
635 ..... 33033, 33039
648 ..... 31323, 33042, 34055
660 33719
679 33390
680 33390
Proposed Rules:
20 32282
223 33440
648 ..... 32282, 33728
679 32287

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT JUNE 15, 2005

AGRICULTURE DEPARTMENT

Rural Utilities Service

Telecommunications loans:

Accounting requirements for RUS telecommunications borrowers; published 5-16-05

COMMERCE DEPARTMENT

Census Bureau

Foreign trade statistics:

Automated Export System; rough diamonds; mandatory filing for exports (reexports); published 5-16-05

ENERGY DEPARTMENT

Federal Energy Regulatory Commission

Organization, functions, and authority delegations:

Director of the Office of Markets, Tariffs and Rates; Director of External Affairs; published 6-15-05

FEDERAL COMMUNICATIONS COMMISSION

Common carrier services:

Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 and Telephone Consumer Protection Act of 2000; implementation—

Updated and amended definitions; published 6-15-05

Satellite communications—

Satellite earth station use on board vessels in 5925-6425 M/Hz/ 3700-4200MHz bands and 14.0-14.5 GHz/11.7-12.12 GHz bands; published 6-15-05

FEDERAL ELECTION COMMISSION

Compliance procedures:

Civil monetary penalties; inflation adjustments; published 6-15-05

INTERIOR DEPARTMENT

Fish and Wildlife Service

Migratory bird permits:

Connecticut; Federal falconry standards; compliance; published 6-15-05

STATE DEPARTMENT

International Traffic in Arms regulations:

Miscellaneous amendments; published 6-15-05

TRANSPORTATION DEPARTMENT

Economic regulations:

Commuter air carrier registrations; elimination; published 5-16-05

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Airbus; published 5-11-05

Boeing; published 5-11-05

Dornier; published 5-11-05

TRANSPORTATION DEPARTMENT

National Highway Traffic Safety Administration

Motor vehicle safety standards:

Tires; correcting amendment; published 5-16-05

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Cotton classing, testing and standards:

Classification services to growers; 2004 user fees; Open for comments until further notice; published 5-28-04 [FR 04-12138]

AGRICULTURE DEPARTMENT

Commodity Credit Corporation

Loan and purchase programs:

Dairy Disaster Assistance Payment Program; comments due by 6-24-05; published 5-25-05 [FR 05-10444]

AGRICULTURE DEPARTMENT

Natural Resources Conservation Service

Reports and guidance documents; availability, etc.:

National Handbook of Conservation Practices; Open for comments until further notice; published 5-9-05 [FR 05-09150]

COMMERCE DEPARTMENT

Industry and Security Bureau

Export administration regulations:

Missile technology-controlled items destined to Canada; exports and reexports; license requirements; comments due by 6-23-05; published 5-24-05 [FR 05-10356]

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

Northeastern United States fisheries—

Atlantic deep-sea red crab; comments due by 6-20-05; published 5-20-05 [FR 05-10130]

West Coast States and Western Pacific fisheries—

Pacific Coast groundfish; comments due by 6-23-05; published 5-24-05 [FR 05-10352]

COURT SERVICES AND OFFENDER SUPERVISION AGENCY FOR THE DISTRICT OF COLUMBIA

Semi-annual agenda; Open for comments until further notice; published 12-22-03 [FR 03-25121]

DEFENSE DEPARTMENT

Acquisition regulations:

Pilot Mentor-Protege Program; Open for comments until further notice; published 12-15-04 [FR 04-27351]

Federal Acquisition Regulation (FAR):

Radio frequency identification; comments due by 6-20-05; published 4-21-05 [FR 05-07978]

Personnel, military and civilian:

Personal commercial solicitation on DoD installations; comments due by 6-20-05; published 4-19-05 [FR 05-07810]

EDUCATION DEPARTMENT

Grants and cooperative agreements; availability, etc.:

Vocational and adult education—

Smaller Learning Communities Program; Open for comments until further notice; published 2-25-05 [FR E5-00767]

ENERGY DEPARTMENT

Climate change:

Voluntary Reporting of Greenhouse Gases Program—

General and technical guidelines; comments due by 6-22-05; published 5-9-05 [FR 05-09192]

Meetings:

Environmental Management Site-Specific Advisory Board—

Oak Ridge Reservation, TN; Open for comments until further notice; published 11-19-04 [FR 04-25693]

ENERGY DEPARTMENT

Energy Efficiency and Renewable Energy Office

Commercial and industrial equipment; energy efficiency program:

Test procedures and efficiency standards—

Commercial packaged boilers; Open for comments until further notice; published 10-21-04 [FR 04-17730]

ENERGY DEPARTMENT

Federal Energy Regulatory Commission

Electric rate and corporate regulation filings:

Virginia Electric & Power Co. et al.; Open for comments until further notice; published 10-1-03 [FR 03-24818]

ENVIRONMENTAL PROTECTION AGENCY

Air pollutants, hazardous; national emission standards:

Brick and structural clay products manufacturing; maximum achievable control technology requirements; comment request and public hearing; comments due by 6-21-05; published 4-22-05 [FR 05-08125]

Iron and steel foundries; comments due by 6-20-05; published 5-20-05 [FR 05-09592]

Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:

Idaho; comments due by 6-20-05; published 5-20-05 [FR 05-10149]

Air quality implementation plans; approval and promulgation; various States:

California; comments due by 6-20-05; published 5-19-05 [FR 05-10011]

Michigan; comments due by 6-20-05; published 5-20-05 [FR 05-10150]

Texas; comments due by 6-22-05; published 5-23-05 [FR 05-10194]

Washington; comments due by 6-20-05; published 5-20-05 [FR 05-10148]

Environmental statements; availability, etc.:

Coastal nonpoint pollution control program—

Minnesota and Texas; Open for comments until further notice; published 10-16-03 [FR 03-26087]

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:

Tetraconazole; comments due by 6-21-05; published 4-22-05 [FR 05-08123]

Solid waste:

State underground storage tank program approvals—

Minnesota; comments due by 6-23-05; published 5-24-05 [FR 05-10341]

Water pollution control:

National Pollutant Discharge Elimination System—

Concentrated animal feeding operations in New Mexico and Oklahoma; general permit for discharges; Open for comments until further notice; published 12-7-04 [FR 04-26817]

Water pollution; effluent guidelines for point source categories:

Meat and poultry products processing facilities; Open for comments until further notice; published 9-8-04 [FR 04-12017]

FEDERAL COMMUNICATIONS COMMISSION

Committees; establishment, renewal, termination, etc.:

Technological Advisory Council; Open for comments until further notice; published 3-18-05 [FR 05-05403]

Common carrier services:

Commercial mobile radio services—

Truth-in-billing and billing format; jurisdiction and sale disclosure rules; comments due by 6-24-05; published 5-25-05 [FR 05-10118]

Interconnection—

Incumbent local exchange carriers unbounding obligations; local competition provisions; wireline services offering advanced telecommunications capability; Open for comments until further notice; published 12-29-04 [FR 04-28531]

Radio stations; table of assignments:

Wyoming; comments due by 6-20-05; published 5-11-05 [FR 05-09292]

HEALTH AND HUMAN SERVICES DEPARTMENT

Centers for Medicare & Medicaid Services

Medicare:

Hospital inpatient prospective payment systems and 2006 FY rates; comments due by 6-24-05; published 5-4-05 [FR 05-08507]

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Food for human consumption:

Food labeling—

Prominence of calories; comments due by 6-20-05; published 4-4-05 [FR 05-06643]

Serving sizes of products that can reasonably be consumed at one eating occasion; approaches in recommending smaller portion sizes; comments due by 6-20-05; published 4-4-05 [FR 05-06644]

Reports and guidance documents; availability, etc.:

Evaluating safety of antimicrobial new animal drugs with regard to their microbiological effects on bacteria of human health concern; Open for comments until further notice; published 10-27-03 [FR 03-27113]

Medical devices—

Dental noble metal alloys and base metal alloys; Class II special controls; Open for comments until further notice; published 8-23-04 [FR 04-19179]

HOMELAND SECURITY DEPARTMENT

Coast Guard

Anchorage regulations:

Maryland; Open for comments until further notice; published 1-14-04 [FR 04-00749]

Drawbridge operations:

Massachusetts; comments due by 6-20-05; published 4-20-05 [FR 05-07893]

Virginia; comments due by 6-24-05; published 5-10-05 [FR 05-09303]

Ports and waterways safety; regulated navigation areas, safety zones, security zones, etc.:

Hingham Inner Harbor, MA; comments due by 6-24-05; published 5-25-05 [FR 05-10421]

Milwaukee Harbor, WI; comments due by 6-20-05; published 5-20-05 [FR 05-10143]

HOMELAND SECURITY DEPARTMENT

Immigration:

Aliens—

Scientists of commonwealth of independent states of former Soviet Union and Baltic states; classification as employment-based immigrants; comments due by 6-24-05; published 4-25-05 [FR 05-08176]

INTERIOR DEPARTMENT

Land Management Bureau

Alaska Native claims selection:

Bethel Native Corp.; comments due by 6-22-05; published 5-23-05 [FR 05-10258]

Sealaska Corp.; comments due by 6-22-05; published 5-23-05 [FR 05-10257]

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and threatened species permit applications

Recovery plans—

Paiute cutthroat trout; Open for comments until further notice; published 9-10-04 [FR 04-20517]

Endangered and threatened species:

Critical habitat designations—

Bull trout; comments due by 6-24-05; published 6-6-05 [FR 05-11166]

Bull trout; Klamath River and Columbia River populations; comments due by 6-24-05; published 5-25-05 [FR 05-10246]

Karst meshweaver; comments due by 6-22-05; published 5-23-05 [FR 05-10245]

Endangered and threatened wildlife and plants:

Findings on petitions, etc.—

Idaho springsnail etc.; comments due by 6-20-05; published 4-20-05 [FR 05-07640]

INTERIOR DEPARTMENT

Minerals Management Service

Outer Continental Shelf; oil, gas, and sulphur operations:

Data release and definitions; comments due by 6-21-05; published 3-23-05 [FR 05-05678]

LEGAL SERVICES CORPORATION

Legal assistance eligibility; maximum income guidelines; comments due by 6-23-05; published 5-24-05 [FR 05-10061]

NATIONAL CREDIT UNION ADMINISTRATION

Credit unions:

Member business loans; comments due by 6-20-05; published 4-20-05 [FR 05-07835]

NUCLEAR REGULATORY COMMISSION

Environmental statements; availability, etc.:

Fort Wayne State Developmental Center; Open for comments until further notice; published 5-10-04 [FR 04-10516]

Spent nuclear fuel and high-level radioactive waste; independent storage; licensing requirements:

Approved spent fuel storage casks, list; comments due by 6-24-05; published 5-25-05 [FR 05-10389]

Approved spent fuel storage casks; list; comments due by 6-24-05; published 5-25-05 [FR 05-10390]

SMALL BUSINESS ADMINISTRATION

Disaster loan areas:

Maine; Open for comments until further notice; published 2-17-04 [FR 04-03374]

Organization, functions, and authority delegations:

Hearings and Appeals Office and Freedom of Information Act and Privacy Acts Office; address changes; comments due by 6-24-05; published 5-25-05 [FR 05-10384]

OFFICE OF UNITED STATES TRADE REPRESENTATIVE

Trade Representative, Office of United States

Generalized System of Preferences:

2003 Annual Product Review, 2002 Annual

Country Practices Review, and previously deferred product decisions; petitions disposition; Open for comments until further notice; published 7-6-04 [FR 04-15361]

TRANSPORTATION DEPARTMENT

Airport concessions; Disadvantaged Business Enterprise Program; business size standards; comments due by 6-20-05; published 3-22-05 [FR 05-05529]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:
- Boeing; comments due by 6-23-05; published 5-9-05 [FR 05-09187]
- Cessna; comments due by 6-24-05; published 4-25-05 [FR 05-08097]
- Empresa Brasileira de Aeronautica S.A. (EMBRAER); comments due by 6-24-05; published 5-25-05 [FR 05-10425]
- McDonnell Douglas; comments due by 6-23-05; published 5-9-05 [FR 05-09188]

Airworthiness standards:
- Special conditions—
  - Cessna Model 650 airplanes; comments due by 6-24-05; published 5-10-05 [FR 05-09306]
  - Embraer Model ERJ 190 series airplanes; comments due by 6-24-05; published 5-25-05 [FR 05-10367]

Class E airspace; comments due by 6-24-05; published 5-25-05 [FR 05-10372]

TRANSPORTATION DEPARTMENT

Federal Railroad Administration

Railroad accidents/incidents; reports classifications and investigations:
- Monetary threshold; revision; comments due by 6-20-05; published 4-19-05 [FR 05-07740]

TRANSPORTATION DEPARTMENT

National Highway Traffic Safety Administration

Consumer information:
- Uniform tire quality grading standards; comments due by 6-20-05; published 4-21-05 [FR 05-07971]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal_register/public_laws/public_laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

H.R. 2566/P.L. 109–14

Surface Transportation Extension Act of 2005 (May 31, 2005; 119 Stat. 324)

Last List May 17, 2005

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://listserv.gsa.gov/archives/publaws-l.html*

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.