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Federal Register

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

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

FEDERAL TRADE COMMISSION

16 CFR Part 4

Revisions to Rules of Practice

AGENCY: Federal Trade Commission.

ACTION: Final rules; technical correction.

SUMMARY: The Federal Trade Commission published final rules on March 23, 2015, revising certain of its rules of practice. This document makes a technical correction to those final rules.

DATES: Effective March 31, 2015.

FOR FURTHER INFORMATION CONTACT: G. Richard Gold, Attorney, (202) 326–3355, Office of the General Counsel, Federal Trade Commission, 600 Pennsylvania Avenue NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: The Commission published a document in the **Federal Register** of March 23, 2015 (80 FR 15157), revising certain of its rules of practice. The document contained an incorrect paragraph reference in amendatory instruction 17 that referenced ''(a)(10)(viii)'' instead of ''(b)(10)(viii).'' This document corrections the erroneous paragraph reference.

List of Subjects in 16 CFR Part 4

Administrative practice and procedure, Freedom of information, Public record.

For the reasons set forth in the preamble, the Federal Trade Commission amends title 16, chapter I, subchapter A of the Code of Federal Regulations as follows:

PART 4—MISCELLANEOUS RULES

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

Authority: 15 U.S.C. 46, unless otherwise noted.

■ 2. Amend § 4.9 by revising paragraph (b)(10)(viii) to read as follows:

§ 4.9 The public record.

* * * * *

(b) * * *

(10) * * *

(viii) The Commission's annual report submitted after the end of each fiscal year, summarizing its work during the year (with copies obtainable from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402) and any other annual reports made to Congress on activities of the Commission as required by law;

* * * * *

Donald S. Clark,

Secretary.

[FR Doc. 2015–07117 Filed 3–30–15; 8:45 am]

BILLING CODE 6750–01–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1460

[Docket No. CPSC–2015–0006]

Children's Gasoline Burn Prevention Act Regulation

AGENCY: Consumer Product Safety Commission.

ACTION: Direct final rule.

SUMMARY: The Children's Gasoline Burn Prevention Act (CGBPA or the Act) adopted the child-resistance requirements for closures on portable gasoline containers—found in the 2005 version of the applicable ASTM rule, F2517–05—as a consumer product safety rule. The 2005 ASTM standard was recently revised. Under the Act, the consumer product standard for portable gasoline containers will, by operation of law, incorporate the 2015 revisions to the child-resistance requirements unless the Commission finds that the revisions do not carry out the purposes of the CGBPA's requirements. The Commission has not found that the revisions fail to carry out the purposes of the CGBPA's requirements. As a result, the 2015 revisions to the child-resistance requirements will be automatically incorporated and apply as the statutorily-mandated standard for closures on portable gasoline containers. This direct final rule is to codify certain sections of the 2015 standard to eliminate potential confusion as to the applicable standard.

DATES: This rule will be effective on April 12, 2015, unless the Commission receives significant adverse comment by April 3, 2015. If we receive timely significant adverse comments, we will publish notification in the **Federal Register** withdrawing this direct final rule. The incorporation by reference of the publications listed in this rule is approved by the Director of the Federal Register as of April 12, 2015.

ADDRESSES: You may submit comments, identified by Docket No. CPSC–2015–0006, by any of the following methods:

Electronic Submissions: Submit electronic comments to the Federal eRulemaking Portal at: *http://www.regulations.gov.* Follow the instructions for submitting comments. The Commission does not accept comments submitted by electronic mail (email), except through *www.regulations.gov.* The Commission encourages you to submit electronic comments by using the Federal eRulemaking Portal, as described above.

Written Submissions: Submit written comments (paper, disk, or CD–ROM submissions) by mail/hand delivery/courier to: Office of the Secretary, Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7923.

Instructions: All submissions received must include the agency name and docket number for this notice. All comments received may be posted without change, including any personal identifiers, contact information, or other personal information provided, to *http://www.regulations.gov.* Do not submit confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. If furnished at all, such information should be submitted in writing.

FOR FURTHER INFORMATION CONTACT: John Boja, Office of Compliance and Field Operations, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814–4408; telephone (301) 504–7300; *jboja@cpsc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Children's Gasoline Burn Prevention Act. The Children's Gasoline Burn Prevention Act was enacted on July 17, 2008. The Act establishes as a

consumer product safety rule ASTM International's (ASTM) F2517–05's child-resistance requirements for closures on portable gasoline containers. All portable gasoline containers manufactured on or after January 17, 2009 for sale to consumers in the United States must conform to the 2005 ASTM standard's child-resistance requirements. By mandating closures that resist access by children under age 5, the Act seeks to reduce hazards to children, including children ingesting gasoline and inhaling gasoline fumes, and the risk of burns from fires and explosions that may occur when children access gasoline stored in portable gasoline containers. The Act did not require the Commission to take any action for the Act's provisions to take effect; rather, ASTM 2715–05's child-resistance requirements were made mandatory through operation of law, as discussed below.

ASTM F2517–05. Under ASTM F2517–05, *Standard Specification for Determination of Child Resistance of Portable Fuel Containers for Consumer Use,* closures on affected containers must prove adequately resistant to children as old as 4 years and 3 months.

CGBPA Provisions Regarding Updates to ASTM F2517–05. Under the Act, ASTM must notify the Commission of any revision to the child-resistance requirements for closures contained in ASTM F2517–05. Once ASTM notifies the CPSC of ASTM's revisions to the standard, the revisions will be incorporated by operation of law and will become the consumer product safety standard within 60 days after such notice unless the Commission determines that the revision does not carry out the purposes of the child-resistant requirements for closures on portable gasoline containers specified in ASTM F2517–05 and so notifies ASTM.

Under the Act, the ASTM standard for portable gasoline containers became, by operation of law, the applicable consumer product safety standard. Similarly, any revision to the child-resistance requirements of the ASTM standard becomes, by operation of law, part of the applicable consumer product safety standard unless the Commission determines, within 60 days after receiving notice from ASTM of a revised ASTM standard, that the revisions are not acceptable as provided in the Act.

On February 11, 2015, ASTM gave to CPSC notice of revisions to ASTM F2517–05. The revised standard is designated F2517–15.

The Commission has not made a determination that the revisions to ASTM F2517–05's child-resistance requirements for closures on portable gasoline containers fail to further the purposes of the CGBPA's requirements.

II. Description of the Rule

The rule codifies the child-resistance requirements for closures on portable gasoline containers as stated in ASTM F2517–15. As stated above, these requirements become mandatory through operation of law; the Commission is publishing this rule so that the Code of Federal Regulations will reflect the current version of the mandatory standard.

III. Direct Final Rule

The Commission is issuing this rule as a direct final rule. Although the Administrative Procedure Act (APA) generally requires notice and comment rulemaking, section 553 of the APA provides an exception when the agency, for good cause, finds that notice and public procedure are ''impracticable, unnecessary, or contrary to the public interest.'' The Administrative Conference of the United States (ACUS) endorsed direct final rulemaking as an appropriate procedure to expedite promulgation of rules that are noncontroversial and that are not expected to generate significant adverse comment. *See* ACUS, Recommendation, 95–4, 60 FR 43108, 43110 (August 18, 1995).

This rule will codify in the Code of Federal Regulations the child-resistance requirements of a consumer product safety standard, ASTM F2517–15, that already are in full force and effect by operation of law. Codification of the rule into CPSC's regulations is intended to eliminate potential confusion as to the child-resistance standard applicable to portable gasoline containers. In these circumstances where the substantive requirements are mandated by statute and have become effective under the statute, public comment serves little purpose. Moreover, codification of existing substantive requirements is not expected to be controversial or to result in significant adverse comment. As a result, the Commission believes that issuance of a rule codifying the revised standard in these circumstances is appropriate.

Unless we receive a significant adverse comment by April 3, 2015, the rule will become effective on April 12, 2015. In accordance with ACUS's recommendation, the Commission considers a significant adverse comment to be one in which the commenter explains why the rule would be inappropriate, including an assertion challenging the rule's underlying premise or approach, or a claim that the rule would be ineffective or unacceptable without change. Should the Commission receive a significant adverse comment, the Commission would withdraw this direct final rule. Depending on the comments and other circumstances, the Commission may then incorporate the adverse comment into a subsequent direct final rule or publish a notice of proposed rulemaking providing an opportunity for public comment.

IV. Incorporation by Reference

Section 1460.3 of the final rule provides that closures on portable gasoline containers must comply with the child-resistance requirements of ASTM F2517–15. The Office of the Federal Register (OFR) has regulations concerning incorporation by reference. 1 CFR part 51. The OFR recently revised these regulations to require that, for a final rule, agencies must discuss in the rule's preamble ways that the materials the agency incorporates by reference are reasonably available to interested persons and how interested parties can obtain the materials. In addition, the preamble of the rule must summarize the material. 1 CFR 51.5(b).

In accordance with the OFR's requirements, the discussion in this section summarizes the provisions of ASTM F2517–15. Interested persons may purchase a copy of ASTM F2517–15 from ASTM, either through ASTM's Web site or by mail at the address provided in the rule. One may also inspect a copy of the standard at the CPSC's Office of the Secretary, U.S. Consumer Product Safety Commission, or at the National Archives and Records Administration (NARA), as discussed in the rule.

The CPSC is incorporating by reference child-resistance requirements of ASTM F2517–15 pursuant to the Act because the Commission has determined that the revised standard carries out the purposes of the child-resistant requirements for closures on portable gasoline containers specified in ASTM F2517–05.

The revised standard, ASTM F2517–15, contains:

- Testing procedures for assessing child-resistance and senior adult-use effectiveness for closures on portable gasoline containers
- A minimum required effectiveness rate of child-resistance and senior adult-use for closures on portable gasoline containers to establish compliance with the standard
- A requirement that child-resistant containers and closures first meet the feasible and appropriate spill resistance requirements in CARB CP–

501, TP–501, TP–502, and EPA Regulation 40 CFR 59.623.

Because the scope of the consumer product safety rule is established by the CGBPA, this rule does not incorporate by reference the scope section of ASTM F2517–15 or Appendix X1 that relates to the scope section of ASTM F2517–15.

V. Effective Date

As discussed in the preceding section, this is a direct final rule. Unless the Commission receives a significant adverse comment by April 3, 2015, the rule will become effective on April 12, 2015.

VI. Other Relevant Statutory Provisions

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statutes unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 603 and 605. This rule merely codifies requirements that will take effect through operation of law as specified in the CGBPA. The rule does not impose any requirements beyond those put in place by the CGBPA. Thus, the rule does not create new substantive obligations for any entity, including any small entity. Accordingly, the Commission certifies that the rule will not have a significant impact on a substantial number of small entities.

B. Environmental Considerations

The Commission's regulations provide a categorical exclusion for the Commission's rules from any requirement to prepare an environmental assessment or an environmental impact statement because they ''have little or no potential for affecting the human environment.'' 16 CFR 1021.5(c)(2). This rule falls within the categorical exclusion, so no environmental assessment or environmental impact statement is required.

C. Paperwork Reduction Act

This direct final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) is not required.

VII. Preemption

Section 26(a) of the Consumer Product Safety Act (CPSA), 15 U.S.C. 2075(a), provides that where a ''consumer product safety standard under [the CPSA]'' is in effect and applies to a product, no state or political subdivision of a state may either establish or continue in effect a requirement dealing with the same risk of injury unless the state requirement is identical to the federal standard. (Section 26(c) of the CPSA also provides that states or political subdivisions of states may apply to the Commission for an exemption from this preemption under certain circumstances).

As discussed above, under the CGBPA, the child-resistance requirements of ASTM F2517–15 became a consumer product standard for CPSA purposes. Children's Gasoline Burn Prevention Act, Pub. L 110–278, Sec. 2(a) (July 17, 2008). The child-resistance requirements of ASTM F2517–15, which will be codified under this rule, will invoke the preemptive effect of section 26(a) of the CPSA.

VIII. Certification

Section 14(a) of the CPSA requires that products subject to a consumer product safety rule under the CPSA, or to a similar rule, ban, standard, or regulation under any other act enforced by the Commission, be certified as complying with all applicable CPSC requirements. 15 U.S.C. 2063(a). Such certification must be based on a test of each product, or on a reasonable testing program. Because ASTM F2517–15 is deemed a ''consumer product safety rule'' for CPSA purpose, portable gasoline containers manufactured on or after April 12, 2015 are subject to the testing and certification requirements of section 14 of the CPSA with respect to ASTM F2517–15.

List of Subjects in 16 CFR Part 1460

Consumer protection, Gasoline, Incorporation by reference, Safety.

For the reasons stated above, the Commission adds part 1460 to subchapter B of title 16 of the Code of Federal Regulations to read as follows:

PART 1460—CHILDREN'S GASOLINE BURN PREVENTION ACT REGULATION

Sec.
1460.1 Scope and application.
1460.2 Definition.
1460.3 Requirements for child-resistance for closures on portable gasoline containers.

Authority: Sec. 2, Pub. L. 110–278, 122 Stat. 2602.

§ 1460.1 Scope and application.

In accordance with the Children's Gasoline Burn Prevention Act, portable gasoline containers must comply with the requirements specified in § 1460.3, which are considered to be a consumer product safety rule.

§ 1460.2 Definition.

Portable gasoline container means any portable gasoline container intended for use by consumers.

§ 1460.3 Requirements for child-resistance for closures on portable gasoline containers.

Each portable gasoline container manufactured on or after April 12, 2015 for sale in the United States shall conform to the child-resistance requirements for closures on portable gasoline containers specified in sections 2 through 6 of ASTM F2517–15 (including Appendixes X2 and X3 referenced therein), *Standard Specification for Determination of Child Resistance of Portable Fuel Containers for Consumer Use,* approved on January 1, 2015. The Director of the Federal Register approves the incorporation by reference listed in this section in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy of these ASTM standards from ASTM International, 100 Barr Harbor Drive, PO Box C700, West Conshohocken, PA 19428–2959 USA, telephone: 610–832–9585; *http://www.astm.org/.* You may inspect copies at the Office of the Secretary, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814, telephone 301–504–7923, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federalregulations/ibr_locations.html.*

Alberta E. Mills,

Acting Secretary, U.S. Consumer Product Safety Commission.

[FR Doc. 2015–07151 Filed 3–30–15; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Chapters VIII and IX

[Docket No. FR–5779–N–01]

HUD Approval of Requests for Transfers of Multifamily Housing Project-Based Rental Assistance, HUD-Held or Insured Debt, and Income-Based Use Restrictions

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice of requirements to transfer assistance.

SUMMARY: This notice establishes the terms and conditions by which HUD will approve a request for the transfer of project-based rental assistance, debt held or insured by the Secretary, and statutorily required income-based use restrictions from one multifamily housing project to another (or between several such projects). The Department of Housing and Urban Development Appropriations Act, 2014 and the Department of Housing and Urban Development Appropriations Act, 2015 give the Secretary the authority to approve transfer requests for fiscal years 2014 through 2016, provided that the Secretary publish a notice in the **Federal Register** establishing the terms and conditions for HUD approval of such transfers no later than 30 days before such notice takes effect. HUD believes that publication of the criteria will assist project owners to determine whether a transfer is feasible given the specific circumstances of their multifamily projects. Publication of the criteria will also facilitate HUD's review of transfer requests by helping owners formulate their requests in a manner that adequately addresses the statutory criteria.

DATES: *Effective:* April 30, 2015.

FOR FURTHER INFORMATION CONTACT: Nancie-Ann Bodell, Acting Director, Office of Asset Management and Portfolio Oversight of Multifamily Housing, Office of Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 6110, Washington, DC 20410; telephone number 202–708–2495 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

A. Background

Beginning with section 318 of the Department of Housing and Urban Development Appropriations Act, 2006 (Pub. L. 109–115, 119 Stat. 2396, approved November 30, 2005), HUD appropriations acts have contained a general provision authorizing the Secretary to approve requests from project owners for the transfer of certain rental assistance, debt, and income-based use restrictions between HUD-assisted projects. For fiscal years 2014 and 2015, this transfer authority is provided under section 214 of Title II of Division L of the Consolidated Appropriations Act, 2014 (Pub. L. 113–76, 128 Stat. 5, approved January 17, 2014) (Section 214).[1] Section 214(a) states that ''[n]otwithstanding any other provision of law . . . the Secretary of Housing and Urban Development may authorize the transfer of some or all project-based assistance, debt held or insured by the Secretary and statutorily required low-income and very low-income use restrictions if any, associated with one or more multifamily housing project or projects to another multifamily housing project or projects.'' Section 214(b) also allows for phased transfers of project-based assistance to accommodate the financing and other requirements related to rehabilitating or constructing the project or projects to which the assistance is transferred.

HUD approval of transfers is subject to the conditions enumerated in the appropriations act for the applicable fiscal year. These statutory terms and conditions have, in general, been consistent from one appropriations act to the next. The statutory criteria for fiscal years 2014 through 2016 are enumerated in Section 214(c), which provides as follows:

- The transfer authorized in subsection (a) is subject to the following conditions:

○ NUMBER AND BEDROOM SIZE OF UNITS.—

—For occupied units in the transferring project: The number of low-income and very low-income units and the configuration (*i.e.* bedroom size) provided by the transferring project shall be no less than when transferred to the receiving project or projects and the net dollar amount of Federal assistance provided to the transferring project shall remain the same in the receiving project or projects.

—For unoccupied units in the transferring project: The Secretary may authorize a reduction in the number of dwelling units in the receiving project or projects to allow for a reconfiguration of bedroom sizes to meet current market demands, as determined by the Secretary and provided there is no increase in the project-based assistance budget authority.

○ The transferring project shall, as determined by the Secretary, be either physically obsolete or economically nonviable.

○ The receiving project or projects shall meet or exceed applicable physical standards established by the Secretary.

○ The owner or mortgagor of the transferring project shall notify and consult with the tenants residing in the transferring project and provide a certification of approval by all appropriate local governmental officials.

○ The tenants of the transferring project who remain eligible for assistance to be provided by the receiving project or projects shall not be required to vacate their units in the transferring project or projects until new units in the receiving project are available for occupancy.

○ The Secretary determines that this transfer is in the best interest of the tenants.

○ If either the transferring project or the receiving project or projects meets the condition specified in subsection (d)(2)(A),[2] any lien on the receiving project resulting from additional financing obtained by the owner shall be subordinate to any FHA-insured mortgage lien transferred to, or placed on, such project by the Secretary, except that the Secretary may waive this requirement upon determination that such a waiver is necessary to facilitate the financing of acquisition, construction, and/or rehabilitation of the receiving project or projects.

○ If the transferring project meets the requirements of subsection (d)(2),[3] the owner or mortgagor of the receiving project or projects shall execute and record either a continuation of the existing use agreement or a new use agreement for the project where, in either case, any use restrictions in such agreement are of no lesser duration than the existing use restrictions.

○ The transfer does not increase the cost (as defined in section 502 of the Congressional Budget Act of 1974, as amended) of any FHA-insured mortgage, except to the extent that appropriations are provided in advance for the amount of any such increased cost.

HUD has exercised the transfer authority on a case-by-case basis, determining compliance with the statutory criteria based on the specific circumstances of the projects. Most of the statutory criteria are prescriptive, leaving little room for the exercise of agency discretion (for example, the requirement that the transfer not increase the cost of any FHA-insured mortgage). Others, however, are more

[1] Section 212 of Title II of Division K of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113–235, approved December 16, 2014) provides the same authority for fiscal years 2015 and 2016. For the sake of simplicity, this notice uses ''Section 214'' to refer to the authority in both Acts, as the language other than the dates is identical.

[2] Subsection (d)(2)(A) pertains to housing that is subject to a mortgage insured under the National Housing Act (12 U.S.C. 1701 *et seq.*).

[3] Subsection (d)(2) defines the term ''multifamily housing project.''

generally phrased, allowing for HUD interpretation in applying the criteria (for example, the requirement that the transferring project be either physically obsolete or economically nonviable, ''as determined by the Secretary''). Over time, HUD has developed uniform guidelines to facilitate the review of transfer requests and aid in determining compliance with the statutory criteria.

Section 214(e)(1) requires that HUD publish by notice in the **Federal Register** the terms and conditions for HUD approval of transfers, no later than 30 days before such notice takes effect. This notice is being issued in accordance with the publication requirements of Section 214(e)(1). HUD believes that publication of the criteria will assist project owners in determining whether a transfer is appropriate given the specific circumstances of their multifamily projects. Publication of the criteria will also facilitate HUD's review of transfer requests by helping owners formulate their requests in a manner that adequately address the statutory criteria.

Owners of multifamily housing projects, as defined by subsection (d)(2) of Section 214, who wish to request a transfer of rental assistance, debt, or income-based use restrictions under Section 214 should submit a package containing the relevant materials outlined below to the HUD Hub/Program Center or Regional Center/Satellite Office for review. Owners can submit packages for review on or after the effective date of this notice. HUD will issue a subsequent Housing notice detailing procedural submission requirements and will follow this notice with a proposed rule to solicit comment before regulatory codification of these criteria.

B. Statutory Terms and Conditions for HUD Approval of Transfer Requests

Commencing for transfer requests submitted pursuant to Section 214, HUD will evaluate the request, on a case-by-case basis, in accordance with the following criteria. The receiving property must be a multifamily housing project prior to or as a result of the Section 214 transfer. The receiving project may already be HUD-affiliated, meaning it has existing HUD project-based rental assistance, an existing use restriction, or debt (either HUD-held or FHA-insured). HUD will approve a transfer under Section 214 to a HUD-affiliated property if the receiving property is in compliance with all business agreements with the Department or has a HUD-approved plan in place to correct any identified deficiencies. The receiving property may be existing, under construction, newly constructed, undergoing substantial rehabilitation, or undergoing moderate rehabilitation. Before Section 8 project-based rental assistance is transferred to the receiving property, the property must exist and be habitable (as demonstrated by a certificate of occupancy or like documentation). The numbered items below track the statutory criteria and, where HUD has been granted flexibility, establishes requirements and guidance on how HUD will assess compliance with the statutory factors.

1. Number and Bedroom Size of Units

For occupied units in the transferring project: The number of low-income and very low-income units and the configuration (*i.e.* bedroom size) provided by the transferring project shall be no less than when transferred to the receiving project or projects. The receiving owner[4] must provide detailed information about the number of units and the corresponding unit size occupied by low-income and very-low income families respectively, as well as the proposed number of units for low and very-low income families and the corresponding unit configuration at the receiving project. In determining compliance with this requirement, HUD will consider the number of units occupied by low and very low-income families and their respective unit sizes, as well as whether the size of the occupied units is appropriate for the family size occupying those units. The net dollar amount of Federal assistance provided to the transferring project shall remain the same in the receiving project or projects. HUD Multifamily Hub/Program Center or Regional Center/Satellite Office staff will verify that the net dollar amount of Federal assistance transferred remains the same in the receiving project or projects.

For unoccupied units in the transferring project: HUD may authorize a reduction in the number of dwelling units in the receiving project or projects to allow for a reconfiguration of bedroom sizes to meet market demands, as demonstrated by the transferring owner, provided there is no increase in the project-based assistance budget authority. HUD Multifamily Hub/Program Center or Regional Center/Satellite Office staff will verify that the net dollar amount of Federal assistance transferred remains the same in the receiving project or projects. The transferring owner shall provide justification for a reduction in the number of dwelling units in one or more of the following ways:

a. Evidence of all efforts to market the unit type proposed for reduction and evidence of the demand within the geographic market area for the proposed new unit type. The documentation may include evidence of the transferring owner's efforts, including:

i. Property traffic reports.

ii. Advertising details.

iii. Age and/or income waivers requested.

iv. Local housing authority wait list information or other affordable housing provider contacts made demonstrating that there is minimal or no demand for the unit type.

b. Documentation that the average vacancy at the transferring property has been 25 percent or more over the past 24 months.

c. Any other documentation that a reduction in the number of dwelling units is necessary to meet market demand, and approved by HUD.

2. Physical Obsolescence or Economic Nonviability

Physical obsolescence shall be shown in one or more of the following ways:

a. A Real Estate Assessment Center (REAC) physical inspection score of 30 or below.

b. Two or more consecutive REAC physical inspection scores of below 60.

c. Condemnation or other such notice by the local or state government rendering the property uninhabitable.

d. A taking through eminent domain.

e. Evidence that needed capital repairs cannot be made without the property losing financial viability.

f. Any other proof of physical obsolescence provided by the owner and approved by HUD.

Economic non-viability must be shown in one or more of the following ways:

a. A market analysis justifying the inability of the property to meet current HUD-imposed affordability restrictions.

b. A market analysis indicating limited to no market for the unit type(s).

c. A demonstrated average vacancy of 25 percent or more over the past 24 months.

d. Any other proof of economic non-viability provided by the owner and approved by HUD.

The transferring owner is required to certify in writing that the material submitted to demonstrate compliance with this criterion is true and accurate. The Multifamily Hub/Program Center will review all submitted information and verify its accuracy.

[4] The term ''owner'' refers to either the transferring or receiving owner unless specified.

3. Applicable Physical Standards

The receiving project or projects must have a REAC physical inspection score of 60 or above. If the project does not have a current REAC physical inspection score, an inspection must be conducted prior to the transfer and the project must score 60 or above or have a HUD-approved plan in place to correct any deficiencies.

The receiving project must also meet all applicable accessibility requirements, including, but not limited to the accessibility requirements of the Fair Housing Act, section 504 of the Rehabilitation Act, and Title II of the Americans with Disabilities Act. The owner must provide documentation acceptable to HUD that the receiving project is in compliance with all applicable accessibility requirements. The HUD Hub/Program Center or Regional Center/Satellite Office will review the submitted documentation and verify acceptability.

4. Notification and Consultation With Tenants and Local Governmental Officials

The transferring owner must give the tenants and legitimate tenant organization(s) written notification of the proposed transfer and provide a minimum 30-day comment period. HUD will not accept a Section 214 request for any project unless the transferring owner has notified the tenants of the proposed transfer and has provided the tenants with an opportunity to comment on the proposed transfer.

a. The notification should include the address and phone of the appropriate HUD office, including the specific division and/or name and phone number of a contact at the appropriate HUD office. The notification should be provided in appropriate formats as necessary to meet the needs of all, including persons with limited English proficiency and formats for persons with vision, hearing, and other communication-related disabilities (*e.g.,* Braille, audio, and large type, sign language interpreters, assistive listening devices, etc.).

b. The notification will include a description of the impact of the request on tenants' rental assistance and tenant contributions. The notification must also explain the tenants' relocation rights and responsibilities, including the assistance that tenants may become eligible to receive under the Uniform Relocation Act if acquisition, rehabilitation or demolition are involved (see section five below). In addition, the notification must inform the tenants that if a Section 8 project-based rental assistance contract will be transferred, and it assists the unit they inhabit, they may be eligible for tenant protection vouchers if they choose not to relocate (see Section C below).

c. The notice must be delivered directly to each unit in the project or mailed to each tenant and posted in at least 3 places/common areas throughout the project, including any project office. In a project greater than 4 stories, the notice may be served either by delivery to each unit or by posting. If the posting method is used, the notice must be posted in at least three conspicuous places within each building in which the affected dwelling units are located.

i. The tenants (including any legal or other representatives acting for the tenants individually or as a group) have the right to inspect and copy the materials that the owner is required to submit to HUD for a period of 30 days from the date on which the notice is served to the tenants. Any tenant comments must be available in the project office during normal business hours for public reading and copying.

ii. The tenants have the right, during this period, to submit written comments on the transfer to the transferring owner and the appropriate HUD office. Tenant representatives may assist tenants in preparing these comments.

d. The transferring owner must hold a meeting with the tenants and legitimate tenant organizations to discuss the details of the notification and answer questions.

e. Upon completion of the tenant comment period, the transferring owner must review the comments submitted by the tenants and their representatives and prepare a written evaluation of the comments. Any negative comments must be addressed. The transferring owner must then submit the following materials to the appropriate HUD office at the time of submission of the request for transfer under Section 214:

i. A copy of the transferring owner's Notification to the tenants;

ii. A sign-in sheet from the tenant meeting;

iii. A copy of all the tenant comments;

iv. The transferring owner's evaluation of the tenant comments and any responses the owner gave to negative comments; and

v. A certification by the transferring owner that it has complied with all of the requirements of 24 CFR 245.410, 245.415, 245.416 through 245.419, as applicable, and 245.420. The transferring owner must identify any Fair Housing litigation settlement agreements, voluntary compliance agreements, or other remedial agreements signed by the owner and HUD. The Office of Fair Housing and Equal Opportunity (FHEO) will ensure there is no conflict between the agreements and the proposed transfer. If there is a conflict, the transferring owner may propose modifications to the remedial agreement as part of the transfer proposal.

The owner must also provide a certification of approval from the relevant local government officials, which may include but are not limited to the:

a. Local Mayor.

b. City Council.

c. Planning Commission.

d. Health and Human Services Commission.

e. Any other pertinent local government official or government body.

Although in some cases, a certification of approval may be required from multiple local governmental officials, there must be at least one certification of approval from at least one local government official in all cases to warrant approval of a request for transfer of assistance, debt, or use restrictions.

5. Relocation of Tenants

The tenants of the transferring project who remain eligible to receive assistance will not be required to vacate their units in the transferring project until new units in the receiving project are available for occupancy. If tenants must move as a direct result of acquisition, rehabilitation or demolition in connection with a transfer of assistance under Section 214, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA) may apply.

HUD will review tenant relocations and protections on a case-by case-basis to ensure tenants are protected from permanent displacement. Under no circumstances shall the residents pay for any relocation costs incurred as a result of the transfer and the resulting move to the receiving property. It is within the owner's discretion whether to pay relocation costs for relocations to locations other than the receiving property. A Section 214 transaction where the tenants' relocation expenses are not paid, will not be approved by HUD.

6. Best Interest of the Tenants

HUD will determine that the transfer is in the best interest of the tenants based on criteria including, but not limited to, the following:

a. The transfer will preserve affordable and/or assisted housing in a

market area in need of such assistance/affordability.

b. The transfer complies with section C of this notice. The site and neighborhood requirements ensure that the receiving property is in a location that affords the tenants at the transferring property the same or a better property location than the transferring site.

c. All current tenants will receive the same level of assistance they are currently receiving. Tenants that move from the transferring project to the receiving project remain subject to their existing lease requirements and all occupancy rules. The receiving owner may not seek to terminate the lease of a tenant from the transferring project for actions that occurred prior to the Section 214 transfer but the tenant will be subject to ongoing eligibility requirements for actions that occur after the transfer. Any eviction procedures currently underway at the transferring project will not be affected by the transfer of budget authority.

d. In scenarios where a Section 8 HAP contract will be transferred, and a tenant assisted by the HAP contract objects to relocating to the receiving property, the tenant may be eligible to receive a tenant protection voucher, subject to the availability of appropriations. A tenant may receive a TPV, if they meet the eligibility requirements for voucher assistance and the unit that they currently reside in is supported by a Section 8 project-based rental assistance contract that is subject to transfer as part of the Section 214 transfer. The owner will notify the tenant of their potential eligibility to receive a TPV at the time of tenant notification and subsequently notify the Multifamily Hub/PC regarding how many TPVs are requested. If TPVs are needed, the Multifamily Hub/PC should work with the Public and Indian Housing (PIH) field office to follow the procedures outlined in PIH Notice 2001–41.

e. To determine if the Section 214 transfer is in the best interest of the tenants, the transferring owner must provide documentation that all tenants residing at the property at the time of the transfer are relocating to a property of greater economic solvency or better physical condition, or accepting a tenant protection voucher to move to a property that best meets their housing needs.

f. If the transferring property is not fully assisted by a Section 8 project-based rental assistance contract, HUD will approve or disapprove the transfer based upon its review of the information submitted and all tenant comments received.

g. If the transferring property is not fully assisted by a Section 8 project-based rental assistance contract, the transfer will only be approved if:

i. There are no tenants at the transferring property; or

ii. The property is occupied but the transfer will be to an immediately adjacent property; or

iii. The unassisted tenants would have to move in the absence of the Section 214 transfer (*e.g.,* the site is contaminated, the property is or will be condemned, the property is being taken via eminent domain, etc.); or

iv. The transfer involves a 202 Direct Loan or a 202/811 Capital Advance or PRAC contract that must be transferred as a result of a state's response to the Olmstead Decision or state Medicaid/Medicare policies on congregate housing make it economically impossible to continue operating the property as originally conceived.

h. If the tenants must be relocated, they will/did receive the protections provided under the URA, or other assistance if the URA is not triggered. No tenants will be displaced as a result of the transfer.

7. Subordination of Liens

To demonstrate compliance, the receiving owner must submit one or more of the following as documentation:

a.Verification from the FHA lender that any lien on the receiving project is subordinate to any FHA-insured mortgage lien.

b. Other documentation as applicable.

A receiving owner may submit a waiver request if the receiving owner believes it is necessary that a lien(s) not be subordinate to the FHA insured mortgage to facilitate the financing of acquisition, construction, or rehabilitation of the receiving project or projects. Such a request must demonstrate that the waiver is necessary to finance the transaction and that there is minimal risk to the FHA as a result of the waiver. HUD must approve all waiver requests.

8. Use Restrictions

If a use restriction is in place at the receiving project, the receiving owner must sign a new or amended use restriction that includes all income and eligibility restrictions of the transferring use restriction and runs for the duration of the transferring project's existing use restriction or the use restriction at the receiving project, whichever is longer.

9. No Increased FHA-Insured Mortgage Costs

Transfers must not increase the cost (as defined in section 502 of the Congressional Budget Act of 1874) of any FHA-insured mortgage. HUD will consider the transfer of an FHA-insured mortgage, or Secretary-held formerly insured mortgage that is subsidized under either Section 221(d)(3)–(d)(5) with below market interest rates or Section 236. In addition, in order to avoid a claim against the General Insurance Fund, HUD may approve the transfer of a non-subsidized FHA-insured mortgage in combination with the transfer of a project-based rental assistance contract and/or a use restriction to a receiving project. However, HUD will only consider the transfer of a non-subsidized FHA-insured mortgage when the transferring project is in danger of imminent default on its FHA-insured mortgage due to a finding that the project is physically obsolete and/or economically nonviable in compliance with the criteria and process set forth in this notice.

C. Site and Neighborhood Standards for the Receiving Property

1. Transfers that involve Section 202 assistance must comply with the site and neighborhood requirements at 24 CFR 891.125.

2. Transfers that involve Section 811 assistance must comply with the site and neighborhood requirements at 24 CFR 891.125 and 24 CFR 891.320.

3. All other receiving sites must comply with the site and neighborhood requirements below. The receiving owner must submit the address of the proposed property with their proposal and HUD will determine whether the site meets the following requirements:

a. The site and neighborhood is suitable from the standpoint of facilitating and furthering full compliance with the applicable provisions of Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, Executive Order 11063, and HUD regulations issued pursuant thereto.

b. The neighborhood must not be one that is seriously detrimental to family life or in which substandard dwellings or other undesirable conditions predominate, unless there is actively in progress a concerted program to remedy the undesirable conditions.

c. The housing must be accessible to social, recreational, educational, commercial, and health facilities and services, and other municipal facilities and services that are at least equivalent to those typically found in neighborhoods consisting largely of unassisted, standard housing of similar market rents.

d. If the receiving project is new construction, and is not covered by the

existing regulations cited above for Section 202/811 properties, it may not be located in a racially mixed area if the project will cause a significant increase in the proportion of minority to nonminority residents in the area and may not be located in an area of minority concentration. If HUD determines that the receiving project will be located in an area of minority concentration, the receiving Owner must submit supporting data (*e.g.* census data, evidence of local revitalization efforts, etc.) in order for HUD to determine that they meet one of the exceptions below:

i. Sufficient, comparable opportunities exist for housing for minority households in the income range to be served by the proposed project, outside areas of minority concentration. Sufficient does not require that in every locality there be an equal number of assisted units within and outside of areas of minority concentration. Rather, application of this standard should produce a reasonable distribution of assisted units each year which over a period of several years will approach an appropriate balance of housing opportunities within and outside areas of minority concentration. An appropriate balance in any jurisdiction must be determined in light of local conditions affecting the range of housing choices available for very low-income minority households and in relation to the racial mix of the locality's population.

(A) Units may be considered to be comparable opportunities if they have the same household type and tenure type (owner/renter), require approximately the same total tenant payment, serve the same income group, are located in the same housing market, and are in standard condition.

(B) Application of this sufficient, comparable opportunities standard involves assessing the overall impact of HUD-assisted housing on the availability of housing choices for very low-income minority households, in and outside areas of minority concentration, and must take into account the extent to which the following factors are present, along with any other factor relevant to housing choice:

(1) A significant number of assisted housing units are available outside areas of minority concentration.

(2) There is significant integration of assisted housing projects constructed or rehabilitated in the past ten years, relative to the racial mix of the eligible population.

(3) There are racially integrated neighborhoods in the locality.

(4) Programs are operated by the locality to assist minority households, as applicable, that wish to find housing outside areas of minority concentration.

(5) Minority households have benefitted from local activities (*e.g.,* acquisition and write-down of sites, tax relief programs for homeowners, acquisitions of units for use as assisted housing units) undertaken to expand choice for minority households (or families) outside of areas of minority concentration.

(6) A significant proportion of minority households, have been successful in finding units in nonminority areas under the Section 8 Certificate and Housing Voucher programs.

(7) Comparable housing opportunities have been made available outside areas of minority concentration through other programs.

ii. The project is necessary to meet overriding housing needs that cannot be met in that housing market area. Application of the overriding housing needs criterion, for example, permits approval of sites that are an integral part of an overall local strategy for the preservation or restoration of the immediate neighborhood and of sites in a neighborhood experiencing significant private investment that is demonstrably changing the economic character of the area (a ''revitalizing area''). An overriding housing need, however, may not serve as the basis for determining that a site is acceptable if the only reason the need cannot otherwise be feasibly met is that discrimination on the basis of race, color, creed, sex, or national origin renders sites outside areas of minority concentration unavailable, or if the use of this standard in recent years has had the effect of circumventing the obligation to provide housing choice.

4. All Section 214 transactions (including those involving Section 202/811 properties) will be reviewed by HUD's Office of Policy Development and Research to assess whether there is sufficient demand for affordable rental housing in the receiving market area and to ensure that the transfer does not occur in neighborhoods with highly concentrated poverty.

	Inter-Fair Market Rent (FMR) area transfers	Intra-Fair Market Rent (FMR) area transfers
	For Inter-FMR Area transfers, there can be two types: (1) Transferring to a new metropolitan (metro) area; or (2) transferring to a new non-metro county.	For Intra-FMR transfers, there can be three types: (1) Within a metro area to a new neighborhood (Small Area Fair Market Rent (SAFMR)/Zip); (2) within a metro area, in the same neighborhood (SAFMR/Zip code); and (3) within a non-metro county.
New Metro Neighborhood	For moves into a metro area, the receiving property's neighborhood must be in a SAFMR area with a poverty rate of less than 30 percent, unless: a. The receiving property is in a neighborhood receiving a Choice Neighborhoods Grant or is part of a significant state or local revitalization initiative that will result in new construction and substantial rehabilitation of mixed income housing; or b. The receiving property is in a SAFMR area with a poverty rate between 30 and 40 percent; and either: 1. Housing market activity within the SAFMR	Within a metro area to a new neighborhood (SAFMR/Zip code), the receiving property's neighborhood must be in a SAFMR area with a poverty rate of less than 30 percent, unless: a. The receiving property is in a neighborhood receiving a Choice Neighborhoods Grant or is part of a significant state or local revitalization initiative that will include and result in new construction and substantial rehabilitation of mixed income housing; or b. The receiving property is in a SAFMR area with a poverty rate between 30 and 40 percent; and either

	Inter-Fair Market Rent (FMR) area transfers	Intra-Fair Market Rent (FMR) area transfers
	area would indicate that the area is revitalizing; or 2. The poverty rate has seen significant recent decline.	1. The proposed receiving site has a higher SAFMR than the current site; or 2. The proposed receiving site is considered immediately adjacent (within ½ mile) to the current site; or 3. Housing market activity within the SAFMR area would indicate that the area is revitalizing; or 4. The poverty rate has seen significant recent decline.
Old Metro Neighborhood	N/A: By definition a transfer to a new FMR area will be a transfer to a new neighborhood.	Within a metro area, and in the same neighborhood (SAFMR/Zip code), the receiving property's neighborhood must be in a SAFMR area with a poverty rate of less than 30 percent, unless: a. The receiving property is in a neighborhood receiving a Choice Neighborhoods Grant or is part of a significant state or local revitalization initiative that will result in new construction and substantial rehabilitation of mixed income housing; or b. The SAFMR area is between 30 and 40 percent and at least 50 percent of the units at the receiving property are unassisted and either: 1. The proposed receiving site is considered immediately adjacent (within ½ mile) to the current site; or 2. Housing market activity within the SAFMR area would indicate that the area is revitalizing; or 3. The poverty rate has seen significant recent decline.
Non-Metro	For moves to a non-metro county, the receiving property must be in a county that has a poverty rate less than 30 percent, unless: The county poverty rate is between 30 and 40 percent, and: 1. The housing market activity within the county would indicate that the area is revitalizing; or 2. The poverty rate has seen significant recent decline; or 3. The transaction is part of a statewide portfolio preservation strategy operated by a Housing Finance Agency or is part of a significant state or local revitalization initiative that will result in new construction and substantial rehabilitation of mixed income housing.	Within the same non-metro county, the receiving property must be in a county that has a poverty rate of less than 30 percent, unless: The county poverty rate is between 30 and 40 percent and: 1. The housing market activity within the county would indicate that the area is revitalizing; or 2. The poverty rate has seen significant recent decline; or 3. The transaction is part of a statewide portfolio preservation strategy operated by a Housing Finance Agency or is part of a significant state or local revitalization initiative that will result in new construction and substantial rehabilitation of mixed income housing.

D. Additional Requirements of the Receiving Owner Prior to Approval

The submission to HUD requesting a transfer under Section 214 must include the following information from the receiving owner:

1. Written confirmation of acceptance of the Housing Assistance Payments (HAP) contract, Use Agreement, and/or debt, as applicable, and confirmation that the transfer is warranted by local demand for affordable housing.

2. If the transfer involves project-based section 8 assistance, written evidence that the transfer of the HAP contract is warranted by local demands for affordable housing. Supporting documentation may include a market analysis showing eligible families in the area, a list of current tenants who are eligible for Section 8 assistance, or prospective tenants on waiting lists.

3. If applicable, a written tenant selection plan, Tenant Relocation Plan and an Affirmative Fair Housing Marketing Plan approved by HUD.

4. A narrative detailing the capacity of the proposed owner and management agent of the receiving property to own, operate, manage, and if applicable, renovate affordable housing.

5. The receiving owner must not be subject to any of the following actions that have not been resolved to HUD's satisfaction: (1) A charge from HUD concerning a systemic violation of the Fair Housing Act or a cause determination from a substantially equivalent state or local fair housing agency concerning a systemic violation of a substantially equivalent state or local fair housing law proscribing discrimination because of race, color, religion, sex, national origin, disability, or familial status; and (2) A Fair Housing Act lawsuit filed by the Department of Justice alleging a pattern or practice of discrimination or denial of rights to a group of persons raising an issue of general public interest pursuant to 42 U.S.C. 3614(a); or (3) A letter of finding identifying systemic noncompliance under Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, or Section 109 of the Housing and Community Development Act of 1974. HUD will determine if actions to resolve the charge, cause determination, lawsuit, or letter of findings are sufficient to resolve the matter.

Examples of actions that would normally be considered sufficient to resolve the matter include, but are not limited to, current compliance with:

a. A voluntary compliance agreement (VCA) signed by all the parties;

b. A HUD-approved conciliation agreement signed by all the parties;

c. A conciliation agreement signed by all the parties and approved by the state governmental or local administrative agency with jurisdiction over the matter;

d. A consent order or consent decree; or

e. A final judicial ruling or administrative ruling or decision.

6. Documentation to assist HUD in an environmental review of the transfer request in accordance with environmental regulations and requirements at 24 CFR part 50. HUD will conduct the environmental review as required by part 50 prior to approving a transfer. HUD will document compliance on Form HUD–4128, ''Environmental Assessment and Compliance Findings for the Related Laws.'' Applicants are responsible for submitting environmental information and reports, and should use Chapter 9 of the MAP Guide and the HUD Environmental Review Web site (available at *https://www.onecpd.info/environmental-review/*) for guidance on environmental review information requirements. If the transfer is to a site that is currently HUD-assisted, HUD-insured or HUD-held, a new Phase I Environmental Site Assessment (ESA) in accordance with ASTM E 1527–13 (or the most recent edition), including a Vapor Encroachment Screen in accordance with ASTM E 2600–10 (or the most recent edition), is *not* required, unless the transfer involves:

a. Significant ground disturbance (digging) or construction not contemplated in the original application or incompatible with current engineering or institutional controls;

b. Site expansion or addition;

c. Transfer to a site for which a Phase I ESA in accordance with ASTM E 1527–05 (or a more recent edition) has not been prepared previously; or

d. Any other activities which may result in contaminant exposure pathways not contemplated in the original application or incompatible with current engineering or institutional controls.

After a request has been submitted to HUD, the requestor and other participants in the proposed transfer, including owners and contractors on the receiving project, may not undertake or commit funds for acquisition, rehabilitation, conversion, or construction of the receiving property until HUD has completed the environmental review and notified the requestor that the transfer to the receiving property is acceptable.

E. Post Approval Requirements

Once HUD has received and reviewed the materials above and approved the transfer under Section 214, the owner of the receiving project must do the following as applicable:

1. If there is a use restriction at the transferring property, sign a new or amended use restriction that includes all income and eligibility restrictions of the transferring use restriction and runs for the duration of the transferring project's existing use restriction or the use restriction at the receiving project, whichever is longer.

2. If the transfer involves project based section 8 assistance, renew the HAP contract for a 20-year term at the time of the transfer and attach the Preservation Exhibit agreeing to the automatic renewal of the Section 8 HAP contract at the end of the 20-year term, subject to annual appropriations, for a minimum of the time remaining on the HAP contract that was in effect prior to the transfer under Section 214.

3. Receive approval through the Previous Participation Process including a 2530 review. The receiving owner must be in compliance with all business agreements for the receiving project and for any other HUD insured or assisted projects owned.

4. Comply with all Departmental statutes, regulations, policies and procedures related to any assignment or amendment of a Section 8 HAP contract or other project-based rental assistance contract, required modification of loan documents and legal descriptions, or other necessary changes as a result of a Section 214 transfer.

F. Environmental Review

A Finding of No Significant Impact (FONSI) with respect to the environment has been made for this notice in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The FONSI is available for public inspection between 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500. Due to security measures at this HUD Headquarters Building, an advance appointment to review the FONSI must be scheduled by calling the Regulations Division at 202–708–3055 (not a toll free number).

G. Information Collection Requirements

The information collection requirements contained in this document have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB Control Number 2502–0608. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

H. Implementation

This notice will become effective April 30, 2015. HUD will begin accepting requests for transfers pursuant to this notice on or after the effective date. For questions regarding the submission or status of a transfer request, interested parties should contact their HUD Multifamily Hub/Program Center. The list of HUD Multifamily Hubs and Program Centers is available at: *http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/mfh/hsgmfbus/abouthubspcs.*

Dated: March 17, 2015.

Biniam Gebre,

Acting Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 2015–06776 Filed 3–30–15; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9716]

RIN 1545–BI65

Certain Employee Remuneration in Excess of $1,000,000 Under Internal Revenue Code Section 162(m)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the deduction limitation for certain employee remuneration in excess of $1,000,000 under the Internal Revenue Code (Code). These regulations affect publicly held corporations.

DATES:

Effective date: These regulations are effective on April 1, 2015.

Applicability date: For dates of applicability, see § 1.162–27(j)(2)(vi).

FOR FURTHER INFORMATION CONTACT: Ilya Enkishev at (202) 317–5600 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On June 24, 2011, the Treasury Department and the IRS published a notice of proposed rulemaking (proposed regulations) in the **Federal Register** (76 FR 37034, corrected by 76 FR 55321 on September 7, 2011) under section 162(m) of the Internal Revenue Code (Code). The proposed regulations clarified § 1.162–27(e)(2)(vi)(A) by providing that the plan under which an option or stock appreciation right is granted must specify the maximum number of shares with respect to which options or rights may be granted to any individual employee during a specified period. The proposed regulations also clarified that the general transition rule under § 1.162–27(f)(1) for a corporation that becomes a publicly held corporation applies to all compensation other than compensation specifically identified in § 1.162–27(f)(3).

The Treasury Department and the IRS received written comments in response to the proposed regulations. All comments were considered and are available for public inspection at *http://www.regulations.gov* or upon request. No public hearing on the proposed regulations was requested or held. After consideration of the comments received, the Treasury Department and the IRS adopt the proposed regulations, with modifications, as final regulations.

Summary of Comments and Explanation of Provisions

1. Maximum Number of Shares With Respect To Which Options or Rights May Be Granted to Each Individual Employee

Section 162(m)(1) precludes a deduction under chapter 1 of the Code by any publicly held corporation for compensation paid to any covered employee to the extent that the compensation for the taxable year exceeds $1,000,000. Section 162(m)(4)(C) provides that the deduction limitation does not apply to qualified performance-based compensation. Section 1.162–27(e)(1) provides that qualified performance-based compensation is compensation that meets all of the requirements of § 1.162–27(e)(2) through (e)(5).

The proposed regulations clarified § 1.162–27(e)(2)(vi)(A) by providing that the plan under which an option or stock appreciation right is granted must state ''the maximum number of shares with respect to which options or rights may be granted during a specified period to any *individual* [emphasis added] employee'' (per-employee limitation requirement). The existing regulations provide that the per-employee limitation applies to ''any employee'' during a specified period. The proposed regulations also provided a corresponding clarification of the shareholder approval requirement under § 1.162–27(e)(4). Specifically, the proposed regulations clarified § 1.162–27(e)(4)(iv) to provide that compensation is not adequately described for purposes of the shareholder approval requirement unless the maximum number of shares on which grants may be made to any individual employee during a specified period and the exercise price of those options is disclosed to the shareholders of the corporation. The proposed regulations provided that the clarifications to § 1.162–27(e)(2)(vi)(A) and (e)(4)(iv) apply to amounts that are otherwise deductible for taxable years ending on or after June 24, 2011.

Commenters suggested that these final regulations clarify that under § 1.162–27(e)(2)(vi)(A) a plan satisfies the per-employee limitation requirement if the plan specifies the maximum number of shares with respect to which any type of equity-based compensation may be granted to any individual employee during a specified period. Commenters explained that clarification is needed on whether the per-employee limitation may apply to all types of equity-based awards, not merely stock options and stock appreciation rights, which are the two types of equity-based awards described in § 1.162–27(e)(2)(vi)(A). In addition, commenters noted that a per-employee limitation on all types of equity-based awards would have the same effect as a per-employee limitation with respect to stock options and stock appreciation rights. In response to these comments, the final regulations modify § 1.162–27(e)(2)(vi)(A) to provide that a plan satisfies the per-employee limitation requirement if the plan specifies an aggregate maximum number of shares with respect to which stock options, stock appreciation rights, restricted stock, restricted stock units and other equity-based awards may be granted to any individual employee during a specified period under a plan approved by shareholders in accordance with § 1.162–27(e)(4). This clarification is not intended as a substantive change.

One commenter suggested that the clarification to § 1.162–27(e)(2)(vi)(A) apply only to compensation attributable to stock options and stock appreciation rights granted under a plan that was submitted for shareholder approval after August 8, 2011 (that is, forty-five days after the publication of the proposed regulations) and not to grants under plans submitted for shareholder approval before August 9, 2011 (even if the grant was made after that date). Another commenter suggested that the clarification apply only after the first shareholder meeting that occurs at least 12 months after the publication of these final regulations. These commenters reasoned that a transition period is appropriate because a plan providing for an aggregate share limit (but not an explicit per-employee share limitation) arguably satisfies the per-employee limitation requirement under the existing regulations because no individual employee may receive shares in excess of the aggregate limit.

These final regulations do not adopt either of these suggestions. The clarification to § 1.162–27(e)(2)(vi)(A) is not a substantive change. The transition rule in § 1.162–27(h)(3)(i) of the regulations provides that a plan providing for an aggregate limit, but not a per-employee limit, satisfies § 1.162–27(e)(2)(vi)(A) only if the plan was approved by shareholders before December 20, 1993, and only during a limited reliance period specified in § 1.162–27(h)(3)(i). Additionally, the legislative history to section 162(m) and the preamble to the 1993 Treasury Regulations (58 FR 66310) under section 162(m) provide for a limit on the maximum number of shares for which options or stock appreciation rights may be granted to individual employees. The preamble to the 1993 Treasury Regulations explains the reason for requiring a per-employee limitation: ''Some have questioned why it would be necessary for the regulations to require an *individual* [emphasis added] employee limit on the number of the shares for which options or stock appreciation rights may be granted, where shareholder approval of an aggregate limit is obtained for securities law purposes. The regulations follow the legislative history, which suggests that a per-employee limit be required under the terms of the plan.'' The preamble further explains that ''a limit on the maximum number of shares for which individual employees may receive options or other rights is appropriate because it is consistent with the broader requirement that a performance goal include an objective formula for determining the maximum amount of compensation that an individual employee could receive.'' Accordingly, these final regulations provide that the clarification to § 1.162–27(e)(2)(vi)(A) applies to compensation

attributable to stock options and stock appreciation rights that are granted on or after June 24, 2011 (the date of publication of the proposed regulations).

2. Compensation Payable Under Restricted Stock Units Paid by Companies That Become Publicly Held

In general, § 1.162–27(f)(1) provides that when a corporation becomes publicly held, the section 162(m) deduction limitation ''does not apply to any remuneration paid pursuant to a compensation plan or agreement that existed during the period in which the corporation was not publicly held.'' Pursuant to § 1.162–27(f)(2), a corporation may rely on § 1.162–27(f)(1) until the earliest of: (i) The expiration of the plan or agreement; (ii) a material modification of the plan or agreement; (iii) the issuance of all employer stock and other compensation that has been allocated under the plan or agreement; or (iv) the first meeting of shareholders at which directors are to be elected that occurs after the close of the third calendar year following the calendar year in which an initial public offering (IPO) occurs or, in the case of a privately held corporation that becomes publicly held without an IPO, the first calendar year following the calendar year in which the corporation becomes publicly held. Section 1.162–27(f)(3) provides that the relief provided under § 1.162–27(f)(1) applies to any compensation received pursuant to the exercise of a stock option or stock appreciation right, or the substantial vesting of restricted property, granted under a plan or agreement described in § 1.162–27(f)(1) if the grant occurs on or before the earliest of the events specified in § 1.162–27(f)(2). The proposed regulations clarified that the transition rule in § 1.162–27(f)(1) applies to all compensation other than compensation specifically identified in § 1.162–27(f)(3). Specifically, the proposed regulations identified compensation payable under a restricted stock unit arrangement (RSU) or a phantom stock arrangement as being ineligible for the transition relief in § 1.162–27(f)(3). Therefore, the effect of the proposed regulations is that compensation payable under a RSU is eligible for transition relief only if it is paid, and not merely granted, before the earliest of the events specified in § 1.162–27(f)(2).

Commenters suggested that compensation payable under a RSU should qualify for the transition relief in § 1.162–27(f)(3) because a RSU is economically similar to restricted stock. These final regulations do not adopt this suggestion. A RSU provides a right to receive an amount of compensation based on the value of stock that is payable in cash, stock, or other property (as defined in § 1.83–3(e)) upon the satisfaction of a vesting condition (such as a period of service). Restricted stock, by contrast, is property that has been transferred to the service provider on the date of grant subject to the satisfaction of a specified vesting condition. Restricted stock and RSU's are treated differently under the Code. RSU's generally are treated as nonqualified deferred compensation and may be subject to the rules under section 409A, whereas restricted stock is treated as property and is governed by the rules under section 83. Because compensation attributable to a RSU is in the nature of nonqualified deferred compensation (unlike restricted stock), compensation attributable to a RSU is not sufficiently similar to restricted property to receive the transition relief provided under § 1.162–27(f)(3). Accordingly, these final regulations adopt the proposed clarification to § 1.162–27(f)(3) without change.

The proposed regulations provided that the clarification to § 1.162–27(f)(3) would apply on or after the date of publication of the Treasury decision adopting the proposed regulations as final regulations. Commenters suggested that the clarification to § 1.162–27(f)(3) should apply to RSU's granted after the publication of final regulations and not merely to remuneration payable under a RSU after the date of publication. These final regulations adopt this suggestion. Accordingly, these final regulations provide that the clarification to § 1.162–27(f)(3) applies to remuneration otherwise deductible under a RSU that is granted on or after April 1, 2015.

Proposed Effective/Applicability Date

The clarifications to paragraphs (e)(2)(vi)(A), (e)(2)(vii) *Example 9,* and (e)(4)(iv) of this section apply to compensation attributable to stock options and stock appreciation rights that are granted on or after June 24, 2011. The clarification to § 1.162–27(f)(3) applies to any remuneration that is otherwise deductible resulting from a stock option, stock appreciation right, restricted stock (or other property), restricted stock unit, or any other form of equity-based remuneration that is granted on or after April 1, 2015.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the proposed regulations preceding these regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these final regulations is Ilya Enkishev, Office of the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

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

■ **Par. 2.** In § 1.162–27 paragraphs (e)(2)(vi)(A), (e)(2)(vii) *Example 9,* (e)(4)(iv), and (f)(3) are revised and paragraph (j)(2)(vi) is added to read as follows:

§ 1.162–27 Certain employee remuneration in excess of $1,000,000.

* * * * *

(e) * * *

(2) * * *

(vi) * * *

(A) *In general.* Compensation attributable to a stock option or a stock appreciation right is deemed to satisfy the requirements of this paragraph (e)(2) if the grant or award is made by the compensation committee; the plan under which the option or right is granted states the maximum number of shares with respect to which options or rights may be granted during a specified period to any individual employee; and, under the terms of the option or right, the amount of compensation the employee may receive is based solely on an increase in the value of the stock

after the date of the grant or award. A plan may satisfy the requirement to provide a maximum number of shares with respect to which stock options and stock appreciation rights may be granted to any individual employee during a specified period if the plan specifies an aggregate maximum number of shares with respect to which stock options, stock appreciation rights, restricted stock, restricted stock units and other equity-based awards that may be granted to any individual employee during a specified period under a plan approved by shareholders in accordance with § 1.162–27(e)(4). If the amount of compensation the employee may receive under the grant or award is not based solely on an increase in the value of the stock after the date of grant or award (for example, in the case of restricted stock, or an option that is granted with an exercise price that is less than the fair market value of the stock as of the date of grant), none of the compensation attributable to the grant or award is qualified performance-based compensation under this paragraph (e)(2)(vi)(A). Whether a stock option grant is based solely on an increase in the value of the stock after the date of grant is determined without regard to any dividend equivalent that may be payable, provided that payment of the dividend equivalent is not made contingent on the exercise of the option. The rule that the compensation attributable to a stock option or stock appreciation right must be based solely on an increase in the value of the stock after the date of grant or award does not apply if the grant or award is made on account of, or if the vesting or exercisability of the grant or award is contingent on, the attainment of a performance goal that satisfies the requirements of this paragraph (e)(2).

* * * * *

(vii) * * *

Example 9. Corporation V establishes a stock option plan for salaried employees. The terms of the stock option plan specify that no individual salaried employee shall receive options for more than 100,000 shares over any 3-year period. The compensation committee grants options for 50,000 shares to each of several salaried employees. The exercise price of each option is equal to or greater than the fair market value of a share of V stock at the time of each grant. Compensation attributable to the exercise of the options satisfies the requirements of paragraph (e)(2)(vi) of this section. If, however, the terms of the options provide that the exercise price is less than fair market value of a share of V stock at the date of grant, no compensation attributable to the exercise of those options satisfies the requirements of this paragraph (e)(2) unless issuance or exercise of the options was contingent upon the attainment of a preestablished performance goal that satisfies this paragraph (e)(2). If, however, the terms of the plan also provide that Corporation V could grant options to purchase no more than 900,000 shares over any 3-year period, but did not provide a limitation on the number of shares that any individual employee could purchase, then no compensation attributable to the exercise of those options satisfies the requirements of paragraph (e)(2)(vi) of this section.

* * * * *

(4) * * *

(iv) *Description of compensation.* Disclosure as to the compensation payable under a performance goal must be specific enough so that shareholders can determine the maximum amount of compensation that could be paid to any individual employee during a specified period. If the terms of the performance goal do not provide for a maximum dollar amount, the disclosure must include the formula under which the compensation would be calculated. Thus, if compensation attributable to the exercise of stock options is equal to the difference between the exercise price and the current value of the stock, then disclosure of the maximum number of shares for which grants may be made to any individual employee during a specified period and the exercise price of those options (for example, fair market value on date of grant) would satisfy the requirements of this paragraph (e)(4)(iv). In that case, shareholders could calculate the maximum amount of compensation that would be attributable to the exercise of options on the basis of their assumptions as to the future stock price.

* * * * *

(f) * * *

(3) *Stock-based compensation.* Paragraph (f)(1) of this section will apply to any compensation received pursuant to the exercise of a stock option or stock appreciation right, or the substantial vesting of restricted property, granted under a plan or agreement described in paragraph (f)(1) of this section if the grant occurs on or before the earliest of the events specified in paragraph (f)(2) of this section. This paragraph does not apply to any form of stock-based compensation other than the forms listed in the immediately preceding sentence. Thus, for example, compensation payable under a restricted stock unit arrangement or a phantom stock arrangement must be paid, rather than merely granted, on or before the occurrence of the earliest of the events specified in paragraph (f)(2) of this section in order for paragraph (f)(1) of this section to apply.

* * * * *

(j) * * *

(2) * * *

(vi) The modifications to paragraphs (e)(2)(vi)(A), (e)(2)(vii) *Example 9,* and (e)(4)(iv) of this section concerning the maximum number of shares with respect to which a stock option or stock appreciation right that may be granted and the amount of compensation that may be paid to any individual employee apply to compensation attributable to stock options and stock appreciation rights that are granted on or after June 24, 2011. The last two sentences of § 1.162–27(f)(3) apply to remuneration that is otherwise deductible resulting from a stock option, stock appreciation right, restricted stock (or other property), restricted stock unit, or any other form of equity-based remuneration that is granted on or after April 1, 2015.

Approved: March 9, 2015.

John Dalrymple,

Deputy Commissioner for Services and Enforcement.

Mark D. Mazur,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2015–07386 Filed 3–30–15; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD–9718]

RIN 1545–BH37

Period of Limitations on Assessment for Listed Transactions Not Disclosed Under Section 6011

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the exception to the general three-year period of limitations on assessment under section 6501(c)(10) of the Internal Revenue Code (Code) for listed transactions that a taxpayer failed to disclose as required under section 6011. These final regulations affect taxpayers who fail to disclose listed transactions in accordance with section 6011.

DATES:

Effective date: These regulations are effective March 31, 2015.

Applicability date: For dates of applicability, see § *301.6501(c)–1(g)(9).*

FOR FURTHER INFORMATION CONTACT: Danielle Pierce of the Office of Chief Counsel (Procedure and

Administration), at (202) 317–6845 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545–1940. The collection of information in these final regulations is in § 301.6501(c)–1(g)(5). This information is required to provide the IRS, under penalties of perjury, with the information necessary to properly determine the taxpayer's applicable period of limitations. The collection of information in these final regulations is the same as the collection of information in Revenue Procedure 2005–26 (2005–1 CB 965), which was previously reviewed and approved by the Office of Management and Budget under control number 1545–1940. The collection of information in § 301.6501(c)–1(g)(6) is the same as the collection of information required under section 6112. See § 601.601(d)(2)(ii)(b).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains amendments to the Procedure and Administration Regulations (26 CFR part 301) under section 6501(c) relating to exceptions to the period of limitations on assessment. Section 6501(a) provides that, except as otherwise provided, if a return is filed, tax with respect to that return must be assessed within 3 years from the later of the date the return was filed or the original due date of the return. Section 6501(c) contains several exceptions to the general three-year period of limitations on assessment.

Section 6501(c)(10) was added to the Code by section 814 of the American Jobs Creation Act of 2004, Public Law 108–357 (118 Stat. 1418, 1581 (2004)) (AJCA), enacted on October 22, 2004. Section 6501(c)(10) provides that, if a taxpayer fails to disclose a listed transaction as required under section 6011, the time to assess tax against the taxpayer with respect to that transaction will end no earlier than one year after the earlier of (A) the date on which the taxpayer furnishes the information required under section 6011, or (B) the date that the material advisor furnishes to the Secretary, upon written request, the information required under section 6112 with respect to the taxpayer related to the listed transaction. Section 6112 requires material advisors to maintain lists of advisees and other information with respect to reportable transactions, including listed transactions, and to furnish that information to the IRS upon request. The term ''material advisor'' is defined in § 301.6111–3(b). Section 6112 and § 301.6112–1 provide guidance relating to the preparation, content, maintenance, retention, and furnishing of lists by material advisors. Under this provision, if neither the taxpayer nor a material advisor furnishes the requisite information, the period of limitations on assessment will remain open, and the tax with respect to the listed transaction may be assessed at any time. Section 6501(c)(10) is effective for taxable years with respect to which the period of limitations on assessment did not expire prior to October 22, 2004.

Section 6501(c)(10) applies when a taxpayer does not properly disclose a listed transaction (as defined in section 6707A(c)(2)) as required under section 6011. Taxpayers are required under section 6011 and the regulations thereunder (collectively referred to as the ''section 6011 disclosure rules'') to disclose certain information regarding each reportable transaction in which the taxpayer participated. See Treas. Reg. §§ 1.6011–4; 20.6011–4; 25.6011–4; 31.6011–4; 53.6011–4; 54.6011–4; and 56.6011–4. Among the transactions that are reportable are ''listed transactions.'' See Treas. Reg. § 1.6011–4(b)(2). Under the section 6011 disclosure rules, a listed transaction is a transaction that is the same as, or substantially similar to, a transaction that the IRS has determined to be a tax avoidance transaction and identified by notice, regulation, or other form of published guidance. Treas. Reg. § 1.6011–4(b)(2). For a list of transactions the IRS has identified as listed transactions, see Notice 2009–59, 2009–31 IRB 1. See § 601.601(d)(2).

If the section 6011 disclosure rules require a taxpayer to disclose a listed transaction, the taxpayer must complete and file a disclosure statement in accordance with the section 6011 disclosure rules. The section 6011 disclosure rules currently require that Form 8886, ''Reportable Transaction Disclosure Statement'' (or successor form), be used as the disclosure statement and be completed in accordance with the instructions to the form. The Form 8886 (or successor form) generally must be attached to the taxpayer's original or amended tax return for each taxable year for which a taxpayer participates in a listed transaction. Treas. Reg. § 1.6011–4(e)(1). If a listed transaction results in a loss that is carried back to a prior year, Form 8886 (or successor form) must be attached to the taxpayer's application for tentative refund or amended tax return for that prior year. The taxpayer also must send a copy of Form 8886 (or successor form) to the IRS Office of Tax Shelter Analysis (OTSA), generally at the same time that a disclosure statement pertaining to a particular listed transaction is first filed. Under the current rules, when a transaction is identified as a listed transaction after the date on which the taxpayer files a tax return (including an amended return) for a taxable year reflecting the taxpayer's participation in the listed transaction and before the end of the period of limitations for assessment of tax for any taxable year in which the taxpayer participated in the listed transaction, then the taxpayer must file Form 8886 (or successor form) with OTSA within 90 calendar days after the date the transaction became a listed transaction.

If a taxpayer does not disclose its participation in a listed transaction in accordance with all of the requirements of the section 6011 disclosure rules and section 6501(c)(10) applies, then the time to assess tax related to the listed transaction will expire no earlier than the earlier of (1) one year after the date on which the information described in section 6501(c)(10)(A) is provided, or (2) one year after the date on which the information described in section 6501(c)(10)(B) is provided.

The IRS and Treasury Department issued Rev. Proc. 2005–26 (2005–1 CB 965) on April 25, 2005, to provide interim guidance on section 6501(c)(10). The revenue procedure prescribes how taxpayers and material advisors should disclose listed transactions that were not properly disclosed under section 6011 in order to start the one-year period under section 6501(c)(10).

On October 7, 2009, a notice of proposed rulemaking (REG–160871–04) relating to the section 6501(c)(10) exception to the general three-year period of limitations on assessment that applies if a taxpayer fails to disclose a listed transaction as required under section 6011 was published in the **Federal Register** (74 FR 51527). The preamble of the notice of proposed

rulemaking provided that taxpayers may continue to rely on the rules in Rev. Proc. 2005–26 until temporary or final regulations are issued under section 6501(c)(10). No comments were received from the public in response to the notice of proposed rulemaking. No public hearing was requested or held. The proposed regulations are adopted as revised by this Treasury decision.

Explanation of Revisions

These final regulations adopt the proposed regulations with four substantive clarifications. First, § 301.6501(c)–1(g)(1) is clarified with respect to the interaction of the one-year period of limitations on assessment after disclosure of a listed transaction under section 6501(c)(10) and the general three-year period of limitations on assessment under section 6501(a) (or other applicable limitations period under section 6501). The one-year period in section 6501(c)(10) serves only to extend the existing limitations period. For example, if the general section 6501(a) three-year period of limitations on assessment applies and the one-year period under section 6501(c)(10) ends prior to the expiration of the section 6501(a) three-year period, the assessment period for the tax year remains open until the expiration of the general three-year period. Proposed section 301.6501(c)–1(g)(8), Example 5 (renumbered as Example 6 in the final regulations) and Example 9, illustrated this point. However, the text of the proposed regulations did not specifically provide that in no case will the period of limitations be shorter than the period of limitations that would apply without regard to application of section 301.6501(c)–1(g). A sentence was added to the end of § 301.6501(c)–1(g)(1) to clarify this point.

Second, the final regulations revise § 301.6501(c)–1(g)(6) to clarify when a disclosure will be considered a disclosure by a material advisor for purposes of section 6501(c)(10)(B) so that the one-year period of limitations on assessment will begin. Under section 6501(c)(10)(B), if a taxpayer fails to disclose information related to a listed transaction, the time to assess tax will end no earlier than one year after the date that ''a material advisor meets the requirements of section 6112 with respect to a request by the Secretary under section 6112(b) relating to such transaction with respect to such taxpayer.'' This means that unless a material advisor furnishes the information with respect to the taxpayer in response to an IRS written request for the list under section 6112(b) and in accordance with section 6112, the one-year period under section 6501(c)(10)(B) will not begin. Accordingly, receipt of information from a person other than the material advisor with respect to the taxpayer will not satisfy the requirements of a disclosure for purposes of section 6501(c)(10)(B). The final regulations add § 301.6501(c)–1(g)(6)(ii)(A) to clarify that, consistent with the statutory language, except in limited circumstances related to dissolution or liquidation of an entity that is a material advisor or in the case of a designation agreement, only receipt of information furnished by the material advisor will satisfy the requirements for disclosure under § 301.6501(c)–1(g)(6).

Third, the final regulations clarify that information received by the IRS in circumstances other than in response to a section 6112 request, such as in response to an Information Document Request in a section 6700 investigation or as a result of a summons enforcement proceeding, will not begin the one-year period under § 301.6501(c)–1(g)(6). Proposed section 301.6501(c)–1(g)(8), Example 10, illustrated this point. However, the text of the proposed regulations did not specifically address this point. The final regulations have been revised to add § 301.6501(c)–1(g)(6)(ii)(B) to provide that information not furnished in response to a section 6112 request will not satisfy the requirements under § 301.6501(c)–1(g)(6) even if provided by the material advisor, unless furnished to OTSA in accordance with § 301.6112–1(d) in the case of material advisors that are liquidated or dissolved.

Fourth, the final regulations clarify that if a material advisor furnishes information described in § 301.6112–1(e), but does not furnish information identifying the taxpayer as a person who entered into the listed transaction, the requirements of section 6501(c)(10)(B) will not have been satisfied for that taxpayer. Proposed section 301.6501(c)–1(g)(8), Example 11, illustrated this point. However, the text of the proposed regulations did not specifically address this point. The final regulations have been revised to add § 301.6501(c)–1(g)(6)(ii)(C) for clarification.

In addition to the revisions described above, other minor clarifying changes have been made that are not intended to be substantive.

These final regulations apply to taxable years for which the period of limitation on assessment under section 6501, including the period of limitation set forth in section 6501(c)(10) and § 301.6510(c)–1(g), did not expire before March 31, 2015, the date these final regulations are published in the **Federal Register**.

Effect on Other Documents

Upon the publication of these final regulations under section 6501(c)(10) in the **Federal Register**, Rev. Proc. 2005–26 (2005–1 CB 965), is superseded for taxable years with respect to which the period of limitations on assessment under section 6501 (including section 6501(c)(10)) did not expire before March 31, 2015. Rev. Proc. 2005–26 (2005–1 CB 965) will continue to apply to taxable years with respect to which the period of limitations on assessment expired on or after April 8, 2005, and before March 31, 2015, although as provided in the proposed regulations, taxpayers could rely on the rules in the notice of proposed rulemaking (REG–160871–04) under section 6501(c)(10) published in the **Federal Register** (74 FR 51527) on October 7, 2009, until these final rules are published in this Treasury decision.

Special Analyses

It has been determined that these final regulations are not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13653. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations.

It is hereby certified that the collection of information contained in these regulations will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act (5 U.S.C. chapter 6). Section 6501(c)(10) applies when taxpayers fail to comply with the reporting requirements set forth under section 6011 with respect to listed transactions. The Treasury Department and the IRS do not know the exact number and types of taxpayers that fail to comply with those requirements. However, although the Treasury Department and the IRS are aware that many tax avoidance transactions involve pass-through entities, when pass-through entities are utilized, the entities are not ultimately liable for the tax; rather, the taxpayers subject to section 6501(c)(10) will be the individuals and corporations owning, directly or indirectly, the interests in the pass-through entities. Therefore, the Treasury Department and the IRS have determined that these final regulations will not affect a substantial number of small entities.

In addition, the Treasury Department and the IRS have determined that any impact on small entities resulting from these final regulations will not be significant. Most of the information required under these final regulations is already required by other regulations or forms, namely, § 1.6011–4, § 301.6112–1, and Form 8886, ''Reportable Transaction Disclosure Statement.'' The only new information required to be submitted to the IRS is a cover letter, which must contain a reference to the tax returns and taxable year(s) at issue and a statement signed under penalty of perjury. The cover letter should take minimal time and expense to prepare. Therefore, the additional requirement of the cover letter should not significantly increase the burden on taxpayers. Based on these facts, the Treasury Department and the IRS have determined that these final regulations will not have a significant economic impact on a substantial number of small entities. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding this regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Danielle Pierce of the Office of the Associate Chief Counsel (Procedure and Administration).

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 301 is amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

■ **Paragraph 1.** The authority citation for part 301 continues to read in part as follows:

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

■ **Par. 2.** Section 301.6501(c)–1 is amended by adding paragraph (g) to read as follows:

§ 301.6501(c)–1 Exceptions to general period of limitations on assessment and collection.

* * * * *

(g) *Listed transactions*—(1) *In general.* If a taxpayer is required to disclose a listed transaction under section 6011 and the regulations thereunder and does not do so in the time and manner required, then the time to assess any tax attributable to that listed transaction for the taxable year(s) to which the failure to disclose relates (as defined in paragraph (g)(3)(iii) of this section) will not expire before the earlier of one year after the date on which the taxpayer makes the disclosure described in paragraph (g)(5) of this section or one year after the date on which a material advisor makes a disclosure described in paragraph (g)(6) of this section. In no case will the operation of this paragraph (g) cause the period of limitations on assessment to expire any earlier than the period that would have otherwise applied under this section determined without regard to this paragraph (g)(1).

(2) *Limitations period if paragraph (g)(5) or (g)(6) is satisfied.* If one of the disclosure provisions described in paragraphs (g)(5) or (6) of this section is satisfied, then the tax attributable to the listed transaction may be assessed at any time before the expiration of the limitations period that would have otherwise applied under this section (determined without regard to paragraph (g)(1) of this section) or the period ending one year after the date that one of the disclosure provisions described in paragraphs (g)(5) or (6) of this section was satisfied, whichever is later. If both disclosure provisions are satisfied, the one-year period will begin on the earlier of the dates on which the provisions were satisfied. Paragraph (g)(1) of this section does not apply to any period of limitations on assessment that expired before the date on which the failure to disclose the listed transaction under section 6011 occurred.

(3) *Definitions*—(i) *Listed transaction.* The term *listed transaction* means a transaction described in section 6707A(c)(2) of the Code and § 1.6011–4(b)(2) of this chapter.

(ii) *Material advisor.* The term *material advisor* means a person described in section 6111(b)(1) of the Code and § 301.6111–3(b) of this chapter.

(iii) *Taxable year(s) to which the failure to disclose relates.* The *taxable year(s) to which the failure to disclose relates* are each taxable year that the taxpayer participated (as defined under section 6011 and the regulations thereunder) in a transaction that was identified as a listed transaction and the taxpayer failed to disclose the listed transaction as required under section 6011. If the taxable year in which the taxpayer participated in the listed transaction is different from the taxable year in which the taxpayer is required to disclose the listed transaction under section 6011, the taxable year(s) to which the failure to disclose relates are each taxable year that the taxpayer participated in the transaction.

(4) *Application of paragraph with respect to pass-through entities.* In the case of taxpayers who are partners in partnerships, shareholders in S corporations, or beneficiaries of trusts and are required to disclose a listed transaction under section 6011 and the regulations thereunder, paragraph (g)(1) of this section will apply to a particular partner, shareholder, or beneficiary if that particular partner, shareholder, or beneficiary does not disclose within the time and in the form and manner provided by section 6011 and § 1.6011–4(d) and (e), regardless of whether the partnership, S corporation, or trust or another partner, shareholder, or beneficiary discloses in accordance with section 6011 and the regulations thereunder. Similarly, because paragraph (g)(1) of this section applies on a taxpayer-by-taxpayer basis, the failure of a partnership, S corporation, or trust that has a disclosure obligation under section 6011 and that does not disclose within the time or in the form and manner provided by § 1.6011–4(d) and (e) will not cause paragraph (g)(1) of this section to apply to a partner, shareholder or beneficiary of the entity. Instead, the application of paragraph (g)(1) of this section to a partner, shareholder, or beneficiary will be determined based on whether the particular partner, shareholder, or beneficiary satisfied their disclosure obligation under section 6011 and the regulations thereunder.

(5) *Taxpayer's disclosure of a listed transaction that the taxpayer did not properly disclose under section 6011*—(i) *In general*—(A) *Method of disclosure.* The taxpayer must complete the most current version of Form 8886, ''Reportable Transaction Disclosure Statement'' (or successor form), available on the date the taxpayer attempts to satisfy this paragraph (g)(5) in accordance with § 1.6011–4(d) and the instructions to the Form in effect on that date. The taxpayer must indicate on the Form 8886 that the form is being submitted for purposes of section 6501(c)(10) and the tax return(s) and taxable year(s) for which the taxpayer is making a section 6501(c)(10) disclosure. Disclosure under this paragraph (g)(5) will only be effective for the tax return(s) and taxable year(s) that the taxpayer specifies on the Form 8886 that he or she is attempting to disclose for purposes of section 6501(c)(10). If the Form 8886 contains a line for this purpose, then the taxpayer must complete the line in accordance with

the instructions to that form. Otherwise, the taxpayer must include on the top of Page 1 of the Form 8886, and each copy of the form, the following statement: ''*Section 6501(c)(10) Disclosure*'' followed by the tax return(s) and taxable year(s) for which the taxpayer is making a section 6501(c)(10) disclosure. For example, if the taxpayer did not properly disclose its participation in a listed transaction the tax consequences of which were reflected on the taxpayer's Form 1040 for the 2005 taxable year, the taxpayer must include the following statement: ''*Section 6501(c)(10) Disclosure; 2005 Form 1040*'' on the form. The taxpayer must submit the properly completed Form 8886 and a cover letter, which must be completed in accordance with the requirements set forth in paragraph (g)(5)(i)(B) of this section, to the Office of Tax Shelter Analysis (OTSA). The taxpayer is permitted, but not required, to file an amended return with the Form 8886 and cover letter. Separate Forms 8886 and separate cover letters must be submitted for each listed transaction the taxpayer did not properly disclose under section 6011. If the taxpayer participated in one listed transaction over multiple years, the taxpayer may submit one Form 8886 (or successor form) and cover letter and indicate on that form all of the tax returns and taxable years for which the taxpayer is making a section 6501(c)(10) disclosure. If a taxpayer participated in more than one listed transaction, then the taxpayer must submit separate Forms 8886 (or successor form) for each listed transaction, unless the listed transactions are the same or substantially similar, in which case all the listed transactions may be reported on one Form 8886.

(B) *Cover letter.* (*1*) A cover letter to which a Form 8886 is to be attached must identify the tax return(s) and taxable year(s) for which the taxpayer is making a section 6501(c)(10) disclosure and include the following statement signed under penalties of perjury by the taxpayer:

Under penalties of perjury, I declare that I have examined this reportable transaction disclosure statement and, to the best of my knowledge and belief, this reportable transaction disclosure statement is true, correct, and complete.

(*2*) If the Form 8886 is prepared by a paid preparer, in addition to the statement under penalties of perjury signed by the taxpayer, the Form 8886 must also include the following statement signed under penalties of perjury by the paid preparer.

Under penalties of perjury, I declare that I have examined this reportable transaction disclosure statement and, to the best of my knowledge and belief, this reportable transaction disclosure statement is true, correct, and complete. This declaration is based on all information of which I, as paid preparer, have any knowledge.

(C) *Taxpayer under examination or Appeals consideration.* A taxpayer making a disclosure under paragraph (g)(5) of this section with respect to a taxable year under examination or Appeals consideration by the IRS must satisfy the requirements of paragraphs (g)(5)(i)(A) and (B) of this section and also submit a copy of the submission to the IRS examiner or Appeals officer examining or considering the taxable year(s) to which the disclosure under this paragraph (g) relates.

(D) *Date the one-year period will begin to run if paragraph (g)(5) satisfied.* Unless an earlier expiration is provided for in paragraph (g)(6) of this section, the time to assess tax under paragraph this (g) will not expire before one year after the date on which the Secretary is furnished the information from the taxpayer that satisfies all the requirements of paragraphs (g)(5)(i)(A) and (B) of this section and, if applicable, paragraph (g)(5)(i)(C) of this section. If the taxpayer does not satisfy all of the requirements on the same date, the one-year period will begin on the date that the IRS is furnished the information that, together with prior disclosures of information, satisfies the requirements of this paragraph (g)(5). For purposes of this paragraph (g)(5), the information is deemed furnished on the date the IRS receives the information.

(ii) *Exception for returns other than annual returns.* The IRS may prescribe alternative procedures to satisfy the requirements of this paragraph (g)(5) in a revenue procedure, notice, or other guidance published in the Internal Revenue Bulletin for circumstances involving returns other than annual returns.

(6) *Material advisor's disclosure of a listed transaction not properly disclosed by a taxpayer under section 6011*—(i) *In general.* In response to a written request of the IRS under section 6112, a material advisor with respect to a listed transaction must furnish to the IRS the information described in section 6112 and § 301.6112–1(b) in the form and manner prescribed by section 6112 and § 301.6112–1(e). If the information the material advisor furnishes identifies the taxpayer as a person who entered into the listed transaction, regardless of whether the material advisor provides the information before or after the taxpayer's failure to disclose the listed transaction under section 6011, then the requirements of this paragraph (g)(6) will be satisfied for that taxpayer. The requirements of this paragraph (g)(6) will be considered satisfied even if the material advisor furnishes the information required under section 6112 to the IRS after the date prescribed in section 6708 or published guidance relating to section 6708.

(ii) *Paragraph (g)(6) not satisfied*—(A) *Information not furnished by a material advisor or a person permitted to act on behalf of the material advisor.* The requirements of this paragraph (g)(6) are not satisfied for a taxpayer unless the information is furnished by—

(*1*) A person who is a material advisor (as defined in paragraph (g)(3)(ii) of this section) with respect to the taxpayer,

(*2*) A person who is providing the information pursuant to § 301.6112–1(d) on behalf of a dissolved or liquidated material advisor with respect to the taxpayer, or

(*3*) a person who is providing the information on behalf of a material advisor with respect to the taxpayer under a designation agreement in accordance with § 301.6112–1(f).

(B) *No written request by IRS.* The requirements of this paragraph (g)(6) are not satisfied unless the information is furnished in response to a written request made by the IRS to the material advisor under section 6112 (except as provided in § 301.6112–1(d) with respect to a list furnished to OTSA within 60 days after dissolution or liquidation of a material advisor).

(C) *Information furnished does not identify the taxpayer.* The requirements of this paragraph (g)(6) are not satisfied for a taxpayer unless the information furnished identifies the taxpayer as a person who entered into the listed transaction.

(iii) *Date the one-year period will begin if paragraph (g)(6) is satisfied.* Unless an earlier expiration is provided for in paragraph (g)(5) of this section, the time to assess tax under this paragraph (g) will expire one year after the date on which the material advisor satisfies the requirements of paragraph (g)(6)(i) of this section with respect to the taxpayer. For purposes of this paragraph (g)(6), information is deemed to be furnished on the date that, in response to a request under section 6112, the IRS receives the information from a material advisor that satisfies the requirements of paragraph (g)(6)(i) of this section with respect to the taxpayer.

(7) *Tax assessable under this section.* If the period of limitations on assessment for a taxable year remains open under this section, the Secretary has authority to assess any tax with

respect to the listed transaction in that year. This includes, but is not limited to, adjustments made to the tax consequences claimed on the return plus interest, additions to tax, additional amounts, and penalties that are related to the listed transaction or adjustments made to the tax consequences. This also includes any item to the extent the item is affected by the listed transaction even if it is unrelated to the listed transaction. An example of an item affected by, but unrelated to, a listed transaction is the threshold for the medical expense deduction under section 213 that varies if there is a change in an individual's adjusted gross income. An example of a penalty related to the listed transaction is the penalty under section 6707A for failure to file the disclosure statement reporting the taxpayer's participation in the listed transaction. Examples of penalties related to the adjustments made to the tax consequences are the accuracy-related penalties under sections 6662 and 6662A.

(8) *Examples.* The rules of this paragraph (g) are illustrated by the following examples:

Example 1. No requirement to disclose under section 6011. P, an individual, is a partner in a partnership that entered into a transaction in 2001 that was the same as or substantially similar to the transaction identified as a listed transaction in Notice 2000–44 (2000–2 CB 255). P claimed a loss from the transaction on his Form 1040 for the tax year 2001. P filed the Form 1040 prior to June 14, 2002. P did not disclose his participation in the listed transaction because P was not required to disclose the transaction under the applicable section 6011 regulations (TD 8961), which were effective for any transaction entered into before January 1, 2001 and any transaction entered into on or after January 1, 2001 that was reported on a return of the taxpayer filed on or before June 14, 2002. Although the transaction was a listed transaction and P did not disclose the transaction, P had no obligation to include on any return or statement any information with respect to a listed transaction within the meaning of section 6501(c)(10) because TD 8961 only applied to corporations, not individuals. Accordingly, section 6501(c)(10) does not apply.

Example 2. Taxable year to which the failure to disclose relates when transaction is identified as a listed transaction after first year of participation and the transaction must be disclosed with the return next filed. (i) On December 30, 2003, Y, a corporation, enters into a transaction that at the time is not a reportable transaction. On March 15, 2004, Y timely files its 2003 Form 1120, reporting the tax consequences from the transaction. On April 1, 2004, the IRS issues Notice 2004–31 that identifies the transaction as a listed transaction. Y also reports tax consequences from the transaction on its 2004 Form 1120, which it timely filed on March 15, 2005. Y did not attach a completed Form 8886 to its 2004 Form 1120 and did not send a copy of the form to OTSA. The general three-year period of limitations on assessment for Y's 2003 and 2004 taxable years would expire on March 15, 2007, and March 17, 2008, respectively.

(ii) The period of limitations on assessment for Y's 2003 taxable year was open on the date the transaction was identified as a listed transaction. Under the applicable section 6011 regulations (TD 9108), which were effective for transactions entered into before August 3, 2007, Y should have disclosed its participation in the transaction with its next filed return, which was its 2004 Form 1120, but Y did not disclose its participation. Y's failure to disclose with the 2004 Form 1120 relates to taxable years 2003 and 2004. Section 6501(c)(10) operates to keep the period of limitations on assessment open for the 2003 and 2004 taxable years with respect to the listed transaction until at least one year after the date Y satisfies the requirements of paragraph (g)(5) of this section or a material advisor satisfies the requirements of paragraph (g)(6) of this section with respect to Y.

Example 3. Taxable year to which the failure to disclose relates when transaction is identified as a listed transaction after the first year of participation and the transaction must be disclosed 90 days after the transaction became a listed transaction. (i) In January 2015, A, a calendar year taxpayer, enters into a transaction that at the time is not a listed transaction. A reports the tax consequences from the transaction on its individual income tax return for 2015 timely filed on April 15, 2016. The time for the IRS to assess tax against A under the general three-year period of limitations for A's 2015 taxable year would expire on April 15, 2019. A only participated in the transaction in 2015. On March 7, 2017, the IRS identifies the transaction as a listed transaction. A does not file the Form 8886 with OTSA by June 5, 2017.

(ii) The period of limitations on assessment for A's 2015 taxable year was open on the date the transaction was identified as a listed transaction. Under the current section 6011 regulations (TD 9350) which are effective for transactions entered into on or after August 3, 2007, A must disclose its participation in the transaction by filing a completed Form 8886 with OTSA on or before June 5, 2017, which is 90 days after the date the transaction became a listed transaction. A did not disclose the transaction as required. A's failure to disclose relates to taxable year 2015 even though the obligation to disclose did not arise until 2017. Section 6501(c)(10) operates to keep the period of limitations on assessment open for the 2015 taxable year with respect to the listed transaction until at least one year after the date A satisfies the requirements of paragraph (g)(5) of this section or a material advisor satisfies the requirements of paragraph (g)(6) of this section with respect to A.

Example 4. Requirements of paragraph (g)(6) satisfied. Same facts as *Example 3,* except that on April 5, 2019, the IRS hand delivers to Advisor J, who is a material advisor, a section 6112 request related to the listed transaction. Advisor J furnishes the required list with all the information required by section 6112 and § 301.6112–1, including all the information required with respect to A, to the IRS on May 8, 2019. The submission satisfies the requirements of paragraph (g)(6) even though Advisor J furnishes the information outside of the 20-business-day period provided in section 6708. Accordingly, under section 6501(c)(10), the period of limitations with respect to A's taxable year 2015 will end on May 8, 2020, one year after the IRS received the required information, unless the period of limitations remains open under another exception. Any tax for the 2015 taxable year not attributable to the listed transaction must be assessed by April 15, 2019.

Example 5. Requirements of paragraph (g)(5) also satisfied. Same facts as *Examples 3 and 4,* except that on May 23, 2019, A files a properly completed Form 8886 and signed cover letter with OTSA both identifying that the section 6501(c)(10) disclosure relates to A's Form 1040 for 2015. A satisfied the requirements of paragraph (g)(5) of this section as of May 23, 2019. Because the requirements of paragraph (g)(6) were satisfied first as described in *Example 4,* under section 6501(c)(10) the period of limitations will end on May 8, 2020 (one year after the requirements of paragraph (g)(6) were satisfied) instead of May 23, 2020 (one year after the requirements of paragraph (g)(5) were satisfied). Any tax for the 2015 taxable year not attributable to the listed transaction must be assessed by April 15, 2019.

Example 6. Period to assess tax remains open under another exception. Same facts as *Examples 3, 4, and 5,* except that on April 1, 2019, A signed Form 872, consenting to extend, without restriction, its period of limitations on assessment for taxable year 2015 under section 6501(c)(4) until July 15, 2020. In that case, although under section 6501(c)(10) the period of limitations would otherwise expire on May 8, 2020, the IRS may assess tax with respect to the listed transaction (as well as any other item on the return covered by the Form 872 extension) at any time up to and including July 15, 2020, pursuant to section 6501(c)(4). Section 6501(c)(10) operates to extend the assessment period but not to shorten any other applicable assessment period.

Example 7. Requirements of (g)(5) not satisfied. In 2015, X, a corporation, enters into a listed transaction. On March 15, 2016, X timely files its 2015 Form 1120, reporting the tax consequences from the transaction. X does not disclose the transaction as required under section 6011 when it files its 2015 return. The failure to disclose relates to taxable year 2015. On February 13, 2017, X completes and files a Form 8886 with respect to the listed transaction with OTSA but does not submit a cover letter, as required. The requirements of paragraph (g)(5) of this section have not been satisfied. Therefore, the time to assess tax against X with respect to the transaction for taxable year 2015 remains open under section 6501(c)(10).

Example 8. Section 6501(c)(10) applies to keep one partner's period of limitations on assessment open. T and S are partners in a

partnership, TS, that enters into a listed transaction in 2015. T and S each receive a Schedule K–1 from TS on April 11, 2016. On April 15, 2016, TS, T and S each file their 2015 returns. Under the applicable section 6011 regulations, TS, T, and S each are required to disclose the transaction. TS attaches a completed Form 8886 to its 2015 Form 1065 and sends a copy of Form 8886 to OTSA. Neither T nor S files a disclosure statement with their respective returns nor sends a copy to OTSA on April 15, 2016. On May 17, 2016, T timely files a completed Form 8886 with OTSA pursuant to § 1.6011–4(e)(1). T's disclosure is timely because T received the Schedule K–1 within 10 calendar days before the due date of the return and, thus, T had 60 calendar days to file Form 8886 with OTSA. TS and T properly disclosed the transaction in accordance with the applicable regulations under section 6011, but S did not. S's failure to disclose relates to taxable year 2015. The time to assess tax with respect to the transaction against S for 2015 remains open under section 6501(c)(10) even though TS and T disclosed the transaction.

Example 9. Section 6501(c)(10) satisfied before expiration of three-year period of limitations under section 6501(a). Same facts as *Example 8,* except that on August 26, 2016, S satisfies the requirements of paragraph (g)(5) of this section. No material advisor satisfied the requirements of paragraph (g)(6) of this section with respect to S on a date earlier than August 26, 2016. Under section 6501(c)(10), the period of time in which the IRS may assess tax against S with respect to the listed transaction would expire no earlier than August 26, 2017, one year after the date S satisfied the requirements of paragraph (g)(5). As the general three-year period of limitations on assessment under section 6501(a) does not expire until April 15, 2019, the IRS will have until that date to assess any tax with respect to the listed transaction.

Example 10. No section 6112 request. B, a calendar year taxpayer, entered into a listed transaction in 2015. B did not comply with the applicable disclosure requirements under section 6011 for taxable year 2015; therefore, section 6501(c)(10) applies to keep the period of limitations on assessment open with respect to the tax related to the transaction until at least one year after B satisfies the requirements of paragraph (g)(5) of this section or a material advisor satisfies the requirements of paragraph (g)(6) of this section with respect to B. In June 2016, the IRS conducts a section 6700 investigation of Advisor K, who is a material advisor to B with respect to the listed transaction. During the course of the investigation, the IRS obtains the name, address, and TIN of all of Advisor K's clients who engaged in the transaction, including B. The information provided does not satisfy the requirements of paragraph (g)(6) with respect to B because the information was not provided pursuant to a section 6112 request. Therefore, the time to assess tax against B with respect to the transaction for taxable year 2015 remains open under section 6501(c)(10).

Example 11. Section 6112 request but the requirements of paragraph (g)(6) are not satisfied with respect to B. Same facts as *Example 10,* except that on January 9, 2017, the IRS sends by certified mail a section 6112 request to Advisor L, who is another material advisor to B with respect to the listed transaction. Advisor L furnishes some of the information required under section 6112 and § 301.6112–1 to the IRS for inspection on January 17, 2017. The list includes information with respect to many clients of Advisor L, but it does not include any information with respect to B. The submission does not satisfy the requirements of paragraph (g)(6) of this section with respect to B. Therefore, the time to assess tax against B with respect to the transaction for taxable year 2015 remains open under section 6501(c)(10).

Example 12. Section 6112 submission made before taxpayer failed to disclose a listed transaction. Advisor M, who is a material advisor, advises C, an individual, in 2015 with respect to a transaction that is not a reportable transaction at that time. C files its return claiming the tax consequences of the transaction on April 15, 2016. The time for the IRS to assess tax against C under the general three-year period of limitations for C's 2015 taxable year would expire on April 15, 2019. The IRS identifies the transaction as a listed transaction on November 3, 2017. On December 7, 2017, the IRS hand delivers to Advisor M a section 6112 request related to the transaction. Advisor M furnishes the information to the IRS on December 29, 2017. The information contains all the required information with respect to Advisor M's clients, including C. C does not disclose the transaction on or before February 1, 2018, as required under section 6011 and the regulations under section 6011. Advisor M's submission under section 6112 satisfies the requirements of paragraph (g)(6) of this section even though it occurred prior to C's failure to disclose the listed transaction. Thus, under section 6501(c)(10), the period of limitations to assess tax against C with respect to the listed transaction will end on December 29, 2018 (one year after the requirements of paragraph (g)(6) of this section were satisfied), unless the period of limitations remains open under another exception.

Example 13. Transaction removed from the category of listed transactions after taxpayer failed to disclose. D, a calendar year taxpayer, entered into a listed transaction in 2015. D did not comply with the applicable disclosure requirements under section 6011 for taxable year 2015; therefore, section 6501(c)(10) applies to keep the period of limitations on assessment open with respect to the tax related to the transaction until at least one year after D satisfies the requirements of paragraph (g)(5) of this section or a material advisor satisfies the requirements of paragraph (g)(6) of this section with respect to D. In 2017, the IRS removes the transaction from the category of listed transactions because of a change in law. Section 6501(c)(10) continues to apply to keep the period of limitations on assessment open for D's taxable year 2015.

Example 14. Taxes assessed with respect to the listed transaction. (i) F, an individual, enters into a listed transaction in 2015. F files its 2015 Form 1040 on April 15, 2016, but does not disclose his participation in the listed transaction in accordance with section 6011 and the regulations under section 6011. F's failure to disclose relates to taxable year 2015. Thus, section 6501(c)(10) applies to keep the period of limitations on assessment open with respect to the tax related to the listed transaction for taxable year 2015 until at least one year after the date F satisfies the requirements of paragraph (g)(5) of this section or a material advisor satisfies the requirements of paragraph (g)(6) of this section with respect to F.

(ii) On July 2, 2020, the IRS completes an examination of F's 2015 taxable year and disallows the tax consequences claimed as a result of the listed transaction. The disallowance of a loss increased F's adjusted gross income. Due to the increase of F's adjusted gross income, certain credits, such as the child tax credit, and exemption deductions were disallowed or reduced because of limitations based on adjusted gross income. In addition, F now is liable for the alternative minimum tax. The examination also uncovered that F claimed two deductions on Schedule C to which F was not entitled. Under section 6501(c)(10), the IRS can timely issue a statutory notice of deficiency (and assess in due course) against F for the deficiency resulting from (1) disallowing the loss, (2) disallowing the credits and exemptions to which F was not entitled based on F's increased adjusted gross income, and (3) being liable for the alternative minimum tax. In addition, the IRS can assess any interest and applicable penalties related to those adjustments, such as the accuracy-related penalty under sections 6662 and 6662A and the penalty under section 6707A for F's failure to disclose the transaction as required under section 6011 and the regulations under section 6011. The IRS cannot, however, pursuant to section 6501(c)(10), assess the increase in tax that would result from disallowing the two deductions on F's Schedule C because those deductions are not related to, or affected by, the adjustments concerning the listed transaction.

(9) *Effective/applicability date.* The rules of this paragraph (g) apply to taxable years with respect to which the period of limitations on assessment under section 6501 (including subsection (c)(10)) did not expire before March 31, 2015.

John Dalrymple,

Deputy Commissioner for Services and Enforcement.

Approved: March 10, 2015.

Mark J. Mazur,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2015–07378 Filed 3–30–15; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2015–0066]

Notice of Enforcement for Special Local Regulations; RiverFest; Port Neches, TX

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce Special Local Regulations for the RiverFest Power Boat races on the Neches River in Port Neches, TX from 2 p.m. on May 1, 2015, through 6 p.m. on May 3, 2015. This action is necessary to provide for the safety of the participants, crew, spectators, participating vessels, non-participating vessels and other users of the waterway. During the enforcement periods no person or vessel may enter the zone established by the Special Local Regulation without permission of the Captain of the Port (COTP) Port Arthur or his designated on-scene Patrol Commander.

DATES: The regulations in 33 CFR 100.801 will be enforced from 2 p.m. to 6 p.m. on May 1, 2015; and from 8:30 a.m. to 6 p.m. on May 2 and 3, 2015.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice of enforcement, call or email Mr. Scott Whalen, U.S. Coast Guard Marine Safety Unit Port Arthur, TX; telephone 409–719–5086, email *scott.k.whalen@uscg.mil.*

SUPPLEMENTARY INFORMATION:

The Coast Guard will enforce Special Local Regulation for the annual boat races in 33 CFR 100.801(60) on May 1, 2015, from 2 p.m. to 6 p.m. and on May 2 and 3, 2015 from 8:30 a.m. to 6 p.m.

Under the provisions of 33 CFR 100.801, a vessel may not enter the regulated area, unless it receives permission from the Captain of the Port or his designated on-scene Patrol Commander. Spectator vessels may safely transit outside the regulated area but may not anchor, block, loiter, or impede participants or official patrol vessels. The Coast Guard may be assisted by other federal, state or local law enforcement agencies in enforcing this regulation.

This notice is issued under authority of 33 CFR 100.801 and 33 U.S.C. 1233. In addition to this notice in the **Federal Register**, the Coast Guard will provide the maritime community with notification of this enforcement period via Local Notice to Mariners, Safety Marine Information Broadcasts, and Marine Safety Information Bulletins.

If the Captain of the Port or his designated on-scene Patrol Commander determines that the regulated area need not be enforced for the full duration stated in this notice, he or she may use a Broadcast Notice to Mariners to grant general permission to enter the regulated area.

Dated: March 12, 2015.

R. S. Ogrydziak,

Captain, U.S. Coast Guard, Captain of the Port, Port Arthur.

[FR Doc. 2015–07319 Filed 3–30–15; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 140 and 143

46 CFR Parts 110 and 111

[Docket No. USCG–2012–0850]

RIN 1625–AC00

Electrical Equipment in Hazardous Locations

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is issuing regulations applicable to newly constructed mobile offshore drilling units (MODUs), floating outer continental shelf (OCS) facilities, and vessels other than offshore supply vessels (OSVs) that engage in OCS activities. The regulations expand the list of acceptable national and international explosion protection standards and add the internationally accepted independent third-party certification system, the International Electrotechnical Commission System for Certification to Standards relating to Equipment for use in Explosive Atmospheres (IECEx), as an accepted method of testing and certifying electrical equipment intended for use in hazardous locations. The regulations also provide owners and operators of existing U.S. MODUs, floating OCS facilities, vessels other than OSVs, and U.S. tank vessels that carry flammable or combustible cargoes, the option of following this compliance regime as an alternative to the requirements contained in existing regulations.

DATES: This final rule is effective April 30, 2015.

The Director of the Federal Register has approved the incorporation by reference of certain publications listed in this rule, effective April 30, 2015.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2012–0850 and are available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket online by going to *http://www.regulations.gov* and following the instructions on that Web site.

Viewing material incorporated by reference. You may make arrangements to view this material by calling the Coast Guard's Office of Regulations and Administrative Law at 202–372–3870 or by emailing *HQS-SMB-CoastGuardRegulationsLaw@uscg.mil.*

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Mr. Raymond Martin, Systems Engineering Division (CG–ENG–3), Coast Guard; telephone 202–372–1384, email *Raymond.W.Martin@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

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I. Abbreviations

ABS American Bureau of Shipping
ANSI American National Standards Institute
ASTM ASTM International
ATEX (Directive) Protective Systems Intended for use in Potentially Explosive Atmospheres

BSEE Bureau of Safety and Environmental Enforcement
CFR Code of Federal Regulations
CSA Canadian Standards Association
DHS Department of Homeland Security
Ex Designation of explosion-protected electrical apparatus complying with IEC standards
ExCB Ex Certification Body
FR **Federal Register**
IEC International Electrotechnical Commission
IECEx IEC Certification to Standards relating to Equipment for use in Explosive Atmospheres
IEEE Institute of Electrical and Electronics Engineers
IMO International Maritime Organization
ISA International Society of Automation
ISO International Organization for Standardization
MSC Marine Safety Center
MODU Mobile Offshore Drilling Unit
NAVSEA Naval Sea Systems Command
NEC National Electrical Code
NEMA National Electrical Manufacturers Association
NEPA National Environmental Policy Act
NFPA National Fire Protection Association
NOSAC National Offshore Safety Advisory Committee
NPFC Naval Publications and Forms Center
NPRM Notice of Proposed Rulemaking
OCS Outer Continental Shelf
OMB Office of Management and Budget
OSV Offshore Supply Vessel
RP Recommended Practice
ULS Ultra Low Sulfur
U.S. United States
U.S.C. United States Code

II. Regulatory History

Notice of Proposed Rulemaking

On June 24, 2013, we published a notice of proposed rulemaking (NPRM) in the **Federal Register** entitled Electrical Equipment in Hazardous Locations (78 FR 37760). The NPRM proposed requiring third-party testing and certification of electrical equipment in hazardous locations by a Coast Guard-accepted independent third-party laboratory in order to achieve uniform standards between U.S. and foreign vessels and floating facilities. We received several requests to extend the 90-day comment period until November 30, 2013. We granted these requests and announced the extension in the **Federal Register** (78 FR 58989) on September 25, 2013. We received 23 comment letters on the NPRM, and considered all of these comments in developing this final rule. In section VI below, we inserted a table that summarizes the changes between the NPRM and the final rule.

Advisory Committee

In April 2013, the Coast Guard tasked the National Offshore Safety Advisory Committee (NOSAC) to review and comment on a notice of policy we published in the **Federal Register** (77 FR 71607) on December 3, 2012. The policy recommended that electrical equipment on foreign mobile offshore drilling units (MODUs) that had never operated on the outer continental shelf (OCS), but were intended to do so, meet Chapter 6 of the 2009 MODU Code of the International Maritime Organization (IMO) and obtain equipment certification under the International Electrotechnical Commission Certification to Standards relating to Equipment for use in Explosive Atmospheres (IECEx) System. While NOSAC was reviewing the notice of policy, we published the Electrical Equipment in Hazardous Locations NPRM (78 FR 37760) in the **Federal Register**. The NPRM proposed regulations similar to the recommendations contained in the notice of policy. Unlike the notice of policy, however, the NPRM was not limited to foreign MODUs but applied to all vessels and facilities that had never operated on the outer continental shelf (OCS) but intended to. Further, the NPRM proposed requiring that certification under the IECEx System be conducted by Coast Guard accepted independent laboratories in order to facilitate Coast Guard oversight of those laboratories. NOSAC provided comments on the notice of policy and on the NPRM, and those comments were considered in developing this final rule.

III. Background

A key finding of the Coast Guard's investigation of the MODU DEEPWATER HORIZON explosion, fire, and sinking emphasized the importance of proper electrical equipment installations in hazardous locations during oil drilling exploration on U.S. and foreign MODUs. The Coast Guard, therefore, reviewed the existing regulations for hazardous locations; specifically, the requirements for electrical equipment testing and certification and the standards applicable to U.S. and foreign MODUs, floating OCS facilities, and vessels that engage in OCS activities.

Currently, electrical equipment on U.S. vessels and floating facilities that operate on the OCS must comply with 46 CFR subpart 111.105. This subpart adopts international and national standards and requires the equipment to be tested and certified by a Coast Guard-accepted independent third-party laboratory.

In contrast, foreign vessels and floating facilities that engage in OCS activities must meet the requirements of 33 CFR subchapter N. Currently, foreign floating OCS facilities must meet the same engineering standards as U.S. floating OCS facilities, while foreign vessels engaged in OCS activities on the U.S. OCS do not meet the same engineering standards as U.S. vessels. While the Coast Guard supports the development and adoption of international vessel safety standards, the existing safety requirements of the International Convention on the Safety of Life at Sea, 1974 (SOLAS) do not completely account for the specifics of hydrocarbon production, processing, storage, and handling systems, and the 2009 IMO MODU Code, which provides a recommended SOLAS equivalency for MODUs, is not a legally binding instrument. For electrical equipment in hazardous locations, we believe this rule is necessary to ensure that all vessels engaged in OCS activities meet the same, OCS-specific safety standards. In this final rule, therefore, we require that new foreign MODUs, floating OCS facilities and vessels meet the same standards for explosion protection in hazardous areas as their U.S. counterparts before operating on the OCS. Additionally, through this final rule, we expand the list of acceptable standards for existing and new vessels and facilities.

IV. Discussion of Comments and Changes

As noted above, we received 23 comment letters in response to the NPRM. Additionally, NOSAC submitted a report to the Coast Guard that included their comments on the NPRM. We considered all of these comments in the development of this final rule. The comments and our responses have been grouped into subject-matter categories below. In cases where the comment resulted in a change to the regulations previously proposed in the NPRM, the change is specifically identified and discussed.

Implementation Date

The NPRM's proposed implementation date was 30 days after publication of the final rule. Fourteen comments stated that was unreasonable. These commenters explained that over 200 MODUs were either under contract, under construction or due to be constructed in the next 5 years and that the costs of changing the specifications for the electrical equipment located in hazardous locations would be much greater than that indicated in Section VI of the NPRM.

We agree. While the estimates provided correspond to the global MODU population currently under construction, a majority of which have

not historically sought to operate on the OCS, the associated burden on vessels under construction is real. Thus, we have delayed the implementation date of the requirements of 46 CFR subpart 111.108. The requirements of 46 CFR subpart 111.108 will apply to MODUs, floating OCS facilities, and vessels, other than offshore supply vessels regulated under 46 CFR subchapter L, that are constructed after April 2, 2018 and that engage in OCS activities. Estimates of the affected foreign flagged vessel population reside in the regulatory analysis section of this final rule. The definition of ''constructed'' has been added to 33 CFR 140.10 and 46 CFR 110.15–1(b). It is consistent with the existing definition for ''constructed'' found in 46 CFR 170.055(f). Constructed means either the date a keel is laid or the date that construction identified with the vessel or facility has begun.

Existing U.S. MODUs, floating OCS facilities, and vessels, other than offshore supply vessels (OSVs), and U.S. tank vessels that carry flammable or combustible cargoes may immediately use the expanded list of explosion protection standards and IECEx certification regime identified in this final rule in lieu of the existing requirements in §§ 111.105–1 through 111.105–15.

2009 IMO MODU Code

The NPRM proposed the adoption of a selection of explosion protection standards and certification schemes. Thirteen comments suggested that the proposed regulations were unnecessary and that compliance with the 2009 IMO MODU Code should be sufficient for all vessels. Many of these comments further noted that the 2009 IMO MODU Code already requires certification by an independent testing laboratory. We agree in part. The Coast Guard supports the development and adoption of international vessel safety standards. The Coast Guard believes the 2009 IMO MODU Code provides helpful guidance for the design and engineering of MODUs, particularly in supplementing SOLAS with standards specific to hydrocarbon production, processing, storage, and handling systems, and should be given appropriate effect by flag administrations. However, the 2009 IMO MODU Code is not a legally binding instrument and by its terms does not apply to vessels that are not MODUs. Additionally, there are differing interpretations of the ''independent testing laboratory'' certification contained in the 2009 MODU Code. As the coastal state with jurisdiction, we find that it is a necessary and reasonable safety measure to require that newly constructed foreign vessels and floating facilities that engage in OCS activities have uniform safety standards for explosion protection in hazardous locations.

Cost of Compliance for Existing Foreign Vessels and Facilities

Ten comments addressed the cost of bringing into compliance with the proposed rule existing MODUs that are currently not operated on the OCS but the owners or operators intend them to do so. Those comments stated that the cost of bringing the existing vessels into compliance would likely exceed the cost published in the NPRM. In addition to required equipment recertification and replacement costs, there would be a loss of revenue during necessary downtime for replacement of equipment that could equal or exceed all other costs.

We recognize that the costs to retrofit an existing MODU could be prohibitive depending on the design, construction and type of operation of an individual MODU. Because of this, we decided to make the final rule applicable to vessels and facilities that are constructed after April 2, 2018 and that engage in OCS activities. Existing vessels and facilities will continue to be subject to the regulations and standards effective at the time of their construction.

Similarly, one comment recommended that the Coast Guard address electrical equipment in hazardous locations on MODUs currently on the OCS. The Coast Guard disagrees. As explained earlier, this rule does not require any existing vessel or facility to meet the requirements of subpart 111.108 because the costs to retrofit existing equipment could be prohibitive depending on the design, construction and type of operation of an individual vessel or facility.

One comment stated that the Coast Guard should address electrical equipment in hazardous locations on foreign oil and chemical tankers and gas carriers entering U.S. ports. These vessels are outside the scope of this rulemaking, which is confined to vessels and facilities engaged in OCS activities. Additionally, foreign oil and chemical tankers and gas carriers are already subject to international standards and to Coast Guard inspection for compliance with those standards.

Sister Vessels of Vessels Already Operating on the OCS

Four comments requested that the final rule not apply to sister vessels of vessels already operating on the OCS. They argued that these vessels are identical in design to those existing vessels that the Coast Guard is excluding from the requirements of this final rule.

Under the NPRM, vessels new to the OCS would have been subject to the new requirements, whereas vessels and facilities that had previously operated on the OCS would not. In this final rule, we have changed the applicability to include only those vessels and facilities that are constructed after April 2, 2018 and that engage in OCS activities. This final rule, therefore, does not place new requirements on any existing vessels or facilities nor any vessel or facility that is constructed on or before April 2, 2018. Existing vessels or facilities or those constructed on or before April 2, 2018 will remain subject to the regulations and standards effective at the time of their construction and will remain subject to Coast Guard inspection. Any vessel or facility constructed after the implementation date will be subject to the requirements of 46 CFR subpart 111.108 before operating on the OCS.

Coast Guard Independent Laboratory Requirement

Eleven comments addressed the proposed requirement in 46 CFR 111.108–3 requiring the testing and certification of electrical equipment in hazardous locations by an independent laboratory. The definition of independent laboratory in the Coast Guard's Electrical Engineering regulations is contained in 46 CFR 110.15–1, and means a laboratory accepted by the Coast Guard using the independent laboratory criteria found in 46 CFR 159.010. Commenters stated that this requirement is burdensome and unnecessary, particularly for Ex Certification Bodies (ExCBs) and Ex Testing Laboratories operating under the IECEx System. Additionally, these commenters were concerned that there were not enough independent laboratories accepted by the Coast Guard, particularly within the IECEx System, to meet the demands for equipment certifications necessary to comply with this final rule. Further, the commenters stated that requiring Coast Guard-accepted independent laboratories undermines use of international standards, foreign flag administrations, and Recognized Organizations.

We disagree. First, there are differing interpretations of the ''independent testing laboratory'' certification contained in the 2009 MODU Code. U.S. MODUs, vessels and floating facilities, have been subject to independent third-party testing for over 30 years because we believe it is a critically important

element in preventing accidental explosions in hazardous locations. As the coastal state with jurisdiction, we find that it is a necessary and reasonable safety measure to require that newly constructed foreign vessels and floating facilities that engage in OCS activities have uniform safety standards for explosion protection in hazardous locations. This final rule, therefore, requires compliance with uniform explosion protection standards and certification regimes. The requirement to use Coast Guard-accepted independent laboratories allows the Coast Guard reasonable oversight of laboratories located worldwide and is consistent with our existing regulations for U.S. vessels and facilities engaged in OCS activities. Currently, the majority of ExCBs are Coast Guard-accepted independent laboratories. We have contacted all ExCBs to suggest that they apply for acceptance. We expect that if the demand is present, additional ExCBs will apply for acceptance. Because this final rule applies to new vessels and facilities constructed after April 2, 2018, we expect system designers, equipment manufacturers, and independent laboratories will be able to smoothly transition from existing international standards to the requirements of this final rule. Finally, the existing SOLAS standards do not completely account for the particularities of vessels designed and constructed for OCS activities, and the 2009 IMO MODU Code is neither mandatory nor applicable to all vessels. Therefore, implementation of a domestic standard for electrical equipment in hazardous locations is necessary to ensure that all vessels engaged in U.S. OCS activities meet uniform safety standards particular to OCS activities and does not undermine international standards or organizations.

In a separate rulemaking, the Coast Guard published an interim rule on August 18, 2014 (79 FR 48894) for U.S. offshore supply vessels greater than 6,000 GT ITC. That interim rule also recognized the IECEx System for certification of electrical equipment in hazardous locations. Unlike section 111.108–3(b)(3) of this final rule, 46 CFR 111.106–3(b)(3)(iii) of the interim rule does not require certification of electrical equipment in hazardous locations to be done by a Coast Guard accepted independent laboratory. The Coast Guard recognizes the inconsistency between 46 CFR 111.106–3(b)(3)(iii) of the interim rule and 46 CFR 111.108–3(b)(3) of this final rule and intends to align 46 CFR 111.106–3(b)(3)(iii) with this final rule in a future rulemaking.

ATEX Equipment Certified by a Third-Party Independent Laboratory

Eight comments suggested the Coast Guard accept electrical equipment with certification issued under the European Commission Directive (94/9/EC) on equipment and Protective Systems Intended for use in Potentially Explosive Atmospheres (ATEX Directive or ATEX).

We disagree. ATEX certification does not require independent third party testing for all types of equipment. It also does not ensure that electrical equipment installed in hazardous locations is fully tested to relevant standards. When foreign MODUs and vessels have electrical equipment installed in hazardous locations that is not independently tested, there is not the same level of safety for explosion protection in hazardous areas as required of U.S. vessels and floating facilities that operate on the OCS and that are required to meet 46 CFR subpart 111.105. The ATEX Directive is a European conformity assessment scheme designed to facilitate trade within Europe and is based on ''Essential Health and Safety Requirements.'' Additionally, the ATEX Directive is currently not applicable to seagoing vessels or MODUs and it is our experience with ATEX certification that it can be difficult to determine the extent of testing performed by the ''notified body [1] ''.

It is also important to recognize that some ATEX certified electrical equipment may be acceptable under subpart 111.108 if it can be demonstrated that the electrical equipment has been fully tested and certified to the applicable standards contained in 46 CFR subchapter J by an independent laboratory as defined in 46 CFR 110.15–1. Frequently, equipment with ATEX certification also has certifications acceptable under 46 CFR 111.108–3 of this final rule.

Two comments requested that the Coast Guard clarify a statement in CG–ENG Policy Letter No. 01–13, Alternate Design and Equipment Standard for Floating Offshore Installations (FOI) and Floating Production, Storage, and Offloading (FPSO) Units on the U.S. Outer Continental Shelf, of June 26, 2013. For hazardous locations, the policy letter states that electrical equipment certified under the ATEX scheme will not be accepted by the Coast Guard. As explained above, if the equipment is also certified in accordance with one of the acceptable methods listed in 46 CFR 111.108–3, in addition to its ATEX certification, then the equipment is acceptable under 46 CFR 111.108–3 of this final rule.

Class I, Special Division 1 Hazardous Locations

Three comments said the proposed use of Class I, Special Division 1 in 46 CFR 111.108–3(e) may cause confusion as it is not a term recognized by the National Fire Protection Association's (NFPA) standard, NFPA 70, National Electrical Code (NEC), We disagree and have not revised this section. Class I, Special Division 1 is intended to be equivalent to Class I, Zone 0, and is consistent with Informational Note No. 2 of Article 500.5(B)(3) of NFPA 70. Coast Guard regulations have long recognized that certain spaces such as cargo pump rooms and cargo tanks are more hazardous than other Class I, Division 1 locations. For these hazardous locations, we limit the types of permitted electrical installations. Use of the term ''Class I, Special Division 1'' simplifies the designation of these locations.

Electrical Equipment Inspection and Maintenance Requirements

Five comments recommended that the Coast Guard establish standards for the design, installation, inspection, and maintenance of electrical equipment in hazardous locations. Two comments suggested requiring an onboard electrical equipment register that contains information regarding electrical equipment and its inspection, maintenance, and operational history. The commenters also suggest this information could be reviewed by visiting Coast Guard marine inspectors or third-party inspection personnel and could become part of a company's quality system. We agree that competency and accurate recordkeeping are critical to safety, but this recommendation is outside the scope of this rulemaking.

''Operated on the OCS''

Under the NPRM, vessels and facilities new to the OCS would be subject to the NPRM, whereas vessels and facilities that had previously operated on the OCS, would not. Two comments requested that the Coast Guard more clearly define what constitutes having ''operated on the OCS.'' Because this final rule now applies only to vessels and facilities constructed after April 2, 2018, that engage in OCS activities, we believe no

[1] A notified body is an organization ''appointed by EU Member States, either for approval and monitoring of the manufacturers' quality assurance system or for direct product inspection.'' *http://ec.europa.eu/enterprise/glossary/index_en.htm,* retrieved February 24, 2014.

further elaboration is needed, because the phrase ''operated on the OCS'' is no longer used.

BSEE–USCG MOA, OCS–8, Regarding MODUs

Two comments requested clarification on the responsibilities of the Coast Guard and of the Bureau of Safety and Environmental Enforcement (BSEE) for electrical equipment in hazardous locations on MODUs under the USCG/BSEE Memorandum of Agreement, OCS–8, signed June 4, 2013. While the subject is outside the scope of this rulemaking because neither agency's responsibilities with regard to regulating electrical equipment located in hazardous locations are affected by this final rule, it is relevant to understanding the regulatory requirements for electrical equipment located in hazardous locations.

BSEE and Coast Guard have a shared responsibility for safety on the OCS. In general, the Coast Guard is responsible for the vessel or facility and all of its supporting systems while BSEE is responsible for systems related to the drilling and production of resources. Classification of hazardous locations and design of electrical systems is a vessel-wide or facility-wide task and the Coast Guard maintains a holistic view of the vessel or facility. The Coast Guard, in this rule, provides an expanded list of standards that are applicable to systems under the Coast Guard's jurisdiction as explained in BSEE–USCG MOA OCS–8. The electrical safety standards contained in BSEE's OCS regulations, 30 CFR part 250, are acceptable to the Coast Guard. Frequently, drilling and production components will be installed on vessels or facilities on a temporary or semi-temporary basis. In general, BSEE oversees these systems and if they find them acceptable, their installation is acceptable to the Coast Guard.

Class I, Division 2 and Class I, Zone 2

Two comments suggested that electrical equipment in Division 2 or Zone 2 locations be accepted without independent third-party certification or be accepted with ATEX certification. The Coast Guard agrees to the extent that applicable provisions of NFPA 70 and the 2009 IMO MODU Code permit. 46 CFR 111.108–3(b)(1) and (b)(2) incorporate by reference Articles 500–504 and Article 505 of the NFPA 70. Articles 501.125(B) and 505.20(C) of the NFPA 70 allow the installation of certain electrical equipment in these locations without independent identification or listing if the equipment meets specific requirements that reduce the risk of explosion. This final rule is not intended to modify these standards. 46 CFR 111.108–3(b)(3) incorporates Chapter 6 of the 2009 IMO MODU Code and requires certification under the IECEx System. The IECEx System requires independent certification for all electrical equipment in hazardous areas. This final rule is not intended to modify the IECEx System. Electrical system designers must choose an explosion protection standards regime from the list of acceptable options provided in 46 CFR 111.108–3 and comply with the standards regime they chose.

American National Standards Institute (ANSI) and International Society of Automation (ISA) Standards

One comment requested that the Coast Guard incorporate the latest ANSI/ISA safety standards for hazardous locations. The Coast Guard agrees and notes that 46 CFR 111.108–3(b) incorporates the ANSI/ISA series of standards incorporated in NFPA 70, as it did in the NPRM.

Certain Required Equipment Not Meeting Zone 2 Requirements

Two comments noted that some required equipment located in hazardous locations is not available as certified for Zone 2 areas, such as search and rescue transponders. The Coast Guard agrees with this comment, and notes that several standards included in this final rule address this situation. The objective of this final rule is to provide a selection of standards for certification of electrical equipment in hazardous locations. Electrical equipment not meeting the Class I, Zone 2 or Class I, Division 2 requirements, should be installed as far as possible from hazardous locations, or if not possible, located or installed in the least hazardous location. Standards listed in 46 CFR 111.108–3 of this final rule do address equipment such as this. Section 6.3.3 of IEC 61892–7:2007,[2] which is accepted by the 2009 IMO MODU Code, refers to an assessment for energy-limited equipment and circuits that is provided in IEC 60079–15, ANSI/ISA 60079–15, ANSI/ISA–12.12.01, and UL 1604. Similarly, non-third party assessment provisions are provided in Article 501 of NFPA 70 for electrical equipment without switching mechanisms, or similar arc producing devices. These standards can be used when certain required equipment is not available as certified for Zone 2 areas.

[2] IEC 61892–7, Mobile and fixed offshore units—Electrical installations—Part 7: Hazardous areas, Edition 2.0.

Acceptance of IECEx Certified Equipment

One comment asked if equipment tested to the IECEx System but not yet marked as such would be acceptable. The commenter explained that equipment is sometimes delivered before the IECEx Certificate of Compliance is issued. Another comment noted that equipment can be certified under both the ATEX Directive and the IECEx System but only have ATEX labeling. Finally, a comment requested acceptance of equipment consisting of assemblies of IECEx certified components rather than requiring a certificate for the entire assembly.

These are compliance issues that can be very simple or very complex depending on the type of equipment and will be addressed by the Marine Safety Center (MSC) or cognizant Officer-in-Charge, Marine Inspection on a case-by-case basis. When IECEx on any other Coast Guard accepted independent third party certification is unclear, documentation must be presented that demonstrates the equipment meets the applicable requirements. Any equipment or assembly of equipment must meet all the requirements of the IECEx System. It is not the Coast Guard's intent to modify the IECEx System.

Ultra Low Sulfur (ULS) Diesel Fuels

One comment requested that the Coast Guard consider lowering the minimum flashpoint that defines hazardous locations, because Ultra Low Sulfur (ULS) diesel fuels are being produced against a minimum flashpoint of 52° C, rather than the 60° C minimum that has served as the basis for both Coast Guard and IMO requirements to date. We are unable to make this change in the final rule because it was not proposed in the NPRM. The minimum flashpoint of 60° C exists in numerous standards and regulations including 46 CFR 111.105–29, 46 CFR 111.105–31, 46 CFR 58.01–10, numerous locations within SOLAS, and IEC 60092–502:1999. We may consider proposing a change to the minimum flashpoint in a future rulemaking. This will provide the public the opportunity to comment on the proposal. Until that occurs, the MSC can accept arrangements that provide an equivalent level of safety in accordance with 46 CFR 110.20–1.

IECEx Certified Equipment in Class I, Division 1 and Class I, Division 2 Locations

One commenter requested that drill floor equipment that is IECEx certified for Class I, Zone 1 or Class I, Zone 2 be

permitted on drill floors classified to Class I, Division 1 or Class I, Division 2. Equipment certified using the zone classification system, regardless of whether certification was by a Coast Guard-accepted independent laboratory or IECEx ExCB, is permitted in locations that are classified using the division classification system in accordance with Article 501.5 of NFPA 70, NEC. The same commenter requested that drill floors be allowed to be classified under both systems so that both zone and division certified equipment could be used. We do not favor one classification system over the other and we are not opposed to dual classification, but we caution that great care must be taken. While both systems offer comparable levels of safety the two systems are not identical or interchangeable. Indiscriminate ''mixing and matching'' of systems could result in errors that result in lower levels of safety. This limits the benefit of dual classification. Article 505.7 of NFPA 70 provides details on dual classification. Any mixing of classification systems should be done in accordance with NFPA 70 to ensure that the requirements of 46 CFR subpart 111.108 are met.

V. Incorporation by Reference

The Director of the Federal Register has approved the material in § 110.10–1 for incorporation by reference under 5 U.S.C. 552 and 1 CFR part 51. Copies of the material are available from the sources listed in that section.

VI. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive Orders (E.O.s) related to rulemaking. Below we summarize our analyses based on these statutes or E.O.s.

A. Regulatory Planning and Review

Executive Orders 12866 (''Regulatory Planning and Review'') and 13563 (''Improving Regulation and Regulatory Review'') direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 as supplemented by Executive Order 13563, 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 (OMB) has not reviewed it under that Order. Nonetheless, we developed an analysis of the costs and benefits of the rule to ascertain its probable impacts on industry.

A summary of the changes between the NPRM and the final rule follows:

TABLE 1—CHANGES BETWEEN NPRM AND FINAL RULE

Subject	Stage		Impact
	NPRM	Final rule	
Affected Population	U.S. and foreign vessels and floating OCS facilities that are new to the OCS or newly built.	Under the final rule, only vessels and facilities constructed after April 2, 2018 will be subject to the rule.	Allows existing vessels and facilities as well as those currently under contract or construction to avoid potentially costly retrofit/recertification costs.
Implementation Date	Affected population required to comply by the effective date, which is 30 days after final rule is published.	Changed to 3 years after effective date of the rule.	Allows owners and operators to avoid recertification costs for vessels or facilities currently under contract or construction.

Discussion of Applicable Regulatory Assessment Comments and Changes

The Coast Guard received several comments on the published NPRM. These comments have been grouped by topic, as several comments addressed similar concerns, and are discussed in the following table.

TABLE 2—NPRM COMMENT TOPICS AND RESPONSES

Implementation Date	Several commenters voiced their concern that the 30 day period between publication of the final rule and the effective date of the requirements was too brief and did not allow sufficient time for vessel and facility owners to come into compliance. Changing the implementation date from 30 days to 3 years after publication of the rule addresses this concern and provides owners and operators of the affected population the amount of time deemed sufficient by both the Coast Guard and commenters alike, to meet the requirements of this rule.
Compliance costs for vessels currently under contract or construction.	Several comments addressed the concern that vessels currently under contract or construction could face recertification costs before the vessel has been completed. For example, one such comment stated, ''Proposed regulations will block entry onto the OCS of over 200 MODUs, built to the 2009 MODU Code, that are currently under contracting or construction.'' The Coast Guard acknowledges the potential cost associated with vessels currently under design or construction. Estimates suggest that designs and contracts are sometimes set as much as 3 years in advance. It is for this reason that we have changed the implementation date to 3 years after the publication of the rule. A 3 year delayed implementation date allows vessels currently under contract or construction to remain subject to the regulations in effect at the time that their construction began. Changing the implementation date to 3 years after the publication of the rule allows owners and operators of vessels currently under contract or construction to avert any costs associated with the requirements of this rule.

TABLE 2—NPRM COMMENT TOPICS AND RESPONSES—Continued

Existing foreign vessels and facilities ..	Several comments addressed existing MODUs that do not currently operate on the OCS but intend to operate on the OCS and the cost of bringing them into compliance with the regulations prescribed in the NPRM. We recognize that the costs of retrofitting and/or recertifying existing MODUs could be prohibitive depending on the individual MODU. Because of this, we revised the rule's applicability to include only those vessels and facilities that are constructed after April 2, 2018 and that operate on the OCS. Existing vessels and facilities or vessels and facilities constructed on or before April 2, 2018 will continue to be subject to the regulations and standards effective at the time of their construction.
Accuracy of Recertification Cost Model and Estimates.	Some commenters stated that the burden to industry would likely exceed the cost published in the NPRM for existing vessels/MODUs. In addition to required equipment recertification and replacement costs, there would be a loss of revenue during necessary downtime for replacement of equipment that could equal or exceed all other costs. As noted previously, due to the burden for existing vessels or vessels currently under contract or construction, the Coast Guard modified the rule's affected population to include only those vessels and facilities that are constructed after April 2, 2018 and that engage in OCS activities.
Barriers to trade	One commenter suggested the proposal would impose U.S.-specific requirements that are above and beyond international norms, and would create a non-tariff barrier to trade that would restrict the availability of rigs for the U.S. market. The Coast Guard does not foresee any barriers to trade. Coast Guard used NIST's process to notify foreign governments of our proposed NPRM and no comments were received as a result of that outreach.

Costs: U.S. Vessels

We do not anticipate any costs to be borne by the U.S.-flagged vessels that will be affected by this rule. The rule requires that all U.S. vessels, excluding OSVs that are regulated under 46 CFR subchapter L, that are constructed after April 2, 2018 and engage in OCS activity, comply with the newly created subpart 111.108. U.S. flagged vessels which fall within this scope are provided with an expanded list of standards and certification options.

Subpart 111.108 will not impose any burden on U.S. vessels due to the nature of current industry practice. Because North American certification of electrical equipment is generally to the most current edition of the published reference standards,[3] we do not anticipate new equipment will be tested and certified to the standards referenced in subpart 111.105 when more current, updated editions of the standards are available.

The logic applied to U.S. vessels, excluding OSVs as discussed above, applies to U.S. MODUs and floating OCS facilities as well. We do not anticipate any cost burden associated with this rule to be imposed on this vessel class. We believe this because the affected population are those U.S. MODUs and floating OCS facilities that are constructed after April 2, 2018. These vessels will be subject to subpart 111.108, a subpart that contains the updated standards to which new equipment will be certified. As with the vessels discussed earlier, in the absence of subpart 111.108, new equipment would be built to the most current standards as a matter of industry practice. Under this final rule, this scenario will not require any costs to the vessel owner as there is no change in the regulatory environment for U.S. MODUs and floating OCS facilities.

Under this final rule, all U.S. MODUs, floating OCS facilities, vessels other than OSVs, and U.S. tank vessels may comply with this new subpart in lieu of §§ 111.105–1 through 111.105–15. We do not foresee any additional costs to the owners of these vessels and facilities by providing this option but if there are additional costs, there is expected to be equal or greater benefit to the owner driving the selection of this option. Currently, the regulations for electrical installations in hazardous locations are contained in subpart 111.105. This regulation will expand the available subparts to include subpart 111.108, while still allowing owners and operators the option to remain subject to existing subpart 111.105.

Costs: Foreign Vessels

While the modification of the affected population aids us in estimating the effects of the proposed rulemaking, it does not further refine the costs which are applied to the population. As some commenters on the NPRM document have reinforced, the estimated costs associated with the rule could vary widely. Industry costs were constructed from a variety of elements, for example the cost of certifying equipment or the opportunity cost of recertification of said equipment. With the modification of the affected population we are able to drop the opportunity cost from our analysis, which allows us to further streamline our discussion of the costs for the rulemaking. What remains is the cost associated with third party certification of equipment.

Currently, foreign vessels are not required to utilize third party certified equipment in hazardous areas unless explicitly required by their flag state. Implementation of the final rule will require certification by a Coast Guard approved, independent laboratory which, in effect, changes the baseline for newly constructed foreign vessels. Foreign flagged vessels constructed 3 years after the implementation date seeking entrance to the OCS in pursuit of OCS activities will be required to utilize third party certified equipment where previously this was not explicitly required. Our analysis of this baseline change is clouded by the aggregate nature of the cost of certification. When an entity purchases equipment for use in a hazardous location on a vessel, the marginal cost of the certification element of the purchase price is not itemized for the purchaser. The certification cost is present in the purchase price as a value added component of the total price of the equipment. As such, we are not able to explicitly determine the marginal cost difference between equipment certified by a third party and those without third party certification. Additionally, the list of equipment present in these locations, and required to be third party certified, is diverse. For example, one equipment list obtained by the Coast Guard contained equipment which ranged in complexity from a fluorescent light to elements of the tank temperature monitoring system.

While the cost estimation is obtuse, it is not insurmountable. We have several elements which should allow us to construct a range for the final rule's associated costs. On the high end of the

[3] Confirmed by Principal Engineer—Global Hazardous Locations Product Safety, UL LLC., 12/26/2012.

range, we have the cost to replace all of the electrical installations in a representative vessel. While not specifically applicable to a newly built vessel, it is an appropriate estimate of the costs associated with replacement of electrical installations in hazardous areas. This estimate contains the costs associated with replacement of both the equipment and the certification on a U.S. flagged vessel, which are already subject to the certification requirements in this final rule.

The $500,000 cost quote [4] for replacement of the equipment appropriate for a hazardous location on a vessel is useful as a cost ceiling. The replacement cost for this equipment, contains that which is associated with the third party certification, in addition to the price of the equipment itself. This functions well as a price ceiling as we can be sure that the marginal cost of third party certification will fall below this point estimate, as it is not likely to be above the full cost of the equipment with its associated certification.

The cost floor is a function of costs potentially accrued to a hypothetical vessel to be built in the future. In some cases these vessels would be built to the certification specifications contained in this final rule anyway, in which case they would accrue no additional costs from this rule. However, due to the probable greater cost of third-party-certified equipment, we can assume that, without this rulemaking, some equipment would be installed without third party certification. Table 3 presents the range.

TABLE 3—COST RANGE

Low-cost floor	Average	High-cost ceiling
$0	$250,000	$500,000

Affected Population

The Coast Guard-maintained MISLE database, contains records of all applicable vessels operating on the OCS in pursuit of OCS activities. Historic data extracted from this database is presented below in Table 4.

TABLE 4—MISLE HISTORIC DATA

Build year	Frequency
2004	0
2005	1
2006	0
2007	0
2008	2
2009	4
2010	3
2011	2
2012	2
2013	3
Total	17
Average	*2

* Rounded.

Over the past 10 years, 17 foreign vessels have been built which would fall under this rule's application. The database was filtered to include foreign vessels, those vessel classes which would potentially be on the OCS in pursuit of OCS activities, and have build years within the past decade. Evaluation of this data found that on average, 2 foreign vessels are built per year which could seek entrance to the US OCS in pursuit of OCS activities.

Therefore, the range of costs associated with this rulemaking will fall between $0 (2 Vessels * $0) and $1,000,000 (2 vessels * $500,000) per year with an average per year cost of $500,000 (2 vessels * $250,000).

Cost estimate		
Low-cost floor	Average	High-cost ceiling
$0	$500,000	$1,000,000

NPRM vs Final Rule

Burden estimates in the NPRM were $800,000 per year. With the changes that the final rule makes to the affected population, the yearly costs have been reduced, by an estimation that is upwards of 37%.

$$\frac{\$500,000 - \$800,000}{\$800,000} = -0.375$$

Benefits

We are unable to monetize benefits. We can find no casualties that would have been prevented by these regulations. However, third-party testing and certification for critical equipment, such as electrical equipment intended for use in hazardous locations, addresses a potentially catastrophic hazard consisting of an explosive gas or vapor combined with an electrical ignition source, and is generally understood by industry as an appropriate measure that enhances safety and protects life, the environment, and property.

Alternatives

We considered five alternatives when evaluating the effects of this final rule. The first, abstaining from action, was rejected because it allows a regulatory imbalance and a potential safety gap to exist between foreign vessels and U.S. vessels operating on the OCS.

The second alternative we considered was to require both U.S. and foreign vessels and facilities to adhere to the existing international standards. This alternative was deemed insufficient because compliance with international standards, such as the 2009 IMO Code, is subject to the interpretation of the applicable flag administration. An example of an undesired consequence of this alternative would be the acceptance of ATEX certified equipment. The Coast Guard, however, will not accept ATEX certifications because evidence of full testing to the applicable harmonized 60079 series of standards by an independent third-party laboratory is not guaranteed. Consistent with preexisting Coast Guard practices, third-party testing and certification for critical equipment is generally required.

The third alternative we considered was to require foreign vessels and floating facilities to meet current U.S. standards. This alternative was not selected because we believe that requiring compliance with U.S. standards is unnecessary when there are comparable international standards acceptable to the Coast Guard. Because these latest editions of internationally recognized standards for explosion protection offer owners and operators greater flexibility, while also avoiding the costs of coastal state-specific requirements, we are expanding the list of international explosion protection standards deemed acceptable.

The fourth alternative, implementing the regulations in this final rule, puts in place a regulatory regime that will allow for both the U.S., as the coastal state, and industry to be confident in the certification and assessment of electrical equipment intended for use in hazardous locations. This will be achieved through the use of the most current, internationally recognized standards for explosion protection and independent third-party certification. The regulations in this final rule expand the list of national and international explosion protection standards deemed acceptable for U.S. operators.

A fifth and final alternative is that which was presented to the public in the NPRM. This alternative included the application of the NPRM regulations to existing vessels before those vessels engaged in OCS activities for the first

[4] Regulatory Advisor—ExxonMobil, 8/14/2012.

time. This alternative would have included foreign vessels currently under contract or construction. We determined that this alternative would force an undue burden on the industry due primarily to the cost effects. Industry's comments to the docket suggest that the compliance cost per vessel could be cost prohibitive. With current estimates of 219 foreign MODUs in some stage of construction, the cost of this alternative could have potentially outpaced its benefits.

B. Small Entities

Under the Regulatory Flexibility Act, 5 U.S.C. 601–612, we have considered whether this rule will 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.

We do not anticipate any effect on small entities. As noted in the previous discussion, there is no anticipated cost burden placed on U.S. entities by this rule and, as such, we do not anticipate any effect on small entities that would be addressed by this section. Therefore, 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.

C. Assistance for Small Entities

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

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

D. Collection of Information

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

E. Federalism

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

It is well settled that States may not regulate in categories reserved for exclusive regulation by the Coast Guard. It is also well settled that all of the categories for inspected vessels covered in 46 U.S.C. 3306, 3703, 7101, and 8101 (design, construction, alteration, repair, maintenance, operation, equipping, personnel qualification, and manning of vessels), as well as the reporting of casualties and any other category in which Congress intended the Coast Guard to be the sole source of a vessel's obligations, are within fields foreclosed from regulation by the States. (See the decision of the Supreme Court in the consolidated cases of *United States* v. *Locke* and *Intertanko* v. *Locke,* 529 U.S. 89, 120 S.Ct. 1135 (March 6, 2000).) This final rule regulates electrical equipment standards on inspected vessels. As such, States may not regulate within this category. Therefore, the rule is consistent with the principles of federalism and preemption requirements in Executive Order 13132.

F. Unfunded Mandates Reform Act

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

G. Taking of Private Property

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

H. Civil Justice Reform

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

I. Protection of Children

We have analyzed this rule under E.O. 13045 (''Protection of Children from Environmental Health Risks and Safety Risks''). This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

J. Indian Tribal Governments

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

K. Energy Effects

We have analyzed this rule under E.O. 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 E.O. 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

L. Technical Standards

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

This rule uses the following voluntary consensus standards:

- ANSI/ISA–12.12.01–2012—Nonincendive Electrical Equipment for Use in Class I and II, Division 2 and Class III, Divisions 1 and 2 Hazardous (Classified) Locations,

approved 9 July 2012 (''ANSI/ISA 12.12.01'')
- ANSI/ISA–60079–18—explosive atmospheres—Part 18: Equipment protection by encapsulation ''m'', Third Edition, approved 14 September 2012 (''ANSI/ISA 60079–18 (2012)'')
- UL 674—Standard for Safety: Electric Motors and Generators for Use in Hazardous (Classified) Locations, Fifth Edition, dated May 31, 2011 (with revisions through July 19, 2013) (''ANSI/UL 674 (2013)'')
- UL 823—Electric Heaters for Use in Hazardous (Classified) Locations, Ninth Edition including revisions through November 15, 2007 (dated October 20, 2006) (''ANSI/UL 823'')
- UL 844—Electric Lighting Fixtures for Use in Hazardous (Classified) Locations, Thirteenth Edition, dated June 29, 2012 (''ANSI/UL 844 (2012)'')
- UL 913—Standard for Safety: Intrinsically Safe Apparatus and Associated Apparatus for use in Class I, II and III, Division 1, Hazardous Locations, Seventh Edition, Dated July 31, 2006 (including revisions through June 3, 2010) (''ANSI/UL 913'')
- UL 1203—Explosion-proof and Dust-ignition Proof Electrical Equipment for use in Hazardous (Classified) Locations, Fourth Edition, Dated September 15, 2006 (including revisions through October 28, 2009) (''ANSI/UL 1203'')
- UL 2225—Standard for Safety: Cables and Cable-Fittings for use in Hazardous (Classified) Locations, Third Edition, dated February 25, 2011 (''ANSI/UL 2225 (2011)'')
- ASTM F2876–10—Standard Practice for Thermal Rating and Installation of Internal Combustion Engine Packages for use in Hazardous Locations in Marine Applications, approved November 1, 2010 (''ASTM F2876–10'')
- CSA C22.2 No. 30–M1986—Explosion-Proof Enclosures for Use in Class I Hazardous Locations, Reaffirmed 2007 (''CSA C22.2 No. 30–M1986'')
- CSA C22.2 No. 213–M1987—Non-incendive Electrical Equipment for Use in Class I, Division 2 Hazardous Locations, Reaffirmed 2008 (''CSA C22.2 No. 213–M1987'')
- CAN/CSA–C22.2 No. 0–M91—General Requirements—Canadian Electrical Code, Part II, Reaffirmed 2006 (''CSA C22.2 No. 0–M91'')
- CAN/CSA–C22.2 No. 157–92—Intrinsically Safe and Non-incendive Equipment for Use in Hazardous Locations, Reaffirmed 2006 (''CSA C22.2 No. 157–92'')
- FM Approvals Class Number 3600—Approval Standard for Electric Equipment for use in Hazardous (Classified) Locations General Requirements, November 1998 (''FM Approvals Class Number 3600'')
- FM Approvals Class Number 3610—Approval Standard for Intrinsically Safe Apparatus and Associated Apparatus for Use in Class I, II, and III, Division 1, Hazardous (Classified) Locations, January 2010 (''FM Approvals Class Number 3610'')
- FM Approvals Class Number 3611—Approval Standard for Nonincendive Electrical Equipment for Use in Class I and II, Division 2, and Class III, Divisions 1 and 2, Hazardous (Classified) Locations, December 2004 (''FM Approvals Class Number 3611'')
- FM Approvals Class Number 3615—Approval Standard for Explosionproof Electrical Equipment General Requirements, August 2006 (''FM Approvals Class Number 3615'')
- FM Approvals Class Number 3620—Approval Standard for Purged and Pressurized Electrical Equipment for Hazardous (Classified) Locations, August 2000 (''FM Approvals Class Number 3620'')
- IEC 60079–1:2007—Explosive atmospheres—Part 1: Equipment protection by flameproof enclosures ''d'', Sixth edition, 2007–04
- IEC 60079–2:2007—Explosive atmospheres—Part 2: Equipment protection by pressurized enclosures ''p'', Fifth edition, 2007–02
- IEC 60079–5:2007—Explosive atmospheres—Part 5: Equipment protection by powder filling ''q'', Third edition, 2007–03
- IEC 60079–6:2007—Explosive atmospheres—Part 6: Equipment protection by oil immersion ''o'', Third edition, 2007–03
- IEC 60079–7:2006—Explosive atmospheres—Part 7: Equipment protection by increased safety ''e'', Fourth edition, 2006–07
- IEC 60079–11:2011—Explosive atmospheres—Part 11: Equipment protection by intrinsic safety ''i'', Edition 6.0, 2011–06
- IEC 60079–13:2010—Explosive atmospheres—Part 13: Equipment protection by pressurized room ''p'', Edition 1.0, 2010–10
- IEC 60079–15:2010—Explosive atmospheres—Part 15: Equipment protection by type of protection ''n'', Edition 4.0, 2010–01
- IEC 60079–18:2009—Explosive atmospheres—Part 18: Equipment protection by encapsulation ''m'', Edition 3.0, 2009–05
- IEC 60079–25:2010—Explosive atmospheres—Part 25: Intrinsically safe electrical systems, Edition 2.0, 2010–02
- IEC 60092–502:1999—Electrical installations in ships—Part 502: Tankers—Special features, Fifth edition, 1999–02
- IEC 61892–7:2007—Mobile and fixed offshore units—Electrical installations—Part 7: Hazardous areas, Edition 2.0, 2007–11
- NFPA 70—National Electrical Code, 2011 Edition (''NFPA 70'')
- NFPA 496—Standard for Purged and Pressurized Enclosures for Electrical Equipment, 2013 Edition (''NFPA 496 (2013)'')
- UL 1604 –Electrical Equipment for use in Class I and II, Division 2 and Class III Hazardous (Classified) Locations, Third Edition, Dated April 28, 1994 (including revisions through February 5, 2004) (''UL 1604'')

The sections that reference these standards and the locations where these standards are available are listed in 46 CFR 110.10–1.

This rule also uses technical standards other than voluntary consensus standards.

- IMO Resolution A.1023(26), Code for the Construction and Equipment of Mobile Offshore Drilling Units, 2009, 19 January 2010 (''2009 IMO MODU Code'')

The section that references this standard and the locations where this standard is available are listed in 46 CFR 110.10–1.

M. Environment

We have analyzed this final rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This final rule is categorically excluded under section 2.B.2, figure 2–1, paragraphs (34)(a), (d) and (e) of the Instruction and under section 6(a) of the ''Appendix to National Environmental Policy Act: Coast Guard Procedures for Categorical Exclusions, Notice of Final Agency Policy'' (67 FR 48244, July 23, 2002).'' This final rule involves regulations which are editorial and concern inspection and equipping of vessels and regulations concerning vessel operation safety standards. An environmental analysis checklist and a categorical exclusion determination are available in

the docket where indicated under **ADDRESSES**.

List of Subjects

33 CFR Part 140

Continental shelf, Investigations, Marine safety, Occupational safety and health, Penalties, Reporting and recordkeeping requirements.

33 CFR Part 143

Continental shelf, Marine safety, Occupational safety and health, Vessels.

46 CFR Part 110

Reporting and recordkeeping requirements, Vessels, Incorporation by reference.

46 CFR Part 111

Vessels.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR parts 140 and 143 and 46 CFR parts 110 and 111 as follows:

Title 33—Navigation and Navigable Waters

CHAPTER I—COAST GUARD, DEPARTMENT OF HOMELAND SECURITY

SUBCHAPTER N—OUTER CONTINENTAL SHELF ACTIVITIES

PART 140—GENERAL

■ 1. The authority citation for part 140 continues to read as follows:

Authority: 43 U.S.C. 1333, 1348, 1350, 1356; Department of Homeland Security Delegation No. 0170.1.

■ 2. Amend § 140.10 by adding a definition for ''Constructed'' in alphabetical order to read as follows:

§ 140.10 Defintions.

* * * * *

Constructed means the date—

(1) The vessel's keel was laid; or

(2) Construction identifiable with the vessel or facility began and assembly of that vessel or facility commenced comprising of 50 metric tons or at least 1 percent of the estimated mass of all structural material, whichever is less.

* * * * *

PART 143—DESIGN AND EQUIPMENT

■ 3. The authority citation for part 143 continues to read as follows:

Authority: 43 U.S.C. 1333(d)(1), 1348(c), 1356; 49 CFR 1.46; section 143.210 is also issued under 14 U.S.C. 664 and 31 U.S.C. 9701.

■ 4. Amend § 143.120 by adding paragraphs (d) to read as follows:

§ 143.120 Floating OCS facilities.

* * * * *

(d) Each floating OCS facility that is constructed after April 2, 2018 must comply with the requirements of 46 CFR subpart 111.108 prior to engaging in OCS activities.

■ 5. Add § 143.208 to read as follows:

§ 143.208 Hazardous location requirements on foreign MODUs.

Each mobile offshore drilling unit that is documented under the laws of a foreign nation and is constructed after April 2, 2018 must comply with the requirements of 46 CFR subpart 111.108 prior to engaging in OCS activities.

■ 6. Add § 143.302 to read as follows:

§ 143.302 Hazardous location requirements on foreign vessels engaged in OCS activities.

Each vessel that is documented under the laws of a foreign nation and is constructed after April 2, 2018 must comply with the requirements of 46 CFR subpart 111.108 prior to engaging in OCS activities.

Title 46—Shipping

CHAPTER I—COAST GUARD, DEPARTMENT OF HOMELAND SECURITY

SUBCHAPTER J—ELECTRICAL ENGINEERING

PART 110—GENERAL PROVISIONS

■ 7. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 1509; 43 U.S.C 1333; 46 U.S.C. 3306, 3307, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1; § 110.01–2 also issued under 44 U.S.C. 3507. Sections 110.15–1 and 110.25–1 also issued under sec. 617, Pub. L. 111–281, 124 Stat. 2905.

■ 8. Revise § 110.10–1 to read as follows:

§ 110.10–1 Incorporation by reference.

(a) Certain material is incorporated by reference into this subchapter with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, the Coast Guard must publish notice of change in the **Federal Register** and the material must be available to the public. The word ''should,'' when used in material incorporated by reference, is to be construed the same as the words ''must'' or ''shall'' for the purposes of this subchapter. All approved material is available for inspection at the U.S. Coast Guard, Office of Design and Engineering Standards (CG–ENG), 2703 Martin Luther King Jr Ave. SE., Stop 7418, Washington, DC 20593–7418, and is available from the sources listed below. It is also available for inspection 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.*

(b) *American Bureau of Shipping (ABS),* ABS Plaza, 16855 Northchase Drive, Houston, TX 77060, 281–877–5800, *http://www.eagle.org.*

(1) Rules for Building and Classing Steel Vessels, Part 4 Vessel Systems and Machinery, 2003 (''ABS Steel Vessel Rules''), IBR approved for §§ 110.15–1, 111.01–9, 111.12–3, 111.12–5, 111.12–7, 111.33–11, 111.35–1, 111.70–1, 111.105–31, 111.105–39, 111.105–40, and 113.05–7 of this chapter.

(2) Rules for Building and Classing Mobile Offshore Drilling Units, Part 4 Machinery and Systems, 2001 (''ABS MODU Rules''), IBR approved for §§ 111.12–1, 111.12–3, 111.12–5, 111.12–7, 111.33–11, 111.35–1, and 111.70–1 of this chapter.

(c) *American National Standards Institute (ANSI),* 25 West 43rd Street, New York, NY 10036, 212–642–4900, *http://www.ansi.org/.*

(1) ANSI/IEEE C37.12–1991—American National Standard for AC High-Voltage Circuit Breakers Rated on a Symmetrical Current Basis-Specifications Guide, 1991 (''ANSI/IEEE C37.12''), IBR approved for § 111.54–1 of this chapter.

(2) ANSI/IEEE C37.27–1987 (IEEE Std 331)—Application Guide for Low-Voltage AC Nonintegrally Fused Power Circuitbreakers (Using Separately Mounted Current-Limiting Fuses), 1987 (''ANSI/IEEE C37.27''), IBR approved for § 111.54–1 of this chapter.

(3) ANSI/ISA 12.12.01–2012—Nonincendive Electrical Equipment for Use in Class I and II, Division 2 and Class II, Divisions 1 and 2 Hazardous (Classified) Locations, approved 9 July 2012 (''ANSI/ISA 12.12.01''), IBR approved for § 111.108–3(b) of this chapter.

(4) ANSI/ISA–60079–18—Electrical Apparatus for Use in Class I, Zone 1 Hazardous (Classified) Locations: Type of Protection—Encapsulation ''m'', approved July 31, 2009 (''ANSI/ISA 60079–18''), IBR approved for § 111.106–3(d) of this chapter.

(5) ANSI/ISA–60079–18—Explosive atmospheres—Part 18: Equipment protection by encapsulation ''m'', Third Edition, approved 14 September, 2012 (''ANSI/ISA 60079–18 (2012)''), IBR approved for § 111.108–3(e) of this chapter.

(d) American Petroleum Institute (API), Order Desk, 1220 L Street NW.,

Washington, DC 20005–4070, 202–682–8000, *http://www.api.org.*

(1) API RP 500—Recommended Practice for Classification of Locations for Electrical Installations at Petroleum Facilities Classified as Class I, Division 1 and Division 2, Second Edition, November 1997, reaffirmed in 2002 (''API RP 500''), IBR approved for §§ 111.106–7(a) and 111.106–13(b) of this chapter.

(2) API RP 505—Recommended Practice for Classification of Locations for Electrical Installations at Petroleum Facilities Classified as Class I, Zone 0, Zone 1, and Zone 2, First Edition, approved January 7, 1998 (dated November 1997), reaffirmed 2002 (''API RP 505''), IBR approved for §§ 111.106–7(a) and 111.106–13(b) of this chapter.

(e) ASME, Three Park Avenue, New York, NY 10016–5990, 800–843–2763, *http://www.asme.org.*

(1) ASME A17.1–2000 Part 2 Electric Elevators, 2000 (''ASME A17.1''), IBR approved for § 111.91–1 of this chapter.

(2) [Reserved]

(f) *ASTM International (ASTM),* 100 Barr Harbor Drive, West Conshohocken, PA 19428–2959, 610–832–9500, *http://www.astm.org.*

(1) ASTM B 117–97, Standard Practice for Operating Salt Spray (Fog) Apparatus, (''ASTM B 117''), IBR approved for § 110.15–1 of this chapter.

(2) ASTM F2876–10—Standard Practice for Thermal Rating and Installation of Internal Combustion Engine Packages for use in Hazardous Locations in Marine Applications, approved November 1, 2010 (''ASTM F2876–10''), IBR approved for §§ 111.106–3(h) and 111.108–3(g) of this chapter.

(g) *Canadian Standards Association (CSA),* 5060 Spectrum Way, Suite 100, Mississauga, Ontario, L4W 5N6, Canada, 800–463–6727, *http://www.csa.ca/.*

(1) CSA C22.2 No. 30–M1986—Explosion-Proof Enclosures for Use in Class I Hazardous Locations, Reaffirmed 2007 (''CSA C22.2 No. 30–M1986''), IBR approved for §§ 111.106–3(b) and 111.108–3(b) of this chapter.

(2) CSA C22.2 No. 213–M1987—Non-incendive Electrical Equipment for Use in Class I, Division 2 Hazardous Locations, Reaffirmed 2008 (''CSA C22.2 No. 213–M1987''), IBR approved for §§ 111.106–3(b) and 111.108–3(b) of this chapter.

(3) CAN/CSA–C22.2 No. 0–M91—General Requirements—Canadian Electrical Code, Part II, Reaffirmed 2006 (''CSA C22.2 No. 0–M91''), IBR approved for §§ 111.106–3(b) and 111.108–3(b) of this chapter.

(4) CAN/CSA–C22.2 No. 157–92—Intrinsically Safe and Non-incendive Equipment for Use in Hazardous Locations, Reaffirmed 2006 (''CSA C22.2 No. 157–92''), IBR approved for §§ 111.106–3(b) and 111.108–3(b) of this chapter.

(h) DLA Document Services, Department of Defense, Single Stock Point, 700 Robbins Avenue, Philadelphia, PA 19111, 215–697–6396, *http://www.assistdocs.com.*

(1) MIL–C–24640A—Military Specification Cables, Light Weight, Electric, Low Smoke, for Shipboard Use, General Specification for (1995) Supplement 1, June 26, 1995 (''NPFC MIL–C–24640A''), IBR approved for §§ 111.60–1 and 111.60–3 of this chapter.

(2) MIL–C–24643A—Military Specification Cables and Cords, Electric, Low Smoke, for Shipboard Use, General Specification for (1996), Amendment 2, March 13, 1996 (''MIL–C–24643A''), IBR approved for §§ 111.60–1 and 111.60–3 of this chapter.

(3) MIL–DTL–24640C with Supplement 1—Detail Specification Cables, Lightweight, Low Smoke, Electric, for Shipboard Use, General Specification for, November 18, 2011 (''MIL–DTL–24640C''), IBR approved for § 111.106–5(a) of this chapter.

(4) MIL–DTL–24643C with Supplement 1A—Detail Specification Cables, Electric, Low Smoke Halogen-Free, for Shipboard Use, General Specification for, December 13, 2011 (dated October 1, 2009) (''MIL–DTL–24643C''), IBR approved for § 111.106–5(a) of this chapter.

(5) MIL–W–76D—Military Specification Wire and Cable, Hook-Up, Electrical, Insulated, General Specification for (2003) Amendment 1–2003, February 6, 2003 (''NPFC MIL–W–76D''), IBR approved for § 111.60–11 of this chapter.

(i) FM Approvals, P.O. Box 9102, Norwood, MA 02062, 781–440–8000, *http://www.fmglobal.com.*

(1) Class Number 3600—Approval Standard for Electric Equipment for use in Hazardous (Classified) Locations General Requirements, November 1998 (''FM Approvals Class Number 3600''), IBR approved for §§ 111.106–3(b) and 111.108–3(b) of this chapter.

(2) Class Number 3610—Approval Standard for Intrinsically Safe Apparatus and Associated Apparatus for Use in Class I, II, and III, Division 1, Hazardous (Classified) Locations, January 2010 (''FM Approvals Class Number 3610''), IBR approved for §§ 111.106–3(b) and 111.108–3(b) of this chapter.

(3) Class Number 3611—Approval Standard for Nonincendive Electrical Equipment for Use in Class I and II, Division 2, and Class III, Divisions 1 and 2, Hazardous (Classified) Locations, December 2004 (''FM Approvals Class Number 3611''), IBR approved for §§ 111.106–3(b) and 111.108–3(b) of this chapter.

(4) Class Number 3615—Approval Standard for Explosionproof Electrical Equipment General Requirements, August 2006 (''FM Approvals Class Number 3615''), IBR approved for §§ 111.106–3(b) and 111.108–3(b) of this chapter.

(5) Class Number 3620—Approval Standard for Purged and Pressurized Electrical Equipment for Hazardous (Classified) Locations, August 2000 (''FM Approvals Class Number 3620''), IBR approved for §§ 111.106–3(b) and 111.108–3(b) of this chapter.

(j) *Institute of Electrical and Electronic Engineers (IEEE),* IEEE Service Center, 445 Hoes Lane, Piscataway, NJ 08854, 732–981–0060, *http://www.ieee.org/.*

(1) IEEE Std C37.04–1999—IEEE Standard Rating Structure for AC High-Voltage Circuit Breakers, 1999 (''IEEE C37.04''), IBR approved for § 111.54–1 of this chapter.

(2) IEEE Std C37.010–1999—IEEE Application Guide for AC High-Voltage Circuit Breakers Rated on a Symmetrical Current Basis, 1999 (''IEEE C37.010''), IBR approved for § 111.54–1 of this chapter.

(3) IEEE Std C37.13–1990—IEEE Standard for Low-Voltage AC Power Circuit Breakers Used in Enclosures, October 22, 1990 (''IEEE C37.13''), IBR approved for § 111.54–1 of this chapter.

(4) IEEE Std C37.14–2002—IEEE Standard for Low-Voltage DC Power Circuit Breakers Used in Enclosures, April 25, 2003 (''IEEE C37.14''), IBR approved for § 111.54–1 of this chapter.

(5) IEEE Std 45–1998—IEEE Recommended Practice for Electric Installations on Shipboard, October 19, 1998 (''IEEE 45–1998''), IBR approved for §§ 111.30–19, 111.105–3, 111.105–31, and 111.105–41 of this chapter.

(6) IEEE Std 45–2002—IEEE Recommended Practice for Electrical Installations On Shipboard, October 11, 2002 (''IEEE 45–2002''), IBR approved for §§ 111.05–7, 111.15–2, 111.30–1, 111.30–5, 111.33–3, 111.33–5, 111.40–1, 111.60–1, 111.60–3, 111.60–5, 111.60–11, 111.60–13, 111.60–19, 111.60–21, 111.60–23, 111.75–5, and 113.65–5 of this chapter.

(7) IEEE 100—The Authoritative Dictionary of IEEE Standards Terms, Seventh Edition, 2000 (''IEEE 100''), IBR approved for § 110.15–1.

(8) IEEE Std 1202–1991—IEEE Standard for Flame Testing of Cables for Use in Cable Tray in Industrial and

Commercial Occupancies, 1991 (''IEEE 1202''), IBR approved for §§ 111.60–6 and 111.107–1 of this chapter.

(9) IEEE Std 1580–2001—IEEE Recommended Practice for Marine Cable for Use on Shipboard and Fixed or Floating Platforms, December 17, 2001 (''IEEE 1580''), IBR approved for §§ 111.60–1, 111.60–2, 111.60–3 and 111.106–5(a) of this chapter.

(k) *International Electrotechnical Commission (IEC),* 3 Rue de Varembe, Geneva, Switzerland, +41 22 919 02 11, *http://www.iec.ch/.*

(1) IEC 60068–2–52—Environmental Testing Part 2: Tests—Test Kb: Salt Mist, Cyclic (Sodium Chloride Solution), Second Edition, 1996 (''IEC 68–2–52''), IBR approved for § 110.15–1.

(2) IEC 60079–0—Electrical apparatus for Explosive Gas Atmospheres—Part 0: General Requirements, Edition 3.1, 2000 (''IEC 60079–0''), IBR approved for §§ 111.105–1, 111.105–3, 111.105–5, 111.105–7, and 111.105–17 of this chapter.

(3) IEC 60079–1—Electrical Apparatus for Explosive Gas Atmospheres—Part 1: Flameproof Enclosures ''d'' including corr.1, Fourth Edition, June 2001 (''IEC 60079–1''), IBR approved for §§ 111.105–1, 111.105–3, 111.105–5, 111.105–7, 111.105–9, and 111.105–17 of this chapter.

(4) IEC 60079–1:2007—Explosive atmospheres—Part 1: Equipment protection by flameproof enclosures ''d'', Sixth edition, 2007–04, IBR approved for §§ 111.106–3(b) and 111.108–3(b) of this chapter.

(5) IEC 60079–2 Electrical Apparatus for Explosive Gas Atmospheres—Part 2: Pressurized Enclosures ''p'', Fourth Edition, 2001 (''IEC 60079–2''), IBR approved for §§ 111.105–1, 111.105–3, 111.105–5, 111.105–7, and 111.105–17 of this chapter.

(6) IEC 60079–2:2007—Explosive atmospheres—Part 2: Equipment protection by pressurized enclosures ''p'', Fifth edition, 2007–02, IBR approved for §§ 111.106–3(b) and 111.108–3(b) of this chapter.

(7) IEC 60079–5—Electrical Apparatus for Explosive Gas Atmospheres—Part 5: Powder Filling ''q'', Second Edition, 1997 (''IEC 60079–5''), IBR approved for §§ 111.105–1, 111.105–3, 111.105–5, 111.105–7, 111.105–15, and 111.105–17 of this chapter.

(8) IEC 60079–5:2007—Explosive atmospheres—Part 5: Equipment protection by powder filling ''q'', Third edition, 2007–03, IBR approved for §§ 111.106–3(b) and 111.108–3(b) of this chapter.

(9) IEC 60079–6—Electrical Apparatus for Explosive Gas Atmospheres—Part 6: Oil Immersion ''o'', Second Edition, 1995 (''IEC 60079–6''), IBR approved for §§ 111.105–1, 111.105–3, 111.105–5, 111.105–7, 111.105–15, and 111.105–17 of this chapter.

(10) IEC 60079–6:2007—Explosive atmospheres—Part 6: Equipment protection by oil immersion ''o'', Third edition, 2007–03, IBR approved for § 111.108–3(b) of this chapter.

(11) IEC 60079–7—Electrical Apparatus for Explosive Gas Atmospheres—Part 7: Increased Safety ''e'', Third Edition, 2001 (''IEC 60079–7''), IBR approved for §§ 111.105–1, 111.105–3, 111.105–5, 111.105–7, 111.105–15, and 111.105–17 of this chapter.

(12) IEC 60079–7:2006—Explosive atmospheres—Part 7: Equipment protection by increased safety ''e'', Fourth edition, 2006–07, IBR approved for § 111.106–3(b) of this chapter.

(13) IEC 60079–11—Electrical Apparatus for Explosive Gas Atmospheres—Part 11: Intrinsic Safety ''i'', Fourth Edition, 1999 (''IEC 60079–11''), IBR approved for §§ 111.105–1, 111.105–3, 111.105–5, 111.105–7, 111.105–11, and 111.105–17 of this chapter.

(14) IEC 60079–11:2006—Explosive atmospheres—Part 11: Equipment protection by intrinsic safety ''i'', Fifth edition, 2006–07, IBR approved for § 111.106–3(b) of this chapter.

(15) IEC 60079–11:2011—Explosive atmospheres—Part 11: Equipment protection by intrinsic safety ''i'', Edition 6.0, 2011–06, IBR approved for § 111.108–3(b) of this chapter.

(16) IEC 60079–13:2010—Explosive atmospheres—Part 13: Equipment protection by pressurized room ''p'', Edition 1.0, 2010–10, IBR approved for §§ 111.106–3(b) and 111.108–3(b) of this chapter.

(17) IEC 60079–15—Electrical Apparatus for Explosive Gas Atmospheres—Part 15: Type of Protection ''n'', Second Edition, 2001 (''IEC 60079–15''), IBR approved for §§ 111.105–1, 111.105–3, 111.105–5, 111.105–7, 111.105–15, and 111.105–17 of this chapter.

(18) IEC 60079–15:2010—Explosive atmospheres—Part 15: Equipment protection by type of protection ''n'', Edition 4.0, 2010–01, IBR approved for §§ 111.106–3(b) and 111.108–3(b) of this chapter.

(19) IEC 60079–18—Electrical Apparatus for Explosive Gas Atmospheres—Part 18: Encapsulation ''m'', First Edition, 1992 (''IEC 60079–18''), IBR approved for §§ 111.105–1, 111.105–3, 111.105–5, 111.105–7, 111.105–15, and 111.105–17 of this chapter.

(20) IEC 60079–18:2009—Explosive atmospheres—Part 18: Equipment protection by encapsulation ''m'', Edition 3.0, 2009–05, IBR approved for §§ 111.106–3(b), 111.106–3(d), and 111.108–3(b) and (e) of this chapter.

(21) IEC 60079–25:2010—Explosive atmospheres—Part 25: Intrinsically safe electrical systems, Edition 2.0, 2010–02, IBR approved for §§ 111.106–3(b) and 111.108–3(b) of this chapter.

(22) IEC 60092–101—Electrical Installation in Ships, Part 101: Definitions and General Requirements, Edition 4.1, 2002 (''IEC 60092–101''), IBR approved for §§ 110.15–1 and 111.81–1 of this chapter.

(23) IEC 60092–201—Electrical Installation in Ships, Part 201: System Design-General, Fourth Edition, 1994 (''IEC 60092–201''), IBR approved for §§ 111.70–3 and 111.81–1 of this chapter.

(24) IEC 60092–202—Amendment 1 Electrical Installation in Ships, Part 202: System Design-Protection, 1996 (''IEC 60092–202''), IBR approved for §§ 111.12–7, 111.50–3, 111.53–1, and 111.54–1 of this chapter.

(25) IEC 60092–301—Amendment 2 Electrical Installation in Ships, Part 301: Equipment-Generators and Motors, 1995 (''IEC 60092–301''), IBR approved for §§ 111.12–7, 111.25–5, and 111.70–1 of this chapter.

(26) IEC 60092–302—Electrical Installation in Ships, Part 302: Low-Voltage Switchgear and Control Gear Assemblies, Fourth Edition, 1997 (''IEC 60092–302''), IBR approved for §§ 111.30–1, 111.30–5, and 111.30–19 of this chapter.

(27) IEC 60092–303—Electrical Installation in Ships, Part 303: Equipment-Transformers for Power and Lighting, Third Edition, 1980 (''IEC 60092–303''), IBR approved for § 111.20–15 of this chapter.

(28) IEC 60092–304—Amendment 1 Electrical Installation in Ships, Part 304: Equipment—Semiconductor Convertors, 1995 (''IEC 60092–304''), IBR approved for §§ 111.33–3 and 111.33–5 of this chapter.

(29) IEC 60092–306—Electrical Installation in Ships, Part 306: Equipment—Luminaries and accessories, Third Edition, 1980 (''IEC 60092–306''), IBR approved for §§ 111.75–20 and 111.81–1 of this chapter.

(30) IEC 60092–350:2008—Electrical installations in ships—Part 350: General construction and test methods of power, control and instrumentation cables for shipboard and offshore applications, Edition 3.0, 2008–02, IBR approved for § 111.106–5(a) of this chapter.

(31) IEC 60092–352—Electrical Installation in Ships—Choice and Installation of Cables for Low-Voltage Power Systems, Second Edition, 1997 (''IEC 60092–352''), IBR approved for §§ 111.60–3, 111.60–5, and 111.81–1 of this chapter.

(32) IEC 60092–353—Electrical Installations in Ships—Part 353: Single and Multicore Non-Radial Field Power Cables with Extruded Solid Insulation for Rated Voltages 1kV and 3kV, Second Edition, 1995 (''IEC 60092–353''), IBR approved for §§ 111.60–1, 111.60–3, and 111.60–5 of this chapter.

(33) IEC 60092–353:2011—Electrical installations in ships—Part 353: Power cables for rated voltages 1 kV and 3 kV, Edition 3.0, 2011–08, IBR approved for § 111.106–5(a) of this chapter.

(34) IEC 60092–401—Electrical Installations in Ships, Part 401: Installation and Test of completed Installation with amendment 1 (1987) and amendment 2 (1997), Third Edition, 1980 (''IEC 60092–401''), IBR approved for §§ 111.05–9 and 111.81–1 of this chapter.

(35) IEC 60092–502—Electrical installations in ships—Part 502: Tankers—Special features, Fifth edition, 1999–02 (''IEC 60092–502''), IBR approved for §§ 111.81–1, 111.105–31, 111.106–3(b), 111.106–5(c), 111.106–15(a), and 111.108–3(b) of this chapter.

(36) IEC 60092–503—Electrical installations in ships, Part 503: Special features: A.C. supply systems with voltages in the range of above 1kV up to and including 11kV, First Edition, 1975 (''IEC 60092–503''), IBR approved for § 111.30–5 of this chapter.

(37) IEC 60331–11—Tests for electric cables under fire conditions—Circuit integrity—Part 11: Apparatus—Fire alone at a flame temperature of at least 750 °C, First Edition, 1999 (''IEC 60331–11''), IBR approved for § 113.30–25 of this chapter.

(38) IEC 60331–21—Tests for Electric Cables Under Fire Conditions—Circuit Integrity—Part 21: Procedures and Requirements—Cables of Rated Voltage up to and Including 0.6/1.0kV, First Edition, 1999 (''IEC 60331–21''), IBR approved for § 113.30–25 of this chapter.

(39) IEC 60332–1—Tests on Electric Cables Under Fire Conditions, Part 1: Test on a Single Vertical Insulated Wire or Cable, Third Edition, 1993 (''IEC 60332–1''), IBR approved for § 111.30–19 of this chapter.

(40) IEC 60332–3–22—Tests on Electric Cables Under Fire Conditions—Part 3–22: Test for Vertical Flame Spread of Vertically-Mounted Bunched Wires or Cables—Category A, First Edition, 2000 (''IEC 60332–3–22''), IBR approved for §§ 111.60–1, 111.60–2, 111.60–6, and 111.107–1 of this chapter.

(41) IEC 60529—Degrees of Protection Provided by Enclosures (IP Code), Edition 2.1, 2001 (''IEC 60529''), IBR approved for §§ 110.15–1, 111.01–9, 113.10–7, 113.20–3, 113.25–11, 113.30–25, 113.37–10, 113.40–10, and 113.50–5 of this chapter.

(42) IEC 60533—Electrical and Electronic Installations in Ships—Electromagnetic Compatibility, Second Edition, 1999 (''IEC 60533''), IBR approved for § 113.05–7 of this chapter.

(43) IEC 60947–2—Low-Voltage Switchgear and Controlgear Part 2: Circuit-Breakers, Third Edition, 2003 (''IEC 60947–2''), IBR approved for § 111.54–1 of this chapter.

(44) IEC 61363–1—Electrical Installations of Ships and Mobile and Fixed Offshore Units—Part 1: Procedures for Calculating Short-Circuit Currents in Three-Phase a.c., First Edition, 1998 (''IEC 61363–1''), IBR approved for § 111.52–5 of this chapter.

(45) IEC 61892–7:2007—Mobile and fixed offshore units—Electrical installations—Part 7: Hazardous areas, Edition 2.0, 2007–11, IBR approved for § 111.108–3(b) of this chapter.

(46) IEC 62271–100—High-voltage switchgear and controlgear—part 100: High-voltage alternating current circuitbreakers, Edition 1.1, 2003 (''IEC 62271–100''), IBR approved for § 111.54–1 of this chapter.

(l) *International Maritime Organization (IMO Publications Section),* 4 Albert Embankment, London SE1 7SR, United Kingdom, +44 (0) 20 7735 7611, *http://www.imo.org.*

(1) International Convention for the Safety of Life at Sea (SOLAS), Consolidated Text of the International Convention for the Safety of Life at Sea, 1974, and its Protocol of 1988: Article, Annexes and Certificates. (Incorporating all Amendments in Effect from January 2001), 2001 (''IMO SOLAS 74''), IBR approved for §§ 111.99–5, 111.105–31, 112.15–1, and 113.25–6 of this chapter.

(2) IMO Resolution A.1023(26)—Code for the Construction and Equipment of Mobile Offshore Drilling Units, 2009, 18 January 2010 (''2009 IMO MODU Code''), IBR approved for § 111.108–3(b) of this chapter.

(m) *International Society of Automation (ISA),* 67 T.W. Alexander Drive, PO Box 12277, Research Triangle Park, NC 27709, 919–549–8411, *http://www.isa.org/.*

(1) RP 12.6—Wiring Practices for Hazardous (Classified) Locations Instrumentation Part I: Intrinsic Safety, 1995 (''ISA RP 12.6''), IBR approved for § 111.105–11 of this chapter.

(2) [Reserved]

(n) *Lloyd's Register,* 71 Fenchurch Street, London EC3M 4BS, UK, +44–0–20–7709–9166, *http://www.lr.org/.*

(1) Type Approval System—Test Specification Number 1, 2002, IBR approved for § 113.05–7 of this chapter.

(2) [Reserved]

(o) *National Electrical Manufacturers Association (NEMA),* 1300 North 17th Street, Arlington, VA 22209, 703–841–3200, *http://www.nema.org/.*

(1) NEMA Standards Publication ICS 2–2000—Industrial Control and Systems Controllers, Contactors, and Overload Relays, Rated 600 Volts, 2000 (''NEMA ICS 2''), IBR approved for § 111.70–3 of this chapter.

(2) NEMA Standards Publication ICS 2.3–1995—Instructions for the Handling, Installation, Operation, and Maintenance of Motor Control Centers Rated not More Than 600 Volts, 1995 (''NEMA ICS 2.3''), IBR approved for § 111.70–3 of this chapter.

(3) NEMA Standards Publication No. ICS 2.4–2003—NEMA and IEC Devices for Motor Service—a Guide for Understanding the Differences, 2003 (''NEMA ICS 2.4''), IBR approved for § 111.70–3 of this chapter.

(4) NEMA Standards Publication No. ANSI/NEMA 250–1997—Enclosures for Electrical Equipment (1000 Volts Maximum), August 30, 2001 (''NEMA 250''), IBR approved for §§ 110.15–1, 111.01–9, 110.15–1, 113.10–7, 113.20–3, 113.25–11, 113.30–25, 113.37–10, 113.40–10, and 113.50–5 of this chapter.

(5) NEMA Standards Publication No. WC–3–1992—Rubber Insulated Wire and Cable for the Transmission and Distribution of Electrical Energy, Revision 1, February 1994 (''NEMA WC–3''), IBR approved for § 111.60–13 of this chapter.

(6) NEMA WC–70/ICEA S–95–658–1999—Standard for Non-Shielded Power Rated Cable 2000V or Less for the Distribution of Electrical Energy, 1999 (''NEMA WC–70''), IBR approved for § 111.60–13 of this chapter.

(p) *National Fire Protection Association (NFPA),* 1 Batterymarch Park, Quincy, MA 02169, 617–770–3000, *http://www.nfpa.org.*

(1) NEC 2002 (NFPA 70)—National Electrical Code Handbook, Ninth Edition, 2002 (''NFPA NEC 2002''), IBR approved for §§ 111.05–33, 111.20–15, 111.25–5, 111.50–3, 111.50–7, 111.50–9, 111.53–1, 111.54–1, 111.55–1, 111.59–1, 111.60–7, 111.60–13, 111.60–23, 111.81–1, 111.105–1, 111.105–3, 111.105–5, 111.105–7, 111.105–9, 111.105–15, 111.105–17, and 111.107–1 of this chapter.

(2) NFPA 70—National Electrical Code, 2011 Edition (''NFPA 70''), IBR approved for §§ 111.106–3(b), 111.106–

5(c), and 111.108–3(b)(1) and (2) of this chapter.

(3) NFPA 77—Recommended Practice on Static Electricity, 2000 (''NFPA 77''), IBR approved for § 111.105–27 of this chapter.

(4) NFPA 99—Standard for Health Care Facilities, 2005 (''NFPA 99''), IBR approved for § 111.105–37 of this chapter.

(5) NFPA 496—Standard for Purged and Pressurized Enclosures for Electrical Equipment, 2003 (''NFPA 496''), IBR approved for § 111.105–7 of this chapter.

(6) NFPA 496—Standard for Purged and Pressurized Enclosures for Electrical Equipment, 2008 Edition (''NFPA 496 (2008)''), IBR approved for § 111.106–3(c) of this chapter.

(7) NFPA 496—Standard for Purged and Pressurized Enclosures for Electrical Equipment, 2013 Edition (''NFPA 496 (2013)''), IBR approved for § 111.108–3(d) of this chapter.

(q) *Naval Sea Systems Command (NAVSEA),* 1333 Isaac Hull Avenue SE., Washington, DC 20376, 202–781–0000, *http://www.navsea.navy.mil.*

(1) DDS 300–2—A.C. Fault Current Calculations, 1988 (''NAVSEA DDS 300–2''), IBR approved for § 111.52–5 of this chapter.

(2) MIL–HDBK–299(SH)—Military Handbook Cable Comparison Handbook Data Pertaining to Electric Shipboard Cable Notice 1–1991 (Revision of MIL–HDBK–299(SH) (1989)), October 15, 1991 (''NAVSEA MIL–HDBK–299(SH)''), IBR approved for § 111.60–3 of this chapter.

(r) *UL* (formerly Underwriters Laboratories, Inc.), 2600 NW. Lake Road, Camas, WA, 98607, 877–854–3577, *http://www.ul.com.*

(1) UL 44—Standard for Thermoset-Insulated Wire and Cable, Fifteenth Edition, Mar. 22, 1999 (Revisions through and including May 13, 2002) (''UL 44''), IBR approved for § 111.60–11 of this chapter.

(2) UL 50—Standard for Safety Enclosures for Electrical Equipment, Eleventh Edition, Oct. 19, 1995 (''UL 50''), IBR approved for § 111.81–1 of this chapter.

(3) UL 62—Standard for Flexible Cord and Fixture Wire, Sixteenth Edition, Oct. 15, 1997 (''UL 62''), IBR approved for § 111.60–13 of this chapter.

(4) UL 83—Standard for Thermoplastic-Insulated Wires and Cables, Twelfth Edition, Sept. 29, 1998 (''UL 83''), IBR approved for § 111.60–11 of this chapter.

(5) UL 484—Standard for Room Air Conditioners, Seventh Edition, (Revisions through and including Sep. 3, 2002), Apr. 27, 1993 (''UL 484''), IBR approved for § 111.87–3 of this chapter.

(6) UL 489—Molded-Case Circuit Breakers, Molded-Case Switches, and Circuit-Breaker Enclosures, Ninth Edition, (Revisions through and including Mar. 22, 2000), Oct. 31, 1996 (''UL 489''), IBR approved for §§ 111.01–15 and 111.54–1 of this chapter.

(7) UL 514A—Metallic Outlet Boxes, Ninth Edition, Dec. 27, 1996 (''UL 514A''), IBR approved for § 111.81–1 of this chapter.

(8) UL 514B—Conduit, Tubing, and Cable Fittings, Fourth Edition, Nov. 3, 1997 (''UL 514B''), IBR approved for § 111.81–1 of this chapter.

(9) UL 514C—Standard for Nonmetallic Outlet Boxes, Flush-Device Boxes, and Covers, Second Edition, Oct. 31, 1988 (''UL 514C''), IBR approved for § 111.81–1 of this chapter.

(10) UL 674—Standard for Safety: Electric Motors and Generators for Use in Division 1 Hazardous (Classified) Locations, Fourth Edition with revisions through Aug. 12, 2008 (dated Dec. 11, 2003) (''ANSI/UL 674''), IBR approved for § 111.106–3(b) of this chapter.

(11) UL 674—Standard for Safety: Electric Motors and Generators for Use in Hazardous (Classified) Locations, Fifth Edition, dated May 31, 2011 (with revisions through July 19, 2013) (''ANSI/UL 674 (2013)''), IBR approved for § 111.108–3(b) of this chapter.

(12) UL 823—Electric Heaters for Use in Hazardous (Classified) Locations, Ninth Edition including revisions through Nov. 15, 2007 (dated Oct. 20, 2006) (''ANSI/UL 823''), IBR approved for §§ 111.106–3(b) and 111.108–3(b) of this chapter.

(13) UL 844—Standard for Safety: Luminaires for Use in Hazardous (Classified) Locations, Twelfth Edition including revisions through Nov. 20, 2008 (dated Jan. 11, 2006) (''ANSI/UL 844''), IBR approved for § 111.106–3(b) of this chapter.

(14) UL 844—Standard for Safety: Luminaires for Use in Hazardous (Classified) Locations, Thirteenth Edition, dated June 29, 2012 (''ANSI/UL 844 (2012)''), IBR approved for § 111.108–3(b) of this chapter.

(15) UL 913—Standard for Intrinsically Safe Apparatus and Associated Apparatus for Use in Class i, ii, and iii, Division 1, Hazardous (Classified) Locations, Sixth Edition, (Revisions through and including Dec. 15, 2003) August 8, 2002 (''UL 913''), IBR approved for § 111.105–11 of this chapter.

(16) UL 913—Standard for Safety: Intrinsically Safe Apparatus and Associated Apparatus for Use in Class I, II, and III, Division 1, Hazardous Locations, Seventh Edition, Dated July 31, 2006 (including revisions through June 3, 2010) (''ANSI/UL 913''), IBR approved for §§ 111.106–3(b) and 111.108–3(b) of this chapter.

(17) UL 1042—Standard for Electric Baseboard Heating Equipment, Apr. 11, 1994, IBR approved for § 111.87–3 of this chapter.

(18) UL 1072—Standard for Medium-Voltage Power Cables, Third Edition, Dec. 28, 2001 (revisions through and including Apr. 14, 2003), IBR approved for § 111.60–1 of this chapter.

(19) UL 1104—Standard for Marine Navigation Lights, Second Edition, Oct. 29, 1998, IBR approved for § 111.75–17 of this chapter.

(20) UL 1203—Standard for Explosion-Proof and Dust-Ignition-Proof Electrical Equipment for Use in Hazardous (Classified) Locations, Third Edition, Sept. 7, 2000 (Revisions through and including Apr. 30, 2004), IBR approved for § 111.105–9 of this chapter.

(21) UL 1203—Standard for Safety: Explosion-Proof and Dust-Ignition Proof Electrical Equipment for Use in Hazardous (Classified) Locations, Fourth Edition, Dated September 15, 2006 (including revisions through October 28, 2009) (''ANSI/UL 1203''), IBR approved for §§ 111.106–3(b) and 111.108–3(b) of this chapter.

(22) UL 1309—Marine Shipboard Cables, First Edition, July 14, 1995, IBR approved for §§ 111.60–1, 111.60–3, and 111.106–5(a) of this chapter.

(23) UL 1581—Reference Standard for Electrical Wires, Cables, and Flexible Cords, May 6, 2003, IBR approved for §§ 111.30–19, 111.60–2, and 111.60–6 of this chapter.

(24) UL 1598—Luminaires, First Edition, Jan. 31, 2000, IBR approved for § 111.75–20 of this chapter.

(25) UL 1598A—Standard for Supplemental Requirements for Luminaires for Installation on Marine Vessels, First Edition, Dec. 4, 2000, IBR approved for § 111.75–20 of this chapter.

(26) UL 1604—Electrical Equipment for use in Class I and II, Division 2 and Class III Hazardous (Classified) Locations, Third Edition, Dated April 28, 1994 (including revisions through February 3, 2004) (''UL 1604''), IBR approved for § 111.108–3(b) of this chapter.

(27) UL 2225—Cables and Cable-Fittings for Use in Hazardous (Classified) Locations, Second Edition, Dec. 21, 2005 (''ANSI/UL 2225''), IBR approved for § 111.106–3(b) of this chapter.

(28) UL 2225—Standard for Safety: Cables and Cable-Fittings for use in

Hazardous (Classified) Locations, Third Edition, dated February 25, 2011 (''ANSI/UL 2225 (2011)''), IBR approved for § 111.108–3(b) of this chapter.

■ 9. Amend § 110.15–1(b) by adding, in alphabetical order, the definitions for ''Constructed'', ''OCS activity'', and ''Outer Continental Shelf (OCS)'' to read as follows:

§ 110.15–1 Definitions.

* * * * *

(b) * * *

Constructed means the date—

(1) The vessel's keel was laid; or

(2) Construction identifiable with the vessel or facility began and assembly of that vessel or facility commenced comprising of 50 metric tons or at least 1 percent of the estimated mass of all structural material, whichever is less.

* * * * *

OCS activity has the same meaning as it does in 33 CFR 140.10.

Outer Continental Shelf (OCS) has the same meaning as it does in 33 CFR 140.10.

* * * * *

■ 10. Amend § 110.25–1 by adding paragraph (q) to read as follows:

§ 110.25–1 Plans and information required for new construction.

* * * * *

(q) For vessels with hazardous locations to which subpart 111.108 of this chapter applies, plans showing the extent and classification of all hazardous locations, including information on—

(1) Equipment identification by manufacturer's name and model number;

(2) Equipment use within the system;

(3) Parameters of intrinsically safe systems, including cables;

(4) Equipment locations;

(5) Installation details and/or approved control drawings; and

(6) A certificate of testing, and listing or certification, by an independent laboratory or an IECEx Certificate of Conformity under the IECEx System, where required by the respective standard in § 111.108–3(b)(1), (2), or (3) of this chapter.

PART 111—ELECTRIC SYSTEMS GENERAL REQUIREMENTS

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

Authority: 46 U.S.C. 3306, 3703; Department of Homeland Security Delegation No. 0170.1. Section 111.05–20 and Subpart 111.106 also issued under sec. 617, Pub. L. 111–281, 124 Stat. 2905.

■ 12. Add subpart 111.108 to read as follows:

Subpart 111.108—Hazardous Locations Requirements on U.S. and Foreign MODUs, Floating OCS Facilities, Vessels Conducting OCS Activities, and U.S. Vessels That Carry Flammable and Combustible Cargo

Sec.
111.108–1 Applicability.
111.108–2 [Reserved]
111.108–3 General requirements.

§ 111.108–1 Applicability.

(a) This subpart applies to MODUs, floating OCS facilities, and vessels, other than offshore supply vessels regulated under subchapter L of this chapter, constructed after April 2, 2018 that engage in OCS activities.

(b) U.S. MODUs, floating OCS facilities, and vessels other than OSVs regulated under subchapter L of this chapter and U.S. tank vessels that carry flammable and combustible cargoes, may comply with this subpart in lieu of §§ 111.105–1 through 111.105–15. All other sections of subpart 111.105 of this part remain applicable.

§ 111.108–2 [Reserved]

§ 111.108–3 General requirements.

(a) Electrical installations in hazardous locations, where necessary for operational purposes, must be located in the least hazardous location practicable.

(b) Electrical installations in hazardous locations must comply with paragraphs (b)(1), (2), or (3) of this section.

(1) NFPA 70 Articles 500 through 504 (incorporated by reference, see § 110.10–1 of this chapter). Equipment required to be identified for Class I locations must meet the provisions of Sections 500.7 and 500.8 of NFPA 70 and must be tested and listed by an independent laboratory to any of the following standards:

(i) ANSI/UL 674 (2013), ANSI/UL 823, ANSI/UL 844 (2012), ANSI/UL 913, ANSI/UL 1203, UL 1604 (replaced by ANSI/ISA 12.12.01) or ANSI/UL 2225 (2011) (incorporated by reference, see § 110.10–1 of this chapter).

(ii) FM Approvals Class Number 3600, Class Number 3610, Class Number 3611, Class Number 3615, or Class Number 3620 (incorporated by reference, see § 110.10–1 of this chapter).

(iii) CSA C22.2 Nos. 0–M91, 30–M1986, 157–92, or 213–M1987 (incorporated by reference, see § 110.10–1 of this chapter).

Note to § 111.108–3(b)(1): See Article 501.5 of NFPA 70 (incorporated by reference, see § 110.10–1 of this chapter) for use of Zone equipment in Division designated spaces.

(2) NFPA 70 Article 505 (incorporated by reference, see § 110.10–1 of this chapter). Equipment required to be identified for Class I locations must meet the provisions of Sections 505.7 and 505.9 of NFPA 70 and must be tested and listed by an independent laboratory to one or more of the types of protection in ANSI/ISA Series of standards incorporated in NFPA 70.

Note to paragraph (b)(2). See Article 505.9(c)(1) of the NFPA 70 (incorporated by reference, see § 110.10–1 of this chapter) for use of Division equipment in Zone designated spaces.

(3) Clause 6 of IEC 61892–7:2007 (incorporated by reference, see § 110.10–1 of this chapter) for all U.S. and foreign floating OCS facilities and vessels on the U.S. OCS or on the waters adjacent thereto; chapter 6 of 2009 IMO MODU Code (incorporated by reference, see § 110.10–1) for all U.S. and foreign MODUs; or clause 6 of IEC 60092–502 (incorporated by reference, see § 110.10–1) for U.S. tank vessels that carry flammable and combustible cargoes. Electrical apparatus in hazardous locations must be tested to IEC 60079–1:2007, IEC 60079–2:2007, IEC 60079–5:2007, IEC 60079–6:2007, IEC 60079–7:2006, IEC 60079–11:2011, IEC 60079–13:2010, IEC 60079–15:2010, IEC 60079–18:2009 or IEC 60079–25:2010 (incorporated by reference, see § 110.10–1) and certified by an independent laboratory under the IECEx System.

(c) System components that are listed or certified under paragraph (b)(1), (2), or (3) of this section must not be combined in a manner that would compromise system integrity or safety.

(d) As an alternative to paragraph (b)(1) of this section, electrical equipment that complies with the provisions of NFPA 496 (2013) (incorporated by reference, see § 110.10–1 of this chapter) is acceptable for installation in Class I, Divisions 1 and 2. When equipment meeting this standard is used, it does not need to be identified and marked by an independent laboratory. The Commanding Officer, MSC, will evaluate equipment complying with this standard during plan review.

Note to paragraph (d). The Commanding Officer, MSC, will generally consider it acceptable if a manufacturer's certification of compliance is indicated on a material list or plan.

(e) Equipment listed or certified to ANSI/ISA 60079–18 (2012) or IEC 60079–18:2009, respectively, (incorporated by reference, see § 110.10–1 of this chapter) is not

permitted in Class I, Special Division 1, or Zone 0 hazardous locations unless the encapsulating compound of Ex ''ma'' protected equipment is not exposed to, or has been determined to be compatible with, the liquid or cargo in the storage tank.

(f) Submerged pump motors that do not meet the requirements of § 111.105–31(d), installed in tanks carrying flammable or combustible liquids with closed-cup flashpoints not exceeding 60° C (140 °F), must receive concept approval by the Commandant (CG–ENG) and plan approval by the Commanding Officer, MSC.

(g) Internal combustion engines installed in Class I, Divisions 1 and 2 (Class I and IEC, Zones 1 and 2) must meet the provisions of ASTM F2876–10 (incorporated by reference, see § 110.10–1 of this chapter).

Dated: March 20, 2015.

J.G. Lantz,

Director of Commercial Regulations and Standards, U.S. Coast Guard.

[FR Doc. 2015–06946 Filed 3–30–15; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF LABOR

Office of Federal Contract Compliance Programs

41 CFR Parts 60–1, 60–2, 60–4, and 60–50

Implementation of Executive Order 13672 Prohibiting Discrimination Based on Sexual Orientation and Gender Identity by Contractors and Subcontractors; Agency Information Collection Activities; Announcement of OMB Approval

AGENCY: Office of Federal Contract Compliance Programs, Labor.

ACTION: Announcement of Office of Management and Budget (OMB) approval of collection of information requirements.

SUMMARY: The Department of Labor, Office of Federal Contract Compliance Programs (OFCCP) is announcing that the collection of information requirements contained in the final rule titled ''Implementation of Executive Order 13672 Prohibiting Discrimination Based on Sexual Orientation and Gender Identity by Contractors and Subcontractors'' (41 CFR part 60) have been approved by OMB under the Paperwork Reduction Act of 1995. The OMB approval control number is 1250–0009.

DATES: The final rule published December 9, 2014 (79 FR 72985), including the information collection requirements, will take effect on April 8, 2015.

FOR FURTHER INFORMATION CONTACT: Debra A. Carr, Director, Division of Policy and Program Development, Office of Federal Contract Compliance Programs, U.S. Department of Labor, 200 Constitution Ave. NW., Room C–3325, Washington, DC 20210, (202) 693–0104. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: OFCCP published a final rule entitled ''Implementation of Executive Order 13672 Prohibiting Discrimination Based on Sexual Orientation and Gender Identity by Contractors and Subcontractors'' on December 9, 2014. This final rule amends the regulations implementing Executive Order 11246 by replacing the words ''sex, or national origin'' with the words ''sex, sexual orientation, gender identity, or national origin'' as directed by Executive Order 13672, titled ''Further Amendments to Executive Order 11478, Equal Employment Opportunity in the Federal Government and Executive Order 11246, Equal Employment Opportunity.'' This final rule becomes effective on April 8, 2015.

OFCCP submitted the information collection request on December 8, 2014 to OMB for approval in accordance with the Paperwork Reduction Act of 1995. On March 17, 2015 OMB approved the collections of information contained in the final rule and assigned this collection OMB Control Number 1250–0009 title ''Prohibiting Discrimination Based on Sexual Orientation and Gender Identity by Contractors and Subcontractors.'' The approval for the collection expires on September 30, 2015. The approved collections of information are:

- Amending the Equal Opportunity Clause: Sections 60–1.4(a) and (b) and 60–4.3(a);
- Amending the Tag Line in Job Advertisements and Solicitations: Sections 60–1.4(a)(2), and 1.4(b)(2); and
- Reporting Denied Visas to Department of State and OFCCP: Section 60–1.10.

As required by the Paperwork Reduction Act of 1995, the **Federal Register** Notice for the final rule stated that compliance with the collection of information requirements was not required until these requirements are approved by OMB, and the Department of Labor publishes a notice in the **Federal Register** announcing that OMB approved and assigned a control number to the requirements. As provided in 5 CFR 1320.5(b) and 1320.6(a), an agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs members of the public who must respond to the collection of information that they are not required to respond to the collection of information unless the agency displays a currently valid OMB control number.

Dated: March 25, 2015.

Debra A. Carr,

Director, Division of Policy and Program Development, Office of Federal Contract Compliance Programs.

[FR Doc. 2015–07216 Filed 3–30–15; 8:45 am]

BILLING CODE 4510–CM–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 140918791–4999–02]

RIN 0648–XD845

Fisheries of the Exclusive Economic Zone Off Alaska; Inseason Adjustment to the 2015 Gulf of Alaska Pollock Seasonal Apportionments

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

ACTION: Temporary rule; inseason adjustment.

SUMMARY: NMFS is adjusting the 2015 seasonal apportionments of the total allowable catch (TAC) for pollock in the Gulf of Alaska (GOA) by re-apportioning unharvested pollock TAC in Statistical Areas 610, 620, and 630 of the GOA. This action is necessary to provide opportunity for harvest of the 2015 pollock TAC, consistent with the goals and objectives of the Fishery Management Plan for Groundfish of the Gulf of Alaska.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), March 26, 2015, until 2400 hours A.l.t., December 31, 2015.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council (Council) under authority of the Magnuson-Stevens Fishery Conservation and Management Act.

Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The annual pollock TACs in Statistical Areas 610, 620, and 630 of the GOA are apportioned among four seasons, in accordance with § 679.23(d)(2). Regulations at § 679.20(a)(5)(iv)(B) allow the underharvest of a seasonal apportionment to be added to subsequent seasonal apportionments, provided that any revised seasonal apportionment does not exceed 20 percent of the seasonal apportionment for a given statistical area. Therefore, NMFS is increasing the B season apportionment of pollock in Statistical Areas 610, 620, and 630 of the GOA to reflect the underharvest of pollock in those areas during the A season. In addition, any underharvest remaining beyond 20 percent of the originally specified seasonal apportionment in a particular area may be further apportioned to other statistical areas. Therefore, NMFS also is increasing the B season apportionment of pollock to Statistical Area 620 based on the underharvest of pollock in Statistical Areas 610 and 630 of the GOA. These adjustments are described below.

The B seasonal apportionment of the 2015 pollock TAC in Statistical Area 610 of the GOA is 3,632 metric tons (mt) as established by the final 2015 and 2016 harvest specifications for groundfish of the GOA (80 FR 10250, February 25, 2015). In accordance with § 679.20(a)(5)(iv)(B), the Administrator, Alaska Region, NMFS (Regional Administrator), hereby increases the B season apportionment for Statistical Area 610 by 726 mt to account for the underharvest of the TAC in Statistical Area 610 in the A season. This increase is not greater than 20 percent of the B seasonal apportionment of the TAC in Statistical Area 610. Therefore, the revised B seasonal apportionment of the pollock TAC in Statistical Area 610 is 4,358 mt (3,632 mt plus 726 mt).

The B seasonal apportionment of the pollock TAC in Statistical Area 620 of the GOA is 37,820 mt as established by the final 2015 and 206 harvest specifications for groundfish of the GOA (80 FR 10250, February 25, 2015). In accordance with § 679.20(a)(5)(iv)(B), the Regional Administrator hereby increases the B seasonal apportionment for Statistical Area 620 by 5,693 mt to account for the underharvest of the TAC in Statistical Areas 610, 620, and 630 in the A season. This increase is in proportion to the estimated pollock biomass and is not greater than 20 percent of the B seasonal apportionment of the TAC in Statistical Area 620. Therefore, the revised B seasonal apportionment of the pollock TAC in Statistical Area 620 is 43,513 mt (37,820 mt plus 5,693 mt).

The B seasonal apportionment of pollock TAC in Statistical Area 630 of the GOA is 4,000 mt as established by the final 2015 and 2016 harvest specifications for groundfish of the GOA (80 FR 10250, February 25, 2015). In accordance with § 679.20(a)(5)(iv)(B), the Regional Administrator hereby increases the B seasonal apportionment for Statistical Area 630 by 800 mt to account for the underharvest of the TAC in Statistical Area 630 in the A season. This increase is not greater than 20 percent of the B seasonal apportionment of the TAC in Statistical Area 630. Therefore, the revised B seasonal apportionment of pollock TAC in Statistical Area 630 is 4,800 mt (4,000 mt plus 800 mt).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would provide opportunity to harvest increased pollock seasonal apportionments. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of March 25, 2015.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: March 26, 2015.

Emily H. Menashes,

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

[FR Doc. 2015–07312 Filed 3–26–15; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 80, No. 61
Tuesday, March 31, 2015

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 925

[Doc. No. AMS–FV–14–0106; FV15–925–2]

Grapes Grown in a Designated Area of Southeastern California; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement a recommendation from the California Desert Grape Administrative Committee (Committee) to increase the assessment rate for the 2015 and subsequent fiscal periods from $0.0200 to $0.0250 per 18-pound lug of grapes handled. The Committee locally administers the marketing order and is comprised of producers and handlers of grapes grown and handled in a designated area of southeastern California. Assessments upon grape handlers are used by the Committee to fund reasonable and necessary expenses of the program. The fiscal period began on January 1 and ends December 31. The assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Comments must be received by April 15, 2015.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule. Comments must be sent to the Docket Clerk, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or Internet: *http://www.regulations.gov.* Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.regulations.gov.* All comments submitted in response to this proposed rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Kathie Notoro, Marketing Specialist, or Martin Engeler, Regional Director, California Marketing Field Office, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA; Telephone: (559) 487–5901, Fax: (559) 487–5906, or Email: *Kathie.Notoro@ams.usda.gov* or *Martin.Engeler@ams.usda.gov.*

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

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Order No. 925 (7 CFR part 925), regulating the handling of grapes grown in a designated area of southeastern California, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this proposed rule in conformance with Executive Orders 12866, 13563, and 13175.

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, grape handlers in a designated area of southeastern California are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as proposed herein would be applicable to all assessable grapes beginning on January 1, 2015, and continue until amended, suspended, or terminated.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This proposed rule would increase the assessment rate established for the Committee for the 2015 and subsequent fiscal periods from $0.0200 to $0.0250 per 18-pound lug of grapes handled.

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

For the 2014 and subsequent fiscal periods, the Committee recommended, and the USDA approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA based upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on October 30, 2014, and unanimously recommended 2015 expenditures of $135,500, a contingency reserve fund of $9,500, and an assessment rate of $0.0250 per 18-pound lug of grapes handled. In comparison, last year's budgeted expenditures were $110,000. The Committee recommended a crop estimate of 5,800,000 18-pound lugs, which is higher than the 5,500,000 18-pound lugs handled last year. The Committee also recommended carrying

over a financial reserve of $40,000, which would increase to $49,500 if the contingency fund is not expended. The assessment rate of $0.0250 per 18-pound lug of grapes handled recommended by the Committee is $0.0050 higher than the $0.0200 rate currently in effect. The higher assessment rate, applied to shipments of 5,800,000 18-pound lugs, would generate $145,000 in revenue and be sufficient to cover the anticipated expenses.

The major expenditures recommended by the Committee for the 2015 fiscal period include $15,500 for research, $17,000 for general office expenses, $62,750 for management and compliance expenses, $25,000 for research and preparation of materials such as the Committee's annual marketing policy statement, and $9,500 for a contingency reserve. The $15,500 research project is a continuation of a vine study in progress by the University of California, Riverside. In comparison, major expenditures for the 2014 fiscal period included $15,500 for research, $22,000 for general office expenses, and $62,500 for management and compliance expenses. Overall 2015 expenditures include an increase in management and compliance expenses and a decrease in general office expenses, and additional funds for a contingency reserve.

The assessment rate recommended by the Committee was derived by evaluating several factors, including estimated shipments for the 2015 season, budgeted expenses, and the level of available financial reserves. The Committee determined that the $0.0250 assessment rate would generate $145,000 in revenue to cover the budgeted expenses of $135,500, and a contingency reserve fund of $9,500.

Reserve funds by the end of 2015 are projected to be $40,000 if the $9,500 added to the contingency fund is expended or $49,500 if it is not expended. Both amounts are well within the amount authorized under the order. Section 925.41 of the order permits the Committee to maintain approximately one fiscal period's expenses in reserve.

The proposed assessment rate would continue in effect indefinitely unless modified, suspended, or terminated by USDA based upon a recommendation and information submitted by the Committee or other available information.

Although this assessment rate would be in effect for an indefinite period, the Committee would continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA would evaluate the Committee's recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Committee's 2015 budget and those for subsequent fiscal periods would be reviewed and, as appropriate, approved by USDA.

Initial Regulatory Flexibility Analysis

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

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

There are approximately 14 handlers of southeastern California grapes who are subject to regulation under the marketing order and about 41 grape producers in the production area. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $7,000,000, and small agricultural producers are defined as those whose annual receipts are less than $750,000. Eleven of the 14 handlers subject to regulation have annual grape sales of less than $7,000,000, according to USDA Market News Service and Committee data. In addition, information from the Committee and USDA's Market News indicates that at least 10 of 41 producers have annual receipts of less than $750,000. Thus, it may be concluded that a majority of the grape handlers regulated under the order and about 10 of the producers could be classified as small entities under the Small Business Administration's definitions.

This proposed rule would increase the assessment rate established for the Committee and collected from handlers for the 2015 and subsequent fiscal periods from $0.0200 to $0.0250 per 18-pound lug of grapes. The Committee unanimously recommended 2015 expenditures of $135,500, a contingency reserve fund of $9,500, and an assessment rate of $0.0250 per 18-pound lug of grapes handled. The proposed assessment rate of $0.0250 is $0.0050 higher than the 2014 rate currently in effect. The quantity of assessable grapes for the 2015 season is estimated at 5,800,000 18-pound lugs. Thus, the $0.0250 rate should generate $145,000 in income. In addition, reserve funds at the end of the year are projected to be $49,500, which is well within the order's limitation of approximately one fiscal period's expenses.

The major expenditures recommended by the Committee for the 2015 fiscal period include $15,500 for research, $17,000 for general office expenses, $62,750 for management and compliance expenses, $25,000 for research and preparation of materials such as the Committee's annual marketing policy statement, and $9,500 for the contingency reserve. In comparison, major expenditures for the 2014 fiscal period included $15,500 for research, $22,000 for general office expenses, and $62,500 for management and compliance expenses. Overall expenditures included an increase in management and compliance expenses and a decrease in general office expenses, and funding of a contingency reserve.

Prior to arriving at this budget, the Committee considered alternative expenditures and assessment rates, to include not increasing the $0.0200 assessment rate currently in effect. Based on a crop estimate of 5,800,000 18-pound lugs, the Committee ultimately determined that increasing the assessment rate to $0.0250 would generate sufficient funds to cover budgeted expenses. Reserve funds at the end of the 2015 fiscal period are projected to be $40,000 if the $9,500 contingency fund is expended or $49,500 if it is not expended. These amounts are well within the amount authorized under the order.

A review of historical crop and price information, as well as preliminary information pertaining to the upcoming fiscal period, indicates that the producer price for the 2014 season averaged about $22.00 per 18-pound lug of California grapes handled. If the 2015 producer price is similar to the 2014 price, estimated assessment revenue as a percentage of total estimated producer revenue would be 0.11 percent for the 2015 season ($0.0250 divided by $22.00 per 18-pound lug).

This action would increase the assessment obligation imposed on handlers. While assessments impose

some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived from the operation of the marketing order. In addition, the Executive Subcommittee and the Committee's meetings were widely publicized throughout the grape production area and all interested persons were invited to attend and participate in Committee deliberations on all issues. Like all Committee meetings, the October 30, 2014, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit comments on this proposed rule, including the regulatory and informational impacts of this action on small businesses.

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

This proposed rule would impose no additional reporting or recordkeeping requirements on either small or large California grape handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

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

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this action.

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

A 15-day comment period is provided to allow interested persons to respond to this proposed rule. Fifteen days is deemed appropriate because: (1) The 2015 fiscal period began on January 1, 2015, and the order requires that the rate of assessment for each fiscal period apply to all assessable grapes handled during such fiscal period; (2) the Committee needs to have sufficient funds to pay its expenses, which are incurred on a continuous basis; and (3) handlers are aware of this action, which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years.

List of Subjects in 7 CFR Part 925

Grapes, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 925 is proposed to be amended as follows:

PART 925—GRAPES GROWN IN A DESIGNATED AREA OF SOUTHEASTERN CALIFORNIA

■ 1. The authority citation for 7 CFR part 925 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 925.215 is revised to read as follows:

§ 925.215 Assessment rate.

On and after January 1, 2015, an assessment rate of $0.0250 per 18-pound lug is established for grapes grown in a designated area of southeastern California.

Dated: March 26, 2015.

Rex A. Barnes,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2015–07370 Filed 3–30–15; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–0675; Directorate Identifier 2014–NM–213–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Airbus Model A330–200, –200 Freighter, and –300 series airplanes; and all Airbus Model A340–200, –300, –500, and –600 series airplanes. This proposed AD was prompted by reports of cracks at certain frames of the forward cargo door. This proposed AD would require a detailed inspection for cracking of certain forward cargo doors, and repair if necessary. We are proposing this AD to detect and correct cracking at certain frames, which could result in the loss of structural integrity of the forward cargo door.

DATES: We must receive comments on this proposed AD by May 15, 2015.

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

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

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–0675; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116,

Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1138; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2015–0675; Directorate Identifier 2014–NM–213–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2014–0228, dated October 20, 2014 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Airbus Model A330–200, –200 Freighter, and –300 series airplanes; and all Airbus Model A340–200, –300, –500, and –600 series airplanes. The MCAI states:

> An A330 aeroplane operator reported recently cases of crack findings on two different aeroplanes, at frame 20A and at frame 20B close to beam 3 of the forward cargo door. The first finding was detected during scheduled maintenance, while the second one was found during an inspection prompted by the first finding. Subsequent analyses of these cracks identified that the first crack initiated at frame 20B, which is the first primary load path, leading to excessive loads at frame 20A and consequent cracking. Nevertheless, on the other aeroplane, a crack was detected on frame 20A only. Rupture of both frames 20A and 20B could lead to frame 21 failure after a limited number of flight cycles (FC).
>
> This condition, if not detected and corrected, may potentially result in the loss of structural integrity of the forward cargo door, which could ultimately jeopardise the aeroplane's safe flight.
>
> Prompted by these findings, Airbus issued Alert Operators Transmission (AOT) A52L010–14 to provide instructions for a one-time inspection of frames 20A, 20B and 21 in the area of beam 3, until the half pitch between beam 2 and beam 3.
>
> For the reasons described above, this [EASA] AD requires identification of the Part Number (P/N) of the affected forward cargo doors, a one-time detailed inspection (DET) of each affected door and, depending on findings, accomplishment of applicable corrective action(s) [contacting Airbus].
>
> This [EASA] AD is considered to be an interim action and further AD action may follow.

Required actions also include sending inspection results to Airbus. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–0675.

Related Service Information Under 1 CFR Part 51

Airbus has issued Alert Operators Transmission (AOT) A52L010–14, dated September 30, 2014. The service information describes procedures for an inspection for cracking of certain forward cargo doors, and repair if necessary. The actions described in this AOT are intended to correct the unsafe condition identified in the MCAI. This service information is reasonably available; see **ADDRESSES** for ways to access this service information.

FAA's Determination and Requirements of This Proposed AD

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

Costs of Compliance

We estimate that this proposed AD affects 89 airplanes of U.S. registry.

We also estimate that it would take about 1 work-hour per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost $0 per product. Based on these figures, we estimate the cost of this proposed AD on U.S. operators to be $7,565, or $85 per product.

In addition, we estimate that any necessary follow-on actions would take about 32 work-hours and require parts costing $654,850, for a cost of $657,570 per product. We have no way of determining the number of aircraft that might need this action.

Paperwork Reduction Act

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB control number. The control number for the collection of information required by this proposed AD is 2120–0056. The paperwork cost associated with this proposed AD has been detailed in the Costs of Compliance section of this document and includes time for reviewing instructions, as well as completing and reviewing the collection of information. Therefore, all reporting associated with this proposed AD is mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at 800 Independence Ave. SW., Washington, DC 20591, ATTN: Information Collection Clearance Officer, AES–200.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

3. Will not affect intrastate aviation in Alaska; and

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus: Docket No. FAA–2015–0675; Directorate Identifier 2014–NM–213–AD.

(a) Comments Due Date

We must receive comments by May 15, 2015.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the airplanes identified in paragraphs (c)(1) and (c)(2) of this AD, certificated in any category.

(1) Airbus Model A330–201, –202, –203, –223, –223F, –243, –243F, –301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes, all manufacturer serial numbers, except those on which Airbus Modification 202702 has been embodied in production.

(2) Airbus Model A340–211, –212, –213, –311, –312, –313, –541, and –642 airplanes, all manufacturer serial numbers.

(d) Subject

Air Transport Association (ATA) of America Code 52, Doors.

(e) Reason

This AD was prompted by reports of cracks at certain frames of the forward cargo door. We are issuing this AD to detect and correct cracking at certain frames, which could result in the loss of structural integrity of the forward cargo door.

(f) Compliance

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

(g) Inspection and Repair

(1) Within 200 flight cycles after the effective date of this AD, do a detailed inspection for cracking of an affected forward cargo door, having a part number identified in paragraphs (g)(1)(i) through (g)(1)(xii) of this AD, at frames 20A, 20B, and 21 areas located above beam 3, from outside and inside, in accordance with Airbus Alert Operators Transmission (AOT) A52L010–14, dated September 30, 2014.

(i) F523–70500–000.
(ii) F523–70550–004.
(iii) F523–70500–006.
(iv) F523–70500–008.
(v) F523–70500–010.
(vi) F523–70500–012.
(vii) F523–70500–014.
(viii) F523–70550–000.
(ix) F523–70550–002.
(x) F523–70500–004.
(xi) F523–70550–008.
(xii) F523–70550–050.

(2) If any crack is found during the inspection required by paragraph (g)(1) of this AD, before further flight, repair using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or Airbus's EASA Design Organization Approval (DOA).

(h) Definition of Detailed Inspection

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 a mirror, magnifying lenses, etc., may be necessary. Surface cleaning and elaborate procedures may be required.

(i) Reporting Requirement

Submit a report of the findings (both positive and negative) of the inspection required by paragraph (g)(1) of this AD to Serge KIYMAZ, Structure Engineer, Structure Engineering—SEES1 CUSTOMER SERVICES, Phone: +33(0)5 82 05 10 33, Fax: +33(0)5 61 93 36 14, email: *serge.kiymaz@airbus.com,* at the applicable time specified in paragraph (i)(1) or (i)(2) of this AD. The report must include the information identified in Airbus AOT A52L010–14, dated September 30, 2014.

(1) If the inspection was done on or after the effective date of this AD: Submit the report within 30 days after the inspection.

(2) If the inspection was done before the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

(j) Parts Installation Limitation

As of the effective date of this AD, installing a forward cargo door having any part number specified in paragraphs (g)(1)(i) through (g)(1)(xii) of this AD is permitted on any airplane, provided that prior to installation, the door is inspected and, depending on the findings, corrected, in accordance with Airbus AOT A52L010–14, dated September 30, 2014.

(k) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1138; fax 425- 227–1149. Information may be emailed to: *9–ANM–116–AMOC–REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

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

(3) Reporting Requirements: A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 5 minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave. SW., Washington, DC 20591, Attn: Information Collection Clearance Officer, AES–200.

(l) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2014–0228, dated October 20, 2014, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–0675.

(2) For service information identified in this AD, contact Airbus SAS, Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email *airworthiness.A330-A340@airbus.com;* Internet *http://www.airbus.com.* You may

view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on March 19, 2015.

Jeffrey E. Duven,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2015–07172 Filed 3–30–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–0679; Directorate Identifier 2013–NM–182–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede Airworthiness Directive (AD) 2012–13–06, for all Airbus Model A300 series airplanes and all Model A300 B4–600, B4–600R, and F4–600R series airplanes, and Model A300 C4–605R Variant F airplanes (collectively called Model A300–600 series airplanes). AD 2012–13–06 currently requires a one-time detailed inspection to determine the length of the fire shut-off valve (FSOV) bonding leads and for contact or chafing of the wires, and corrective actions if necessary. Since we issued AD 2012–13–06, a determination was made that the description of the inspection area specified in the service information was misleading; therefore, some operators might have inspected incorrect bonding leads. This proposed AD would instead require a new one-time detailed inspection of the FSOV bonding leads to ensure that the correct bonding leads are inspected, and corrective action if necessary. We are proposing this AD to detect and correct contact or chafing of wires and the bonding leads, which, if not detected, could be a source of sparks in the wing trailing edge, and could lead to an uncontrolled engine fire. May 5, 2015.

DATES: We must receive comments on this proposed AD by May 15, 2015.

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

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

For service information identified in this proposed AD, contact Airbus SAS, Airworthiness Office—EAW, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com*. You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–0679; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–2125; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2015–0679; Directorate Identifier 2013–NM–182–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

On June 21, 2012, we issued AD 2012–13–06, Amendment 39–17108 (77 FR 40485, July 10, 2012). AD 2012–13–06 requires actions intended to address an unsafe condition on all Airbus Model A300 series airplanes and all Model A300 B4–600, B4–600R, and F4–600R series airplanes, and Model A300 C4–605R Variant F airplanes (collectively called Model A300–600 series airplanes).

Since we issued AD 2012–13–06, the European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2013–0204, dated September 6, 2013 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> During a scheduled maintenance check, one operator reported inoperative Fire Shut Off Valve (FSOV). Investigations showed damage at wire located between engine 2 hydraulic FSOV and wing rear spar, in the zones 575/675, and at bonding lead, located between wing rib 7A and rib 8 below hydraulic pressure lines.
>
> Similar inspections on different aeroplanes have shown that one of the causes of damage is the contact between bonding lead and the harness, due to over length of the bonding lead.
>
> This condition, if not detected and corrected, could lead to either:
>
> —a potential explosive condition on-ground if the FSOV, that is installed in fuel vapor zone is commanded to close position, or
>
> —a temporary uncontrolled engine fire, if combined with a fire event in the nacelle fed by an hydraulic leakage and not controlled by the fire extinguishing system.
>
> As the affected wire is not powered during normal operation, no defect can be detected unless a test is performed on the FSOV during maintenance check.
>
> EASA issued AD 2011–0084 [*http://ad.easa.europa.eu/blob/easa_ad_2011_0084.pdf/AD_2011–0084_Superseded*] which required a one-time [detailed] inspection of the wires [for contact or chafing] located between [LH/RH] engines hydraulic FSOV and wing rear spar in the zones 575/675, and the bonding lead [for length] that is located between rib 7A and rib 8 below hydraulic pressure lines, and corrective actions [repair of wires or replacement of bonding leads] depending on findings.
>
> It appeared that the original issue of the Airbus inspection Service Bulletins (SB's) as

well as EASA AD 2011–0084 might have caused possible misunderstandings on the exact bonding leads and wires that are required to be inspected.

For the reasons described above, this [EASA] AD retains the requirements of EASA AD 2011–0084, which is superseded, and requires additional work on aeroplanes that have already been inspected in accordance with the instructions of the original issue of the SB's.

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–0679.

Related Service Information Under 1 CFR Part 51

Airbus has issued Service Bulletin A300–24–0106, Revision 01, including Appendices 01, 02, 03, and 04, dated March 26, 2013 (for Model A300 series airplanes); and Service Bulletin A300–24–6108, Revision 01, including Appendices 01, 02, 03, and 04, dated March 26, 2013 (for Model A300–600 series airplanes. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI. This service information is reasonably available; see **ADDRESSES** for ways to access this service information.

FAA's Determination and Requirements of This Proposed AD

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

Costs of Compliance

We estimate that this proposed AD affects 123 airplanes of U.S. registry.

We estimate that it would take about 8 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $500 per product. Based on these figures, we estimate the cost of this proposed AD on U.S. operators to be $145,140, or $1,180 per product.

In addition, we estimate that any necessary follow-on actions would take about 1 work-hour and require parts costing $50, for a cost of $135 per product. We have no way of determining the number of products that may need these actions.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2012–13–06, Amendment 39–17108 (77 FR 40485, July 10, 2012), and adding the following new AD:

Airbus: Docket No. FAA–2015–0679; Directorate Identifier 2013–NM–182–AD.

(a) Comments Due Date

We must receive comments by May 15, 2015.

(b) Affected ADs

This AD replaces AD 2012–13–06, Amendment 39–17108 (77 FR 40485, July 10, 2012).

(c) Applicability

This AD applies to the airplanes specified in paragraphs (c)(1), (c)(2), and (c)(3) of this AD, certificated in any category, all certificated models; all manufacturer serial numbers.

(1) Airbus Model A300 B2–1A, B2–1C, B2K–3C, B2–203, B4–2C, B4–103, and B4–203 airplanes.

(2) Airbus Model A300 B4–601, B4–603, B4–620, B4–622, B4–605R, B4–622R, F4–605R, and F4–622R airplanes.

(3) Airbus Model A300 C4–605R Variant F airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 24, Electrical Power.

(e) Reason

This AD was prompted by a determination that the description of the inspection area specified in the service information was misleading; therefore, some operators might have inspected incorrect bonding leads. We are issuing this AD to detect and correct contact or chafing of wires and the bonding leads, which, if not detected, could be a source of sparks in the wing trailing edge, and could lead to an uncontrolled engine fire.

(f) Compliance

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

(g) Inspection of the Fire Shut-off Valve (FSOV) Bonding Leads

At the applicable time specified in paragraph (g)(1) or (g)(2) of this AD: Do a one-time detailed inspection to determine the length of the FSOV bonding leads, and to detect contact or chafing of the wires located on the left-hand (LH) and right-hand (RH) sides of the wing rear spar, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–24–0106, Revision 01, including Appendices 01, 02, 03, and 04, dated March 26, 2013 (for Model A300 series airplanes); or Airbus Service Bulletin A300–24–6108, Revision 01, including Appendices 01, 02, 03, and 04, dated March 26, 2013 (for Model A300–600 series airplanes); as applicable.

(1) For airplanes on which the inspection required by paragraph (g) of AD 2012–13–06,

Amendment 39–17108 (77 FR 40485, July 10, 2012), has not been done as of the effective date of this AD: Inspect within 4,500 flight hours or 30 months after August 14, 2012 (the effective date of AD 2012–13–06), whichever occurs first.

(2) For airplanes on which the inspection required by paragraph (g) of AD 2012–13–06, Amendment 39–17108 (77 FR 40485, July 10, 2012), has been done as of the effective date of this AD: Inspect within 4,500 flight hours or 30 months after the effective date of this AD, whichever occurs first.

(h) Corrective Action for FSOV Bonding Leads

If, during the inspection required by paragraph (g) of this AD, the length of the bonding lead(s) is more than 80 millimeters (mm) (3.15 inches): Before further flight, replace the bonding lead(s) with a new bonding lead having a length equal to 80 mm ± 2 mm (3.15 inches) ± 0.08 inch, in accordance with the Accomplishment Instructions of the applicable service information identified in paragraph (g) of this AD.

(i) Repair of the Wires of the LH and RH Sides

If, during the inspection required by paragraph (g) of this AD, any contact or chafing of the wires is found, repair the wires before further flight, in accordance with the Accomplishment Instructions of the applicable service information identified in paragraph (g) of this AD.

(j) Parts Installation Prohibition

As of August 14, 2012 (the effective date of AD 2012–13–06, Amendment 39–17108 (77 FR 40485, July 10, 2012), no person may install any bonding lead longer than 80 mm ± 2 mm (3.15 inches) ± 0.08 inch, located between the LH/RH engine hydraulic FSOV and wing rear spar in zones 575/675 on any airplane.

(k) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–2125; fax 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov*. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

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

(l) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2013–0204, dated September 6, 2013, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–0679.

(2) For service information identified in this AD, contact Airbus SAS, Airworthiness Office—EAW, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com*. You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on March 24, 2015.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2015–07280 Filed 3–30–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–0677; Directorate Identifier 2013–NM–244–AD]

RIN 2120–AA64

Airworthiness Directives; Gulfstream Aerospace Corporation Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all Gulfstream Aerospace Corporation Model GVI airplanes. This proposed AD was prompted by reports of corrosion on in-service air non-return valves. This proposed AD would require a revision to the Emergency Procedures section of the airplane flight manual (AFM). This proposed AD would also require a revision to the maintenance or inspection program, as applicable, to incorporate airworthiness limitations for the high pressure (HP) Stage 5 air non-return valves. We are proposing this AD to ensure the flightcrew is provided with procedures to mitigate the risks associated with failure of the HP Stage 5 air non-return valve. Failure of the HP Stage 5 air non-return valve in the open position could result in engine instability and uncommanded in-flight shutdown.

DATES: We must receive comments on this proposed AD by May 15, 2015.

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

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

For service information identified in this proposed AD, contact Gulfstream Aerospace Corporation, Technical Publications Dept., P.O. Box 2206, Savannah, GA 31402–2206; telephone 800–810–4853; fax 912–965–3520; email *pubs@gulfstream.com;* Internet *http://www.gulfstream.com/product_support/technical_pubs/pubs/index.htm.* You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–0677; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Eric Potter, Aerospace Engineer, Propulsion and Services Branch, ACE–118A, Atlanta Aircraft Certification Office, FAA, 1701 Columbia Avenue, College Park, GA 30337; phone: 404–474–5583;

fax: 404–474–5606; email: *eric.potter@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2015–0677; Directorate Identifier 2013–NM–244–AD at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

We received a report of multiple instances of corrosion on in-service air non-return valves on Gulfstream Aerospace Corporation Model GIV–X airplanes. This corrosion has resulted in failure of air non-return valves.

The same part number air non-return valve is installed on the Gulfstream Aerospace Corporation Model GVI airplanes, but it serves a different purpose in that application, where it functions as an HP Stage 5 air non-return valve.

Failure of the HP Stage 5 air non-return valve in the open position on the Model GVI airplanes could supply high-stage pressure to the low-stage port, resulting in engine instability and uncommanded in-flight shutdown. This condition could also have an adverse effect on subsequent in-flight engine re-start efforts if the flightcrew follows the current AFM procedures.

In light of this information, the FAA has determined that certain procedures should be included in the FAA-approved AFM for Model GVI airplanes to ensure the flightcrew is provided with procedures to mitigate the risks associated with failure of the HP Stage 5 air non-return valve. We have also determined that the maintenance or inspection program, as applicable, should be revised to incorporate an airworthiness limitation for the HP Stage 5 air non-return valves.

Related Service Information Under 1 CFR Part 51

We reviewed Section 04–08–20, Normal Airstart-Automatic; Section 04–08–30, Manual Airstart-Starter Assist; and Section 04–08–40, Manual Airstart-Windmilling; of Chapter 04, Emergency Procedures, of the Gulfstream GVI (G650) AFM, Document Number GAC–AC–G650–OPS–0001, Revision 5, dated August 12, 2013. This service information describes revised procedures for in-flight engine restart and operating procedures.

In addition, we reviewed Section 05–10–10, Airworthiness Limitations, of Chapter 05, Time Limits/Maintenance Checks, of the Gulfstream GVI (G650) Maintenance Manual (MM), Revision 4, dated September 30, 2013. This service information adds an airworthiness limitation for the HP Stage 5 air non-return valve.

This service information is reasonably available; see ADDRESSES for ways to access this service information.

FAA's Determination

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in the service information described previously.

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

Interim Action

We consider this proposed AD interim action. The manufacturer is currently developing a modification that will positively address the unsafe condition identified in this proposed AD. Once this modification is developed, approved, and available, we might consider additional rulemaking.

Costs of Compliance

We estimate that this proposed AD affects 52 airplanes of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
AFM revision	1 work-hour × $85 per hour = $85	$0	$85	$4,420
MM revision	1 work-hour × $85 per hour = $85	0	85	4,420

Authority for This Rulemaking

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

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

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the

distribution of power and responsibilities among the various levels of government.

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

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

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

(3) Will not affect intrastate aviation in Alaska, and

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Gulfstream Aerospace Corporation: Docket No. FAA–2015–0677; Directorate Identifier 2013–NM–244–AD.

(a) Comments Due Date

We must receive comments by May 15, 2015.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Gulfstream Aerospace Corporation Model GVI airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 36, Pneumatic.

(e) Unsafe Condition

This AD was prompted by reports of corrosion on in-service air non-return valves. We are issuing this AD to ensure the flightcrew is provided with procedures to mitigate the risks associated with failure of the high pressure (HP) Stage 5 air non-return valve. Failure of the HP Stage 5 air non-return valve in the open position could result in engine instability and uncommanded in-flight shutdown.

(f) Compliance

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

(g) Revision of the Airplane Flight Manual (AFM)

Within 30 days after the effective date of this AD: Revise the Emergency Procedures section of the AFM by inserting Section 04–08–20, Normal Airstart-Automatic; Section 04–08–30, Manual Airstart-Starter Assist; and Section 04–08–40, Manual Airstart-Windmilling; of Chapter 04, Emergency Procedures; of the Gulfstream GVI (G650) AFM, Document Number GAC–AC–G650–OPS–0001, Revision 5, dated August 12, 2013.

(h) Revision of Maintenance or Inspection Program

Within 30 days after the effective date of this AD: Revise the airplane maintenance manual or inspection program, as applicable, by incorporating the requirement for the HP Stage 5 air non-return valve from Section 05–10–10, Airworthiness Limitations, of Chapter 05, Time Limits/Maintenance Checks, of the Gulfstream GVI (G650) Maintenance Manual (MM), Revision 4, dated September 30, 2013. The initial compliance time for replacement of the HP Stage 5 air non-return valve is at the applicable time specified in Section 05–10–10, Airworthiness Limitations, of Chapter 05, Time Limits/Maintenance Checks, of the Gulfstream GVI (G650) MM, Revision 4, dated September 30, 2013, or within 30 days after the effective date of this AD, whichever occurs later.

(i) No Alternative Actions or Intervals

After the maintenance or inspection program has been revised, as required by paragraph (h) of this AD, no alternative actions (*e.g.,* inspections) or intervals may be used unless the actions or intervals are approved as an alternative method of compliance in accordance with the procedures specified in paragraph (j) of this AD.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Atlanta Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in paragraph (k)(1) of this AD.

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(k) Related Information

(1) For more information about this AD, contact Eric Potter, Aerospace Engineer, Propulsion and Services Branch, ACE–118A, FAA, Atlanta ACO, 1701 Columbia Avenue, College Park, GA 30337; phone: 404–474–5583; fax: 404–474–5606; email: *eric.potter@faa.gov.*

(2) For service information identified in this AD, contact Gulfstream Aerospace Corporation, Technical Publications Dept., P.O. Box 2206, Savannah, GA 31402–2206; telephone 800–810–4853; fax 912–965–3520; email *pubs@gulfstream.com;* Internet *http://www.gulfstream.com/product_support/technical_pubs/pubs/index.htm.* You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on March 19, 2015.

Jeffrey E. Duven,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2015–07301 Filed 3–30–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–0678; Directorate Identifier 2013–NM–207–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede Airworthiness Directive (AD) 2013–13–04, for certain Airbus Model A318, A319, A320, and A321 series airplanes. AD 2013–13–04 currently requires installing a power interruption protection circuit for the landing gear control interface unit (LGCIU). Since we issued AD 2013–13–04, we have determined that additional work is necessary to adequately address the identified unsafe condition. This proposed AD would require a new modification of any previously modified LGCIU. This proposed AD would also require revising the maintenance or inspection program to reduce a certain functional check interval. This proposed AD also adds airplanes to the applicability. We are proposing this AD to prevent untimely unlocking and/or retraction of the nose landing gear (NLG), which, while on the ground, could result in injury to ground personnel and damage to the airplane.

DATES: We must receive comments on this proposed AD by May 15, 2015.

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

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

For service information identified in this AD, contact Airbus, Airworthiness Office—EAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com*. You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–0678; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1405; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2015–0678; Directorate Identifier 2013–NM–207–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

On June 14, 2013, we issued AD 2013–13–04, Amendment 39–17492 (78 FR 41286, July 10, 2013). AD 2013–13–04 requires actions intended to address an unsafe condition on certain Airbus Model A318, A319, A320, and A321 series airplanes. Since we issued AD 2013–13–04, Amendment 39–17492 (78 FR 41286, July 10, 2013), the European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2013–0202, dated September 5, 2013 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for Airbus Model A318–111, –112, –121, and –122 airplanes; Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes; Model A320–211, –212, –214, –231, –232, and –233 airplanes; and Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes. The MCAI states:

> After a push back from the gate, an A320 aeroplane was preparing to initiate taxi, when an uncommanded nose landing gear (NLG) retraction occurred, causing the nose of the aeroplane to hit the ground. Investigations revealed that the retraction was caused by a combination of a power interruption to Landing Gear Control and Interface Units (LGCIU) and an internal hydraulic leak through the landing gear (LG) selector valve 40GA.
>
> Deeper investigations have revealed that LGCIU power interruption appears during engine start at each flight. Even though no incident has been reported in service, it has been determined that a non-compliance to the safety objective exists when combined with a dormant single failure of the selector valve seal leaking.
>
> This condition, if not corrected, could lead to further incidents of untimely unlocking and/or retraction of the NLG which, while on the ground, could result in injury to ground personnel and damage to the aeroplane.
>
> To address the possible hydraulic leak of the LG selector valve, EASA issued AD 2007–0065 [*http://ad.easa.europa.eu/blob/easa_ad_2007_0065.pdf/AD_2007-0065]* currently at Revision 2.
>
> To address the risk of untimely unlocking and/or retraction of the NLG, EASA issued AD 2011–0202 [*http://ad.easa.europa.eu/blob/easa_ad_2011_0202.pdf/AD_2011-0202]* to require installation of a power interruption protection circuit to the LGCIU and accomplishment of associated modifications.
>
> Since that [EASA] AD was issued, it has been discovered that additional work is necessary to adequately correct this unsafe condition and consequently, Airbus issued Service Bulletin (SB) A320–32–1346 to Revision 05. An update of the maintenance programme is required as well, following the required modification.
>
> For the reasons described above, this [EASA] AD retains the requirements of EASA AD 2011–0202, which is superseded, and requires certain additional actions, as defined in the revised Airbus SB, as applicable to aeroplane model, and an update of the approved maintenance programme.

The additional actions include a new modification of any previously modified LGCIU, and reducing a certain functional check interval. This proposed AD also adds airplanes on which Airbus modification 37866 has been embodied in production to the applicability. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–0678.

Related Service Information Under 1 CFR Part 51

Airbus has issued Service Bulletin A320–32–1346, Revision 05, dated January 13, 2012. The service information describes procedures for modifying the LGCIU. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI. This service information is reasonably available; see **ADDRESSES** for ways to access this service information.

FAA's Determination and Requirements of This Proposed AD

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

Costs of Compliance

We estimate that this proposed AD affects 851 airplanes of U.S. registry.

The actions required by AD 2013–13–04, Amendment 39–17492 (78 FR 41286, July 10, 2013), take about 48 work-hours per product, at an average labor rate of $85 per work-hour. Required parts will cost about $8,220

per product. Based on these figures, the estimated cost of the actions that are required by AD 2013–13–04 is $12,300 per product.

We estimate that it would take about 46 work-hours per product to comply with the new modification in this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $9,650 per product. Based on these figures, we estimate the cost of the new modification on U.S. operators to be $11,539,560 or $13,560 per product.

We estimate that it would take about 1 work-hour per product to revise the maintenance or inspection program in this proposed AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of revising the maintenance program on U.S. operators to be $72,335 or $85 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

3. Will not affect intrastate aviation in Alaska; and

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2013–13–04, Amendment 39–17492 (78 FR 41286, July 10, 2013), and adding the following new AD:

Airbus: Docket No. FAA–2015–0678; Directorate Identifier 2013–NM–207–AD.

(a) Comments Due Date

We must receive comments by May 15, 2015.

(b) Affected ADs

This AD replaces AD 2013–13–04, Amendment 39–17492 (78 FR 41286, July 10, 2013).

(c) Applicability

(1) This AD applies to Airbus Model A318–111, –112, –121, and –122 airplanes; Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes; Model A320–211, –212, –214, –231, –232, and –233 airplanes; and Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes; certificated in any category; all manufacturer serial numbers.

(d) Subject

Air Transport Association (ATA) of America Code 32, Landing Gear.

(e) Reason

This AD was prompted by a determination that additional work is necessary to adequately address the identified unsafe condition. We are issuing this AD to prevent untimely unlocking and/or retraction of the nose landing gear (NLG), which, while on the ground, could result in injury to ground personnel and damage to the airplane.

(f) Compliance

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

(g) Retained Modification

This paragraph restates the requirements of paragraph (g) of AD 2013–13–04, Amendment 39–17492 (78 FR 41286, July 10, 2013). For all airplanes except airplanes on which Airbus modification 37866 has been embodied in production: At the applicable compliance time specified in paragraph (g)(1) or (g)(2) of this AD: Install a power interruption protection circuit for the landing gear control interface unit (LGCIU), in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–32–1346, Revision 04, including Appendices 01 and 02, dated April 22, 2011 (for Model A318, A319, A320, and A321 series airplanes other than the Model A319CJ (corporate jet) airplanes); or Airbus Service Bulletin A320–32–1349, Revision 03, including Appendix 1, dated October 5, 2011 (for Model A319CJ (corporate jet) airplanes).

(1) For airplanes that have embodied Airbus Modification 38947 specified in Airbus Service Bulletin A320–32–1348 during production or in service: Within 72 months after August 14, 2013 (the effective date of AD 2013–13–04, Amendment 39–17492 (78 FR 41286, July 10, 2013)).

(2) For all airplanes other than those identified in paragraph (g)(1) of this AD: Within 60 months after August 14, 2013 (the effective date of AD 2013–13–04, Amendment 39–17492 (78 FR 41286, July 10, 2013)).

(h) Retained Re-Identification of Identification Plates

This paragraph restates the requirements of paragraph (h) of AD 2013–13–04, Amendment 39–17492 (78 FR 41286, July 10, 2013). For airplanes on which the installation required by paragraph (g) of this AD has been done before August 14, 2013 (the effective date of AD 2013–13–04, Amendment 39–17492 (78 FR 41286, July 10, 2013)) using Airbus Service Bulletin A320–32–1346, dated December 4, 2008 (for Model A318, A319, A320, and A321 series airplanes other than Model A319CJ (corporate jet) airplanes): Within the applicable times specified in paragraphs (g)(1) and (g)(2) of this AD, re-identify the identification plates, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–32–1346, Revision 04, including Appendices 01 and 02, dated April 22, 2011 (for Model A318, A319, A320, and A321 series airplanes other than Model A319CJ (corporate jet) airplanes).

(i) New Modification

For airplanes identified in paragraphs (i)(1), (i)(2), and (i)(3) of this AD except airplanes on which Airbus modification 37866 has been embodied in production: Modify the LGCIU at the applicable time specified in paragraph (i)(1), (i)(2), or (i)(3) of this AD, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–32–1346, Revision 05, dated January 13, 2012, or Airbus Service Bulletin A320–32–1349, Revision 03, including Appendix 1, dated October 5, 2011 (for Model A319CJ (corporate jet) airplanes). Accomplishing the modification in this paragraph terminates the actions required by paragraphs (g) and (h) of this AD.

(1) For airplanes on which any LG selector valve having part number (P/N) 114079019 is installed and that have embodied Airbus Modification 38947 specified in Airbus Service Bulletin A320–32–1348 during production or in service: Modify the LGCIU within 72 months after the effective date of this AD.

(2) For airplanes on which any LG selector valve 40GA having a part number listed in paragraphs (i)(2)(i) through (i)(2)(xii) of this AD, provided the valve has the marking ''DI'' or ''DI–BE'' recorded on its amendment plates: Modify the LGCIU within 72 months after the effective date of this AD.

(i) P/N 114079001.
(ii) P/N 114079005.
(iii) P/N 114079009.
(iv) P/N 114079013.
(v) P/N 114079001A.
(vi) P/N 114079005A.
(vii) P/N 114079009A.
(viii) P/N114079015.
(ix) P/N 114079001AB.
(x) P/N 114079005AB.
(xi) P/N 114079009AB.
(xii) P/N 114079017.

(3) For all airplanes other than those identified in paragraphs (i)(1) and (i)(2) of this AD: Modify the LGCIU within 60 months after the effective date of this AD.

(j) New Modification for Airplanes Previously Modified

For airplanes that have been modified as of the effective date of this AD as specified in the applicable service information identified in paragraph (j)(1), (j)(2), (j)(3), or (j)(4) of this AD, except airplanes on which Airbus modification 37866 has been embodied in production: Within 72 months after the effective date of this AD, do the additional modification of the LGCIU, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–32–1346, Revision 05, dated January 13, 2012.

(1) Airbus Service Bulletin A320–32–1346, Revision 01, dated October 27, 2009, which is not incorporated by reference in this AD.

(2) Airbus Service Bulletin A320–32–1346, Revision 02, dated November 4, 2009, which is not incorporated by reference in this AD.

(3) Airbus Service Bulletin A320–32–1346, Revision 03, dated January 7, 2010, which is not incorporated by reference in this AD.

(4) Airbus Service Bulletin A320–32–1346, including Appendices 01 and 02, Revision 04, dated April 22, 2011, which is incorporated by reference in AD 2013–13–04, Amendment 39–17492 (78 FR 41286, July 10, 2013).

(k) New Maintenance or Inspection Program Revision

Before further flight after accomplishing the actions specified in paragraph (i) or (j) of this AD or within 7 days after the effective date of this AD, whichever occurs later: Revise the maintenance or inspection program, as applicable, to incorporate Task 32.30.00.17, ''Functional Check of LGCIU Power Supply Relays,'' of Section C–32 of Section C, Systems and Powerplant, of the Airbus A318/A319/A320/A321 Maintenance Review Board Report, Revision 18, dated March 2013. The initial compliance time is within 4,000 flight hours after accomplishing the additional modification of the LGCIU.

(l) Credit for Previous Actions

This paragraph provides credit for A319 Corporate Jet airplanes for the modification required by paragraph (g) of this AD if that modification was performed before the effective date of this AD using Airbus Service Bulletin A320–32–1349, dated December 4, 2008; Airbus Service Bulletin A320–32–1349, Revision 01, dated August 31, 2009; or Airbus Service Bulletin A320–32–1349, Revision 02, dated June 16, 2010.

(m) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1405; fax 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) AMOCs approved previously for AD 2013–13–04, Amendment 39–17492 (78 FR 41286, July 10, 2013) are approved as AMOCs for the corresponding provisions of this AD.

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

(n) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2013–0202, dated September 5, 2013, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–0678.

(2) For service information identified in this AD, contact Airbus, Airworthiness Office—EAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.* You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on March 20, 2015.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2015–07281 Filed 3–30–15; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2015–0165; FRL–9925–31–Region 9]

Promulgation of Air Quality Implementation Plans; Arizona; Regional Haze Federal Implementation Plan; Reconsideration

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to revise part of the Arizona Regional Haze (RH) Federal Implementation Plan (FIP) applicable to the Coronado Generating Station (Coronado). In response to a petition for reconsideration from the Salt River Project Agricultural Improvement and Power District (SRP), the owner/operator of Coronado, we are proposing to replace a plant-wide compliance method with a unit-specific compliance method for determining compliance with the best available retrofit technology (BART) emission limits for nitrogen oxides (NO_X) from Units 1 and 2 at Coronado. While the plant-wide limit for the NO_X emissions from Units 1 and 2 were established as 0.065 lb/MMBtu, we are proposing a unit-specific limit of 0.065 lb/MMBtu for Unit 1 and 0.080 lb/MMBtu for Unit 2. In addition, we are proposing to revise the work practice standard in the FIP for Coronado. Finally, we are proposing to remove the affirmative defense for malfunctions from the Arizona RH FIP, which applies to both Coronado and the Cholla Power Plant (Cholla).

DATES: Written comments must be submitted to the designated contact on or before May 15, 2015. Requests for a public hearing must be received on or before April 15, 2015.

ADDRESSES: Submit your comments, identified by docket number EPA–R09–OAR–2015–0165, by one of the following methods:

• *Federal Rulemaking portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
• *Email: webb.thomas@epa.gov.*
• *Fax:* 415–947–3579 (Attention: Thomas Webb).
• *Mail, Hand Delivery, or Courier:* Thomas Webb, EPA Region 9, Air Division (AIR–2), 75 Hawthorne Street, San Francisco, California 94105. Hand and courier deliveries are only accepted Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays. Special arrangements should be made for deliveries of boxed information.

See the **SUPPLEMENTARY INFORMATION** section for further instructions on where and how to learn more about this proposal, attend a public hearing, or submit comments.

FOR FURTHER INFORMATION CONTACT: Thomas Webb, U.S. EPA, Region 9, Planning Office, Air Division, Air-2, 75 Hawthorne Street, San Francisco, CA 94105. Thomas Webb can be reached at telephone number (415) 947–4139 and via electronic mail at *webb.thomas@epa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. General Information
II. Background
III. Proposed FIP Revision
IV. EPA's Proposed Action
V. Statutory and Executive Order Reviews

I. General Information

A. Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

• The words or initials *Act* or *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.
• The initials *ADEQ* mean or refer to the Arizona Department of Environmental Quality.
• The words *Arizona* and *State* mean the State of Arizona.
• The initials *BART* mean or refer to Best Available Retrofit Technology.
• The term *Class I area* refers to a mandatory Class I Federal area.[1]
• The initials *CBI* mean or refer to Confidential Business Information.
• The initials *EGU* mean or refer to Electric Generating Unit.
• The words *EPA, we, us,* or *our* mean or refer to the United States Environmental Protection Agency.
• The initials *FIP* mean or refer to Federal Implementation Plan.
• The initials *LNB* mean or refer to low-NO_X burners.
• The initials *MMBtu* mean or refer to million British thermal units.
• The initials *MW* mean or refer to megawatts.
• The initials NO_X mean or refer to nitrogen oxides.
• The initials *NP* mean or refer to National Park.
• The initials *OFA* mean or refer to over fire air.
• The initials *RMB* mean or refer to RMB Consulting and Research.
• The initials *S&L* mean or refer to Sargent and Lundy, a consulting firm.
• The initials *SCR* mean or refer to Selective Catalytic Reduction.
• The initials *SIP* mean or refer to State Implementation Plan.
• The initials *SRP* mean or refer to the Salt River Project Agricultural Improvement and Power District.
• The initials *UPL* mean or refer to Upper Prediction Limit.

B. Docket

The proposed action relies on documents, information, and data that are listed in the index on *http://www.regulations.gov* under docket number EPA–R09–OAR–2015–0165. Although listed in the index, some information is not publicly available (*e.g.,* Confidential Business Information (CBI)). Certain other material, such as copyrighted material, is publicly available only in hard copy form. Publicly available docket materials are accessible either electronically at *http://www.regulations.gov* or in hard copy at the Planning Office of the Air Division, AIR–2, EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105. EPA requests that you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket from Monday through Friday, 9–5:00 PDT, excluding Federal holidays.

C. Instructions for Submitting Comments to EPA

Written comments must be submitted on or before May 15, 2015. Submit your comments, identified by docket number EPA–R09–OAR–2015–0165, by one of the following methods:

• *Federal Rulemaking portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
• *Email: webb.thomas@epa.gov.*
• *Fax:* 415–947–3579 (Attention: Thomas Webb).
• *Mail, Hand Delivery, or Courier:* Thomas Webb, EPA Region 9, Air Division (AIR–2), 75 Hawthorne Street, San Francisco, California 94105. Hand and courier deliveries are only accepted Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays. Special arrangements should be made for deliveries of boxed information.

EPA's policy is to include all comments received in the public docket without change. We may make comments available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be CBI or other information for which disclosure is restricted by statute. Do not submit information that you consider to be CBI or that is otherwise protected through *http://www.regulations.gov* or email. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA, without going through *http://www.regulations.gov,* we will include your email address as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. 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. Electronic files should not include special characters or any form of encryption, and be free of any defects or viruses.

D. Submitting Confidential Business Information

Do not submit CBI to EPA through *http://www.regulations.gov* or email. Clearly mark the part or all of the information that you claim as CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, you must submit a copy of the comment that does not contain the information claimed as CBI for inclusion in the public docket. We will not disclose information so marked except in accordance with procedures set forth in 40 CFR part 2.

E. Tips for Preparing Your Comments

When submitting comments, remember to:

• Identify the rulemaking by docket number and other identifying

[1] Although states and tribes may designate as Class I additional areas which they consider to have visibility as an important value, the requirements of the visibility program set forth in section 169A of the CAA apply only to ''mandatory Class I Federal areas.''

information (*e.g.,* subject heading, **Federal Register** date and page number).

- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the identified comment period deadline.

F. Public Hearings

If anyone contacts EPA by April 15, 2015 requesting to speak at a public hearing, EPA will schedule a public hearing and announce the hearing in the **Federal Register**. Contact Thomas Webb at *webb.thomas@epa.gov* or at (415) 947–4139 to request a hearing or to determine if a hearing will be held.

II. Background

A. Summary of Statutory and Regulatory Requirements

Congress created a program for protecting visibility in the nation's national parks and wilderness areas in 1977 by adding section 169A to the CAA. This section of the CAA establishes as a national goal the ''prevention of any future, and the remedying of any existing, impairment of visibility in mandatory Class I Federal areas which impairment results from man-made air pollution.'' [2] It also directs states to evaluate the use of retrofit controls at certain larger, often uncontrolled, older stationary sources in order to address visibility impacts from these sources. Specifically, section 169A(b)(2)(A) of the CAA requires states to revise their State Implementation Plans (SIPs) to contain such measures as may be necessary to make reasonable progress towards the natural visibility goal, including a requirement that certain categories of existing major stationary sources built between 1962 and 1977 procure, install, and operate best available retrofit technology (BART) controls. These sources are referred to as ''BART-eligible'' sources.[3] In the 1990 CAA Amendments, Congress amended the visibility provisions in the CAA to focus attention on the problem of regional haze, which is visibility impairment produced by a multitude of sources and activities located across a broad geographic area.[4] We promulgated the Regional Haze Rule (RHR) in 1999, which requires states to develop and implement SIPs to ensure reasonable progress toward improving visibility in mandatory Class I Federal areas [5] by reducing emissions that cause or contribute to regional haze.[6] Under the RHR, states are directed to conduct BART determinations for BART-eligible sources that may be anticipated to cause or contribute to any visibility impairment in a Class I area.[7]

B. History of FIP BART Determination

The Arizona Department of Environmental Quality (ADEQ) submitted a RH SIP (''Arizona RH SIP'') under Section 308 of the RHR to EPA Region 9 on February 28, 2011. The Arizona RH SIP included BART determinations for NO_X, particulate matter (PM), and sulfur dioxide (SO_2) for Units 1 and 2 at the Coronado Generating Station. We proposed on July 20, 2012, to approve ADEQ's BART determinations for PM and SO_2, but to disapprove its determination for NO_X at Coronado.[8] In the same notice, we also proposed a FIP that included a NO_X BART emission limit of 0.050 lb/MMbtu for Unit 1 and 0.080 lb/MMbtu for Unit 2 based on a 30-boiler-operating-day (BOD) rolling average. These limits correspond to the use of Selective Catalytic Reduction (SCR) control technology to reduce NO_X emissions. We noted that a consent decree between SRP and EPA required the installation of SCR and compliance with a NO_X emission limit of 0.080 lb/MMBtu (30–BOD rolling average) at Coronado Unit 2 by June 1, 2014. We explained that:

> . . . the emission limit of 0.080 lb/MMBtu established in the consent decree was not the result of a BART five-factor analysis, nor does the consent decree indicate that SCR at 0.080 lb/MMBtu represents BART. Nonetheless, given the compliance schedule established in the consent decree and the preliminary information received from SRP regarding the status of design and construction of the SCR system, it appears that achieving a 0.050 lb/MMBtu emission rate may not be technically feasible. Even if it is feasible, achievement of this emission rate may not be cost-effective. Therefore, we are proposing an emission limit of 0.080 lb/MMBtu as BART for NO_X at Unit 2. However, if we do not receive sufficient documentation establishing that achievement of a more stringent limit is infeasible or not cost-effective, then we may determine that a more stringent limit for this unit is required in our final action.[9]

In its comments on our proposal, SRP asserted that a NO_X emission rate of 0.050 lb/MMBtu was not achievable at either of the Coronado units, due to their startup/shutdown operating profile. In support of this assertion, SRP submitted reports by two consultants, Sargent and Lundy (S&L) and RMB Consulting and Research (RMB), which indicated that the Coronado units could achieve a rolling 30-day emission rate in the range of 0.053 to 0.072 lb/MMBtu.[10] Specifically, the S&L report examined the effect of multiple startup/shutdown events on emission rates over a 30-day period for Unit 2. The S&L report also examined potential measures to improve the performance of the current SCR design for Unit 2, including installation of a ''low load temperature control system.'' We explained the purpose of this control system in the preamble to our final rule:

> As described in the S&L report, periods of low load operation generally consist of operation between loads of 138 MW to 270 MW (operation above 270 MW can be considered ''high'' load). Broadly speaking, the temperature in the SCR system will fall below 599 degrees F during these periods of low load operation, which is the minimum temperature required for effective NO_X control. A low load temperature control system increases the temperature at the SCR inlet in order to maintain 599 degrees F, allowing operation of the SCR system during periods of low load. Without this control system, the Coronado Unit 2 SCR system will not operate during periods of low load.[11]

The low-load temperature-control system is referred to as both ''pegging steam'' and ''steam reheat'' in the various documents submitted by SRP. During periods of low load (138 MW to 270 MW), a certain amount of steam is routed to the SCR inlet in order to raise the inlet temperature to above 599 degrees F, which allows for proper operation of the SCR. At loads below 138 MW, the SCR could not operate even with the low-load temperature-control system.

In setting the NO_X emission limits for Coronado in the final Arizona RH FIP, we considered the information and analyses contained in the S&L report

[2] 42 U.S.C. 7491(a)(1).

[3] 40 CFR 51.301.

[4] See CAA section 169B, 42 U.S.C. 7492.

[5] Areas designated as mandatory Class I Federal areas consist of national parks exceeding 6000 acres, wilderness areas, and national memorial parks exceeding 5000 acres, and all international parks that were in existence on August 7, 1977. 42 U.S.C. 7472(a). When we use the term ''Class I area'' in this action, we mean a ''mandatory Class I Federal area.''

[6] See generally 40 CFR 51.308.

[7] 40 CFR 51.308(e).

[8] 77 FR 42834.

[9] 77 FR 42864.

[10] 77 FR 72555.

[11] *Id.*

and the RMB report.[12] We concluded that:

> In recognition of the work already performed by SRP to meet the consent decree emission limit of 0.080 lb/MMBtu for Unit 2, and to avoid interfering with SRP's ability to meet that requirement by the deadline of June 1, 2014, we have decided not to require a BART emission limit for Coronado 2 more stringent than 0.080 lb/MMBtu. Instead, we are finalizing a plant-wide NO_X emission limit for Coronado of 0.065 lb/MMBtu on a rolling 30-day average, which will provide a sufficient compliance margin for startup and shutdown events. We are also structuring the compliance determination method so that, when one of the two units is not operating, its emissions from the preceding thirty boiler-operating-days will continue to be included in the two-unit average. We expect that SRP can meet this limit by installing a low load temperature control system on Unit 2 and an SCR system including a low load temperature control system on Unit 1.[13]

Please see our final rule published on December 5, 2012, for further information on the BART determinations and compliance methodology.

C. Petition for Reconsideration and Stay

We received a petition from SRP on February 4, 2013, requesting partial reconsideration and administrative stay of our final rule under section 307(d)(7)(B) of the Clean Air Act (CAA) and section 705 of the Administrative Procedure Act.[14] EPA Region 9 sent a letter on April 9, 2013, to representatives of SRP informing the company that we were granting partial reconsideration of the final rule for the Arizona RH FIP.[15] In particular, we stated that we were granting reconsideration of the compliance methodology for NO_X emissions from Units 1 and 2 at Coronado and that we would issue a notice of proposed rulemaking seeking comment on an alternative compliance methodology. We also noted that, because we initially proposed different NO_X emission limits for the two units, we would seek comment on the appropriate emission limit for each of the units. Today's notice of proposed rulemaking includes each of these elements, and constitutes EPA's proposed action for the reconsideration.

III. Proposed FIP Revision

EPA is proposing a unit-specific compliance method and separate emission limits for NO_X on Units 1 and 2 at the Coronado Generating Station. We also are proposing to revise the work practice requirement that applies to Coronado and to remove the affirmative defense for malfunctions that is currently included in the FIP for Coronado and Cholla.

A. Proposed Compliance Method for Unit-Specific Emission Limits

In a letter sent to EPA on November 18, 2013, SRP outlined its views concerning the compliance method and emission limit at Coronado.[16] Regarding the compliance method, SRP requested that EPA use the same approach specified in the Consent Decree, noting that this would ensure ''consistency across applicable requirements.'' [17] EPA notes that the Consent Decree contains two different types of NO_X emission limits: Unit-specific 30-day rolling lb/MMBtu limits and a 365-day plant-wide rolling NO_X tonnage limit.[18] For purposes of BART, we consider a 30–BOD rolling lb/MMBtu limit to be appropriate.[19] Therefore, we propose to set a separate 30–BOD rolling lb/MMBtu limit for each of the two Coronado Units, based on the following compliance method:

> The 30-day rolling average NO_X emission rate for each unit shall be calculated in accordance with the following procedure: First, sum the total pounds of NO_X emitted from the unit during the current boiler operating day and the previous twenty-nine (29) boiler-operating days; second, sum the total heat input to the unit in MMBtu during the current boiler operating day and the previous twenty-nine (29) boiler-operating days; and third, divide the total number of pounds of NO_X emitted during the thirty (30) boiler-operating days by the total heat input during the thirty (30) boiler-operating days. A new 30-day rolling average NO_X emission rate shall be calculated for each new boiler operating day. Each 30-day rolling average NO_X emission rate shall include all emissions that occur during all periods within any boiler operating day, including emissions from startup, shutdown, and malfunction.

This method is identical to that employed for the unit-specific 30-day rolling lb/MMBtu limit in the Consent Decree, except that it uses the term ''boiler operating day'' instead of ''Unit Operating Day.'' This method would replace the plant-wide method promulgated in the final rule at 40 CFR 52.145(f)(5)(B)(ii). All other compliance-related requirements, including the monitoring, recordkeeping and reporting requirements, would remain as promulgated.

B. Proposed Emission Limits for Coronado Units 1 and 2

Because we are proposing to replace the plant-wide average emission rate limit for NO_X with unit-specific limits, we also must propose separate emission limits for each of the two units at Coronado. However, we are not reconsidering our determination that BART for Coronado Units 1 and 2 is an emission limit consistent with the use of SCR, low-NO_X burners (LNB) with over fire air (OFA), and low-load temperature control. Nor are we conducting a new five-factor analysis for these units. Rather, we are reconsidering only the emission limits achievable with SCR and LNB with OFA at Coronado Units 1 and 2. Due to the different regulatory requirements that currently apply to these units, we have analyzed them separately.

1. Proposed Emission Limit for Coronado Unit 1

a. SRP's Analysis of Unit 1

After EPA granted reconsideration, SRP submitted additional information to EPA, including two reports prepared by S&L and RMB concerning the achievability of various NO_X emission limits at Coronado Unit 1.[20] The 2013 S&L analysis presented modeling results intended to predict NO_X emissions from Unit 1 under various operating scenarios.[21] The 2013 RMB report further analyzed the achievable NO_X emission limit at Coronado Unit 1, ''based on the results of S&L's modeling and application of an appropriate compliance margin.'' [22] In particular, RMB applied an ''upper prediction limit'' (UPL) technique in order to account for ''the impact of measurement

[12] *Id.* at 72554–56.

[13] *Id.* at 72555.

[14] Petition of Salt River Project Agricultural Improvement and Power District for Partial Reconsideration and Stay of EPA's Final Rule: ''Approval, Disapproval and Promulgation of Air Quality Implementation Plans; Arizona; Regional Haze State and Federal Implementation Plans'' (February 4, 2013).

[15] Letters from Jared Blumenfeld, EPA, to Norman W. Fichthorn and Aaron Flynn, Hunton and Williams (April 9, 2013).

[16] Letter from Kelly Barr, SRP, to Deborah Jordan, EPA (November 18, 2013).

[17] *Id.* at 4.

[18] Consent Decree in *United States* v. *Salt River Project,* CV 08–1479–PHX–JAT (D. Az.) (entered Dec. 19, 2008) (''Coronado Consent Decree'').

[19] BART Guidelines, 40 CFR part 51, appendix Y, section V (''For EGUs, specify an averaging time of a 30-day rolling average, and contain a definition of ''boiler operating day'' that is consistent with the definition in the proposed revisions to the NSPS for utility boilers in 40 CFR part 60, subpart Da.'').

[20] Letter from Kelly J. Barr, SRP, to Deborah Jordan, EPA (November 18, 2013) and attachments.

[21] Attachment 1 to November 18, 2013, Letter, Sargent and Lundy LLC Report SL–011754, Salt River Project Coronado Generating Station Unit 1 SCR NO_X emissions Modeling (November 14, 2013).

[22] Attachment 2 to November 18, 2013 Letter, Technical Memorandum from RMB Consulting & Research, Inc. to Salt River Project NO_X limits Compliance monitoring Consideration on Coronado Unit 1 (October 28, 2013) at 1.

uncertainty and other process variation.''[23]

The 2013 S&L report consisted of an emission analysis of the SCR for Unit 1. Similar to the 2012 S&L report, which concerned Unit 2, the 2013 analysis examined the effect of startup/shutdown events, low-load cycling, and steam reheat on emissions over a 30-day average. In summary, the 2013 S&L analysis examined load profile data for Unit 1 for the period from January 1, 2011, through July 31, 2013, and estimated NO_X emission rates with the hypothetical use of SCR for the various load profiles that occurred during this period. S&L's estimates of SCR performance and emission rate under various load profiles are summarized in Table 1. For greater detail, consult the 2013 S&L report, which is included in the docket for this proposed rule.

TABLE 1—UNIT 1 LOAD PROFILE OF NO_X EMISSIONS

Load profile	Unit 1 emission rate (lb/MMBtu)	Description
SCR Design Target Emission Rate	0.030	Full load performance guarantee per vendor.
SCR emission rate at full load steady state conditions.	0.040	Actual controlled NO_X emissions are expected to average 0.01 above the design target rate.
SCR emission rate when load *increasing* by more than 10 MW/hour.	0.050	Emission expected to change as control systems adjust to changes in boiler load, gas flow rates, and NO_X loading.
SCR emission rate when load *decreasing* by more than 10 MW/hour.	0.035	Emission expected to change as control systems adjust to changes in boiler load, gas flow rates, and NO_X loading.
Emission rate during cold start, oil-firing[24].	0.10	Low NO_X burners (LNB) only, no SCR during startup. Unit 1 initially uses fuel oil for startup, and transitions to coal to complete startup.
Emission rate during cold start, coal-firing.	0.25	LNB only, no SCR during startup.
Emission rate during warm start, oil-firing[25].	0.19	LNB only, no SCR during startup. Unit 1 initially uses fuel oil for startup, and transitions to coal to complete startup.
Emission rate during warm start, coal-firing.	0.28	LNB only, no SCR during startup.
Emission rate during low load periods	0.29	For low-load periods with no steam reheat (LNB-only, no SCR control).
SCR emission rate during initial shutdown.	0.10	Emission rate during shutdown with SCR inlet >599 degrees F, allowing for SCR operation.
Emission rate after SCR shutdown	0.45	LNB only. Corresponds to shutdown period after SCR inlet <599 degrees F.

Based on the emission rates summarized in Table 1 above, the S&L analysis examined the 30-day emission rate for Unit 1 assuming several combinations of startup events and loading profiles. The highest controlled 30-day average emission rate for several selected scenarios is presented in Table 2. The full analysis, including selected spreadsheets that contain the emission rate modeling for certain operating scenarios, is available in the docket for this proposed rule.[26]

TABLE 2—SUMMARY OF UNIT 1 EMISSION MODELING RESULTS

[Per S&L analysis]

Scenario	Description	Controlled NO_X emission rates based on 30-day average (lb/MMBtu)
0	Full Load high-cycle loading	0.041
1b	Low-load cycling for 30 days (with steam reheat)	0.048
5a	One cold startup with low-load cycling (with steam reheat)	0.055
5b	Two cold startups with low-load cycling (with steam reheat)	0.061
5c	Three cold startups with low-load cycling (with steam reheat)	0.065

The supplemental information submitted by SRP on November 13, 2013, also included a report from RMB. In this report, RMB stated that it used equations for calculating the UPL, which is a statistical technique that examines an existing set of data points and predicts the chances (*i.e.,* the probability) of future data points (in this case, emission rates). In general terms, the UPL is a value that is calculated from a data set that identifies the emission rate that a source or group of sources is meeting and would be expected to meet a specified percent of the time that the source is operating. For example, the 99 percent UPL value is the emission level that the source(s) would be predicted to be below during 99 out of 100 performance tests. The UPL value is calculated using an

[23] *Id.*

[24] The term ''cold startup'' is not specifically defined by SRP or S&L in its analysis. Typically, a ''cold startup'' refers to a startup event that occurs after the boiler has been offline for approximately 24 to 48 hours or longer. Compared to hot or warm startups, a cold startup event produces greater emissions because it is longer in duration and consumes more fuel.

[25] The term ''hot'' or ''warm'' startup is not defined by SRP or S&L in its analysis. However, a ''hot'' or ''warm'' typically refers to a startup event that occurs when the boiler has been offline for less than 24 hours. Because certain elements of the boiler may still be hot or warm following shutdown, less time is required to reach normal operating temperatures and conditions. As a result, hot and warm startup events produce fewer emissions than cold startup events because they are shorter in duration and consume less fuel.

[26] ''SRP Coronado Generating Station, Unit 1 SCR NO_X Emissions Modeling'', Prepared by Sargent and Lundy, Report SL–011754, November 14, 2013.

equation based on the average and variance of a data set (in this instance, the aforementioned emission rates), the distribution of the data, quantity of data points, confidence level, and common statistical values such as t-scores and z-scores. The underlying regulatory concept behind the use of UPL values is that a source should have only a very small risk of being determined to be in noncompliance when the emission control system is actually performing as expected under each type of normal operation that takes place. UPL values are used in a wide variety of industries for predictive purposes, including finance, manufacturing, and healthcare.

RMB stated that it applied the equations for calculating UPL values to CEMS data for Unit 1, as well as to the CEMS data from three SCR-equipped coal-fired boilers that it considered comparable to Unit 1.[27] To summarize, RMB calculated the 99th percentile emission rate for each of the four units, and compared the 99th percentile emission rate to the average emission rate of each respective unit. RMB indicated that for Unit 1, the 99th percentile emission rate was three to seven percent greater than average emission rates. For the three SCR-equipped units examined, RMB reports that the 99th percentile emission rate was approximately 15 percent higher than average emission rates. RMB then adjusted the average 30-day emission rates from the S&L emission modeling analysis for each operating scenario upwards by 15 percent in order to account for the variability indicated by the UPL values. The results of RMB's analysis are summarized in Table 3.

TABLE 3—SUMMARY OF UNIT 1 EMISSION MODELING RESULTS

[Per RMB report]

Scenario	Description	Controlled NO_X emission rate (30-day average in lb/MMBtu)
1b	Low-load cycling for 30 days (with steam reheat)	0.055
5a	One cold startup with low-load cycling (with steam reheat)	0.062
5b	Two cold startups with low-load cycling (with steam reheat)	0.069
5c	Three cold startups with low-load cycling (with steam reheat)	0.073

RMB then indicated that if the emission limit were considered a ''never to be exceeded value,'' an additional compliance margin should be incorporated given that the 99th percentile value does not account for the entire potential range of operating conditions that may occur. RMB indicated that rounding upwards to the next highest reasonable interval, 0.080 lb/MMBtu, would provide an approximate 10 percent compliance margin, and proposed that this value represents the lowest achievable NO_X emission limit for Unit 1. The full RMB analysis is included in the docket for this proposed rule.

SRP provided additional information to EPA on April 28, 2014, that included documentation on SCR design parameters for Unit 2, the number of historical startup events occurring within single 30-day periods for Units 1 and 2, and expected future operation of Units 1 and 2.[28]

b. EPA's Evaluation of Unit 1

In proposing a unit-specific limit for Unit 1, we have reviewed each of the analyses provided by SRP including the emission spreadsheets developed by S&L for several load profile scenarios. In addition, we have compared SRP's emission estimates for certain load profiles with actual Unit 1 emission data as reported to the Air Markets Program Data (AMPD).[29] We consider the emission rates used by S&L for the various load profiles to be reasonable and generally consistent with emission data reported to AMPD. We also consider the scenarios examined by S&L to be realistic depictions of load profile scenarios that were historically experienced by the Coronado units. AMPD and Energy Information Administration (EIA) records indicate periods of both high-load and low-load cycling, as well as 30-day periods with multiple shutdown periods.[30] The greatest number of cold startups occurring in a single 30-day period examined by the the S&L load profile scenarios was three. Although we have not identified an actual historical 30-day period exhibiting three cold startups, we consider this a reasonable assumption given both the number of startup events that have historically occurred,[31] as well as SRP's expectation that the Coronado units will experience greater periods of operation in load-following service or non-operation given the expanded role of renewable energy sources.[32] As a result, we consider the emission rate of 0.065 lb/MMBtu, which corresponds to a scenario consisting of low-load cycling operations (with steam reheat) and 3 cold startups within a 30-day period, to be a reasonable estimate of average SCR performance for Unit 1.

With regard to the RMB analysis, we are unable to assess fully this analysis, as it lacked documentation regarding many of its components. In particular, RMB did not identify the UPL equation(s) it used or the emission rate characteristics, data distribution, number of emission rates, or t- or z-scores. RMB did not present specific evidence that the two SCR-equipped units are representative of how Coronado will perform when carefully operated after installation of SCR. In particular, RMB did not address the possibility that the SCR systems on these two units malfunctioned or were incorrectly operated during the data period. Accordingly, we are unable to evaluate RMB's assertions regarding its UPL calculations.

More fundamentally, we do not consider a UPL analysis to be necessary or appropriate for use in establishing an emission limit for Coronado Unit 1. Because the UPL method is a statistical technique, it is essentially an analytical tool that can be applied to any data set

[27] The CEMS data examined for Unit 1 corresponded to operation with low NO_X burners, as Unit 1 does not presently operate with SCR. For the three other units, CEMS data corresponding to SCR operation was examined.

[28] Letter from Kelly J. Barr, SRP, to Deborah Jordan, EPA (April 28, 2014) and attachments.

[29] As noted in SRP's April 28, 2014 information response, we requested detailed emission spreadsheets for several scenarios, including high-load cycling, low-load cycling, and low-load cycling including multiple startups.

[30] See spreadsheet ''Coronado 2008–11 NO_X Emission Data (daily).xls''.

[31] See SRP's April 28, 2014 letter, Attachment A (Multiple Start Summary).

[32] See April 28, 2014 letter. Expanded periods of load following service will result in greater periods of low-load cycling, as well as increase the need for startup/shutdown events.

and produce a UPL value for a specified percentile (*i.e.,* 95th, 98th, 99th percentile, etc). While UPL has been used by EPA to establish emission standards in other rulemakings, the context for those rulemakings differs significantly from the context for this action. In general, EPA has employed the UPL method in instances where it was necessary to establish an emission standard based on a limited number of emission measurements, such as when establishing maximum available control technology (MACT) standards or new source performance standards (NSPS).[33] The emission data available for establishing MACT standards are generally in the form of short-term, three-run stack tests, with each test-run lasting between one and four hours. These short-term tests represent three ''snapshots'' of a source's operation and generally will not represent a source's full range of operations or emission levels. Accordingly, when establishing an emission standard that applies continuously across an entire source category, EPA considers it necessary to account for the emissions and operations over a fuller range using data sets that encompass longer time periods (*i.e.,* collected over several months to a year or more of operation). In such situations, EPA applies the UPL method to predict the emission levels the source is achieving at times other than when the stack testing is conducted. For example, it is common for EPA to establish an emission standard for a particular source category for which only three to six test results may be available. Because these three to six data points do not represent the full range of unit operations, the UPL method is employed to ''fill in the blanks'' when developing an emission standard that is appropriate for a broader range of operations. As described in a memo regarding the use of UPL in establishing MACT standards, ''EPA did not have emissions information from sources at all times each source was operating, and therefore determined it was necessary to apply a methodology that addressed the fact that the data were not complete.'' [34] Furthermore, while EPA has used the UPL method in other instances besides MACT standards, such as in developing NSPS, the emission data sets for those rulemakings were also very limited, numbering at most in the dozens of test results for specific source subcategories.

By contrast, the data set available here is much more extensive, represents continuous data collected over a long period of time, and covers a wider range of unit operations. In particular, the UPL analyses performed by RMB for Coronado Unit 1 and the three SCR-equipped coal-fired boilers examined actual emission data from CEMS (or in the case of Coronado Unit 1, modeled emission data based on actual load operation) that consisted of thousands of data points collected continuously over periods of time ranging from eight months to over a year. As noted above, this is a different context than rulemakings in which EPA has employed the UPL method to develop category-wide emission standards based on, at most, a few dozen data points. Given the size and scope of the data set available in this instance, we propose to find that the use of the UPL method is not appropriate.[35]

Finally, we do not agree with RMB's suggestion that the emission limit for Coronado Unit 1 should be rounded up to provide an additional compliance margin. We note that the UPL methodology used by EPA for MACT standard development does not include rounding up to the next highest reasonable interval as suggested by RMB. Given the conservative nature of the assumptions in the S&L analysis, we do not consider additional compliance margin appropriate in this instance.

Accordingly, in evaluating an appropriate limit for Coronado Unit 1, we have relied primarily upon the information provided in the S&L analysis. This analysis found that an emission rate of 0.065 lb/MMBtu would be appropriate for a scenario consisting of low-load cycling operations (with steam reheat) and three cold startups within a 30-day period. As described above, we consider this to be a reasonable estimate of SCR performance for Coronado Unit 1. We are are therefore proposing a limit of 0.065 lb/MMBtu on a rolling 30–BOD basis.

2. Proposed Emission Limit for Coronado Unit 2

a. SRP's Analysis of Unit 2

SRP also provided documentation in its April 28, 2014 letter of Unit 2 design parameters and indicated that it is proceeding with the installation of a low-load temperature-control system (*i.e.,* steam reheat) for Unit 2. In addition, SRP stated that the design parameters demonstrate that Unit 2 was properly designed to meet the 0.080 lb/MMBtu NO_X limit required by the Coronado Consent Decree. Based on these design parameters and emission modeling performed by S&L, SRP reiterated that the design of Unit 2 could not accommodate a NO_X emission limit lower than that required by the Consent Decree. SRP has met certain terms of the Consent Decree by operating Unit 2 with SCR since June 1, 2014. Finally, in response to an inquiry from EPA regarding the possibility of a work practice standard for the SCR system on Unit 2, SRP indicated that certain language from the Coronado Consent Decree and the Title V operating permit requiring proper operation of NO_X controls are sufficient to ensure that NO_X emissions are minimized.

b. EPA's Evaluation of Unit 2

In our final rule published on December 5, 2012, establishing the NO_X emission limit for Coronado Units 1 and 2, we stated the following regarding Unit 2:

> In recognition of the work already performed by SRP to meet the consent decree emission limit of 0.080 lb/MMBtu for Unit 2, and to avoid interfering with SRP's ability to meet that requirement by the deadline of June 1, 2014, we have decided not to require a BART emission limit for Coronado 2 more stringent than 0.080 lb/MMBtu.

The information subsequently provided by SRP supports the assertion that the emission limit in the Consent Decree of 0.080 lb/MMBtu represents BART for this unit. In particular, the fact that SRP has already installed a low-load temperature-control system at this unit in order to meet the 0.080 lb/MMBtu limit suggests that a lower limit would not be achievable on a 30–BOD basis. As a result, we propose to set a unit-specific NO_X limit for Unit 2 of 0.080 lb/MMBtu, based on a rolling 30–BOD basis.

In addition, we propose to revise the work practice standard at 40 CFR 52.145(f)(10) to require the operation of the SCR at all times that Unit 2 is in operation, consistent with technological

[33] In particular, EPA has used the UPL method in the Mercury and Air Toxics Standard (MATS), also known as the Boiler MACT, the Wool Fiberglass MACT, the Phosphoric Acid and Phosphate Fertilizer MACT, and the Nitric Acid Plant NSPS.

[34] Memorandum from Susan Fairchild to Docket Number EPA–HQ–OAR–2010–1041, ''Use of the Upper Prediction Limit for Calculating MACT Floors'' (July 14, 2014); see also Memo from Susan Fairchild to Docket No. EPA–HQ–OAR–2010–1041, ''Approach for Applying the Upper Prediction Limit to Limited Datasets'' (October 6, 2014).

[35] In addition, we note that we consider RMB's application of its UPL-estimated variability to the results of the S&L modeling inappropriate. The S&L modeling results already account for substantial degree of operational variability by assuming a conservative operating scenario of low-load cycling and 3 cold startups in a single 30-day period. Applying the UPL-estimated variability on top of the S&L modeling could be described, to a degree, as ''double counting'' operational variability.

limitations.[36] As noted in SRP's letter dated April 28, 2014, the Consent Decree contains a work practice standard for Unit 2. This language is included in the facility's current Title V operating permit.[37] We are proposing to include this same language in the BART FIP in order to ensure that the SCR is operated at all times during which it is technologically feasible to do so. In particular, we note that, based on the information provided by SRP, periods of low-load operation are a significant element of the Coronado units' operations. Given the installation of a low-load temperature-control system on Unit 2, the SCR system is now capable of operating at lower loads (*i.e.,* between about 138 MW and 270 MW) on Unit 2. Accordingly, we are proposing to revise the work practice standard in the FIP to ensure that the SCR system operates during these periods of low-load operation.

C. Proposed Removal of Affirmative Defense for Malfunctions

The Arizona RH FIP incorporates by reference certain provisions of the Arizona Administrative Code that establish an affirmative defense for excess emissions due to malfunctions.[38] In the interim since EPA's promulgation of that FIP, the United States Court of Appeals for the DC Circuit ruled that CAA sections 113 and 304 preclude EPA from creating affirmative defense provisions in the Agency's own regulations imposing emission limits on sources.[39] The court found that such affirmative defense provisions purport to alter the jurisdiction of federal courts to assess liability and impose penalties for violations of those limits in private civil enforcement cases. The court's holding makes it clear that the CAA does not authorize promulgation of such a provision by EPA. In particular, the court's decision turned on an analysis of CAA sections 113 (''Federal enforcement'') and 304 (''Citizen suits''). These provisions apply with equal force to a civil action brought to enforce the provisions of a FIP. The logic of the court's decision thus applies to the promulgation of a FIP, and precludes EPA from including an affirmative defense provision in a FIP. Furthermore, in light of the DC Circuit's decision, EPA has proposed to find R18–2–310(B) and R18–2–310(C) substantially inadequate to meet CAA requirements and to issue a SIP call with respect to these provisions.[40] Consistent with the reasoning of the DC Circuit and EPA's proposed SIP call, we are proposing to remove the affirmative defense provision in the Arizona Regional Haze FIP. In addition to Coronado, this revision would also affect Cholla.

D. Non-Interference With Applicable Requirements

The CAA requires that any revision to an implementation plan shall not be approved by the Administrator if the revision would interfere with any applicable requirement concerning attainment, reasonable further progress, or any other applicable requirement of the CAA.[41]

EPA has promulgated health-based standards, known as the national ambient air quality standards (NAAQS), for seven pollutants, including NO_2, a component of NO_X, and pollutants such as ozone and particulate matter with a diameter less than or equal to 2.5 micrometers ($PM_{2.5}$), that are formed in the atmosphere from reactions between NO_X and other pollutants. Using a process that considers air quality data and other factors, EPA designates areas as ''nonattainment'' if those areas violate a NAAQS or cause or contribute to violations of a NAAQS in a nearby area. Reasonable further progress, as defined in section 171 of the CAA, is related to attainment and means ''such annual incremental reductions in emissions of the relevant air pollutant . . . for the purpose of ensuring attainment of the applicable [NAAQS].'' Coronado is located in Apache County, Arizona, which is designated as Unclassifiable/Attainment for all of the NAAQS. Therefore, we propose to find that a revision to the BART emission limits for NO_X will not interfere with attainment or reasonable further progress for any air quality standard.

The other requirements of the CAA that are applicable to Coronado are:

- Standards of Performance for New Stationary Sources, 40 CFR part 60, subpart D;
- National Emission Standards for Hazardous Air Pollutants, 40 CFR part 63, subpart UUUUU;
- Compliance Assurance Monitoring, 40 CFR part 64;
- BART and other visibility protection requirements under CAA sections 110(a)(2)(J) and 169A and 40 CFR part 51, subpart P; and
- Interstate transport visibility requirements under CAA section 110(a)(2)(D)(i)(II).

Today's proposed revisions would not affect the applicable requirements of the National Emission Standards for Hazardous Air Pollutants, Standards of Performance for New Stationary Sources, or Compliance Assurance Monitoring requirements. Therefore, we propose to find that these revisions would not interfere with these requirements.

The proposed revisions would alter the specific emission limits that constitute BART for NO_X at Coronado under CAA section 169A and 40 CFR 51.308(e). However, we expect the effect of the proposed changes on visibility will be very small. In particular, we note that, under the BART Guidelines, the ''degree of visibility improvement'' expected to result from BART is evaluated through modeling of the highest emission rate observed on a 24-hour average.[42] Although today's rule would raise the emission rate allowed on a 30-day rolling average, we do not expect that it would alter the rate on a 24-hour basis. First, the 24-hour maximum emission rate used in visibility modeling corresponds to operation of the SCR during periods of full load, steady state operation. As noted previously, the BART limits proposed in today's rule are still consistent with the application of SCR. In addition, the underlying assumptions regarding SCR emission rate and performance remain unchanged from the December 5, 2012, final rule. Second, the adjustments to the rolling 30-day emission limit were made to accommodate periods of startup and shutdown. Specifically, BART limits for EGUs are established based on a 30-day rolling average and must be met on a continuous basis, including during periods of startup, shutdown, and malfunction.[43] As described previously, the SCR system requires a certain minimum temperature in order to operate properly. As a result, there will necessarily be certain periods of time during startup and shutdown in which the SCR system is not technologically

[36] See CAA Section 302(k) (defining ''emission limit'' to include ''any requirement relating to the operation or maintenance of a source to assure continuous emission reduction, and any design, equipment, work practice or operational standard promulgated under this chapter'').

[37] Specific Conditions II.E.2.b and c, Title V Operating Permit No. 52693, issued December 6, 2011.

[38] *See* 40 CFR 52.145(f)(11) (incorporating by reference R–18–2–101, paragraph 65; R18–2–310, sections (A), (B), (D) and (E); and R18–2–310.01).

[39] *See* NRDC v. EPA, 749 F.3d 1055 (D.C. Cir. 2014).

[40] 79 FR 55920, 55947 (September 17, 2014).

[41] CAA Section 110(l), 42 U.S.C. 7410(l). In this instance EPA is proposing to promulgate a revision to a FIP, rather than to approve a revision to a SIP. Although 110(l) on its face applies only to EPA approvals of plan revisions, we have nonetheless considered whether this proposed action would interfere with the requirements of the CAA.

[42] BART Guidelines 40 CFR part 51, Appendix Y, section IV.D.5.

[43] See CAA section 302(k).

capable of operating. This does not alter any of the assumptions regarding the SCR system when it is in operation, such as the maximum 24-hour emission rate, which is the basis of the visibility modeling. Moreover, the BART Guidelines recommend that periods of startup and shutdown be excluded from the visibility modeling.[44] Therefore, the degree of visibility improvement would not be significantly diminished.

With respect to the CAA's reasonable progress requirements under CAA section 110(a)(2)(J) and 169A, we note that in a September 3, 2014, final rule, we set reasonable progress goals (RPGs) for Arizona that accounted for the emission reductions projected to result from implementation of BART at Coronado (among other sources).[45] The revised emission limits we are proposing today will allow for greater total annual NO_X emissions than the FIP. We have therefore considered the impact of additional emissions on the RPGs. As summarized in Tables 4 and 5, the difference in NO_X emissions between the Arizona RH FIP and today's proposed rule is approximately 233 tons per year (tpy).[46] This amount represents less than one percent of the projected total NO_X emission reductions in the FIP. Therefore, we consider its potential impact on the RPGs to be *de minimis.*

Finally, CAA section 110(a)(2)(D)(i)(II) requires that all SIPs contain adequate provisions to prohibit emissions that will interfere with other states' required measures to protect visibility. In our final rule of September 3, 2014, we determined that control measures in the Arizona RH SIP and FIP were sufficient to fulfill this requirement for the 1997 8-hour ozone, 1997 $PM_{2.5}$, and 2006 $PM_{2.5}$ NAAQS.[47] As noted above, while today's proposal would allow for an increase in emissions of 233 tpy compared to the FIP, this represents less than one percent of the projected total NO_X emission reductions in the FIP. Accordingly, we propose to determine that this change would not alter our determination that the control measures in the Arizona RH SIP and FIP are adequate to prevent Arizona's emissions from interfering with other states' required measures to protect visibility. Thus, we propose to find that today's proposed revisions would not interfere with any applicable requirement of the CAA.

TABLE 4—CORONADO SCR EMISSION RATE ALLOWED UNDER 2012 EPA FIP

Unit No.	Heat duty [1]	NO_X emission limit [2]	Capacity factor [1]	NO_X	
	(MMBtu/hr)	(lb/MMBtu)		(lb/hr)	(tpy)
Coronado 1	4316	0.065	0.84	280.54	2,042
Coronado 2	3984		0.89	258.96	

[1] Supplemental Cost Analysis 2012–11–15.
[2] Emission limit per FIP final rule, 77 FR 72578.

TABLE 5—CORONADO SCR EMISSION RATE ALLOWED UNDER PROPOSED 2015 EPA FIP REVISION

Unit No.	Heat duty [1]	NO_X emission limit	Capacity factor [1]	NO_X	
	(MMBtu/yr)	(lb/MMBtu)		(lb/hr)	(tpy)
Coronado 1	4316	0.065	0.84	280.54	2,275
Coronado 2	3984	0.080	0.89	318.72	

[1] Supplemental Cost Analysis 2012–11–15.

IV. EPA's Proposed Action

EPA is proposing to revise the Arizona RH FIP to replace a plant-wide BART compliance method and emission limit for NO_X on Units 1 and 2 at Coronado with a single-unit compliance method and emission limit on each of the units. As described in today's action, we are proposing an emission limit of 0.065 lb/MMBtu for Unit 1 and 0.080 lb/MMBtu for Unit 2 with compliance based on a rolling 30–BOD basis. This revision would constitute our action on SRP's petition for reconsideration of the FIP. We also are proposing to remove the affirmative defense for malfunctions in the FIP and revise the work practice requirement that applies to Coronado.

V. Statutory and Executive Order Reviews

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

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review. This rule applies to only two facilities and is therefore not a rule of general applicability.

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* This rule applies to only two facilities. Therefore, its recordkeeping and reporting provisions do not constitute a ''collection of information'' as defined under 44 U.S.C. 3502(3) and 5 CFR 1320.3(c).

C. Regulatory Flexibility Act (RFA)

I certify that this proposed action will not have a significant economic impact on a substantial number of small entities. This action will not impose any requirements on small entities. Firms primarily engaged in the generation, transmission, and/or distribution of electric energy for sale are small if, including affiliates, the total electric output for the preceding fiscal year did not exceed 4 million megawatt hours. Each of the owners of facilities affected

[44] Id. section III.A.3 (recommending that ''emissions reflecting periods of start-up, shutdown, and malfunction'' not be used for modeling.).

[45] 79 FR 52420, 52468–52469.

[46] This value assumes that the units will fully operate at the allowed emission rates in Table 4 and 5 for every month of the year. Given that the 30–BOD limits are based on conditions that occur infrequently (*i.e.,* low-load cycling, 3 cold startup/shutdowns), during many periods the units can be expected to operate at a lower emission rate. As a result, this value represents a conservative (*i.e.,* tending to overestimate rather than underestimate in this context) estimate of the difference in NO_X emissions.

[47] 79 FR 52426.

by this rule, SRP, Arizona Public Service and PacifiCorp, exceeds this threshold.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments.

E. Executive Order 13132: Federalism

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

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

This action does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on any Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. Thus, Executive Order 13175 does not apply to this action.

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

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

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

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

I. National Technology Transfer and Advancement Act

This rulemaking does not involve technical standards. EPA is not proposing to revise any technical standards or impose any new technical standards in this action.

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

EPA believes the human health or environmental risk addressed by this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations. We expect that Coronado will install the same control technology in order to meet the revised emission limits as would have been necessary to meet the previously finalized limits. As shown in Tables 4 and 5 above, the difference in NO_X emissions between the final EPA FIP and today's proposed rule is approximately 233 tons per year (tpy). Although this is a not a trivial amount of emissions, it is relatively small compared to the facility's total emissions. In particular, 233 tpy is equivalent to about 3 percent of the 7,300 tpy of NO_X that the facility is presently allowed to emit under the Coronado Consent Decree.[48] Furthermore, as shown in Table 5, if today's proposal is finalized, total NO_X emissions from the facility would be roughly 2,275 tpy, a decrease of over 5,000 tpy compared to the plant-wide cap under the Consent Decree. Thus, although today's proposed revision will allow for a marginal increase in emissions compared to the FIP, it will still ensure a significant reduction in emissions compared to present levels.

K. Determination Under Section 307(d)

Pursuant to CAA section 307(d)(1)(B), EPA proposes to determine that this action is subject to the requirements of CAA section 307(d), as it revises a FIP under CAA section 110(c).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen oxides, Reporting and recordkeeping requirements, Visibility.

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

Dated: March 13, 2015.

Jared Blumenfeld,

Regional Administrator, EPA Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

[48] Coronado Consent Decree, paragraph 44.

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

Subpart D—Arizona

■ 2. In § 52.145, revise paragraphs (f)(3)(i), (f)(5)(ii)(A) and (B), and (f)(10) and remove paragraph (f)(11) to read as follows:

§ 52.145 Visibility protection.

* * * * *

(f) * * *

(3) * * *

(i) *NO_X emission limitations.* The owner/operator of each coal-fired unit subject to this paragraph (f) shall not emit or cause to be emitted NO_X in excess of the following limitations, in pounds per million British thermal units (lb/MMBtu) from any coal fired unit or group of coal-fired units. Each emission limit shall be based on a rolling 30-boiler-operating-day average, unless otherwise indicated in specific paragraphs.

Coal fired unit or group of coal-fired units	Federal emission limitation
Cholla Power Plant Units 2, 3, and 4	0.055
Coronado Generating Station Unit 1	0.065
Coronado Generating Station Unit 2	0.080

* * * * *

(5) * * *

(ii) * * *

(A) *Cholla Power Plant.* The 30-day rolling average NO_X emission rate for the group of coal-fired units identified as Cholla Power Plant, Units 2, 3, and 4 shall be calculated for each calendar day, even if a unit is not in operation on that calendar day, in accordance with the following procedure: Step one, for each unit, sum the hourly pounds of NO_X emitted during the current boiler-operating day (or most recent boiler-operating day if the unit is not in operation), and the preceding twenty-nine (29) boiler-operating days, to calculate the total pounds of NO_X emitted over the most recent thirty (30) boiler-operating day period for each coal-fired unit; step two, for each unit, sum the hourly heat input, in MMBtu, during the current boiler-operating day (or most recent boiler-operating day if the unit is not in operation), and the preceding twenty-nine (29) boiler-operating days, to calculate the total heat input, in MMBtu, over the most recent thirty (30) boiler-operating day period for each coal-fired unit; step 3, sum together the total pounds of NO_X emitted from the group of coal-fired units over each unit's most recent thirty (30) boiler-operating day period (the

most recent 30 boiler-operating day periods for different units may be different); step four, sum together the total heat input from the group of coal-fired units over each unit's most recent thirty (30) boiler-operating day period; and step five, divide the total pounds of NO_X emitted from step three by the total heat input from step four for each group of coal-fired units, to calculate the 30-day rolling average NO_X emission rate for each group of coal-fired units, in pounds of NO_X per MMBtu, for each calendar day. Each 30-day rolling average NO_X emission rate shall include all emissions and all heat input that occur during all periods within any boiler-operating day, including emissions from startup, shutdown, and malfunction.

(B) *Coronado Generating Station.* Compliance with the NO_X emission limits for Coronado Unit 1 and Coronado Unit 2 in paragraph (f)(3)(i) of this section shall be determined on a rolling 30 boiler-operating-day basis. The 30-boiler-operating-day rolling NO_X emission rate for each unit shall be calculated in accordance with the following procedure: Step one, sum the total pounds of NO_X emitted from the unit during the current boiler operating day and the previous twenty-nine (29) boiler operating days; Step two, sum the total heat input to the unit in MMBtu during the current boiler operating day and the previous twenty-nine (29) boiler operating days; Step three, divide the total number of pounds of NO_X emitted from that unit during the thirty (30) boiler operating days by the total heat input to the unit during the thirty (30) boiler operating days. A new 30-boiler-operating-day rolling average NO_X emission rate shall be calculated for each new boiler operating day. Each 30-boiler-operating-day average NO_X emission rate shall include all emissions that occur during all periods within any boiler operating day, including emissions from startup, shutdown, and malfunction.

* * * * *

(10) *Equipment operations.*—(i) *Cholla Power Plant.* At all times, including periods of startup, shutdown, and malfunction, the owner or operator of Cholla Power Plant Units 2, 3 and 4 shall, to the extent practicable, maintain and operate each unit including associated air pollution control equipment in a manner consistent with good air pollution control practices for minimizing emissions. Pollution control equipment shall be designed and capable of operating properly to minimize emissions during all expected operating conditions. Determination of whether acceptable operating and maintenance procedures are being used will be based on information available to the Regional Administrator which may include, but is not limited to, monitoring results, review of operating and maintenance procedures, and inspection of each unit.

(ii) *Coronado Generating Station.* At all times, including periods of startup, shutdown, and malfunction, the owner or operator of Coronado Generating Station Unit 1 and Unit 2 shall, to the extent practicable, maintain and operate each unit in a manner consistent with good air pollution control practices for minimizing emissions. The owner or operator shall continuously operate pollution control equipment at all times the unit it serves is in operation, and operate pollution control equipment in a manner consistent with technological limitations, manufacturer's specifications, and good engineering and good air pollution control practices for minimizing emissions. Determination of whether acceptable operating and maintenance procedures are being used will be based on information available to the Regional Administrator which may include, but is not limited to, monitoring results, review of operating and maintenance procedures, and inspection of each unit.

* * * * *

[FR Doc. 2015–07233 Filed 3–30–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 141

[FRL–9925–49–OW]

Notice of a Public Meeting: Regulations Implementing Section 1417 of the Safe Drinking Water Act: Prohibition on Use of Lead Pipes, Solder and Flux

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of a public meeting.

SUMMARY: The U.S. Environmental Protection Agency (EPA) announces a public meeting and webinar to obtain input on potential revisions to regulations for the Prohibition on Use of Lead Pipes, Solder and Flux. The Safe Drinking Water Act (SDWA) prohibits the use or introduction into commerce of pipes, pipe or plumbing fittings or fixtures, solder and flux that are not lead free. These revisions are necessary due to SDWA amendments enacted by Congress in the Reduction of Lead in Drinking Water Act of 2011 and the Community Fire Safety Act of 2013.

DATES: The public meeting will be held on April 14, 2015 (1 p.m. to 4:30 p.m., eastern time). This meeting will also be simultaneously broadcast as a webinar, available on the Internet. Persons wishing to participate in the meeting or webinar must pre-register by April 7, 2015, as described in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: More information is available at the following EPA Web site: *http://water.epa.gov/drink/info/lead/index.cfm.* For questions about this meeting, contact Brian D'Amico, Office of Ground Water and Drinking Water, U.S. Environmental Protection Agency; telephone (202) 566–1069 or email at *damico.brian@epa.gov.*

SUPPLEMENTARY INFORMATION: To participate in the webinar, you must pre-register by April 7, 2015, at *https://leadprohibitionreg.eventbrite.com.* If you would like to attend in person, please contact Brian D'Amico at (202) 566–1069 or *damico.brian@epa.gov* before or by April 7, 2015. The seating for the public meeting and the number of connections available for the webinar are limited and will be available on a first-come, first-served basis. During the meeting and webinar, there will be a time period available for public comments. EPA encourages public input and will allocate time to receive verbal statements on a first-come, first-served basis. Participants will be provided with a set time frame for their statements. It is preferred that only one person present a statement on behalf of a group or organization. To ensure adequate time for public involvement, individuals or organizations interested in presenting an oral statement should notify Brian D'Amico no later than April 7, 2015.

How can I get a copy of the meeting/webinar materials? The meeting materials will provided for those attending the meeting/webinar. EPA will post the materials on the Agency's Web site for persons who are unable to attend the meeting. Please note, the posting of these materials could occur after the meeting.

Special Accommodations: To request special accommodations for individuals with disabilities, please contact Brian D'Amico at (202) 566–1069, or by email to *damico.brian@epa.gov,* at least five business days prior to the meeting to allow time to process your request.

Dated: March 24, 2015.

Rebecca M. Clark,

Acting Director, Office of Ground Water and Drinking Water.

[FR Doc. 2015–07375 Filed 3–30–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA–R05–RCRA–2014–0689; FRL–9925–55–Region 5]

Michigan: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Michigan has applied to EPA for final authorization of the revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has reviewed Michigan's application with regards to federal requirements and is proposing to authorize the State's program revisions.

DATES: Comments on this proposed rule must be received on or before June 1, 2015.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–RCRA–2014–0689, by one of the following methods:

Web site: www.regulations.gov: Follow the online instructions for submitting comments.

Email: greenberg.judith@epa.gov.

Mail: Judith Greenberg, Michigan Regulatory Specialist, RCRA/TSCA Programs Section, RCRA Branch, Land and Chemicals Division, U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, LR–8J, Chicago, Illinois 60604.

Instructions: Direct your comments to Docket ID Number EPA–R05–RCRA–2014–0689. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any CD–ROM or other electronic media you submit. 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. Electronic files should avoid the use of special characters or any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epagov/epahome/dockets/.*

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some of the information is not publicly available; *e.g.,* CBI or other information for which disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy. You may view and copy Michigan's application from 9:00 a.m. to 4:00 p.m. at the following addresses: U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, contact: Judith Greenberg, telephone (312) 886–4179; or Michigan Department of Environmental Quality, Constitution Hall, 525 West Allegan Street, Lansing, Michigan, contact: Ronda Blayer, telephone (517) 284–6555.

FOR FURTHER INFORMATION CONTACT: Judith Greenberg, Michigan Regulatory Specialist, RCRA/TSCA Programs Section, RCRA Branch, Land and Chemicals Division, U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, LR–8J, Chicago, Illinois 60604. Judith Greenberg can be reached by telephone at (312) 886–4179 or via email at *greenberg.judith@epa.gov.*

SUPPLEMENTARY INFORMATION:

A. Why are revisions to state programs necessary?

States which have received final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the federal program. As the federal program changes, states must change their programs and request EPA to authorize the changes. Changes to state programs may be necessary when federal or state statutory or regulatory authority is modified or when certain other changes occur. Most commonly, states must change their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273 and 279.

B. What decisions have we made in this rule?

We have made a tentative decision that Michigan's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we propose to grant Michigan final authorization to operate its hazardous waste program with the revisions described in the authorization application. Michigan will have responsibility for permitting treatment, storage, and disposal facilities (TSDFs) within its borders (except in Indian Country) and for carrying out the aspects of the RCRA program described in its program revision application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New federal requirements and prohibitions imposed by federal regulations that EPA promulgates under the authority of HSWA take effect in authorized states before they are authorized for the requirements. Thus, EPA will implement those requirements and prohibitions in Michigan, including issuing permits, until the State is granted authorization to do so.

C. What is the effect of this authorization decision?

The effect of this tentative decision, once finalized, is that a facility in Michigan subject to RCRA would have to comply with the authorized state requirements instead of the equivalent federal requirements in order to comply with RCRA. Michigan has enforcement responsibilities under its state hazardous waste program for violations of such program, but EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include among others, authority to:

1. Perform inspections, and require monitoring, tests, analyses or reports;
2. Enforce RCRA requirements and suspend or revoke permits; and
3. Take enforcement actions regardless of whether the State has taken its own actions.

This action will not impose additional requirements on the regulated community because the regulations for which Michigan will be authorized are already effective, and will not be changed by EPA's final action.

D. What happens if EPA receives adverse comments on this action?

If EPA receives adverse comments on this authorization, we will address all public comments in a later **Federal Register**. You may not have another opportunity to comment. If you want to comment on this authorization, you must do so at this time.

E. What has Michigan previously been authorized for?

Michigan initially received final authorization on October 16, 1986, effective October 30, 1986 (51 FR 36804–36805), to implement the RCRA hazardous waste management program. We granted authorization for changes to Michigan's program on November 24, 1989, effective January 23, 1990 (54 FR 48608); on January 24, 1991, effective June 24, 1991 (56 FR 18517); on October 1, 1993, effective November 30, 1993 (58 FR 51244); on January 13, 1995, effective January 13, 1995 (60 FR 3095); on February 8, 1996, effective April 8, 1996 (61 FR 4742); on November 14, 1997, effective November 14, 1997 (62 FR 61775); on March 2, 1999, effective June 1, 1999 (64 FR 10111); on July 31, 2002, effective July 31, 2002 (67 FR 49617); on March 9, 2006, effective March 9, 2006 (71 FR 12141); on January 7, 2008 (73 FR 1077), effective January 7, 2008; and on March 2, 2010, effective March 2, 2010 (75 FR 9345).

F. What changes are we proposing with today's action?

On June 9, 2014, Michigan submitted its final application seeking authorization of hazardous waste program revisions in accordance with 40 CFR 271.21. We have determined, subject to receipt of written comments that oppose this action, that Michigan's program revisions satisfy all of the requirements necessary to qualify for final authorization. Therefore, we propose to grant Michigan final authorization for the following program changes:

Description of federal requirement and revision checklist number [1]	**Federal Register** date and page (and/or RCRA statutory authority)	Analogous state authority
NESHAP: Final Standards for Hazardous Waste Combustors (Phase I Final Replacement Standards and Phase II) Amendments, Checklist 217.	April 8, 2008, 73 FR 18970.	R 299.9623, effective November 5, 2013.
F019 Exemption for Wastewater Treatment Sludges from Auto Manufacturing Zinc Phosphating Processes, Checklist 218.	June 4, 2008, 73 FR 31756.	R 299.9220, R 299.9307(6) and (7), effective November 5, 2013.
Academic Laboratories Generator Standards, Checklist 220.	December 1, 2008, 73 FR 72912.	R 299.9205(5)(j), R 299.9301(9), R 299.9313 and R 299.11003(1)(k) and (2), effective November 5, 2013.
OECD Requirements: Export Shipments of Spent Lead-Acid Batteries, Checklist 222.	January 8, 2010, 75 FR 1236.	R 299.9601(2)(c), (3) and (9), effective December 16, 2004. R 299.9401(5), effective March 17, 2008. R 299.9301(7), R 299.9309(1), (3) and (4), R 299.9312(1) and (2), R 299.9605(1) and (4), R 299.9608(1), (4) and (8), R 299.9804(7) and (8), and R 299.11003(1)(k), (m), (n) and (p) and (2), effective November 5, 2013.
Hazardous Waste Technical Corrections and Clarifications Rule, as amended, Checklist 223.	March 16, 2010, 75 FR 12989; and June 4, 2010, 75 FR 31716.	R 299.9302(2), effective June 21, 1994. R 299.9209(7), R 299.9311, R 299.9413 and R 299.9803(4), effective September 11, 2000. R 299.9619(1) and (8), R 299.9627 and R 299.9635(5) and (12), effective December 16, 2004. R 299.9222, R 299.9310(2) and R 299.9404(1)(b), effective March 17, 2008. R 299.9105(l), R 299.9106(t), R 299.9202(2)(c), R 299.9204(1)(v)(vi), R 299.9205(1)(b), (1)(b)(ii), (2), (3)(a) and (b), R 299.9206(1)(b) and (d), (2), (2)(b) and (3), R 299.9207(1), (2), (3) and (5), R 299.9212(3)(h), R 299.9213(2) and (3), R 299.9220, R 299.9225, R 299.9304(1)(b), (2)(d) and (6), R 299.9306(1) and (1)(b) and (d), (2), (3), (3)(b), (4)(c), (6) and (7), R 299.9308(1), (3) and (6), R 299.9503(1)(c), R 299.9516(5), R 299.9607(1) and (4), R 299.9608(3), (6) and (8), R 299.9801(3) and (7), R 299.9804(3), R 299.9808(3)(c), (7) and (8), R 299.11003(1)(j), (k), (m), (n) and (u) and (2), effective November 5, 2013.
Removal of Saccharin and Its Salts, Checklist 225.	December 17, 2010, 75 FR 78918.	R 299.9311, R 299.9413, effective September 11, 2000. R 299.9627, effective December 16, 2004. R 299.11003(1)(n) and (2), effective November 5, 2013.
Corrections to the Academic Generator Standards, Checklist 226.	December 20, 2010, 75 FR 79304.	R 299.9313(2) and (3), R 299.11003(1)(k) and (2), effective November 5, 2013.
Revisions of the Treatment Standards for Carbamate Wastes, Checklist 227.	June 13, 2011, 75 FR 34147.	R 299.9311 and R 299.9413, effective September 11, 2000. R 299.9627, effective September 11, 2004. R 299.11003(1)(u) and (2), effective November 5, 2013.
Hazardous Waste Technical Corrections and Clarifications, Checklist 228.	April 13, 2012, 77 FR 22229.	R 299.9222, effective March 17, 2008. R 299.9801(3), effective November 5, 2013.

[1] Revision Checklists generally reflect changes to federal regulations pursuant to a particular **Federal Register** notice; EPA publishes these checklists as aids to states to use for development of their authorization revision application. *See* EPA's RCRA State Authorization Web site at *http://www.epa.gov/epawaste/laws-regs/state/index.htm.*

EQUIVALENT STATE-INITIATED CHANGES

Michigan administrative rules	Effective date of amended State requirement
R 299.9102 (definition of ''construction permit'' removed), R 299.9106(e) (definition of ''operating license'' modified), R 299.9224, R 299.9225, R 299.9304(2)(b), R 299.9409(4), R 299.9501 (except second sentence only of paragraph (3)(d)), R 299.9505, R 299.9524, R 299.9603, R 299.9604(2), R 299.9605, R 299.9609, R 299.9610(3), R 299.9612, R 299.9615, R 299.9616, R 299.9623, R 299.9629, R 299.9640, R 299.9707, R 299.9708, R 299.9808, and R 299.9821.	November 5, 2013.

G. Which revised state rules are different from the federal rules?

The most significant differences between the state rules we are proposing to authorize and federal rules are summarized below. It should be noted that this summary does not describe every difference or every detail regarding the differences that are described. Members of the regulated community are advised to read the complete rules to ensure that they understand the requirements with which they will need to comply.

There are aspects of the Michigan program which are more stringent than the federal program. All of these more stringent requirements are or will become part of the federally enforceable RCRA program when authorized by the EPA, and must be complied with in addition to the state requirements which track the minimum federal requirements. These more stringent requirements are found at (references are to the Michigan Administrative Code):

Michigan does not allow containment buildings, making the state requirements more stringent than the federal requirements at 40 CFR 262.10(f), (k)(1) and (k); 262.11(d); 262.41(b); 263.12; 40 CFR part 264 subpart DD; 40 CFR 265 subpart DD; and 40 CFR part 264 appendix I, Tables 1 and 2.

Michigan's rules at R 299.9220 are more stringent than the federal analog at 40 CFR 261.31 since the State's listing of F019 includes recordkeeping requirements as a condition of the exemption of wastewater treatment sludge generated from zinc phosphating, when zinc phosphating is used in the automobile assembly process, while the federal analog at 40 CFR 261.31 has separate recordkeeping requirements for generators claiming the exemption, rather than having the recordkeeping requirements as a condition of the exemption.

Michigan's rules at R 299.9601(1), (2), (2)(b), (c), (d), (e), (f), (g), (h) and (i); R 299.9608(1), (6) and (8); R 299.9615; and R 299.9702(1) are more stringent than the federal analogs at 40 CFR 265.56(b), 265.71, 265.72, 265.142(a), 265.174, 265.190(a), 265.193, 265.194, 265.197, 265.201, and 265.340(b)(1) since the State rules include provisions that require compliance with standards equivalent to 40 CFR part 264 rather than 40 CFR part 265.

Michigan's rules at R 299.9601(2)(a) and R 299.9602 are more stringent since the rules impose requirements regarding environmental and human health standards generally.

Michigan's rules at R 299.9615(4) are more stringent since the State rules require tank systems to comply with Michigan 1941 Act 207 standards (which govern above-ground storage tanks).

Michigan's rules at R 299.9623(9) are more stringent since the State rules require incinerators to comply with Michigan Part 55 standards (which address air pollution).

Michigan's rules at R 299.9629(7)–(7)(c) are more stringent since the State rules require timely notification of an exceedance of a groundwater surface water interface standard based on acute toxicity and established pursuant to part 201 and part 31 of act 451 and implementation of interim measures to prevent exceedance at the monitoring wells along with a proposal and schedule for completing corrective action to prevent a discharge that exceeds the standard.

Michigan's rules at R 299.11002(1) and (2) are more stringent than the federal analogs at 40 CFR 260.11(d) and (d)(1) since the State adopts updated versions of the ''Flammable and Combustible Liquids Code.''

There are also aspects of Michigan's revised program which are broader in scope than the federal program. State provisions that EPA determines are broader in scope are not part of the federally authorized program and are not federally enforceable. Michigan's program revisions include the following rules that are broader in scope than the federal program (references are to the Michigan Administrative Code):

R 299.9226, R 299.9501(3)(d) (second sentence only) and R 299.9507, as amended effective November 5, 2013.

The following Michigan administrative rules that were broader in scope than the federal program were rescinded effective November 5, 2013 (references are to the Michigan Administrative Code):

R 299.9221 (Table 203b), R 299.9223 (Table 204b), R 299.9904, R 299.9905, R 299.9906, and R 299.11101, R 299.11102, R 299.11103, R 299.11104, R 299.11105, R 299.11106, and R 299.11107.

H. Who handles permits after final authorization takes effect?

Michigan will issue permits for all the provisions for which it is authorized and will administer the permits it issues. EPA will continue to administer any RCRA hazardous waste permits or portions of permits which EPA issued prior to the effective date of the proposed authorization until they expire or are terminated. We will not issue any more new permits or new portions of permits for the provisions listed in the Table above after the effective date of the authorization. EPA will continue to implement and issue permits for HSWA requirements for which Michigan is not yet authorized.

I. How does today's action affect Indian Country (18 U.S.C. 1151) in Michigan?

Michigan is not authorized to carry out its hazardous waste program in Indian Country within the State, as defined in 18 U.S.C. 1151. This includes:

1. All lands within the exterior boundaries of Indian reservations within the State of Michigan;
2. Any land held in trust by the U.S. for an Indian tribe; and
3. Any other land, whether on or off an Indian reservation that qualifies as Indian Country.

Therefore, authorizing Michigan for these revisions would not affect Indian Country in Michigan. EPA would continue to implement and administer the RCRA program in Indian Country. It is EPA's long-standing position that the term ''Indian lands'' used in past Michigan hazardous waste approvals is synonymous with the term ''Indian Country.'' *Washington Dep't of Ecology*

v. *U.S. EPA,* 752 F.2d 1465, 1467, n.1 (9th Cir. 1985). *See* 40 CFR 144.3 and 258.2.

J. What is codification and is EPA codifying Michigan's hazardous waste program as authorized in this rule?

Codification is the process of placing a state's statutes and regulations that comprise a state's authorized hazardous waste program into the Code of Federal Regulations. We do this by referencing the authorized state rules in 40 CFR part 272. Michigan's rules, up to and including those revised October 19, 1991, have previously been codified through incorporation-by-reference effective April 24, 1989 (54 FR 7421, February 21, 1989); as amended effective March 31, 1992 (57 FR 3724, January 31, 1992). We reserve the amendment of 40 CFR part 272, subpart X, for the codification of Michigan's program changes until a later date.

K. Statutory and Executive Order Reviews

This proposed rule only authorizes hazardous waste requirements pursuant to RCRA 3006 and imposes no requirements other than those imposed by state law (see **SUPPLEMENTARY INFORMATION**, Section A. Why Are Revisions to State Programs Necessary?). Therefore, this rule complies with applicable executive orders and statutory provisions as follows:

1. Executive Order 18266: Regulatory Planning and Review and Executive Order 13563: Improving Regulations and Regulatory Review

The Office of Management and Budget has exempted this rule from its review under Executive Orders 12866 (58 FR 51735, October 4, 1993) and Executive Order 13563 (76 FR 3821 January 21, 2011).

2. Paperwork Reduction Act

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.*).

3. Regulatory Flexibility Act

This rule authorizes state requirements for the purpose of RCRA 3006 and imposes no additional requirements beyond those required by state law. Accordingly, I certify 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.*).

4. Unfunded Mandates Reform Act

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 (Pub. L. 104–4).

5. Executive Order 13132: Federalism

Executive Order 13132 (64 FR 43255, August 10, 1999) does not apply to this rule because it will not have federalism implications (*i.e.,* 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).

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

Executive Order 13175 (65 FR 67249, November 9, 2000) does not apply to this rule because it will not have tribal implications (*i.e.,* substantial direct effects on one or more Indian tribes, or 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).

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

This rule is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant as defined in Executive Order 12866 and because the EPA does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

8. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not a significant regulatory action as defined in Executive Order 12866.

9. National Technology Transfer Advancement Act

EPA approves state programs as long as they meet criteria required by RCRA, so it would be inconsistent with applicable law for EPA, in its review of a state program, to require the use of any particular voluntary consensus standard in place of another standard that meets the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply to this rule.

10. Executive Order 12988

As required by Section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct.

11. Executive Order 12630: Evaluation of Risk and Avoidance of Unanticipated Takings

EPA has complied with Executive Order 12630 (53 FR 8859, March 18, 1988) by examining the takings implications of the rule in accordance with the Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings issued under the executive order.

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

Because this rule proposes authorization of pre-existing state rules and imposes no additional requirements beyond those imposed by state law and there are no anticipated significant adverse human health or environmental effects, the rule is not subject to Executive Order 12898 (59 FR 7629, February 16, 1994).

List of Subjects in 40 CFR Part 271

Environmental protection; Administrative practice and procedure; Confidential business information; Hazardous materials transportation; Hazardous waste; Indians-lands; Intergovernmental relations; Penalties; Reporting, and recordkeeping requirements.

Authority: This action is issued under the authority of Sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: January 15, 2015.

Susan Hedman,

Regional Administrator, Region 5.

[FR Doc. 2015–07347 Filed 3–30–15; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register

Vol. 80, No. 61

Tuesday, March 31, 2015

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

National Institute of Food and Agriculture

Notice of Intent To Request Approval To Establish a New Information Collection

AGENCY: National Institute of Food and Agriculture, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and Office of Management and Budget (OMB) regulations, that implement the Paperwork Reduction Act of 1995, this notice announces the National Institute of Food and Agriculture's (NIFA) intention to request approval to establish a new information collection for the Small Business Innovation Research (SBIR) Program.

DATES: Written comments on this notice must be received by June 4, 2015, to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Written comments may be submitted by any of the following methods: *Email: rmartin@nifa.usda.gov; Fax:* 202–720–0857; *Mail:* Office of Information Technology (OIT), NIFA, USDA, STOP 2216, 1400 Independence Avenue SW., Washington, DC 20250–2216.

FOR FURTHER INFORMATION CONTACT: Robert Martin, Records Officer; Email: *rmartin@nifa.usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Small Business Innovation Research (SBIR) Program.

OMB Number: 0524—New.

Type of Request: Intent to request approval to establish a new information collection for three years.

Abstract: The Small Business Innovation Research (SBIR) program at United States Department of Agriculture (USDA) makes competitively awarded grants to qualified small businesses to support high quality, advanced concepts research related to important scientific problems and opportunities in agriculture that could lead to significant public benefit if successful.

The USDA SBIR Program Office proposes to contact Phase II awardees to determine their success in achieving commercial application of a market ready technology that was funded under the USDA SBIR Program. The survey would collect information from Phase II companies that received funding during the years of 1994 to 2014.

Data from the survey will be used to provide information that currently does not exist. The data will be used internally by the USDA SBIR Office to identify past and current activities of Phase II grantees in the areas of technology development, commercialization success, product development or services, and factors that may have prevented the technology from entering into the market place. Depending on the results of the survey, information from the survey will be used to highlight commercialization successes within the small business community; improve and refine program interactions with, and responsiveness to, the small business community; potentially refocus the strategies that are used to accomplish SBIR objectives for commercialization; and identify areas in need of improvement and enhancement. This survey will not be used to formulate or change policies. Rather, it will be used to enable the USDA SBIR Office to be responsive to its constituents and document successes within the USDA SBIR Program.

The objectives of the SBIR Program are to: Stimulate technological innovations in the private sector; strengthen the role of small businesses in meeting Federal research and development needs; increase private sector commercialization of innovations derived from USDA-supported research and development efforts; and foster and encourage participation by women-owned and socially and economically disadvantaged small business firms in technological innovations.

The USDA SBIR program is carried out in three separate phases:

1. Phase I awards to determine, insofar as possible, the scientific and technical merit and feasibility of ideas that appear to have commercial potential.

2. Phase II awards to further develop work from Phase I that meets particular program needs and exhibits potential for commercial application.

3. Phase III awards where commercial applications of SBIR-funded Research/Research and Development (R/R&D) are funded by non-Federal sources of capital; or where products, services or further research intended for use by the Federal Government are funded by follow-on non-SBIR Federal Funding Agreements.

The USDA SBIR Program is administered by NIFA of the USDA. NIFA exercises overall oversight for the policies and procedures governing SBIR grants awarded to the U.S. small business community, representing approximately 2.5% to 2.8% of the USDA extramural R/R&D budget. This represents approximately $201M in Phase II grants awarded to the U.S. small business community from 1994 to 2014.

Plan

A total of 499 USDA SBIR Phase II grants were awarded to small businesses between 1994 and 2014, and the USDA SBIR Program plans to contact past Phase II awardees to determine their success in achieving commercial application of a market ready technology under Phase III.

The survey will be administered through a USDA led contract where a contractor will perform an initial web based survey administered through a secure Internet link with a telephone interview and/or in person interview as a follow-up with SBIR Phase II grantees. Both the web based survey and telephone/in person interviews will consist of a series of questions that relate to the commercial status of the technology developed with USDA SBIR Phase II funding as well as general questions regarding the USDA SBIR Program. The USDA SBIR Program office will coordinate the initial contact with the Phase II companies in an effort to introduce the scope of the survey, provide straightforward instructions and facilitate the survey work that the contractor will initiate and complete. Phase II companies that do not respond within two weeks to the initial contact from the USDA SBIR Program Office will be sent a second request by email

or by phone to respond. It is envisioned that the contractor would then conduct the web based survey and interviews thereafter.

Estimate of Burden: NIFA used burden estimates administered through contractor led web based survey to estimate the burden for SBIR, but anticipates the transactions for project initiation may be reduced because grant application information will be used to prepopulate many fields. The total annual burden for the SBIR Program collection is 2500 hours.

Types of respondents	Number of respondents	Frequency of response	Average time per response hours	Annual burden hours requested
USDA SBIR Phase II Grantees	500	1	5	2500

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 will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request to OMB for approval. All comments will become a matter of public record.

Obtaining a Copy of the Information Collection: A copy of the information collection and related instructions may be obtained free of charge by contacting Robert Martin as directed above.

Done at Washington, DC, this 23rd day of March, 2015.

Catherine E. Woteki,

Under Secretary, Research, Education, and Economics.

[FR Doc. 2015–07373 Filed 3–30–15; 8:45 am]

BILLING CODE 3410–22–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Child Nutrition Programs—Income Eligibility Guidelines

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces the Department's annual adjustments to the Income Eligibility Guidelines to be used in determining eligibility for free and reduced price meals and free milk for the period from July 1, 2015 through June 30, 2016. These guidelines are used by schools, institutions, and facilities participating in the National School Lunch Program (and Commodity School Program), School Breakfast Program, Special Milk Program for Children, Child and Adult Care Food Program, and Summer Food Service Program. The annual adjustments are required by section 9 of the Richard B. Russell National School Lunch Act. The guidelines are intended to direct benefits to those children most in need and are revised annually to account for changes in the Consumer Price Index.

DATES: *Effective Date:* July 1, 2015.

FOR FURTHER INFORMATION CONTACT: Vivian Lees, Branch Chief, Operational Support Branch, Child Nutrition Programs, Food and Nutrition Service (FNS), USDA, Alexandria, Virginia 22302, or by phone at (703) 305–2322.

SUPPLEMENTARY INFORMATION: This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612) and thus is exempt from the provisions of that Act.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), no recordkeeping or reporting requirements have been included that are subject to approval from the Office of Management and Budget.

This notice has been determined to be not significant and was reviewed by the Office of Management and Budget in conformance with Executive Order 12866.

The affected programs are listed in the Catalog of Federal Domestic Assistance under No. 10.553, No. 10.555, No. 10.556, No. 10.558 and No. 10.559 and are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 2 CFR 415.3–415.6).

Background

Pursuant to sections 9(b)(1) and 17(c)(4) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(b)(1) and 42 U.S.C. 1766(c)(4)), and sections 3(a)(6) and 4(e)(1)(A) of the Child Nutrition Act of 1966 (42 U.S.C. 1772(a)(6) and 1773(e)(1)(A)), the Department annually issues the Income Eligibility Guidelines for free and reduced price meals for the National School Lunch Program (7 CFR part 210), the Commodity School Program (7 CFR part 210), School Breakfast Program (7 CFR part 220), Summer Food Service Program (7 CFR part 225) and Child and Adult Care Food Program (7 CFR part 226) and the guidelines for free milk in the Special Milk Program for Children (7 CFR part 215). These eligibility guidelines are based on the Federal income poverty guidelines and are stated by household size. The guidelines are used to determine eligibility for free and reduced price meals and free milk in accordance with applicable program rules.

Definition of Income

In accordance with the Department's policy as provided in the Food and Nutrition Service publication *Eligibility Manual for School Meals,* ''income,'' as the term is used in this notice, means income before any deductions such as income taxes, Social Security taxes, insurance premiums, charitable contributions and bonds. It includes the following: (1) Monetary compensation for services, including wages, salary, commissions or fees; (2) net income from nonfarm self-employment; (3) net income from farm self-employment; (4) Social Security; (5) dividends or interest on savings or bonds or income from estates or trusts; (6) net rental income; (7) public assistance or welfare payments; (8) unemployment compensation; (9) government civilian employee or military retirement, or pensions or veterans payments; (10) private pensions or annuities; (11) alimony or child support payments; (12) regular contributions from persons not living in the household; (13) net royalties; and (14) other cash income. Other cash income would include cash amounts received or withdrawn from any source including savings, investments, trust accounts and other resources that would be available to pay the price of a child's meal.

''Income,'' as the term is used in this notice, does *not* include any income or benefits received under any Federal programs that are excluded from consideration as income by any statutory prohibition. Furthermore, the

value of meals or milk to children shall not be considered as income to their households for other benefit programs in accordance with the prohibitions in section 12(e) of the Richard B. Russell National School Lunch Act and section 11(b) of the Child Nutrition Act of 1966 (42 U.S.C. 1760(e) and 1780(b)).

The Income Eligibility Guidelines

The following are the Income Eligibility Guidelines to be effective from July 1, 2015 through June 30, 2016. The Department's guidelines for free meals and milk and reduced price meals were obtained by multiplying the year 2015 Federal income poverty guidelines by 1.30 and 1.85, respectively, and by rounding the result upward to the next whole dollar.

This notice displays only the annual Federal poverty guidelines issued by the Department of Health and Human Services because the monthly and weekly Federal poverty guidelines are not used to determine the Income Eligibility Guidelines. The chart details the free and reduced price eligibility criteria for monthly income, income received twice monthly (24 payments per year), income received every two weeks (26 payments per year) and weekly income.

Income calculations are made based on the following formulas: Monthly income is calculated by dividing the annual income by 12; twice monthly income is computed by dividing annual income by 24; income received every two weeks is calculated by dividing annual income by 26; and weekly income is computed by dividing annual income by 52. All numbers are rounded upward to the next whole dollar. The numbers reflected in this notice for a family of four in the 48 contiguous States, the District of Columbia, Guam and the territories represent an increase of 1.7 percent over last year's level for a family of the same size. The income eligibility guidelines table follows below.

INCOME ELIGIBILITY GUIDELINES

[Effective from July 1, 2015 to June 30, 2016]

Household size	Federal poverty guidelines	Reduced price meals—185%					Free meals—130%				
	Annual	Annual	Monthly	Twice per month	Every two weeks	Weekly	Annual	Monthly	Twice per month	Every two weeks	Weekly
48 Contiguous States, District of Columbia, Guam and Territories											
1	11,770	21,775	1,815	908	838	419	15,301	1,276	638	589	295
2	15,930	29,471	2,456	1,228	1,134	567	20,709	1,726	863	797	399
3	20,090	37,167	3,098	1,549	1,430	715	26,117	2,177	1,089	1,005	503
4	24,250	44,863	3,739	1,870	1,726	863	31,525	2,628	1,314	1,213	607
5	28,410	52,559	4,380	2,190	2,022	1,011	36,933	3,078	1,539	1,421	711
6	32,570	60,255	5,022	2,511	2,318	1,159	42,341	3,529	1,765	1,629	815
7	36,730	67,951	5,663	2,832	2,614	1,307	47,749	3,980	1,990	1,837	919
8	40,890	75,647	6,304	3,152	2,910	1,455	53,157	4,430	2,215	2,045	1,023
For each additional family member add	4,160	7,696	642	321	296	148	5,408	451	226	208	104
Alaska											
1	14,720	27,232	2,270	1,135	1,048	524	19,136	1,595	798	736	368
2	19,920	36,852	3,071	1,536	1,418	709	25,896	2,158	1,079	996	498
3	25,120	46,472	3,873	1,937	1,788	894	32,656	2,722	1,361	1,256	628
4	30,320	56,092	4,675	2,338	2,158	1,079	39,416	3,285	1,643	1,516	758
5	35,520	65,712	5,476	2,738	2,528	1,264	46,176	3,848	1,924	1,776	888
6	40,720	75,332	6,278	3,139	2,898	1,449	52,936	4,412	2,206	2,036	1,018
7	45,920	84,952	7,080	3,540	3,268	1,634	59,696	4,975	2,488	2,296	1,148
8	51,120	94,572	7,881	3,941	3,638	1,819	66,456	5,538	2,769	2,556	1,278
For each additional family member add	5,200	9,620	802	401	370	185	6,760	564	282	260	130
Hawaii											
1	13,550	25,068	2,089	1,045	965	483	17,615	1,468	734	678	339
2	18,330	33,911	2,826	1,413	1,305	653	23,829	1,986	993	917	459
3	23,110	42,754	3,563	1,782	1,645	823	30,043	2,504	1,252	1,156	578
4	27,890	51,597	4,300	2,150	1,985	993	36,257	3,022	1,511	1,395	698
5	32,670	60,440	5,037	2,519	2,325	1,163	42,471	3,540	1,770	1,634	817
6	37,450	69,283	5,774	2,887	2,665	1,333	48,685	4,058	2,029	1,873	937
7	42,230	78,126	6,511	3,256	3,005	1,503	54,899	4,575	2,288	2,112	1,056
8	47,010	86,969	7,248	3,624	3,345	1,673	61,113	5,093	2,547	2,351	1,176
For each additional family member add	4,780	8,843	737	369	341	171	6,214	518	259	239	120

Authority: Section 9(b)(1) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(b)(1).

Date: March 26, 2015.

Jeffrey J. Tribiano,

Acting Administrator, Food and Nutrition Service.

[FR Doc. 2015–07358 Filed 3–30–15; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Special Supplemental Nutrition Program for Women, Infants and Children (WIC): Income Eligibility Guidelines

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Notice

SUMMARY: The U.S. Department of Agriculture (''Department'') announces adjusted income eligibility guidelines to be used by State agencies in determining the income eligibility of persons applying to participate in the Special Supplemental Nutrition Program for Women, Infants and Children Program (WIC). These income eligibility guidelines are to be used in conjunction with the WIC Regulations.

DATES: Effective Date July 1, 2015.

FOR FURTHER INFORMATION CONTACT: Donna Hines, Chief, Policy Branch, Supplemental Food Programs Division, FNS, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302, (703) 305–2746.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This notice is exempt from review by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612) and thus is exempt from the provisions of this Act.

Paperwork Reduction Act of 1995

This notice does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Executive Order 12372

This program is listed in the Catalog of Federal Domestic Assistance Programs under No. 10.557, and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials (7 CFR part 3015, subpart V, 48 FR 29100, June 24, 1983, and 49 FR 22675, May 31, 1984).

Description

Section 17(d)(2)(A) of the Child Nutrition Act of 1966, as amended (42 U.S.C. 1786(d)(2)(A)), requires the Secretary of Agriculture to establish income criteria to be used with nutritional risk criteria in determining a person's eligibility for participation in the WIC Program. The law provides that persons will be income-eligible for the WIC Program only if they are members of families that satisfy the income standard prescribed for reduced-price school meals under section 9(b) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(b)). Under section 9(b), the income limit for reduced-price school meals is 185 percent of the Federal poverty guidelines, as adjusted. Section 9(b) also requires that these guidelines be revised annually to reflect changes in the Consumer Price Index. The annual revision for 2015/2016 was published by the Department of Health and Human Services (HHS) at 80 FR 3236, January 22, 2015. The guidelines published by HHS are referred to as the ''poverty guidelines.''

Section 246.7(d)(1) of the WIC regulations (Title 7, Code of Federal Regulations) specifies that State agencies may prescribe income guidelines either equaling the income guidelines established under section 9 of the Richard B. Russell National School Lunch Act for reduced-price school meals, or identical to State or local guidelines for free or reduced-price health care. However, in conforming WIC income guidelines to State or local health care guidelines, the State cannot establish WIC guidelines which exceed the guidelines for reduced-price school meals, or which are less than 100 percent of the Federal poverty guidelines. Consistent with the method used to compute income eligibility guidelines for reduced-price meals under the National School Lunch Program, the poverty guidelines were multiplied by 1.85 and the results rounded upward to the next whole dollar. At this time, the Department is publishing the maximum and minimum WIC income eligibility guidelines by household size for the period July 1, 2015, through June 30, 2016. Consistent with section 17(f)(17) of the Child Nutrition Act of 1966, as amended (42 U.S.C. 1786(f)(17)), a State agency may implement the revised WIC income eligibility guidelines concurrently with the implementation of income eligibility guidelines under the Medicaid Program established under Title XIX of the Social Security Act (42 U.S.C. 1396, *et seq.*). State agencies may coordinate implementation with the revised Medicaid guidelines, *i.e.,* earlier in the year, but in no case may implementation take place later than July 1, 2015.

State agencies that do not coordinate implementation with the revised Medicaid guidelines must implement the WIC income eligibility guidelines on July 1, 2015. The first table of this Notice contains the income limits by household size for the 48 contiguous States, the District of Columbia, and all Territories, including Guam.

INCOME ELIGIBILITY GUIDELINES

[Effective from July 1, 2015 to June 30, 2016]

Household size	Federal poverty guidelines—100%					Reduced price meals—185%				
	Annual	Monthly	Twice-monthly	Bi-weekly	Weekly	Annual	Monthly	Twice-monthly	Bi-weekly	Weekly
48 Contiguous States, D.C., Guam and Territories										
1	$11,770	$981	$491	$453	$227	$21,775	$1,815	$908	$838	$419
2	15,930	1,328	664	613	307	29,471	2,456	1,228	1,134	567
3	20,090	1,675	838	773	387	37,167	3,098	1,549	1,430	715
4	24,250	2,021	1,011	933	467	44,863	3,739	1,870	1,726	863
5	28,410	2,368	1,184	1,093	547	52,559	4,380	2,190	2,022	1,011
6	32,570	2,715	1,358	1,253	627	60,255	5,022	2,511	2,318	1,159
7	36,730	3,061	1,531	1,413	707	67,951	5,663	2,832	2,614	1,307
8	40,890	3,408	1,704	1,573	787	75,647	6,304	3,152	2,910	1,455
Each add'l family member add	+ $4,160	+ $347	+ $174	+ $160	+ $80	+ $7,696	+ $642	+ $321	+ $296	+ $148
Alaska										
1	$14,720	$1,227	$614	$567	$284	$27,232	$2,270	$1,135	$1,048	$524
2	19,920	1,660	830	767	384	36,852	3,071	1,536	1,418	709
3	25,120	2,094	1,047	967	484	46,472	3,873	1,937	1,788	894
4	30,320	2,527	1,264	1,167	584	56,092	4,675	2,338	2,158	1,079
5	35,520	2,960	1,480	1,367	684	65,712	5,476	2,738	2,528	1,264
6	40,720	3,394	1,697	1,567	784	75,332	6,278	3,139	2,898	1,449
7	45,920	3,827	1,914	1,767	884	84,952	7,080	3,540	3,268	1,634
8	51,120	4,260	2,130	1,967	984	94,572	7,881	3,941	3,638	1,819
Each add'l family member add	+ $5,200	+ $434	+ $217	+ $200	+ $100	+ $9,620	+ $802	+ $401	+ $370	+ $185
Hawaii										
1	$13,550	$1,130	$565	$522	$261	$25,068	$2,089	$1,045	$965	$483

INCOME ELIGIBILITY GUIDELINES—Continued

[Effective from July 1, 2015 to June 30, 2016]

Household size	Federal poverty guidelines—100%					Reduced price meals—185%				
	Annual	Monthly	Twice-monthly	Bi-weekly	Weekly	Annual	Monthly	Twice-monthly	Bi-weekly	Weekly
2	18,330	1,528	764	705	353	33,911	2,826	1,413	1,305	653
3	23,110	1,926	963	889	445	42,754	3,563	1,782	1,645	823
4	27,890	2,325	1,163	1,073	537	51,597	4,300	2,150	1,985	993
5	32,670	2,723	1,362	1,257	629	60,440	5,037	2,519	2,325	1,163
6	37,450	3,121	1,561	1,441	721	69,283	5,774	2,887	2,665	1,333
7	42,230	3,520	1,760	1,625	813	78,126	6,511	3,256	3,005	1,503
8	47,010	3,918	1,959	1,809	905	86,969	7,248	3,624	3,345	1,673
Each add'l family member add	+ $4,780	+ $399	+ $200	+ $184	+ $92	+ $8,843	+ $737	+ $369	+ $341	+ $171

INCOME ELIGIBILITY GUIDELINES—SUPPLEMENTAL CHART FOR FAMILY SIZES GREATER THAN EIGHT

[Effective from July 1, 2015 to June 30, 2016]

Household size	Federal poverty guidelines—100%					Reduced price meals—185%				
	Annual	Monthly	Twice-monthly	Bi-weekly	Weekly	Annual	Monthly	Twice-monthly	Bi-weekly	Weekly
48 Contiguous States, D.C., Guam and Territories										
9	$45,050	$3,755	$1,878	$1,733	$867	$83,343	$6,946	$3,473	$3,206	$1,603
10	49,210	4,101	2,051	1,893	947	91,039	7,587	3,794	3,502	1,751
11	53,370	4,448	2,224	2,053	1,027	98,735	8,228	4,114	3,798	1,899
12	57,530	4,795	2,398	2,213	1,107	106,431	8,870	4,435	4,094	2,047
13	61,690	5,141	2,571	2,373	1,187	114,127	9,511	4,756	4,390	2,195
14	65,850	5,488	2,744	2,533	1,267	121,823	10,152	5,076	4,686	2,343
15	70,010	5,835	2,918	2,693	1,347	129,519	10,794	5,397	4,982	2,491
16	74,170	6,181	3,091	2,853	1,427	137,215	11,435	5,718	5,278	2,639
Each add'l family member add	+ $4,160	+ $347	+ $174	+ $160	+ $80	+ $7,696	+ $642	+ $321	+ $296	+ $148
Alaska										
9	$56,320	$4,694	$2,347	$2,167	$1,084	$104,192	$8,683	$4,342	$4,008	$2,004
10	61,520	5,127	2,564	2,367	1,184	113,812	9,485	4,743	4,378	2,189
11	66,720	5,560	2,780	2,567	1,284	123,432	10,286	5,143	4,748	2,374
12	71,920	5,994	2,997	2,767	1,384	133,052	11,088	5,544	5,118	2,559
13	77,120	6,427	3,214	2,967	1,484	142,672	11,890	5,945	5,488	2,744
14	82,320	6,860	3,430	3,167	1,584	152,292	12,691	6,346	5,858	2,929
15	87,520	7,294	3,647	3,367	1,684	161,912	13,493	6,747	6,228	3,114
16	92,720	7,727	3,864	3,567	1,784	171,532	14,295	7,148	6,598	3,299
Each add'l family member add	+ $5,200	+ $434	+ $217	+ $200	+ $100	+ $9,620	+ $802	+ $401	+ $370	+ $185
Hawaii										
9	$51,790	$4,316	$2,158	$1,992	$996	$95,812	$7,985	$3,993	$3,686	$1,843
10	56,570	4,715	2,358	2,176	1,088	104,655	8,722	4,361	4,026	2,013
11	61,350	5,113	2,557	2,360	1,180	113,498	9,459	4,730	4,366	2,183
12	66,130	5,511	2,756	2,544	1,272	122,341	10,196	5,098	4,706	2,353
13	70,910	5,910	2,955	2,728	1,364	131,184	10,932	5,466	5,046	2,523
14	75,690	6,308	3,154	2,912	1,456	140,027	11,669	5,835	5,386	2,693
15	80,470	6,706	3,353	3,095	1,548	148,870	12,406	6,203	5,726	2,863
16	85,250	7,105	3,553	3,279	1,640	157,713	13,143	6,572	6,066	3,033
Each add'l family member add	+ $4,780	+ $399	+ $200	+ $184	+ $92	+ $8,843	+ $737	+ $369	+ $341	+ $171

Because the poverty guidelines for Alaska and Hawaii are higher than for the 48 contiguous States, separate tables for Alaska and Hawaii have been included for the convenience of the State agencies.

Authority: 42 U.S.C. 1786.

Dated: March 26, 2015.

Jeffrey J. Tribiano,

Acting Administrator, Food and Nutrition Service.

[FR Doc. 2015–07359 Filed 3–30–15; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—National Universal Product Code (NUPC) Database

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on this proposed information collection. This is a revision of a currently approved collection for the development and maintenance of a central repository containing information about authorized WIC foods as approved by various WIC State agencies.

DATES: Written comments must be received on or before June 1, 2015.

ADDRESSES: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate

of the burden of the proposed collection of information, including the validity of the methodology and assumptions that were used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent to: Steve Porter, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 528, Alexandria, VA 22302. Comments may also be submitted via fax to the attention of Steve Porter at 703–305–2196 or via email to *Steve.Porter@fns.usda.gov*. Comments will also be accepted through the Federal eRulemaking Portal. Go to *http://www.regulations.gov,* and follow the online instructions for submitting comments electronically.

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will be a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this information collection should be directed to Steve Porter at 703–305–2721.

SUPPLEMENTARY INFORMATION:

Title: National Universal Product Code (NUPC) Database

Form Number: N/A

OMB Number: 0584–0552

Expiration Date: May 31, 2015

Type of Request: Revision of a currently approved collection

Abstract: The Special Supplemental Nutrition Program for Women, Infants and Children (WIC), (Pub. L. 109–85), provides low-income pregnant, breastfeeding, and postpartum women, infants, and children up to age five with nutritious supplemental foods. The program also provides nutrition education and referrals to health and social services.

The WIC Program is administered by the USDA Food and Nutrition Service (FNS). FNS provides grant funding and issues regulations which are utilized by WIC State agencies to operate the WIC Program and distribute benefits through local WIC clinics. The program operates throughout the 50 States, the District of Columbia, Guam, Puerto Rico, American Samoa, Commonwealth of the Northern Mariana Islands, the Virgin Islands, and in 34 Indian Tribal Organizations.

The USDA Food and Nutrition Service previously included WIC State agencies in burden calculations for the NUPC database. WIC State agencies have been removed from this burden calculation and will instead be included in the burden calculation associated with the final regulations for WIC Electronic Benefit Transfer promulgated as a result of The Healthy Hunger-Free Kids Act of 2010 (Pub. L. 111–296). The remainder of this abstract provides a brief description of WIC program operations and recent modifications to the NUPC database.

WIC State agencies are required to authorize eligible foods on their WIC food list by federal regulations at 7 CFR part 246. Under these regulations, State agencies must review food products for eligibility in accordance with Federal regulations and State agency policies. State agencies are not required to authorize all food products eligible under federal regulations, but generally select foods based on factors such as cost, availability and acceptability to participants. After review, the State agency develops a list of food items available to WIC participants for purchase. State agencies require Authorized Vendors (*i.e.,* stores authorized to provide WIC foods) to ensure only authorized food items are purchased. A few of these vendors have programmed their point of sale systems to identify WIC approved foods and their associated Universal Product Code (UPC) or Price Look-Up (PLU) code as individual products are scanned at the checkout; however, many vendors still rely on their checkout clerks to ensure only authorized WIC products are approved for purchase.

WIC State agencies currently operating Electronic Benefit Transfer (EBT) systems provide their Authorized Vendors with an electronic file containing the State agency's current list of authorized foods. This food list is known as the Authorized Products List (APL). In State agencies where EBT systems are operational, as products are scanned at the checkout lane, the UPC or PLU is matched to the State specific APL. Food items matching the APL, and which are presented in quantities less than or equal to the remaining benefit balance associated with the participant's WIC EBT card, are approved for purchase. Unmatched items, or items in excess of the available account balance, may not be purchased with WIC benefits.

The Healthy, Hunger-Free Kids Act of 2010 directs the Secretary of Agriculture to establish a National Universal Product Code (NUPC) database for use by all WIC State agencies as they implement Electronic Benefit Transfer (EBT) statewide. As a result of this legislation, FNS has adopted a plan to expand the number of data elements contained in the existing NUPC database while simultaneously attempting to reduce the burden on WIC State agency employees tasked with creating State specific APL's by assembling food product information in an easily accessible repository.

NUPC database modifications and expansion activities have allowed for the storage and retrieval of additional data elements for each WIC authorized food to include: Nutrition facts panel, ingredients, special processing practices (*i.e.,* Kosher or Halal), and a free form comments field. All previously used product identifier fields were retained. Responsibility for populating the NUPC database, which previously resided with individual WIC State agencies, has been transferred to an independent contractor who will serve as the single point of entry for all information entering the NUPC database. This contractor will ensure NUPC data is captured with a high level of accuracy while preserving data integrity in a standardized format.

The NUPC database will provide all WIC State agencies with access to a central repository containing comprehensive information about authorized WIC foods. State agencies may choose to use the NUPC database to create an initial list of authorized foods eligible for redemption by WIC Program participants. Subsequently, State agencies may use the NUPC database to maintain their list of authorized foods and to create an APL for distribution to Authorized Vendors when operating in the EBT environment.

Affected Public: Businesses or Other For Profit Organizations. Respondent groups identified include: (1) Food Manufacturers and Distributors; and (2) Authorized Vendors.

Estimated Number of Respondents: The total estimated number of respondents is 360. This includes 240 Food Manufacturers or Distributors and 120 Authorized Vendors.

Estimated Frequency of Responses per Respondent: 3.33. The 240 Food Manufacturers or Distributors will be asked to provide product information in electronic format (.doc, .xls, .pdf). All responses are voluntary. FNS estimates that each of the Food Manufacturers or Distributors will be asked to provide product information 4 times per year on average and that each of the 120 Authorized Vendors will be asked to provide product information 2 times per year on average.

Estimated Total Annual Responses: The total number of responses is estimated to be 1,200. FNS estimates

Food Manufacturers or Distributors will be asked to respond a total of 960 times per year (240 Food Manufacturers or Distributors × 4 responses per year each = 960). FNS estimates Authorized Vendors will be asked to respond a total of 240 times per year (120 Authorized Vendors × 2 responses per year each = 240). All responses are voluntary.

Estimated Time per Response: 8.6 hours.

The estimated time per response varies by type of respondent. FNS expects all respondents will expend 12 hours per respondent per year to develop, maintain, and troubleshoot the electronic systems for use in transmitting information. The estimated time required to develop, maintain, and troubleshoot electronic systems is amortized over the expected number of responses. FNS also expects all respondents will expend 2 seconds per response to transmit information to FNS electronically. Since the time required to actually transmit the information to FNS is considered negligible (total of 40 minutes per year for all respondents), it was omitted from the burden calculation. FNS expects that Food Manufacturers or Distributors will expend 6 hours per response to gather and format the requested information. Authorized Vendors are expected to expend 1 hour per response to gather and format the requested information.The estimated time per response for Food Manufacturers or Distributors is expected to be 9 hours per response ((12 hours per year/4 responses per year) + 6 hours per response = 9 hours per response).

The estimated time per response for Authorized Vendors is expected to be 7 hours per response ((12 hours per year/2 responses per year) + 1 hour per response = 7 hours per response).

Estimated Total Annual Burden on all Respondents: 10,320 hours. The table below provides an estimated total annual burden for each type of respondent.

Respondent	Estimated number of respondents	Frequency of responses per respondent (annually)	Total annual responses	Estimated average number of hours per response	Estimated total hours
Food Manufacturers and Distributors (Voluntary)	240	4	960	9.0	8,640.0
Authorized Vendors (Voluntary)	120	2	240	7.0	1,680.0
Total Reporting Burden	360	3.33	1,200	8.6	10,320.0

Dated: March 19, 2015.

Audrey Rowe,

Administrator, Food and Nutrition Service.

[FR Doc. 2015–07369 Filed 3–30–15; 8:45 am]

BILLING CODE 3410–30–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Missouri Advisory Committee for a Meeting To Discuss Matters Related to Its Project on Police-Community Relations in Missouri; Correction

AGENCY: U.S. Commission on Civil Rights.

ACTION: Notice of meeting; correction.

SUMMARY: The U.S. Commission on Civil Rights published a document in the **Federal Register** of March 9, 2015, concerning a meeting of the Missouri Advisory Committee to discuss matters related to its project on police-community relations in Missouri. The document contained an incorrect date and time.

FOR FURTHER INFORMATION CONTACT: David Mussatt, 312–353–8311.

Correction

In the **Federal Register** of March 18, 2015, in 80 FR 14071, in the third column on page 14071, the first sentence of the Summary section should be changed to read:

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Missouri Advisory Committee (Committee) will hold a meeting on Wednesday, April 1, 2015, at 2:00 p.m. until 3:00 p.m. CST.

Correction

In the **Federal Register** of March 18, 2015, in 80 FR 14071, in the first column on page 14072, the first sentence of the Dates section should be changed to read:

DATES: The meeting will be held on Wednesday, April 1, 2015, at 2:00 p.m. CST.

Dated: March 18, 2015.

David Mussatt,

Chief, Regional Programs Unit.

[FR Doc. 2015–07240 Filed 3–30–15; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the New York Advisory Committee

Dates and Times: Friday, April 10, 2015 at 12:00 p.m. [EDT]

Place: Via Teleconference. Public Dial-in 1–877–446–3914; Listen Line Code: 3098402

TDD: Dial Federal Relay Service 1–800–977–8339 give operator the following number: 202–376–7533—or by email at *ero@usccr.gov.*

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a planning meeting of the New York Advisory Committee to the Commission will convene at 12:00 p.m. via conference call on Friday, April 10, 2015. The purpose of the planning meeting is for the Advisory Committee to discuss plans to conduct a public meeting on the over policing of communities of color in New York.

The meeting will be conducted via conference call. Persons with hearing impairments must first dial the Federal Relay Service *TDD:* 1–800–977–8339 and give the operator the Eastern Regional Office number (202–376–7533).

Members of the public who call-in can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number.

Members of the public are entitled to submit written comments. The comments must be received in ERO by 30 days after the meeting date. Comments may be mailed to the Eastern Regional Office, U.S. Commission on Civil Rights, 1331 Pennsylvania Avenue, Suite 1150, Washington, DC 20425, faxed to (202) 376–7548, or emailed to Evelyn Bohor at

ero@usccr.gov. Persons who desire additional information may contact the Eastern Regional Office at 202–376–7533.

Records generated from this meeting may be inspected and reproduced at the Eastern Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *www.usccr.gov,* or to contact the Eastern Regional Office at the above phone number, email or street address.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission and FACA.

Exceptional Circumstance: Pursuant to 41 CFR 102–3.150, the notice for this meeting is given less than 15 calendar days prior to the meeting because of the exceptional circumstances of technical difficulties occurring in the process of having the meeting notice signed and sent to the **Federal Register**.

Dated: March 25, 2015.

David Mussatt,

Chief, Regional Programs Unit.

[FR Doc. 2015–07239 Filed 3–30–15; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD858

New England Fishery Management Council; Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council's (Council) Observer Policy Committee will meet to review scientific information affecting New England fisheries in the exclusive economic zone (EEZ).

DATES: The meeting will be held on Thursday, April 16, 2015 beginning at 9:30 a.m.

ADDRESSES: The meeting will be held at the Four Points by Sheraton (formerly Sheraton Colonial), One Audubon Ave., Wakefield, MA 01880.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Agenda items:

The Observer Committee will review and discuss updated information and analyses for the draft Environmental Assessment for the NMFS-led omnibus amendment to establish provisions for Industry-Funded Monitoring (IFM) across all Council-managed fisheries; consider additional options for industry-funded portside sampling and electronic monitoring (EM) in the Atlantic herring fishery, to be implemented immediately in the IFM amendment (versus a framework adjustment); develop Committee recommendations; review/discuss updated information related to herring/mackerel economic analysis in omnibus IFM amendment; discuss other elements of IFM amendment and develop Committee recommendations; review Draft Action Plan and timeline for completion of IFM amendment. They will address other business as necessary.

Although non-emergency issues not contained in this agenda may be discussed, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies (see **ADDRESSES**) at least 5 days prior to the meeting date.

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

Dated: March 26, 2015.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2015–07311 Filed 3–30–15; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

International Trade Administration

Extension of Deadline of Request for Applicants for Appointment to the United States-Brazil CEO Forum

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: On March 16, 2015, the Department of Commerce (''the Department'') published a **Federal Register** notice requesting applications for appointment to the United States-Brazil CEO Forum, providing March 30, 2015, as the deadline to submit applications to the Department for immediate consideration.[1] This notice extends the deadline from March 30, 2015, to Monday, April 13, 2015.

DATES: Applications for immediate consideration should be received no later than close of business April 13, 2015. Applications will continue to be accepted until June 30, 2016, for appointments to fill future vacancies that may arise.

ADDRESSES: Please send requests for consideration to Braeden Young, Office of Latin America and the Caribbean, U.S. Department of Commerce, either by email at *Braeden.Young@trade.gov* or by mail to U.S. Department of Commerce, 1401 Constitution Avenue NW., Room CC334, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Braeden Young, Office of Latin America and the Caribbean, U.S. Department of Commerce, telephone: (202) 482–1093.

SUPPLEMENTARY INFORMATION: For more information on the United States-Brazil CEO Forum, please see the Request for Applicants. The Terms of Reference may be viewed at: *http://www.trade.gov/ceo-forum/.*

As delineated in the Request for Applicants, to be considered for membership, please submit the following information as instructed in the **ADDRESSES** and **DATES** captions above: Name(s) and title(s) of the individual(s) requesting consideration; name and address of company's headquarters; location of incorporation; size of the company; size of company's export trade, investment, and nature of operations or interest in Brazil; an affirmative statement that the applicant is neither registered nor required to register as a foreign agent under the Foreign Agents Registration Act of 1938, as amended; and a brief statement of why the candidate should be considered, including information about the candidate's ability to initiate and be responsible for activities in which the Forum will be active. Applications will be considered as they are received. All candidates will be notified of whether they have been selected.

[1] *See Request for Applicants for Appointment to the United States-Brazil CEO Forum,* 80 FR 13521 (March 16, 2015)(''Request for Applicants'').

Dated: March 25, 2015.

Alexander Peacher,

Acting Director for the Office of Latin America & the Caribbean.

[FR Doc. 2015–07385 Filed 3–30–15; 8:45 am]

BILLING CODE 3510–HE–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Pacific Islands Logbook Family of Forms

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

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 June 1, 2015.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Walter Ikehara, (808) 725–5175 or *Walter.Ikehara@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for extension of a currently approved information collection.

Fishermen in Federally-managed fisheries in the western Pacific region are required to provide certain information about their fishing activities, catch, and interactions with protected species by submitting reports to National Marine Fisheries Service (NMFS), per 50 CFR part 665. These data are needed to determine the condition of the stocks and whether the current management measures are having the intended effects, to evaluate the benefits and costs of changes in management measures, and to monitor and respond to accidental takes of endangered and threatened species, including seabirds, sea turtles, and marine mammals.

II. Method of Collection

Respondents have a choice of either electronic or paper forms. Methods of submittal include email of electronic forms, submission via Vessel Monitoring System device or online, and mail and facsimile transmission of paper forms.

III. Data

OMB Control Number: 0648–0214.

Form Number: None.

Type of Review: Regular submission (extension of a currently approved collection).

Affected Public: Businesses or other for-profit organizations; individuals or households.

Estimated Number of Respondents: 280.

Estimated Time per Response: Logbooks and sales reports, 5–35 minutes based on fishery, entry/exit and landing notices, Protected Species Zone entry/exit notices, 5 minutes; landing/offloading notices, 3 minutes.

Estimated Total Annual Burden Hours: 14,867.

Estimated Total Annual Cost to Public: $1,300 in recordkeeping/reporting costs.

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: March 25, 2015.

Sarah Brabson,

NOAA PRA Clearance Officer.

[FR Doc. 2015–07244 Filed 3–30–15; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–16–2015]

Notification of Proposed Production Activity; Xylem Water Systems USA LLC, Subzone 37D (Centrifugal and Submersible Pumps), Auburn, New York

Xylem Water Systems USA LLC (Xylem), operator of Subzone 37D, submitted a notification of proposed production activity to the FTZ Board for its facilities located in Auburn, New York. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on March 23, 2015.

Xylem already has authority to produce centrifugal and submersible pumps and related controllers. The current request would add a finished product (pump demonstration cutaways) and certain foreign-status materials and components to the scope of authority. Pursuant to 15 CFR 400.14(b), additional FTZ authority would be limited to the specific foreign-status materials and components and specific finished products described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt Xylem from customs duty payments on the foreign status components used in export production. On its domestic sales, Xylem would be able to choose the duty rates during customs entry procedures that apply to centrifugal and submersible pumps (free), pump demonstration cutaways (free), and controllers (1.5%) for the foreign status components and materials noted below and in the existing scope of authority.

Customs duties also could possibly be deferred or reduced on foreign status production equipment.

The components and materials sourced from abroad include: strainer parts; shaft coupling parts; cast iron bases; non-asbestos gaskets; plastic resins; electric current filtration devices; polyester rope; pressure transducers; and, fluid sight glasses (duty rate ranges from free to 6.5%).

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary at the address below. The closing period for their receipt is May 11, 2015.

A copy of the notification will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room

21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the FTZ Board's Web site, which is accessible via *www.trade.gov/ftz.*

For further information, contact Pierre Duy at *Pierre.Duy@trade.gov* (202) 482–1378.

Dated: March 24, 2015.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2015–07381 Filed 3–30–15; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Papahanaumokuakea Marine National Monument Mokupapapa Discovery Center Exhibit Evaluation

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

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 June 1, 2015.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov).*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Andy Collins, at (808) 694–3922 or *Andy.Collins@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for extension of a currently approved information collection. Mokupapapa Discovery Center (Center) is an outreach arm of Papahanaumokuakea Marine National Monument that reaches 60,000 people each year in Hilo, Hawai'i. The Center was created eight years ago to help raise support for the creation of a National Marine Sanctuary in the Northwestern Hawaiian Islands. Since that time, the area has been proclaimed a Marine National Monument and the main messages we are trying to share with the public have changed to better reflect the new monument status, UNESCO World Heritage status and the joint management by the three co-trustees of the Monument. We therefore are seeking to find out if people visiting our Center are receiving our new messages by conducting an optional exit survey.

II. Method of Collection

Surveys will be conducted by in-person interview as people exit the Center. Interviewers will record responses on paper, and later transfer them to an electronic database.

III. Data

OMB Control Number: 0648–0582.

Form Number: None.

Type of Review: Regular submission (extension of a currently approved collection).

Affected Public: Individuals or households.

Estimated Number of Respondents: 250.

Estimated Time Per Response: 7 minutes.

Estimated Total Annual Burden Hours: 29.

Estimated Total Annual Cost to Public: $0 in recordkeeping/reporting costs.

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: March 26, 2015.

Sarah Brabson,

NOAA PRA Clearance Officer.

[FR Doc. 2015–07290 Filed 3–30–15; 8:45 am]

BILLING CODE 3510–NK–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–867]

Large Power Transformers From the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2012–2013

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On September 24, 2014, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on large power transformers from the Republic of Korea.[1] The review covers five producers/exporters of the subject merchandise, Hyosung Corporation (Hyosung), Hyundai Heavy Industries Co., Ltd. (Hyundai), ILJIN, ILJIN Electric Co., Ltd. (ILJIN Electric), and LSIS Co., Ltd. (LSIS). ILJIN, ILJIN Electric, and LSIS, were not selected for individual examination. The period of review (POR) is February 16, 2012, through July 31, 2013. As a result of our analysis of the comments and information received, these final results differ from the *Preliminary Results.* For the final weighted-average dumping margins, *see* the ''Final Results of Review'' section below.

DATES: Effective March 31, 2015.

FOR FURTHER INFORMATION CONTACT: Brian Davis (Hyosung) or David Cordell (Hyundai), AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–7924 or (202) 482–0408, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 24, 2014, the Department published the *Preliminary Results.* In accordance with 19 CFR 351.309(c)(1)(ii), we invited parties to comment on our *Preliminary Results.*[2] On October 15, 2014, the Department issued a post-preliminary supplemental questionnaire, to which Hyundai

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[1] *See Large Power Transformers From the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2012–2013,* 79 FR 57046 (September 24, 2014) (*Preliminary Results*).

[2] The Department issued the briefing schedule in a Memorandum to the File, dated November 3, 2014. This briefing schedule was later extended at the request of interested parties to December 19, 2014 for briefs and January 9, 2015 for rebuttal briefs on all issues, except one.

responded on November 3 and 12, 2014, and December 2, 2014. On December 19, 2014, Hyosung and ABB Inc. (Petitioner) timely submitted case briefs.[3] Rebuttal briefs were also timely filed by Hyosung, Hyundai, and Petitioner, on January 9, 2015.[4] On January 20, 2015, the Department issued a memorandum extending the time period for issuing the final results of this administrative review from January 22, 2015 to March 16, 2015. On March 6, 2015, the Department further extended the final results to March 23, 2015.[5]

Scope of the Order

The scope of this order covers large liquid dielectric power transformers (LPTs) having a top power handling capacity greater than or equal to 60,000 kilovolt amperes (60 megavolt amperes), whether assembled or unassembled, complete or incomplete. The merchandise subject to the order is currently classified in the Harmonized Tariff Schedule of the United States at subheadings 8504.23.0040, 8504.23.0080 and 8504.90.9540.[6]

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the Issues and Decision Memorandum.[7] A list of the issues that parties raised and to which we responded is attached to this notice as an Appendix. The Issues and Decision Memorandum is a public document and is on-file electronically via ACCESS. ACCESS is available to registered users at *http://access.trade.gov* and in the Central Records Unit, Room 7046 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the Internet at *http://enforcement.ita.doc.gov/frn/index.html*. The signed Issues and Decision Memorandum and the electronic version of the Issues and Decision Memorandum are identical in content.

Changes Since the Preliminary Results

Based on a review of the record and comments received from interested parties regarding our *Preliminary Results,* we recalculated Hyosung's and Hyundai's weighted-average dumping margins for these final results.

For Hyosung, we revised our margin program by adjusting Hyosung's reported U.S. duty expenses for certain sales transactions. We are also including U.S. freight expenses that were excluded in the *Preliminary Results* and including the entered value of a unit that entered the United States during the POR in our calculation of the assessment rates for entries of LPTs during the POR.[8]

We made some changes to our calculation programs for Hyundai with respect to oil and certain other expenses. We also used the latest revised databases for U.S. sales and the Cost of Production based on post-preliminary questionnaires and responses.[9]

As a result of the aforementioned recalculations of Hyosung's and Hyundai's weighted-average dumping margins, the weighted-average dumping margin for the three non-selected companies also changed.

Final Results of the Review

As a result of this review, the Department determines the following weighted-average dumping margins [10] for the period February 16, 2012, through July 31, 2013, are as follows:

Manufacturer/exporter	Weighted-average margin (percent)
Hyosung Corporation	6.43
Hyundai Heavy Industries Co., Ltd.	9.53
ILJIN Electric Co., Ltd.	8.16
ILJIN	8.16
LSIS Co., Ltd.	8.16

Duty Assessment

The Department shall determine and U.S. Customs and Border Protection (CBP) shall assess antidumping duties on all appropriate entries.[11] For any individually examined respondents whose weighted-average dumping margin is above *de minimis,* we calculated importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of dumping calculated for the importer's examined sales to the total entered value of those same sales in accordance with 19 CFR 351.212(b)(1). Upon issuance of the final results of this administrative review, if any importer-specific assessment rates calculated in the final results are above *de minimis* (*i.e.,* at or above 0.5 percent), the Department will issue instructions directly to CBP to assess antidumping duties on appropriate entries.

To determine whether the duty assessment rates covering the period were *de minimis,* in accordance with the requirement set forth in 19 CFR 351.106(c)(2), for each respondent we calculated importer (or customer)-specific *ad valorem* rates by aggregating the amount of dumping calculated for all U.S. sales to that importer or customer and dividing this amount by the total entered value of the sales to that importer (or customer). Where an importer (or customer)-specific *ad valorem* rate is greater than *de minimis,* and the respondent has reported reliable entered values, we apply the assessment rate to the entered value of the importer's/customer's entries during the review period.

The Department clarified its ''automatic assessment'' regulation on

[3] *See* Brief from Petitioner regarding Hyundai, (Petitioner Brief Hyundai), Brief from Petitioner regarding Hyosung (Petitioner Brief Hyosung) and Hyosung Brief, all dated December 19, 2014.

[4] *See* Hyosung Rebuttal Brief, Hyundai Rebuttal Brief and Petitioner Rebuttal Brief: All dated January 9, 2015. Petitioner requested an extension for rebuttal briefs to January 9, 2015 which the Department granted for all parties on December 8, 2014. *See* Letter to All Interested Parties dated December 8, 2014. Petitioner also requested a further extension for submission of the initial briefs, which the Department denied in its letter to all parties dated December 17, 2014, with the exception of one issue.

[5] *See* Memoranda to the file dated January 20, 2015 and March 6, 2015.

[6] For a full description of the scope of the order, *see* the Memorandum from Gary Taverman, Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, titled ''Issues and Decision Memorandum for the Final Results of the Administrative Review of the Antidumping Duty Order on Large Power Transformers from the Republic of Korea; 2012–2013'' (Issues and Decision Memorandum), which is issued concurrent with and hereby adopted by this notice, and dated concurrently with this notice.

[7] *Id.*

[8] *See* Memorandum from Brian Davis to the File, regarding ''Analysis of Data Submitted by Hyosung Corporation in the Final Results of the Administrative Review of the Antidumping Duty Order on Large Power Transformers from the Republic of Korea; 2012–2013'' (Hyosung Final Analysis Memorandum), dated March 23, 2014, at section ''Changes from the Preliminary Results,'' for further information.

[9] *See* Memorandum from David Cordell to the File, regarding ''Analysis of Data Submitted by Hyundai Heavy Industries Co., Ltd. in the Final Results of the Administrative Review of the Antidumping Duty Order on Large Power Transformers from the Republic of Korea; 2012–2013'' (Hyundai Final Analysis Memorandum), dated March 23, 2014, at section ''Changes from the Preliminary Results,'' for further information.

[10] The rate applied to the non-selected companies (*i.e.,* ILJIN, ILJIN Electric, and LSIS) is a weighted-average percentage margin calculated based on the publicly-ranged U.S. volumes of the two reviewed companies with an affirmative dumping margin, for the period February 16, 2012, through July 31, 2013. *See* Memorandum to the File titled, ''Large Power Transformers from the Republic of Korea: Final Dumping Margin for Respondents Not Selected for Individual Examination,'' through Angelica Townshend, Program Manager, dated concurrently with this notice.

[11] In these final results, the Department applied the assessment rate calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification,* 77 FR 8101 (February 14, 2012).

May 6, 2003.[12] This clarification will apply to entries of subject merchandise during the POR produced by the respondent for which it did not know its merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction. For a full discussion of this clarification, *see* the *Automatic Assessment Clarification.*

We intend to issue assessment instructions directly to CBP 15 days after publication of the final results of this review.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of this notice for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication of these final results, as provided by section 751(a)(2) of the Act: (1) The cash deposit rate for respondents noted above will be the rate established in the final results of this administrative review; (2) for merchandise exported by manufacturers or exporters not covered in this administrative review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company specific rate published for the most recently completed segment of this proceeding; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the manufacturer of the subject merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 29.93 percent, the all-others rate established in the antidumping investigation.[13] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers Regarding the Reimbursement of Duties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping and/or countervailing duties prior to liquidation of the relevant entries during the POR. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping and/or countervailing duties occurred and the subsequent assessment of doubled antidumping duties.

Administrative Protective Order

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213(h).

Dated: March 23, 2015.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Final Issues and Decision Memorandum

I. Summary
II. List of Issues
III. Background
IV. Discussion of Interested Party Comments
A. General Issues
Comment 1: Whether the Department Treats Installation Expenses as Further Manufacturing Costs
B. Hyosung-Specific Issues
Comment 2: Discrepancies Between Hyosung's Net U.S. Price (as Calculated by the Department) and Reported Entered Values
Comment 3: Hyosung Has Overstated Its Reported U.S. Prices and Understated/Omitted U.S. Expenses and Whether To Apply Adverse Facts Available (AFA)
Comment 4: U.S. Commission Expenses
Comment 5: U.S. Ocean Freight Expenses
Comment 6: Installation Expenses
Comment 7: The Department Erred in Conducting the Differential Pricing Analysis
Comment 8: Consideration of an Alternative Comparison Method in an Administrative Review
Comment 9: Denial of Offsets for Non-Dumped U.S. Sales When Using the A-To-T Comparison Method In Administrative Reviews
Comment 10: Harbor Maintenance Fees
Comment 11: Oil Expenses
Comment 12: Exclusion of Certain U.S. Freight Expenses for a Particular U.S. Sales Transaction
Comment 13: Calculation of Importer-Specific Assessment Rate
Comment 14: Incomplete Further Manufacturing Cost Data
C. Hyundai-Specific Issues
Comment 15: Hyundai's U.S. Sales Data are Not Reliable or Verifiable Because of Certain Submissions and Should Not Be Used in the Final Results
Comment 16: AFA With Respect to Comment 15 (Above).
Comment 17: ''Overlapping'' Sales Between Investigation and This Review
Comment 18: Alleged Underreported U.S. Movement and Selling Expenses
Comment 19: Hyundai's Reporting of Home Market Sales
Comment 20: Indirect Selling Expenses
Comment 21: Section E Response Was Not Complete
Comment 22: Whether Total AFA is Warranted Based On the Totality of Hyundai's Responses
V. Recommendation

[FR Doc. 2015–07382 Filed 3–30–15; 8:45 am]

BILLING CODE 3510–DS–P

[12] *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003) (*Automatic Assessment Clarification*).

[13] *See Large Power Transformers From the Republic of Korea: Antidumping Duty Order,* 77 FR 53177 (August 31, 2012).

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities Under OMB Review

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (PRA), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected costs and burden.

DATES: Comments must be submitted on or before April 30, 2015.

ADDRESSES: Comments regarding the burden estimated or any other aspect of the information collection, including suggestions for reducing the burden, may be submitted directly to OMB within 30 days of the notice's publication by email at *OIRAsubmissions@omb.eop.gov.* Please identify the comments by OMB Control No. 3038–0069. Please provide the Commission with a copy of all submitted comments at the address listed below. Please refer to OMB Reference No. 3038–0069, found on *http://reginfo.gov.* Comments may also be mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Commodity Futures Trading Commission, 725 17th Street NW., Washington, DC 20503, and to

Eileen Chotiner, Senior Program Analyst, Division of Clearing and Risk, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581. Comments may also be submitted by any of the following methods:

- *Agency Web site, via its Comments Online process: http://comments.cftc.gov.* Follow the instructions for submitting comments through the Web site.
- *Mail:* Send to Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.
- *Hand Delivery/Courier:* Same as Mail, above.
- *Federal eRulemaking Portal: http://www.regulations.gov/.* Follow the instructions for submitting comments. Please submit your comments to the Commission using only one of these methods.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *http://www.cftc.gov.* You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures set forth in § 145.9 of the Commission's regulations.[1]

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the rulemaking will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: Eileen Chotiner, Division of Clearing and Risk, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581; (202) 418–5467; email: *echotiner@cftc.gov,* and refer to OMB Control No. 3038–0069.

[1] Commission regulations referred to herein are found at 17 CFR Ch. 1 *et seq.* (2014).

SUPPLEMENTARY INFORMATION: This is a request for extension of a currently approved information collection.

Title: ''Information Management Requirements for Derivatives Clearing Organization,'' OMB Control No. 3038–0069—Extension. This is a request for extension of a currently approved information collection.

Abstract: Part 39 of the Commission's regulations establishes information management requirements for derivatives clearing organizations (''DCOs''), which are required to be registered with the Commission. The Commission will use the information in this collection to assess compliance of DCOs with requirements for DCOs prescribed in the Commodity Exchange Act and Commission regulations.

Burden Statement: The respondent burden for this collection is estimated to average 11 hours per response.

Respondents/Affected Entities: Derivatives clearing organizations and applicants for registration as a derivatives clearing organization.

Estimated Number of Respondents: 14.

Estimated Total Annual Burden on Respondents: 38,546 hours.

Frequency of Collection: Daily, annually, and on occasion.

Authority: 44 U.S.C. 3501 *et seq.*

Dated: March 25, 2015.

Christopher J. Kirkpatrick,

Secretary of the Commission.

[FR Doc. 2015–07283 Filed 3–30–15; 8:45 am]

BILLING CODE 6351–01–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 (CNCS) has submitted a public information collection request (ICR) entitled Senior Corps Foster Grand Parent pilot case study for review and approval in accordance with the Paperwork Reduction Act of 1995, Public Law 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, Anthony Nerino, at (202) 606–3913 or email to *anerino@cns.gov.* Individuals who use a telecommunications device for the deaf (TTY–TDD) may call 1–800–833–3722 between 8:00 a.m. and 8:00 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. Sharon Mar, OMB Desk Officer for the Corporation for National and Community Service, by any of the following two methods within 30 days from the date of publication in the **Federal Register**:

(1) By fax to: (202) 395–6974, Attention: Ms. Sharon Mar, OMB Desk Officer for the Corporation for National and Community Service; or

(2) By email to: *smar@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 CNCS, 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.

Comments

A 60-day Notice requesting public comment was published in the **Federal Register** on December 30, 2014. This comment period ended March 2, 2015. No public comments were received from this Notice.

Description: CNCS seeks to implement case studies of selected FGP grantees that are implementing two similar national education models in various service sites. The information is designed to allow CNCS Senior Corps administrators to understand the process and experiences of grantees as they implement national education models including member and beneficiary recruitment, member training, program structure and processes, program modifications specific to FGP, scope and reach of the various projects, and observed outcomes for members and beneficiaries.

The case study instrument will involve interviews and focus groups

with current and former FGP project administrators, staff including site supervisors and volunteer coordinators and volunteers at two sites implementing each of two different models—Jumpstart and Reading Partners. Potential sites for inclusion in the study have been drawn from existing and former grantees implementing two national models, Jumpstart and Reading Partners.

Interview and focus group data will be collected via taped and written responses to telephone conversations. Data analysis will focus on identifying and understanding factors associated the process (opportunity costs, benefits, obstacles and preparation) related to the decision to use a model approach to tutoring and educational interventions.

Type of Review: New.

Agency: Corporation for National and Community Service.

Title: The Foster Grand Parent Pilot Case Study.

OMB Number: TBD.

Agency Number: None.

Affected Public: Current and former FGP project administrators, staff, including site supervisors and volunteer coordinators, and volunteers.

Total Respondents: 140 respondents.

Frequency: Once.

Average Time per Response: 60 minutes for interviews (80 participants)/ 90 minutes for focus groups (60 Participants).

Estimated Total Burden Hours: 170 total hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/ maintenance): None.

Dated: March 25, 2015.

Mary Hyde,

Deputy Director, Office of Research and Evaluation.

[FR Doc. 2015–07241 Filed 3–30–15; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2015–ICCD–0037]

Agency Information Collection Activities; Comment Request; School Survey on Crime and Safety (SSOCS) 2016 and 2018

AGENCY: Institute of Education Sciences/ National Center for Education Statistics (IES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), ED is proposing a reinstatement of a previously approved information collection.

DATES: Interested persons are invited to submit comments on or before June 1, 2015.

ADDRESSES: Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting Docket ID number ED–2015–ICCD–0037, or via postal mail, commercial delivery, or hand delivery. If the regulations.gov site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov.* Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted; ED will only accept comments during the comment period in this mailbox when the regulations.gov site is not available. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Mailstop L–OM–2–2E319, Room 2E103, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Kashka Kubzdela, 202–502–7411.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: School Survey on Crime and Safety (SSOCS) 2016 and 2018.

OMB Control Number: 1850–0761.

Type of Review: A reinstatement of a previously approved information collection.

Respondents/Affected Public: Individuals.

Total Estimated Number of Annual Responses: 3,919.

Total Estimated Number of Annual Burden Hours: 1,795.

Abstract: The School Survey on Crime and Safety (SSOCS) is a nationally representative survey of elementary and secondary school principals that serve as the primary source of school-level data on crime and safety in public schools. SSOCS is the only recurring federal survey collecting detailed information on the incidence, frequency, seriousness, and nature of violence affecting students and school personnel from the school's perspective. Data are also collected on frequency and types of disciplinary actions taken for select offenses; perceptions of other disciplinary problems, such as bullying, verbal abuse and disorder in the classroom; the presence and role of school security staff; parent and community involvement; staff training; mental health services available to students; and, school policies and programs concerning crime and safety. Prior administrations of SSOCS were conducted in 2000, 2004, 2006, 2008, and 2010. This request is to conduct the 2016 and 2018 administrations of SSOCS.

Dated: March 25, 2015.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2015–07246 Filed 3–30–15; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2881–014; ER10–2882–014; ER10–2883–014; ER10–2884–014; ER10–2885–014; ER10–2641–014; ER10–2663–014; ER10–2886–014; ER13–1101–009; ER13–1541–008; ER14–787–002.

Applicants: Alabama Power Company, Southern Power Company, Mississippi Power Company, Georgia Power Company, Gulf Power Company, Oleander Power Project, Limited Partnership, Southern Company—Florida LLC, Southern Turner Cimarron I, LLC, Spectrum Nevada Solar, LLC, Campo Verde Solar, LLC, Macho Springs Solar, LLC.

Description: Second Supplement to June 30, 2014 Updated Market Power Analysis of Alabama Power Company, et. al.

Filed Date: 3/20/15.

Accession Number: 20150320–5274.

Comments Due: 5 p.m. ET 4/10/15.

Docket Numbers: ER13–1929–001.

Applicants: Florida Power & Light Company.

Description: Compliance filing per 35: FPL's Second Order No. 1000 Interregional Further Regional Compliance Filings to be effective 1/1/2015.

Filed Date: 3/24/15.

Accession Number: 20150324–5223.

Comments Due: 5 p.m. ET 4/14/15.

Docket Numbers: ER13–1940–002.

Applicants: Ohio Valley Electric Corporation.

Description: Compliance filing per 35: Interregional Compliance Filing for the SERTP–FRCC and SERTP–SCRTP Seams to be effective 1/1/2015.

Filed Date: 3/24/15.

Accession Number: 20150324–5189.

Comments Due: 5 p.m. ET 4/14/15.

Docket Numbers: ER15–1016–000.

Applicants: Shafter Solar, LLC.

Description: Supplement to February 9, 2015 Shafter Solar, LLC tariff filing.

Filed Date: 3/24/15.

Accession Number: 20150324–5240.

Comments Due: 5 p.m. ET 4/14/15.

Docket Numbers: ER15–1368–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: Section 205(d) rate filing per 35.13(a)(2)(iii): 2015–03–24_SA 2762 ATC–UPPCo Project Commitment Agreement to be effective 5/24/2015.

Filed Date: 3/24/15.

Accession Number: 20150324–5193.

Comments Due: 5 p.m. ET 4/14/15.

Docket Numbers: ER15–1369–000.

Applicants: Southern California Edison Company.

Description: Section 205(d) rate filing per 35.13(a)(2)(iii): Amended Service Agmt for Wholesale Distribution Service with Mogul Energy to be effective 5/25/2015.

Filed Date: 3/25/15.

Accession Number: 20150325–5001.

Comments Due: 5 p.m. ET 4/15/15.

Docket Numbers: ER15–1370–000.

Applicants: Southwest Power Pool, Inc.

Description: Section 205(d) rate filing per 35.13(a)(2)(iii): 3001 KCP&L GMO and AECI Interconnection Agreement to be effective 2/25/2015.

Filed Date: 3/25/15.

Accession Number: 20150325–5064.

Comments Due: 5 p.m. ET 4/15/15.

Docket Numbers: ER15–1371–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: Notice of Termination of the Large Generator Interconnection Agreement No. 719 of Midcontinent Independent System Operator, Inc.

Filed Date: 3/25/15.

Accession Number: 20150325–5094.

Comments Due: 5 p.m. ET 4/15/15.

Take notice that the Commission received the following electric reliability filings.

Docket Numbers: RD15–3–000.

Applicants: North American Electric Reliability Corporation.

Description: Supplemental Petition of the North American Electric Reliability Corporation for Approval of Proposed Reliability Standards PRC–001–1.1(ii), PRC–019–2 and PRC–024–2.

Filed Date: 3/13/15.

Accession Number: 20150313–5161.

Comments Due: 5 p.m. ET 4/9/15.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: March 25, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–07303 Filed 3–30–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

State Energy Advisory Board (STEAB)

AGENCY: Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a live Board meeting of the State Energy Advisory Board (STEAB). The Federal Advisory Committee Act (Pub. L. 92–463; 86 Stat.770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: April 28, 2015 9:00 a.m. to 5:30 p.m.; April 29, 2015 9:00 a.m. to 2:30 p.m.

ADDRESSES: Hilton Garden Inn Austin Downtown/Convention Center, 500 N Interstate 35, Austin, TX 78701

FOR FURTHER INFORMATION CONTACT: Monica Neukomm, Policy Advisor, Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy, 1000 Independence Ave. SW., Washington, DC 20585. Phone number 202–287–5189, and email *monica.neukomm@ee.doe.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: To make recommendations to the Assistant Secretary for the Office of Energy Efficiency and Renewable Energy regarding goals and objectives, programmatic and administrative policies, and to otherwise carry out the Board's responsibilities as designated in the State Energy Efficiency Programs Improvement Act of 1990 (Pub. L. 101–440).

Tentative Agenda: Meet with and hear from members of the Austin Technology Incubator, receive updates and information from ERCOT regarding demand response and transmission planning, meet with staff from Austin Energy, hear from EERE and DOE staff regarding updates on the new Office of Technology Transitions, explore opportunities to continue assisting with the QER year 2 process, discuss updates and provide recommendations on the Weatherization Assistance Program, tour the Mueller site and the Pecan Street sites, and update members of the Board on routine business matters.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Monica Neukomm at the address or telephone number listed above. Requests to make oral comments must be received five days prior to the meeting; reasonable provision will be made to include requested topic(s) on the agenda. The Chair of the Board is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes: The minutes of the meeting will be available for public review and copying within 90 days on the STEAB Web site, *www.steab.org.*

Issued at Washington, DC, on March 25, 2015.

LaTanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2015–07379 Filed 3–30–15; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC15–103–000.
Applicants: Iberdrola, S.A., Iberdrola USA, Inc., Iberdrola USA Networks, Inc., Green Merger Sub, Inc., UIL Holdings Corporation.
Description: Joint Application of Iberdrola S.A, et al. for Authorization of Transaction under Section 203 of the Federal Power Act and Requests for Waivers of Filing Requirements, Shortened Comment Period and Expedited Consideration.
Filed Date: 3/25/15.
Accession Number: 20150325–5217.
Comments Due: 5 p.m. ET 4/15/15.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER12–348–004.
Applicants: Mercuria Energy America, Inc.
Description: Compliance filing per 35: MBR Tariff to be effective 3/26/2015.
Filed Date: 3/25/15.
Accession Number: 20150325–5245.
Comments Due: 5 p.m. ET 4/15/15.

Docket Numbers: ER13–1332–002.
Applicants: Canadian Hills Wind, LLC.
Description: Tariff Cancellation per 35.17(a): CH Withdrawal to be effective N/A.
Filed Date: 3/25/15.
Accession Number: 20150325–5165.
Comments Due: 5 p.m. ET 4/15/15.

Docket Numbers: ER15–1372–000.
Applicants: Canadian Hills Wind, LLC.
Description: Section 205(d) rate filing per 35.13(a)(2)(iii): Filing of Amended Co-Tenancy and Shared Facilities Agreement to be effective 5/12/2015.
Filed Date: 3/25/15.
Accession Number: 20150325–5174.
Comments Due: 5 p.m. ET 4/15/15.

Docket Numbers: ER15–1373–000.
Applicants: Orange and Rockland Utilities, Inc.
Description: Section 205(d) rate filing per 35.13(a)(2)(i): Orange and Rockland Undergrounding Rate 3.24.15 to be effective 4/1/2015.
Filed Date: 3/25/15.
Accession Number: 20150325–5175.
Comments Due: 5 p.m. ET 4/15/15.

Docket Numbers: ER15–1374–000.
Applicants: PJM Interconnection, L.L.C., Potomac Electric Power Company.
Description: Section 205(d) rate filing per 35.13(a)(2)(iii): Potomac Electric Power Company submits revisions to OATT Att H–9A to be effective 4/1/2015.
Filed Date: 3/25/15.
Accession Number: 20150325–5196.
Comments Due: 5 p.m. ET 4/15/15.

Docket Numbers: ER15–1375–000.
Applicants: McCoy Solar, LLC.
Description: Baseline eTariff Filing per 35.1: McCoy Solar, LLC Application for Market-Based Rate Authority to be effective 5/24/2015.
Filed Date: 3/25/15.
Accession Number: 20150325–5230.
Comments Due: 5 p.m. ET 4/15/15.

Docket Numbers: ER15–1376–000.
Applicants: Mercuria Commodities Canada Corporation.
Description: Tariff Withdrawal per 35.15: Notice of Cancellation to be effective 3/26/2015.
Filed Date: 3/25/15.
Accession Number: 20150325–5246.
Comments Due: 5 p.m. ET 4/15/15.

Docket Numbers: ER15–1377–000
Applicants: Midcontinent Independent System Operator, Inc.
Description: Section 205(d) rate filing per 35.13(a)(2)(iii): 2015–03–25_SA 2707 NSP-Odell Wind Farm 1st Rev GIA (G826) to be effective 3/26/2015.
Filed Date: 3/25/15.
Accession Number: 20150325–5247.
Comments Due: 5 p.m. ET 4/15/15.

Docket Numbers: ER15–1378–000.
Applicants: Mercuria Commodities Canada Corporation.
Description: Baseline eTariff Filing per 35.1: Refile MBR Tariff to be effective 3/26/2015.
Filed Date: 3/25/15.
Accession Number: 20150325–5248.
Comments Due: 5 p.m. ET 4/15/15.

Docket Numbers: ER15–755–001.
Applicants: Powerex Corp.
Description: Compliance filing per 35: FERC Rate Schedule No. 1 Compliance Filing to be effective 3/1/2015.
Filed Date: 3/25/15.
Accession Number: 20150325–5195.
Comments Due: 5 p.m. ET 4/15/15.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: March 25, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–07304 Filed 3–30–15; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2011–0439; EPA–HQ–OW–2011–0442; EPA–HQ–OW–2011–0443; FRL–9925–45–OW]

Proposed Information Collection Request; Comment Request; Disinfectants/Disinfection Byproducts, Chemical and Radionuclides Rules Renewal Information Collection Request; Microbial Rules Renewal Information Collection Request; Public Water System Supervision Program Renewal Information Collection Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The U.S. Environmental Protection Agency (EPA) will be submitting renewals of information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (PRA; 44 U.S.C. 3501 *et seq.*). The ICRs included in this renewal notice are the Microbial Rules Renewal Information Collection Request, EPA ICR No. 1895.08, OMB Control No. 2040–0205, which expires on August 31, 2015; the Public Water System Supervision Program Renewal Information Collection Request, EPA ICR No. 0270.46, OMB Control No. 2040–0090, which expires on October 31, 2015; and the Disinfectants/Disinfection Byproducts, Chemical and Radionuclides Rules Renewal

Information Collection Request (ICR), EPA ICR No. 1896.10, OMB Control No. 2040–0204, which expires on December 31, 2015. EPA is soliciting public comments on specific aspects of the proposed information collections as described in this renewal notice. The Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

DATES: Comments must be submitted on or before June 1, 2015.

ADDRESSES: Submit your comments, referencing the Docket ID numbers provided for each ICR listed in the **SUPPLEMENTARY INFORMATION** section, online using *www.regulations.gov* (our preferred method), by email to *OW-Docket@epa.gov* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without modifications including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Kevin Roland, Drinking Water Protection Division, Office of Ground Water and Drinking Water, (4606M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–564–4588; fax number: 202–564–3755; email address: *roland.kevin@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents that explain in detail the information that the EPA will be collecting are available in the public dockets for these ICRs. The dockets can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *www.epa.gov/dockets.*

Pursuant to section 3506(c)(2)(A) of the PRA, the EPA is soliciting comments and information to enable it to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (iii) enhance the quality, utility and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. EPA will consider the comments received and amend the ICRs as appropriate. The final ICR packages will then be submitted to OMB for review and approval. At that time, EPA will issue another **Federal Register** notice to announce the submission of the ICRs to OMB and the opportunity to submit additional comments to OMB.

EPA ICR No. 1895.08, OW–2011–0442 Microbial Rules Renewal Information Collection Request

Abstract: The Microbial Rules Renewal ICR examines public water system and primacy agency burden and costs for recordkeeping and reporting requirements in support of the microbial drinking water regulations. These recordkeeping and reporting requirements are mandatory for compliance per the *Code of Federal Regulations* (CFR) at 40 CFR parts 141 and 142. The following microbial regulations are included: the Surface Water Treatment Rule (SWTR), the Total Coliform Rule (TCR), the Revised Total Coliform Rule (RTCR), the Interim Enhanced Surface Water Treatment Rule (IESWTR), the Filter Backwash Recycling Rule (FBRR), the Long Term 1 Enhanced Surface Water Treatment Rule (LT1ESWTR), the Long Term 2 Enhanced Surface Water Treatment Rule (LT2ESWTR), the Ground Water Rule (GWR) and the Aircraft Drinking Water Rule (ADWR). Future microbial-related rulemakings will be added to this consolidated ICR after the regulations are promulgated and the initial, rule-specific, ICRs are due to expire.

Form Numbers: None.

Respondents/affected entities: Entities potentially affected by this action are new and existing public water systems and primacy agencies.

Respondent's obligation to respond: Mandatory for compliance with 40 CFR parts 141 and 142.

Estimated number of respondents: 153,083 (total).

Frequency of response: Varies by requirement (*i.e.,* on occasion, monthly, quarterly, semi-annually and annually).

Total estimated burden: 12,930,414 hours (per year). Burden is defined in 5 CFR 1320.03(b).

Total estimated cost: $590,507,000 (per year), includes $20,386,000 annualized capital and $115,808,000 operation and maintenance costs.

Changes in estimates: There is no estimated increase or decrease of hours in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB.

EPA ICR No. 0270.46, OW–2011–0443 Public Water System Supervision Program Renewal Information Collection Request

Abstract: The Public Water System Supervision (PWSS) Program Renewal ICR examines public water system, primacy agency and tribal operator certification provider burden and costs for ''cross-cutting'' recordkeeping and reporting requirements (*i.e.,* the burden and costs for complying with drinking water information requirements that are not associated with contaminant-specific rulemakings). The following activities have recordkeeping and reporting requirements that are mandatory for compliance with 40 CFR parts 141 and 142: The Consumer Confidence Report Rule (CCR), the Variance and Exemption Rule (V/E Rule), General State Primacy Activities, the Public Notification Rule (PN) and Proficiency Testing Studies for Drinking Water Laboratories. The information collection activities for both the Operator Certification Program and the Capacity Development Program are driven by the grant withholding and reporting provisions under sections 1419 and 1420, respectively, of the Safe Drinking Water Act. Although the Tribal Operator Certification Program is voluntary, the information collection is driven by grant eligibility requirements outlined in the Drinking Water Infrastructure Grant Tribal Set-Aside Program Final Guidelines and the Tribal Drinking Water Operator Certification Program Guidelines.

Form numbers: None.

Respondents/affected entities: Entities potentially affected by this action are new and existing public water systems and primacy agencies.

Respondent's obligation to respond: Mandatory for compliance with 40 CFR parts 141 and 142.

Estimated number of respondents: 154,938 (total).

Frequency of response: Varies by requirement (*i.e.,* on occasion, monthly, quarterly, semi-annually and annually).

Total estimated burden: 4,113,408 hours (per year). Burden is defined in 5 CFR 1320.03(b).

Total estimated cost: $227,666,000. This includes an estimated burden cost

of $40,019,000 for maintenance and operational costs.

Changes in estimates: There is no estimated increase or decrease of hours in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB.

EPA ICR No. 1896.10, OW–2011–0439 Disinfectants/Disinfection Byproducts, Chemical and Radionuclides Rules Information Collection Request

Abstract: The Disinfectants/Disinfection Byproducts, Chemical and Radionuclides Rules ICR examines public water system and primacy agency burden and costs for recordkeeping and reporting requirements in support of the chemical drinking water regulations. These recordkeeping and reporting requirements are mandatory for compliance with 40 CFR parts 141 and 142. The following chemical regulations are included: The Stage 1 Disinfectants and Disinfection Byproducts Rule (Stage 1 DBPR), the Stage 2 Disinfectants and Disinfection Byproducts Rule (Stage 2 DBPR), the Chemical Phase Rules (Phases II/IIB/V), the Radionuclides Rule, the Total Trihalomethanes (TTHM) Rule, Disinfectant Residual Monitoring and Associated Activities under the Surface Water Treatment Rule (SWTR), the Arsenic Rule, the Lead and Copper Rule (LCR) and the Lead and Copper Rule Short Term Revisions. Future chemical-related rulemakings will be added to this consolidated ICR after the regulations are promulgated and the initial, rule-specific, ICRs are due to expire.

Form numbers: None

Respondents/affected entities: Entities potentially affected by this action are new and existing public water systems and primacy agencies.

Respondent's obligation to respond: Mandatory for compliance with 40 CFR parts 141 and 142.

Estimated number of respondents: 153,036.

Frequency of response: Varies by requirement (*i.e.,* on occasion, monthly, quarterly, semi-annually, annually, biennially and every 3, 6 and 9 years).

Total estimated burden: 5,734,335 hours (per year). Burden is defined in 5 CFR 1320.03(b).

Total estimated cost: $435,706,000 (per year), includes $4,984,000 annualized capital and $225,068,000 operation and maintenance costs.

Changes in Estimates: There is no estimated increase or decrease of hours in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB.

Dated: March 20, 2015.

Peter Grevatt,

Director, Office of Ground Water and Drinking Water.

[FR Doc. 2015–07357 Filed 3–30–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2009–0090; FRL–9925–25–OW]

Proposed Information Collection Request; Comment Request; Information Collection Request Renewal for the Unregulated Contaminant Monitoring Rule (UCMR 3)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The U.S. Environmental Protection Agency (EPA) will be submitting the ''Information Collection Request Renewal for the Unregulated Contaminant Monitoring Rule (UCMR 3)'' (EPA ICR No. 2192.06, OMB Control No. 2040–0270) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (PRA; 44 U.S.C. 3501 *et seq.*). Before doing so, EPA solicits public comments on specific aspects of the proposed information collection as described in this renewal notice. This is a proposed extension of the information collection request (ICR), which is currently approved through August 31, 2015. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Comments must be submitted on or before June 1, 2015.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OW–2009–0090, online using *www.regulations.gov* (our preferred method), by email to *OW-Docket@epa.gov* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Brenda D. Parris, Technical Support Center, Office of Ground Water and Drinking Water, Environmental Protection Agency, 26 West Martin Luther King Drive (MS 140), Cincinnati, Ohio 45268; telephone (513) 569–7961 or email at *parris.brenda@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents that explain in detail the information that EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *www.epa.gov/dockets.*

Pursuant to section 3506(c)(2)(A) of the PRA, EPA requests comments and information to enable it to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (iii) enhance the quality, utility and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: The Safe Drinking Water Act (SDWA), as amended in 1996, requires EPA to establish criteria for a program for public water systems (PWSs) to monitor not more than 30 unregulated contaminants every five years. Information collected under the program supports Agency decision making regarding whether or not to regulate particular contaminants in drinking water. EPA published the first group of contaminants in UCMR 1, in the **Federal Register** on September 17, 1999 (64 FR 50556), and the second

group of contaminants in UCMR 2, in the **Federal Register** on January 4, 2007 (72 FR 368). UCMR 3 addresses the third group of 30 contaminants and was published in the **Federal Register** on May 2, 2012 (77 FR 26071).

UCMR 3 ''Assessment Monitoring'' began in January 2013 and continues through December 2015 for all large systems (those systems serving 10,001 to 100,000 people) and very large systems (those systems serving more than 100,000 people), and for a nationally representative sample of 800 small systems (those systems serving 10,000 or fewer people). The ''Screening Survey'' began in January 2013 and continues through December 2015 for all very large systems, 320 randomly-selected large systems, and 480 randomly selected small systems. ''Pre-Screen Testing'' began in January 2013 and continues through December 2015 for a sample of 800 small, undisinfected ground water systems (those systems serving 1,000 or fewer people).

This notice proposes renewal of the currently approved UCMR 3 ICR, (OMB Control No. 2040–0270), which covers the period 2012–2014. This ICR renewal accounts for activities conducted during 2015–2017. The complete five-year UCMR 3 period of 2012–2016 overlaps with the applicable ICR period only during 2015 and 2016. PWSs will only be involved in active monitoring during 2015 (*i.e.,* one-third of this ICR period).

This information collection does not require respondents to disclose confidential information.

Form Numbers: None.

Respondents/affected entities: Data associated with this ICR are collected and submitted by PWSs. States, territories and tribes with primacy to administer the regulatory program for PWSs under SDWA may participate in UCMR 3 implementation through a partnership agreement with EPA. These primacy agencies may sometimes conduct monitoring and maintain records.

Respondent's obligation to respond: Mandatory. The information collection is carried out per section 1445(a) of SDWA.

Estimated number of respondents: There are approximately 6,351 respondents to UCMR 3, including 2,098 PWSs that will monitor during the ICR years of 2015–2017; and 56 states and primacy agents.

Frequency of response: The frequency of responses varies based on the respondent type. PWSs and states have a different number of responses. PWSs served by surface water monitor for the UCMR contaminants four times during a 12-month period. PWSs served by ground water monitor twice during a 12-month period. The number of samples collected by PWSs also differs based on the size of the systems, and the number of entry points and distribution system sample points within each system. The total number of responses per respondent is 2.96 over the three ICR years of 2015–2017, or an average of 0.99 responses per respondent per year.

Total estimated burden: EPA estimates the annual labor burden per respondent at 8.31 hours during the ICR years of 2015–2017 for states and PWSs. Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: EPA estimates the total cost at $7.45 million per year during the ICR years of 2015–2017 for states and PWSs. The total costs include labor costs and laboratory analysis (non-labor) costs. EPA pays for the analytical and sample shipping costs for small PWSs, and the Agency collects all the Pre-Screen Testing samples for all PWSs.

Changes in Estimates: There is a decrease of 68,294 hours in the total estimated respondent burden for states and PWSs compared with the existing ICR. Respondents to this renewal ICR will incur a different burden than those responding to the original ICR for 2012–2014 because:

- Fewer PWSs participate during the ICR period of 2015–2017 than in 2012–2014. Only one third of the systems monitor for UCMR 3 contaminants in 2015–2017; two-thirds of the systems have already monitored for UCMR 3 contaminants in 2012–2014.

- The schedule of activities for PWSs differs. Some initial activities were conducted by all systems during the previous ICR period. These activities will not take place during the second ICR period of 2015–2017.

- The schedule of activities differs for participating states. Management and support activities for states vary with the UCMR 3 monitoring schedule. States are expected to incur less burden during this second UCMR 3 ICR period of 2015–2017.

Dated: March 20, 2015.

Peter Grevatt,

Director, Office of Ground Water and Drinking Water.

[FR Doc. 2015–07360 Filed 3–30–15; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Proposed Collection Renewal; Comment Request (3064–0109, 0162 & 0165)

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, 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 the renewal of existing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the FDIC is soliciting comment on renewal of the information collections described below.

DATES: Comments must be submitted on or before April 30, 2015.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- *http://www.FDIC.gov/regulations/laws/federal/.*
- *Email: comments@fdic.gov* Include the name of the collection in the subject line of the message.
- *Mail:* Gary A. Kuiper, Counsel, (202.898.3877), or John Popeo, Counsel, (202.898.6923), MB–3007, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

Hand Delivery: Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m.

All comments should refer to the relevant OMB control number. A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Gary Kuiper or John Popeo, at the FDIC address above.

SUPPLEMENTARY INFORMATION:

Proposal To Renew the Following Currently-Approved Collections of Information

1. *Title:* Notice of Branch Closure

OMB Number: 3064–0109.

Frequency of Response: On occasion.

Affected Public: State nonmember banks and state savings associations.

Estimated Number of Respondents: 509.

Estimated Time per Response: 2.6 hours.

Total Annual Burden: 1319 hours.

General Description of Collection: Section 42 of the Federal Deposit Insurance Act mandates that an institution proposing to close a branch give its primary regulator no less than 90 days written notice. Notices of closure are submitted on occasion as needed. Also, each insured depository institution must adopt branch closing policies. The adoption of policies is a one-time activity, repeated only if the institution finds need to revise its policy.

2. *Title:* Large-Bank Deposit Insurance Programs

OMB Number: 3064–0162.

Frequency of Response: On occasion.

Affected Public: Insured depository institutions having at least $2 billion in domestic deposits and either at least: (i) 250,000 deposit accounts; or (ii) $20 million in total assets.

Estimated Number of Respondents: 159.

Estimated Time per Response: 157—255.5 hours.

Total Annual Burden: 25,000—40,624.5 hours.

General Description of Collection: Insured depository institutions having at least $2 billion in domestic deposits and either: (1) More than 250,000 deposit accounts; or (2) total assets over $20 billion, regardless of the number of deposit accounts are required to adopt mechanisms that, in the event of the institution's failure: (1) Provide the FDIC with standard deposit account and customer information; and (2) allow the FDIC to place and release holds on liability accounts, including deposits.

3. *Title:* Basel II Interagency Supervisory Guidance for the Supervisory Review Process (Pillar 2).

OMB Number: 3064–0165.

Frequency of Response: Event-generated.

Affected Public: Insured state nonmember banks and certain subsidiaries of these entities.

Estimated Number of Respondents: 19.

Estimated Time per Response: 420 hours.

Total Annual Burden: 7,980 hours.

General Description of Collection: The agencies issued a supervisory guidance document for implementing the supervisory review process (Pillar 2). The guidance was issued on July 31, 2008 (73 FR 44620). Sections 37, 41, 43, and 46 of the guidance impose information collection requirements. Section 37 states that banks should state clearly the definition of capital used in any aspect of its internal capital adequacy assessment process (ICAAP) and document any changes in the internal definition of capital. Section 41 requires banks to maintain thorough documentation of ICAAP. Section 43 specifies that boards of directors must approve the bank's ICAAP, review it on a regular basis, and approve any changes. Boards of directors also are required under section 46 to periodically review the assessment of overall capital adequacy and to analyze how measures of internal capital adequacy compare with other capital measures (such as regulatory or accounting).

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Dated at Washington, DC, this 25th day of March 2015.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2015–07229 Filed 3–30–15; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Savings and Loan Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Home Owners' Loan Act (12 U.S.C. 1461 *et seq.*) (HOLA), Regulation LL (12 CFR part 238), and Regulation MM (12 CFR part 239), and all other applicable statutes and regulations to become a savings and loan holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a savings association and nonbanking companies owned by the savings and loan 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 HOLA (12 U.S.C. 1467a(e)). 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 10(c)(4)(B) of the HOLA (12 U.S.C. 1467a(c)(4)(B)). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 24, 2015.

A. Federal Reserve Bank of Cleveland (Nadine Wallman, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101–2566:

1. *First Mutual Holding Company,* Lakewood, Ohio; to reorganize into a MHC structure, and thereby acquire First Federal Saving and Loan Association of Lakewood, Lakewood, Ohio, in connection with the thrift's conversion from mutual to stock form.

Board of Governors of the Federal Reserve System, March 26, 2015.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2015–07294 Filed 3–30–15; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of

a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 24, 2015.

A. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *Jones National Corporation,* Seward, Nebraska; to acquire 100 percent of the voting shares of Valparaiso Enterprises, Inc., and thereby indirectly acquire Oak Creek Valley Bank, both in Valparaiso, Nebraska.

In connection with this application, Applicant also has applied to engage through Valparaiso Enterprises, Inc., Valparaiso, Nebraska, in general insurance activities in a town of less than 5,000 in population, pursuant to section 225.28(b)(11)(iii)(A).

Board of Governors of the Federal Reserve System, March 26, 2015.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2015–07295 Filed 3–30–15; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and section 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 15, 2015.

A. Federal Reserve Bank of Minneapolis (Jacquelyn K. Brunmeier, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *The Belva H. Rasmussen 2012 Irrevocable Trust, Roseville, Minnesota, Pamela M. Harris, Falcon Heights, Minnesota, and Eva B. Rasmussen, Edina, Minnesota, individually and as trustees, and Benjamin T. Rasmussen, Edina, Minnesota, to retroactively join the Rasmussen Family Control Group;* to acquire voting shares of Northeast Securities Corporation, Minneapolis, Minnesota; and thereby indirectly acquire voting shares of Northeast Bank, Minneapolis, Minnesota.

Board of Governors of the Federal Reserve System, March 26, 2015.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2015–07296 Filed 3–30–15; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel Development of Informatics Technology.

Date: April 15–16, 2015.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W538, Rockville, MD 20850, (Telephone Conference Call).

Contact Person: Nicholas Kenney, Ph.D., Scientific Review Officer, Research Technology and Contract Review Branch, Division of Extramural Activities, National Cancer Institute, 9609 Medical Center Drive, Room 7W246, Rockville, MD 20850, 240–276–6374, *nicholas.kenney@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Information is also available on the Institute's/Center's home page: *http://deainfo.nci.nih.gov/advisory/sep/sep.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: March 26, 2015.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–07340 Filed 3–30–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Notice for Public Comment on the Child Abuse Prevention and Treatment Act (CAPTA)

AGENCY: Children's Bureau; Administration on Children, Youth and Families; ACF, HHS.

ACTION: Notice.

SUMMARY: Pursuant to 42 U.S.C. 5106a, the Children's Bureau (CB) announces the opportunity for public comment on the policy interpretation of section 106(b)(2)(B)(x) articulated in question 2.1A.4 #8 of the Child Welfare Policy Manual (CWPM), which concerns the public disclosure of findings or information about a case of child abuse or neglect which results in a child fatality or near fatality.

DATES: Submit written or electronic comments on or before June 29, 2015.

ADDRESSES: Interested persons may submit comments to *http://www.regulations.gov/.* We urge you to submit comments electronically to ensure they are received in a timely manner. Written comments may also be submitted to Kathleen McHugh, United States Department of Health and Human Services, Administration for Children and Families, Policy Division, 8th Floor, 1250 Maryland Avenue, SW., Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Kathleen McHugh, United States Department of Health and Human Services, Administration for Children and Families, Policy Division, 8th Floor, 1250 Maryland Avenue, SW., Washington, DC 20024. Email address: *cbcomments@acf.hhs.gov.*

SUPPLEMENTARY INFORMATION: Section 106(b)(2)(B)(x) of CAPTA requires a certification by the State Governor that the State has in effect and is enforcing a State law, or has in effect and is operating a statewide program, relating to child abuse and neglect that includes ''provisions which allow for public disclosure of the findings or information about the case of child abuse or neglect which has resulted in a child fatality or near fatality.'' We revised our policy interpretation of the statutory provision regarding public disclosure of information in cases of child abuse or neglect which have resulted in a child fatality or near fatality found in section 106(b)(2)(B)(x) of CAPTA in September 2012 with the addition of CWPM question 2.1A.4 #8. This interpretation requires States to develop procedures for the release of information including, but not limited to: the cause of and circumstances regarding the fatality or near fatality; the age and gender of the child; information describing any previous reports or child abuse or neglect investigations that are pertinent to the child abuse or neglect that led to the fatality or near fatality; the result of any such investigations; and the services provided by and actions of the State on behalf of the child that are pertinent to the child abuse or neglect that led to the fatality or near fatality. States may allow exceptions to the release of information in order to ensure the safety and well-being of the child, parents and family or when releasing the information would jeopardize a criminal investigation, interfere with the protection of those who report child abuse or neglect or harm the child or the child's family. States must also ensure compliance with other federal confidentiality restrictions when implementing the confidentiality provisions under CAPTA, including the confidentiality requirements applicable to titles IV–B and IV–E of the Social Security Act (the Act) and in accordance with 45 CFR 1355.30, which requires that records maintained under title IV–E and IV–B of the Act are subject to the confidentiality provisions in 45 CFR 205.50. Among other things, 45 CFR 205.50 restricts the release or use of information concerning individuals receiving financial assistance under these programs to certain persons or agencies that require the information for specified purposes.

We also revised several CWPM answers in section 2.1A to bring them in line with the policy as outlined in the new question and answer (Q/A). CWPM section 2.1A.1, questions 1, 2, 6, and 8; and CWPM section 2.1A.4, questions 3, 4, 5, 6, and 7 were all revised. At that time, Q/A 2.1A.4 #2, was deleted, but it was updated and reissued in August 2013. This Q/A clarifies that when child abuse or neglect results in the death or near death of a child, the State must provide for the disclosure of the information required by section 2.1A.4, Q/A #8 of the CWPM, but that the provision should not be interpreted to require disclosure of information which would fall within the specific exceptions that states are allowed to establish under section 2.1A.4, Q/A #8 of the CWPM. The full Q/A 2.1A.4 #2 can be found at: *http://www.acf.hhs.gov/cwpm/programs/cb/laws_policies/laws/cwpm/policy_dsp.jsp?citID=68#320.* The history of the modified Q/A's is also available in the CWPM at: *http://www.acf.hhs.gov/cwpm/programs/cb/laws_policies/laws/cwpm/policy_dsp.jsp?citID=68#2561*).

We seek comment from state agencies and other stakeholders about the revised policy interpretation at CWPM, section 2.1A.4, Q/A #8, or any other revised policies in section 2.1A of the CWPM noted above.

We encourage stakeholder respondents to address the following questions:

(1) Please describe any challenges you've had obtaining information about child fatalities and near fatalities which resulted from child abuse and neglect from a state. Have there been improvements in obtaining the information since CB revised the policy in CWPM section 2.1.A in September 2012?

(2) What concerns, if any, do you have with the definition of near fatalities in a state?

(3) Has a state responded that the state cannot disclose information due to confidentiality protections? If so, describe the information requested and the confidentiality provision cited by the state.

(4) Does your state offer a public report of the child fatalities review panel/commission? If so, does the report contain the required disclosure of information? Is the report a barrier to obtaining information?

We encourage state agency respondents to address the following questions:

(1) What challenges, if any, have you faced implementing the revised policy? Has the revised policy improved your disclosure process and policies?

(2) Are there challenges in applying the disclosure policy while also ensuring that you adhere to confidentiality protections?

Dated: March 24, 2015.

Mark H. Greenberg,

Acting Assistant Secretary for Children and Families.

[FR Doc. 2015–07390 Filed 3–30–15; 8:45 am]

BILLING CODE 4184–29–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: AIDS and AIDS Related Research.

Date: April 8, 2015.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Mary Clare Walker, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5208, MSC 7852, Bethesda, MD 20892, (301) 435–1165, *walkermc@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Topics in Bacterial Pathogenesis.

Date: April 9, 2015.

Time: 10:00 a.m. to 11:00 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Marci Scidmore, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3192, MSC 7808, Bethesda, MD 20892, 301–435–1149, *marci.scidmore@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Hypertension, Thrombosis, Vascular Inflammation and Dysfunction.

Date: April 23–24, 2015.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

*Place:*National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Natalia Komissarova, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5207, MSC 7846, Bethesda, MD 20892, 301–435–1206, *komissar@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS).

Dated: March 25, 2015.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–07256 Filed 3–30–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2015–N–0815]

Electronic Study Data Submission; Data Standards; Recommending the Use of the World Health Organization Drug Dictionary

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing support for the World Health Organization (WHO) Drug Dictionary (available at *http://www.who-umc.org/*), which is maintained and updated by the Uppsala Monitoring Centre. FDA is encouraging sponsors and applicants to use WHO Drug Dictionary codes in investigational study data provided in regulatory submissions to the Center for Drug Evaluation and Research and to the Center for Biologics Evaluation and Research. The WHO Drug Dictionary contains unique codes for identifying drug names and evaluating medicinal product information, including active ingredients and therapeutic uses. Typically, WHO Drug Dictionary is used to code concomitant medications used by subjects during the course of a clinical trial. WHO Drug Dictionary will be listed in the FDA Data Standards Catalog posted to FDA's Study Data Standards Resources Web site at *http://www.fda.gov/forindustry/datastandards/studydatastandards/default.htm*

DATES: Although you can comment on this notice at any time, to ensure that the Agency considers your comments submit either electronic or written comments by May 5, 2015.

ADDRESSES: Submit written requests for single copies of the documents to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002 or the Office of Communication, Outreach, and Development, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests.

Submit electronic comments to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Ron Fitzmartin, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave. Bldg. 51, rm. 1192, Silver Spring, MD 20993–002, *ronald.fitzmartin@fda.hhs.gov;* or Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave. Bldg. 71, Rm. 7301, Silver Spring, MD 20993, *stephen.ripley@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The use of a common dictionary to code concomitant medications is an important component of study data standardization. Generally, controlled terminology standards specify the key concepts that are represented as definitions, preferred terms, synonyms, codes, and code system. The analysis of study data is greatly facilitated by the use of controlled terms for clinical or scientific concepts that have standard, predefined meanings and representations. WHO Drug Dictionary contains unique codes as drug names and corresponding medicinal product information, including active ingredients and the Anatomical Therapeutic Chemical (ATC) classification system for the therapeutic uses. Typically, sponsors and applicants use WHO Drug Dictionary to code and analyze concomitant medications taken by subjects during the course of clinical trials.

Although use of WHO Drug Dictionary codes are not required at this time, FDA now supports and encourages the use of WHO Drug Dictionary coded concomitant medications used in clinical trials. For purposes of this notice, ''supported'' means the receiving Center has established processes and technology to support receiving, processing, reviewing, and archiving files in the specified standard.

FDA is now encouraging sponsors and applicants to provide WHO Drug Dictionary codes for concomitant medication data in investigational studies provided in regulatory submissions (*e.g.,* investigational new drug applications, new drug applications, abbreviated new drug applications, and biologics license applications). The codes should include the drug product trade name where available, the active ingredient(s) and the ATC class.

II. Comments

Interested persons may submit either electronic comments to *http://www.regulations.gov* or written comments regarding this notice to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

Dated: March 23, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–07269 Filed 3–30–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2015–D–0839]

Target Animal Safety Data Presentation and Statistical Analysis; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for

industry #226 entitled ''Target Animal Safety Data Presentation and Statistical Analysis.'' The purpose of this document is to provide recommendations to industry regarding the presentation and statistical analyses of target animal safety (TAS) data submitted to the Center for Veterinary Medicine (CVM) as part of a study report to support approval of a new animal drug. These recommendations apply to TAS data generated from both TAS and field effectiveness studies conducted in companion animals (*e.g.,* dogs, cats, and horses) and food animals (*e.g.,* swine, ruminants, fish, and poultry).

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by June 1, 2015.

ADDRESSES: Submit written requests for single copies of the guidance to the Communications Staff (HFV–12), Center for Veterinary Medicine, Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

Submit electronic comments on the draft guidance to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Virginia Recta, Center for Veterinary Medicine (HFV–164), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–402–0840, *virginia.recta@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry #226 entitled ''Target Animal Safety Data Presentation and Statistical Analysis.'' It is intended to provide recommendations to industry regarding the presentation and statistical analyses of TAS data submitted to CVM as part of a study report to support approval of a new animal drug. These recommendations apply to TAS data generated from both TAS and field effectiveness studies conducted in companion animals (*e.g.,* dogs, cats, and horses) and food animals (*e.g.,* swine, ruminants, fish, and poultry).

II. Significance of Guidance

This level 1 draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on ''Target Animal Safety Data Presentation and Statistical Analysis.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

III. Paperwork Reduction Act of 1995

This draft guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 514 have been approved under OMB control number 0910–0032.

IV. Comments

Interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

V. Electronic Access

Persons with access to the Internet may obtain the draft guidance at either *http://www.fda.gov/AnimalVeterinary/GuidanceComplianceEnforcement/GuidanceforIndustry/default.htm* or *http://www.regulations.gov.*

Dated: March 25, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–07264 Filed 3–30–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Title: Same-sex relationships: Updates to Healthy Marriage and Relationship Education.

OMB No.: New Collection

Description: The Administration for Children and Families (ACF) will examine how healthy marriage programs currently approach, and could approach, serving sexual minority populations, that is, lesbian, gay, and bisexual populations. ACF expects to collect and analyze data from a range of information collection efforts—including interviews with program administrators, program managers, healthy marriage and relationship programming experts, and focus groups with program applicants and program attendees—to propose methods and practices for serving such couples/individuals/youth.

Respondents: Current healthy marriage program applicants and participants, program managers and facilitators, and experts in the field.

ANNUAL BURDEN ESTIMATES

Instrument	Total/annual number of respondents	Number of responses per respondent	Average burden hours per response	Annual burden hours
Focus Group Guide for Program Applicants	30	1	1.5	45
Focus Group Guide for Program Attendees	60	1	1.5	90
Focus Group Guide for Program Attendees	60	1	1.5	90
Interview Guide for Program Managers	6	1	1	6
Interview Guide for Program Facilitators	12	1	1	12
Interview Guide for Program Experts	12	1	1	12

Estimated Total Annual Burden Hours: 255.

In compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade SW., Washington, DC 20447, Attn: OPRE Reports Clearance Officer. Email address: *OPREinfocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) 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. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Karl Koerper,

Reports Clearance Officer.

[FR Doc. 2015–07316 Filed 3–30–15; 8:45 am]

BILLING CODE 4184–73–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel; NIH Loan Repayment Program (Clinical and Pediatric Researchers).

Date: April 24, 2015.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institute of Environmental Health Sciences, Keystone Building, 530 Davis Drive, Suite 3118, Research Triangle Park, NC 27709, (Virtual Meeting).

Contact Person: RoseAnne M McGee, Scientific Review Officer, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709 (919) 541–0752, *mcgee1@niehs.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: March 25, 2015.

Carolyn Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–07249 Filed 3–30–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–N–0563]

Odalys Fernandez: Debarment Order

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The U.S. Food and Drug Administration (FDA or Agency) is issuing an order under the Federal Food, Drug, and Cosmetic Act (the FD&C Act) debarring Odalys Fernandez from providing services in any capacity to a person that has an approved or pending drug product application for a period of 6 years. FDA bases this order on a finding that Ms. Fernandez was convicted of five felony counts under Federal law for conduct involving health care fraud, and one count of conspiracy to commit health care fraud, and that this pattern of conduct is sufficient to find that there is reason to believe she may violate requirements under the FD&C Act relating to drug products. Ms. Fernandez was given notice of the proposed debarment and an opportunity to request a hearing within the timeframe prescribed by regulation. Ms. Fernandez failed to request a hearing. Ms. Fernandez's failure to request a hearing constitutes a waiver of her right to a hearing concerning this action.

DATES: This order is effective March 31, 2015.

ADDRESSES: Submit applications for termination of debarment to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Kenny Shade, Division of Enforcement, Office of Enforcement and Import Operations, Office of Regulatory Affairs, Food and Drug Administration, 12420 Parklawn Dr. (ELEM–4144), Rockville, MD 20857, 301–796–4640.

SUPPLEMENTARY INFORMATION:

I. Background

Section 306(b)(2)(B)(ii)(I) of the FD&C Act (21 U.S.C. 335a(b)(2)(B)(ii)(I)) permits debarment of an individual if FDA finds that the individual has been convicted of a felony under Federal law for conduct which involves bribery, payment of illegal gratuities, fraud, perjury, false statement, racketeering, blackmail, extortion, falsification or destruction of records, or interference with, obstruction of an investigation into, or prosecution of any criminal offense, and FDA finds, on the basis of the conviction and other information, that such individual has demonstrated a pattern of conduct sufficient to find that there is reason to believe the individual may violate requirements under the FD&C Act relating to drug products.

On November 9, 2012, the U.S. District Court for the Southern District of Florida entered judgment against Ms. Fernandez after a jury found her guilty of five counts of health care fraud in violation of 18 U.S.C. 1347, and one count of conspiracy to commit health care fraud in violation of 18 U.S.C. 1349.

FDA's finding that debarment is appropriate is based on the felony convictions referenced herein. The factual basis for these convictions is as follows: Ms. Fernandez was a registered nurse working for Ideal Home Health Inc. (Ideal), which was a business in Miami-Dade County, FL. Ideal purportedly provided skilled nursing services to Medicare beneficiaries who required home health services. As a

registered nurse in the home health field, it was Ms. Fernandez's duty to provide skilled nursing services to patients and maintain proper documentation of all treatments provided to patients.

From on or about August 17, 2007, through on or about March 19, 2009, Ms. Fernandez conspired with others to defraud Medicare.

Ms. Fernandez and her coconspirators submitted, and caused the submission of, false and fraudulent claims to Medicare, and concealed the submission of these false and fraudulent claims.

Ms. Fernandez and her coconspirators falsified and caused Medicare beneficiaries to falsify weekly visit/time record sheets, and falsified skilled nursing progress notes representing that she had administered insulin injections and provided other medical services to Medicare beneficiaries. She caused Ideal to submit false and fraudulent claims to Medicare for home health benefits by falsely representing that she had provided these health services. As a result of these fraudulent claims, she caused Medicare to make payments to Ideal of approximately $82,040. Ms. Fernandez engaged in this criminal conduct repeatedly over a period of approximately 19 months.

As a result of her convictions, on September 8, 2014, FDA sent Ms. Fernandez a notice by certified mail proposing to debar her for 6 years from providing services in any capacity to a person that has an approved or pending drug product application. The proposal was based on the finding, under section 306(b)(2)(B)(ii)(I) of the FD&C Act, that Ms. Fernandez was convicted of felonies under Federal law for conduct involving health care fraud and conspiracy to commit health care fraud, and the Agency found, on the basis of the conviction and other information, that Ms. Fernandez had demonstrated a pattern of conduct sufficient to find that there is reason to believe she may violate requirements under the FD&C Act relating to drug products. This conclusion was based on the fact that Ms. Fernandez had legal and professional obligations to ensure that she submitted accurate medical claims for services she provided. Instead, Ms. Fernandez submitted, and caused the submission of, false weekly visit/time records and false daily blood sugar/insulin log sheets. She engaged in this conduct repeatedly over a period of almost 2 years. Her convictions indicate that she knowingly and willfully disregarded her legal and professional obligations to keep accurate medical records and to submit accurate claims for the services she provided. Having considered the conduct that forms the basis of her conviction and the fact that this conduct occurred in the course of her profession and showed a disregard for the obligations of her profession and the law, FDA found that Ms. Fernandez has demonstrated a pattern of conduct sufficient to find that there is reason to believe that, if she were to provide services to a person that has an approved or pending drug application, she may violate requirements under the FD&C Act relating to drug products. The proposal offered Ms. Fernandez an opportunity to request a hearing, providing her with 30 days from the date of receipt of the letter in which to file the request, and advised her that failure to request a hearing constituted a waiver of the opportunity for a hearing and of any contentions concerning this action. The proposal was received on September 12, 2014. Ms. Fernandez failed to respond within the timeframe prescribed by regulation and has, therefore, waived her opportunity for a hearing and has waived any contentions concerning her debarment (21 CFR part 12).

II. Findings and Order

Therefore, the Director, Office of Enforcement and Import Operations, Office of Regulatory Affairs, under section 306(b)(2)(B)(ii)(I) of the FD&C Act, under authority delegated to the Director (Staff Manual Guide 1410.35), finds that Odalys Fernandez has been convicted of five counts of a felony and one count of conspiracy to commit a felony under Federal law for conduct involving health care fraud and, on the basis of the conviction and other information, finds that Ms. Fernandez has demonstrated a pattern of conduct sufficient to find that there is reason to believe she may violate requirements under the FD&C Act relating to drug products.

Based on the factors under section 306(c)(2)(A)(iii) of the FD&C Act, FDA finds that each offense be accorded a debarment period of 3 years. In the case of a person debarred for multiple offenses, FDA shall determine whether the periods of debarment shall run concurrently or consecutively (section 306(c)(2)(A)). FDA has concluded that the 3-year periods of debarment for the five counts of health care fraud shall run concurrently. The 3-year period of debarment for the conspiracy conviction shall run consecutively to the periods of debarment for health care fraud convictions, resulting in a total debarment period of 6 years.

As a result of the foregoing findings, Odalys Fernandez is debarred for 6 years from providing services in any capacity to a person with an approved or pending drug product application under sections 505, 512, or 802 of the FD&C Act (21 U.S.C. 355, 360b, or 382), or under section 351 of the Public Health Service Act (42 U.S.C. 262), effective (see **DATES**)(see sections 201(dd), 306(c)(1)(B), and 306(c)(2)(A)(ii) of the FD&C Act, (21 U.S.C. 321(dd), 335a(c)(1)(B), and 335a(c)(2)(A)(ii)). Any person with an approved or pending drug product application who knowingly employs or retains as a consultant or contractor, or otherwise uses the services of Ms. Fernandez in any capacity during her debarment, will be subject to civil money penalties (section 307(a)(6) of the FD&C Act (21 U.S.C. 335b(a)(6))). If Ms. Fernandez provides services in any capacity to a person with an approved or pending drug product application during her period of debarment she will be subject to civil money penalties (section 307(a)(7) of the FD&C Act). In addition, FDA will not accept or review any abbreviated new drug applications submitted by or with the assistance of Odalys Fernandez during her period of debarment (section 306(c)(1)(A) of the FD&C Act).

Any application by Ms. Fernandez for termination of debarment under section 306(d)(4) of the FD&C Act should be identified with Docket No. FDA–2014–N–0563 and sent to the Division of Dockets Management (see **ADDRESSES**). All such submissions are to be filed in four copies. The public availability of information in these submissions is governed by 21 CFR 10.20.

Publicly available submissions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 24, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–07267 Filed 3–30–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–D–0500]

Early Clinical Trials With Live Biotherapeutic Products: Chemistry, Manufacturing, and Control Information; Guidance for Industry; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; requests for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing a request for additional comments on the chemistry, manufacturing, and control (CMC) information that a sponsor of an investigational new drug application (IND) should provide in its IND in order to meet regulatory requirements when commercially available foods or dietary supplements containing live biotherapeutic products (LBPs) are used as investigational new drugs in early phase clinical trials. The request for additional comments on the CMC information is related to the guidance entitled, ''Early Clinical Trials with Live Biotherapeutic Products: Chemistry, Manufacturing, and Control Information; Guidance for Industry,'' dated February 2012 (February 2012 guidance).

DATES: Submit either electronic or written comments on the requested CMC information by May 29, 2015.

ADDRESSES: Submit written requests for single copies of the February 2012 guidance to the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist the office in processing your requests. The guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 240–402–7800. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

Submit electronic comments on the requested CMC information to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Jessica T. Walker, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing a request for additional comments on the CMC information that a sponsor of an IND should provide in its IND in order to meet the requirements under § 312.23 (21 CFR 312.23), when commercially available foods or dietary supplements containing LBPs are subject to study as investigational new drugs in early phase clinical trials.

In the **Federal Register** of February 21, 2012 (77 FR 9947), FDA announced the publication of a final guidance entitled ''Early Clinical Trials with Live Biotherapeutic Products: Chemistry, Manufacturing, and Control Information; Guidance for Industry,'' dated February 2012. The guidance provides IND sponsors with recommendations regarding CMC information that should be included in IND submissions for early clinical trials with LBPs, including LBPs lawfully marketed as foods or dietary supplements in the United States and proposed for clinical uses regulated under section 351 of the Public Health Service Act (42 U.S.C. 262). The guidance also outlines the Drug Substance and Drug Product information that should be provided in the CMC section of an IND to meet the requirements under § 312.23 and to support proceeding to clinical evaluation of an LBP in human subjects.

II. CMC Information

FDA is considering modifying the February 2012 guidance to address the CMC information that should be provided in an IND, under certain conditions. Specifically, FDA is considering whether to revise the guidance to address when the label on the commercially available product(s) would be considered adequate to satisfy the requirement for CMC information under § 312.23. For example, we are considering whether the label would be adequate to satisfy the CMC information when the following conditions are met: (1) The LBP product that is proposed for investigational use is a commercially available food or dietary supplement; (2) the investigation does not involve a route of administration, dose, patient population, or other factor that significantly increases the risk (or decreases the acceptability of risk) associated with the use of the food or dietary supplement; (3) the investigation is not intended to support a marketing application for a drug claim for the food or dietary supplement; and (4) the investigation is conducted in compliance with the requirements for INDs (part 312), the requirements for review by an institutional review board (21 CFR part 56), and with the requirements for informed consent (21 CFR part 50). FDA is seeking public comment on this issue.

III. Comments

Interested persons may submit either electronic comments regarding the requested CMC information to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

IV. Electronic Access

Persons with access to the Internet may obtain the February 2012 guidance at either *http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *http://www.regulations.gov.*

Dated: March 25, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–07273 Filed 3–30–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–D–1439]

Critical Path Innovation Meetings; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry entitled ''Critical Path Innovation Meetings.'' This guidance describes a Critical Path Innovation Meeting (CPIM), a means by which FDA's Center for Drug Evaluation and Research (CDER) and investigators from industry, academia, government, and patient advocacy groups can communicate to improve efficiency and success in drug development. The goals of the CPIM are to discuss a methodology or technology proposed by the meeting requester and for CDER to provide general advice on how this methodology or technology might enhance drug development. The discussions and background information submitted through the CPIM are nonbinding on both FDA and CPIM requesters.

DATES: Submit either electronic or written comments on Agency guidances at any time.

ADDRESSES: Submit written requests for single copies of this guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food

and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

Submit electronic comments on the guidance to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Alicia Barbieri Stuart, Office of Translational Sciences, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 21, Rm. 4547, Silver Spring, MD 20993–0002, 301–796–3852.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled ''Critical Path Innovation Meetings.'' The guidance describes the purpose and scope of a CPIM and how to request such a meeting. A CPIM provides the opportunity to discuss a methodology or technology proposed by the meeting requester and for CDER to provide general advice on how the methodology or technology might enhance drug development. During a CPIM, CDER will identify some of the larger gaps in existing knowledge that requesters might consider addressing in the course of their work. The discussions and background information submitted through the CPIM are nonbinding on both FDA and CPIM requesters. The CPIM initiative meets Prescription Drug User Fee Act (PDUFA) V Reauthorization Goal IX.A, ''Enhancing Regulatory Science and Expediting Drug Development'' by ''Promoting Innovation Through Enhanced Communication Between FDA and Sponsors During Drug Development.''

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on ''Critical Path Innovation Meetings.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. The Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collection of information in 21 CFR part 312 (investigational new drug applications) has been approved under OMB control number 0910–0014. The collection of information in 21 CFR part 314 (new drug applications) has been approved under OMB control number 0910–0001. The collection of information resulting from formal meetings between interested persons and FDA has been approved under OMB control number 0910–0429.

III. Comments

Interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

IV. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *http://www.regulations.gov.*

Dated: March 24, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–07272 Filed 3–30–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2015–N–0001]

Pulmonary-Allergy Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Pulmonary-Allergy Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the Agency on FDA's regulatory issues.

Date and Time: The meeting will be held on May 12, 2015, from 8 a.m. to 4 p.m.

Location: Hilton Washington DC North/Gaithersburg, The Ballrooms, 620 Perry Pkwy., Gaithersburg, MD 20877. The hotel phone number is 301–977–8900.

Contact Person: Cindy Hong, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993–0002, 301–796–9001, FAX: 301–847–8533, email: *PADAC@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site at *http://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

Agenda: The committee will discuss new drug application (NDA) 206038, lumacaftor/ivacaftor combination tablets for oral use, submitted by Vertex Pharmaceuticals, proposed for the treatment of cystic fibrosis (CF) in patients age 12 years and older who are homozygous for the *F508del* mutation in the cystic fibrosis transmembrane conductance regulator (CFTR) gene.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee meeting link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before April 27, 2015. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Those individuals

interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before April 17, 2015. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by April 20, 2015.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Cindy Hong at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: March 25, 2015.

Jill Hartzler Warner,

Associate Commissioner for Special Medical Programs.

[FR Doc. 2015–07299 Filed 3–30–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Time-Sensitive Obesity.

Date: April 27, 2015.

Time: 12:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Michele L. Barnard, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 753, 6707 Democracy Boulevard, Bethesda, MD 20892–2542, (301) 594–8898, *barnardm@extra.niddk.nih.gov*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Pragmatic Research and Natural Experiments.

Date: May 6, 2015.

Time: 10:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Michele L. Barnard, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 753, 6707 Democracy Boulevard, Bethesda, MD 20892–2542, (301) 594–8898, *barnardm@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: March 25, 2015.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–07255 Filed 3–30–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

Agency Information Collection Activities; Proposed Collection; Comment Request; Extension of Certification of Maintenance of Effort on Help America Vote Act, Payments for Protection and Advocacy Systems (P&A Voting Access Narrative Annual Report)

AGENCY: Administration on Intellectual and Developmental Disabilities, Administration for Community Living, HHS.

ACTION: Notice.

SUMMARY: The Administration for Community Living (ACL) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection requirements relating to the Help America Vote Act (HAVA), Public Law 107–252, title II, subtitle D, section 291, Payments for Protection and Advocacy Systems (P&As Narrative Annual Report).

DATES: Submit written or electronic comments on the collection of information by June 1, 2015.

ADDRESSES: Submit electronic comments on the collection of information to: *melvenia.wright@acl.hhs.gov.*

Submit written comments on the collection of information to Administration for Community Living, 1 Massachusetts Avenue NW., Room 4716, Washington, DC 20001, attention Melvenia Wright.

FOR FURTHER INFORMATION CONTACT: Melvenia Wright, Program Specialist, Administration for Community Living, Washington, DC 20001. Telephone: (202) 357–3486; email *melvenia.wright@acl.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency request or requirements that members of the

public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, ACL is publishing notice of the proposed collection of information set forth in this document. With respect to the following collection of information, ACL invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of ACL's functions, including whether the information will have practical utility; (2) the accuracy of ACL'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 respondents, including through the use of automated collection techniques when appropriate, and other forms of information technology.

The Protection and Advocacy Voting Access Annual Narrative Report from the Protection and Advocacy Systems is required by federal statute and regulation, the Help America Vote Act (HAVA), Public Law 107–252, title II, subtitle D, section 291, Payments for Protection and Advocacy to Assure Access for Individuals with Disabilities (42 U.S.C. 15461). The report is provided in writing to the Administration for Community Living, Administration on Intellectual and Developmental Disabilities (AIDD). Each eligible Protection and Advocacy System (P&As) must prepare and submit an annual report at the end of every fiscal year by the 31st of December. The report addresses the activities conducted with the funds provided during the year. The information collected from the annual report will be aggregated into an annual profile of how the P&As have utilized the funds and review the P&As activities carried out for each of the seven mandated area. These areas include full participation in the electoral process; education, training and assistance; advocacy and education around HAVA implementation efforts; training and education of election officials, poll workers and election volunteers regarding the rights of voters with disabilities and best practices; assistance in filing complaints; assistance to State and other governmental entities regarding the physical accessibility of polling places; and obtaining training and technical assistance on voting issues. The PAVA annual narrative report will also provide an overview of the goals and accomplishments for each P&A as well as permit the Administration on Intellectual and Developmental Disabilities (AIDD) to track voting progress to monitor grant activities and create the bi-annual report to Congress.

ACL estimates the burden of this collection of information as follows: 55 Protection and Advocacy Systems (P&A) respond annually which should be an average burden of 20 hours per State per year or a total of 1,100 hours for all states annually.

Dated: March 25, 2015.

Kathy Greenlee,

Administrator and Assistant Secretary for Aging.

[FR Doc. 2015–07313 Filed 3–30–15; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Center for Substance Abuse Treatment; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given that the Substance Abuse and Mental Health Services Administration's (SAMHSA's) Center for Substance Abuse Treatment (CSAT) National Advisory Council will meet on April 15, 2015, from 9:30 a.m.–5:00 p.m. (EDT) and will include a session that is closed to the public.

The closed meeting will include the review of grant applications, which contain budget information, including the description of how an agency prices its services, information on proposed business relationships and subcontracts. Grant applications also contain personal information and contact information on agency principles. Discussion of proposed funding and awardees would be made public prior to the required congressional notification of grant award. Since the closed meeting will include discussion and evaluation of grant applications reviewed by Initial Review Groups and involve an examination of confidential financial and business information as well as personal information concerning the applicants, it will be closed to the public from 9:30 a.m. to 11:00 a.m. as determined by the SAMHSA Administrator, in accordance with Title 5 U.S.C. 552b(c)(4) and (6) and (c)(9)(B) and 5 U.S.C. App. 2, section 10(d).

The open session of the meeting will be held from 11:00 a.m.–5:00 p.m. and will include consideration of minutes from the SAMHSA CSAT NAC meeting of August 27, 2014, Director's report, discussion of SAMHSA's role regarding treatment of mental illness and substance use disorders, budget update, Pregnant and Postpartum Women and Medication Assisted Treatment panel discussions, and a recovery presentation and discussion.

The meeting will be held at the SAMHSA building, 1 Choke Cherry Road, Great Falls Conference Room, Rockville, MD 20850. Attendance by the public will be limited to space available and will be limited to the open sessions of the meeting. Interested persons may present data, information, or views, orally or in writing, on issues pending before the Council. Written submissions should be forwarded to the contact person on or before April 5, 2015. Oral presentations from the public will be scheduled at the conclusion of the meeting. Individuals interested in making oral presentations are encouraged to notify the contact on or before April 5, 2015. Five minutes will be allotted for each presentation.

The open meeting session may be accessed via telephone. To attend on site, obtain the call-in number and access code, submit written or brief oral comments, or request special accommodations for persons with disabilities, please register on-line at *http://nac.samhsa.gov/Registration/meetingsRegistration.aspx,* or communicate with SAMHSA's Committee Management Officer, LCDR Holly Berilla (see contact information below).

Substantive meeting information and a roster of Council members may be obtained either by accessing the SAMHSA Council Web site at: *http://www.samhsa.gov/about-us/advisory-councils/csat-national-advisory-council* or by contacting LCDR Berilla.

Substantive program information may be obtained after the meeting by accessing the SAMHSA Council Web site, *http://nac.samhsa.gov/,* or by contacting LCDR Berilla.

Council Name: SAMHSA's Center for Substance Abuse Treatment National Advisory Council.

Date/Time/Type:

April 15, 2015, 9:30 a.m.–11:00 a.m. EDT, CLOSED

April 15, 2015, 11:00 a.m.–5:00 p.m. EDT, OPEN

Place: SAMHSA Building, 1 Choke Cherry Road, Great Falls Conference Room, Rockville, Maryland 20850.

Contact: LCDR Holly Berilla, Committee Management Officer and Acting Designated Federal Official, CSAT National Advisory Council, 1 Choke Cherry Road, Rockville, Maryland 20857 (mail). Telephone: (240) 276–1252. Fax: (240) 276–2252. Email: *holly.berilla@samhsa.hhs.gov.*

Summer King,

Statistician, SAMHSA.

[FR Doc. 2015–07284 Filed 3–30–15; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0473]

Agency Information Collection Activities; Proposed Collection; Comment Request; Irradiation in the Production, Processing, and Handling of Food

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on our proposed collection of certain information. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies must publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and allow 60 days for public comment. This notice invites comments on the information collection provisions of our requirements for food irradiation processors.

DATES: Submit either electronic or written comments on the collection of information by June 1, 2015.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov.* Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 8455 Colesville Rd., COLE–14526, Silver Spring, MD 20993–0002, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, we are publishing this notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, we invite comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of our functions, including whether the information will have practical utility; (2) the accuracy of our 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 respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Irradiation in the Production, Processing, and Handling of Food—21 CFR Part 179 (OMB Control Number 0910–0186)—Extension

Under sections 201(s) and 409 of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 321(s) and 348), food irradiation is subject to regulation under the food additive premarket approval provisions of the FD&C Act. The regulations providing for uses of irradiation in the production, processing, and handling of food are found in part 179 (21 CFR part 179). To ensure safe use of a radiation source, § 179.21(b)(1) requires that the label of sources bear appropriate and accurate information identifying the source of radiation and the maximum (or minimum and maximum) energy of the emitted radiation. Section 179.21(b)(2) requires that the label or accompanying labeling bear adequate directions for installation and use and a statement supplied by us that indicates maximum dose of radiation allowed. Section 179.26(c) requires that the label or accompanying labeling bear a logo and a radiation disclosure statement. Section 179.25(e) requires that food processors who treat food with radiation make and retain, for 1 year past the expected shelf life of the products up to a maximum of 3 years, specified records relating to the irradiation process (*e.g.,* the food treated, lot identification, scheduled process, etc.). The records required by § 179.25(e) are used by our inspectors to assess compliance with the regulation that establishes limits within which radiation may be safely used to treat food. We cannot ensure safe use without a method to assess compliance with the dose limits, and there are no practicable methods for analyzing most foods to determine whether they have been treated with ionizing radiation and are within the limitations set forth in part 179. Records inspection is the only way to determine whether firms are complying with the regulations for treatment of foods with ionizing radiation.

Description of respondents: Respondents are businesses engaged in the irradiation of food.

We estimate the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

21 CFR section	Number of record-keepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
179.25(e), large processors	4	300	1,200	1	1,200
179.25(e), small processors	4	30	120	1	120

TABLE 1—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]—Continued

21 CFR section	Number of record-keepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
Total					1,320

[1] There are no capital costs or operating and maintenance costs associated with this collection.

We base our estimate of burden for the recordkeeping provisions of § 179.25(e) on our experience regulating the safe use of radiation as a direct food additive. The number of firms who process food using irradiation is extremely limited. We estimate that there are four irradiation plants whose business is devoted primarily (*i.e.,* approximately 100 percent) to irradiation of food and other agricultural products. Four other firms also irradiate small quantities of food. We estimate that this irradiation accounts for no more than 10 percent of the business for each of these firms. Therefore, the average estimated burden is based on four facilities devoting 100 percent of their business to food irradiation (4 × 300 hours = 1200 hours for recordkeeping annually), and four facilities devoting 10 percent of their business to food irradiation (4 × 30 hours = 120 hours for recordkeeping annually).

No burden has been estimated for the labeling requirements in §§ 179.21(b)(1), 179.21(b)(2), and 179.26(c) because the information to be disclosed is information that has been supplied by FDA. Under 5 CFR 1320.3(c)(2), the public disclosure of information originally supplied by the Federal Government to the recipient for the purpose of disclosure to the public is not subject to review by the Office of Management and Budget under the Paperwork Reduction Act.

Dated: March 23, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–07263 Filed 3–30–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2015–N–0001]

Ear, Nose, and Throat Devices Panel of the Medical Devices Advisory Committee; Amendment of Notice

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an amendment to the notice of meeting of the Ear, Nose, and Throat Devices Panel of the Medical Devices Advisory Committee. This meeting was announced in the **Federal Register** of March 13, 2015. The amendment is being made to reflect a change in the April 30th *Agenda* portion of the document. There are no other changes.

FOR FURTHER INFORMATION CONTACT: Patricio Garcia, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 1535, Silver Spring MD 20993–0002, *patricio.garcia@fda.hhs.gov,* 301–796–6875, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington DC area), code EN. Please call the Information Line for up-to-date information on this meeting.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 13, 2015 (80 FR 13392), FDA announced that a meeting of the Ear, Nose, and Throat Devices Panel of the Medical Devices Advisory Committee would be held on April 30 and May 1, 2015. On page 13393, in the first and second columns, the *Agenda* portion of the document is changed to read as follows:

On April 30, 2015, the Agency is adding three Agenda items to the original five agenda items posted in the March 13, 2015, **Federal Register** document. The three additional items are: Speech Training Aids for the Hearing Impaired (Battery Powered or Non-Patient), Speech Training Aids for the Hearing Impaired (AC-powered and Patient-Contact), and Nasal Septal Button Devices. The committee will discuss and make recommendations regarding the classification of Hearing Protectors, Circumaural Hearing Protectors, Tactile Hearing Aids, Speech Training Aids for the Hearing Impaired (Battery Powered or Non-Patient), Speech Training Aids for the Hearing Impaired (AC-powered and Patient-Contact), Vestibular Analysis, Middle Ear Inflation Devices, and Nasal Septal Button Devices. These devices are considered preamendments devices since they were in commercial distribution prior to May 28, 1976, when the Medical Devices Amendments became effective. Hearing Protectors are currently regulated under the heading, ''Protector, Hearing (Insert),'' Product Code EWD, as unclassified under the 510(k) premarket notification authority. Circumaural Hearing Protectors are currently regulated under the heading, ''Protector, Hearing (Circumaural),'' Product Code EWE, as unclassified under the 510(k) premarket notification authority. Tactile Hearing Aid Devices are currently regulated under the heading, ''Hearing Aid, Tactile,'' Product Code LRA, as unclassified under the 510(k) premarket notification authority. Speech Training Aids for the Hearing Impaired (Battery Powered or Non-Patient) are currently regulated under the heading, ''Aids, Speech Training For The Hearing Impaired (Battery-Operated or Non-Patient),'' Product Code LFA, as unclassified under the 510(k) premarket notification authority. Speech Training Aids for the Hearing Impaired (AC-Powered and Patient-Contact) are currently regulated under the heading, ''Aids, Speech Training For The Hearing Impaired (AC-Powered and Patient-Contact),'' Product Code LEZ, as unclassified under the 510(k) premarket notification authority. Vestibular Analysis Apparatuses are currently regulated under the heading, ''Apparatus, Vestibular Analysis,'' Product Code LXV, as unclassified under the 510(k) premarket notification authority. Middle Ear Inflation Devices are currently regulated under the heading, ''Device, Inflation, Middle Ear,'' Product Code MJV, as unclassified under the 510(k) premarket notification authority. Nasal Septal Button Devices are currently regulated under the heading, ''Button, Nasal Septal,'' Product Code LFB, as unclassified under the 510(k) premarket notification authority. FDA is seeking committee input on the risks, safety and effectiveness, and the regulatory classification of Hearing Protectors, Circumaural Hearing Protectors, Tactile Hearing Aids, Speech Training Aids for the Hearing Impaired (Battery Powered or Non-Patient), Speech Training Aids for the Hearing Impaired (AC-Powered and Patient-Contact), Vestibular Analysis, Middle Ear Inflation Devices, and Nasal Septal Button Devices.

On May 1, 2015, the committee will discuss key issues related to a potential pre- to postmarket shift in clinical data requirements for modifications to cochlear implants in pediatric patients. These issues are categorized into three broad areas for discussion:

1. Cochlear implant changes (*e.g.* sound processing features, patient characteristics) that may be suitable for this pre- to postmarket shift in clinical data requirements.

2. Appropriate premarket clinical data requirements to support pre- to postmarket shift (*e.g.* leveraging clinical data from adults and/or older children.)

3. Clinical study design considerations (*e.g.* study endpoints and test metrics, subject characteristics) for postmarket studies to confirm safety and effectiveness and inform future labeling.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee meeting link.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to the advisory committees.

Dated: March 24, 2015.

Jill Hartzler Warner,

Associate Commissioner for Special Medical Programs.

[FR Doc. 2015–07300 Filed 3–30–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–F–0171]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Food Labeling; Calorie Labeling of Articles of Food in Vending Machines

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Food Labeling; Calorie Labeling of Articles of Food in Vending Machines'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 8455 Colesville Rd., COLE–14526, Silver Spring, MD 20993–0002, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: On February 5, 2015, the Agency submitted a proposed collection of information entitled ''Food Labeling; Calorie Labeling of Articles of Food in Vending Machines'' to OMB for review and clearance under 44 U.S.C. 3507. 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. OMB has now approved the information collection and has assigned OMB control number 0910–0782. The approval expires on March 31, 2018. A copy of the supporting statement for this information collection is available on the Internet at *http://www.reginfo.gov/public/do/PRAMain.*

Dated: March 25, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–07265 Filed 3–30–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2015–D–0868]

Development and Submission of Near Infrared Analytical Procedures; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled ''Development and Submission of Near Infrared Analytical Procedures.'' This draft guidance provides recommendations to applicants of new drug applications (NDAs) and abbreviated new drug applications (ANDAs) regarding the development and submission of near infrared (NIR) analytical procedures used during the manufacture and analysis of pharmaceuticals. This draft guidance only pertains to the development and validation of NIR analytical procedures and does not provide recommendations concerning the set up and qualification of NIR instruments or their maintenance and calibration.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by June 1, 2015.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

Submit electronic comments on the draft guidance to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: John L. Smith, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, 301–796–1757.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Development and Submission of Near Infrared Analytical Procedures.'' This draft guidance provides recommendations to applicants of NDAs and ANDAs regarding the development and submission of NIR analytical procedures used during the manufacture and analysis of pharmaceuticals (including raw materials, in-process materials and intermediates, and finished products). It also provides recommendations regarding how the concepts described in the International Conference on Harmonisation (ICH) guidance for industry, ''Q2(R1) Validation of Analytical Procedures: Text and Methodology'' (*http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/ucm265700.htm*) and ''PAT—A Framework for Innovative Pharmaceutical Development, Manufacturing, and Quality Assurance'' (*http://www.fda.gov/downloads/Drugs/Guidances/ucm070305.pdf*) can be applied to the development, validation,

and submission of NIR analytical procedures.

This draft guidance only pertains to the development and validation of NIR analytical procedures and does not provide recommendations concerning the set up and qualification of NIR instruments or their maintenance and calibration.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on the submission and development of NIR analytical procedures. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. The Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 314 for NDAs, ANDAs, supplements to applications, and annual reports have been approved under OMB control number 0910–0001.

III. Comments

Interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

IV. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *http://www.regulations.gov.*

Dated: March 25, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–07266 Filed 3–30–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Notice for Public Comment on the Title IV–E Adoption Assistance Program's Suspension and Termination Policies

AGENCY: Children's Bureau; Administration on Children, Youth and Families; ACF, HHS

ACTION: Notice.

SUMMARY: In accordance with title IV–E of the Social Security Act (42 U.S.C. 673), the Children's Bureau (CB) announces the opportunity for public comment on our suspension and termination policies for the title IV–E adoption assistance program, articulated in the Child Welfare Policy Manual. We similarly announce the opportunity to provide public comment about any other policy areas of concern relating to the title IV–E adoption assistance program.

DATES: Submit written or electronic comments on or before June 29, 2015.

ADDRESSES: Interested persons may submit comments to *http://www.regulations.gov/.* We urge you to submit comments electronically to ensure they are received in a timely manner. Written comments may also be submitted to Kathleen McHugh, United States Department of Health and Human Services, Administration for Children and Families, Policy Division, 8th Floor, 1250 Maryland Avenue SW., Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Kathleen McHugh, United States Department of Health and Human Services, Administration for Children and Families, Policy Division, 8th Floor, 1250 Maryland Avenue SW., Washington, DC 20024. Email address: *cbcomments@acf.hhs.gov.*

SUPPLEMENTARY INFORMATION: The Social Security Act only permits a title IV–E agency to terminate a child or youth's title IV–E adoption assistance subsidy under three delineated circumstances: (1) The child has attained the age of 18, or the age that the agency has chosen pursuant to sec. 475(8)(B)(iii) and (iv) of the Social Security Act (or the age of 21 if the title IV–E agency has determined that the child has a mental or physical disability which would warrant continuation of assistance); (2) the title IV–E agency determines that the adoptive parents are no longer legally responsible for support of the child; or (3) the title IV–E agency determines that the adoptive parents are no longer providing any support to the child.

CB has interpreted the law to prohibit a title IV–E agency from automatically suspending a title IV–E adoption assistance payment on the basis that suspending title IV–E adoption assistance is equivalent to terminating title IV–E adoption assistance. See Child Welfare Policy Manual, section 8.2D.5, Question and Answer #3 (available at *http://www.acf.hhs.gov/cwpm/programs/cb/laws_policies/laws/cwpm/policy_dsp.jsp?citID=82#747*).

The statute also requires adoptive parents to keep the title IV–E agency apprised of any circumstances that would impact a child's continued eligibility for title IV–E adoption assistance, or would impact the appropriate amount of the payment. See the Social Security Act at sec. 473(a)(4)(B). However, the statute does not specify a recourse for title IV–E agencies if a parent does not provide such information. CB has explained in the Child Welfare Policy Manual that title IV–E agencies may not suspend or terminate title IV–E adoption assistance if adoptive parents do not respond to requests for information about whether the parents are providing any support to the child, or whether the adoptive parents remain legally responsible for their adopted child. See Child Welfare Policy Manual, section 8.2, Question and Answer #1 (*http://www.acf.hhs.gov/cwpm/programs/cb/laws_policies/laws/cwpm/policy_dsp.jsp?citID=63*).

We seek comment from title IV–E agencies and other stakeholders about the title IV–E adoption assistance suspension and termination policies. We invite agencies and stakeholders to share their experiences and concerns about how title IV–E agencies implement the suspension and termination policies, and any difficulties they have had ensuring that they are paying title IV–E adoption assistance funds appropriately.

In particular, we encourage respondents to address the following questions:

(1) Should jurisdictions have authority to suspend adoption assistance payments under any circumstances? If so, what specific circumstances should be the basis for suspension?

(2) If suspension was to be permitted, what processes should be required in connection with suspension, and what processes should be required for reinstatement?

More generally, we invite title IV–E agencies and other stakeholders to share their broader concerns about the title IV–E adoption assistance program that are unrelated to suspending or

terminating adoption assistance payments.

Dated: March 23, 2015.

Mark H. Greenberg,

Acting Assistant Secretary for Children and Families.

[FR Doc. 2015–07389 Filed 3–30–15; 8:45 am]

BILLING CODE 4184–29–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0001]

Agency Information Collection Activities: Cargo Manifest/Declaration, Stow Plan, Container Status Messages and Importer Security Filing

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 60-Day notice and request for comments; revision and extension of an existing collection of information.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Cargo Manifest/Declaration, Stow Plan, Container Status Messages and Importer Security Filing. CBP is proposing to add burden hours for four new collections of information, including Electronic Ocean Export Manifest, Electronic Air Export Manifest, Electronic Rail Export Manifest, and Vessel Stow Plan (Export). There are no changes to the existing forms or collections within this OMB approval. This document is published to obtain comments from the public and affected agencies.

DATES: Written comments should be received on or before June 1, 2015 to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs and Border Protection, Attn: Tracey Denning, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10th Floor, Washington, DC 20229–1177.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10th Floor, Washington, DC 20229–1177, at 202–325–0265.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3507). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden, including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs burden to respondents or record keepers from the collection of information (total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for OMB approval. All comments will become a matter of public record. In this document, CBP is soliciting comments concerning the following information collection:

Title: Cargo Manifest/Declaration, Stow Plan, Container Status Messages and Importer Security Filing.

OMB Number: 1651–0001.

Form Numbers: Forms 1302, 1302A, 7509, 7533.

Abstract: This OMB approval includes the following existing information collections: CBP Form 1302 (or electronic equivalent); CBP Form 1302A (or electronic equivalent); CBP Form 7509 (or electronic equivalent); CBP Form 7533 (or electronic equivalent); Manifest Confidentiality; Vessel Stow Plan (Import); Container Status Messages; and Importer Security Filing. CBP is proposing to add new information collections for Electronic Ocean Export Manifest; Electronic Air Export Manifest; Electronic Rail Export Manifest; and Vessel Stow Plan (Export). Specific information regarding these collections of information is as follows:

CBP Form 1302: The master or commander of a vessel arriving in the United States from abroad with cargo on board must file CBP Form 1302, *Inward Cargo Declaration*, or submit the information on this form using a CBP-approved electronic equivalent. CBP Form 1302 is part of the manifest requirements for vessels entering the United States and was agreed upon by treaty at the United Nations Inter-government Maritime Consultative Organization (IMCO). This form and/or electronic equivalent, is provided for by 19 CFR 4.5, 4.7, 4.7a, 4.8, 4.33, 4.34, 4.38, 4.84, 4.85, 4.86, 4.91, 4.93 and 4.99 and is accessible at: *http://www.cbp.gov/sites/default/files/documents/CBP%20Form%201302_0.pdf.*

CBP Form 1302A: The master or commander of a vessel departing from the United States must file CBP Form 1302A, *Cargo Declaration Outward With Commercial Forms,* or CBP-approved electronic equivalent, with copies of bills of lading or equivalent commercial documents relating to all cargo encompassed by the manifest. This form and/or electronic equivalent, is provided for by 19 CFR 4.62, 4.63, 4.75, 4.82, and 4.87–4.89 and is accessible at: *http://www.cbp.gov/sites/default/files/documents/CBP%20Form%201302_0.pdf.*

Electronic Ocean Export Manifest: CBP will begin a pilot in 2015 to electronically collect ocean export manifest information. This information will be transmitted to CBP in advance via the Automated Export System (AES) within the Automated Commercial Environment (ACE). The data elements to be transmitted may include the following:

- Name of the vessel or carrier
- Name and address of the shipper
- Port Where the Report is Made
- Nationality of the Ship
- Name of the Master
- Port of Loading
- Port of Discharge
- B/L Number (Master and House)
- Marks and Numbers
- Container numbers
- Seal Numbers
- Number and Kinds of Packages
- Description of Goods
- Gross Weight (lb. or kg)
- Measurement (per HTSUS)
- In-bond number
- AES ITN number or Exemption statement
- Split shipment indicator
- Port of split shipment
- Hazmat Indicator
- Chemical Abstract Service ID Number
- Vehicle Identification Number or Product Identification Number
- Mode of transportation (containerized or non-containerized)

CBP Form 7509: The aircraft commander or agent must file Form 7509, *Air Cargo Manifest,* with CBP at the departure airport, or respondents may submit the information on this form using a CBP-approved electronic equivalent. CBP Form 7509 contains information about the cargo onboard the aircraft. This form, and/or electronic equivalent, is provided for by 19 CFR 122.35, 122.48, 122.48a, 122.52, 122.54, 122.73, 122.113, and 122.118, and is

accessible at: *http://www.cbp.gov/sites/default/files/documents/CBP%20Form%207509_0.pdf.*

Electronic Air Export Manifest: CBP will begin a pilot in 2015 to electronically collect air export manifest information. This information will be transmitted to CBP in advance via ACE's AES. The data elements to be transmitted may include the following:

- Exporting Carrier
- Marks of nationality and registration
- Flight Number
- Port of Lading
- Port of Unlading
- Scheduled date of departure
- Consolidator
- De-Consolidator
- Air Waybill type (Master, House, Simple, or Sub)
- Air Waybill Number
- Number of pieces and unit of measure
- Weight (lb. or kg.)
- Number of house air waybills
- Shipper name and address
- Consignee name and address
- Cargo description
- AES ITN number or AES Exemption statement
- Split air waybill indicator
- Hazmat indicator
- UN Number
- In-bond number
- Mode of transportation (containerized or non-containerized)

CBP Form 7533: The master or person in charge of a conveyance files CBP Form 7533, *INWARD CARGO MANIFEST FOR VESSEL UNDER FIVE TONS, FERRY, TRAIN, CAR, VEHICLE, ETC,* which is required for a vehicle or a vessel of less than 5 net tons arriving in the United States from Canada or Mexico, otherwise than by sea, with baggage or merchandise. Respondents may also submit the information on this form using a CBP-approved electronic equivalent. CBP Form 7533, and/or electronic equivalent, is provided for by 19 CFR 123.4, 123.7, 123.61, 123.91, and 123.92, and is accessible at: *http://www.cbp.gov/sites/default/files/documents/CBP%20Form%207533_0.pdf.*

Electronic Rail Export Manifest: CBP will begin a pilot in 2015 to electronically collect the rail export manifest information. This information will be transmitted to CBP in advance via ACE's AES. The data elements to be transmitted may include the following:

- Manifest number
- Mode of transportation (containerized or non-containerized)
- Port of Departure from the United States
- Date of Departure
- Train Number
- Rail car order/Car locator message
- Hazmat Indicator
- 6-character Hazmat code
- Marks and Numbers
- SCAC (Standard Carrier Alpha Code) identification code for exporting carrier
- Bill of Lading Number (Master and House)
- Shipper name and address
- Consignee name and address
- Notify Party name and address
- AES ITN or AES Exemption Statement
- Cargo Description
- Weight
- Quantity and Unit of Measure
- Split Shipment Indicator
- Portion of Split Shipment
- In-bond number
- Seal Number
- Mexican Pedimento Number
- Place where the rail carrier takes possession of the cargo shipment
- Port of Unlading
- Container Numbers (for containerized shipments) or the rail car numbers
- Data for empty rail cars (Empty indicator and rail car number)

Manifest Confidentiality: An importer or consignee (inward) or a shipper (outward) may request confidential treatment of its name and address contained in manifests by following the procedure set forth in 19 CFR 103.31.

Vessel Stow Plan (Import): For all vessels transporting goods to the United States, except for any vessel exclusively carrying bulk cargo, the incoming carrier is required to electronically submit a vessel stow plan no later than 48 hours after the vessel departs from the last foreign port that includes information about the vessel and cargo. For voyages less than 48 hours in duration, CBP must receive the vessel stow plan prior to arrival at the first port in the U.S. The vessel stow plan is provided for by 19 CFR 4.7c.

Vessel Stow Plan (Export): CBP will begin a pilot in 2015 to electronically collect a vessel stow plan for vessels transporting goods from the United States, except for any vessels exclusively carrying bulk cargo. The exporting carrier will electronically submit a vessel stow plan in advance.

Container Status Messages (CSMs): For all containers destined to arrive within the limits of a U.S. port from a foreign port by vessel, the incoming carrier must submit messages regarding the status of events if the carrier creates or collects a container status message (CSM) in its equipment tracking system reporting an event. CSMs must be transmitted to CBP via a CBP-approved electronic data interchange system. These messages transmit information regarding events such as the status of a container (full or empty); booking a container destined to arrive in the United States; loading or unloading a container from a vessel; and a container arriving or departing the United States. CSMs are provided for by 19 CFR 4.7d.

Importer Security Filing (ISF): For most cargo arriving in the United States by vessel, the importer, or its authorized agent, must submit the data elements listed in 19 CFR 149.3 via a CBP-approved electronic interchange system within prescribed time frames. Transmission of these data elements provide CBP with advance information about the shipment.

Current Actions: CBP is proposing that this information collection be extended with a change to the burden hours resulting from proposed new information collections associated with the Electronic Ocean Export Manifest, Electronic Air Export Manifest, Electronic Rail Export Manifest, and Vessel Stow Plan (Export). There are no changes to the existing information collections under this OMB approval. The burden hours are listed in the chart below.

Type of Review: Revision and Extension.

Affected Public: Businesses.

Collection	Total burden hours	Number of respondents	Number of responses per respondent	Total responses	Time per response
Air Cargo Manifest (CBP Form 7509)	366,600	260	5,640	1,466,400	15 minutes.
Inward Cargo Manifest for Truck, Rail, Vehicles, Vessels, etc. (CBP Form 7533).	962,940	33,000	291.8	9,629,400	6 minutes.
Inward Cargo Declaration (CBP Form 1302)	1,500,000	10,000	300	3,000,000	30 minutes.
Cargo Declaration Outward With Commercial Forms (CBP Form 1302A).	10,000	500	400	200,000	3 minutes.

Collection	Total burden hours	Number of respondents	Number of responses per respondent	Total responses	Time per response
Importer Security Filing	17,739,000	240,000	33.75	8,100,000	2.19 hours.
Vessel Stow Plan (Import)	31,803	163	109	17,767	1.79 hours.
Vessel Stow Plan (Export)	31,803	163	109	17,767	1.79 hours.
Container Status Messages	23,996	60	4,285,000	257,100,000	0.0056 minutes.
Request for Manifest Confidentiality	1,260	5,040	1	5,040	15 minutes.
Electronic Air Export Manifest	121,711	260	5,640	1,466,400	5 minutes.
Electronic Ocean Export Manifest	5,000	500	400	200,000	1.5 minutes.
Electronic Rail Export Manifest	2,490	50	300	15,000	10 minutes.
Total	20,796,603	289,996		281,217,774	

Dated: March 23, 2015.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2015–07275 Filed 3–30–15; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0075]

Agency Information Collection Activities: Affidavit of Support Under Section 213A of the Act, Forms I–864; I–864A; I–864EZ; I–864W; Revision of a Currently Approved Collection

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 30-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection notice was previously published in the **Federal Register** on January 27, 2015, at 80 FR 4297, allowing for a 60-day public comment period. USCIS did receive 1 comment in connection with the 60-day notice.

DATES: The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until April 30, 2015. This process is conducted in accordance with 5 CFR 1320.10.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, must be directed to the OMB USCIS Desk Officer via email at *oira_submission@omb.eop.gov.* Comments may also be submitted via fax at (202) 395–5806. All submissions received must include the agency name and the OMB Control Number 1615–0075.

You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make. For additional information please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: If you need a copy of the information collection instrument with instructions, or additional information, please visit the Federal eRulemaking Portal site at: *http://www.regulations.gov* and enter USCIS–2007–0029 in the search box. We may also be contacted at: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Laura Dawkins, Chief, 20 Massachusetts Avenue NW, Washington, DC 20529–2140, Telephone number 202–272–8377.

SUPPLEMENTARY INFORMATION:

Comments

Note: The address listed in this notice should only be used to submit comments concerning this information collection. Please do not submit requests for individual case status inquiries to this address. If you are seeking information about the status of your individual case, please check ''My Case Status'' online at: *https://egov.uscis.gov/cris/Dashboard.do,* or call the USCIS National Customer Service Center at 1–800–375–5283.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection Request:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Affidavit of Support under Section 213A of the Act.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* Forms I–864; I–864A; I–864EZ; I–864W; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. These forms are used by family-based and certain employment-based immigrants to have the petitioning relative execute an Affidavit of Support on their behalf.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection Form I–864, 439,500 responses at 6 hours per response; Form I–864A, 215,800 responses at 1.75 hours per response; Form I–864EZ, 100,000 responses at 2.5 hours per response; Form I–864W, 1,000 responses at 1 hour per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 3,265,650 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated cost burden for this collection is $132,177,500.

Dated: March 18, 2015.

Laura Dawkins,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2015–06732 Filed 3–30–15; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5789–N–04]

Notice of Regulatory Waiver Requests Granted for the Fourth Quarter of Calendar Year 2014

AGENCY: Office of the General Counsel, HUD.

ACTION: Notice.

SUMMARY: Section 106 of the Department of Housing and Urban Development Reform Act of 1989 (the HUD Reform Act) requires HUD to publish quarterly **Federal Register** notices of all regulatory waivers that HUD has approved. Each notice covers the quarterly period since the previous **Federal Register** notice. The purpose of this notice is to comply with the requirements of section 106 of the HUD Reform Act. This notice contains a list of regulatory waivers granted by HUD during the period beginning on October 1, 2014, and ending on December 31, 2014.

FOR FURTHER INFORMATION CONTACT: For general information about this notice, contact Camille E. Acevedo, Associate General Counsel for Legislation and Regulations, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10282, Washington, DC 20410–0500, telephone 202–708–1793 (this is not a toll-free number). Persons with hearing- or speech-impairments may access this number through TTY by calling the toll-free Federal Relay Service at 800–877–8339.

For information concerning a particular waiver that was granted and for which public notice is provided in this document, contact the person whose name and address follow the description of the waiver granted in the accompanying list of waivers that have been granted in the fourth quarter of calendar year 2014.

SUPPLEMENTARY INFORMATION: Section 106 of the HUD Reform Act added a new section 7(q) to the Department of Housing and Urban Development Act (42 U.S.C. 3535(q)), which provides that:

1. Any waiver of a regulation must be in writing and must specify the grounds for approving the waiver;

2. Authority to approve a waiver of a regulation may be delegated by the Secretary only to an individual of Assistant Secretary or equivalent rank, and the person to whom authority to waive is delegated must also have authority to issue the particular regulation to be waived;

3. Not less than quarterly, the Secretary must notify the public of all waivers of regulations that HUD has approved, by publishing a notice in the **Federal Register**. These notices (each covering the period since the most recent previous notification) shall:

a. Identify the project, activity, or undertaking involved;

b. Describe the nature of the provision waived and the designation of the provision;

c. Indicate the name and title of the person who granted the waiver request;

d. Describe briefly the grounds for approval of the request; and

e. State how additional information about a particular waiver may be obtained.

Section 106 of the HUD Reform Act also contains requirements applicable to waivers of HUD handbook provisions that are not relevant to the purpose of this notice.

This notice follows procedures provided in HUD's Statement of Policy on Waiver of Regulations and Directives issued on April 22, 1991 (56 FR 16337). In accordance with those procedures and with the requirements of section 106 of the HUD Reform Act, waivers of regulations are granted by the Assistant Secretary with jurisdiction over the regulations for which a waiver was requested. In those cases in which a General Deputy Assistant Secretary granted the waiver, the General Deputy Assistant Secretary was serving in the absence of the Assistant Secretary in accordance with the office's Order of Succession.

This notice covers waivers of regulations granted by HUD from October 1, 2014 through December 31, 2014. For ease of reference, the waivers granted by HUD are listed by HUD program office (for example, the Office of Community Planning and Development, the Office of Fair Housing and Equal Opportunity, the Office of Housing, and the Office of Public and Indian Housing, etc.). Within each program office grouping, the waivers are listed sequentially by the regulatory section of title 24 of the Code of Federal Regulations (CFR) that is being waived. For example, a waiver of a provision in 24 CFR part 58 would be listed before a waiver of a provision in 24 CFR part 570.

Where more than one regulatory provision is involved in the grant of a particular waiver request, the action is listed under the section number of the first regulatory requirement that appears in 24 CFR and that is being waived. For example, a waiver of both § 58.73 and § 58.74 would appear sequentially in the listing under § 58.73.

Waiver of regulations that involve the same initial regulatory citation are in time sequence beginning with the earliest-dated regulatory waiver.

Should HUD receive additional information about waivers granted during the period covered by this report (the fourth quarter of calendar year 2014) before the next report is published (the first quarter of calendar year 2015), HUD will include any additional waivers granted for the fourth quarter in the next report.

Accordingly, information about approved waiver requests pertaining to HUD regulations is provided in the Appendix that follows this notice.

Dated: March 24, 2015.

Tonya T. Robinson,

Principal Deputy General Counsel.

APPENDIX

Listing of Waivers of Regulatory Requirements Granted by Offices of the Department of Housing and Urban Development October 1, 2014 through December 31, 2014

Note to Reader: More information about the granting of these waivers, including a copy of the waiver request and approval, may be obtained by contacting the person whose name is listed as the contact person directly after each set of regulatory waivers granted.

The regulatory waivers granted appear in the following order:

I. Regulatory waivers granted by the Office of Community Planning and Development.

II. Regulatory waivers granted by the Office of Housing.

III. Regulatory waivers granted by the Office of Public and Indian Housing.

I. Regulatory Waivers Granted by the Office of Community Planning and Development

For further information about the following regulatory waivers, please see the name of the contact person that immediately follows the description of the waiver granted.

• Regulation: 24 CFR 58.22(a).

Project/Activity: The Spokane Tribe of Indians requested a waiver of 24 CFR 58.22(a) for the demolition and new construction of the West End Community Center serving the Spokane Tribe in Wellpinit, WA. The waiver requested clearance for the demolition of the old community center prior to the Request for Release of Funds (RROF).

Nature of Requirement: The regulation at 24 CFR 58.22(a) provides that no entity may

commit HUD assistance under a program listed in § 58.1(b) on any activity or project until HUD or the state has approved the recipient's RROF. In addition, until the RROF has been approved, no entity may commit non-HUD funds on an activity listed in § 58.1(b) if the activity would have an adverse environmental impact. Since the commitment of non-HUD funds violates only the regulation and not the statute, HUD may, if there is good cause, grant a waiver of the affected regulation. A waiver is required because the Spokane Tribe committed non-HUD funds to demolish the old West End Community Center facility prior to receiving an approved RROF.

Granted By: Clifford Taffet, General Deputy Assistant Secretary for Community Planning and Development.

Date Granted: December 10, 2014.

Reason Waived: It was determined that the project would further the HUD mission and advance HUD program goals to develop viable, quality communities. It was further determined that the Spokane Tribe of Indians did not knowingly violate the regulation, no HUD funds were committed, and based on the environmental assessment and field inspection, granting the waiver will not result in any unmitigated, adverse environmental impact.

Contact: Lauren Hayes, Office of Environment and Energy, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7248, Washington, DC 20410, telephone (202) 402–4270.

• Regulations: 24 CFR 92.251(c) and 24 CFR 92.504(d).

Project/Activity: HUD, along with the U.S. Department of Agriculture and the U.S. Department of Treasury, developed the Physical Inspection Alignment Pilot Program to align physical inspection criteria and reduce the number of inspections for each property to no more than one visit per year while meeting the requirements of each federal funding source with a vested financial interest in the property. The waiver permitted pilot grantees to use the Uniform Physical Condition Standards as the minimum inspection standard for HOME-assisted rental property rather than Housing Quality Standards as currently required by 24 CFR 92.251(c) and allows for more frequent inspections than are required for inspection frequency under 24 CFR 92.504(d). The following participating jurisdictions were granted a limited waiver of HOME property standards for participating in HUD's Physical Inspections Alignment Pilot Program: the State of Kentucky, the State of Louisiana, the State of Minnesota, the State of Missouri, the State of New Mexico, the State of Texas, the State of Wisconsin and the State of Vermont.

Nature of Requirements: The regulation at 24 CFR 92.251(c) identifies the property standards for property acquired with HOME assistance. The regulation at 24 CFR 92.504(d) requires the participating jurisdiction to inspect each project at project completion and during the period of affordability to determine that the project meets the property standards of 24 CFR 92.251.

Granted By: Clifford Taffet, General Deputy Assistant Secretary for Community Planning and Development.

Date Granted: November 5, 2014.

Reasons Waived: The waiver was granted to reduce duplicative inspection for grantees participating in the Physical Inspection Alignment Pilot Program. HUD estimates that one periodically-scheduled physical inspection may result in 20,000 fewer property inspections per year by federal agencies, which will reduce the cost of program oversight and create efficiencies for the government, property owners, and for residents of affordable housing whose apartments are subject to inspection. The waiver was effective until December 31, 2014 and limited to Combined Funding Properties included in the 2014 Physical Inspection Alignment Pilot Program.

Contact: Virginia Sardone, Director, Office of Affordable Housing Programs, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7164, Washington, DC 20410, telephone (202) 708–2684.

• Regulation: 24 CFR 570.200(h).

Project/Activity: On October 21, 2014, HUD issued a CPD Notice implementing procedures to govern the submission and review of consolidated plans and action plans for FY 2015 funding prior to the enactment of a FY 2015 HUD appropriation bill. These procedures apply to any Entitlement, Insular or Hawaii nonentitlement grantee with a program year start date prior to, or up to 60 days after, HUD's announcement of the FY 2015 formula program funding allocations for CDBG, ESG, HOME and HOPWA formula funding. Any grantee with an FY 2015 program year start date during the period starting October 1, 2014, and ending August 16, 2015 or 60 days after HUD announcement of FY 2015 allocation amounts (whichever comes first), is advised not to submit its consolidated plan/action plan until the FY 2015 formula allocations have been announced.

Nature of Requirement: The Entitlement CDBG program regulations provide for situations in which a grantee may incur costs against its CDBG grant prior to the award of its grant from HUD. Under the regulations, the effective date of a grantee's grant agreement is either the grantee's program year start date or the date that the grantee's annual action plan is received by HUD, whichever is later. This waiver allowed grantees to treat the effective date of the FY 2015 program year as the grantee's program year start date or date or the date that the grantee's annual action plan is received by HUD, whichever is *earlier*.

Granted By: Clifford Taffet, General Deputy Assistant Secretary for Community Planning and Development.

Date Granted: September 25, 2014, for effect on October 21, 2014.

Reason Waived: Under the provisions of the CPD Notice, a grantee's action plan may not be submitted to (and thus received by) HUD until several months after the grantee's program year start date. Lengthy delays in the receipt of annual appropriations by HUD, and implementation of the policy to delay submission of FY 2015 Action Plans, may have negative consequences for CDBG grantees that intend to incur eligible costs prior to the award of FY 2015 funding. Some activities might otherwise be interrupted while implementing these revised procedures. In addition, grantees might not otherwise be able to use CDBG funds for planning and administrative costs of administering their programs. In order to address communities' needs and to ensure that programs can continue without disturbance, this waiver allowed grantees to incur pre-award costs on a timetable comparable to that under which grantees have operated in past years. HUD advised grantees that this waiver is available for use by any applicable CDBG grantee whose action plan submission is delayed past the normal submission date because of delayed enactment of FY 2015 appropriations for the Department. This waiver authority is only in effect until August 16, 2015.

Contact: Steve Johnson, Director, Entitlement Communities Division, Office of Block Grant Assistance, Office of Community and Planning Development, Department of Housing and Urban Development, 451 7th Street SW., Room 7282, Washington, DC 20410, telephone (202) 708–1577.

• Regulation: 24 CFR 570.208(a)(l)(vi).

Project/Activity: Spokane County, WA requested a waiver of 24 CFR 570.208(a)(l)(vi) to allow the use of prior Low and Moderate Income Summary Data (LMISD) for an infrastructure activity in the town of Fairfield in order to demonstrate compliance with the low- and moderate-income benefit national objective requirements.

Nature of Requirement: HUD's regulation at 24 CFR 570.208(a)(l)(vi) requires that the most recently available decennial census information must be used to the fullest extent feasible, together with the section 8 income limits that would have applied at the time the income information was collected by the Census Bureau, to determine whether there is a sufficiently large percentage of low- and moderate-income persons residing in the area served by a CDBG funded activity. The HUD-produced Low and Moderate Income Summary Data provide this data to grantees. On June 10, 2014, HUD issued new Low and Moderate Income Summary Data, with an effective date of July 1, 2014 for use by grantees.

Granted By: Clifford Taffet, General Deputy Assistant Secretary for Community Planning and Development.

Date Granted: November 4, 2014.

Reason Waived: The Fairfield water line infrastructure activity had been in the planning stage for many months, and was included in the county's FY 2014 Annual Action Plan. However, funds were not obligated by the county to the activity prior to July 1, 2014 and July 1 was the county's program year start date. The service area for this activity no longer qualified under the new LMISD. However, the county explained that the town of Fairfield's demographic characteristics, with a population of 665, almost remained the same since the previous LMISD was issued, and that the American Community Survey (ACS) sampling methodology resulted in this change, not a

decrease in the number of low- and moderate-income persons. The urgency of repairing the water lines made it difficult to complete a special survey in time. The county estimated that it would cost close to $20,000 to conduct a survey to demonstrate that the service area of the activity meets the low- and moderate-income area benefit national objective criteria. The waiver allowed the county to continue to use the prior Low and Moderate Income Summary Data to demonstrate compliance with the low- and moderate-income benefit national objective requirements.

Contact: Steve Johnson, Director, Entitlement Communities Division, Office of Block Grant Assistance, Office of Community and Planning Development, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7282, Washington, DC 20410, telephone (202) 708–1577.

• Regulation: 24 CFR 570.208(a)(l)(vi).

Project/Activity: King County, WA requested a waiver of 24 CFR 570.208(a)(l)(vi) to allow the use of prior Low and Moderate Income Summary Data (LMISD) for two infrastructure activities in order to demonstrate compliance with the low- and moderate-income benefit national objective requirements.

Nature of Requirement: HUD's regulation at 24 CFR 570.208(a)(l)(vi) requires that the most recently available decennial census information must be used to the fullest extent feasible, together with the section 8 income limits that would have applied at the time the income information was collected by the Census Bureau, to determine whether there is a sufficiently large percentage of low- and moderate-income persons residing in the area served by a CDBG funded activity. The HUD-produced Low and Moderate Income Summary Data provide this data to grantees. On June 10, 2014, HUD issued new Low and Moderate Income Summary Data, with an effective date of July 1, 2014 for use by grantees.

Granted By: Clifford Taffet, General Deputy Assistant Secretary for Community Planning and Development.

Date Granted: November 18, 2014.

Reason Waived: The request pertained to two infrastructure activities, which had been in the planning stage for many months, and were included in the county's FY 2014 Annual Action Plan. However, funds were not obligated by the county to these activities prior to July 1, 2014. The county documented that the available Low and Moderate Income Summary Data covered an area larger than the actual service areas for the two activities, and was not representative of the income characteristics of the activity service area residents. It was determined that unless the waiver was granted to the county, these activities that directly benefit the health and safety of residents would not be implemented due to the lack of expertise and funds needed to conduct special surveys to qualify the service areas. The waiver allowed the county to continue to use the prior Low and Moderate Income Summary Data to demonstrate compliance with the low- and moderate-income benefit national objective requirements.

Contact: Steve Johnson, Director, Entitlement Communities Division, Office of Block Grant Assistance, Office of Community and Planning Development, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7282, Washington, DC 20410, telephone (202) 708–1577.

• Regulation: 24 CFR part 576.403(c).

Project/Activity: Louisville-Jefferson County, KY Metro Government requested a waiver of § 576.403(c) to allow the Legal Aid Society to provide legal services under the homelessness prevention component to program participants who want to stay in their units, even if the units do not meet the habitability standards. The waiver would allow those program participants receiving the legal services to receive the case management required at § 576.401(d) and (e) even if their units do not meet the habitability standards. The waiver was contingent upon the commitment of the recipient, its subrecipient, Legal Aid Society, and the subrecipient(s) providing the required case management to work with the property owners to bring the units into compliance with the habitability standards or assist the program participants to move if the units are unsafe.

Nature of Requirement: The regulation at § 576.403(c) states that the recipient or subrecipient cannot use ESG funds to help a program participant remain in or move into housing that does not meet the ESG minimum habitability standards for permanent housing.

Granted By: Cliff Taffet, General Deputy Assistant Secretary for Community Planning and Development.

Date Granted: December 10, 2014.

Reason Waived: HUD recognized that in certain instances, the best way to help program participants avoid homelessness is to keep them in their housing until better housing can be located, or their existing housing can be brought up to code. Legal services provide an important resource for persons who are at risk of homelessness, who need immediate assistance to help them avoid moving to the streets or emergency shelters. In some instances, it is not feasible to inspect a unit to ensure that it meets the habitability standards prior to the provision of the legal services assistance necessary to prevent homelessness for the individual or family. Also in some cases, the habitability requirement actually prohibits eligible program participants from receiving the legal services that could assist them to make the unit habitable and stabilize them in their housing.

Contact: Norm Suchar, Director, Office of Special Needs Assistance Programs, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7262, Washington, DC 20410, telephone (202) 708–4300.

II. Regulatory Waivers Granted by the Office of Housing—Federal Housing Administration (FHA)

For further information about the following regulatory waivers, please see the name of the contact person that immediately follows the description of the waiver granted.

• Regulation: 24 CFR 219.220(b).

Project/Activity: St. James A.M.E Tower Apartments, FHA Project Number 031–018NISUP, Newark, NJ. The Owners have requested deferral of repayment of the Flexible Subsidy Operating Assistance Loan on this project due to their inability to repay the loan in full upon prepayment of the 236 Loan.

Nature of Requirement: Section 219.220(b)(1995) governs the repayment of operating assistance provided under the Flexible Subsidy Program for Troubled Projects states ''Assistance that has been paid to a project owner under this subpart must be repaid at the earlier of expiration of the term of the mortgage, termination of mortgage insurance, prepayment of the mortgage, or a sale of the project (Transfer of Physical Assets (TPA)) if the Secretary so requires at the time of approval of the TPA.'' Either of these actions would typically terminate FHA involvement with the property, and the Flexible Subsidy Loan would be repaid, in whole, at that time.

Granted by: Biniam T. Gebre, Acting Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 30, 2014.

Reason Waived: The owner requested and was granted waiver of the requirement to defer repayment of the Flexible Subsidy Operating Assistance Loan to allow the much needed preservation and moderate rehabilitation of the project. The project will be preserved as an affordable housing resource of Newark, NJ.

Contact: John Ardovini, Restructuring Analyst, Office of Affordable Housing Preservation, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 402–2636.

• Regulation: 24 CFR 219.220(b).

Project/Activity: CWA Apartments II FHA Number TN43L000016 is a project based Section 8 Loan Management Set-Aside (LMSA) contract encumbering a76-units for low- income families located in Nashville, Tennessee. The project consists of 76 two-bedroom units. The contract expires on August 31, 2017. On September 1, 1994, a Flexible Subsidy Loan was awarded in the amount of $1,659,585 at one percent per annum.

Nature of Requirement: Section 219.220(b) governs the repayment of operating assistance provided under the Flexible Subsidy Program for Troubled Projects prior to May 1, 1996 states: ''Assistance that has been paid to a project owner under this subpart must be repaid at the earlier of the expiration of the term of the mortgage, termination of mortgage insurance, prepayment of the mortgage, or a sale of the project. . .'' Either of these actions would typically terminate FHA involvement with the property, and the Flexible Subsidy Loan would be repaid, in whole, at that time.

Granted by: Carol J. Galante, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: October 7, 2014.

Reason Waived: The owner requested and was granted waiver because good cause was shown that it is in the public's best interest to grant this waiver. The owner executed and recorded a Rental Use Agreement that extended the affordability of the property for

20 years and amended the Residual Receipts Note to reflect the monthly payments. These documents were simultaneously assumed by the purchaser.

Contact: Marilynne Hutchins, Office of Asset Management and Portfolio Oversight (OAMPO), Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 6174, Washington, DC 20410, telephone (202) 402–4323.

• Regulation: 24 CFR 219.220(b).

Project/Activity: CWA Apartments I Contract number TN43–L000–015 apartments CWA Apartments I is a 176-unit multifamily project which consists of 20 two-bedroom units and 156 three-bedroom units. The property was financed with a mortgage insured pursuant to Section 221(d)(3) of the National Housing Act, which has now matured and is paid in full. The Loan Management Set-Aside (LMSA) Housing Assistance Payments (HAP) contract covers all 176 units. The HAP contact expires on August 31, 2017. In 1995, the project was awarded a Flexible Subsidy Loan in the amount of $3,508,629 with one percent interest rate. As of September 29, 2014, the Flexible Subsidy Loan's unpaid balance is $4,141,194, including accrued interest.

Nature of Requirement: The regulation at 24 CFR 219.220(b)(1995), which governs the repayment of operating assistance provided under the Flexible Subsidy Program for Troubled Projects states, ''Assistance that has been paid to a project Owner under this subpart must be repaid at the earlier of expiration of the term of the mortgage, termination of mortgage insurance, prepayment of the mortgage, or a sale of the project.''

Granted by: Carol J. Galante, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: October 7, 2014.

Reason Waived: The owner requested and was granted waiver because good cause was shown that it is in the public's best interest to grant this waiver. The owner executed and recorded a Rental Use Agreement that extended the affordability of the property for 20 years and amended the Residual Receipts Note to reflect the monthly payments. These documents were simultaneously assumed by the purchaser.

Contact: Marilynne Hutchins, Office of Asset Management and Portfolio Oversight (OAMPO), Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 6174, Washington, DC 20410, telephone (202) 402–4323.

• Regulation: 24 CFR 219.220(b).

Project/Activity: Cathedral Terrace Apartments FHA number 063–44007 is a 240-unit high-rise project for low- income and very low-income tenants. The mortgage was insured pursuant to Section 236(j)(1) of the National Housing Act and received its final endorsement on November 22, 1974, in the amount of $4,919,500. A Section 8 Loan Management Set-Aside (LMSA) contract subsidizes 224 units and expires on June 30, 2034. The mortgage matured on November 1, 2014, which triggered the repayment of the Flexible Subsidy Loans

Nature of Requirement: The regulation at 24 CFR 219.220(b) (1995), which governs the repayment of operating assistance provided under the Flexible Subsidy Program for Troubled Properties, states ''Assistance that has been paid to a project Owner under this subpart must be repaid at the earlier of the expiration of the term of the mortgage, termination of mortgage insurance, prepayment of the mortgage, or a sale of the project.''

Granted by: Biniam Gebre, Acting Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 30, 2014.

Reason Waived: The owner requested and was granted waiver to permit the deferment of repayment of the Flexible Subsidy Loans, plus accrued interest for a period of one year. The requested waiver was for the subject property only. The owner executed and recorded a Rental Use Agreement that would be superior to all liens. The Rental Use Agreement extended the project affordability 20 years from the date of the original mortgage maturity.

Contact: Judith Bryant, Office of Asset Management and Portfolio Oversight (OAMPO), Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 6174, Washington, DC 20410, telephone (202) 402–4891.

• Regulation: 24 CFR 232.7.

Project/Activity: Maple Ride of Plover Memory care is a 20 bed memory care facility. The facility does not meet the FHA ''Bathroom ''requirements at 24 CFR 232.7. The project is located in Plover, WI.

Nature of Requirement: The regulation mandates in a board and care home or assisted living facility that not less than one full bathroom must be provided for every four residents. Also, the bathroom cannot be accessed from a public corridor or area.

Granted By: Carol J. Galante, Assistant Secretary for Housing–Federal Housing Commissioner.

Date Granted: October 7, 2014.

Reason Waived: The project is for memory care, all rooms have half-bathrooms and the resident to full bathroom ratio is 5:1.

Contact: Vance T. Morris, Special Assistant, Office of Healthcare Programs, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 2337, Washington, DC 20401, telephone (202) 402–2419.

• Regulation: 24 CFR 232.7.

Project/Activity: Senior Suites of Urbandale is an assisted living and memory care facility. The facility does not meet the FHA ''Bathroom ''requirements at 24 CFR 232.7. The project is located in Urbandale, IA.

Nature of Requirement: The regulation mandates that in a board and care home or assisted living facility that the not less than one full bathroom must be provided for every four residents. Also, the bathroom cannot be accessed from a public corridor or area.

Granted By: Biniam Gebre, Acting, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: November 24, 2014.

Reason Waived: The project is currently FHA insured and presents no additional financial risks to HUD.

Contact: Vance T. Morris, Special Assistant, Office of Healthcare Programs, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 2337, Washington, DC 20401, telephone (202) 402–2419.

• Regulation: 24 CFR 232.505(a), 232.520, 232.540(b), 232.605 and 232.620.

Project/Activity: Supplemental Loans to Finance Purchase and Installation of Fire Safety Equipment.

Nature of Requirement: Waiver of provisions 232.505(a), 232.520, 232.540(b), 232.605 and 232.620 that do not reflect current processing requirements, as these regulatory procedures and protocols were established in 1974.

Granted By: Carol J. Galante, Assistant Secretary for Housing–Federal Housing Commissioner.

Date Granted: October 21, 2014.

Reason Waived: There is an urgent need to install automatic fire sprinkler systems in nursing homes due to a new federal mandate.

Contact: Vance T. Morris, Special Assistant, Office of Healthcare Programs, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 2337, Washington, DC 20401, telephone (202) 402–2419.

• Regulation: 24 CFR 891.100(d).

Project/Activity: Teaneck Senior Housing, Teaneck, NJ, Project Number: 031–EE077/NJ39–S091–004.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to closing.

Granted by: Carol J. Galante, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: October 3, 2014.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Catherine M. Brennan, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 6180, Washington, DC 20410, telephone (202) 708–3000.

• Regulation: 24 CFR 891.100(d).

Project/Activity: Allen House, Millstone, NJ, Project Number: 031–EE083/NJ39–S101–006.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to closing.

Granted by: Carol J. Galante, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: October 3, 2014.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Catherine M. Brennan, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 6180, Washington, DC 20410, telephone (202) 708–3000.

• Regulation: 24 CFR 891.100(d).

Project/Activity: Our Lady of Assumption Apts., Abbeville, LA, Project Number: 064–EE243/LA48–S091–012.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to closing.

Granted by: Carol J. Galante, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: October 3, 2014.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Catherine M. Brennan, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 6180, Washington, DC 20410, telephone (202) 708–3000.

• Regulation: 24 CFR 891.165.

Project/Activity: Bill Sorro Community, San Francisco, CA, Project Number: 121–HD097/CA39–Q101–003.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 36 months, as approved by HUD on a case-by-case basis.

Granted by: Carol J. Galante, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: October 22, 2014.

Reason Waived: Additional time was needed in order to meet the construction lender's loan requirement for this capital advance upon completion mixed-finance project.

Contact: Catherine M. Brennan, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 6180, Washington, DC 20410, telephone (202) 708–3000.

• Regulation: Requirements of Mortgagee Letter 2011–22, Condominium Project Approval and Processing Guide, Insurance Requirements.

Project/Activity: Extension of initial waiver issued November 27, 2013, providing an exemption to the insurance requirements defined in Mortgagee Letter 2011–22, Condominium Project Approval and Processing Guide.

Nature of Requirement: Section 2.1.9 of the Condominium Project Approval and Processing Guide, Insurance Requirements, defines the condominium project insurance requirements that must be met for issuance of FHA condominium project approval. The extension of the initial waiver allows for acceptance of individual insurance policies issued to the unit owners for Manufactured Housing, Detached and Common Interest Condominium Projects unable to satisfy the insurance requirements.

Granted by: Biniam Gebre, Acting Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: November 27, 2014.

Reason Waived: The extension of the waiver previously issued that allows unit owners to obtain and maintain their own insurance coverage is required to ensure the continued availability of a condominium unit as an affordable housing option. Issuance of the extension is consistent with the Department's objectives to expand the availability of FHA mortgage insurance, while providing appropriate safeguards.

Contact: Joanne B. Kuczma, Housing Program Officer, Office of Single Family Program Development, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 402–2137.

III. Regulatory Waivers Granted by the Office of Public and Indian Housing

For further information about the following regulatory waivers, please see the name of the contact person that immediately follows the description of the waiver granted.

• Regulation: 24 CFR 5.801(d)(1).

Project/Activity: Olean Housing Authority (NY093), Olean NY.

Nature of Requirement: The regulation establishes certain reporting compliance dates. The audited financial statements are required to be submitted to the Real Estate Assessment Center (REAC) no later than nine months after the housing authority's (HA) fiscal year end (FYE), in accordance with the Single Audit Act and OMB Circular A–133.

Granted By: Jemine A. Bryon, Acting Assistant Secretary for Public and Indian Housing.

Date Granted: October 1, 2014.

Reason Waived: The final approval of the annual audit was postponed due to three weather related cancellations of meetings of the Board of Commissioners. The audit was completed in December 2013, but was inadvertently not submitted. Due to the Departments' delayed response and the fact that the audited financials have been submitted and approved, the housing authority was granted a one-time waiver.

Contact: Judy Wojciechowski, Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street SW., Suite 100, Washington, DC 20410, telephone (202) 475–7907.

• Regulation: 24 CFR 5.801(d)(1).

Project/Activity: The Municipality of Fajardo (RQ036) Fajardo, PR

Nature of Requirement: The regulation establishes certain reporting compliance dates. The audited financial statements are required to be submitted to the Real Estate Assessment Center (REAC) no later than nine months after the housing authority's (HA) fiscal year end (FYE), in accordance with the Single Audit Act and OMB Circular A–133.

Granted By: Jemine A. Bryon, Acting Assistant Secretary for Public and Indian Housing.

Date Granted: October 13, 2014.

Reason Waived: The audited reporting requirements were delayed due to the unforeseen death of your predecessor auditor. The additional time was needed to enable the successor auditor to review and process for final approval. Due to the Departments' delayed response and the fact that the audited financial report was approved on August 28, 2014, the housing authority was granted this one-time waiver.

Contact: Judy Wojciechowski, Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street SW., Suite 100, Washington, DC 20410, telephone (202) 475–7907.

• Regulation: 24 CFR 5.801(d)(1).

Project/Activity: City of Mesa Housing Authority (AZ005) Mesa AZ.

Nature of Requirement: The regulation establishes certain reporting compliance dates. The audited financial statements are required to be submitted to the Real Estate Assessment Center (REAC) no later than nine months after the housing authority's (HA) fiscal year end (FYE), in accordance with the Single Audit Act and OMB Circular A–133.

Granted By: Jemine A. Bryon, Acting Assistant Secretary for Public and Indian Housing.

Date Granted: October 14, 2014.

Reason Waived: The delayed submission was a result of the process to implement a new ERP Integrated Information System during 2013. The agency is component unit and must wait until the city-wide audit was complete before processing the audited financial data. The agency incurred a turnover in staff prior to closing your 2013 books and that additional time was needed for IPA review and final submission. Due to the Department's delayed response and the fact that your audited financial report was approved on July 22, 2014, the housing authority was granted this one-time waiver.

Contact: Judy Wojciechowski, Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street SW., Suite 100, Washington, DC 20410, telephone (202) 475–7907.

• Regulation: 24 CFR 5.801(d)(1).

Project/Activity: South Tucson Housing Authority (AZ025) South Tucson, AZ

Nature of Requirement: The regulation establishes certain reporting compliance dates. The audited financial statements are required to be submitted to the Real Estate Assessment Center (REAC) no later than nine months after the housing authority's (HA) fiscal year end (FYE), in accordance with the Single Audit Act and OMB Circular A–133.

Granted By: Jemine A. Bryon, Acting Assistant Secretary for Public and Indian Housing.

Date Granted: November 19, 2014.

Reason Waived: The delayed submission was a result of the City of South Tucson's inability to obtain an extension from OMB to complete its Single Audit requirement. The agency was a component unit and waited until the city-wide audit was completed before processing the audited financial data for submission. Due to the Department's delayed response and the fact that the audited financial report was approved on August 27, 2014, the housing authority was granted a one-time waiver.

Contact: Judy Wojciechowski, Program Manager, NASS, Real Estate Assessment

Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street SW., Suite 100, Washington, DC 20410, telephone (202) 475–7907.

• Regulation: 24 CFR 5.801(d)(1).

Project/Activity: Mercedes Housing Authority (TX029) Mercedes, TX

Nature of Requirement: The regulation establishes certain reporting compliance dates. The audited financial statements are required to be submitted to the Real Estate Assessment Center (REAC) no later than nine months after the housing authority's (HA) fiscal year end (FYE), in accordance with the Single Audit Act and OMB Circular A–133.

Granted By: Jemine A. Bryon, Acting Assistant Secretary for Public and Indian Housing.

Date Granted: November 26, 2014.

Reason Waived: The delayed submission was due to issues between the independent auditor and the Texas State Board. The State Board required the agency to seek a second review from another independent auditor. However, due to human resource issues and scheduled vacation, the advising auditor could not complete the audit in time to submit your audited financial data by the due date. The agency's audited financial data was approved on September 4, 2014, therefore, the housing authority was granted a one-time waiver.

Contact: Judy Wojciechowski, Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street SW., Suite 100, Washington, DC 20410, telephone (202) 475–7907.

• Regulation: Notices PIH 2013–3 and PIH 20013–26: Public Housing and Housing Choice Voucher Programs—Temporary Compliance Assistance.

Project/Activity: PIH Notice 2013–3 was issued to establish temporary guidelines for public housing agencies (PHAs) in fulfilling certain public housing and housing choice voucher requirements during the current and upcoming fiscal year to alleviate some of the burden on already stressed PHA resources. The reduction of burden provided in this notice involved offering PHAs the option to comply with certain alternative requirements to existing regulations, and if they opted to do so the existing regulation would be waived. Issuance of this notice was reported in HUD's Quarterly Regulatory Waiver report published in the **Federal Register** on September 13, 2013, at 78 FR 56912, at 56916. On November 5, 2013, PIH extended the availability of the alternative requirements to existing regulations through March 31, 2015. The following housing authorities obtained regulatory waivers under these notices: Housing Authority of the Birmingham District, AL; Housing Authority of the City of Huntsville, AL; Enterprise Housing Authority, AL; Albertville Housing Authority, AL; Gordo Housing Authority, AL; Searcy Housing Authority, AR; Lonoke County Housing Authority, AR; Jonesboro Urban Renewal Housing Authority, AR; City of Phoenix Housing Department, AZ; Housing and Community Development Tucson, AZ; Housing Authority of Maricopa County, AZ; Yuma County Housing Department, AZ; Chandler Housing & Redevelopment Division, AZ; Tempe Housing Authority, AZ; Pima County Housing Authority, AZ; Housing Authority of the City & County of San Francisco, CA; Housing Authority of the City of Los Angeles, CA; City of Sacramento Housing Authority, CA; Housing Authority City of Fresno, CA; Housing Authority of Fresno County, CA; County of Sacramento Housing Authority, CA; Housing Authority of the County of Kern, CA; Tulare County Housing Authority, CA; Housing Authority of the City of San Buenaventura, CA; Regional Housing Authority of Sutter & Nevada Co, CA.; Housing Authority of County of Marin, CA; Housing Authority of the City of Vallejo, CA; City of Pittsburg Housing Authority, CA; Housing Authority of the City of San Luis Obispo, CA; Alameda County Housing Authority, CA; Santa Cruz County Housing Authority, CA; Housing Authority of the City of Pasadena, CA; Mendocino County Housing Authority, CA; County of Sonoma Housing Authority, CA; Yuba County Housing Authority, CA; Housing Authority of the County of San Diego, CA; Housing Authority of the City of Norwalk, CA; City of Hollister Housing Authority, CA; City of Vacaville Housing Authority, CA; City of Roseville Housing Authority, CA; County of Solano Housing Authority, CA; City of Oceanside Community Development Commission, CA; Housing Authority of the City and County of Denver, CO; Wellington Housing Authority, CO; Housing Authority of the City of Greeley, CO; Littleton Housing Authority, CO; Fort Collins Housing Authority, CO; Englewood Housing Authority, CO; Lakewood Housing Authority, CO; Arvada Housing Authority, CO; Aurora Housing Authority, CO; Housing Authority of Weld County, CO; Larimer County Housing Authority, CO; Colorado Division of Housing, CO; Housing Authority of the City of Bridgeport, CT; Housing Authority of the City of Stamford, CT; Housing Authority of the City of Danbury, CT; West Haven Housing Authority, CT; Tampa Housing Authority, FL; Sarasota Housing Authority, FL; Housing Authority of Pompano Beach, FL; Housing Authority of the City of Fort Myers, FL; Milton Housing Authority, FL; Pinellas County Housing Authority, FL; Gainesville Housing Authority, FL; City of Pensacola Housing Office, FL; Housing Authority of Boca Raton, FL; Housing Authority of Lee County, FL; Housing Authority of the City of Athens, GA; Housing Authority of the City of Macon, GA; Housing Authority of the City of LaGrange, GA; Housing Authority of the City of Conyers, GA; Housing Authority of Fulton County, GA; Hawaii Public Housing Authority, HI; Kauai County Housing Agency, HI; City of Sioux City Housing Authority, IA; Des Moines Municipal Housing Agency, IA; City of Iowa City Housing Authority, IA; Boise City Housing Authority, ID; Southwestern Idaho Cooperative Housing Authority, ID; Idaho Housing and Finance Association, ID; Ada County Housing Authority, ID; Decatur Housing Authority, IL; Rockford Housing Authority, IL; Housing Authority Cook County, IL; Pike County Housing Authority, IL; Aurora Housing Authority of the City of Aurora, IL; Housing Authority of the Village of Oak Park, IL; Housing Authority of the City of New Albany, IN; Housing Authority of the City of Evansville, IN; Housing Authority of the City of Michigan City, IN; Housing Authority of the City of Terre Haute, IN; Brazil Housing Authority, IN; Cannelton Housing Authority, IN; Housing Authority of the City of Lafayette, IN; Housing Authority of the City of Peru, IN; Indiana Housing and Community Development Authority, IN; Wichita Housing Authority, KS; Holton Housing Authority, KS; Atchison Housing Authority, KS; Great Bend Housing Authority, KS; Wamego Housing Authority, KS; Housing Authority of Paducah, KY; Housing Authority of Somerset, KY; Housing Authority of Owensboro, KY; Housing Authority of Newport, KY; Housing Authority of Cynthiana, KY; Housing Authority of Glasgow, KY; Housing Authority of Owenton, KY; Bowling Green CDA, KY; Kentucky Housing Corporation-State Agency, KY; Ouachita Parish Police Jury, LA; Boston Housing Authority, MA; Taunton Housing Authority, MA; Lynn Housing Authority, MA; Newton Housing Authority, MA; Braintree Housing Authority, MA; Salem Housing Authority, MA; Holden Housing Authority, MA; Leominster Housing Authority, MA; Franklin County Regional Housing Authority, MA; Department of Housing & Community Development. MA; Hagerstown Housing Authority, MD; Rockville Housing Enterprises, MD; Elkton Housing Authority, MD; Portland Housing Authority, ME; Brunswick Housing Authority, ME; Auburn Housing Authority, ME; Housing Authority City of Bangor, ME; Biddeford Housing Authority, ME; Saco Housing Authority, ME; Maine State Housing Authority, ME; Detroit Housing Commission, MI; Inkster Housing Commission, MI; Eastpointe Housing Commission, MI; Cadillac Housing Commission, MI; Ann Arbor Housing Commission, MI; Traverse City Housing Commission, MI; Lapeer Housing Commission, MI; Wyoming Housing Commission, MI; Saranac Housing Commission, MI; Potterville Housing Commission, MI; Ingham County Housing Commission, MI; Michigan State Housing Development Authority, MI; Public Housing Agency of the City of St Paul, MN; Housing Authority of Virginia, MN; Housing and Redevelopment Authority of the City of St. Paul, MN; Housing and Redevelopment Authority of St. Cloud, MN; Itasca County Housing Redevelopment Authority, MN; Northwest MN Multi-County Housing Redevelopment Authority, MN; Metropolitan Council of MN; Clay County Housing Redevelopment Authority, MN; Plymouth Housing & Redevelopment Authority, MN; Stearns County Housing Redevelopment Authority, MN: Washington County Housing Redevelopment Authority: Ripley County Public Housing Agency, MO; ESCSWA dba Jasper Cty Public Housing Agency, MO; Mississippi Regional Housing Authority No. VII, MS; Mississippi Regional Housing Authority No. VI, MS; Housing Authority of Billings, MT; Whitefish Housing Authority, MT; Missoula Housing Authority, MT; Housing Authority of the City of Asheville,

NC; Housing Authority of the City of Greensboro, NC; Housing Authority of the City of Winston-Salem, NC; Housing Authority of the City of Durham, NC; Housing Authority of the City of Salisbury, NC; Mooresville Housing Authority, NC; City of Hickory Public Housing Authority, NC; New Edenton Housing Authority, NC; Asheboro Housing Authority, NC; Roanoke-Chowan Regional Housing Authority, NC; Western Carolina Community Action, Inc., NC; Northwestern Regional Housing Authority, NC; Omaha Housing Authority, NE; Hall County Housing Authority, NE; Kearney Housing Authority, NE; Henderson Housing Authority, NE; Minden Housing Authority, NE; Shelton Housing Authority, NE; Tilden Housing Authority, NE; Blair Housing Authority, NE; Gibbon Housing Authority, NE; Alliance Housing Authority, NE; Douglas County Housing Authority, NE; Norfolk Housing Agency, NE; Concord Housing Authority, NH; Laconia Housing & Redevelopment Authority, NH; Housing Authority of the Town of Salem, NH; New Hampshire Housing Finance Agency, NH; Housing Authority City of Jersey City, NJ; Burlington County Housing Authority, NJ; Mesilla Valley Public Housing Authority, NM; Housing Authority of the City of Truth or Consequences, NM; City of Reno Housing Authority, NV; Southern Nevada Regional Housing Authority, NV; Nevada Rural Housing Authority, NV; Syracuse Housing Authority, NY; Municipal Housing Authority City Yonkers, NY; Gloversville Housing Authority, NY; Ithaca Housing Authority, NY; Town of Amherst, NY; NYC Department of Housing Preservation and Development, NY; Village of Highland Falls, NY; Town of Southampton; Village of Elmira Heights, NY; City of North Tonawand, NY; Town of Colonie, NY; City of Buffalo, NY; Town of Clifton Park, NY; Town of Hadley, NY; Town of Guilderland, NY; Town of Bethlehem, NY; Town of Duanesburg, NY; Town of Niskayuna, NY; Town of Schodack, NY; Town of Horseheads, NY; City of Johnstown, NY; Town of Knox, NY; Town of Waterford, NY; Village of Scotia' Town of Glenville, NY; Town of Rotterdam, NY; Town of Corinth, NY; Fort Plain Housing Agency, NY; Village of Green Island, NY; Village of Corinth, NY; Town of Coeymans, NY; Town of Stillwater, NY; Village of Ballston Spa, NY; Town of Nassau, NY; Village of Waterford, NY; Youngstown Metropolitan Housing Authority, OH; Cuyahoga Metropolitan Housing Authority, OH; Lucas Metropolitan Housing Authority, OH; Akron Metropolitan Housing Authority, OH; Trumbull Metropolitan Housing Authority, OH; Jefferson Metropolitan Housing Authority, OH; Mansfield Metropolitan Housing Authority, OH; Springfield Metropolitan Housing Authority, OH; Huron Metropolitan Housing Authority, OH; Crawford Metropolitan housing Authority, OH: Geauga Metropolitan Housing Authority, OH; Warren Metropolitan Housing Authority; Seneca Metropolitan Housing Authority; Marion Metropolitan Housing Authority, OH; City of Marietta, OH; Brown Metropolitan Housing Authority, OH; Hancock Housing Authority, OH; Housing Authority of the City of Stillwater, OK; Housing Authority of Clackamas County, OR; Housing Authority of Lincoln County, OR; Housing Authority & Community Services of Lane County, OR; Housing Authority of the County of Umatilla' Housing and Urban Renewal Agency of Polk County, OR; North Bend Housing Authority, OR; Housing Authority of Jackson County, OR; Housing Authority of Yamhill County, OR; Linn-Benton Housing Authority, OR; Coos-Curry Housing Authority, OR; Housing Authority of Washington County, OR; Northwest Oregon Housing Authority, OR; Josephine Housing Community Development Council, OR; Central Oregon Regional Housing Authority, OR; Housing Authority of the City of Pittsburgh, PA; Allentown Housing Authority, PA; Allegany Housing Authority, PA: Chester Housing Authority. PA: Housing Authority of the County Butler, PA; Montgomery County Housing Authority, PA; Housing Authority of the County of Beaver, PA; Washington County Housing Authority, PA: Housing Authority of the County Delaware, PA; Housing Authority of the County of Huntingdon, PA; Housing Authority of the County of Franklin, PA; Housing Authority of the City of Hazleton, PA; Housing Authority of the County of Chester, PA; Bradford City Housing Authority, PA; Housing Authority of the County of Berks, PA; Housing Authority of the County of Cumberland, PA; Housing Authority of the County of McKean, PA; Lehigh County Housing Authority, PA; Columbia County Housing Authority, PA; Housing Authority of the County of Clarion, PA; Adams County Housing Authority, PA; Housing Authority Providence, RI; Housing Authority of the City of Pawtucket, RI; East Providence Housing Authority, RI; Greenville Housing Authority, SC; Housing Authority of Myrtle Beach, SC; Sioux Falls Housing and Redevelopment Commission, SD; Aberdeen Housing & Redevelopment Commission, SD; Memphis Housing Authority, TN; Knoxville's Community Development Corp., TN; Chattanooga Housing Authority, TN; Metropolitan Development & Housing Agency, TN; Kingsport Housing and Redevelopment Authority, TN; Murfreesboro Housing Authority, TN; Newport Housing Authority, TN; Bristol Housing Authority, TN; Elizabethton Housing and Development Agency, TN; East Tennessee Human Resource Agency, TN; Tennessee Housing Development Agency, TN; Northern Marianas Housing Corporation; Austin Housing Authority, TX; Housing Authority of the City of El Paso, TX; Housing Authority of Fort Worth, TX; Houston Housing Authority, TX; Housing Authority of the City of Dallas, TX; San Benito Housing Authority, TX; Housing Authority of Temple, TX; New Boston Property Management, TX; Housing Authority of the City of Munday, TX; Housing Authority of the City of Knox City, TX; Housing Authority of Belton, TX; Seguin Housing Authority, TX; Denton Housing Authority, TX; Arlington Housing Authority, TX; Housing Authority of Marshall, TX; City of Amarillo, TX; Housing Authority of the City of Rosenberg, TX; McKinney Housing Authority, TX; Housing Authority of Salt Lake City, UT; Housing Authority of Utah County, UT; Hopewell Redevelopment & Housing Authority, VA; Richmond Redevelopment & Housing Authority, VA; Roanoke Redevelopment & Housing Authority, VA; Hampton Redevelopment & Housing Authority, VA; Fairfax County Redevelopment & Housing Authority, VA; Lee County Redevelopment & Housing Authority, VA; Accomack-Northampton Regional Housing Authority, VA; Virgin Islands Housing Authority; Brattleboro Housing Authority, VT; Housing Authority of the City of Bremerton, WA; Housing Authority of the City of Everett, WA; Housing Authority City of Longview, WA; Housing Authority City of Bellingham, WA; Housing Authority of Snohomish County, WA; Housing Authority of Whatcom County, WA; Housing Authority of the City of Yakima, WA; Housing Authority of Thurston County, WA; Housing Authority of City of Spokane, WA; Housing Authority of the City of Walla Walla, WA; Housing Authority of the City of Milwaukee, WI; New London Housing Authority, WI; River Falls Housing Authority, WI; West Bend Housing Authority, WI; Antigo Housing Authority, WI; Waukesha Housing Authority, WI; Brown County Housing Authority, WI; Janesville Neighborhood Services, WI; Walworth County Housing Authority, WI; Barron County Housing Authority, WI; Richland County Housing Authority, WI; New Berlin Housing Authority, WI; Waukesha County Housing Authority, WI; Wisconsin Housing & Economic Development Authority, WI; Fairmont/Morgantown Housing Authority, WV; Housing Authority of the City of Beckley, WV; and Housing Authority of Raleigh County, WV.

Nature of Requirement: The alternative requirements to regulatory requirements that were offered under the original notice and extended by the second notice were the following: The notice allows PHAs to use participants' actual past income to verify income, which would be a waiver of the requirement to project expected income in 24 CFR 5.609(a)(2). The notice allows households to self-certify as to having assets of less than $5,000, which would be a waiver of the requirement under 24 CFR 5.609(b)(3), 982.516(a)(2)(ii), and 960.259(c) for PHAs to verify assets. The notice allows a streamlined reexamination of income for elderly families and disabled families on fixed incomes, which would be a waiver of the requirement in 24 CFR 982.516 and 960.257 for PHAs to undertake the complete process for income verification and rent determination for families on fixed incomes. The notice allows PHAs to establish a payment standard of not more than 120 percent of the fair market rent without HUD approval as a reasonable accommodation, which would be a waiver of 24 CFR 982.503(c)(2)(B)(ii), which allows a PHA to establish a payment standard for the housing choice voucher program only but within limits currently permitted but designated for approval only by a HUD field office.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Dates Granted: January 2013 through March 2015.

Reason Waived: The waivers and alternative requirements were granted because they would help facilitate the ability

of PHAs to continue, without interruption and with minimal burden, the delivery of rental assistance to eligible families in their communities. Increased demand for housing assistance without corresponding increased resources strains the operations of PHAs and jeopardizes their ability to assist families at a time when families most need housing assistance.

Contact: Todd Thomas, Senior Program Specialist, Public Housing Management and Occupancy Division, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 4210, Washington, DC 20410, telephone 202–402–5849.

• Regulation: 24 CFR 982.503(c), 982.503(c)(4)(ii) and 982.503(c)(5).

Project/Activity: Dunn County Housing Authority (DCHA), McKenzie County Housing Authority (MCHA), Bowman County Housing Authority (BCHA), Adams County Housing Authority (ACHA), Hettinger County Housing Authority (HCHA), Billings County Housing Authority (BCHA), Slope County Housing Authority (SCHA), Golden Valley County Housing Authority (GVCHA), Stark County Housing Authority (SCHA), ND.

Nature of Requirement: HUD's regulation at 24 CFR 982.503(c) establishes the methodology for establishing exception payment standards for an area. HUD's regulation at 24 CFR 503(c)(4)(ii) states that HUD will only approve an exception payment standard amount after six months from the date of HUD approval of an exception payment standard amount above 110 percent to 120 percent of the published fair market rent (FMR). HUD's regulation at 24 CFR 982.503(c)(5) states that the total population of a HUD-approved exception areas in an FMR area may not include more than 50 percent of the population of the FMR area.

Granted By: Jemine A. Bryon, Acting Assistant Secretary for Public and Indian Housing.

Date Granted: October 17, 2014.

Reason Waived: These waivers were granted because of increased economic activity due to natural resource exploration.

Contact: Becky Primeaux, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 4216, Washington, DC 20410, telephone (202) 708–0477.

• Regulation: 24 CFR 982.503(c), 982.503(c)(4)(ii) and 982.503(c)(5).

Project/Activity: Burleigh County Housing Authority (BCHA), Bismarck, ND.

Nature of Requirement: HUD's regulation at 24 CFR 982.503(c) establishes the methodology for establishing exception payment standards for an area. HUD's regulation at 24 CFR 503(c)(4)(ii) states that HUD will only approve an exception payment standard amount after six months from the date of HUD approval of an exception payment standard amount above 110 percent to 120 percent of the published fair market rent (FMR). HUD's regulation at 24 CFR 982.503(c)(5) states that the total population of a HUD-approved exception areas in an FMR area may not include more than 50 percent of the population of the FMR area.

Granted By: Jemine A. Bryon, Acting Assistant Secretary for Public and Indian Housing.

Date Granted: November 19, 2014.

Reason Waived: These waivers were granted because of increased economic activity due to natural resource exploration.

Contact: Becky Primeaux, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 4216, Washington, DC 20410, telephone (202) 708–0477.

• Regulation: 24 CFR 982.505(d).

Project/Activity: Arvada Housing Authority (AHA), Arvada, CO.

Nature of Requirement: 24 CFR 982.505(d) states that a public housing agency may only approve a higher payment standard for a family as a reasonable accommodation if the higher payment standard is within the basic range of 90 to 110 percent of the fair market rent (FMR) for the unit size.

Granted By: Jemine A. Bryon, Acting Assistant Secretary for Public and Indian Housing.

Date Granted: October 1, 2014.

Reason Waived: The participant, who is a person with disabilities, required an exception payment standard to move to a more accessible unit. To provide this reasonable accommodation so the client could move to a new unit and pay no more than 40 percent of her adjusted income toward the family share, the AHA was allowed to approve an exception payment standard that exceeded the basic range of 90 to 110 percent of the FMR.

Contact: Becky Primeaux, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 4216, Washington, DC 20410, telephone (202) 708–0477.

• Regulation: 24 CFR 982.505(d).

Project/Activity: West Valley Housing Authority (WVHA), Dallas, OR.

Nature of Requirement: HUD's regulation at 24 CFR 982.505(d) states that a public housing agency may only approve a higher payment standard for a family as a reasonable accommodation if the higher payment standard is within the basic range of 90 to 110 percent of the fair market rent (FMR) for the unit size.

Granted By: Jemine A. Bryon, Acting Assistant Secretary for Public and Indian Housing.

Date Granted: October 23, 2014.

Reason Waived: The applicant, who is a person with disabilities, required an exception payment standard to remain in her current unit that met her needs. To provide this reasonable accommodation so that the client could remain in her unit and pay no more than 40 percent of her adjusted income toward the family share, the WVHA was allowed to approve an exception payment standard that exceeded the basic range of 90 to 110 percent of the FMR.

Contact: Becky Primeaux, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 4216, Washington, DC 20410, telephone (202) 708–0477.

• Regulation: 24 CFR 982.505(d).

Project/Activity: Housing Authority of Grays Harbor County (HAGHC), Aberdeen, WA.

Nature of Requirement: HUD's regulation at 24 CFR 982.505(d) states that a public housing agency may only approve a higher payment standard for a family as a reasonable accommodation if the higher payment standard is within the basic range of 90 to 110 percent of the fair market rent (FMR) for the unit size.

Granted By: Jemine A. Bryon, Acting Assistant Secretary for Public and Indian Housing.

Date Granted: December 10, 2014.

Reason Waived: The applicant, who is a person with disabilities, required an exception payment standard to remain in her current unit that met her needs. To provide this reasonable accommodation so that the client could remain in her unit and pay no more than 40 percent of her adjusted income toward the family share, the HAGHC was allowed to approve an exception payment standard that exceeded the basic range of 90 to 110 percent of the FMR.

Contact: Becky Primeaux, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 4216, Washington, DC 20410, telephone (202) 708–0477.

• Regulation: 24 CFR 982.505(d).

Project/Activity: Rhode Island Housing (RHI), Providence, RI.

Nature of Requirement: HUD's regulation at 24 CFR 982.505(d) states that a public housing agency may only approve a higher payment standard for a family as a reasonable accommodation if the higher payment standard is within the basic range of 90 to 110 percent of the fair market rent (FMR) for the unit size.

Granted By: Jemine A. Bryon, Acting Assistant Secretary for Public and Indian Housing.

Date Granted: December 17, 2014.

Reason Waived: The participant, who is a person with disabilities, required an exception payment standard to move to a unit that meets her needs. To provide this reasonable accommodation so the family could move to a new unit and pay no more than 40 percent of its adjusted income toward the family share, RHI was allowed to approve an exception payment standard that exceeded the basic range of 90 to 110 percent of the FMR.

Contact: Becky Primeaux, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 4216, Washington, DC 20410, telephone (202) 708–0477.

• Regulation: 24 CFR 982.505(d).

Project/Activity: San Francisco Housing Authority (SFHA), San Francisco, CA.

Nature of Requirement: HUD's regulation at 24 CFR 982.505(d) states that a public housing agency may only approve a higher payment standard for a family as a reasonable accommodation if the higher payment standard is within the basic range of 90 to 110 percent of the fair market rent (FMR) for the unit size.

Granted By: Jemine A. Bryon, Acting Assistant Secretary for Public and Indian Housing.

Date Granted: December 17, 2014.

Reason Waived: The applicant was a person with disabilities who required an exception payment standard to move to a unit that met his needs. To provide this reasonable accommodation so that the client could move to a new unit and pay no more than 40 percent of his adjusted income toward the family share, the SFHA was allowed to approve an exception payment standard that exceeded the basic range of 90 to 110 percent of the FMR.

Contact: Becky Primeaux, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 4216, Washington, DC 20410, telephone (202) 708–0477.

• Regulation: 24 CFR 982.505(d).

Project/Activity: Howard County Housing (HCH), Columbia, MD.

Nature of Requirement: HUD's regulation at 24 CFR 982.505(d) states that a public housing agency may only approve a higher payment standard for a family as a reasonable accommodation if the higher payment standard is within the basic range of 90 to 110 percent of the fair market rent (FMR) for the unit size.

Granted By: Jemine A. Bryon, Acting Assistant Secretary for Public and Indian Housing.

Date Granted: December 29, 2014.

Reason Waived: The participant, who is a person with disabilities, required an exception payment standard to move to a new unit. To provide this reasonable accommodation so the family could move to a new unit and pay no more than 40 percent of its adjusted income toward the family share, HCH was allowed to approve an exception payment standard that exceeded the basic range of 90 to 110 percent of the FMR.

Contact: Becky Primeaux, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 4216, Washington, DC 20410, telephone (202) 708–0477.

• Regulation: 24 CFR 982.505(d).

Project/Activity: City of Roseville Housing Authority (CRHA), Roseville, CA.

Nature of Requirement: HUD's regulation at 24 CFR 982.505(d) states that a public housing agency may only approve a higher payment standard for a family as a reasonable accommodation if the higher payment standard is within the basic range of 90 to 110 percent of the fair market rent (FMR) for the unit size.

Granted By: Jemine A. Bryon, Acting Assistant Secretary for Public and Indian Housing.

Date Granted: December 29, 2014.

Reason Waived: The applicant, who is a person with disabilities, required an exception payment standard to move to a new unit. To provide this reasonable accommodation so the family could move to a new unit and pay no more than 40 percent of his adjusted income toward the family share, the CRHA was allowed to approve an exception payment standard that exceeded the basic range of 90 to 110 percent of the FMR.

Contact: Becky Primeaux, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 4216, Washington, DC 20410, telephone (202) 708–0477.

• Regulation: 24 CFR 985.101(a).

Project/Activity: Hawaii Public Housing Authority (HPHA), Honolulu, HI.

Nature of Requirement: HUD's regulation at 24 CFR 985.101(a) states a PHA must submit the HUD-required Section Eight Management Assessment Program (SEMAP) certification form within 60 calendar days after the end of its fiscal year.

Granted By: Jemine A. Bryon, Acting Assistant Secretary for Public and Indian Housing.

Date Granted: October 20, 2014.

Reason Waived: This waiver was granted since HPHA had technical difficulties in submitting its certification. HPHA was permitted to submit its SEMAP certification after the due date.

Contact: Becky Primeaux, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 4210, Washington, DC 20410, telephone (202) 708–0477.

• Regulation: 24 CFR 985.101(a).

Project/Activity: Fort Wayne Housing Authority (FWHA), Fort Wayne, IN.

Nature of Requirement: HUD's regulation at 24 CFR 985.101(a) states a PHA must submit the HUD-required Section Eight Management Assessment Program (SEMAP) certification form within 60 calendar days after the end of its fiscal year.

Granted By: Jemine A. Bryon, Acting Assistant Secretary for Public and Indian Housing.

Date Granted: November 7, 2014.

Reason Waived: This waiver was granted since the executive director had a death in his family at the time the SEMAP certification was due. FWHA was permitted to submit its SEMAP certification after the due date.

Contact: Becky Primeaux, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 4210, Washington, DC, 20410, telephone (202) 708–0477.

• Regulation: 24 CFR 985.101(a).

Project/Activity: Housing Authority of the City of Meriden (HACM), Meriden, CT.

Nature of Requirement: HUD's regulation at 24 CFR 985.101(a) states a PHA must submit the HUD-required Section Eight Management Assessment Program (SEMAP) certification form within 60 calendar days after the end of its fiscal year.

Granted By: Jemine A. Bryon, Acting Assistant Secretary for Public and Indian Housing.

Date Granted: December 17, 2014.

Reason Waived: This waiver was granted since the SEMAP certification had been submitted timely, but incorrectly into PICTEST. HACM was permitted to submit its SEMAP certification after the due date.

Contact: Becky Primeaux, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 4210, Washington, DC 20410, telephone (202) 708–0477.

• Regulation: 24 CFR 985.101(a).

Project/Activity: Palm Beach County Housing Authority (PBCHA), West Palm Beach, FL.

Nature of Requirement: HUD's regulation at 24 CFR 985.101(a) states a PHA must submit the HUD-required Section Eight Management Assessment Program (SEMAP) certification form within 60 calendar days after the end of its fiscal year.

Granted By: Jemine A. Bryon, Acting Assistant Secretary for Public and Indian Housing.

Date Granted: December 17, 2014.

Reason Waived: This waiver was granted since the SEMAP certification had been submitted timely, but with an error message that could not be validated. PBCHA was permitted to submit its SEMAP certification after the due date.

Contact: Becky Primeaux, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 4210, Washington, DC 20410, telephone (202) 708–0477.

• Regulation: 24 CFR 985.101(a).

Project/Activity: Mercer County Housing Authority (MCHA), Aledo, IL.

Nature of Requirement: HUD's regulation at 24 CFR 985.101(a) states a PHA must submit the HUD-required Section Eight Management Assessment Program (SEMAP) certification form within 60 calendar days after the end of its fiscal year.

Granted By: Jemine A. Bryon, Acting Assistant Secretary for Public and Indian Housing.

Date Granted: December 29, 2014.

Reason Waived: This waiver was granted since it the executive director was new and notification emails regarding SEMAP submission were sent to the wrong email address. MCHA was permitted to submit its SEMAP certification after the due date.

Contact: Becky Primeaux, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 4210, Washington, DC 20410, telephone (202) 708–0477.

• Regulation: 24 CFR 1000.327(b).

Project/Activity: Asa'Carsarmiut Tribe of Mountain Village, Alaska 99632–0249; Stebbins Community Association of Stebbins, Alaska 99671; Bering Straits Regional Housing Authority of Nome, Alaska 99762; Native Village of Kivalina of Kivalina, AK 99750.

Nature of Requirement: HUD's regulation at 24 CFR 1000.327(b) requires Indian tribes in Alaska not located on a reservation to notify HUD in writing by September 15th that they or their Tribally Designated Housing Entity (TDHE) intends to submit an Indian Housing Plan (IHP) for the following fiscal year. If the tribe or their TDHE does not notify HUD, or notifies HUD that they do not intend to submit an IHP, HUD allocates the tribe's need formula data in the Indian Housing Block Grant formula to the tribe's regional tribe or regional corporation. HUD is required to allocate IHBG funds within 60 days of an appropriation, and prior notification ensures that HUD can properly allocate Alaska tribes' need data and make formula allocations in a timely manner.

Granted By: Jemine A. Bryon, Acting Assistant Secretary for Public and Indian Housing.

Date Granted: November 24, 2014.

Reason Waived: HUD granted the waiver because the tribes and TDHE would have lost out on critical Indian Housing Block Grant funding for the year. The waiver would not delay HUD's process because the Congressional appropriation for the upcoming fiscal year had not yet occurred. As such, the Department believed that there was good cause to waive the notification requirements of 24 CFR 1000.327(b).

Contact: Glenda N. Green, Director for the Office of Grants Management, Office of Native American Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Suite 5156, Washington, DC 20410, telephone (202) 402–6967.

• Regulation: 24 CFR 1000.224.

Project/Activity: Pueblo de Cochiti of Cochiti Pueblo, NM 87072–0070.

Nature of Requirement: HUD's regulation at 24 CFR 1000.224 that the Secretary may waive the applicability of the requirement to submit an Indian Housing Plan (IHP), in whole or in part, for a period of not more than 90 days, if the Secretary determines that an Indian tribe has not complied with, or is unable to comply with, those requirements due to exigent circumstances beyond the control of the Indian Tribe.

Granted By: Jemine A. Bryon, Acting Assistant Secretary for Public and Indian Housing.

Date Granted: October 20, 2014.

Reason Waived: A waiver was requested because of the unexpected resignation of the Executive Director based on health issues. The waiver was provided for no more than 90 days on the basis of exigent circumstances beyond its control.

Contact: Cheryl Dixon, Grants Management Specialist, Office of Grants Management, Office of Native American Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 500 Gold Avenue SW., Seventh FL, Suite 7301, Albuquerque, NM 87103–0906, telephone (505) 346–6924.

• Regulation: 24 CFR 1000.224.

Project/Activity: Hopi Tribal Housing Authority of Polacca, AZ 86042.

Nature of Requirement: HUD's regulation at 24 CFR 1000.224 that the Secretary may waive the applicability of the requirement to submit an Indian Housing Plan (IHP), in whole or in part, for a period of not more than 90 days, if the Secretary determines that an Indian tribe has not complied with, or is unable to comply with, those requirements due to exigent circumstances beyond the control of the Indian Tribe.

Granted By: Jemine A. Bryon, Acting Assistant Secretary for Public and Indian Housing.

Date Granted: October 22, 2014.

Reason Waived: A waiver was requested because a new Executive Director was in the process of being hired. The waiver was provided for no more than 90 days on the basis of exigent circumstances beyond its control.

Contact: Cristal Quinn, Grants Management Specialist, Office of Grants Management, Office of Native American Programs, Southwest Office of Native American Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, One N. Central Ave., Phoenix, AZ 85004, telephone (602) 379–7206.

• Regulation: 24 CFR 1000.224.

Project/Activity: Resighini Rancheria of Klamath, CA 95548–0529.

Nature of Requirement: HUD's regulation at 24 CFR 1000.224 that the Secretary may waive the applicability of the requirement to submit an Indian Housing Plan (IHP), in whole or in part, for a period of not more than 90 days, if the Secretary determines that an Indian tribe has not complied with, or is unable to comply with, those requirements due to exigent circumstances beyond the control of the Indian Tribe.

Granted By: Jemine A. Bryon, Acting Assistant Secretary for Public and Indian Housing.

Date Granted: October 22, 2014.

Reason Waived: A waiver was requested because of new staff turnover, which resulted in technological problems in completing the IHP. The waiver was provided for no more than 90 days on the basis of exigent circumstances beyond its control.

Contact: Sarah Olson, Grants Management Specialist, Office of Grants Management, Office of Native American Programs, Southwest Office of Native American Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, One N. Central Ave., Phoenix, AZ 85004, telephone (602) 379–7233.

• Regulation: 24 CFR 1000.224.

Project/Activity: Cahto Indians of the Laytonville Rancheria, Laytonville, CA 95454–1239.

Nature of Requirement: HUD's regulation at 24 CFR 1000.224 that the Secretary may waive the applicability of the requirement to submit an Indian Housing Plan (IHP), in whole or in part, for a period of not more than 90 days, if the Secretary determines that an Indian tribe has not complied with, or is unable to comply with, those requirements due to exigent circumstances beyond the control of the Indian Tribe.

Granted By: Jemine A. Bryon, Acting Assistant Secretary for Public and Indian Housing.

Date Granted: October 22, 2014.

Reason Waived: A waiver was requested because there were no housing funds available to pay the housing staff salary prior to completing the IHP. The Tribe needed time to re-hire the staff person to complete and submit the IHP. The waiver was provided for no more than 90 days on the basis of exigent circumstances beyond its control.

Contact: Daniel Celaya, Grants Management Specialist, Office of Grants Management, Office of Native American Programs, Southwest Office of Native American Programs, Office of Public and Indian, Housing Department of Housing and Urban Development, One N. Central Ave., Phoenix, AZ 85004, telephone (602) 379–7193.

• Regulation: 24 CFR 1000.224.

Project/Activity: Big Valley Tribe of Pomo Indians, Lakeport, CA 95453.

Nature of Requirement: HUD's regulation at 24 CFR 1000.224 that the Secretary may waive the applicability of the requirement to submit an Indian Housing Plan (IHP), in whole or in part, for a period of not more than 90 days, if the Secretary determines that an Indian tribe has not complied with, or is unable to comply with, those requirements due to exigent circumstances beyond the control of the Indian Tribe.

Granted By: Jemine A. Bryon, Acting Assistant Secretary for Public and Indian Housing.

Date Granted: October 22, 2014.

Reason Waived: A waiver was requested because a new Executive Director was in the process of being hired. The waiver was provided for no more than 90 days on the basis of exigent circumstances beyond its control.

Contact: Sarah Olson, Grants Management Specialist, Office of Grants Management, Office of Native American Programs, Southwest Office of Native American Programs, Office of Public and Indian Housing Department of Housing and Urban Development, One N. Central Ave., Phoenix, AZ 85004, telephone (602) 379–7233.

• Regulation: 24 CFR 1000.224.

Project/Activity: Summit Lake Paiute Tribe, Summit Lake, NV.

Nature of Requirement: HUD's regulation at 24 CFR 1000.224 that the Secretary may waive the applicability of the requirement to submit an Indian Housing Plan (IHP), in whole or in part, for a period of not more than 90 days, if the Secretary determines that an Indian tribe has not complied with, or is unable to comply with, those requirements due to exigent circumstances beyond the control of the Indian Tribe.

Granted By: Jemine A. Bryon, Acting Assistant Secretary for Public and Indian Housing.

Date Granted: October 28, 2014.

Reason Waived: A waiver was requested because the Tribal Council went through an internal reorganization; the person responsible for preparing the IHP was no longer associated with the Tribal Council. The Tribal Council will assign another council member to complete the IHP. The waiver was provided for no more than 90 days on the basis of exigent circumstances beyond its control.

Contact: Leticia Rodriguez, Grants Management Specialist, Office of Grants Management, Office of Native American Programs, Southwest Office of Native American Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 500 Gold Ave. SW., Seventh FL, Suite 7301, Albuquerque, NM 87103–0906, telephone (505) 346–6926.

[FR Doc. 2015–07183 Filed 3–30–15; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5831–N–16]

30-Day Notice of Proposed Information Collection: Application for Energy Innovation Fund—Multifamily Pilot Program

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: HUD has submitted the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, in accordance with the Paperwork Reduction Act. The purpose of this notice is to allow for an additional 30 days of public comment.

DATES: *Comments Due Date:* April 30, 2015.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410; email at *Colette Pollard@hud.gov* or telephone 202–402–3400. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD has submitted to OMB a request for approval of the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on December 5, 2014 at 79 FR 72194.

A. Overview of Information Collection

Title of Information Collection: Application for Energy Innovation Fund—Multifamily Pilot Program.

OMB Approval Number: 2502–0599.

Type of Request: Extension of currently approved collection.

Form Numbers: N/A.

Description of the need for the information and proposed use: Application information will be used to evaluate, score and rank applications for grant funds.

Estimated Number of Respondents: 12.

Estimated Number of Responses: 120.

Frequency of Response: 4.

Average Hours per Response: 25.

Total Estimated Burdens: 464.

Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: March 25, 2015.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2015–07323 Filed 3–30–15; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNMP00000 L13110000.PP0000 15XL1109PF]

Notice of Cancellation of Public Meeting, Pecos District Resource Advisory Council Meeting, Lesser Prairie-Chicken Habitat Preservation Area of Critical Environmental Concern (LPC ACEC) Livestock Grazing Subcommittee New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Cancellation of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act, the meeting of the Bureau of Land Management (BLM) Pecos District Resource Advisory Council's (RAC) Lesser Prairie-Chicken (LPC) Habitat Preservation Area of Critical Environmental Concerns (ACEC) Livestock Grazing Subcommittee originally scheduled for the time a date listed below is cancelled.

DATES: The LPC ACEC Subcommittee was originally scheduled to meet on March 31, 2015, at 1 p.m. in the Roswell Field Office, 2909 West Second Street, Roswell, New Mexico 88201.

FOR FURTHER INFORMATION CONTACT: Adam Ortega, Roswell Field Office, Bureau of Land Management, 2909 West 2nd Street, Roswell, New Mexico 88201, 575–627–0204. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8229 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The 10-member Pecos District RAC elected to create a subcommittee to advise the Secretary of the Interior, through the BLM Pecos District, about possible livestock grazing within the LPC ACEC. The Pecos District RAC met on March 10, 2015, and voted to pass on Subcommittee's management recommendations for the LPC ACEC to the BLM's Pecos District, making the

scheduled meeting of the subcommittee unnecessary.

James K. Stovall,

Acting Deputy State Director, Lands and Resources.

[FR Doc. 2015–07286 Filed 3–30–15; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–17822; PPWOCRADI0, PCU00RP14.R50000]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before February 28, 2015. Pursuant to section 60.13 of 36 CFR part 60, written comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation. Comments may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., MS 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St. NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by April 15, 2015. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: March 10, 2015.

J. Paul Loether,

Chief, National Register of Historic Places/National Historic Landmarks Program.

COLORADO

Jefferson County

District No. 17 School—Medlen School, (Rural School Buildings in Colorado MPS), Address Restricted, Morrison, 15000139

IOWA

Polk County

Plymouth Place, 4111 Ingersoll Ave., Des Moines, 15000140

KANSAS

Cherokee County

Kansas Route 66 Historic District—North Baxter Springs, (Route 66 in Kansas MPS), N. Willow Ave. SE. 50th St., Baxter Springs, 15000141

Clark County

Girl Scout Little House, (New Deal-Era Resources of Kansas MPS), 448 W. 6th Ave., Ashland, 15000142

Cowley County

Strother Field Tetrahedron Wind Indicator, (World War II-Era Aviation-Related Facilities of Kansas), 22215 Tupper St., Winfield, 15000143

Hodgeman County

St. Mary's Catholic Church, 14920 SE. 232 Rd., Kinsley, 15000144

Labette County

Parsonian Hotel, The, 1725 Broadway Ave., Parsons, 15000145

Marion County

Bown—Corby School, (Public Schools of Kansas MPS), 412 N. 2nd St., Marion, 15000146

Montgomery County

Washington School, (Public Schools of Kansas MPS), 300 E. Myrtle St., Independence, 15000147

Morris County

Hermit's Cave on Belfry Hill, E. of N. Belfry St., generally from Columbia to Conn Sts., Council Grove, 15000148

Wabaunsee County

Fix Farmstead, (Agriculture-Related Resources of Kansas MPS), 34554 Old K–10 Rd., Alma, 15000149

MONTANA

Madison County

Doncaster Round Barn, Riverside Dr., Twin Bridges, 15000150

NEW JERSEY

Essex County

Eighteenth Avenue School, 229–243 18th Ave., Newark, 15000151

TEXAS

Collingsworth County

State Highway 203 (Old TX 52) Bridge at Salt Fork of the Red River, (Road Infrastructure of Texas, 1866–1965 MPS), TX 203 at Salt Fork of Red R., Wellington, 15000152

Palo Pinto County

State Highway 16, Brazos River Bridge Segment, (Road Infrastructure of Texas, 1866–1965 MPS), TX 16 from 7.4 mi. NE. of US 180 to jct. of TX 16 & TX 254, Graford, 15000153

[FR Doc. 2015–07274 Filed 3–30–15; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–R–2015–N013]; [FXRS12650400000S3–123–FF04R02000]

Sam D. Hamilton Noxubee National Wildlife Refuge, Mississippi; Final Comprehensive Conservation Plan and Finding of No Significant Impact for the Environmental Assessment and Associated Step-Down Plans

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of the final Comprehensive Conservation Plan (CCP) and Finding of No Significant Impact (FONSI) for the environmental assessment and associated step-down plans, including the Habitat Management Plan, Integrated Pest Management Plan, and the Visitor Services Plan, for Sam D. Hamilton Noxubee National Wildlife Refuge in Oktibbeha, Noxubee, and Winston Counties, Mississippi. In the final CCP, we describe how we will manage the Refuge for the next 15 years.

ADDRESSES: You may obtain a copy of the CCP and FONSI by writing to: Sam D. Hamilton Noxubee National Wildlife Refuge, 13723 Bluff Lake Rd., Brooksville, MS 39739. Alternatively, you may download the documents from our Internet Site: *http://southeast.fws.gov/planning* under ''Completed CCP Documents.''

FOR FURTHER INFORMATION CONTACT: Steve Reagan, Project Leader, 662–323–5548, *steve_reagan@fws.gov*

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we finalize the CCP process for Sam D. Hamilton Noxubee National Wildlife Refuge. We started the process through a notice in the **Federal Register** on Tuesday, January 15, 2013 (78 FR 3024). For more about the process, see that notice.

Sam D. Hamilton Noxubee National Wildlife Refuge (Refuge) is located within three counties (Noxubee, Oktibbeha, and Winston) in east-central Mississippi, and is approximately 17 miles south-southwest of Starkville and approximately 120 miles north-northeast of Jackson, the capital of Mississippi. The Refuge is currently 48,219 acres. The primary establishing legislation for the Refuge is Executive Order 8444, dated June 14, 1940. Established as Noxubee NWR in 1940, the Refuge was subsequently renamed

Sam D. Hamilton Noxubee NWR by Public Law 112–279 on February 14, 2012.

Background

The CCP Process

The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee) (Administration Act), as amended by the National Wildlife Refuge System Improvement Act of 1997, requires us to develop a CCP for each national wildlife refuge. The purpose for developing a CCP is to provide refuge managers with a 15-year plan for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation, wildlife photography, and environmental education and interpretation. We will review and update the CCP at least every 15 years in accordance with the Administration Act.

Comments

We made copies of the Draft CCP/EA available for a 60-day public review and comment period via a **Federal Register** notice on Thursday August 28, 2014 (79 FR 51356). We provided four hard copies of the Draft CCP/EA to those individuals or organizations requesting a copy. The draft CCP/EA was also accessed via the internet. A total of 37 individuals, organizations, and government agencies provided comments on the Draft CCP/EA by U.S. Mail or email. Comments were received from private citizens; The Humane Society of the United States; Wild South; Mississippi State University; Safari Club International; Mississippi Entomological Museum; Center for Biological Diversity; Florida Gulf Coast University; Wolf River Conservancy; Oktibbeha Audubon Society; The Nature Conservancy; Mississippi Department of Wildlife Fisheries, and Parks; Mississippi Department of Transportation; Mississippi Department of Archives and History; and Greenfire Law.

CCP Alternatives, Including Our Preferred Alternative

We developed three alternatives for managing the Refuge (Alternatives A, B, and C), with Alternative C selected for implementation. This alternative will manage refuge resources to optimize native wildlife populations and habitats under a balanced and integrated approach, not only for federally listed species (red-cockaded woodpeckers (RCW)) and migratory birds, but also for other native species such as white-tailed deer, wild turkey, Northern bobwhite, paddlefish, and forest-breeding birds.

This alternative also provides opportunities for the six priority public uses (*i.e.,* hunting, fishing, wildlife observation, wildlife photography, and interpretation and environmental education) and other wildlife-dependent activities found to be appropriate and compatible with the purpose for which the Refuge was established.

Wildlife and Habitat

Under this alternative, the Refuge would favor management that restores historic forest conditions while achieving Refuge purposes.

Waterfowl: This alternative would provide approximately 1 million Duck Energy Days (DEDs) over a 110-day period yearly, through the possible combination of managed moist soil units, planted agricultural crops that can be flooded, aquatic vegetation and invertebrates within Refuge lakes, and seasonally flooded green-tree reservoirs which provide mast crops and invertebrates. Wood duck breeding opportunities would be enhanced using wood duck nest boxes, but greater emphasis would be placed on protecting trees with natural cavities throughout the bottomland forests. Trees found with existing cavities and those having unique wildlife values would be protected from timber harvest.

Active manipulation of habitats and populations would occur as necessary to maintain biological integrity, diversity, and environmental health. Silvicultural treatments within bottomland hardwood habitats would receive low priority, but may be used to promote recruitment of red oak species within the overstory of those flooded forested habitats used by waterfowl. The Refuge would attempt to increase brood survival of waterfowl by managing shallow water aquatic habitats to produce and sustain protective shrub-scrub cover with fringe area of the Refuge's lakes. Manipulation of water level would be the primary tool used to produce the desired shrub-scrub cover.

The Refuge would participate in wood duck banding programs and try to obtain Refuge quotas as assigned by the U.S. Fish and Wildlife Service's national Migratory Bird program, and limit human access to key areas used by waterfowl to reduce disturbance during critical life cycle stages.

Forest Breeding Birds: Forest-breeding bird populations would be enhanced through improved nesting, brooding, and foraging opportunities by application of active habitat manipulation techniques within bottomland hardwood forested habitats and streamside management zones. Even and uneven aged silviculture, including selective thinning, patch cuts, group tree selections, shelterwoods, irregular shelterwoods, clearcuts, timber stand improvements, wildlife stand improvements, chemical treatments, and other methods, could be used to ensure hardwood species diversity, red oak recruitment into the overstory, and forest structure for the benefit of a diversity of wildlife.

Red-cockaded woodpecker (RCW): The number of RCW clusters would be based on continuous pine habitat as defined by historic conditions and the optimal partition size of 300 acres based on a loblolly forest stand surviving to at least 100 years of age. Based on a spatial analysis accounting for locations and size of pine stands and the current locations of active RCW groups, the Refuge is expected to be able to manage for 49 partitions. All RCW partitions would be managed according to the RCW Recovery Plan and, where sufficient habitat exists, to provide long-term good-quality foraging habitat.

Habitat manipulations used to benefit RCWs could include silvicultural practices (*e.g.,* active forest management, including but not limited to manual or mechanized pre-commercial thinning, commercial biomass thinning, mulching, firewood cutting, timber stand improvements, herbicide, irregular shelterwood, shelterwood, seedtree, patch cuts, afforestation, reforestation, and free thinning), prescribed fire, raking, mowing, creation of new artificial cavities, maintenance of suitable cavities, midstory reduction (chemical and/or mechanical control), integrated pest management, use of restrictor plates on cavities, snake exclusion devices, and kleptoparasite control.

In order to sustain forest resources for future RCW habitat, harvesting of existing mature forests as part of regeneration efforts within present and future partitions may occur. No additional, non-historic pine habitats outside currently active partitions would be maintained or converted for support of the RCW. Refuge staff and possibly contractors would continue to scientifically monitor RCWs through observation and nest and fledge checks.

Monitoring: Additional quantitative monitoring of a broad suite of wildlife and their habitats will be sought

through the participation of nongovernmental organizations (NGOs), universities, and volunteers in the Refuge System's Inventory and Monitoring program for development of standardized survey methods, cataloging and analyzing Refuge information.

Invasive and Exotic Species: Efforts would be made to prevent the establishment of exotic invasive species and pest species.

Bluff Lake: Deep water habitats within Bluff Lake would be created through dirt excavation to ensure consistency in recreational fisheries resources (*i.e.,* crappie, bass, and sunfish). Excavated soil from the creation of the deep water habitat would be used to create islands within the lake to serve as bird rookery sites. Other existing water control structures on Bluff Lake and in areas upstream of the lake may also be modified or removed to allow fish passage. Paddlefish and Gulf Coast Walleye could benefit from the restoration. Additional ephemeral pools for amphibians would be artificially created throughout the Refuge through excavation in areas where excess water impedes road maintenance or threatens sedimentation of streams.

Morgan Hill Prairie: The Morgan Hill Prairie Demonstration Area would remain but be reduced by more than 50 percent in size, and the remaining area would be restored into habitats similar to that indicated by historic conditions.

Fields: Existing old fields that would not be a direct benefit to federally protected species or waterfowl would continue to be managed as old field sites for the benefit of native grassland species. Old fields that would be a direct benefit to federally protected species or waterfowl would be restored to historical species compositions through natural regeneration or the manual planting of trees. No new field sites would be created.

Forest Management: Active forest management, including silvicultural treatments, prescribed fire, and chemical and/or mechanical midstory reduction, would occur throughout the Refuge's habitats to achieve desired historic forest conditions, greater habitat diversity and greater forest structure to benefit RCW, forest interior birds, and a wider range of native wildlife. Upland forests would be managed for historic conditions and, when applicable, management would emphasize providing the needed habitat for federally listed species. If needed to support federally listed species, active forest management would occur using a variety of techniques, including timber harvest, prescribed fire, and chemical and/or mechanical midstory reduction.

Resource Protection

Cultural Resources: To protect cultural resources, completing a comprehensive, Refuge-wide survey of archeological sites would be the goal as well as individual cultural resource surveys as needed for specific projects or sites. Partnerships would be developed with other agencies, institutions, Tribes, and other cultural groups, to seek ideas and possibly share staff positions. The Refuge would improve management and interpretation of the Refuge's cultural resources.

Land Acquisition: Conservation partnerships would be developed with neighboring landowners to have the greatest impact on maintaining or restoring the biological integrity of the local community. Fee title acquisition from willing sellers will focus on lands within the existing approved acquisition boundary that will most efficiently assist the Refuge in meeting the purposes for which it was established and the mission of the Service.

Research Natural Areas (RNA): Under this alternative the two RNAs would no longer remain under this designation and would be managed as part of the larger surrounding units of similar type and managed for their historic conditions.

Staff: A second wildlife law enforcement officer would be established, in combination with possible collateral duty officer positions to assist in protecting natural and cultural resources, along with public safety.

Visitor Services

The current level of visitor services programs would be expanded for the general public, and attempts made to provide more access for users with disabilities and youth. This alternative would establish a ''Connecting People with Nature'' area to consolidate activities and users requiring greater support to enjoy wildlife dependent activities.

All existing wildlife-dependent uses and the supporting facilities would be maintained and, if resources are available, enhanced through possible increase and better maintenance in overlooks, boardwalks, and trails. An effort would be made to increase visitor safety and enjoyment through establishment of parking areas, improved management of vehicle flow, creation of paved walking and biking trails, and roadside bike lanes along Bluff Lake and Loakfoma Roads. Refuge regulatory and informational signs would receive priority.

Public activities found compatible include bicycle, boating, and picnicking in association with wildlife-dependent activities, geocaching for environmental education, recreational fishing and hunting, wildlife observation, wildlife photography, and environmental education and interpretation.

Hunting: the Service would develop a weeklong large game (turkey and deer) hunt program to provide increased opportunities for disabled hunters in exchange for a one-week reduction in the general gun deer and turkey seasons. Deer hunting opportunities overall would be increased. The Service would work with the Mississippi Department of Wildlife, Fisheries and Parks to develop family hunting and fishing opportunities.

Fishing: Fishing opportunities would be expanded to include year-round designated bank fishing areas on Bluff Lake's south shore.

Fees: Alternative funding mechanisms, such as a general user fee under the Fee Program, would be used to spread costs of programs across all users. This alternative would continue participation in the existing Fee Program. Changes within the program would include establishment of a general access pass for all users to assist in the maintenance and development of public use programs and facilities (*e.g.,* Daily Pass, Weekly Pass, or Annual Pass). Current Federal duck stamps and other congressionally authorized entrance fee passes would be accepted as a Refuge access pass. This additional fee would allow the Refuge to fully support and improve the Refuge's public use programs to better meet public interest. Without additional fees, the current level of public use would not be sustainable based on base funding alone.

Partnerships: Partnerships to conduct environmental education and off-site activities and increase volunteer involvement in all Refuge programs would be established. More effort would be placed toward developing cooperative programs sponsored through the Refuge's Friends group.

Staff: The current staff of 9 employees would be reorganized, with a goal of reaching 13 staff; this is still less than the optimal staff level of 18 as recommended within the 2008 Final Report for the Staffing Model for Field Stations.

Authority: This notice is published under the authority of the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd *et seq.*).

Dated: February 27, 2015.

Mike Oetker,

Acting Regional Director.

[FR Doc. 2015–07356 Filed 3–30–15; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–17869; PPWOCRADI0, PCU00RP14.R50000]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before March 7, 2015. Pursuant to section 60.13 of 36 CFR part 60, written comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation. Comments may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., MS 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service,1201 Eye St. NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by April 15, 2015. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: March 13, 2015.

J. Paul Loether,

Chief, National Register of Historic Places/ National Historic Landmarks Program.

IOWA

Polk County

Equitable Life Insurance Company of Iowa Building, 604 Locust St. & 316 6th Ave., Des Moines, 15000154

MARYLAND

Allegany County

Evergreen, 15603 Trimble Rd. NW., Mount Savage, 15000155

MICHIGAN

Allegan County

Francis Metallic Surfboat, 130 W. Center St., Douglas, 15000156

Branch County

Beardsley, Ezra E. and Florence (Holmes), House, 1063 Holmes Rd., Bronson Township, 15000157

Jackson County

Otsego Hotel, 102–106 Francis St., Jackson, 15000158

Wayne County

Temple Baptist Church—King Solomon Baptist Church, 6102 & 6125 14th St., Detroit, 15000159

MONTANA

Yellowstone County

Graf, Arnold, House, 633 Highland Park Dr., Billings, 15000160

NORTH CAROLINA

Cabarrus County

Coleman—Franklin—Cannon Mill, 625 Main St. SW., Concord, 15000161

Duplin County

Carter—Simmons House, 218 Coy Smith Rd., Albertson, 15000162

Guilford County

Carolina Casket Company, 812 Millis St., High Point, 15000163

Henderson County

Sewell, Dillard B. and Georgia, House, 64 Clipper Ln., Penrose, 15000164

Orange County

Chapel Hill Historic District (Boundary Increase), Roughly bounded by Carolina Ave., North, Cameron & Columbia Sts., Chapel Hill, 15000165

Polk County

Stone Hedge, 222 Stone Hedge Ln., Tryon, 15000166

OREGON

Multnomah County

Ott, David and Marianne, House, 2075 Palmblad Rd., Gresham, 15000167

A request for removal has been received for the following resource:

MICHIGAN

Bay County

Bay City Bascule Bridge, (Highway Bridges of Michigan MPS) M–13/M–84 over East Channel of Saginaw R., Bay City, 99001465

[FR Doc. 2015–07276 Filed 3–30–15; 8:45 am]

BILLING CODE 4312–51–P

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

Meeting of the Advisory Committee; Meeting

AGENCY: Joint Board for the Enrollment of Actuaries.

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The Executive Director of the Joint Board for the Enrollment of Actuaries gives notice of a closed meeting of the Advisory Committee on Actuarial Examinations.

DATES: The meeting will be held on April 27, 2015, from 8:30 a.m. to 5:00 p.m.

ADDRESSES: The meeting will be held at The Savitz Organization, 1845 Walnut Street, 14th Floor, Philadelphia, PA 19103.

FOR FURTHER INFORMATION CONTACT: Patrick W. McDonough, Executive Director of the Joint Board for the Enrollment of Actuaries, 703–414–3163.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Advisory Committee on Actuarial Examinations will meet at The Savitz Organization, 1845 Walnut Street, 14th Floor, Philadelphia, PA 19103.

The purpose of the meeting is to discuss topics and questions that may be recommended for inclusion on future Joint Board examinations in actuarial mathematics, pension law and methodology referred to in 29 U.S.C. 1242(a)(1)(B).

A determination has been made as required by section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. App., that the subject of the meeting falls within the exception to the open meeting requirement set forth in Title 5 U.S.C. 552b(c)(9)(B), and that the public interest requires that such meeting be closed to public participation.

Dated: March 25, 2015.

Patrick W. McDonough,

Executive Director, Joint Board for the Enrollment of Actuaries.

[FR Doc. 2015–07335 Filed 3–30–15; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

On March 23, 2015, the Department of Justice lodged a proposed consent decree with the United States District

Court for the Middle District of Georgia in the lawsuit entitled *United States* v. *Richard Middleton, et al.,* Civil Action No. 1:11–cv–00127–WLS.

The proposed consent decree resolves the United States' claims against: Richard Middleton, Circle Environmental, Inc. and Waterpollutionsolutions.com, Inc. (collectively the ''Settling Defendants''), for cost recovery under Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA'') relating to the release or threatened release of hazardous substances into the environment at the Circle Environmental #1 and #2 Superfund Sites (the ''Sites'') in Terrell County, Georgia. Under the terms of the proposed consent decree, Settling Defendants will reimburse the United States' past costs in connection with the removal actions at the Sites in the amount of $285,000. In return, the United States agrees not to sue or take administrative action against Settling Defendants under Section 107 of CERCLA for past response costs. The case remains open against BSJR, LLC.

The publication of this notice opens a period for public comment on the consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *Richard Middleton et al.,* D.J. Ref. No. 90–11–3–10265. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the consent decree may be examined and downloaded at this Justice Department Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* We will provide a paper copy of the consent decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $5.50 (25 cents per page reproduction cost) payable to the United States Treasury for a copy of the consent decree with Appendices, or $4.50 (25 cents per page reproduction cost) for a copy of the consent decree without Appendices.

Henry S. Friedman,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2015–07307 Filed 3–30–15; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Occupational Exposure to Hazardous Chemicals in Laboratories Standard

ACTION: Notice.

SUMMARY: On March 31, 2015, the Department of Labor (DOL) will submit the Occupational Safety and Health Administration (OSHA) sponsored information collection request (ICR) titled, ''Occupational Exposure to Hazardous Chemicals in Laboratories Standard,'' to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.* Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before April 30, 2015.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201502-1218-002* (this link will only become active on April 1, 2015) or by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–OSHA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: This ICR seeks to extend PRA authority for the Occupational Exposure to Hazardous Chemicals in Laboratories Standard information collection codified in regulation 29 CFR 1910.1450. The Standard applies to any Occupational Safety and Health Act of 1970 (OSH Act) laboratory that uses hazardous chemicals in accordance with the Standard's definitions for *laboratory use of hazardous chemicals* and *laboratory scale.* The Standard requires such a laboratory to maintain worker exposures at or below the permissible exposure limits specified for the hazardous chemicals in 29 CFR part 1910, subpart Z. A laboratory does so by developing a written Chemical Hygiene Plan (CHP) that describes: Standard operating procedures for using hazardous chemicals; hazard-control techniques; equipment-reliability measures; worker information-and-training programs; conditions under which the employer must approve operations, procedures, and activities before implementation; and medical consultations and examinations. The CHP also designates personnel responsible for implementing the CHP, and specifies the procedures used to provide additional protection to workers exposed to particularly hazardous chemicals. OSH Act sections 2(b)(9), (6), and 8(c) authorize this information collection. See 29 U.S.C. 651(b)(9), 655, and 657.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1218–0131.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the current approval for this collection is scheduled to expire on March 31, 2015. The DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on December 15, 2014 (79 FR 74113).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section by April 30, 2015. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1218–0131. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including 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.

Agency: DOL–OSHA.

Title of Collection: Occupational Exposure to Hazardous Chemicals in Laboratories Standard.

OMB Control Number: 1218–0131.

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

Total Estimated Number of Respondents: 64,404.

Total Estimated Number of Responses: 1,026,010.

Total Estimated Annual Time Burden: 332,350 hours.

Total Estimated Annual Other Costs Burden: $46,540,670.

Dated: March 25, 2015.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2015–07278 Filed 3–30–15; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; National Longitudinal Survey of Youth 1997

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Bureau of Labor Statistics (BLS) sponsored information collection request (ICR) revision titled, ''National Longitudinal Survey of Youth 1997,'' to the Office of Management and Budget (OMB) for review and approval for use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 *et seq.*). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before April 30, 2015.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201501-1220-003* (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–BLS, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor—OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: This ICR seeks approval under the PRA for revisions to the National Longitudinal Survey of Youth 1997 information collection. The National Longitudinal Survey of Youth 1997 (NLSY97) includes respondents born from 1980 through 1984 and lived in the United States when the survey began in 1997. The primary objective of the survey is to study the transition from full-time schooling to the establishment of careers and families. The longitudinal focus of the survey requires information to be collected about the same individuals over many years in order to trace their education, training, work experience, fertility, income, and program participation. Research based on the NLSY97 contributes to the formation of national policy in the areas of education, training, employment programs, and school-to-work transitions. This information collection has been classified as a revision, because there have been a few modifications to the existing NLSY97 questionnaire. The BLS Authorizing Statute authorizes this information collection. *See* 29 U.S.C. 1, 2.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1220–0157. The current approval is scheduled to expire on June 30, 2015; however, the DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. New requirements would only take effect upon OMB approval. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on December 8, 2014 (79 FR 72704).

Interested parties are encouraged to send comments to the OMB, Office of

Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1220–0157. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including 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.

Agency: DOL–BLS.

Title of Collection: National Longitudinal Survey of Youth 1997.

OMB Control Number: 1220–0157.

Affected Public: Individuals or Households.

Total Estimated Number of Respondents: 7,400.

Total Estimated Number of Responses: 8,694

Total Estimated Annual Time Burden: 7,682 hours.

Total Estimated Annual Other Costs Burden: $0.

Dated: March 25, 2015.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2015–07297 Filed 3–30–15; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Employee Retirement Income Security Act Section 408(b)(2) Regulation

ACTION: Notice.

SUMMARY: On March 31, 2015, the Department of Labor (DOL) will submit the Employee Benefits Security Administration (EBSA) sponsored information collection request (ICR) titled, ''Employee Retirement Income Security Act Section 408(b)(2) Regulation,'' to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.* Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before April 30, 2015.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201503-1210-002* (this link will only become active on April 1, 2015) or by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–EBSA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

For Further Information: Contact Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: This ICR seeks to extend PRA authority for the Employee Retirement Income Security Act (ERISA) section 408(b)(2) regulation information collection requirements codified in regulations 29 CFR 2550.408(b)(-2(c) that require certain retirement plan service providers to disclose information about their compensation and potential conflicts of interest to responsible plan fiduciaries. These disclosure requirements provide guidance for compliance with a statutory exemption from ERISA prohibited transaction provisions. Failing to satisfy the 408(b)(2) regulation disclosure requirements may result in provision of services prohibited by ERISA section 406(a)(1)(C), with consequences for both the responsible plan fiduciary and the covered service provider. ERISA section 408(b)(2) authorizes this information collection. *See* 29 U.S.C. 1108(b)(2).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1210–0133.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the current approval for this collection is scheduled to expire on March 31, 2015. The DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on October 15, 2014 (79 FR 61903).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section by April 30, 2015. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1210–0133. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including 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.

Agency: DOL–EBSA.

Title of Collection: Employee Retirement Income Security Act Section 408(b)(2) Regulation.

OMB Control Number: 1210–0133.

Affected Public: Private Sector—businesses and other for profits.

Total Estimated Number of Respondents: 51,000.

Total Estimated Number of Responses: 1,472,000.

Total Estimated Annual Time Burden: 1,040,000 hours.

Total Estimated Annual Other Costs Burden: $1,336,000.

Dated: March 25, 2015.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2015–07279 Filed 3–30–15; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–85,674]

Levi Strauss & Co., Eugene, Oregon; Notice of Affirmative Determination Regarding Application for Reconsideration

By application dated on February 6, 2015, a state workforce official requested administrative reconsideration of the negative determination regarding workers' eligibility to apply for worker adjustment assistance applicable to workers and former workers of Levi Strauss & Company, Eugene, Oregon. The determination was issued on January 14, 2015 and the Notice of Determination was published in the **Federal Register** on February 18, 2015 (80 FR 8692).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The initial investigation resulted in a negative determination based on the findings that worker separations at Levi Strauss & Co., Eugene, Oregon are not attributable to increased imports of articles or a shift in production of articles to a foreign country.

The request for reconsideration asserts that although the workers are engaged in service-related activities, the workers perform production forecasting activities and order management support of Levi Strauss' production of clothing and apparel. The reconsideration application concludes that both activities drive production and has been shifted to a foreign country.

The Department of Labor has carefully reviewed the request for reconsideration and the existing record, and has determined that the Department will conduct further investigation to determine if the workers meet the eligibility requirements of the Trade Act of 1974.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the U.S. Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 10th day of March 2015.

Michael W. Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2015–07237 Filed 3–30–15; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Availability of Funds and Funding Opportunity Announcement for Training To Work 3—Adult Reentry

AGENCY: Employment and Training Administration, Labor.

ACTION: Funding Opportunity Announcement (FOA).

Funding Opportunity Number: FOA–ETA–15–07.

SUMMARY: The Employment and Training Administration (ETA), U.S. Department of Labor, announces the availability of approximately $27 million in grant funds authorized by the Workforce Investment Act and the Second Chance Act of 2007 for Training to Work 3—Adult Reentry. ETA plans to award approximately 20 grants of up to $1,360,000 each to serve male and female ex-offenders, referred to in the FOA as returning citizens.

This FOA provides the opportunity for organizations to develop and implement career pathways programs in demand sectors and occupations for men and women, including veterans, and people with disabilities, who are at least 18 years old and who are enrolled in work release programs. The purpose of this program is to assist returning citizens transition back into their communities by gaining industry-recognized credentials and securing employment.

The complete FOA and any subsequent FOA amendments in connection with this solicitation are described in further detail on ETA's Web site at *http://www.doleta.gov/grants/* or on *http://www.grants.gov.* The Web sites provide application information, eligibility requirements, review and selection procedures, and other program requirements governing this solicitation.

DATES: The closing date for receipt of applications under this announcement is May 1, 2015. Applications must be received no later than 4:00:00 p.m. Eastern Time.

FOR FURTHER INFORMATION CONTACT: Brinda Ruggles, 200 Constitution Avenue NW., Room N–4716, Washington, DC 20210; Telephone: 202–693–3437.

The Grant Officer for this FOA is Melissa Abdullah.

Signed March 24, 2015 in Washington, DC.

Eric D. Luetkenhaus,

Grant Officer/Division Chief, Employment and Training Administration.

[FR Doc. 2015–07236 Filed 3–30–15; 8:45 am]

BILLING CODE 4510–FN–P

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meetings; National Science Board

The National Science Board's Committee on Programs and Plans (CPP) and Subcommittee on Facilities (SCF), pursuant to NSF regulations (45 CFR part 614), the National Science Foundation Act, as amended (42 U.S.C. 1862n–5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice of the scheduling of a teleconference for the transaction of National Science Board business, as follows:

DATE AND TIME: Friday, April 3, 2015 at 1 p.m. EDT.

SUBJECT MATTER: Chairmen's remarks and discussion of NSF's draft response

to the Decadal Survey of Ocean Sciences (DSOS) report.

STATUS: Closed.

This meeting will be held by teleconference. Please refer to the National Science Board Web site *www.nsf.gov/nsb* for additional information and schedule updates (time, place, subject matter or status of meeting) which may be found at *http://www.nsf.gov/nsb/notices/.* Point of contact for this meeting is John Veysey at *jveysey@nsf.gov.*

Ann Bushmiller,

Senior Counsel to the National Science Board.

[FR Doc. 2015–07467 Filed 3–27–15; 4:15 pm]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS); Meeting of the ACRS Subcommittee on Metallurgy & Reactor Fuels; Notice of Meeting

The ACRS Subcommittee on Metallurgy & Reactor Fuels will hold a meeting on April 7, 2015, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, April 7, 2015—8:30 a.m. until 5:00 p.m.

The Subcommittee will discuss Consequential Steam Generator Tube Rupture (C–SGTR). The Subcommittee will hear presentations by and hold discussions with the NRC staff and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Christopher Brown (Telephone 301–415–7111 or Email: *Christopher.Brown@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 13, 2014 (79 FR 59307–59308).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs.* Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

If attending this meeting, please enter through the One White Flint North building, 11555 Rockville Pike, Rockville, MD. After registering with security, please contact Mr. Theron Brown (Telephone 240–888–9835) to be escorted to the meeting room.

Dated: March 25, 2015.

Mark L. Banks,

Chief, Technical Support Branch, Advisory Committee on Reactor Safeguards.

[FR Doc. 2015–07350 Filed 3–30–15; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 52–025 and 52–026; NRC–2015–0074]

Vogtle Electric Generating Station, Units 3 and 4; Southern Nuclear Operating Company; Annex Building Structure and Layout Changes

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption and combined license amendment issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is granting an exemption to allow a departure from the certification information of Tier 1 of the generic design control document (DCD) and is issuing License Amendment No. 27 to Combined Licenses (COL), NPF–91 and NPF–92. The COLs were issued to Southern Nuclear Operating Company, Inc., and Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, and the City of Dalton, Georgia (the licensee); for construction and operation of the Vogtle Electric Generating Plant (VEGP), Units 3 and 4, located in Burke County, Georgia.

The granting of the exemption allows the changes to Tier 1 information requested in the amendment. Because the acceptability of the exemption was determined in part by the acceptability of the amendment, the exemption and amendment are being issued concurrently.

ADDRESSES: Please refer to Docket ID NRC–2015–0074 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for Docket ID NRC–2015–0074. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- NRC's Agencywide Documents Access and Management System (ADAMS): You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it available in ADAMS) is provided the first time that a document is referenced. The request for the amendment and exemption were submitted by letter dated August 22, 2014 (ADAMS Accession No. ML14234A423). The licensee revised this request by letter dated September 23, 2014 (ADAMS Accession No. ML14266A656), and supplemented the request by letters dated October 30 and November 6, 2014 (ADAMS Accession Nos. ML14303A660 and ML14310A831, respectively).
- NRC's PDR: You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Chandu Patel, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–3025; email: *Chandu.Patel@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is granting an exemption from Paragraph B of Section III, ''Scope and Contents,'' of appendix D, ''Design Certification Rule for the AP1000,'' to part 52 of Title 10 of the *Code of Federal Regulations* (10 CFR) and issuing License Amendment No. 27 to COLs, NPF–91 and NPF–92, to the licensee. The exemption is required by Paragraph A.4 of Section VIII, ''Processes for Changes and Departures,'' appendix D to 10 CFR part 52 to allow the licensee to depart from Tier 1 information. With the requested amendment, the licensee sought:

(a) Installation of an additional non-safety-related battery;

(b) Revision to the annex building internal configuration by converting a shift turnover room to a battery room, adding an additional battery equipment room, and moving a fire area wall;

(c) Increase in the height of a room in the annex building; and

(d) Increase in thicknesses of certain annex building floor slabs.

In addition, the proposed changes also include reconfiguring existing rooms and related room, wall, and access path changes and making changes to the corresponding Tier 1 information in appendix C to the Combined Licenses.

These changes were necessary as part of structural and layout design modifications to the annex building.

Part of the justification for granting the exemption was provided by the review of the amendment. Because the exemption is necessary in order to issue the requested license amendment, the NRC granted the exemption and issued the amendment concurrently, rather than in sequence. This included issuing a combined safety evaluation containing the NRC staff's review of both the exemption request and the license amendment. The exemption met all applicable regulatory criteria set forth in 10 CFR 50.12, 10 CFR 52.7, and Section VIII.A.4. of appendix D to 10 CFR part 52. The license amendment was found to be acceptable as well. The combined safety evaluation is available in ADAMS under Accession No. ML14323A649.

Identical exemption documents (except for referenced unit numbers and license numbers) were issued to the licensee for VEGP Units 3 and 4 (COLs NPF–91 and NPF–92). The exemption documents for VEGP Units 3 and 4 can be found in ADAMS under Accession Nos. ML14323A623 and ML14323A629, respectively. The exemption is reproduced (with the exception of abbreviated titles and additional citations) in Section II of this document. The amendment documents for COLs NPF–91 and NPF–92 are available in ADAMS under Accession Nos. ML14323A635 and ML14323A640, respectively. A summary of the amendment documents is provided in Section III of this document.

II. Exemption

Reproduced below is the exemption document issued to Vogtle Units 3 and Unit 4. It makes reference to the combined safety evaluation that provides the reasoning for the findings made by the NRC (and listed under Item 1) in order to grant the exemption:

1. In a letter dated August 22, 2014, and revised by letter dated September 23, 2014, and supplemented by letters dated October 30 and November 6, 2014, the licensee requested from the Commission an exemption from the provisions of 10 CFR part 52, appendix D, Section III.B, as part of license amendment request 13–038, ''Annex Building Structure and Layout Changes'' (LAR–13–038).

For the reasons set forth in Section 3.1, ''Evaluation of Exemption,'' of the NRC staff's Safety Evaluation, which can be found in ADAMS under Accession No. ML14323A649, the Commission finds that:

A. The exemption is authorized by law;

B. the exemption presents no undue risk to public health and safety;

C. the exemption is consistent with the common defense and security;

D. special circumstances are present in that the application of the rule in this circumstance is not necessary to serve the underlying purpose of the rule;

E. the special circumstances outweigh any decrease in safety that may result from the reduction in standardization caused by the exemption; and

F. the exemption will not result in a significant decrease in the level of safety otherwise provided by the design.

2. Accordingly, the licensee is granted an exemption to the provisions of 10 CFR part 52, appendix D, Section III.B, to allow departures from the certified Design Control Document Tier 1, Table 3.3–1, ''Definition of Wall Thickness for Nuclear Island Buildings, Turbine Building, and Annex Building,'' and Figure 3.3–11A, ''Annex Building Plan View at Elevation 100′-0″ (sensitive unclassified non-safeguards information (SUNSI)). The proposed changes include non-system based design descriptions and other detailed information related to these design descriptions and associated ITAAC, such changes to concrete floor thicknesses, annex building wall location descriptions, and the interior configuration of the annex building as described in the licensee's request dated August 22, 2014, and revised by letter dated September 23, 2014, and supplemented by letters dated October 30 and November 6, 2014. This exemption is related to, and necessary for the granting of License Amendment No. 27, which is being issued concurrently with this exemption.

3. As explained in Section 3.1, ''Evaluation of Exemption,'' of the NRC staff's Safety Evaluation (ADAMS Accession No. ML14323A649), this exemption meets the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(9). Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment needs to be prepared in connection with the issuance of the exemption.

4. This exemption is effective as of December 23, 2014.

III. License Amendment Request

By letter dated August 22, 2014, and revised by letter dated September 23, 2014, and supplemented by letters dated October 30 and November 6, 2014, the licensee requested that the NRC amend the COLs for VEGP, Units 3 and 4, COLs NPF–91 and NPF–92. The proposed amendment would depart from Tier 2 material previously incorporated into the Updated Final Safety Evaluation Report (UFSAR). Additionally, these Tier 2 changes involve changes to Tier 1 Information in the UFSAR, and the proposed amendment would also revise the associated material that has been included in Appendix C of each of the VEGP, Units 3 and 4 COLs. The requested amendment would revise the Tier 2 UFSAR information by revising UFSAR to (1) install an additional non-safety-related battery; (2) revise the annex building internal configuration; (3) increase the height of Containment Filtration Room A (Room 40551) by 4 feet from elevation (EL.) 146′-3″ to 150′-3″; and (4) increase concrete thicknesses from 6 inches to 8 inches in a number of floor slabs.

Additionally, the licensee proposed consistency and editorial changes to Tier 1 Table 3.3–1, as well as the corresponding information in Appendix C. These changes were necessary as part of a design modification to the structure and layout of the annex building.

The Commission has determined for these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to facility operating license or combined license, as applicable, proposed no significant hazards consideration determination, and opportunity for a hearing in connection with these actions, was published in the **Federal Register** on October 14, 2014 (79 FR 61662). The September 23, 2014, application revision, and the October 30 and November 6, 2014, supplements had no effect on the no significant hazards consideration determination, and no comments were received during the 60-day comment period.

The Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments.

IV. Conclusion

Using the reasons set forth in the combined safety evaluation, the staff granted the exemption and issued the amendment that the licensee requested on August 22, 2014, and revised by letter dated September 23, 2014, and supplemented by letters dated October 30 and November 6, 2014. The exemption and amendment were issued on December 23, 2014 as part of a combined package to the licensee (ADAMS Accession No. ML14323A609).

Dated at Rockville, Maryland, this 23rd day of March 2015.

For the Nuclear Regulatory Commission.

Lawrence Burkhart,

Chief, Licensing Branch 4, Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. 2015–07277 Filed 3–30–15; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2015–0073]

Biweekly Notice; Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving No Significant Hazards Considerations

AGENCY: Nuclear Regulatory Commission.

ACTION: Biweekly notice.

SUMMARY: Pursuant to Section 189a. (2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (NRC) is publishing this regular biweekly notice. The Act requires the Commission to publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license or combined license, as applicable, upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from March 5, 2015 to March 18, 2015. The last biweekly notice was published on March 17, 2015.

DATES: Comments must be filed by April 30, 2015. A request for a hearing must be filed by June 1, 2015.

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

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2015–0073. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Cindy Bladey, Office of Administration, Mail Stop: OWFN–12–H08, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

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

FOR FURTHER INFORMATION CONTACT: Kay Goldstein, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001; telephone: 301–415–1506, email: *Kay.Goldstein@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2015–0073 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2015–0073.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in the **SUPPLEMENTARY INFORMATION** section.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2015–0073, facility name, unit number(s), application date, and subject in your comment submission.

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

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

submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Combined Licenses and Proposed No Significant Hazards Consideration Determination

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in § 50.92 of Title 10 of the *Code of Federal Regulations* (10 CFR), this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

A. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license or combined license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the NRC's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. The NRC's regulations are accessible electronically from the NRC Library on the NRC's Web site at *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the requestor/petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the requestor/petitioner intends to rely in proving the contention at the hearing. The requestor/petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the requestor/petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the requestor/petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of any amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

B. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory

documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/getting-started.html.* System requirements for accessing the E-Submittal server are detailed in the NRC's ''Guidance for Electronic Submission,'' which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC's Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the ''Contact Us'' link located on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/ehd/,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. However, a request to intervene will require including information on local residence in order to demonstrate a proximity assertion of interest in the proceeding. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Petitions for leave to intervene must be filed no later than 60 days from the date of publication of this notice. Requests for hearing, petitions for leave to intervene, and motions for leave to file new or amended contentions that are filed after the 60-day deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i)–(iii).

For further details with respect to these license amendment applications, see the application for amendment which is available for public inspection in ADAMS and at the NRC's PDR. For additional direction on accessing information related to this document, see the ''Obtaining Information and Submitting Comments'' section of this document.

Duke Energy Carolinas, LLC, Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: November 24, 2014. A publicly-

available version is in ADAMS under Accession No. ML14330A327.

Description of amendment request: The proposed amendments would modify the Technical Specifications (TS) to correct non-conservative setpoints. Specifically, modify the Allowable Value parameter and the Nominal Trip Setpoint for the TS 3.3.2 Table 3.3.2–1, ''Engineered Safety Feature Actuation System Instrumentation'' function for Auxiliary Feedwater Loss of Offsite Power (Function 6.d.) and for the TS 3.3.5 Loss of Voltage function in Surveillance Requirement (SR) 3.3.5.2. As part of the change, the licensee is also proposing to add the applicable footnotes in accordance with TSTF–493, Revision 4, ''Clarify Application of Setpoint Methodology for LSSS [limiting safety system set point] Functions.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below and staff's changes/additions are provided in [ ]:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

Duke Energy requests NRC review and approval to revise the Allowable Value parameter for the Technical Specification (TS) 3.3.2 Table 3.3.2–1, ''Engineered Safety Feature Actuation System Instrumentation'' function for Auxiliary Feedwater Loss of Offsite Power (Function 6.d.) and for the TS 3.3.5 Loss of Voltage function in Surveillance Requirement (SR) 3.3.5.2 in order to make this parameter more restrictive. The existing parameter was determined to be non-conservative and this parameter is presently classified as Operable But Degraded in the Catawba Corrective Action Program. In addition, the Nominal Trip Setpoint parameter for this function is being slightly lowered in order to gain additional margin. Finally, as part of this License Amendment Request (LAR), applicable footnotes are also being added to the affected TS 3.3.2 function in accordance with TS Task Force Traveler [(TSTF)] TSTF–493, Revision 4, ''Clarify Application of Setpoint Methodology for LSSS Functions.'' The more restrictive Allowable Value will preclude the potential for a double sequencing event to occur under the condition of a Loss of Coolant Accident (LOCA) load sequencer actuation with a pre-existing degraded voltage condition on the essential buses. These proposed changes will not increase the probability of occurrence of any design basis accident since the affected function, in and of itself, cannot initiate an accident. Should a LOCA occur, the proposed changes will ensure that the sequencer operates properly in order to mitigate the consequences of the event. Appropriate calculations were developed to substantiate the revised TS parameters proposed in this LAR. There will be no impact on the source term or pathways assumed in accidents previously evaluated. No analysis assumptions will be violated and there will be no adverse effects on onsite or offsite doses as the result of an accident. Adoption of the TSTF–493 footnotes for the respective SRs will ensure that the function's channels will continue to behave in accordance with safety analysis assumptions and the channel performance assumptions in the setpoint methodology.

Therefore, the proposed amendments do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed amendments do not change the methods governing normal plant operation; nor are the methods utilized to respond to plant transients altered. In addition, the proposed changes to the affected TS parameters and the adoption of the TSTF–493 footnotes will not create the potential for any new initiating events or transients to occur in the actual physical plant.

Therefore, the proposed amendments do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in the margin of safety?

Response: No.

Margin of safety is related to the confidence in the ability of the fission product barriers to perform their design functions during and following an accident. These barriers include the fuel cladding, the reactor coolant system, and the containment system. The proposed changes will assure the acceptable operation of the affected function under all postulated transient and accident conditions. This will ensure that all applicable design and safety limits are satisfied such that the fission product barriers will continue to perform their design functions.

Therefore, the proposed amendments do not involve a significant reduction in a margin of safety.

Based on the preceding discussion, Duke Energy concludes that the proposed amendments do not involve a significant hazards consideration under the standards set forth in 10 CFR 50.92(c), and, accordingly, a finding of ''no significant hazards consideration'' is justified.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lara S. Nichols, Associate General Counsel, Duke Energy Corporation, 526 South Church Street—EC07H, Charlotte, NC 28202.

NRC Branch Chief: Robert J. Pascarelli.

Duke Energy Carolinas, LLC, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of amendment request: March 14, 2014. A publicly-available version is in ADAMS under Accession No. ML14078A037.

Description of amendment request: The amendment would revise the Technical Specifications (TS) for the Inservice Testing Program to reflect the current edition of the American Society of Mechanical Engineers (ASME) Code that is referenced in 10 CFR 50.55a(b).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change corrects a typographical error in TS 5.5.8, ''Reactor Coolant Pump Flywheel Inspection Program,'' and revises TS 5.5.9, ''Inservice Testing Program,'' for consistency with the requirements of 10 CFR 50.55a(f)(4) regarding the inservice testing of pumps and valves which are classified as ASME Code Class 1, Class 2 and Class 3. The proposed change incorporates revisions to the ASME Code that result in a net improvement in the measures for testing pumps and valves.

The proposed change does not impact any accident initiators or analyzed events or assumed mitigation of accident or transient events. The proposed change does not involve the addition or removal of any equipment, or any design changes to the facility.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change corrects a typographical error in TS 5.5.8, ''Reactor Coolant Pump Flywheel Inspection Program,'' and revises TS 5.5.9, ''Inservice Testing Program,'' for consistency with the requirements of 10 CFR 50.55a(f)(4) regarding the inservice testing of pumps and valves which are classified as ASME Code Class 1, Class 2 and Class 3. The proposed change incorporates revisions to the ASME Code that result in a net improvement in the measures for testing pumps and valves.

The proposed change does not involve a modification to the physical configuration of

the plant (*i.e.,* no new equipment will be installed), nor does it involve a change in the methods governing normal plant operation. The proposed change will not impose any new or different requirements or introduce a new accident initiator, accident precursor, or malfunction mechanism. Additionally, there is no change in the types or increases in the amounts of any effluent that may be released offsite and there is no increase in individual or cumulative occupational exposure.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change corrects a typographical error in TS 5.5.8, ''Reactor Coolant Pump Flywheel Inspection Program,'' and revises TS 5.5.9, ''lnservice Testing Program,'' for consistency with the requirements of 10 CFR 50.55a(f)(4) regarding the inservice testing of pumps and valves which are classified as ASME Code Class 1, Class 2 and Class 3. The proposed change incorporates revisions to the ASME Code that result in a net improvement in the measures for testing pumps and valves. The safety function of the affected pumps and valves will be maintained. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lara S. Nichols, Deputy General Counsel, Duke Energy Corporation, 550 South Tryon Street—DEC45A, Charlotte, NC 28202–1802.

NRC Branch Chief: Robert J. Pascarelli.

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Entergy Mississippi, Inc., Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1 (GGNS), Claiborne County, Mississippi

Date of amendment request: November 21, 2014. A publicly-available version is in ADAMS under Accession No. ML14325A520.

Description of amendment request: The amendment would change the GGNS Technical Specification (TS) 2.1.1, ''Reactor Core SLs [Safety Limits].'' Specifically, the change would revise the Minimum Critical Power Ratio (MCPR) SL stated in TS 2.1.1.2 for two-loop operation from greater than or equal to (≥) 1.11 to ≥ 1.15. Additionally, the change would revise the MCPR SL stated in TS 2.1.1.2 for single-loop operation from ≥ 1.14 to ≥ 1.15.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The Bases to TS 2.1.1.2 states that: ''The MCPR SL ensures sufficient conservatism in the operating MCPR limit that, in the event of an AOO [Anticipated Operational Occurrence] from the limiting condition of operation, at least 99.9% of the fuel rods in the core would be expected to avoid boiling transition.

This condition is met in that the GGNS Cycle 20 (C20) MCPR SL evaluation was performed in accordance with Reference 4 [NEDE–24011–P–A, ''General Electric Standard Application for Reactor Fuel (GESTAR–II'')]. The resulting values continue to ensure the conservatism described in the Bases to TS 2.1.1.2. The proposed changes also continue to ensure sufficient conservatism in the operating MCPR limit. The MCPR operating limits are presented and controlled in accordance with the GGNS Core Operating Limits Report (COLR).

The requested Technical Specification change does not involve any plant modifications or operational changes that could affect system reliability or performance or that could affect the probability of operator error. The requested change does not affect any postulated accident precursors, any accident mitigating systems, or introduce any new accident initiation mechanisms.

Therefore, the proposed change to increase the MCPR SL values does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not involve any new modes of operation, any changes to setpoints, or any plant modifications. The proposed change to the MCPR SL accounts for requirements specified in the NRC Safety Evaluation limitations and conditions associated with NEDC–33173P [''Applicability of GE Methods to Expanded Operating Domains''] and NEDC–33006P [''Licensing Topical Report—General Electric Boiling Water Reactor Maximum Extended Load Line Limit Analysis Plus'']. Compliance with the criterion for incipient boiling transition continues to be ensured. The core operating limits will continue to be developed using NRC approved methods. The proposed [MCPR SL] does not result in the creation of any new precursors to an accident.

Therefore, the proposed change does not create of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The MCPR SLs have been evaluated in accordance with Global Nuclear Fuels NRC-approved cycle-specific safety limit methodology to ensure that during normal operation and during AOO's, at least 99.9% of the fuel rods in the core are not expected to experience transition boiling. The proposed change to the [MCPR SL] accounts for requirements specified in the NRC Safety Evaluation limitations and conditions associated with NEDC–33173P and NEDC–33006P, which result in additional margin above that specified in the TS Bases.

Therefore, the proposed change to the MCPR SL does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Joseph A. Aluise, Associate General Counsel—Nuclear, Entergy Services, Inc., 639 Loyola Avenue, New Orleans, Louisiana 70113.

NRC Branch Chief: Meena K. Khanna.

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Entergy Mississippi, Inc., Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1 (GGNS), Claiborne County, Mississippi

Date of amendment request: November 21, 2014, as supplemented by letter dated February 18, 2015. Publicly-available versions are in ADAMS under Accession Nos. ML14325A752 and ML15049A536, respectively.

Description of amendment request: The proposed amendment would revise GGNS's license basis to adopt a single fluence methodology.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change adopts a single flux methodology. While Chapter 15, Accident Analysis, of the Standard Review Plan (NUREG–0800, Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants) assumes the pressure vessel does not fail, the flux methodology is not an initiator to any accident previously evaluated. Accordingly, the proposed change

to the adoption of the flux methodology has no effect on the probability of any accident previously evaluated.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change adopts a flux methodology. The change does not involve a physical alteration of the plant (*i.e.,* no new or different type of equipment will be installed) or a change in the methods governing normal plant operations. The change does not alter assumptions made in the safety analysis regarding fluence.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change adopts a single fluence methodology. The proposed change does not alter the manner in which safety limits, limiting safety system settings or limiting conditions for operation are determined. The proposed change ensures that the methodology used for fluence is in compliance with RG 1.190 requirements.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Joseph A. Aluise, Associate General Counsel—Nuclear, Entergy Services, Inc., 639 Loyola Avenue, New Orleans, Louisiana 70113.

NRC Branch Chief: Meena K. Khanna.

Exelon Generation Company, LLC, Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Units 1 and 2, Will County, Illinois

Date of amendment request: August 19, 2014. A publicly-available version is in ADAMS under Accession No. ML14231A902.

Description of amendment request: The proposed amendment would increase the technical specification (TS) surveillance requirement (SR) 3.7.9.2 allowable temperature to less than or equal to 102 °F [degree Fahrenheit].

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the Proposed Change Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated?

Response: No.

The likelihood of a malfunction of any systems, structures or components (SSCs) supported by the UHS [ultimate heat sink] is not significantly increased by increasing the allowable Ultimate Heat Sink (UHS) temperature from ≤100 °F to ≤102 °F. The UHS provides a heat sink for process and operating heat from safety related components during a transient or accident, as well as during normal operation. The proposed change does not make any physical changes to any plant SSCs, nor does it alter any of the assumptions or conditions upon which the UHS is designed. The UHS is not an initiator of any analyzed accident. All equipment supported by the UHS has been evaluated to demonstrate that their performance and operation remains as described in the UFSAR [updated final safety analysis report] with no increase in probability of failure or malfunction.

The SSCs credited to mitigate the consequences of postulated design basis accidents remain capable of performing their design basis function. The change in maximum UHS temperature has been evaluated using the UFSAR described methods to demonstrate that the UHS remains capable of removing normal operating and post-accident heat. The change in UHS temperature and resulting containment response following a postulated design basis accident has been demonstrated to not be impacted. Additionally, all the UHS supported equipment, credited in the accident analysis to mitigate an accident, has been shown to continue to perform their design function as described in the UFSAR.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the Proposed Change Create the Possibility of a New or Different Kind of Accident from any Accident Previously Evaluated?

Response: No.

The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed change does not introduce any new modes of plant operation, change the design function of any SSC, change the mode of operation of any SSC, or change any actions required when the TS limit is exceeded. There are no new equipment failure modes or malfunctions created as affected SSCs continue to operate in the same manner as previously evaluated and have been evaluated to perform as designed at the increased UHS temperature and as assumed in the accident analysis. Additionally, accident initiators remain as described in the UFSAR and no new accident initiators are postulated as a result of the increase in UHS temperature.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the Proposed Change Involve a Significant Reduction in a Margin of Safety?

Response: No.

The proposed change continues to ensure that the maximum temperature of the cooling water supplied to the plant SSCs during a UHS design basis event remains within the evaluated equipment limits and capabilities assumed in the accident analysis. The proposed change does not result in any changes to plant equipment function, including setpoints and actuations. All equipment will function as designed in the plant safety analysis without any physical modifications. The proposed change does not alter a limiting condition for operation, limiting safety system setting, or safety limit specified in the Technical Specifications.

The proposed change does not adversely impact the UHS inventory required to be available for the UFSAR described design basis accident involving the worst case 30-day period including losses for evaporation and seepage to support safe shutdown and cooldown of both Braidwood Station units. Additionally, the structural integrity of the UHS is not impacted and remains acceptable following the change, thereby ensuring that the assumptions for both UHS temperature and inventory remain valid.

Therefore, since there is no adverse impact of this change on the Braidwood Station safety analysis, there is no reduction in the margin of safety of the plant.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Attorney for licensee: Bradley J. Fewell, Associate General Counsel, Exelon Nuclear, 4300 Winfield Road, Warrenville, IL 60555.

NRC Branch Chief: Travis L. Tate

Exelon Generation Company, LLC (EGC), Docket Nos. STN 50–454 and STN 50–455, Byron Station, Units 1 and 2, Ogle County, Illinois

Date of amendment request: November 24, 2014. A publicly-available version is in ADAMS under Accession No. ML14328A800.

Description of amendment request: The proposed amendment would revise Condition I and surveillance requirement (SR) 3.7.9.3 associated with technical specification (TS) Section 3.7.9, ''Ultimate Heat Sink (UHS),'' to reflect the current design basis flood level.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards

consideration, which is presented below:

EGC has evaluated whether or not a significant hazards consideration is involved with the proposed amendment by focusing on the three standards set forth in 10 CFR 50.92(c), ''Issuance of amendment,'' as discussed below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes to revise TS 3.7.9, Condition I and SR 3.7.9.3 will ensure the operability of the SX [service water] makeup pumps to meet TS 3.7.9 LCO [Limiting Condition for Operation] requirement. The proposed change does not result in any physical changes to safety related structures, systems, or components. The probability of a flood at the river screen house (RSH) is unchanged. Since the UHS itself is not an accident initiator, the proposed change does not impact the initiators or assumptions of analyzed accidents, nor do they impact the mitigation of accidents or transient events. Consequently, the proposed change does not increase the probability of occurrence for any accident previously evaluated.

The proposed change will ensure that actions to verify operability of the deep well pumps will be taken prior to the potential for the SX makeup pumps to be adversely affected by the combined event flood high river level. Therefore, the UHS will be capable of performing its functions to mitigate accidents by serving as the heat sink for safety related equipment. Thus, the proposed change does not increase the consequences of any accident previously evaluated.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change to revise TS 3.7.9, Condition I and SR 3.7.9.3 does not change the design function or operation of the SX makeup pumps. The proposed change does not change or introduce the possibility of any new or different type of equipment, modes of system operation, failure mechanisms, malfunctions, or accident initiators. The proposed change to lower the river level value at which action is taken to verify basin levels and deep well pumps are ready to perform the UHS makeup function in the place of the SX makeup pumps will not affect the operation or function of the UHS or the deep well pumps.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed change to revise TS 3.7.9, Condition I and SR 3.7.9.3 reestablishes the margin between the design bases combined event flood level and TS 3.7.9, Condition I action level for high river level. The proposed change will ensure the operability of the SX makeup pumps to meet TS 3.7.9 LCO and do not affect the ability of the SX makeup pumps to provide the safety related source makeup to the UHS.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

Based on the above, EGC concludes that the proposed amendment does not involve a significant hazards consideration under the standards set forth in 10 CFR 50.92(c), and accordingly, a finding of no significant hazards consideration is justified.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Attorney for licensee: Bradley J. Fewell, Associate General Counsel, Exelon Nuclear, 4300 Winfield Road, Warrenville, IL 60555.

NRC Branch Chief: Travis L. Tate.

Exelon Generation Company, LLC, Docket Nos. 50–237 and 50–249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois

Exelon Generation Company, LLC, Docket Nos. 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Exelon Generation Company, LLC, Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of amendment request: December 22, 2014. A publicly-available version is in ADAMS under Accession No. ML14357A085.

Description of amendment request: The proposed amendment modifies the technical specifications (TSs) to add a new Limiting Condition for Operation (LCO) 3.10.8 to specifically permit inservice leakage and hydrostatic testing at reactor coolant system (RCS) temperatures greater than the average reactor coolant temperature for MODE 4 with the reactor shutdown. In addition, the proposed amendment includes an expanded scope of LCO 3.10.8 consistent with the NRC-approved Revision 0 of Technical Specification Task Force (TSTF) Improved Standard Technical Specification Change Traveler, TSTF–484, ''Use of TS 3.10.1 for Scram Time Testing Activities'' available in ADAMS under Accession No. ML062990425.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

EGC [Exelon Generation Company] has evaluated the proposed changes, using the criteria in 10 CFR 50.92, and has determined that the proposed changes do not involve a significant hazards consideration. The following information is provided to support a finding of no significant hazards consideration.

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes will not result in a significant change in the stored energy in the reactor vessel during the performance of the testing. The probability of an accident is not significantly increased because the proposed changes will not alter the method by which inservice leakage and hydrostatic testing is performed or significantly change the temperatures and pressures achieved to perform the test.

The consequences of previously evaluated accidents are not significantly increased because the required testing conditions provide adequate assurance that the consequences of a steam leak will be conservatively bounded by the consequences of the postulated main system line break outside of primary containment. Under these proposed changes, the secondary containment, standby gas treatment system, and associated initiation instrumentation are required to be operable during the performance of inservice leakage and hydrostatic testing and would be capable of mitigating any airborne radioactivity or steam leaks that could occur. In addition, the required Emergency Core Cooling subsystems will be more than adequate to ensure that a significant increase in consequences will not occur by ensuring that the potential for failed fuel and a subsequent increase in coolant activity above Technical Specification limits are minimized.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

As the accumulated neutron fluence on the reactor vessel increases, the Pressure-Temperature Limits in TS 3.4.9 for DNPS [Dresden Nuclear Power Station] and QCNPS [Quad Cities Nuclear Power Station and TS [technical specification] 3.4.11 for LSCS [LaSalle County Station] may eventually require that inservice leakage and hydrostatic testing be conducted at RCS [reactor coolant system] temperatures greater than the average reactor coolant temperature for MODE 4 with the reactor shutdown. However, even with the required minimum reactor coolant temperatures less than or equal to the average reactor coolant temperature for MODE 4 with the reactor shutdown, maintaining RCS

temperatures within a small band during testing can be impractical. The proposed changes will not result in a significant change in the stored energy in the reactor vessel during the performance of the testing nor will it alter the way inservice leakage and hydrostatic testing is performed or significantly change the temperatures and pressures achieved to perform the testing.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed changes and additions result in increased system operability requirements above those that currently exist during the performance of inservice leakage and hydrostatic testing. The incremental increase in stored energy in the vessel during testing will be conservatively bounded by the consequences of the postulated main steam line break outside of primary containment and analyzed margins of safety are unchanged.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

EGC has reviewed the no significant hazards determination published on August 21, 2006 (71 FR 48561) [for Technical Specification Task Force traveler TSTF–484]. The no significant hazards determination was made available on October 27, 2006 (71 FR 63050) as part of the CLIIP [Consolidated Line Item Improvement Process] Notice of Availability. EGC has concluded that the determination presented in the notice is applicable to DNPS, Units 2 and 3; LSCS, Units 1 and 2; and QCNPS, Units 1 and 2; and the determination is hereby incorporated by reference to satisfy the requirements of 10 CFR 50.91(a).

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Attorney for licensee: Bradley Fewell, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

NRC Branch Chief: Travis L. Tate.

Exelon Generation Company, LLC, Docket No. 50–373 and 50–374, LaSalle County Station (LSCS), Units 1 and 2, LaSalle County, Illinois

Date of Amendment Request: January 12, 2015. A publicly-available version is in ADAMS under Accession No. ML15012A544.

Description of amendment request: The proposed amendment would delete the limiting condition for operation (LCO) Note for Technical Specification (TS) Section 3.5.1, ''ECCS [emergency core cooling system]—Operating.'' The current Note allows the licensee to consider the low pressure coolant injection (LPCI) subsystem associated with the residual heat removal (RHR) system to be OPERABLE under specified conditions.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

No physical changes to the facility will occur as a result of this proposed amendment. The proposed change will not alter the physical design. Current TS note could make LSCS susceptible to potential water hammer in the RHR system if in the SDC [shutdown cooling] Mode of RHR in Mode 3 when swapping from the SDC to LPCI mode of RHR. The proposed LAR [license amendment request] will eliminate the risk for cavitation of the pump and voiding in the suction piping, thereby avoiding potential to damage the RHR system, including water hammer.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not alter the physical design, safety limits, or safety analysis assumptions associated with the operation of the plant. Accordingly, the change does not introduce any new accident initiators, nor does it reduce or adversely affect the capabilities of any plant structure, system, or component to perform their safety function. Deletion of the TS note is appropriate because current TSs could put the plant at risk for potential cavitation of the pump and voiding in the suction piping, resulting in potential to damage the RHR system, including water hammer.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed change conforms to NRC regulatory guidance regarding the content of plant Technical Specifications. The proposed change does not alter the physical design, safety limits, or safety analysis assumptions associated with the operation of the plant.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

Based on the above evaluation, EGC [Exelon Generation Company, LLC] concludes that the proposed amendment does not involve a significant hazards consideration under the standards set forth in 10 CFR 50.92(c), and, according a finding of no significant hazards consideration is justified.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Tamra Domeyer, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL, 60555.

Branch Chief: Travis L. Tate.

FirstEnergy Nuclear Operating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit 1, Ottawa County, Ohio

Date of amendment request: December 31, 2014. A publicly-available version is in ADAMS under Accession No. ML14365A080.

Description of amendment request: The proposed amendment would revise the frequency for the technical specification surveillance to verify that each containment spray system nozzle is unobstructed from a frequency of 10 years to an event-based frequency.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The containment spray system and its spray nozzles are not accident initiators and therefore the proposed change does not involve a significant increase in the probability of an accident. The revised surveillance requirement will require event-based frequency verification in lieu of a fixed frequency verification. The proposed change does not have a detrimental impact on the integrity of any plant structure, system, or component that may initiate an analyzed event. The proposed change will not alter the operation or otherwise increase the failure probability of any plant equipment that can initiate an analyzed accident. Because the system will continue to be available to perform its accident mitigation function, the consequences of accidents previously evaluated are not significantly increased.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change will not physically alter the plant (no new or different type of equipment will be installed) or change the methods governing normal plant operation. The proposed change does not introduce new accident initiators or impact assumptions made in the safety analysis. Testing requirements continue to demonstrate that the limiting conditions for operation are met and the system components are functional.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The safety function of the CSS [containment spray system] is to spray water into the containment atmosphere in the event of a loss-of-coolant accident to prevent containment pressure from exceeding the design value and to remove fission products from the containment atmosphere.

The CSS is not susceptible to corrosion-induced obstruction or obstruction from sources external to the system. Maintenance activities that unexpectedly introduce unretrievable foreign material into the system would require subsequent verification to ensure there is no nozzle blockage. The spray header nozzles are expected to remain unblocked and available in the event that a safety function is required. Therefore, the capacity of the system would remain unaffected. The proposed change does not relax any criteria used to establish safety limits and will not relax any safety system settings. The safety analysis acceptance criteria are not affected by this change.

Therefore, the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: David W. Jenkins, Attorney, FirstEnergy Corporation, Mail Stop A–GO–15, 76 South Main Street, Akron, OH 44308.

NRC Branch Chief: Travis L. Tate.

FirstEnergy Nuclear Operating Company, et al., Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit 1, Ottawa County, Ohio

Date of amendment request: December 19, 2014. A publicly-available version is in ADAMS under Accession No. ML14353A349.

Description of amendment request: The proposed amendment would revise the technical specifications (TS) to adopt performance-based Type C testing for the reactor containment, which would allow for extended test intervals for Type C valves up to 75 months, and corrects an editorial issue in the TS.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed amendment adopts the NRG-accepted guidelines of [Nuclear Energy Institute] NEI 94–01, Revision 3–A, ''Industry Guideline for Implementing Performance-Based Option of 10 CFR part 50, Appendix J,'' for [Davis-Besse Nuclear Power Station] DBNPS performance-based Type C containment isolation valve testing. Revision 3–A of NEI 94–01 allows, based on previous valve leak test performance, an extension of Type C containment isolation valve leak test intervals. Since the change involves only performance-based Type C testing, the proposed amendment does not involve either a physical change to the plant or a change in the manner in which the plant is operated or controlled.

Implementation of these guidelines continues to provide adequate assurance that during design basis accidents, the components of the primary containment system will limit leakage rates to less than the values assumed in the plant safety analyses.

The proposed amendment will not change the leakage rate acceptance requirements. As such, the containment will continue to perform its design function as a barrier to fission product releases.

Therefore, the proposed amendment does not significantly increase the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed amendment to revise the extended frequency performance-based Type C testing program does not change the design or operation of structures, systems, or components of the plant.

The proposed amendment would continue to ensure containment operability and would ensure operation within the bounds of existing accident analyses. There are no accident initiators created or affected by the proposed amendment.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed amendment to revise the extended frequency performance-based Type C testing program does not affect plant operations, design functions, or any analysis that verifies the capability of a structure, system, or component of the plant to perform a design function. In addition, this change does not affect safety limits, limiting safety system setpoints, or limiting conditions for operation. The specific requirements and conditions of the Technical Specification Containment Leakage Rate Testing Program exist to ensure that the degree of containment structural integrity and leak-tightness that is considered in the plant safety analysis is maintained.

The overall containment leak rate limit specified by Technical Specifications is maintained, thus ensuring the margin of safety in the plant safety analysis is maintained. The design, operation, testing methods, and acceptance criteria for Type A, Type B, and Type C containment leakage tests specified in applicable codes and standards would continue to be met with the acceptance of this proposed change, since these are not affected by this revision to the performance-based containment testing program.

Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: David W. Jenkins, Attorney, FirstEnergy Corporation, Mail Stop A–GO–15, 76 South Main Street, Akron, OH 44308.

NRC Branch Chief: Travis L. Tate.

Indiana Michigan Power Company (IandM), Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Units 1 and 2, Berrien County, Michigan

Date of amendment request: November 14, 2014, as supplemented by a letter dated February 12, 2015. Publicly-available versions are in ADAMS under Accession Nos. ML14324A209, and ML15050A247, respectively.)

Description of amendment request: The proposed amendments would replace the current Donald C. Cook Nuclear Plant (CNP) Units 1 and 2 technical specifications (TSs) limit on reactor coolant system (RCS) gross specific activity with a new limit on RCS noble gas specific activity. The noble gas specific activity limit would be based on a new DOSE EQUIVALENT XE–133 definition that would replace the current E-Bar average disintegration energy definition. In addition, the current DOSE EQUIVALENT I–131 definition would be revised to allow the use of additional thyroid dose conversion factors. The proposed RCS specific activity changes are consistent with NRC-approved Industry Technical

Specification Task Force (TSTF) Standard Technical Specification change traveler, TSTF–490, Revision 0, ''Deletion of E-Bar Definition and Revision to Reactor Coolant System Specific Activity Technical Specification,'' with deviations. Additionally, the proposed amendments would revise the CNP Units 1 and 2 licensing basis and TSs to adopt the alternative source term (AST) as allowed in 10 CFR 50.67. The proposed amendments represent full implementation of the AST as described in the NRC's Regulatory Guide 1.183, ''Alternative Radiological Source Terms for Evaluating Design Basis Accidents at Nuclear Power Reactors,'' Revision 0.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The licensee concluded that the no significant hazards consideration determination published on March 19, 2007 (72 FR 12838), ''Notice of Availability of the Model Safety Evaluation,'' is applicable. This determination is presented below, along with the licensee's analysis of the implementation of the AST.

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

Reactor coolant specific activity is not an initiator for any accident previously evaluated. The Completion Time when primary coolant gross activity is not within limit is not an initiator for any accident previously evaluated. The current variable limit on primary coolant iodine concentration is not an initiator to any accident previously evaluated. As a result, the proposed change does not significantly increase the probability of an accident. The proposed change will limit primary coolant noble gases to concentrations consistent with the accident analyses. The proposed change to the Completion Time has no impact on the consequences of any design basis accident since the consequences of an accident during the extended Completion Time are the same as the consequences of an accident during the Completion Time. As a result, the consequences of any accident previously evaluated are not significantly increased.

There are no physical changes to the plant being introduced by the proposed changes to the accident source term. Implementation of AST and the associated proposed TS changes and new atmospheric dispersion factors have no impact on the probability for initiation of any DBAs [Design Basis Accidents]. Once the occurrence of an accident has been postulated, the new accident source term and atmospheric dispersion factors are an input to analyses that evaluate the radiological consequences. The proposed changes do not involve a revision to the design or manner in which the facility is operated that could increase the probability of an accident previously evaluated in Chapter 14 of the UFSAR.

Based on the AST analyses, there are no proposed changes to performance requirements and no proposed revision to the parameters or conditions that could contribute to the initiation of an accident previously discussed in Chapter 14 of the UFSAR. Plant-specific radiological analyses have been performed using the AST methodology and new X/Qs have been established. Based on the results of these analyses, it has been demonstrated that the CR [control room] and off-site dose consequences of the limiting events considered in the analyses meet the regulatory guidance provided for use with the AST, and the doses are within the limits established by 10 CFR 50.67.

Therefore, it is concluded that the proposed amendment does not involve a significant increase in the probability or the consequences of an accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

The proposed change in specific activity limits does not alter any physical part of the plant nor does it affect any plant operating parameter. The change does not create the potential for a new or different kind of accident from any previously calculated.

No new modes of operation are introduced by the proposed changes. The proposed changes will not create any failure mode not bounded by previously evaluated accidents. Implementation of AST and the associated proposed TS changes and new X/Qs have no impact to the initiation of any DBAs. These changes do not affect the design function or modes of operation of structures, systems and components in the facility prior to a postulated accident. Since structures, systems and components are operated no differently after the AST implementation, no new failure modes are created by this proposed change. The alternative source term change itself does not have the capability to initiate accidents.

Consequently, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in a Margin of Safety.

The proposed change revises the limits on noble gas radioactivity in the primary coolant. The proposed change is consistent with the assumptions in the safety analyses and will ensure the monitored values protect the initial assumptions in the safety analyses.

The AST analyses have been performed using approved methodologies to ensure that analyzed events are bounding and safety margin has not been reduced. Also, new X/Qs, which are based on site specific meteorological data, were calculated in accordance with the guidance of RG 1.194 to utilize more recent data and improved calculational methodologies. The dose consequences of these limiting events are within the acceptance criteria presented in 10 CFR 50.67. Thus, by meeting the applicable regulatory limits for AST, there is no significant reduction in a margin of safety. Therefore, because the proposed changes continue to result in dose consequences within the applicable regulatory limits, the proposed amendment does not involve a significant reduction in margin of safety.

The NRC staff has reviewed the analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments requested involve no significant hazards consideration.

Attorney for licensee: Robert B. Haemer, Senior Nuclear Counsel, One Cook Place, Bridgman, MI 49106.

NRC Branch Chief: David L. Pelton.

Luminant Generation Company LLC, Docket Nos. 50–445 and 50–446, Comanche Peak Nuclear Power Plant (CPNPP), Units 1 and 2, Somervell County, Texas

Date of amendment request: January 28, 2015. A publicly-available version is in ADAMS under Accession No. ML15036A032.

Description of amendment request: The amendment would revise Technical Specification (TS) 5.5.16, ''Containment Leakage Rate Testing Program,'' for CPNPP, Units 1 and 2, to allow an increase in the 10 CFR part 50, appendix J, ''Primary Reactor Containment Leakage Testing for Water-Cooled Power Reactors,'' Type A Integrated Leak Rate Test (ILRT) interval from a 10-year frequency to a maximum of 15 years and the extension of the containment isolation valves leakage Type C tests from its current 60-month frequency to 75 months in accordance with Nuclear Energy Institute (NEI) 94–01, Revision 3–A, ''Industry Guidance for Implementing Performance Based Option of 10 CFR part 50, appendix J,'' July 2012 (ADAMS Accession No. ML12221A202), and conditions and limitations specified in NEI 94–01, Revision 2–A, ''Industry Guidance for Implementing Performance Based Option of 10 CFR part 50, appendix J,'' October 2008 (ADAMS Accession No. ML100620847), in addition to limitations and conditions of NEI 94–01, Revision 3–A. The proposed change would also delete the listing of one-time exceptions previously granted to ILRT frequencies.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed amendment to the TS involves the extension of the CPNPP, Units 1 and 2 Type A containment test interval to 15 years and the extension of the Type C test interval to 75 months. The current Type A test interval of 120 months (10 years) would be extended on a permanent basis to no longer than 15 years from the last Type A test. The current Type C test interval of 60 months for selected components would be extended on a performance basis to no longer than 75 months. Extensions of up to nine months (total maximum interval of 84 months for Type C tests) are permissible only for non-routine emergent conditions. The proposed extension does not involve either a physical change to the plant or a change in the manner in which the plant is operated or controlled. The containment is designed to provide an essentially leak tight barrier against the uncontrolled release of radioactivity to the environment for postulated accidents. The containment and the testing requirements invoked to periodically demonstrate the integrity of the containment exist to ensure the plant's ability to mitigate the consequences of an accident, and do not involve the prevention or identification of any precursors of an accident. The change in dose risk for changing the Type A test frequency from three-per-ten years to once-per-fifteen-years, measured as an increase to the total integrated dose risk for all internal events accident sequences for CPNPP, of 1.00E–02 person rem/yr [roentgen equivalent man per year] to 6.51 person-rem/yr for Unit 1 and 6.53 person-rem/yr for Unit 2 using the EPRI [Energy Power Research Institute] guidance with the base case corrosion included. Therefore, this proposed extension does not involve a significant increase in the probability of an accident previously evaluated.

As documented in NUREG–1493 [, ''Performance-Based Containment Leak-Test Program: Draft Report for Comment,'' January 1995 (not publicly available)], Type B and C tests have identified a very large percentage of containment leakage paths, and the percentage of containment leakage paths that are detected only by Type A testing is very small. The CPNPP, Units 1 and 2 Type A test history supports this conclusion.

The integrity of the containment is subject to two types of failure mechanisms that can be categorized as: (1) Activity based, and; (2) time based. Activity based failure mechanisms are defined as degradation due to system and/or component modifications or maintenance. Local leak rate test requirements and administrative controls such as configuration management and procedural requirements for system restoration ensure that containment integrity is not degraded by plant modifications or maintenance activities. The design and construction requirements of the containment combined with the containment inspections performed in accordance with ASME [American Society of Mechanical Engineers] Section XI, the Maintenance Rule, and TS requirements serve to provide a high degree of assurance that the containment would not degrade in a manner that is detectable only by a Type A test. Based on the above, the proposed extensions do not significantly increase the consequences of an accident previously evaluated.

The proposed amendment also deletes exceptions previously granted to allow one-time extensions of the ILRT test frequency for both Units 1 and 2. These exceptions were for activities that have already taken place so their deletion is solely an administrative action that has no effect on any component and no impact on how the units are operated.

Therefore, the proposed change does not result in a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed amendment to the TS involves the extension of the CPNPP, Unit 1 and 2 Type A containment test interval to 15 years and the extension of the Type C test interval to 75 months. The containment and the testing requirements to periodically demonstrate the integrity of the containment exist to ensure the plant's ability to mitigate the consequences of an accident do not involve any accident precursors or initiators. The proposed change does not involve a physical change to the plant (*i.e.,* no new or different type of equipment will be installed) or a change to the manner in which the plant is operated or controlled.

The proposed amendment also deletes exceptions previously granted to allow one-time extensions of the ILRT test frequency for both Units 1 and 2. These exceptions were for activities that would have already taken place by the time this amendment is approved; therefore, their deletion is solely an administrative action that does not result in any change in how the units are operated.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed amendment to TS 5.5.16 involves the extension of the CPNPP, Units 1 and 2 Type A containment test interval to 15 years and the extension of the Type C test interval to 75 months for selected components. This amendment does not alter the manner in which safety limits, limiting safety system set points, or limiting conditions for operation are determined. The specific requirements and conditions of the TS Containment Leak Rate Testing Program exist to ensure that the degree of containment structural integrity and leak-tightness that is considered in the plant safety analysis is maintained. The overall containment leak rate limit specified by TS is maintained.

The proposed change involves only the extension of the interval between Type A containment leak rate tests and Type C tests for CPNPP, Units 1 and 2. The proposed surveillance interval extension is bounded by the 15-year ILRT Interval and the 75-month Type C test interval currently authorized within NEI 94–01, Revision 3–A. Industry experience supports the conclusion that Type B and C testing detects a large percentage of containment leakage paths and that the percentage of containment leakage paths that are detected only by Type A testing is small. The containment inspections performed in accordance with ASME Section Xl, TS and the Maintenance Rule serve to provide a high degree of assurance that the containment would not degrade in a manner that is detectable only by Type A testing. The combination of these factors ensures that the margin of safety in the plant safety analysis is maintained. The design, operation, testing methods and acceptance criteria for Type A, B, and C containment leakage tests specified in applicable codes and standards would continue to be met, with the acceptance of this proposed change, since these are not affected by changes to the Type A and Type C test intervals.

The proposed amendment also deletes exceptions previously granted to allow one-time extensions of the ILRT test frequency for both Units 1 and 2. These exceptions were for activities that would have already taken place by the time this amendment is approved; therefore, their deletion is solely an administrative action and does not change how the units are operated and maintained.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Timothy P. Matthews, Esq., Morgan, Lewis and Bockius, 1111 Pennsylvania Avenue NW., Washington, DC 20004.

NRC Branch Chief: Michael T. Markley.

South Carolina Electric and Gas Company Docket Nos.: 52–027 and 52–028, Virgil C. Summer Nuclear Station (VCSNS) Units 2 and 3, Fairfield County, South Carolina

Date of amendment request: December 4, 2014. A publicly-available version is in ADAMs under Accession No. ML14339A637.

Description of amendment request: The proposed change would amend Combined License (COL) Nos. NPF–93 and NPF–94 for the Virgil C. Summer Nuclear Station (VCSNS) Units 2 and 3 by changing the structure and layout of various areas of the annex building. The proposed amendment requires changes to the Updated Final Safety Analysis Report (UFSAR) in the form of departures from the incorporated plant-

specific Design Control Document (DCD) Tier 2 information and involves changes to related plant-specific Tier 2* and Tier 1 information, with corresponding changes to the associated COL Appendix C information.

Because, this proposed change requires a departure from Tier 1 information in the Westinghouse Electric Company's Advanced Passive 1000 DCD, the licensee also requested an exemption from the requirements of the Generic DCD Tier 1 in accordance with 10 CFR 52.63(b)(1).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed additions of a new nonsafety-related battery, battery room and battery equipment room, the room height increase, the floor thickness changes, the relocation of a non-structural internal wall, and the associated wall, room and corridor changes within the annex building do not adversely affect the fire loading analysis durations of the affected fire zones and areas (*i.e.,* the calculated fire durations remain less than their design values). Thus, the fire loads analysis is not adversely affected (*i.e.,* analysis results remain acceptable). The safe shutdown fire analysis is not affected. The proposed changes to the structural configuration, including anticipated equipment loading, room height, and floor thickness are accounted for in the updated structural configuration model that was used to analyze the Annex Building for safe shutdown earthquake (SSE) and other design loads and load combinations, thus the structural analysis is not adversely affected. The structural analysis description and results in the UFSAR are unchanged. The relocated internal Annex Building wall is non-structural, thus this change does not affect the structural analyses for the Annex Building. The proposed changes do not involve any accident initiating event or component failure, thus the probabilities of the accidents previously evaluated are not affected. The rooms affected by the proposed changes do not contain or interface with safety-related equipment, thus the proposed changes would not affect any safety-related equipment or accident mitigating function. The radioactive material source terms and release paths used in the safety analyses are unchanged, thus the radiological releases in the accident analyses are not affected.

With the conversion of an annex building room to a battery room, the building volume serviced by nuclear island nonradioactive ventilation system decreases by approximate five percent. This reduced volume is used in the post-accident main control room dose portion of the UFSAR LOCA radiological analysis. However, the volume decrease is not sufficient to change the calculated main control room dose reported in the UFSAR, and control room habitability is not affected.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed additions of a new nonsafety-related battery, battery room and battery equipment room, the room height increase, the floor thickness changes, the relocation of a non-structural internal wall, and their associated wall, room and corridor changes do not change fire barrier performance, and the fire loading analyses results remain acceptable. The room height and floor thickness changes are consistent with the annex building configuration used in the building's structural analysis. The relocated internal wall is non-structural, thus the structural analyses for the annex building are not affected. The affected rooms and associated equipment do not interface with components that contain radioactive material. The affected rooms do not contain equipment whose failure could initiate an accident. The proposed changes do not create a new fault or sequence of events that could result in a radioactive material release.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed additions of a new nonsafety-related battery, battery room and battery equipment room, the room height increase, the floor thickness changes, the relocation of a non-structural internal wall, and their associated wall, room and corridor changes do not change the fire barrier performance of the affected fire areas. The affected rooms do not contain safety-related equipment, and the safe shutdown fire analysis is not affected. Because the proposed change does not alter compliance with the construction codes to which the annex building is designed and constructed, the proposed changes to the structural configuration, including anticipated equipment loading, room height, and floor thickness do not adversely affect the safety margins associated with the seismic Category II structural capability of the annex building.

The floor areas and amounts of combustible material loads in affected fire zones and areas do not significantly change, such that their fire duration times remain within their two-hour design value, thus the safety margins associated with the fire loads analysis are not affected.

No safety analysis or design basis acceptance limit/criterion is challenged or exceeded by the proposed changes, thus no margin of safety is reduced.

Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ms. Kathryn M. Sutton, Morgan, Lewis & Bockius LLC, 1111 Pennsylvania Avenue NW., Washington, DC 20004–2514.

NRC Branch Chief: Lawrence Burkhart.

South Carolina Electric and Gas Company, Docket Nos.: 52–027 and 52–028, Virgil C. Summer Nuclear Station (VCSNS) Units 2 and 3, Fairfield County, South Carolina

Date of amendment request: February 10, 2015. A publicly-available version is in ADAMS under Accession No. ML15041A698.

Description of amendment request: The proposed change would amend Combined License Nos. NPF–93 and NPF–94 for the Virgil C. Summer Nuclear Station (VCSNS) Units 2 and 3 by revising Tier 2* information contained within the Human Factors Engineering Design Verification, Task Support Verification and Integrated System Validation plans. These documents are incorporated by reference into the VCSNS Units 2 and 3 Updated Final Safety Analysis Report and will additionally require changes to be made to affected Tier 2 information.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed amendment includes changes to Integrated System Validation (ISV) activities, which are performed on the AP1000 plant simulator to validate the adequacy of the AP1000 human systems interface design and confirm that it meets human factors engineering principles. The proposed changes involve administrative details related to performance of the ISV, and no plant hardware or equipment is affected whose failure could initiate an accident, or that interfaces with a component that could initiate an accident, or that contains radioactive material. Therefore, these changes have no effect on any accident initiator in the Updated Final Safety Analysis Report (UFSAR), nor do they affect the radioactive material releases in the UFSAR accident analysis.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed amendment includes changes to ISV activities, which are performed on the AP1000 plant simulator to validate the adequacy of the AP1000 human system interface design and confirm that it meets human factors engineering principles. The proposed changes involve administrative details related to performance of the ISV, and no plant hardware or equipment is affected whose failure could initiate an accident, or that interfaces with a component that could initiate an accident, or that contains radioactive material. Although the ISV may identify a need to initiate changes to add, modify, or remove plant structures, systems, or components, these changes will not be made directly as part of the ISV.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed amendment includes changes to ISV activities, which are performed on the AP1000 plant simulator to validate the adequacy of the AP1000 human system interface design and confirm that it meets human factors engineering principles. The proposed changes involve administrative details related to performance of the ISV, and do not affect any safety-related equipment, design code compliance, design function, design analysis, safety analysis input or result, or design/safety margin. No safety analysis or design basis acceptance limit/criterion is challenged or exceeded by the proposed changes, thus no margin of safety is reduced.

Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ms. Kathryn M. Sutton, Morgan, Lewis & Bockius LLC, 1111 Pennsylvania Avenue NW., Washington, DC 20004–2514.

NRC Branch Chief: Lawrence Burkhart.

Southern Nuclear Operating Company, Inc., Docket Nos. 50–321 and 50–366, Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia

Date of amendment request: October 10, 2014. A publicly-available version is in ADAMS under Accession No. ML14288A226.

Description of amendment request: The licensee requested 21 revisions to the Technical Specifications. The licensee states the changes were chosen to increase the consistency between the Hatch Technical Specifications, the Improved Standard Technical Specifications, and the Technical Specifications of other plants in the Southern Nuclear Operating Company fleet. A list of the requested revisions is included in Enclosure 1 of the application.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration for each of the 24 changes requested, which is presented below:

2.1 TSTF–30–A, Revision 3, ''Extend the Completion Time for Inoperable Isolation Valve to a Closed System to 72 Hours.''

Specification 3.6.1.3, ''Primary Containment Isolation Valves (PCIVs),'' Action C, TS page 3.6–9, is revised to provide a 72 hour Completion Time for penetration flow paths with one inoperable PCIV with a closed system.

Significant Hazards Consideration: SNC has evaluated whether or not a significant hazards consideration is involved with the proposed amendment(s) by focusing on the three standards set forth in 10 CFR 50.92, ''Issuance of amendment,'' as discussed below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change extends the Completion Time to isolate an inoperable primary containment isolation valve (PCIV) from 4 hours to 72 hours when the PCIV is associated with a closed system. The PCIVs are not an initiator of any accident previously evaluated. The consequences of a previously evaluated accident during the extended Completion Time are the same as the consequences during the existing Completion Time.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not involve a physical alteration to the plant (*i.e.,* no new or different type of equipment will be installed) or a change to the methods governing normal plant operation. The changes do not alter the assumptions made in the safety analysis.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed change extends the Completion Time to isolate an inoperable primary containment isolation valve (PCIV) from 4 hours to 72 hours when the PCIV is associated with a closed system. The PCIVs serve to mitigate the potential for radioactive release from the primary containment following an accident. The design and response of the PCIVs to an accident are not affected by this change. The revised Completion Time is appropriate given the isolation capability of the closed system.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

Based on the above, SNC concludes that the proposed amendment does not involve a significant hazards consideration under the standards set forth in 10 CFR 50.92(c), and, accordingly, a finding of ''no significant hazards consideration'' is justified.

2.2 TSTF–45–A, Revision 2, ''Exempt Verification of CIVs that are Locked, Sealed or Otherwise Secured''

The proposed change revises SRs 3.6.1.3.2 and 3.6.1.3.3 in Specification 3.6.1.3, ''Primary Containment Isolation Valves (PCIVs),'' to exempt manual PCIVs and blind flanges which are locked, sealed, or otherwise secured in position from position verification requirements. The proposed change also revises SR 3.6.4.2.1 in Specification 3.6.4.2, ''Secondary Containment Isolation Valves (SCIVs),'' to exempt manual SCIVs and blind flanges which are locked, sealed, or otherwise secured in position from position verification requirements.

Signification Hazards Consideration: SNC has evaluated whether or not a significant hazards consideration is involved with the proposed amendment(s) by focusing on the three standards set forth in 10 CFR 50.92, ''Issuance of amendment,'' as discussed below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change exempts manual primary containment isolation valves and blind flanges located inside and outside of containment, and manual secondary containment isolation valves and blind flanges, that are locked, sealed, or otherwise secured in position from the periodic verification of valve position required by Surveillance Requirements 3.6.1.3.2, 3.6.1.3.3, and 3.6.4.2.1. The exempted valves and devices are verified to be in the correct position upon being locked, sealed, or secured. Because the valves and devices are in the condition assumed in the accident analysis, the proposed change will not affect the initiators or mitigation of any accident previously evaluated.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not involve a physical alteration to the plant (*i.e.,* no new or different type of equipment will be installed) or a change to the methods governing normal plant operation. The changes do not alter the assumptions made in the safety analysis.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed change exempts manual primary containment isolation valves and blind flanges located inside and outside of containment, and manual secondary containment isolation valves and blind flanges, that are locked, sealed, or otherwise secured in position from the periodic verification of valve position required by Surveillance Requirements 3.6.1.3.2, 3.6.1.3.3, and 3.6.4.2.1. These valves and devices are administratively controlled and their operation is a non-routine event. The position of a locked, sealed or secured blind flange or valve is verified at the time it is locked, sealed or secured, and any changes to their position is performed under administrative controls. Industry experience has shown that these valves are generally found to be in the correct position. Since the change impacts only the frequency of verification for blind flange and valve position, the proposed change will provide a similar level of assurance of correct position as the current frequency of verification.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

Based on the above, SNC concludes that the proposed amendment does not involve a significant hazards consideration under the standards set forth in 10 CFR 50.92(c), and, accordingly, a finding of ''no significant hazards consideration'' is justified.

2.3 TSTF–46–A, Revision 1, ''Clarify the CIV Surveillance to Apply Only to Automatic Isolation Valves''

The proposed change modifies SR 3.6.1.3.5 in Specification 3.6.1.3, ''Primary Containment Isolation Valves (PCIVs),'' and SR 3.6.4.2.2, in Specification 3.6.4.2, ''Secondary Containment Isolation Valves (SCIVs),'' including their associated Bases, to delete the requirement to verify the isolation time of ''each power operated'' containment isolation valve and only require verification of each ''power operated automatic isolation valve.''

Signification Hazards Consideration: SNC has evaluated whether or not a significant hazards consideration is involved with the proposed amendment(s) by focusing on the three standards set forth in 10 CFR 50.92, ''Issuance of amendment,'' as discussed below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change revises the requirements in Technical Specification Surveillance Requirements (SRs) 3.6.1.3.5 and 3.6.4.2.2, and their associated Bases, to delete the requirement to verify the isolation time of ''each power operated'' PCIV and SCIV and only require verification of closure time for each ''automatic power operated isolation valve.'' The closure times for PCIVs and SCIVs that do not receive an automatic closure signal are not an initiator of any design basis accident or event, and therefore the proposed change does not increase the probability of any accident previously evaluated. The PCIVs and SCIVs are used to respond to accidents previously evaluated. Power operated PCIVs and SCIVs that do not receive an automatic closure signal are not assumed to close in a specified time. The proposed change does not change how the plant would mitigate an accident previously evaluated.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not result in a change in the manner in which the PCIVs and SCIVs provide plant protection or introduce any new or different operational conditions. Periodic verification that the closure times for PCIVs and SCIVs that receive an automatic closure signal are within the limits established by the accident analysis will continue to be performed under SRs 3.6.1.3.5 and 3.6.4.2.2. The change does not alter assumptions made in the safety analysis, and is consistent with the safety analysis assumptions and current plant operating practice. There are also no design changes associated with the proposed changes, and the change does not involve a physical alteration of the plant (*i.e.,* no new or different type of equipment will be installed).

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed change provides clarification that only PCIVs and SCIVs that receive an automatic isolation signal are within the scope of SRs 3.6.1.3.5 and 3.6.4.2.2. The proposed change does not result in a change in the manner in which the PCIVs and SCIVs provide plant protection. Periodic verification that closure times for PCIVs and SCIVs that receive an automatic isolation signal are within the limits established by the accident analysis will continue to be performed. The proposed change does not affect the safety analysis acceptance criteria for any analyzed event, nor is there a change to any safety analysis limit. The proposed change does not alter the manner in which safety limits, limiting safety system settings or limiting conditions for operation are determined, nor is there any adverse effect on those plant systems necessary to assure the accomplishment of protection functions. The proposed change will not result in plant operation in a configuration outside the design basis.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

Based on the above, SNC concludes that the proposed amendment does not involve a significant hazards consideration under the standards set forth in 10 CFR 50.92(c), and, accordingly, a finding of ''no significant hazards consideration'' is justified.

2.4 TSTF–222–A, Revision 1, ''Control Rod Scram Time Testing''

Specification 3.1.4, ''Control Rod Scram Times,'' SRs 3.1.4.1 and 3.1.4.4, are revised to only require scram time testing of control rods that are in an affected core cell. The SR 3.1.4.1 Frequency ''Prior to exceeding 40% RTP after fuel movement within the reactor vessel,'' is eliminated and a new Frequency is added to SR 3.1.4.4 which states, ''Prior to exceeding 40% RTP after fuel movement within the affected core cell.''

Significant Hazards Consideration: SNC has evaluated whether or not a significant hazards consideration is involved with the proposed amendment(s) by focusing on the three standards set forth in 10 CFR 50.92, ''Issuance of amendment,'' as discussed below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change clarifies the intent of Surveillance testing in Specification 3.1.4, ''Control Rod Scram Times.'' The existing Specification wording requires control rod scram time testing of all control rods whenever fuel is moved within the reactor pressure vessel, even though the Technical Specification Bases state that control rod scram time testing is only required in the affected core cells. The Frequency of Surveillances 3.1.4.1 and 3.1.4.4 are revised to implement the Bases statement in the Specifications. The proposed change does not affect any plant equipment, test methods, or plant operation, and are not initiators of any analyzed accident sequence. The control rods will continue to perform their function as designed. Operation in accordance with the proposed Technical Specifications will ensure that all analyzed accidents will continue to be mitigated as previously analyzed.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not involve a physical alteration to the plant (*i.e.,* no new or different type of equipment will be installed) or a change to the methods

governing normal plant operation. The changes do not alter the assumptions made in the safety analysis.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed change clarifies the intent of Surveillance testing in Specification 3.1.4, ''Control Rod Scram Times.'' The existing Specification wording requires control rod scram time testing of all control rods whenever fuel is moved within the reactor pressure vessel, even though the Technical Specification Bases state that the control rod scam time testing is only required in the affected core cells. The proposed change will not affect the operation of plant equipment or the function of any equipment assumed in the accident analysis. Control rod scram time testing will be performed following any fuel movement that could affect the scram time.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

Based on the above, SNC concludes that the proposed amendment does not involve a significant hazards consideration under the standards set forth in 10 CFR 50.92(c), and, accordingly, a finding of ''no significant hazards consideration'' is justified.

2.5 TSTF–264–A, Revision 0, ''3.3.9 and 3.3.10—Delete Flux Monitors Specific Overlap Requirement SRs''

The proposed change revises Specification 3.3.1.1, ''RPS Instrumentation,'' by deleting Surveillances 3.3.1.1.6 and 3.3.1.1.7, which verify the overlap between the source range monitor (SRM) and the intermediate range monitor (IRM), and between the IRM and the average power range monitor (APRM).

Significant Hazards Consideration: SNC has evaluated whether or not a significant hazards consideration is involved with the proposed amendment(s) by focusing on the three standards set forth in 10 CFR 50.92, ''Issuance of amendment,'' as discussed below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change eliminates two Surveillances Requirements (SRs) (SRs 3.3.1.1.6 and 3.3.1.1.7) which verify the overlap between the source range monitor (SRM) and intermediate range monitor (IRM) and between the IRM and the average power range monitor (APRM). The testing requirement is incorporated in the existing Channel Check Surveillance (SR 3.3.1.1.1). The proposed change does not affect any plant equipment, test methods, or plant operation, and are not initiators of any analyzed accident sequence. The SRM, IRM, and APRM will continue to perform their function as designed. Operation in accordance with the proposed Technical Specifications will ensure that all analyzed accidents will continue to be mitigated as previously analyzed.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not involve a physical alteration to the plant (*i.e.,* no new or different type of equipment will be installed) or a change to the methods governing normal plant operation. The changes do not alter the assumptions made in the safety analysis.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed change eliminates SRs 3.3.1.1.6 and 3.3.1.1.7 which verify the overlap between the SRM and IRM and between the IRM and the APRM. The testing requirement is incorporated in the existing Channel Check Surveillance (SR 3.3.1.1.1). The proposed change will not affect the operation of plant equipment or the function of any equipment assumed in the accident analysis. Instrument channel overlap will continue to be verified under the existing Channel Check surveillance.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

Based on the above, SNC concludes that the proposed amendment does not involve a significant hazards consideration under the standards set forth in 10 CFR 50.92(c), and, accordingly, a finding of ''no significant hazards consideration'' is justified.

2.6 TSTF–269–A, Revision 2, ''Allow Administrative Means of Position Verification for Locked or Sealed Valves''

The proposed change modifies Specification 3.6.1.3, ''Primary Containment Isolation Valves,'' and Specification 3.6.4.2, ''Secondary Containment Isolation Valves.'' The specifications require penetrations with an inoperable isolation valve to be isolated and periodically verified to be isolated. A Note is added to Specification 3.6.1.3, Actions A and C, and Specification 3.6.4.2, Action A, to allow isolation devices that are locked, sealed, or otherwise secured to be verified by use of administrative means.

Significant Hazards Consideration: SNC has evaluated whether or not a significant hazards consideration is involved with the proposed amendment(s) by focusing on the three standards set forth in 10 CFR 50.92, ''Issuance of amendment,'' as discussed below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change modifies Specification 3.6.1.3, ''Primary Containment Isolation Valves,'' and Specification 3.6.4.2, ''Secondary Containment Isolation Valves.'' The specifications require penetrations with an inoperable isolation valve to be isolated and periodically verified to be isolated. A Note is added to Specification 3.6.1.3, Actions A and C, and Specification 3.6.4.2, Action A, to allow isolation devices that are locked, sealed, or otherwise secured to be verified by use of administrative means. The proposed change does not affect any plant equipment, test methods, or plant operation, and are not initiators of any analyzed accident sequence. The inoperable containment penetrations will continue to be isolated, and hence perform their isolation function. Operation in accordance with the proposed Technical Specifications will ensure that all analyzed accidents will continue to be mitigated as previously analyzed.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not involve a physical alteration to the plant (*i.e.,* no new or different type of equipment will be installed) or a change to the methods governing normal plant operation. The changes do not alter the assumptions made in the safety analysis.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed change will not affect the operation of plant equipment or the function of any equipment assumed in the accident analysis. The primary and secondary containment isolation valves will continue to be operable or will be isolated as required by the existing specifications.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

Based on the above, SNC concludes that the proposed amendment does not involve a significant hazards consideration under the standards set forth in 10 CFR 50.92(c), and, accordingly, a finding of ''no significant hazards consideration'' is justified.

2.7 TSTF–273–A, Revision 2, ''Safety Function Determination Program Clarifications''

The proposed Technical Specification (TS) changes add explanatory text to the Bases for limiting condition for operation (LCO) 3.0.6 clarifying the ''appropriate LCO for loss of function,'' and that consideration does not have to be made for a loss of power in determining loss of function. Explanatory text is also added to the programmatic description of the Safety Function Determination Program (SFDP) in Specification 5.5.12 to provide clarification of these same issues.

Signification Hazards Consideration: SNC has evaluated whether or not a significant hazards consideration is involved with the proposed amendment(s) by focusing on the

three standards set forth in 10 CFR 50.92, ''Issuance of amendment,'' as discussed below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed Technical Specification (TS) changes add explanatory text to the programmatic description of the Safety Function Determination Program (SFDP) in Specification 5.5.10 to clarify in the requirements that consideration does not have to be made for a loss of power in determining loss of function. The Bases for limiting condition for operations (LCO) 3.0.6 are revised to provide clarification of the ''appropriate LCO for loss of function,'' and that consideration does not have to be made for a loss of power in determining loss of function. The changes are editorial and administrative in nature, and therefore do not increase the probability of any accident previously evaluated. No physical or operational changes are made to the plant. The proposed change does not change how the plant would mitigate an accident previously evaluated.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes are editorial and administrative in nature and do not result in a change in the manner in which the plant operates. The loss of function of any specific component will continue to be addressed in its specific TS LCO and plant configuration will be governed by the required actions of those LCOs. The proposed changes are clarifications that do not degrade the availability or capability of safety related equipment, and therefore do not create the possibility of a new or different kind of accident from any accident previously evaluated. There are no design changes associated with the proposed changes, and the changes do not involve a physical alteration of the plant (*i.e.,* no new or different type of equipment will be installed). The changes do not alter assumptions made in the safety analysis, and are consistent with the safety analysis assumptions and current plant operating practice. Due to the administrative nature of the changes, they cannot be an accident initiator.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed changes to TS 5.5.10 are clarifications and are editorial and administrative in nature. No changes are made the LCOs for plant equipment, the time required for the TS Required Actions to be completed, or the out of service time for the components involved. The proposed changes do not affect the safety analysis acceptance criteria for any analyzed event, nor is there a change to any safety analysis limit. The proposed changes do not alter the manner in which safety limits, limiting safety system settings or limiting conditions for operation are determined, nor is there any adverse effect on those plant systems necessary to assure the accomplishment of protection functions. The proposed changes will not result in plant operation in a configuration outside the design basis.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

Based on the above, SNC concludes that the proposed amendment does not involve a significant hazards consideration under the standards set forth in 10 CFR 50.92(c), and, accordingly, a finding of ''no significant hazards consideration'' is justified.

2.8 TSTF–283–A, Revision 3, ''Modify Section 3.8 Mode Restriction Notes''

The proposed change revises several Specification 3.8.1, ''AC Sources—Operating,'' Surveillance Notes to allow full or partial performance of the SRs to re-establish Operability provided an assessment determines the safety of the plant is maintained or enhanced. These Surveillances currently have Notes prohibiting their performance in Modes 1 or 2, or in Modes 1, 2, or 3.

SR 3.8.1.6 (ISTS SR 3.8.1.8), which tests the transfer of Alternating (AC) sources from normal to alternate offsite circuits, contains a Note prohibiting performance in Mode 1 or 2. The Note is modified to state that performance is normally prohibited in Mode 1 or 2 but may be performed to re-establish Operability provided an assessment determines the safety of the plant is maintained or enhanced.

SR 3.8.1.7 (ISTS SR 3.8.1.9), which tests the ability of the emergency diesel generator (DG) to reject a load greater than or equal to its associated single largest post-accident load, contains a Note prohibiting performance in Mode 1 or 2. An exception is provided for the swing DG. The Note is modified to state that performance is normally prohibited in Mode 1 or 2 but may be performed to re- establish Operability provided an assessment determines the safety of the plant is maintained or enhanced.

SR 3.8.1.8 (ISTS SR 3.8.1.10), which tests emergency DG operation following a load rejection of greater than or equal to 2775 kW, contains a Note prohibiting performance in Mode 1 or 2. The Note is modified to state that performance is normally prohibited in Mode 1 or 2 but portions of the SR may be performed to re- establish Operability provided an assessment determines the safety of the plant is maintained or enhanced.

SR 3.8.1.9 (ISTS SR 3.8.1.11), which tests the response to a loss of offsite power signal, contains a Note prohibiting performance in Mode 1, 2, or 3. The Note is modified to state that performance is normally prohibited in Mode 1, 2, or 3, but portions of the SR may be performed to re-establish Operability provided an assessment determines the safety of the plant is maintained or enhanced.

SR 3.8.1.10 (ISTS SR 3.8.1.12), which tests response to an Emergency Core Cooling System (ECCS) initiation signal, contains a Note prohibiting performance in Mode 1 or 2. The Note is modified to state that performance is normally prohibited in Mode 1 or 2, but the SR may be performed to re-establish Operability provided an assessment determines the safety of the plant is maintained or enhanced.

SR 3.8.1.11 (ISTS SR 3.8.1.13), which tests that each DGs automatic trips are bypassed on a loss of voltage signal concurrent with an ECCS initiation signal, contains a Note prohibiting performance in Mode 1, 2, or 3. The Note is modified to state that performance is normally prohibited in Mode 1, 2, or 3, but the SR may be performed to re-establish Operability provided an assessment determines the safety of the plant is maintained or enhanced.

SR 3.8.1.12 (ISTS SR 3.8.1.14), which performs a 24 hour loaded test run of the DG, contains a Note prohibiting performance in Mode 1 or 2. The Note is modified to state that performance is normally prohibited in Mode 1 or 2, but the SR may be performed to re-establish Operability provided an assessment determines the safety of the plant is maintained or enhanced.

SR 3.8.1.14 (ISTS SR 3.8.1.16), which verifies transfer from DG to offsite power, contains a Note prohibiting performance in Mode 1, 2, or 3. The Note is modified to state that performance is normally prohibited in Mode 1, 2, or 3, but portions of the SR may be performed to re-establish Operability provided an assessment determines the safety of the plant is maintained or enhanced.

SR 3.8.1.15 (ISTS SR 3.8.1.17), which verifies than a DG operating in test mode will return to ready-to-load condition and energize the emergency load from offsite power on receipt of an ECCS initiation signal, contains a Note prohibiting performance in Mode 1, 2, or 3. The Note is modified to state that performance is normally prohibited in Mode 1, 2, or 3, but portions of the SR may be performed to re-establish Operability provided an assessment determines the safety of the plant is maintained or enhanced.

SR 3.8.1.16 (ISTS SR 3.8.1.18), which verifies the interval between each sequenced load, contains a Note prohibiting performance in Mode 1, 2, or 3. The Note is modified to state that performance is normally prohibited in Mode 1, 2, or 3, but the SR may be performed to re-establish Operability provided an assessment determines the safety of the plant is maintained or enhanced.

SR 3.8.1.17 (ISTS SR 3.8.1.19), which verifies the response to a loss of offsite power signal and Engineered Safety Features (ESF) actuation signal, contains a Note prohibiting performance in Mode 1, 2, or 3. The Note is modified to state that performance is normally prohibited in Mode 1, 2, or 3, but portions of the SR may be performed to re-establish Operability provided an assessment determines the safety of the plant is maintained or enhanced.

Significant Hazards Consideration: SNC has evaluated whether or not a significant hazards consideration is involved with the proposed amendment(s) by focusing on the three standards set forth in 10 CFR 50.92, ''Issuance of amendment,'' as discussed below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change modifies Mode restriction Notes on eleven emergency diesel generator (DG) Surveillances to allow performance of the Surveillance in whole or in part to re-establish emergency DG Operability. The emergency DGs and their associated emergency loads are accident mitigating features, and are not an initiator of any accident previously evaluated. As a result the probability of any accident previously evaluated is not increased. The proposed change allows Surveillance testing to be performed in whole or in part to re-establish Operability of an emergency DG. The consequences of an accident previously evaluated during the period that the emergency DG is being tested to re-establish Operability are no different from the consequences of an accident previously evaluated while the emergency DG is inoperable. As a result, the consequences of any accident previously evaluated are not increased.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not involve a physical alteration to the plant (*i.e.,* no new or different type of equipment will be installed) or a change to the methods governing normal plant operation. The changes do not alter the assumptions made in the safety analysis.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The purpose of Surveillances is to verify that equipment is capable of performing its assumed safety function. The proposed change will only allow the performance of the Surveillances to re-establish Operability and the proposed changes may not be used to remove an emergency DG from service. The proposed changes also require an assessment to verify that plant safety will be maintained or enhanced by performance of the Surveillance in the normally prohibited Modes.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

Based on the above, SNC concludes that the proposed amendment does not involve a significant hazards consideration under the standards set forth in 10 CFR 50.92(c), and, accordingly, a finding of ''no significant hazards consideration'' is justified.

2.9 TSTF–284–A, Revision 3, ''Add 'Met vs. Perform' to Technical Specification 1.4, Frequency''

The change inserts a discussion paragraph into Specification 1.4, and two new examples are added to facilitate the use and application of SR Notes that utilize the terms ''met'' and ''perform.''

Signification Hazards Consideration: SNC has evaluated whether or not a significant hazards consideration is involved with the proposed amendment(s) by focusing on the three standards set forth in 10 CFR 50.92, ''Issuance of amendment,'' as discussed below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes insert a discussion paragraph into Specification 1.4, and several new examples are added to facilitate the use and application of Surveillance Requirement (SR) Notes that utilize the terms ''met'' and ''perform''. The changes also modify SRs in multiple Specifications to appropriately use ''met'' and ''perform'' exceptions. The changes are administrative in nature because they provide clarification and correction of existing expectations, and therefore the proposed change does not increase the probability of any accident previously evaluated. No physical or operational changes are made to the plant. The proposed change does not significantly change how the plant would mitigate an accident previously evaluated.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes are administrative in nature and do not result in a change in the manner in which the plant operates. The proposed changes do not degrade the availability or capability of safety related equipment, and therefore do not create the possibility of a new or different kind of accident from any accident previously evaluated. There are no design changes associated with the proposed changes, and the changes do not involve a physical alteration of the plant (*i.e.,* no new or different type of equipment will be installed). The changes do not alter assumptions made in the safety analysis, and are consistent with the safety analysis assumptions and current plant operating practice. Due to the administrative nature of the changes, they cannot be an accident initiator.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed changes are administrative in nature and do not result in a change in the manner in which the plant operates. The proposed changes provide clarification and correction of existing expectations that do not degrade the availability or capability of safety related equipment, or alter their operation. The proposed changes do not affect the safety analysis acceptance criteria for any analyzed event, nor is there a change to any safety analysis limit. The proposed changes do not alter the manner in which safety limits, limiting safety system settings or limiting conditions for operation are determined, nor is there any adverse effect on those plant systems necessary to assure the accomplishment of protection functions. The proposed changes will not result in plant operation in a configuration outside the design basis.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

Based on the above, SNC concludes that the proposed amendment does not involve a significant hazards consideration under the standards set forth in 10 CFR 50.92(c), and, accordingly, a finding of ''no significant hazards consideration'' is justified.

2.10 TSTF–295–A, Revision 0, ''Modify Note 2 to Actions of PAM Table to Separate Condition Entry for Each Penetration''

Specification 3.3.3.1, ''Post Accident Monitoring (PAM) Instrumentation,'' Function 6, is renamed from ''Primary Containment Isolation Valve Position'' to ''Penetration Flow Path Primary Containment Isolation Valve Position.''

Significant Hazards Consideration: SNC has evaluated whether or not a significant hazards consideration is involved with the proposed amendment(s) by focusing on the three standards set forth in 10 CFR 50.92, ''Issuance of amendment,'' as discussed below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change clarifies the separate condition entry Note in Specification 3.3.3.1, ''Post Accident Monitoring (PAM) Instrumentation,'' for Function 6, ''Primary Containment Isolation Valve Position,'' and Function 9, ''Suppression Pool Water Temperature.'' The proposed change does not affect any plant equipment, test methods, or plant operation, and are not initiators of any analyzed accident sequence. The actions taken for inoperable PAM channels are not changed. Operation in accordance with the proposed Technical Specifications will ensure that all analyzed accidents will continue to be mitigated as previously analyzed.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not involve a physical alteration to the plant (*i.e.,* no new or different type of equipment will be installed) or a change to the methods

governing normal plant operation. The changes do not alter the assumptions made in the safety analysis.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed change will not affect the operation of plant equipment or the function of any equipment assumed in the accident analysis. The PAM channels will continue to be operable or the existing, appropriate actions will be followed.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

Based on the above, SNC concludes that the proposed amendment does not involve a significant hazards consideration under the standards set forth in 10 CFR 50.92(c), and, accordingly, a finding of ''no significant hazards consideration'' is justified.

2.11 TSTF–306–A, Revision 2, ''Add Action to LCO 3.3.6.1 to Give Option to Isolate the Penetration''

The proposed change revises Specification 3.3.6.1, ''Primary Containment Isolation Instrumentation.'' An Actions Note is added allowing penetration flow paths to be unisolated intermittently under administrative controls. The traversing incore probe (TIP) isolation system is also segregated into a separate Function, allowing 12 hours to place the channel in trip and 24 hours to isolate the penetration. A new Condition G is added for the new TIP isolation system Function. Condition G is referenced from Required Action C.1 when Conditions A or B are not met. The subsequent Actions are renumbered.

Significant Hazards Consideration: SNC has evaluated whether or not a significant hazards consideration is involved with the proposed amendment(s) by focusing on the three standards set forth in 10 CFR 50.92, ''Issuance of amendment,'' as discussed below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change revises Specification 3.3.6.1, ''Primary Containment Isolation Instrumentation.'' An Actions Note is added allowing penetration flow paths to be unisolated intermittently under administrative controls. The traversing incore probe (TIP) isolation system is segregated into a separate Function, allowing 12 hours to place the channel in trip and 24 hours to isolate the penetration. A new Action G is added which is referenced by the new TIP isolation system Function. The subsequent Actions are renumbered. The proposed change does not affect any plant equipment, test methods, or plant operation, and are not initiators of any analyzed accident sequence. The allowance to unisolate a penetration flow path will not have a significant effect on mitigation of any accident previously evaluated because the penetration flow path can be isolated, if needed, by a dedicated operator. The option to isolate a TIP System penetration will ensure the penetration will perform as assumed in the accident analysis. Operation in accordance with the proposed Technical Specifications will ensure that all analyzed accidents will continue to be mitigated as previously analyzed.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not involve a physical alteration to the plant (*i.e.,* no new or different type of equipment will be installed) or a change to the methods governing normal plant operation. The changes do not alter the assumptions made in the safety analysis.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed change will not affect the operation of plant equipment or the function of any equipment assumed in the accident analysis. The allowance to unisolate a penetration flow path will not have a significant effect on a margin of safety because the penetration flow path can be isolated manually, if needed. The option to isolate a TIP System penetration will ensure the penetration will perform as assumed in the accident analysis.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

Based on the above, SNC concludes that the proposed amendment does not involve a significant hazards consideration under the standards set forth in 10 CFR 50.92(c), and, accordingly, a finding of ''no significant hazards consideration'' is justified.

2.12 TSTF–308–A, Revision 1, ''Determination of Cumulative and Projected Dose Contributions in RECP''

The proposed change revises Specification 5.5.4, ''Radioactive Effluent Controls Program,'' paragraph e, to describe the original intent of the dose projections.

Significant Hazards Consideration: SNC has evaluated whether or not a significant hazards consideration is involved with the proposed amendment(s) by focusing on the three standards set forth in 10 CFR 50.92, ''Issuance of amendment,'' as discussed below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change revises Specification 5.5.4, ''Radioactive Effluent Controls Program,'' paragraph e, to describe the original intent of the dose projections. The cumulative and projection of doses due to liquid releases are not an assumption in any accident previously evaluated and have no effect on the mitigation of any accident previously evaluated.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not involve a physical alteration to the plant (*i.e.,* no new or different type of equipment will be installed) or a change to the methods governing normal plant operation. The changes do not alter the assumptions made in the safety analysis.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed change revises Specification 5.5.4, ''Radioactive Effluent Controls Program,'' paragraph e, to describe the original intent of the dose projections. The cumulative and projection of doses due to liquid releases are administrative tools to assure compliance with regulatory limits. The proposed change revises the requirement to clarify the intent, thereby improving the administrative control over this process. As a result, any effect on the margin of safety should be minimal.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

Based on the above, SNC concludes that the proposed amendment does not involve a significant hazards consideration under the standards set forth in 10 CFR 50.92(c), and, accordingly, a finding of ''no significant hazards consideration'' is justified.

2.13 TSTF–318–A, Revision 0, ''Revise 3.5.1 for One LPCI Pump Inoperable in Each of Two ECCS Divisions''

The proposed change adds a provision to Condition A of Specification 3.5.1, ''ECCS—Operating,'' to allow one Low Pressure Coolant Injection (LPCI) pump to be inoperable in each subsystem for a period of seven days.

Significant Hazards Consideration: SNC has evaluated whether or not a significant hazards consideration is involved with the proposed amendment(s) by focusing on the three standards set forth in 10 CFR 50.92, ''Issuance of amendment,'' as discussed below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change adds a provision to Condition A of Technical Specification (TS) 3.5.1 to allow one Low Pressure Coolant Injection (LPCI) pump to be inoperable in each subsystem for a period of seven days. The change to allow one LPCI pump to be inoperable in both subsystems is more reliable than what is currently allowed by Condition A, which requires entry into

shutdown limiting condition for operation (LCO) 3.0.3 under these conditions. The LPCI mode of the Residual Heat Removal system is not assumed to be initiator of any analyzed event sequence. The consequences of an accident previously evaluated under the proposed allowance are no different than the consequences under the existing requirements.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not involve a physical alteration to the plant (*i.e.,* no new or different type of equipment will be installed) or a change to the methods governing normal plant operation. The changes do not alter the assumptions made in the safety analysis.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed change adds a provision to Condition A of Technical Specification TS 3.5.1 to allow one LPCI pump to be inoperable in each subsystem for a period of seven days. The change to allow one LPCI pump to be inoperable in both subsystems is more reliable than what is currently allowed by Condition A, which requires entry into shutdown LCO 3.0.3 under these conditions. The proposed change does not affect any safety analysis assumptions.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

Based on the above, SNC concludes that the proposed amendment does not involve a significant hazards consideration under the standards set forth in 10 CFR 50.92(c), and, accordingly, a finding of ''no significant hazards consideration'' is justified.

2.14 TSTF–322–A, Revision 2, ''Secondary Containment and Shield Building Boundary Integrity SRs'

The proposed change revises Specification 3.6.4.1, ''Secondary Containment,'' SRs 3.6.4.1.3 and 3.6.4.1.4 to clarify the intent of the Surveillances.

Significant Hazards Consideration: SNC has evaluated whether or not a significant hazards consideration is involved with the proposed amendment(s) by focusing on the three standards set forth in 10 CFR 50.92, ''Issuance of amendment,'' as discussed below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change revises Specification 3.6.4.1, ''Secondary Containment,'' Surveillance Requirements (SRs) 3.6.4.1.3 and 3.6.4.1.4 to clarify the intent of the Surveillances. The secondary containment and the standby gas treatment (SGT) system are not initiators of any accident previously evaluated. Operation in accordance with the proposed Technical Specifications will ensure that all analyzed accidents will continue to be mitigated as previously analyzed.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not involve a physical alteration to the plant (*i.e.,* no new or different type of equipment will be installed) or a change to the methods governing normal plant operation. The changes do not alter the assumptions made in the safety analysis.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed change is an clarification of the intent of the surveillances to ensure that the secondary containment is not inappropriately declared inoperable when a SGT subsystem is inoperable. The safety functions of the secondary containment and the SGT system are not affected. This change is a correction that ensures that the intent of the secondary containment surveillances is clear.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

Based on the above, SNC concludes that the proposed amendment does not involve a significant hazards consideration under the standards set forth in 10 CFR 50.92(c), and, accordingly, a finding of ''no significant hazards consideration'' is justified.

2.15 TSTF–323–A, Revision 0, ''EFCV Completion Time to 72 hours''

The proposed change revises Specification 3.6.1.3, ''Primary Containment Isolation Valves,'' Action C, to provide a 72 hour Completion Time instead of a 12 hour Completion Time to isolate an inoperable excess flow check valve (EFCV).

Significant Hazards Consideration: SNC has evaluated whether or not a significant hazards consideration is involved with the proposed amendment(s) by focusing on the three standards set forth in 10 CFR 50.92, ''Issuance of amendment,'' as discussed below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change revises Specification 3.6.1.3, ''Primary Containment Isolation Valves,'' Action C, to provide a 72 hour Completion Time instead of a 12 hour Completion Time to isolate an inoperable excess flow check valve (EFCV). The primary containment isolation valves (PCIVs) are not an initiator of any accident previously evaluated. The consequences of a previously evaluated accident during the extended Completion Time are the same as the consequences during the existing Completion Time.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not involve a physical alteration to the plant (*i.e.,* no new or different type of equipment will be installed) or a change to the methods governing normal plant operation. The changes do not alter the assumptions made in the safety analysis.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed change extends the Completion Time to isolate an inoperable primary containment penetration equipped with an excess flow check valve from 12 hours to 72 hours. The PCIVs serve to mitigate the potential for radioactive release from the primary containment following an accident. The design and response of the PCIVs to an accident are not affected by this change. The revised Completion Time is appropriate given the EFCVs are on penetrations that have been found to have acceptable barrier(s) in the event that the single isolation valve fails.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

Based on the above, SNC concludes that the proposed amendment does not involve a significant hazards consideration under the standards set forth in 10 CFR 50.92(c), and, accordingly, a finding of ''no significant hazards consideration'' is justified.

2.16 TSTF–374–A, Revision 0, ''Revision to TS 5.5.13 and Associated TS Bases for Diesel Fuel Oil''

The proposed change revises Specification 5.5.9, ''Diesel Fuel Oil Testing Program,'' to remove references to the specific American Society for Testing and Materials (ASTM) Standard from the Administrative Controls Section of TS, and places them in a licensee-controlled document. Also, alternate criteria are added to establish the acceptability of new fuel oil for use prior to and following the addition to storage tanks.

Signification Hazards Consideration: SNC has evaluated whether or not a significant hazards consideration is involved with the proposed amendment(s) by focusing on the three standards set forth in 10 CFR 50.92, ''Issuance of amendment,'' as discussed below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes remove the references to specific ASTM standards from the Administrative Controls Section of the Technical Specifications (TS) and place them in a licensee controlled document. Requirements to perform testing in accordance with the applicable ASTM standards is retained in the TS as are requirements to perform testing of both new and stored diesel fuel oil. Future changes to the licensee controlled document will be evaluated pursuant to the requirements of 10 CFR 50.59 to ensure that these changes do not result in more than a minimal increase in the probability or consequences of an accident previously evaluated. In addition, tests used to establish the acceptability of new fuel oil for use prior to and following the addition to storage tanks has been expanded to recognize more rigorous testing of water and sediment content. Relocating the specific ASTM standard references from the TS to a licensee controlled document and allowing a water and sediment content test to be performed to establish the acceptability of new fuel oil will not affect nor degrade the ability of the emergency diesel generators (EDGs) to perform their specified safety function. Fuel oil quality will continue to be tested and maintained to ASTM requirements. Diesel fuel oil testing is not an initiator of any accident previously evaluated, and the proposed changes do not adversely affect any accident initiators or precursors, or alter design assumptions, conditions, and configuration of the facility, or the manner in which the plant is operated. The proposed changes do not adversely affect the ability of structures, systems, and components to perform their intended safety function to mitigate the consequences of an initiating event within the assumed acceptance limits.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes remove the references to specific ASTM standards from the Administrative Controls Section of TS and place them in a licensee controlled document. In addition, the tests used to establish the acceptability of new fuel oil for use prior to and following the addition to storage tanks has been expanded to allow a water and sediment content test to be performed to establish the acceptability of new fuel oil. The changes do not involve a physical alteration of the plant (*i.e.,* no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. The requirements retained in the TS will continue to require testing of new and stored diesel fuel oil to ensure the proper functioning of the EDGs.

Therefore, the changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed changes remove the references to specific ASTM standards from the Administrative Controls Section of TS and place them in a licensee controlled document. Instituting the proposed changes will continue to ensure the use of applicable ASTM standards to evaluate the changes to the licensee-controlled document are performed in accordance with the provisions of 10 CFR 50.59. This approach provides an effective level of regulatory control and ensures that diesel fuel oil testing is conducted such that there is no significant reduction in a margin of safety. The margin of safety provided by the EDGs is unaffected by the proposed changes since TS requirements will continue to ensure fuel oil is of the appropriate quality. The proposed changes provide the flexibility needed to improve fuel oil sampling and analysis methodologies while maintaining sufficient controls to preserve the current margins of safety.

Based on the above, SNC concludes that the proposed amendment does not involve a significant hazards consideration under the standards set forth in 10 CFR 50.92(c), and, accordingly, a finding of ''no significant hazards consideration'' is justified.

2.17 TSTF–400–A, Revision 1, ''Clarify SR on Bypass of DG Automatic Trips''

The proposed change revises Specification 3.8.1, ''AC Sources—Operating,'' Surveillance 3.8.1.11, to clarify that the intent of the SR is to test the non-critical emergency DG automatic trips.

Significant Hazards Consideration: SNC has evaluated whether or not a significant hazards consideration is involved with the proposed amendment(s) by focusing on the three standards set forth in 10 CFR 50.92, ''Issuance of amendment,'' as discussed below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

This change clarifies the purpose of Surveillance Requirement (SR) 3.8.1.11, which is to verify that non-critical automatic emergency diesel generator (DG) trips are bypassed in an accident. The non-critical automatic DG trips and their bypasses are not initiators of any accident previously evaluated. Therefore, the probability of any accident is not significantly increased. Additionally, the function of the emergency DG in mitigating accidents is not changed. The revised SR continues to ensure the emergency DG will operate as assumed in the accident analysis.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

This change clarifies the purpose of SR 3.8.1.11, which is to verify that non-critical automatic emergency DG trips are bypassed in an accident. The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed), or a change in the methods governing normal plant operation. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

This change clarifies the purpose of SR 3.8.1.11, which is to verify that non-critical automatic DG trips are bypassed in an accident. This change clarifies the purpose of the SR, which is to verify that the emergency DG is capable of performing the assumed safety function. The safety function of the emergency DG is unaffected, so the change does not affect the margin of safety.

Therefore, this change does not involve a significant reduction in a margin of safety.

Based on the above, SNC concludes that the proposed change presents no significant hazards consideration under the standards set forth in 10 CFR 50.92(c), and, accordingly, a finding of ''no significant hazards consideration'' is justified.

2.18 TSTF–439–A, Revision 2, ''Eliminate Second Completion Times Limiting Time From Discovery of Failure To Meet an LCO''

Specifications 3.1.7, ''Standby Liquid Control (SLC) System;'' 3.6.4.3, ''Standby Gas Treatment (SGT) System;'' 3.8.1, ''AC Sources—Operating;'' and 3.8.7, ''Distribution Systems—Operating,'' contain Required Actions with a second Completion Time to establish a limit on the maximum time allowed for any combination of Conditions that result in a single continuous failure to meet the LCO. These Completion Times (henceforth referred to as ''second Completion Times'') are joined by an ''AND'' logical connector to the Condition-specific Completion Time and state ''X days from discovery of failure to meet the LCO'' (where ''X'' varies by specification). The proposed change deletes these second Completion Times from the affected Required Actions. It also revises ISTS Example 1.3–3 to remove the discussion of second Completion Times and to revise the discussion in that Example to state that alternating between Conditions in such a manner that operation could continue indefinitely without restoring systems to meet the LCO is inconsistent with the basis of the Completion Times and is inappropriate. Therefore, the licensee shall have administrative controls to limit the maximum time allowed for any combination of Conditions that result in a single contiguous occurrence of failing to meet the LCO.

Significant Hazards Consideration: SNC has evaluated whether or not a significant hazards consideration is involved with the proposed amendment(s) by focusing on the three standards set forth in 10 CFR 50.92, ''Issuance of amendment,'' as discussed below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change eliminates certain Completion Times from the Technical Specifications. Completion Times are not an initiator to any accident previously evaluated. As a result, the probability of an accident previously evaluated is not affected. The consequences of an accident during the remaining Completion Time are no different than the consequences of the same accident during the removed Completion Times. As a result, the consequences of an accident previously evaluated are not affected by this change.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not involve a physical alteration to the plant (*i.e.,* no new or different type of equipment will be installed) or a change to the methods governing normal plant operation. The changes do not alter the assumptions made in the safety analysis.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed change to delete the second Completion Time does not alter the manner in which safety limits, limiting safety system settings or limiting conditions for operation are determined. The safety analysis acceptance criteria are not affected by this change. The proposed changes will not result in plant operation in a configuration outside of the design basis.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

Based on the above, SNC concludes that the proposed amendment does not involve a significant hazards consideration under the standards set forth in 10 CFR 50.92(c), and, accordingly, a finding of ''no significant hazards consideration'' is justified.

2.19 TSTF–458–T, Revision 0, ''Removing Restart of Shutdown Clock for Increasing Suppression Pool Temperature''

The proposed change revises Specification 3.6.2.1, ''Suppression Pool Average Temperature,'' Required Actions D and E, to eliminate redundant requirements.

Significant Hazards Consideration SNC has evaluated whether or not a significant hazards consideration is involved with the proposed amendment(s) by focusing on the three standards set forth in 10 CFR 50.92, ''Issuance of amendment,'' as discussed below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change revises Specification 3.6.2.1, ''Suppression Pool Average Temperature,'' Required Actions D and E, to eliminate redundant requirements when suppression pool temperature is above the Limiting Conditions for Operation (LCO) limit. Suppression pool temperature is not an initiator to any accident previously evaluated. Suppression pool temperature may affect the mitigation of accidents previously evaluated. The proposed change reduces the time allowed to operate with suppression pool temperature above the limit. The consequences of an accident under the proposed change are no different than under the current requirements.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not involve a physical alteration to the plant (*i.e.,* no new or different type of equipment will be installed) or a change to the methods governing normal plant operation. The changes do not alter the assumptions made in the safety analysis.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed change revises Specification 3.6.2.1, ''Suppression Pool Average Temperature,'' Required Actions D and E, to eliminate redundant requirements when suppression pool temperature is above the LCO limit. The proposed change reduces the time allowed to operate with suppression pool temperature above the limit. The proposed revision will not adversely affect the margin of safety as it corrects the Actions to provide appropriate compensatory measures when suppression pool temperature is greater than the limit.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

Based on the above, SNC concludes that the proposed amendment does not involve a significant hazards consideration under the standards set forth in 10 CFR 50.92(c), and, accordingly, a finding of ''no significant hazards consideration'' is justified.

2.20 TSTF–464–T, Revision 0, ''Clarify the Control Rod Block Instrumentation Required Action''

The proposed change revises Specification 3.3.2.1, Required Action C.2.1.2 from ''Verify by administrative methods that startup with RWM inoperable has not been performed in the last calendar year'' to ''Verify by administrative methods that startup with RWM inoperable has not been performed in the last 12 months.''

Significant Hazards Consideration: SNC has evaluated whether or not a significant hazards consideration is involved with the proposed amendment(s) by focusing on the three standards set forth in 10 CFR 50.92, ''Issuance of amendment,'' as discussed below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change revises a Required Action to limit startup with the Rod Worth Minimizer (RWM) inoperable from once per calendar year to once per 12 months. The RWM is used to minimize the possibility and consequences of a control rod drop accident. This change clarifies the intent of the limitation, but does not affect the requirement for the RWM to be operable. As, over time, the number of startups with the RWM inoperable will not increase, the probability of any accident previously evaluated is not significantly increased. As the RWM is still required to be operable, the consequences of an any accident previously evaluated are not significantly increased.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change revises a Required Action to limit startup with the Rod Worth Minimizer inoperable from once per calendar year to once per 12 months. No new or different accidents result from utilizing the proposed change. The changes do not involve a physical alteration of the plant (*i.e.,* no new or different type of equipment will be installed) or a significant change in the methods governing normal plant operation. The changes do not alter assumptions made in the safety analysis. The proposed changes are consistent with the safety analysis assumptions and current plant operating practice.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change revises a Required Action to limit startup with the Rod Worth Minimizer (RWM) inoperable from once per calendar year to once per 12 months. This clarifies the intent of the Required Action. The number of startups with RWM inoperable is not increased.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

Based on the above, SNC concludes that the proposed change presents no significant hazards consideration under the standards set forth in 10 CFR 50.92(c), and, accordingly, a finding of ''no significant hazards consideration'' is justified.

2.21 ISTS Adoption #1—Revise the 5.5.7 Introductory Paragraph To Be Consistent With the ISTS

The proposed change revises the introductory paragraph of Specification 5.5.7, ''Ventilation Filter Testing Program (VFTP),'' to be consistent with the ISTS. Specific requirements to perform testing after

structural maintenance on the HEPA filter or charcoal adsorber housing or following painting, fire or chemical release, and after every 720 hours of operation are relocated to the licensee- controlled program.

The existing wording states, ''The VFTP will establish the required testing of Engineered Safety Feature (ESF) filter ventilation systems at the frequencies specified in Regulatory Guide 1.52, Revision 2, Sections C.5.c and C.5.d, or: (1) After any structural maintenance on the HEPA filter or charcoal adsorber housings, (2) following painting, fire or chemical release in any ventilation zone communicating with the system, or 3) after every 720 hours of charcoal adsorber operation.''

The proposed wording states, ''A program shall be established to implement the following required testing of Engineered Safety Feature (ESF) filter ventilation systems at the frequencies specified in Regulatory Guide 1.52, Revision 2, Sections C.5.c and C.5.d, and in accordance with Regulatory Guide 1.52, Revision 2.''

Significant Hazards Consideration: SNC has evaluated whether or not a significant hazards consideration is involved with the proposed amendment(s) by focusing on the three standards set forth in 10 CFR 50.92, ''Issuance of amendment,'' as discussed below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change revises the introductory paragraph of Specification 5.5.7, ''Ventilation Filter Testing Program (VFTP),'' to be consistent with the ISTS. Specific requirements to perform testing after structural maintenance on the HEPA filter or charcoal adsorber housing or following painting, fire or chemical release, and after every 720 hours of operation are retained as a reference to Regulatory Guide requirements and general requirements in Surveillance Requirement (SR) 3.0.1. Implementation of these requirements will be in the licensee-controlled VFTP. The VFTP will be maintained in accordance with 10 CFR 50.59. Since any changes to the VFTP will be evaluated under 10 CFR 50.59, no significant increase in the probability or consequences of an accident previously evaluated will be allowed.

Therefore, this proposed change does not represent a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not involve a physical alteration to the plant (*i.e.,* no new or different type of equipment will be installed) or a change to the methods governing normal plant operation. The changes do not alter the assumptions made in the safety analysis.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed change revises the introductory paragraph of Specification 5.5.7, ''Ventilation Filter Testing Program (VFTP),'' to be consistent with the ISTS. The proposed change will not reduce a margin of safety because it has no effect on any safety analysis assumption. In addition, no requirements are being removed, but are being replaced with references to an NRC Regulatory Guide and the requirements of SR 3.0.1.

Therefore, this proposed change does not involve a significant reduction in a margin of safety.

Based on the above, SNC concludes that the proposed amendment does not involve a significant hazards consideration under the standards set forth in 10 CFR 50.92(c), and, accordingly, a finding of ''no significant hazards consideration'' is justified.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jennifer M. Buettner, Associate General Counsel, Southern Nuclear Operating Company, 40 Inverness Center Parkway, Birmingham, AL 35201

NRC Branch Chief: Robert J. Pascarelli.

Tennessee Valley Authority, Docket Nos. 50–259, 50–260, and 50–296, Browns Ferry Nuclear Plant, Units 1, 2, and 3, Limestone County, Alabama

Date of amendment request: December 11, 2014 (ADAMS Accession No. ML14349A694).

Description of amendment request: The amendment would revise Section 3.8.3, ''Diesel Fuel Oil, Lube Oil, and Starting Air,'' of the Technical Specifications (TSs) by replacing the current volume requirements with the number of continuous days the diesel generators (DGs) are required to run. The numerical volumes will be maintained in the licensee-controlled TSs Bases document so they may be modified under licensee control. The resulting requirements will specify an inventory of stored diesel fuel oil and lube oil sufficient for a 7-day supply for each DG. This proposed amendment is consistent with NRC's approved Technical Specifications Task Force (TSTF) Improved Standard Technical Specifications Change Traveler TSTF–501, Revision 1, ''Relocate Stored Fuel Oil and Lube Oil Volume Values to Licensee Control.'' The availability of this TSs improvement was announced in the **Federal Register** on May 26, 2010 (75 FR 29588). The licensee also proposed additional changes to Section 3.8.3 and Section 5.5.9, ''Diesel Fuel Oil Testing Program,'' to support other related changes proposed by TSTF–501, Revision 1. These additional changes concern fuel oil quality and associated surveillance requirements (SRs).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes to TS Section 3.8.3, Conditions A and B, and to SR 3.8.3.1 and SR 3.8.3.2 remove the volume of diesel fuel oil and lube oil required to support 7-day operation of each onsite diesel generator, and the volume equivalent to a 6-day supply, from the TS and replace them with the associated number of days. The numerical volumes will be maintained under licensee control. The specific volume of fuel oil equivalent to a 7 and 6-day supply is calculated using the NRC-approved methodology described in Regulatory Guide 1.137, Revision 1, ''Fuel-Oil Systems for Standby Diesel Generators'' and ANSI [American National Standards Institute]-N195 1976, ''Fuel Oil Systems for Standby Diesel-Generators.'' The specific volume of lube oil equivalent to a 7-day and 6-day supply is based on the diesel generator manufacturer's consumption values for the run time of the diesel generator. Because the requirement to maintain a 7-day supply of diesel fuel oil and lube oil is not changed and is consistent with the assumptions in the accident analyses, and the actions taken when the volume of fuel oil and lube oil are less than a 6-day supply have not changed, neither the probability nor the consequences of any accident previously evaluated will be affected.

The addition of a new Condition D provides a required action and completion time if new fuel oil properties are not within limits. The new SR 3.8.3.5 requires checking for and removing water from the 7-day storage tank every 31 days. The revised Section 5.5.9 adds testing requirements for new fuel oil to be completed prior to the addition of the new fuel oil to the 7-day storage tank, as well as additional testing to be completed prior or within 31 days of the addition. These requirements are more restrictive testing requirements and provide corrective action to be taken if the testing limits are not met. They are taken from the current NRC approved NUREG–1433, Revision 4, ''Standard Technical Specifications, General Electric BWR/4 Plants.'' Improved, more restrictive testing standards will neither change the probability or the consequences of any accident previously evaluated be affected.

Therefore, the proposed changes do not involve a significant increase in the

probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The changes do not involve a physical alteration of the plant (*i.e.,* no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. The change does not alter assumptions made in the safety analysis but ensures that the diesel generator operates as assumed in the accident analysis. The proposed change is consistent with the safety analysis assumptions.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed changes to Section 3.8.3, Conditions A and B, and to SR 3.8.3.1 and SR 3.8.3.2 remove the numerical volume of diesel fuel oil and lube oil required to support 7-day operation of each onsite diesel generator, and the numerical volume equivalent to a 6-day supply from the TS and replaces them with the associated number of days. The numerical volumes will be maintained under licensee control. As the bases for the existing limits on diesel fuel oil volume and lube oil volume are not changed, no change is made to the accident analysis assumptions and no margin of safety is reduced as part of this change.

The new, more restrictive, testing requirements, and the provision for corrective action to be taken if the testing limits are not met, are taken from the current NRC approved NUREG–1433, Revision 4, ''Standard Technical Specifications, General Electric BWR/4 Plants.'' These changes do not revise the accident analysis assumptions and no margin of safety is reduced as part of these changes.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, 6A West Tower, Knoxville, TN 37902.

NRC Branch Chief: Shana R. Helton.

Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: November 20, 2014. A publicly-available version is in ADAMS under Accession No. ML14330A247.

Description of amendment request: The amendment would revise the Technical Specification (TS) requirements to address NRC Generic Letter 2008–01, ''Managing Gas Accumulation in Emergency Core Cooling, Decay Heat Removal, and Containment Spray Systems,'' as described in Technical Specification Task Force (TSTF) Traveler TSTF–523, Revision 2, ''Generic Letter 2008–01, Managing Gas Accumulation.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change revises or adds SRs [surveillance requirements] that require verification that the Emergency Core Cooling System (ECCS), the Residual Heat Removal (RHR) System, and the Containment Spray System are not rendered inoperable due to accumulated gas and to provide allowances which permit performance of the revised verification. Gas accumulation in the subject systems is not an initiator of any accident previously evaluated. As a result, the probability of any accident previously evaluated is not significantly increased. The proposed SRs ensure that the subject systems continue to be capable to perform their assumed safety function and are not rendered inoperable due to gas accumulation. Thus, the consequences of any accident previously evaluated are not significantly increased.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change revises or adds SRs that require verification that the ECCS, the RHR System, and the Containment Spray System are not rendered inoperable due to accumulated gas and to provide allowances which permit performance of the revised verification. The proposed change does not involve a physical alteration of the plant (*i.e.,* no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. In addition, the proposed change does not impose any new or different requirements that could initiate an accident. The proposed change does not alter assumptions made in the safety analysis and is consistent with the safety analysis assumptions.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change revises or adds SRs that require verification that the ECCS, the RHR System, and the Containment Spray System are not rendered inoperable due to accumulated gas and to provide allowances which permit performance of the revised verification. The proposed change adds new requirements to manage gas accumulation in order to ensure the subject systems are capable of performing their assumed safety functions. The proposed SRs are more comprehensive than the current SRs and will ensure that the assumptions of the safety analysis are protected. The proposed change does not adversely affect any current plant safety margins or the reliability of the equipment assumed in the safety analysis. Therefore, there are no changes being made to any safety analysis assumptions, safety limits or limiting safety system settings that would adversely affect plant safety as a result of the proposed change.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jay Silberg, Esq., Pillsbury Winthrop Shaw Pittman LLP, 2300 N Street NW., Washington, DC 20037.

NRC Branch Chief: Michael T. Markley.

III. Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses and Combined Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the ***Federal Register*** on the day and page cited. This notice does not extend the notice period of the original notice.

Energy Northwest, Docket No. 50–397, Columbia Generating Station, Benton County, Washington

Date of amendment request: August 22, 2014. A publicly-available version is in ADAMS under Accession No. ML14237A729.

Brief description of amendment request: The proposed amendment would revise the technical specification (TS) surveillance requirement (SR) for the ultimate heat sink (UHS) to clarify that spray pond level is the average of the level in both ponds. The design of the ultimate heat sink is such that it is difficult to meet the current SR when only one standby service water (SW) pump is in operation without overflowing a spray pond resulting in a net loss of water inventory, which may challenge the ability of the UHS to provide sufficient inventory for 30 days. However, if the SR is not met, a plant shutdown is required.

Date of publication of individual notice in ***Federal Register****:* September 5, 2014 (79 FR 53085).

Expiration date of individual notice: October 6, 2014 (public comments); November 4, 2014 (hearing requests).

IV. Notice of Issuance of Amendments to Facility Operating Licenses and Combined Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to facility operating license or combined license, as applicable, proposed no significant hazards consideration determination, and opportunity for a hearing in connection with these actions, was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items can be accessed as described in the ''Obtaining Information and Submitting Comments'' section of this document.

DTE Electric Company, Docket No. 50–341, Fermi 2, Monroe County, Michigan

Date of amendment request: April 23, 2013, as supplemented by letters dated June 19, and October 13, 2014.

Brief description of amendment: The amendment revised the Fermi 2 technical specification (TS) surveillance requirements (SRs) associated with SR 3.8.4.2 and SR 3.8.4.5 to add a battery resistance limit; SR 3.8.6.3 to change the average electrolyte temperature of representative cells, and SR 3.8.4.8 to change the frequency of battery capacity testing.

Date of issuance: March 16, 2015.

Effective date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment No.: 199. A publicly-available version is in ADAMS under Accession No. ML15057A297; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Facility Operating License No. NPF–43: The amendment revised the Facility Operating License and Technical Specifications.

Date of initial notice in ***Federal Register****:* July 22, 2014 (79 FR 42542). The supplemental letters dated June 19, and October 13, 2014, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 16, 2015.

No significant hazards consideration comments received: No.

Entergy Gulf States Louisiana, LLC, and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: June 13, 2013, as supplemented by letters dated August 28 and November 3, 2014, and January 22, 2015.

Brief description of amendment: The amendment revised the Technical Specifications to risk-inform requirements regarding selected Required Action end states by adopting Technical Specification Task Force (TSTF)–423, Revision 1, ''Technical Specifications End States, NEDC–32998–A,'' with some deviations as approved by the NRC staff. This technical specification improvement is part of the Consolidated Line Item Improvement Process (CLIIP). In addition, it approves a change to the facility operating license for the River Bend Station, Unit 1. The change deletes two license conditions that are no longer applicable and adds a new license condition for maintaining commitments required for the approval of this TSTF into the Updated Safety Analysis Report.

Date of issuance: February 17, 2015.

Effective date: As of the date of issuance and shall be implemented 90 days from the date of issuance.

Amendment No.: 185. A publicly-available version is in ADAMS under Accession No. ML14106A167; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Facility Operating License No. NPF–47: The amendment revised the Facility Operating License and Technical Specifications.

Date of initial notice in ***Federal Register****:* August 20, 2013 (78 FR 51226). The supplemental letters dated August 28, and November 3, 2014, and January 22, 2015, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 17, 2015.

No significant hazards consideration comments received: No.

Entergy Nuclear Operations, Inc., Docket No. 50–286, Indian Point Nuclear Generating Unit 3, Westchester County, New York

Date of amendment request: February 4, 2014, as supplemented by letter dated December 9, 2014.

Brief description of amendment: The amendment revised Technical Specification 5.5.15, ''Containment Leakage Rate Testing Program,'' to allow a permanent extension of the Type A primary containment integrated leak

rate test frequency from once every 10 years to once every 15 years.

Date of issuance: March 13, 2015.

Effective date: As of the date of issuance, and shall be implemented within 30 days.

Amendment No.: 256. A publicly-available version is in ADAMS under Accession No. ML15028A308; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Facility Operating License No. DPR–64: The amendment revised the Facility Operating License and the Technical Specifications.

Date of initial notice in ***Federal Register****:* July 8, 2014 (79 FR 38587). The supplemental letter provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 13, 2015.

No significant hazards consideration comments received: No

Entergy Nuclear Operations, Inc., Docket No. 50–286, Indian Point Nuclear Generating Unit 3, Westchester County, New York

Date of amendment request: April 1, 2014.

Brief description of amendment: The amendment revised Technical Specification Figures 3.4.3–1, ''Heatup Limitations for Reactor Coolant System,'' 3.4.3–2, ''Cooldown Limitations for Reactor Coolant System,'' and 3.4.3–3, ''Hydrostatic and Inservice Leak Testing Limitations for Reactor Coolant System'' to address vacuum fill operations in the TSs. The proposed changes clarify that the figures are applicable for vacuum fill conditions where pressure limits are considered to be met for pressures that are below 0 pounds per square inch gauge (psig) (*i.e.,* up to and including full vacuum conditions). Vacuum fill operations for the RCS can result in system pressures below 0 psig.

Date of issuance: March 6, 2015.

Effective date: As of the date of issuance, and shall be implemented within 30 days.

Amendment No.: 255. A publicly-available version is in ADAMS under Accession No. ML15050A144; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Facility Operating License No. DPR–64: The amendment revised the Facility Operating License and the Technical Specifications.

Date of initial notice in ***Federal Register****:* October 28, 2014 (79 FR 64223).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 6, 2015.

No significant hazards consideration comments received: No

Entergy Nuclear Operations, Inc., Docket No. 50–293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of amendment request: April 5, 2013, as supplemented by letter dated March 20, 2014.

Brief description of amendment: This amendment revised Technical Specification (TS) 2.1.1 and 2.1.2, ''Safety Limits,'' by reducing the reactor steam dome pressure from 785 pounds per square inch gauge (psig) to 685 psig to resolve the Pressure Regulator Failure-Open transient.

Date of issuance: March 12, 2015.

Effective date: As of the date of issuance, and shall be implemented within 60 days of issuance.

Amendment No.: 242. A publicly-available version is in ADAMS under Accession No. ML14272A070; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Renewed Facility Operating License No. DPR–35: Amendment revised the License and TS.

Date of initial notice in ***Federal Register****:* August 6, 2013 (78 FR 47788). The supplement dated March 20, 2014, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 12, 2015.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket No. 50–220, Nine Mile Point Nuclear Station, Unit 1, Oswego County, New York

Date of application for amendment: March 8, 2013, as supplemented by letter dated May 16, 2013, July 8, July16, August 29, 2014, and January 22, 2015. The public versions of these documents are available in ADAMS at the Accession Nos. ML13073A103, ML13144A068, ML14203A050, ML14199A384, ML14251A233, and ML15026A132, respectively.

Brief description of amendment: The amendment to the Nine Mile Point Unit 1 (NMP1) Renewed Facility Operating License DPR–63 modified Technical Specification (TS) Table 3.6.2i, ''Diesel Generator Initiation,'' by revising the existing 4.16kV Power Board (PB) 102/103 Emergency Bus Undervoltage (Degraded Voltage) Operating Time value and by updating the Set Point heading title. The TS revisions are being made to resolve the green non-cited violation (NCV) associated with the vital bus degraded voltage protection time delay documented in NRC Inspection Report (IR) 05000220/201101, ''Nine Mile Point Nuclear Station—NRC Unresolved Item Follow-up Inspection Report,'' dated January 23, 2012 (ADAMS Accession No. ML12023A119), specifically, NCV05000220/20 11011–01, ''Vital Bus Degraded Voltage Time Delay Not Maintained within LOCA Analysis Assumptions.''

Date of issuance: March 12, 2015.

Effective date: effective as of the date of its issuance and shall be implemented within 60 days.

Amendment No.: 217.

Renewed Facility Operating License No. DPR–63: Amendment revised the License and Technical Specifications.

Date of initial notice in **Federal Register***:* June 11, 2013, (78 FR 35062). The supplements dated May 16, 2013, July 8, July16, August 29, 2014, and January 22, 2015, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's initial proposed no significant hazards consideration determination noticed in the **Federal Register** on June 11, 2013 (78 FR 35062).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 12, 2015.

No significant hazards consideration comments received: No

Exelon Generation Company, LLC, and PSEG Nuclear LLC, Docket Nos. 50–277 and 50–278, Peach Bottom Atomic Power Station, Units 2 and 3, York and Lancaster Counties, Pennsylvania

Date of application for amendments: July 11, 2014, as supplemented by letter dated December 1, 2014.

Brief description of amendments: The amendments incorporate several administrative changes to the Facility Operating Licenses (FOLs) and the Technical Specifications (TSs) such as deleting historical items that are no longer applicable, correcting errors, and removing references that are no longer valid.

Date of issuance: March 11, 2015.

Effective date: As of the date of issuance, to be implemented within 60 days.

Amendments Nos.: 296 and 299. A publicly-available version is in ADAMS under Accession No. ML14363A227; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Renewed Facility Operating License Nos. DPR–44 and DPR–56: The amendments revised the FOLs and the TSs.

*Date of initial notice in **Federal Register**:* September 2, 2014 (79 FR 52062). The supplemental letter dated December 1, 2014, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 11, 2015.

No significant hazards consideration comments received: No.

FirstEnergy Nuclear Operating Company, et al., Docket Nos. 50–334 and 50–412, Beaver Valley Power Station, Units 1 and 2 (BVPS–1 and 2), Beaver County, Pennsylvania

Date of amendment request: October 18, 2013, as supplemented by letters dated June 26, 2014, September 21, 2014, and February 4, 2015.

Brief description of amendments: The amendment changes the Beaver Valley Power Station Technical Specifications (TS). Specifically, this change request involves the adoption of an approved change to the standard TS for Westinghouse plants (NUREG–1431), to allow relocation of specific TS surveillance frequencies to a licensee-controlled program. The proposed change is described in TS Task Force (TSTF) Traveler, TSTF–425, Revision 3, ''Relocation Surveillance Frequencies to Licensee Control—RITSTF [Risk-Informed Technical Specifications Task Force] Initiative 5b'' (Agencywide Documents Access and Management System (ADAMS) Accession No. ML090850642). A Notice of Availability was published in the **Federal Register** on July 6, 2009 (74 FR 31996).

The proposed change relocates surveillance frequencies to a licensee-controlled program, the Surveillance Frequency Control Program. This change is applicable to licensees using probabilistic risk guidelines contained in NRC-approved NEI 04–10, Revision 1, ''Risk-Informed Technical Specifications Initiative 5b, Risk-Informed Method for Control of Surveillance Frequencies'' (ADAMS Accession No. ML071360456).

Date of issuance: March 6, 2015.

Effective date: As of the date of issuance and shall be implemented within 120 days of issuance.

Amendment Nos.: 292 and 179. A publicly-available version is in ADAMS under Accession No. ML14322A461; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Renewed Facility Operating License Nos. DPR–66 and NPF–73: Amendments revised the Renewed Facility Operating Licenses and Technical Specifications.

*Date of initial notice in **Federal Register**:* January 21, 2014 (79 FR 3416). The supplemental letters dated June 26, 2014, September 21, 2014, and February 4, 2015, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 6, 2015.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company, Docket Nos. 52–025 and 52–026, Vogtle Electric Generating Plant (VEGP) Units 3 and 4, Burke County, Georgia

Date of amendment request: November 21, 2013, and supplemented by the letters dated March 5 and June 30, 2014.

Brief description of amendment: The amendment authorizes changes to the VEGP Units 3 and 4 Updated Final Safety Analysis Report to revise the details of the effective thermal conductivity resulting from the oxidation of the inorganic zinc component of the containment vessel coating system.

Date of issuance: February 26, 2015.

Effective date: As of the date of issuance and shall be implemented within 30 days of issuance.

Amendment No.: 31. A publicly-available version is in ADAMS under Accession No. ML15028A358; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Facility Combined Licenses Nos. NPF–91 and NPF–92: Amendment revised the Facility Combined Licenses.

*Date of initial notice in **Federal Register**:* March 18, 2014 (79 FR 15150).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 26, 2015.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company, Inc., Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama

Date of application for amendment: September 25, 2012; as supplemented on December 20, 2012; September 16, October 30, and November 12, 2013; April 23, May 23, July 3, August 11, August 29, and October 13, 2014; and January 16, 2015.

Brief description of amendments: The amendment authorizes the transition of the Joseph M. Farley Nuclear Plant, Units 1 and 2, fire protection program to a risk-informed, performance-based program based on National Fire Protection Association (NFPA) 805, ''Performance-Based Standard for Fire Protection for Light Water Reactor Electric Generating Plants, 2001 Edition'' (NFPA 805), in accordance with 10 CFR 50.48(c).

Date of issuance: March 10, 2015.

Effective date: As of its date of issuance and shall be implemented within 60 days from the date of issuance.

Amendment Nos.: Unit 1–196, Unit 2–192. A publicly-available version is in ADAMS under Accession No. ML14308A048, documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Facility Operating License Nos. NPF–2 and NPF–8: The amendments revised the Renewed Facility Operating Licenses and Technical Specifications.

*Date of initial notice in **Federal Register**:* March 12, 2013 (78 FR 15750). The supplemental letters dated September 16, October 30, and November 12, 2013; April 23, May 23, July 3, August 11, August 29, and October 13, 2014; and January 16, 2015, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 10, 2015.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 23rd day of March 2015.

For the Nuclear Regulatory Commission.

Michele G. Evans,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2015–07192 Filed 3–30–15; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2015–0001]

Sunshine Act Meeting Notice

DATE: March 30, April 6, 13, 20, 27, May 4, 2015.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of March 30, 2015

There are no meetings scheduled for the week of March 30, 2015.

Week of April 6, 2015—Tentative

There are no meetings scheduled for the week of April 6, 2015.

Week of April 13, 2015—Tentative

Tuesday, April 14, 2015

9:30 a.m. Meeting with the Advisory Committee on the Medical Uses of Isotopes
(Public Meeting)
(Contact: Nima Ashkeboussi, 301-415–5775)

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

Thursday, April 16, 2015

9:30 a.m. Meeting with the Organization of Agreement States and the Conference of Radiation Control Program Directors
(Public Meeting)
(Contact: Nima Ashkeboussi, 301–415–5775)

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

Week of April 20, 2015—Tentative

There are no meetings scheduled for the week of April 20, 2015.

Week of April 27, 2015—Tentative

There are no meetings scheduled for the week of April 27, 2015.

Week of May 4, 2015—Tentative

There are no meetings scheduled for the week of May 4, 2015.

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The schedule for Commission meetings is subject to change on short notice. For more information or to verify the status of meetings, contact Glenn Ellmers at 301–415–0442 or via email at *Glenn.Ellmers@nrc.gov.*

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.* braille, large print), please notify Kimberly Meyer, NRC Disability Program Manager, at 301–287–0727, by videophone at 240–428–3217, or by email at *Kimberly.Meyer-Chambers@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

Members of the public may request to receive this information electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555 (301–415–1969), or email *Brenda.Akstulewicz@nrc.gov* or *Patricia.Jimenez@nrc.gov.*

Dated: March 26, 2015.

Glenn Ellmers,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2015–07384 Filed 3–27–15; 11:15 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Civilian Acquisition Workforce Personnel Demonstration Project; Department of Defense

AGENCY: U.S. Office of Personnel Management (OPM).

ACTION: Notice of amendments to the project plan for the Department of Defense (DoD) Civilian Acquisition Workforce Personnel Demonstration Project (AcqDemo).

SUMMARY: The DoD, with the approval of OPM, received authority to conduct a personnel demonstration project within DoD's civilian acquisition workforce and among those supporting personnel assigned to work directly with it. This notice announces the repeal and replacement of AcqDemo's original legal authorization and modifies the project plan to include new provisions; updates the project plan to address changes resulting from new General Schedule regulations and operational experience; announces guidelines for a formal process for interested DoD civilian acquisition organizations to use to request approval to participate in AcqDemo; and provides notice of expansion of coverage to new or realigned organizations.

DATES: The amendments will become effective as of March 31, 2015.

FOR FURTHER INFORMATION CONTACT: (1) DoD: Darryl R. Burgan, Civilian Acquisition Workforce Personnel Demonstration Project Program Office, 9820 Belvoir Road, Ft. Belvoir, VA 22060, (703) 805–5050; (2) OPM: Zelma Moore, U.S. Office of Personnel Management, 1900 E Street NW., Room 7456, Washington, DC 20415, (202) 606–1157.

SUPPLEMENTARY INFORMATION:

A. Background

The AcqDemo Project was established under the authority of the Secretary of Defense, with the approval of OPM. Subject to the authority, direction, and control of the Secretary, the Under Secretary of Defense for Acquisition, Technology, and Logistics (USD(AT&L)) carries out the powers, functions, and duties of the Secretary concerning the DoD acquisition workforce. As stated in the most recent legislative authorization, the purpose of the demonstration project is ''to determine the feasibility or desirability of one or more proposals for improving the personnel management policies or procedures that apply with respect to the acquisition workforce of the [DoD] and supporting personnel assigned to work directly with the acquisition workforce.''

This demonstration project was originally authorized under section 4308 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 1996 (Pub. L. 104–106, 110 Stat. 669; 10 United States Code Annotated (U.S.C.A.) 1701 note), as amended by section 845 of NDAA for FY 1998 (Pub. L. 105–85, 111 Stat.1845); section 813 of NDAA for FY 2003 (Pub. L. 107–314, 116 Stat. 2609); and section 1112 of NDAA for FY 2004 (Pub. L. 108–136, 117 Stat. 1634). Section 1113 of NDAA for FY 2010 (Pub. L. 111–84, 123 Stat. 2190) repealed the National Security Personnel System and directed conversion of all NSPS employees to their previous pay system by January 1, 2012. All NSPS employees formerly in AcqDemo were transitioned back to AcqDemo during the month of May 2011. On January 7, 2011, the original demonstration project authority was repealed and codified at section 1762 of

title 10 United States Code (U.S.C.) pursuant to section 872 of the Ike Skelton NDAA for FY 2011 (Pub. L. 111–383, 124 Stat. 4300, 4302).

OPM approved and published the final project plan for the AcqDemo on January 8, 1999, in 64 FR 1426–1492. Since that time, four amendments have been approved and published, and one notice of intent to amend published by OPM:

(1) 66 FR 28006–28007 (May 21, 2001): This amendment was published to (1) correct discrepancies in the list of occupational series included in the project and (2) authorize managers to offer a buy-in to Federal employees entering the project after initial implementation.

(2) 67 FR 20192–20193 (April 24, 2002): This amendment was published to (1) make employees in the top broadband level of their career path eligible to receive a ''very high'' overall contribution score and (2) reduce the minimum rating period under the Contribution-based Compensation and Appraisal System (CCAS) to 90 calendar days.

(3) 67 FR 44250–44256 (July 1, 2002): This amendment (1) contained a list of all organizations that are eligible to participate in the project and (2) made the resulting adjustments to the table that describes the project's workforce demographics and union representation.

(4) 67 FR 63948–63949 (October 16, 2002): This notice of the intent to amend was published to propose a change in the method for determining and translating retention service credit. The proposal was overcome by the advent of the National Security Personnel System (NSPS), which was projected to replace the AcqDemo.

(5) 71 FR 58638–58639 (October 4, 2006): This amendment was published to facilitate the transition of AcqDemo employees to NSPS by authorizing an out-of-cycle Contribution-based Compensation and Appraisal System payout and amending conversion-out procedures.

With the enactment of section 872 of the Ike Skelton NDAA for FY 2011 (Pub. L. 111–383), Congress extended the authority for AcqDemo until September 30, 2017, and raised the total number of persons who may participate in the project from 95,000 to 120,000. Since the enactment, a number of acquisition workforce organizations recently indicated a strong interest in joining AcqDemo and have received DoD (USD(AT&L) and the Under Secretary of Defense (Personnel and Readiness) (USD(P&R)) and OPM approval to participate in the demonstration project.

B. Overview

AcqDemo involves streamlined hiring processes, broad banding, simplified classification, a contribution-based compensation and appraisal system, revised reduction-in-force procedures, academic degree and certification training, and sabbaticals.

C. Purpose of This Notice

The purpose of this notice is fivefold:

1. Announce that the original authority for the DoD Civilian Acquisition Workforce Personnel Demonstration Project provided by section 4308 of NDAA for FY 1996 (Pub. L. 104–106, 110 Stat. 669; 10 U.S.C.A. 1701 note), as amended, was repealed and codified at section 1762 of title 10 U.S.C. pursuant to section 872 of the Ike Skelton NDAA for FY 2011 (Pub. L. 111–383, 124 Stat. 4300, 4302).

2. Make modifications to 64 FR 1426–1492; 66 FR 28006–28007; 67 FR 20192–20193; 67 FR 44250–44256; 67 FR 63948–63949; and 71 FR 58638–58639 as appropriate to delete the repealed authority, insert the new updated authority, and include the new provisions authorized by section 872 of the Ike Skelton NDAA for FY 2011, including the associated changes necessitated by these provisions. The new provisions extend the authority termination date for the AcqDemo project to September 30, 2017; increase the total number of employees who may participate in the demonstration project up to 120,000; add workforce, organization and team participation eligibility criteria; add a provision for continuing the participation of organizations and teams whose subsequent reorganization causes changes in their demographics which could result in loss of eligibility to participate; and adds a requirement for two project assessments—one to be completed no later than September 30, 2012, which was forwarded to Congress in November 2012, and the other to be completed no later than September 30, 2016.

3. Improve process efficiency in refreshing the demonstration project plan to address required immediate changes resulting from new General Schedule (GS) regulations and actual demonstration project operational experience. These current changes include: Adding newly established GS occupational series, GS–0017, Explosive Safety Series; GS–0089, Emergency Management Series; GS–901, General Legal and Kindred Administration Series; GS–1603, Equipment, Facilities, and Services Assistance Series; GS–2299 Information Technology Management Student Trainee Series; and GS–0306, Public Information Management Series; replacing inactivated series GS–0334, Computer Specialist Series, with its replacement series GS–2210, Information Technology (IT) Management Series; and providing AcqDemo the capability to add other occupational series and revise or delete current series as a result of fluctuations in mission requirements or future DoD or OPM modifications to occupational series with appropriate notification to USD(P&R) and OPM for approval. Up to 20 positions may be reclassified to the Explosive Safety Series; approximately 800 positions are classified to the Information Technology Series; at least 5 positions each are classified to the General Legal and Kindred Administration Series, the Equipment, Facilities, and Services Assistance Series, and the Information Technology Management Student Trainee Series; and there is no impact on positions at this time with the addition of the Emergency Management Series and the Public Information Management Series.

4. Provide a formal process for DoD organizations interested in joining AcqDemo to request approval to participate in the demonstration project.

5. Announce the expansion of the AcqDemo to new or realigned DoD Acquisition organizations.

D. Notification Responsibilities and Collective Bargaining Requirements

The DoD AcqDemo Program Office will post this amendment on the Program Office's Web site at *http://AcqDemo.dau.mil* and request that components, DoD agencies, DoD field activities, and other organizations and teams, once approved for participation, notify employees, appropriate union officials, and other stakeholders of their communication vehicles, *e.g.,* Web site, letters to employees and union officials, consultation/negotiation with union officials, town halls, etc., as well as the DoD Program Office Web site and information contained therein. These amendments will be made and implemented in accordance with bargaining requirements contained in the project plan published in 64 FR 1426, as amended, that employees, within a unit to which a labor organization is accorded exclusive recognition under Chapter 71 of title 5, United States Code (U.S.C.), shall not be included as part of the demonstration project unless the exclusive representative and the agency have entered into a written agreement covering participation in and implementation of the project.

U.S. Office of Personnel Management.

Katherine Archuleta,

Director.

Pursuant to 5 CFR 470.315, OPM approves the following modification to the AcqDemo project plan.

Specific Textual Changes to the AcqDemo Project Plan:

A. In the notice published on January 8, 1999, 64 FR 1426–1492:

1. On page 1426, in the first column, in the second paragraph under the **SUMMARY** section, in the first through sixth lines, ''Section 4308 of the National Defense Authorization Act for Fiscal Year 1996 (Pub. L. 104–106; 10 U.S.C.A. § 1701), as amended by section 845 of the National Defense Authorization Act for Fiscal Year 1998 (Pub. L. 105–85),'' should read ''Section 872 of the Ike Skelton National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2011 (Pub. L. 111–383, 124 Stat. 4300, 4302)''.

2. On page 1426, in the first column, in the second paragraph under the **SUMMARY** section, in the last line, ''95,000'' should read ''120,000''.

3. On page 1426, in the second column, in the first full paragraph, in the first through sixth lines, ''Section 4308 of the National Defense Authorization Act for Fiscal Year 1996 (Pub. L. 104–106; 10 U.S.C.A. § 1701), as amended by section 845 of the National Defense Authorization Act for Fiscal Year 1998 (Pub. L. 105–85),'' should read ''Section 872 of the Ike Skelton NDAA for FY 2011 (Pub. L. 111–383, 124 Stat. 4300, 4302)''.

4. On page 1439, in Table 2, in the ''Business Management & Technical Management Professional'' section, insert GS occupational series GS–0017, Explosive Safety Series; GS–0089, Emergency Management Series; and GS–0306, Public Information Management Series in their proper place in accordance with the numerical sequence shown in the ''Business Management & Technical Management Professional'' section.

5. On page 1440, in Table 2, in the ''Business Management & Technical Management Professional'' section, delete the inactivated GS–0334, Computer Specialist Series.

6. On page 1441, in Table 2, in the ''Business Management & Technical Management Professional'' section, insert GS occupational series GS–0901, General Legal and Kindred Administration Series in its proper place in accordance with the numerical sequence shown in the ''Business Management & Technical Management Professional'' section.

7. On page 1444, in Table 2, in the ''Business Management & Technical Management Professional'' section, insert in a new line below series number 2199 at the end of Table 2, the GS–2210, Information Technology Management Series (Alternative A) and annotate for a footnote.

8. On page 1444, in Table 2, in the ''Business Management & Technical Management Professional'' section, insert GS occupational series GS–2299, Information Technology Management Student Trainee in its proper place in accordance with the numerical sequence shown in the ''Business Management & Technical Management Professional'' section.

9. On page 1444, in Table 2, under the bottom of the table, add the following footnote associated with GS–2210, Information Technology Management Series (Alternative A): ''In April 2009, the Office of Personnel Management issued two qualification standards for Information Technology (IT) Management Series, 2210. Alternative A, which is applicable to AcqDemo participants, covers GS–5 through GS–15 (or equivalent) and must be used for GS–5 and GS–7 positions requiring IT-related education and/or IT-related experience. Alternative B covers only positions at the GS–5 or GS–7 (or equivalent) that do not require IT-related education or IT-related experience upon entry.''

10. On page 1446, in Table 2, in the ''Administrative Support'' section, insert GS occupational series GS–1603, Equipment, Facilities, and Services Assistance Series in its proper place in accordance with the numerical sequence shown in the ''Administrative Support'' section.

11. On page 1451, bottom of middle column, delete text in paragraph C.1 and replace with the following: ''The AcqDemo Project will continue to use the occupational series designators consistent with those authorized by DoD and or OPM to identify positions. The current AcqDemo occupational series will be placed into appropriate career paths as shown in Table 2. Other occupational series may be added or current series revised or deleted as a result of fluctuations in mission requirements or future DoD or OPM modifications to occupational series with appropriate notice to USD(P&R) and OPM for approval. Titling practices consistent with those established by DoD or OPM classification standards will be used to determine the official title of positions.''

12. On page 1484, in the third column, immediately preceding the VI. Project Duration heading, insert the following new Section D (which will follow a Section C added to Section V by 71 FR 58638, October 4, 2006):

''*D. Effect of Reorganizations*

''Section 872 of the Ike Skelton NDAA for FY 2011 codified at 10 U.S.C. 1762(d) provides that an AcqDemo organization that loses, due to reorganization, the one-third, two-thirds personnel demographic eligibility required for continued inclusion in AcqDemo may continue to participate in the AcqDemo project. All requirements set forth in 5 U.S.C. 4703 continue to apply to the new organization or team. In addition, the following circumstances may be considered in determining whether the new organization should participate in AcqDemo. Continued participation may be contingent upon such items as the amount of reduction in the number and/or kinds of positions to be counted for the one-third, two-thirds demographic eligibility requirement; degree of personnel involvement in an organization with an acquisition mission to acquire necessary supplies, equipment, and services to support the warfighter and DoD support staff; scope of direct support to an acquisition workforce organization or closely related functional area; and or the primary personnel system utilized by the gaining organization.

''AcqDemo organizations affected by reorganization, realignment, consolidation, or other organizational changes that may impact the one-third, two-thirds personnel demographic eligibility requirement are to contact the AcqDemo Program Director expeditiously to discuss the workforce changes in relation to continued AcqDemo participation. The AcqDemo Program Director will decide the additional information that needs to be included in the organization's request for continued participation. The organization will submit a request for continued participation in accordance with the AcqDemo Program Office's internal implementing guidance. The AcqDemo Program Office will review the rationale for and the data supplied in support of continued participation; conduct periodic audits of the participating organizations' populations as appropriate; and request additional details or formal documentation as needed. Based on an assessment of the information provided, the AcqDemo Program Director will approve or disapprove the continued participation including any pertinent comments.''

13. On page 1485, in the first column, immediately preceding the VII. Evaluation Plan heading, insert the following new paragraph:

''The demonstration project has been extended by statute twice as indicated below:

''(a) Section 813 of the Bob Stump NDAA for FY 2003 (Pub. L. 107–314, 116 Stat. 2609) extended the authority to conduct the AcqDemo until September 30, 2012 and

''(b) Section 872 of the Ike Skelton NDAA for FY 2011 (Pub. L. 111–383, 124 Stat. 4300, 4302), which extended the authority to conduct the AcqDemo Program until September 30, 2017.''

14. On page 1485, in the third column, immediately following the text in VII. Evaluation Plan, insert the following new paragraph:

''With the authority extension granted by section 872, the Secretary of Defense was required to designate an independent organization to conduct two assessments of the acquisition workforce demonstration project. Each such assessment must include the following:

''(a) A description of the workforce included in the project.

''(b) An explanation of the flexibilities used in the project to appoint individuals to the acquisition workforce and whether those appointments are based on competitive procedures and recognize veterans' preferences.

''(c) An explanation of the flexibilities used in the project to develop a performance appraisal system that recognizes excellence in performance and offers opportunities for improvement.

''(d) The steps taken to ensure that such system is fair and transparent for all employees in the project.

''(e) How the project allows the organization to better meet mission needs.

''(f) An analysis of how the flexibilities in subparagraphs (b) and (c) are used, and what barriers have been encountered that inhibit their use.

''(g) Whether there is a process for—

''(i) ensuring ongoing performance feedback and dialogue among supervisors, managers, and employees throughout the performance appraisal period; and

''(ii) setting timetables for performance appraisals.

''(h) The project's impact on career progression.

''(i) The project's appropriateness or inappropriateness in light of the complexities of the workforce affected.

''(j) The project's sufficiency in terms of providing protections for diversity in promotion and retention of personnel.

''(k) The adequacy of the training, policy guidelines, and other preparations afforded in connection with using the project.

''(l) Whether there is a process for ensuring employee involvement in the development and improvement of the project.

''Pursuant to section 872 of the Ike Skelton NDAA for FY 2011 (see 10 U.S.C. 1762(e)), the first assessment was forwarded to Congress in November 2012. The second and final assessment must be completed no later than September 30, 2016. The Secretary shall submit to the covered congressional committees a copy of each assessment within 30 days after receipt by the Secretary of the assessment.''

B. In the notice published on May 21, 2001, 66 FR 28006–28007:

On page 28007, in the first column, under **SUMMARY** section, first sentence: Delete the following citation: ''Section 4308 of the National Defense Authorization Act for Fiscal Year 1996 (Pub. L. 104–106; 10 U.S.C.A. 1701 note), as amended by section 845 of the National Defense Authorization Act for Fiscal Year 1998 (Pub. L. 105–85)''. Replace with: ''Section 872 of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011 (Pub. L. 111–383, 124 Stat. 4300, 4302)''.

C. In the notice published on April 24, 2002, 67 FR 20192–20193:

On page 20192, in the second and third columns, under the **SUMMARY** section, beginning in the last line of the second column, ''(See Section 4308 of the National Defense Authorization Act for Fiscal Year 1996 (Pub. L. 104–106; 10 U.S.C.A. 1701 note), as amended by section 845 of the National Defense Authorization Act for Fiscal Year 1998 (Pub. L. 105–85))'' should read ''(Section 872 of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011 (Pub. L. 111–383, 124 Stat. 4300, 4302)),''

D. In the notice published on July 1, 2002, 67 FR 44250–44256:

1. On page 44250, in the first column, under the **SUMMARY** section, the second sentence ''(See Section 4308 of the National Defense Authorization Act for Fiscal Year 1996 (Pub. L. 104–106; 10 U.S.C.A. § 1701 note), as amended by section 845 of the National Defense Authorization Act for Fiscal Year 1998 (Pub. L. 105–85))'' should read ''(See Section 872 of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011 (Pub. L. 111–383, 124 Stat. 4300, 4302)).''

2. On page 44251, in the third column, under III. Personnel System Changes, delete paragraph 1 before Table 1, covering changes to Section II.E. and replace with the following:

''*E. Scope of the AcqDemo Project*

''1. Eligible Organizations. The DoD has numerous civilian acquisition organizations and teams found in the Departments of the Army, the Navy (including the Marine Corps), and the Air Force; the Joint Services; and several Defense agencies and field activities in the 4th Estate. These organizations and teams are located not only across the United States but also in a number of foreign countries. Various elements of these organizations may be included in AcqDemo if they request to participate in AcqDemo, meet the eligibility requirements, and are approved by both the DoD and OPM. Table 1 provides a list of those organizations that were determined to be eligible to participate as of July 1, 2002. Table 1A contains a list of new or realigned organizations whose eligibility to participate in AcqDemo was approved by the DoD in calendar year 2014 and by OPM in calendar year 2015.''

3. On page 44251, middle of page, top of Table 1, delete Table 1 title and replace with: ''Table 1. Eligible AcqDemo Organizations as of July 1, 2002.''

4. On page 44255, after Table 1, Note 5, and before paragraph 2, insert the following:

''2. AcqDemo Expansion.

''a. Request to Participate in AcqDemo. As a demonstration project, AcqDemo is subject to audit, evaluation and reporting requirements as Department leaders consider expanding participation in AcqDemo. Therefore, to assist in the effective management of the project, it is necessary to establish and utilize a formal application and approval process for organizations and teams desiring to participate in AcqDemo. The broad parameters of this process are described below with finite content requirements to be issued by the DoD AcqDemo Program Office using various internal DoD issuances such as AcqDemo Memorandum and AcqDemo Operating Procedures. As experience is gained using this process, analysis is conducted, and conclusions reached, minor modifications may be made by the DoD AcqDemo Program Office.

''b. Calls for Additional Participation. The AcqDemo Program Office may establish a regular schedule or periodically announce opportunities for interested acquisition organizations to apply for approval to participate in AcqDemo. Out-of cycle participation requests will be reviewed on a case-by-case basis. During the demonstration project authority period, limited expansion of the project may be determined valuable by the USD(AT&L). In these cases, plans for such expansion will be coordinated with the USD(P&R)and OPM prior to execution.

''c. Eligibility Requirements. Organizational and team participation in AcqDemo is voluntary. For an interested organization or team to be approved to participate, the following conditions must be met:

''(1) At least one-third of the workforce selected to participate in the demonstration project consists of members of the acquisition workforce (civilian employees occupying positions coded as meeting the requirements of the Defense Acquisition Workforce Improvement Act (DAWIA) of 1990);

''(2) At least two-thirds of the workforce participating in the demonstration project consists of members of the acquisition workforce and supporting personnel assigned to work directly with the acquisition workforce;

''(3) The civilian acquisition personnel demonstration project commenced before October 1, 2007;

''(4) Positions are classified to an approved occupational series; and

''(5) Requests from organizations or teams must be coordinated through the chain of command to include the USD(P&R) and for approval by USD(AT&L), or designee, and OPM for participation in the AcqDemo Project. Once the USD(AT&L) approves participation, the approval package will be provided to the USD(P&R) or designee for signature and forwarded to OPM for final approval and publication in accordance with 5 U.S.C. 4703 and title 5 Code of Federal Regulations (CFR) Part 470.''d. Application Process. The organization or team seeking approval to participate in AcqDemo would follow the process steps listed below:

''(1) Initiation of the process should only occur after the leadership of the candidate population has:

''(a) Reviewed the AcqDemo design with AcqDemo Program Office officials;

''(b) Informally coordinated concurrence of their participation within their component leadership for any enterprise planning impacts; and

''(c) Assessed the acceptance level of their workforce with participation, views of stakeholders such as local bargaining union leadership (if applicable), and consideration of any other local climate and/or operational issues that would impact effective implementation of the project.

''(2) Gather and provide the required information described below:

''(a) Complete DoD component, DoD agency, or DoD field activity address.

''(b) Identification of the acquisition-related mission of the population requesting participation including a brief discussion of the major functions performed.

''(c) Requesting organizations are encouraged to provide any applicable local workforce challenges being encountered that are not covered in 64 FR 1426 and indicate how it is anticipated that AcqDemo could help address such challenges.

''(d) Workforce Demographic Data.

''(e) Identification of occupational series that need to be added.

''(f) A statement of confirmation that applicable Within-Grade Increase (WGI) buy-in conversion costs have been estimated and do not present adverse financial impact on payroll budgeting and execution.

''(g) Communication Plan, as available.

''(h) Desired conversion date for candidate population.

''(3) Requesting organization will route the application package through their command channels to the Assistant Secretary for Manpower and Reserve Affairs (M&RA) or equivalent, or as delegated by the Component for the military services, or the appropriate equivalent authority for Joint Services and DoD agencies and field activities under the 4th Estate for appropriate review and endorsement to the DoD AcqDemo Program Director. The AcqDemo Program Office staff will review the application package for compliance with required information and eligibility requirements and facilitate coordination of eligibility with USD (P&R) and participation approval with USD (AT&L) and OPM. The AcqDemo Program Director will then ensure the approval decisions are implemented, with quarterly updates provided to USD (P&R) and USD (AT&L).

''(4) Following receipt of appropriate coordinations and approvals for the requesting organization to participate in AcqDemo, the AcqDemo Program Office staff will initiate appropriate notification to the component Assistant Secretary (M&RA); 4th Estate Director, Administration and Management, or designees; USD (P&R), and the Office of Personnel Management. In addition, any organization approved to participate will notify affected employees, labor organizations, and other appropriate stakeholders.

''e. New or Realigned AcqDemo Eligible Organizations. As a result of the success of the AcqDemo classification, contribution appraisal, and compensation strategies and the desire of the USD (AT&L) to increase participation to more evenly balance the workforce among components and agencies for evaluation, the organizations listed in Table 1A either applied in calendar year 2014 and have been approved to participate in the AcqDemo, or are currently in Table 1 but require an update to their listed organizational alignment.

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"Table 1A. Eligible AcqDemo Organizations Updated and Approved in Calendar Year 2015"

"DoD component/DoD component major organizational subdivision	Organization/office symbol	Locations
Air Force		
Air Force Materiel Command (AFMC)	Air Armament Complex (AAC)	Eglin AFB, FL and all other locations
AFMC	Air Force Life Cycle Management Center	All locations
AFMC	Air Force Test Center (AFTC)	Edwards AFB, CA and all other locations
AFMC	Air Force Nuclear Weapons Center	Kirtland AFB, NM
AFMC	Air Force Sustainment Center	All locations
Air Force Operational Test and Evaluation Center (AFOTEC)	All	Kirtland AFB, NM and all other locations
Miscellaneous Air Force	Contracting Organizations	All locations
Navy		
Naval Sea Systems Command (NAVSEA)	Headquarters, Program Executive Office (PEO) Ships, PEO Subs, PEO LCS, PEO IWS and PEO Carriers	Arlington, VA
Naval Air Systems Command (NAVAIR)	NAVAIR Headquarters and associated PEO workforce	Patuxent River, MD
Space and Naval Warfare Systems Command	Headquarters and PEOs	San Diego, CA
Strategic Systems Programs (SSP)	SSP	Washington, DC (WNY) and all locations
DoD		
Defense Acquisition University (DAU)	Defense Acquisition University (DAU) (See Note 1)	All locations
Missile Defense Agency (MDA)	All	All locations
Defense Test Resource Management Center (DTRMC)	All	Arlington, VA

"DoD component/DoD component major organizational subdivision	Organization/office symbol	Locations
Washington Headquarters Services (WHS)	Acquisition Directorate	Arlington, VA
	Joint Services	
U.S. Special Operations Command	Office of the Acquisition Executive and all associated PEOs and PMs	All locations
U.S. Transportation Command	Office of the Acquisition Executive and all associated PEOs and PMs	All locations

5. On page 44255, bottom of page, first column of narrative, delete paragraph 2, covering Section II.F. in its entirety including Table 3 and replace with the following:

''3. Workforce Coverage.

''a. Current Participating Employees. ''As of January 22, 2015, AcqDemo contained twenty-eight organizations and teams with a total of 15,514 civilian employees covered by the project. Table 2 provides a demographic breakout of this actual population by participating Components or Service including number of employees by career path, broadband level, and bargaining unit representation. Of the 15,514 employees, 9.3% or 1,449 are represented by labor unions. The American Federation of Government Employees (AFGE) represents 65.1% of the bargaining unit employees and the National Federation of Federal Employees (NFFE) represents 31.5% of bargaining unit employees. The International Federation of Professional and Technical Engineers (IFPTE), National Association of Government Employees (NAGE), and Laborers' International Union of North America (LIUNA) represent the remainder (3.4%) of AcqDemo bargaining unit employees.''

Table 2. Participating DoD Components/Service including Number of AcqDemo Employees by Career Path, Broadband Level, and Union Representation January 22, 2015"

Component	Career Path	Broadband Level Number of Employees (GS Grades Included) 1/22/15					Bargaining Unit Employees
		I	II	III	IV	Total	
Air Force 2,700	NH	0 (GS 1-4)	564 (GS 5-11)	1,320 (GS 12-13)	334 (GS 14-15)	2,218	75
	NJ	0 (GS 1-4)	69 (GS 5-8)	189 (GS 9-11)	32 (GS 12-13)	290	2
	NK	8 (GS 1-4)	169 (GS 5-7)	15 (GS 8-10)		192	5
Army 7,654	NH	1 (GS 1-4)	419 (GS 5-11)	3,779 (GS 12-13)	3,014 (GS 14-15)	7,213	1,252
	NJ	0 (GS 1-4)	4 (GS 5-8)	58 (GS 9-11)	88 (GS 12-13)	150	0
	NK	0 (GS 1-4)	183 (GS 5-7)	108 (GS 8-10)		291	114
Navy 225	NH	0 (GS 1-4)	11 (GS 5-11)	80 (GS 12-13)	130 (GS 14-15)	221	1
	NJ	0 (GS 1-4)	0 (GS 5-8)	0 (GS 9-11)	0 (GS 12-13)	0	0
	NK	0 (GS 1-4)	2 (GS 5-7)	2 (GS 8-10)		4	0
Marine Corps 1,909	NH	0 (GS 1-4)	105 (GS 5-11)	1,179 (GS 12-13)	591 (GS 14-15)	1,875	0
	NJ	0 (GS 1-4)	0 (GS 5-8)	6 (GS 9-11)	11 (GS 12-13)	17	0
	NK	0 (GS 1-4)	14 (GS 5-7)	3 (GS 8-10)		17	0
4th Estate 2,748	NH	0 (GS 1-4)	244 (GS 5-11)	695 (GS 12-13)	1,751 (GS 14-15)	2,690	0
	NJ	0 (GS 1-4)	24 (GS 5-8)	5 (GS 9-11)	0 (GS 12-13)	29	0
	NK	0 (GS 1-4)	3 (GS 5-7)	26 (GS 8-10)		29	0
Joint Services 278	NH	0 (GS 1-4)	11 (GS 5-11)	207 (GS 12-13)	60 (GS 14-15)	278	0
	NJ	0 (GS 1-4)	0 (GS 5-8)	0 (GS 9-11)	0 (GS 12-13)	0	0
	NK	0 (GS 1-4)	0 (GS 5-7)	0 (GS 8-10)		0	0
	Totals	9	1,822	7,672	6,011	15,514	1,449

''b. Workforce Coverage. Section 872 of the Ike Skelton NDAA for FY 2011 increased the number of employees who may participate in AcqDemo from 95,000 to 120,000 at any one time. The scope of AcqDemo workforce coverage gives primary consideration to the number and diversity of occupations within (1) the acquisition workforce and

(2) the supporting personnel assigned to work directly with the acquisition workforce. This coverage may encompass acquisition-related duties and positions in program management; systems planning, research, development, engineering, and testing; procurement, including contracting; industrial property management; logistics; quality control and assurance; manufacturing and production; business, cost estimating, financial management, and auditing; education, training, and career development; construction; and joint development and production with other Government agencies and foreign governments. The occupational series for this collection of duties and associated positions included in AcqDemo are listed in Table 3.

''The AcqDemo includes primarily former General Schedule employees in positions with pay plan codes GS and GM. Employees and positions in other personnel systems and pay plans may be converted into AcqDemo as a result of reorganizations, restructuring, realignment, consolidation, Base Realignment and Closure decisions, legislative dictates, or other organizational changes. Students and recent graduates hired through the Pathways Programs may be included as determined by their organization or component. Excluded from coverage of this project are Senior Executive Service (SES), Senior Level (SL), Scientific and Technical (ST), Federal Wage System (FWS), and Administratively Determined (AD) positions. Also excluded from the project are (1) positions allocated to a Physicians and Dentist Pay Plan, either GP or GR; (2) positions covered by the Defense Civilian Intelligence Personnel System (DCIPS) (10 U.S.C. Chapter 83); (3) positions covered by or to be included in one of the Science and Technology Reinvention Laboratory (STRL) personnel demonstration projects (Section 342(b) of the NDAA for FY 1995, Pub. L. 103–337 (10 U.S.C. 2358), as amended); and (4) positions in the Space and Naval Warfare Systems Center, San Diego, CA, Alternative Personnel System (**Federal Register**, Volume 45, Number 77, Friday April 18, 1980).

E. In the notice published on October 16, 2002, 67 FR 63948—63949:

On page 63948, in the first column, under the **SUMMARY** section, the second sentence ''(See Section 4308 of the National Defense Authorization Act for Fiscal Year 1996 (Pub. L. 104–106; 10 U.S.C.A. 1701 note)), as amended by section 845 of the National Defense Authorization Act for Fiscal Year 1998 (Pub. L. 105–85))'' should read ''(See Section 872 of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011 (Pub. L. 111–383, 124 Stat. 4300, 4302))''.

F. In the notice published on October 4, 2006, 71 FR 58638–58639:

On page 58638, in the third column, beginning in the third line from the top, ''[See Section 4308 of the National Defense Authorization Act for Fiscal Year 1996 (Pub. L. 104–106; 10 U.S.C.A. section 1701 note), as amended by section 845 of the National Defense Authorization Act for Fiscal Year 1998 (Pub. L. 105–85)]'' should read ''[See Section 872 of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011 (Pub. L. 111–383, 124 Stat. 4300, 4302)]''.

G. In the notice published on January 8, 1999, 64 FR 1439, change the number of Table 2 to Table 3.

[FR Doc. 2015–07314 Filed 3–30–15; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 31512; 812–14367]

Princeton Private Equity Fund and Princeton Fund Advisors, LLC; Notice of Application

March 25, 2015.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 18(c) and 18(i) of the Act and for an order pursuant to section 17(d) of the Act and rule 17d–1 under the Act.

Summary of Application: Applicants request an order to permit certain registered closed-end management investment companies to issue multiple classes of shares of beneficial interest (''Shares'') and to impose asset-based service and/or distribution and contingent deferred sales loads (''CDSCs'').

Applicants: Princeton Private Equity Fund (the ''Fund'') and Princeton Fund Advisors, LLC (the ''Adviser'') (together, the ''Applicants'').

Filing Dates: The application was filed on October 2, 2014 and amended on February 6, 2015.

Hearing or Notification of Hearing: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on April 20, 2015, and should be accompanied by proof of service on the applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090; Applicants, c/o Michael Wible, Esq., Thompson Hine LLP, 41 S. High Street, Suite 1700, Columbus, OH 43065.

FOR FURTHER INFORMATION CONTACT: Emerson S. Davis, Senior Counsel, at (202) 551–6868 or Daniele Marchesani, at (202) 551–6821 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.html* or by calling (202) 551–8090.

Applicants' Representations

1. The Fund is a continuously offered non-diversified closed-end management investment company registered under the Act and organized as a Delaware statutory trust.

2. The Adviser, a Delaware limited liability company, is registered with the Commission as an investment adviser under the Investment Advisers Act of 1940, as amended (the ''Advisers Act''). Northern Lights Fund Distributors, LLC, a registered broker-dealer under the Securities Exchange Act of 1934, as amended (''1934 Act''), will act as a placement agent for the Fund Northern Lights Fund Distributors, LLC is not an affiliated person, as defined in section 2(a)(3) of the Act, of the Adviser or of the Fund.

3. The Fund will continuously offer Shares in private placements in reliance on the provisions of Regulation D under the Securities Act of 1933, as amended (''Securities Act'').[1] Shares of the Fund

[1] Shares of the Fund will be sold only to ''accredited investors,'' as defined in Regulation D under the Securities Act. The Fund reserves the

Continued

are not listed on any securities exchange and do not trade on an over-the-counter system such as NASDAQ. Applicants do not expect that any secondary market will develop for the Shares.

4. The Fund currently issues a single class of Shares (''Initial Class'') at net asset value per share plus a servicing fee.[2] The Fund proposes to offer multiple classes of Shares at net asset value per share that may (but would not necessarily) be subject to a front-end sales load, an annual asset-based service and/or distribution fee, and/or an Early Withdrawal Fee (defined below), in each case as set forth in the Fund's Confidential Memorandum.

5. In order to provide a limited degree of liquidity to shareholders, the Fund may from time to time offer to repurchase Shares at their then current net asset value pursuant to rule 13e–4 under the 1934 Act pursuant to written tenders by shareholders.[3] Repurchases will be made at such times, in such amounts and on such terms as may be determined by the Fund's board of trustees (the ''Board''), in its sole discretion. The Adviser expects to ordinarily recommend that the Board authorize the Fund to offer to repurchase Shares from shareholders quarterly.

6. The Applicants request that the order also apply to any other continuously-offered registered closed-end management investment company existing now or in the future, for which the Adviser or any entity controlling, controlled by, or under common control (as the term ''control'' is defined in section 2(a)(9) of the Act) with the Adviser acts as investment adviser, and which provides periodic liquidity with respect to its Shares pursuant to rule 13e–4 under the 1934 Act.[4]

7. Applicants represent that any asset-based service and distribution fees will comply with the provisions of rule 2830(d) of the Conduct Rules of the National Association of Securities Dealers, Inc. (''NASD Conduct Rule 2830'').[5] Applicants also represent that the Fund will disclose in its Confidential Memorandum the fees, expenses and other characteristics of each class of Shares offered for sale by the Confidential Memorandum, as is required for open-end, multiple class funds under Form N–1A. As is required for open-end funds, the Fund will disclose its expenses in shareholder reports, and disclose any arrangements that result in breakpoints in or elimination of sales loads in its Confidential Memorandum.[6] The Fund will also comply with any requirement that may be adopted by the Commission or FINRA regarding disclosure at the point of sale and in transaction confirmations about the costs and conflicts of interest arising out of the distribution of open-end investment company shares, and regarding private placement memorandum disclosure of sales loads and revenue sharing arrangements as if those requirements applied to the Fund and the Distributor.[7] In addition, Applicants will comply with applicable enhanced fee disclosure requirements for fund of funds, including registered funds of hedge funds.[8]

8. The Fund will allocate all expenses incurred by it among the various classes of Shares based on the net assets of the Fund attributable to each class, except that the net asset value and expenses of each class will reflect distribution fees, service fees, and any other incremental expenses of that class. Expenses of the Fund allocated to a particular class of the Fund's Shares will be borne on a pro rata basis by each outstanding Share of that class. The Fund will comply with the provisions of rule 18f–3 as if it were an open-end investment company.

9. Although the Fund does not anticipate imposing CDSCs, the Applicants would only do so in compliance with the provisions of rule 6c–10 of the Act, as if that rule applied to closed-end management investment companies. With respect to any waiver of, scheduled variation in, or elimination of the CDSC, the Fund will comply with rule 22d–1 under the Act as if the Fund were an open-end investment company.

Applicants' Legal Analysis

Multiple Classes of Shares

1. Section 18(c) of the Act provides, in relevant part, that a registered closed-end investment company may not issue or sell any senior security if, immediately thereafter, the company has outstanding more than one class of senior security. Applicants state that the creation of multiple classes of Shares of the Fund may be prohibited by section 18(c) of the Act.

2. Section 18(i) of the Act provides that each share of stock issued by a registered management investment company will be a voting stock and have equal voting rights with every other outstanding voting stock. Applicants state that permitting multiple classes of Shares of the Fund may violate section 18(i) of the Act because each class would be entitled to exclusive voting rights with respect to matters solely related to that class.

3. Section 6(c) of the Act provides that, the Commission may, by order upon application, conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of the Act or from any rule or regulation under the Act, if and to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants request exemptive relief under section 6(c) from sections 18(c) and 18(i) to permit the Funds to issue multiple classes of Shares.

4. Applicants also believe that the proposed allocation of expenses and voting rights among multiple classes is equitable and will not discriminate against any group or class of

right to conduct a public offering of the Shares to accredited investors under the Securities Act in the future. These Shares will be offered subject to minimum initial and subsequent purchase requirements.

[2] Before relying on the relief requested in this application, the Fund will convert the servicing fee currently charged to holders of its current class of Shares to an asset-based service and/or distribution fee that complies with rule 12b–1 under the Act.

[3] Shares will be subject to an early repurchase fee at a rate of 2% of the aggregate net asset value of a shareholder's Shares repurchased by the Fund (the ''Early Withdrawal Fee'') with respect to any repurchase of Shares from a shareholder at any time prior to the day immediately preceding the one-year anniversary of the shareholder's purchase of the Shares. The Early Withdrawal Fee will equally apply to all classes of Shares of the Fund, consistent with section 18 of the Act and rule 18f–3 thereunder. To the extent the Fund determines to waive, impose scheduled variations of, or eliminate the Early Withdrawal Fee, it will do so consistently with the requirements of rule 22d–1 under the Act and the Fund's waiver of, scheduled variation in, or elimination of, the Withdrawal Fee will apply uniformly to all classes of shares of the Fund.

[4] Any Fund relying on this relief will do so in a manner consistent with the terms and conditions of the application. Applicants represent that any person presently intending to rely on the order requested in the application is listed as an applicant.

[5] All references to NASD Conduct Rule 2830 include any successor or replacement rule that may be adopted by FINRA.

[6] See Shareholder Reports and Quarterly Portfolio Disclosure of Registered Management Investment Companies, Investment Company Act Release No. 26372 (Feb. 27, 2004) (adopting release); and Disclosure of Breakpoint Discounts by Mutual Funds, Investment Company Act Release No. 26464 (June 7, 2004) (adopting release).

[7] See Confirmation Requirements and Point of Sale Disclosure Requirements for Transactions in Certain Mutual Funds and Other Securities and Other Confirmation Requirement Amendments, and Amendments to the Registration Form for Mutual Funds, Investment Company Act Release No. 26341 (Jan. 29, 2004) (proposing release).

[8] Fund of Funds Investments, Investment Company Act Rel. Nos. 26198 (Oct. 1, 2003) (proposing release) and 27399 (Jun. 20, 2006) (adopting release). See also Rules 12d1–1, *et seq.* of the Act.

shareholders. Applicants submit that the proposed arrangements would permit the Fund to facilitate the distribution of Shares and provide investors with a broader choice of shareholder options. Applicants believe that the proposed closed-end investment company multiple class structure does not raise the concerns underlying section 18 of the Act to any greater degree than open-end investment companies' multiple class structures. Applicants state that the Fund will comply with the provisions of rule 18f–3 as if it were an open-end investment company.

CDSCs

1. Applicants believe that the requested relief meets the standards of section 6(c) of the Act. Rule 6c–10 under the Act permits open-end investment companies to impose CDSCs, subject to certain conditions. Applicants state that although the Fund does not currently intend to impose CDSCs, the Fund will only impose a CDSC in compliance with rule 6c–10 as if that rule applied to closed-end management investment companies. The Fund would also make required disclosures in accordance with the requirements of Form N–1A concerning CDSCs as if the Fund were an open-end investment company. Applicants further state that, in the event it imposes CDSCs, the Fund will apply the CDSCs (and any waivers or scheduled variations of the CDSCs) uniformly to all shareholders of a given class and consistently with the requirements of rule 22d–1 under the Act.

Asset-based Service and Distribution Fees

1. Section 17(d) of the Act and rule 17d–1 under the Act prohibit an affiliated person of a registered investment company or an affiliated person of such person, acting as principal, from participating in or effecting any transaction in connection with any joint enterprise or joint arrangement in which the investment company participates unless the Commission issues an order permitting the transaction. In reviewing applications submitted under section 17(d) and rule 17d–1, the Commission considers whether the participation of the investment company in a joint enterprise or joint arrangement is consistent with the provisions, policies and purposes of the Act, and the extent to which the participation is on a basis different from or less advantageous than that of other participants.

2. Rule 17d–3 under the Act provides an exemption from section 17(d) and rule 17d–1 to permit open-end investment companies to enter into distribution arrangements pursuant to rule 12b–1 under the Act. Applicants request an order under section 17(d) of the Act and rule 17d–1 under the Act to permit the Fund to impose asset-based service and/or distribution fees. Applicants have agreed to comply with rules 12b–1 and 17d–3 as if those rules applied to closed-end investment companies.

Applicants' Condition

Applicants agree that any order granting the requested relief will be subject to the following condition:

Applicants will comply with the provisions of rules 6c–10, 12b–1, 17d–3, 18f–3, and 22d–1 under the Act, as amended from time to time or replaced, as if those rules applied to closed-end management investment companies, and will comply with NASD Conduct Rule 2830, as amended from time to time, as if that rule applied to all closed-end management investment companies.

For the Commission, by the Division of Investment Management, under delegated authority.

Brent J. Fields,

Secretary.

[FR Doc. 2015–07302 Filed 3–30–15; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Thursday, April 2, 2015 at 2:00 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or her designee, has certified that, in her opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matter at the Closed Meeting.

Commissioner Piwowar, as duty officer, voted to consider the items listed for the Closed Meeting in closed session, and determined that no earlier notice thereof was possible.

The subject matter of the Closed Meeting will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Resolution of litigation claims; and

Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact the Office of the Secretary at (202) 551–5400.

Dated: March 26, 2015.

Brent J. Fields,

Secretary.

[FR Doc. 2015–07422 Filed 3–27–15; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74577; File No. SR–ICEEU–2015–006]

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to FATCA Requirements

March 25, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 13, 2015, ICE Clear Europe Limited (''ICE Clear Europe'' or ''Clearing House'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I, II and III below, which Items have been prepared by ICE Clear Europe. ICE Clear Europe filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(4)(i)[4] thereunder, so that the proposed rule change was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The principal purpose of the proposed rule change is to amend the ICE Clear Europe Finance Procedures in order to address certain reporting and information requirements relating to Sections 1471 through 1474 of the U.S.

[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)(4)(i).

Internal Revenue Code [5] and U.S. Treasury regulations and other guidance thereunder (commonly known as the Foreign Account Tax Compliance Act, or ''FATCA'') and related provisions under U.K. law and similar legislation, regulations or guidance enacted in any jurisdiction which seeks to implement similar tax reporting and/or withholding tax regimes.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICE Clear Europe included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. ICE Clear Europe has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of these statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(i) Purpose

The purpose of the proposed rule change is for ICE Clear Europe to adopt amendments to its Finance Procedures in order to clarify certain informational and tax form requirements applicable to its Clearing Members in connection with FATCA (and other similar laws). Specifically, the amendments add a new paragraph 6.1(j) to the Finance Procedures, which states that Clearing Members are required to provide to the Clearing House information, and to complete tax forms, as may be required by the Clearing House in order to comply with its obligations relating to FATCA, including obligations under intergovernmental arrangements between U.K. and U.S. authorities with respect to FATCA compliance and implementing regulations and guidance in the U.K. The amendments also clarify that ICE Clear Europe's status under FATCA and such agreements and implementing regulations (including ICE Clear Europe's registration with the U.S. Internal Revenue Service for a Global Intermediary Identification Number for FATCA reporting purposes) is not intended to have any effect on ICE Clear Europe's status for the purposes of any other applicable law, or any of the rights or obligations of ICE Clear Europe or any Clearing Member or customer provided for under the Rules and Procedures and relevant member agreements.

(ii) Statutory Basis

FATCA was enacted on March 18, 2010, as part of the Hiring Incentives to Restore Employment Act, and became effective, subject to transition rules, on January 1, 2013. The U.S. Treasury Department finalized and issued various implementing regulations (''FATCA Regulations'') [6] on January 17, 2013. FATCA's intent is to curb tax evasion by U.S. citizens and residents through their use of offshore bank accounts. FATCA generally requires foreign financial institutions (''FFIs'') [7] to become ''participating FIs'' by entering into agreements with the Internal Revenue Service (''IRS''), under which the FFI is required to report to the IRS information on U.S. persons and entities that have accounts with the FFI. Failure to enter into such an agreement would result in withholding taxes on certain payments to the FFI. As an alternative to FFIs entering into individual agreements with the IRS, the U.S. Treasury Department provided another means of complying with FATCA for FFIs which are resident in Non-U.S. jurisdictions that enter into intergovernmental agreements (''IGAs'') with the United States. Generally, such a jurisdiction (''FATCA Partner'') would pass laws to eliminate the conflicts of law issues that would otherwise make it difficult for FFIs in its jurisdiction to collect the information required under FATCA and transfer this information, directly or indirectly, to the United States. An FFI resident in a FATCA Partner jurisdiction would be required to transmit FATCA reporting to its local competent tax authority (which in turn would transmit the information to the IRS), or the FFI would be authorized or required to transmit FATCA reporting directly to the IRS.[8]

The U.K. has entered into an IGA with the United States, and U.K. tax authorities have adopted implementing regulations (and related guidance) with respect to FATCA compliance for U.K. entities.[9] Under the U.K. implementing regulations and guidance, central counterparties such as ICE Clear Europe may be treated as FFIs for purposes of FATCA compliance. In connection with those regulations, and ICE Clear Europe's potential obligations under them as a central counterparty, ICE Clear Europe has proposed the amendments to the Finance Procedures to require its Clearing Members to provide necessary information and relevant tax forms to the Clearing House. In addition, for added clarity and to avoid any potential legal uncertainty arising from the treatment of central counterparties under the U.K. implementing regulations for FATCA purposes, the amendments also provide that ICE Clear Europe's FATCA status is not intended to otherwise affect its status under other laws, or to affect the rights and obligations of the Clearing House, its Clearing Members or other market participants.

ICE Clear Europe believes that the proposed rule change is consistent with the requirements of Section 17A of the Securities Exchange Act of 1934 (the ''Act'') [10] and the regulations thereunder applicable to it. Section 17A(b)(3)(F) of the Act [11] requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible and to protect investors and the public interest. Specifically, the proposed rule change is intended to facilitate compliance by ICE Clear Europe with its potential obligations under FATCA and under the related implementing regulations and guidance in the U.K. and thus further the tax compliance goals of the FATCA regime. In ICE Clear Europe's view, the amendments are therefore consistent with the protection of investors and the public interest, and the requirements of Section 17A(b)(3)(F) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

ICE Clear Europe does not believe the proposed rule change would have any impact, or impose any burden, on

[5] 26 U.S.C. 1471–1474.

[6] Regulations Relating to Information Reporting by Foreign Financial Institutions and Withholding on Certain Payments to Foreign Financial Institutions and Other Foreign Entities, 78 FR 5874 (Apr. 15, 2013).

[7] Non-U.S. financial institutions are referred to as ''foreign financial institutions'' or ''FFIs'' in the FATCA Regulations.

[8] For a more complete discussion of the background of FATCA, as well as certain rules and procedures previously adopted by ICE Clear Europe relating to FATCA compliance, see Exchange Act Release No. 34–70283 (August 29, 2013), 78 FR 54713 (Sept. 5, 2013) (File No. SR–ICEEU–2013–08).

[9] See International Tax Compliance (United States of America) Regulations 2014 (SI 2014/1506); Implementation of The International Tax Compliance (United States of America) Regulations 2014, HM Revenue & Customs Guidance Notes (Aug. 28, 2014).

[10] 15 U.S.C. 78q–1.

[11] 15 U.S.C. 78q–1(b)(3)(F).

competition not necessary or appropriate in furtherance of the purpose of the Act. The proposed rule change imposes certain informational requirements on Clearing Members, in order to ensure that ICE Clear Europe is in compliance with FATCA and implementing U.K. regulations and guidance. The amendments would apply to all Clearing Members. ICE Clear Europe does not believe that the amendments would adversely affect the ability of Clearing Members or other market participants generally to engage in cleared transactions or to access clearing, adversely affect competition among Clearing Members, adversely affect the market for clearing services or limit market participants' choices for clearing transactions. To the extent that compliance with the amendments will result in any additional cost for Clearing Member or other market participants, ICE Clear Europe believes that such cost results from the requirements mandated by FATCA and implementing regulations. As a result, ICE Clear Europe does not believe that the proposed amendments will impose any burden on competition not appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rule change to the rules have not been solicited or received. ICE Clear Europe will notify the Commission of any written comments received by ICE Clear Europe.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A) of the Act [12] and Rule 19b–4(f)(4)(i).[13] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ICEEU–2015–006 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ICEEU–2015–006. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings will also be available for inspection and copying at the principal office of ICE Clear Europe and on ICE Clear Europe's Web site at *https://www.theice.com/clear-europe/regulation.* 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–ICEEU–2015–006 and should be submitted on or before April 21, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Brent J. Fields,

Secretary.

[FR Doc. 2015–07258 Filed 3–30–15; 8:45 am]

BILLING CODE 8011–01P

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(4)(i).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549–2736.

Extension:

Regulation BTR, SEC File No. 270–521, OMB Control No. 3235–0579.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget this request for extension of the previously approved collection of information discussed below.

Regulation Blackout Trade Restriction (''Regulation BTR'') (17 CFR 245.100–245.104) clarifies the scope and application of Section 306(a) of the Sarbanes-Oxley Act of 2002 (''Act'') (15 U.S.C. 7244(a)). Section 306(a)(6) [15 U.S.C.7244(a)(6)] of the Act requires an issuer to provide timely notice to its directors and executive officers and to the Commission of the imposition of a blackout period that would trigger the statutory trading prohibition of Section 306(a)(1) [15 U.S.C. 7244(a)(1)]. Section 306(a) of the Act prohibits any director or executive officer of an issuer of any equity security, directly or indirectly, from purchasing, selling or otherwise acquiring or transferring any equity security of that issuer during any blackout period with respect to such equity security, if the director or executive officer acquired the equity security in connection with his or her service or employment. The information provided under Regulation BTR is mandatory and is available to the public. Approximately 1,230 issuers file Regulation BTR notices approximately 5 times a year for a total of 6,150 responses. We estimate that it takes approximately 2 hours to prepare the blackout notice for a total annual burden of 2,460 hours. The issuer prepares 75% of the 2,460 annual burden hours for a total reporting burden of (1,230 × 2 hrs × 0.75) 1,845 hours. In addition, we estimate that an issuer distributes a notice to five directors and executive officers at an estimated 5 minutes per notice (1,230 blackout period × 5 notices × 5 minutes) for a total reporting burden of 512 hours. The combined annual reporting burden is (1,845 hours + 512 hours) 2,357 hours.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view the background documentation for this information collection at the following Web site, *www.reginfo.gov* . Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: March 25, 2015.

Brent J. Fields,

Secretary.

[FR Doc. 2015–07251 Filed 3–30–15; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74576; File No. SR–BOX–2015–16]

Self-Regulatory Organizations; BOX Options Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Clarify Certain Statements Made in SR–BOX–2015–03, a Proposed Rule Change Filed by the Exchange on January 9, 2015

March 25, 2015.

Pursuant to Section 19(b)(1) under the Securities Exchange Act of 1934 (the ''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 16, 2015, BOX Options Exchange LLC (the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A)(ii) of the Act,[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange is filing with the Securities and Exchange Commission (''Commission'') a proposed rule change to clarify certain statements made in SR–BOX–2015–03, a rule change filed by the Exchange on January 9, 2015, to implement an equity rights program (the ''VPR Filing''). There are no proposed changes to any rule text.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On January 9, 2015, the Exchange filed the VPR Filing to implement an equity rights program (the ''VPR Program'').[5] As provided on page 4 of 49 of the VPR Filing, Subscribers in the VPR Program have the right to acquire equity in, and receive distributions from, BOX Holdings Group LLC (''Holdings''), an affiliate of the Exchange, in exchange for the achievement of certain order flow volume commitment thresholds on the Exchange over a period of five (5) years (and a nominal initial cash payment). Specifically, each Volume Performance Right (''VPR'') issued to Subscribers under the VPR Program includes an average daily transaction volume commitment (''VPR Volume Commitment'') with respect to Qualifying Contract Equivalents (as defined on page 6 of 49 of the VPR Filing) equal to 0.0055% of the Industry ADV [6] for a total of five (5) years.[7] The calculation of a Contract Equivalent depends on the type of account that sends the order flow to BOX, each of which has a predetermined ratio assigned to it under the Program: Public Customer (0.71), Market Maker (1.10), Broker/Dealer (1.35) and Professional Customer (1.35). This predetermined ratio is then multiplied by the quantity of options contracts executed by the Subscriber on BOX for the Subscriber's own or customer account over a certain period to determine the number of Contract Equivalents attributed to the Subscriber for that period.

In describing how Contract Equivalents are calculated in the VPR Filing, the Exchange inadvertently used the term ''orders'' to describe the option contracts executed by the Subscriber. Specifically, on pages 5 and 20–21 of 49 of the VPR Filing, the Exchange explained that the Contract Equivalent calculation for each of the four categories of account types would be based on the quantity of *orders* executed, multiplied by the predetermined ratio assigned to each category. However, this description was intended to convey that, in calculating the Contract Equivalent for each of the four categories of account types under the Program, the Exchange measures the number of *contracts* executed, and then multiples the executed contracts by the predetermined ratio for the appropriate category. Accordingly, if a Subscriber were to send a single *order* of 1,000 option *contracts* to the Exchange, and all 1,000 option contracts are executed on BOX (assuming none are Excluded Member Contracts, as defined on pages 9–10 of the VPR Filing), then the number of Contract Equivalents for that Subscriber would be calculated by multiplying the 1,000 contracts (not the single order) by the predetermined ratio for the appropriate account type.

Furthermore, in describing how the Contract Equivalent ratio was determined for each of the four account type categories under the Program, the Exchange noted, on pages 6, 16, and 20–

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] *See* SR–BOX–2015–03. As noted in the VPR Filing, certain aspects of the Program require changes to the company governance documents, including the acquisition of equity ownership and any right related to such ownership, are contingent upon Commission approval of a separate company governance proposed rule change, which has yet to be filed.

[6] The Industry ADV for a period is calculated by multiplying (i) two (2) times (ii) the quotient of (A) the aggregate number of cleared U.S. options transactions executed on a U.S. national exchange or facility thereof in U.S. listed securities on trading days during the period, as reported by the Options Clearing Corporation (''OCC''), divided by (B) the number of trading days during the period. A ''trading day'' is generally any day on which the BOX market is open for business, subject to certain qualifications to be defined in the Members Agreement. Certain industry transactions are excluded from the calculation of Industry ADV as described on pages 9—10 of 49 of the VPR Filing.

[7] Each VPR also includes 8.5 unvested new Class C Membership Units of Holdings. *See* page 5 of 49 of the VPR Filing.

21 of 49 of the VPR Filing, that the ratios are weighted in accordance with the Exchange's Fee Schedule, such that those account types that are charged higher fees by the Exchange have Contract Equivalent ratios that are weighted more heavily. While the Exchange believes the operating principles of the VPR Program are evident from the VPR Filing, we understand the description of the weight assigned to each predetermined Contract Equivalent ratio may be confusing, and seek to clarify it. Specifically, the Contract Equivalent ratios assigned to each of the four account types escalate in accordance with the fees charged to the same four account types in the Exchange's Fee Schedule. Thus, the categories for which the Exchange earns the highest fees for any executed contract (Broker/Dealer and Professional Customer) also have the highest Contract Equivalent ratio, and vice versa. Having a higher Contract Equivalent ratio requires additional contracts to be executed to achieve the number of Qualifying Contract Equivalents required to meet the Subscriber's VPR Volume Commitment. Put another way, having a lower Contract Equivalent ratio allows a Subscriber to reach their VPR Volume Commitment faster as compared to submitting contracts with a higher Contract Equivalent ratio. Accordingly, a Subscriber executing contracts for the Broker/Dealer and Professional Customer account types will take longer to reach their VPR Volume Commitment as compared to executing contracts for the Market Maker and Public Customer account types, in that more executions will be required to achieve the VPR Volume Commitment because it takes 1.35 Broker/Dealer or Professional Customer executed contracts to equal one (1) Qualifying Contract Equivalent. In contrast, a Subscriber executing contracts for the Public Customer account type, for which the Exchange earns the lowest fees, will reach their VPR Volume Commitment faster as compared to executing contracts for the Market Maker, Professional Customer and Broker/Dealer account types, in that less contracts will need to be executed on behalf of Public Customer accounts than any other type of account in order to meet the VPR Volume Commitment because it only takes .71 Public Customer executed contracts to equal one (1) Qualifying Contract Equivalent. For example if a Subscriber is trying to reach 1000 Qualifying Contract Equivalents it would only take 710 executed Public Customer contracts (1000*0.71 = 710) or 1350 executed Broker/Dealer contracts (1000*1.35 = 1350) to reach the 1000 Qualifying Contract Equivalents. This example illustrates how a Subscriber can reach their VPR Volume Commitment faster and through fewer transactions by executing Public Customer contracts as compared to executing Broker/Dealer contracts.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act, in general, and Section 6(b)(4) and 6(b)(5)of the Act,[8] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among BOX Participants and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers. In particular, the proposed rule change is reasonable, equitable and not unfairly discriminatory because it proposes to clarify aspects of the VPR Filing, thereby helping ensure that investors and current Subscribers to the VPR Program clearly understand how the VPR Program operates. In addition, because the first quarter of the VPR Program has not yet completed as of the time of filing this proposed rule change, no Quarterly Volume Commitment (as defined on page 30 of 49 of the VPR Filing) calculations have been made under the Program for any Subscribers. Accordingly, this proposed rule filing should provide current Subscribers will sufficient time to resolve any potential confusion that stemmed from the description of the VPR Program and, specifically, the Contract Equivalent calculation and Contract Equivalent ratios, in the VPR Filing before the first Quarterly Volume Commitment under the Program is calculated for Subscribers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed rule change will improve competition by clarifying certain aspects of the VPR Filing for all market participants.

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.

[8] 15 U.S.C. 78f(b)(4) and (5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Exchange Act [9] and Rule 19b–4(f)(2) thereunder,[10] because it establishes or changes a due, or fee.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BOX–2015–16 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BOX–2015–16. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and

[9] 15 U.S.C. 78s(b)(3)(A)(ii).

[10] 17 CFR 240.19b–4(f)(2).

printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing 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–BOX–2015–16 and should be submitted on or before April 21, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Brent J. Fields,

Secretary.

[FR Doc. 2015–07257 Filed 3–30–15; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74583; File No. SR–ICEEU–2015–008]

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Clearance of New Natural Gas Futures Contracts

March 25, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 18, 2015, ICE Clear Europe Limited (''ICE Clear Europe'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I, II and III below, which Items have been prepared primarily by ICE Clear Europe. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The principal purpose of the proposed rule change is to modify the ICE Clear Europe Delivery Procedures with respect to the settlement of certain European natural gas futures contracts that are currently traded or will be traded on the ICE Endex market and cleared by ICE Clear Europe.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICE Clear Europe included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. ICE Clear Europe has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the rule amendments is to modify the ICE Clear Europe Delivery Procedures in connection with the launch by the ICE Endex market of certain new natural gas futures contracts that will be cleared by ICE Clear Europe, namely the ICE Endex TTF Natural Gas Daily Futures Contracts, ICE Endex Gaspool Natural Gas Daily Futures Contracts, ICE Endex NCG Natural Gas Daily Futures Contracts and ICE Endex ZTP Natural Gas Daily Futures Contracts (the ''New Futures Contracts''). These contracts are daily versions of existing monthly natural gas futures contracts traded on ICE Endex and cleared by ICE Clear Europe. ICE Clear Europe also proposes to make clarifying and conforming amendments for certain existing natural gas contracts that are covered by the Delivery Procedures. ICE Clear Europe does not otherwise propose to amend its clearing rules or procedures in connection with the New Futures Contracts.

The amendments adopt new subparts of Parts E, F, G and H of the Delivery Procedures, applicable to the ICE Endex TTF Natural Gas Daily Futures Contracts, ICE Endex Gaspool Natural Gas Daily Futures Contracts, ICE Endex NCG Natural Gas Daily Futures Contracts and ICE Endex ZTP Natural Gas Daily Futures Contracts, respectively. The amendments add references, as appropriate, to the New Futures Contracts in the applicable Parts of the Delivery Procedures. The amendments provide, among other matters, specifications for delivery of natural gas under a New Futures Contract, including relevant definitions and a detailed delivery timetable for the contracts. The amendments also address invoicing and payment for delivery. The amendments provide for calculation by ICE Clear Europe of buyer's and seller's security to cover delivery obligations and related liabilities, costs or charges, as well as procedures to address failed deliveries. The revised procedures also set out various documentation requirements for the relevant parties. In addition, changes are made to paragraph 5.1 of the Delivery Procedures to include the New Futures Contracts in the list of contracts for which parties may nominate transferors and transferees to make and take delivery.

Other changes are made throughout the Delivery Procedures to conform the names of certain contracts to those used in the relevant exchange rules, including for the ICE Endex Gaspool Natural Gas Futures Contract, ICE Endex NCG Natural Gas Futures Contract and ICE Endex ZTP Natural Gas Futures Contract. (Related changes and clarifications to defined terms have also been made.) Throughout relevant Parts of the Delivery Procedures, references to the ''HIT report'' have been replaced with the ''MPFE report'' (which is the current form of futures expiry report indicating positions that have gone to expiry). Certain drafting clarifications to the term ''Invoice Period'' have been made in the Delivery Procedures.

Changes have also made to the settlement timetable for existing ICE Futures UK Natural Gas Daily Futures in paragraph 5.2 of Part D and the delivery documentation requirements table in paragraph 8.1 of Part D (including as to the timetable and documentation for nominations of transferors and transferees). Parallel and conforming changes have been made in Parts E through H for other existing natural gas contracts. The existing Schedule of Forms and Reports appended to the Delivery Procedures has been removed as obsolete and unnecessary.

2. Statutory Basis

ICE Clear Europe believes that the changes described herein are consistent with the requirements of Section 17A of the Act[3] and the regulations thereunder applicable to it, including the standards under Rule 17Ad–22,[4] and are consistent with the prompt and accurate clearance of and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts and transactions, the safeguarding of securities and funds in the custody or control of ICE Clear Europe or for which it is responsible and the protection of investors and the public interest, within the meaning of Section 17A(b)(3)(F) of the Act.[5] The New Futures Contracts have similar

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[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78q–1.

[4] 17 CFR 240.17Ad–22.

[5] 15 U.S.C. 78q–1(b)(3)(F).

characteristics to other ICE Endex natural gas contracts currently cleared by ICE Clear Europe, and ICE Clear Europe believes that its existing financial resources, risk management, systems and operational arrangements are sufficient to support clearing of such products (and address physical delivery under such contracts). The other changes set forth in the proposed amendments are generally intended to conform and clarify various provisions of the Delivery Procedures for natural gas contracts, and are also consistent with the prompt and accurate clearance and settlement of derivative agreements, contracts and transactions.

Specifically, ICE Clear Europe believes that it will be able to manage the risks associated with acceptance of the New Futures Contracts for clearing and physical delivery in such contracts. The New Futures Contracts present a similar risk profile to other ICE Endex contracts currently cleared by ICE Clear Europe, and ICE Clear Europe believes that its existing risk management and margin framework is sufficient for purposes of risk management of the New Futures Contracts and related deliveries.

Similarly, ICE Clear Europe has established appropriate standards for determining the eligibility of contracts submitted to it for clearing, and ICE Clear Europe believes that its existing systems are appropriately scalable to handle the New Futures Contracts, which are generally similar from an operational perspective to the other ICE Endex power contracts currently cleared by ICE Clear Europe.

For the reasons noted above, ICE Clear Europe believes that the proposed rule change is consistent with the requirements of Section 17A of the Act and regulations thereunder applicable to it.

B. Self-Regulatory Organization's Statement on Burden on Competition

ICE Clear Europe does not believe the proposed rule change would have any impact, or impose any burden, on competition not necessary or appropriate in furtherance of the Act. ICE Clear Europe is adopting the amendments to the Delivery Procedures principally in connection with the listing of new contracts for trading on the ICE Endex market. ICE Clear Europe believes that such contracts will provide additional opportunities for interested market participants to engage in trading activity relating to the relevant underlying gas markets. ICE Clear Europe does not believe the adoption of related Delivery Procedures amendments would adversely affect access to clearing for clearing members or their customers, or otherwise adversely affect competition in clearing services.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rule change have not been solicited or received. ICE Clear Europe will notify the Commission of any written comments received by ICE Clear Europe.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A) [6] of the Act and Rule 19b–4(f)(4)(ii) [7] thereunder because it effects a change in an existing service of a registered clearing agency that primarily affects the clearing operations of the clearing agency with respect to products that are not securities, including futures that are not security futures, swaps that are not security-based swaps or mixed swaps, and forwards that are not security forwards, and does not significantly affect any securities clearing operations of the clearing agency or any rights or obligations of the clearing agency with respect to securities clearing or persons using such securities-clearing service. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ICEEU–2015–008 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ICEEU–2015–008. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings will also be available for inspection and copying at the principal office of ICE Clear Europe and on ICE Clear Europe's Web site at *https://www.theice.com/notices/Notices.shtml?regulatoryFilings.*

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–ICEEU–2015–008 and should be submitted on or before April 21, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Brent J. Fields,

Secretary.

[FR Doc. 2015–07248 Filed 3–30–15; 8:45 am]

BILLING CODE 8011–01–P

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(4)(ii).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74580; File No. SR–NASDAQ–2015–025]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Rule 5950

March 25, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 19, 2015, The NASDAQ Stock Market LLC (''NASDAQ'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASDAQ. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASDAQ proposes to amend the Market Quality Program (''MQP'' or ''Program'') fee (''MQP Fee'') in Rule 5950, entitled Market Quality Program.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nasdaq.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposal is to amend the MQP Fee in section (b)(2) of Rule 5950. No other changes to the MQP are proposed.

The MQP enables market makers that voluntarily commit to and do in fact enhance the market quality, in terms of quoted spreads and liquidity, of certain securities listed on the Exchange to qualify for a fee credit. These market makers are eligible for a fee credit only to the extent that they maintain stringent quoting and liquidity standards set forth in the Program. The MQP is a one year pilot, during which time the Exchange will periodically provide information to the Commission about market quality in respect of the MQP. NASDAQ believes that the MQP will be beneficial to issuers, investors and other market participants, and to the economy in general by significantly enhancing the quality of the market and trading in listed securities.

The Commission approved the MQP as a pilot program.[3] The pilot program has not commenced. At this time, there are no MQP Companies [4] or MQP Market Makers [5] in the Program.[6] During this interim period, the Exchange is proposing to reduce the MQP Fee to enhance the competitive nature of the Program.[7]

Current Rule 5950 discusses the Market Quality Program. MQP Securities consist of ETF securities issued by an MQP Company and listed on the Exchange pursuant to NASDAQ Rule 5705.[8] In addition to the standard (non-MQP) Exchange listing fee applicable to an MQP Security set forth in the NASDAQ Rule 5000 Series an MQP Company may [sic] incur a fee known as an MQP Fee, on behalf of an MQP Security, to participate in the Program. The MQP Fee will be paid by a Sponsors [sic] associated with an MQP Company.[9] The MQP Fee will be used for the purpose of incentivizing one or more MQP Market Makers to enhance the market quality of an MQP Security. Subject to the conditions set forth in the proposed [sic] rule, this incentive payment will be credited (''MQP Credit'') pro rata to one or more MQP Market Makers that meet quoting and trading requirements in the MQP Security and thereby make a high-quality market in the MQP Security.[10]

Currently, per Rule 5950(b)(2), an MQP Company participating in the MQP will incur an annual basic MQP Fee of $50,000 per MQP Security (''basic MQP Fee''), which must be paid to the Exchange prospectively each quarter. An MQP Company may also, on an annual basis, voluntarily select to incur

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 69195 (March 20, 2013), 78 FR 18393 (March 26, 2013) (SR–NASDAQ–2012–137) (order granting approval of Market Quality Program) (SR–NASDAQ–2012–137) (''MQP order''). *See also* Securities Exchange Act Release No. 68515 (December 21, 2012), 77 FR 77141 (December 31, 2012) (SR–NASDAQ–2012–137) (notice of filing Market Quality Program as pilot, with extensive description of program) (''MQP proposal''). In the MQP proposal the Exchange noted the need for the MQP and positive results of such programs, the extensive positive academic studies, and the success of the thirteen year old NASDAQ First North market incentive program that is similar in nature to the MQP.

[4] The term ''MQP Company'' is defined in Rule 5950(e)(5) as the trust or company housing the Exchange Traded Fund (''ETF'') or, if the ETF is not a series of a trust or company, then the Exchange Traded Fund itself. MQP Fees for MQP Securities will be paid by the Sponsors associated with the MQP Companies. The term ''Sponsor'' means the registered investment adviser that provides investment management services to an MQP Company or any of such adviser's parents or subsidiaries. The term ''Exchange Traded Fund'' is defined in Rule 5950(e)(2) includes [sic] Portfolio Depository Receipts and Index Fund Shares, which are defined in NASDAQ Rule 5705; the Exchange believes, as noted in the MQP proposal, that predominantly ETFs will be listed on the MQP.

[5] The term ''Market Maker'' is defined in Rule 5005(a)(24) as a dealer that, with respect to a security, holds itself out (by entering quotations in the NASDAQ Market Center) as being willing to buy and sell such security for its own account on a regular and continuous basis and that is registered as such.

[6] Section (f) of Rule 5950 states, in relevant part, that the MQP will be effective for a one year pilot period that will commence when the Program is implemented by Exchange acceptance of an MQP Company, on behalf of an MQP Security, and relevant MQP Market Maker into the Program.

[7] *See, e.g.,* Securities Exchange Act Release No. 69706 (June 6, 2013), 78 FR 35340 (June 12, 2013) (SR–NYSEArca–2013–34) (order granting approval of NYSE Arca incentive pilot program). *See also* Securities Exchange Act Release No. 66307 (February 2, 2012), 77 FR 6608 (February 8, 2012) (SR–BATS–2011–051) (order granting approval of BATS Competitive Liquidity Provider program).

[8] The term ''MQP Security'' is defined in Rule 5950(e)(1) as an ETF security issued by an MQP Company that meets all of the requirements to be listed on NASDAQ pursuant to Rule 5705.

[9] *See* Rule 5950(b)(2)(C)(i). The term ''Sponsor'' is defined in Rule 5950(e)(5) to mean the registered investment adviser that provides investment management services to an MQP Company or any of the adviser's parents or subsidiaries.

[10] *See* Rule 5950(c). For an MQP Market Maker to be eligible to receive MQP Credit when making markets in MQP Securities, the MQP Market Maker must, in addition to meeting applicable Market Maker obligations pursuant to Rule 4613, on a monthly basis meet or exceed section (c) quoting and trading requirements that include, in relevant part: (i) For at least 25% of the time when quotes can be entered in the Regular Market Session as averaged over the course of a month, must maintain: a) at least 500 shares of attributable, displayed quotes or orders at the NBBO or better on the bid side of an MQP Security; and b) at least 500 shares of attributable, displayed quotes or orders at the NBBO or better on the offer side of an MQP Security; and (ii) For at least 90% of the time when quotes can be entered in the Regular Market Session as averaged over the course of a month, must maintain: a) at least 2,500 shares of attributable, displayed posted liquidity on the Nasdaq Market Center that are priced no wider than 2% away from the NBBO on the bid side of an MQP Security; and b) at least 2,500 shares of attributable, displayed posted liquidity on the Nasdaq Market Center that are priced no wider than 2% away from the NBBO on the offer side of an MQP Security.

an annual supplemental MQP Fee per MQP Security (''supplemental MQP Fee''), which must be paid to the Exchange prospectively each quarter. Currently, the basic MQP Fee and supplemental MQP Fee cannot exceed $100,000 per year when combined. The amount of the supplemental MQP Fee, if any, for each MQP Security will be determined by the MQP Company initially and will remain the same for one year. The Exchange will provide notification on its Web site regarding the amount, if any, of any supplemental MQP Fee determined by an MQP Company per MQP Security.[11]

The Exchange proposes to amend the basic MQP Fee and the supplemental MQP Fee. Specifically, the Exchange proposes to amend the MQP Fee as follows: the annual basic MQP fee will be $35,000; and the basic MQP Fee and supplemental MQP Fee when combined will not exceed $70,000. Thus, the supplemental MQP Fee as proposed may not be greater than $35,000 in addition to the basic MQP Fee. The 1:2 relationship between the basic and supplemental fee is preserved. That is, where currently the basic MQP Fee is $50,000 and the basic MQP Fee and supplemental MQP Fee when combined may not exceed $100,000 (twice the basic MQP Fee), the proposed basic MQP Fee is $35,000 and the basic MQP Fee and supplemental MQP Fee when combined may not exceed $70,000 (also twice the basic MQP Fee). Other than the MQP Fee, no other changes are proposed in this filing.

The Exchange has discussed the structure and implementation of the Program with potential MQP Companies and MQP Market Makers. The Exchange believes that the proposal will help to incentivize MQP Companies to list ETF products, and MQP Market Makers to make quality markets through the MQP Program. The Exchange believes that its proposal, which would encourage Program implementation, will be beneficial to the market and market participants.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder, including the requirements of Section 6(b) of the Act.[12] In particular, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[13] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that its proposal to decrease the MQP Fee is wholly consistent with the Act and promotes the implementation and use of the MQP.

The goal of the MQP—to incentivize members to make high-quality, liquid markets—supports the primary goal of the Act to promote the development of a resilient and efficient national market system. The primary goal of the Act includes multiple policies such as price discovery, order interaction, and competition among orders and markets. The MQP as amended promotes all of these policies and will enhance quote competition, improve NASDAQ liquidity, support the quality of price discovery, promote market transparency and increase competition for listings and trade executions while reducing spreads and transaction costs. Maintaining and increasing liquidity in exchange-listed securities executed on a registered exchange will help raise investors' confidence in the fairness of the market and their transactions. Improving liquidity in this manner is particularly important with respect to ETFs and low-volume securities, as noted by the Joint CFTC/SEC Advisory Commission on Emerging Regulatory Issues.[14]

Each aspect of the MQP as amended adheres to and supports the Act. The Program promotes the equitable allocation of fees and dues among issuers. The MQP is completely voluntary in that it will provide an additional means by which issuers may relate to the Exchange without modifying the existing listing options. Issuers can supplement the standard listing fees (which have already been determined to be consistent with the Act) with those of the MQP (which are consistent with the Act as well). While the MQP will result in higher overall fees for issuers that choose to participate, the Exchange notes that the MQP Fee (both basic and supplemental) for participation in the Program is decidedly lower and would enable the issuers to receive significant benefits for participating, including greater liquidity, and lower transaction costs for their investors.[15]

The MQP as amended also represents an equitable allocation of fees and dues among Market Makers. Again, the MQP is completely voluntary with respect to Market Maker participation in that it will provide an additional means by which members may qualify for a credit, without eliminating any of the existing means of qualifying for incentives on the Exchange. Currently, NASDAQ and other exchanges use multiple fee arrangements to incentivize Market Makers to maintain high quality markets or to improve the quality of executions, including various payment for order flow arrangements, liquidity provider credits, and NASDAQ's Investor Support Program (set forth in NASDAQ Rule 7014). Market Makers that choose to undertake increased burdens pursuant to the MQP will be rewarded with increased credits; those that do not undertake such burdens will receive no added benefit. As with issuers, Market Makers that choose to participate in the MQP will be permitted to withdraw from it after an initial commitment if they determine that the burdens imposed by the MQP outweigh the benefits provided.

Additionally, the MQP as amended reflects an equitable allocation of MQP Credits among Market Makers that choose to participate and fulfill the obligations imposed by the rule. If one Market Maker fulfills those obligations, the MQP Credit will be distributed by NASDAQ to that Market Maker out of the General Fund; and if multiple Market Makers satisfy the standard, the MQP Credit will be distributed pro rata among them. In other words, all of the

[11] In addition to the supplemental MQP fee, the Exchange will include on its Web site the following information: (i) The identities of the MQP Companies, MQP Securities, and MQP Market Makers accepted into the MQP; (ii) any limits the Exchange may impose on the number of MQP Securities per MQP Company or MQP Market Makers per MQP Security in the MQP; (iii) any notification received by the Exchange that an MQP Company, on behalf of an MQP Security, or MQP Market Maker intends to withdraw from the MQP; and (iv) the dates that an MQP Company, on behalf of an MQP Security, commences participation in and is withdrawn or terminated from the MQP. Furthermore, an MQP Company will be required to disclose on a product-specific Web site that the MQP Security is participating in the MQP and will be required to provide a link on that Web site to the Exchange's MQP Web site.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] *See* Recommendations Regarding Regulatory Responses To The Market Events Of May 6, 2010, February 18, 2011 (Recommendation that the SEC evaluate whether incentives or regulations can be developed to encourage persons who engage in market making strategies to regularly provide buy and sell quotations that are ''reasonably related to the market.''). Available at *http://www.sec.gov/spotlight/sec-cftcjointcommittee/021811-report.pdf*.

[15] Additionally, issuers will have the ability to withdraw from the Program after an initial commitment in the event they determine that participation is not beneficial. In that case, the withdrawing issuers will automatically revert to the already-approved fee schedule applicable to the market tier in which their shares are listed.

benefit of the MQP Credits will flow to high-performing Market Makers, provided that at least one Market Maker fulfills the obligations under the proposed rule.

The MQP as amended is designed to avoid unfair discrimination among Market Makers and issuers. The proposed rule contains objective, measurable (universal) standards that NASDAQ will apply with care. These standards will be applied equally to ensure that similarly situated parties are treated similarly. This is equally true for inclusion of issuers and Market Makers, withdrawal of issuers and Market Makers, and termination of eligibility for the MQP. The standards are carefully constructed to protect the rights of all parties wishing to participate in the Program by providing notice of requirements and a description of the selection process. NASDAQ will apply these standards with the same care and experience with which it applies the many similar rules and standards in NASDAQ's rule manuals. The MQP Fee as amended and the credit to Market Makers will be applied uniformly to all in the Program that maintain Program standards.

NASDAQ notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, NASDAQ must continually adjust its fees and program offerings to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. NASDAQ believes that all aspects of the proposed rule change reflect this competitive environment because the MQP is designed to increase the credits provided to members that enhance NASDAQ's market quality.[16]

The proposal to lower the MQP Fee is commensurate with the goals of the Act, in compliance with the Act, and raises no new issues that have not already been discussed. The proposal is non-controversial in nature.

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. To the contrary, NASDAQ believes that its proposal is pro-competitive in that it will incentivize the use of the MQP and increase competition in both the listings market and in the transaction services market. This proposal, like the MQP, will promote competition in the listings market by advancing NASDAQ's reputation as an exchange that works tirelessly to develop a better market for all issuers, and for partnering with issuers to improve the quality of trading on NASDAQ. In fact, this proposal, and the MQP itself, is a response to the competition provided by other markets that have developed competing programs, including NYSE Arca and BATS.

The MQP as amended promotes competition in the transaction services market by creating incentives for market makers to make better quality markets. As market makers strive to attain the quality standards established by the MQP, the quality of NASDAQ's quotes will improve. This, in turn, will attract more liquidity to NASDAQ and further improve the quality of trading of MQP stocks. Market quality and liquidity is paramount to NASDAQ, as also to other exchanges. As discussed, competing markets have created incentives of their own to improve the quality of their markets and to attract liquidity to their markets.

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

Pursuant to Section 19(b)(3)(A)(ii) of the Act,[17] the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2015–025 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2015–025. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing 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–NASDAQ–2015–025 and should be submitted on or before April 21, 2015.

[16] NASDAQ notes that, as discussed, the proposed paid for market making system has been used successfully for years on NASDAQ Nordic's First North market and has been beneficial to market participants including investors and listing companies (issuers) that have experienced market quality and liquidity with narrowed spreads.

[17] 15 U.S.C. 78s(b)(3)(A)(ii).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Brent J. Fields,

Secretary.

[FR Doc. 2015–07260 Filed 3–30–15; 8:45 am]

BILLING CODE 8011–01–P

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–335, OMB Control No. 3235–0381]

Submission for OMB Review; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549–2736.

Extension:
Form 40–F.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget this request for extension of the previously approved collection of information discussed below.

Form 40–F (17 CFR 249.240f) is used by certain Canadian issuers to register a class of securities pursuant to Section 12(b) or (g) of the Securities Exchange Act of 1934 (''Exchange Act'')(15 U.S.C. 78*l*) or as an annual report pursuant to Section 13(a) or 15(d) of the Exchange Act (15 U.S.C. 78m(a) or 78o(d)). The information required in the Form 40–F is used by investors in making investment decisions with respect to the securities of such Canadian companies. We estimate that Form 40–F takes approximately 429.93 hours per response and is filed by approximately 160 respondents. We estimate that 25% of the 429.93 hours per response (107.48 hours) is prepared by the issuer for a total reporting burden of 17,197 (107.48 hours per response × 160 responses).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view the background documentation for this information collection at the following Web site, *www.reginfo.gov* . Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: March 25, 2015.

Brent J. Fields,

Secretary.

[FR Doc. 2015–07253 Filed 3–30–15; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 31511; File No. 812–14346]

ETFS Trust and ETF Securities Advisors, LLC; Notice of Application

March 25, 2015.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from section 15(a) of the Act and rule 18f–2 under the Act, as well as from certain disclosure requirements.

Summary of Application: Applicants request an order that would permit them to enter into and materially amend subadvisory agreements with Wholly-Owned Sub-Advisers (as defined below) and non-affiliated sub-advisers without shareholder approval and would grant relief from certain disclosure requirements.

Applicants: ETFS Trust (the ''Trust'') and ETF Securities Advisors LLC (the ''Adviser'').

DATES: *Filing Dates:* The application was filed on August 13, 2014 and amended on December 2, 2014 and February 12, 2015.

Hearing or Notification of Hearing: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on April 17, 2015, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090. Applicants, ETFS Trust, 48 Wall Street, New York, New York 10005.

FOR FURTHER INFORMATION CONTACT: Barbara T. Heussler, Senior Counsel, at (202) 551–6990, or Mary Kay Frech, Branch Chief, at (202) 551–6821 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. The Trust is organized as a Delaware statutory trust and is registered with the Commission as an open-end management investment company under the Act. The Trust currently offers four series of shares and may offer additional series of shares in the future (each, a ''Fund'' and collectively the ''Funds''),[1] each with its own distinct investment objective, policy and restrictions. Each Fund will operate as an exchange-traded fund.[2] ETF Securities is a Delaware limited liability company and is registered with the Commission as an investment adviser under the Investment Advisers Act of 1940 (the ''Advisers Act'').

2. Applicants request an order to permit the Adviser,[3] subject to the

[1] Currently the Trust consists of the following Funds: ETFS Zacks Earnings Large-Cap U.S. Index Fund, ETFS Zacks Earnings Small-Cap U.S. Index Fund, ETFS Diversified-Factor Large Cap U.S. Index Fund, and the ETFS Diversified-Factor Developed Europe Index Fund (the ''Initial Fund(s)'').

[2] Future Funds may be operated as a master-feeder structure pursuant to section 12(d)(1)(E) of the Act. In such a structure, certain Funds (each, a ''Feeder Fund'') may invest substantially all of their assets in a Fund (a ''Master Fund'') pursuant to section 12(d)(1)(E) of the Act. No Feeder Fund will engage any sub-advisers other than through approving the engagement of one or more of the Master Fund's sub-advisers.

[3] The term ''Adviser'' includes (1) ETF Securities, and (2) any entity controlling, controlled by or under common control with, ETF Securities or its successors that serves as investment adviser to the Funds. For purposes of the requested order, ''successor'' is limited to an entity that results from a reorganization into another jurisdiction or a change in the type of business organization.

approval of the board of trustees of the Trust (the ''Board''), including a majority of the trustees who are not ''interested persons'' of the Trust, the Funds or the Adviser as defined in section 2(a)(19) of the Act (the ''Independent Trustees''), to, without obtaining shareholder approval: (a) Select Sub-Advisers [4] to manage all or a portion of the assets of a Fund and enter into investment sub-advisory agreements with the Sub-Advisers (each, a ''Sub-Advisory Agreement''); and (b) materially amend Sub-Advisory Agreements with the Sub-Advisers.[5] Applicants request that the relief apply to the named applicants, as well as to any future Fund and any other existing or future registered open-end management investment company or series thereof that is advised by the Adviser, uses the multi-manager structure described in the application, and complies with the terms and conditions set forth in the application (each, a ''Subadvised Fund'').[6] The requested relief will not extend to any sub-adviser, other than a Wholly-Owned Sub-Adviser, who is an affiliated person, as defined in section 2(a)(3) of the Act, of the Subadvised Fund, of any Feeder Fund, or of the Adviser, other than by reason of serving as a sub-adviser to one or more of the Subadvised Funds (''Affiliated Sub-Adviser'').

3. ETF Securities is the investment adviser to each Fund pursuant to an investment advisory agreement with the Trust (the ''Investment Management Agreement''). Any other Adviser will be registered with the Commission as an investment adviser under the Advisers Act. The Investment Management Agreement was approved by the Board, including a majority the Independent Trustees, and by the shareholders of each Fund in the manner required by sections 15(a) and 15(c) of the Act and rule 18f–2 thereunder. The terms of the Investment Management Agreement will comply with section 15(a) of the Act. Each other investment management agreement with respect to a Fund (included in the term ''Investment Management Agreement'') will comply with section 15(a) of the Act and will be similarly approved.

4. Pursuant to the terms of the Investment Management Agreement, the Adviser, subject to the supervision of the Board, provides continuous investment management of the assets of each Fund. Consistent with the terms of the Investment Management Agreement, the Adviser may, subject to the approval of the Board, including a majority of the Independent Trustees, and the shareholders of the applicable Subadvised Fund (if required), delegate portfolio management responsibilities of all or a portion of the assets of a Subadvised Fund to one or more Sub-Advisers. The Adviser would continue to have overall responsibility for the management and investment of the assets of each Subadvised Fund, and the Adviser's responsibilities would include, for example, recommending the removal or replacement of Sub-Advisers and determining the portion of that Subadvised Fund's assets to be managed by any given Sub-Adviser and reallocating those assets as necessary from time to time. The Adviser evaluates, allocates assets to, and oversees, the Sub-Advisers, and makes recommendations about their hiring, termination and replacement to the Board, at all times subject to the authority of the Board. For its services to a Fund under an Investment Management Agreement, the Adviser would receive an investment management fee from that Fund based on the average net assets of that Fund.

5. Currently the Adviser has entered into a sub-advisory agreement with Index Management Solutions, LLC (''IMS'') with respect to the Initial Funds. The sub-advisory agreement with IMS was approved by the Board, including a majority of the Independent Trustees, and by the sole shareholders of each Initial Fund in the manner required by sections 15(a) and 15(c) of the Act and rule 18f–2 thereunder. The terms of the sub-advisory agreement with IMS comply with section 15(a) of the Act. IMS is, and any future Sub-Adviser will be, an ''investment adviser'' as defined in section 2(a)(20) of the Act and will be registered as an investment adviser under the Advisers Act or exempt from such registration. Any Sub-Advisory Agreements will be approved by the Board, including a majority of the Independent Trustees, and the terms of each Sub-Advisory Agreement will comply fully with the requirements of section 15(a) of the Act. The Sub-Advisers, subject to the supervision of the Adviser and oversight of the Board, determine the securities and other instruments to be purchased, sold or entered into by a Subadvised Fund's portfolio or a portion thereof, and place orders with brokers or dealers that they select. The Adviser will compensate each Sub-Adviser out of the fee paid to the Adviser under the Investment Management Agreement.

6. Subadvised Funds will inform shareholders of the hiring of a new Sub-Adviser pursuant to the following procedures (''Modified Notice and Access Procedures''): (a) Within 90 days after a new Sub-Adviser is hired for any Subadvised Fund, that Subadvised Fund will send its shareholders [7] either a Multi-manager Notice or a Multi-manager Notice and Multi-manager Information Statement; [8] and (b) the Subadvised Fund will make the Multi-manager Information Statement available on the Web site identified in the Multi-manager Notice no later than when the Multi-manager Notice (or Multi-manager Notice and Multi-manager Information Statement) is first

[4] A ''Sub-Adviser'' for a Fund is (1) an indirect or direct ''wholly owned subsidiary'' (as such term is defined in the Act) of the Adviser for that Fund, or (2) a sister company of the Adviser for that Fund that is an indirect or direct ''wholly-owned subsidiary'' of the same company that, indirectly or directly, wholly owns the Adviser (each of (1) and (2) a ''Wholly-Owned Sub-Adviser'' and collectively, the ''Wholly-Owned Sub-Advisers''), or (3) not an ''affiliated person'' (as such term is defined in section 2(a)(3) of the Act) of the Fund, any Feeder Fund invested in a Master Fund, the Trust, or the Adviser, except to the extent that an affiliation arises solely because the Sub-Adviser serves as a sub-adviser to a Fund (each, a ''Non-Affiliated Sub-Adviser'').

[5] Shareholder approval will continue to be required for any other sub-adviser changes (not otherwise permitted by rule) and material amendments to an existing Sub-Advisory Agreement with any sub-adviser other than a Non-Affiliated Sub-Adviser or Wholly-Owned Sub-Adviser (all such changes referred to as ''Ineligible Sub-Adviser Changes'').

[6] All registered open-end investment companies that currently intend to rely on the requested order are named as applicants. All Funds that currently are, or that currently intend to be, Subadvised Funds are identified in the application. Any entity that relies on the requested order will do so only in accordance with the terms and conditions contained in the application. If the name of any Subadvised Fund contains the name of a Sub-Adviser, the name of the Adviser that serves as the primary adviser to the Subadvised Fund, or a trademark or trade name that is owned by or publicly used to identify that Adviser, will precede the name of the Sub-Adviser.

[7] If the Subadvised Fund is a Master Fund, for purposes of the Modified Notice and Access Procedures, ''shareholders'' include both the shareholders of the applicable Master Fund and the shareholders of its Feeder Funds.

[8] A ''Multi-manager Notice'' will be modeled on a Notice of Internet Availability as defined in rule 14a–16 under the Securities Exchange Act of 1934 (''Exchange Act''), and specifically will, among other things: (a) Summarize the relevant information regarding the new Sub-Adviser; (b) inform shareholders that the Multi-manager Information Statement is available on a Web site; (c) provide the Web site address; (d) state the time period during which the Multi-manager Information Statement will remain available on that Web site; (e) provide instructions for accessing and printing the Multi-manager Information Statement; and (f) instruct the shareholder that a paper or email copy of the Multi-manager Information Statement may be obtained, without charge, by contacting the Subadvised Fund.

A ''Multi-manager Information Statement'' will meet the requirements of Regulation 14C, Schedule 14C and Item 22 of Schedule 14A under the Exchange Act for an information statement. Multi-manager Information Statements will be filed with the Commission via the EDGAR system.

sent to shareholders, and will maintain it on that Web site for at least 90 days. Applicants state that, in the circumstances described in the application, a proxy solicitation to approve the appointment of new Sub-Advisers provides no more meaningful information to shareholders than the proposed Multi-manager Information Statement. Applicants also state that the Board would comply with the requirements of sections 15(a) and 15(c) of the Act before entering into or amending Sub-Advisory Agreements.

7. Applicants also request an order under section 6(c) of the Act exempting the Subadvised Funds from certain disclosure obligations that may require each Subadvised Fund to disclose fees paid by the Adviser to each Sub-Adviser. Applicants seek relief to permit each Subadvised Fund to disclose (as a dollar amount and a percentage of the Subadvised Fund's net assets): (a) The aggregate fees paid to the Adviser and any Wholly-Owned Sub-Advisers; (b) the aggregate fees paid to Non-Affiliated Sub-Advisers; and (c) the fee paid to each Affiliated Sub-Adviser (collectively, the ''Aggregate Fee Disclosure''). An exemption is requested to permit the Funds to include only the Aggregate Fee Disclosure. All other items required by sections 6–07(2)(a), (b) and (c) of Regulation S–X will be disclosed.

Applicants' Legal Analysis

1. Section 15(a) of the Act states, in part, that it is unlawful for any person to act as an investment adviser to a registered investment company ''except pursuant to a written contract, which contract, whether with such registered company or with an investment adviser of such registered company, has been approved by the vote of a majority of the outstanding voting securities of such registered company.'' Rule 18f–2 under the Act provides that each series or class of stock in a series investment company affected by a matter must approve that matter if the Act requires shareholder approval.

2. Form N–1A is the registration statement used by open-end investment companies. Item 19(a)(3) of Form N–1A requires a registered investment company to disclose in its statement of additional information the method of computing the ''advisory fee payable'' by the investment company, including the total dollar amounts that the investment company ''paid to the adviser (aggregated with amounts paid to affiliated advisers, if any), and any advisers who are not affiliated persons of the adviser, under the investment advisory contract for the last three fiscal years.''

3. Rule 20a–1 under the Act requires proxies solicited with respect to a registered investment company to comply with Schedule 14A under the Exchange Act. Items 22(c)(1)(ii), 22(c)(1)(iii), 22(c)(8) and 22(c)(9) of Schedule 14A, taken together, require a proxy statement for a shareholder meeting at which the advisory contract will be voted upon to include the ''rate of compensation of the investment adviser,'' the ''aggregate amount of the investment adviser's fee,'' a description of the ''terms of the contract to be acted upon,'' and, if a change in the advisory fee is proposed, the existing and proposed fees and the difference between the two fees.

4. Regulation S–X sets forth the requirements for financial statements required to be included as part of investment company registration statements and shareholder reports filed with the Commission. Sections 6–07(2)(a), (b) and (c) of Regulation S–X require registered investment companies to include in their financial statements information about investment advisory fees.

5. Section 6(c) of the Act provides that the Commission by order upon application may conditionally or unconditionally exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provisions of the Act, or from any rule thereunder, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants state that their requested relief meets this standard for the reasons discussed below.

6. Applicants assert that the shareholders expect the Adviser, subject to the review and approval of the Board, to select the Sub-Advisers who are in the best position to achieve the Subadvised Funds' investment objectives. Applicants assert that, from the perspective of the shareholder, the role of the Sub-Advisers is substantially equivalent to the role of the individual portfolio managers employed by an investment adviser to a traditional investment company. Applicants believe that permitting the Adviser to perform the duties for which the shareholders of the Subadvised Fund are paying the Adviser—the selection, supervision and evaluation of the Sub-Advisers—without incurring unnecessary delays or expenses is appropriate in the interest of the Subadvised Fund's shareholders and will allow such Subadvised Fund to operate more efficiently. Applicants state that the Investment Management Agreement will continue to be fully subject to section 15(a) of the Act and rule 18f–2 under the Act and approved by the Board, including a majority of the Independent Trustees, in the manner required by sections 15(a) and 15(c) of the Act. Applicants are not seeking an exemption with respect to the Investment Management Agreement.

7. Applicants assert that disclosure of the individual fees that the Adviser would pay to the Sub-Advisers of Subadvised Funds that operate in the multi-manager structure described in the application does not serve any meaningful purpose. Applicants contend that the primary reasons for requiring disclosure of individual fees paid to Sub-Advisers are to inform shareholders of expenses to be charged by a particular Subadvised Fund and to enable shareholders to compare the fees to those of other comparable investment companies. Applicants believe that the requested relief satisfies these objectives because the advisory fee paid to the Adviser will be fully disclosed and, therefore, shareholders will know what the Subadvised Fund's fees and expenses are and will be able to compare the advisory fees a Subadvised Fund is charged to those of other investment companies. Applicants assert that the requested disclosure relief would benefit shareholders of the Subadvised Fund because it would improve the Adviser's ability to negotiate the fees paid to Sub-Advisers. Applicants state that if the Adviser is not required to disclose the Sub-Advisers' fees to the public, the Adviser may be able to negotiate rates that are below a Sub-Adviser's ''posted'' amounts. Applicants assert that the relief will also encourage Sub-Advisers to negotiate lower sub-advisory fees with the Adviser if the lower fees are not required to be made public.

8. Applicants submit that the requested relief meets the standards for relief under section 6(c) of the Act. Applicants state that each Subadvised Fund will be required to obtain shareholder approval to operate as a ''multiple manager'' fund as described in the application before relying on the requested order. Applicants assert that conditions 6, 10, and 11 are designed to provide the Board with sufficient independence and the resources and information it needs to monitor and address any conflicts of interest. Applicants state that, accordingly, they believe the requested relief is necessary or appropriate in the public interest and consistent with the protection of

investors and the purposes fairly intended by the policy and provisions of the Act.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:[9]

1. Before a Subadvised Fund may rely on the order requested in the application, the operation of the Subadvised Fund in the manner described in the application, including the hiring of Wholly-Owned Sub-Advisers, will be approved by a majority of the Subadvised Fund's outstanding voting securities as defined in the Act, which in the case of a Master Fund will include voting instructions provided by shareholders of the Feeder Funds investing in such Master Fund or other voting arrangements that comply with section 12(d)(1)(E)(iii)(aa) of the Act or, in the case of a new Subadvised Fund whose public shareholders purchase shares on the basis of a prospectus containing the disclosure contemplated by condition 2 below, by the initial shareholder(s) before offering the Subadvised Fund's shares to the public.

2. The prospectus for each Subadvised Fund, and in the case of a Master Fund relying on the requested relief, the prospectus for each Feeder Fund investing in such Master Fund, will disclose the existence, substance and effect of any order granted pursuant to the application. Each Subadvised Fund (and any such Feeder Fund) will hold itself out to the public as employing the multi-manager structure described in the application. Each prospectus will prominently disclose that the Adviser has the ultimate responsibility, subject to oversight by the Board, to oversee the Sub-Advisers and recommend their hiring, termination, and replacement.

3. The Adviser will provide general management services to a Subadvised Fund, including overall supervisory responsibility for the general management and investment of the Subadvised Fund's assets. Subject to review and approval of the Board, the Adviser will (a) set a Subadvised Fund's overall investment strategies, (b) evaluate, select, and recommend Sub-Advisers to manage all or a portion of a Subadvised Fund's assets, and (c) implement procedures reasonably designed to ensure that Sub-Advisers comply with a Subadvised Fund's investment objective, policies and restrictions. Subject to review by the Board, the Adviser will (a) when appropriate, allocate and reallocate a Subadvised Fund's assets among Sub-Advisers; and (b) monitor and evaluate the performance of Sub-Advisers.

4. A Subadvised Fund will not make any Ineligible Sub-Adviser Changes without such agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Subadvised Fund, which in the case of a Master Fund will include voting instructions provided by shareholders of the Feeder Fund investing in such Master Fund or other voting arrangements that comply with section 12(d)(1)(E)(iii)(aa) of the Act.

5. Subadvised Funds will inform shareholders, and if the Subadvised Fund is a Master Fund, shareholders of any Feeder Funds, of the hiring of a new Sub-Adviser within 90 days after the hiring of the new Sub-Adviser pursuant to the Modified Notice and Access Procedures.

6. At all times, at least a majority of the Board will be Independent Trustees, and the selection and nomination of new or additional Independent Trustees will be placed within the discretion of the then-existing Independent Trustees.

7. Independent Legal Counsel, as defined in rule 0–1(a)(16) under the Act, will be engaged to represent the Independent Trustees. The selection of such counsel will be within the discretion of the then-existing Independent Trustees.

8. The Adviser will provide the Board, no less frequently than quarterly, with information about the profitability of the Adviser on a per Subadvised Fund basis. The information will reflect the impact on profitability of the hiring or termination of any sub-adviser during the applicable quarter.

9. Whenever a sub-adviser is hired or terminated, the Adviser will provide the Board with information showing the expected impact on the profitability of the Adviser.

10. Whenever a sub-adviser change is proposed for a Subadvised Fund with an Affiliated Sub-Adviser or a Wholly-Owned Sub-Adviser, the Board, including a majority of the Independent Trustees, will make a separate finding, reflected in the Board minutes, that such change is in the best interests of the Subadvised Fund and its shareholders, and if the Subadvised Fund is a Master Fund, the best interests of any applicable Feeder Funds and their respective shareholders, and does not involve a conflict of interest from which the Adviser or the Affiliated Sub-Adviser or Wholly-Owned Sub-Adviser derives an inappropriate advantage.

11. No Trustee or officer of the Trust, a Fund or a Feeder Fund, or partner, director, manager or officer of the Adviser, will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by such person) any interest in a Sub-Adviser except for (a) ownership of interests in the Adviser or any entity, except a Wholly-Owned Sub-Adviser, that controls, is controlled by, or is under common control with the Adviser, or (b) ownership of less than 1% of the outstanding securities of any class of equity or debt of any publicly traded company that is either a Sub-Adviser or an entity that controls, is controlled by, or under common control with a Sub-Adviser.

12. Each Subadvised Fund and any Feeder Fund that invests in a Subadvised Fund that is a Master Fund will disclose the Aggregate Fee Disclosure in its registration statement.

13. Any new Sub-Advisory Agreement or any amendment to a Subadvised Fund's existing Investment Management Agreement or Sub-Advisory Agreement that directly or indirectly results in an increase in the aggregate advisory fee rate payable by the Subadvised Fund will be submitted to the Subadvised Fund's shareholders for approval.

14. In the event the Commission adopts a rule under the Act providing substantially similar relief to that requested in the application, the requested order will expire on the effective date of that rule.

For the Commission, by the Division of Investment Management, under delegated authority.

Brent J. Fields,

Secretary.

[FR Doc. 2015–07252 Filed 3–30–15; 8:45 am]

BILLING CODE 8011–01–P

[9] Applicants will only comply with conditions 7, 8, 9, and 12 if they rely on the relief that would allow them to provide Aggregate Fee Disclosure.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74579; File No. SR–ICEEU–2015–007]

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing of Proposed Rule Change Relating to Collateral and Haircut Policy

March 25, 2015.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder[2] notice is hereby given that on March 13, 2015, ICE Clear Europe Limited (''ICE Clear Europe'' or ''Clearing House'')

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by ICE Clear Europe. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The principal purpose of the proposed rule change is to implement a new collateral and haircut policy (the ''Haircut Policy''), which is applicable to Permitted Cover posted by Clearing Members to meet the Clearing House's Margin and Guaranty Fund requirements.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICE Clear Europe included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. ICE Clear Europe has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Haircut Policy codifies and consolidates certain existing practices of the Clearing House with respect to Permitted Cover. Specifically, the policy is designed (i) to set out overall principles with respect to the assets accepted by the Clearing House as Permitted Cover; (ii) to establish a framework for determining absolute and relative limits, as applicable, on the value of the collateral that may be posted by a Clearing Member as Permitted Cover; (iii) to establish a value-at-risk (''VaR'') based methodology for determining haircuts for all Permitted Cover; (iv) to mitigate wrong-way risk from Permitted Cover; (v) to address sources for pricing Permitted Cover; and (vi) to set out certain related monitoring, reviewing and reporting procedures. The Haircut Policy applies to Permitted Cover provided for all product classes (F&O, CDS and FX).[3] Following implementation, the Clearing House will from time to time adjust the haircuts applicable to Permitted Cover under the methodology set forth in the policy.

The general aims of the Haircut Policy are to ensure that the Clearing House can efficiently liquidate all forms of Permitted Cover, that appropriate prices are used for valuation of Permitted Cover and that appropriate haircuts (including, as applicable, cross-currency haircuts) are used. The Haircut Policy also codifies certain general principles considered by the Clearing House in accepting assets as Permitted Cover, including availability of pricing information, the existence of liquid and active markets for buyers and sellers of those assets, the existence of sufficient price history, the ability to liquidate Permitted Cover without causing a market disruption, compliance with legal and regulatory requirements and sufficient operational and technological framework to handle deposit, liquidation and return of such assets as Permitted Cover. Cash collateral must be in one of several specified currencies underlying contracts cleared by the Clearing House. Additional general requirements apply to financial instruments, including prohibitions on acceptance of instruments that have non-''vanilla'' features such as embedded options, instruments issued by a Clearing Member or its affiliate, instruments issued by a CCP or by entities that provide critical services to the Clearing House (other than central banks) and certain credit-based limits. Such limits require that the issuer is rated at least ''BBB−'' by S&P (or its equivalent), the average yield on the asset over the previous three months is not greater than 8%, and the 5-year CDS spread of the issuer has not exceeded 500 basis points over the previous three months. The Haircut Policy provides that where market conditions warrant, or where the Clearing House's sovereign risk model indicates deteriorating credit below a certain threshold (*i.e.,* ''BBB−'' by S&P), the Clearing House may remove securities from the list of Permitted Cover and/or vary applicable haircuts. The Clearing House will notify Clearing Members and other market participants of such actions by Circular. The Clearing House maintains the current List of Permitted Cover (along with haircut rates, limits and restrictions) on its Web site, *https://www.theice.com/publicdocs/clear_europe/list-of-permitted-covers.pdf.*

The Haircut Policy contains a methodology for setting absolute limits on the value of non-cash Permitted Cover that can be posted by a Clearing Member. (The Clearing House does not, however, impose absolute or relative limits on the use of US Treasury securities as Permitted Cover.) Absolute collateral limits apply across a group of affiliated Clearing Members and apply across all product categories cleared by that group. Collateral provided by Sponsored Principals with the same sponsoring member will be included in all collateral limit calculations as part of the sponsoring member's client account. The policy also sets out relative, or concentration, limits for Permitted Cover provided by a Clearing Member. The Clearing House publishes on its Web site the current absolute and relative limits on government bonds provided as Permitted Cover. For government bonds, the absolute limit generally is calculated pursuant to a formula based on data from the repo market for the relevant government bond, taking into account both the overall size of that market and the percentage of that market consisting of repos with a one day maturity. The policy also specifies relevant sources of repo market data for particular types of government securities (including most European government bonds and Japanese government bonds accepted by the Clearing House) and gold market data for gold Permitted Cover. The policy also sets out alternative approaches for determining the limit for certain government bonds, including for UK, Swiss and Canadian government bonds. The policy sets out procedures for monitoring of limits on a daily basis and for remediation of breach of a limit by a Clearing Member. The risk management department monitors all collateral limits on a daily basis using a collateral breakdown report which flags limit breaches. Breaches will be reviewed internally and the relevant Clearing Member will be contacted. Breaches can be remediated by posting additional collateral, removal of collateral that is in breach of a limit, or both of the above.

The policy also provides for a risk-based reduction in absolute limits for government bonds based on the credit default swap (CDS) spread for the relevant issuer. Once the spread exceeds a specified level for a particular issuer, the absolute limit for Permitted Collateral of that issuer is reduced pursuant to a defined formula. If the spread exceeds a second level, the absolute limit is reduced to 5% of the

[3] Although the Haircut Policy generally also applies to Permitted Cover posted with respect to Guaranty Fund requirements, certain additional requirements apply to Guaranty Fund contributions under the Rules and Finance Procedures. Those additional requirements are not proposed to be changed in connection with the Haircut Policy.

otherwise applicable original limit. Spread levels are determined using a five-day average to avoid excessive volatility. This reduction is intended to mitigate wrong-way risk from government bond Permitted Cover. The specified parameters will be reviewed on a quarterly basis.

Specific wrong-way risk arising in connection with clearing of Western European sovereign CDS is addressed through a requirement that US dollar denominated collateral be provided for initial margin and that a portion of the CDS Guaranty Fund be US dollar-based (determined based on the ratio between the dollar-denominated and Euro-denominated initial margin requirements for CDS). In addition, where the member's aggregate short position in sovereign CDS with respect to a sovereign exceeds a specified threshold, the Clearing House may decline to accept government bonds of that sovereign or any other sovereign bonds that exhibit certain correlations with such government bonds.

The Haircut Policy also addresses potential wrong-way risk arising from Permitted Cover more generally. The Clearing House monitors collateral on a daily basis. Where the Clearing House considers there to be strong general wrong-way risk between a Clearing Member and the asset it is posting, the Clearing House will ask the member to change the composition of collateral to mitigate that risk.

The Haircut Policy establishes a VaR-based methodology for determining haircuts for Permitted Cover. The Clearing House calculates six different estimations of VaR for each applicable risk factor. Two estimations are based on a historical simulation approach (using a 1,000-business day (approximately 4 year) lookback period), and a one-day or two-day liquidation period assumption. Four estimations are based on a parametric methodology: Two using a 1,000-business day lookback period and a one-day or two-day liquidation period assumption, and two using a 60-business day (approximately 3 month) lookback period and a one-day or two-day liquidation period assumption. Each estimation is calculated using a 99.9% confidence interval (applicable to Permitted Cover posted with respect to all product categories). The proposed haircut will be based on the largest VaR of the 6 estimations. Fixed income assets are divided into separate maturity buckets for each issuer, with a separate haircut established for each bucket. The policy specifies relevant price sources that will be used for the calculation of haircuts for each type of Permitted Cover. Haircuts are determined using the bid prices of Permitted Cover assets, in order to account for higher liquidation costs in stressed markets. The model output is rounded up to the nearest 0.25%, in order to limit unnecessary variation in haircut levels. The applicable haircuts will be reviewed on a monthly basis, or more frequently where the risk management department deems it necessary.

The risk management department may further adjust the haircut determined under the model as it determines prudent in light of additional qualitative and quantitative factors. These include the Clearing House's credit assessment of the issuer, current market conditions and volatility, expected future volatility, the liquidity of the underlying market for the asset, including bid/ask spread, wrong way risk considerations, VaR estimates determined for a period of stressed market conditions, and other factors that might affect the liquidity or value of an asset in stressed market conditions. The Clearing House anticipates that such adjustments to the value calculated under the model would be used only in exceptional circumstances and would expect to use such adjustments to increase haircuts in stressed market circumstances. The Clearing House will make judicious use of current market information to override the model but anticipates exercising this ability in less than 5% of haircut rates.

The Haircut Policy also sets a minimum haircut level of 3%, in order to avoid pro-cyclical variation in haircuts. (The minimum level will be reviewed annually under the Haircut Policy.) In addition, a haircut add-on of up to 1% will be applied during the period until the next monthly review to issuers presenting increased credit risk. The add-on is applied once the issuer's CDS spread exceeds a specified level, and increases in steps of 0.25% up to a maximum of 1% where the CDS spread exceeds higher thresholds. The add-on is generally designed to anticipate potential haircut increases as part of the next monthly review cycle.

The Clearing House also imposes cross-currency haircuts, which address the exchange rate risk faced by the Clearing House where the Permitted Cover is denominated in a different currency from the currency of the applicable margin requirement. Under the Haircut Policy, cross-currency haircuts are determined using the same methodology described above for other haircuts, but are subject to a minimum haircut of 4.5%. Cross-currency haircuts are applied in addition to any applicable haircut for the relevant form of Permitted Cover.

Haircuts are reviewed under the policy on at least a monthly basis, although the risk department may do so more frequently in exceptional circumstances. The Clearing House monitors Permitted Cover on a daily and intraday basis. The Clearing House may, under its existing Rules and the Haircut Policy, take action to mitigate any change in risk, including by increasing haircuts, calling for additional collateral, reducing concentration limits and removing an asset from eligibility as Permitted Cover. The Clearing House monitors the value of Permitted Cover deposited with it on a real time basis. Any change in a member's intra-day cover value that is greater than 3% is flagged immediately by the Risk Management intraday monitoring system that is monitored by the Risk Management team throughout the business day. Any breach is investigated and appropriate action taken where necessary. The Clearing House also will backtest haircuts based on price moves observed in the markets on a daily basis, and review haircut levels if a price move breaches an existing haircut. The Clearing House prepares daily reports with respect to Permitted Cover for purposes of internal monitoring and provides monthly reports to the relevant Risk Committees and Board Risk Committee. The Clearing House will review the Haircut Policy on an annual basis (which will include review by the Board Risk Committee) or where there is a material change to the risk exposure of the Clearing House. The Haircut Policy will also be independently reviewed annually under the Clearing House's model governance framework.

2. Statutory Basis

ICE Clear Europe believes that the proposed rule change is consistent with the requirements of section 17A of the Act [4] and the regulations thereunder applicable to it.[5] Section 17A(b)(3)(F) of the Act [6] requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, the safeguarding of securities and funds in the custody or control of the clearing agency, and the protection of investors and the public interest. ICE Clear Europe is adopting the Haircut Policy to codify and consolidate its procedures

[4] 15 U.S.C. 78q–1.

[5] 17 CFR 240.17Ad–22.

[6] 15 U.S.C. 78q–1(b)(3)(F).

and practices concerning the determination of haircuts and certain other limitations applicable to Permitted Cover provided in respect of initial and original margin requirements. These limitations include establishment of general principles for the assets accepted as Permitted Cover, valuation of Permitted Cover, absolute and relative concentration limits on the amount of a particular bond a Clearing Member (including any affiliated Clearing Members) may provide as Permitted Cover as well as further measures designed to mitigate wrong-way-risk. ICE Clear Europe believes that the policy provides a conservative set of haircuts intended to protect the Clearing House from a decline in collateral value or a change in exchange rates in circumstances where it is required to liquidate Permitted Cover following a Clearing Member default. In addition, the policy permits the Clearing House to respond promptly and appropriately to changes in market conditions by modifying haircuts or other limits on Permitted Cover. ICE Clear Europe thus believes that the Haircut Policy will enhance the stability of the clearing system and the Clearing House's ability to manage a Clearing Member default and to continue to fulfill its obligations in a Clearing Member default scenario. As a result, in ICE Clear Europe's view, the proposed changes will facilitate the prompt and accurate settlement of such transactions, assure the safeguarding of securities and funds which are in the custody or control of ICE Clear Europe or for which it is responsible, and promote the public interest and the protection of investors, within the meaning of section 17A(b)(3)(F).[7]

B. Self-Regulatory Organization's Statement on Burden on Competition

ICE Clear Europe does not believe the amendments would have any impact, or impose any burden, on competition not necessary or appropriate in furtherance of the purposes of the Act. The Haircut Policy will be applicable to all Clearing Members with respect to assets provided by those members as Permitted Cover. ICE Clear Europe does not believe the adoption of the policy will adversely affect competition among Clearing Members. Furthermore, ICE Clear Europe does not anticipate that the changes will adversely affect the ability of market participants to clear contracts generally, reduce access to clearing generally, or limit market participants' choices for clearing such contracts. Although it is possible that the application of the Haircut Policy will result in higher haircuts or lower limitations for certain categories of Permitted Cover, ICE Clear Europe believes that the policy appropriately tailors the haircuts and limitations to the particular market, liquidity and credit risks presented by particular assets as Permitted Cover. As a result, in ICE Clear Europe's view, any incremental increase in cost of using certain types of Permitted Cover is warranted in light of the risks presented to the Clearing House. ICE Clear Europe thus believes that any impact on competition from the new model is appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rule change have not been solicited or received. ICE Clear Europe will notify the Commission of any written comments received by ICE Clear Europe.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ICEEU–2015–007 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ICEEU–2015–007. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings will also be available for inspection and copying at the principal office of ICE Clear Europe and on ICE Clear Europe's Web site at *https://www.theice.com/clear-europe/regulation.*

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–ICEEU–2015–007 and should be submitted on or before April 21, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Brent J. Fields,

Secretary.

[FR Doc. 2015–07259 Filed 3–30–15; 8:45 am]

BILLING CODE 8011–01–P

[7] 15 U.S.C. 78q–1(b)(3)(F).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549–2736.

Extension:

Regulation G.; SEC File No. 270–518; OMB Control No. 3235–0576.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget this request for extension of the previously approved collection of information discussed below.

Regulation G (17 CFR 244.100–244.102) under the Securities Exchange Act of 1934 (the ''Exchange Act'') (15 U.S.C. 78a *et seq.*) requires publicly reporting companies that disclose or releases financial information in a manner that is calculated or presented other than in accordance with generally accepted accounting principles (''GAAP'') to provide a reconciliation of the non-GAAP financial information to the most directly comparable GAAP financial measure. Regulation G implemented the requirements of Section 401 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7261). We estimate that approximately 14,000 public companies must comply with Regulation G approximately six times a year for a total of 84,000 responses annually. We estimated that it takes approximately 0.5 hours per response (84,000 × 0.5 hours) for a total reporting burden of 42,000 hours annually.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view the background documentation for this information collection at the following Web site, *www.reginfo.gov* . Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: March 25, 2015.

Brent J. Fields,

Secretary.

[FR Doc. 2015–07250 Filed 3–30–15; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549–2736.

Extension:

Form 20–F; SEC File No. 270–156, OMB Control No. 3235–0288.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget this request for extension of the previously approved collection of information discussed below.

Form 20–F (17 CFR 249.220f) is used by foreign private issuers to register securities pursuant to Section 12(b) or (g) of the Securities Exchange Act of 1934 (''Exchange Act'') (15 U.S.C. 78*l*) or as annual and transitional reports pursuant to Section 13 or 15(d) of the Exchange Act (15 U.S.C. 78m(a) and 78o(d)). The information required in the Form 20–F is used by investors in making investment decisions with respect to the securities of such foreign private issuers. We estimate that Form 20–F takes approximately 2,645.52 hours per response and is filed by approximately 725 respondents. We estimate that 25% of the 2,645.52 hours per response (661.38 hours) is prepared by the issuer for a total reporting burden of 479,501 (661.38 hours per response × 725 responses).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view the background documentation for this information collection at the following Web site, *www.reginfo.gov* . Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: March 25, 2015.

Brent J. Fields,

Secretary.

[FR Doc. 2015–07254 Filed 3–30–15; 8:45 am]

BILLING CODE 8011–01–P

STATE JUSTICE INSTITUTE

SJI Board of Directors Meeting, Notice

AGENCY: State Justice Institute.

ACTION: Notice of Meeting.

SUMMARY: The SJI Board of Directors will be meeting on Monday, April 13, 2015 at 10:00 a.m. The meeting will be held at SJI Headquarters in Reston, Virginia. The purpose of this meeting is to consider grant applications for the 2nd quarter of FY 2015, and other business. All portions of this meeting are open to the public.

ADDRESSES: State Justice Institute, 11951 Freedom Drive, Suite 1020, Reston, VA 20190.

FOR FURTHER INFORMATION CONTACT: Jonathan Mattiello, Executive Director, State Justice Institute, 11951 Freedom Drive, Suite 1020, Reston, VA 20190, 571–313–8843, *contact@sji.gov.*

Jonathan D. Mattiello,

Executive Director.

[FR Doc. 2015–07308 Filed 3–30–15; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RIN 2120–AA66

Record of Decision To Adopt U.S. Air Force Final Environmental Impact Statement for the Powder River Training Complex

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of record of decision.

SUMMARY: In accordance with Section 102 of the National Environmental Policy Act of 1969 (''NEPA''), the Council on Environmental Quality's (''CEQ'') regulations implementing NEPA (40 CFR parts 1500–1508), and other applicable authorities, including FAA Order 1050.1E, Environmental Impacts: Policies and Procedures, paragraph 518h, and FAA Order JO 7400.2K, ''Procedures for Handling Airspace Matters,'' paragraph 32–2–3, the FAA has conducted an independent review and evaluation of the Air Force's Final Environmental Impact Statement (FEIS) for the proposed expansion of airspace for the Powder River Training

Complex (PRTC), dated November 28, 2014. As a cooperating agency with responsibility for approving special use airspace under 49 U.S.C. 40103(b)(3)(A), the FAA provided subject matter expertise and closely coordinated with the Air Force during the environmental review process, including preparation of the Draft EIS and the FEIS. Based on its independent review and evaluation, the FAA has determined the FEIS, including its supporting documentation, as incorporated by reference, adequately assesses and discloses the environmental impacts of the proposed expansion of airspace for PRTC, and that adoption of the FEIS by the FAA is authorized under 40 CFR 1506.3, Adoption.

Accordingly, the FAA adopts the FEIS, and takes full responsibility for the scope and content that addresses the proposed expansion of airspace for PRTC.

DATES: *Effective date:* March 31, 2015.

FOR FURTHER INFORMATION CONTACT: William Burris, Airspace Policy and Regulations Group, Office of Airspace Services, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–8656.

SUPPLEMENTARY INFORMATION:

Background

In August 2010, in accordance with the National Environmental Policy Act and its implementing regulations, the Air Force released a Draft EIS. The Draft EIS presented the potential environmental consequences of the Air Force's proposal to improve training for primarily bomber aircrews assigned to Ellsworth Air Force Base (AFB) and Minot AFB.

As a result of public, agency, and tribal comments during the 100-day public comment period on the Draft EIS, and the FAA aeronautical review process, the Air Force, FAA, other federal and state agencies, and tribal governments have consulted to mitigate concerns while continuing to meet national defense training requirements. The Air Force participated in continued communication, consultation, and/or meetings with state agencies and tribal representatives from 2008 through 2014. Consultation and coordination on potential environmental and related impacts will continue after completion of the FEIS. The Air Force is the proponent for the PRTC and is the lead agency for the preparation of the FEIS. The FAA is a cooperating agency responsible for approving special use airspace as defined in 40 CFR 1508.5.

Implementation

As a result of the public comments received, the aeronautical studies, environmental analysis, and the USAF using agency and FAA controlling agency concurrence on mitigation measures to address public issues and aeronautical impacts, the FAA is establishing the PRTC MOAs as circularized to the public from February through May 2014, with two minor boundary adjustments. The adjustments include a larger cutout in the southern boundary of the PR–2 Low and High MOAs for arrivals and departures into Hulett, WY, and an adjustment of the southern boundaries of the Gap B and Gap C MOAs to avoid the Gap B MOAs extending across VOR Federal airway V–491.

The legal descriptions for the PRTC MOAs being established, as noted in this notice, will be published in the NFDD with a September 17, 2015 effective date.

Activating or scheduling the Powder River PR–1A–D Low, PR–3 Low, Gap A Low, and Gap B Low MOAs is not authorized until communication coverage is established by the USAF for these areas. This ensures the ability to recall airspace for civil IFR use. The following conditions must be accomplished prior to FAA approval for activating or scheduling the Low MOAs:

1. The USAF must notify Manager, Airspace Policy and Regulations when the communications capability mitigation described in the FEIS is established.

2. The FAA must accept that the communications capability established by the USAF complies with the mitigation described in the FEIS. If no validation information is provided with the USAF notice, the FAA will request it. The communication capability acceptance is to be accomplished by the Airspace Policy and Regulations Group in concert with the Central Service Center Operations Support Group (OSG).

3. The FAA controlling agencies and USAF using agency must establish MOA recall procedures which will enable controlling agencies to recall the low MOA airspace whenever necessary to allow IFR aircraft access to and from public use airports underlying the MOA.

4. The USAF must accomplish public outreach to all known aviation interested persons, organizations, and offices within 50 miles of the PRTC 60-days prior to the first planned scheduling and use of the PRTC Low MOAs once the conditions above are accomplished.

Upon completion of the conditions established above for the scheduling and activating of the PRTC Low MOAs identified, the USAF will be authorized to schedule and use all PRTC MOAs consistent with their designated purpose.

A copy of the FAA Record of Decision is available on the FAA Web site.

Right of Appeal: The Adoption/ROD for the expansion of PRTC constitutes a final order of the FAA Administrator and is subject to exclusive judicial review under 49 U.S.C. 46110 by the U.S. Circuit Court of Appeals for the District of Columbia or the U.S. Circuit Court of Appeals for the circuit in which the person contesting the decision resides or has its principal place of business. Any party having substantial interest in this order may apply for review of the decision by filing a petition for review in the appropriate U.S. Court of Appeals no later than 60 days after the date of this notice in accordance with the provisions of 49 U.S.C. 46110. Any party seeking to stay implementation of the action as stated in the ROD must file an application with the FAA prior to seeking judicial relief as provided in Rule 18(a) of the Federal Rules of Appellate Procedure.

Issued in Washington, DC, on March 25, 2015.

Jacqueline R. Jackson,

Acting Manager, Airspace Policy and Regulations Group.

[FR Doc. 2015–07324 Filed 3–30–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Transfer of Federally Assisted Facility

AGENCY: Federal Transit Administration (FTA), United States Department of Transportation (USDOT).

ACTION: Notice of Intent (NOI) to transfer Federally assisted facility.

SUMMARY: Section 5334(h) of the Federal Transit Laws, as codified, 49 U.S.C. 5301, et. seq., permits the Administrator of the Federal Transit Administration (FTA) to authorize a recipient of FTA funds to transfer land or a facility to a public body for any public purpose with no further obligation to the Federal Government if, among other things, no Federal agency is interested in acquiring the asset for Federal use. Accordingly, FTA is issuing this Notice to advise Federal agencies that the North Carolina Department of Transportation (NCDOT) intends to transfer the facility located at

274 Winkler's Creek Road, Boone, NC 28607, on behalf of a subrecipient, AppalCART, to Watauga County, NC. AppalCART, the transportation authority serving all of Watauga County, used the location as an administrative and maintenance facility from 1981–2013 (32 yrs). AppalCART can no longer use the property because construction on a new administrative and maintenance facility was completed in August 2013.

Watauga County will be utilizing the property as a County maintenance department. Watauga County is charged with maintaining all county vehicles and facilities, including snow removal. This transfer would provide a number of benefits to the county and its residents. The site is more centrally located than the current location of the County maintenance department; the new location would allow quicker and more efficient dispatch of maintenance crews for snow removal and other services to County facilities. The interior space at this property will allow maintenance equipment and vehicles to be sheltered and maintained indoors, saving them from the wear currently experienced due to the harsh climate of the area. Also, the site and facilities have adequate space for other county usage, such as storage for other departments and a possible impound lot for the Sheriff's Office. The transfer will allow the property to be put to good use. The County has agreed to ensure that this use will be maintained for no less than five (5) years.

DATES: Effective Date: Any Federal agency interested in acquiring the facility must notify the FTA Region IV office of its interest no later than 30 days from the date of publication of the **Federal Register** notice.

ADDRESSES: Interested parties should notify the Regional Office by writing to Yvette G. Taylor, Regional Administrator, Federal Transit Administration, 230 Peachtree NW., Suite 1400, Atlanta, GA 30303.

FOR FURTHER INFORMATION CONTACT: Micah M. Miller, Regional Counsel, (404) 865–5474.

SUPPLEMENTARY INFORMATION:

Background

49 U.S.C. 5334(h) provides guidance on the transfer of capital assets. Specifically, if a recipient of FTA assistance decides an asset acquired under this chapter at least in part with that assistance is no longer needed for the purpose for which it was acquired, the Secretary of Transportation may authorize the recipient to transfer the asset to a local governmental authority to be used for a public purpose with no further obligation to the Government. 49 U.S.C. 5334(h)(1).

Determinations

The Secretary may authorize a transfer for a public purpose other than mass transportation only if the Secretary decides:

(A) The asset will remain in public use for at least 5 years after the date the asset is transferred;

(B) There is no purpose eligible for assistance under this chapter for which the asset should be used;

(C) The overall benefit of allowing the transfer is greater than the interest of the Government in liquidation and return of the financial interest of the Government in the asset, after considering fair market value and other factors; and

(D) Through an appropriate screening or survey process, that there is no interest in acquiring the asset for Government use if the asset is a facility or land.

Federal Interest in Acquiring Land or Facility

This document implements the requirements of 49 U.S.C. 5334(h)(1)(D) of the Federal Transit Laws. Accordingly, FTA hereby provides notice of the availability of the facility further described below. Any Federal agency interested in acquiring the affected facility should promptly notify the FTA. If no Federal agency is interested in acquiring the existing facility, FTA will make certain that the other requirements specified in 49 U.S.C. 5334(h)(1)(A) through (C) are met before permitting the asset to be transferred.

Additional Description of Land or Facility

The subject property is identified as parcel identification number 2910–23–0273–000 by the Watauga County Tax Supervisor's office. The subject property contains 1.549-acres improved with a one-story metal & brick garage/office/warehouse building and a one-story brick equipment vehicle wash building, both in fair condition. Site improvements include asphalt pavement, chain-link fencing, and landscaping. The subject was formerly used as an office and maintenance facility for AppalCART, a public transportation system serving Watauga County. AppalCART moved to a new facility in late 2013 and the subject facilities are currently vacant. Public utilities include water, sewer, electric, telephone and cable.

Yvette G. Taylor,

Regional Administrator, Federal Transit Administration, Atlanta, GA.

[FR Doc. 2015–07288 Filed 3–30–15; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2015–16]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before April 10, 2015.

ADDRESSES: You may send comments identified by Docket Number FAA–2015–0156 using any of the following methods:

- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.
- *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the

individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Timoleon Mouzakis, Federal Aviation Administration, Engine and Propeller Directorate, Standards Staff, ANE–111, 12 New England Executive Park, Burlington, Massachusetts 01803–5229; (781) 238–7114; facsimile: (781) 238–7199; email: *timoleon.mouzakis@faa.gov.*

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on March 24, 2015.

Dale Bouffiou,

Acting, Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2015–0156.

Petitioner: Rolls-Royce plc.

Section of 14 CFR Affected: Section 33.27 (f)(6).

Description of Relief Sought: The petitioner seeks relief from § 33.27 (f)(6) for the Rolls-Royce Trent 1000–AE, –CE, –AE2, and –CE2 engine models, to exclude the entire high-pressure shaft system from consideration in determining the highest overspeed that would result from a complete loss of load on a turbine rotor.

[FR Doc. 2015–07383 Filed 3–30–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2014–0378]

Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to grant requests from 3 individuals for exemptions from the regulatory requirement that interstate commercial motor vehicle (CMV) drivers have ''no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness or any loss of ability to control a CMV.'' The regulation and the associated advisory criteria published in the Code of Federal Regulations as the ''Instructions for Performing and Recording Physical Examinations'' have resulted in numerous drivers being prohibited from operating CMVs in interstate commerce based on the fact that they have had one or more seizures and are taking anti-seizure medication, rather than an individual analysis of their circumstances by a qualified medical examiner. The Agency concluded that granting exemptions for these CMV drivers will provide a level of safety that is equivalent to or greater than the level of safety maintained without the exemptions. FMCSA grants exemptions that will allow these 3 individuals to operate CMVs in interstate commerce for a 2-year period. The exemptions preempt State laws and regulations and may be renewed.

DATES: The exemptions are effective March 31, 2015. The exemptions expire on March 31, 2017.

FOR FURTHER INFORMATION CONTACT: Charles A. Horan, III, Director, Office of Carrier, Driver and Vehicle Safety, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

A. Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at: *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* and/or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

B. Background

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the safety regulations for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The statute also allows the Agency to renew exemptions at the end of the 2-year period.

FMCSA grants 3 individuals an exemption from the regulatory requirement in section 391.41(b)(8), to allow these individuals who take anti-seizure medication to operate CMVs in interstate commerce for a 2-year period. The Agency's decision on these exemption applications is based on an individualized assessment of each applicant's medical information, including the root cause of the respective seizure(s), the length of time elapsed since the individual's last seizure, and each individual's treatment regimen. In addition, the Agency reviewed each applicant's driving record found in the Commercial Driver's License Information System (CDLIS) [1] for commercial driver's license (CDL) holders, and interstate and intrastate inspections recorded in Motor Carrier Management Information System (MCMIS).[2] For non-CDL holders, the Agency reviewed the driving records from the State licensing agency. The Agency acknowledges the potential consequences of a driver experiencing a seizure while operating a CMV. However, the Agency believes the drivers covered by the exemptions granted here have demonstrated that they are unlikely to have a seizure and their medical condition does not pose a risk to public safety.

In reaching the decision to grant these exemption requests, the Agency considered both current medical literature and information and the 2007 recommendations of the Agency's Medical Expert Panel (MEP). The Agency previously gathered evidence for potential changes to the regulation at 49 CFR 391.41(b)(8) by conducting a comprehensive review of scientific literature that was compiled into the

[1] *Commercial Driver License Information System* (CDLIS) is an information system that allows the exchange of commercial driver licensing information among all the States. CDLIS includes the databases of fifty-one licensing jurisdictions and the CDLIS Central Site, all connected by a telecommunications network.

[2] *Motor Carrier Management Information System* (MCMIS) is an information system that captures data from field offices through SAFETYNET, CAPRI, and other sources. It is a source for FMCSA inspection, crash, compliance review, safety audit, and registration data.

''*Evidence Report on Seizure Disorders and Commercial Vehicle Driving''* (*Evidence Report*) [CD–ROM HD TL230.3 .E95 2007]. The Agency then convened a panel of medical experts in the field of neurology (the MEP) on May 14–15, 2007, to review 49 CFR 391.41(b)(8) and the advisory criteria regarding individuals who have experienced a seizure, and the 2007 *Evidence Report.* The *Evidence Report* and the MEP recommendations are published on-line at *http://www.fmcsa.dot.gov/rules-regulations/topics/mep/mep-reports.htm,* under Seizure Disorders, and are in the docket for this notice.

MEP Criteria for Evaluation

On October 15, 2007, the MEP issued the following recommended criteria for evaluating whether an individual with epilepsy or a seizure disorder should be allowed to operate a CMV.[3] The MEP recommendations are included in previously published dockets.

Epilepsy diagnosis. If there is an *epilepsy diagnosis,* the applicant should be seizure-free for *8 years, on or off medication.* If the individual is taking anti-seizure medication(s), the plan for medication should be stable for *2 years.* Stable means no changes in medication, dosage, or frequency of medication administration. Recertification for drivers with an epilepsy diagnosis should be performed every year.

Single unprovoked seizure. If there is a *single unprovoked seizure* (*i.e.,* there is no known trigger for the seizure), the individual should be seizure-free for *4 years, on or off medication.* If the individual is taking anti-seizure medication(s), the plan for medication should be stable for *2 years.* Stable means no changes in medication, dosage, or frequency of medication administration. Recertification for drivers with a single unprovoked seizure should be performed every 2 years.

Single provoked seizure. If there is a *single provoked seizure* (*i.e.,* there is a known reason for the seizure), the Agency should consider specific criteria that fall into the following two categories: low-risk factors for recurrence and moderate-to-high risk factors for recurrence.

• *Examples of low-risk factors for recurrence* include seizures that were caused by a medication; by non-penetrating head injury with loss of consciousness less than or equal to 30 minutes; by a brief loss of consciousness not likely to recur while driving; by metabolic derangement not likely to recur; and by alcohol or illicit drug withdrawal.

• *Examples of moderate-to-high-risk factors for recurrence* include seizures caused by non-penetrating head injury with loss of consciousness or amnesia greater than 30 minutes, or penetrating head injury; intracerebral hemorrhage associated with a stroke or trauma; infections; intracranial hemorrhage; post-operative complications from brain surgery with significant brain hemorrhage; brain tumor; or stroke.

The MEP report indicates individuals with moderate to high-risk conditions should not be certified. Drivers with a history of a single provoked seizure with low risk factors for recurrence should be recertified every year.

Medical Review Board Recommendations and Agency Decision

FMCSA presented the MEP's findings and the *Evidence Report* to the Medical Review Board (MRB) for consideration. The MRB reviewed and considered the 2007 ''Seizure Disorders and Commercial Driver Safety'' evidence report and the 2007 MEP recommendations. The MRB recommended maintaining the current advisory criteria, which provide that ''drivers with a history of epilepsy/seizures off anti-seizure medication and seizure-free for 10 years may be qualified to drive a CMV in interstate commerce. Interstate drivers with a history of a single unprovoked seizure may be qualified to drive a CMV in interstate commerce if seizure-free and off anti-seizure medication for a 5 year period or more'' [Advisory criteria to 49 CFR 391.43(f)].

The Agency acknowledges the MRB's position on the issue but believes relevant current medical evidence supports a less conservative approach. The medical advisory criteria for epilepsy and other seizure or loss of consciousness episodes was based on the 1988 ''Conference on Neurological Disorders and Commercial Drivers'' (NITS Accession No. PB89–158950/AS). A copy of the report can be found in the docket referenced in this notice.

The MRB's recommendation treats all drivers who have experienced a seizure the same, regardless of individual medical conditions and circumstances. In addition, the recommendation to continue prohibiting drivers who are taking anti-seizure medication from operating a CMV in interstate commerce does not consider a driver's actual seizure history and time since the last seizure. The Agency has decided to use the 2007 MEP recommendations as the basis for evaluating applications for an exemption from the seizure regulation on an individual, case-by-case basis.

C. Exemptions

Following individualized assessments of the exemption applications, including a review of detailed follow-up information requested from each applicant, FMCSA is granting exemptions from 49 CFR 391.41(b)(8) to 3 individuals. Under current FMCSA regulations, all of the 3 drivers receiving exemptions from 49 CFR 391.41(b)(8) would have been considered physically qualified to drive a CMV in interstate commerce except that they presently take or have recently stopped taking anti-seizure medication. For these 3 drivers, the primary obstacle to medical qualification was the FMCSA Advisory Criteria for Medical Examiners, based on the 1988 ''Conference on Neurological Disorders and Commercial Drivers,'' stating that a driver should be off anti-seizure medication in order to drive in interstate commerce. In fact, the Advisory Criteria have little if anything to do with the actual risk of a seizure and more to do with assumptions about individuals who are taking anti-seizure medication.

In addition to evaluating the medical status of each applicant, FMCSA evaluated the crash and violation data for the 3 drivers, some of whom currently drive a CMV in intrastate commerce. The CDLIS and MCMIS were searched for crash and violation data on the 3 applicants. For non-CDL holders, the Agency reviewed the driving records from the State licensing agency.

These exemptions are contingent on the driver maintaining a stable treatment regimen and remaining seizure-free during the 2-year exemption period. The exempted drivers must submit annual reports from their treating physicians attesting to the stability of treatment and that the driver has remained seizure-free. The driver must undergo an annual medical examination by a medical examiner, as defined by 49 CFR 390.5, following the FCMSA's regulations for the physical qualifications for CMV drivers.

FMCSA published a notice of receipt of application and requested public comment during a 30-day public comment period in a **Federal Register** notice for each of the applicants. A short summary of the applicants' qualifications and a discussion of the comments received follows this section. For applicants who were denied an exemption, a notice will be published at a later date.

[3] Engel, J., Fisher, R.S., Krauss, G.L., Krumholz, A., and Quigg, M.S., ''Expert Panel Recommendations: Seizure Disorders and Commercial Motor Vehicle Driver Safety,'' FMCSA, October 15, 2007.

D. Comments

Docket # FMCSA–2014–0378

On October 27, 2014, FMCSA published a notice of receipt of exemption applications and requested public comment on six individuals (79 FR 64003; Docket number FMCSA–2014–25450). The comment period ended on November 26, 2014. Three commenters responded to this notice. Bobby Shane Walker, an applicant in this notice, expressed support for his health status and driving safety. He provided details about his most recent driving accident. An anonymous commenter submitted details involving Bobby Shane Walker's recent driving accident and provided the driving accident report. Bob Johnson expressed support for the Epilepsy standard because it will save lives and benefit our citizens. Of the six applicants, three were denied. The Agency has determined that the following three applicants should be granted an exemption.

James Connelly

Mr. Connelly is a 60 year-old class B CDL holder in New Jersey. He has a history of seizures and has remained seizure free since 2000. He takes anti-seizure medication with the dosage and frequency remaining the same since that time. If granted an exemption, he would like to drive a CMV. His physician states he is supportive of Mr. Connelly receiving an exemption.

Timothy C. Marrill

Mr. Marrill is a 48 year-old class A CDL holder in Missouri. He has a history of epilepsy and has remained seizure free since 1995. He takes anti-seizure medication with the dosage and frequency remaining the same for over two years. If granted an exemption, he would like to drive a CMV. His physician states he is supportive of Mr. Marrill receiving an exemption.

John Rinkema

Mr. Rinkema is a 64 year-old driver in Illinois. He has a history of seizures and has remained seizure free since 1968. He takes anti-seizure medication with the dosage and frequency remaining the same since that time since 2004. If granted the exemption, he would like to drive a CMV. His physician states that he is supportive of Mr. Rinkema receiving an exemption.

E. Basis for Exemption

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the epilepsy/seizure standard in 49 CFR 391.41(b)(8) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. Without the exemption, applicants will continue to be restricted to intrastate driving. With the exemption, applicants can drive in interstate commerce. Thus, the Agency's analysis focuses on whether an equal or greater level of safety is likely to be achieved by permitting each of these drivers to drive in interstate commerce as opposed to restricting the driver to driving in intrastate commerce.

Conclusion

The Agency is granting exemptions from the epilepsy standard, 49 CFR 391.41(b)(8), to 3 individuals based on a thorough evaluation of each driver's safety experience, and medical condition. Safety analysis of information relating to these 3 applicants meets the burden of showing that granting the exemptions would achieve a level of safety that is equivalent to or greater than the level that would be achieved without the exemption. By granting the exemptions, the interstate CMV industry will gain 3 highly trained and experienced drivers. In accordance with 49 U.S.C. 31315(b)(1), each exemption will be valid for 2 years, with annual recertification required unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained prior to being granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

FMCSA exempts the following 3 drivers for a period of 2 years with annual medical certification required: James Connelly (NJ); Timothy Merrill (MO); and John Rinkema (IL) from the prohibition of CMV operations by persons with a clinical diagnosis of epilepsy or seizures. If the exemption is still in effect at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: March 20, 2015.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2015–07332 Filed 3–30–15; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. AB 303 (Sub-No. 46X)]

Wisconsin Central Ltd.—Abandonment Exemption—in Lake County, Ill.

On March 11, 2015, Wisconsin Central Ltd. (WCL) filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon 3.6 miles of rail line extending between milepost 71.0 in North Chicago, Lake County, Ill., and milepost 74.6 in Waukegan, Lake County, Ill. (the Line). The Line traverses United States Postal Service Zip Codes 60064, 60085, and 60087.

According to WCL, there is one shipper, International Precision Components Corporation (IPCC), located on the Line. WCL states that IPCC has entered into a terminable agreement with WCL to lease a side track connecting to the Line. From WCL's side track, IPCC transloads shipments to truck for final delivery at IPCC's off-Line manufacturing facility. WCL notes that it is exploring the relocation of IPCC's transloading operations to another rail-served location. After receiving Board authority to abandon the Line, WCL states that it intends to salvage the rails, ties, and other track material and then to negotiate a sale of the right-of-way to the City of Waukegan (City). According to WCL, the sale of the right-of-way will allow the City to implement an urban redevelopment project.

In addition to an exemption from the provisions of 49 U.S.C. 10903, WCL seeks an exemption from 49 U.S.C. 10904 (offer of financial assistance (OFA) procedures). In support, WCL states that the right-of-way is needed for a valid public purpose as it is an essential component of the City's multi-faceted lakefront revitalization and redevelopment effort. WCL further asserts that there is no overriding public need for continued freight rail service. This request will be addressed in the final decision.

According to WCL, the Line does not contain federally granted rights-of-way. Any documentation in WCL's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, In Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979).

By issuing this notice, the Board is instituting an exemption proceeding

pursuant to 49 U.S.C. 10502(b). A final decision will be issued by June 29, 2015.

Any OFA under 49 CFR 1152.27(b)(2) will be due by July 9, 2015, or 10 days after service of a decision granting the petition for exemption, whichever occurs first. Each OFA must be accompanied by a $1,600 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment, the Line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than April 20, 2015. Each trail request must be accompanied by a $300 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to Docket No. AB 303 (Sub-No. 46X) and must be sent to: (1) Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001; and (2) Robert A. Wimbish, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 920, Chicago, IL 60606–2832. Replies to the petition are due on or before April 20, 2015.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Assistance, Governmental Affairs and Compliance at (202) 245–0238 or refer to the full abandonment regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Office of Environmental Analysis (OEA) at (202) 245–0305. Assistance for the hearing impaired is available through the Federal Information Relay Service at 1–800–877–8339.

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by OEA will be served upon all parties of record and upon any other agencies or persons who comment during its preparation. Other interested persons may contact OEA to obtain a copy of the EA (or EIS). EAs in abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA generally will be within 30 days of its service.

Board decisions and notices are available on our Web site at ''*WWW.STB.DOT.GOV.*''

Decided: March 25, 2015.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Kenyatta Clay,

Clearance Clerk.

[FR Doc. 2015–07243 Filed 3–30–15; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[FMCSA–2013–0513]

Registration and Financial Security Requirements for Brokers of Property and Freight Forwarders; Association of Independent Property Brokers and Agents' Exemption Application

AGENCY: Federal Motor Carrier Safety Administration (FMCSA).

ACTION: Notice of denial of application for exemption.

SUMMARY: FMCSA denies an application from the Association of Independent Property Brokers and Agents (AIPBA) for an exemption for all property brokers and freight forwarders from the $75,000 bond provision included in section 32918 of the Moving Ahead for Progress in the 21st Century Act (MAP–21), now codified in 49 U.S.C. 13906. AIPBA filed its request pursuant to 49 U.S.C. 13541 on August 14, 2013. On December 26, 2013, FMCSA published a notice in the **Federal Register** requesting comments from all interested parties on AIPBA's exemption application. After reviewing the public comments, the Agency has concluded that the exemption should be denied on the basis that 49 U.S.C.13541 does not give FMCSA the authority to essentially nullify a statutory provision by exempting the entire class of persons subject to the provision. Furthermore, even if the Agency had the authority to issue such a blanket exemption, AIPBA's exemption application does not meet the factors provided in section 13541 because (1) the new $75,000 bond requirement is necessary to carry out the National Transportation Policy at 49 U.S.C.13101, (2) there has been no showing that the $75,000 requirement ''is not needed to protect shippers from the abuse of market power'' and (3) the requested exemption is not in the public interest.

DATES: This decision is effective March 31, 2015.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Yager, Chief of Driver and Carrier Operations, (202) 366–4001 or *thomas.yager@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Ave. SE., Washington, DC 20590.

ADDRESSES: For access to the docket to read background documents, including those referenced in this document, or to read comments received, go to:

- Regulations.gov, *http://www.regulations.gov,* at any time and insert FMCSA–2013–0513 in the ''Keyword'' box, and then click ''Search.''
- Docket Management Facility, Room W12–140, DOT Building, 1200 New Jersey Ave. SE., Washington, DC 20590. You may view the docket online by visiting the facility between 9 a.m. and 5 p.m., Monday through Friday except Federal holidays.

Viewing Comments and Documents

AIPBA's exemption application and all public comments are available in the public docket. To view comments filed in this docket, go to *http://www.regulations.gov* and click on the ''Read Comments'' box in the upper right hand side of the screen. Then, in the ''Keyword'' box, insert ''FMCSA–2013–0513'' and click ''Search.'' Next, click ''Open Docket Folder'' in the ''Actions'' column. Finally, in the ''Title'' column, click on the document you would like to review. If you do not have access to the Internet, you may view the docket by visiting the Docket Management Facility at the address above.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

SUPPLEMENTARY INFORMATION:

Legal Basis for the Exemption Application and Proceeding

Section 13541(a) of title 49 of the United States Code (49 U.S.C. 13541) requires the Secretary of Transportation (Secretary) to exempt a person, class of persons, or a transaction or service from the application, in whole or in part, of a provision of 49 U.S.C., Subtitle IV, Part B (Chapters 131–149), or to use the exemption authority to modify the application of a provision of 49 U.S.C. Chapters 131–149 as it applies to such person, class, transaction, or service when the Secretary finds that the application of the provision:

- Is not necessary to carry out the transportation policy of 49 U.S.C. 13101

• Is not needed to protect shippers from the abuse of market power or that the transaction or service is of limited scope; and

• Is in the public interest.

The exemption authority provided by section 13541 ''may not be used to relieve a person from the application of, and compliance with, any law, rule, regulation, standard, or order pertaining to cargo loss and damage [or] insurance . . . .'' 49 U.S.C. 13541(e)(1).

AIPBA seeks an exemption from the $75,000 financial security requirements for brokers and freight forwarders at 49 U.S.C. 13906 (b) & (c). Section 13906 is located in 49 U.S.C. Subtitle IV Part B (chapter 139) and therefore may be considered within the general scope of the exemption authority provided by section 13541. The Secretary may begin a section 13541 exemption proceeding on the application of an interested party. 49 U.S.C. 13541(b). *See, e.g., Motor Carrier Financial Information Reporting Requirements-Request for Public Comments,* 68 FR 48987 (Aug. 15, 2003). The Secretary may ''specify the period of time during which an exemption'' is effective and may revoke the exemption ''to the extent specified, on finding that application of a provision of [49 U.S.C. Chapters 131–149] to the person, class, or transportation is necessary to carry out the transportation policy of [49 U.S.C.] section 13101.'' 49 U.S.C. 13541(c), (d).

The Administrator of FMCSA has been delegated authority under 49 CFR 1.87 to carry out the functions vested in the Secretary by 49 U.S.C. 13541.

Background

On July 6, 2012, the President signed MAP–21 into law, which included a number of mandatory, non-discretionary changes to FMCSA programs. Some of these changes amended the financial security requirements applicable to property brokers and freight forwarders operating under FMCSA's jurisdiction. Pub.L. 112–141, § 32918, 126 Stat. 405 (codified at 49 U.S.C. 13906(b) & (c)). More specifically, 49 U.S.C. 13906(b) and (c) requires brokers and freight forwarders to provide evidence of minimum financial security in the amount of $75,000.

On September 5, 2013, FMCSA published guidance (78 FR 54720) ''concerning the implementation of certain provisions of . . . (MAP–21) concerning persons acting as a broker or a freight forwarder.'' On October 1, 2013, FMCSA issued regulations requiring brokers and freight forwarders to have a $75,000 surety bond or trust fund in effect. 49 CFR 387.307(a), 387.403(c); 78 FR 60226, 60233.

On November 14, 2013, after initially filing a complaint and then voluntarily dismissing the case in district court, AIPBA filed a petition for review in the U.S. Court of Appeals for the Eleventh Circuit. *Association of Independent Property Brokers and Agents, Inc.* v. *Foxx,* No. 13–15238–D (11th Cir.). The petition alleges that the Agency's October 1, 2013 final rule was improperly issued without notice and comment. The court, upon AIPBA's request, has stayed the case pending the resolution of this exemption proceeding.

On January 23, 2015, AIPBA instituted another proceeding in the United States District Court for the Middle District of Florida, seeking to invalidate the $75,000 bond requirement from 49 U.S.C. 13906. *Association of Independent Property Brokers and Agents, Inc.* v. *Foxx et al,* No. 5:15–cv–00038–JSM–PRL (M.D. Fla.). No additional briefs or rulings have been filed in the district court case.

AIPBA Exemption Application

In an August 14, 2013 letter to the Secretary, AIPBA, through its counsel, requested that the Department ''permanently exempt all property brokers and freight forwarders from the $75,000 broker bond provision of MAP–21. . . .'' AIPBA argues that the ''$75,000 broker surety bond amount is not necessary to carry out the transportation policy of section 13101, [or] . . . to protect shippers from the abuse of market power . . . and . . . is not in the public interest.'' AIPBA seeks a categorical exemption ''so that property brokers and forwarders can continue to do business under the existing bond regulations.'' A copy of the exemption application is included in the docket referenced at the beginning of this notice.

First, AIPBA believes that the $75,000 bond requirement is contrary to the transportation policy of 49 U.S.C. 13101 because it violates the federal government's policy to ''encourage fair competition, and reasonable rates for transportation by motor carriers of property'' and to ''allow a variety of quality and price options to meet changing market demands and the diverse requirements of the shipping and traveling public,'' citing 49 U.S.C. 13101(a) (2)(A),(D).

AIPBA also argues that the $75,000 broker bond requirement ''is not necessary to protect shippers from the abuse of market power.'' According to AIPBA,''[t]he unnecessarily high $75,000 broker bond requirement will cause the majority of property brokers to leave the marketplace, which will expose shippers to abuses of market power by the few large property brokers able to stay in business.''

With regard to the public interest, AIPBA believes that the new bond requirement will ''cause a significant increase in consumer prices once the supply of property brokers is drastically reduced.'' AIPBA indicated that a lack of competition will require shippers to pay more for transportation services. In addition to predicting that small and mid-sized brokers will be forced out of the marketplace due to the new higher bond requirement, AIPBA believes the new requirement will serve as a barrier to entry into the marketplace for other property brokers.

Finally, while AIPBA acknowledges that ''there are certain regulations from which [the Secretary] cannot issue exemptions,'' it believes that:

> ''. . . the broker bond does not fall into one of the listed categories. Specifically, the bond is a financial security rather than a type of required insurance, a distinction emphasized in 49 U.S.C 13906 by the choice of a bond or insurance as well as MAP–21's proposed amendment to 49 U.S.C. 13906, which still requires the broker bond but deletes all reference to insurance.''

Request for Comments

On December 26, 2013, FMCSA requested public comment on the AIPBA exemption application (78 FR 78472). Specifically, FMCSA requested comments on whether the Agency should grant or deny AIPBA's application, in whole or in part. The Agency also requested comments on how it should apply 49 U.S.C. 13541(a)(1–3) to AIPBA's request.

Discussion of Public Comments

General Discussion

FMCSA received 80 responses to the December 26, 2013, notice, 23 of which were anonymous. Most of the commenters (52, including 16 of the anonymous commenters) supported the AIPBA application for an exemption and 26 (including 7 of the anonymous commenters) opposed the request. The named commenters are: Micah Applebee; AIPBA; Dave Britton; William Cohen; Gerard Coyle; Sue Cuthbertson; Raymond Donahue; Rodney Falkenstein; Christine Friend; Philip Fulmer; Kelley Gabor; Ray Gerdes; Kathy Harris; David Hoke; Scott Housely; Matt Kloss; James Lamb (2 responses); Deborah J. Larson; Lew Levy; Stuart Looney (LineHaul Logistics, Inc.); Angela Maccombs; Michael Majerek; Mike Manzella; Aaron Menice; Deborah McCoy; Jenny Merkey; Michael Millard (2 responses); John Miller; Gaetono P. Monteleone

(Transport Management Service Corporation); Ronald Morales; Hugh Nolan; Chris Olson; Charles Onsum; the Owner-Operator Independent Drivers Association (OOIDA); M. Peters; James Powers; Roger's Freight, LLC; James Randolph; Kevin Reidy; Paul Rosenweig, Jr.; Bev Smith; Michael Stanley (SMS Transportation); Robert Schwartz; Tracey Spence; the Surety & Fidelity Association of America (SFAA); Kelly Swickard; John Thomas; The Transportation Intermediaries Association (TIA); Veles Logistics, Inc.; Patrick Walsh; Werner Enterprises, Inc.; and, Gregory Williamson (Williamson's Enterprises). One commenter provided only his first name, Larry, and one hand-written comment (from Mike) included an illegible last name.

Many of the commenters who wrote in support of AIPBA's application believe the increased bond requirement has resulted in a significant decrease in the number of freight forwarders and brokers with the requisite authority from FMCSA. Some of these commenters argue that the increased bond requirement has resulted in the loss of jobs and an adverse impact on consumer prices. A number of the commenters who identified themselves as brokers argued the new requirement is intended to reduce competition by eliminating small businesses rather than to reduce fraud. Several commenters also argue that implementation of the $75,000 bond requirement is inconsistent with the transportation policy in 49 U.S.C. 13101.

Commenters writing in opposition to AIPBA's application argue that the previous $10,000 bond requirement was originally set in 1979 and that small trucking companies, especially owner operators, will be better protected and have better business opportunities with the $75,000 bond. A number of these commenters include brokers who state that obtaining the higher bond amount was relatively easy. And some state that the previous $10,000 bond was insufficient and resulted in transportation service providers being left unpaid after the broker went out of business.

Specific Issues Raised by AIPBA and Supporters of AIPBA's Application

Unintended Consequences

A number of the commenters writing in support of AIPBA's application believe the increased bond requirement has resulted in unintended consequences such as brokers and freight forwarders being forced out of the industry, a loss of jobs and decreased rates for trucking companies. AIPBA indicated in its comments that the total number of property brokers on October 1, 2013, was 21,565 and that 8,218 broker operating authority registrations have been revoked since December 1, 2013. AIPBA indicated that the total number of freight forwarders on October 1, 2013, was 2,212 with 1,583 freight forwarder operating authority registrations revoked since December 1, 2013.[1] AIPBA believes there will be a secondary wave of revocations when bonding companies that rushed to acquire market share adjust their rates after the financial security market settles.

AIPBA also argues the increase in the bond requirements has resulted in the loss of jobs and an adverse impact on consumer prices. AIPBA believes the increase in bonds has had an adverse impact on rates for truckers as well.

Incremental Increase in Bond Requirement

Matt Kloss supports the AIPBA exemption in part and believes FMCSA should consider an incremental increase in the bond limit rather than leaving the limit at $75,000. He states that he has been in the brokerage business for 12 years and he has never had a successful filing against his bond. He explains that he is not in the business to steal money from trucking companies. He argues that ''[e]stablished companies with good histories should have been required to increase the bond to $20,000 this year, with future increases that are manageable.''

An anonymous commenter believes that the bond requirement ''. . . should be initially lowered to a more reasonable amount of $25,000.'' This commenter also argued that the rules should require a $25,000 fee per agent for large brokers.

Costs of the $75,000 Bond Will Drive Brokers Out of the Industry

Sue Cuthbertson discusses the premiums that she had to pay to comply with the $75,000 bond requirement. She explains that she used to pay $900 per year for her broker bond and she now has to pay $3,500 per year for the $75,000 bond. She says that she could barely stay in business paying the $900.

An anonymous commenter writing in support of the AIPBA application describes a similar experience with premiums for the $75,000 bond. The commenter explains that initially the premium quoted was $3,500. However, after the commenter shopped around for better rates, the same company quoted the commenter a more favorable premium of $1,300.

Specific Comments by Opponents of AIPBA's Application

Protection of the General Public's, Shippers' and Carriers' Financial Interests

OOIDA believes that the $75,000 bond requirement helps to increase carriers' comfort in dealing with brokers they do not know and as such helps promote efficiency in the marketplace. According to OOIDA:

> ''Many of OOIDA's members are small business men and women who operate under their own federal operating authority and rely upon brokers to find freight to meet their business goals. Part of the efficiency of the current transportation marketplace is that brokers match motor carriers available to haul freight and shippers needing to move freight—parties who do not have an ongoing relationship, but who might make mutually beneficial connections on a load by load basis. This efficiency in the marketplace is increased greatly when motor carriers feel comfortable taking loads from brokers who they do [not] know *(apparent omission in original).* By securing the debts of brokers to the motor carrier, the federal broker bond or trust is intended to give motor carriers confidence that they will be paid when they are doing business with a broker they do not know.''

OOIDA also argues that ''raising the bond or trust amount to $75,000 is intended to reduce harm caused by undercapitalized brokers who steal transportation service from motor carriers—the protected parties under the broker bond or trust statute . . . The $10,000 bond or trust was simply not sufficient to serve its intended purpose—to protect the motor carriers from non-payment by brokers.'' OOIDA also comments on the connection between the new $75,000 financial responsibility requirement and the National Transportation Policy (NTP) at 49 U.S.C. 13101. According to OOIDA, ''[b]y this statute, Congress burnished the national transportation goals of encouraging 'sound economic conditions in transportation, including sound economic conditions among carriers;' 49 U.S.C. 13101(a)(1)(C), and acted to promote efficient transportation and to enable efficient and well-managed carriers to . . . maintain fair wages and working conditions. Sections 13101(a)(2)(B)&(F).''

Stuart Looney states:

> ''The purpose for requiring the posting of a bond is well established as furthering protection to the general public. The public is well served with this requirement as freight brokering is an easy entry undertaking and is fraught with many thinly capitalized and reasonably unprofessional participants.''

[1] AIPBA's comments were dated January 22, 2014.

The Surety & Fidelity Association of America (SFAA) believes a bond requirement of less than $75,000 would deprive shippers and carriers of the additional protection that Congress thought was necessary. According to SFAA ''the intent of the bond is to protect shippers and motor carriers . . . There are a number of cases in which the $10,000 bond was not sufficient to pay all claims in the full amount . . . .'' SFAA cited multiple cases for its proposition.

SFAA also argues that the surety bond:

''. . . protects the public interest by ensuring that FMCSA licenses are provided to qualified, well-capitalized brokers and freight forwarders . . . While claims handling is a critical function of the surety, another equally critical function is the surety's prequalification of a principal before the surety will write a bond. A surety will review the capabilities and financial strength of bonds applicants and provide bonds only to those entities that the surety has determined are capable of performing the underlying obligation . . . The bond provides financial protection to shippers and carriers, which serves to reduce costs in the long run by eliminating the need for a carrier or shipper to include the risk of nonpayment in its pricing.''

The Transportation Intermediaries Association (TIA) indicates that eliminating the bond requirement is ''not acceptable'' to shippers or carriers. According to TIA, 2 major trucking organizations, the American Trucking Associations (ATA) and OOIDA have supported increasing the bond well above the new $75,000 amount. According to TIA, in a 2009 letter, ''ATA cited a study they conducted indicating that only 13 percent of carriers' claims against brokers were satisfied by the $10,000 bond.'' According to TIA, in recent years, its members have seen shippers demand $100,000 bonds to exclusively protect one shipper.

Werner Enterprises, Inc. (Werner) argues that ''[t]he eroded value of the bond since it was last adjusted to $10,000 in 1977'' means ''there is essentially no real security for broker misconduct.''

Veles Logistics Inc. (Veles), which describes itself as a ''small group of owner-operators,'' believes the $75,000 bond will help to get rid of ''unstable unsafe financially weak and fraudulent brokers.'' Veles also believes the new bond requirement will increase the prices of loads by eliminating ''third and fourth and fifth resellers out of the freight moving chain.''

Scott Housely argues:

''The brokerage limit as it stand[s] at $75,000.00 addresses a larger problem of unethical brokers who have not invested in the industry and don't intend to. Carriers in the past had little recourse in collecting bad debt from brokers or the shippers that they worked for due to the transient nature of many brokers. The limit as it stands does not [impede] any good brokers and enhances the relationship with the asset based carriers who are the backbone of the entire system. Please keep the current rule in place.''

Granting the Exemption Would Eliminate the Bond Requirement

OOIDA expresses concern that if FMCSA granted AIPBA's request, the Agency would not have the discretion to return to the $10,000 bond limit; the Agency would have to allow brokers to operate without having a bond. OOIDA argues:

''The application would have the effect of permitting all brokers to operate without a broker bond or trust of *any* amount. When Congress enacted a $75,000 bond or trust statute, it repealed the $10,000 bond or trust statute. AIPBA's requested exemption would not reenact the $10,000 bond or trust requirement; it would exempt all property brokers from the requirement to carry *any* bond or trust. The statute found at 49 U.S.C. 13541 only permits FMCSA to grant exemptions from certain statutory requirements. It does not permit FMCSA to amend or revise applicable statutes. FMCSA has no power to institute a bond or trust requirement of any amount other than the statutorily set $75,000 amount. The goal of AIPBA's application, the creation of a broker industry with no bond or trust protecting the motor carrier industry, would completely subvert congressional intent.''

Costs of the Bond are Reasonable

Werner states:

''The bond cost is a problem for some brokers for good reason. A bond such as this which is designed to guaranty the integrity and ability of a party to respond for their failures to another party is priced not only upon the total exposure of the company writing the bond but also upon the financial strength of the party being bonded. Our experience was that the cost of our $10,000 bond was $77 per year which increased to $338 for a $75,000 bond. The cost increase is not significant. Companies that are experiencing higher costs may be the companies for whom the shippers and motor carriers need protection.''

TIA states:

It is ironic that those making the argument to eliminate the bond increase because some brokers and forwarders cannot afford it, actually make the case for the higher bond. Congress determined that companies should not handle other people's money if they cannot afford to protect it. Broker and forwarder bonds are available in the marketplace today for less than $6,000 per year.

TIA argues that when the cost for the bond is spread over an average of 5 loads per day, the bond premium works out to be less than $5.00 per load.

FMCSA Decision

FMCSA has considered AIPBA's exemption request and all of the comments received, including AIPBA's subsequent comments, and FMCSA denies the request. FMCSA does not have the authority to disregard Congress's directive in the revised statutory provision by exempting all property brokers and freight forwarders from the bond requirement. Essentially, AIPBA's opposition to the increase in the bond amount is a challenge to Congress's judgment that the increase is necessary and appropriate, indeed in the public interest.

Furthermore, even if the Agency had the authority to grant AIPBA's exemption application, AIPBA's request does not meet the three part statutory test in 49 U.S.C. 13541. Specifically, FMCSA finds that the $75,000 bond requirement at 49 U.S.C. 13906(b)–(c) is necessary to carry out the transportation policy of section 13101, and is needed to protect shippers from the abuse of market power. . . .'' [2] Moreover, and most critically, an industry-wide exemption for brokers and freight forwarders from the $75,000 bond requirement is not in the public interest.

The Scope of FMCSA's Exemption Authority

In Section 32918 of MAP–21, Congress expressly mandated that all FMCSA regulated brokers and freight forwarders have a minimum of $75,000 in financial security. 49 U.S.C. 13906(b),(c). AIPBA asks the Agency to permanently exempt all property brokers and freight forwarders subject to section 32918's $75,000 bond requirement. FMCSA is denying AIPBA's exemption application because the Agency lacks the authority to issue the kind of blanket exemption that AIPBA seeks.

While section 13541 gives the Agency broad authority to exempt certain persons or transactions, FMCSA does not have the authority to effectively nullify a statute by exempting the entire class of persons subject to the bond requirement, as AIPBA requests. 49 U.S.C. 13541(a); *Terran ex rel. Terran* v. *Secretary of Health and Human Services,* 195 F.3d 1302, 1312 (Fed. Cir. 1999) (''The Constitution does not authorize members of the executive branch to enact, amend, or repeal statutes.''). AIPBA's request would

[2] AIPBA does not argue that ''the transaction or service is of limited scope,'' 49 U.S.C. 13541(a)(2), nor do other commenters.

amount to a usurpation of a congressional mandate. Therefore, because the Agency lacks the authority to grant AIPBA's blanket exemption, the Agency is denying AIPBA's exemption application.

Public Interest

Even if FMCSA had the authority to grant AIPBA's exemption application, a blanket exemption covering all brokers and freight forwarders is not in the public interest. ''Congress is presumed to legislate in the public interest.'' *Time Warner Entertainment Co. L.P.* v. *F.C.C.,* 810 F.Supp. 1302, 1304 n.6 (D.D.C. 1992). As discussed above, granting an exemption to all brokers and freight forwarders would flout a clear and recent congressional directive and statement of the public interest. Further, numerous commenters have persuaded FMCSA that such an exemption is not in the public interest.

First, FMCSA finds that granting AIPBA's request would undermine the purpose of the bond requirement—the protection of shippers and motor carriers that utilize brokers and freight forwarders as third party intermediaries. FMCSA's predecessor, the Interstate Commerce Commission (ICC), very clearly stated that '' '[t]he legislative history . . . clearly reveals that the primary purpose of Congress in regulating motor transportation brokers is to protect carriers and the traveling and shipping public against dishonest and financially unstable middlemen in the transportation industry.' '' *Clarification of Insurance Regulation,* 3 I.C.C.2d 689, 692 (1987)(quoting *Carla Ticket Service, Inc., Broker Application,* 94 M.C.C. 579, 580 (1964)).

According to OOIDA, ''[t]he $10,000 bond or trust was simply not sufficient to serve its intended purpose—to protect the motor carriers from non-payment by brokers.'' And, as SFAA notes, ''the intent of the bond is to protect shippers and motor carriers. A bond in a lesser amount would deprive shippers and carriers of the additional protection that Congress thought was necessary. There are a number of cases in which the $10,000 bond was not sufficient to pay all claims in the full amount. . . .'' Moreover, according to TIA, in 2009, ''ATA cited a study they conducted indicating that only 13 percent of carriers' claims against brokers were satisfied by the $10,000 bond.'' This unanimity of input from members of the three industries most affected by the $75,000 requirement (transportation intermediaries, motor carriers and the surety bond industry) is noteworthy. Given that the purpose of the financial security requirement is to protect shippers and motor carriers, and the widespread view that the previous $10,000 requirement [3] was deficient in performing that function, it would not serve the public interest to grant AIPBA's requested exemption. FMCSA will not perpetuate, through the grant of an exemption, the pre-MAP–21 status quo of shippers and motor carriers not being able to collect from financially insolvent brokers. Neither AIPBA nor any of the commenters that supported its request have shown how the public interest in protecting shippers and motor carriers would be served by granting the requested exemption.

On the other hand, in its exemption application, AIPBA argues that the $75,000 broker surety bond amount is ''not in the public interest.'' AIPBA argues that the $75,000 broker bond would:

> . . . cause a significant increase in consumer prices once the supply of property brokers is drastically reduced . . . In addition, the high amount of the broker bond will not only cause existing small and mid-size property brokers to leave the marketplace, but will also serve as a barrier to entry by other property brokers . . . The statutory loss of broker licenses on October 1, without further warning, will cause chaos in the trucking and shipping industry, and will cause thousands of brokers to lose their livelihood on October 1, 2013, a date now less than 60 days away. This will result in an immediate loss of jobs for these brokers and the agents they employ. It will also cause significant supply chain disruptions. Such a scenario is not in the public interest.

In its January 22, 2014, comments in response to FMCSA's **Federal Register** Notice in this proceeding, AIPBA states ''[w]ith regard to the public interest . . . a lack of competition will require shippers to pay more for transportation services.'' AIPBA also argues that ''it is in the public interest to allow open competition, as the public benefits from lower consumer prices and increased employment. A larger pool of property brokers provides more competition and better access to brokers for shippers, which reduces the overall prices of products to consumers.''

FMCSA acknowledges that the number of FMCSA-registered brokers and freight forwarders declined after the $75,000 bond requirement went into effect on October 1, 2013. Between September 2013 and December 2013, the number of freight forwarders with active authority dropped from 2,351 to 925. The number of freight forwarders then increased to 1,208 by December 2014. During this same period, the number of active brokers dropped from 21,375 to 13,839, and then increased to 15,471 in December 2014. However, AIPBA has provided no proof of a causal connection between the broker license revocations and an adverse impact on consumer prices or an adverse impact on rates for truckers.[4]

Moreover, even if AIPBA had shown that the $75,000 requirement caused all of the consequences it alleges, it has not focused on the key public interest implicated in the broker bond—the protection of motor carriers and shippers. It has not provided, nor have we discerned, any evidence that shippers or motor carriers would be adequately protected by the pre-MAP–21 bond requirement.

Abuse of Market Power

In its exemption application, AIPBA asserts that ''[t]he $75,000 broker surety bond amount is not necessary to protect shippers from the abuse of market power.'' To the contrary, AIPBA asserts that ''[e]xemption from the increased broker amount will protect shippers from an abuse of market power. The unnecessarily high $75,000 broker bond requirement will cause the majority of property brokers to leave the marketplace, which will expose shippers to abuses of market power by the few large property brokers able to stay in business.'' In its subsequent comments, AIPBA reiterates its assertion that the new ''minimum financial security is not necessary to protect shippers from abuse of market power.'' AIPBA argues that ''the new minimum security amount is the direct result of collusion to abuse market power. The exemption would help stop the loss of property brokers and provide more options for shippers, which would protect shippers.'' Other commenters did not address the abuse of market power.

Based on the record before it, FMCSA cannot find that application of the $75,000 broker/freight forwarder bond requirement under 49 U.S.C. 13906(b),(c) ''is not needed to protect shippers from the abuse of market power. . . .'' 49 U.S.C. 13541(a)(2). While AIPBA hypothesizes that a smaller brokerage industry will abuse its market power with regard to shippers, it

[3] FMCSA, by regulation, raised the bond requirement to $25,000 for household goods (HHG) brokers in 2010. 49 CFR 387.307 (2012). Pursuant to regulation, as of October 1, 2013, all FMCSA regulated brokers and freight forwarders (HHG and non-HHG) are required to have $75,000 in financial security. 49 CFR 387.307(a) (brokers); 49 CFR 387.403(c)(freight forwarders).

[4] In late-filed comments, James P. Lamb, AIPBA's president, alleged that the broker bond increase in MAP–21 ''caused 9,800 intermediaries to lose their licenses, first time jobless claims then shot up, consumer prices are on the increase, and truckers' rates are down for all equipment types. . . .''

provides no evidence outlining such abuse. Moreover, it provides no evidence that the new $75,000 bond requirement is not required to protect against such abuse of market power. Without any evidence, FMCSA will not exempt an entire industry from a clearly articulated congressional directive to raise the broker and freight forwarder financial responsibility requirements.

National Transportation Policy (NTP)

Finally, in its application, AIPBA argues that the $75,000 bond requirement is contrary to the transportation policy of 49 U.S.C. 13101, because it violates the federal government's policy to ''encourage fair competition, and reasonable rates for transportation by motor carriers of property'' and to ''allow a variety of quality and price options to meet changing market demands and the diverse requirements of the shipping and traveling public. . . .'' 49 U.S.C. 13101(a)(2)(A), (D). AIPBA argues that the new broker bond amount ''will likely result in a loss of tens of thousands of jobs and higher consumer prices as a matter of supply and demand.'' Further, according to AIPBA, ''per Kevin Reid of the National Association for Minority Truckers, the anti-competitive effects of the new broker bond requirement will detrimentally affect the participation of minorities in the motor carrier system, which is another violation of the transportation policy.''

In its docket comments in this proceeding, AIPBA argues that ''a $75,000 bond to protect carriers is not necessary to implement the national transportation policy because there is no shipper bond to protect carriers when they receive loads without the involvement of an intermediary.'' Further, AIPBA argues that ''enforcement of the new financial security minimum is contrary to the national transportation policy of 49 U.S.C. 13101 because it restricts opportunity, competition and reasonable rates.''

On the other hand, with regard to the National Transportation Policy (NTP), OOIDA argues that Congress's new $75,000 requirement ''burnished the national transportation goals of encouraging 'sound economic conditions in transportation, including sound economic conditions among carriers;' 49 U.S.C. 13101(a)(1)(C), and acted to promote efficient transportation and to enable efficient and well-managed carriers to . . . maintain fair wages and working conditions. Sections 13101(a)(2)(B)&(F).'' OOIDA's point is well taken.

While AIPBA is correct that the NTP provides that the policy of the United States Government is to ''encourage fair competition, and reasonable rates for transportation by motor carriers of property,'' ''allow a variety of quality and price options to meet changing market demands and the diverse requirements of the shipping and traveling public'', 49 U.S.C. 13101(a)(2)(A), (D), and ''promote greater participation by minorities in the motor carrier system,'' 49 U.S.C. 3101(a)(2)(J), these are not the only elements of the NTP. Among other goals, the NTP provides that federal transportation policy includes ''promot[ing] efficiency in the motor carrier transportation system . . . ,'' 49 U.S.C. 13101(a)(2)(B), meeting the needs of shippers, 49 U.S.C. 13101(a)(2)(C), and ''enabl[ing] efficient and well-managed carriers to earn adequate profits, attract capital, and maintain fair wages and working conditions. . . .'' 49 U.S.C. 13101(a)(2)(F).

FMCSA finds that application of the $75,000 broker and freight forwarder financial responsibility requirements under 49 U.S.C. 13906(b), (c) is ''necessary to carry out the transportation policy of section 13101. . . .'' 49 U.S.C. 13541(a)(1). First, Congress set that amount as the minimum requirement and in so doing, must be presumed to have acted in a manner consistent with the NTP. Second, as OOIDA, TIA and SFAA have shown, the previous $10,000 bond was inadequate in the event of broker financial problems. In such instances, both shippers and motor carriers faced losses. Accordingly, applying the new $75,000 bond amount is necessary to meet the ''needs of shippers,'' 49 U.S.C. 13101(a)(2)(C), and to allow motor carriers to ''earn adequate profits [and] attract capital,'' 49 U.S.C. 13101(a)(2)(F), as directed by the NTP.

Moreover, AIPBA has not shown why applying the new $75,000 requirement is not necessary to carry out those provisions of the NTP. FMCSA does not believe that AIPBA has provided evidence that there has been a decrease in motor carrier competition or an increase in shipping rates due to the implementation of the $75,000 bond requirement. Indeed at p. 5 of their docket comments, AIPBA admits that rates have actually decreased. Further, aside from an unsubstantiated projection, AIPBA makes no showing that the new $75,000 requirement will undermine the NTP's goal of ''promot[ing] greater participation by minorities in the motor carrier system. . . .'' 49 U.S.C. 13101(a)(2)(J).

FMCSA does not find that the $75,000 financial responsibility requirement for brokers/freight forwarders is ''not necessary to carry out the transportation policy of section 13101. . . .'' 49 U.S.C. 13541(a)(1). Nor does FMCSA find that continued regulation under section 13906(b), (c) ''is not needed to protect shippers from the abuse of market power'' or that the transaction or service at issue is of ''limited scope. . . .'' 49 U.S.C. 13541(a)(2). Finally, granting the exemption requested by AIPBA is not in the public interest. 49 U.S.C. 13541(a)(3). Accordingly, AIBPA's request is denied.

Issued on: March 25, 2015.

T.F. Scott Darling, III,

Chief Counsel.

[FR Doc. 2015–07353 Filed 3–30–15; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Notice of Intent To Prepare an Environmental Impact Statement for the GA 400 Transit Initiative in Fulton County, Georgia

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) and Section 4(f) Evaluation.

SUMMARY: The Federal Transit Administration (FTA) and the Metropolitan Atlanta Rapid Transit Authority (MARTA) issue this Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) and an evaluation per 49 U.S.C, 303 and 23 CFR 774 (''Section 4(f)'') for the extension of high capacity, rapid transit in the Georgia (GA) 400 corridor in north Fulton County, GA from Dunwoody to Alpharetta. The EIS and Section 4(f) Evaluation will be prepared in accordance with regulations implementing the National Environmental Policy Act (NEPA) and 40 CFR parts 1500 through 1508, Section 4(f), as well as FTA's regulations and guidance implementing NEPA (23 CFR 771).

The purpose of this NOI is to: (1) Advise the public and agencies that MARTA in coordination with the FTA is preparing an EIS for the proposed project; (2) provide information including previous planning studies and decision, purpose and need, and alternatives being considered; and, (3) invite public and agency participation in the EIS process, which includes a

review and written comments on the scope of the EIS.

DATES: *Scoping Meeting Dates:* Public Scoping meetings will be held on April 14, 16, and 30, 2015 at locations within the study area. The Scoping meeting locations are accessible by transit and to persons with disabilities. Confirmed times and locations will be published in local notices and on the project Web site at *http://www.itsmarta.com/north-line-400-corr.aspx*.

The dates, times, and locations of the Scoping meetings are:

- *Scoping Meeting 1:* Tuesday, April 14, 2015 at the North Fulton Government Service Center located at 7741 Roswell Road #104, Sandy Springs, GA 30350.
- *Scoping Meeting 2:* Thursday, April 16, 2015 at the Georgia State University Alpharetta Center located at 3775 Brookside Parkway, Alpharetta, GA 30022.
- *Scoping Meeting 3:* Thursday, April 30, 2015 at the East Roswell Park located at 9000 Fouts Road, Roswell, GA 30076.

All meetings will be held from 6:30 p.m. to 8:00 p.m. Directional signage will be posted at all meeting locations to inform participants of the meeting room number and location.

All meeting locations are considered private property. With the exception of on-duty law enforcement and/or security officials, weapons will not be allowed on the premises of any meeting locations under any circumstances. If there are questions concerning weapons policies for Scoping meeting locations or if translation, signing services, or other special accommodations are needed, please contact MARTA's Office of External Affairs, Toni Thornton at *tthornton@itsmarta.com* or 404–848–5423 at least one week before the scoping meetings.

Written Comments: Written or electronic mail (email) comments should be sent to Mark Eatman, Project Manager, MARTA, 2424 Piedmont Road NE., Atlanta GA 30324–3330 or by email at *mreatman@itsmarta.com*. If submitting an email comment, please type ''*Scoping Meeting Comment for MARTA*'' in the subject line of the email. MARTA maintains a Facebook page for the GA 400 Corridor project and will notify Facebook followers, in conjunction with publication of this notice, to submit comments to the aforementioned email address as well. The address for the Facebook page is *https://www.facebook.com/Connect400*. Information on the project may also be found on the project Web site, *http://www.itsmarta.com/north-line-400-corr.aspx*.

FOR FURTHER INFORMATION CONTACT: Mr. Stan Mitchell, Environmental Protection Specialist, FTA Region IV, 230 Peachtree Street NW., Suite 1400, Atlanta, GA 30303 or email: *stanley.a.mitchell@dot.gov,* telephone 404–865–5643.

SUPPLEMENTARY INFORMATION:

I. Scoping

FTA and MARTA will undertake a Scoping process that will allow the public and interested agencies to comment on the scope of the environmental review process. Scoping is the process of determining the scope, focus, and content of an EIS. NEPA Scoping has specific objectives, identifying issues that will be examined in detail during the EIS, while at the same time limiting consideration and development of issues that are not truly significant to the purpose and need for the project. FTA and MARTA invite all interested individuals, members of the public, Native American tribes, and Federal, State, and local agencies to review and comment on the scope of the Draft EIS.

To facilitate public and agency comment, a Scoping Information Packet will be prepared for review and will be available before each Scoping meeting and for handout at each Scoping meeting. This packet will include draft descriptions of the project purpose and need, the alternatives considered, impacts to be assessed, early alternatives that are currently not being considered, and the public outreach and agency coordination process.

II. Study Area Description

The project study area is located in Fulton County, Georgia, and includes small portions of the cities of Sandy Springs, Roswell, Milton, Dunwoody, Johns Creek and Alpharetta. The corridor study area extends approximately 12 miles along GA 400 from North Springs heavy rail station (the current northern terminus of the MARTA heavy rail service) northward to Windward Parkway near the Fulton/Forsyth county line.

III. Purpose and Need for the Proposed Project

MARTA invites comments on the following preliminary statement of the project's purpose and need:

The purpose of the GA 400 Corridor project is to provide high capacity transit (bus and/or rail) through the corridor study area, improve transit linkages and coverage to communities within the study area, and enhance mobility and accessibility to and within the study area by providing a more robust transit network that offers an alternative to automobile travel.

The GA 400 Corridor is the transportation spine of northern Fulton County, one of the fastest growing sub-regions in the metro-Atlanta region. The corridor is home to many employment centers, including Perimeter Center in the southern portion of the corridor, one of the largest employment centers in the region. Transit service to and within the study area is provided primarily by MARTA heavy rail and bus. MARTA heavy rail service extends from Downtown Atlanta to major retail and employment centers, including the Medical Center and Perimeter Center in Dunwoody and Sandy Springs in the southern portion of the corridor. MARTA bus service in the corridor study area primarily functions as feeder service to the North Springs heavy rail station from areas to the north, including Roswell, Alpharetta and Milton. The Georgia Regional Transportation Authority (GRTA) also operates two express bus routes during peak hours that connect the southern portion of the GA 400 corridor to/from north and southeast destinations outside the GA 400 corridor.

The following needs for the proposed project stem from existing conditions and deficiencies in the corridor study area:

- Travel demand—Increased travel demand and traffic congestion;
- Transit mobility—There is inadequate transit connectivity within the northern Fulton County study area and between the study area and DeKalb, Gwinnett, and Cobb Counties and central Atlanta. In addition, east-west transit connectivity is inadequate. The limited routes across the Chattahoochee River reflect the inadequate transit connectivity;
- Transit travel times—Transit travel times are not competitive with auto travel times due to the lack of express service; this is true for north-south trips within the study area and for trips with origins and destinations outside the study area. Transit and auto travel times cannot be compared for east-west trips as there is no east-west transit service; and,
- Economic development—Traffic congestion caused by insufficient transportation system capacity affects both personal travel and goods movement, which constrains economic development opportunities.

IV. Alternatives Analysis and Results

In 2011, MARTA initiated the GA 400 Corridor Transit Initiative Alternatives Analysis (AA) to analyze the corridor based on current trends and conditions.

The AA study process identified ways to enhance transportation choices, improve transit service, and increase access to jobs and activity centers for commuters and residents in the GA 400 corridor. MARTA and corridor stakeholders examined a broad range of alternatives for high capacity, fixed route transit investments in the corridor. The AA study process reduced the number of potentially viable alternatives through a multilayered screening methodology and by engaging the public and stakeholders. The AA process concluded that the GA 400 right-of-way from the North Springs station to Windward Parkway near the Fulton/Forsyth County line is the preferred alignment. The transit technologies requiring further evaluation were identified as heavy rail transit (HRT), light rail transit (LRT), and bus rapid transit (BRT). Additional technical and public and stakeholder input received during Early Scoping (conducted in 2013 and 2014) established the basis for selecting a Locally Preferred Alternative (LPA) within the GA 400 Corridor.

The LPA is a HRT line that would cross to the west side of Georgia 400 north of North Springs Station but south of Spalding Dr. This alternative would have a second crossover back to the east side of GA 400 north of the Chattahoochee River. The HRT alternative received the strongest public support throughout the study process due to the higher level of transit service for corridor commuters and residents. In addition, two BRT alignments will be considered as lower-cost options as part of the DEIS. Stakeholder input received during Early Scoping, poor performance shown in technical study and preliminary analysis eliminated the LRT alternative. The MARTA Board of Directors adopted the HRT transit concept as the LPA for the GA 400 corridor along with consideration of the additional BRT alternatives on March 5, 2015.

The results of the AA study, Early Scoping, and the Preliminary Engineering and Environmental Analysis study are available at *http://www.itsmarta.com/north-line-400-corr.aspx,* under Documents.

V. EIS Alternatives Considered

Based on the technical analysis and input received from the public and stakeholders regarding the GA 400 corridor, the following proposed alternatives, along with a brief description for each, will be evaluated during the EIS:

No-Build Alternative: The No-Build Alternative includes all transportation improvement projects within the GA 400 Corridor project area that are programmed in the Atlanta Regional Commission's Regional Transportation Plan (RTP) with the exception of the GA 400 Corridor project. The No-Build Alternative serves as a comparison baseline for the project build alternatives.

Build Alternative 1: Build Alternative 1 is an extension of MARTA's HRT Red line. It includes segments that are at-grade, tunnel and on aerial structure. From the North Springs station, the alignment for Build Alternative 1 would cross GA 400 south of Spalding Drive to run along the west side of GA 400, cross the Chattahoochee River, and then cross back over GA 400 to run along the east side of GA 400 to Windward Parkway. The Build Alternative 1 is the LPA for the study corridor.

Build Alternative 2: Build Alternative 2 is a new BRT exclusive guideway that includes segments that are at-grade and on aerial structure. The alignment would extend from the North Springs station, cross GA 400 south of Spalding Drive to run along the west side of GA 400, cross the Chattahoochee River and then cross over GA 400 to run along the east side of GA 400 to Windward Parkway.

Build Alternative 3: Build Alternative 3 is a new BRT line operating in a future Georgia Department of Transportation (GDOT) Managed Lanes project on GA 400 that includes segments that are at-grade and on aerial structure. Except when serving the station at Windward Parkway, this alternative would not cross over GA 400.

VI. Potential Effects

FTA and MARTA will evaluate project-specific direct, indirect, and cumulative effects, including benefits, to the existing human and natural environmental setting in which the Build Alternatives could be located. The permanent or long-term effects to be investigated during this study include effects to public parks and recreation lands (Section 4(f) Evaluation), traffic and transportation, land use and socioeconomic, visual character and aesthetics, noise and vibration, historical and archaeological resources, community effects, and natural resources. Temporary effects during construction may include effects to transportation and traffic, air quality, water quality, noise and vibration, natural resources, and encounters with hazardous materials and contaminated soils.

The analysis will be undertaken in conformity with Federal environmental laws, regulations, and executive orders applicable to the proposed project during the environmental review process. These requirements include but are not limited to NEPA, Council on Environmental Quality (CEQ) regulations, FTA guidance and relevant environmental planning guidelines, Section 106 of the National Historic Preservation Act (NHPA), Section 4(f) of the Department of Transportation Act, Executive Order 12898 regarding minority and low-income populations, Executive Order 11990 regarding the protection of wetlands, the Clean Water Act, the Endangered Species Act of 1973, and the Clean Air Act of 1970 along with other applicable Federal, state, and local laws and regulations. Opportunities for review and comment on the potential effects will be provided to the public and agencies. Comments received will be considered in the development of the final scope and content of the EIS. The final scope and content of the EIS will be documented in the Scoping Summary Report and the Annotated Outline for the EIS.

VII. FTA's Public and Agency Involvement Procedures

The regulations implementing NEPA and FTA guidance call for public involvement in the EIS process. In accordance with these regulations and guidance, FTA and MARTA will: (1) Extend an invitation to other Federal and non-Federal (state and/or local) agencies and Native American Tribes that may have an interest in the proposed project to become participating agencies (any interested agency that does not receive an invitation can notify any of the contact persons listed earlier in this NOI); (2) provide opportunity for involvement by participating agencies and the public to help define the purpose and need for the proposed project, as well as the range of alternatives for consideration in the EIS; and (3) establish a plan for coordinating public and agency participation in, and comment on, the environmental review process.

Input on a Public Involvement Plan will be solicited at Scoping meetings and on the project Web site. The documents will outline public and agency involvement for the project. Once completed, these documents will be available on the project Web site or through written request to the MARTA Project Manager.

VIII. Paperwork Reduction Act

The Paperwork Reduction Act seeks, in part, to minimize the cost of the taxpayer of the creation, collection, maintenance, use, dissemination, and disposition of information. Consistent with this goal and with the principles of

economy and efficiency in government, it is FTA's policy to limit, insofar as possible, distribution of complete printed sets of NEPA documents. Accordingly, unless a specific request for a complete printed set is received before the document is printed, FTA and its grant applicants (including MARTA) will only distribute electronic copies of the NEPA document. A complete printed set of the environmental documents produced for this project will be available for review at the grant applicant's office (MARTA Headquarters office listed in **ADDRESSES** above) and in other possible locations within the project corridor. An electronic copy of the complete environmental documents will be available on the grant applicant's project Web site at *http://www.itsmarta.com/north-line-400-corr.aspx*.

IX. Summary and Next Steps

With the publication of this NOI, the Scoping process and the public comment period for the project begins allowing the public to offer input on the scope of the EIS until May 11, 2015. In accordance with the Federal regulations, this date is at least 45 days following the publication of this NOI. Public comments will be received through those methods explained earlier in this NOI and will be incorporated into a Scoping Summary Report. The Scoping Summary Report will detail the scope of the EIS and the potential environmental effects that will be considered during the study period. After the completion of the Draft EIS, a public and agency review period will allow for input on the Draft EIS and these comments will be incorporated into the Final EIS for this project. In accordance with Section 1319 of the Moving Ahead for Progress in the 21st Century Act (MAP–21), Accelerated Decision-making in Environmental Reviews, FTA may consider the use of errata sheets attached to the DEIS in place of a traditional Final EIS and/or development a single environmental decision document that consists of a Final EIS and a Record of Decision (ROD), if certain conditions exist following the conclusion of the public and agency review period for the project's Draft EIS.

Yvette G. Taylor,

Regional Administrator, Federal Transit Administration, Atlanta, GA.

[FR Doc. 2015–07287 Filed 3–30–15; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

AGENCY: Department of the Treasury.

ACTION: Notice.

The Department of the Treasury will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the date of publication of this notice.

DATES: Comments should be received on or before April 30, 2015 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.gov* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 8140, Washington, DC 20220, or email at *PRA@treasury.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submission(s) may be obtained by calling (202) 927–5331, email at *PRA@treasury.gov,* or the entire information collection request may be found at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

Internal Revenue Service

OMB Number: 1545–1661.

Type of Review: Extension without change of a currently approved collection.

Title: REG–106010–98 (Final) Qualified Lessee Construction Allowance for Short-Term Leases.

Abstract: The regulations provide guidance with respect to Sec. 110, which provides a safe harbor whereby it will be assumed that a construction allowance provided by a lessor to a lessee is used to construct or improve lessor property when long-term property is constructed or improved and used pursuant to a short-term lease. The regulations also provide a reporting requirement that ensures that both the lessee and lessor consistently treat the property subject to the construction allowance as nonresidential real property owned by the lessor.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Annual Burden Hours: 10,000.

OMB Number: 1545–1791.

Type of Review: Extension without change of a currently approved collection.

Title: Membership Applications for IRPAC, IRSAC, and ETACC (IRS Committee's), IRS Advisory Council, and Tax Check Waiver.

Form: 12339, 12339–B, 12339–C, 13775.

Abstract: The Federal Advisory Committee Act (FACA) requires that committee membership be fairly balanced in terms of points of view represented and the functions to be performed. As a result, members of specific committees often have both the expertise and professional skills that parallel the program responsibilities of their sponsoring agencies.

In order to apply to be a member of the Internal Revenue Service Advisory Council (IRSAC), the Information Reporting Program Advisory Committee (IRPAC), Advisory Committee on Tax Exempt and Government Entities, or the Electronic Tax Administration Advisory Committee (ETAAC), applicants must submit a Membership Application. Selection of committee members is made based on the FACA's requirements and the potential member's background and qualifications. Therefore, an application is needed to ascertain the desired skills set for membership. The information will also be used to perform Federal Income Tax, FBI, and practitioner checks as required of all members and applicants to the Committees or Council.

The tax check waiver permits the Internal Revenue Service (IRS) to release information about the applicant which would otherwise be confidential. This information will be used in connection with my application for appointment to membership in one of the IRS Advisory Committee/Council. It is necessary for the purpose of ensuring that all panel members are tax compliant. Information provided will be used to qualify or disqualify individuals to serve as panel members. The information will be used as appropriate by the Taxpayer Advocate service staff, and other appropriate IRS personnel.

Affected Public: Individual or Household.

Estimated Annual Burden Hours: 492.

OMB Number: 1545–1941.

Type of Review: Extension without change of a currently approved collection.

Title: Consumer Cooperative Exemption Application.

Form: 3491.

Abstract: A cooperative uses Form 3491 to apply for exemption from filing information returns (Forms 1099–PATR)

on patronage distributions of $10 or more to any person during the calendar year.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Annual Burden Hours: 148.

OMB Number: 1545–2095.

Type of Review: Extension without change of a currently approved collection.

Title: 26 US Code §§ 430 and 436.

Abstract: Regulations under sections 430(d), 430(g), 430(h)(2), and 430(i) provide guidance on the determination of benefit liabilities and the valuation of plan assets for purposes of the funding requirements that apply to single employer defined benefit plans pursuant to changes made by the Pension Protection Act of 2006. In order to implement the statutory provisions under section 430(h)(2), the regulations provide for the sponsor of a defined benefit plan to make any of several elections related to the interest rate used for minimum funding purposes and require written notification of any such election to be provided to the plan's enrolled actuary. These final regulations provide for the sponsor of a defined benefit pension plan to make any of several elections.

The Highway and Transportation Funding Act of 2014 (HATFA), Public Law 113–159, was enacted on August 8, 2014, and was effective retroactively for single employer defined benefit pension plans, optional for plan years beginning in 2013 and mandatory for plan years beginning in 2014. Notice 2014–53 provides guidance on these changes to the funding stabilization rules for single-employer pension plans.

Affected Public: Private Sector: Businesses or other for-profits; Not-for-profit institutions.

Estimated Annual Burden Hours: 158,000.

OMB Number: 1545–2103.

Type of Review: Extension without change of a currently approved collection.

Title: TD 9547—Election to Expense Certain Refineries.

Abstract: The regulations provide guidance with respect to section 179C of the Internal Revenue Code, which provides a taxpayer can elect to treat 50 percent of the cost of ''qualified refinery property'' as a deductible expense not chargeable to capital account. The taxpayer makes an election under section 179C by entering the amount of the deduction at the appropriate place on the taxpayer's timely filed original federal income tax return for the taxable year in which the qualified refinery property is placed in service and by attaching a report specifying (a) the name and address of the refinery and (b) the production capacity requirement under which the refinery qualifies. If the taxpayer making the expensing election described above is a cooperative described in section 1381, and one or more persons directly holding an ownership interest in the taxpayer are organizations described in section 1381, the taxpayer can elect to allocate all or a portion of the deduction allowable under section 179C to those persons. The allocation must be equal to the person's ratable share of the total amount allocated, determined on the basis of the person's ownership interest in the taxpayer/cooperative. If the taxpayer/cooperative makes such an election, it must provide written notice of the amount of the allocation to any owner receiving an allocation by written notice on Form 1099–PAT, Taxable Distributions Received from Cooperatives. This notice must be provided before the due date (including extensions) of the cooperative owner's federal income tax return for the taxable year for which the election applies.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Annual Burden Hours: 120.

OMB Number: 1545–2135.

Type of Review: Revision of a currently approved collection.

Title: TD 9447 (Final) Automatic Contribution Arrangements.

Abstract: These regulations provide a method by which an automatic contribution arrangement can become a qualified automatic contribution arrangement and automatically satisfy the ADP test of section 401(k)(3)A)(ii). These regulations also describe how an automatic contribution arrangement can become an eligible automatic contribution arrangement and employees can get back mistaken contributions.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Annual Burden Hours: 36,000.

Dated: March 26, 2015.

Dawn D. Wolfgang,

Treasury PRA Clearance Officer.

[FR Doc. 2015–07306 Filed 3–30–15; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Electronic Tax Administration Advisory Committee (ETAAC); Nominations

AGENCY: Internal Revenue Service (IRS), Department of the Treasury.

ACTION: Request for applications.

SUMMARY: The Internal Revenue Service (IRS) requests applications of individuals to be considered for selection as members of the Electronic Tax Administration Advisory Committee (ETAAC). Nominations should describe and document the proposed member's qualification for ETAAC membership, including the applicant's knowledge of regulations and the applicant's past or current affiliations and dealings with the particular tax segment or segments of the community that the applicant wishes to represent on the council. Applications will be accepted for current vacancies from qualified individuals and from professional and public interest groups that wish to have representation on ETAAC. Submittal of an application and resume is required.

The ETAAC provides an organized public forum for discussion of electronic tax administration issues in support of the overriding goal that paperless filing should be the preferred and most convenient method of filing tax and information returns. ETAAC members convey the public's perception of IRS electronic tax administration activities, offer constructive observations about current or proposed policies, programs, and procedures, and suggest improvements.

The IRS seeks a diverse group of individuals to represent various groups including: (1) Tax practitioners and preparers, (2) tax software developers, (3) large and small business, (4) employers and payroll service providers, (5) individual taxpayers, (6) financial industry (payers, payment options and best practices), (7) system integrators or technology providers, (8) digital or online service providers, (9) academic (marketing, sales or technical perspectives), (10) trusts and estates, (11) tax exempt organizations, and (12) state and local governments.

This is a volunteer position and members will serve a three-year term on the ETAAC to allow for a rotation in membership which ensures that different perspectives are represented. Travel expenses within government guidelines will be reimbursed. Potential candidates must pass an IRS tax compliance check and Federal Bureau of Investigation (FBI) background investigation.

DATES: The complete application package must be received no later than Friday, May 22, 2015.

ADDRESSES: Applications should be sent to Internal Revenue Service, 1111 Constitution Ave. NW., Attn: ETAAC

Analyst, Room 7045, SE:OLS:SAS Washington, DC 20224, by email: *etaac@irs.gov* or by fax to (202) 317–6238 (not a toll-free number). An application can be obtained by sending an email to *etaac@irs.gov* or calling (202) 317–6247 or (202) 317–6248 (not toll-free numbers).

FOR FURTHER INFORMATION CONTACT: Sean Parman at (202) 317–6247 or Rose Smith at (202) 317–6248, or send an email to *etaac@irs.gov.*

SUPPLEMENTARY INFORMATION: The establishment and operation of the Electronic Tax Administration Advisory Committee (ETAAC) is required by the Internal Revenue Service (IRS) Restructuring and Reform Act of 1998 (RRA 98), Title II, Section 2001(b)(2). ETAAC follows a charter in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C., App. 2. The ETAAC provides continued input into the development and implementation of the IRS's strategy for electronic tax administration. The ETAAC will research, analyze, consider, and make recommendations on a wide range of electronic tax administration issues and will provide input into the development of the strategic plan for electronic tax administration. Members will provide an annual report to Congress by June 30th.

Applicants must complete the application, which includes describing and documenting your qualifications for membership to the Committee. Submit a short (one or two page) statement, including recent examples, addressing your specific skills and qualifications as they relate to the following: (1) Filing, preparing, or processing tax or information returns/requests electronically (*e.g.* e-file); (2) Managing a multi-channel customer service environment; (3) Developing web or mobile applications, including experience with human-centered design, front-end and back-end development; (4) Developing software product lines for businesses (specify small/medium sized businesses or large enterprise) and/or consumers; (5) Working in digital commerce environment or financial institution, including managing large volume of digital transactions and improving associated processes; (6) Mitigating cybersecurity risks affecting digital commerce, including, but not limited to identity theft, authentication, and transmission of sensitive data; (7) Incorporating mobile, cloud computing, digital communication, and/or analytics into product or service design; (8) Thinking critically and planning strategically in order to collaborate on digital issues and ideas, preferably electronic tax administration; (9) Managing large scale-business transformation, including digital migration, change management and culture change; (10) Communicating (oral and written) issues and recommendations. An acknowledgement of receipt will be sent to all applicants.

Equal opportunity practices will be followed in all appointments to the ETAAC in accordance with Department of Treasury and IRS policies. The IRS has a special interest in assuring that women and men, members of all races and national origins, and individuals with disabilities have an opportunity to serve on advisory committees: and therefore, extends particular encouragement to nominations from such appropriately qualified individuals.

Dated: March 27, 2015.

David W. Parrish,

Director, Strategic and Analytic Services, Office of Online Services.

[FR Doc. 2015–07336 Filed 3–30–15; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE TREASURY

Office of the Secretary

List of Countries Requiring Cooperation With an International Boycott

In accordance with section 999(a)(3) of the Internal Revenue Code of 1986, the Department of the Treasury is publishing a current list of countries which require or may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986).

On the basis of the best information currently available to the Department of the Treasury, the following countries require or may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986).

Iraq
Kuwait
Lebanon
Libya
Qatar
Saudi Arabia
Syria
United Arab Emirates
Yemen

Danielle Rolfes,

International Tax Counsel (Tax Policy).

[FR Doc. 2015–07309 Filed 3–30–15; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

AGENCY: Department of the Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the date of publication of this notice.

DATES: Comments should be received on or before April 30, 2015 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.gov* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 8140, Washington, DC 20220, or email at *PRA@treasury.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submission may be obtained by emailing *PRA@treasury.gov,* calling (202) 927–5331, or viewing the entire information collection request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

Bureau of the Fiscal Service (FS)

OMB Number: 1530–0014.

Type of Review: Extension without change of a currently approved collection.

Title: Annual Letters—Certificate of Authority (A) and Admitted Reinsurer (B).

Abstract: Annual letters sent to insurance companies providing surety bonds to protect the U.S. or companies providing reinsurance to the U.S. Information needed for renewal of certified companies and their underwriting limitations, and of admitted reinsurers.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Annual Burden Hours: 13,555.

Dawn D. Wolfgang,

Treasury PRA Clearance Officer.

[FR Doc. 2015–07291 Filed 3–30–15; 8:45 am]

BILLING CODE 4810–AS–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Unblocking of Specially Designated Nationals and Blocked Persons Pursuant to the Cuban Assets Control Regulations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the name of six individuals, 28 entities, and 11 vessels whose property and interests in property have been unblocked pursuant to the Cuban Assets Control Regulations, 31 CFR part 515.

DATES: The unblocking and removal from the list of Specially Designated Nationals and Blocked Persons (SDN List) of the individuals, entities, and vessels identified in this notice is effective March 24, 2015.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Sanctions Compliance & Evaluation, Department of the Treasury, Office of Foreign Assets Control, Washington, DC 20220, Tel: (202) 622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

The SDN List and additional information concerning OFAC are available from OFAC's Web site (*www.treas.gov/ofac*). Certain general information pertaining to OFAC's sanctions programs is available via facsimile through a 24-hour fax-on-demand service, tel.: 202/622–0077.

Background

On March 24, 2015, the Associate Director of OFAC removed from the SDN List the individuals, entities, and vessels listed below, whose property and interests in property were blocked pursuant to the Cuban Assets Control Regulations:

Individuals

1. STERN, Alfred Kaufman, Prague, Czech Republic (individual) [CUBA].
2. PADRON TRUJILLO, Amado, Panama (individual) [CUBA].
3. CASTELL VALDEZ, Osvaldo Antonio, Panama (individual) [CUBA].
4. DUQUE, Carlos Jaen, Panama (individual) [CUBA].
5. ABDELNUR, Nury de Jesus, Panama (individual) [CUBA].
6. DELGADO ARSENIO, Antonio, Panama (individual) [CUBA].

Entities

7. KOL INVESTMENTS, INC., Miami, FL, United States [CUBA].
8. TRAVEL SERVICES, INC., Hialeah, FL, United States [CUBA].
9. ABASTECEDORA NAVAL Y INDUSTRIAL, S.A. (a.k.a. ANAINSA), Panama [CUBA].
10. AGENCIA DE VIAJES GUAMA (a.k.a. GUAMA TOUR; a.k.a. GUAMATUR, S.A.; a.k.a. VIAJES GUAMA TOURS), Bal Harbour Shopping Center, Via Italia, Panama City, Panama [CUBA].
11. AVALON, S.A., Colon Free Zone, Panama [CUBA].
12. BEWELL CORPORATION, INC., Panama [CUBA].
13. CARBONICA, S.A., Panama [CUBA].
14. CARIBBEAN HAPPY LINES (a.k.a. CARIBBEAN HAPPY LINES CO.), Panama [CUBA].
15. CARIBSUGAR, S.A., Panama [CUBA].
16. CARISUB, S.A., Panama [CUBA].
17. CHAMET IMPORT, S.A., Panama [CUBA].
18. COMPANIA PESQUERA INTERNACIONAL, S.A., Panama [CUBA].
19. FAMESA INTERNATIONAL, S.A., Panama [CUBA].
20. GLOBAL MARINE OVERSEAS, INC., Panama [CUBA].
21. HERMANN SHIPPING CORP., INC., Panama [CUBA].
22. HEYWOOD NAVIGATION CORPORATION, c/o MELFI MARINE CORPORATION S.A., Oficina 7, Edificio Senorial, Calle 50, Apartado 31, Panama City 5, Panama [CUBA].
23. INVERSIONES LUPAMAR, S.A. (a.k.a. LUPAMAR INVESTMENT COMPANY), Panama [CUBA]. \
24. LOUTH HOLDINGS, S.A., Panama [CUBA].
25. PESCADOS Y MARISCOS DE PANAMA, S.A. (a.k.a. PESMAR S.A.; a.k.a. PEZMAR S.A.), Panama City, Panama [CUBA].
26. PIRAMIDE INTERNATIONAL, Panama [CUBA].
27. RADIO SERVICE, S.A., Panama [CUBA].
28. RECICLAJE INDUSTRIAL, S.A., Panama [CUBA].
29. SIBONEY INTERNACIONAL, S.A., Edificio Balmoral, 82 Via Argentina, Panama City, Panama; Venezuela [CUBA].
30. TALLER DE REPARACIONES NAVALES, S.A. (a.k.a. TARENA, S.A.), Panama City, Panama [CUBA].
31. TECHNIC DIGEMEX CORP., Calle 34 No. 4–50, Office 301, Panama City, Panama [CUBA].
32. TEMIS SHIPPING CO., Panama [CUBA].
33. TREVISO TRADING CORPORATION, Edificio Banco de Boston, Panama City, Panama [CUBA].
34. POCHO NAVIGATION CO. LTD., c/o EMPRESA DE NAVEGACION MAMBISA, Apartado 543, San Ignacio 104, Havana, Cuba [CUBA].

Vessels

35. ALEGRIA DE PIO Unknown vessel type (Naviera Maritima de Arosa, Spain) (vessel) [CUBA].
36. CARIBBEAN SALVOR (9H2275) Tug 669DWT 856GRT Malta flag (Compania Navegacion Golfo S.A.) (vessel) [CUBA].
37. HARNMAN H (f.k.a. PEONY ISLANDS) (5BXH) Bulk Cargo 26,400DWT 15,864GRT Cyprus flag (PEONY SHIPPING CO. LTD. (SDN)) (vessel) [CUBA].
38. HYALITE Unknown vessel type (Whiteswan Shipping Co., Ltd., Cyprus) (vessel) [CUBA].
39. NEW GROVE (f.k.a. KASPAR) (P3QJ3) General Cargo 1,909DWT 754GRT Cyprus flag (Oakgrove Shipping Co. Ltd.) (vessel) [CUBA].
40. PINECONE (f.k.a. GRETE) (P3QH3) General Cargo 1,941DWT 753GRT Cyprus flag (Pinecone Shipping Co. Ltd.) (vessel) [CUBA].
41. RAVENS (9H2485) General Cargo 2,468DWT 1,586GRT Malta flag (ATAMALLO SHIPPING CO. LTD. (a.k.a. ANTAMALLO SHIPPING CO. LTD.) (SDN)) (vessel) [CUBA].
42. ROSE ISLANDS Unknown vessel type (Shipley Shipping Corp., Panama) (vessel) [CUBA].
43. TEPHYS (f.k.a. PAMIT C) (H2RZ) General Cargo 15,123DWT 8,935GRT Cyprus flag (Tephys Shipping Co. Ltd.) (vessel) [CUBA].
44. WEST ISLANDS (C4IB) General Cargo 15,136DWT 9,112GRT Cyprus flag (WEST ISLAND SHIPPING CO. LTD. (SDN)) (vessel) [CUBA].
45. BROTHERS (f.k.a. TULIP ISLANDS) (C4QK) Bulk Carrier 25,573DWT 16,605GRT Cyprus flag (Ciflare Shipping Co. Ltd.) (vessel) [CUBA].

Dated: March 24, 2015.

Gregory T. Gatjanis,

Associate Director, Office of Global Targeting, Office of Foreign Assets Control.

[FR Doc. 2015–07315 Filed 3–30–15; 8:45 am]

BILLING CODE 4810–AL–P

U.S.-CHINA ECONOMIC AND SECURITY REVIEW COMMISSION

Notice of Open Public Hearing; Correction

AGENCY: U.S.-China Economic and Security Review Commission.

ACTION: Notice; correction.

SUMMARY: The U.S.-China Commission published a document in the **Federal Register** on March 24, 2015, concerning notice of an open public hearing to be held in Washington, DC to inform production of the Commission's 2015 Annual Report to Congress. The background section and room number for this meeting has changed.

FOR FURTHER INFORMATION CONTACT: Rickisha Berrien-Lopez, 202–624–1454.

Corrections

Background: This is the fourth public hearing the Commission will hold during its 2015 report cycle to collect input from academic, industry, and government experts on national security implications of the U.S. bilateral trade and economic relationship with China. This hearing will explore the advancement of China's offensive missile forces—both conventional and nuclear—and security implications for the United States. The hearing will be co-chaired by Vice Chairman Dennis Shea and Commissioner Katherine Tobin Ph.D. Any interested party may file a written statement by April 1, 2015, by mailing to the contact below. A portion of each panel will include a question and answer period between the Commissioners and the witnesses.

Location, Date and Time: Room SD–562, Dirksen Senate Office Building.

Michael Danis,

Executive Director, U.S.-China Economic and Security Review Commission.

[FR Doc. 2015–07261 Filed 3–30–15; 8:45 am]

BILLING CODE 1137–00–P

FEDERAL REGISTER

Vol. 80 Tuesday,

No. 61 March 31, 2015

Part II

Department of Agriculture

Office of the Secretary

7 CFR Part 1

Department of the Interior

Office of the Secretary

43 CFR Part 45

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 221

Resource Agency Hearings and Alternatives Development Procedures in Hydropower Licenses; Interim Rule

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 1

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 45

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 221

[Docket No.: DOI–2015–0001]

RINs 0596–AC42, 1090–AA91, and 0648–AU01

Resource Agency Hearings and Alternatives Development Procedures in Hydropower Licenses

AGENCIES: Office of the Secretary, Agriculture; Office of the Secretary, Interior; National Oceanic and Atmospheric Administration, Commerce.

ACTION: Revised interim rules with request for comment.

SUMMARY: The Departments of Agriculture, the Interior, and Commerce are jointly revising the procedures they established in November 2005 for expedited trial-type hearings required by the Energy Policy Act of 2005. The hearings are conducted to expeditiously resolve disputed issues of material fact with respect to conditions or prescriptions developed for inclusion in a hydropower license issued by the Federal Energy Regulatory Commission under the Federal Power Act. The Departments are also revising the procedures for considering alternative conditions and prescriptions submitted by a party to a license proceeding.

DATES:

Effective date: These rules are effective on April 30, 2015.

Comment date: You should submit your comments by June 1, 2015.

ADDRESSES: You may submit comments, identified by any of the Regulation Identifier Numbers (RINs) shown above (0596–AC42, 1090–AA91, or 0648–AU01), by either of the methods listed below. Comments submitted to any one of the three Departments will be shared with the others, so it is not necessary to submit comments to all three Departments.

1. *Federal rulemaking portal: http://www.regulations.gov.* Follow the instructions for submitting comments on-line.

2. *Mail or hand delivery to any of the following:*

a. Deputy Chief, National Forest Systems, c/o WO Lands Staff, Department of Agriculture, Mail stop 1124, 1400 Independence Avenue SW., Washington, DC 20250–1124;

b. Office of Hearings and Appeals, 801 N. Quincy Street, Suite 300, Arlington, Virginia 22203; or

c. Chief, Habitat Protection Division, Office of Habitat Conservation, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Washington Office Director, Lands and Realty Management, Forest Service, U.S. Department of Agriculture, 202–205–1769; John Rudolph, Solicitor's Office, Department of the Interior, 202–208–3553; or Melanie Harris, Office of Habitat Conservation, National Marine Fisheries Service, 301–427–8636. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

The Departments of Agriculture, the Interior, and Commerce (the Departments) are revising the interim final rules they published jointly in November 2005 to implement section 241 of the Energy Policy Act of 2005. That section created additional procedures applicable to conditions or prescriptions that a Department develops for inclusion in a hydropower license issued by Federal Energy Regulatory Commission (FERC). Specifically, section 241 amended sections 4 and 18 of the Federal Power Act (FPA) to provide for trial-type hearings on disputed issues of material fact with respect to a Department's conditions or prescriptions; and it added a new section 33 to the FPA, allowing parties to propose alternative conditions and prescriptions.

The Departments are promulgating three substantially similar rules—one for each agency—with a common preamble. The rules and preamble address a few issues that were left open in the 2005 rulemaking, such as who has the burden of proof in a trial-type hearing and whether a trial-type hearing is an administrative remedy that a party must exhaust before challenging conditions or prescriptions in court. In addition, the rules and preamble respond to the public comments we received on the 2005 rules, and they make a number of changes reflecting our experience in implementing those rules.

The rules are being made effective as revised interim final rules, so that interested parties and the agencies may avail themselves of improvements being made to the procedures adopted in 2005. The Departments are also requesting comments on additional ways the rules can be improved.

A detailed explanation of the revisions is provided below, but some of the highlights of the revised rules are as follows:

- The rules clarify the availability of the trial-type hearing and alternatives processes in the situation where a Department has previously reserved its authority to include conditions or prescriptions in a hydropower license, and it now decides to exercise that authority. The rules also extend the period of time for a party to request a hearing or submit an alternative in that situation.
- The rules extend a few of the deadlines in the 2005 rules, while not adopting some commenters' recommendations that the Departments significantly expand the hearing schedule. Specifically, parties are given 5 additional days to take each of the following steps: file a notice of intervention and response; update their witness and exhibit lists and submit written testimony following discovery; prepare for the hearing; and submit post-hearing briefs.
- The rules allow for a stay, not to exceed 120 days, to facilitate settlement negotiations among the parties. As necessary, the parties would coordinate with FERC regarding any effect on the time frame established for the license proceeding.
- The rules adopt the unanimous position of the Administrative Law Judges (ALJs) in the cases adjudicated to date, that the party requesting a hearing has the burden of proof.
- The rules accept the argument of some commenters that the ALJ decision can come after the statutory 90-day period specified for the hearing itself. However, the rules require that the decision come no later than 120 days after the case was referred to the ALJ, to keep the whole process within FERC's time frame for the license proceeding.
- The rules allow a party who has participated in a trial-type hearing and has filed an alternative condition or prescription to submit a revised alternative within 20 days after the ALJ decision, based on the facts as found by the ALJ.
- The rules clarify that FPA section 33 requires a Department to prepare an equal consideration statement only

when a party has submitted an alternative condition or prescription.

• Finally, the preamble provides additional guidance on the term ''disputed issues of material fact.''

II. Public Comments

You may submit your comments by either of the methods listed in the **ADDRESSES** section above. We will consider all comments received by the deadline stated in the **DATES** section above. Based on the comments received, we will consider promulgation of further revised final rules.

Please make your comments as specific as possible and explain the reason for any changes you recommend. Where possible, your comments should reference the specific section or paragraph of the rules that you are addressing.

We will make comments available for public review during regular business hours. To review the comments, you may contact any of the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section above.

Before including your personal address, telephone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comments to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

III. Background

A. Interim Final Rules

On November 17, 2005, at 70 FR 69804, the Departments jointly published interim final rules implementing section 241 of the Energy Policy Act of 2005 (EPAct), Public Law 109–58. Section 241 of EPAct amended FPA sections 4(e) and 18, 16 U.S.C. 797(e), 811, to provide that any party to a license proceeding before FERC is entitled to a determination on the record, after opportunity for an agency trial-type hearing of no more than 90 days, of any disputed issues of material fact with respect to mandatory conditions or prescriptions developed by one or more of the three Departments for inclusion in a hydropower license. EPAct section 241 also added a new FPA section 33, 16 U.S.C. 823d, allowing any party to the license proceeding to propose an alternative condition or prescription, and specifying the consideration that the Departments must give to such alternatives.

The interim final rules were made immediately effective, but a 60-day comment period was provided for the public to suggest changes to the interim regulations. The Departments stated in the preamble that, based on the comments received and the initial results of implementation, they would consider publication of revised final rules. Since that time, the Departments have gained experience under the interim regulations necessary to properly evaluate the comments received, and have developed these revised interim final rules.

The November 17, 2005, preamble to the interim final rules contains additional background information that the reader may wish to consult concerning EPAct, the FPA, FERC's integrated licensing process (ILP), the trial-type hearing process, and the alternative conditions and prescriptions process.

B. Comments Received

The Departments received substantive comments on the interim final rules from the following organizations:

• American Public Power Association, Sacramento Municipal Utility District, and Public Utility District No. 1 of Snohomish County, Washington;
• Association of California Water Agencies;
• Center for Biological Diversity (CBD);
• Edison Electric Institute and National Hydropower Association (EEI/NHA);
• Georgia Department of Natural Resources, Wildlife Resources Division;
• Greater Yellowstone Coalition (GYC);
• Hoopa Valley Tribe (HVT);
• Hydropower Reform Coalition (HRC);
• Idaho Rivers United;
• Los Angeles Department of Water and Power
• Ohio Department of Natural Resources;
• PacifiCorp;
• Ponderay Newsprint Company;
• Power Authority of the State of New York;
• Public Utility District No. 1 of Pend Oreille County, Washington;
• Public Utility District No. 2 of Grant County, Washington; and
• Southern Company.

The Departments also received about 3,000 nearly identical letters from individuals expressing concern about the environmental effects of the new procedures. Taken together, the comments were extensive and very helpful to the Departments in determining what changes were needed to the interim regulations. Responses to the comments are provided below in the section-by-section analysis of the revised regulations.

C. Litigation Challenging the Interim Final Rules

Following publication of the interim final rules, lawsuits were filed challenging certain aspects of the rulemaking.

In *American Rivers* v. *U.S. Department of the Interior,* 2006 WL 2841929 (W.D. Wash. 2006), seven non-governmental organizations sued the three Departments, alleging that (1) publication of the interim final rules without prior notice and comment violated the Administrative Procedure Act (APA), 5 U.S.C. 553, and (2) the rules were impermissibly retroactive. In its October 3, 2006, decision, the court rejected plaintiffs' arguments, holding that (1) the rules were exempt from the APA's notice and comment requirements because they were procedural and interpretative, and (2) the rules did not result in an impermissible retroactive application of EPAct.

In *Public Utility District No. 1 of Pend Oreille County, Washington* v. *U.S. Department of the Interior,* No. 1:06cv00365 (D.D.C., filed Mar. 1, 2006), a licensee challenged the decision of the Departments in the interim final rules to limit the trial-type hearing and alternatives processes to license proceedings in which the license had not been issued as of November 17, 2005. FERC had issued a licensing order to the plaintiff in July 2005, but the plaintiff had sought rehearing from FERC and therefore argued that its license proceeding was still pending as of November 17, 2005. A nearly identical suit was filed the following month, *Ponderay Newsprint Co.* v. *U.S. Department of the Interior,* No. 1:06cv00768 (D.D.C., filed Apr. 26, 2006), and the two cases were consolidated. In March 2010, the plaintiffs voluntarily dismissed their lawsuits as part of a comprehensive settlement agreement with the Departments of Agriculture and the Interior.

D. Other Significant Litigation

Another notable legal development since publication of the interim final rule was the issuance of the decision in *City of Tacoma, Washington* v. *Federal Energy Regulatory Comm'n,* 460 F.3d 53 (D.C. Cir. 2006). The case involved several consolidated petitions challenging the license issued by FERC in 1998 (and amended in 2005) for the

Cushman Project located in the State of Washington. While a detailed discussion of the court's multiple holdings is beyond the scope of this preamble, the Departments note that the decision provides useful guidance in the implementation of Federal agencies' various authorities under the FPA, including those addressed in these regulations.

For example, in one holding, the court discussed the relationships among the delegated authorities possessed by FERC and the Departments, respectively, under the FPA. Noting that the conditioning authority conferred on the Secretaries by section 4(e) is mandatory and independent of FERC's authorities, the court stated,

> Though FERC makes the final decision as to whether to issue a license, FERC shares its authority to impose license conditions with other federal agencies. To the extent Congress has delegated licensing authority to agencies other than FERC, those agencies, and not FERC, determine how to exercise that authority, subject of course to judicial review.

460 F.3d at 65 (citations omitted). The court held that, while the Departments ''should certainly make every effort to cooperate and to coordinate their efforts, because license conditions imposed by one agency may alter the conditions the other agency deems necessary,'' FERC may not unilaterally place restrictions (such as a strict time limit) on the exercise of the other Departments' authorities. *Id.* In another holding, the court adopted an expansive interpretation of the section 4(e) requirement that a project and associated license be located ''within'' a reservation. *Id.* at 65–66.

E. Request for Additional Comment Period

In July 2009, NHA and HRC sent a joint letter to the three Departments, asking that an additional 60-day comment period be provided before publication of final rules. The organizations noted that they and their members had gained extensive experience with the interim final rules since their initial comments were submitted in January 2006, and they now have additional comments to offer on ways to improve the trial-type hearing and alternatives processes.

The Departments have decided to grant NHA and HRC's request. Instead of publishing final rules, we are publishing these revised interim final rules with a 60-day comment period. Under this approach, we are putting into effect several improvements to the November 2005 interim final rules, while providing the public with updated information on which to base additional comments, including our responses to the prior comments we received.

F. Government Accountability Office (GAO) Report

In September 2010, GAO released Report GAO–10–770 entitled, ''Hydropower Licensing: Stakeholders' Views on the Energy Policy Act Varied, but More Consistent Information Needed.'' The report analyzed implementation of EPAct section 241 since 2005 and made two recommendations. The first recommendation was that the Secretaries of Agriculture, Commerce, and the Interior

> [d]irect cognizant officials, where the agency has not adopted a proposed alternative condition or prescription, to include in the written statement filed with FERC (1) its reasons for not doing so, in accordance with the interim rules and (2) whether a proposed alternative was withdrawn as a result of negotiations and an explanation of what occurred subsequent to the withdrawal. . . .

GAO Report at 19.

As noted by GAO, the interim final rules already require each Department to file with FERC, along with any modified condition or prescription the Department adopts, a statement explaining (i) the basis for the modified condition or prescription and (ii), if the Department is not adopting a proposed alternative, its reasons for not doing so. 7 CFR 1.673(c); 43 CFR 45.73(c); 50 CFR 221.73(c).

However, the Departments pointed out in their comments to GAO that, in some cases, a license party that submitted an alternative condition or prescription later withdraws it, often as a result of negotiations with the Department. In cases where there is no longer an alternative to consider because a proposed alternative has been voluntarily withdrawn, the statutory requirement to provide a reason for not adopting an alternative does not apply. The Departments' written statement will, however, include an explanatory notation indicating that a proposed alternative was voluntarily withdrawn.

GAO's second recommendation was that the Departments ''[i]ssue final rules governing the use of the section 241 provisions after providing an additional period for notice and an opportunity for public comment and after considering their own lessons learned from their experience with the interim rules.'' GAO Report at 19. As explained above, we are publishing these revised interim final rules with a 60-day comment period, as requested by NHA and HRC and as recommended by GAO.

G. Other Developments Since Release of Interim Final Rules

In developing the interim final regulations, the Departments anticipated that the Department of Commerce involvement in licensing proceedings under the FPA would be limited to issuance of fishway prescriptions under FPA section 18. This was consistent with Commerce's traditional experience in implementing the FPA. The Commerce regulations therefore referenced only the National Marine Fisheries Service (NMFS) and section 18 of the Act.

However, in the years since promulgation of the interim final regulations, alternative energy projects that would use new technologies to harness tidal and wave energy have been increasingly proposed for development. As applicants have moved into the marine environment in proposing projects to be licensed by FERC, impacts not traditionally associated with licenses under the FPA have emerged. For example, projects have been proposed within areas designated as National Marine Sanctuaries.

These developments have necessarily required broader interest and involvement in the licensing process throughout the Department of Commerce, including within the National Marine Sanctuary Program (NMSP). In 2006, in response to a proposal to site a wave energy project within the Olympic Coast National Marine Sanctuary, NMSP filed conditions with FERC under FPA section 4(e) to address impacts of the proposed Makah Bay Offshore Wave Pilot Project (Project No. 12751–001, applicant Finavera Renewables Ocean Energy, Ltd.). It is likely that the interest and involvement of Commerce agencies beyond NMFS will continue and will include the need to address impacts other than to fish migration under section 18.[1]

While the wording of the current regulations does not foreclose issuance of such conditions, and the procedures of EPAct would be available under the

[1] FERC initially accepted and proposed to incorporate all of the NMSP conditions into the draft project license. *See Finavera Renewables Ocean Energy, Ltd.,* 121 FERC ¶ 61,288 (2007). On rehearing, FERC reversed itself, stating that it did not believe the sanctuary constituted a ''reservation'' under the FPA, although it continued to include most of the NMSP conditions in the license. *See* 122 FERC ¶ 61,248 (March 20, 2008). On May 19, 2008, FERC granted NOAA's request for rehearing on the revised order, but on rehearing declined to reverse its determination that a sanctuary does not constitute a ''reservation'' under the FPA. *See,* 124 FERC ¶ 61,063 (July 18, 2008). No Court of Appeals has addressed these issues.

current regulations where such conditions are issued, the Departments believe the regulations should be changed to expressly apply to those situations. Therefore, Commerce is revising its regulations to make clear that any Commerce agency that identifies a basis to issue conditions under section 4(e) will be subject to these regulations. Currently, NMSP is the only known such agency.

IV. Section-by-Section Analysis

The following discussion explains the changes made to the regulations published in November 2005 and provides the Departments' response to the comments received. Regulations that have not been changed and that were not the subject of public comments are not discussed. The reader may wish to consult the section-by-section analysis in the interim final rules for additional explanation of all the regulations.

Three separate versions of the revised interim final regulations are provided, one version each for Agriculture, Interior, and Commerce. The structure and content of the regulations are substantially similar, but there are variations, such as to account for differences in the names of the Departments and their organizational components. The three versions also vary somewhat in their references to conditions and prescriptions, since Agriculture does not develop prescriptions under FPA section 18, while Interior and Commerce may develop either conditions or prescriptions or both.

For each section discussed below, the CFR title, section number, and heading for each Department are shown, 7 CFR for Agriculture, 43 CFR for Interior, and 50 CFR for Commerce.

7 CFR 1.601 What is the purpose of this subpart, and to what license proceedings does it apply?

43 CFR 45.1 What is the purpose of this part, and to what license proceedings does it apply?

50 CFR 221.1 What is the purpose of this part, and to what license proceedings does it apply?

Paragraphs (a)(1)–(2) of these sections in the interim final rules provided that the trial-type hearing process in these regulations applies to mandatory conditions and prescriptions developed by a Department under FPA section 4(e) or 18 and does not apply to recommendations that a Department may submit to FERC under FPA section 10(a) or (j). The Departments have expanded paragraph (a)(2) in the final rules to exclude more generally provisions that a Department may submit to FERC under any authority other than FPA section 4(e) or 18. Such provisions would include recommendations under section 10(a) or (j), terms and conditions under section 30(c), or any other provisions not submitted under section 4(e) or 18.

Commenters raised four sets of issues concerning the applicability of the EPAct hearing and alternatives processes, as set forth in paragraphs (c) and (d) of these regulations.

Cases pending on November 17, 2005. Paragraph (d)(1) provides that the regulations apply to any hydropower license proceeding for which the license had not been issued as of November 17, 2005, and for which one or more preliminary conditions or prescriptions have been or are filed with FERC. Some commenters contended that applying the regulations to proceedings where preliminary or ''final'' conditions or prescriptions had been submitted before November 17, 2005, would be disruptive, would impose an undue burden on stakeholders, and would constitute an impermissible retroactive application of the EPAct provisions. Others argued that claims of retroactivity are groundless, since proposed conditions and prescriptions are not final or closed until FERC has made its licensing decision.

The Departments agree that applying the EPAct provisions to licensing proceedings pending at the time of enactment does not constitute retroactive application. The same allegation of retroactive application was considered and rejected by the court in *American Rivers.* There, the court held that the interim regulations did not have an impermissible retroactive impact, noting that conditions and prescriptions that have not been included in a final FERC license cannot be regarded as completed events. Paragraph (d)(1) therefore remains substantially unchanged.

Reserved authority. On occasion, a Department does not submit conditions or prescriptions for inclusion in a license during the license proceeding, but reserves the authority to do so at a later point, *e.g.,* if conditions change or the Department obtains additional information. The interim regulations provided that, if the Department notifies FERC that it is reserving its authority, the hearing and alternatives processes would be available to the license parties if and when the Department subsequently exercised its reserved authority.

Some commenters asserted that these processes should be available, not only when the Department subsequently exercises reserved conditioning or prescriptive authority, but also when the Department initially decides to reserve its authority. According to these commenters, the reservation of authority is a decision not to impose a condition or prescription, with consequences for natural resources, and should be subject to the hearing and alternatives processes.

Under the terms of EPAct, license applicants and other parties are entitled to trial-type hearings with respect to conditions or prescriptions that a Department deems necessary. Similarly, the opportunity to propose an alternative arises when the Department deems a condition or prescription to be necessary. Thus, under EPAct, it is only when a Department affirmatively exercises its discretion to mandate a condition or prescription that the hearing and alternatives processes are triggered. Allowing for trial-type hearings and alternatives when the agencies have not exercised this authority would be both inconsistent with the legislation and an inefficient use of the Departments' resources. Consequently, the revised interim final regulations continue to provide that the hearing and alternatives processes are available only when a Department submits a preliminary condition or prescription to FERC, either during the initial licensing proceeding or subsequently through the exercise of reserved authority.

Exercise of reserved authority. Other commenters noted that, with respect to the exercise of reserved authority, the language of the interim regulations appeared to limit the availability of these processes to a Department's exercise after November 17, 2005, of an authority it reserved on or after that date. They argued that the processes should be equally available to a Department's exercise after November 17, 2005, of an authority it reserved before that date. The Departments agree that Congress intended the hearing and alternatives processes to apply to any case in which a Department issues mandatory conditions or prescriptions on or after the date of EPAct's enactment. Paragraph (c) has been revised and a new paragraph (d)(2) has been added to clarify this point. Interim paragraph (d)(2) has been deleted as no longer needed, for the reasons explained below in connection with 7 CFR 1.604, 43 CFR 45.4, and 50 CFR 221.4.

Exhaustion of administrative remedies. Several parties commented that utilizing EPAct's trial-type hearing and alternatives processes should not be a condition precedent to seeking appellate court review of mandatory

conditions and prescriptions. According to these commenters, the failure to request a trial-type hearing on disputed issues of material fact or to propose an alternative should not be considered a failure to exhaust administrative remedies.

Section 241 of EPAct does not itself contain an express exhaustion requirement, and there have been no court decisions addressing the issue of exhaustion in the context of EPAct trial-type hearings to date. Whether the doctrine of exhaustion applies to a given claim will be determined by the court based on the specific circumstances involved, such as whether any exhaustion provision from another statute applies, the nature of the claim being raised, and the applicability of any exhaustion defenses.

The Departments note that license parties have ample opportunities to provide input into the processes for developing mandatory conditions and prescriptions. In addition to the trial-type hearing and alternatives processes, the FERC licensing process provides opportunities for parties to comment on a Department's preliminary conditions or prescriptions, and on FERC's environmental assessment or draft environmental impact statement that discusses such preliminary conditions or prescriptions, See, *e.g.,* 18 CFR 5.23(a), 5.24(b)–(c), 5.25(b)–(c). Presenting information and concerns to the Departments well before the court of appeals review is the best way to ensure that the Departments are aware of the concerns and have an opportunity to consider them in formulating their conditions and prescriptions.

No changes have been made to the regulations in response to the comments on this issue.

7 CFR 1.602 What terms are used in this subpart?

43 CFR 45.2 What terms are used in this part?

50 CFR 221.2 What terms are used in this part?

These sections define the meaning of various terms used in the regulations. They are unchanged from the interim regulations, except for two address changes and the following two modifications.

First, a definition of ''modified condition or prescription'' has been added, as recommended by a commenter.

Second, the definition of ''preliminary condition or prescription'' has been revised by changing ''a'' to ''any'' in the first line and by omitting the citations to FERC's regulations in the last line. While the Departments make every effort to submit their preliminary conditions and prescriptions in accordance with the requirements in FERC's regulations, circumstances on occasion may necessitate the submission of a preliminary condition or prescription after FERC's regulatory deadline. *See City of Tacoma,* discussed under section II.D. of this preamble. In such instances, the license parties should still have an opportunity to request a trial-type hearing as to disputed issues of material fact and to submit alternative conditions or prescriptions.

Some commenters suggested that the Departments clarify the definition of ''material fact'' in these sections to expressly exclude allegations of law or policy, or any argument directed at whether a preliminary condition or prescription should be adopted, modified, or rejected, or whether a proposed alternative should be adopted or rejected. The comments cited several specific examples of issues that parties have sought to raise in trial-type hearing proceedings that the commenters considered inappropriate.

The Departments agree that the commenters accurately described both the intent of the statute and interim regulations and the experience to date in trial-type hearing proceedings. The regulations clearly prohibit an ALJ from rendering a conclusion on the ultimate question of whether a condition or prescription should be affirmed, modified, or withdrawn, because that conclusion is reserved to the Secretary's discretion and expert judgment. 7 CFR 1.660(b)(3), 43 CFR 45.60(b)(3), 50 CFR 221.60(b)(3). Therefore, the November 2005 preamble made clear that issues of law or policy are not appropriate for resolution in a trial-type hearing. 70 FR at 69809.

The Departments do not find it necessary to change the regulatory text on this point but are including an extended preamble discussion of ''disputed issues of material fact,'' which provides further clarification and draws from the Departments' experience to date under the rules. See section IV.A. below.

7 CFR 1.603 How are time periods computed?

43 CFR 45.3 How are time periods computed?

50 CFR 221.3 How are time periods computed?

Some commenters requested that the regulations allow extensions of time for filing hearing requests, notices of intervention, or answers upon a showing of extraordinary circumstances. The interim final rules provided that no extension of time could be granted for these particular filings. 7 CFR 1.603(b), 43 CFR 45.3(b), 50 CFR 221.3(b). The revised interim final regulations do not incorporate these requested changes, but we have extended the time for filing a notice of intervention and response (see 7 CFR 1.622, 43 CFR 45.22, 50 CFR 221.22).

As noted in the preamble to the interim final rules, strict time limitations are necessary to ensure timely completion of the hearing and alternatives processes and to avoid delays in the FERC licensing proceeding. 70 FR at 69809. Parties with a significant interest in the proceeding will presumably have already participated in the pre-filing consultation, scoping, and study processes for at least 3 years prior to the submission of preliminary conditions or prescriptions. A substantial and voluminous record will also have been developed during that time. Most parties should therefore be sufficiently prepared to respond to the Departments' preliminary conditions or prescriptions and prepare a hearing request or notice of intervention and response within the allotted time, without the need for extensions.

The preamble to the interim rules also explained that, as a practical matter, no ALJ would be available prior to referral to rule on an extension motion. According to the commenters, an ALJ is not necessary to rule on extension requests and ''the Departments could make such a determination during their initial adequacy review of the hearing request or alternate condition.'' HRC Comments at 41. The Departments disagree. These rules establish stringent time frames to which all parties must abide, absent an extension granted by a neutral and impartial ALJ or a provision of these rules.

The commenters further observed that the hearing request imposes a significant burden on all parties that should be avoided if there is an available resolution that simply needs time to succeed. A new provision for a limited stay of the proceedings to allow settlement negotiations should provide an opportunity for such resolution. See 7 CFR 1.624, 43 CFR 45.24, 50 CFR 221.24, discussed below.

7 CFR 1.604 What deadlines apply to pending applications?

43 CFR 45.4 What deadlines apply to pending applications?

50 CFR 221.4 What deadlines apply to pending applications?

These sections from the interim regulations dealing with pending applications have been removed and replaced in the revised interim final regulations. They applied to license proceedings in which (1) a Department had filed a preliminary condition or prescription before the November 17, 2005, effective date of the regulations, and (2) FERC had not issued a license as of that date. They provided that hearing requests and alternatives in such cases would be due on or before December 19, 2005. All license parties in such proceedings that wished to request a hearing or submit alternatives by the latter date have done so, and all but one of those cases has since been resolved.[2] Therefore, these sections are no longer needed; their removal does not represent a substantive change to the regulations.

Some commenters raised concerns that there would be no comment opportunity on alternative conditions and prescriptions in pending cases where review under the National Environmental Policy Act (NEPA) had already been completed when the interim final rules were issued. They suggested that, for such cases, the regulations require reissuance or supplementation of the NEPA document. Under 7 CFR 1.674, 43 CFR 45.74, and 50 CFR 221.74, the Department must consider evidence and supporting material provided by any license party or otherwise reasonably available to it, including information on the environmental effects of conditions, prescriptions, and alternatives. On a case-by-case basis, FERC should consider whether supplemental NEPA analysis is appropriate under 40 CFR 1502.9.

[2] Timely hearing requests filed by PacifiCorp with respect to its Condit Hydroelectric Project remain pending before Interior and Commerce. The Departments have notified PacifiCorp that they will establish a time frame for the hearing process if and when FERC reinstates the proceeding to evaluate PacifiCorp's 1991 license application.

7 CFR 1.604 What deadlines apply to the trial-type hearing and alternatives processes?

43 CFR 45.4 What deadlines apply to the trial-type hearing and alternatives processes?

50 CFR 221.4 What deadlines apply to the trial-type hearing and alternatives processes?

In place of the removed interim regulations dealing with pending applications (discussed above), the revised interim final regulations include tables summarizing the steps in the trial-type hearing and alternatives processes and indicating the deadlines generally applicable to each step. The regulations state that, if the deadlines in the tables are in any way inconsistent with the deadlines as set by other sections of the regulations or by the ALJ, the deadlines as set by those other sections or by the ALJ control.

For example, under 7 CFR 1.603, 43 CFR 45.3, or 50 CFR 221.3, a deadline as shown in the table may be extended because it falls on a Saturday, Sunday, or holiday, or because the ALJ has granted a motion to extend it. See also 7 CFR 1.631(c), 43 CFR 45.31(c), and 50 CFR 221.31(c). The deadlines in the table may also be extended if the hearing requester and the Department agree to a stay to allow for settlement negotiations under 7 CFR 1.624, 43 CFR 45.24, or 50 CFR 221.24, discussed below.

7 CFR 1.610 Who may represent a party, and what requirements apply to a representative?

43 CFR 45.10 Who may represent a party, and what requirements apply to a representative?

50 CFR 221.10 Who may represent a party, and what requirements apply to a representative?

Three minor changes have been made to these sections regarding representation of a party in the hearing process. Environmental organizations objected that the regulations did not allow them to designate one organization to represent another, as they have done in the past. In response to this comment, paragraph (b)(3) has been revised to change ''officer or full-time employee'' to ''officer or agent,'' leaving it up to an organization to decide what type of agent it wishes to designate to represent its interests.

Paragraph (c) has been revised to clarify that an individual representing himself or herself must file a notice or appearance, as must any other representative of a party.

And a new paragraph (d) has been added to expressly authorize the administrative law judge (ALJ) to require a party that has more than one representative to designate a lead representative for service of documents under 7 CFR 1.613, 43 CFR 45.13, or 50 CFR 221.13. This authority was implicit in the interim rules.

7 CFR 1.611 What are the form and content requirements for documents under §§ 6.610 through 1.660?

43 CFR 45.11 What are the form and content requirements for documents under this subpart?

50 CFR 221.11 What are the form and content requirements for documents under this subpart?

Two minor changes have been made to these regulations. Paragraph (a)(2) has been revised to state that service copies of a document may be printed on both sides of a page, to save paper. And paragraph (a)(4) has been revised to increase the minimum font size from 10 to 11 points to improve readability.

7 CFR 1.612 Where and how must documents be filed?

43 CFR 45.12 Where and how must documents be filed?

50 CFR 221.12 Where and how must documents be filed?

Paragraph (b) of these regulations has been revised to specify that an original and two copies of any document must be filed with the appropriate office under paragraph (a). This change will facilitate the expedited hearing process. Under paragraph (b)(2), supporting materials, which may be burdensome to copy, may be submitted in the form of a hard-copy original and an electronic copy on compact disc or other suitable media.

Several commenters suggested that the Departments revise the regulations to allow parties to file documents electronically, using email or FERC's eFiling system. The Departments agree that, in many circumstances, the electronic transmission of documents is a preferable means of providing documents to another party. As a result, the revised regulations in 7 CFR 1.613, 43 CFR 45.13, and 50 CFR 221.13 allow for electronic *service* of documents on a party who consents to such service. However, the Departments and their ALJ offices do not currently have the capacity or resources to accept electronically and print off the large volume of documents typically filed in connection with a trial-type hearing.

The Departments disagree with the commenters' suggestion to use FERC's

eFiling system because EPAct places the responsibility of administering the trial-type hearing process exclusively with the Departments. In addition, the Departments do not believe it is advisable to rely for filing on an electronic system of another agency over which the Departments have no control. Given the tight time frames involved, any technical problems or other issues that rendered FERC's eFiling system unavailable even for a limited time could prove disruptive to the trial-type hearing process.

Paragraph (d) dealing with nonconforming documents has been revised by deleting the second sentence concerning minor defects, which had stated that parties may be notified of ''minor'' technical defects and given a chance to correct them. Commenters objected that no definition of a ''minor'' defect was provided, thus presenting a risk of inconsistent and subjective interpretations. Commenters proposed the following definition: ''For this purpose, 'minor' means that the filing is substantively in compliance with the requirements for the filing.'' HRC comments at 57.

This proposed definition fails to provide additional clarity and has not been adopted. Rather than trying to catalogue possible defects as ''minor'' or ''major,'' the Departments have deleted the second sentence. The revised interim final regulation thus puts parties on notice that non-conforming documents may be rejected, thereby helping to ensure compliance with technical filing requirements. The form, content, and filing requirements in the regulations are straightforward and clear, and the Departments expect compliance for documents to be accepted. It remains within the Departments' discretion to determine the appropriate remedy for failure to comply with these requirements.

7 CFR 1.613 What are the requirements for service of documents?

43 CFR 45.13 What are the requirements for service of documents?

50 CFR 221.13 What are the requirements for service of documents?

These regulations have been revised in response to comments advocating the use of electronic means of service.

Use of FERC's service procedures. Several commenters proposed that the Departments allow parties to use FERC's eService and eSubscription systems to ensure a cost-effective and reliable means of effectuating service on other parties. The Departments have adopted this suggestion to a limited extent.

For service on *license parties* as required under paragraphs (a)(1) and (a)(2)(ii) of these sections, the revised regulations authorize service under FERC's procedures at 18 CFR 385.2010(f)(3) for those license parties that have agreed to receive electronic service. For service on *hearing parties* under paragraph (a)(3), the use of FERC's procedures is not authorized. In the Departments' experience, the number of hearing parties generally is substantially less than the number of license parties. This limited approach balances the interests in cost-effective means of service on a large number of parties with the Departments' interest in retaining control over the administration of the trial-type hearing process, for which the Departments are exclusively responsible under EPAct. The latter interest predominates for most of the hearing process, when service is limited to the much smaller number of hearing parties.

Service by other electronic means. Service on either *license parties* or *hearing parties* is also authorized under paragraph (c) of these regulations, which has been expanded in two ways.

First, paragraph (c)(4) has been revised in 7 CFR 1.613 and 50 CFR 221.13 and has been added to 43 CFR 45.13. Under this paragraph, service may be made by electronic means if the party to be served has consented to that means of service in writing. However, if the serving party learns that the document did not reach the party to be served, the serving party must re-serve the document by another method. This provision, which is modeled on Rule 5(b) of the Federal Rules of Civil Procedure (FRCP), takes the place of former paragraph (c)(4)(ii) both in 7 CFR 1.613 and 50 CFR 221.13, which required the person served by electronic mail to acknowledge receipt of the document.

Second, the introductory language in paragraph (c) has been revised to allow the ALJ to order methods of service other than those enumerated in paragraphs (c)(1) through (c)(4), upon agreement of the parties.

Service via Internet posting. Commenters suggested that the Departments allow parties to post documents filed in support of a hearing request on a Web site to reduce service costs associated with those sometimes voluminous documents. Other commenters suggested that the Departments place electronic or scanned copies of all materials received during the trial-type hearing onto a public Internet site to make the documents more accessible to other interested parties. The Departments do not adopt this suggestion due to the time and resource constraints during the trial-type hearing. Parties who wish to place documents on public Internet sites are not prohibited from doing so, but such posting will not substitute for service under these regulations.

Timing of service. Commenters proposed that the Departments revise the regulations to clarify that all served documents must arrive by 5 p.m. on the filing date. The Departments disagree with the commenters' proposal and preserve the requirement established in the interim final rules. This requirement provides that service is effected when a party initiates the transmission of a document through one of the specified methods of service at the same time the document is delivered or sent for filing. This requirement ensures that parties receive served documents in a cost-effective and timely fashion. Indeed, unless a document was served by hand-delivery or facsimile, the commenters' proposal would require parties to serve a document a day or more *in advance* of filing in order to have service copies arrive by 5 p.m. on the filing date. This would unnecessarily shorten the already tight regulatory time frames.

Service on the Department. Comments were received requesting that the regulations be clarified with respect to timing of service and agency personnel to be served. With respect to timing, paragraphs (a)(1) through (a)(3) have been revised to specify that documents to be served must be delivered or sent to the other parties at the same time the documents are delivered or sent for filing.

With respect to agency personnel to be served, the Departments do not believe that any changes to the regulations are needed. Under paragraph (a)(1), a request for a hearing must be served on each license party; FERC's service list for the license proceeding will identify the persons or entities to be served and their addresses. Under paragraph (a)(2), a notice of intervention and response must be served on the Departmental entity that developed the preliminary condition or prescription; the preliminary condition or prescription will identify the persons or entities to be served and their addresses. Subsequent documents in the hearing process will be served on the Departmental representatives identified in the Department's answer or notice under 7 CFR 1.625, 43 CFR 45.25, and 50 CFR 221.25.

7 CFR 1.620 What supporting information must the Forest Service provide with its preliminary conditions?

43 CFR 45.20 What supporting information must a bureau provide with its preliminary conditions or prescriptions?

50 CFR 221.20 What supporting information must NMFS provide with its preliminary conditions or prescriptions?

Some commenters suggested amending these sections to require that the agency rationale for its preliminary conditions or prescriptions include a clear and concise statement of the material facts relied upon and an ''analysis of the project's impacts on the resources the agency administers.'' HRC comments at 33.

The Departments agree that the rationale for a preliminary condition or prescription must contain sufficient information to enable license parties to identify disputed issues of material fact in light of the relevant legal standards under the FPA. The Departments' rationales also generally identify the nature of project-related impacts on agency-managed resources that their conditions or prescriptions are designed to address. However, EPAct is not reasonably interpreted to require the Departments to catalogue every fact considered in developing a preliminary condition or prescription. Accordingly, the Departments are not amending the regulatory text on this point.

7 CFR 1.621 How do I request a hearing?

43 CFR 45.21 How do I request a hearing?

50 CFR 221.21 How do I request a hearing?

The Departments received comments on various aspects of these regulations, including the time for filing hearing requests, page limits, and reliance on new evidence.

Time for filing hearing requests generally. Commenters suggested that the Departments extend the deadline for filing hearing requests because, in their view, the interim regulations do not provide parties with sufficient time to prepare such requests or attempt an informal resolution of contested issues. Specifically, the commenters suggested that the Departments extend the deadline for filing hearing requests from 30 days to 45 days to be consistent with FERC's ILP, which provides parties with 45 days to respond to preliminary conditions and prescriptions. Additionally, these commenters argued that, since FERC's ILP-prescribed deadlines may not be met in certain cases, the Departments should extend the deadline for filing hearing requests instead of conforming the trial-type hearing process to the ILP schedule.

The Departments disagree with this proposal (except in cases where the Department is issuing conditions or prescriptions pursuant to reservations of authority, as discussed below). As the commenters recognize, the Departments have tried ''to conform the trial-type hearing to the ILP schedule'' (EEI/NHA comments at 21). Even though FERC's ILP schedule provides parties with 45 days to submit comments on preliminary conditions and prescriptions, the 30-day deadline for filing trial-type hearing requests is necessary both to fit the hearing process within the time frame established by FERC for each license proceeding, as required by EPAct, and to provide intervenors and the Department with sufficient time to evaluate hearing requests and prepare responses before the matter is referred to an ALJ. The 30-day deadline applies to any request for a hearing on a preliminary condition or prescription submitted to FERC before the license is issued.

Time for filing hearing requests as related to the exercise of reserved authority. Some commenters complained that the interim regulations do not include an express, separate timetable for requesting a hearing or proposing alternatives in response to a Department's exercise of reserved authority under 7 CFR 1.601(d)(2), 43 CFR 45.1(d)(2), or 50 CFR 221.1(d)(2). Under these circumstances, parties may have less advance notice concerning the justification for and content of any proposed conditions or prescriptions. The Departments agree that a separate timetable should be provided.

Accordingly, paragraph (a)(2) of these regulations has been revised to provide a longer period of time—60 days as compared to 30 days—for a license party to request a hearing on disputed issues of material fact with respect to a preliminary condition or prescription in situations where the Department is exercising its reserved authority after the license has been issued.

Time for filing hearing requests as related to preliminary versus modified conditions and prescriptions. Industry commenters took differing positions on whether the trial-type hearing should be held to address disputed issues of fact at the preliminary or modified condition/prescription stage. Some commenters supported holding trial-type hearings at the preliminary stage, acknowledging that doing so is appropriate in most cases, is consistent with FERC's licensing timetable, and will help inform the NEPA process. Other commenters stated that hearings are more appropriately held after modified conditions or prescriptions are submitted. Commenters also requested that the regulations provide for trial-type hearings at the modified stage if the modifications are based on new facts that did not exist or were not anticipated at the preliminary stage, or if the agency submits an entirely new condition or prescription at the modified stage.

As set forth in the interim final rules, the trial-type hearing procedures were carefully crafted to work within FERC's time frame, as required by Congress, while affording interested parties an opportunity to present evidence on disputed issues of material fact with respect to the Departments' mandatory conditions and prescriptions. 70 FR at 69806. Holding a hearing after submission of preliminary conditions and prescriptions allows for resolution of disputed factual issues at the most relevant time—before the Department completes necessary modifications to the conditions or prescriptions, before the close of the NEPA comment period, and before completion of the final environmental impact statement (EIS).

This approach also promotes efficiency by allowing the Departments to assess all relevant information—including any ALJ opinion, comments on FERC's NEPA document, and alternative conditions or prescriptions with supporting information—and to modify the conditions or prescriptions in one coordinated effort.

Providing for trial-type hearings solely at the modified stage is not a reasonable or efficient use of resources. Issuance of an ALJ opinion *after* conditions and prescriptions have already been modified could require the Departments to revise and resubmit conditions and prescriptions, thereby adding an additional step and additional time to the process. This second round of revisions would delay license issuance in most cases. Indeed, under current practice, the Departments submit modified conditions and prescriptions 60 days after the close of the NEPA comment period, with FERC's final EIS being issued just 90 days later. An ALJ opinion resolving disputed facts on modified conditions and prescriptions would almost certainly be issued after FERC's completion of the final NEPA document.

The Departments disagree with comments that holding an adversarial hearing at the preliminary stage will jeopardize the possibility of settlement. The Departments' experience has been that several cases have settled after

hearing requests were filed at the preliminary condition or prescription stage.

The revised interim final regulations therefore continue the approach taken in the interim regulations of scheduling the trial-type hearing process immediately following the issuance of preliminary conditions and prescriptions. Nevertheless, the Departments acknowledge that exceptional circumstances may arise where facts not in existence and not anticipated at an earlier stage necessitate a new preliminary condition or prescription. This circumstance would be handled on a case-by-case basis, in coordination with FERC as necessary.

Page limits for hearing requests. Some commenters objected that the page limits for hearing request are too restrictive, and they requested that the limit for describing disputed issues of material fact be increased from two pages to five pages and that the limit for witness and exhibit identification be increased from one page to three pages. The Departments believe that the page limits set forth in the interim regulations are generally appropriate and provide sufficient space for parties to identify disputed issues, particularly in light of the expedited nature of the proceeding. The Departments further note that they are bound by the same page limits in submitting an answer. See 7 CFR 1.622, 43 CFR 45.22, and 50 CFR 221.22.

Nevertheless, having considered this comment and the purpose of the rule, the Departments have concluded that the required list of specific citations to supporting information and the list of exhibits need not be included in the page restrictions. The rule has been revised accordingly for the hearing request and the notice of intervention and response. See 7 CFR 1.621(d), 43 CFR 45.21(d), 50 CFR 221.21(d) and 7 CFR 1.622(d), 43 CFR 45.22(d), 50 CFR 221.22(d). This change will provide the parties with additional space to describe the disputed issues of material fact and to summarize expected witness testimony.

Reliance on new evidence. Other commenters suggested that the final rules require parties who wish to submit new evidence when requesting a trial-type hearing or in support of an alternative condition or prescription to show good cause for not having previously submitted the information in the license proceeding record. Otherwise, these commenters argued, parties would have an incentive ''to 'hide the ball' from others and disrupt proceedings at the last minute,'' which may create delays or unfair advantage. HRC Comments at 30.

While the Departments share the commenters' interest in ensuring an expeditious and fair trial-type hearing, we disagree with the proposal to include a ''good cause'' requirement. Such a requirement could harm the Department's ability to rely on relevant information from the parties, such as newly completed studies, that might assist the Department in evaluating conditions and fishway prescriptions. Moreover, such a requirement may run counter to the parties' and the Department's interests in ensuring a ''full and accurate disclosure of the facts.'' 7 CFR 1.651(a), 43 CFR 45.51(a), 50 CFR 221.51(a).

Service by electronic means. Consistent with the changes to 7 CFR 1.613(c), 43 CFR 45.13(c), and 50 CFR 221.13(c), a new paragraph (b)(4) has been added to these regulations, requiring a hearing requester to state whether or not it consents to service by electronic means and, if so, by what means.

7 CFR 1.622 How do I file a notice of intervention and response?

43 CFR 45.22 How do I file a notice of intervention and response?

50 CFR 221.22 How do I file a notice of intervention and response?

Commenters objected that the 15-day period provided in the interim regulations for filing a notice of intervention and response to a hearing request was too short, pointing out that the Departments have 30 days to file their answers under interim 7 CFR 1.624(a), 43 CFR 45.24(a), and 50 CFR 221.24(a). While the Departments need the additional time to coordinate with each other and with the respective ALJ offices regarding the possible consolidation of related hearing requests, the Departments agree that a 15-day intervention and response period is very tight.

As revised, paragraph (a)(1)(ii) of these regulations gives license parties 20 days for filing a notice of intervention and response, thus adding 5 days to the overall hearing process. A diagram of the trial-type hearing process under these revised interim final rules is found in the discussion of 7 CFR 1.660, 43 CFR 45.60, and 50 CFR 221.60, below.

Paragraph (a)(2) has also been revised, to clarify the permissible scope of a notice of intervention and response.

Paragraph (b)(3) has been added, requiring an intervenor to state whether or not it consents to service by electronic means and, if so, by what means.

Finally, paragraph (d) has been revised to specify that citations to scientific studies, literature, and other documented information do not count against the page limits for the response.

7 CFR 1.623 Will hearing requests be consolidated?

43 CFR 45.23 Will hearing requests be consolidated?

50 CFR 221.23 Will hearing requests be consolidated?

These sections, including the section headings, have been revised slightly to focus on the substance rather than the timing of the Departments' interagency coordination regarding multiple hearing requests. A decision on consolidation of hearing requests must still be made before the Departments file their responses under revised 7 CFR 1.625, 43 CFR 45.25, and 50 CFR 221.25; but it is not necessary to specify the timing of steps within the interagency coordination process.

The introductory language to paragraph (c) has also been revised to clarify that two or more hearing requests may be consolidated only in part, which could be appropriate if they have only some issues in common.

Some commenters proposed that the regulations provide for consecutive rather than simultaneous 90-day hearings for those cases that the Departments do not consolidate. Similarly, they proposed that a consolidated hearing involving two Departments last up to 180 days and a consolidated hearing involving three Departments last up to 270 days. The Departments do not agree that EPAct affords this level of flexibility regarding timing.

EPAct requires that any trial-type hearing be conducted within the time frame established by FERC for each license proceeding. To fulfill this requirement, trial-type hearings are generally completed 180 days or so before completion of the final NEPA document and license issuance. Those 180 days are needed to complete several procedural steps, including the comment period on FERC's draft NEPA document, submission of revised alternatives, review of comments on the draft NEPA document, preparation of the alternatives analysis, modification of conditions or prescriptions, issuance of FERC's final NEPA document, and license issuance. Many if not all of these steps are dependent on receipt of the ALJ's decision.

Increasing the overall time frame for hearings from 90 to 180 or 270 days—either through consecutive 90-day hearings or one extended consolidated

hearing—would push back these subsequent steps and raise a significant potential for delay in license issuance, a result Congress expressly sought to avoid. The revised interim final regulations do not adopt the commenters' proposals.

Some commenters questioned the authority of the Departments to consolidate hearing requests, thereby giving an ALJ for one Department the authority to decide disputed issues of material fact for another. This issue is addressed below in connection with 7 CFR 1.660(d), 43 CFR 45.60(d), and 50 CFR 221.60(d).

7 CFR 1.624 Can a hearing process be stayed to allow for settlement discussions?

43 CFR 45.24 Can a hearing process be stayed to allow for settlement discussions?

50 CFR 221.24 Can a hearing process be stayed to allow for settlement discussions?

These sections are new and reflect the Departments' experience in implementing the interim final rules, which did not contain any provision for a stay of the hearing process. As noted previously, the Departments have been able to settle several cases after hearing requests were filed. However, in other cases, the Departments found that settlement might have been possible, but once the hearing request was referred to the ALJ, the expedited hearing schedule left little time for further settlement discussions. Under these revised interim final regulations, before a case is referred to the ALJ, the hearing requester and the Department may agree to stay the hearing process for a limited period of time, not to exceed 120 days, to allow for settlement discussions. The Department's agreement to a stay will be based on its judgment as to the likelihood of achieving settlement within the period of the potential stay.

If necessary, the relevant Department and hearing requester(s) may request that FERC revise the time frame established for the license proceeding to accommodate the stay period and any subsequent hearing process that may be necessary if negotiations fail. FERC's regulations at 18 CFR 5.29(g) provide that FERC will consider such requests on a case-by-case basis. However, during our consultation process on these rules, FERC staff noted that the ILP is designed to allow for collaboration and coordination early in the process, with the goal that disagreements are worked out prior to the NEPA document stage. FERC staff expressed concern that allowance of stays of the trial-type hearing proceeding could encourage participants to wait until this late date to work out their differences.

A stay would not affect the deadline for filing a notice of intervention and response, so that the hearing requester and the Department will be aware of other parties' interest in the case.

7 CFR 1.625 How will the Forest Service respond to any hearing requests?

43 CFR 45.25 How will the bureau respond to any hearing requests?

50 CFR 221.25 How will NMFS respond to any hearing requests?

These sections have been renumbered because of the insertion of the stay provisions just discussed. Revisions to paragraph (a) adjust the deadline for the Departments to file their answers to accommodate the change made to 7 CFR 1.622(a)(1)(ii), 43 CFR 45.22(a)(1)(ii), and 50 CFR 221.22(a)(1)(ii) regarding notices of intervention and responses and the addition of 7 CFR 1.624, 43 CFR 45.24, and 50 CFR 221.24 regarding stays. The 50 days allowed for the Department's answer runs from the deadline for filing a hearing request, and it therefore includes the additional 5 days allowed above for filing a notice of intervention and response. Thus, the increase from 45 to 50 days in paragraph (a) will not further extend the overall hearing process.

Paragraph (b)(3) has been added in response to comments. It requires the Department to provide a copy of any scientific studies, literature, and other documented information it relies on that are not already in the license proceeding record, as is required of the other parties by 7 CFR 1.621(b)(3), 43 CFR 45.21(b)(3), and 50 CFR 221.21(b)(3) and by 7 CFR 1.622(b)(2), 43 CFR 45.22(b)(2), and 50 CFR 221.22(b)(2).

Paragraph (b)(4) has also been added, requiring the Department to state whether or not it consents to service by electronic means and, if so, by what means.

The Departments received comments on various aspects of these regulations, including the content of the answer, filing a notice in lieu of an answer, and potential methods for avoiding an evidentiary hearing.

Content of the answer. Some commenters suggested amending 7 CFR 1.624(b), 43 CFR 45.24(b), and 50 CFR 221.24(b) to require the Department to indicate in its answer whether it would stipulate to facts as alleged by any intervenor, and not just to facts as alleged by the hearing requester. Adoption of this suggestion would require the Department to review all facts alleged in any notice of intervention and response and take a specific position on each.

The Departments disagree that the regulations should be changed. The primary function of the answer is to present the Department's position on whether the hearing request raises issues that are factual, material, and in dispute. The answer may narrow the issues for a hearing or avoid one altogether if there is no disagreement between the primary parties (the hearing requester and the party Department) as to the facts. Given that intervenors cannot raise new issues, it is not necessary to respond to a notice of intervention and response in the same way as to a hearing request.

Further, reviewing every allegation raised in notices of intervention and responses would likely require extensive effort at the same time the Department is reviewing the hearing request, consulting with other Departments regarding consolidation, assembling exhibits and identifying witnesses, and preparing an answer or notice. Nothing precludes a Department from noting its position on statements in other filings, if doing so may narrow the issues for hearing. Since the regulations allow any party to the licensing proceeding to file a hearing request, intervenors are not prejudiced by this decision not to adopt the commenters' suggestion.

Filing a notice in lieu of an answer. The same commenters objected to the interim rule provision allowing the Department to file a notice in lieu of an answer, arguing that the Department should be required to file an answer in all cases, and offering revised regulatory language to that effect. The proposed revisions have not been adopted. Developing a formal answer in cases where the agency agrees that the issues are factual, material, and in dispute would not be an efficient use of agency resources. In those situations, the regulations provide that the agency will file a notice in lieu of answer and may also file a list of exhibits and witnesses. 7 CFR 1.625(e), 43 CFR 45.25(e), 50 CFR 221.25(e).

These commenters also stated that, if an answer remains permissive rather than mandatory, ''a Department's failure to file an answer should be deemed a denial of the hearing request for failure to raise a disputed issue of material fact.'' HRC comments at 35. It appears from the context that by ''denial'' the commenters mean rejection of the hearing request. As discussed below, the Departments favor leaving the

determination of which issues warrant a hearing to an independent ALJ.

Avoidance of evidentiary hearing through use of a ''paper hearing.'' The commenters also requested that this section be revised to state that the Department is not required to refer a case for hearing if no disputed issues of material fact exist or if any such issues can be resolved through a ''paper hearing'' or other procedure. The commenters would require the hearing requester to demonstrate that formal procedures such as cross-examination ''will produce a fuller and truer disclosure of the facts than a paper hearing process.'' HRC comments at 28. The Departments do not believe such an approach would be consistent with EPAct.

EPAct section 241 expressly entitles any party to the FERC license proceeding to ''a determination on the record, after opportunity for an agency trial-type hearing . . . on any disputed issues of material fact'' relating to mandatory conditions and prescriptions. Importantly, section 241 requires that the Departments' implementing regulations provide hearing parties the opportunity to undertake discovery and cross-examine witnesses. Thus, Congress did not contemplate that a '' 'paper hearing' or other procedures'' would suffice.

Avoidance of evidentiary hearing where no disputed issues of material fact exist. The commenters similarly proposed that the Department not be required to refer a case for hearing where ''the answer determines that there are no disputed issues of material fact.'' HRC comments at 38–40. These commenters would rely on the answer process to allow the Department to narrow or dispose of issues for hearing prior to referral to the ALJ. Other commenters supported giving the ALJ sole authority to determine whether disputed issues of material fact exist.

HRC's approach would grant the Department a gatekeeper role in determining what issues actually go to hearing. Although failure to raise a disputed issue of material fact should result in dismissal of a hearing request or component issue, the Departments believe that this determination is more appropriately left to an independent ALJ. Thus, unless the hearing process is stayed for a limited time for settlement negotiations under 7 CFR 1.624, 43 CFR 45.24, 50 CFR 221.24, the regulations require referral of any hearing request, answer, and intervention to the appropriate ALJ's office, which can then determine the existence of disputed issues of material fact. This approach benefits all parties by providing necessary transparency and avoiding any appearance of bias in making the important threshold determination of whether particular issues warrant a hearing.

Avoidance of evidentiary hearing by adoption of a proposed alternative condition or prescription. In the November 17, 2005, interim final rule, the Departments indicated that they would endeavor to review proposed alternatives at the earliest possible time and that, in some cases, review of a proposed alternative could ''preclude the need for a hearing.'' 70 FR at 69807. HRC asked for clarification as to whether the Departments contemplated formally adopting a proposed alternative on an expedited basis to avoid a hearing. The commenters stated that they oppose what they term ''fast-track adoption of a proposed alternative in order to forgo a hearing,'' suggesting that such an action would be inconsistent with the Departments' obligation to consider the information specified in the regulations for analyzing alternatives. HRC Comments at 70. They also suggested that public comment should be sought prior to any decision to forgo a hearing.

In response to this comment, the Departments have considered their cumulative experience thus far with early evaluation of alternatives in connection with hearing requests filed under the interim final rule. As explained below (in discussing 7 CFR 1.671, 43 CFR 45.71, and 50 CFR 221.71), early, informal evaluation of proposed alternatives in conjunction with hearing requests has led to several successful settlements. The resulting condition or prescription may differ from both the Department's preliminary condition or prescription and any proposed alternative. In revising its condition or prescription pursuant to a settlement, the Department would have to follow any applicable requirements for considering available information. Nothing in the FPA requires a Department to seek public comment on a settlement that avoids the need for a hearing. The Departments believe that developing conditions and prescriptions that achieve resource protection while avoiding litigation furthers the goals of the FPA (and particularly the EPAct amendments) and should be encouraged where feasible.

7 CFR 1.626 What will the Forest Service do with any hearing requests?

43 CFR 45.26 What will DOI do with any hearing requests?

50 CFR 221.26 What will NMFS do with any hearing requests?

Revisions to paragraph (b) of these regulations (renumbered like the previous section) track the changes to 7 CFR 1.612(b)(1), 43 CFR 45.12(b)(1), and 50 CFR 221.12(b)(1) concerning the number of copies.

Paragraph (c)(4) has been revised to require the referral notice to specify the effective date of the referral, which will be the basis for computing other time periods during the hearing process—see 7 CFR 1.630, 43 CFR 45.30, and 50 CFR 221.30 concerning docketing; 7 CFR 1.640(a), 43 CFR 45.40(a), and 50 CFR 221.40(a) concerning the prehearing conference; 7 CFR 1.641(d), 43 CFR 45.41(d), and 50 CFR 221.41(d) concerning discovery motions; and 7 CFR 1.660(a)(2), 43 CFR 45.60(a)(2), and 50 CFR 221.60(a)(2) concerning the ALJ's decision. This change will eliminate the confusion that occasionally arose under the interim regulations as to the date on which a referral notice was ''issued.''

The interim final regulations provide that the Department receiving a hearing request will refer it to an appropriate ALJ office for a hearing by sending a ''referral'' package, which includes a ''referral notice.'' See 7 CFR 1.625(b)(5), 43 CFR 45.25(b)(5), 50 CFR 221.25(b)(5). The referral notice must include, among other things, ''the date on which [the agency] is referring the case for docketing.'' 7 CFR 1.625(c), 43 CFR 45.25(c), 50 CFR 221.25(c). In establishing deadlines for key milestones in the hearing procedure (such as docketing of the case by the ALJ, filing motions, setting the initial prehearing conference, etc.), a number of provisions refer to the ''issuance of the referral notice'' as the triggering event for calculating deadlines. See, *e.g.,* 7 CFR 1.630; 43 CFR 45.30; 50 CFR 221.30.

Because the interim final regulations used slightly varying terminology throughout and did not define the ''issuance'' date, there was a potential for confusion as to how deadlines should be calculated. Despite the provision noting that the referral notice should state the date on which the agency ''is referring'' the case, there was potential to construe the triggering date as being either the date the notice was sent from the referring agency, the date it was received by the ALJ, or (if different) the date stated as the

''effective date'' on the notice itself. This led to confusion where, for example, an agency wished to send out the referral package in advance to ensure timely receipt by the ALJ, while avoiding accelerating the dates in the hearing process (such as sending the package by Federal Express on a Friday for receipt by the ALJ's office by the deadline the following Monday). The approach of specifying in the text of the referral notice an ''effective'' date that was different from the date the package was sent from the agency was expressly approved by the Coast Guard ALJ presiding in the Santee-Cooper Project trial-type hearing. See Order Memorializing Prehearing Conference at 1–2 (FERC Project Number 199, license applicant South Carolina Public Service Authority) (September 15, 2006).

Corresponding changes have been made to various other provisions of the revised interim final regulations. These changes are intended to make clear that, where any provision sets forth a period of time after referral of the case within which an act or event must take place, the trigger for calculating the due date will be the ''effective date'' stated in the text of the referral notice. This may or may not be the same as the date the notice was written, the date it was sent out from the Department, or the date it was received by the ALJ. This approach is consistent with the intent of the original regulations. If the text of the referral notice does not set forth an ''effective date,'' then the effective date will be the date shown as the date the notice was sent out from the Department.

7 CFR 1.631 What are the powers of the ALJ?

43 CFR 45.31 What are the powers of the ALJ?

50 CFR 221.31 What are the powers of the ALJ?

The introductory language to these regulations has been revised to include the phrase, ''relating to any . . . Department's condition or prescription that has been referred to the ALJ for hearing,'' previously found in interim 7 CFR 1.631(i), 43 CFR 45.31(i), and 50 CFR 221.31(i). That phrase properly covers the entire hearing process, not merely the ALJ's decision.

Paragraph (b) has been revised to affirm the authority of the ALJ to issue subpoenas under 7 CFR 1.647, 43 CFR 45.47, and 50 CFR 221.47. *See Childers* v. *Carolina Power & Light Co.,* No. 98–77 (Dept. of Labor Admin. Review Board, Dec. 29, 2000), 2000 DOL Adm.Rev.Bd. LEXIS 123, 2000 WL 1920346.

Paragraph (c) has been added to allow the ALJ to shorten or enlarge the time periods set forth in the hearing process regulations generally. Several interim regulations specified that the ALJ could change the time period otherwise applicable, while others did not. The revised interim final regulations omit those context-specific authorizations in favor of this general authority of the ALJ to adjust time periods as necessary to effectively manage the hearing process. However, the revised interim final regulations state that the ALJ cannot extend the time period for rendering a decision on the disputed issues of material fact past the deadline set in 7 CFR 1.660(a)(2), 43 CFR 45.60(a)(2), or 50 CFR 221.60(a)(2), except in the extraordinary situation where the ALJ must be replaced under 7 CFR 1.632, 43 CFR 45.32, or 50 CFR 221.32 dealing with unavailability or 7 CFR 1.633, 43 CFR 45.33, or 50 CFR 221.33 dealing with disqualification.

Some commenters suggested that the regulations be amended to state expressly that the ALJ is authorized only to issue a decision limited to disputed issues of material fact and may not address the propriety of the Department's condition or prescription. Specifically, the commenters recommended that language from preamble to the interim final rules (70 FR at 69814) be incorporated into the regulations.

The Departments find that the regulations already adequately state this principle, and thus regulatory changes are not needed. While the commenters focused on the provisions at 7 CFR 1.631(i), 43 CFR 45.31(i), and 50 CFR 221.31(i), a separate provision of the regulations at 7 CFR 1.660(b), 43 CFR 45.60(b), and 50 CFR 221.60(b) specifies the content of an ALJ decision. That section provides that an ALJ decision must contain ''findings of fact on all disputed issues of material fact'' (paragraph (b)(1)) and only those ''conclusions of law necessary to make the findings of fact'' (paragraph (b)(2)). Paragraph (b)(3) then specifies, ''The decision [of the ALJ] will not contain conclusions as to whether any preliminary condition or prescription should be adopted, modified, or rejected, or whether any proposed alternative should be adopted or rejected.'' The experience of the Departments to date is that ALJs well understand the limitations on their authority under EPAct.

These commenters suggested further that 7 CFR 1.631(j), 43 CFR 45.31(j), and 50 CFR 221.31(j) be amended to specify that the ALJ is empowered, not just to ''[t]ake any action authorized by law,'' but in particular, to ''summarily dispose of a proceeding, or part of a proceeding,'' as provided under a comparable provision in the FERC procedural regulations, citing 18 CFR 385.504(b)(9). The commenters suggested that a new provision be added that lays out the procedures for summary disposition, either on motion of a party or at the initiative of the ALJ, following the example of the FERC regulations at 18 CFR 385.217.

The Departments agree that ALJs have the inherent authority to summarily dispose of a proceeding that fails to raise legitimate disputed issues of material fact; failure to raise such issues means the ALJ lacks jurisdiction to hear the matter. ALJs have recognized and used this authority in ruling on motions to dismiss in trial-type-hearings conducted under the interim final rules. The Departments conclude that adding language to the regulations to make this authority explicit would be beneficial and thus are adding a new paragraph (j) expressly setting forth this authority.

However, the Departments find it unnecessary to add a provision to these regulations comparable to 18 CFR 385.217. The term ''disputed issue of material fact'' has a distinct legal meaning in the context of these regulations, and whether or not such issues have been presented determines whether the ALJ has jurisdiction to hear any part of the matter. The inquiry is governed by the particular definition of ''material fact'' and related parameters set forth in these regulations. It would be confusing to litigants to set forth a new provision that uses a similar phrase in a different context (''genuine issue of fact material to the decision of a proceeding or part of a proceeding''), as the referenced FERC provision (or FRCP 56) does.

7 CFR 1.635 What are the requirements for motions?

43 CFR 45.35 What are the requirements for motions?

50 CFR 221.35 What are the requirements for motions?

Paragraph (a)(2)(iii) in the interim regulations imposed a 10-page limit for motions, but the regulations contained no page limit for responses. The revised interim final regulations increase the page limit for motions in paragraph (a)(2)(iii) to 15 pages, including supporting arguments, and impose the same page limit for responses to motions in paragraph (c).

7 CFR 1.640 What are the requirements for prehearing conferences?

43 CFR 45.40 What are the requirements for prehearing conferences?

50 CFR 221.40 What are the requirements for prehearing conferences?

Two minor changes have been made to these sections. As mentioned previously, paragraph (a) has been revised to set the date for the initial prehearing conference at about 20 days after the effective date—rather than after ''issuance''—of the referral notice under 7 CFR 1.626(c)(4), 43 CFR 45.26(c)(4), or 50 CFR 221.26(c)(4). And the list of topics to be covered in the initial prehearing conference under paragraph (a)(1)(iv) has been revised by adding the exchange of exhibits that will be offered as evidence under 7 CFR 1.654, 43 CFR 45.54, and 50 CFR 221.54.

Some commenters suggested that parties to a trial-type hearing be required to make ''all reasonable efforts'' to resolve procedural disputes before the pre-hearing conference, which they reason is critical to the effective conduct of that conference. HRC Comments at 47. The Departments believe the existing requirement that parties make ''a good faith effort'' is sufficient.

The same commenters suggested that the scope of the prehearing conference be limited to issues raised in each party's hearing requests or intervention and response. The commenters reasoned that this limitation is necessary to ensure that parties are not burdened with discussing matters beyond their expertise.

The Departments agree with this proposal in part and have revised paragraph (d) to provide that ''(e)ach party's representative must be fully prepared for a discussion of all issues *pertinent to that party that are* properly before the conference, both procedural and substantive.'' To promote administrative efficiency and judicial economy, ALJs must have the discretion to address any issue properly before the prehearing conference, and each party's representative must be fully prepared to discuss issues raised by the ALJ that are pertinent to that party.

These commenters further stated that parties to a trial-type hearing should always have the option of participating in the prehearing conference via telephone. They argued that prohibiting participation by telephone could create an unfair advantage for parties that have a greater ability to travel.

The revised interim final rule confirms that the prehearing conference will ordinarily be held via telephone, but preserves the flexibility established in the interim final rules for the ALJ to set the venue for a prehearing conference. This flexibility is important for cases where the ALJ and the parties would benefit from participating in a prehearing conference in person. The ALJ must retain the discretion to make this determination. In-person prehearing conferences may be justified in various circumstances, including cases where parties are located in close geographic proximity or where a large number of parties must interact with each other and the ALJ to resolve procedural and substantive issues.

Finally, the commenters suggested that the final rules allow a party who shows ''good cause'' for not attending a prehearing conference to object to any agreements or orders resulting from the prehearing conference. HRC Comments at 48–49. The commenters reasoned that parties are given only a few days' notice prior to the prehearing conference and may not be able to attend due to preexisting or unforeseen circumstances, such as lack of resources, travel delays, or medical emergencies.

The ALJ's ability to manage attendance at the prehearing conference is critical to ensuring timely resolution of issues in these expedited trial-type hearings. The revised interim final rules do not adopt the commenters' suggestion, but preserve the ALJ's discretion to accommodate a party who fails to attend a prehearing conference by not waiving that party's objection to any agreements or orders resulting from the conference. Parties may notify the ALJ if they have concerns about the schedule for the prehearing conference or will be unable to attend.

7 CFR 1.641 How may parties obtain discovery of information needed for the case?

43 CFR 45.41 How may parties obtain discovery of information needed for the case?

50 CFR 221.41 How may parties obtain discovery of information needed for the case?

Minor editorial changes have been made to paragraphs (a)(1), (a)(2), (g), and (h)(1) in these regulations for greater clarity. The latter three changes are intended to clarify that paragraphs (g) and (h) are not separate bases for discovery but are subject to and further qualify the general provisions in paragraphs (a) and (b) applicable to all discovery requests.

As mentioned previously, paragraph (d) has been revised to set the deadline for discovery motions at 7 days after the effective date—rather than after the ''issuance''—of the referral notice under 7 CFR 1.626(c)(4), 43 CFR 45.26(c)(4), or 50 CFR 221.26(c)(4).

Paragraph (h)(4) has been added to provide that, unless otherwise agreed to by the parties or authorized by the ALJ upon a showing of extraordinary circumstances, a deposition is limited to 1 day of 7 hours. This limitation is modeled on FRCP 30(d)(2).

Some commenters recommended that discovery be authorized to begin immediately upon referral of a case to an ALJ, and argued that requiring authorization from an ALJ or agreement of the parties (as the current regulations do) needlessly limits discovery rights. The commenters recommended that the Departments adopt the approach of the FERC regulations at 18 CFR 385.402(a) and 385.403(a), which authorize discovery to begin without the need for ALJ involvement unless there are discovery disputes.

The Departments disagree that the regulations should be changed. As noted in the preamble to the interim final rules, discovery procedures must be limited in this specialized trial-type hearing context to fit within the expedited time frame mandated by section 241 of EPAct. See 70 FR at 69812. In addition, discovery must be carefully managed to ensure that it is appropriate in light of the particular history of the underlying licensing proceeding. In most cases, the licensing proceeding will have been ongoing for a number of years, and the parties will be familiar with the key documents and issues that have been developed. Further, the Department will have already filed an administrative record to support its preliminary condition or prescription, thus making wide-ranging discovery unnecessary.

Moreover, the current regulations already provide for discovery to begin promptly and continue for an adequate time. Where the parties agree, discovery may begin right away, without a need for an authorizing order of the ALJ. Any discovery motions must be expeditiously filed, within 7 days of referral of the case to the ALJ. This prompt filing enables the parties to begin as soon as possible to formulate their discovery requests and to review one another's discovery requests. See 7 CFR 1.641(d), 43 CFR 45.41(d), 50 CFR 221.41(d).

The regulations further require the parties to make a good faith effort to reach agreement regarding discovery prior to the prehearing conference. See 7 CFR 1.640(d)(2), 43 CFR 45.40(d)(2), 50 CFR 221.40(d)(2). Because the scope

of discovery is necessarily limited, as discussed above, the default date for the close of discovery (25 days after the prehearing conference, see 7 CFR 1.641(i), 43 CFR 45.41(i), 50 CFR 221.41(i)) should ordinarily be sufficient. However, the revised interim final regulations allow the ALJ to adjust the dates for key events, such as the prehearing conference and close of discovery, where appropriate.

These commenters also suggested that the Departments should model the trial-type hearing discovery procedures on the FERC rules at 18 CFR part 385, subpart D. The Departments do not find it necessary to adopt procedures developed in the much broader FERC context. For the reasons discussed above, the limited procedures under these regulations are appropriate and adequately flexible for expedited trial-type hearing proceedings.

Moreover, contrary to the commenters' suggestions, the procedures for initiating discovery under these regulations are not more onerous than FERC's. Discovery under the FERC procedures is not necessarily automatic, as Rule 410 of the FERC procedures states that a presiding officer ''may, by order, *deny or limit* discovery'' in order, among other things, to ''protect a participant or other person from undue annoyance, burden, harassment or oppression'' and ''prevent undue delay in the proceeding.'' 18 CFR 385.410(c) (emphasis added). See also 18 CFR 402(a) (scope and right of discovery is dependent upon any relevant orders of the presiding officer). Further, similar to the requirement in the Departments' regulations that discovery issues be addressed at the prehearing conference, the FERC regulations provide that the presiding officer may hold a ''discovery conference'' for the purpose of resolving disputes or ''scheduling discovery.''

The mechanisms included in these regulations are also similar to those under the FRCP. See Rule 26(d) (providing that, for most kinds of cases, parties are prohibited from directing discovery requests to other parties prior to conferring with other parties to develop a proposed discovery plan under Rule 26(f)).

For these reasons, no changes to the discovery provisions are needed.

7 CFR 1.642 When must a party supplement or amend information it has previously provided?

43 CFR 45.42 When must a party supplement or amend information it has previously provided?

50 CFR 221.42 When must a party supplement or amend information it has previously provided?

Paragraph (b)(1) of these regulations has been revised to give the parties 10 days after the completion of discovery to update their witness and exhibit lists, as compared to 5 days in the interim regulations. The same change has been made to 7 CFR 1.652(a)(1)(iii), 43 CFR 45.52(a)(1)(iii), and 50 CFR 221.52(a)(1)(iii) concerning the submission of written testimony. The additional time will assist the parties in preparing their cases for trial.

This change will add 5 days to the overall hearing process, in addition to the 5 days added by 7 CFR 1.622(a)(1)(ii), 43 CFR 45.22(a)(1)(ii), and 50 CFR 221.22(a)(1)(ii) concerning notices of intervention and responses. A diagram of the trial-type hearing process under these revised interim final rules is found in the discussion of 7 CFR 1.660, 43 CFR 45.60, and 50 CFR 221.60, below.

7 CFR 1.643 What are the requirements for written interrogatories?

43 CFR 45.43 What are the requirements for written interrogatories?

50 CFR 221.43 What are the requirements for written interrogatories?

A new paragraph (a)(2) has been added to these regulations, stating that, unless the parties agree otherwise, a party may propound no more than 25 interrogatories, counting discrete subparts as separate interrogatories, unless the ALJ approves a higher number upon a showing of good cause. This limitation is modeled on FRCP 33(a).

7 CFR 1.644 What are the requirements for depositions?

43 CFR 45.44 What are the requirements for depositions?

50 CFR 221.44 What are the requirements for depositions?

Some commenters suggested that the regulations pose unnecessary hurdles to parties wishing to participate in a deposition via telephonic conference call, to record a deposition on videotape, or to offer testimony during the trial via telephone. They stated that the regulations, as written, allow parties to block others from participating in depositions and at the hearing via telephone, which may prejudice parties who lack the means to participate in person. The commenters stated that no party should be allowed to veto another's ability to participate by conference call or video conference, and the ALJ should not be allowed to prohibit witnesses from submitting testimony by telephone or video, in light of advances in technology.

Specifically, the commenters suggested that the language ''if agreed to by the parties, or approved in the ALJ's order'' in paragraph (c)(4) of these regulations be struck from the provision regarding the participation in depositions by telephonic means and that the phrase ''subject to any conditions the parties may agree to or the ALJ may impose'' in paragraph (g) be struck from the provision regarding recording of depositions on videotape. The commenters also recommended that the phrase ''the ALJ may by order allow'' be struck from 7 CFR 1.652(c), 43 CFR 45.52(c), and 50 CFR 221.52(c) and be replaced with the phrase ''the ALJ will allow'' in the provision regarding allowing witness testimony by telephonic conference call during the trial.

The Departments disagree that the regulations need to be amended. As written, the regulations do not prevent parties from participating in depositions via telephonic conference call, from recording depositions on videotape, or from offering testimony during the trial via telephone or video recording. Rather, the regulations offer parties the opportunity to address such matters by agreement. If the parties are unable to agree, the regulations appropriately allow the ALJ to manage these matters within his or her discretion, with input from the parties as appropriate. Because the ALJ will be in the best position to evaluate the parties' relative abilities to participate and the other needs in the case (need for expedition versus need for live testimony, availability of technologies, costs, etc.), this issue is best addressed on a case-by-case basis, as the current regulations contemplate.

7 CFR 1.647 What are the requirements for subpoenas and witness fees?

43 CFR 45.47 What are the requirements for subpoenas and witness fees?

50 CFR 221.47 What are the requirements for subpoenas and witness fees?

Minor editorial changes have been made to paragraph (a)(1) and (a)(2) of these regulations to clarify that, while it is up to each party to decide whether or

not it wishes to have a subpoena issued, a party may obtain a subpoena only by filing a motion with the ALJ.

7 CFR 1.650 When and where will the hearing be held?

43 CFR 45.50 When and where will the hearing be held?

50 CFR 221.50 When and where will the hearing be held?

As revised, paragraph (a) of these regulations states that the hearing will be held at the time and place set during the prehearing conference, generally within 25 days after the completion of discovery, an increase from the 15 days provided in the interim regulations. This 25-day period includes the 5 days previously added by 7 CFR 1.642(b)(1), 43 CFR 45.42(b)(1), and 50 CFR 221.42(b)(1) concerning updated witness and exhibit lists, so the net increase is a further 5 days, to assist the parties in preparing their cases for trial.

Thus, the regulatory changes discussed to this point add a total of 15 days to the overall hearing process: 5 days for the notice of intervention and response under 7 CFR 1.622(a)(1)(ii), 43 CFR 45.22(a)(1)(ii), and 50 CFR 221.22(a)(1)(ii); 5 days for the updated witness and exhibit lists under 7 CFR 1.642(b)(1), 43 CFR 45.42(b)(1), and 50 CFR 221.42(b)(1); and 5 days for the start of the hearing under 7 CFR 1.650, 43 CFR 45.50, and 50 CFR 221.50. See the trial-type hearing process diagram in the discussion of 7 CFR 1.660, 43 CFR 45.60, and 50 CFR 221.60, below.

Some commenters observed that the interim regulations are silent on the location of the trial-type hearing, other than stating that the location will be decided at the prehearing conference. They suggested that each hearing be held in a field location commonly used by the parties to discuss matters concerning the hydropower project that is the subject of the hearing or, if such a locale is not possible, in Washington, DC. The commenters thus recommended that paragraph (a) of these regulations be amended to include as a final sentence, ''A location local to the project and convenient to the parties will be preferred.'' HRC Comments at 46.

The Departments agree that the hearings should be held in a location that is convenient to the parties whenever possible. However, no change in the regulatory language is necessary. As the rule is currently written, the ALJ has discretion to manage hearing locations. As the ALJs have done in prior cases, the Departments expect that an ALJ will take into consideration factors such as convenience to the parties and to the ALJ, the location of witnesses, and the availability of adequate hearing facilities when determining the location of a hearing.

7 CFR 1.651 What are the parties' rights during the hearing?

43 CFR 45.51 What are the parties' rights during the hearing?

50 CFR 221.51 What are the parties' rights during the hearing?

Paragraph (a) of these regulations has been revised to clarify that the parties' right to present evidence is qualified by the requirements of other regulations governing the parties' initial pleadings and prehearing submissions.

7 CFR 1.652 What are the requirements for presenting testimony?

43 CFR 45.52 What are the requirements for presenting testimony?

50 CFR 221.52 What are the requirements for presenting testimony?

Two changes have been made to these sections with respect to written direct testimony. First, paragraph (a) has been revised to distinguish between direct testimony for each party's initial case and direct rebuttal testimony. As revised, the regulations provide that all direct testimony for each party's initial case must be prepared and submitted in written form; it will be up to the ALJ to decide whether to allow rebuttal testimony, and if so, whether to require that it be submitted in written form also.

Second, as previously mentioned, paragraph (a)(1)(iii) has been revised to increase from 5 days to 10 days the time that the parties have to submit their written testimony. These are the same additional 5 days provided by revised 7 CFR 1.642(b)(1), 43 CFR 45.42(b)(1), and 50 CFR 221.42(b)(1) concerning updated witness and exhibit lists, and they do not further extend the overall hearing process.

7 CFR 1.657 Who has the burden of persuasion, and what standard of proof applies?

43 CFR 45.57 Who has the burden of persuasion, and what standard of proof applies?

50 CFR 221.57 Who has the burden of persuasion, and what standard of proof applies?

The interim regulations specified that the standard of proof applicable to a trial-type hearing is a preponderance of the evidence. The interim final rule did not address the issue of which party bears the burden of proof, other than to request comments on that question. 70 FR at 69813.

Commenters generally supported the rule with respect to the standard of proof; and they agreed that the burden of persuasion should be assigned, in accordance with 5 U.S.C. 556(d), to the party that is ''the proponent of [the] rule or order.'' They disagreed, however, as to which party is the ''proponent.''

According to EEI/NHA, ''In the mandatory conditioning context, the proponent is the Department that seeks to impose a condition on a license.'' EEI/NHA comments at 19. PacifiCorp and Southern Co. filed comments agreeing with EEI/NHA. According to HRC, on the other hand,

> The hearing requester is undoubtedly the proponent of a final decision by the ALJ resolving disputed issues of material facts in the requester's favor. While the Secretary's filing of mandatory conditions gives rise to the dispute, the conditions themselves are not the subject of the hearing. The conditions, and whether they are supported by substantial evidence, are only reviewable under FPA section 313[,] 16 U.S.C. 825*l*. As such, the Secretary is not the proponent of an order by the ALJ in the agency trial-type hearing. Rather, the proponent is the hearing requester.

HRC comments at 32. CBD and GYC filed similar comments on this issue. Other commenters argued that the hearing requester bears the burden of proof that a disputed issue of material fact exists and then the burden shifts to the Department to support its condition or prescription.

The question of which party bears the burden of persuasion has been addressed in six proceedings initiated under the interim final rules. Each of six independent ALJs, including at least one from each Department, concluded that the hearing requester bears the burden of persuasion. *Idaho Power Co.* v. *Bureau of Land Management,* No. DCHD 2006–01 (DOI, May 3, 2006); *In re Idaho Power Co. Hells Canyon Complex,* No. 06–0001 (USDA, May 31, 2006); *In re Klamath Hydroelectric Project,* No. 2006–NMFS–0001 (USCG, July 6, 2006); *Public Service Co. of New Hampshire* v. *U.S. Fish and Wildlife Service,* No. DCHD–2006–02 (DOI, Aug. 9, 2006); *In re Santee Cooper Hydroelectric Project,* No. 2006–NMFS–0001 (USCG, Sept. 15, 2006); *Avista Corp.* v. *Bureau of Indian Affairs,* DCHD–2007–01 (DOI, Nov. 1, 2006).

The Departments concur with HRC and the unanimous position of the ALJs on this issue. That position is consistent with the general rule that the burden of persuasion lies with the party seeking relief. See *Schaffer* v. *Weast,* 546 U.S. 49 (2005) (characterizing 5 U.S.C. 556(d) as applying the general rule and placing the burden of persuasion on parents

challenging an individualized education plan for their child, not on the school district that proposed the plan).

A hearing request under EPAct section 241 is a challenge to the factual basis for a Department's preliminary condition or prescription. The validity of the condition or prescription is not itself at issue, as EPAct allows for a hearing only on disputed issues of material fact, and the ALJ has no authority to adopt, modify, or reject a preliminary condition or prescription. *See* 7 CFR 1.660(b)(3), 43 CFR 45.60(b)(3), 50 CFR 221.60(b)(3). The requester seeks a decision from the ALJ that the facts are different from those assumed by the Department in its preliminary condition or prescription. The requester is thus the party seeking relief, the proponent of the order in the trial-type hearing, and the party that bears the burden of persuasion.

The revised interim final regulations add a new paragraph (a) concerning the burden of persuasion and retain the standard of proof from the interim regulations in paragraph (b). The combined effect of the burden of persuasion and the standard of proof is that, in order for the hearing requester to prevail on any given issue, it must establish by a preponderance of the evidence that the facts are as the requester asserts, rather than as the Department asserts. If the ALJ finds that it is more likely than not that the facts are as the Department asserts, or that the evidence is so closely balanced that there is no preponderance in either direction, the requester will have failed to meet its burden of persuasion and the Department's factual assertions on the issue will stand.

7 CFR 1.659 What are the requirements for post-hearing briefs?

43 CFR 45.59 What are the requirements for post-hearing briefs?

50 CFR 221.59 What are the requirements for post-hearing briefs?

Paragraph (a)(1) of these regulations has been revised to increase the time that the parties have to file their post-hearing briefs from 10 days to 15 days. This change will add 5 days to the overall hearing process, beyond the 15 days added by regulatory changes discussed previously. See the trial-type hearing process diagram, below.

7 CFR 1.660 What are the requirements for the ALJ's decision?

43 CFR 45.60 What are the requirements for the ALJ's decision?

50 CFR 221.60 What are the requirements for the ALJ's decision?

Commenters raised a number of issues related to these regulations, including the timing and finality of the ALJ's decision and the ability of an ALJ from one Department to render a decision for another Department.

Timing of the ALJ's decision in relation to the TTH process. The interim regulations provided that the ALJ must issue a decision within 30 days after the close of the hearing or 90 days after issuance of the referral notice, whichever occurs first. As explained in the preamble to the interim final rules, the Departments interpreted EPAct's requirement of ''an agency trial-type hearing of no more than 90 days'' as mandating that the portion of the overall hearing process from referral to the ALJ to final decision be completed within 90 days. This, in turn, necessitated a highly compressed schedule for the prehearing conference, discovery, written testimony, and post-hearing briefing, so that the ALJ could meet the 90-day deadline for issuing a decision.

The Departments received numerous comments about the tight time frames in the interim regulations and also received several suggestions for revisions extending certain procedural steps. In particular, several commenters argued that the time for the ALJ's decision should fall outside the 90-day hearing time frame. EEI/NHA argued that the Departments had misconstrued the statute on this issue:

> [T]he extraordinarily compressed hearing schedule is inconsistent with the plain language of section 241, which provides that a ''determination on the record,'' *i.e.,* the ALJ's decision, shall occur ''after opportunity for agency trial-type hearing . . . .'' Therefore, the statute expressly requires that the ALJ's ''determination on the record'' be made after completion of the hearing, not during the hearing process itself.

EEI/NHA Comments at 12. EEI/NHA buttressed their argument by relying on the distinction between hearings, which are governed by one section of the APA, 5 U.S.C. 556, and decisions, which are governed by another, 5 U.S.C. 557. Reading EPAct and the APA together, EEI/NHA concluded that

> the rule should be revised to require that only the hearing process itself, as defined by section 556 of the APA, be conducted within the 90-day limit. It is plainly inconsistent with the structure of the APA to include the briefing and decision-making process within the 90-day limit.

EEI/NHA Comments at 14. Commenters also argued that the 90-day hearing clock should exclude discovery, begin to run with the submission of written direct testimony, and close after rebuttal testimony and cross-examination.

The Departments agree in part. The provisions of EPAct and the APA that the commenters cite do provide a basis for considering the post-hearing briefing and decision stages of the hearing process to be outside the 90-day requirement. However, other provisions of EPAct militate against EEI/NHA's expansive view that the 90-day period should not begin until discovery and other prehearing stages have been completed, and that the briefing and decision stages should extend for 75 days beyond the end of the 90-day period.

First, EPAct required the three Departments to ''establish jointly, by rule, the procedures for such expedited trial-type hearing, including the opportunity to undertake discovery and cross-examine witnesses.'' A schedule that allowed 90 days just for the taking of evidence at the hearing could hardly be considered ''expedited.'' Moreover, the statute's specific mention of discovery indicates that Congress intended the 90 days to cover both prehearing and hearing procedures.

Second, EEI/NHA cites APA section 557 to support its argument that post-trial briefing should not be considered part of the 90-day hearing process, but rather part of the ''decision.'' EEI/NHA notes that this separate section addressing decisions specifically affords parties the opportunity to offer proposed findings of fact and conclusions. The relevant APA section, however, is 557(c), which expressly applies only to ''a recommended, initial, or tentative decision, or a decision on agency review of the decision of subordinate employees.'' 5 U.S.C. 557(c). The ALJ's opinion in an EPAct trial-type hearing does not fall within any of these decisional categories. The preamble to the interim final rules recognized that the EPAct trial-type hearing decision is not the type contemplated by section 557(c). 70 FR at 69814. And at least one ALJ has recognized the unique nature of EPAct trial-type hearings, noting in the burden of proof context that the hearing provisions of the APA ''do not however directly or clearly apply to the postures of the parties in this unique new proceeding authorized by the EPAct.'' *Avista Corp.* at 6.

Third, EPAct section 241 requires that the trial-type hearing be conducted ''within the time frame established by

[FERC] for each license proceeding.'' A hearing process extending more than 6 months after referral of the case to the ALJ, as urged by EEI/NHA, would be difficult to square with this Congressional mandate in many cases. Indeed, as noted previously in connection with 7 CFR 1.623, 43 CFR 45.23, and 50 CFR 221.23, several procedural steps remain to be completed after issuance of the ALJ's opinion; and many, if not all, of these subsequent steps are dependent on receipt of the ALJ's opinion. Excluding discovery and post-trial briefing from the 90-day time frame and expending 90 days solely on the presentation of testimony and evidence would extend the hearing process, push back these subsequent steps, and create delays in the licensing process—a result that Congress clearly sought to avoid.

In any event, EPAct requires the Departments to afford license parties an ''opportunity for an agency trial-type hearing of *no more than* 90 days'' (emphasis added). This language leaves it to the Departments' discretion whether the hearing, even excluding post-hearing briefing and the ALJ's decision, will take the full 90 days or something less than 90 days.

In light of the competing considerations, the Departments have decided to extend some of the time frames in the hearing process that seemed particularly tight. As noted previously, 5 days have been added to the period for filing a notice of intervention and response, which occurs before the case is referred to the ALJ. Five days each have likewise been added to the periods for filing updated witness lists, exhibit lists, and written testimony, for commencing the hearing, and for filing post-hearing briefs, all of which occur after the case has been referred to the ALJ.

Under this schedule, assuming a 5-day evidentiary hearing, the post-hearing briefs would be filed about 90 days after the case has been referred to the ALJ, as opposed to 75 days under the interim regulations. Under revised 7 CFR 1.660(a)(1), 43 CFR 45.60(a)(1), and 50 CFR 221.60(a)(1), the ALJ would then have 15 days after the deadline for filing the post-hearing briefs, which is 30 days from the close of the hearing, to render his or her decision. This timing means that the ALJ decision would be issued within 105 days after the case was referred to him or her. If necessitated by the length of the evidentiary hearing, the desirability of reply briefs, or other circumstances, the ALJ could extend the deadline for his or her decision under revised 7 CFR 1.631(c), 43 CFR 45.31(c), and 50 CFR 221.31(c), but not past 120 days after the case was referred to the ALJ, under 7 CFR 1.660(a)(2), 43 CFR 45.60(a)(2), and 50 CFR 221.60(a)(2).[3]

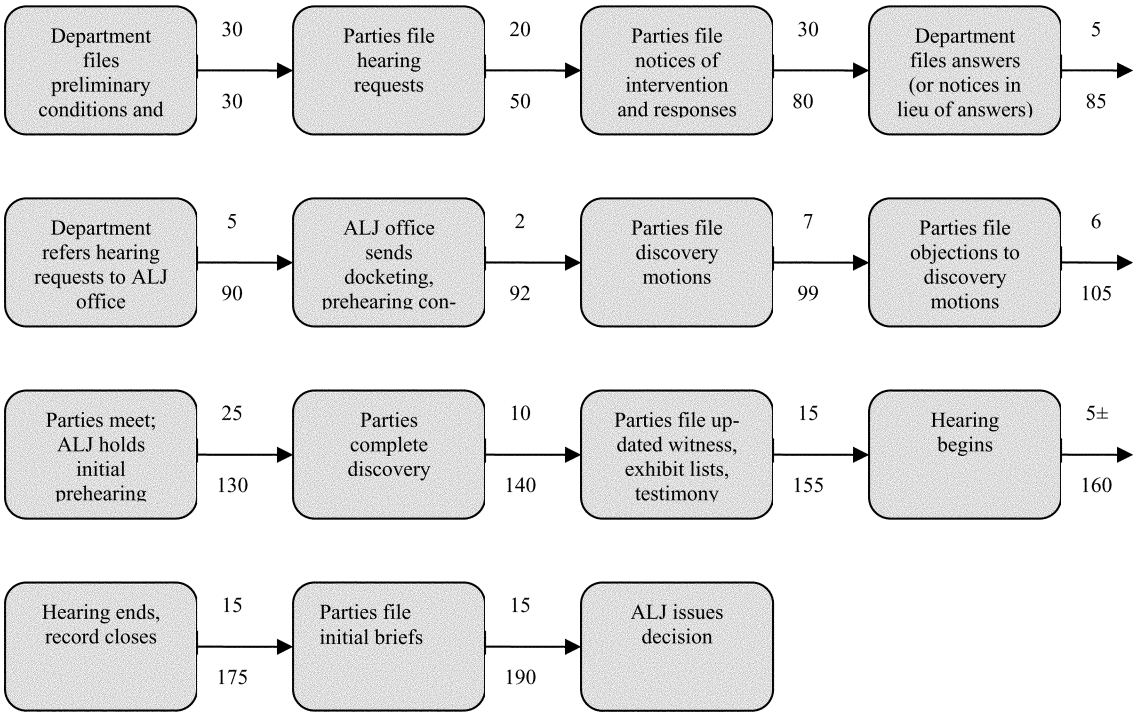
Thus, the Departments have decided to keep the (initial) post-hearing briefing within the 90-day schedule; but based on EEI/NHA's argument, have allowed the ALJ 15 to 30 days past the 90-day period to render his or her decision. Even if the ALJ takes the full 30 days, resulting in a decision 120 days after the case was referred, the decision would come before comments are due to FERC on its draft NEPA document under FERC's usual schedule set forth in 18 CFR 5.25(c). Even as extended, therefore, the trial-type hearing can be conducted ''within the time frame established by [FERC] for each license proceeding,'' as required by EPAct.[4]

The following diagram shows the overall trial-type hearing process under the revised interim final rules. The number above each arrow shows the maximum number of days normally allowed from the completion of the previous step to the completion of the next step, while the number below each arrow shows the cumulative number of days from the beginning of the trial-type hearing process to the completion of the next step in the process.

[3] The only exception would be if the ALJ has to be replaced under 7 CFR 1.632, 43 CFR 45.32, or 50 CFR 221.32 dealing with unavailability or 7 CFR 1.633, 43 CFR 45.33, or 50 CFR 221.33 dealing with disqualification.

[4] As noted above, a trial-type hearing process could be stayed for settlement negotiations up to 120 days under revised 7 CFR 1.624, 43 CFR 45.24, or 50 CFR 221.24, further extending the overall hearing process, but only if FERC revises the time frame for the license proceeding to accommodate the stay period and any subsequent hearing process required if settlement discussions fail.

Trial-Type Hearing Process



Timing of the ALJ's decision in relation to FERC's NEPA process. The Hoopa Valley Tribe (HVT) raised a concern that, under the regulatory schedule, FERC will prepare its draft EIS at the same time the ALJ is resolving disputed material facts relating to the environment. HVT comments at 2. The Departments acknowledge that, in a given case, the ALJ's resolution of disputed factual issues may affect the timing for completing the NEPA analysis and document. Therefore, on a case-by-case basis, FERC should consider whether supplemental NEPA analysis is appropriate and proceed to supplement when a resolution of disputed factual issues results in substantial changes that are relevant to environmental concerns.

Finality of the ALJ's decision. Some commenters recommended that the regulations be changed to provide that factual findings of an ALJ are advisory to the Secretaries of the Departments involved, rather than final. They contended that the Secretaries may not lawfully recognize an ALJ's finding of facts as binding, particularly where the findings are rendered by the designated ALJ of a different Department in a consolidated case. The commenters also disputed that ALJ findings may be fairly characterized as wholly factual and devoid of substantive legal rulings. Finally, the commenters contended that there is no precedent for the approach taken in the interim rules, and they pointed to the advisory nature of decisions of FERC's Dispute Resolution Panel (under 18 CFR 5.14). Specifically, the commenters suggested amending paragraph (d) of these regulations by changing the title from ''Finality'' to ''Review,'' striking from the first sentence the word ''final,'' and replacing it with the term ''advisory.''

Regardless of what practice is followed for other aspects of the licensing process before FERC, EPAct mandates that disputed issues of material fact with respect to conditions and prescriptions ''*shall be determined* in a single trial-type hearing'' conducted by the relevant Department. 16 U.S.C. 797(e), 811 (emphasis added). The Departments have reasonably construed the statutory language to require that the factual findings of an ALJ be used by the Secretaries of the Departments involved in developing modified conditions and prescriptions.

The Departments' view is supported by the district court's holding in *American Rivers:*

> [T]he Energy Policy Act explicitly provides that '[a]ll disputed issues of material fact raised by any party shall be determined in a single trial-type hearing' and makes no provision for appeals of that determination. By making the ALJ's decision on factual issues final, it appears that the departments are simply interpreting what Congress has mandated and establishing agency procedures for fulfilling this mandate.

2006 WL 2841929, * 7.

The Secretaries' authority to determine whether to issue mandatory conditions and prescribe fishways is not undercut by this approach. While the ALJ may determine specific facts, the resource agencies retain the responsibility of determining the weight and significance to be accorded such facts in finalizing mandatory conditions or prescriptions, in light of the resource agencies' objectives for the resources they manage. The Departments also have an obligation to ensure that their modified conditions and prescriptions are supported by substantial evidence as informed by all relevant information in the administrative record, which may include new information that was not available during the hearing.

The Departments also note that, contrary to the commenter's suggestion, both EPAct and the interim final regulations clearly preserve the Secretaries' discretion to determine whether to issue conditions or prescriptions and how to structure them. The regulations are clear that the ALJ is empowered to render only factual findings. While conclusions of law necessary to reach those findings (such as rulings regarding the admissibility of evidence) may be made, the ALJs may not include substantive legal conclusions with their final determinations.

Nevertheless, to avoid confusion over different possible meanings of the term ''final,'' the Departments have revised

paragraph (d) to state that the ALJ's decision with respect to the disputed issues of material fact ''will not be subject to further administrative review.''

Ability of an ALJ from one Department to render a decision for another Department. With respect to the commenters' objection that an ALJ in one Department may not render findings of fact that would be determinative for another Department, the Departments respond that this would happen only where cases have been consolidated due to the commonality of some of the issues. Consolidation in these circumstances will benefit both the Departments and the parties by avoiding duplication of effort, scheduling conflicts, and the risk of inconsistent results. The court in *American Rivers* recognized consolidation as a valid practice.

As amended by EPAct, FPA sections 4(e) and 18 provide that ''[a]ll disputed issues of material fact raised by any party shall be determined in a single trial-type hearing *to be conducted by the relevant resource agency in accordance with the regulations promulgated under this subsection* . . . '' 16 U.S.C. 797(e), 811 (emphasis added). Thus, when the Departments decide to consolidate hearing requests under these regulations and refer them to a single ALJ, they are exercising the authority given them by Congress to determine the relevant resource agency to conduct the hearing on their behalf. Such arrangements are also authorized by the Economy Act, 31 U.S.C. 1535.

The interim final rules explained that hearing requests received by NOAA would be referred to an appropriate ALJ office outside the Department of Commerce because neither NOAA nor the Department of Commerce has a staff of ALJs. See 70 FR at 69810. NOAA is taking this opportunity to clarify that, for any trial-type hearings arising with respect to NOAA conditions or prescriptions under FPA sections 4(e) or 18, the United States Coast Guard Office of Administrative Law Judges, within the Department of Homeland Security, is an appropriate forum.

Authority to refer trial-type hearings involving NOAA under the FPA to the Coast Guard's Office of ALJs is set forth at 15 U.S.C. 1541, which provides that,

> with respect to any marine resource conservation law or regulation administered by the Secretary of Commerce acting through the National Oceanic and Atmospheric Administration, all adjudicatory functions which are required by chapter 5 of Title 5 to be performed by an Administrative Law Judge may be performed by the United States Coast Guard on a reimbursable basis.

Coast Guard ALJs have thus handled proceedings as needed with respect to several hearing requests arising under the interim final regulations.

Other changes. The revised interim final regulations make a few additional changes to 7 CFR 1.660, 43 CFR 45.60, and 50 CFR 221.60. They add a new paragraph (c)(2), requiring the ALJ to prepare a list of all the documents that constitute the complete record for the hearing process and to certify that the list is complete. Under paragraph (c)(3), that list is then sent along with the record to FERC for inclusion in the record for the license proceeding. Two new sentences are added to paragraph (c)(3), specifying what documents should be forwarded to FERC for cases in which a settlement is reached.

7 CFR 1.671 How do I propose an alternative?

43 CFR 45.71 How do I propose an alternative?

50 CFR 221.71 How do I propose an alternative?

As with the change to 7 CFR 1.621(a)(2), 43 CFR 45.21(a)(2), and 50 CFR 221.21(a)(2) discussed above, paragraph (a)(2) of these regulations has been revised to provide a longer period of time—60 days as compared to 30 days—for a license party to submit a proposed alternative condition or prescription to a Department in cases where the Department is exercising its reserved authority after issuance of a license under 7 CFR 1.601(d)(2), 43 CFR 45.1(d)(2), or 50 CFR 221.1(d)(2).

Several commenters requested that the Departments extend the deadline for filing alternative conditions and prescriptions because they believe the interim regulations do not provide sufficient time to prepare alternatives or attempt informal resolution of contested issues. Specifically, these commenters suggested that the Departments extend the existing deadline for filing alternatives from 30 days to 45 days

The Departments have decided to retain a concurrent filing deadline for requests for hearings and proposals of alternative conditions. As explained in the preamble to the interim final rules, the 30-day deadline for filing alternative conditions and prescriptions provides several benefits for the parties, FERC, and the Departments. See 70 FR 69807. Among these benefits are, first, that early submission of proposed alternatives helps ensure that such proposals are available to FERC during the development of its draft NEPA document. Second, the concurrent filing may help inform any settlement negotiations, thus potentially avoiding the need for a trial-type hearing.

Both of these concerns remain relevant and have been reaffirmed in the Departments' experience implementing the interim final regulations. In practice, there have been a number of cases where the relevant parties were able to settle disputes without the need for a trial-type hearing. In several of those cases, the Departments found that having proposed alternatives in hand to review along with the hearing request furthered the goal of identifying conditions and prescriptions that achieved necessary resources protection while avoiding litigation.

Also in practice, parties did not appear to be unduly burdened by the requirement to concurrently file hearing requests with proposed alternatives, as reflected in the number of alternatives filed in a timely manner. We previously noted how proposed alternatives may factor into settlement discussions (see discussion of 7 CFR 1.625, 43 CFR 45.25, and 50 CFR 22.25).

A diagram of the overall alternative condition and prescription process under these revised interim final rules is found in the discussion of 7 CFR 1.673, 43 CFR 45.73, and 50 CFR 221.73, below.

7 CFR 1.672 May I file a revised proposed alternative?

43 CFR 45.72 May I file a revised proposed alternative?

50 CFR 221.72 May I file a revised proposed alternative?

These sections are new. They provide that, within 20 days after issuance of the ALJ's decision in a trial-type hearing, a license party may file a revised alternative condition or prescription, if two conditions are met. First, the party must have previously filed a proposed alternative under 7 CFR 1.671, 43 CFR 45.71, or 50 CFR 221.71. And second, the revised proposed alternative must be designed to respond to one or more specific findings of fact by the ALJ.

These sections afford an opportunity to license parties who have previously proposed an alternative to submit a revised alternative, if the facts as found by the ALJ following the trial-type hearing are different from those assumed by the party as the basis for its original alternative. The revised proposed alternative must identify the specific ALJ findings that it addresses and how the revised alternative differs from the original alternative. Filing a revised alternative will constitute a withdrawal of the original alternative.

7 CFR 1.673 When will the Forest Service file its modified condition or prescription?

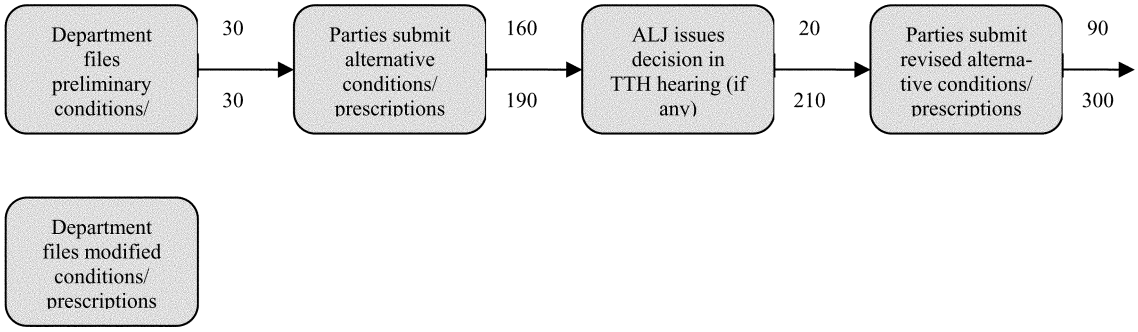
43 CFR 45.73 When will the bureau file its modified condition or prescription?

50 CFR 221.73 When will NMFS file its modified condition or prescription?

These sections have been redesignated because of the insertion of the revised proposed alternative provisions just discussed. They have also been renamed to focus on the timing of the Department's filing of its modified condition or prescription. Under paragraph (a), the Department will generally take action on any proposed alternative and file its modified condition or prescription within 60 days after the deadline for filing comments on FERC's draft NEPA document under 18 CFR 5.25(c) unless additional time is needed to complete supplemental analysis of the modified condition or prescription. This will typically be 75–90 days after the deadline for the parties to file revised alternatives under 7 CFR 1.672, 45 CFR 45.72, or 50 CFR 221.72, depending on when the ALJ decision is issued and any necessary supplemental analysis is completed. However, under new paragraph (b), if the Department needs additional time to complete the steps set forth in paragraph (a), it will so inform FERC within that same 60-day period. *See City of Tacoma.*

The following diagram shows the overall alternative condition and prescription process under the revised rules. The number above each arrow shows the maximum number of days normally allowed from the completion of the previous step to the completion of the next step, while the number below each arrow shows the cumulative number of days from the beginning of the alternatives process to the completion of the next step in the process.

Alternative Condition and Prescription Process



HRC suggested that the regulations expressly provide instructions to parties who wish to submit comments regarding proposed alternative conditions or prescriptions. It noted that the regulations already obligate the Departments to consider ''evidence and supporting material provided by any license party,'' comments on the preliminary condition or prescription, and comments on FERC's draft or final NEPA documents. HRC suggested that the list of material to be considered in reviewing an alternative implies that any comments received on alternatives will be considered, without specifying how that should be done.

HRC proposed that paragraph (a) of these regulations be amended to expressly include comments received on the proposed alternative. It further recommended that a new paragraph (e) be added to provide a discrete comment period on alternative conditions and prescriptions. Such comments, HRC suggested, should be accepted from any member of the public, whether or not they are parties to the license proceeding. According to HRC, the Departments cannot rely solely on comments submitted to the FERC on the draft NEPA document.

Finally, HRC suggested adding a completely new section (to come after 7 CFR 1.671, 43 CFR 45.71, and 50 CFR 221.71) to address how comments on the proposed alternative may be submitted. It suggested that the regulations include: A 60-day comment period on proposed alternatives; filing and service requirements for comments similar to those for proposed alternatives; a requirement that parties provide specific citations to scientific studies, literature, and other documents and to supply copies of materials not already in the licensing proceeding; and a statement that parties may also file comments on the FERC NEPA document addressing the proposed alternative within the time frame established by FERC.

The Departments disagree that a specific comment process for alternatives is needed. The statute lays out specific criteria for acceptance of an alternative, and the existing regulations require that the proponent submit information on each of the criteria. The regulations also require that alternatives and supporting documents be served on each party to the license proceeding, so that interested parties will have notice. Any license party is free to submit comments, either supporting or opposing a proposed alternative; and the Departments will consider comment materials timely submitted by all parties.

As discussed below, the Departments are amending the regulations at 7 CFR 1.674, 43 CFR 45.74, and 50 CFR 221.74 to clarify that they will consider information regarding alternatives submitted by any license party by the close of the FERC NEPA comment period.

7 CFR 1.674 How will the Forest Service analyze a proposed alternative and formulate its modified condition?

43 CFR 45.74 How will the bureau analyze a proposed alternative and formulate its modified condition or prescription?

50 CFR 221.74 How will NMFS analyze a proposed alternative and formulate its modified condition or prescription?

Paragraph (a) of these regulations (redesignated like the previous section), has been revised slightly to clarify that a Department's burden in reviewing any proposed alternatives is to consider evidence and supporting material provided by any license party or otherwise *reasonably* available to the

Department, recognizing that the Department has a limited time to complete its review and prepare the required written analysis.

As mentioned above, a new paragraph (c) has been added to specify that the Department will consider evidence and supporting material provided by any license party by the deadline for filing comments on FERC's draft NEPA document under 18 CFR 5.25(c). Given the complexity of the issues and the volume of material to be analyzed in the typical case, the Departments cannot reasonably be expected to continue to accept and incorporate new information right up until the FERC filing deadline for modified conditions and prescriptions.

Finally, paragraph (d) (as redesignated) has been revised to specify that, if an alternative submitted by a license party under 7 CFR 1.671, 43 CFR 45.71, or 50 CFR 221.71 was subsequently withdrawn, the Department will include in its statement to FERC an explanatory notation that a proposed alternative was voluntarily withdrawn. This provision responds to GAO's recommendation that the Department provide additional information in cases where an alternative was withdrawn, *e.g.,* as the result of settlement negotiations with the Department.

The Departments received comments on various aspects of these regulations, including the consideration to be given alternative conditions and prescriptions, the meaning of ''substantial evidence,'' ''adequate protection,'' and ''cost,'' and the applicability of FPA section 33.

Consideration of alternatives. Some commenters proposed regulatory revisions to this section clarifying that the Department has the right to reject alternatives that do not meet the FPA section 33 criteria for resource protection, cost, and improved project operation, and specifying that the Department must consider all proposed alternatives at the same time. These concepts are already captured by EPAct and these regulations, including the regulatory time frames for submitting and considering alternatives. No additional regulatory language or clarification is necessary.

The same commenters also proposed a two-tiered approach under which alternatives not meeting the section 33 criteria for required acceptance would be moved into a category of alternatives that the Department ''may consider.'' HRC comments at 66. According to this proposal, where multiple alternatives have been submitted that do not meet the statutory criteria for required acceptance, ''[a]ll of these alternatives are then compared to the original condition the Department proposed, and the Department makes a determination as to which best protects the resource.'' HRC comments at 66.

The commenters' proposal appears to impose a new substantive standard for selection of ''second tier'' alternatives—a standard that Congress did not require. These regulations are limited to implementing the specific requirements of section 33. No regulation is needed to address Departmental action where an alternative fails to meet the statutory criteria, as the Departments retain discretion to consider all record documents. The commenters' proposed revisions have not been adopted.

Substantial evidence. Some commenters stated their assumption that the term ''substantial evidence'' in paragraph (b) refers only to the Department's obligation to base any conditions and prescriptions on substantial evidence. To clarify, it is incumbent on the proponent of an alternative to provide the supporting information required by 7 CFR 1.671(b), 43 CFR 45.71(b), or 50 CFR 221.71(b) for the Secretary to consider in determining whether the statutory criteria are met.

Adequate protection. Some commenters suggested that this section clarify the criteria of ''adequate protection'' as specified in EPAct and paragraph (b)(2)(i) of these regulations for adoption of alternative conditions under section 33. They argued that, in light of Endangered Species Act regulations, ''adequate protection'' includes both conservation and recovery of threatened and endangered species.

The ''adequate protection'' standard in section 33(a)(2) applies specifically to the alternatives analysis process for conditions under FPA section 4(e). Section 4(e) in turn authorizes the Secretaries of the Interior, Commerce, and Agriculture to condition hydropower licenses on provisions deemed ''necessary for the *adequate protection* and utilization'' of Federal reservations under their jurisdiction. 16 U.S.C. 797(e) (emphasis added).

Determining what constitutes ''adequate protection'' when developing section 4(e) conditions falls within the sole authority and discretion of the relevant Secretary, and the answer will vary among cases and reservations depending on a variety of factors. Similarly, the relevant Secretary has sole authority and discretion to determine if a proposed alternative condition rises to the level of ''adequate protection.'' As such, the Departments do not believe that further clarification is feasible or necessary.

Cost. The commenters also suggested that determining whether alternative conditions and prescriptions ''cost significantly less to implement'' under section 33 and paragraph (b)(1)(i) of these regulations not be limited to short-term economic considerations, but also include consideration of both the long-term costs of lost resources and the benefits of protection. The Departments agree that the section 33 alternatives process should examine costs in a broader context than simply short-term economic costs to the project operator. No regulatory revision is required, however, to effectuate this point.

Applicability of FPA section 33. Under paragraph (c)(1) of the interim rules, when the Department files its modified condition or prescription, it must also file a written statement explaining the basis for the condition or prescription and the reasons for not adopting any alternative. Under paragraph (d) of the interim rules, the written statement must demonstrate that the Department gave equal consideration to the effects of the modified condition or prescription and any alternative not adopted on energy supply, distribution, cost, and use; flood control; navigation; water supply; air quality; and the preservation of other aspects of environmental quality. Revised versions of these provisions are now found in paragraphs (d) and (e).

Some commenters argued that the plain language of FPA section 33(a)(4) and (b)(4) must be interpreted to require that the Department file a written statement explaining the basis for its condition or prescription and show that it gave ''equal consideration'' to the factors identified in the statute whether or not a party has submitted a proposed alternative condition or prescription. Some commenters further suggested that a statement must be prepared for both preliminary and modified (final) conditions and prescriptions.

The operative statutory language states,

> The Secretary concerned shall submit into the public record of the Commission proceeding with any condition under section 4(e) or alternative condition it accepts under this section, a written statement explaining the basis for such condition, and reason for not accepting any alternative condition under this section. The written statement must demonstrate that the Secretary gave equal consideration to the effects of the condition adopted and alternatives not accepted on energy supply, distribution, cost, and use; flood control; navigation; water supply; and air quality (in addition to the preservation of other aspects of environmental quality); based on such information as may be available to the Secretary, including information voluntarily provided in a timely

manner by the applicant and others. The Secretary shall also submit, together with the aforementioned written statement, all studies, data, and other factual information available to the Secretary and relevant to the Secretary's decision.

16 U.S.C. 823d(a)(4). The language at section 823d(b)(4) (regarding fishway prescriptions) is substantially identical.

The Departments disagree that the statute requires a written statement demonstrating ''equal consideration'' of the statutory factors in cases where no alternatives have been submitted. In determining the plain meaning of statutory language, the reviewing body

should not confine itself to examining a particular statutory provision in isolation. The meaning—or ambiguity—of certain words or phrases may only become evident when placed in context. . . . It is a ''fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme.''

Food and Drug Admin. v. *Brown & Williamson Tobacco Corp.,* 529 U.S. 120, 132–33 (2000), quoting *Davis* v. *Michigan Dept. of Treasury,* 489 U.S. 803, 809 (1989).

Section 33 is entitled ''Alternative conditions and prescriptions,'' and it lays out a sequential series of steps for considering proposed alternatives and reaching a final determination. Section 33(a)(l) permits any party to a hydropower license proceeding to propose an alternative condition. Under section 33(a)(2), the Secretary must accept an alternative if it ''(A) provides for the adequate protection and utilization of the reservation; and (B) will either, as compared to the condition initially [deemed necessary] by the Secretary[,] (i) cost significantly less to implement; or (ii) result in improved operation of the project works for electricity production.'' 16 U.S.C. 823d(a)(2).

When evaluating an alternative, section 33(a)(3) directs the Secretary to consider evidence otherwise available concerning ''the implementation costs or operational impacts for electricity production of a proposed alternative.'' And section 33(a)(4) directs the Secretary to submit a statement ''with any condition under section 4(e) or alternative condition [the Secretary] accepts'' to demonstrate that the Secretary ''gave equal consideration to the effects of the condition adopted and alternatives not accepted.'' 16 U.S.C. 823d(a)(4). Again, the language at section 823d(b) (regarding fishway prescriptions) is substantially identical.

Thus, a contextual analysis of section 33 shows that the equal consideration requirement is triggered by the submission of an alternative condition or prescription. The requirement does not apply at the preliminary condition or prescription stage, since no alternatives have been submitted at that stage. And it does not apply at the modified condition or prescription stage, unless a license party has proposed an alternative.

This contextual analysis of section 33 is buttressed by an important practical consideration. In the absence of an alternative that has been proposed and supported by a license party under 7 CFR 1.671(b), 43 CFR 45.71(b), or 50 CFR 221.71(b), the Departments will generally lack sufficient information about the factors listed in section 33(a)(4) and (b)(4)—energy supply, distribution, cost, and use; flood control; navigation; water supply; air quality; and other aspects of environmental quality—to provide a meaningful equal consideration statement.

Nevertheless, the Departments as a matter of course submit written explanations of the basis for their conditions or prescriptions, together with record materials supporting those conditions or prescriptions. See redesignated 7 CFR 1.674(c)(1)(i), (2); 43 CFR 45.74(c)(1)(i), (2); or 50 CFR 221.74(c)(1)(i), (2). And as a matter of policy, in cases where a Department determines that it has sufficient information and staff resources to provide a meaningful analysis of the statutory factors even in the absence of an alternative, it may do so. No changes to the regulations are needed in response to the commenters' concern.

V. General Comments

A. Disputed Issues of Material Fact

As noted previously, some commenters urged that the final rules provide additional guidance on the types of issues that are appropriate for resolution in a trial-type hearing under EPAct. A ''disputed issue of material fact'' must meet three fundamental requirements: The matter raised must (1) concern a ''fact,'' (2) be ''material,'' and (3) be ''disputed.'' These are distinct inquiries, and all three must be fully considered by an ALJ.

Factuality

In the context of ordinary litigation, an issue of fact is one that would typically be left to a jury in a proceeding where a jury is the trier of fact. *See* William W. Schwarzer, *Summary Judgment under the Federal Rules: Defining Genuine Issues of Material Fact,* 99 FRD. 465, 470 (1984). Schwarzer explains:

The dictionaries define a fact as a thing done, an action performed, or an event or occurrence. One can safely say, therefore, that a dispute over whether a thing was done or an event occurred is an issue of fact. Such facts, which may be called historical facts, are jury issues.

Id.

While this statement provides a useful starting point, the analogy to jury facts may be somewhat confusing in the context of EPAct trial-type hearings because the ALJ is the factfinder. And while Federal litigation may involve a range of issues from purely factual to purely legal, with some mixed issues, trial-type hearings under these rules are limited to resolving ''disputed issues of material fact.'' Clear and specialized standards must be applied to hearing requests under these regulations.

To determine whether an issue is ''factual'' for purposes of these regulations, it helps to first distinguish matters of fact from matters of law and policy. Substantive legal issues are excluded from the scope of the hearing. ALJs are empowered to render legal conclusions only to the extent necessary to facilitate the presentation of evidence and conduct of the trial on the underlying factual issues. See 7 CFR 1.60(b)(1)(ii), 43 CFR 45.60(b)(1)(ii), 50 CFR 221.60(b)(1)(ii); 70 FR at 69814.

It would not be appropriate, for example, to hold a hearing on whether or not a measure that the Secretary is considering prescribing would constitute a ''fishway,'' which is a term that has been partially defined by Congress. Public Law 102–486, § 1701(b), 106 Stat. 3008 (1992). Nor is the ALJ empowered to decide what substantive standards must be met to justify the Secretary's exercise of discretion under sections 4(e) and 18 (*e.g.,* what level of impacts to resources from the existing project must be demonstrated to uphold a condition or prescription), or whether the Secretary's condition or prescription is ''reasonable'' or is supported by substantial evidence in the record. Such legal issues can be raised later, in any judicial review of a final FERC license, pursuant to 16 U.S.C. 825*l*. The EPAct trial-type hearing process does not substitute for or preempt judicial review of final agency decisions, which will be available only after the FERC license has been issued.

Matters of policy are also not appropriate for a trial-type hearing. Examples of such matters include what types and levels of adverse effects to a species from a project would be ''acceptable,'' or what kinds of mitigation measures may be desirable or ''necessary'' to protect a resource. These

are not matters of fact, but rather matters of policy judgment committed to the discretion of the Departments, in light of their management objectives for the resource. Under EPAct and these regulations, the Departments retain the prerogative to make these ultimate decisions in light of their policies; the ALJ may not appropriately address those issues. See 7 CFR 1.660(b)(3), 43 CFR 45.60(b)(3), 50 CFR 221.60(b)(3).

Having ruled out legal and policy issues, it is next useful to consider whether an issue presented may be either proved or disproved by a preponderance of the evidence. Good examples of factual inquiries that lend themselves to resolution via trial-type hearings are set forth in the November 2005 preamble—whether a fishery was historically warm water or cold water, and whether fish historically were present above a dam. 70 FR at 69809. Using the framework discussed above, these are clearly ''historical facts'' (or ''jury facts''). Such issues may be resolved based on available evidence and do not involve attempts to predict what may happen in the future.

Materiality

To be appropriate for resolution, a factual issue must be ''material'' to a Secretary's consideration of the preliminary condition or prescription, *i.e.,* it must be of the type that lawfully ''may affect a Department's decision whether to affirm, modify, or withdraw [the] condition or prescription.'' 7 CFR 1.602, 43 CFR 45.2, 50 CFR 221.2. The inquiry is thus particular to the preliminary condition or prescription issued and the factual areas considered in the development of that condition or prescription. As an initial matter, the best indicators of the kinds of factual issues that may affect the Department's ultimate decision are the factors identified in the preliminary condition or prescription and supporting justification. A factual issue not closely related to one of those factors would not be material in the absence of a showing that resolution of the issue would affect the Department's ultimate decision. Similarly, issues that relate to the larger licensing proceeding and will be determined by FERC are not ''material'' to the Department's decision and are not appropriate for a trial-type hearing.

In addition to the Department's stated basis for the preliminary condition or prescription, the ALJ must be aware of the relevant legal framework governing the exercise of conditioning and prescriptive authority. Only factual issues that involve the kinds of considerations that the Secretary may legally take into account should be viewed as potentially affecting the Secretary's ultimate decision. In other words, whether an issue of fact is ''material'' must be decided with reference to the substantive law governing the Department's exercise of authority under the FPA. *See Anderson* v. *Liberty Lobby, Inc.,* 477 U.S. 242, 248 (1986) (FRCP 56 context) (''As to materiality, the substantive law will identify which facts are material'').

Other issues that are not material to a Department's preliminary condition or prescription include those that blur the distinction between the EPAct trial-type hearing process and the separate alternatives process created under new FPA section 33. Trial-type hearings are limited to resolving disputed issues of material fact relating to a Department's own preliminary condition or prescription. Where the hearing requester's purpose is to establish facts that may support an alternative proposed under the distinct section 33 process, but that do not otherwise affect the Department's ultimate decision whether to affirm, modify, or withdraw its preliminary prescription or condition, then the issue raised is not ''material'' to that condition or prescription.

Such matters must be resolved by the relevant Department through the section 33 process, and the ALJ should not make findings that would preempt the Department's review. For example, it would be inappropriate to ask the ALJ to resolve whether an alternative method of passing fish would be more desirable or more effective than the method prescribed by the Secretary.

Dispute

EPAct provides for a hearing only where specific material facts are actually in dispute. The implementing regulations thus require that a hearing requester specifically identify the factual statements made or relied upon by an agency that are disputed. 7 CFR 1.621(b)(2)(i), 43 CFR 45.(b)(2)(i), 50 CFR 221.21(b)(2)(i). Further, the agency has the option of stipulating to the facts as presented in the hearing request. 7 CFR 1.621(b)(1)(i), 43 CFR 45.(b)(1)(i), 50 CFR 221.24(b)(1)(i). Such a stipulation will mean that there is no dispute to be resolved through a trial-type hearing.

B. Separation of Functions

Some commenters argued that the Departments should maintain a separation of functions during the EPAct section 241 trial-type hearing. Section 241 trial-type hearings are conducted by each Department's independent adjudicative body—the Office of Hearings and Appeals for the Department of the Interior, the Office of Administrative Law Judges for the Department of Agriculture, and the United States Coast Guard's Office of Administrative Law Judges for the Department of Commerce. Each of these ALJ offices is an independent entity with its own staff that is entirely separate from the conditioning or prescribing agency. Departmental staff that develop conditions or prescriptions or participate in the trial-type hearing have no more input into the ALJ's decision-making than the other parties to the hearing process and are subject to the same prohibition on ex parte communication. 7 CFR 1.634, 43 CFR 45.34, 50 CFR 221.34. The final rule therefore does not need a provision regarding separation of functions in section 241 trial-type hearings.

Citing 5 U.S.C. 554(d)(2), these commenters further argued that Departmental staff involved in preparing preliminary conditions or prescriptions and representing the agency in the trial-type hearing are barred by the APA's separation of functions provision from advising senior staff and officials on any decision related to modified conditions, prescriptions, or section 33 alternatives.

The Departments disagree. Section 554 provides that in every case of *adjudication required by statute to be determined on the record after opportunity for an agency hearing* . . . and an employee or agent engaged in the performance of investigative or prosecuting functions for an agency in a case may not, in that or a factually related case, *participate or advise in the decision, recommended decision, or agency review pursuant to section 557* of this title, except as witness or counsel in public proceedings. 5 U.S.C. 554(a), (d)(2) (emphasis added).

A Department's decision whether and how to modify the preliminary conditions or prescriptions does not constitute ''an adjudication required by statute to be determined on the record after opportunity for an agency hearing.'' See 2 K. Davis, Administrative Law Treatise § 10:7 (1979). Although FPA section 33 establishes specific criteria for considering alternatives, neither EPAct nor the FPA requires the Departments to conduct an on-the-record hearing for this separate and distinct phase.[5] Similarly, in accordance

[5] The fact that EPAct requires a trial-type hearing for disputed issues of material fact does not alter this conclusion. The regulations make clear that the trial-type hearing and the decision to modify are two distinct proceedings: The hearing is strictly limited to resolving disputed issues of fact underlying the preliminary conditions; the ALJ's

with FERC regulations, the Departments have long provided modified conditions and prescriptions based on additional information, but they are under no statutory requirement to provide an on-the-record hearing when they do so. 18 CFR 4.34 (b)(4), 5.24(d), 5.25(d).

Moreover, section 554(d)(2) only bars participation in decisions or agency reviews pursuant to 5 U.S.C. 557. Section 557 by its terms applies to initial hearing decisions or recommendations by a qualified presiding employee with the potential for subsequent agency review. Modifying preliminary conditions or prescriptions involves no such hearing, no presiding employee, and no initial or recommended decision. Instead, the Department conducts the appropriate review and analysis and provides modified conditions or prescriptions to FERC with accompanying written findings. 7 CFR 1.673, 43 CFR 45.73, 50 CFR 221.73. Accordingly, section 554 does not apply to the Departments' decision whether and how to modify preliminary conditions or prescriptions.

EEI and NHA cite *Amos Treat & Co., Inc.* v. *SEC,* 306 F.2d 260, 266–67 (D.C. Cir. 1962) and *American Gen. Ins. Co.* v. *FTC,* 589 F.2d 462 (9th Cir. 1979), for the proposition that any participation by agency staff in a decision to modify conditions is necessarily unfair. EEI/NHA Comments at 20–21. In each cited case, however, the agency employee who investigated or prosecuted an issue went on to become the decisionmaker on the same issues in the same proceeding. Such cases do not apply here, where a Department's decision to modify conditions or prescriptions does not address the same specific matters addressed by the ALJ. Indeed, as noted above, the ALJ is prohibited from offering an opinion on how to modify the preliminary conditions and the ALJ's hearing order is final.[6] Courts have consistently rejected arguments of unfairness relating to multiple agency functions in cases involving such distinct phases of a proceeding. *See, e.g., Withrow* v. *Larkin,* 421 U.S. 35 (1975); *RSR Corp.* v. *FTC,* 656 F.2d 718 (D.C. Cir. 1981); *Porter County* v. *NRC,* 606 F.2d 1363 (D.C. Cir. 1979); *Pangburn* v. *CAB,* 311 F.2d 349 (1st Cir. 1962).

order is final, with no opportunity for administrative review; and the regulations specifically prohibit the ALJ from offering an opinion on how to modify the preliminary conditions. See 7 CFR 1.660(b), (d), 43 CFR 45.60(b), (d), 50 CFR 221.60(b); 70 FR 69807.

[6] See 7 CFR 1.660(b), (d), 43 CFR 45.60(b), (d), 50 CFR 221.60(b), (d); 70 FR 69807.

C. Ex Parte Communication

Some commenters argued that the section 33 alternatives process constitutes a quasi-judicial proceeding and thus should be subject to the APA's prohibition on ex parte communications. Under 5 U.S.C. 557(d)(1), no interested person outside the agency shall make or knowingly cause to be made to any member of the body comprising the agency, administrative law judge, or other employee who is or may reasonably be expected to be involved in the decisional process of the proceeding, an ex parte communication relevant to the merits of the proceeding.

As discussed previously, section 557 by its terms applies only to on-the-record hearings required by statute. Section 33 calls for a process of agency analysis subject to specific statutory criteria, but neither EPAct nor the FPA requires the Departments to conduct an on-the-record hearing when considering alternative conditions and prescriptions. As such, the APA's prohibition on ex parte communication does not apply to the section 33 alternatives process.

VI. Consultation With FERC

Pursuant to EPAct's requirement that the agencies promulgate rules implementing EPAct section 241 ''in consultation with the Federal Energy Regulatory Commission,'' the agencies have consulted with FERC regarding the content of these revised interim final rules.

VII. Procedural Requirements

A. Regulatory Planning and Review (E.O. 12866 and E.O. 13563)

The rules in this document are significant. Although these rules will not have an adverse effect or an annual effect of $100 million or more on the economy, OMB has determined that the expedited trial-type hearing and alternatives processes represent a novel approach to public participation and administrative review and have interagency implications. Therefore, OMB has reviewed these rules under Executive Order 12866.

Executive Order 13563 reaffirms the principles of Executive Order 12866 while calling for improvements in the nation's regulatory system to promote predictability; to reduce uncertainty; and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. Executive Order 13563 emphasizes further than regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. These revised interim final rules have been developed in a manner consistent with these requirements.

B. Regulatory Flexibility Act

As noted previously, the court in *American Rivers* v. *U.S. Department of the Interior,* 2006 WL 2841929 (W.D. Wash. 2006), upheld the Departments' November 17, 2005, interim final rules, holding that they were exempt from the APA's notice and comment requirements because they were procedural and interpretative in nature. These revised interim final rules are likewise procedural and interpretative in nature and do not require publication of a notice of proposed rulemaking. As a result, they are exempt from the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

Even if these rules were not exempt, they will not have a significant economic effect on a substantial number of small entities, for the reasons explained in the preamble to the November 17, 2005, interim final rules, 70 FR 69815–16. Because these rules are exempt, a regulatory flexibility analysis is not required and, thus, none was prepared.

C. Small Business Regulatory Enforcement Fairness Act

These rules are not major under the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 804(2).

1. As explained above, these rules will not have an annual effect on the economy of $ 100 million or more.

2. These rules will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. A hearing process for disputed issues of material fact with respect to the Departments' conditions and prescriptions will not affect costs or prices.

3. These rules will not have significant, adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises. Implementing the 2005 amendments to the FPA by establishing the hearing procedures in these rules should have no effects, adverse or beneficial, on competition, employment, investment, productivity, innovation, or the ability

of United States-based enterprises to compete with foreign-based enterprises.

D. Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act, 2 U.S.C. 1531 *et seq.,* The Departments find that:

1. These rules will not have a significant or unique effect on State, local, or Tribal governments or the private sector.

2. These rules will not produce an unfunded Federal mandate of $100 million or more on State, local, or Tribal governments in the aggregate or on the private sector in any year; *i.e.,* they do not constitute a ''significant regulatory action'' under the Unfunded Mandates Reform Act. The opportunity for a hearing will be available to a State, local, or Tribal government only if it is a party to the license proceeding and chooses to participate in the hearing process. Therefore, a statement containing the information required by the Unfunded Mandates Reform Act is not required.

E. Takings (E.O. 12630)

In accordance with Executive Order 12630, the Departments conclude that these rules will not have significant takings implications. The conditions and prescriptions included in hydropower licenses relate to operation of hydropower facilities on resources not owned by the applicant, *i.e.,* public waterways and/or reservations. Therefore, these rules will not result in a taking of private property, and a takings implication assessment is not required.

F. Federalism (E.O. 13132)

In accordance with Executive Order 13132, the Departments find that these rules do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. There is no foreseeable effect on States from establishing hearing procedures for disputed issues of material fact regarding Departmental conditions and prescriptions. The rules will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. The rules will not preempt State law. Therefore, a Federalism Assessment is not required.

G. Civil Justice Reform (E.O. 12988)

In accordance with Executive Order (E.O.) 12988, the Departments have determined that these rules will not unduly burden the judicial system and that they meet the requirements of sections 3(a) and 3(b)(2) of E.O. 12988. The rules provide clear language as to what is allowed and what is prohibited. Litigation regarding FERC hydropower licenses currently begins with a rehearing before FERC and then moves to Federal appeals court. By offering a trial-type hearing on disputed issues of material fact with respect to conditions and prescriptions developed by the Departments, the rules will likely result in a decrease in the number of proceedings that are litigated before FERC and in court.

H. Paperwork Reduction Act

With respect to the hearing process, these rules are exempt from the requirements of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* (PRA), because they will apply to the conduct of agency administrative proceedings involving specific individuals and entities. 44 U.S.C. 3518(c); 5 CFR 1320.4(a)(2). However, with respect to the alternatives process, these rules contain provisions that would collect information from the public, and therefore require approval from OMB under the PRA. According to the PRA, 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 that indicates OMB approval. OMB has reviewed the information collection in these rules and approved it under OMB control number 1094–0001. This approval expires November 30, 2015.

The purpose of the information collection in this rulemaking is to provide an opportunity for license parties to propose an alternative condition or prescription. Responses to this information collection are voluntary. At the time of our request for OMB approval in 2009, we estimated that an average of 62 alternatives would be submitted per year over the next 3 years. We estimated that the average burden for preparing and submitting an alternative would be 200 hours; thus, the total information collection burden was estimated to be 12,400 hours per year.

I. National Environmental Policy Act

The Departments have analyzed their respective rules in accordance with NEPA, Council on Environmental Quality (CEQ) regulations, 40 CFR part 1500, and the Departments' internal NEPA guidance. CEQ regulations, at 40 CFR 1508.4, define a ''categorical exclusion'' as a category of actions that a department has determined normally do not, individually or cumulatively, have a significant effect on the human environment, and, therefore in the absence of extraordinary circumstances, neither an environmental assessment nor an environmental impact statement is required. The regulations further direct each department to adopt NEPA procedures, including categorical exclusions. 40 CFR 1507.3.

Each Department has determined that these rules are categorically excluded from further environmental analysis under NEPA in accordance with its own authorities, listed below. These rules promulgate regulations of an administrative and procedural nature relating to trial-type hearings and the submission and analysis of alternatives as mandated under FPA, as amended by EPAct. They do not individually or cumulatively have a significant impact on the human environment and, therefore, neither an EA nor an EIS under NEPA is required. The relevant authorities for each Department are as follows:

Agriculture: 7 CFR 1b.3(b); Forest Service Handbook 1909.15, 31.12.

Interior: 43 CFR part 46.

Commerce: NOAA Administrative Order 216–6, sections 5.05 and 6.03c3(i).

J. Consultation With Indian Tribes (E.O. 13175)

Under the criteria in Executive Order 13175, the Departments have assessed the impact of these rules and have determined that they do not directly affect federally recognized Indian tribes or tribal resources. The rules are procedural and administrative in nature. However, conditions and actions associated with an actual hydropower licensing proposal may directly affect tribal resources; therefore the Departments will continue to consult with tribal governments when developing section 4(e) conditions and section 18 prescriptions needed to address the management of those resources.

K. Effects on the Nation's Energy Supply (E.O. 13211)

In accordance with Executive Order 13211, the Departments find that these rules will not have substantial direct effects on energy supply, distribution, or use, including shortfall in supply or price increase. Analysis by FERC has found that, on average, installed capacity increased through licensing by 4.06 percent, and the average annual generation loss, attributable largely to increased flows to protect aquatic resources, was 1.59 percent. (Report on Hydroelectric Licensing Policies, Procedures, and Regulations: Comprehensive Review and

Recommendations Pursuant to Section 603 of the Energy Act of 2000, prepared by the staff of the Federal Energy Regulatory Commission, May 2001.) Since the licensing process itself has such a modest energy impact, these rules, which affect only the Departments' administrative review procedures, are not expected to have a significant impact under the Executive Order (*i.e.,* reductions in electricity production in excess of 1 billion kilowatt-hours per year or in excess of 500 megawatts of installed capacity).

L. Data Quality Act

In developing this rule, we did not conduct or use a study, experiment, or survey requiring peer review under the Data Quality Act, Public Law 106–554.

M. Clarity of These Regulations

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(1) Be logically organized;

(2) Use the active voice to address readers directly;

(3) Use clear language rather than jargon;

(4) Be divided into short sections and sentences; and

(5) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that you find unclear, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

List of Subjects

7 CFR Part 1

Administrative practice and procedure, Fisheries, Hydroelectric power, Indians—lands, National forests, National parks, National wildlife refuge system, Public land, Waterways, Wildlife.

43 CFR Part 45

Administrative practice and procedure, Fisheries, Hydroelectric power, Indians—lands, National forests, National parks, National wildlife refuge system, Public land, Waterways, Wildlife.

50 CFR Part 221

Administrative practice and procedure, Fisheries, Hydroelectric power, Indians—lands, National forests, National parks, National wildlife refuge system, Public land, Waterways, Wildlife.

Dated: March 10, 2015.

Robert F. Bonnie,

Undersecretary—Natural Resources and Environment, U.S. Department of Agriculture.

Kristen J. Sarri,

Principal Deputy Assistant Secretary—Policy, Management and Budget, U.S. Department of the Interior.

Dated: December 15, 2014.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

For the reasons set forth in the preamble, the Departments of Agriculture, the Interior, and Commerce amend titles 7, 43, and 50 of the Code of Federal Regulations as follows:

Title 7—Department of Agriculture

PART 1—ADMINISTRATIVE REGULATIONS

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

Authority: 5 U.S.C. 301, unless otherwise noted.

■ 2. Revise subpart O to read as follows:

Subpart O—Conditions in FERC Hydropower Licenses

Authority: 16 U.S.C. 797(e), 811, 823d.

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General Provisions

§ 1.601 What is the purpose of this subpart, and to what license proceedings does it apply?

(a) *Hearing process.* (1) The regulations in §§ 1.601 through 1.660 contain rules of practice and procedure applicable to hearings on disputed issues of material fact with respect to mandatory conditions that the Department of Agriculture, Forest Service (Forest Service) may develop for inclusion in a hydropower license issued under subchapter I of the Federal Power Act (FPA), 16 U.S.C. 791 *et seq.* The authority to develop these conditions is granted by FPA section 4(e), 16 U.S.C. 797(e), which authorizes the Secretary of Agriculture to condition hydropower licenses issued by the Federal Energy Regulatory Commission (FERC).

(2) The hearing process under this part does not apply to recommendations that the Forest Service may submit to FERC under FPA section 10(a), 16 U.S.C. 803(a).

(3) The FPA also grants the Department of Commerce and the Department of the Interior the authority to develop mandatory conditions and prescriptions for inclusion in a hydropower license. Where the Forest Service and either or both of these other Departments develop conditions or prescriptions to be included in the same hydropower license and where the Departments agree to consolidate the hearings under § 1.623:

(i) A hearing conducted under this subpart will also address disputed issues of material fact with respect to any condition or prescription developed by one of the other Departments; or

(ii) A hearing requested under this subpart will be conducted by one of the other Departments, pursuant to 43 CFR 45.1 *et seq.* or 50 CFR 221.1 *et seq.,* as applicable.

(4) The regulations in §§ 1.601 through 1.660 will be construed and applied to each hearing process to achieve a just and speedy determination, consistent with adequate consideration of the issues involved and the provisions of § 1.660(a).

(b) *Alternatives process.* The regulations in §§ 1.670 through 1.674 contain rules of procedure applicable to the submission and consideration of alternative conditions under FPA section 33, 16 U.S.C. 823d. That section allows any party to the license proceeding to propose an alternative to a condition deemed necessary by the Forest Service under section 4(e).

(c) *Reserved authority.* Where the Forest Service has notified or notifies FERC that it is reserving its authority to develop one or more conditions at a later time, the hearing and alternatives processes under this subpart for such conditions will be available if and when the Forest Service exercises its reserved authority.

(d) *Applicability.* (1) This subpart applies to any hydropower license proceeding for which the license had not been issued as of November 17, 2005, and for which one or more preliminary conditions have been or are filed with FERC before FERC issues the license.

(2) This subpart also applies to any exercise of the Forest Service's reserved authority under paragraph (c) of this section with respect to a hydropower license issued before or after November 17, 2005.

§ 1.602 What terms are used in this subpart?

As used in this subpart:

ALJ means an administrative law judge appointed under 5 U.S.C. 3105 and assigned to preside over the hearing process under this subpart.

Alternative means a condition that a license party other than the Forest Service or another Department develops as an alternative to a preliminary condition from the Forest Service or another Department, under FPA sec. 33, 16 U.S.C. 823d.

Condition means a condition under FPA sec. 4(e), 16 U.S.C. 797(e), for the adequate protection and utilization of a reservation.

Day means a calendar day.

Department means the Department of Agriculture, Department of Commerce, or Department of the Interior.

Discovery means a prehearing process for obtaining facts or information to assist a party in preparing or presenting its case.

Ex parte communication means an oral or written communication to the ALJ that is made without providing all parties reasonable notice and an opportunity to participate.

FERC means the Federal Energy Regulatory Commission.

Forest Service means the USDA Forest Service.

FPA means the Federal Power Act, 16 U.S.C. 791 *et seq.*

Hearing Clerk means the Hearing Clerk, OALJ, USDA, 1400 Independence Ave., SW., Washington, DC 20250; phone: 202–720–4443, facsimile: 202–720–9776.

Intervention means a process by which a person who did not request a hearing under § 1.621 can participate as a party to the hearing under § 1.622.

License party means a party to the license proceeding, as that term is defined at 18 CFR 385.102(c).

License proceeding means a proceeding before FERC for issuance of a license for a hydroelectric facility under 18 CFR part 4 or 5.

Material fact means a fact that, if proved, may affect a Department's decision whether to affirm, modify, or withdraw any condition or prescription.

Modified condition or prescription means any modified condition or prescription filed by a Department with FERC for inclusion in a hydropower license.

NEPA document means an environmental document as defined at 40 CFR 1508.10 to include an environmental assessment, environmental impact statement (EIS), finding of no significant impact, and notice of intent to prepare an EIS. Such documents are issued to comply with the requirements of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq., and the CEQ Regulations Implementing the Procedural Requirements of NEPA (40 CFR parts 21500–1508).*

NFS means the National Forest System and refers to:

(1) Federal land managed by the Forest Service; and

(2) The Deputy Chief of the National Forest System, located in the Forest Service's Washington, DC, office.

Office of Administrative Law Judges (OALJ) is the office within USDA in which ALJs conduct hearings under the regulations in this subpart.

Party means, with respect to USDA's hearing process:

(1) A license party that has filed a timely request for a hearing under:

(i) Section 1.621; or

(ii) Either 43 CFR 45.21 or 50 CFR 221.21, with respect to a hearing process consolidated under § 1.623;

(2) A license party that has filed a timely notice of intervention and response under:

(i) Section 1.622; or

(ii) Either 43 CFR 45.22 or 50 CFR 221.22, with respect to a hearing process consolidated under § 1.623;

(3) The Forest Service; and

(4) Any other Department that has filed a preliminary condition or prescription, with respect to a hearing process consolidated under § 1.623.

Person means an individual; a partnership, corporation, association, or other legal entity; an unincorporated organization; and any Federal, State,

Tribal, county, district, territorial, or local government or agency.

Preliminary condition or prescription means any preliminary condition or prescription filed by a Department with FERC for potential inclusion in a hydropower license.

Prescription means a fishway prescribed under FPA sec. 18, 16 U.S.C. 811, to provide for the safe, timely, and effective passage of fish.

Representative means a person who:

(1) Is authorized by a party to represent the party in a hearing process under this subpart; and

(2) Has filed an appearance under § 1.610.

Reservation has the same meaning as the term ''reservations'' in FPA sec. 3(2), 16 U.S.C. 796(2).

Secretary means the Secretary of Agriculture or his or her designee.

Senior Department employee has the same meaning as the term ''senior employee'' in 5 CFR 2637.211(a).

USDA means the United States Department of Agriculture.

You refers to a party other than a Department.

§ 1.603 How are time periods computed?

(a) *General.* Time periods are computed as follows:

(1) The day of the act or event from which the period begins to run is not included.

(2) The last day of the period is included.

(i) If that day is a Saturday, Sunday, or Federal holiday, the period is extended to the next business day.

(ii) The last day of the period ends at 5 p.m. at the place where the filing or other action is due.

(3) If the period is less than 7 days, any Saturday, Sunday, or Federal holiday that falls within the period is not included.

(b) *Extensions of time.* (1) No extension of time can be granted to file a request for a hearing under § 1.621, a notice of intervention and response under § 1.622, an answer under § 1.625, or any document under §§ 1.670 through 1.674.

(2) An extension of time to file any other document under this subpart may be granted only upon a showing of good cause.

(i) To request an extension of time, a party must file a motion under § 1.635 stating how much additional time is needed and the reasons for the request.

(ii) The party must file the motion before the applicable time period expires, unless the party demonstrates extraordinary circumstances that justify a delay in filing.

(iii) The ALJ may grant the extension only if:

(A) It would not unduly prejudice other parties; and

(B) It would not delay the decision under § 1.660.

§ 1.604 What deadlines apply to the trial-type hearing and alternatives processes?

(a) The following table summarizes the steps in the trial-type hearing process under this subpart and indicates the deadlines generally applicable to each step. If the deadlines in this table are in any way inconsistent with the deadlines as set by other sections of this subpart or by the ALJ, the deadlines as set by those other sections or by the ALJ control.

Process step	Process day	Must generally be completed	See section
(1) Forest Service files preliminary condition(s) with FERC.	0	.....	1.620.
(2) License party files request for hearing	30	Within 30 days after Forest Service files preliminary condition(s) with FERC.	1.621(a).
(3) Any other license party files notice of intervention and response.	50	Within 20 days after deadline for filing requests for hearing.	1.622(a).
(4) NFS refers case to ALJ office for hearing and issues referral notice to parties.	85	Within 55 days after deadline for filing requests for hearing.	1.626(a).
(5) Parties may meet and agree to discovery (optional step).	86–91	Before deadline for filing motions seeking discovery ..	1.641(a).
(6) ALJ office sends docketing notice, and ALJ issues notice setting date for initial prehearing conference.	90	Within 5 days after effective date of referral notice	1.630.
(7) Party files motion seeking discovery from another party.	92	Within 7 days after effective date of referral notice	1.641(d).
(8) Other party files objections to discovery motion or specific portions of discovery requests.	99	Within 7 days after service of discovery motion	1.641(e).
(9) Parties meet to discuss discovery and hearing schedule.	100–104	Before date set for initial prehearing conference	1.640(d).
(10) ALJ conducts initial prehearing conference	105	On or about 20th day after effective date of referral notice.	1.640(a).
(11) ALJ issues order following initial prehearing conference.	107	Within 2 days after initial prehearing conference	1.640(g).
(12) Party responds to interrogatories from another party as authorized by ALJ.	120–22	Within 15 days after ALJ's order authorizing discovery during or following initial prehearing conference.	1.643(c).
(13) Party responds to requests for documents, etc., from another party as authorized by ALJ.	120–22	Within 15 days after ALJ's order authorizing discovery during or following initial prehearing conference.	1.645(c).
(14) Parties complete all discovery, including depositions, as authorized by ALJ.	130	Within 25 days after initial prehearing conference	1.641(i).
(15) Parties file updated lists of witnesses and exhibits.	140	Within 10 days after deadline for completion of discovery.	1.642(b).
(16) Parties file written direct testimony	140	Within 10 days after deadline for completion of discovery.	1.652(a).
(17) Parties complete prehearing preparation and ALJ commences hearing.	155	Within 25 days after deadline for completion of discovery.	1.650(a).
(18) ALJ closes hearing record	160	When ALJ closes hearing	1.658.
(19) Parties file post-hearing briefs	175	Within 15 days after hearing closes	1.659(a).
(20) ALJ issues decision	190	Within 30 days after hearing closes	1.660(a).

(b) The following table summarizes the steps in the alternatives process under this subpart and indicates the deadlines generally applicable to each step. If the deadlines in this table are in any way inconsistent with the deadlines as set by other sections of this subpart, the deadlines as set by those other sections control.

Process step	Process day	Must generally be completed	See section
(1) Forest Service files preliminary condition(s) with FERC.	0	.....	1.620.
(2) License party files alternative condition(s)	30	Within 30 days after Forest Service files preliminary condition(s) with FERC.	1.671(a).
(3) ALJ issues decision on any hearing request	190	Within 30 days after hearing closes (see previous table).	1.660(a).
(4) License party files revised alternative condition(s) if authorized.	210	Within 20 days after ALJ issues decision	1.672(a).
(5) Forest Service files modified condition(s) with FERC.	300	Within 60 days after the deadline for filing comments on FERC's draft NEPA document.	1.673(a).

Hearing Process

Representatives

§ 1.610 Who may represent a party, and what requirements apply to a representative?

(a) *Individuals.* A party who is an individual may either represent himself or herself in the hearing process under this subpart or authorize an attorney to represent him or her.

(b) *Organizations.* A party that is an organization or other entity may authorize one of the following to represent it:

(1) An attorney;

(2) A partner, if the entity is a partnership;

(3) An officer or agent, if the entity is a corporation, association, or unincorporated organization;

(4) A receiver, administrator, executor, or similar fiduciary, if the entity is a receivership, trust, or estate; or

(5) An elected or appointed official or an employee, if the entity is a Federal, State, Tribal, county, district, territorial, or local government or component.

(c) *Appearance.* An individual representing himself or herself and any other representative must file a notice of appearance. The notice must:

(1) Meet the form and content requirements for documents under § 1.611;

(2) Include the name and address of the party on whose behalf the appearance is made;

(3) If the representative is an attorney, include a statement that he or she is a member in good standing of the bar of the highest court of a state, the District of Columbia, or any territory or commonwealth of the United States (identifying which one); and

(4) If the representative is not an attorney, include a statement explaining his or her authority to represent the entity.

(d) *Lead representative.* If a party has more than one representative, the ALJ may require the party to designate a lead representative for service of documents under § 1.613.

(e) *Disqualification.* The ALJ may disqualify any representative for misconduct or other good cause.

Document Filing and Service

§ 1.611 What are the form and content requirements for documents under this subpart?

(a) *Form.* Each document filed in a case under §§ 1.610 through 1.660 must:

(1) Measure 8½ by 11 inches, except that a table, chart, diagram, or other attachment may be larger if folded to 8½ by 11 inches and attached to the document;

(2) Be printed on just one side of the page (except that service copies may be printed on both sides of the page);

(3) Be clearly typewritten, printed, or otherwise reproduced by a process that yields legible and permanent copies;

(4) Use 11 point font size or larger;

(5) Be double-spaced except for footnotes and long quotations, which may be single-spaced;

(6) Have margins of at least 1 inch; and

(7) Be bound on the left side, if bound.

(b) *Caption.* Each document filed under §§ 1.610 through 1.660 must begin with a caption that sets forth:

(1) The name of the case under §§ 1.610 through 1.660 and the docket number, if one has been assigned;

(2) The name and docket number of the license proceeding to which the case under §§ 1.610 through 1.660 relates; and

(3) A descriptive title for the document, indicating the party for whom it is filed and the nature of the document.

(c) *Signature.* The original of each document filed under §§ 1.610 through 1.660 must be signed by the representative of the person for whom the document is filed. The signature constitutes a certification by the representative that he or she has read the document; that to the best of his or her knowledge, information, and belief, the statements made in the document are true; and that the document is not being filed for the purpose of causing delay.

(d) *Contact information.* Below the representative's signature, the document must provide the representative's name, mailing address, street address (if different), telephone number, facsimile number (if any), and electronic mail address (if any).

§ 1.612 Where and how must documents be filed?

(a) *Place of filing.* Any documents relating to a case under §§ 1.610 through 1.660 must be filed with the appropriate office, as follows:

(1) Before NFS refers a case for docketing under § 1.626, any documents must be filed with NFS by directing them to the ''Deputy Chief, NFS.''

(i) For delivery by regular mail, address to USDA Forest Service, Attn: Lands Staff, Mail Stop 1124, 1400 Independence Ave. SW., Washington, DC 20250–1124.

(ii) For delivery by hand or private carrier, deliver to USDA Forest Service, Yates Bldg. (4 SO), 201 14th Street SW., Washington, DC (SW. corner of 14th Street and Independence Ave. SW.); phone (202) 205–1248; facsimile (703) 605–5117. Hand deliverers must obtain an official date-time-stamp from Lands Staff.

(2) The Forest Service will notify the parties of the date on which NFS refers a case for docketing under § 1.626. After that date, any documents must be filed with:

(i) The Hearing Clerk, if OALJ will be conducting the hearing. The Hearing Clerk's address, telephone number, and facsimile number are set forth in § 1.602; or

(ii) The hearings component of or used by another Department, if that Department will be conducting the

hearing. The name, address, telephone number, and facsimile number of the appropriate hearings component will be provided in the referral notice from the Forest Service.

(b) *Method of filing.* (1) A document must be filed with the appropriate office under paragraph (a) of this section using one of the following methods:

(i) By hand delivery of the original document and two copies;

(ii) By sending the original document and two copies by express mail or courier service; or

(iii) By sending the document by facsimile if:

(A) The document is 20 pages or less, including all attachments;

(B) The sending facsimile machine confirms that the transmission was successful; and

(C) The original of the document and two copies are sent by regular mail on the same day.

(2) Parties are encouraged, and may be required by the ALJ, to supplement any filing by providing the appropriate office with an electronic copy of the document on compact disc or other suitable media. With respect to any supporting material accompanying a request for hearing, a notice of intervention and response, or an answer, the party may submit in lieu of an original and two hard copies:

(i) An original; and

(ii) One copy on a compact disc or other suitable media.

(c) *Date of filing.* A document under this subpart is considered filed on the date it is received. However, any document received after 5 p.m. at the place where the filing is due is considered filed on the next regular business day.

(d) *Nonconforming documents.* If any document submitted for filing under this subpart does not comply with the requirements of this subpart or any applicable order, it may be rejected.

§ 1.613 What are the requirements for service of documents?

(a) *Filed documents.* Any document related to a case under §§ 1.610 through 1.660 must be served at the same time the document is delivered or sent for filing. Copies must be served as follows:

(1) A complete copy of any request for a hearing under § 1.621 must be delivered or sent to FERC and each license party, using one of the methods of service in paragraph (c) of this section or under 18 CFR 385.2010(f)(3) for license parties that have agreed to receive electronic service.

(2) A complete copy of any notice of intervention and response under § 1.622 must be:

(i) Delivered or sent to FERC, the license applicant, any person who has filed a request for hearing under § 1.621, and the Forest Service office that submitted the preliminary conditions to FERC, using one of the methods of service in paragraph (c) of this section; and

(ii) Delivered or sent to any other license party using one of the methods of service in paragraph (c) of this section or under 18 CFR 385.2010(f)(3) for license parties that have agreed to receive electronic service, or by regular mail.

(3) A complete copy of any answer or notice under § 1.625 and any other document filed by any party to the hearing process must be delivered or sent to every other party to the hearing process, using one of the methods of service in paragraph (c) of this section.

(b) *Documents issued by the Hearing Clerk or ALJ.* A complete copy of any notice, order, decision, or other document issued by the Hearing Clerk or the ALJ under §§ 1.610 through 1.660 must be served on each party, using one of the methods of service in paragraph (c) of this section.

(c) *Method of service.* Unless otherwise agreed to by the parties and ordered by the ALJ, service must be accomplished by one of the following methods:

(1) By hand delivery of the document;

(2) By sending the document by express mail or courier service for delivery on the next business day;

(3) By sending the document by facsimile if:

(i) The document is 20 pages or less, including all attachments;

(ii) The sending facsimile machine confirms that the transmission was successful; and

(iii) The document is sent by regular mail on the same day; or

(4) By sending the document, including all attachments, by electronic means if the party to be served has consented to that means of service in writing. However, if the serving party learns that the document did not reach the party to be served, the serving party must re-serve the document by another method set forth in paragraph (c) of this section (including another electronic means, if the party to be served has consented to that means in writing).

(d) *Certificate of service.* A certificate of service must be attached to each document filed under §§ 1.610 through 1.660. The certificate must be signed by the party's representative and include the following information:

(1) The name, address, and other contact information of each party's representative on whom the document was served;

(2) The means of service, including information indicating compliance with paragraph (c)(3) or (c)(4) of this section, if applicable; and

(3) The date of service.

Initiation of Hearing Process

§ 1.620 What supporting information must the Forest Service provide with its preliminary conditions?

(a) *Supporting information.* (1) When the Forest Service files its preliminary conditions with FERC, it must include a rationale for each condition, explaining why the Forest Service deems the condition necessary for the adequate protection and utilization of the affected NFS lands, and an index to the Forest Service's administrative record that identifies all documents relied upon.

(2) If any of the documents relied upon are not already in the license proceeding record, the Forest Service must:

(i) File them with FERC at the time it files its preliminary conditions; and

(ii) Provide copies to the license applicant.

(b) *Service.* The Forest Service will serve copies of its preliminary conditions on each license party.

§ 1.621 How do I request a hearing?

(a) *General.* To request a hearing on disputed issues of material fact with respect to any preliminary condition filed by the Forest Service, you must:

(1) Be a license party; and

(2) File with NFS, at the appropriate address provided in § 1.612(a)(1), a written request for a hearing:

(i) For a case under § 1.601(d)(1), within 30 days after the Forest Service files a preliminary condition with FERC; or

(ii) For a case under § 1.601(d)(2), within 60 days after the Forest Service files a preliminary condition with FERC.

(b) *Content.* Your hearing request must contain:

(1) A numbered list of the factual issues that you allege are in dispute, each stated in a single, concise sentence;

(2) The following information with respect to each issue:

(i) The specific factual statements made or relied upon by the Forest Service under § 1.620(a) that you dispute;

(ii) The basis for your opinion that those factual statements are unfounded or erroneous; and

(iii) The basis for your opinion that any factual dispute is material.

(3) With respect to any scientific studies, literature, and other

documented information supporting your opinions under paragraphs (b)(2)(ii) and (b)(2)(iii) of this section, specific citations to the information relied upon. If any such document is not already in the license proceeding record, you must provide a copy with the request; and

(4) A statement indicating whether or not you consent to service by electronic means under § 1.613(c)(4) and, if so, by what means.

(c) *Witnesses and exhibits.* Your hearing request must also list the witnesses and exhibits that you intend to present at the hearing, other than solely for impeachment purposes.

(1) For each witness listed, you must provide:

(i) His or her name, address, telephone number, and qualifications; and

(ii) A brief narrative summary of his or her expected testimony.

(2) For each exhibit listed, you must specify whether it is in the license proceeding record.

(d) *Page limits.* (1) For each disputed factual issue, the information provided under paragraph (b)(2) of this section may not exceed two pages.

(2) For each witness, the information provided under paragraph (c)(1) of this section may not exceed one page.

§ 1.622 How do I file a notice of intervention and response?

(a) *General.* (1) To intervene as a party to the hearing process, you must:

(i) Be a license party; and

(ii) File with NFS, at the appropriate address provided in § 1.612(a)(1), a notice of intervention and a written response to any request for a hearing within 20 days after the deadline in § 1.621(a)(2).

(2) A notice of intervention and response must be limited to one or more of the issues of material fact raised in the hearing request and may not raise additional issues.

(b) *Content.* In your notice of intervention and response you must explain your position with respect to the issues of material fact raised in the hearing request under § 1.621(b).

(1) If you agree with the information provided by the Forest Service under § 1.620(a) or by the requester under § 1.621(b), your response may refer to the Forest Service's explanation or the requester's hearing request for support.

(2) If you wish to rely on additional information or analysis, your response must provide the same level of detail with respect to the additional information or analysis as required under § 1.621(b).

(3) Your notice of intervention and response must also indicate whether or not you consent to service by electronic means under § 1.613(c)(4) and, if so, by what means.

(c) *Witnesses and exhibits.* Your response and notice must also list the witnesses and exhibits that you intend to present at the hearing, other than solely for impeachment purposes.

(1) For each witness listed, you must provide:

(i) His or her name, address, telephone number, and qualifications; and

(ii) A brief narrative summary of his or her expected testimony; and

(2) For each exhibit listed, you must specify whether it is in the license proceeding record.

(d) *Page limits.* (1) For each disputed factual issue, the information provided under paragraph (b) of this section (excluding citations to scientific studies, literature, and other documented information supporting your opinions) may not exceed two pages.

(2) For each witness, the information provided under paragraph (c)(1) of this section may not exceed one page.

§ 1.623 Will hearing requests be consolidated?

(a) *Initial Department coordination.* If NFS has received a copy of a hearing request, it must contact the other Departments and determine:

(1) Whether any of the other Departments has also filed a preliminary condition or prescription relating to the license with FERC; and

(2) If so, whether the other Department has also received a hearing request with respect to the preliminary condition or prescription.

(b) *Decision on consolidation.* Where more than one Department has received a hearing request, the Departments involved must decide jointly:

(1) Whether the cases should be consolidated for hearing under paragraphs (c)(3)(ii) through (iv) of this section; and

(2) If so, which Department will conduct the hearing on their behalf.

(c) *Criteria.* Cases will or may be consolidated as follows:

(1) All hearing requests with respect to any conditions from the same Department will be consolidated for hearing.

(2) All hearing requests with respect to any prescriptions from the same Department will be consolidated for hearing.

(3) All or any portion of the following may be consolidated for hearing, if the Departments involved determine that there are common issues of material fact or that consolidation is otherwise appropriate:

(i) Two or more hearing requests with respect to any condition and any prescription from the same Department;

(ii) Two or more hearing requests with respect to conditions from different Departments;

(iii) Two or more hearing requests with respect to prescriptions from different Departments; or

(iv) Two or more hearing requests with respect to any condition from one Department and any prescription from another Department.

§ 1.624 Can a hearing process be stayed to allow for settlement discussions?

(a) Prior to referral to the ALJ, the hearing requester and the Forest Service may by agreement stay the hearing process under this subpart for a period not to exceed 120 days to allow for settlement discussions, if the stay period and any subsequent hearing process (if required) can be accommodated within the time frame established for the license proceeding.

(b) Any stay of the hearing process will not affect the deadline for filing a notice of intervention and response, if any, pursuant to § 1.622(a)(1)(ii).

§ 1.625 How will the Forest Service respond to any hearing requests?

(a) *General.* NFS will determine whether to answer any hearing request under § 1.621 on behalf of the Forest Service.

(b) *Content.* If NFS answers a hearing request:

(1) For each of the numbered factual issues listed under § 1.621(b)(1), NFS's answer must explain the Forest Service's position with respect to the issues of material fact raised by the requester, including one or more of the following statements as appropriate:

(i) That the Forest Service is willing to stipulate to the facts as alleged by the requester;

(ii) That the Forest Service believes the issue listed by the requester is not a factual issue, explaining the basis for such belief;

(iii) That the Forest Service believes the issue listed by the requester is not material, explaining the basis for such belief; or

(iv) That the Forest Service agrees that the issue is factual, material, and in dispute.

(2) NFS's answer must also indicate whether the hearing request will be consolidated with one or more other hearing requests under § 1.623 and, if so:

(i) Identify any other hearing request that will be consolidated with this hearing request; and

(ii) State which Department will conduct the hearing and provide contact

information for the appropriate Department hearings component.

(3) If the Forest Service plans to rely on any scientific studies, literature, and other documented information that are not already in the license proceeding record, a copy of each item must be provided with NFS's answer.

(4) NFS's answer must also indicate whether or not the Forest Service consents to service by electronic means under § 1.613(c)(4) and, if so, by what means.

(c) *Witnesses and exhibits.* NFS's answer must also contain a list of the Forest Service's witnesses and exhibits that the Forest Service intends to present at the hearing, other than solely for impeachment purposes.

(1) For each witness listed, the Forest Service must provide:

(i) His or her name, address, telephone number, and qualifications; and

(ii) A brief narrative summary of his or her expected testimony.

(2) For each exhibit listed, the Forest Service must specify whether it is in the license proceeding record.

(d) *Page limits.* (1) For each disputed factual issue, the information provided under paragraph (b)(1) of this section may not exceed two pages.

(2) For each witness, the information provided under paragraph (c)(1) of this section may not exceed one page.

(e) *Notice in lieu of answer.* If NFS elects not to answer a hearing request:

(1) The Forest Service is deemed to agree that the issues listed by the requester are factual, material, and in dispute;

(2) The Forest Service may file a list of witnesses and exhibits with respect to the request only as provided in § 1.642(b); and

(3) NFS must include with its case referral under § 1.623 a notice in lieu of answer containing the information required by paragraph (b)(2) of this section, if the hearing request will be consolidated with one or more other hearing requests under § 1.623, and the statement required by paragraph (b)(4) of this section.

§ 1.626 What will the Forest Service do with any hearing requests?

(a) *Case referral.* Within 55 days after the deadline in § 1.621(a)(2) or 35 days after the expiration of any stay period under § 1.624, whichever is later, NFS will refer the case for a hearing as follows:

(1) If the hearing is to be conducted by USDA, NFS will refer the case to the OALJ.

(2) If the hearing is to be conducted by another Department, NFS will refer the case to the hearings component used by that Department.

(b) *Content.* The case referral will consist of the following:

(1) Two copies of any preliminary condition under § 1.620;

(2) The original and one copy of any hearing request under § 1.621;

(3) The original and one copy of any notice of intervention and response under § 1.622;

(4) The original and one copy of any answer or notice in lieu of answer under § 1.625; and

(5) The original and one copy of a referral notice under paragraph (c) of this section.

(c) *Notice.* At the time NFS refers the case for a hearing, it must provide a referral notice that contains the following information:

(1) The name, address, telephone number, and facsimile number of the Department hearings component that will conduct the hearing;

(2) The name, address, and other contact information for the representative of each party to the hearing process;

(3) An identification of any other hearing request that will be consolidated with this hearing request; and

(4) The effective date of the case referral to the appropriate Department hearings component.

(d) *Delivery and service.* (1) NFS must refer the case to the appropriate Department hearings component by one of the methods identified in § 1.612(b)(1)(i) and (b)(1)(ii).

(2) The Forest Service must serve a copy of the referral notice on FERC and each party to the hearing by one of the methods identified in § 1.613(c)(1) and (c)(2).

§ 1.627 What regulations apply to a case referred for a hearing?

(a) If NFS refers the case to the OALJ, these regulations will continue to apply to the hearing process.

(b) If NFS refers the case to the Department of Interior's Office of Hearing and Appeals, the regulations at 43 CFR 45.1 *et seq.* will apply from that point on.

(c) If NFS refers the case to the Department of Commerce's designated ALJ office, the regulations at 50 CFR 221.1 *et seq.* will apply from that point on.

General Provisions Related to Hearings

§ 1.630 What will OALJ do with a case referral?

Within 5 days after the effective date stated in the referral notice under § 1.626(c)(4), 43 CFR 45.26(c)(4), or 50 CFR 221.26(c)(4):

(a) The Hearing Clerk must:

(1) Docket the case;

(2) Assign an ALJ to preside over the hearing process and issue a decision; and

(3) Issue a docketing notice that informs the parties of the docket number and the ALJ assigned to the case; and

(b) The ALJ must issue a notice setting the time, place, and method for conducting an initial prehearing conference under § 1.640. This notice may be combined with the docketing notice under paragraph (a)(3) of this section.

§ 1.631 What are the powers of the ALJ?

The ALJ will have all powers necessary to conduct a fair, orderly, expeditious, and impartial hearing process relating to Forest Service's or other Department's condition or prescription that has been referred to the ALJ for hearing, including the powers to:

(a) Administer oaths and affirmations;

(b) Issue subpoenas under § 1.647;

(c) Shorten or enlarge time periods set forth in these regulations, except that the deadline in § 1.660(a)(2) can be extended only if the ALJ must be replaced under § 1.632 or 1.633;

(d) Rule on motions;

(e) Authorize discovery as provided for in §§ 1.641 through 1.647;

(f) Hold hearings and conferences;

(g) Regulate the course of hearings;

(h) Call and question witnesses;

(i) Exclude any person from a hearing or conference for misconduct or other good cause;

(j) Summarily dispose of any hearing request or issue as to which the ALJ determines there is no disputed issue of material fact;

(k) Issue a decision consistent with § 1.660(b) regarding any disputed issue of material fact; and

(l) Take any other action authorized by law.

§ 1.632 What happens if the ALJ becomes unavailable?

(a) If the ALJ becomes unavailable or otherwise unable to perform the duties described in § 1.631, the Hearing Clerk will designate a successor.

(b) If a hearing has commenced and the ALJ cannot proceed with it, a successor ALJ may do so. At the request of a party, the successor ALJ may recall any witness whose testimony is material and disputed, and who is available to testify again without undue burden. The successor ALJ may, within his or her discretion, recall any other witness.

§ 1.633 Under what circumstances may the ALJ be disqualified?

(a) The ALJ may withdraw from a case at any time the ALJ deems himself or herself disqualified.

(b) At any time before issuance of the ALJ's decision, any party may move that the ALJ disqualify himself or herself for personal bias or other valid cause.

(1) The party must file the motion promptly after discovering facts or other reasons allegedly constituting cause for disqualification.

(2) The party must file with the motion an affidavit or declaration setting forth the facts or other reasons in detail.

(c) The ALJ must rule upon the motion, stating the grounds for the ruling.

(1) If the ALJ concludes that the motion is timely and meritorious, he or she must disqualify himself or herself and withdraw from the case.

(2) If the ALJ does not disqualify himself or herself and withdraw from the case, the ALJ must continue with the hearing process and issue a decision.

§ 1.634 What is the law governing ex parte communications?

(a) Ex parte communications with the ALJ or his or her staff are prohibited in accordance with 5 U.S.C. 554(d).

(b) This section does not prohibit ex parte inquiries concerning case status or procedural requirements, unless the inquiry involves an area of controversy in the hearing process.

§ 1.635 What are the requirements for motions?

(a) *General.* Any party may apply for an order or ruling on any matter related to the hearing process by presenting a motion to the ALJ. A motion may be presented any time after the Hearing Clerk issues a docketing notice under § 1.630.

(1) A motion made at a hearing may be stated orally on the record, unless the ALJ directs that it be reduced to writing.

(2) Any other motion must:

(i) Be in writing;

(ii) Comply with the requirements of §§ 1.610 through 1.613 with respect to form, content, filing, and service; and

(iii) Not exceed 15 pages, including all supporting arguments.

(b) *Content.* (1) Each motion must state clearly and concisely:

(i) Its purpose and the relief sought;

(ii) The facts constituting the grounds for the relief sought; and

(iii) Any applicable statutory or regulatory authority.

(2) A proposed order must accompany the motion.

(c) *Response.* Except as otherwise required by this part, any other party may file a response to a written motion within 10 days after service of the motion. The response may not exceed 15 pages, including all supporting arguments. When a party presents a motion at a hearing, any other party may present a response orally on the record.

(d) *Reply.* Unless the ALJ orders otherwise, no reply to a response may be filed.

(e) *Effect of filing.* Unless the ALJ orders otherwise, the filing of a motion does not stay the hearing process.

(f) *Ruling.* The ALJ will rule on the motion as soon as practicable, either orally on the record or in writing. He or she may summarily deny any dilatory, repetitive, or frivolous motion.

Prehearing Conferences and Discovery

§ 1.640 What are the requirements for prehearing conferences?

(a) *Initial prehearing conference.* The ALJ will conduct an initial prehearing conference with the parties at the time specified in the notice under § 1.630, on or about the 20th day after the effective date stated in the referral notice under § 1.626(c)(4), 43 CFR 45.26(c)(4), or 50 CFR 221.26(c)(4).

(1) The initial prehearing conference will be used:

(i) To identify, narrow, and clarify the disputed issues of material fact and exclude issues that do not qualify for review as factual, material, and disputed;

(ii) To consider the parties' motions for discovery under § 1.641 and to set a deadline for the completion of discovery;

(iii) To discuss the evidence on which each party intends to rely at the hearing;

(iv) To set deadlines for submission of written testimony under § 1.652 and exchange of exhibits to be offered as evidence under § 1.654; and

(v) To set the date, time, and place of the hearing.

(2) The initial prehearing conference may also be used:

(i) To discuss limiting and grouping witnesses to avoid duplication;

(ii) To discuss stipulations of fact and of the content and authenticity of documents;

(iii) To consider requests that the ALJ take official notice of public records or other matters;

(iv) To discuss the submission of written testimony, briefs, or other documents in electronic form; and

(v) To consider any other matters that may aid in the disposition of the case.

(b) *Other conferences.* The ALJ may in his or her discretion direct the parties to attend one or more other prehearing conferences, if consistent with the need to complete the hearing process within 90 days. Any party may by motion request a conference.

(c) *Notice.* The ALJ must give the parties reasonable notice of the time and place of any conference. A conference will ordinarily be held by telephone, unless the ALJ orders otherwise.

(d) *Preparation.* (1) Each party's representative must be fully prepared to discuss all issues pertinent to that party that are properly before the conference, both procedural and substantive. The representative must be authorized to commit the party that he or she represents respecting those issues.

(2) Before the date set for the initial prehearing conference, the parties' representatives must make a good faith effort:

(i) To meet in person, by telephone, or by other appropriate means; and

(ii) To reach agreement on discovery and the schedule of remaining steps in the hearing process.

(e) *Failure to attend.* Unless the ALJ orders otherwise, a party that fails to attend or participate in a conference, after being served with reasonable notice of its time and place, waives all objections to any agreements reached in the conference and to any consequent orders or rulings.

(f) *Scope.* During a conference, the ALJ may dispose of any procedural matters related to the case.

(g) *Order.* Within 2 days after the conclusion of each conference, the ALJ must issue an order that recites any agreements reached at the conference and any rulings made by the ALJ during or as a result of the conference.

§ 1.641 How may parties obtain discovery of information needed for the case?

(a) *General.* By agreement of the parties or with the permission of the ALJ, a party may obtain discovery of information to assist the party in preparing or presenting its case. Available methods of discovery are:

(1) Written interrogatories as provided in § 1.643;

(2) Depositions of witnesses as provided in paragraph (h) of this section; and

(3) Requests for production of designated documents or tangible things or for entry on designated land for inspection or other purposes.

(b) *Criteria.* Discovery may occur only as agreed to by the parties or as authorized by the ALJ during a prehearing conference or in a written order under § 1.640(g). The ALJ may authorize discovery only if the party requesting discovery demonstrates:

(1) That the discovery will not unreasonably delay the hearing process;

(2) That the information sought:

(i) Will be admissible at the hearing or appears reasonably calculated to lead to the discovery of admissible evidence;

(ii) Is not already in the license proceeding record or otherwise obtainable by the party;

(iii) Is not cumulative or repetitious; and

(iv) Is not privileged or protected from disclosure by applicable law;

(3) That the scope of the discovery is not unduly burdensome;

(4) That the method to be used is the least burdensome method available;

(5) That any trade secrets or proprietary information can be adequately safeguarded; and

(6) That the standards for discovery under paragraphs (f) through (h) of this section have been met, if applicable.

(c) *Motions.* A party may initiate discovery:

(1) Pursuant to an agreement of the parties; or

(2) By filing a motion that:

(i) Briefly describes the proposed method(s), purpose, and scope of the discovery;

(ii) Explains how the discovery meets the criteria in paragraphs (b)(1) through (b)(6) of this section; and

(iii) Attaches a copy of any proposed discovery request (written interrogatories, notice of deposition, or request for production of designated documents or tangible things or for entry on designated land).

(d) *Timing of motions.* A party must file any discovery motion under paragraph (c)(2) of this section within 7 days after the effective date stated in the referral notice under § 1.626(c)(4), 43 CFR 45.26(c)(4), or 50 CFR 221.26(c)(4).

(e) *Objections.* (1) A party must file any objections to a discovery motion or to specific portions of a proposed discovery request within 7 days after service of the motion.

(2) An objection must explain how, in the objecting party's view, the discovery sought does not meet the criteria in paragraphs (b)(1) through (6) of this section.

(f) *Materials prepared for hearing.* A party generally may not obtain discovery of documents and tangible things otherwise discoverable under paragraph (b) of this section if they were prepared in anticipation of or for the hearing by or for another party's representative (including the party's attorney, expert, or consultant).

(1) If a party wants to discover such materials, it must show:

(i) That it has substantial need of the materials in preparing its own case; and

(ii) That the party is unable without undue hardship to obtain the substantial equivalent of the materials by other means.

(2) In ordering discovery of such materials when the required showing has been made, the ALJ must protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney.

(g) *Experts.* Unless restricted by the ALJ, a party may discover any facts known or opinions held by an expert through the methods set out in paragraph (a) of this section concerning any relevant matters that are not privileged. Such discovery will be permitted only if:

(1) The expert is expected to be a witness at the hearing; or

(2) The expert is relied on by another expert who is expected to be a witness at the hearing, and the party shows:

(i) That it has a compelling need for the information; and

(ii) That it cannot practicably obtain the information by other means.

(h) *Limitations on depositions.* (1) A party may depose an expert or non-expert witness only if the party shows that the witness:

(i) Will be unable to attend the hearing because of age, illness, or other incapacity; or

(ii) Is unwilling to attend the hearing voluntarily, and the party is unable to compel the witness's attendance at the hearing by subpoena.

(2) Paragraph (h)(1)(ii) of this section does not apply to any person employed by or under contract with the party seeking the deposition.

(3) A party may depose a senior Department employee only if the party shows:

(i) That the employee's testimony is necessary in order to provide significant, unprivileged information that is not available from any other source or by less burdensome means; and

(ii) That the deposition would not significantly interfere with the employee's ability to perform his or her government duties.

(4) Unless otherwise stipulated to by the parties or authorized by the ALJ upon a showing of extraordinary circumstances, a deposition is limited to 1 day of 7 hours.

(i) *Completion of discovery.* All discovery must be completed within 25 days after the initial prehearing conference.

§ 1.642 When must a party supplement or amend information it has previously provided?

(a) *Discovery.* A party must promptly supplement or amend any prior response to a discovery request if it learns that the response:

(1) Was incomplete or incorrect when made; or

(2) Though complete and correct when made, is now incomplete or incorrect in any material respect.

(b) *Witnesses and exhibits.* (1) Within 10 days after the date set for completion of discovery, each party must file an updated version of the list of witnesses and exhibits required under § 1.621(c), § 1.622(c), or § 1.625(c).

(2) If a party wishes to include any new witness or exhibit on its updated list, it must provide an explanation of why it was not feasible for the party to include the witness or exhibit on its list under § 1.621(c), § 1.622(c), or § 1.625(c).

(c) *Failure to disclose.* (1) A party will not be permitted to introduce as evidence at the hearing testimony from a witness or other information that it failed to disclose under § 1.621(c), § 1.622(c), or § 1.625(c), or paragraph (a) or (b) of this section.

(2) Paragraph (c)(1) of this section does not apply if the failure to disclose was substantially justified or is harmless.

(3) A party may object to the admission of evidence under paragraph (c)(1) of this section before or during the hearing.

(4) The ALJ will consider the following in determining whether to exclude evidence under paragraphs (c)(1) through (3) of this section:

(i) The prejudice to the objecting party;

(ii) The ability of the objecting party to cure any prejudice;

(iii) The extent to which presentation of the evidence would disrupt the orderly and efficient hearing of the case;

(iv) The importance of the evidence; and

(v) The reason for the failure to disclose, including any bad faith or willfulness regarding the failure.

§ 1.643 What are the requirements for written interrogatories?

(a) *Motion; limitation.* Except upon agreement of the parties:

(1) A party wishing to propound interrogatories must file a motion under § 1.641(c); and

(2) A party may propound no more than 25 interrogatories, counting discrete subparts as separate interrogatories, unless the ALJ approves a higher number upon a showing of good cause.

(b) *ALJ order.* The ALJ will issue an order under § 1.641(b) with respect to any discovery motion requesting the use of written interrogatories. The order will:

(1) Grant the motion and approve the use of some or all of the proposed interrogatories; or

(2) Deny the motion.

(c) *Answers to interrogatories.* Except upon agreement of the parties, the party to whom the proposed interrogatories are directed must file its answers to any interrogatories approved by the ALJ within 15 days after issuance of the order under paragraph (b) of this section.

(1) Each approved interrogatory must be answered separately and fully in writing.

(2) The party or its representative must sign the answers to interrogatories under oath or affirmation.

(d) *Access to records.* A party's answer to an interrogatory is sufficient when:

(1) The information may be obtained from an examination of records, or from a compilation, abstract, or summary based on such records;

(2) The burden of obtaining the information from the records is substantially the same for all parties;

(3) The answering party specifically identifies the individual records from which the requesting party may obtain the information and where the records are located; and

(4) The answering party provides the requesting party with reasonable opportunity to examine the records and make a copy, compilation, abstract, or summary.

§ 1.644 What are the requirements for depositions?

(a) *Motion and notice.* Except upon agreement of the parties, a party wishing to take a deposition must file a motion under § 1.641(c). Any notice of deposition filed with the motion must state:

(1) The time and place that the deposition is to be taken;

(2) The name and address of the person before whom the deposition is to be taken;

(3) The name and address of the witness whose deposition is to be taken; and

(4) Any documents or materials that the witness is to produce.

(b) *ALJ order.* The ALJ will issue an order under § 1.641(b) with respect to any discovery motion requesting the taking of a deposition. The order will:

(1) Grant the motion and approve the taking of the deposition, subject to any conditions or restrictions the ALJ may impose; or

(2) Deny the motion.

(c) *Arrangements.* If the parties agree to or the ALJ approves the taking of the deposition, the party requesting the deposition must make appropriate arrangements for necessary facilities and personnel.

(1) The deposition will be taken at the time and place agreed to by the parties or indicated in the ALJ's order.

(2) The deposition may be taken before any disinterested person authorized to administer oaths in the place where the deposition is to be taken.

(3) Any party that objects to the taking of a deposition because of the disqualification of the person before whom it is to be taken must do so:

(i) Before the deposition begins; or

(ii) As soon as the disqualification becomes known or could have been discovered with reasonable diligence.

(4) A deposition may be taken by telephone conference call, if agreed to by the parties or approved in the ALJ's order.

(d) *Testimony.* Each witness deposed must be placed under oath or affirmation, and the other parties must be given an opportunity for cross-examination.

(e) *Representation of witness.* The witness being deposed may have counsel or another representative present during the deposition.

(f) *Recording and transcript.* Except as provided in paragraph (g) of this section, the deposition must be stenographically recorded and transcribed at the expense of the party that requested the deposition.

(1) Any other party may obtain a copy of the transcript at its own expense.

(2) Unless waived by the deponent, the deponent will have 3 days after receiving the transcript to read and sign it.

(3) The person before whom the deposition was taken must certify the transcript following receipt of the signed transcript from the deponent or expiration of the 3-day review period, whichever occurs first.

(g) *Video recording.* The testimony at a deposition may be recorded on videotape, subject to any conditions or restrictions that the parties may agree to or the ALJ may impose, at the expense of the party requesting the recording.

(1) The video recording may be in conjunction with an oral examination by telephone conference held under paragraph (c)(4) of this section.

(2) After the deposition has been taken, the person recording the deposition must:

(i) Provide a copy of the videotape to any party that requests it, at the requesting party's expense; and

(ii) Attach to the videotape a statement identifying the case and the deponent and certifying the authenticity of the video recording.

(h) *Use of deposition.* A deposition may be used at the hearing as provided in § 1.653.

§ 1.645 What are the requirements for requests for documents or tangible things or entry on land?

(a) *Motion.* Except upon agreement of the parties, a party wishing to request the production of designated documents or tangible things or entry on designated land must file a motion under § 1.641(c). A request may include any of the following that are in the possession, custody, or control of another party:

(1) The production of designated documents for inspection and copying, other than documents that are already in the license proceeding record;

(2) The production of designated tangible things for inspection, copying, testing, or sampling; or

(3) Entry on designated land or other property for inspection and measuring, surveying, photographing, testing, or sampling either the property or any designated object or operation on the property.

(b) *ALJ order.* The ALJ will issue an order under § 1.641(b) with respect to any discovery motion requesting the production of documents or tangible things or entry on land for inspection, copying, or other purposes. The order will:

(1) Grant the motion and approve the use of some or all of the proposed requests; or

(2) Deny the motion.

(c) *Compliance with order.* Except upon agreement of the parties, the party to whom any approved request for production is directed must permit the approved inspection and other activities within 15 days after issuance of the order under paragraph (a) of this section.

§ 1.646 What sanctions may the ALJ impose for failure to comply with discovery?

(a) Upon motion of a party, the ALJ may impose sanctions under paragraph (b) of this section if any party:

(1) Fails to comply with an order approving discovery; or

(2) Fails to supplement or amend a response to discovery under § 1.642(a).

(b) The ALJ may impose one or more of the following sanctions:

(1) Infer that the information, testimony, document, or other evidence withheld would have been adverse to the party;

(2) Order that, for the purposes of the hearing, designated facts are established;

(3) Order that the party not introduce into evidence, or otherwise rely on to

support its case, any information, testimony, document, or other evidence:

(i) That the party improperly withheld; or

(ii) That the party obtained from another party in discovery;

(4) Allow another party to use secondary evidence to show what the information, testimony, document, or other evidence withheld would have shown; or

(5) Take other appropriate action to remedy the party's failure to comply.

§ 1.64 What are the requirements for subpoenas and witness fees?

(a) *Request for subpoena.* (1) Except as provided in paragraph (a)(2) of this section, any party may request by written motion that the ALJ issue a subpoena to the extent authorized by law for the attendance of a person, the giving of testimony, or the production of documents or other relevant evidence during discovery or for the hearing.

(2) A party may request a subpoena for a senior Department employee only if the party shows:

(i) That the employee's testimony is necessary in order to provide significant, unprivileged information that is not available from any other source or by less burdensome means; and

(ii) That the employee's attendance would not significantly interfere with the ability to perform his or her government duties.

(b) *Service.* (1) A subpoena may be served by any person who is not a party and is 18 years of age or older.

(2) Service must be made by hand delivering a copy of the subpoena to the person named therein.

(3) The person serving the subpoena must:

(i) Prepare a certificate of service setting forth:

(A) The date, time, and manner of service; or

(B) The reason for any failure of service; and

(ii) Swear to or affirm the certificate, attach it to a copy of the subpoena, and return it to the party on whose behalf the subpoena was served.

(c) *Witness fees.* (1) A party who subpoenas a witness who is not a party must pay him or her the same fees and mileage expenses that are paid witnesses in the district courts of the United States.

(2) A witness who is not a party and who attends a deposition or hearing at the request of any party without having been subpoenaed is entitled to the same fees and mileage expenses as if he or she had been subpoenaed. However, this paragraph does not apply to Federal employees who are called as witnesses by the Forest Service or another Department.

(d) *Motion to quash.* (1) A person to whom a subpoena is directed may request by motion that the ALJ quash or modify the subpoena.

(2) The motion must be filed:

(i) Within 5 days after service of the subpoena; or

(ii) At or before the time specified in the subpoena for compliance, if that is less than 5 days after service of the subpoena.

(3) The ALJ may quash or modify the subpoena if it:

(i) Is unreasonable;

(ii) Requires production of information during discovery that is not discoverable; or

(iii) Requires disclosure of irrelevant, privileged, or otherwise protected information.

(e) *Enforcement.* For good cause shown, the ALJ may apply to the appropriate United States District Court for the issuance of an order compelling the appearance and testimony of a witness or the production of evidence as set forth in a subpoena that has been duly issued and served.

Hearing, Briefing, and Decision

§ 1.650 When and where will the hearing be held?

(a) Except as provided in paragraph (b) of this section, the hearing will be held at the time and place set at the initial prehearing conference under § 1.640, generally within 25 days after the date set for completion of discovery.

(b) On motion by a party or on the ALJ's initiative, the ALJ may change the date, time, or place of the hearing if he or she finds:

(1) That there is good cause for the change; and

(2) That the change will not unduly prejudice the parties and witnesses.

§ 1.651 What are the parties' rights during the hearing?

Each party has the following rights during the hearing, as necessary to assure full and accurate disclosure of the facts:

(a) To present testimony and exhibits, consistent with the requirements in §§ 1.621(c), 1.622(c), 1.625(c), 1.642(b), and 1.652;

(b) To make objections, motions, and arguments; and

(c) To cross-examine witnesses and to conduct re-direct and re-cross examination as permitted by the ALJ.

§ 1.652 What are the requirements for presenting testimony?

(a) *Written direct testimony.* Unless otherwise ordered by the ALJ, all direct hearing testimony for each party's initial case must be prepared and submitted in written form. The ALJ will determine whether rebuttal testimony, if allowed, must be submitted in written form.

(1) Prepared written testimony must:

(i) Have line numbers inserted in the left-hand margin of each page;

(ii) Be authenticated by an affidavit or declaration of the witness;

(iii) Be filed within 10 days after the date set for completion of discovery; and

(iv) Be offered as an exhibit during the hearing.

(2) Any witness submitting written testimony must be available for cross-examination at the hearing.

(b) *Oral testimony.* Oral examination of a witness in a hearing, including on cross-examination or redirect, must be conducted under oath and in the presence of the ALJ, with an opportunity for all parties to question the witness.

(c) *Telephonic testimony.* The ALJ may by order allow a witness to testify by telephonic conference call.

(1) The arrangements for the call must let each party listen to and speak to the witness and each other within the hearing of the ALJ.

(2) The ALJ will ensure the full identification of each speaker so the reporter can create a proper record.

(3) The ALJ may issue a subpoena under § 1.647 directing a witness to testify by telephonic conference call.

§ 1.653 How may a party use a deposition in the hearing?

(a) *In general.* Subject to the provisions of this section, a party may use in the hearing any part or all of a deposition taken under § 1.644 against any party who:

(1) Was present or represented at the taking of the deposition; or

(2) Had reasonable notice of the taking of the deposition.

(b) *Admissibility.* (1) No part of a deposition will be included in the hearing record, unless received in evidence by the ALJ.

(2) The ALJ will exclude from evidence any question and response to which an objection:

(i) Was noted at the taking of the deposition; and

(ii) Would have been sustained if the witness had been personally present and testifying at a hearing.

(3) If a party offers only part of a deposition in evidence:

(i) An adverse party may require the party to introduce any other part that ought in fairness to be considered with the part introduced; and

(ii) Any other party may introduce any other parts.

(c) *Videotaped deposition.* If the deposition was recorded on videotape and is admitted into evidence, relevant portions will be played during the hearing and transcribed into the record by the reporter.

§ 1.654 What are the requirements for exhibits, official notice, and stipulations?

(a) *General.* (1) Except as provided in paragraphs (b) through (d) of this section, any material offered in evidence, other than oral testimony, must be offered in the form of an exhibit.

(2) Each exhibit offered by a party must be marked for identification.

(3) Any party who seeks to have an exhibit admitted into evidence must provide:

(i) The original of the exhibit to the reporter, unless the ALJ permits the substitution of a copy; and

(ii) A copy of the exhibit to the ALJ.

(b) *Material not offered.* If a document offered as an exhibit contains material not offered as evidence:

(1) The party offering the exhibit must:

(i) Designate the matter offered as evidence;

(ii) Segregate and exclude the material not offered in evidence, to the extent practicable; and

(iii) Provide copies of the entire document to the other parties appearing at the hearing.

(2) The ALJ must give the other parties an opportunity to inspect the entire document and offer in evidence any other portions of the document.

(c) *Official notice.* (1) At the request of any party at the hearing, the ALJ may take official notice of any matter of which the courts of the United States may take judicial notice, including the public records of any Department party.

(2) The ALJ must give the other parties appearing at the hearing an opportunity to show the contrary of an officially noticed fact.

(3) Any party requesting official notice of a fact after the conclusion of the hearing must show good cause for its failure to request official notice during the hearing.

(d) *Stipulations.* (1) The parties may stipulate to any relevant facts or to the authenticity of any relevant documents.

(2) If received in evidence at the hearing, a stipulation is binding on the stipulating parties.

(3) A stipulation may be written or made orally at the hearing.

§ 1.655 What evidence is admissible at the hearing?

(a) *General.* (1) Subject to the provisions of § 1.642(b), the ALJ may admit any written, oral, documentary, or demonstrative evidence that is:

(i) Relevant, reliable, and probative; and

(ii) Not privileged or unduly repetitious or cumulative.

(2) The ALJ may exclude evidence if its probative value is substantially outweighed by the risk of undue prejudice, confusion of the issues, or delay.

(3) Hearsay evidence is admissible. The ALJ may consider the fact that evidence is hearsay when determining its probative value.

(4) The Federal Rules of Evidence do not directly apply to the hearing, but may be used as guidance by the ALJ and the parties in interpreting and applying the provisions of this section.

(b) *Objections.* Any party objecting to the admission or exclusion of evidence must concisely state the grounds. A ruling on every objection must appear in the record.

§ 1.656 What are the requirements for transcription of the hearing?

(a) *Transcript and reporter's fees.* The hearing will be transcribed verbatim.

(1) The Forest Service will secure the services of a reporter and pay the reporter's fees to provide an original transcript to the OALJ on an expedited basis.

(2) Each party must pay the reporter for any copies of the transcript obtained by that party.

(b) *Transcript corrections.* (1) Any party may file a motion proposing corrections to the transcript. The motion must be filed within 5 days after receipt of the transcript, unless the ALJ sets a different deadline.

(2) Unless a party files a timely motion under paragraph (b)(1) of this section, the transcript will be presumed to be correct and complete, except for obvious typographical errors.

(3) As soon as practicable after the close of the hearing and after consideration of any motions filed under paragraph (b)(1) of this section, the ALJ will issue an order making any corrections to the transcript that the ALJ finds are warranted.

§ 1.657 Who has the burden of persuasion, and what standard of proof applies?

(a) Any party who has filed a request for a hearing has the burden of persuasion with respect to the issues of material fact raised by that party.

(b) The standard of proof is a preponderance of the evidence.

§ 1.658 When will the hearing record close?

(a) The hearing record will close when the ALJ closes the hearing, unless he or she directs otherwise.

(b) Evidence may not be added after the hearing record is closed, but the transcript may be corrected under § 1.656(b).

§ 1.659 What are the requirements for post-hearing briefs?

(a) *General.* (1) Each party may file a post-hearing brief within 15 days after the close of the hearing.

(2) A party may file a reply brief only if requested by the ALJ. The deadline for filing a reply brief, if any, will be set by the ALJ.

(3) The ALJ may limit the length of the briefs to be filed under this section.

(b) *Content.* (1) An initial brief must include:

(i) A concise statement of the case;

(ii) A separate section containing proposed findings regarding the issues of material fact, with supporting citations to the hearing record;

(iii) Arguments in support of the party's position; and

(iv) Any other matter required by the ALJ.

(2) A reply brief, if requested by the ALJ, must be limited to any issues identified by the ALJ.

(c) *Form.* (1) An exhibit admitted in evidence or marked for identification in the record may not be reproduced in the brief.

(i) Such an exhibit may be reproduced, within reasonable limits, in an appendix to the brief.

(ii) Any pertinent analysis of an exhibit may be included in a brief.

(2) If a brief exceeds 20 pages, it must contain:

(i) A table of contents and of points made, with page references; and

(ii) An alphabetical list of citations to legal authority, with page references.

§ 1.660 What are the requirements for the ALJ's decision?

(a) *Timing.* The ALJ must issue a decision within the shorter of the following time periods:

(1) 30 days after the close of the hearing under § 1.658; or

(2) 120 days after the effective date stated in the referral notice under § 1.626(c)(4), 43 CFR 45.26(c)(4), or 50 CFR 221.26(c)(4).

(b) *Content.* (1) The decision must contain:

(i) Findings of fact on all disputed issues of material fact;

(ii) Conclusions of law necessary to make the findings of fact (such as rulings on materiality and on the admissibility of evidence); and

(iii) Reasons for the findings and conclusions.

(2) The ALJ may adopt any of the findings of fact proposed by one or more of the parties.

(3) The decision will not contain conclusions as to whether any preliminary condition or prescription should be adopted, modified, or rejected, or whether any proposed alternative should be accepted or rejected.

(c) *Service.* Promptly after issuing his or her decision, the ALJ must:

(1) Serve the decision on each party to the hearing;

(2) Prepare a list of all documents that constitute the complete record for the hearing process (including the decision) and certify that the list is complete; and

(3) Forward to FERC the complete record for the hearing process, along with the certified list prepared under paragraph (c)(2) of this section, for inclusion in the record for the license proceeding. Materials received in electronic form, *e.g.,* as attachments to electronic mail, should be transmitted to FERC in electronic form. However, for cases in which a settlement was reached prior to a decision, the entire record need not be transmitted to FERC. In such situations, only the initial pleadings (hearing requests with attachments, any notices of intervention and response, answers, and referral notice) and any dismissal order of the ALJ need be transmitted.

(d) *Finality.* The ALJ's decision under this section with respect to the disputed issues of material fact will not be subject to further administrative review. To the extent the ALJ's decision forms the basis for any condition or prescription subsequently included in the license, it may be subject to judicial review under 16 U.S.C. 825*l*(b).

Alternatives Process

§ 1.670 How must documents be filed and served under this subpart?

(a) *Filing.* (1) A document under this subpart must be filed using one of the methods set forth in § 1.612(b).

(2) A document is considered filed on the date it is received. However, any document received after 5 p.m. at the place where the filing is due is considered filed on the next regular business day.

(b) *Service.* (1) Any document filed under this subpart must be served at the same time the document is delivered or sent for filing. A complete copy of the document must be delivered or sent to each license party and FERC, using:

(i) One of the methods of service in § 1.613(c); or

(ii) Regular mail.

(2) The provisions of § 1.613(d) regarding a certificate of service apply to service under this subpart.

§ 1.671 How do I propose an alternative?

(a) *General.* To propose an alternative condition, you must:

(1) Be a license party; and

(2) File a written proposal with NFS, at the appropriate address provided in § 1.612(a)(1):

(i) For a case under § 1.601(d)(1), within 30 days after the Forest Service files its preliminary conditions with FERC; or

(ii) For a case under § 1.601(d)(2), within 60 days after the Forest Service files its proposed conditions with FERC.

(b) *Content.* Your proposal must include:

(1) A description of the alternative, in an equivalent level of detail to the Forest Service's preliminary condition;

(2) An explanation of how the alternative will provide for the adequate protection and utilization of the reservation;

(3) An explanation of how the alternative, as compared to the preliminary condition, will:

(i) Cost significantly less to implement; or

(ii) Result in improved operation of the project works for electricity production;

(4) An explanation of how the alternative will affect:

(i) Energy supply, distribution, cost, and use;

(ii) Flood control;

(iii) Navigation;

(iv) Water supply;

(v) Air quality; and

(vi) Other aspects of environmental quality; and

(5) Specific citations to any scientific studies, literature, and other documented information relied on to support your proposal, including any assumptions you are making (*e.g.,* regarding the cost of energy or the rate of inflation). If any such document is not already in the license proceeding record, you must provide a copy with the proposal.

§ 1.672 May I file a revised proposed alternative?

(a) Within 20 days after issuance of the ALJ's decision under § 1.660, you may file with NFS, at the appropriate address provided in § 1.612(a)(1), a revised proposed alternative condition if:

(1) You previously filed a proposed alternative that met the requirements of § 1.671; and

(2) Your revised proposed alternative is designed to respond to one or more findings of fact by the ALJ.

(b) Your revised proposed alternative must:

(1) Satisfy the content requirements for a proposed alternative under § 1.671(b); and

(2) Identify the specific ALJ finding(s) to which the revised proposed alternative is designed to respond and how the revised proposed alternative differs from the original alternative.

(c) Filing a revised proposed alternative will constitute a withdrawal of the previously filed proposed alternative.

§ 1.673 When will the Forest Service file its modified condition?

(a) Except as provided in paragraph (b) of this section, if any license party proposes an alternative to a preliminary condition or prescription under § 1.671,the Forest Service will do the following within 60 days after the deadline for filing comments on FERC's draft NEPA document under 18 CFR 5.25(c):

(1) Analyze under § 1.674 any alternative condition proposed under § 1.671 or 1.672; and

(2) File with FERC:

(i) Any condition the Forest Service adopts as its modified condition; and

(ii) The Forest Service's analysis of the modified condition and any proposed alternative.

(b) If the Forest Service needs additional time to complete the steps set forth in paragraphs (a)(1) and (2) of this section, it will so inform FERC within 60 days after the deadline for filing comments on FERC's draft NEPA document under 18 CFR 5.25(c).

§ 1.674 How will the Forest Service analyze a proposed alternative and formulate its modified condition?

(a) In deciding whether to accept an alternative proposed under § 1.671 or § 1.672, the Forest Service must consider evidence and supporting material provided by any license party or otherwise reasonably available to the Forest Service, including:

(1) Any evidence on the implementation costs or operational impacts for electricity production of the proposed alternative;

(2) Any comments received on the Forest Service's preliminary condition;

(3) Any ALJ decision on disputed issues of material fact issued under § 1.660 with respect to the preliminary condition;

(4) Comments received on any draft or final NEPA documents; and

(5) The license party's proposal under § 1.671 or § 1.672.

(b) The Forest Service must accept a proposed alternative if the Forest

Service determines, based on substantial evidence provided by any license party or otherwise available to the Forest Service, that the alternative:

(1) Will, as compared to the Forest Service's preliminary condition:

(i) Cost significantly less to implement; or

(ii) Result in improved operation of the project works for electricity production; and

(2) Will provide for the adequate protection and utilization of the reservation.

(c) For purposes of paragraphs (a) and (b) of this section, the Forest Service will consider evidence and supporting material provided by any license party by the deadline for filing comments on FERC's NEPA document under 18 CFR 5.25(c).

(d) When the Forest Service files with FERC the condition that the Forest Service adopts as its modified condition under § 1.673(a)(2), it must also file:

(1) A written statement explaining:

(i) The basis for the adopted condition;

(ii) If the Forest Service is not accepting any pending alternative, its reasons for not doing so; and

(iii) If any alternative submitted under § 1.671 was subsequently withdrawn by the license party, that the alternative was withdrawn; and

(2) Any study, data, and other factual information relied on that is not already part of the licensing proceeding record.

(e) The written statement under paragraph (d)(1) of this section must demonstrate that the Forest Service gave equal consideration to the effects of the condition adopted and any alternative not accepted on:

(1) Energy supply, distribution, cost, and use;

(2) Flood control;

(3) Navigation;

(4) Water supply;

(5) Air quality; and

(6) Preservation of other aspects of environmental quality.

§ 1.675 Has OMB approved the information collection provisions of this subpart?

Yes. This subpart contains provisions in §§ 1.670 through 1.674 that would collect information from the public. It therefore requires approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* (PRA). According to the PRA, 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 that indicates OMB approval. OMB has reviewed the information collection in this rule and approved it under OMB control number 1094–0001.

Title 43—Department of the Interior

■ 3. Part 45 is revised to read as follows:

PART 45—CONDITIONS AND PRESCRIPTIONS IN FERC HYDROPOWER LICENSES

Subpart A—General Provisions

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Authority: 16 U.S.C. 797(e), 811, 823d.

Subpart A—General Provisions

§ 45.1 What is the purpose of this part, and to what license proceedings does it apply?

(a) *Hearing process.* (1) The regulations in subparts A and B of this part contain rules of practice and procedure applicable to hearings on disputed issues of material fact with respect to mandatory conditions and prescriptions that the Department of the Interior (DOI) may develop for inclusion in a hydropower license issued under subchapter I of the Federal Power Act (FPA), 16 U.S.C. 791 *et seq.* The authority to develop these conditions and prescriptions is granted by FPA sections 4(e) and 18, 16 U.S.C. 797(e) and 811, which authorize the Secretary of the Interior to condition hydropower licenses issued by the Federal Energy Regulatory Commission (FERC) and to prescribe fishways.

(2) The hearing process under this part does not apply to provisions that DOI may submit to FERC under any

authority other than FPA section 4(e) and 18, including recommendations under FPA section 10(a) or (j), 16 U.S.C. 803(a), (j), or terms and conditions under FPA section 30(c), 16 U.S.C. 823a(c).

(3) The FPA also grants the Department of Agriculture and the Department of Commerce the authority to develop mandatory conditions, and the Department of Commerce the authority to develop mandatory prescriptions, for inclusion in a hydropower license. Where DOI and either or both of these other Departments develop conditions or prescriptions to be included in the same hydropower license and where the Departments agree to consolidate the hearings under § 45.23:

(i) A hearing conducted under this part will also address disputed issues of material fact with respect to any condition or prescription developed by one of the other Departments; or

(ii) A hearing requested under this part will be conducted by one of the other Departments, pursuant to 7 CFR 1.601 *et seq.* or 50 CFR 221.1 *et seq.,* as applicable.

(4) The regulations in subparts A and B of this part will be construed and applied to each hearing process to achieve a just and speedy determination, consistent with adequate consideration of the issues involved and the provisions of § 45.60(a).

(b) *Alternatives process.* The regulations in subparts A and C of this part contain rules of procedure applicable to the submission and consideration of alternative conditions and prescriptions under FPA section 33, 16 U.S.C. 823d. That section allows any party to the license proceeding to propose an alternative to a condition deemed necessary by DOI under section 4(e) or a fishway prescribed by DOI under section 18.

(c) *Reserved authority.* Where DOI has notified or notifies FERC that it is reserving its authority to develop one or more conditions or prescriptions at a later time, the hearing and alternatives processes under this part for such conditions or prescriptions will be available if and when DOI exercises its reserved authority.

(d) *Applicability.* (1) This part applies to any hydropower license proceeding for which the license had not been issued as of November 17, 2005, and for which one or more preliminary conditions or prescriptions have been or are filed with FERC before FERC issues the license.

(2) This part also applies to any exercise of DOI's reserved authority under paragraph (c) of this section with respect to a hydropower license issued before or after November 17, 2005.

§ 45.2 What terms are used in this part?

As used in this part:

ALJ means an administrative law judge appointed under 5 U.S.C. 3105 and assigned to preside over the hearing process under subpart B of this part.

Alternative means a condition or prescription that a license party other than a bureau or Department develops as an alternative to a preliminary condition or prescription from a bureau or Department, under FPA sec. 33, 16 U.S.C. 823d.

Bureau means any of the following organizations within DOI that develops a preliminary condition or prescription: The Bureau of Indian Affairs, Bureau of Land Management, Bureau of Reclamation, Fish and Wildlife Service, or National Park Service.

Condition means a condition under FPA sec. 4(e), 16 U.S.C. 797(e), for the adequate protection and utilization of a reservation.

Day means a calendar day.

Department means the Department of Agriculture, Department of Commerce, or Department of the Interior.

Discovery means a prehearing process for obtaining facts or information to assist a party in preparing or presenting its case.

DOI means the Department of the Interior, including any bureau, unit, or office of the Department, whether in Washington, DC, or in the field.

Ex parte communication means an oral or written communication to the ALJ that is made without providing all parties reasonable notice and an opportunity to participate.

FERC means the Federal Energy Regulatory Commission.

FPA means the Federal Power Act, 16 U.S.C. 791 *et seq.*

Hearings Division means the Departmental Cases Hearings Division, Office of Hearings and Appeals, Department of the Interior, 301 South West Temple Street, Suite 6.300, Salt Lake City, UT 84101, telephone 801–524–5344, facsimile number 801–524–5539.

Intervention means a process by which a person who did not request a hearing under § 45.21 can participate as a party to the hearing under § 45.22.

License party means a party to the license proceeding, as that term is defined at 18 CFR 385.102(c).

License proceeding means a proceeding before FERC for issuance of a license for a hydroelectric facility under 18 CFR part 4 or 5.

Material fact means a fact that, if proved, may affect a Department's decision whether to affirm, modify, or withdraw any condition or prescription.

Modified condition or prescription means any modified condition or prescription filed by a Department with FERC for inclusion in a hydropower license.

NEPA document means an environmental assessment or environmental impact statement issued to comply with the requirements of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*

OEPC means the Office of Environmental Policy and Compliance, Department of the Interior, 1849 C Street NW., Mail Stop 2462, Washington, DC 20240, telephone 202–208–3891, facsimile number 202–208–6970.

Party means, with respect to DOI's hearing process under subpart B of this part:

(1) A license party that has filed a timely request for a hearing under:

(i) Section 45.21; or

(ii) Either 7 CFR 1.621 or 50 CFR 221.21, with respect to a hearing process consolidated under § 45.23;

(2) A license party that has filed a timely notice of intervention and response under:

(i) Section 45.22; or

(ii) Either 7 CFR 1.622 or 50 CFR 221.22, with respect to a hearing process consolidated under § 45.23;

(3) Any bureau whose preliminary condition or prescription has been filed with FERC; and

(4) Any other Department that has filed a preliminary condition or prescription, with respect to a hearing process consolidated under § 45.23.

Person means an individual; a partnership, corporation, association, or other legal entity; an unincorporated organization; and any Federal, State, Tribal, county, district, territorial, or local government or agency.

Preliminary condition or prescription means any preliminary condition or prescription filed by a Department with FERC for potential inclusion in a hydropower license.

Prescription means a fishway prescribed under FPA sec. 18, 16 U.S.C. 811, to provide for the safe, timely, and effective passage of fish.

Representative means a person who:

(1) Is authorized by a party to represent the party in a hearing process under this subpart; and

(2) Has filed an appearance under § 45.10.

Reservation has the same meaning as the term ''reservations'' in FPA sec. 3(2), 16 U.S.C. 796(2).

Secretary means the Secretary of the Interior or his or her designee.

Senior Department employee has the same meaning as the term ''senior employee'' in 5 CFR 2637.211(a).

You refers to a party other than a Department.

§ 45.3 How are time periods computed?

(a) *General.* Time periods are computed as follows:

(1) The day of the act or event from which the period begins to run is not included.

(2) The last day of the period is included.

(i) If that day is a Saturday, Sunday, or Federal holiday, the period is extended to the next business day.

(ii) The last day of the period ends at 5 p.m. at the place where the filing or other action is due.

(3) If the period is less than 7 days, any Saturday, Sunday, or Federal holiday that falls within the period is not included.

(b) *Extensions of time.* (1) No extension of time can be granted to file a request for a hearing under § 45.21, a notice of intervention and response under § 45.22, an answer under § 45.25, or any document under subpart C of this part.

(2) An extension of time to file any other document under subpart B of this part may be granted only upon a showing of good cause.

(i) To request an extension of time, a party must file a motion under § 45.35 stating how much additional time is needed and the reasons for the request.

(ii) The party must file the motion before the applicable time period expires, unless the party demonstrates extraordinary circumstances that justify a delay in filing.

(iii) The ALJ may grant the extension only if:

(A) It would not unduly prejudice other parties; and

(B) It would not delay the decision under § 45.60.

§ 45.4 What deadlines apply to the trial-type hearing and alternatives processes?

(a) The following table summarizes the steps in the trial-type hearing process under subpart B of this part and indicates the deadlines generally applicable to each step. If the deadlines in this table are in any way inconsistent with the deadlines as set by other sections of this part or by the ALJ, the deadlines as set by those other sections or by the ALJ control.

Process step	Process day	Must generally be completed	See section
(1) DOI files preliminary condition(s) or prescription(s) with FERC.	0	.....	45.20.
(2) License party files request for hearing	30	Within 30 days after DOI files preliminary condition(s) or prescription(s) with FERC.	45.21(a).
(3) Any other license party files notice of intervention and response.	50	Within 20 days after deadline for filing requests for hearing.	45.22(a).
(4) Bureau may file answer	80	Within 50 days after deadline for filing requests for hearing.	45.25(a).
(5) OEPC refers case to ALJ office for hearing and issues referral notice to parties.	85	Within 55 days after deadline for filing requests for hearing.	45.26(a).
(6) Parties may meet and agree to discovery (optional step).	86–91	Before deadline for filing motions seeking discovery ...	45.41(a).
(7) ALJ office sends docketing notice, and ALJ issues notice setting date for initial prehearing conference.	90	Within 5 days after effective date of referral notice	45.30.
(8) Party files motion seeking discovery from another party.	92	Within 7 days after effective date of referral notice	45.41(d).
(9) Other party files objections to discovery motion or specific portions of discovery requests.	99	Within 7 days after service of discovery motion	45.41(e).
(10) Parties meet to discuss discovery and hearing schedule.	100–104	Before date set for initial prehearing conference	45.40(d).
(11) ALJ conducts initial prehearing conference	105	On or about 20th day after effective date of referral notice.	45.40(a).
(12) ALJ issues order following initial prehearing conference.	107	Within 2 days after initial prehearing conference	45.40(g).
(13) Party responds to interrogatories from another party as authorized by ALJ.	120–22	Within 15 days after ALJ's order authorizing discovery during or following initial prehearing conference.	45.43(c).
(14) Party responds to requests for documents, etc., from another party as authorized by ALJ.	120–22	Within 15 days after ALJ's order authorizing discovery during or following initial prehearing conference.	45.45(c).
(15) Parties complete all discovery, including depositions, as authorized by ALJ.	130	Within 25 days after initial prehearing conference	45.41(i).
(16) Parties file updated lists of witnesses and exhibits	140	Within 10 days after deadline for completion of discovery.	45.42(b).
(17) Parties file written direct testimony	140	Within 10 days after deadline for completion of discovery.	45.52(a).
(18) Parties complete prehearing preparation and ALJ commences hearing.	155	Within 25 days after deadline for completion of discovery.	45.50(a).
(19) ALJ closes hearing record	160	When ALJ closes hearing	45.58.
(20) Parties file post-hearing briefs	175	Within 15 days after hearing closes	45.59(a).
(21) ALJ issues decision	190	Within 30 days after hearing closes	45.60(a).

(b) The following table summarizes the steps in the alternatives process under subpart C of this part and indicates the deadlines generally applicable to each step. If the deadlines in this table are in any way inconsistent with the deadlines as set by other sections of this part, the deadlines as set by those other sections control.

Process step	Process day	Must generally be completed	See section
(1) DOI files preliminary condition(s) or prescription(s) with FERC.	0	.....	45.20.
(2) License party files alternative condition(s) or prescription(s).	30	Within 30 days after DOI files preliminary condition(s) or prescription(s) with FERC.	45.71(a).
(3) ALJ issues decision on any hearing request	190	Within 30 days after hearing closes (see previous table).	45.60(a).
(4) License party files revised alternative condition(s) or prescription(s) if authorized.	210	Within 20 days after ALJ issues decision	45.72(a).
(5) DOI files modified condition(s) or prescription(s) with FERC.	300	Within 60 days after the deadline for filing comments on FERC's draft NEPA document.	45.73(a).

Subpart B—Hearing Process

Representatives

§ 45.10 Who may represent a party, and what requirements apply to a representative?

(a) *Individuals.* A party who is an individual may either represent himself or herself in the hearing process under this subpart or authorize an attorney to represent him or her.

(b) *Organizations.* A party that is an organization or other entity may authorize one of the following to represent it:

(1) An attorney;

(2) A partner, if the entity is a partnership;

(3) An officer or agent, if the entity is a corporation, association, or unincorporated organization;

(4) A receiver, administrator, executor, or similar fiduciary, if the entity is a receivership, trust, or estate; or

(5) An elected or appointed official or an employee, if the entity is a Federal, State, Tribal, county, district, territorial, or local government or component.

(c) *Appearance.* An individual representing himself or herself and any other representative must file a notice of appearance. The notice must:

(1) Meet the form and content requirements for documents under § 45.11;

(2) Include the name and address of the party on whose behalf the appearance is made;

(3) If the representative is an attorney, include a statement that he or she is a member in good standing of the bar of the highest court of a state, the District of Columbia, or any territory or commonwealth of the United States (identifying which one); and

(4) If the representative is not an attorney, include a statement explaining his or her authority to represent the entity.

(d) *Lead representative.* If a party has more than one representative, the ALJ may require the party to designate a lead representative for service of documents under § 45.13.

(e) *Disqualification.* The ALJ may disqualify any representative for misconduct or other good cause.

Document Filing and Service

§ 45.11 What are the form and content requirements for documents under this subpart?

(a) *Form.* Each document filed in a case under this subpart must:

(1) Measure 8½ by 11 inches, except that a table, chart, diagram, or other attachment may be larger if folded to 8½ by 11 inches and attached to the document;

(2) Be printed on just one side of the page (except that service copies may be printed on both sides of the page);

(3) Be clearly typewritten, printed, or otherwise reproduced by a process that yields legible and permanent copies;

(4) Use 11 point font size or larger;

(5) Be double-spaced except for footnotes and long quotations, which may be single-spaced;

(6) Have margins of at least 1 inch; and

(7) Be bound on the left side, if bound.

(b) *Caption.* Each document filed under this subpart must begin with a caption that sets forth:

(1) The name of the case under this subpart and the docket number, if one has been assigned;

(2) The name and docket number of the license proceeding to which the case under this subpart relates; and

(3) A descriptive title for the document, indicating the party for whom it is filed and the nature of the document.

(c) *Signature.* The original of each document filed under this subpart must be signed by the representative of the person for whom the document is filed. The signature constitutes a certification by the representative that he or she has read the document; that to the best of his or her knowledge, information, and belief, the statements made in the document are true; and that the document is not being filed for the purpose of causing delay.

(d) *Contact information.* Below the representative's signature, the document must provide the representative's name, mailing address, street address (if different), telephone number, facsimile number (if any), and electronic mail address (if any).

§ 45.12 Where and how must documents be filed?

(a) *Place of filing.* Any documents relating to a case under this subpart must be filed with the appropriate office, as follows:

(1) Before OEPC refers a case for docketing under § 45.26, any documents must be filed with OEPC. OEPC's address, telephone number, and facsimile number are set forth in § 45.2.

(2) OEPC will notify the parties of the date on which it refers a case for docketing under § 45.26. After that date, any documents must be filed with:

(i) The Hearings Division, if DOI will be conducting the hearing. The Hearings Division's address, telephone number, and facsimile number are set forth in § 45.2; or

(ii) The hearings component of or used by another Department, if that Department will be conducting the hearing. The name, address, telephone number, and facsimile number of the appropriate hearings component will be provided in the referral notice from OEPC.

(b) *Method of filing.* (1) A document must be filed with the appropriate office under paragraph (a) of this section using one of the following methods:

(i) By hand delivery of the original document and two copies;

(ii) By sending the original document and two copies by express mail or courier service; or

(iii) By sending the document by facsimile if:

(A) The document is 20 pages or less, including all attachments;

(B) The sending facsimile machine confirms that the transmission was successful; and

(C) The original of the document and two copies are sent by regular mail on the same day.

(2) Parties are encouraged, and may be required by the ALJ, to supplement any filing by providing the appropriate

office with an electronic copy of the document on compact disc or other suitable media. With respect to any supporting material accompanying a request for hearing, a notice of intervention and response, or an answer, the party may submit in lieu of an original and two hard copies:

(i) An original; and

(ii) One copy on a compact disc or other suitable media.

(c) *Date of filing.* A document under this subpart is considered filed on the date it is received. However, any document received after 5 p.m. at the place where the filing is due is considered filed on the next regular business day.

(d) *Nonconforming documents.* If any document submitted for filing under this subpart does not comply with the requirements of this subpart or any applicable order, it may be rejected.

§ 45.13 What are the requirements for service of documents?

(a) *Filed documents.* Any document related to a case under this subpart must be served at the same time the document is delivered or sent for filing. Copies must be served as follows:

(1) A complete copy of any request for a hearing under § 45.21 must be delivered or sent to FERC and each license party, using one of the methods of service in paragraph (c) of this section or under 18 CFR 385.2010(f)(3) for license parties that have agreed to receive electronic service.

(2) A complete copy of any notice of intervention and response under § 45.22 must be:

(i) Delivered or sent to FERC, the license applicant, any person who has filed a request for hearing under § 45.21, and any bureau, using one of the methods of service in paragraph (c) of this section; and

(ii) Delivered or sent to any other license party using one of the methods of service in paragraph (c) of this section or under 18 CFR 385.2010(f)(3) for license parties that have agreed to receive electronic service, or by regular mail.

(3) A complete copy of any answer or notice under § 45.25 and any other document filed by any party to the hearing process must be delivered or sent on every other party to the hearing process, using one of the methods of service in paragraph (c) of this section.

(b) *Documents issued by the Hearings Division or ALJ.* A complete copy of any notice, order, decision, or other document issued by the Hearings Division or the ALJ under this subpart must be served on each party, using one of the methods of service in paragraph (c) of this section.

(c) *Method of service.* Unless otherwise agreed to by the parties and ordered by the ALJ, service must be accomplished by one of the following methods:

(1) By hand delivery of the document;

(2) By sending the document by express mail or courier service for delivery on the next business day;

(3) By sending the document by facsimile if:

(i) The document is 20 pages or less, including all attachments;

(ii) The sending facsimile machine confirms that the transmission was successful; and

(iii) The document is sent by regular mail on the same day; or

(4) By sending the document, including all attachments, by electronic means if the party to be served has consented to that means of service in writing. However, if the serving party learns that the document did not reach the party to be served, the serving party must re-serve the document by another method set forth in paragraph (c) of this section (including another electronic means, if the party to be served has consented to that means in writing).

(d) *Certificate of service.* A certificate of service must be attached to each document filed under this subpart. The certificate must be signed by the party's representative and include the following information:

(1) The name, address, and other contact information of each party's representative on whom the document was served;

(2) The means of service, including information indicating compliance with paragraph (c)(3) or (c)(4) of this section, if applicable; and

(3) The date of service.

Initiation of Hearing Process

§ 45.20 What supporting information must DOI provide with its preliminary conditions or prescriptions?

(a) *Supporting information.* (1) When DOI files a preliminary condition or prescription with FERC, it must include a rationale for the condition or prescription and an index to the administrative record that identifies all documents relied upon.

(2) If any of the documents relied upon are not already in the license proceeding record, DOI must:

(i) File them with FERC at the time it files the preliminary condition or prescription;

(ii) Provide copies to the license applicant; and

(iii) In the case of a condition developed by the Bureau of Indian Affairs, provide copies to the affected Indian tribe.

(b) *Service.* DOI will serve a copy of its preliminary condition or prescription on each license party.

§ 45.21 How do I request a hearing?

(a) *General.* To request a hearing on disputed issues of material fact with respect to any preliminary condition or prescription filed by DOI, you must:

(1) Be a license party; and

(2) File with OEPC, at the address provided in§ 45.2, a written request for a hearing:

(i) For a case under § 45.1(d)(1), within 30 days after DOI files a preliminary condition or prescription with FERC; or

(ii) For a case under § 45.1(d)(2), within 60 days after DOI files a preliminary condition or prescription with FERC.

(b) *Content.* Your hearing request must contain:

(1) A numbered list of the factual issues that you allege are in dispute, each stated in a single, concise sentence;

(2) The following information with respect to each issue:

(i) The specific factual statements made or relied upon by DOI under § 45.20(a) that you dispute;

(ii) The basis for your opinion that those factual statements are unfounded or erroneous; and

(iii) The basis for your opinion that any factual dispute is material.

(3) With respect to any scientific studies, literature, and other documented information supporting your opinions under paragraphs (b)(2)(ii) and (b)(2)(iii) of this section, specific citations to the information relied upon. If any such document is not already in the license proceeding record, you must provide a copy with the request; and

(4) A statement indicating whether or not you consent to service by electronic means under § 45.13(c)(4) and, if so, by what means.

(c) *Witnesses and exhibits.* Your hearing request must also list the witnesses and exhibits that you intend to present at the hearing, other than solely for impeachment purposes.

(1) For each witness listed, you must provide:

(i) His or her name, address, telephone number, and qualifications; and

(ii) A brief narrative summary of his or her expected testimony.

(2) For each exhibit listed, you must specify whether it is in the license proceeding record.

(d) *Page limits.* (1) For each disputed factual issue, the information provided

under paragraph (b)(2) of this section may not exceed two pages.

(2) For each witness, the information provided under paragraph (c)(1) of this section may not exceed one page.

§ 45.22 How do I file a notice of intervention and response?

(a) *General.* (1) To intervene as a party to the hearing process, you must:

(i) Be a license party; and

(ii) File with OEPC, at the address provided in§ 45.2, a notice of intervention and a written response to any request for a hearing within 20 days after the deadline in § 45.21(a)(2).

(2) A notice of intervention and response must be limited to one or more of the issues of material fact raised in the hearing request and may not raise additional issues.

(b) *Content.* In your notice of intervention and response you must explain your position with respect to the issues of material fact raised in the hearing request under § 45.21(b).

(1) If you agree with the information provided by DOI under § 45.20(a) or by the requester under § 45.21(b), your response may refer to DOI's explanation or the requester's hearing request for support.

(2) If you wish to rely on additional information or analysis, your response must provide the same level of detail with respect to the additional information or analysis as required under § 45.21(b).

(3) Your notice of intervention and response must also indicate whether or not you consent to service by electronic means under § 45.13(c)(4) and, if so, by what means.

(c) *Witnesses and exhibits.* Your response and notice must also list the witnesses and exhibits that you intend to present at the hearing, other than solely for impeachment purposes.

(1) For each witness listed, you must provide:

(i) His or her name, address, telephone number, and qualifications; and

(ii) A brief narrative summary of his or her expected testimony; and

(2) For each exhibit listed, you must specify whether it is in the license proceeding record.

(d) *Page limits.* (1) For each disputed factual issue, the information provided under paragraph (b) of this section (excluding citations to scientific studies, literature, and other documented information supporting your opinions) may not exceed two pages.

(2) For each witness, the information provided under paragraph (c)(1) of this section may not exceed one page.

§ 45.23 Will hearing requests be consolidated?

(a) *Initial Department coordination.* Any bureau that has received a copy of a hearing request must contact the other bureaus and Departments and determine:

(1) Whether a preliminary condition or prescription relating to the license has been filed with FERC on behalf of any other bureau or Department; and

(2) If so, whether the other bureau or Department has also received a hearing request with respect to the preliminary condition or prescription.

(b) *Decision on consolidation.* Where more than one bureau or Department has received a hearing request, the bureaus or Departments involved must decide jointly:

(1) Whether the cases should be consolidated for hearing under paragraphs (c)(3)(ii) through (iv) of this section; and

(2) If so, which Department will conduct the hearing on their behalf.

(c) *Criteria.* Cases will or may be consolidated as follows:

(1) All hearing requests with respect to any conditions from the same Department will be consolidated for hearing.

(2) All hearing requests with respect to any prescriptions from the same Department will be consolidated for hearing.

(3) All or any portion of the following may be consolidated for hearing, if the bureaus and Departments involved determine that there are common issues of material fact or that consolidation is otherwise appropriate:

(i) Two or more hearing requests with respect to any condition and any prescription from the same Department;

(ii) Two or more hearing requests with respect to conditions from different Departments;

(iii) Two or more hearing requests with respect to prescriptions from different Departments; or

(iv) Two or more hearing requests with respect to any condition from one Department and any prescription from another Department.

§ 45.24 Can a hearing process be stayed to allow for settlement discussions?

(a) Prior to referral to the ALJ, the hearing requester and the Department may by agreement stay the hearing process under this subpart for a period not to exceed 120 days to allow for settlement discussions, if the stay period and any subsequent hearing process (if required) can be accommodated within the time frame established for the license proceeding.

(b) Any stay of the hearing process will not affect the deadline for filing a notice of intervention and response, if any, pursuant to § 45.22(a)(1)(ii).

§ 45.25 How will the bureau respond to any hearing requests?

(a) *General.* Within 50 days after the deadline in § 45.21(a)(2) or 30 days after the expiration of any stay period under § 45.24, whichever is later, the bureau may file with OEPC an answer to any hearing request under § 45.21.

(b) *Content.* If the bureau files an answer:

(1) For each of the numbered factual issues listed under § 45.21(b)(1), the answer must explain the bureau's position with respect to the issues of material fact raised by the requester, including one or more of the following statements as appropriate:

(i) That the bureau is willing to stipulate to the facts as alleged by the requester;

(ii) That the bureau believes the issue listed by the requester is not a factual issue, explaining the basis for such belief;

(iii) That the bureau believes the issue listed by the requester is not material, explaining the basis for such belief; or

(iv) That the bureau agrees that the issue is factual, material, and in dispute.

(2) The answer must also indicate whether the hearing request will be consolidated with one or more other hearing requests under § 45.23 and, if so:

(i) Identify any other hearing request that will be consolidated with this hearing request; and

(ii) State which Department will conduct the hearing and provide contact information for the appropriate Department hearings component.

(3) If the bureau plans to rely on any scientific studies, literature, and other documented information that are not already in the license proceeding record, it must provide a copy with its answer.

(4) The answer must also indicate whether or not the bureau consents to service by electronic means under § 45.13(c)(4) and, if so, by what means.

(c) *Witnesses and exhibits.* The bureau's answer must also list the witnesses and exhibits that it intends to present at the hearing, other than solely for impeachment purposes.

(1) For each witness listed, the bureau must provide:

(i) His or her name, address, telephone number, and qualifications; and

(ii) A brief narrative summary of his or her expected testimony.

(2) For each exhibit listed, the bureau must specify whether it is in the license proceeding record.

(d) *Page limits.* (1) For each disputed factual issue, the information provided under paragraph (b)(1) of this section may not exceed two pages.

(2) For each witness, the information provided under paragraph (c)(1) of this section may not exceed one page.

(e) *Notice in lieu of answer.* If the bureau elects not to file an answer to a hearing request:

(1) The bureau is deemed to agree that the issues listed by the requester are factual, material, and in dispute;

(2) The bureau may file a list of witnesses and exhibits with respect to the request only as provided in § 45.42(b); and

(3) The bureau must file a notice containing the information required by paragraph (b)(2) of this section, if the hearing request will be consolidated with one or more other hearing requests under § 45.23, and the statement required by paragraph (b)(4) of this section.

§ 45.26 What will DOI do with any hearing requests?

(a) *Case referral.* Within 55 days after the deadline in § 45.21(a)(2) or 35 days after the expiration of any stay period under § 45.24, whichever is later, OEPC will refer the case for a hearing as follows:

(1) If the hearing is to be conducted by DOI, OEPC will refer the case to the Hearings Division.

(2) If the hearing is to be conducted by another Department, OEPC will refer the case to the hearings component used by that Department.

(b) *Content.* The case referral will consist of the following:

(1) Two copies of any preliminary condition or prescription under § 45.20;

(2) The original and one copy of any hearing request under § 45.21;

(3) The original and one copy of any notice of intervention and response under § 45.22;

(4) The original and one copy of any answer under § 45.25; and

(5) The original and one copy of a referral notice under paragraph (c) of this section.

(c) *Notice.* At the time OEPC refers the case for a hearing, it must provide a referral notice that contains the following information:

(1) The name, address, telephone number, and facsimile number of the Department hearings component that will conduct the hearing;

(2) The name, address, and other contact information for the representative of each party to the hearing process;

(3) An identification of any other hearing request that will be consolidated with this hearing request; and

(4) The effective date of the case referral to the appropriate Department hearings component.

(d) *Delivery and service.* (1) OEPC must refer the case to the appropriate Department hearings component by one of the methods identified in § 45.12(b)(1)(i) and (ii).

(2) OEPC must serve a copy of the referral notice on FERC and each party to the hearing by one of the methods identified in § 45.13(c)(1) and (2).

§ 45.27 What regulations apply to a case referred for a hearing?

(a) If OEPC refers the case to the Hearings Division, the regulations in this subpart will continue to apply to the hearing process.

(b) If OEPC refers the case to the United States Department of Agriculture's Office of Administrative Law Judges, the regulations at 7 CFR 1.601 *et seq.* will apply from that point on.

(c) If OEPC refers the case to the Department of Commerce's designated ALJ office, the regulations at 50 CFR 221.1 *et seq.* will apply from that point on.

General Provisions Related to Hearings

§ 45.30 What will the Hearings Division do with a case referral?

Within 5 days after the effective date stated in the referral notice under § 45.26(c)(4), 7 CFR 1.626(c)(4), or 50 CFR 221.26(c)(4):

(a) The Hearings Division must:

(1) Docket the case;

(2) Assign an ALJ to preside over the hearing process and issue a decision; and

(3) Issue a docketing notice that informs the parties of the docket number and the ALJ assigned to the case; and

(b) The ALJ must issue a notice setting the time, place, and method for conducting an initial prehearing conference under § 45.40. This notice may be combined with the docketing notice under paragraph (a)(3) of this section.

§ 45.31 What are the powers of the ALJ?

The ALJ will have all powers necessary to conduct a fair, orderly, expeditious, and impartial hearing process relating to any bureau's or other Department's condition or prescription that has been referred to the ALJ for hearing, including the powers to:

(a) Administer oaths and affirmations;

(b) Issue subpoenas under § 45.47;

(c) Shorten or enlarge time periods set forth in these regulations, except that the deadline in § 45.60(a)(2) can be extended only if the ALJ must be replaced under § 45.32 or 45.33;

(d) Rule on motions;

(e) Authorize discovery as provided for in this subpart;

(f) Hold hearings and conferences;

(g) Regulate the course of hearings;

(h) Call and question witnesses;

(i) Exclude any person from a hearing or conference for misconduct or other good cause;

(j) Summarily dispose of any hearing request or issue as to which the ALJ determines there is no disputed issue of material fact;

(k) Issue a decision consistent with § 45.60(b) regarding any disputed issue of material fact; and

(l) Take any other action authorized by law.

§ 45.32 What happens if the ALJ becomes unavailable?

(a) If the ALJ becomes unavailable or otherwise unable to perform the duties described in § 45.31, the Hearings Division will designate a successor.

(b) If a hearing has commenced and the ALJ cannot proceed with it, a successor ALJ may do so. At the request of a party, the successor ALJ may recall any witness whose testimony is material and disputed, and who is available to testify again without undue burden. The successor ALJ may, within his or her discretion, recall any other witness.

§ 45.33 Under what circumstances may the ALJ be disqualified?

(a) The ALJ may withdraw from a case at any time the ALJ deems himself or herself disqualified.

(b) At any time before issuance of the ALJ's decision, any party may move that the ALJ disqualify himself or herself for personal bias or other valid cause.

(1) The party must file the motion promptly after discovering facts or other reasons allegedly constituting cause for disqualification.

(2) The party must file with the motion an affidavit or declaration setting forth the facts or other reasons in detail.

(c) The ALJ must rule upon the motion, stating the grounds for the ruling.

(1) If the ALJ concludes that the motion is timely and meritorious, he or she must disqualify himself or herself and withdraw from the case.

(2) If the ALJ does not disqualify himself or herself and withdraw from the case, the ALJ must continue with the hearing process and issue a decision.

§ 45.34 What is the law governing ex parte communications?

(a) Ex parte communications with the ALJ or his or her staff are prohibited in accordance with 5 U.S.C. 554(d).

(b) This section does not prohibit ex parte inquiries concerning case status or procedural requirements, unless the inquiry involves an area of controversy in the hearing process.

§ 45.35 What are the requirements for motions?

(a) *General.* Any party may apply for an order or ruling on any matter related to the hearing process by presenting a motion to the ALJ. A motion may be presented any time after the Hearings Division issues a docketing notice under § 45.30.

(1) A motion made at a hearing may be stated orally on the record, unless the ALJ directs that it be reduced to writing.

(2) Any other motion must:

(i) Be in writing;

(ii) Comply with the requirements of this subpart with respect to form, content, filing, and service; and

(iii) Not exceed 15 pages, including all supporting arguments.

(b) *Content.* (1) Each motion must state clearly and concisely:

(i) Its purpose and the relief sought;

(ii) The facts constituting the grounds for the relief sought; and

(iii) Any applicable statutory or regulatory authority.

(2) A proposed order must accompany the motion.

(c) *Response.* Except as otherwise required by this part, any other party may file a response to a written motion within 10 days after service of the motion. The response may not exceed 15 pages, including all supporting arguments. When a party presents a motion at a hearing, any other party may present a response orally on the record.

(d) *Reply.* Unless the ALJ orders otherwise, no reply to a response may be filed.

(e) *Effect of filing.* Unless the ALJ orders otherwise, the filing of a motion does not stay the hearing process.

(f) *Ruling.* The ALJ will rule on the motion as soon as practicable, either orally on the record or in writing. He or she may summarily deny any dilatory, repetitive, or frivolous motion.

Prehearing Conferences and Discovery

§ 45.40 What are the requirements for prehearing conferences?

(a) *Initial prehearing conference.* The ALJ will conduct an initial prehearing conference with the parties at the time specified in the notice under § 45.30, on or about the 20th day after the effective date stated in the referral notice under § 45.26(c)(4), 7 CFR 1.626(c)(4), or 50 CFR 221.26(c)(4).

(1) The initial prehearing conference will be used:

(i) To identify, narrow, and clarify the disputed issues of material fact and exclude issues that do not qualify for review as factual, material, and disputed;

(ii) To consider the parties' motions for discovery under § 45.41 and to set a deadline for the completion of discovery;

(iii) To discuss the evidence on which each party intends to rely at the hearing;

(iv) To set deadlines for submission of written testimony under § 45.52 and exchange of exhibits to be offered as evidence under § 45.54; and

(v) To set the date, time, and place of the hearing.

(2) The initial prehearing conference may also be used:

(i) To discuss limiting and grouping witnesses to avoid duplication;

(ii) To discuss stipulations of fact and of the content and authenticity of documents;

(iii) To consider requests that the ALJ take official notice of public records or other matters;

(iv) To discuss the submission of written testimony, briefs, or other documents in electronic form; and

(v) To consider any other matters that may aid in the disposition of the case.

(b) *Other conferences.* The ALJ may in his or her discretion direct the parties to attend one or more other prehearing conferences, if consistent with the need to complete the hearing process within 90 days. Any party may by motion request a conference.

(c) *Notice.* The ALJ must give the parties reasonable notice of the time and place of any conference. A conference will ordinarily be held by telephone, unless the ALJ orders otherwise.

(d) *Preparation.* (1) Each party's representative must be fully prepared to discuss all issues pertinent to that party that are properly before the conference, both procedural and substantive. The representative must be authorized to commit the party that he or she represents respecting those issues.

(2) Before the date set for the initial prehearing conference, the parties' representatives must make a good faith effort:

(i) To meet in person, by telephone, or by other appropriate means; and

(ii) To reach agreement on discovery and the schedule of remaining steps in the hearing process.

(e) *Failure to attend.* Unless the ALJ orders otherwise, a party that fails to attend or participate in a conference, after being served with reasonable notice of its time and place, waives all objections to any agreements reached in the conference and to any consequent orders or rulings.

(f) *Scope.* During a conference, the ALJ may dispose of any procedural matters related to the case.

(g) *Order.* Within 2 days after the conclusion of each conference, the ALJ must issue an order that recites any agreements reached at the conference and any rulings made by the ALJ during or as a result of the conference.

§ 45.41 How may parties obtain discovery of information needed for the case?

(a) *General.* By agreement of the parties or with the permission of the ALJ, a party may obtain discovery of information to assist the party in preparing or presenting its case. Available methods of discovery are:

(1) Written interrogatories as provided in § 45.43;

(2) Depositions of witnesses as provided in paragraph (h) of this section; and

(3) Requests for production of designated documents or tangible things or for entry on designated land for inspection or other purposes.

(b) *Criteria.* Discovery may occur only as agreed to by the parties or as authorized by the ALJ during a prehearing conference or in a written order under § 45.40(g). The ALJ may authorize discovery only if the party requesting discovery demonstrates:

(1) That the discovery will not unreasonably delay the hearing process;

(2) That the information sought:

(i) Will be admissible at the hearing or appears reasonably calculated to lead to the discovery of admissible evidence;

(ii) Is not already in the license proceeding record or otherwise obtainable by the party;

(iii) Is not cumulative or repetitious; and

(iv) Is not privileged or protected from disclosure by applicable law;

(3) That the scope of the discovery is not unduly burdensome;

(4) That the method to be used is the least burdensome method available;

(5) That any trade secrets or proprietary information can be adequately safeguarded; and

(6) That the standards for discovery under paragraphs (f) through (h) of this section have been met, if applicable.

(c) *Motions.* A party may initiate discovery:

(1) Pursuant to an agreement of the parties; or

(2) By filing a motion that:

(i) Briefly describes the proposed method(s), purpose, and scope of the discovery;

(ii) Explains how the discovery meets the criteria in paragraphs (b)(1) through (b)(6) of this section; and

(iii) Attaches a copy of any proposed discovery request (written interrogatories, notice of deposition, or request for production of designated documents or tangible things or for entry on designated land).

(d) *Timing of motions.* A party must file any discovery motion under paragraph (c)(2) of this section within 7 days after the effective date stated in the referral notice under § 45.26(c)(4), 7 CFR 1.626(c)(4), or 50 CFR 221.26(c)(4).

(e) *Objections.* (1) A party must file any objections to a discovery motion or to specific portions of a proposed discovery request within 7 days after service of the motion.

(2) An objection must explain how, in the objecting party's view, the discovery sought does not meet the criteria in paragraphs (b)(1) through (6) of this section.

(f) *Materials prepared for hearing.* A party generally may not obtain discovery of documents and tangible things otherwise discoverable under paragraph (b) of this section if they were prepared in anticipation of or for the hearing by or for another party's representative (including the party's attorney, expert, or consultant).

(1) If a party wants to discover such materials, it must show:

(i) That it has substantial need of the materials in preparing its own case; and

(ii) That the party is unable without undue hardship to obtain the substantial equivalent of the materials by other means.

(2) In ordering discovery of such materials when the required showing has been made, the ALJ must protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney.

(g) *Experts.* Unless restricted by the ALJ, a party may discover any facts known or opinions held by an expert through the methods set out in paragraph (a) of this section concerning any relevant matters that are not privileged. Such discovery will be permitted only if:

(1) The expert is expected to be a witness at the hearing; or

(2) The expert is relied on by another expert who is expected to be a witness at the hearing, and the party shows:

(i) That it has a compelling need for the information; and

(ii) That it cannot practicably obtain the information by other means.

(h) *Limitations on depositions.* (1) A party may depose an expert or non-expert witness only if the party shows that the witness:

(i) Will be unable to attend the hearing because of age, illness, or other incapacity; or

(ii) Is unwilling to attend the hearing voluntarily, and the party is unable to compel the witness's attendance at the hearing by subpoena.

(2) Paragraph (h)(1)(ii) of this section does not apply to any person employed by or under contract with the party seeking the deposition.

(3) A party may depose a senior Department employee only if the party shows:

(i) That the employee's testimony is necessary in order to provide significant, unprivileged information that is not available from any other source or by less burdensome means; and

(ii) That the deposition would not significantly interfere with the employee's ability to perform his or her government duties.

(4) Unless otherwise stipulated to by the parties or authorized by the ALJ upon a showing of extraordinary circumstances, a deposition is limited to 1 day of 7 hours.

(i) *Completion of discovery.* All discovery must be completed within 25 days after the initial prehearing conference.

§ 45.42 When must a party supplement or amend information it has previously provided?

(a) *Discovery.* A party must promptly supplement or amend any prior response to a discovery request if it learns that the response:

(1) Was incomplete or incorrect when made; or

(2) Though complete and correct when made, is now incomplete or incorrect in any material respect.

(b) *Witnesses and exhibits.* (1) Within 10 days after the date set for completion of discovery, each party must file an updated version of the list of witnesses and exhibits required under § 45.21(c), § 45.22(c), or § 45.25(c).

(2) If a party wishes to include any new witness or exhibit on its updated list, it must provide an explanation of why it was not feasible for the party to include the witness or exhibit on its list under § 45.21(c), § 45.22(c), or § 45.25(c).

(c) *Failure to disclose.* (1) A party will not be permitted to introduce as evidence at the hearing testimony from a witness or other information that it failed to disclose under § 45.21(c), § 45.22(c), or § 45.25(c), or paragraphs (a) or (b) of this section.

(2) Paragraph (c)(1) of this section does not apply if the failure to disclose was substantially justified or is harmless.

(3) A party may object to the admission of evidence under paragraph (c)(1) of this section before or during the hearing.

(4) The ALJ will consider the following in determining whether to exclude evidence under paragraphs (c)(1) through (3) of this section:

(i) The prejudice to the objecting party;

(ii) The ability of the objecting party to cure any prejudice;

(iii) The extent to which presentation of the evidence would disrupt the orderly and efficient hearing of the case;

(iv) The importance of the evidence; and

(v) The reason for the failure to disclose, including any bad faith or willfulness regarding the failure.

§ 45.43 What are the requirements for written interrogatories?

(a) *Motion; limitation.* Except upon agreement of the parties:

(1) A party wishing to propound interrogatories must file a motion under § 45.41(c); and

(2) A party may propound no more than 25 interrogatories, counting discrete subparts as separate interrogatories, unless the ALJ approves a higher number upon a showing of good cause.

(b) *ALJ order.* The ALJ will issue an order under § 45.41(b) with respect to any discovery motion requesting the use of written interrogatories. The order will:

(1) Grant the motion and approve the use of some or all of the proposed interrogatories; or

(2) Deny the motion.

(c) *Answers to interrogatories.* Except upon agreement of the parties, the party to whom the proposed interrogatories are directed must file its answers to any interrogatories approved by the ALJ within 15 days after issuance of the order under paragraph (b) of this section.

(1) Each approved interrogatory must be answered separately and fully in writing.

(2) The party or its representative must sign the answers to interrogatories under oath or affirmation.

(d) *Access to records.* A party's answer to an interrogatory is sufficient when:

(1) The information may be obtained from an examination of records, or from a compilation, abstract, or summary based on such records;

(2) The burden of obtaining the information from the records is substantially the same for all parties;

(3) The answering party specifically identifies the individual records from

which the requesting party may obtain the information and where the records are located; and

(4) The answering party provides the requesting party with reasonable opportunity to examine the records and make a copy, compilation, abstract, or summary.

§ 45.44 What are the requirements for depositions?

(a) *Motion and notice.* Except upon agreement of the parties, a party wishing to take a deposition must file a motion under § 45.41(c). Any notice of deposition filed with the motion must state:

(1) The time and place that the deposition is to be taken;

(2) The name and address of the person before whom the deposition is to be taken;

(3) The name and address of the witness whose deposition is to be taken; and

(4) Any documents or materials that the witness is to produce.

(b) *ALJ order.* The ALJ will issue an order under § 45.41(b) with respect to any discovery motion requesting the taking of a deposition. The order will:

(1) Grant the motion and approve the taking of the deposition, subject to any conditions or restrictions the ALJ may impose; or

(2) Deny the motion.

(c) *Arrangements.* If the parties agree to or the ALJ approves the taking of the deposition, the party requesting the deposition must make appropriate arrangements for necessary facilities and personnel.

(1) The deposition will be taken at the time and place agreed to by the parties or indicated in the ALJ's order.

(2) The deposition may be taken before any disinterested person authorized to administer oaths in the place where the deposition is to be taken.

(3) Any party that objects to the taking of a deposition because of the disqualification of the person before whom it is to be taken must do so:

(i) Before the deposition begins; or

(ii) As soon as the disqualification becomes known or could have been discovered with reasonable diligence.

(4) A deposition may be taken by telephone conference call, if agreed to by the parties or approved in the ALJ's order.

(d) *Testimony.* Each witness deposed must be placed under oath or affirmation, and the other parties must be given an opportunity for cross-examination.

(e) *Representation of witness.* The witness being deposed may have counsel or another representative present during the deposition.

(f) *Recording and transcript.* Except as provided in paragraph (g) of this section, the deposition must be stenographically recorded and transcribed at the expense of the party that requested the deposition.

(1) Any other party may obtain a copy of the transcript at its own expense.

(2) Unless waived by the deponent, the deponent will have 3 days after receiving the transcript to read and sign it.

(3) The person before whom the deposition was taken must certify the transcript following receipt of the signed transcript from the deponent or expiration of the 3-day review period, whichever occurs first.

(g) *Video recording.* The testimony at a deposition may be recorded on videotape, subject to any conditions or restrictions that the parties may agree to or the ALJ may impose, at the expense of the party requesting the recording.

(1) The video recording may be in conjunction with an oral examination by telephone conference held under paragraph (c)(4) of this section.

(2) After the deposition has been taken, the person recording the deposition must:

(i) Provide a copy of the videotape to any party that requests it, at the requesting party's expense; and

(ii) Attach to the videotape a statement identifying the case and the deponent and certifying the authenticity of the video recording.

(h) *Use of deposition.* A deposition may be used at the hearing as provided in § 45.53.

§ 45.45 What are the requirements for requests for documents or tangible things or entry on land?

(a) *Motion.* Except upon agreement of the parties, a party wishing to request the production of designated documents or tangible things or entry on designated land must file a motion under § 45.41(c). A request may include any of the following that are in the possession, custody, or control of another party:

(1) The production of designated documents for inspection and copying, other than documents that are already in the license proceeding record;

(2) The production of designated tangible things for inspection, copying, testing, or sampling; or

(3) Entry on designated land or other property for inspection and measuring, surveying, photographing, testing, or sampling either the property or any designated object or operation on the property.

(b) *ALJ order.* The ALJ will issue an order under § 45.41(b) with respect to any discovery motion requesting the production of documents or tangible things or entry on land for inspection, copying, or other purposes. The order will:

(1) Grant the motion and approve the use of some or all of the proposed requests; or

(2) Deny the motion.

(c) *Compliance with order.* Except upon agreement of the parties, the party to whom any approved request for production is directed must permit the approved inspection and other activities within 15 days after issuance of the order under paragraph (a) of this section.

§ 45.46 What sanctions may the ALJ impose for failure to comply with discovery?

(a) Upon motion of a party, the ALJ may impose sanctions under paragraph (b) of this section if any party:

(1) Fails to comply with an order approving discovery; or

(2) Fails to supplement or amend a response to discovery under § 45.42(a).

(b) The ALJ may impose one or more of the following sanctions:

(1) Infer that the information, testimony, document, or other evidence withheld would have been adverse to the party;

(2) Order that, for the purposes of the hearing, designated facts are established;

(3) Order that the party not introduce into evidence, or otherwise rely on to support its case, any information, testimony, document, or other evidence:

(i) That the party improperly withheld; or

(ii) That the party obtained from another party in discovery;

(4) Allow another party to use secondary evidence to show what the information, testimony, document, or other evidence withheld would have shown; or

(5) Take other appropriate action to remedy the party's failure to comply.

§ 45.47 What are the requirements for subpoenas and witness fees?

(a) *Request for subpoena.* (1) Except as provided in paragraph (a)(2) of this section, any party may request by written motion that the ALJ issue a subpoena to the extent authorized by law for the attendance of a person, the giving of testimony, or the production of documents or other relevant evidence during discovery or for the hearing.

(2) A party may request a subpoena for a senior Department employee only if the party shows:

(i) That the employee's testimony is necessary in order to provide

significant, unprivileged information that is not available from any other source or by less burdensome means; and

(ii) That the employee's attendance would not significantly interfere with the ability to perform his or her government duties.

(b) *Service.* (1) A subpoena may be served by any person who is not a party and is 18 years of age or older.

(2) Service must be made by hand delivering a copy of the subpoena to the person named therein.

(3) The person serving the subpoena must:

(i) Prepare a certificate of service setting forth:

(A) The date, time, and manner of service; or

(B) The reason for any failure of service; and

(ii) Swear to or affirm the certificate, attach it to a copy of the subpoena, and return it to the party on whose behalf the subpoena was served.

(c) *Witness fees.* (1) A party who subpoenas a witness who is not a party must pay him or her the same fees and mileage expenses that are paid witnesses in the district courts of the United States.

(2) A witness who is not a party and who attends a deposition or hearing at the request of any party without having been subpoenaed is entitled to the same fees and mileage expenses as if he or she had been subpoenaed. However, this paragraph does not apply to Federal employees who are called as witnesses by a bureau or other Department.

(d) *Motion to quash.* (1) A person to whom a subpoena is directed may request by motion that the ALJ quash or modify the subpoena.

(2) The motion must be filed:

(i) Within 5 days after service of the subpoena; or

(ii) At or before the time specified in the subpoena for compliance, if that is less than 5 days after service of the subpoena.

(3) The ALJ may quash or modify the subpoena if it:

(i) Is unreasonable;

(ii) Requires production of information during discovery that is not discoverable; or

(iii) Requires disclosure of irrelevant, privileged, or otherwise protected information.

(e) *Enforcement.* For good cause shown, the ALJ may apply to the appropriate United States District Court for the issuance of an order compelling the appearance and testimony of a witness or the production of evidence as set forth in a subpoena that has been duly issued and served.

Hearing, Briefing, and Decision

§ 45.50 When and where will the hearing be held?

(a) Except as provided in paragraph (b) of this section, the hearing will be held at the time and place set at the initial prehearing conference under § 45.40, generally within 25 days after the date set for completion of discovery.

(b) On motion by a party or on the ALJ's initiative, the ALJ may change the date, time, or place of the hearing if he or she finds:

(1) That there is good cause for the change; and

(2) That the change will not unduly prejudice the parties and witnesses.

§ 45.51 What are the parties' rights during the hearing?

Each party has the following rights during the hearing, as necessary to assure full and accurate disclosure of the facts:

(a) To present testimony and exhibits, consistent with the requirements in §§ 45.21(c), 45.22(c), 45.25(c), 45.42(b), and 45.52;

(b) To make objections, motions, and arguments; and

(c) To cross-examine witnesses and to conduct re-direct and re-cross examination as permitted by the ALJ.

§ 45.52 What are the requirements for presenting testimony?

(a) *Written direct testimony.* Unless otherwise ordered by the ALJ, all direct hearing testimony for each party's initial case must be prepared and submitted in written form. The ALJ will determine whether rebuttal testimony, if allowed, must be submitted in written form.

(1) Prepared written testimony must:

(i) Have line numbers inserted in the left-hand margin of each page;

(ii) Be authenticated by an affidavit or declaration of the witness;

(iii) Be filed within 10 days after the date set for completion of discovery; and

(iv) Be offered as an exhibit during the hearing.

(2) Any witness submitting written testimony must be available for cross-examination at the hearing.

(b) *Oral testimony.* Oral examination of a witness in a hearing, including on cross-examination or redirect, must be conducted under oath and in the presence of the ALJ, with an opportunity for all parties to question the witness.

(c) *Telephonic testimony.* The ALJ may by order allow a witness to testify by telephonic conference call.

(1) The arrangements for the call must let each party listen to and speak to the witness and each other within the hearing of the ALJ.

(2) The ALJ will ensure the full identification of each speaker so the reporter can create a proper record.

(3) The ALJ may issue a subpoena under § 45.47 directing a witness to testify by telephonic conference call.

§ 45.53 How may a party use a deposition in the hearing?

(a) *In general.* Subject to the provisions of this section, a party may use in the hearing any part or all of a deposition taken under § 45.44 against any party who:

(1) Was present or represented at the taking of the deposition; or

(2) Had reasonable notice of the taking of the deposition.

(b) *Admissibility.* (1) No part of a deposition will be included in the hearing record, unless received in evidence by the ALJ.

(2) The ALJ will exclude from evidence any question and response to which an objection:

(i) Was noted at the taking of the deposition; and

(ii) Would have been sustained if the witness had been personally present and testifying at a hearing.

(3) If a party offers only part of a deposition in evidence:

(i) An adverse party may require the party to introduce any other part that ought in fairness to be considered with the part introduced; and

(ii) Any other party may introduce any other parts.

(c) *Videotaped deposition.* If the deposition was recorded on videotape and is admitted into evidence, relevant portions will be played during the hearing and transcribed into the record by the reporter.

§ 45.54 What are the requirements for exhibits, official notice, and stipulations?

(a) *General.* (1) Except as provided in paragraphs (b) through (d) of this section, any material offered in evidence, other than oral testimony, must be offered in the form of an exhibit.

(2) Each exhibit offered by a party must be marked for identification.

(3) Any party who seeks to have an exhibit admitted into evidence must provide:

(i) The original of the exhibit to the reporter, unless the ALJ permits the substitution of a copy; and

(ii) A copy of the exhibit to the ALJ.

(b) *Material not offered.* If a document offered as an exhibit contains material not offered as evidence:

(1) The party offering the exhibit must:

(i) Designate the matter offered as evidence;

(ii) Segregate and exclude the material not offered in evidence, to the extent practicable; and

(iii) Provide copies of the entire document to the other parties appearing at the hearing.

(2) The ALJ must give the other parties an opportunity to inspect the entire document and offer in evidence any other portions of the document.

(c) *Official notice.* (1) At the request of any party at the hearing, the ALJ may take official notice of any matter of which the courts of the United States may take judicial notice, including the public records of any Department party.

(2) The ALJ must give the other parties appearing at the hearing an opportunity to show the contrary of an officially noticed fact.

(3) Any party requesting official notice of a fact after the conclusion of the hearing must show good cause for its failure to request official notice during the hearing.

(d) *Stipulations.* (1) The parties may stipulate to any relevant facts or to the authenticity of any relevant documents.

(2) If received in evidence at the hearing, a stipulation is binding on the stipulating parties.

(3) A stipulation may be written or made orally at the hearing.

§ 45.55 What evidence is admissible at the hearing?

(a) *General.* (1) Subject to the provisions of § 45.42(b), the ALJ may admit any written, oral, documentary, or demonstrative evidence that is:

(i) Relevant, reliable, and probative; and

(ii) Not privileged or unduly repetitious or cumulative.

(2) The ALJ may exclude evidence if its probative value is substantially outweighed by the risk of undue prejudice, confusion of the issues, or delay.

(3) Hearsay evidence is admissible. The ALJ may consider the fact that evidence is hearsay when determining its probative value.

(4) The Federal Rules of Evidence do not directly apply to the hearing, but may be used as guidance by the ALJ and the parties in interpreting and applying the provisions of this section.

(b) *Objections.* Any party objecting to the admission or exclusion of evidence must concisely state the grounds. A ruling on every objection must appear in the record.

§ 45.56 What are the requirements for transcription of the hearing?

(a) *Transcript and reporter's fees.* The hearing will be transcribed verbatim.

(1) The Hearings Division will secure the services of a reporter and pay the reporter's fees to provide an original transcript to the Hearings Division on an expedited basis.

(2) Each party must pay the reporter for any copies of the transcript obtained by that party.

(b) *Transcript Corrections.* (1) Any party may file a motion proposing corrections to the transcript. The motion must be filed within 5 days after receipt of the transcript, unless the ALJ sets a different deadline.

(2) Unless a party files a timely motion under paragraph (b)(1) of this section, the transcript will be presumed to be correct and complete, except for obvious typographical errors.

(3) As soon as practicable after the close of the hearing and after consideration of any motions filed under paragraph (b)(1) of this section, the ALJ will issue an order making any corrections to the transcript that the ALJ finds are warranted.

§ 45.57 Who has the burden of persuasion, and what standard of proof applies?

(a) Any party who has filed a request for a hearing has the burden of persuasion with respect to the issues of material fact raised by that party.

(b) The standard of proof is a preponderance of the evidence.

§ 45.58 When will the hearing record close?

(a) The hearing record will close when the ALJ closes the hearing, unless he or she directs otherwise.

(b) Evidence may not be added after the hearing record is closed, but the transcript may be corrected under § 45.56(b).

§ 45.59 What are the requirements for post-hearing briefs?

(a) *General.* (1) Each party may file a post-hearing brief within 15 days after the close of the hearing.

(2) A party may file a reply brief only if requested by the ALJ. The deadline for filing a reply brief, if any, will be set by the ALJ.

(3) The ALJ may limit the length of the briefs to be filed under this section.

(b) *Content.* (1) An initial brief must include:

(i) A concise statement of the case;

(ii) A separate section containing proposed findings regarding the issues of material fact, with supporting citations to the hearing record;

(iii) Arguments in support of the party's position; and

(iv) Any other matter required by the ALJ.

(2) A reply brief, if requested by the ALJ, must be limited to any issues identified by the ALJ.

(c) *Form.* (1) An exhibit admitted in evidence or marked for identification in the record may not be reproduced in the brief.

(i) Such an exhibit may be reproduced, within reasonable limits, in an appendix to the brief.

(ii) Any pertinent analysis of an exhibit may be included in a brief.

(2) If a brief exceeds 20 pages, it must contain:

(i) A table of contents and of points made, with page references; and

(ii) An alphabetical list of citations to legal authority, with page references.

§ 45.60 What are the requirements for the ALJ's decision?

(a) *Timing.* The ALJ must issue a decision within the shorter of the following time periods:

(1) 30 days after the close of the hearing under § 45.58; or

(2) 120 days after the effective date stated in the referral notice under § 45.26(c)(4), 7 CFR 1.626(c)(4), or 50 CFR 221.26(c)(4).

(b) *Content.* (1) The decision must contain:

(i) Findings of fact on all disputed issues of material fact;

(ii) Conclusions of law necessary to make the findings of fact (such as rulings on materiality and on the admissibility of evidence); and

(iii) Reasons for the findings and conclusions.

(2) The ALJ may adopt any of the findings of fact proposed by one or more of the parties.

(3) The decision will not contain conclusions as to whether any preliminary condition or prescription should be adopted, modified, or rejected, or whether any proposed alternative should be accepted or rejected.

(c) *Service.* Promptly after issuing his or her decision, the ALJ must:

(1) Serve the decision on each party to the hearing;

(2) Prepare a list of all documents that constitute the complete record for the hearing process (including the decision) and certify that the list is complete; and

(3) Forward to FERC the complete record for the hearing process, along with the certified list prepared under paragraph (c)(2) of this section, for inclusion in the record for the license proceeding. Materials received in electronic form, *e.g.,* as attachments to electronic mail, should be transmitted to FERC in electronic form. However, for cases in which a settlement was reached prior to a decision, the entire record need not be transmitted to FERC. In such situations, only the initial pleadings (hearing requests with attachments, any notices of intervention and response, answers, and referral

notice) and any dismissal order of the ALJ need be transmitted.

(d) *Finality.* The ALJ's decision under this section with respect to the disputed issues of material fact will not be subject to further administrative review. To the extent the ALJ's decision forms the basis for any condition or prescription subsequently included in the license, it may be subject to judicial review under 16 U.S.C. 825*l*(b).

Subpart C—Alternatives Process

§ 45.70 How must documents be filed and served under this subpart?

(a) *Filing.* (1) A document under this subpart must be filed using one of the methods set forth in § 45.12(b).

(2) A document is considered filed on the date it is received. However, any document received after 5 p.m. at the place where the filing is due is considered filed on the next regular business day.

(b) *Service.* (1) Any document filed under this subpart must be served at the same time the document is delivered or sent for filing. A complete copy of the document must be delivered or sent to each license party and FERC, using:

(i) One of the methods of service in § 45.13(c); or

(ii) Regular mail.

(2) The provisions of § 45.13(d) regarding a certificate of service apply to service under this subpart.

§ 45.71 How do I propose an alternative?

(a) *General.* To propose an alternative condition or prescription, you must:

(1) Be a license party; and

(2) File a written proposal with OEPC:

(i) For a case under § 45.1(d)(1), within 30 days after DOI files a preliminary condition or prescription with FERC; or

(ii) For a case under § 45.1(d)(2), within 60 days after DOI files a proposed condition or prescription with FERC.

(b) *Content.* Your proposal must include:

(1) A description of the alternative, in an equivalent level of detail to DOI's preliminary condition or prescription;

(2) An explanation of how the alternative:

(i) If a condition, will provide for the adequate protection and utilization of the reservation; or

(ii) If a prescription, will be no less protective than the fishway prescribed by DOI;

(3) An explanation of how the alternative, as compared to the preliminary condition or prescription, will:

(i) Cost significantly less to implement; or

(ii) Result in improved operation of the project works for electricity production;

(4) An explanation of how the alternative will affect:

(i) Energy supply, distribution, cost, and use;

(ii) Flood control;

(iii) Navigation;

(iv) Water supply;

(v) Air quality; and

(vi) Other aspects of environmental quality; and

(5) Specific citations to any scientific studies, literature, and other documented information relied on to support your proposal, including any assumptions you are making (*e.g.,* regarding the cost of energy or the rate of inflation). If any such document is not already in the license proceeding record, you must provide a copy with the proposal.

§ 45.72 May I file a revised proposed alternative?

(a) Within 20 days after issuance of the ALJ's decision under § 45.60, you may file with OEPC a revised proposed alternative condition or prescription if:

(1) You previously filed a proposed alternative that met the requirements of § 45.71; and

(2) Your revised proposed alternative is designed to respond to one or more findings of fact by the ALJ.

(b) Your revised proposed alternative must:

(1) Satisfy the content requirements for a proposed alternative under § 45.71(b); and

(2) Identify the specific ALJ finding(s) to which the revised proposed alternative is designed to respond and how the revised proposed alternative differs from the original alternative.

(c) Filing a revised proposed alternative will constitute a withdrawal of the previously filed proposed alternative.

§ 45.73 When will DOI file its modified condition or prescription?

(a) Except as provided in paragraph (b) of this section, if any license party proposes an alternative to a preliminary condition or prescription under § 45.71, DOI will do the following within 60 days after the deadline for filing comments on FERC's draft NEPA document under 18 CFR 5.25(c):

(1) Analyze under § 45.74 any alternative condition or prescription proposed under § 45.71 or 45.72; and

(2) File with FERC:

(i) Any condition or prescription that DOI adopts as its modified condition or prescription; and

(ii) DOI's analysis of the modified condition or prescription and any proposed alternative.

(b) If DOI needs additional time to complete the steps set forth in paragraphs (a)(1) and (a)(2) of this section, it will so inform FERC within 60 days after the deadline for filing comments on FERC's draft NEPA document under 18 CFR 5.25(c).

§ 45.74 How will DOI analyze a proposed alternative and formulate its modified condition or prescription?

(a) In deciding whether to accept an alternative proposed under § 45.71 or 45.72, DOI must consider evidence and supporting material provided by any license party or otherwise reasonably available to DOI, including:

(1) Any evidence on the implementation costs or operational impacts for electricity production of the proposed alternative;

(2) Any comments received on DOI's preliminary condition or prescription;

(3) Any ALJ decision on disputed issues of material fact issued under § 45.60 with respect to the preliminary condition or prescription;

(4) Comments received on any draft or final NEPA documents; and

(5) The license party's proposal under § 45.71 or 45.72.

(b) DOI must accept a proposed alternative if it determines, based on substantial evidence provided by any license party or otherwise reasonably available to DOI, that the alternative:

(1) Will, as compared to DOI's preliminary condition or prescription:

(i) Cost significantly less to implement; or

(ii) Result in improved operation of the project works for electricity production; and

(2) Will:

(i) If a condition, provide for the adequate protection and utilization of the reservation; or

(ii) If a prescription, be no less protective than DOI's preliminary prescription.

(c) For purposes of paragraphs (a) and (b) of this section, DOI will consider evidence and supporting material provided by any license party by the deadline for filing comments on FERC's NEPA document under 18 CFR 5.25(c).

(d) When DOI files with FERC the condition or prescription that DOI adopts as its modified condition or prescription under § 45.73(a)(2), it must also file:

(1) A written statement explaining:

(i) The basis for the adopted condition or prescription;

(ii) If DOI is not accepting any pending alternative, its reasons for not doing so; and

(iii) If any alternative submitted under § 45.71 was subsequently withdrawn by the license party, that the alternative was withdrawn; and

(2) Any study, data, and other factual information relied on that is not already part of the licensing proceeding record.

(e) The written statement under paragraph (d)(1) of this section must demonstrate that DOI gave equal consideration to the effects of the condition or prescription adopted and any alternative not accepted on:

(1) Energy supply, distribution, cost, and use;

(2) Flood control;

(3) Navigation;

(4) Water supply;

(5) Air quality; and

(6) Preservation of other aspects of environmental quality.

§ 45.75 Has OMB approved the information collection provisions of this subpart?

Yes. This rule contains provisions that would collect information from the public. It therefore requires approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* (PRA). According to the PRA, 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 that indicates OMB approval. OMB has reviewed the information collection in this rule and approved it under OMB control number 1094–0001.

Department of Commerce

50 CFR Chapter II

■ 4. The National Oceanic and Atmospheric Administration revises part 221, title 50, to read as follows:

PART 221—CONDITIONS AND PRESCRIPTIONS IN FERC HYDROPOWER LICENSES

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Authority: 16 U.S.C. 797(e), 811, 823d.

Subpart A—General Provisions

§ 221.1 What is the purpose of this part, and to what license proceedings does it apply?

(a) *Hearing process.* (1) The regulations in subparts A and B of this part contain rules of practice and procedure applicable to hearings on disputed issues of material fact with respect to mandatory conditions and prescriptions that the Department of Commerce (acting through the National Oceanic and Atmospheric Administration's (NOAA's) National Marine Fisheries Service (NMFS) and other NOAA entities) may develop for inclusion in a hydropower license issued under subchapter I of the Federal Power Act (FPA), 16 U.S.C. 791 *et seq.* The authority to develop these conditions and prescriptions is granted by FPA sections 4(e) and 18, 16 U.S.C. 797(e) and 811, which authorize the Secretary of Commerce to condition hydropower licenses issued by the Federal Energy Regulatory Commission (FERC) and to prescribe fishways.

(2) The hearing process under this part does not apply to provisions that the Department of Commerce may submit to FERC under any authority other than FPA section 4(e) and 18, including recommendations under FPA section 10(a) or (j), 16 U.S.C. 803(a), (j), or terms and conditions under FPA section 30(c), 16 U.S.C. 823a(c).

(3) The FPA also grants the Department of Agriculture and the Department of the Interior the authority to develop mandatory conditions, and the Department of the Interior the authority to develop mandatory prescriptions, for inclusion in a hydropower license. Where the Department of Commerce and either or both of these other Departments develop conditions or prescriptions to be included in the same hydropower license and where the Departments

agree to consolidate the hearings under § 221.23:

(i) A hearing conducted under this part will also address disputed issues of material fact with respect to any condition or prescription developed by one of the other Departments; or

(ii) A hearing requested under this part will be conducted by one of the other Departments, pursuant to 7 CFR 1.601 *et seq.* or 43 CFR 45.1 *et seq.,* as applicable.

(4) The regulations in subparts A and B of this part will be construed and applied to each hearing process to achieve a just and speedy determination, consistent with adequate consideration of the issues involved and the provisions of § 221.60(a).

(b) *Alternatives process.* The regulations in subparts A and C of this part contain rules of procedure applicable to the submission and consideration of alternative conditions and prescriptions under FPA section 33, 16 U.S.C. 823d. That section allows any party to the license proceeding to propose an alternative to a condition deemed necessary by NOAA under section 4(e) or a fishway prescribed by NMFS under section 18.

(c) *Reserved authority.* Where NOAA has notified or notifies FERC that it is reserving its authority to develop one or more conditions or prescriptions at a later time, the hearing and alternatives processes under this part for such conditions or prescriptions will be available if and when NOAA exercises its reserved authority.

(d) *Applicability.* (1) This part applies to any hydropower license proceeding for which the license had not been issued as of November 17, 2005, and for which one or more preliminary conditions or prescriptions have been or are filed with FERC before FERC issues the license.

(2) This part also applies to any exercise of NOAA's reserved authority under paragraph (c) of this section with respect to a hydropower license issued before or after November 17, 2005.

§ 221.2 What terms are used in this part?

As used in this part:

ALJ means an administrative law judge appointed under 5 U.S.C. 3105 and assigned to preside over the hearing process under subpart B of this part.

Alternative means a condition or prescription that a license party other than NOAA or another Department develops as an alternative to a preliminary condition or prescription from NOAA or another Department, under FPA sec. 33, 16 U.S.C. 823d.

Condition means a condition under FPA sec. 4(e), 16 U.S.C. 797(e), for the adequate protection and utilization of a reservation.

Day means a calendar day.

Department means the Department of Agriculture, Department of Commerce, or Department of the Interior.

Department of Commerce's designated ALJ office means the ALJ office that is assigned to preside over the hearing process for NOAA.

Discovery means a prehearing process for obtaining facts or information to assist a party in preparing or presenting its case.

Ex parte communication means an oral or written communication to the ALJ that is made without providing all parties reasonable notice and an opportunity to participate.

FERC means the Federal Energy Regulatory Commission.

FPA means the Federal Power Act, 16 U.S.C. 791 *et seq.*

Intervention means a process by which a person who did not request a hearing under § 221.21 can participate as a party to the hearing under § 221.22.

License party means a party to the license proceeding, as that term is defined at 18 CFR 385.102(c).

License proceeding means a proceeding before FERC for issuance of a license for a hydroelectric facility under 18 CFR part 4 or 5.

Material fact means a fact that, if proved, may affect a Department's decision whether to affirm, modify, or withdraw any condition or prescription.

Modified condition or prescription means any modified condition or prescription filed by a Department with FERC for inclusion in a hydropower license.

NEPA document means an environmental document as defined at 40 CFR 1508.10 to include an environmental assessment, environmental impact statement (EIS), finding of no significant impact, and notice of intent to prepare an EIS. Such documents are issued to comply with the requirements of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq., and the CEQ Regulations Implementing the Procedural Requirements of NEPA (40 CFR parts 21500–1508).*

NMFS means the National Marine Fisheries Service, a constituent agency of the Department of Commerce, acting by and through the Assistant Administrator for Fisheries or one of NMFS's six Regional Administrators, as appropriate.

NOAA means the National Oceanic and Atmospheric Administration, a constituent agency of the Department of Commerce, acting by and through its Administrator, the Undersecretary of Commerce for Oceans and Atmosphere or one of its line offices.

Office of Habitat Conservation means the NMFS Office of Habitat Conservation. Address: Chief, Habitat Protection Division, Office of Habitat Conservation, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. Telephone 301–427–8601. Facsimile number 301–713–4305.

Party means, with respect to NOAA's hearing process under subpart B of this part:

(1) A license party that has filed a timely request for a hearing under:

(i) Section 221.21; or

(ii) Either 7 CFR 1.621 or 43 CFR 45.21, with respect to a hearing process consolidated under § 221.23;

(2) A license party that has filed a timely notice of intervention and response under:

(i) Section 221.22; or

(ii) Either 7 CFR 1.622 or 43 CFR 45.22, with respect to a hearing process consolidated under § 221.23;

(3) NOAA; and

(4) Any other Department that has filed a preliminary condition or prescription, with respect to a hearing process consolidated under § 221.23.

Person means an individual; a partnership, corporation, association, or other legal entity; an unincorporated organization; and any Federal, State, Tribal, county, district, territorial, or local government or agency.

Preliminary condition or prescription means any preliminary condition or prescription filed by a Department with FERC for potential inclusion in a hydropower license.

Prescription means a fishway prescribed under FPA sec. 18, 16 U.S.C. 811, to provide for the safe, timely, and effective passage of fish.

Representative means a person who:

(1) Is authorized by a party to represent the party in a hearing process under this subpart; and

(2) Has filed an appearance under § 221.10.

Reservation has the same meaning as the term ''reservations'' in FPA sec. 3(2), 16 U.S.C. 796(2).

Secretary means the Secretary of Commerce or his or her designee.

Senior Department employee has the same meaning as the term ''senior employee'' in 5 CFR 2637.211(a).

You refers to a party other than a Department.

§ 221.3 How are time periods computed?

(a) *General.* Time periods are computed as follows:

(1) The day of the act or event from which the period begins to run is not included.

(2) The last day of the period is included.

(i) If that day is a Saturday, Sunday, or Federal holiday, the period is extended to the next business day.

(ii) The last day of the period ends at 5 p.m. at the place where the filing or other action is due.

(3) If the period is less than 7 days, any Saturday, Sunday, or Federal holiday that falls within the period is not included.

(b) *Extensions of time.* (1) No extension of time can be granted to file a request for a hearing under § 221.21, a notice of intervention and response under § 221.22, an answer under § 221.25, or any document under subpart C of this part.

(2) An extension of time to file any other document under subpart B of this part may be granted only upon a showing of good cause.

(i) To request an extension of time, a party must file a motion under § 221.35 stating how much additional time is needed and the reasons for the request.

(ii) The party must file the motion before the applicable time period expires, unless the party demonstrates extraordinary circumstances that justify a delay in filing.

(iii) The ALJ may grant the extension only if:

(A) It would not unduly prejudice other parties; and

(B) It would not delay the decision under § 221.60.

§ 221.4 What deadlines apply to the trial-type hearing and alternatives processes?

(a) The following table summarizes the steps in the trial-type hearing process under subpart B of this part and indicates the deadlines generally applicable to each step. If the deadlines in this table are in any way inconsistent with the deadlines as set by other sections of this part or by the ALJ, the deadlines as set by those other sections or by the ALJ control.

Process step	Process day	Must generally be completed	See section
(1) NOAA files preliminary condition(s) or prescription(s) with FERC.	0	.....	221.20.
(2) License party files request for hearing	30	Within 30 days after NOAA files preliminary condition(s) or prescription(s) with FERC.	221.21(a).
(3) Any other license party files notice of intervention and response.	50	Within 20 days after deadline for filing requests for hearing.	221.22(a).
(4) NOAA may file answer	80	Within 50 days after deadline for filing requests for hearing.	221.25(a).
(5) Office of Habitat Conservation refers case to ALJ office for hearing and issues referral notice to parties.	85	Within 55 days after deadline for filing requests for hearing.	221.26(a).
(6) Parties may meet and agree to discovery (optional step).	86–91	Before deadline for filing motions seeking discovery	221.41(a).
(7) ALJ office sends docketing notice, and ALJ issues notice setting date for initial prehearing conference.	90	Within 5 days after effective date of referral notice	221.30.
(8) Party files motion seeking discovery from another party.	92	Within 7 days after effective date of referral notice	221.41(d).
(9) Other party files objections to discovery motion or specific portions of discovery requests.	99	Within 7 days after service of discovery motion	221.41(e).
(10) Parties meet to discuss discovery and hearing schedule.	100–104	Before date set for initial prehearing conference	221.40(d).
(11) ALJ conducts initial prehearing conference	105	On or about 20th day after effective date of referral notice.	221.40(a).
(12) ALJ issues order following initial prehearing conference.	107	Within 2 days after initial prehearing conference	221.40(g).
(13) Party responds to interrogatories from another party as authorized by ALJ.	120–22	Within 15 days after ALJ's order authorizing discovery during or following initial prehearing conference.	221.43(c).
(14) Party responds to requests for documents, etc., from another party as authorized by ALJ.	120–22	Within 15 days after ALJ's order authorizing discovery during or following initial prehearing conference.	221.45(c).
(15) Parties complete all discovery, including depositions, as authorized by ALJ.	130	Within 25 days after initial prehearing conference	221.41(i).
(16) Parties file updated lists of witnesses and exhibits	140	Within 10 days after deadline for completion of discovery.	221.42(b).
(17) Parties file written direct testimony	140	Within 10 days after deadline for completion of discovery.	221.52(a).
(18) Parties complete prehearing preparation and ALJ commences hearing.	155	Within 25 days after deadline for completion of discovery.	221.50(a).
(19) ALJ closes hearing record	160	When ALJ closes hearing	221.58.
(20) Parties file post-hearing briefs	175	Within 15 days after hearing closes	221.59(a).
(21) ALJ issues decision	190	Within 30 days after hearing closes	221.60(a).

(b) The following table summarizes the steps in the alternatives process under subpart C of this part and indicates the deadlines generally applicable to each step. If the deadlines in this table are in any way inconsistent with the deadlines as set by other sections of this part, the deadlines as set by those other sections control.

Process step	Process day	Must generally be completed	See section
(1) NOAA files preliminary condition(s) or prescription(s) with FERC.	0	.....	221.20.
(2) License party files alternative condition(s) or prescription(s).	30	Within 30 days after NOAA files preliminary condition(s) or prescription(s) with FERC.	221.71(a).
(3) ALJ issues decision on any hearing request	190	Within 30 days after hearing closes (see previous table).	221.60(a).

Process step	Process day	Must generally be completed	See section
(4) License party files revised alternative condition(s) or prescription(s) if authorized.	210	Within 20 days after ALJ issues decision	221.72(a).
(5) NOAA files modified condition(s) or prescription(s) with FERC.	300	Within 60 days after the deadline for filing comments on FERC's draft NEPA document.	221.73(a).

Subpart B—Hearing Process

Representatives

§ 221.10 Who may represent a party, and what requirements apply to a representative?

(a) *Individuals.* A party who is an individual may either represent himself or herself in the hearing process under this subpart or authorize an attorney to represent him or her.

(b) *Organizations.* A party that is an organization or other entity may authorize one of the following to represent it:

(1) An attorney;

(2) A partner, if the entity is a partnership;

(3) An officer or agent, if the entity is a corporation, association, or unincorporated organization;

(4) A receiver, administrator, executor, or similar fiduciary, if the entity is a receivership, trust, or estate; or

(5) An elected or appointed official or an employee, if the entity is a Federal, State, Tribal, county, district, territorial, or local government or component.

(c) *Appearance.* An individual representing himself or herself and any other representative must file a notice of appearance. The notice must:

(1) Meet the form and content requirements for documents under § 221.11;

(2) Include the name and address of the party on whose behalf the appearance is made;

(3) If the representative is an attorney, include a statement that he or she is a member in good standing of the bar of the highest court of a state, the District of Columbia, or any territory or commonwealth of the United States (identifying which one); and

(4) If the representative is not an attorney, include a statement explaining his or her authority to represent the entity.

(d) *Lead representative.* If a party has more than one representative, the ALJ may require the party to designate a lead representative for service of documents under § 221.13.

(e) *Disqualification.* The ALJ may disqualify any representative for misconduct or other good cause.

Document Filing and Service

§ 221.11 What are the form and content requirements for documents under this subpart?

(a) *Form.* Each document filed in a case under this subpart must:

(1) Measure 8½ by 11 inches, except that a table, chart, diagram, or other attachment may be larger if folded to 8½ by 11 inches and attached to the document;

(2) Be printed on just one side of the page (except that service copies may be printed on both sides of the page);

(3) Be clearly typewritten, printed, or otherwise reproduced by a process that yields legible and permanent copies;

(4) Use 11 point font size or larger;

(5) Be double-spaced except for footnotes and long quotations, which may be single-spaced;

(6) Have margins of at least 1 inch; and

(7) Be bound on the left side, if bound.

(b) *Caption.* Each document filed under this subpart must begin with a caption that sets forth:

(1) The name of the case under this subpart and the docket number, if one has been assigned;

(2) The name and docket number of the license proceeding to which the case under this subpart relates; and

(3) A descriptive title for the document, indicating the party for whom it is filed and the nature of the document.

(c) *Signature.* The original of each document filed under this subpart must be signed by the representative of the person for whom the document is filed. The signature constitutes a certification by the representative that he or she has read the document; that to the best of his or her knowledge, information, and belief, the statements made in the document are true; and that the document is not being filed for the purpose of causing delay.

(d) *Contact information.* Below the representative's signature, the document must provide the representative's name, mailing address, street address (if different), telephone number, facsimile number (if any), and electronic mail address (if any).

§ 221.12 Where and how must documents be filed?

(a) *Place of filing.* Any documents relating to a case under this subpart must be filed with the appropriate office, as follows:

(1) Before NOAA refers a case for docketing under § 221.26, any documents must be filed with the Office of Habitat Conservation. The Office of Habitat Conservation's address, telephone number, and facsimile number are set forth in § 221.2.

(2) NOAA will notify the parties of the date on which it refers a case for docketing under § 221.26. After that date, any documents must be filed with:

(i) The Department of Commerce's designated ALJ office, if the Department of Commerce will be conducting the hearing. The name, address, telephone number, and facsimile number of the designated ALJ office will be provided in the referral notice from NOAA; or

(ii) The hearings component of or used by another Department, if that Department will be conducting the hearing. The name, address, telephone number, and facsimile number of the appropriate hearings component will be provided in the referral notice from NOAA.

(b) *Method of filing.* (1) A document must be filed with the appropriate office under paragraph (a) of this section using one of the following methods:

(i) By hand delivery of the original document and two copies;

(ii) By sending the original document and two copies by express mail or courier service; or

(iii) By sending the document by facsimile if:

(A) The document is 20 pages or less, including all attachments;

(B) The sending facsimile machine confirms that the transmission was successful; and

(C) The original of the document and two copies are sent by regular mail on the same day.

(2) Parties are encouraged, and may be required by the ALJ, to supplement any filing by providing the appropriate office with an electronic copy of the document on compact disc or other suitable media. With respect to any supporting material accompanying a request for hearing, a notice of intervention and response, or an

answer, the party may submit in lieu of an original and two hard copies:

(i) An original; and

(ii) One copy on a compact disc or other suitable media.

(c) *Date of filing.* A document under this subpart is considered filed on the date it is received. However, any document received after 5 p.m. at the place where the filing is due is considered filed on the next regular business day.

(d) *Nonconforming documents.* If any document submitted for filing under this subpart does not comply with the requirements of this subpart or any applicable order, it may be rejected.

§ 221.13 What are the requirements for service of documents?

(a) *Filed documents.* Any document related to a case under this subpart must be served at the same time the document is delivered or sent for filing. Copies must be served as follows:

(1) A complete copy of any request for a hearing under § 221.21 must be delivered or sent to FERC and each license party, using one of the methods of service in paragraph (c) of this section or under 18 CFR 385.2010(f)(3) for license parties that have agreed to receive electronic service.

(2) A complete copy of any notice of intervention and response under § 221.22 must be:

(i) Delivered or sent to FERC, the license applicant, any person who has filed a request for hearing under § 221.21, and NOAA, using one of the methods of service in paragraph (c) of this section; and

(ii) Delivered or sent to any other license party using one of the methods of service in paragraph (c) of this section or under 18 CFR 385.2010(f)(3) for license parties that have agreed to receive electronic service, or by regular mail.

(3) A complete copy of any answer or notice under § 221.25 and any other document filed by any party to the hearing process must be delivered or sent on every other party to the hearing process, using one of the methods of service in paragraph (c) of this section.

(b) *Documents issued by the ALJ.* A complete copy of any notice, order, decision, or other document issued by the ALJ under this subpart must be served on each party, using one of the methods of service in paragraph (c) of this section.

(c) *Method of service.* Unless otherwise agreed to by the parties and ordered by the ALJ, service must be accomplished by one of the following methods:

(1) By hand delivery of the document;

(2) By sending the document by express mail or courier service for delivery on the next business day;

(3) By sending the document by facsimile if:

(i) The document is 20 pages or less, including all attachments;

(ii) The sending facsimile machine confirms that the transmission was successful; and

(iii) The document is sent by regular mail on the same day; or

(4) By sending the document, including all attachments, by electronic means if the party to be served has consented to that means of service in writing. However, if the serving party learns that the document did not reach the party to be served, the serving party must re-serve the document by another method set forth in paragraph (c) of this section (including another electronic means, if the party to be served has consented to that means in writing).

(d) *Certificate of service.* A certificate of service must be attached to each document filed under this subpart. The certificate must be signed by the party's representative and include the following information:

(1) The name, address, and other contact information of each party's representative on whom the document was served;

(2) The means of service, including information indicating compliance with paragraph (c)(3) or (c)(4) of this section, if applicable; and

(3) The date of service.

Initiation of Hearing Process

§ 221.20 What supporting information must NOAA provide with its preliminary conditions or prescriptions?

(a) *Supporting information.* (1) When NOAA files a preliminary condition or prescription with FERC, it must include a rationale for the condition or prescription and an index to NOAA's administrative record that identifies all documents relied upon.

(2) If any of the documents relied upon are not already in the license proceeding record, NOAA must:

(i) File them with FERC at the time it files the preliminary condition or prescription;

(ii) Provide copies to the license applicant; and

(b) *Service.* NOAA will serve a copy of its preliminary condition or prescription on each license party.

§ 221.21 How do I request a hearing?

(a) *General.* To request a hearing on disputed issues of material fact with respect to any preliminary condition or prescription filed by NOAA, you must:

(1) Be a license party; and

(2) File with the Office of Habitat Conservation, at the address provided in § 221.2, a written request for a hearing:

(i) For a case under § 221.1(d)(1), within 30 days after NOAA files a preliminary condition or prescription with FERC; or

(ii) For a case under § 221.1(d)(2), within 60 days after NOAA files a preliminary condition or prescription with FERC.

(b) *Content.* Your hearing request must contain:

(1) A numbered list of the factual issues that you allege are in dispute, each stated in a single, concise sentence;

(2) The following information with respect to each issue:

(i) The specific factual statements made or relied upon by NOAA under § 221.20(a) that you dispute;

(ii) The basis for your opinion that those factual statements are unfounded or erroneous; and

(iii) The basis for your opinion that any factual dispute is material.

(3) With respect to any scientific studies, literature, and other documented information supporting your opinions under paragraphs (b)(2)(ii) and (b)(2)(iii) of this section, specific citations to the information relied upon. If any such document is not already in the license proceeding record, you must provide a copy with the request; and

(4) A statement indicating whether or not you consent to service by electronic means under § 221.13(c)(4) and, if so, by what means.

(c) *Witnesses and exhibits.* Your hearing request must also list the witnesses and exhibits that you intend to present at the hearing, other than solely for impeachment purposes.

(1) For each witness listed, you must provide:

(i) His or her name, address, telephone number, and qualifications; and

(ii) A brief narrative summary of his or her expected testimony.

(2) For each exhibit listed, you must specify whether it is in the license proceeding record.

(d) *Page limits.* (1) For each disputed factual issue, the information provided under paragraph (b)(2) of this section may not exceed two pages.

(2) For each witness, the information provided under paragraph (c)(1) of this section may not exceed one page.

§ 221.22 How do I file a notice of intervention and response?

(a) *General.* (1) To intervene as a party to the hearing process, you must:

(i) Be a license party; and

(ii) File with the Office of Habitat Conservation, at the address provided in

§ 221.2, a notice of intervention and a written response to any request for a hearing within 20 days after the deadline in § 221.21(a)(2).

(2) A notice of intervention and response must be limited to one or more of the issues of material fact raised in the hearing request and may not raise additional issues.

(b) *Content.* In your notice of intervention and response you must explain your position with respect to the issues of material fact raised in the hearing request under § 221.21(b).

(1) If you agree with the information provided by NOAA under § 221.20(a) or by the requester under § 221.21(b), your response may refer to NOAA's explanation or the requester's hearing request for support.

(2) If you wish to rely on additional information or analysis, your response must provide the same level of detail with respect to the additional information or analysis as required under § 221.21(b).

(3) Your notice of intervention and response must also indicate whether or not you consent to service by electronic means under § 221.13(c)(4) and, if so, by what means.

(c) *Witnesses and exhibits.* Your response and notice must also list the witnesses and exhibits that you intend to present at the hearing, other than solely for impeachment purposes.

(1) For each witness listed, you must provide:

(i) His or her name, address, telephone number, and qualifications; and

(ii) A brief narrative summary of his or her expected testimony; and

(2) For each exhibit listed, you must specify whether it is in the license proceeding record.

(d) *Page limits.* (1) For each disputed factual issue, the information provided under paragraph (b) of this section (excluding citations to scientific studies, literature, and other documented information supporting your opinions) may not exceed two pages.

(2) For each witness, the information provided under paragraph (c)(1) of this section may not exceed one page.

§ 221.23 Will hearing requests be consolidated?

(a) *Initial Department coordination.* If NOAA has received a copy of a hearing request, it must contact the other Departments and determine:

(1) Whether any of the other Departments has also filed a preliminary condition or prescription relating to the license with FERC; and

(2) If so, whether the other Department has also received a hearing request with respect to the preliminary condition or prescription.

(b) *Decision on consolidation.* Where more than one Department has received a hearing request, the Departments involved must decide jointly:

(1) Whether the cases should be consolidated for hearing under paragraphs (c)(3)(ii) through (c)(3)(iv) of this section; and

(2) If so, which Department will conduct the hearing on their behalf.

(c) *Criteria.* Cases will or may be consolidated as follows:

(1) All hearing requests with respect to any conditions from the same Department will be consolidated for hearing.

(2) All hearing requests with respect to any prescriptions from the same Department will be consolidated for hearing.

(3) All or any portion of the following may be consolidated for hearing, if the Departments involved determine that there are common issues of material fact or that consolidation is otherwise appropriate:

(i) Two or more hearing requests with respect to any condition and any prescription from the same Department;

(ii) Two or more hearing requests with respect to conditions from different Departments;

(iii) Two or more hearing requests with respect to prescriptions from different Departments; or

(iv) Two or more hearing requests with respect to any condition from one Department and any prescription from another Department.

§ 221.24 Can a hearing process be stayed to allow for settlement discussions?

(a) Prior to referral to the ALJ, the hearing requester and NOAA may by agreement stay the hearing process under this subpart for a period not to exceed 120 days to allow for settlement discussions, if the stay period and any subsequent hearing process (if required) can be accommodated within the time frame established for the license proceeding.

(b) Any stay of the hearing process will not affect the deadline for filing a notice of intervention and response, if any, pursuant to § 221.22(a)(1)(ii).

§ 221.25 How will NOAA respond to any hearing requests?

(a) *General.* Within 50 days after the deadline in § 221.21(a)(2) or 30 days after the expiration of any stay period under § 221.24, whichever is later, NOAA may file with the Office of Habitat Conservation an answer to any hearing request under § 221.21.

(b) *Content.* If NOAA files an answer:

(1) For each of the numbered factual issues listed under § 221.21(b)(1), the answer must explain NOAA's position with respect to the issues of material fact raised by the requester, including one or more of the following statements as appropriate:

(i) That NOAA is willing to stipulate to the facts as alleged by the requester;

(ii) That NOAA believes the issue listed by the requester is not a factual issue, explaining the basis for such belief;

(iii) That NOAA believes the issue listed by the requester is not material, explaining the basis for such belief; or

(iv) That NOAA agrees that the issue is factual, material, and in dispute.

(2) The answer must also indicate whether the hearing request will be consolidated with one or more other hearing requests under § 221.23 and, if so:

(i) Identify any other hearing request that will be consolidated with this hearing request; and

(ii) State which Department will conduct the hearing and provide contact information for the appropriate Department hearings component.

(3) If NOAA plans to rely on any scientific studies, literature, and other documented information that are not already in the license proceeding record, it must provide a copy with its answer.

(4) The answer must also indicate whether or not NOAA consents to service by electronic means under § 221.13(c)(4) and, if so, by what means.

(c) *Witnesses and exhibits.* NOAA's answer must also list the witnesses and exhibits that it intends to present at the hearing, other than solely for impeachment purposes.

(1) For each witness listed, NOAA must provide:

(i) His or her name, address, telephone number, and qualifications; and

(ii) A brief narrative summary of his or her expected testimony.

(2) For each exhibit listed, NOAA must specify whether it is in the license proceeding record.

(d) *Page limits.* (1) For each disputed factual issue, the information provided under paragraph (b)(1) of this section may not exceed two pages.

(2) For each witness, the information provided under paragraph (c)(1) of this section may not exceed one page.

(e) *Notice in lieu of answer.* If NOAA elects not to file an answer to a hearing request:

(1) NOAA is deemed to agree that the issues listed by the requester are factual, material, and in dispute;

(2) NOAA may file a list of witnesses and exhibits with respect to the request only as provided in § 221.42(b); and

(3) NOAA must file a notice containing the information required by paragraph (b)(2) of this section, if the hearing request will be consolidated with one or more other hearing requests under § 221.23, and the statement required by paragraph (b)(4) of this section.

§ 221.26 What will the Office of Habitat Conservation do with any hearing requests?

(a) *Case referral.* Within 55 days after the deadline in § 221.21(a)(2) or 35 days after the expiration of any stay period under § 221.24, whichever is later, the Office of Habitat Conservation will refer the case for a hearing as follows:

(1) If the hearing is to be conducted by NOAA, the Office of Habitat Conservation will refer the case to the Department of Commerce's designated ALJ office.

(2) If the hearing is to be conducted by another Department, the Office of Habitat Conservation will refer the case to the hearings component used by that Department.

(b) *Content.* The case referral will consist of the following:

(1) Two copies of any preliminary condition or prescription under § 221.20;

(2) The original and one copy of any hearing request under § 221.21;

(3) The original and one copy of any notice of intervention and response under § 221.22;

(4) The original and one copy of any answer under § 221.25; and

(5) The original and one copy of a referral notice under paragraph (c) of this section.

(c) *Notice.* At the time the Office of Habitat Conservation refers the case for a hearing, it must provide a referral notice that contains the following information:

(1) The name, address, telephone number, and facsimile number of the Department hearings component that will conduct the hearing;

(2) The name, address, and other contact information for the representative of each party to the hearing process;

(3) An identification of any other hearing request that will be consolidated with this hearing request; and

(4) The effective date of the case referral to the appropriate Department hearings component.

(d) *Delivery and service.* (1) The Office of Habitat Conservation must refer the case to the appropriate Department hearings component by one of the methods identified in § 221.12(b)(1)(i) and (b)(1)(ii).

(2) The Office of Habitat Conservation must serve a copy of the referral notice on FERC and each party to the hearing by one of the methods identified in § 221.13(c)(1) and (c)(2).

§ 221.27 What regulations apply to a case referred for a hearing?

(a) If the Office of Habitat Conservation refers the case to the Department of Commerce's designated ALJ office, the regulations in this subpart will continue to apply to the hearing process.

(b) If the Office of Habitat Conservation refers the case to the United States Department of Agriculture's Office of Administrative Law Judges, the regulations at 7 CFR 1.601 *et seq.* will apply from that point on.

(c) If the Office of Habitat Conservation refers the case to the Department of the Interior's Office of Hearings and Appeals, the regulations at 43 CFR 45.1 *et seq.* will apply from that point on.

General Provisions Related to Hearings

§ 221.30 What will the Department of Commerce's designated ALJ office do with a case referral?

Within 5 days after the effective date stated in the referral notice under § 221.26(c)(4), 43 CFR 45.26(c)(4), or 7 CFR 1.626(c)(4):

(a) The Department of Commerce's designated ALJ office must:

(1) Docket the case;

(2) Assign an ALJ to preside over the hearing process and issue a decision; and

(3) Issue a docketing notice that informs the parties of the docket number and the ALJ assigned to the case; and

(b) The ALJ must issue a notice setting the time, place, and method for conducting an initial prehearing conference under § 221.40. This notice may be combined with the docketing notice under paragraph (a)(3) of this section.

§ 221.31 What are the powers of the ALJ?

The ALJ will have all powers necessary to conduct a fair, orderly, expeditious, and impartial hearing process relating to NOAA's or any other Department's condition or prescription that has been referred to the ALJ for hearing, including the powers to:

(a) Administer oaths and affirmations;

(b) Issue subpoenas under § 221.47;

(c) Shorten or enlarge time periods set forth in these regulations, except that the deadline in § 221.60(a)(2) can be extended only if the ALJ must be replaced under § 221.32 or 221.33;

(d) Rule on motions;

(e) Authorize discovery as provided for in this subpart;

(f) Hold hearings and conferences;

(g) Regulate the course of hearings;

(h) Call and question witnesses;

(i) Exclude any person from a hearing or conference for misconduct or other good cause;

(j) Summarily dispose of any hearing request or issue as to which the ALJ determines there is no disputed issue of material fact;

(k) Issue a decision consistent with § 221.60(b) regarding any disputed issue of material fact; and

(l) Take any other action authorized by law.

§ 221.32 What happens if the ALJ becomes unavailable?

(a) If the ALJ becomes unavailable or otherwise unable to perform the duties described in § 221.31, the Department of Commerce's designated ALJ office will designate a successor.

(b) If a hearing has commenced and the ALJ cannot proceed with it, a successor ALJ may do so. At the request of a party, the successor ALJ may recall any witness whose testimony is material and disputed, and who is available to testify again without undue burden. The successor ALJ may, within his or her discretion, recall any other witness.

§ 221.33 Under what circumstances may the ALJ be disqualified?

(a) The ALJ may withdraw from a case at any time the ALJ deems himself or herself disqualified.

(b) At any time before issuance of the ALJ's decision, any party may move that the ALJ disqualify himself or herself for personal bias or other valid cause.

(1) The party must file the motion promptly after discovering facts or other reasons allegedly constituting cause for disqualification.

(2) The party must file with the motion an affidavit or declaration setting forth the facts or other reasons in detail.

(c) The ALJ must rule upon the motion, stating the grounds for the ruling.

(1) If the ALJ concludes that the motion is timely and meritorious, he or she must disqualify himself or herself and withdraw from the case.

(2) If the ALJ does not disqualify himself or herself and withdraw from the case, the ALJ must continue with the hearing process and issue a decision.

§ 221.34 What is the law governing ex parte communications?

(a) Ex parte communications with the ALJ or his or her staff are prohibited in accordance with 5 U.S.C. 554(d).

(b) This section does not prohibit ex parte inquiries concerning case status or procedural requirements, unless the inquiry involves an area of controversy in the hearing process.

§ 221.35 What are the requirements for motions?

(a) *General.* Any party may apply for an order or ruling on any matter related to the hearing process by presenting a motion to the ALJ. A motion may be presented any time after the Department of Commerce's designated ALJ office issues a docketing notice under § 221.30.

(1) A motion made at a hearing may be stated orally on the record, unless the ALJ directs that it be reduced to writing.

(2) Any other motion must:

(i) Be in writing;

(ii) Comply with the requirements of this subpart with respect to form, content, filing, and service; and

(iii) Not exceed 15 pages, including all supporting arguments.

(b) *Content.* (1) Each motion must state clearly and concisely:

(i) Its purpose and the relief sought;

(ii) The facts constituting the grounds for the relief sought; and

(iii) Any applicable statutory or regulatory authority.

(2) A proposed order must accompany the motion.

(c) *Response.* Except as otherwise required by this part, any other party may file a response to a written motion within 10 days after service of the motion. The response may not exceed 15 pages, including all supporting arguments. When a party presents a motion at a hearing, any other party may present a response orally on the record.

(d) *Reply.* Unless the ALJ orders otherwise, no reply to a response may be filed.

(e) *Effect of filing.* Unless the ALJ orders otherwise, the filing of a motion does not stay the hearing process.

(f) *Ruling.* The ALJ will rule on the motion as soon as practicable, either orally on the record or in writing. He or she may summarily deny any dilatory, repetitive, or frivolous motion.

Prehearing Conferences and Discovery

§ 221.40 What are the requirements for prehearing conferences?

(a) *Initial prehearing conference.* The ALJ will conduct an initial prehearing conference with the parties at the time specified in the notice under § 221.30, on or about the 20th day after the effective date stated in the referral notice under § 221.26(c)(4), 7 CFR 1.626(c)(4), or 43 CFR 45.26(c)(4).

(1) The initial prehearing conference will be used:

(i) To identify, narrow, and clarify the disputed issues of material fact and exclude issues that do not qualify for review as factual, material, and disputed;

(ii) To consider the parties' motions for discovery under § 221.41 and to set a deadline for the completion of discovery;

(iii) To discuss the evidence on which each party intends to rely at the hearing;

(iv) To set deadlines for submission of written testimony under § 221.52 and exchange of exhibits to be offered as evidence under § 221.54; and

(v) To set the date, time, and place of the hearing.

(2) The initial prehearing conference may also be used:

(i) To discuss limiting and grouping witnesses to avoid duplication;

(ii) To discuss stipulations of fact and of the content and authenticity of documents;

(iii) To consider requests that the ALJ take official notice of public records or other matters;

(iv) To discuss the submission of written testimony, briefs, or other documents in electronic form; and

(v) To consider any other matters that may aid in the disposition of the case.

(b) *Other conferences.* The ALJ may in his or her discretion direct the parties to attend one or more other prehearing conferences, if consistent with the need to complete the hearing process within 90 days. Any party may by motion request a conference.

(c) *Notice.* The ALJ must give the parties reasonable notice of the time and place of any conference. A conference will ordinarily be held by telephone, unless the ALJ orders otherwise.

(d) *Preparation.* (1) Each party's representative must be fully prepared to discuss all issues pertinent to that party that are properly before the conference, both procedural and substantive. The representative must be authorized to commit the party that he or she represents respecting those issues.

(2) Before the date set for the initial prehearing conference, the parties' representatives must make a good faith effort:

(i) To meet in person, by telephone, or by other appropriate means; and

(ii) To reach agreement on discovery and the schedule of remaining steps in the hearing process.

(e) *Failure to attend.* Unless the ALJ orders otherwise, a party that fails to attend or participate in a conference, after being served with reasonable notice of its time and place, waives all objections to any agreements reached in the conference and to any consequent orders or rulings.

(f) *Scope.* During a conference, the ALJ may dispose of any procedural matters related to the case.

(g) *Order.* Within 2 days after the conclusion of each conference, the ALJ must issue an order that recites any agreements reached at the conference and any rulings made by the ALJ during or as a result of the conference.

§ 221.41 How may parties obtain discovery of information needed for the case?

(a) *General.* By agreement of the parties or with the permission of the ALJ, a party may obtain discovery of information to assist the party in preparing or presenting its case. Available methods of discovery are:

(1) Written interrogatories as provided in § 221.43;

(2) Depositions of witnesses as provided in paragraph (h) of this section; and

(3) Requests for production of designated documents or tangible things or for entry on designated land for inspection or other purposes.

(b) *Criteria.* Discovery may occur only as agreed to by the parties or as authorized by the ALJ during a prehearing conference or in a written order under § 221.40(g). The ALJ may authorize discovery only if the party requesting discovery demonstrates:

(1) That the discovery will not unreasonably delay the hearing process;

(2) That the information sought:

(i) Will be admissible at the hearing or appears reasonably calculated to lead to the discovery of admissible evidence;

(ii) Is not already in the license proceeding record or otherwise obtainable by the party;

(iii) Is not cumulative or repetitious; and

(iv) Is not privileged or protected from disclosure by applicable law;

(3) That the scope of the discovery is not unduly burdensome;

(4) That the method to be used is the least burdensome method available;

(5) That any trade secrets or proprietary information can be adequately safeguarded; and

(6) That the standards for discovery under paragraphs (f) through (h) of this section have been met, if applicable.

(c) *Motions.* A party may initiate discovery:

(1) Pursuant to an agreement of the parties; or

(2) By filing a motion that:

(i) Briefly describes the proposed method(s), purpose, and scope of the discovery;

(ii) Explains how the discovery meets the criteria in paragraphs (b)(1) through (b)(6) of this section; and

(iii) Attaches a copy of any proposed discovery request (written interrogatories, notice of deposition, or request for production of designated documents or tangible things or for entry on designated land).

(d) *Timing of motions.* A party must file any discovery motion under paragraph (c)(2) of this section within 7 days after the effective date stated in the referral notice under § 221.26(c)(4), 7 CFR 1.626(c)(4), or 43 CFR 45.26(c)(4).

(e) *Objections.* (1) A party must file any objections to a discovery motion or to specific portions of a proposed discovery request within 7 days after service of the motion.

(2) An objection must explain how, in the objecting party's view, the discovery sought does not meet the criteria in paragraphs (b)(1) through (b)(6) of this section.

(f) *Materials prepared for hearing.* A party generally may not obtain discovery of documents and tangible things otherwise discoverable under paragraph (b) of this section if they were prepared in anticipation of or for the hearing by or for another party's representative (including the party's attorney, expert, or consultant).

(1) If a party wants to discover such materials, it must show:

(i) That it has substantial need of the materials in preparing its own case; and

(ii) That the party is unable without undue hardship to obtain the substantial equivalent of the materials by other means.

(2) In ordering discovery of such materials when the required showing has been made, the ALJ must protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney.

(g) *Experts.* Unless restricted by the ALJ, a party may discover any facts known or opinions held by an expert through the methods set out in paragraph (a) of this section concerning any relevant matters that are not privileged. Such discovery will be permitted only if:

(1) The expert is expected to be a witness at the hearing; or

(2) The expert is relied on by another expert who is expected to be a witness at the hearing, and the party shows:

(i) That it has a compelling need for the information; and

(ii) That it cannot practicably obtain the information by other means.

(h) *Limitations on depositions.* (1) A party may depose an expert or non-expert witness only if the party shows that the witness:

(i) Will be unable to attend the hearing because of age, illness, or other incapacity; or

(ii) Is unwilling to attend the hearing voluntarily, and the party is unable to compel the witness's attendance at the hearing by subpoena.

(2) Paragraph (h)(1)(ii) of this section does not apply to any person employed by or under contract with the party seeking the deposition.

(3) A party may depose a senior Department employee only if the party shows:

(i) That the employee's testimony is necessary in order to provide significant, unprivileged information that is not available from any other source or by less burdensome means; and

(ii) That the deposition would not significantly interfere with the employee's ability to perform his or her government duties.

(4) Unless otherwise stipulated to by the parties or authorized by the ALJ upon a showing of extraordinary circumstances, a deposition is limited to 1 day of 7 hours.

(i) *Completion of discovery.* All discovery must be completed within 25 days after the initial prehearing conference.

§ 221.42 When must a party supplement or amend information it has previously provided?

(a) *Discovery.* A party must promptly supplement or amend any prior response to a discovery request if it learns that the response:

(1) Was incomplete or incorrect when made; or

(2) Though complete and correct when made, is now incomplete or incorrect in any material respect.

(b) *Witnesses and exhibits.* (1) Within 10 days after the date set for completion of discovery, each party must file an updated version of the list of witnesses and exhibits required under §§ 221.21(c), 221.22(c), or 221.25(c).

(2) If a party wishes to include any new witness or exhibit on its updated list, it must provide an explanation of why it was not feasible for the party to include the witness or exhibit on its list under §§ 221.21(c), 221.22(c), or 221.25(c).

(c) *Failure to disclose.* (1) A party will not be permitted to introduce as evidence at the hearing testimony from a witness or other information that it failed to disclose under §§ 221.21(c), 221.22(c), or 221.25(c), or paragraphs (a) or (b) of this section.

(2) Paragraph (c)(1) of this section does not apply if the failure to disclose was substantially justified or is harmless.

(3) A party may object to the admission of evidence under paragraph (c)(1) of this section before or during the hearing.

(4) The ALJ will consider the following in determining whether to exclude evidence under paragraphs (c)(1) through (3) of this section:

(i) The prejudice to the objecting party;

(ii) The ability of the objecting party to cure any prejudice;

(iii) The extent to which presentation of the evidence would disrupt the orderly and efficient hearing of the case;

(iv) The importance of the evidence; and

(v) The reason for the failure to disclose, including any bad faith or willfulness regarding the failure.

§ 221.43 What are the requirements for written interrogatories?

(a) *Motion; limitation.* Except upon agreement of the parties:

(1) A party wishing to propound interrogatories must file a motion under § 221.41(c); and

(2) A party may propound no more than 25 interrogatories, counting discrete subparts as separate interrogatories, unless the ALJ approves a higher number upon a showing of good cause.

(b) *ALJ order.* The ALJ will issue an order under § 221.41(b) with respect to any discovery motion requesting the use of written interrogatories. The order will:

(1) Grant the motion and approve the use of some or all of the proposed interrogatories; or

(2) Deny the motion.

(c) *Answers to interrogatories.* Except upon agreement of the parties, the party to whom the proposed interrogatories are directed must file its answers to any interrogatories approved by the ALJ within 15 days after issuance of the order under paragraph (b) of this section.

(1) Each approved interrogatory must be answered separately and fully in writing.

(2) The party or its representative must sign the answers to interrogatories under oath or affirmation.

(d) *Access to records.* A party's answer to an interrogatory is sufficient when:

(1) The information may be obtained from an examination of records, or from a compilation, abstract, or summary based on such records;

(2) The burden of obtaining the information from the records is substantially the same for all parties;

(3) The answering party specifically identifies the individual records from

which the requesting party may obtain the information and where the records are located; and

(4) The answering party provides the requesting party with reasonable opportunity to examine the records and make a copy, compilation, abstract, or summary.

§ 221.44 What are the requirements for depositions?

(a) *Motion and notice.* Except upon agreement of the parties, a party wishing to take a deposition must file a motion under § 221.41(c). Any notice of deposition filed with the motion must state:

(1) The time and place that the deposition is to be taken;

(2) The name and address of the person before whom the deposition is to be taken;

(3) The name and address of the witness whose deposition is to be taken; and

(4) Any documents or materials that the witness is to produce.

(b) *ALJ order.* The ALJ will issue an order under § 221.41(b) with respect to any discovery motion requesting the taking of a deposition. The order will:

(1) Grant the motion and approve the taking of the deposition, subject to any conditions or restrictions the ALJ may impose; or

(2) Deny the motion.

(c) *Arrangements.* If the parties agree to or the ALJ approves the taking of the deposition, the party requesting the deposition must make appropriate arrangements for necessary facilities and personnel.

(1) The deposition will be taken at the time and place agreed to by the parties or indicated in the ALJ's order.

(2) The deposition may be taken before any disinterested person authorized to administer oaths in the place where the deposition is to be taken.

(3) Any party that objects to the taking of a deposition because of the disqualification of the person before whom it is to be taken must do so:

(i) Before the deposition begins; or

(ii) As soon as the disqualification becomes known or could have been discovered with reasonable diligence.

(4) A deposition may be taken by telephone conference call, if agreed to by the parties or approved in the ALJ's order.

(d) *Testimony.* Each witness deposed must be placed under oath or affirmation, and the other parties must be given an opportunity for cross-examination.

(e) *Representation of witness.* The witness being deposed may have counsel or another representative present during the deposition.

(f) *Recording and transcript.* Except as provided in paragraph (g) of this section, the deposition must be stenographically recorded and transcribed at the expense of the party that requested the deposition.

(1) Any other party may obtain a copy of the transcript at its own expense.

(2) Unless waived by the deponent, the deponent will have 3 days after receiving the transcript to read and sign it.

(3) The person before whom the deposition was taken must certify the transcript following receipt of the signed transcript from the deponent or expiration of the 3-day review period, whichever occurs first.

(g) *Video recording.* The testimony at a deposition may be recorded on videotape, subject to any conditions or restrictions that the parties may agree to or the ALJ may impose, at the expense of the party requesting the recording.

(1) The video recording may be in conjunction with an oral examination by telephone conference held under paragraph (c)(4) of this section.

(2) After the deposition has been taken, the person recording the deposition must:

(i) Provide a copy of the videotape to any party that requests it, at the requesting party's expense; and

(ii) Attach to the videotape a statement identifying the case and the deponent and certifying the authenticity of the video recording.

(h) *Use of deposition.* A deposition may be used at the hearing as provided in § 221.53.

§ 221.45 What are the requirements for requests for documents or tangible things or entry on land?

(a) *Motion.* Except upon agreement of the parties, a party wishing to request the production of designated documents or tangible things or entry on designated land must file a motion under § 221.41(c). A request may include any of the following that are in the possession, custody, or control of another party:

(1) The production of designated documents for inspection and copying, other than documents that are already in the license proceeding record;

(2) The production of designated tangible things for inspection, copying, testing, or sampling; or

(3) Entry on designated land or other property for inspection and measuring, surveying, photographing, testing, or sampling either the property or any designated object or operation on the property.

(b) *ALJ order.* The ALJ will issue an order under § 221.41(b) with respect to any discovery motion requesting the production of documents or tangible things or entry on land for inspection, copying, or other purposes. The order will:

(1) Grant the motion and approve the use of some or all of the proposed requests; or

(2) Deny the motion.

(c) *Compliance with order.* Except upon agreement of the parties, the party to whom any approved request for production is directed must permit the approved inspection and other activities within 15 days after issuance of the order under paragraph (a) of this section.

§ 221.46 What sanctions may the ALJ impose for failure to comply with discovery?

(a) Upon motion of a party, the ALJ may impose sanctions under paragraph (b) of this section if any party:

(1) Fails to comply with an order approving discovery; or

(2) Fails to supplement or amend a response to discovery under § 221.42(a).

(b) The ALJ may impose one or more of the following sanctions:

(1) Infer that the information, testimony, document, or other evidence withheld would have been adverse to the party;

(2) Order that, for the purposes of the hearing, designated facts are established;

(3) Order that the party not introduce into evidence, or otherwise rely on to support its case, any information, testimony, document, or other evidence:

(i) That the party improperly withheld; or

(ii) That the party obtained from another party in discovery;

(4) Allow another party to use secondary evidence to show what the information, testimony, document, or other evidence withheld would have shown; or

(5) Take other appropriate action to remedy the party's failure to comply.

§ 221.47 What are the requirements for subpoenas and witness fees?

(a) *Request for subpoena.* (1) Except as provided in paragraph (a)(2) of this section, any party may request by written motion that the ALJ issue a subpoena to the extent authorized by law for the attendance of a person, the giving of testimony, or the production of documents or other relevant evidence during discovery or for the hearing.

(2) A party may request a subpoena for a senior Department employee only if the party shows:

(i) That the employee's testimony is necessary in order to provide significant, unprivileged information that is not available from any other source or by less burdensome means; and

(ii) That the employee's attendance would not significantly interfere with the ability to perform his or her government duties.

(b) *Service.* (1) A subpoena may be served by any person who is not a party and is 18 years of age or older.

(2) Service must be made by hand delivering a copy of the subpoena to the person named therein.

(3) The person serving the subpoena must:

(i) Prepare a certificate of service setting forth:

(A) The date, time, and manner of service; or

(B) The reason for any failure of service; and

(ii) Swear to or affirm the certificate, attach it to a copy of the subpoena, and return it to the party on whose behalf the subpoena was served.

(c) *Witness fees.* (1) A party who subpoenas a witness who is not a party must pay him or her the same fees and mileage expenses that are paid witnesses in the district courts of the United States.

(2) A witness who is not a party and who attends a deposition or hearing at the request of any party without having been subpoenaed is entitled to the same fees and mileage expenses as if he or she had been subpoenaed. However, this paragraph does not apply to Federal employees who are called as witnesses by a Department.

(d) *Motion to quash.* (1) A person to whom a subpoena is directed may request by motion that the ALJ quash or modify the subpoena.

(2) The motion must be filed:

(i) Within 5 days after service of the subpoena; or

(ii) At or before the time specified in the subpoena for compliance, if that is less than 5 days after service of the subpoena.

(3) The ALJ may quash or modify the subpoena if it:

(i) Is unreasonable;

(ii) Requires production of information during discovery that is not discoverable; or

(iii) Requires disclosure of irrelevant, privileged, or otherwise protected information.

(e) *Enforcement.* For good cause shown, the ALJ may apply to the appropriate United States District Court for the issuance of an order compelling the appearance and testimony of a witness or the production of evidence as set forth in a subpoena that has been duly issued and served.

Hearing, Briefing, and Decision

§ 221.50 When and where will the hearing be held?

(a) Except as provided in paragraph (b) of this section, the hearing will be held at the time and place set at the initial prehearing conference under § 221.40, generally within 25 days after the date set for completion of discovery.

(b) On motion by a party or on the ALJ's initiative, the ALJ may change the date, time, or place of the hearing if he or she finds:

(1) That there is good cause for the change; and

(2) That the change will not unduly prejudice the parties and witnesses.

§ 221.51 What are the parties' rights during the hearing?

Each party has the following rights during the hearing, as necessary to assure full and accurate disclosure of the facts:

(a) To present testimony and exhibits, consistent with the requirements in §§ 221.21(c), 221.22(c), 221.25(c), 221.42(b), and 221.52;

(b) To make objections, motions, and arguments; and

(c) To cross-examine witnesses and to conduct re-direct and re-cross examination as permitted by the ALJ.

§ 221.52 What are the requirements for presenting testimony?

(a) *Written direct testimony.* Unless otherwise ordered by the ALJ, all direct hearing testimony for each party's initial case must be prepared and submitted in written form. The ALJ will determine whether rebuttal testimony, if allowed, must be submitted in written form.

(1) Prepared written testimony must:

(i) Have line numbers inserted in the left-hand margin of each page;

(ii) Be authenticated by an affidavit or declaration of the witness;

(iii) Be filed within 10 days after the date set for completion of discovery; and

(iv) Be offered as an exhibit during the hearing.

(2) Any witness submitting written testimony must be available for cross-examination at the hearing.

(b) *Oral testimony.* Oral examination of a witness in a hearing, including on cross-examination or redirect, must be conducted under oath and in the presence of the ALJ, with an opportunity for all parties to question the witness.

(c) *Telephonic testimony.* The ALJ may by order allow a witness to testify by telephonic conference call.

(1) The arrangements for the call must let each party listen to and speak to the witness and each other within the hearing of the ALJ.

(2) The ALJ will ensure the full identification of each speaker so the reporter can create a proper record.

(3) The ALJ may issue a subpoena under § 221.47 directing a witness to testify by telephonic conference call.

§ 221.53 How may a party use a deposition in the hearing?

(a) *In general.* Subject to the provisions of this section, a party may use in the hearing any part or all of a deposition taken under § 221.44 against any party who:

(1) Was present or represented at the taking of the deposition; or

(2) Had reasonable notice of the taking of the deposition.

(b) *Admissibility.* (1) No part of a deposition will be included in the hearing record, unless received in evidence by the ALJ.

(2) The ALJ will exclude from evidence any question and response to which an objection:

(i) Was noted at the taking of the deposition; and

(ii) Would have been sustained if the witness had been personally present and testifying at a hearing.

(3) If a party offers only part of a deposition in evidence:

(i) An adverse party may require the party to introduce any other part that ought in fairness to be considered with the part introduced; and

(ii) Any other party may introduce any other parts.

(c) *Videotaped deposition.* If the deposition was recorded on videotape and is admitted into evidence, relevant portions will be played during the hearing and transcribed into the record by the reporter.

§ 221.54 What are the requirements for exhibits, official notice, and stipulations?

(a) *General.* (1) Except as provided in paragraphs (b) through (d) of this section, any material offered in evidence, other than oral testimony, must be offered in the form of an exhibit.

(2) Each exhibit offered by a party must be marked for identification.

(3) Any party who seeks to have an exhibit admitted into evidence must provide:

(i) The original of the exhibit to the reporter, unless the ALJ permits the substitution of a copy; and

(ii) A copy of the exhibit to the ALJ.

(b) *Material not offered.* If a document offered as an exhibit contains material not offered as evidence:

(1) The party offering the exhibit must:

(i) Designate the matter offered as evidence;

(ii) Segregate and exclude the material not offered in evidence, to the extent practicable; and

(iii) Provide copies of the entire document to the other parties appearing at the hearing.

(2) The ALJ must give the other parties an opportunity to inspect the entire document and offer in evidence any other portions of the document.

(c) *Official notice.* (1) At the request of any party at the hearing, the ALJ may take official notice of any matter of which the courts of the United States may take judicial notice, including the public records of any Department party.

(2) The ALJ must give the other parties appearing at the hearing an opportunity to show the contrary of an officially noticed fact.

(3) Any party requesting official notice of a fact after the conclusion of the hearing must show good cause for its failure to request official notice during the hearing.

(d) *Stipulations.* (1) The parties may stipulate to any relevant facts or to the authenticity of any relevant documents.

(2) If received in evidence at the hearing, a stipulation is binding on the stipulating parties.

(3) A stipulation may be written or made orally at the hearing.

§ 221.55 What evidence is admissible at the hearing?

(a) *General.* (1) Subject to the provisions of § 221.42(b), the ALJ may admit any written, oral, documentary, or demonstrative evidence that is:

(i) Relevant, reliable, and probative; and

(ii) Not privileged or unduly repetitious or cumulative.

(2) The ALJ may exclude evidence if its probative value is substantially outweighed by the risk of undue prejudice, confusion of the issues, or delay.

(3) Hearsay evidence is admissible. The ALJ may consider the fact that evidence is hearsay when determining its probative value.

(4) The Federal Rules of Evidence do not directly apply to the hearing, but may be used as guidance by the ALJ and the parties in interpreting and applying the provisions of this section.

(b) *Objections.* Any party objecting to the admission or exclusion of evidence must concisely state the grounds. A ruling on every objection must appear in the record.

§ 221.56 What are the requirements for transcription of the hearing?

(a) *Transcript and reporter's fees.* The hearing will be transcribed verbatim.

(1) The Department of Commerce's designated ALJ office will secure the services of a reporter and pay the reporter's fees to provide an original transcript to the Department of Commerce's designated ALJ office on an expedited basis.

(2) Each party must pay the reporter for any copies of the transcript obtained by that party.

(b) *Transcript Corrections.* (1) Any party may file a motion proposing corrections to the transcript. The motion must be filed within 5 days after receipt of the transcript, unless the ALJ sets a different deadline.

(2) Unless a party files a timely motion under paragraph (b)(1) of this section, the transcript will be presumed to be correct and complete, except for obvious typographical errors.

(3) As soon as practicable after the close of the hearing and after consideration of any motions filed under paragraph (b)(1) of this section, the ALJ will issue an order making any corrections to the transcript that the ALJ finds are warranted.

§ 221.57 Who has the burden of persuasion, and what standard of proof applies?

(a) Any party who has filed a request for a hearing has the burden of persuasion with respect to the issues of material fact raised by that party.

(b) The standard of proof is a preponderance of the evidence.

§ 221.58 When will the hearing record close?

(a) The hearing record will close when the ALJ closes the hearing, unless he or she directs otherwise.

(b) Evidence may not be added after the hearing record is closed, but the transcript may be corrected under § 221.56(b).

§ 221.59 What are the requirements for post-hearing briefs?

(a) *General.* (1) Each party may file a post-hearing brief within 15 days after the close of the hearing.

(2) A party may file a reply brief only if requested by the ALJ. The deadline for filing a reply brief, if any, will be set by the ALJ.

(3) The ALJ may limit the length of the briefs to be filed under this section.

(b) *Content.* (1) An initial brief must include:

(i) A concise statement of the case;

(ii) A separate section containing proposed findings regarding the issues of material fact, with supporting citations to the hearing record;

(iii) Arguments in support of the party's position; and

(iv) Any other matter required by the ALJ.

(2) A reply brief, if requested by the ALJ, must be limited to any issues identified by the ALJ.

(c) *Form.* (1) An exhibit admitted in evidence or marked for identification in the record may not be reproduced in the brief.

(i) Such an exhibit may be reproduced, within reasonable limits, in an appendix to the brief.

(ii) Any pertinent analysis of an exhibit may be included in a brief.

(2) If a brief exceeds 20 pages, it must contain:

(i) A table of contents and of points made, with page references; and

(ii) An alphabetical list of citations to legal authority, with page references.

§ 221.60 What are the requirements for the ALJ's decision?

(a) *Timing.* The ALJ must issue a decision within the shorter of the following time periods:

(1) 30 days after the close of the hearing under § 221.58; or

(2) 120 days after the effective date stated in the referral notice under § 221.26(c)(4), 7 CFR 1.626(c)(4), or 43 CFR 45.26(c)(4).

(b) *Content.* (1) The decision must contain:

(i) Findings of fact on all disputed issues of material fact;

(ii) Conclusions of law necessary to make the findings of fact (such as rulings on materiality and on the admissibility of evidence); and

(iii) Reasons for the findings and conclusions.

(2) The ALJ may adopt any of the findings of fact proposed by one or more of the parties.

(3) The decision will not contain conclusions as to whether any preliminary condition or prescription should be adopted, modified, or rejected, or whether any proposed alternative should be accepted or rejected.

(c) *Service.* Promptly after issuing his or her decision, the ALJ must:

(1) Serve the decision on each party to the hearing;

(2) Prepare a list of all documents that constitute the complete record for the hearing process (including the decision) and certify that the list is complete; and

(3) Forward to FERC the complete record for the hearing process, along with the certified list prepared under paragraph (c)(2) of this section, for inclusion in the record for the license proceeding. Materials received in electronic form, *e.g.,* as attachments to

electronic mail, should be transmitted to FERC in electronic form. However, for cases in which a settlement was reached prior to a decision, the entire record need not be transmitted to FERC. In such situations, only the initial pleadings (hearing requests with attachments, any notices of intervention and response, answers, and referral notice) and any dismissal order of the ALJ need be transmitted.

(d) *Finality.* The ALJ's decision under this section with respect to the disputed issues of material fact will not be subject to further administrative review. To the extent the ALJ's decision forms the basis for any condition or prescription subsequently included in the license, it may be subject to judicial review under 16 U.S.C. 825*l*(b).

Subpart C—Alternatives Process

§ 221.70 How must documents be filed and served under this subpart?

(a) *Filing.* (1) A document under this subpart must be filed using one of the methods set forth in § 221.12(b).

(2) A document is considered filed on the date it is received. However, any document received after 5 p.m. at the place where the filing is due is considered filed on the next regular business day.

(b) *Service.* (1) Any document filed under this subpart must be served at the same time the document is delivered or sent for filing. A complete copy of the document must be delivered or sent to each license party and FERC, using:

(i) One of the methods of service in § 221.13(c); or

(ii) Regular mail.

(2) The provisions of § 221.13(d) regarding a certificate of service apply to service under this subpart.

§ 221.71 How do I propose an alternative?

(a) *General.* To propose an alternative condition or prescription, you must:

(1) Be a license party; and

(2) File a written proposal with the Office of Habitat Conservation, at the address set forth in § 221.2:

(i) For a case under § 221.1(d)(1), within 30 days after NOAA files a preliminary condition or prescription with FERC; or

(ii) For a case under § 221.1(d)(2), within 60 days after NOAA files a proposed condition or prescription with FERC.

(b) *Content.* Your proposal must include:

(1) A description of the alternative, in an equivalent level of detail to NOAA's preliminary condition or prescription;

(2) An explanation of how the alternative:

(i) If a condition, will provide for the adequate protection and utilization of the reservation; or

(ii) If a prescription, will be no less protective than the fishway prescribed by NMFS;

(3) An explanation of how the alternative, as compared to the preliminary condition or prescription, will:

(i) Cost significantly less to implement; or

(ii) Result in improved operation of the project works for electricity production;

(4) An explanation of how the alternative will affect:

(i) Energy supply, distribution, cost, and use;

(ii) Flood control;

(iii) Navigation;

(iv) Water supply;

(v) Air quality; and

(vi) Other aspects of environmental quality; and

(5) Specific citations to any scientific studies, literature, and other documented information relied on to support your proposal, including any assumptions you are making (*e.g.,* regarding the cost of energy or the rate of inflation). If any such document is not already in the license proceeding record, you must provide a copy with the proposal.

§ 221.72 May I file a revised proposed alternative?

(a) Within 20 days after issuance of the ALJ's decision under § 221.60, you may file with the Office of Habitat Conservation, at the address set forth in § 221.2, a revised proposed alternative condition or prescription if:

(1) You previously filed a proposed alternative that met the requirements of § 221.71; and

(2) Your revised proposed alternative is designed to respond to one or more findings of fact by the ALJ.

(b) Your revised proposed alternative must:

(1) Satisfy the content requirements for a proposed alternative under § 221.71(b); and

(2) Identify the specific ALJ finding(s) to which the revised proposed alternative is designed to respond and how the revised proposed alternative differs from the original alternative.

(c) Filing a revised proposed alternative will constitute a withdrawal of the previously filed proposed alternative.

§ 221.73 When will NOAA file its modified condition or prescription?

(a) Except as provided in paragraph (b) of this section, if any license party proposes an alternative to a preliminary condition or prescription under § 221.71, NOAA will do the following within 60 days after the deadline for filing comments on FERC's draft NEPA document under 18 CFR 5.25(c):

(1) Analyze under § 221.74 any alternative condition or prescription proposed under § 221.71 or 221.72; and

(2) File with FERC:

(i) Any condition or prescription that NOAA adopts as its modified condition or prescription; and

(ii) Its analysis of the modified condition or prescription and any proposed alternative under § 221.74(c).

(b) If NOAA needs additional time to complete the steps set forth in paragraphs (a)(1) and (a)(2) of this section, it will so inform FERC within 60 days after the deadline for filing comments on FERC's draft NEPA document under 18 CFR 5.25(c).

§ 221.74 How will NOAA analyze a proposed alternative and formulate its modified condition or prescription?

(a) In deciding whether to accept an alternative proposed under § 221.71 or 221.72, NOAA must consider evidence and supporting material provided by any license party or otherwise reasonably available to NOAA, including:

(1) Any evidence on the implementation costs or operational impacts for electricity production of the proposed alternative;

(2) Any comments received on NOAA's preliminary condition or prescription;

(3) Any ALJ decision on disputed issues of material fact issued under § 221.60 with respect to the preliminary condition or prescription;

(4) Comments received on any draft or final NEPA documents; and

(5) The license party's proposal under § 221.71 or § 221.72.

(b) NOAA must accept a proposed alternative if NOAA determines, based on substantial evidence provided by any license party or otherwise reasonably available to NOAA, that the alternative:

(1) Will, as compared to NOAA's preliminary condition or prescription:

(i) Cost significantly less to implement; or

(ii) Result in improved operation of the project works for electricity production; and

(2) Will:

(i) If a condition, provide for the adequate protection and utilization of the reservation; or

(ii) If a prescription, be no less protective than NMFS's preliminary prescription.

(c) For purposes of paragraphs (a) and (b) of this section, NOAA will consider

evidence and supporting material provided by any license party by the deadline for filing comments on FERC's NEPA document under 18 CFR 5.25(c).

(d) When NOAA files with FERC the condition or prescription that NOAA adopts as its modified condition or prescription under § 221.73(a)(2), it must also file:

(1) A written statement explaining:

(i) The basis for the adopted condition or prescription;

(ii) If NOAA is not accepting any pending alternative, its reasons for not doing so; and

(iii) If any alternative submitted under § 221.71 was subsequently withdrawn by the license party, that the alternative was withdrawn; and

(2) Any study, data, and other factual information relied on that is not already part of the licensing proceeding record.

(e) The written statement under paragraph (d)(1) of this section must demonstrate that NOAA gave equal consideration to the effects of the condition or prescription adopted and any alternative not accepted on:

(1) Energy supply, distribution, cost, and use;

(2) Flood control;

(3) Navigation;

(4) Water supply;

(5) Air quality; and

(6) Preservation of other aspects of environmental quality.

§ 221.75 Has OMB approved the information collection provisions of this subpart?

Yes. This rule contains provisions that would collect information from the public. It therefore requires approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* (PRA). According to the PRA, 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 that indicates OMB approval. OMB has reviewed the information collection in this rule and approved it under OMB control number 1094–0001.

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Part III

Department of Energy

10 CFR Part 430

Energy Conservation Program: Energy Conservation Standards for Residential Boilers; Proposed Rule

DEPARTMENT OF ENERGY

10 CFR Part 430

[Docket Number EERE–2012–BT–STD–0047]

RIN 1904–AC88

Energy Conservation Program: Energy Conservation Standards for Residential Boilers

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of proposed rulemaking and announcement of public meeting.

SUMMARY: The Energy Policy and Conservation Act of 1975 (EPCA), as amended, prescribes energy conservation standards for various consumer products and certain commercial and industrial equipment, including residential boilers. EPCA also requires the U.S. Department of Energy (DOE) to periodically determine whether more-stringent, amended standards would be technologically feasible and economically justified, and would save a significant amount of energy. In this notice, DOE proposes amended energy conservation standards for residential boilers. The notice also announces a public meeting to receive comment on these proposed standards and associated analyses and results.

DATES:

Meeting: DOE will hold a public meeting on Thursday, April 30, 2015 from 9:00 a.m. to 4:00 p.m., in Washington, DC. The meeting will also be broadcast as a webinar. See section VII, ''Public Participation,'' for webinar registration information, participant instructions, and information about the capabilities available to webinar participants.

Comments: DOE will accept comments, data, and information regarding this notice of proposed rulemaking (NOPR) before and after the public meeting, but no later than June 1, 2015. See section VII, ''Public Participation,'' for details.

ADDRESSES: The public meeting will be held at the U.S. Department of Energy, Forrestal Building, Room 8E–089, 1000 Independence Avenue SW., Washington, DC 20585. To attend, please notify Ms. Brenda Edwards at (202) 586–2945. Please note that foreign nationals visiting DOE Headquarters are subject to advance security screening procedures. Any foreign national wishing to participate in the meeting should advise DOE as soon as possible by contacting Ms. Edwards to initiate the necessary procedures. Please also note that any person wishing to bring a laptop computer or tablet into the Forrestal Building will be required to obtain a property pass. Visitors should avoid bringing laptops, or allow an extra 45 minutes. Persons may also attend the public meeting via webinar. For more information, refer to section VII, ''Public Participation,'' near the end of this notice.

Instructions: Any comments submitted must identify the NOPR for Energy Conservation Standards for Residential Boilers, and provide docket number EE–2012–BT–STD–0047 and/or regulatory information number (RIN) number 1904–AC88. Comments may be submitted using any of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.

2. *Email: ResBoilers2012STD0047@ee.doe.gov.* Include the docket number and/or RIN in the subject line of the message. Submit electronic comments in Word Perfect, Microsoft Word, PDF, or ASCII file format, and avoid the use of special characters or any form on encryption.

3. *Postal Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Office, Mailstop EE–5B, 1000 Independence Avenue SW., Washington, DC 20585–0121. If possible, please submit all items on a compact disc (CD), in which case it is not necessary to include printed copies.

4. *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Office, 950 L'Enfant Plaza SW., Suite 600, Washington, DC 20024. Telephone: (202) 586–2945. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to Office of Energy Efficiency and Renewable Energy through the methods listed above and by email to *Chad_S_Whiteman@omb.eop.gov.*

No telefacsimilies (faxes) will be accepted. For detailed instructions on submitting comments and additional information on the rulemaking process, see section VII of this document (Public Participation).

Docket: The docket, which includes **Federal Register** notices, public meeting attendee lists and transcripts, comments, and other supporting documents/materials, is available for review at *www.regulations.gov.* All documents in the docket are listed in the *www.regulations.gov* index. However, some documents listed in the index may not be publically available, such as those containing information that is exempt from public disclosure.

A link to the docket Web page can be found at: *http://www.regulations.gov/#!docketDetail;D=EERE-2012-BT-STD-0047.* This Web page contains a link to the docket for this notice on the *www.regulations.gov* site. The *www.regulations.gov* Web page contains simple instructions on how to access all documents, including public comments, in the docket. See section VII, ''Public Participation,'' for further information on how to submit comments through *www.regulations.gov.*

For further information on how to submit a comment, review other public comments and the docket, or participate in the public meeting, contact Ms. Brenda Edwards at (202) 586–2945 or by email: *Brenda.Edwards@ee.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Ronald Majette, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–7935. Email: *residential_furnaces_and_boilers@ee.doe.gov.*

Mr. Eric Stas, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202)-586-9507. Email: *Eric.Stas@hq.doe.gov.*

For information on how to submit or review public comments, contact Ms. Brenda Edwards at (202) 586–2945 or by email: *Brenda.Edwards@ee.doe.gov.*

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I. Summary of the Proposed Rule

Title III, Part B [1] of the Energy Policy and Conservation Act of 1975 (EPCA or the Act), Public Law 94–163 (42 U.S.C. 6291–6309, as codified), established the Energy Conservation Program for Consumer Products Other Than Automobiles.[2] These products include residential boilers, the subject of today's notice.

Pursuant to EPCA, any new or amended energy conservation standard must be designed to achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A)) Furthermore, the new or amended standard must result in a significant conservation of energy. (42 U.S.C. 6295(o)(3)(B)) EPCA specifically provides that DOE must conduct a second round of energy conservation standards rulemaking for residential boilers. (42 U.S.C. 6295(f)(4)(C)) The statute also provides that not later than 6 years after issuance of any final rule establishing or amending a standard, DOE must publish either a notice of determination that standards for the product do not need to be amended, or a notice of proposed rulemaking including new proposed energy conservation standards. (42 U.S.C. 6295(m)(1)) DOE initiated this rulemaking as required by 42 U.S.C. 6295(f)(4)(C), but once complete, this rulemaking will also satisfy the 6-year review provision under 42 U.S.C. 6295(m)(1).

Furthermore, EISA 2007 amended EPCA to require that any new or amended energy conservation standard adopted after July 1, 2010, shall address standby mode and off mode energy consumption pursuant to 42 U.S.C. 6295(o). (42 U.S.C. 6295(gg)(3)) If feasible, the statute directs DOE to incorporate standby mode and off mode energy consumption into a single standard with the product's active mode energy use. If a single standard is not feasible, DOE may consider establishing a separate standard to regulate standby mode and off mode energy consumption.

In accordance with these and other statutory provisions discussed in this notice, DOE proposes amending the existing AFUE energy conservation standards and adopting new standby mode off mode electrical energy conservation standards for residential boilers. The proposed AFUE standards for each product class (described in section IV.A.2) are expressed as minimum annual fuel utilization efficiencies (AFUE), as determined by the DOE test method (described in section III.B), and are shown in Table I.1. Table I.2 shows the proposed standards for standby and off mode.

[1] For editorial reasons, upon codification in the U.S. Code, Part B was redesignated Part A.

[2] All references to EPCA in this document refer to the statute as amended through the American Energy Manufacturing Technical Corrections Act (AEMTCA), Public Law 112–210 (Dec. 18, 2012).

These proposed standards, if adopted, would apply to all products listed in Table I.1 and Table I.2 and manufactured in, or imported into, the United States on or after the date 5 years after the publication of the final rule for this rulemaking.

TABLE I.1—PROPOSED AFUE ENERGY CONSERVATION STANDARDS FOR RESIDENTIAL BOILERS

Product class *	Proposed standard: AFUE ** (%)	Design requirement
Gas-fired hot water boiler	85	Constant-burning pilot not permitted. Automatic means for adjusting water temperature required (except for boilers equipped with tankless domestic water heating coils).
Gas-fired steam boiler	82	Constant-burning pilot not permitted.
Oil-fired hot water boiler	86	Automatic means for adjusting temperature required (except for boilers equipped with tankless domestic water heating coils).
Oil-fired steam boiler	86	None
Electric hot water boiler	None	Automatic means for adjusting temperature required (except for boilers equipped with tankless domestic water heating coils).
Electric steam boiler	None	None.

* Product classes are separated by fuel source—gas, oil, or electricity—and heating medium—steam or hot water. See section IV.A.2 for a discussion of product classes.

** AFUE is an annualized fuel efficiency metric that fully accounts for fuel consumption in active, standby, and off modes. See section III.B for a discussion of the AFUE test method.

TABLE I.2—PROPOSED ENERGY CONSERVATION STANDARDS FOR RESIDENTIAL BOILERS STANDBY MODE AND OFF MODE ELECTRICAL ENERGY CONSUMPTION

Product class	Proposed standard: $P_{W,SB}$ (watts)	Proposed standard: $P_{W,OFF}$ (watts)
Gas-fired hot water boiler	9	9
Gas-fired steam boiler	8	8
Oil-fired hot water boiler	11	11
Oil-fired steam boiler	11	11
Electric hot water boiler	8	8
Electric steam boiler	8	8

A. Benefits and Costs to Consumers

Table I.3 presents DOE's evaluation of the economic impacts of the proposed AFUE and standby mode and off mode standards on consumers of residential boilers, as measured by the average life-cycle cost (LCC) savings and the median payback period (PBP).[3] Table I.4 presents the same results for standby mode and off mode. The average LCC savings are positive for all product classes. The estimated PBP for the standard levels proposed for all product classes fall below the average boiler lifetime, which is approximately 25 years.[4] DOE has not conducted an analysis of an AFUE standard level for electric boilers as the efficiency of these products already approaches 100 percent AFUE.

TABLE I.3—IMPACTS OF PROPOSED AFUE ENERGY CONSERVATION STANDARDS ON CONSUMERS OF RESIDENTIAL BOILERS

Product class	Average LCC savings (2013$)	Median payback period (years *)
Gas-Fired Hot Water Boiler	123	7.7
Gas-Fired Steam Boiler	61	1.3
Oil-Fired Hot Water Boiler	257	7.6
Oil-Fired Steam Boiler	723	10.5
Electric Hot Water Boiler	[1] N/A	[1] N/A
Electric Steam Boiler	[1] N/A	[1] N/A

* The average PBP in years is 20.8 for Gas-Fired Hot Water Boiler, 3.7 for Gas-Fired Steam Boiler, 11.7 for Oil-Fired Hot Water Boiler, and 13.9 for Oil-Fired Steam Boiler.

[1] (No Standard).

[3] The average LCC savings and PBP are measured relative to the base case efficiency distribution, which depicts the boiler market in the compliance year (see section IV.F.2.e). The LCC savings and PBP calculations are further described in section IV.F and in chapter 8 of the NOPR TSD.

[4] DOE used a distribution of boiler lifetimes that ranges from 2 to 55 years. See appendix 8F of the NOPR TSD for details of the derivation of the average boiler lifetime.

TABLE I.4—IMPACTS OF PROPOSED STANDBY MODE AND OFF MODE ELECTRICAL ENERGY CUNSUMPTION ENERGY CONSERVATION STANDARDS ON CONSUMERS OF RESIDENTIAL BOILERS

Product class	Average LCC savings (2013$)	Median payback period (years)
Gas-Fired Hot Water Boiler	14	7.8
Gas-Fired Steam Boiler	15	7.4
Oil-Fired Hot Water Boiler	15	7.4
Oil-Fired Steam Boiler	15	7.4
Electric Hot Water Boiler	8	11.0
Electric Steam Boiler	9	10.9

Estimates of the combined impact of the proposed AFUE and standby mode and off mode standards on the consumers are shown in Table I.5.[5]

TABLE I.5—COMBINED IMPACTS OF PROPOSED AFUE AND STANDBY MODE AND OFF MODE ENERGY CONSERVATION STANDARDS ON CONSUMERS OF RESIDENTIAL BOILERS

Product class	Average LCC savings (2013$)	Median payback period (years)
Gas-Fired Hot Water Boiler	137	7.8
Gas-Fired Steam Boiler	76	7.3
Oil-Fired Hot Water Boiler	272	7.4
Oil-Fired Steam Boiler	739	9.9
Electric Hot Water Boiler	8	11.0
Electric Steam Boiler	9	10.9

B. Impact on Manufacturers

The industry net present value (INPV) is the sum of the discounted cash flows to the industry from the base year through the end of the analysis period (2014 to 2049). Using a real discount rate of 8.0 percent, DOE estimates that the INPV for manufacturers is $380.96 million.[6] DOE analyzed the impacts of AFUE energy conservation standards and standby/off mode electrical energy consumption energy conservation standards on manufacturers separately. Under the proposed AFUE standards, DOE expects that the change in INPV will range from −2.10 to 0.20 percent, which is approximately equivalent to a reduction of $7.99 million to an increase of $0.77 million. DOE estimates that residential boiler manufacturers will incur $4.28 million in conversion costs as a result of this proposed AFUE standard. Under the proposed standby mode and off mode standards, DOE expects the change in INPV will range from −0.28 to 0.06 percent, which is approximately equivalent to a decrease of $1.08 million to an increase of $0.22 million. DOE estimates that residential boiler manufacturers will incur $0.21 million in conversion costs as a result of this this proposed standby and off mode standard. DOE expects the combined impact of the TSLs proposed for AFUE and standby and off mode electrical consumption in this NOPR to range from −2.38 to 0.26 percent, which is approximately equivalent to a reduction of $9.07 million to an increase of $0.99 million. DOE estimates that residential boiler manufacturers will incur $4.49 million in conversion costs as a result of both proposed standards. Based on DOE's interviews with residential boiler manufacturers, DOE does not expect any plant closings or significant loss of employment to result from the proposed standards for residential boilers. More information on DOE's direct employment impact analysis can be found in section V.B.2.b of this NOPR.

C. National Benefits[7]

DOE's analyses indicate that the proposed AFUE energy conservation standards for residential boilers would save a significant amount of energy. The lifetime energy savings for residential boilers purchased in the 30-year period that begins in the first full year of compliance with amended standards (2020–2049) amount to 0.21 quads[8] of full-fuel-cycle energy. This is a savings of 0.6 percent relative to the energy use of these products in the base case without amended standards.

The cumulative net present value (NPV) of total consumer costs and savings for the proposed residential boilers AFUE standards ranges from $0.4 billion to $1.3 billion at 7-percent and 3-percent discount rates, respectively. This NPV expresses the estimated total value of future operating-cost savings minus the estimated increased product costs for residential boilers purchased in 2020–2049.

In addition, the proposed residential boilers AFUE standards would have significant environmental benefits. The energy savings would result in cumulative emission reductions of 12.9 million metric tons (Mt)[9] of carbon dioxide (CO_2), 110.1 thousand tons of methane (CH_4), 0.1 thousand tons of

[5] The average LCC savings and PBP for both standards are calculated for each household. To calculate the PBP, DOE determined the combined installed cost to the consumer and the first-year operating costs for both standards. The combined LCC savings and PBP are compared to the base case efficiency distribution for both standards, which depicts the boiler market in the compliance year (see section IV.F.2.e). The combined results for all households are used to derive the average LCC savings and the median payback period values shown in Table I.5.

[6] All monetary values in this document are expressed in 2013 dollars; discounted values are discounted to 2014 unless explicitly stated otherwise.

[7] Energy savings in this section refer to full-fuel-cycle savings (see section IV.H for discussion).

[8] A quad is equal to 10^{15} British thermal units (Btu).

[9] A metric ton is equivalent to 1.1 short tons. Results for emissions other than CO_2 are presented in short tons.

nitrous oxide (N_2O), 0.3 thousand tons of sulfur dioxide (SO_2), 32.07 thousand tons of nitrogen oxides (NO_X), and −0.001 tons of mercury (Hg).[10] The cumulative reduction in CO_2 emissions through 2030 amounts to 1.4 Mt.

The value of the CO_2 reductions is calculated using a range of values per metric ton of CO_2 (otherwise known as the Social Cost of Carbon, or SCC) developed by a recent Federal interagency process.[11] The derivation of the SCC values is discussed in section IV.L. Using discount rates appropriate for each set of SCC values, DOE estimates the present monetary value of the CO_2 emissions reduction is between $0.07 billion and $1.14 billion. Additionally, DOE estimates the present monetary value of the NO_X emissions reduction to be $13.5 million to $35.5 million at 7-percent and 3-percent discount rates, respectively.[12]

Table I.5 summarizes the national economic benefits and costs expected to result from the proposed AFUE standards for residential boilers.

TABLE I.6—SUMMARY OF NATIONAL ECONOMIC BENEFITS AND COSTS OF PROPOSED AFUE ENERGY CONSERVATION STANDARDS FOR RESIDENTIAL BOILERS

[TSL 3]*

Category	Present value (billion 2013$)	Discount rate (%)
Benefits		
Consumer Operating Cost Savings	0.64	7
	1.82	3
CO_2 Reduction Monetized Value ($12.0/t case)**	0.07	5
CO_2 Reduction Monetized Value ($40.5/t case)**	0.37	3
CO_2 Reduction Monetized Value ($62.4/t case)**	0.60	2.5
CO_2 Reduction Monetized Value ($119/t case)**	1.14	3
NO_X Reduction Monetized Value (at $2,684/ton)**	0.01	7
	0.04	3
Total Benefits†	1.03	7
	2.22	3
Costs		
Consumer Incremental Installed Costs	0.29	7
	0.54	3
Total Net Benefits		
Including Emissions Reduction Monetized Value†	0.74	7
	1.69	3

*This table presents the costs and benefits associated with residential boilers shipped in 2020–2049. These results include benefits to consumers which accrue after 2049 from the products purchased in 2020–2049. The results account for the incremental variable and fixed costs incurred by manufacturers due to the standard, some of which may be incurred in preparation for the rule.

**The CO_2 values represent global monetized values of the SCC, in 2013$, in 2015 under several scenarios of the updated SCC values. The first three cases use the averages of SCC distributions calculated using 5%, 3%, and 2.5% discount rates, respectively. The fourth case represents the 95th percentile of the SCC distribution calculated using a 3% discount rate. The SCC time series used by DOE incorporate an escalation factor. The value for NO_X is the average of the low and high values used in DOE's analysis.

†Total Benefits for both the 3% and 7% cases are derived using the series corresponding to average SCC with a 3-percent discount rate ($40.5/t in 2015).

For the proposed standby mode and off mode standards, the lifetime energy savings for residential boilers purchased in the 30-year period that begins in the first full year of compliance with amended standards (2020–2049) amount to 0.045 quads. This is a savings of 18 percent relative to the standby energy use of these products in the base case without amended standards.

The cumulative NPV of total consumer costs and savings for the proposed standby mode and off mode standards for residential boilers ranges from $0.17 billion to $0.44 billion at 7-percent and 3-percent discount rates, respectively. This NPV expresses the estimated total value of future operating-cost savings minus the estimated increased product costs for residential boilers purchased in 2020–2049.

In addition, the proposed standby mode and off mode standards would have significant environmental benefits. The energy savings would result in cumulative emission reductions of 2.1 million metric tons (Mt) of carbon dioxide (CO_2), 11.8 thousand tons of methane (CH_4), 0.1 thousand tons of nitrous oxide (N_2O), 2.2 thousand tons of sulfur dioxide (SO_2), 1.91 thousand tons of nitrogen oxides (NO_X), and 0.004 tons of mercury (Hg). The cumulative reduction in CO_2 emissions through 2030 amounts to 0.25 Mt.

As noted above, the value of the CO_2 reductions is calculated using a range of values per metric ton of CO_2 (otherwise known as the Social Cost of Carbon, or SCC) developed by a recent Federal interagency process. The derivation of the SCC values is discussed in section IV.L. Using discount rates appropriate for each set of SCC values, DOE

[10] DOE calculated emissions reductions relative to the *Annual Energy Outlook 2013* (*AEO 2013*) Reference case, which generally represents current legislation and environmental regulations for which implementing regulations were available as of December 31, 2012. DOE notes that the proposed AFUE standards are estimated to cause a very slight increase in mercury emissions due to associated increase in boiler electricity use.

[11] *Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866,* Interagency Working Group on Social Cost of Carbon, United States Government (May 2013; revised November 2013) (Available at: *http://www.whitehouse.gov/sites/default/files/omb/assets/inforeg/technical-update-social-cost-of-carbon-for-regulator-impact-analysis.pdf*).

[12] DOE is currently investigating valuation of avoided Hg and SO_2 emissions.

estimates the present monetary value of the CO_2 emissions reduction is between $0.01 billion and $0.18 billion. Additionally, DOE estimates the present monetary value of the NO_X emissions reduction to be $0.8 million to $2.1 million at 7-percent and 3-percent discount rates, respectively.

Table I.6 summarizes the national economic benefits and costs expected to result from the proposed standby mode and off mode standards for residential boilers.

TABLE I.6—SUMMARY OF NATIONAL ECONOMIC BENEFITS AND COSTS OF PROPOSED STANDBY MODE AND OFF MODE ENERGY CONSERVATION STANDARDS FOR RESIDENTIAL BOILERS

[TSL 3]*

Category	Present value (billion 2013$)	Discount rate (%)
Benefits		
Consumer Operating Cost Savings	0.250	7
	0.596	3
CO_2 Reduction Monetized Value ($12.0/t case)**	0.012	5
CO_2 Reduction Monetized Value ($40.5/t case)**	0.058	3
CO_2 Reduction Monetized Value ($62.4/t case)**	0.094	2.5
CO_2 Reduction Monetized Value ($119/t case)**	0.180	3
NO_X Reduction Monetized Value (at $2,684/ton)**	0.001	7
	0.002	3
Total Benefits†	0.309	7
	0.657	3
Costs		
Consumer Incremental Installed Costs	0.082	7
	0.158	3
Total Net Benefits		
Including Emissions Reduction Monetized Value†	0.226	7
	0.499	3

*This table presents the costs and benefits associated with residential boilers shipped in 2020–2049. These results include benefits to consumers which accrue after 2049 from the products purchased in 2020–2049. The results account for the incremental variable and fixed costs incurred by manufacturers due to the standard, some of which may be incurred in preparation for the rule.

**The CO_2 values represent global monetized values of the SCC, in 2013$, in 2015 under several scenarios of the updated SCC values. The first three cases use the averages of SCC distributions calculated using 5%, 3%, and 2.5% discount rates, respectively. The fourth case represents the 95th percentile of the SCC distribution calculated using a 3% discount rate. The SCC time series used by DOE incorporate an escalation factor. The value for NO_X is the average of the low and high values used in DOE's analysis.

†Total Benefits for both the 3% and 7% cases are derived using the series corresponding to average SCC with a 3-percent discount rate ($40.5/t in 2015).

The benefits and costs of today's proposed energy conservation standards, for residential boiler products sold in 2020–2049, can also be expressed in terms of annualized values. Benefits and costs for the AFUE standards are considered separately from benefits and costs for the standby mode and off mode electrical consumption standards, because for the reasons explained in section I.D below, it was not technically feasible to develop a single, integrated standard. The annualized monetary values are the sum of: (1) The annualized national economic value of the benefits from consumer operation of products that meet the proposed new or amended standards (consisting primarily of operating cost savings from using less energy, minus increases in product purchase price and installation costs, which is another way of representing consumer NPV), and (2) the annualized monetary value of the benefits of emission reductions, including CO_2 emission reductions.[13]

Although combining the values of operating savings and CO_2 emission reductions provides a useful perspective, two issues should be considered. First, the national operating savings are domestic U.S. consumer monetary savings that occur as a result of market transactions, whereas the value of CO_2 reductions is based on a global value. Second, the assessments of operating cost savings and CO_2 savings are performed with different methods that use different time frames for analysis. The national operating cost savings is measured for the lifetime of residential boilers shipped in 2020–2049. The SCC values, on the other hand, reflect the present value of some future climate-related impacts resulting from the emission of one ton of carbon dioxide in each year. These impacts continue well beyond 2100.

Estimates of annualized benefits and costs of the proposed AFUE standards are shown in Table I.7. The results under the primary estimate are as follows. Using a 7-percent discount rate for benefits and costs other than CO_2 reduction (for which DOE used a 3-percent discount rate along with the average SCC series that uses a 3-percent discount rate ($40.5/t in 2015)), cost of the residential boiler standards

[13] DOE used a two-step calculation process to convert the time-series of costs and benefits into annualized values. First, DOE calculated a present value in 2014, the year used for discounting the NPV of total consumer costs and savings, for the time-series of costs and benefits using discount rates of three and seven percent for all costs and benefits except for the value of CO_2 reductions. For the latter, DOE used a range of discount rates, as shown in Table I.7. From the present value, DOE then calculated the fixed annual payment over a 30-year period (2020 through 2049) that yields the same present value. The fixed annual payment is the annualized value. Although DOE calculated annualized values, this does not imply that the time-series of cost and benefits from which the annualized values were determined is a steady stream of payments.

proposed in today's rule is $32.3 million per year in increased equipment costs, while the estimated benefits are $73 million per year in reduced equipment operating costs, $21.8 million in CO_2 reductions, and $1.53 million in reduced NO_X emissions. In this case, the net benefit would amount to $64 million per year. Using a 3-percent discount rate for all benefits and costs and the average SCC series that uses a 3-percent discount rate ($40.5/t in 2015), the estimated cost of the residential boiler standards proposed in today's rule is $31.7 million per year in increased equipment costs, while the estimated benefits are $108 million per year in reduced equipment operating costs, $21.8 million in CO_2 reductions, and $2.10 million in reduced NO_X emissions. In this case, the net benefit would amount to $100 million per year.

TABLE I.7—ANNUALIZED BENEFITS AND COSTS OF PROPOSED AFUE ENERGY CONSERVATION STANDARDS FOR RESIDENTIAL BOILERS

[TSL 3]

	Discount rate (%)	(million 2013$/year)		
		Primary estimate *	Low net benefits estimate *	High net benefits estimate *
Benefits				
Consumer Operating Cost Savings	7	73	71	75.
	3	108	105	112.
CO_2 Reduction Monetized Value ($12.0/t case) *.	5	6.1	6.1	6.2.
CO_2 Reduction Monetized Value ($40.5/t case) *.	3	21.8	21.6	22.0.
CO_2 Reduction Monetized Value ($62.4/t case) *.	2.5	32.2	31.9	32.5.
CO_2 Reduction Monetized Value ($119/t case) *.	3	67.6	66.9	68.2.
NO_X Reduction Monetized Value (at $2,684/ton) **.	7	1.53	1.52	1.53.
	3	2.10	2.08	2.12.
Total Benefits †	7 plus CO_2 range	80 to 142	79 to 140	83 to 145.
	7	96	94	99.
	3 plus CO_2 range	116 to 177	113 to 174	121 to 183.
	3	132	128	136.
Costs				
Consumer Incremental Installed Costs.	7	32.3	38.7	26.8.
	3	31.7	38.9	25.6.
Net Benefits				
Total †	7 plus CO_2 range	48 to 110	40 to 101	56 to 118.
	7	64	56	72.
	3 plus CO_2 range	84 to 146	74 to 135	95 to 157.
	3	100	89	111.

* This table presents the annualized costs and benefits associated with residential boilers shipped in 2020–2049. These results include benefits to consumers which accrue after 2049 from the products purchased in 2020–2049. The results account for the incremental variable and fixed costs incurred by manufacturers due to the standard, some of which may be incurred in preparation for the rule. The Primary, Low Benefits, and High Benefits Estimates utilize projections of energy prices from the *AEO 2013* Reference case, Low Estimate, and High Estimate, respectively. In addition, incremental product costs reflect a medium decline rate for projected product price trends in the Primary Estimate, a low decline rate for projected product price trends in the Low Benefits Estimate, and a high decline rate for projected product price trends in the High Benefits Estimate. The methods used to derive projected price trends are explained in section IV.F.1.

** The CO_2 values represent global monetized values of the SCC, in 2013$, in 2015 under several scenarios of the updated SCC values. The first three cases use the averages of SCC distributions calculated using 5%, 3%, and 2.5% discount rates, respectively. The fourth case represents the 95th percentile of the SCC distribution calculated using a 3% discount rate. The SCC time series used by DOE incorporate an escalation factor. The value for NO_X is the average of the low and high values used in DOE's analysis.

† Total Benefits for both the 3% and 7% cases are derived using the series corresponding to the average SCC with a 3-percent discount rate ($40.5/t in 2015). In the rows labeled "7% plus CO_2 range" and "3% plus CO_2 range," the operating cost and NO_X benefits are calculated using the labeled discount rate, and those values are added to the full range of CO_2 values.

Estimates of annualized benefits and costs of the proposed standby mode and off mode standards are shown in Table I.8. The results under the primary estimate are as follows. Using a 7-percent discount rate for benefits and costs other than CO_2 reduction (for which DOE used a 3-percent discount rate along with the average SCC series that uses a 3-percent discount rate ($40.5/t in 2015)), the estimated cost of the residential boiler standby mode and off mode standards proposed in today's rule is $9.31 million per year in increased equipment costs, while the estimated benefits are $28 million per year in reduced equipment operating costs, $3 million in CO_2 reductions, and $0.09 million in reduced NO_X emissions. In this case, the net benefit would amount to $22 million per year. Using a 3-percent discount rate for all benefits and costs and the average SCC series that uses a 3-percent discount rate ($40.5/t in 2015), the estimated cost of the residential boiler standby mode and off mode standards proposed in today's

rule is $9.35 million per year in increased equipment costs, while the estimated benefits are $35 million per year in reduced equipment operating costs, $3 million in CO_2 reductions, and $0.12 million in reduced NO_X emissions. In this case, the net benefit would amount to $29 million per year.

TABLE I.8—ANNUALIZED BENEFITS AND COSTS OF PROPOSED STANDBY MODE AND OFF MODE ENERGY CONSERVATION STANDARDS FOR RESIDENTIAL BOILERS

[TSL 3]

	Discount rate (%)	(million 2013$/year)		
		Primary estimate *	Low net benefits estimate *	High net benefits estimate *
Benefits				
Consumer Operating Cost Savings	7	28	27	29.
	3	35	34	36.
CO_2 Reduction Monetized Value ($12.0/t case) *.	5	1	1	1.
CO_2 Reduction Monetized Value ($40.5/t case) *.	3	3	3	4.
CO_2 Reduction Monetized Value ($62.4/t case) *.	2.5	5	5	5.
CO_2 Reduction Monetized Value ($119/t case) *.	3	11	10	11.
NO_X Reduction Monetized Value (at $2,684/ton) **.	7	0.09	0.09	0.09.
	3	0.12	0.12	0.13.
Total Benefits †	7 plus CO_2 range	29 to 39	28 to 38	30 to 40.
	7	32	30	33.
	3 plus CO_2 range	36 to 46	35 to 44	38 to 47.
	3	39	37	40.
Costs				
Consumer Incremental Installed Costs.	7	9.31	9.48	9.13.
	3	9.35	9.55	9.15.
Net Benefits				
Total †	7 plus CO_2 range	20 to 30	19 to 28	21 to 31.
	7	22	21	24.
	3 plus CO_2 range	27 to 37	25 to 35	28 to 38.
	3	29	28	31.

* This table presents the annualized costs and benefits associated with residential boilers shipped in 2020 – 2049. These results include benefits to consumers which accrue after 2049 from the products purchased in 2020 – 2049. The results account for the incremental variable and fixed costs incurred by manufacturers due to the standard, some of which may be incurred in preparation for the rule. The Primary, Low Benefits, and High Benefits Estimates utilize projections of energy prices from the *AEO 2013* Reference case, Low Estimate, and High Estimate, respectively. In addition, incremental product costs reflect a medium decline rate for projected product price trends in the Primary Estimate, a low decline rate for projected product price trends in the Low Benefits Estimate, and a high decline rate for projected product price trends in the High Benefits Estimate. The methods used to derive projected price trends are explained in section IV.F.1.

** The CO_2 values represent global monetized values of the SCC, in 2013$, in 2015 under several scenarios of the updated SCC values. The first three cases use the averages of SCC distributions calculated using 5%, 3%, and 2.5% discount rates, respectively. The fourth case represents the 95th percentile of the SCC distribution calculated using a 3% discount rate. The SCC time series used by DOE incorporate an escalation factor. The value for NO_X is the average of the low and high values used in DOE's analysis.

† Total Benefits for both the 3% and 7% cases are derived using the series corresponding to the average SCC with a 3-percent discount rate ($40.5/t in 2015). In the rows labeled "7% plus CO_2 range" and "3% plus CO_2 range," the operating cost and NO_X benefits are calculated using the labeled discount rate, and those values are added to the full range of CO_2 values.

DOE has tentatively concluded that the proposed standards (for both AFUE, as well as standby mode and off mode) represent the maximum improvement in energy efficiency that is technologically feasible and economically justified, and would result in the significant conservation of energy. DOE further notes that products achieving these standard levels are already commercially available for all product classes covered by today's proposal. Based on the analyses described above, DOE has tentatively concluded that the benefits of the proposed standards to the Nation (energy savings, positive NPV of consumer benefits, consumer LCC savings, and emission reductions) would outweigh the burdens (loss of INPV for manufacturers and LCC increases for some consumers).

DOE also considered more-stringent energy efficiency levels as trial standard levels, and is still considering them in this rulemaking. However, DOE has tentatively concluded that the potential burdens of the more-stringent energy efficiency levels would outweigh the projected benefits. Based on consideration of the public comments DOE receives in response to this notice and related information collected and analyzed during the course of this rulemaking effort, DOE may adopt energy efficiency levels presented in this notice that are either higher or lower than the proposed standards, or some combination of level(s) that incorporate the proposed standards in part.

DOE also added the annualized benefits and costs from the individual annualized tables to provide a combined benefit and cost estimate of the proposed AFUE and standby mode and

off mode standards as shown in Table I.10.[14] The results under the primary estimate are as follows. Using a 7-percent discount rate for benefits and costs other than CO_2 reduction, for which DOE used a 3-percent discount rate along with the average SCC series that uses a 3-percent discount rate ($40.5/t in 2015), the estimated cost of the residential boilers AFUE and standby mode and off mode standards proposed in this rule is $41.7 million per year in increased equipment costs, while the estimated benefits are $101 million per year in reduced equipment operating costs, $25.3 million per year in CO_2 reductions, and $1.62 million per year in reduced NO_X emissions. In this case, the net benefit would amount to $86.3 million per year. Using a 3-percent discount rate for all benefits and costs and the average SCC series that uses a 3-percent discount rate ($40.5/t in 2015), the estimated cost of the residential boilers AFUE and standby mode and off mode standards proposed in this rule is $41.0 million per year in increased equipment costs, while the estimated benefits are $143 million per year in reduced equipment operating costs, $25.3 million per year in CO_2 reductions, and $2.22 million per year in reduced NO_X emissions. In this case, the net benefit would amount to $129 million per year.

TABLE I.10—ANNUALIZED BENEFITS AND COSTS OF PROPOSED AFUE AND STANDBY MODE AND OFF MODE ENERGY CONSERVATION STANDARDS FOR RESIDENTIAL BOILERS

[TSL 3]

	Discount rate (%)	(million 2013$/year)		
		Primary estimate *	Low net benefits estimate *	High net benefits estimate*
Benefits				
Consumer Operating Cost Savings	7	101	98	104.
	3	143	138	149.
CO_2 Reduction Monetized Value ($12.0/t case)*.	5	7.11	7.04	7.18.
CO_2 Reduction Monetized Value ($40.5/t case)*.	3	25.3	25.0	25.6.
CO_2 Reduction Monetized Value ($62.4/t case)*.	2.5	37.3	36.8	37.7.
CO_2 Reduction Monetized Value ($119/t case)*.	3	78.2	77.3	79.1.
NO_X Reduction Monetized Value (at $2,684/ton)**.	7	1.62	1.61	1.63.
	3	2.22	2.20	2.24.
Total Benefits †	7 plus CO_2 range	110 to 181	107 to 177	113 to 185.
	7	128	125	131.
	3 plus CO_2 range	152 to 223	148 to 218	158 to 230.
	3	170	165	177.
Costs				
Consumer Incremental Installed Costs.	7	41.7	48.2	35.9.
	3	41.0	48.5	34.8.
Net Benefits				
Total †	7 plus CO_2 range	68.1 to 139	58.8 to 129	77.0 to 149.
	7	86.3	76.7	95.4.
	3 plus CO_2 range	111 to 182	99 to 169	123 to 195.
	3	129	117	142.

* This table presents the annualized costs and benefits associated with residential boilers shipped in 2020 – 2049. These results include benefits to consumers which accrue after 2049 from the products purchased in 2020 – 2049. The results account for the incremental variable and fixed costs incurred by manufacturers due to the standard, some of which may be incurred in preparation for the rule. The Primary, Low Benefits, and High Benefits Estimates utilize projections of energy prices from the *AEO 2013* Reference case, Low Estimate, and High Estimate, respectively.

** The CO_2 values represent global monetized values of the SCC, in 2013$, in 2015 under several scenarios of the updated SCC values. The first three cases use the averages of SCC distributions calculated using 5%, 3%, and 2.5% discount rates, respectively. The fourth case represents the 95th percentile of the SCC distribution calculated using a 3% discount rate. The SCC time series used by DOE incorporate an escalation factor. The value for NO_X is the average of the low and high values used in DOE's analysis.

† Total Benefits for both the 3% and 7% cases are derived using the series corresponding to the average SCC with a 3-percent discount rate ($40.5/t in 2015). In the rows labeled "7% plus CO_2 range" and "3% plus CO_2 range," the operating cost and NO_X benefits are calculated using the labeled discount rate, and those values are added to the full range of CO_2 values.

D. Standby Mode and Off Mode

As discussed in section II.A of this NOPR, any final rule for amended or new energy conservation standards that is published on or after July 1, 2010 must address standby mode and off mode energy use. (42 U.S.C. 6295(gg)(3)) As a result, DOE has analyzed and is proposing new energy conservation

[14] To obtain the combined results, DOE added the results for the AFUE standard in Table I.7 and for the standby standards in Table I.8.

standards for the standby mode and off mode electrical energy consumption for residential boilers.

AFUE, the statutory metric for residential boilers, does not incorporate standby mode or off mode use of electricity, although it already fully addresses use in these modes of fossil fuels by gas-fired and oil-fired boilers. In the October 2010 test procedure final rule for residential furnaces and boilers, DOE determined that incorporating standby mode and off mode electricity consumption into a single standard for residential furnaces and boilers is not technically feasible. 75 FR 64621, 64626–64627 (Oct. 20, 2010). DOE concluded that a metric that integrates standby mode and off mode electricity consumption into AFUE is not technically feasible, because the standby mode and off mode energy usage, when measured, is essentially lost in practical terms due to rounding conventions for certifying furnace and boiler compliance with Federal energy conservation standards. *Id.* Therefore, in this notice, DOE is proposing amended boiler standards that are AFUE levels, which exclude standby mode and off mode electricity use, and DOE is also proposing separate standards that are maximum wattage (W) levels to address the standby mode ($P_{W,SB}$) and off mode ($P_{W,OFF}$) electrical energy use of boilers. DOE also presents corresponding trial standard levels (TSLs) for energy consumption in standby mode and off mode. DOE has tentatively decided to use a maximum wattage requirement to regulate standby mode and off mode for boilers. DOE believes using an annualized metric could add unnecessary complexities, such as trying to estimate an assumed number of hours that a boiler typically spends in standby mode. Instead, DOE believes that a maximum wattage standard is the most straightforward metric for regulating standby mode and off mode energy consumption of boilers and will result in the least amount of industry and consumer confusion.

DOE is using the metrics just described—AFUE, $P_{W,SB}$, and $P_{W,OFF}$—in the amended energy conservation standards it proposes in this rulemaking for boilers. This approach satisfies the mandate of 42 U.S.C. 6295(gg)(3) that amended standards address standby mode and off mode energy use. The various analyses performed by DOE to evaluate minimum standards for standby mode and off mode electrical energy consumption for boilers are discussed further in section IV.E of this NOPR.

II. Introduction

The following section briefly discusses the statutory authority underlying today's proposal, as well as some of the relevant historical background related to the establishment of standards for residential boilers.

A. Authority

Title III, Part B [15] of the Energy Policy and Conservation Act of 1975 (EPCA or the Act), Public Law 94–163 (42 U.S.C. 6291–6309, as codified) established the Energy Conservation Program for Consumer Products Other Than Automobiles, a program covering most major household appliances (collectively referred to as ''covered products'').[16] These products include the residential boilers that are the subject of this rulemaking. (42 U.S.C. 6292(a)(5)) EPCA, as amended, prescribed energy conservation standards for these products (42 U.S.C. 6295(f)(1) and (3)), and directed DOE to conduct further rulemakings to determine whether to amend these standards (42 U.S.C. 6295(f)(4)). Under 42 U.S.C. 6295(m), the agency must periodically review established energy conservation standards for a covered product; under this requirement, such review must be conducted no later than 6 years from the issuance of any final rule establishing or amending a standard for a covered product. This rulemaking satisfies both statutory provisions (42 U.S.C. 6295(f)(4) and 42 U.S.C. 6295(m)).

Pursuant to EPCA, DOE's energy conservation program for covered products consists essentially of four parts: (1) Testing; (2) labeling; (3) establishing Federal energy conservation standards; and (4) certification and enforcement procedures. The Federal Trade Commission (FTC) is primarily responsible for labeling, and DOE implements the remainder of the program. Subject to certain criteria and conditions, DOE is required to conduct a second round of rulemaking under 42 U.S.C. 6295(f)(4)(C) to consider amended energy conservation standards for residential boilers, and DOE is also required to consider amended standards under 42 U.S.C. 6295(m)(1) by July 15, 2014 (*i.e.,* with either: (1) A NOPR with proposed standards, or (2) a notice of determination not to amend the standards within six years of issuance of the last final rule for residential boilers). DOE is further required to develop test procedures to measure the energy efficiency, energy use, or estimated annual operating cost of each covered product prior to the adoption of a new or amended energy conservation standard. (42 U.S.C. 6295(o)(3)(A) and (r)) Manufacturers of covered products must use the prescribed DOE test procedure as the basis for certifying to DOE that their products comply with the applicable energy conservation standards adopted under EPCA and when making representations to the public regarding the energy use or efficiency of those products. (42 U.S.C. 6293(c) and 6295(s)) Similarly, DOE must use these test procedures to determine whether the products comply with standards adopted pursuant to EPCA. (42 U.S.C. 6295(s)) The DOE test procedures for residential boilers appear at title 10 of the Code of Federal Regulations (CFR) part 430, subpart B, appendix N. In 2012, DOE initiated a rulemaking to review the residential furnace and boiler test procedure. In March 2015, DOE published a NOPR outlining the proposed changes to the test procedure. 80 FR 12876. Details regarding this rulemaking are discussed in section III.B.

DOE must follow specific statutory criteria for prescribing amended standards for covered products, including residential boilers. As indicated above, any amended standard for a covered product must be designed to achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A) and (3)(B)) Furthermore, DOE may not adopt any standard that would not result in the significant conservation of energy. (42 U.S.C. 6295(o)(3)) Moreover, DOE may not prescribe a standard: (1) For certain products, including residential boilers, if no test procedure has been established for the product, or (2) if DOE determines by rule that the proposed standard is not technologically feasible or economically justified. (42 U.S.C. 6295(o)(3)(A)–(B)) In deciding whether a proposed standard is economically justified, after receiving comments on the proposed standard, DOE must determine whether the benefits of the standard exceed its burdens. (42 U.S.C. 6295(o)(2)(B)(i)) DOE must make this determination by, to the greatest extent practicable, considering the following seven statutory factors:

(1) The economic impact of the standard on manufacturers and consumers of the products subject to the standard;

[15] For editorial reasons, upon codification in the U.S. Code, Part B was redesignated Part A.

[16] All references to EPCA in this document refer to the statute as amended through the American Energy Manufacturing Technical Corrections Act, Pub. L. 112–210 (enacted December 18, 2012).

(2) The savings in operating costs throughout the estimated average life of the covered products in the type (or class) compared to any increase in the price, initial charges, or maintenance expenses for the covered products that are likely to result from the standard;

(3) The total projected amount of energy (or as applicable, water) savings likely to result directly from the standard;

(4) Any lessening of the utility or the performance of the covered products likely to result from the standard;

(5) The impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the standard;

(6) The need for national energy and water conservation; and

(7) Other factors the Secretary of Energy (Secretary) considers relevant.

(42 U.S.C. 6295(o)(2)(B)(i)(I)–(VII))

EPCA, as codified, also contains what is known as an ''anti-backsliding'' provision, which prevents the Secretary from prescribing any amended standard that either increases the maximum allowable energy use or decreases the minimum required energy efficiency of a covered product. (42 U.S.C. 6295(o)(1)) Also, the Secretary may not prescribe an amended or new standard if interested persons have established by a preponderance of evidence that the standard is likely to result in the unavailability in the United States of any covered product type (or class) of performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as those generally available in the United States. (42 U.S.C. 6295(o)(4))

Further, EPCA, as codified, establishes a rebuttable presumption that a standard is economically justified if the Secretary finds that the additional cost to the consumer of purchasing a product complying with an energy conservation standard level will be less than three times the value of the energy savings during the first year that the consumer will receive as a result of the standard, as calculated under the applicable test procedure. (42 U.S.C. 6295(o)(2)(B)(iii))

Additionally, 42 U.S.C. 6295(q)(1) specifies requirements when promulgating an energy conservation standard for a covered product that has two or more subcategories. DOE must specify a different standard level for a type or class of covered product that has the same function or intended use, if DOE determines that products within such group: (A) Consume a different kind of energy from that consumed by other covered products within such type (or class); or (B) have a capacity or other performance-related feature that other products within such type (or class) do not have and such feature justifies a higher or lower standard. (42 U.S.C. 6295(q)(1)) In determining whether a performance-related feature justifies a different standard for a group of products, DOE must consider such factors as the utility to the consumer of the feature and other factors DOE deems appropriate. *Id.* Any rule prescribing such a standard must include an explanation of the basis on which such higher or lower level was established. (42 U.S.C. 6295(q)(2))

Federal energy conservation requirements generally supersede State laws or regulations concerning energy conservation testing, labeling, and standards. (42 U.S.C. 6297(a)–(c)) DOE may, however, grant waivers of Federal preemption for particular State laws or regulations, in accordance with the procedures and other provisions set forth under 42 U.S.C. 6297(d).

Finally, pursuant to the amendments contained in the Energy Independence and Security Act of 2007 (EISA 2007), Public Law 110–140, any final rule for new or amended energy conservation standards promulgated after July 1, 2010, is required to address standby mode and off mode energy use. (42 U.S.C. 6295(gg)(3)) Specifically, when DOE adopts a standard for a covered product after that date, it must, if justified by the criteria for adoption of standards under EPCA (42 U.S.C. 6295(o)), incorporate standby mode and off mode energy use into a single standard, or, if that is not feasible, adopt a separate standard for such energy use for that product. (42 U.S.C. 6295(gg)(3)(A)–(B)) DOE's current test procedures for residential boilers address standby mode and off mode energy use. In this rulemaking, DOE intends to adopt separate energy conservation standards to address standby mode and off mode energy use.

B. Background

1. Current Standards

In a final rule published on July 28, 2008 (2008 final rule), DOE prescribed energy conservation standards for residential boilers manufactured on or after September 1, 2012. 73 FR 43611. These standards are set forth in DOE's regulations at 10 CFR 430.32(e)(2)(ii) and are repeated in Table II.1 below.

TABLE II.1—CURRENT FEDERAL ENERGY CONSERVATION STANDARDS FOR RESIDENTIAL BOILERS

Product class	Minimum annual fuel utilization efficiency (%)	Design requirements
Gas-fired Hot Water Boiler	82	No Constant-Burning Pilot, Automatic Means for Adjusting Water Temperature.*
Gas-fired Steam Boiler	80	No Constant-Burning Pilot.
Oil-fired Hot Water Boiler	84	Automatic Means for Adjusting Temperature.*
Oil-fired Steam Boiler	82	None.
Electric Hot Water Boiler	None	Automatic Means for Adjusting Temperature.*
Electric Steam Boiler**	None	None.

* Excluding boilers equipped with a tankless domestic water heating coil.

** Although the ''Electric steam boiler'' product class is not included in the table at 10 CFR 430.32(e)(2)(ii), according to 42 U.S.C. 6295(f), there are no minimum AFUE or design requirements for these products. DOE intends to clarify the standards for these products in this NOPR.

2. History of Standards Rulemaking for Residential Boilers

Given the somewhat complicated interplay of recent DOE rulemakings and statutory provisions related to residential boilers, DOE provides the following regulatory history as background leading to the present rulemaking. On November 19, 2007, DOE published a final rule in the **Federal Register** (November 2007 final rule) revising the energy conservation standards for furnaces and boilers, which addressed the first required review of standards for boilers under 42 U.S.C. 6295(f)(4)(B). 72 FR 65136. Compliance with the standards in the November 2007 final rule would have been required by November 19, 2015. However, on December 19, 2007, EISA 2007, Public Law 110–140, was signed into law, which further revised the energy conservation standards for residential boilers. More specifically,

EISA 2007 amended EPCA to revise the AFUE requirements for residential boilers and set design requirements for most product classes. (42 U.S.C. 6295(f)(3)) EISA 2007 required compliance with the amended energy conservation standards for residential boilers beginning on September 1, 2012.

Only July 15, 2008, DOE issued a final rule technical amendment to the 2007 final rule, which was published in the **Federal Register** on July 28, 2008, to codify the energy conservation standard levels, the design requirements, and compliance dates for residential boilers outlined in EISA 2007. 73 FR 43611. For gas-fired hot water boilers, oil-fired hot water boilers, and electric hot water boilers, EISA 2007 requires that residential boilers manufactured after September 1, 2012 have an automatic means for adjusting water temperature. (42 U.S.C. 6295(f)(3)(A)–(C); 10 CFR 430.32(e)(2)(ii)–(iv)) The automatic means for adjusting water temperature must ensure that an incremental change in the inferred heat load produces a corresponding incremental change in the temperature of the water supplied by the boiler. EISA 2007 also disallows the use of constant-burning pilot lights in gas-fired hot water boilers and gas-fired steam boilers.

DOE initiated today's rulemaking pursuant to 42 U.S.C. 6295(f)(4)(C), which requires DOE to conduct a second round of amended standards rulemaking for residential boilers. EPCA, as amended by EISA 2007, also requires that not later than 6 years after issuance of any final rule establishing or amending a standard, DOE must publish either a notice of the determination that standards for the product do not need to be amended, or a notice of proposed rulemaking including proposed energy conservation standards. (42 U.S.C. 6295(m)(1)) As noted above, this rulemaking will satisfy both statutory provisions.

Furthermore, EISA 2007 amended EPCA to require that any new or amended energy conservation standard adopted after July 1, 2010, shall address standby mode and off mode energy consumption pursuant to 42 U.S.C. 6295(o). (42 U.S.C. 6295(gg)(3)) If feasible, the statute directs DOE to incorporate standby mode and off mode energy consumption into a single standard with the product's active mode energy use. If a single standard is not feasible, DOE may consider establishing a separate standard to regulate standby mode and off mode energy consumption. Consequently, DOE will consider standby mode and off mode energy use as part of this rulemaking for residential boilers.

DOE initiated this current rulemaking by issuing an analytical Framework Document, ''Rulemaking Framework for Residential Boilers'' (February 11, 2013). DOE published the notice of public meeting and availability of the Framework Document for residential boilers in the **Federal Register** on February 11, 2013. 78 FR 9631. The residential boiler energy conservation standards rulemaking docket is EERE–2012–BT–STD–0047. See: *http://www1.eere.energy.gov/buildings/appliance_standards/rulemaking.aspx?ruleid=112.*

The Framework Document explained the issues, analyses, and process that DOE anticipated using to develop energy conservation standards for residential boilers. DOE held a public meeting on March 13, 2013, to solicit comments from interested parties regarding DOE's analytical approach. The comment period for the Framework Document closed on March 28, 2013.

To further develop the energy conservation standards for residential boilers, DOE gathered additional information and performed an initial technical analysis. This process culminated in publication in the **Federal Register** on February 11, 2014, of the notice of data availability (NODA), which announced the availability of analytical results and modeling tools. 79 FR 8122. In that document, DOE presented its initial analysis of potential amended energy conservation standards for residential boilers, and requested comment on the following matters discussed in the analysis: (1) The product classes and scope of coverage; (2) the analytical framework, models, and tools that DOE is using to evaluate potential standards; and (3) the results of the preliminary analyses performed by DOE. *Id.* DOE also invited written comments on these subjects, as well as any other relevant issues, and announced the availability of supporting documentation on its Web site at *http://www.regulations.gov/#!documentDetail;D=EERE-2012-BT-STD-0047-0015*.

A PDF copy of the supporting documentation is available at *http://www.regulations.gov/#!documentDetail;D=EERE-2012-BT-STD-0047-0011*. The comment period closed on March 13, 2014.

The supporting documentation in the NODA provided an overview of the activities DOE undertook in developing potential amended energy conservation standards for residential boilers, and discussed the comments DOE received in response to the Framework Document. It also described the analytical methodology that DOE used and each analysis DOE had performed up to that point. These analyses were as follows:

- A *market and technology assessment* addressed the scope of this rulemaking, identified the potential product classes of residential boilers, characterized the markets for these products, and reviewed techniques and approaches for improving their efficiency;
- A *screening analysis* reviewed technology options to improve the efficiency of residential boilers, and weighed these options against DOE's four prescribed screening criteria;
- An *engineering analysis* estimated the increase in manufacturer selling prices (MSPs) associated with more energy-efficient residential boilers;
- An *energy use analysis* estimated the annual energy use of residential boilers at various potential standard levels;
- A *markups analysis* converted estimated MSPs to consumer-installed prices.
- A *life-cycle cost (LCC) analysis* calculated, at the consumer level, the discounted savings in operating costs throughout the estimated average life of the product, compared to any increase in installed costs likely to result directly from the adoption of a given standard;
- A *payback period (PBP) analysis* estimated the amount of time it would take consumers to recover the higher expense of purchasing more-energy-efficient products through lower operating costs;
- A *shipments analysis* estimated shipments of residential boilers over the time period examined in the analysis (30 years), which were used in performing the national impact analysis;
- A *national impact analysis* assessed the aggregate impacts at the national level of potential energy conservation standards for residential boilers, as measured by the net present value of total consumer economic impacts and national energy savings;

The nature and function of the analyses in this rulemaking, including the engineering analysis, energy-use characterization, markups to determine installed prices, LCC and PBP analyses, and national impacts, are summarized in the February 2014 notice. 79 FR 8122, 8124–28 (Feb. 11, 2014).

Statements received after publication of the Framework Document, at the Framework public meeting, and comments received after the publication of the NODA have helped identify issues involved in this rulemaking and have provided information that has contributed to DOE's resolution of these issues. The Department considered

these statements and comments in developing revised engineering and other analyses for this rulemaking.

DOE received 30 comments in response to the February 2014 NODA. These commenters include: A joint comment from the American Council for an Energy-Efficient Economy (ACEEE), the Appliance Standards Awareness Project (ASAP), the Alliance to Save Energy (ASE), the Natural Resources Defense Council (NRDC), and the Northeast Energy Efficiency Partnerships (NEEP); a comment from the Air-Conditioning, Heating, and Refrigeration Institute (AHRI); a comment from Edison Electric Institute (EEI); and a joint comment from the American Gas Association (AGA) and the American Public Gas Association (APGA). Manufacturers submitting written comments include: Energy Kinetics, Weil McLain, Weil McLain and various contractors and distributors (Weil McLain *et al.*), Crown Boiler, US Boiler, New Yorker Boiler, and HTP. Heating, ventilation, and air conditioning professionals and fuel companies who submitted written comments include: Belyea Brothers, Fire & Ice Heating &Cooling, Westmore Fuel Company, Maritime Energy, Brideau Oil Co., Hlavaty Plumb Heat and Cool, Rhoads Energy Corporation, Powers Energy Corporation, Sunshine Fuels & Energy Services, Petro Heating & Air Conditioning Services, OSI Comfort Specialists, Soundview Heating and Air Conditioning Corp, Aiello Home Services, Lombardi Oil, Boehm Heating Company, Kafin Oil Company, Wilkinson Oil Company, Santoro Oil Company, and Stocker Home Energy Services. This NOPR summarizes and responds to the issues raised in these comments. A parenthetical reference at the end of a comment quotation or paraphrase provides the location of the item in the public record.

III. General Discussion

DOE developed today's proposed rule after considering verbal and written comments, data, and information from interested parties that represent a variety of interests. The following discussion addresses issues raised by these commenters.

A. Product Classes and Scope of Coverage

When evaluating and establishing energy conservation standards, DOE divides covered products into product classes by the type of energy used or by capacity or other performance-related features that justify a different standard. In making a determination whether a performance-related feature justifies a different standard, DOE must consider such factors as the utility of the feature to the consumer and other factors DOE deems appropriate. (42 U.S.C. 6295(q))

Existing energy conservation standards divide residential boilers into six product classes based on the fuel type (*i.e.,* gas, oil, or electricity) and heating medium of the product (*i.e.,* hot water or steam). For this rulemaking, DOE proposes to maintain the scope of coverage defined by its current regulations for the analysis of standards, so as to include six product classes of boilers: (1) Gas-fired hot water boilers; (2) gas-fired steam boilers; (3) oil-fired hot water boilers; (4) oil-fired steam boilers; (5) electric hot water boilers; and (6) electric steam boilers. DOE has not conducted an analysis of an AFUE standard level for electric boilers as the AFUE of these products already approaches 100 percent. DOE also did not conduct an analysis of a standard level for combination appliances as the DOE test procedure does not include a method with which to test these products. These reasons are explained in greater detail in section IV.A.1 of this NOPR. However, DOE did include electric boilers within the scope of its analysis of standby mode and off mode energy conservation standards.

The scope and product classes analyzed for today's NOPR are the same as those initially set forth proposed in the Framework Document and examined in DOE's initial analysis. Comments received relating to the scope of coverage are described in section IV.A of this proposed rule.

B. Test Procedure

DOE's current energy conservation standards for residential boilers are expressed in terms of annual fuel utilization efficiency (*see* 10 CFR 430.32(e)(2)(ii)). AFUE is an annualized fuel efficiency metric that fully accounts for fuel consumption in active, standby, and off modes. The existing DOE test procedure for determining the AFUE of residential boilers is located at 10 CFR part 430, subpart B, appendix N. The current DOE test procedure for residential boilers was originally established by a May 12, 1997 final rule, which incorporates by reference the American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE)/American National Standards Institute (ANSI) Standard 103–1993, *Method of Testing for Annual Fuel Utilization Efficiency of Residential Central Furnaces and Boilers* (1993). 62 FR 26140, 26157.

On October 20, 2010, DOE updated its test procedures for residential boilers in a final rule published in the **Federal Register** (October 2010 test procedure rule). 75 FR 64621. This rule amended DOE's test procedure for residential furnaces and boilers to establish a separate metric for measuring the electrical energy use in standby mode and off mode for gas-fired, oil-fired, and electric boilers pursuant to requirements established by EISA 2007. In the final rule, DOE determined that due to the magnitude of the electrical standby/off mode vs active mode, a single efficiency metric is technically infeasible. The test procedure amendments were primarily based on and incorporate by reference provisions of the International Electrotechnical Commission (IEC) Standard 62301 (First Edition), ''Household electrical appliances—Measurement of standby power.'' On December 31, 2012, DOE published a final rule in the **Federal Register** which updated the incorporation by reference of the standby mode and off mode test procedure provisions to refer to the latest edition of IEC Standard 62301 (Second Edition). 77 FR 76831.

On July 10, 2013, DOE published a final rule in the **Federal Register** (July 2013 final rule) that modified the existing testing procedures for residential furnaces and boilers. 78 FR 41265. The modification addressed the omission of equations needed to calculate AFUE for two-stage and modulating condensing furnaces and boilers that are tested using an optional procedure provided by section 9.10 of ASHRAE 103–1993 (incorporated by reference into DOE's test procedure), which allows the test engineer to omit the heat-up and cool-down tests if certain conditions are met. Specifically, the DOE test procedure allows condensing boilers and furnaces to omit the heat-up and cool-down tests provided that the units have no measurable airflow through the combustion chamber and heat exchanger (HX) during the burner off period and have post-purge period(s) of less than 5 seconds. For two-stage and modulating condensing furnaces and boilers, ASHRAE 103–1993 (and by extension the DOE test procedure) does not contain the necessary equations to calculate the heating seasonal efficiency (which contributes to the ultimate calculation of AFUE) when the option in section 9.10 is selected. The July 2013 final rule adopted two new equations needed to account for the use of section 9.10 for two-stage and modulating condensing furnaces and boilers. *Id.*

EPCA, as amended by EISA 2007, requires that DOE must review test procedures for all covered products at least once every 7 years. (42 U.S.C

6293(b)(1)(A)) Accordingly, DOE must complete the residential furnaces and boiler test procedure rulemaking no later than December 19, 2014 (*i.e.,* 7 years after the enactment of EISA 2007), which is before the expected completion of this energy conservation standards rulemaking. On March 11, 2015, DOE published a notice of proposed rulemaking for the test procedure in the **Federal Register** (March 2015 Test Procedure NOPR), a necessary step toward fulfillment of the requirement under 42 U.S.C. 6293(b)(1)(A) for residential furnaces and boilers. 80 FR 12876. DOE must base the analysis of amended energy conservation standards on the most recent version of its test procedures, and accordingly, DOE will use any amended test procedure when considering product efficiencies, energy use, and efficiency improvements in its analyses. Major changes proposed in the March 2015 Test Procedure NOPR included proposals to:

- Adopt ANSI/ASHRAE 103–2007 by reference in place of the existing reference to ANSI/ASHRAE 103–1993;
- Modify the requirements for the measurement of condensate under steady-state conditions;
- Update references to installation manuals;
- Update the auxiliary electrical consumption calculation to include additional measurements of electrical consumption;
- Adopt a method for determining if the automatic means requirement has been met;
- Adopt a method for qualifying the use of the minimum draft factor, and
- Revising the required reporting precision for AFUE.

DOE received several comments from stakeholders relating to the residential furnace and boiler test procedure. These comments were considered and addressed in that rulemaking proceeding.

C. Technological Feasibility

1. General

In each energy conservation standards rulemaking, DOE conducts a screening analysis based on information gathered on all current technology and prototype designs that could improve the efficiency of the products or equipment that are the subject of the rulemaking. As the first step in such an analysis, DOE develops a list of technology options for consideration in consultation with manufacturers, design engineers, and other interested parties. DOE then determines which of those means for improving efficiency are technologically feasible. DOE considers technologies incorporated in commercially-available products or in working prototypes to be technologically feasible. 10 CFR part 430, subpart C, appendix A, section 4(a)(4)(i).

After DOE has determined that particular technology options are technologically feasible, it further evaluates each technology option in light of the following additional screening criteria: (1) Practicability to manufacture, install, and service; (2) adverse impacts on product utility or availability; and (3) adverse impacts on health or safety. 10 CFR part 430, subpart C, appendix A, section 4(a)(4)(ii)–(iv). Additionally, it is DOE policy not to include in its analysis any proprietary technology that is a unique pathway to achieving a certain efficiency level. Section IV.B of this notice discusses the results of the screening analysis for residential boilers, particularly the designs DOE considered, those it screened out, and those that are the basis for the trial standard levels (TSLs) in this rulemaking. For further details on the screening analysis for this rulemaking, see chapter 4 of the NOPR technical support document (TSD).

2. Maximum Technologically Feasible Levels

When DOE proposes to adopt an amended standard for a type or class of covered product, it must determine the maximum improvement in energy efficiency or maximum reduction in energy use that is technologically feasible for such product. (42 U.S.C. 6295(p)(1)) Accordingly, in the engineering analysis, DOE determined the maximum technologically feasible (max-tech) improvements in energy efficiency for residential boilers, using the design parameters for the most-efficient products available on the market or in working prototypes. The max-tech levels that DOE determined for this rulemaking include efficiency levels currently only achieved through the use of condensing technology for both the gas fired hot water and the oil fired hot water product classes. Details regarding the max-tech efficiency levels determined for this rulemaking are described in section IV.C of this proposed rule and in chapter 5 of the NOPR TSD.

D. Energy Savings

1. Determination of Savings

For each TSL, DOE projected energy savings from the products that are the subject of this rulemaking purchased in the 30-year period that begins in the year of compliance with amended standards (2020–2049).[17] The savings are measured over the entire lifetime of products purchased in the 30-year analysis period.[18] DOE quantified the energy savings attributable to each TSL as the difference in energy consumption between each standards case and the base case. The base case represents a projection of energy consumption in the absence of amended energy conservation standards, and it considers market forces and policies that affect demand for more-efficient products.

DOE used its national impact analysis (NIA) spreadsheet model to estimate energy savings from potential amended standards for the products that are the subject of this rulemaking. The NIA spreadsheet model (described in section IV.H of this NOPR) calculates energy savings in site energy, which is the energy directly consumed by products at the locations where they are used. For electricity, DOE reports national energy savings on an annual basis in terms of primary (source) energy savings, which is the savings in the energy that is used to generate and transmit the site electricity. To calculate this quantity (*i.e.,* converting site energy to primary energy), DOE derives annual conversion factors from the model used to prepare the Energy Information Administration's (EIA) most recent *Annual Energy Outlook* (*AEO*).

DOE also has begun to estimate full-fuel-cycle (FFC) energy savings, as discussed in DOE's statement of policy and notice of policy amendment. 76 FR 51282 (August 18, 2011), as amended at 77 FR 49701 (August 17, 2012). The FFC metric includes the energy consumed in extracting, processing, and transporting primary fuels (*i.e.,* coal, natural gas, petroleum fuels), and, thus, presents a more complete picture of the impacts of energy efficiency standards. DOE's evaluation of FFC savings is driven in part by the National Academy of Sciences' (NAS) report on FFC measurement approaches for DOE's Appliance Standards Program.[19] The

[17] DOE also presents a sensitivity analysis that considers impacts for products shipped in a 9-year period.

[18] In the past, DOE presented energy savings results for only the 30-year period that begins in the year of compliance. In the calculation of economic impacts, however, DOE considered operating cost savings measured over the entire lifetime of products purchased in the 30-year period. DOE has chosen to modify its presentation of national energy savings to be consistent with the approach used for its national economic analysis.

[19] "Review of Site (Point-of-Use) and Full-Fuel-Cycle Measurement Approaches to DOE/EERE Building Appliance Energy-Efficiency Standards," (Academy report) was completed in May 2009 and included five recommendations. A copy of the

Continued

NAS report discusses that the FFC metric was primarily intended for energy conservation standards rulemakings where multiple fuels may be used by a particular product. DOE's approach is based on the calculation of an FFC multiplier for each of the energy types used by covered products or equipment (oil, gas and electricity in the case of residential boilers). Although the addition of FFC energy savings in the rulemakings is consistent with the recommendations, the methodology for estimating FFC does not project how fuel markets would respond to this particular standards rulemaking. The FFC methodology simply estimates how much additional energy, and in turn how many tons of emissions, may be displaced if the estimated quantity of energy was not consumed by the residential boilers covered in this rulemaking. It is also important to note that inclusion of FFC savings did not affect DOE's choice of proposed standards. For more information on FFC energy savings, see section IV.H.1.

2. Significance of Savings

To adopt more-stringent standards for a covered product, DOE must determine that such action would result in ''significant'' energy savings. (42 U.S.C. 6295(o)(3)(B)) Although the term ''significant'' is not defined in the Act, the U.S. Court of Appeals for the District of Columbia Circuit, in *Natural Resources Defense Council* v. *Herrington,* 768 F.2d 1355, 1373 (D.C. Cir. 1985), opined that Congress intended ''significant'' energy savings in the context of EPCA to be savings that were not ''genuinely trivial.'' The energy savings for all of the trial standard levels considered in this rulemaking, including the proposed standards, are nontrivial, and, therefore, DOE considers them ''significant'' within the meaning of section 325 of EPCA.

E. Economic Justification

1. Specific Criteria

EPCA provides seven factors to be evaluated in determining whether a potential energy conservation standard is economically justified. (42 U.S.C. 6295(o)(2)(B)(i)(I)–(VII)) The following sections discuss how DOE has addressed each of those seven factors in this rulemaking.

a. Economic Impact on Manufacturers and Consumers

In determining the impacts of a potential amended standard on manufacturers, DOE conducts a manufacturer impact analysis (MIA), as discussed in section IV.J. DOE first uses an annual cash-flow approach to determine the quantitative impacts. This step includes both a short-term assessment—based on the cost and capital requirements during the period between when a regulation is issued and when entities must comply with the regulation—and a long-term assessment over a 30-year period. The industry-wide impacts analyzed include: (1) Industry net present value (INPV), which values the industry on the basis of expected future cash flows; (2) cash flows by year; (3) changes in revenue and income; and (4) other measures of impact, as appropriate. Second, DOE analyzes and reports the impacts on different types of manufacturers, including impacts on small manufacturers. Third, DOE considers the impact of standards on domestic manufacturer employment and manufacturing capacity, as well as the potential for standards to result in plant closures and loss of capital investment. Finally, DOE takes into account cumulative impacts of various DOE regulations and other regulatory requirements on manufacturers.

For individual consumers, measures of economic impact include the changes in LCC and PBP associated with new or amended standards. These measures are discussed further in the following section. For consumers in the aggregate, DOE also calculates the national net present value of the economic impacts applicable to a particular rulemaking. DOE also evaluates the LCC impacts of potential standards on identifiable subgroups of consumers that may be affected disproportionately by a national standard.

b. Savings in Operating Costs Compared To Increase in Price (LCC and PBP)

EPCA requires DOE to consider the savings in operating costs throughout the estimated average life of the covered product in the type (or class) compared to any increase in the price of, or in the initial charges for, or maintenance expenses of, the covered product that are likely to result from a standard. (42 U.S.C. 6295(o)(2)(B)(i)(II)) DOE conducts this comparison in its LCC and PBP analyses.

The LCC is the sum of the purchase price of a product (including its installation) and the operating expense (including energy, maintenance, and repair expenditures) discounted over the lifetime of the product. The LCC analysis requires a variety of inputs, such as product prices, product energy consumption, energy prices, maintenance and repair costs, product lifetime, and consumer discount rates. To account for uncertainty and variability in specific inputs, such as product lifetime and discount rate, DOE uses a distribution of values, with probabilities attached to each value. For its analysis, DOE assumes that consumers will purchase the covered products in the first year of compliance with amended standards.

The LCC savings and the PBP for the considered conservation levels are calculated relative to a base case that reflects projected market trends in the absence of amended standards. DOE identifies the percentage of consumers estimated to receive LCC savings or experience an LCC increase, in addition to the average LCC savings associated with a particular standard level. DOE's LCC and PBP analyses are discussed in further detail in section IV.F.

c. Energy Savings

Although significant conservation of energy is a separate statutory requirement for adopting an energy conservation standard, EPCA requires DOE, in determining the economic justification of a standard, to consider the total projected energy savings that are expected to result directly from the standard. (42 U.S.C. 6295(o)(2)(B)(i)(III)) As discussed in section IV.H, DOE uses the NIA spreadsheet to project national energy savings.

d. Lessening of Utility or Performance of Products

In establishing product classes and in evaluating design options and the impact of potential standard levels, DOE evaluates potential standards that would not lessen the utility or performance of the considered products. (42 U.S.C. 6295(o)(2)(B)(i)(IV)) Based on data available to DOE, the standards proposed in this notice would not reduce the utility or performance of the products under consideration in this rulemaking.

e. Impact of Any Lessening of Competition

EPCA directs DOE to consider the impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from a proposed standard. (42 U.S.C. 6295(o)(2)(B)(i)(V)) It also directs the Attorney General to determine the impact, if any, of any lessening of competition likely to result from a proposed standard and to transmit such determination to the Secretary within 60 days of the publication of a proposed rule, together with an analysis of the nature and extent of the impact. (42 U.S.C. 6295(o)(2)(B)(ii)) DOE will

study can be downloaded at: *http://www.nap.edu/catalog.php?record_id=12670.*

transmit a copy of this proposed rule to the Attorney General with a request that the Department of Justice (DOJ) provide its determination on this issue. DOE will publish and respond to the Attorney General's determination in the final rule.

f. Need for National Energy Conservation

In evaluating the need for national energy conservation, DOE expects that the energy savings from the proposed standards are likely to provide improvements to the security and reliability of the nation's energy system. (42 U.S.C. 6295(o)(2)(B)(i)(VI)) Reductions in the demand for electricity also may result in reduced costs for maintaining the reliability of the nation's electricity system. DOE conducts a utility impact analysis to estimate how standards may affect the nation's needed power generation capacity, as discussed in section IV.M.

The proposed standards also are likely to result in environmental benefits in the form of reduced emissions of air pollutants and greenhouse gases associated with energy production. DOE reports the emissions impacts from today's proposed standards and from each TSL it considered and discussed in sections IV.K and V.B.6 of this NOPR. DOE also reports estimates of the economic value of emissions reductions resulting from the considered TSLs, as discussed in section IV.L.

g. Other Factors

EPCA allows the Secretary of Energy, in determining whether a standard is economically justified, to consider any other factors that the Secretary deems to be relevant. (42 U.S.C. 6295(o)(2)(B)(i)(VII)) To the extent interested parties submit any relevant information regarding economic justification that does not fit into the other categories described above, DOE could consider such information under ''other factors.''

2. Rebuttable Presumption

As set forth in 42 U.S.C. 6295(o)(2)(B)(iii), EPCA creates a rebuttable presumption that an energy conservation standard is economically justified if the additional cost to the consumer of a product that meets the standard is less than three times the value of the first year's energy savings resulting from the standard, as calculated under the applicable DOE test procedure. DOE's LCC and PBP analyses generate values used to calculate the effects that proposed energy conservation standards would have on the payback period for consumers. These analyses include, but are not limited to, the 3-year payback period contemplated under the rebuttable-presumption test. In addition, DOE routinely conducts an economic analysis that considers the full range of impacts to consumers, manufacturers, the Nation, and the environment, as required under 42 U.S.C. 6295(o)(2)(B)(i). The results of this analysis serve as the basis for DOE's evaluation of the economic justification for a potential standard level (thereby supporting or rebutting the results of any preliminary determination of economic justification). The rebuttable presumption payback calculation is discussed in section V.B.1 of this proposed rule.

IV. Methodology and Discussion of Comments

This section addresses the analyses DOE has performed for this rulemaking with regard to residential boilers. Separate subsections will address each component of DOE's analyses.

DOE used three spreadsheet tools to estimate the impact of today's proposed standards. The first spreadsheet calculates LCCs and payback periods of potential standards. The second provides shipments forecasts, and then calculates national energy savings and net present value impacts of potential standards. Finally, DOE assessed manufacturer impacts, largely through use of the Government Regulatory Impact Model (GRIM). All three spreadsheet tools are available online at the rulemaking portion of DOE's Web site: *http://www1.eere.energy.gov/buildings/appliance_standards/rulemaking.aspx?ruleid=112.*

Additionally, DOE estimated the impacts on utilities and the environment that would be likely to result from potential amended standards for residential boilers. DOE used a version of EIA's National Energy Modeling System (NEMS) for the utility and environmental analyses.[20] The NEMS simulates the energy sector of the U.S. economy. EIA uses NEMS to prepare its *Annual Energy Outlook,* a widely-known energy forecast for the United States. NEMS offers a sophisticated picture of the effect of standards, because it accounts for the interactions between the various energy supply and demand sectors and the economy as a whole.

A. Market and Technology Assessment

DOE develops information that provides an overall picture of the market for the products concerned, including the purpose of the products, the industry structure, manufacturers, market characteristics, and technologies used in the products. This activity includes both quantitative and qualitative assessments, based primarily on publicly-available information. The subjects addressed in the market and technology assessment for this residential boilers rulemaking include: (1) A determination of the scope of the rulemaking and product classes; (2) manufacturers and industry structure; (3) quantities and types of products sold and offered for sale; (4) retail market trends; (5) regulatory and non-regulatory programs; and (6) technologies or design options that could improve the energy efficiency of the product(s) under examination. The key findings of DOE's market assessment are summarized below. See chapter 3 of the NOPR TSD for further discussion of the market and technology assessment.

1. Definition and Scope of Coverage

EPCA defines residential boilers as a type of furnace. Specifically, the term ''furnace'' is defined as ''a product which utilizes only single-phase electric current, or single-phase electric current or DC current in conjunction with natural gas, propane, or home heating oil, and which—

(A) is designed to be the principal heating source for the living space of a residence;

(B) is not contained within the same cabinet with a central air conditioner whose rated cooling capacity is above 65,000 Btu [British thermal units] per hour;

(C) is an electric central furnace, electric boiler, forced- air central furnace, gravity central furnace, or low pressure steam or hot water boiler; and

(D) has a heat input rate of less than 300,000 Btu per hour for electric boilers and low pressure steam or hot water boilers and less than 225,000 Btu per hour for forced-air central furnaces, gravity central furnaces, and electric central furnaces.''

(42 U.S.C. 6291(23))

DOE has incorporated this definition into its regulations in the Code of Federal Regulations (CFR) at 10 CFR 430.2. DOE has generally defined an electric boiler as an electrically powered furnace designed to supply low pressure steam or hot water for space heating applications, including a low pressure steam boiler that operates at or below 15 pounds per square inch gauge (psig) steam pressure and a hot water boiler that operates at or below 160 psig water

[20] For more information on NEMS, refer to the U.S. Department of Energy, Energy Information Administration documentation. A useful summary is *National Energy Modeling System: An Overview 2009,* DOE/EIA–0581(2009) (October 2009) (Available at: *http://www.eia.doe.gov/oiaf/aeo/overview/index.html*).

pressure and 250 °F water temperature. DOE has generally defined a low pressure steam or hot water boiler as an electric, gas or oil burning furnace designed to supply low pressure steam or hot water for space heating applications, including a low pressure steam boiler that operates at or below 15 psig steam pressure; a hot water boiler operates at or below 160 psig water pressure and 250 °F water temperature. See 10 CFR part 430.2.

For this rulemaking, DOE proposes to maintain the scope of coverage as defined by its current regulations for this analysis of new and amended standards, which includes six product classes of boilers (gas-fired hot water boilers, gas-fired steam boilers, oil-fired hot water boilers, oil-fired steam boilers, electric hot water boilers, and electric steam boilers). DOE has not conducted an analysis of an AFUE standard level for electric boilers or combination appliance for the reasons explained below.

Combination appliances provide both space heating and domestic hot water to a residence. These products are available on the market in two major configurations, including a water heater fan-coil combination unit and a boiler tankless coil combination unit. Currently, manufacturers certify combination appliances by rating the efficiency of the unit when performing their primary function (*i.e.,* space heating for boiler tankless coil combination units or water heating for water heater fan-coil units). In the March 2015 residential furnaces and boilers test procedure NOPR, DOE did not propose a method for which to calculate AFUE for combination appliances, because DOE chose not to delay or complicate the test procedure rulemaking. Rather, DOE plans to continue to seek input about the development of a test procedure for combination appliances and may consider a separate rulemaking devoted specifically to those products in the future. 80 FR 12876. Without a Federal test procedure for combination appliances, DOE was not able to perform an AFUE standards analysis for such products.

DOE did not include electric boilers in the analysis of amended AFUE standards. Electric boilers do not have an AFUE requirement under 10 CFR 430.32(e)(2)(ii). Electric boilers typically use electric resistance coils as their heating elements, which are highly efficient. Furthermore, the current DOE test procedure for determining AFUE classifies boilers as indoor units and, thus, considers jacket losses to be usable heat, because those losses would go to the conditioned space. The efficiency of these products already approaches 100 percent AFUE. Therefore, there are no options for increasing the rated AFUE of this product, and the impact of setting AFUE energy conservation standards for these products would be negligible. However, DOE has considered standby mode and off mode standards for electric boilers.

The proposed scope used for the analysis for this NOPR is the same as the scope used for the NODA analysis. In response to the NODA analysis, AGA and AGPA filed a joint comment which stated that DOE should clarify that gas-fired boilers that do not have an electrical supply requirement are not subject to this regulation. (AGA and AGPA, No. 21 at p. 2) DOE agrees that under EPCA, an exception already exists for boilers which are manufactured to operate without any need for electricity. (42 U.S.C. 6295(f)(3)(C); 10 CFR 430.32(e)(2)(iv)) Thus, DOE did not consider such products in the course of this analysis, and such products would not be covered by amended standards resulting from this process.

2. Product Classes

When evaluating and establishing energy conservation standards, DOE divides covered products into product classes by the type of energy used or by capacity or other performance-related features that justify a different standard. In making a determination whether a performance-related feature justifies a different standard, DOE must consider such factors as the utility to the consumer of the feature and other factors DOE determines are appropriate. (42 U.S.C. 6295(q)) For this rulemaking, DOE proposes to maintain the scope of coverage as defined by its current regulations for this analysis of standards, which includes six product classes of boilers. Table IV.1 lists the six proposed product classes.

TABLE IV.1—PROPOSED PRODUCT CLASSES FOR RESIDENTIAL BOILERS

Boiler by fuel type	Heat transfer medium
Gas-fired Boiler	Steam. Hot Water.
Oil-fired Boiler	Steam. Hot Water.
Electric Boiler	Steam. Hot Water.

Several interested parties suggested that the product classes should be further subdivided into condensing and non-condensing products for gas-fired hot water boilers. (Weil McLain No. 20 at p. 2, AGA and APGA No.21 at p. 2, HTP No. 31 at p. 2)

Weil McLain commented that condensing and noncondensing boilers should be in separate product classes because each presents significant options to have available for different applications. Weil McLain added that each type of boiler can provide a good solution to a residential boiler need, but the solution requires the correct application of the boiler to a particular home. In particular, Weil McLain commented that there are important differences between new installations and replacement installations for these products. (Weil McLain No. 20 at p. 2)

Similarly, AGA and APGA suggested that the gas-fired hot water boiler product class should be subdivided into condensing and non-condensing subclasses, such that DOE may consider establishing separate standards for Category I and Category IV gas boilers based on their different venting and condensing characteristics. Category I gas boilers are those that operate with a non-positive vent static pressure and with a vent gas temperature that avoids excessive condensate production in the vent. Category IV gas boilers are those that operate with a positive vent static pressure with a vent gas temperature that is capable of causing excessive condensation.[21] AGA and APGA commented that in the past, DOE has established separate standards for clothes dryers based on venting characteristics. (AGA and APGA No.21 at p. 2–3)

In response to these comments, DOE notes that, in evaluating and establishing energy conservation standards, EPCA directs DOE to divide covered products into classes based on differences including the type of energy used, capacity, or other performance-related feature that justifies a different standard for products having such feature. (42 U.S.C. 6295(q)) In deciding whether a feature justifies a different standard, DOE must consider factors such as the utility of the features to users. In evaluating Weil McLain's, AGA's, and AGPA's suggestion to consider separate product classes for non-condensing and condensing boilers (and specifically in AGA's and APGA's comments for boilers using Category I and Category IV venting), DOE considered the utility to consumers of condensing and non-condensing boilers, including the ability to use one venting type versus another. The utility derived

[21] See ANSI Z223.1–2009/NFPA 54, National Fuel Gas Code, 3.3.6.11.1 and 3.3.6.11.4 (2009). See also 2012 International Fuel Gas Code, at p. 16 (2011).

by consumers from boilers is in the form of the space heating function that a boiler performs. Condensing and non-condensing boilers perform equally well in providing this function. Likewise, a boiler requiring Category I venting and a boiler requiring Category IV venting are capable of providing the same heating function to the consumer, and, thus, provide virtually the same utility with respect to their primary function. AGA and AGPA contend that the ability to vent a boiler with Category I venting provides boiler consumers with a special utility due to the cost-saving benefits compared to having to retrofit a venting system to accommodate a Category IV boiler. DOE does not agree with the characterization of reduced costs associated with Category I venting in certain installations as a special utility, but rather, it is an economic impact on consumers that must be considered in the rulemaking's cost-benefit analysis. Rather, the average installation cost by efficiency level for gas-fired hot water boilers ranges from $3,301 to $3,599; for gas-fired steam boilers, from $3,037 to $3,061; for oil-fired hot water boilers, from $3,069 to $3,662; and for oil-fired steam boilers, from $3,074 to $3,081. Information related to installation costs can be found in section IV.F.1 of this NOPR and Chapter 8 of the NOPR TSD. DOE also recognizes the merit in Weil McLain's comments regarding the important operational differences between condensing and non-condensing systems. However, DOE believes this issue is also analytical and best addressed in the analyses as DOE considers these operational differences. Accordingly, DOE is not proposing to establish separate product classes for condensing and non-condensing boilers, or for boilers utilizing Category I and Category IV venting systems. Rather, DOE considered the impacts of these characteristics in the relevant analyses performed for the NOPR. DOE requests comment on the installation costs cited above.

HTP suggested that the Department should consider separate residential boiler standards for new construction and retrofits. (HTP, No. 31 at p.2)

In response, as set forth in the statutory definition for ''energy conservation standard,'' DOE notes that EPCA directs the Department to establish performance standards that prescribe minimum levels of energy efficiency or maximum levels of energy use for covered products. (42 U.S.C. 6291(6)(A)) EPCA does not authorize setting multiple levels of efficiency for a given covered product, depending on where the product is installed in terms of home type (*i.e.,* new or existing). The Department does not have the authority to set separate standards for residential boilers for new homes and for existing homes and, therefore, must reject the suggestion that it consider separate standards for new construction and retrofits.

3. Technology Options

In the NODA analysis, DOE identified 10 technology options that would be expected to improve the AFUE of residential boilers, as measured by the DOE test procedure: (1) Heat exchanger improvements; (2) modulating operation; (3) dampers; (4) direct vent; (5) pulse combustion; (6) premix burners; (7) burner derating; (8) low-pressure air-atomized oil burner; (9) delayed-action oil pump solenoid valve; and (10) electronic ignition.[22] In addition, DOE identified three technologies that would reduce the standby mode and off mode energy consumption of residential boilers: (1) Transformer improvements; (2) control relay for models with brushless permanent magnet motors; and (3) switching mode power supply.

DOE received no comments suggesting additional technology options in response to the NODA analysis, and thus, DOE has maintained the same list of technology options in the NOPR analysis. After identifying all potential technology options for improving the efficiency of residential boilers, DOE performed the screening analysis (see section IV.B of this NOPR or chapter 4 of the TSD) on these technologies to determine which could be considered further in the analysis and which should be eliminated.

B. Screening Analysis

DOE uses the following four screening criteria to determine which technology options are suitable for further consideration in an energy conservation standards rulemaking:

1. *Technological feasibility.* Technologies that are not incorporated in commercial products or in working prototypes will not be considered further.

2. *Practicability to manufacture, install, and service.* If it is determined that mass production and reliable installation and servicing of a technology in commercial products could not be achieved on the scale necessary to serve the relevant market at the time of the compliance date of the standard, then that technology will not be considered further.

3. *Impacts on product utility or product availability.* If it is determined that a technology would have significant adverse impact on the utility of the product to significant subgroups of consumers or would result in the unavailability of any covered product type with performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as products generally available in the United States at the time, it will not be considered further.

4. *Adverse impacts on health or safety.* If it is determined that a technology would have significant adverse impacts on health or safety, it will not be considered further.

(10 CFR part 430, subpart C, appendix A, 4(a)(4) and 5(b))

In sum, if DOE determines that a technology, or a combination of technologies, fails to meet one or more of the above four criteria, it will be excluded from further consideration in the engineering analysis. The reasons for eliminating any technology are discussed below.

The subsequent sections include comments from interested parties pertinent to the screening criteria, DOE's evaluation of each technology option against the screening analysis criteria, and whether DOE determined that a technology option should be excluded (''screened out'') based on the screening criteria.

1. Screened-Out Technologies

During the NODA phase, DOE screened out pulse combustion as a technology option for improving AFUE and screened out control relay for boiler models with brushless permanent magnet motors as a technology option for reducing standby electric losses. DOE decided to screen out pulse combustion based on manufacturer feedback during the Framework public meeting indicating that pulse combustion boilers have had reliability issues in the past, and therefore, manufacturers do not consider this a viable option to improve efficiency. Further, manufacturers indicated that similar or greater efficiencies than those of pulse combustion boilers can be achieved using alternative technologies. For this reason, DOE is not including pulse combustion as a technology option, as it could reduce consumer utility (reliability). DOE decided to screen out using a control relay to depower BPM motors due to feedback received during the residential furnace rulemaking (which was reconfirmed during manufacturer interviews for the residential boiler rulemaking), which indicated that using a control relay to depower brushless permanent magnet

[22] Although DOE has identified vent dampers and electronic ignition as technologies that improve residential boiler efficiency, DOE did not consider these technologies further in the analysis as options for improving efficiency of baseline units, because they are already included in baseline residential boilers.

motors could reduce the lifetime of the motors, which would lead to a reduction in utility of the product. For this reason, DOE is not including control relays for models with brushless permanent magnet motors as a technology option, as it could reduce consumer utility. DOE did not receive any comments relating to the screening out of these two technologies.

AHRI stated that neither direct vent nor burner derating should be included in the analysis since they are not currently practical ways to achieve higher levels of efficiency. (AHRI, No. 16 at p. 1)

In response, DOE agrees that burner derating should be screened out, and has done so for the NOPR analysis. Burner derating reduces the burner firing rate while keeping heat exchanger geometry and surface area and the fuel-air ratio the same, which increases the ratio of heat transfer surface area to energy input, and increases efficiency. However, the lower energy input means that less heat is provided to the user than with conventional burner firing rates. As a result of the decreased heat output of boilers with derated burners, DOE has screened out burner derating as a technology option, as it could reduce consumer utility.

For direct vent, DOE has found that boilers using this technology can improve AFUE by reducing the heat loss through draft, because direct vent systems are sealed systems in which combustion air is brought in from outside, rather than from the space surrounding the boiler. This reduces infiltration losses, and would improve AFUE. In addition, this technology has been demonstrated as technologically feasible and practicable to manufacture, install, and service, as it is currently offered in boiler models available on the market. In addition, DOE is not aware of any impacts on product utility or adverse impacts on safety that would result from the use of this technology. Thus, DOE has maintained direct vent as a technology option. However, it should be noted that this technology option was not considered to be a primary driver of increased efficiency in the engineering analysis (see section IV.C).

2. Remaining Technologies

Through a review of each technology, DOE found that all of the other identified technologies met all four screening criteria and consequently, are suitable for further examination in DOE's analysis. In summary, DOE did not screen out the following technology options to improve AFUE: (1) Heat exchanger improvements; (2) modulating operation; (3) direct vent; (4) premix burners; (5) low-pressure air-atomized oil burner; and (6) delayed-action oil pump solenoid valve. DOE also maintained the following technology options to improve standby mode and off mode energy consumption: (1) Transformer improvements; and (2) switching mode power supply. All of these technology options are technologically feasible, given that the evaluated technologies are being used (or have been used) in commercially-available products or working prototypes. Therefore, all of the trial standard levels evaluated in this notice are technologically feasible. DOE also finds that all of the remaining technology options also meet the other screening criteria (*i.e.,* practicable to manufacture, install, and service, and do not result in adverse impacts on consumer utility, product availability, health, or safety). For additional details, please see chapter 4 of the NOPR TSD. DOE requests further comment from interested parties regarding whether there are any technologies which have passed the screening analysis that should be screened out based on the four screening criteria (*i.e.,* technological feasibility; practicability to manufacture, install, and service; impacts on product utility or product availability; and adverse impacts on health or safety).

C. Engineering Analysis

In the engineering analysis (corresponding to chapter 5 of the NOPR TSD), DOE establishes the relationship between the manufacturer selling price (MSP) and improved residential boiler efficiency. This relationship serves as the basis for cost-benefit calculations for individual consumers, manufacturers, and the Nation. DOE typically structures the engineering analysis using one of three approaches: (1) Design option; (2) efficiency level; or (3) reverse engineering (or cost-assessment). The design-option approach involves adding the estimated cost and efficiency of various efficiency-improving design changes to the baseline to model different levels of efficiency. The efficiency-level approach uses estimates of cost and efficiency at distinct levels of efficiency from publicly-available information, and information gathered in manufacturer interviews that is supplemented and verified through technology reviews. The reverse-engineering approach involves testing products for efficiency and determining cost from a detailed bill of materials (BOM) derived from reverse engineering representative products. The efficiency values range from that of a least-efficient boiler sold today (*i.e.,* the baseline) to the maximum technologically feasible efficiency level. At each efficiency level examined, DOE determines the manufacture production cost (MPC) and MSP; this relationship is referred to as a cost-efficiency curve.

As noted in section III.B, the active mode AFUE metric fully accounts for the fuel use consumption in active, standby and off modes whereas the standby and off mode metric (maximum wattage) only accounts for the electrical energy use in standby and off mode. In analyzing the technologies that would be likely to be employed to effect changes in these metrics, DOE found that the efficiency changes were mostly independent. For example, the primary means of improving AFUE is to improve the heat exchanger design, which would likely have little or no impact on standby and off mode electrical consumption. Similarly, the design options considered likely to be implemented for reducing standby mode and off mode electrical consumption are not expected to impact the AFUE. Therefore, DOE conducted separate engineering and cost-benefit analyses for each of these two metrics and their associated systems (fuel and electrical). In order to account for the total impacts of both proposed standards, DOE added the monetized impacts from these two separate analyses in the NIA, LCC, and MIA as a means of providing a cumulative impact on residential boilers. For the PBP, to estimate the cumulative impact for both standards, DOE determined the combined installed cost to the consumer and the first-year operating costs for each household. DOE requests comment on this approach and whether it is reasonable to assume that the design changes implemented by manufacturers in order to comply with the standby and off mode would be independent of those implemented to comply with AFUE standards.

DOE also requests comment on employing an alternative methodology to inform the selection of the appropriate technologically feasible and economically justified standard level, which would occur as follows: (1) First the agency would first consider the technological feasibility and economic justification of one standard (*e.g.,* standby and off mode) in the engineering cost model and downstream cost-benefit analysis to select a proposed level; and (2) DOE would then incorporate the estimated impacts of the proposed level into the baseline of the engineering cost model and downstream cost-benefit analysis prior to conducting the analysis for the second standard (*e.g.*

active mode). DOE recognizes that this methodology would yield the exact same incremental costs since the cost and savings are truly independent of one another—that is the cost to achieve the savings from the AFUE standard are not impacted by the compliance to the proposed sand-by and off mode standard.

For the NODA analysis of AFUE efficiency levels, DOE conducted the engineering analysis for residential boilers using a combination of the efficiency level and cost-assessment approaches. More specifically, DOE identified the efficiency levels for analysis and then used the cost-assessment approach to determine the technologies used and the associated manufacturing costs at those levels.

For the standby mode and off mode analyses, DOE adopted a design option approach, which allowed for the calculation of incremental costs through the addition of specific design options to a baseline model. DOE decided on this approach because it did not have sufficient data to execute an efficiency-level analysis, as manufacturers typically do not rate or publish data on the standby mode and or off mode energy consumption of their products.

DOE continued to use the same analytical approaches for the NOPR phase of this rulemaking as used in the NODA. In response to the NODA, DOE received specific comments from interested parties on certain aspects of the engineering analysis. A brief overview of the methodology, a discussion of the comments DOE received, DOE's response to those comments, and any adjustments made to the engineering analysis methodology or assumptions as a result of those comments is presented in the sections below. See chapter 5 of the NOPR TSD for additional details about the engineering analysis.

1. Efficiency Levels

As noted above, for analysis of amended AFUE standards, DOE used an efficiency-level approach to identify incremental improvements in efficiency for each product class. An efficiency-level approach enabled DOE to identify incremental improvements in efficiency for efficiency-improving technologies that boiler manufacturers already incorporate in commercially-available models. After identifying efficiency levels for analysis, DOE used a cost-assessment approach (section IV.C.2) to determine the MPC at each efficiency level identified for analysis. This method estimates the incremental cost of increasing product efficiency. For the analysis of amended standby mode and off mode energy conservation standards, DOE used a design-option approach and identified efficiency levels that would result from implementing certain design options for reducing power consumption in standby mode and off mode.

a. Baseline Efficiency Level and Product Characteristics

In the analysis presented in the NODA, DOE selected baseline units typical of the least-efficient commercially-available residential boilers. DOE selected baseline units as reference points for each product class, against which it measured changes resulting from potential amended energy conservation standards. The baseline efficiency level in each product class represents the basic characteristics of products in that class. A baseline unit is a unit that just meets current Federal energy conservation standards and provides basic consumer utility.

DOE uses the baseline unit for comparison in several phases of the analyses, including the engineering analysis, LCC analysis, PBP analysis, and the NIA. To determine energy savings that will result from an amended energy conservation standard, DOE compares energy use at each of the higher energy efficiency levels to the energy consumption of the baseline unit. Similarly, to determine the changes in price to the consumer that will result from an amended energy conservation standard, DOE compares the price of a baseline unit to the price of a unit at each higher efficiency level.

DOE received no comments regarding the baseline efficiency levels and characteristics chosen for the NODA analysis of amended AFUE standards. Thus, DOE has maintained these baseline efficiency levels, which are equal to the current federal minimum standards for each product class in the NOPR analysis. Table IV.2 presents the baseline AFUE levels identified for each product class. Additional details on the selection of baseline efficiency levels may be found in chapter 5 of the NOPR TSD.

TABLE IV.2—TABLE BASELINE AFUE EFFICIENCY LEVELS

Product class	AFUE (%)
Gas-Fired Hot Water Boilers	82
Gas-Fired Steam Boilers	80
Oil-Fired Hot Water Boilers	84
Oil-Fired Steam Boilers	82

AHRI commented that the baseline efficiency levels shown in the engineering analysis are assumed to have dampers. AHRI asked for clarification as to the type of damper the baseline gas-fired hot water boilers are assumed to have in the analysis. (AHRI No. 22 at p. 3) In the engineering analysis, DOE assumed baseline gas-fired hot water boilers to have stack dampers, as described in chapter 5 of the TSD.

For the standby mode and off mode analysis, DOE identified baseline components as those that consume the most electricity during the operation of those modes. Since it would not be practical for DOE to test every boiler on the market to determine the baseline and since manufacturers do not currently report standby mode and off mode energy consumption, DOE ''assembled'' the most consumptive baseline components from the models tested to model the electrical system of a boiler with the expected maximum system standby mode and off mode power consumption observed during testing of boilers and similar equipment. Additional boiler standby mode and off mode testing was performed for the NOPR analysis and has led DOE to lower the standby mode and off mode baseline consumption level for each product class as compared to the NODA analysis. The baseline standby mode and off mode consumption levels used in the NOPR analysis are presented in Table IV.3.

TABLE IV.3—BASELINE STANDBY MODE AND OFF MODE POWER CONSUMPTION USED IN THE NOPR ANALYSES

Component	Standby mode and off mode power consumption (watts)					
	Gas-fired hot water	Oil-fired hot water	Gas-fired steam	Oil-fired steam	Electric hot water	Electric steam
Transformer	4	4	4	4	4	4
ECM Burner Motor	1	N/A	N/A	N/A	N/A	N/A

TABLE IV.3—BASELINE STANDBY MODE AND OFF MODE POWER CONSUMPTION USED IN THE NOPR ANALYSES—Continued

Component	Standby mode and off mode power consumption (watts)					
	Gas-fired hot water	Oil-fired hot water	Gas-fired steam	Oil-fired steam	Electric hot water	Electric steam
Controls	2.5	2.5	2.5	2.5	2.5	2.5
Display	4	4	4	4	4	4
Oil Burner	N/A	3	N/A	3	N/A	N/A
Total (watts)	11.5	13.5	10.5	13.5	10.5	10.5

b. Other Energy Efficiency Levels

Table IV.4 through Table IV.7 shows the efficiency levels DOE selected for the NOPR analysis of amended AFUE standards, along with a description of the typical technological change at each level. DOE seeks comment from interested parties regarding the typical technological change associated with each efficiency level.

HTP commented that it does not support an incremental increase in AFUE for gas hot water boilers. The commenter stated that appliances utilizing combustion technology that operates at efficiencies above 82 percent and below 90 percent AFUE will likely experience cyclic condensation within their venting and periods of high vent temperatures. HTP added that the safety and installation cost implications of operating within this range should be seriously considered. (HTP, No. 31 at p. 1)

The Department recognizes that efficiency levels within the non-condensing to condensing range could pose health or safety concerns under certain conditions, but the concerns can be resolved with proper product installations and venting system design. This is evidenced by the high number of models of products that are currently commercially available at these efficiency levels, as well as the lack of restrictions on the installation of these units (in terms of location) in installation manuals. Therefore, due to the significant product availability, DOE considered efficiency levels above 82 percent and below 90 percent in its analysis. However, DOE requests further comment from interested parties on non-condensing levels above 82 percent, as well as the appropriateness of considering such levels for amended energy conservation standards.

TABLE IV.4—AFUE EFFICIENCY LEVELS FOR GAS-FIRED HOT WATER BOILERS

Efficiency level	AFUE (%)	Technology options
0–Baseline	82	Baseline.
1	83	EL0 + Increased Heat Exchanger (HX) Area, Baffles.
2	84	EL1 + Increased HX Area.
3	85	EL2 + Increased HX Area.
4	90	Condensing HX.
5	92	EL4 + Improved HX.
6–Max-Tech	96	EL5 + Improved HX.

TABLE IV.5—AFUE EFFICIENCY LEVELS FOR GAS-FIRED STEAM BOILERS

Efficiency level	AFUE (%)	Technology options
0–Baseline	80	Baseline.
1	82	EL0 + Increased HX Area.
2–Max-Tech	83	EL1 + Increased HX Area.

TABLE IV.6—AFUE EFFICIENCY LEVELS FOR OIL-FIRED HOT WATER BOILERS

Efficiency level	AFUE (%)	Technology options
0–Baseline	84	Baseline.
1	85	EL0 + Increased HX Area.
2	86	EL1 + Increased HX Area.
3–Max-Tech	91	EL2 + Improved HX, baffles and Secondary Condensing HX.

TABLE IV.7–AFUE EFFICIENCY LEVELS FOR OIL-FIRED STEAM BOILERS

Efficiency level	AFUE (%)	Technology options
0–Baseline	82	Baseline.

TABLE IV.7–AFUE EFFICIENCY LEVELS FOR OIL-FIRED STEAM BOILERS—Continued

Efficiency level	AFUE (%)	Technology options
1	84	EL0 + Increased HX Area.
2	85	EL1 + Increased HX Area.
3–Max-Tech	86	EL2 + Improved HX.

In addition, DOE considered whether changes to the residential furnaces and boilers test procedure, as proposed by the March 2015 test procedure NOPR would necessitate changes to the AFUE levels being analyzed. The primary change proposed in the test procedure included updating the incorporation by reference to ASHRAE 103–2007. As discussed in the March 2015 test procedure NOPR, adopting ASHRAE 103–2007 would not be expected to change the AFUE rating for single-stage products and would result in a *de minimis* increase in the AFUE ratings for two-stage and modulating non-condensing products. Adopting ASHRAE 103–2007 provisions was assessed to have no statistically significant impact on the AFUE for condensing products. 80 FR 12876. DOE has found that single-stage (rather than two-stage or modulating) cast iron products make up the majority of non-condensing residential boilers and, therefore, has tentatively determined that this amendment to the test procedure would not be substantial enough to merit a revision of the proposed AFUE efficiency levels for residential boilers. Consequently, DOE used the same AFUE efficiency levels in the NOPR analysis as were used in the NODA analysis.

Table IV.8 through Table IV.13 show the efficiency levels DOE selected for the NOPR analysis of standby mode and off mode standards, along with a description of the typical technological change at each level. For the NOPR analysis, DOE has modified the baseline standby mode and off mode efficiency levels, as discussed in section IV.C.1.a. However, DOE has assumed the same impacts from the design options in the NOPR analysis, as was assumed for the NODA analysis. As a result, the change to the baseline standby mode and off mode power consumption have resulted in corresponding changes to the standby mode and off mode power consumption at each efficiency level.

''Standby mode'' and ''off mode'' power consumption are defined in the DOE test procedure for residential furnaces and boilers. DOE defines ''standby mode'' as ''the condition during the heating season in which the furnace or boiler is connected to the power source, and neither the burner, electric resistance elements, nor any electrical auxiliaries such as blowers or pumps, are activated.'' 10 CFR part 430, subpart B, appendix N, section 2.8. ''Off mode'' is defined as ''the condition during the non-heating season in which the furnace or boiler is connected to the power source, and neither the burner, electric resistance elements, nor any electrical auxiliaries such as the blowers or pumps, are activated.'' 10 CFR part 430, subpart B, appendix N, section 2.6. A ''seasonal off switch'' is defined as ''the switch on the furnace or boiler that, when activated, results in a measurable change in energy consumption between the standby and off modes.'' 10 CFR part 430, subpart B, appendix N, section 2.7.

Through review of product literature and discussions with manufacturers, DOE has found that boilers generally do not have a seasonal off switch. Manufactures stated that if a switch is included with a product, it is primarily used as a service/repair switch, not for turning off the product during the off season. Therefore, DOE assumed that the standby mode and the off mode power consumption are equal. DOE requests comment on the efficiency levels analyzed for standby mode and off mode, and on the assumption that standby mode and off mode energy consumption (as defined by DOE) would be equal.

TABLE IV.8—STANDBY MODE AND OFF MODE EFFICIENCY LEVELS FOR GAS-FIRED HOT WATER BOILERS

Efficiency level	Standby mode and off mode power consumption (W)	Technology Options
0–Baseline	11.5	Linear Power Supply.*
1	10.0	Linear Power Supply with Low-Loss Transformer (LLTX).
2	9.7	Switching Mode Power Supply.**
3–Max-Tech	9.0	Switching Mode Power Supply with LLTX.

* A linear power supply regulates voltage with a series element.
** A switching mode power supply regulates voltage with power handling electronics.

TABLE IV.9—STANDBY MODE AND OFF MODE EFFICIENCY LEVELS FOR GAS-FIRED STEAM BOILERS

Efficiency level	Standby mode and off mode power consumption (W)	Technology options
0–Baseline	10.5	Linear Power Supply.
1	9.0	Linear Power Supply with LLTX.
2	8.7	Switching Mode Power Supply.
3–Max-Tech	8.0	Switching Mode Power Supply with LLTX.

TABLE IV.10—STANDBY MODE AND OFF MODE EFFICIENCY LEVELS FOR OIL-FIRED HOT WATER BOILERS

Efficiency level	Standby mode and off mode power consumption (W)	Technology options
0–Baseline	13.5	Linear Power Supply.
1	12.0	Linear Power Supply with LLTX.
2	11.7	Switching Mode Power Supply.
3–Max-Tech	11.0	Switching Mode Power Supply with LLTX.

TABLE IV.11—STANDBY MODE AND OFF MODE EFFICIENCY LEVELS FOR OIL-FIRED STEAM BOILERS

Efficiency level	Standby mode and off mode power consumption (W)	Technology options
0–Baseline	13.5	Linear Power Supply.
1	12.0	Linear Power Supply with LLTX.
2	11.7	Switching Mode Power Supply.
3–Max-Tech	11.0	Switching Mode Power Supply with LLTX.

TABLE IV.12—STANDBY MODE AND OFF MODE EFFICIENCY LEVELS FOR ELECTRIC HOT WATER BOILERS

Efficiency level	Standby mode and off mode power consumption (W)	Technology options
0–Baseline	10.5	Linear Power Supply
1	9.0	Linear Power Supply with LLTX.
2	8.7	Switching Mode Power Supply.
3–Max-Tech	8.0	Switching Mode Power Supply with LLTX.

TABLE IV.13—STANDBY MODE AND OFF MODE EFFICIENCY LEVELS FOR ELECTRIC STEAM BOILERS

Efficiency level	Standby mode and off mode power consumption (W)	Technology options
0–Baseline	10.5	Linear Power Supply.
1	9.0	Linear Power Supply with LLTX.
2	8.7	Switching Mode Power Supply.
3–Max-Tech	8.0	Switching Mode Power Supply with LLTX.

2. Cost-Assessment Methodology

At the start of the engineering analysis, DOE identified the energy efficiency levels associated with residential boilers on the market using data gathered in the market assessment. DOE also identified the technologies and features that are typically incorporated into products at the baseline level and at the various energy efficiency levels analyzed above the baseline. Next, DOE selected products for the physical teardown analysis having characteristics of typical products on the market at the representative input capacity. DOE gathered information by performing a physical teardown analysis (see section IV.C.2.a) to create detailed BOMs, which included all components and processes used to manufacture the products. DOE used the BOMs from the teardowns as an input to a cost model, which was then used to calculate the manufacturing production cost (MPC) for products at various efficiency levels spanning the full range of efficiencies from the baseline to the maximum technology available (''max-tech''). DOE reexamined and revised its cost assessment performed for the NODA analysis based on additional teardowns and in response to comments received on the NODA analysis.

During the development of the engineering analysis for the NOPR, DOE held interviews with manufacturers to gain insight into the residential boiler industry, and to request feedback on the engineering analysis and assumptions that DOE used. DOE used the information gathered from these interviews, along with the information obtained through the teardown analysis and public comments, to refine the assumptions and data in the cost model. Next, DOE derived manufacturer markups using publicly-available residential boiler industry financial data in conjunction with manufacturers' feedback. The markups were used to convert the MPCs into MSPs. Further information on comments received and the analytical methodology is presented in the subsections below. For additional detail, see chapter 5 of the NOPR TSD.

a. Teardown Analysis

To assemble BOMs and to calculate the manufacturing costs for the different components in residential boilers, DOE disassembled multiple units into their base components and estimated the materials, processes, and labor required for the manufacture of each individual component, a process referred to as a ''physical teardown.'' Using the data gathered from the physical teardowns, DOE characterized each component according to its weight, dimensions, material, quantity, and the manufacturing processes used to fabricate and assemble it.

DOE also used a supplementary method, called a ''virtual teardown,'' which examines published manufacturer catalogs and supplementary component data to estimate the major physical differences between a product that was physically disassembled and a similar product that was not. For supplementary virtual teardowns, DOE gathered product data such as dimensions, weight, and design features from publicly-available information, such as manufacturer catalogs. The initial teardown analysis for the NODA included 6 physical and 5 virtual teardowns of residential boilers. The NOPR teardown analysis included 16 physical and 4 virtual teardowns of residential boilers. The additional teardowns performed for the NOPR analysis allowed DOE to further refine the assumptions used to develop the MPCs.

DOE selected the majority of the physical teardown units in the gas hot water product class because it has the largest number of shipments. DOE conducted physical teardowns of twelve gas hot water boilers, five of which were non-condensing cast iron boilers, two were non-condensing copper boilers, and the remaining five were condensing boilers. DOE performed an additional two virtual teardowns of gas hot water boilers.

DOE also performed physical teardowns on two gas-fired steam boilers as well as two oil-fired hot water boilers. DOE conducted one virtual teardown of an oil steam boiler as well as a virtual teardown of an oil hot water boiler.

The teardown analysis allowed DOE to identify the technologies that manufacturers typically incorporate into their products, along with the efficiency levels associated with each technology or combination of technologies. The end result of each teardown is a structured BOM, which DOE developed for each of the physical and virtual teardowns. The BOMs incorporate all materials, components, and fasteners (classified as either raw materials or purchased parts and assemblies), and characterize the materials and components by weight, manufacturing processes used, dimensions, material, and quantity. The BOMs from the teardown analysis were then used as inputs to the cost model to calculate the MPC for each product that was torn down. The MPCs resulting from the teardowns were then used to develop an industry average MPC for each product class analyzed.

In response to the teardown analysis performed for the NODA, AHRI stated that it is not appropriate to perform a virtual teardown of a baseline 82-percent AFUE gas hot water boiler based on information developed by physically tearing down an 85-percent AFUE gas hot water boiler. (AHRI, No. 22 at p. 3) AHRI explained that the designs to achieve an 85-percent AFUE model are significantly different than that to build an 82-percent AFUE model, so it is not appropriate to do a virtual teardown of a baseline 82-percent AFUE model, as this approach assumes a commonality of design between an 85-percent AFUE model and an 82-percent AFUE model that is greater than it actually is. In response, DOE agrees that it is preferable to conduct a physical teardown at the baseline level as to not overstate the similarities between the baseline and higher efficiency levels. Accordingly, DOE has supplemented the virtual teardown conducted at the 82-percent AFUE baseline level for the gas-fired hot water boiler product class during the initial analysis with two physical teardowns at the baseline level for the NOPR analysis.

AHRI also stated that conducting a single teardown for the oil-fired hot water boiler product class is inadequate for this analysis. (AHRI, No. 22 at p. 3) In response to this comment, DOE has conducted an additional physical teardown for the oil-fired hot water boiler product class.

More information regarding details on the teardown analysis can be found in chapter 5 of the NOPR TSD.

b. Cost Model

The cost model is a spreadsheet that converts the materials and components in the BOMs into dollar values based on the price of materials, average labor rates associated with manufacturing and assembling, and the cost of overhead and depreciation, as determined based on manufacturer interviews and DOE expertise. To convert the information in the BOMs to dollar values, DOE collected information on labor rates, tooling costs, raw material prices, and other factors. For purchased parts, the cost model estimates the purchase price based on volume-variable price quotations and detailed discussions with manufacturers and component suppliers. For fabricated parts, the prices of raw metal materials [23] (*e.g.,* tube, sheet metal) are estimated on the basis of 5-year averages (from 2009 to 2014). The cost of transforming the intermediate materials into finished parts is estimated based on current industry pricing.[24]

Burnham subsidiaries Crown Boiler, US Boiler, and New Yorker all commented that the material price for cast iron was not shown in chapter 5 of the TSD. (Crown Boiler, No. 24 at p. 1; US Boiler, No. 25 at p. 1; New Yorker, No. 26 at p. 1) DOE acknowledges that a large portion of the manufacturer production cost can typically be attributed to raw materials and the omission of the cost used for cast iron may make it difficult to review how DOE arrived at the MSPs. The omission of this value from chapter 5 of the NODA TSD was in error, and chapter 5 of the NOPR TSD corrects this deficiency.

c. Manufacturing Production Costs

Once the cost estimates for all the components in each teardown unit were finalized, DOE totaled the cost of materials, labor, and direct overhead used to manufacture a product in order to calculate the manufacturer production cost. The total cost of the product was broken down into two main costs: (1) The full manufacturer production cost, referred to as MPC; and (2) the non-production cost, which includes selling, general, and administration (SG&A) expenses; the cost of research and development; and interest from borrowing for operations or capital expenditures. DOE estimated the MPC at each efficiency level considered for each product class, from the baseline through the max-tech. After incorporating all of the assumptions into the cost model, DOE calculated the percentages attributable to each element of total production cost (*i.e.,* materials, labor, depreciation, and overhead). These percentages are used to validate the assumptions by comparing them to manufacturers' actual financial data published in annual reports, along with feedback obtained from manufacturers during interviews. DOE uses these production cost percentages in the

[23] American Metals Market (Available at: *http://www.amm.com* (Last accessed January, 2014).

[24] U.S. Department of Labor, Bureau of Labor Statistics, Produce Price Indices (Available at: *http://www.bls.gov/ppi/*) (Last accessed January, 2014).

manufacturer impact analysis (MIA) (see section IV.J).

In developing the MPCs for the NODA analysis, DOE considered the draft type (*i.e.,* natural draft or fan-assisted draft) and whether the model would have fan-assisted draft at a given efficiency level. Some boilers utilize natural draft, in which the natural buoyancy of the combustion gases is sufficient to vent those gases. Other boilers employ fan-assisted draft to help vent the products of combustion. As product efficiency increases, more heat is extracted from the flue gases, thereby resulting in less natural buoyancy that can be used to vent the flue gases. DOE surveyed the market to determine the percentage of models at each efficiency level that currently utilize fan-assisted draft, and DOE assumed that under an amended standard, that percentage would remain unchanged. DOE received various comments in response to the MPCs presented in its NODA analysis, as discussed below.

AHRI stated that it disagrees with the assumption that if the minimum efficiency level were to change, the percentage of models using inducer fans (*i.e.,* a fan-assisted boiler design) at each efficiency level would remain unchanged. AHRI stated that, at higher efficiency levels that are non-condensing (such as 84 percent and 85 percent for gas-fired hot water boilers), the manufacturer would consider anew the question of whether to use a fan-assisted design, if that higher level were to become the minimum standard. AHRI added that manufacturers face challenges in trying to address the wide range of venting systems that are connected to existing residential boiler installations. The commenter argued that models developed by manufacturers must be able to work safely and properly with existing venting systems that vary widely relative to an ideally-sized and configured vent system. AHRI stated that today, the models that are available at 84-percent AFUE or 85-percent AFUE are offered by the manufacturer with the knowledge that in cases where such models are not compatible with the existing vent system, lower efficiency models are available. Those lower efficiency models are more likely to be designed in a manner compatible with the existing vent system. If the minimum standard is raised to 84 percent or 85 percent, this current market equilibrium would be eliminated, and manufacturers would need to reconsider the mix of models they offer. For these reasons, AHRI recommended that DOE should increase the percentage of fan-assisted models at these levels. (AHRI No. 22 at p. 3–4)

In response to AHRI's comment, DOE notes that AHRI did not provide any information as to how the mix of products with and without inducers might change in response to amended energy conservation standards. As mentioned above, for the NODA analysis, DOE used information gathered from a survey of models currently on the market to determine the percentages of units with and without inducer fans. DOE was unable to identify any better source of data or methodology for estimating the percentage of products which would have inducer fans under amended standards, so DOE maintained this methodology for the NOPR. DOE requests comments regarding how the mix of products with and without inducers would change under amended energy conservation standards, and how to best estimate and account for such changes in this analysis.

Crown Boiler stated that the incremental MPCs for EL1 and EL2 for gas-fired hot water and gas-fired steam boilers are optimistic and cannot be analyzed for accuracy. In addition, Crown Boiler stated that the incremental costs for the gas-fired product classes imply that DOE is assuming simple changes to the heat pin size to increase heat exchanger area, but that in reality, this change would be more complicated. Crown Boiler added that this is contradicted by the assumption of heat exchanger cost increase in non-condensing oil-fired boilers. The commenter stated that the use of larger heat transfer pins would likely require a wider heat exchanger to avoid excessive flue gas pressure drop. In addition, atmospheric boilers would probably require a taller draft hood to overcome the increased pressure drop caused by larger heat transfer pins. Crown Boiler also stated that the cost of sheet metal is not accounted for in the analysis. (Crown Boiler, No. 24 at p. 1)

As noted previously, DOE determined the incremental MPC at various efficiency levels for each product class by conducting physical and virtual teardowns. DOE determined the incremental cost between EL1 and EL2 for gas-fired hot water boilers in the NODA analysis using virtual teardowns, which are based on physical teardowns of similar units and then supplemented with catalog data. For the NOPR, DOE acquired additional data by conducting physical teardowns, which confirmed its observations from catalog data at the NODA analysis stage. Based on the observations from physical teardowns and manufacturer product literature and parts list, DOE found that many manufactures are able to increase the efficiency of their baseline gas-fired hot water boilers through the addition of baffles and/or a modest increase in heat transfer surface. Through product literature review, DOE has found it is common for manufacturers of non-condensing oil-fired boilers to derate the burner input (thereby increasing the ratio of heat transfer area to input rating) rather than create new cast iron patterns. However, as discussed previously, derating was screened out as a design option because it reduces the heating capability of the boiler. Therefore, DOE estimated the cost of improving efficiency as an increase in heat exchanger size, using information observed to model the appropriate amount of heat exchanger increase that would be required to improve efficiency. Based upon the different observed methods for improving efficiency, DOE's NODA and NOPR analyses reflect the different designs and different costs of achieving incremental AFUE increases in gas-fired and oil-fired boilers. The differential cost in efficiency improvement between gas-fired and oil-fired non-condensing boilers is also due in part to the larger representative input capacity of oil-fired boilers, as well as the larger heat exchanger design for oil-fired boilers (*i.e.,* wet-based rather than dry-based). DOE has also accounted for the additional sheet metal cost of increasing the cabinet to accommodate an increase in heat exchanger size. Because DOE's analysis is based upon observations from teardowns of actual products available on the market, DOE did not change its assumptions for how EL1 and EL2 are achieved in gas-fired or oil-fired boilers, as suggested by Crown Boiler.

In the NOPR analysis, DOE revised the cost model assumptions it used for the NODA analysis based on additional teardown analysis, updated pricing information (for raw materials and purchased parts), and additional manufacturer feedback. These changes resulted in refined MPCs and production cost percentages. Table IV.14 through Table IV.17 present DOE's estimates of the MPCs by AFUE efficiency level for this rulemaking.

TABLE IV.14—MANUFACTURING COST FOR GAS-FIRED HOT WATER BOILERS

Efficiency level	Efficiency level (AFUE) (%)	MPC * ($)	Incremental cost ($)
Baseline	82	624	
EL1	83	631	7
EL2	84	637	13
EL3	85	675	51
EL4	90	1,023	399
EL5	92	1,158	534
EL6	96	1,522	898

* Non-condensing boilers (<90 percent AFUE) are available with or without an inducer. The costs shown reflect the MPC for a boiler without an inducer.

TABLE IV.15—MANUFACTURING COST FOR GAS-FIRED STEAM BOILERS

Efficiency level	Efficiency level (AFUE) (%)	MPC * ($)	Incremental cost ($)
Baseline	80	798	
EL1	82	812	13
EL2	83	952	154

* Non-condensing boilers (<90 percent AFUE) are available with or without an inducer. The costs shown reflect the MPC for a boiler without an inducer.

TABLE IV.16—MANUFACTURING COST FOR OIL-FIRED HOT WATER BOILERS

Efficiency level	Efficiency level (AFUE) (%)	MPC * ($)	Incremental cost ($)
Baseline	84	1,247	
EL1	85	1,319	73
EL2	86	1,392	146
EL3	91	2,204	957

* Non-condensing boilers (<90 percent AFUE) are available with or without an inducer. The costs shown reflect the MPC for a boiler without an inducer.

TABLE IV.17—MANUFACTURING COST FOR OIL-FIRED STEAM BOILERS

Efficiency level	Efficiency level (AFUE) (%)	MPC * ($)	Incremental cost ($)
Baseline	82	1,270	
EL1	84	1,416	146
EL2	85	1,489	218
EL3	86	1,634	364

* Non-condensing boilers (<90 percent AFUE) are available with or without an inducer. The costs shown reflect the MPC for a boiler without an inducer.

Table IV.18 through Table IV.23 present's DOE's estimate estimates of the MPCs at each standby mode and off mode efficiency level for this rulemaking.

TABLE IV.18—MANUFACTURING COST FOR GAS-FIRED HOT WATER BOILERS STANDBY MODE AND OFF MODE

Efficiency level	Standby mode and off mode power consumption (W)	MPC ($)	Incremental cost ($)
Baseline	11.5	9.56	
EL1	10.0	10.56	1.00
EL2	9.7	20.03	10.47
EL3	9.0	20.68	11.12

TABLE IV.19—MANUFACTURING COST FOR GAS-FIRED STEAM BOILERS STANDBY MODE AND OFF MODE

Efficiency level	Standby mode and off mode power consumption (W)	MPC ($)	Incremental cost ($)
Baseline	10.5	9.56	
EL1	9.0	10.56	1.00
EL2	8.7	20.03	10.47
EL3	8.0	20.68	11.12

TABLE IV.20—MANUFACTURING COST FOR OIL-FIRED HOT WATER BOILERS STANDBY MODE AND OFF MODE

Efficiency level	Standby mode and off mode power consumption (W)	MPC ($)	Incremental cost ($)
Baseline	13.5	9.56	
EL1	12.0	10.56	1.00
EL2	11.7	20.03	10.47
EL3	11.0	20.68	11.12

TABLE IV.21—MANUFACTURING COST FOR OIL-FIRED STEAM BOILERS STANDBY MODE AND OFF MODE

Efficiency level	Standby mode and off mode power consumption (W)	MPC ($)	Incremental cost ($)
Baseline	13.5	9.56	
EL1	12.0	10.56	1.00
EL2	11.7	20.03	10.47
EL3	11.0	20.68	11.12

TABLE IV.22—MANUFACTURING COST FOR ELECTRIC HOT WATER BOILERS STANDBY MODE AND OFF MODE

Efficiency level	Standby mode and off mode power consumption (W)	MPC ($)	Incremental cost ($)
Baseline	10.5	9.56	
EL1	9.0	10.56	1.00
EL2	8.7	20.03	10.47
EL3	8.0	20.68	11.12

TABLE IV.23—MANUFACTURING COST FOR ELECTRIC STEAM BOILERS STANDBY MODE AND OFF MODE

Efficiency level	Standby mode and off mode power consumption (W)	MPC ($)	Incremental cost ($)
Baseline	10.5	9.56	
EL1	9.0	10.56	1.00
EL2	8.7	20.03	10.47
EL3	8.0	20.68	11.12

Chapter 5 of the NOPR TSD presents more information regarding the development of DOE's estimates of the MPCs for this rulemaking.

d. Cost-Efficiency Relationship

The result of the engineering analysis is a cost-efficiency relationship. DOE created cost-efficiency curves representing the cost-efficiency relationship for each product class that it examined. To develop the cost-efficiency relationships for residential boilers, DOE examined the cost differential to move from one efficiency level to the next for each manufacturer. DOE used the results of teardowns on a market-share-weighted average basis to determine the industry average cost increase to move from one efficiency level to the next. Additional details on how DOE developed the cost-efficiency relationships and related results are available in chapter 5 of the NOPR TSD, which also presents these cost-efficiency curves in the form of energy efficiency versus MPC.

The results indicate that cost-efficiency relationships are nonlinear. In other words, as efficiency increases, manufacturing becomes more difficult

and more costly. A large cost increase is evident between non-condensing and condensing efficiency levels due to the requirement for a heat exchanger that can withstand corrosive condensate.

e. Manufacturer Markup

To account for manufacturers' non-production costs and profit margin, DOE applies a non-production cost multiplier (the manufacturer markup) to the full MPC. The resulting MSP is the price at which the manufacturer can recover all production and non-production costs and earn a profit. To meet new or amended energy conservation standards, manufacturers typically introduce design changes to their product lines that increase manufacturer production costs. Depending on the competitive environment for these particular products, some or all of the increased production costs may be passed from manufacturers to retailers and eventually to consumers in the form of higher purchase prices. As production costs increase, manufacturers typically incur additional overhead. The MSP should be high enough to recover the full cost of the product (*i.e.,* full production and non-production costs) and yield a profit. The manufacturer markup has an important bearing on profitability. A high markup under a standards scenario suggests manufacturers can readily pass along the increased variable costs and some of the capital and product conversion costs (the one-time expenditures) to consumers. A low markup suggests that manufacturers will not be able to recover as much of the necessary investment in plant and equipment.

To calculate the manufacturer markups, DOE used 10–K reports [25] submitted to the U.S. Securities and Exchange Commission (SEC) by the three publicly-owned residential boiler companies. The financial figures necessary for calculating the manufacturer markup are net sales, costs of sales, and gross profit. For boilers, DOE averaged the financial figures spanning the years 2008 to 2012 in order to calculate the markups. DOE used this approach because amended standards may transform high-efficiency products (which currently are considered premium products) into typical products. DOE acknowledges that there are numerous manufacturers of residential boilers that are privately-held companies, which do not file SEC 10–K reports. In addition, while the publicly-owned companies file SEC 10–K reports, the financial information summarized may not be exclusively for the residential boiler portion of their business and can also include financial information from other product sectors, whose margins could be quite different from the residential boiler industries. DOE discussed the manufacturer markup with manufacturers during interviews, and used the feedback to validate the markup calculated through review of SEC 10–K reports. DOE received no comments regarding the manufacturer markup used in the NODA analysis. See chapter 5 of the NOPR TSD for more details about the manufacturer markup calculation.

f. Shipping Costs

In response to the NODA analysis, Crown Boiler, US Boiler, and New Yorker commented that the shipping costs were not discussed in chapter 5 of the TSD nor is it apparent that they were used to calculate MPC in the manufacturer markup. These commenters stated that depending on the situation, shipping costs may be borne by either the manufacturer or by the wholesaler, but either way, the shipping costs eventually become part of the installed cost of the boiler and, therefore, need to be taken into account. The commenters added that almost all condensing gas-fired boiler heat exchangers and burner systems are imported from Europe or Asia, and therefore, there are importation costs associated with condensing boilers. (Crown Boiler, No. 24 at p. 1; US Boiler, No. 25 at p. 1; New Yorker, No. 26 at p. 1)

For residential boilers, the Department has included transportation costs in its calculation of manufacturer selling price in both the NODA and the NOPR. Outbound freight is normally considered a sales expense and not a production cost. As discussed in section IV.C.2.e, when translating MPCs to MSPs, DOE applies a manufacturer mark-up to the MPC. This mark-up, based on an analysis of manufacturer SEC 10–K reports, includes outbound freight costs. Inbound freight costs are included in MPCs as a component of costs for purchased parts and raw materials. Chapter 5 of the NOPR TSD contains additional details about DOE's shipping cost assumptions.

g. Manufacturer Interviews

Throughout the rulemaking process, DOE has sought and continues to seek feedback and insight from interested parties that would improve the information used in its analyses. DOE interviewed manufacturers as a part of the NOPR manufacturer impact analysis (see section IV.J.3). During the interviews, DOE sought feedback on all aspects of its analyses for residential boilers. For the engineering analysis, DOE discussed the analytical assumptions and estimates, cost model, and cost-efficiency curves with residential boiler manufacturers. DOE considered all the information manufacturers provided when refining the cost model and assumptions. However, DOE incorporated equipment and manufacturing process figures into the analysis as averages in order to avoid disclosing sensitive information about individual manufacturers' products or manufacturing processes. More details about the manufacturer interviews are contained in chapter 12 of the NOPR TSD.

D. Markups Analysis

DOE uses appropriate markups (*e.g.,* manufacturer markups, retailer markups, distributors markups, contractor markups), and sales taxes to convert the manufacturer selling price (MSP) estimates from the engineering analysis to consumer prices, which are then used in the LCC and PBP analysis and in the manufacturer impact analysis. DOE develops baseline and incremental markups based on the product markups at each step in the distribution chain. The markups are multipliers that represent increases above the MSP for residential boilers. The incremental markup relates the change in the manufacturer sales price of higher-efficiency models (the incremental cost increase) to the change in the consumer price. Before developing markups, DOE defines key market participants and identifies distribution channels.

In the NODA, DOE characterized three distribution channels to describe how residential boiler products pass from the manufacturer to residential and commercial consumers: (1) Replacement market; (2) new construction, and (3) national accounts.[26] 79 FR 8122, 8124 (Feb. 11, 2014). The replacement market distribution channel is characterized as follows:

Manufacturer → Wholesaler → Mechanical contractor → Consumer

The new construction distribution channel is characterized as follows:

[25] U.S. Securities and Exchange Commission, Annual 10–K Reports (Various Years) (Available at: *http://sec.gov*).

[26] The national accounts channel is an exception to the usual distribution channel that is only applicable to those residential boilers installed in the small to mid-size commercial buildings where the on-site contractor staff purchase equipment directly from the wholesalers at lower prices due to the large volume of equipment purchased, and perform the installation themselves.

Manufacturer → Wholesaler → Mechanical contractor → General contractor → Consumer

In the third distribution channel, the manufacturer sells the product to a wholesaler and then to the commercial consumer through a national account:

Manufacturer → Wholesaler → Consumer (National Account)

To develop markups for the parties involved in the distribution of the product, DOE utilized several sources, including: (1) The Heating, Air-Conditioning & Refrigeration Distributors International (HARDI) 2012 Profit Report [27] to develop wholesaler markups; (2) the 2005 Air Conditioning Contractors of America's (ACCA) financial analysis for the heating, ventilation, air-conditioning, and refrigeration (HVACR) contracting industry [28] to develop mechanical contractor markups, and (3) U.S. Census Bureau's 2007 Economic Census data [29] for the commercial and institutional building construction industry to develop general contractor markups.

In addition to the markups, DOE derived State and local taxes from data provided by the Sales Tax Clearinghouse.[30] These data represent weighted-average taxes that include county and city rates. DOE derived shipment-weighted-average tax values for each region considered in the analysis.

DOE did not receive comments on the markups analysis, and consequently, it retained the same approach for today's NOPR. Chapter 6 of the NOPR TSD provides further detail on the estimation of markups.

E. Energy Use Analysis

1. Energy Use Methodology

The purpose of the energy use analysis is to determine the annual energy consumption of residential boilers at different efficiencies in representative U.S. single-family homes, multi-family residences, and commercial buildings, and to assess the energy savings potential of increased boiler efficiency. DOE estimated the annual energy consumption of residential boilers at specified energy efficiency levels across a range of climate zones, building characteristics, and heating applications. The annual energy consumption includes the natural gas, liquid petroleum gas (LPG), oil, and/or electricity use by the boiler for space and water heating. The annual energy consumption of residential boilers is used in subsequent analyses, including the LCC and PBP analysis and the national impacts analysis.

For the residential sector, DOE consulted the Energy Information Administration's (EIA) 2009 Residential Energy Consumption Survey (RECS 2009) to establish a sample of households using residential boilers for each boiler product class.[31] The RECS data provide information on the vintage of the home, as well as heating energy use in each household. The survey also included household characteristics such as the physical characteristics of housing units, household demographics, information about other heating and cooling products, fuels used, energy consumption and expenditures, and other relevant data. DOE used the household samples not only to determine boiler annual energy consumption, but also as the basis for conducting the LCC and PBP analysis. DOE used data from RECS 2009 [32] and CBECS 2003 [33] to project household weights and household characteristics in 2020, the expected compliance date of any amended energy conservation standards for residential boilers.

DOE accounted for applications of residential boilers in commercial buildings because the intent of the analysis of consumer impacts is to capture the full range of usage conditions for these products. DOE considers the definition of ''residential boiler'' to be limited only by its capacity.[34] DOE determined that these applications represent about 7 percent of the residential boiler market.

For the commercial building sample, DOE used the EIA's 2003 Commercial Building Energy Consumption Survey [35] (CBECS 2003) to establish a sample of commercial buildings using residential boilers for each boiler product class. Criteria were developed to help size these boilers using several variables, including building square footage and estimated supply water temperature. For boilers used in multi-family housing, DOE used the RECS 2009 sample discussed above, accounting for situations where more than one residential boiler is used to heat a building.

To estimate the annual energy consumption of boilers meeting higher efficiency levels, DOE first calculated the heating load based on the RECS and CBECS estimates of the annual energy consumption of the boiler for each household. DOE estimated the house heating load by reference to the existing boiler's characteristics, specifically its capacity and efficiency (AFUE), as well as by the heat generated from the electrical components. The AFUE of the existing boilers was determined using the boiler vintage (the year of installation of the product) from RECS and historical data on the market share of boilers by AFUE. DOE then used the house heating load to determine the burner operating hours, which are needed to calculate the fossil fuel consumption and electricity consumption based on the DOE residential furnace and boiler test procedure. To calculate pump and other auxiliary components' electricity consumption, DOE utilized data from manufacturer product literature.

Additionally, DOE adjusted the energy use to normalize for weather by using long-term heating degree-day (HDD) data for each geographical region.[36] DOE also accounted for change in building shell characteristics between 2009 and 2020 by applying the building shell efficiency indexes in the National Energy Modeling System (NEMS) based on EIA's *Annual Energy Outlook 2013* (*AEO 2013*).[37] DOE also accounted for future climate trends based on *AEO 2013* HDD projections.

[27] *Heating, Air Conditioning & Refrigeration Distributors International 2012 Profit Report* (Available at: *http://www.hardinet.org/Profit-Report*) (Last accessed April 10, 2013).

[28] Air Conditioning Contractors of America (ACCA), *Financial Analysis for the HVACR Contracting Industry: 2005* (Available at: *http://www.acca.org/store/*) (Last accessed April 10, 2013).

[29] U.S. Census Bureau, *2007 Economic Census Data* (2007) (Available at: *http://www.census.gov/econ/*)(Last accessed April 10, 2013).

[30] Sales Tax Clearinghouse Inc., State Sales Tax Rates Along with Combined Average City and County Rates, 2013 (Available at: *http://thestc.com/STrates.stm*) (Last accessed Sept. 11, 2013).

[31] U.S. Department of Energy: Energy Information Administration, *Residential Energy Consumption Survey: 2009 RECS Survey Data* (2013) (Available at: *http://www.eia.gov/consumption/residential/data/2009/*) (Last accessed March, 2013).

[32] U.S. Department of Energy: Energy Information Administration, Residential Energy Consumption Survey: 2009 RECS Survey Data (2013) (Available at: *http://www.eia.gov/consumption/residential/data/2009/*) (Last accessed March, 2014).

[33] U.S. Department of Energy: Energy Information Administration, Commercial Buildings Energy Consumption Survey (2003) (Available at: *http://www.eia.gov/consumption/commercial/data/2003/index.cfm?view=microdata*) (Last accessed November, 2013).

[34] 42 U.S.C. 6291(23).

[35] U.S. Department of Energy: Energy Information Administration, *Commercial Buildings Energy Consumption Survey* (2003) (Available at: *http://www.eia.gov/consumption/commercial/data/2003/index.cfm?view=microdata*) (Last accessed November, 2013).

[36] National Oceanic and Atmospheric Administration, NNDC Climate Data Online (Available at: *http://www7.ncdc.noaa.gov/CDO/CDODivisionalSelect.jsp*) (Last accessed March 15, 2013).

[37] U.S. Department of Energy—Energy Information Administration, *Annual Energy Outlook 2013 with Projections to 2040* (Available at: *http://www.eia.gov/forecasts/aeo/*).

DOE is aware that some residential boilers have the ability to provide both space heating and domestic water heating, and that these products are widely available and may vary greatly in design. For these applications, DOE accounted for the boiler energy used for domestic water heating, which is part of the total annual boiler energy use. To accomplish this, DOE used the RECS 2009 and/or CBECS data to identify households or buildings with boilers that use the same fuel type for space and water heating, and then assumed that a fraction of these identified households/buildings use the boiler for both applications.

To calculate the annual water-heating energy use for each boiler efficiency level, DOE first calculated the water-heating load by multiplying the annual fuel consumption for water heating (derived from RECS or CBECS) by the AFUE of the existing boiler, adjusted for the difference between AFUE and recovery efficiency for water heating. DOE then calculated the boiler energy use for each efficiency level by multiplying the water-heating load by the AFUE of the selected efficiency level, adjusted for the difference between AFUE and recovery efficiency for water heating.

The Department calculated boiler electricity consumption for the circulating pump, the draft inducer,[38] and the ignition system. If a household required a condensate pump, which is sometimes installed with higher-efficiency products, DOE assumed that the pump consumes 60 watts and operated at the same time as the burner. For single-stage boilers, the Department calculated the electricity consumption as the sum of the electrical energy used during boiler operation for space heating, water heating, and standby energy consumption. For two-stage and modulating products, this formula includes parameters for the operation at full, modulating, and reduced load.

2. Standby Mode and Off Mode

The Department calculated boiler standby mode and off mode electricity consumption for times when the boiler is not in use for each efficiency level identified in the engineering analysis. DOE calculated boiler standby mode and off mode electricity consumption by multiplying the power consumption at each efficiency level by the number of standby mode and off mode hours. To calculate the annual number of standby mode and off mode hours for each sample household, DOE subtracted the estimated total burner operating hours (both for space heating and water heating) from the total hours in a year (8,760). Details of the method are provided in chapter 7 of the NOPR TSD.

AHRI disagreed with DOE's assumption that a residential boiler is in standby mode throughout the year. AHRI stated that the time when the boiler is in standby should be limited to the heating season; the remainder of the year the boiler is ''off.'' (AHRI, No. 22 at p. 5) DOE is not aware of any information on the extent to which consumers shut off the boiler when the heating season is over. For the NOPR, DOE estimated that 25 percent of consumers shut the boiler off.

See chapter 7 in the NOPR TSD for additional detail on the energy analysis and results for standby mode and off mode operation.

3. Comments on Boiler Energy Use Calculation

Commenting on the NODA, AHRI stated that, in basing the estimated energy consumption on RECS 2009 and CBECS 2003 data, the estimated energy use must be recalculated to account for the benefit of the automatic temperature reset means both for the baseline unit and the higher efficiency levels. For residential applications, AHRI suggested that an average of 10 percent savings would be a reasonable estimate. AHRI predicted that this revised analysis will show a smaller incremental energy savings resulting from an increased AFUE rating. (AHRI, No. 22 at pp. 5–6)

For the NOPR, DOE incorporated the impact of automatic temperature reset means on boiler energy use by adjusting AFUE based on a reduction in average return water temperature (RWT). DOE calculated the reduction in average RWT for single-stage boilers based on the duration of burner operating hours at reduced RWT. For modulating boilers, DOE used the average relationship [39] between RWT and thermal efficiency to establish the magnitude of the efficiency adjustment required for the high- and low-temperature applications. See appendix 7B for details on how DOE calculated the adjustment for automatic means.

Energy Kinetics stated that the average oversizing factor of between three and four used in the NODA exceeds the 0.7 oversizing factor indicated in the AFUE standard. It argued that this oversizing has a clear and direct impact on annual efficiency due to idle losses, which are virtually ignored in AFUE. (Energy Kinetics, No. 19 at p. 1)

In the NODA analysis, DOE did not use an average oversizing factor of between three and four, but applied an oversize factor of 0.7 as specified in the existing DOE test procedure. The oversize factor was applied directly to the calculated input capacity of the boiler. DOE calculated the input capacity for the existing boiler of each housing/building unit based on information derived from the RECS and CBECs data. The equipment sizing approach determines the heating load of the sampled household/building by accounting for building characteristics impacting heat load. Following determination of the building heating load, equipment efficiency is applied to the heat load to calculate the boiler input capacity. Input capacity was then multiplied by an oversize factor of 0.7 as specified in the existing DOE test procedure. Using the oversized input capacity, DOE then rounded the input capacity up to the nearest typical equipment size, which in some cases resulted in oversize factors slightly more or less than 1.7. See appendix 7B for additional details of the boiler sizing methodology.

Energy Kinetics stated that temperature reset controls would be highly ineffective without accounting for idle loss. Energy Kinetics stated that idle loss or energy wasted at the end of the heating cycle (not during the burner operation), greatly impacts annual energy efficiency. (Energy Kinetics, No. 19 at p. 2)

Idle loss, as the term applies to residential heating boilers, is heat wasted when the burner is not firing. The idle losses are the heat from combustion that is not transferred to the heating water, including the products of combustion up the flue, the loss out of the heat exchanger walls and boiler's jacket (in the form of radiant, conductive, or convective transfer), and the loss down the drain as a condensate. Since no fuel is being consumed in the off-cycle, off-cycle losses, therefore, are important only to the extent that they must be replaced during the on-cycle by the burning of extra fuel (*i.e.,* longer burner on times or higher firing rates). The DOE test procedure accounts for

[38] In the case of modulating condensing boilers, to accommodate lower firing rates, the inducer will provide lower combustion airflow to regulate the excess air in the combustion process. DOE assumed that modulating condensing boilers are equipped with inducer fans with PSC motors and two-stage controls. The inducers are assumed to run at a 70-percent airflow rate when the modulating unit operates at low-fire.

[39] Appendix 7B includes a list of references used to derive the relationship. No information is available about the relationship between AFUE and RWT, while manufacturers publish data on the relationship between boiler thermal efficiency and the RWT. DOE assumed that AFUE scales according to the relationship reported for the thermal efficiency.

idle losses associated with space heating in the heating season efficiency value, but the idle losses during non-space heating operation (*i.e.,* domestic water heating) are not captured in the existing DOE test procedure. For the NOPR analysis, DOE accounted for idle losses based on the installation location of the boiler (conditioned or unconditioned space) and whether or not the boiler served domestic hot water loads (summer hot water use only). For boilers that serve only space heating loads, the idle losses are accounted for in the heating season efficiency. For boilers that provided domestic hot water heating, idle losses occur in both heating and non-heating seasons. These idle losses were accounted for by applying heat loss values to the boiler and storage tank (when necessary) for a fraction of the off-cycle time. DOE also accounted for the losses for boilers that are installed with indirect tanks or tankless coils. See appendix 7B for additional details on the consideration of idle losses.

Energy Kinetics also stated that AFUE assumes that the boiler is in the conditioned space and heat lost is gained in the conditioned space, but in practice, much of this heat energy is wasted in basements, up chimneys, and out draft hoods and draft regulators. (Energy Kinetics, No. 19 at p. 2)

The AFUE metric incorporates sensible and latent heat lost up chimneys and out draft hoods and draft regulators. Regarding losses in basements, for the NOPR analysis, DOE accounted for boiler jacket losses based on the installation location. For boilers installed in unconditioned basements and garages, DOE adjusted AFUE using a jacket loss factor, which was derived from the values provided by the existing DOE test procedure. For high-mass boilers, DOE used a jacket loss factor of 2.4 percent. For low-mass boilers, DOE assumed that the jacket losses were only 10 percent of those of a high-mass boiler (*i.e.,* 0.24 percent).[40] See appendix 7B for details of the jacket loss factors applied.

Energy Kinetics stated that if combined heat and hot water boilers are considered to be in the conditioned space, then heat lost in summertime while heating domestic water should have an impact on air conditioning cooling loads. (Energy Kinetics, No. 19 at p. 2) For the NOPR, DOE estimated the share of combined heat and hot water boilers that are installed in the conditioned space, and estimated the impact of heat lost in summertime on air conditioning cooling loads. Details of the method are given in chapter 7 of the NOPR TSD.

Fire & Ice and Weil McLain *et al.* stated that installing high-efficiency condensing boilers in older replacement applications may not actually achieve the expected energy savings because the homeowners may not be able to afford to make extensive and expensive changes to the heat distribution system in an older home that may be needed to achieve the rated efficiency. (Fire & Ice, No. 18 at pp. 1–2; Weil McLain *et al.,* No. 20–2 at pp. 1–2) Weil McLain stated that if a condensing boiler is installed in a heat distribution system that is not appropriate for that product (*i.e.,* the return water temperature is too high), then the condensing boiler will not be able to operate in the ''condensing'' mode, but will instead operate in the non-condensing mode, achieving much lower efficiencies. (Weil McLain, No. 20–1 at p. 5) Crown Boiler, U.S. Boiler, and New Yorker Boiler agree with the AFUE adjustment for condensing boilers that recognizes 150 °F average return water temperature and resulting operation in a non-condensing mode during a significant portion of the heating season. (Crown Boiler, No. 24 at p. 2; U.S. Boiler, No. 25 at p. 2; New Yorker Boiler, No. 26 at p. 2)

DOE accounts for boiler operational efficiency in specific installations by adjusting the AFUE of the sampled boiler based on an average system return water temperature. The criteria used to determine the return water temperature of the boiler system included consideration of building vintage, product type (condensing or non-condensing, single-stage or modulating), and whether the boiler employed an automatic means for adjusting water temperature. Using product type and system return water temperature, DOE developed and applied the AFUE adjustments based on average heating season return water temperatures. See appendix 7B for additional details.

F. Life-Cycle Cost and Payback Period Analysis

In determining whether an energy conservation standard is economically justified, DOE considers the economic impact of potential standards on consumers. The effect of new or amended energy conservation standards on individual consumers usually involves a reduction in operating cost and an increase in purchase cost. DOE used the following two metrics to measure consumer impacts:

- LCC (life-cycle cost) is the total consumer cost of an appliance or product, generally over the life of the appliance or product. The LCC calculation includes total installed cost (equipment manufacturer selling price, distribution chain markups, sales tax, and installation costs), operating costs (energy, repair, and maintenance costs), product lifetime, and discount rate. Future operating costs are discounted to the time of purchase and summed over the lifetime of the appliance or product.
- PBP (payback period) measures the amount of time it takes consumers to recover the assumed higher purchase price of a more energy-efficient product through reduced operating costs. Inputs to the payback period calculation include the installed cost to the consumer and first-year operating costs.

For any given efficiency level, DOE measures the PBP and the change in LCC relative to an estimate of the base-case efficiency level. The base-case estimate reflects the market in the absence of amended energy conservation standards, including market trends for products that exceed the current energy conservation standards.

DOE analyzed the net effect of potential amended residential boiler standards on consumers by calculating the LCC and PBP for each efficiency level of each sample household using the engineering performance data, the energy-use data, and the markups. DOE performed the LCC and PBP analyses using a spreadsheet model combined with Crystal Ball (a commercially-available software program used to conduct stochastic analysis using Monte Carlo simulation and probability distributions) to account for uncertainty and variability among the input variables (*e.g.,* energy prices, installation cost, and repair and maintenance costs). It uses weighting factors to account for distributions of shipments to different building types and States to generate LCC savings by efficiency level. Each Monte Carlo simulation consists of 10,000 LCC and PBP calculations using input values that are either sampled from probability distributions and household samples or characterized with single point values. The analytical results include a distribution of 10,000 data points showing the range of LCC savings and PBPs for a given efficiency level relative to the base-case efficiency forecast. In performing an iteration of the Monte Carlo simulation for a given consumer, product efficiency is chosen based on its probability. If the chosen product efficiency is greater than or equal to the efficiency of the standard level under consideration, the LCC and PBP calculation reveals that a consumer is

[40] DOE estimated that 75 percent of condensing boilers, and 25 percent of non-condensing boilers are low-mass. The remainder are high-mass.

not impacted by the standard level. By accounting for consumers who already purchase more-efficient products, DOE avoids overstating the potential benefits from increasing product efficiency.

EPCA establishes a rebuttable presumption that a standard is economically justified if the Secretary finds that the additional cost to the consumer of purchasing a product complying with an energy conservation standard level will be less than three times the value of the energy (and, as applicable, water) savings during the first year that the consumer will receive as a result of the standard, as calculated under the test procedure in place for that standard. (42 U.S.C. 6295(o)(2)(B)(iii)) For each considered efficiency level, DOE determines the value of the first year's energy savings by calculating the quantity of those savings in accordance with the applicable DOE test procedure, and multiplying that amount by the average energy price forecast for the year in which compliance with the amended standards would be required.

DOE calculated the LCC and PBP for all consumers of residential boilers as if each were to purchase new product in the year that compliance with amended standards is required. As discussed above, DOE is conducting this rulemaking pursuant to 42 U.S.C. 6295(f)(4)(C), and consistent with that provision, DOE is applying a 5-year lead time for compliance with amended standards. (This rulemaking also satisfies DOE's 6-year-lookback review requirement under 42 U.S.C. 6295(m), a provision which calls for the same 5-year lead time for residential boilers.) At the time of preparation of the NOPR analysis, the expected issuance date was spring 2014, leading to an anticipated final rule publication in 2015. Accordingly, the projected compliance date for amended standards is early 2020. Therefore, for purposes of its analysis, DOE used January 1, 2020 as the beginning of compliance with potential amended standards for residential boilers.

As noted above, DOE's LCC and PBP analyses generate values that calculate the payback period for consumers of potential energy conservation standards, which includes, but is not limited to, the three-year payback period contemplated under the rebuttable presumption test. However, DOE routinely conducts a full economic analysis that considers the full range of impacts, including those to the consumer, manufacturer, Nation, and environment, as required under 42 U.S.C. 6295(o)(2)(B)(i). The results of this analysis serve as the basis for DOE to definitively evaluate the economic justification for a potential standard level (thereby supporting or rebutting the results of any preliminary determination of economic justification).

1. Inputs to Installed Cost

The primary inputs for establishing the total installed cost are the baseline consumer product price, standard-level consumer price increases, and installation costs (labor and material cost). Baseline consumer prices and standard-level consumer price increases were determined by applying markups to manufacturer price estimates, including sales tax where appropriate. The installation cost is added to the consumer price to arrive at a total installed cost.

Weil McLain stated that lumping all condensing and non-condensing boilers together to determine the average or median cost of a type of boiler does not provide the correct basis for making a decision. (Weil McLain, No. 20–1 at p. 3) In response, DOE's product cost analysis considers condensing and non-condensing boilers as separate efficiency levels and accounts for the specific characteristics of these designs. Details of the method are provided in chapter 8 of the NOPR TSD.

For the NODA, DOE projected future prices of residential boilers using inflation-adjusted producer price index (PPI) data for ''heating equipment'' from the Bureau of Labor Statistics.[41] AHRI stated that the analysis conducted for the residential furnace rulemaking and the PPI data for heating equipment from the Bureau of Labor Statistics are not directly transferable to residential boilers. AHRI stated that the unique factors of the relatively small size of the residential boiler market and the relatively higher cost of residential boilers minimize the applicability of the general PPI data in this analysis. (AHRI, No. 22 at p. 5)

DOE agrees that the broad category ''heating equipment'' may not be the best measure to apply to residential boilers. For the NOPR, DOE examined the PPI for cast iron heating boilers from 1987 to 2013 and for steel heating boilers from 1980 to 2013.[42] The inflation-adjusted PPI shows a strongly rising trend over this period. DOE has concerns about using this trend, however. During much of the period, the inflation-adjusted PPI for iron and steel mills (which indicates the price of the primary materials that go into cast iron heating boilers) was also sharply rising. This rise mirrors the increase in prices of various industrial commodities, which resulted from rapid industrialization in China, India, and other emerging economies. Prior to 2004, the inflation-adjusted PPI for iron and steel mills was in a long downtrend that began in the early 1980s. In the recent global economic environment of slower growth, iron ore prices have been declining since the beginning of 2011. Given the past trend and the current situation, DOE is not confident that extrapolating the trend in the PPI for cast iron heating boilers in 1999–2013 would provide a sound projection. Nor is DOE confident that the recent downward trend in iron ore prices will continue in the future. Given the uncertainty in commodities pricing and other factors, DOE concluded that including a price trend in the main analysis cases would not be justified by the data, instead choosing to maintain a constant manufacturer selling price (in real dollars) for residential boilers.

The Joint Commenters stated that it is expected that the installed cost of condensing boilers would decline between now and the compliance date of amended standards (2020). The Joint Commenters stated that the new ENERGY STAR specification, which requires condensing levels from gas-fired boilers, are expected to increase the market share of condensing gas boilers, resulting in a decline in equipment costs. Furthermore, the Joint Commenters encouraged DOE to explore ways to estimate learning rates for condensing technology. The Joint Commenters stated that analyzing price trends of whole categories of equipment fails to capture the price trends of the actual technologies that are employed to improve efficiency. The Joint Commenters would expect the price of condensing boilers to decline much faster than the price of all boilers. The Joint Commenters stated that the use of historic price trends of heating equipment to estimate learning rates for boilers implicitly assumes that prices of non-condensing and condensing boilers will change at the same rate, and will likely significantly underestimate future declines in the incremental cost of condensing boilers. (Joint Commenters, No. 27 at pp. 2–3)

DOE acknowledges that the product cost of condensing boilers may decline between now and the compliance date of amended standards as production increases and the technology matures. It also recognizes that experience in the manufacturing sector generally indicates

[41] Series ID PCU333414333414 (Available at: *http://www.bls.gov/ppi/*).

[42] Cast iron heating boiler PPI series ID: PCU 3334143334141; Steel heating boiler PPI series ID: PCU 3334143334145 (Available at: *www.bls.gov/ppi/*).

that the price of new products declines in the early years of adoption. However, DOE could not find data that would allow a projection of the magnitude of likely decline for condensing boilers. Thus, for the NOPR, it used the same price trend projection for condensing and non-condensing boilers. Currently, information about price trends related to different boiler technologies is not available, but DOE is exploring ways to estimate learning rates for different technologies.[43]

DOE estimated the costs associated with installing a boiler in a new housing unit or as a replacement for an existing boiler. Installation costs account for labor and material costs and any additional costs, such as venting and piping modifications and condensate disposal that might be required when installing products at various efficiency levels.

For replacement installations, DOE included a number of additional costs (''adders'') for a fraction of the sample households. For non-condensing boilers, these additional costs may account for updating of flue vent connectors, vent resizing, chimney relining, and, for a fraction of installations, the costs for a stainless steel vent. For condensing boilers, these additional costs included adding a new polyvinylchloride (PVC) flue vent, combustion air venting for direct vent installations (PVC), concealing vent pipes for indoor installations, addressing an orphaned water heater (by updating flue vent connectors, vent resizing, or chimney relining), and condensate removal.

Weil McLain stated that changes to the heat distribution system in an older home can include: Installing new piping and venting; lining the existing chimney; installing a more powerful circulating pump; installing a different, larger electrical service; and/or installing a condensate neutralizer to prevent damage to a cast iron drain or installing a condensate pump. Weil McLain stated that quotations from qualified contractors for the complete installation of a condensing boiler in a replacement application are generally at least 30–60 percent higher than the installation cost of a non-condensing boiler in the same application. (Weil McLain, No. 20–1 at pp. 3–4)

In response, DOE's analysis does account for venting, condensate, and electrical related costs to determine the overall installation cost for condensing boilers. According to the available data, the total installed cost, which is the sum of the installation cost and the product price, is on average 23 percent higher for condensing boilers compared to baseline products. See appendix 8D of the NOPR TSD for details on how DOE calculated the installation costs.

Crown Boiler, U.S. Boiler, and New Yorker Boiler stated that the LCC spreadsheet does not include the total cost of masonry chimneys, chimney relining, vent resizing, and orphaned water heaters (except for condensing boiler venting cost). They also suggested that DOE should consider vent system changes based on input from building inspectors and code officials. (Crown Boiler, No. 24 at p. 2; U.S. Boiler, No. 25 at p. 2; New Yorker Boiler, No. 26 at p. 2)

Gathering input from a representative sample of building inspectors and code officials was not possible in the time frame of the NOPR preparation. However, for the NOPR, DOE included disaggregated costs associated with different installation scenarios and requirements. These costs included the cost of chimney relining, vent resizing, orphaned water heaters, and condensate withdrawal. These costs can be found in appendix 8D of the NOPR TSD.

Crown Boiler, U.S. Boiler, and New Yorker Boiler stated that a 100 Mbh gas boiler would use a 5″ vent, not a 4″ Type B vent as shown in the LCC spreadsheet. They also stated that a 140 Mbh oil boiler would use a 6″ vent and cannot use a 4″ Type B vent as shown in the LCC spreadsheet. (Crown Boiler, No. 24 at p. 2; U.S. Boiler, No. 25 at p. 2; New Yorker Boiler, No. 26 at p. 2) DOE agrees that the vent size is correlated with boiler capacity. For the NOPR, DOE included a methodology that sized vent material based on the capacity of the boiler to be installed and accounted for the subsequent change in installation cost. Specifically, DOE modified the analysis to include the costs of 5″ and 6″ vent material where appropriate. Appendix 8D of the NOPR TSD contains more details on the installation cost methodology.

Crown Boiler, U.S. Boiler, and New Yorker Boiler stated that the National Fuel Gas Code (ANSI Z223.l/INFPA 54, 2012 Edition, paragraph 12.6.4.3) suggests EL0 gas boilers can be installed without vent modification. (Crown Boiler, No. 24 at p. 2; U.S. Boiler, No. 25 at p. 2; New Yorker Boiler, No. 26 at p. 2) DOE's LCC analysis accounts for an estimated fraction of 81 percent of boiler replacement installations that do not require vent modifications for EL 0 (baseline) for hot water gas boilers. The baseline may require chimney relining or vent resizing for boilers installed before 1995. See appendix 8D of the NOPR TSD for more details.

The Joint Commenters stated that the installation costs for condensing boilers will decline as contractors gain more experience installing condensing boilers, competition increases, and new venting systems for retrofits (including flexible polypropylene) are introduced to the market. The Joint Commenters encouraged DOE to evaluate whether polypropylene venting systems, which are designed for easy retrofit installations, would represent the lowest-cost venting option for some portion of installations. (Joint Commenters, No. 27 at pp. 2–3)

In response, DOE notes that condensing boilers already comprise more than one-third of boiler installations, so it is not clear that costs will decline due to experience and competition. DOE conducted a literature review to assess the polypropylene venting market in the U.S. For this rulemaking, DOE applied polypropylene venting as a venting option for the fraction of installations involving models or applications for which PVC piping is not recommended.

DOE also included installation adders for new construction installations related to potential amended standards. For non-condensing boilers, the only adder is a new metal flue vent (including a fraction with stainless steel venting). For condensing gas boilers, the adders include a new flue vent, combustion air venting for direct vent installations, accounting for a commonly-vented water heater, and condensate removal.

Crown Boiler, U.S. Boiler, and New Yorker Boiler stated that the only difference in residential boiler installation cost between retrofit and new construction applications in terms of placement and set-up should be the cost of removing the old boiler; trip charge, unit startup, check, and cleanup should apply equally to both types of installation. (Crown Boiler, No. 24 at p. 2; U.S. Boiler, No. 25 at p. 2; New Yorker Boiler, No. 26 at p. 2)

For the NOPR analysis, DOE assumes that boiler placement, set-up, start-up, check, trip charge, and cleanup costs are included in labor hours based on RS Means data for both new construction and replacements. The cost of removing the old boiler was only applied for replacement installations and not applied to new construction.

With regards to near-condensing boiler installations, for the NODA, DOE

[43] Taylor, M. and K. S. Fujita, Accounting for Technological Change in Regulatory Impact Analyses: The Learning Curve Technique, Lawrence Berkeley National Laboratory, Report No. LBNL–6195E (2013) (Available at: *http://efficiency.lbl.gov/sites/all/files/accounting_for_tech_change_in_rias_-_learning_curves_lbnl.pdf*).

accounted for the installation costs of the near-condensing products by considering the additional cost of using stainless steel venting. AHRI stated that boilers with AFUE ratings in the range of 83.5 percent to 87 percent should be considered near-condensing products from an installation perspective (in terms of vent requirements). AHRI stated that DOE has underestimated the increased installation cost for vent system rework or upgrade at the 84-percent and 85-percent AFUE levels for gas-fired hot water boiler models. (AHRI, No. 22 at pp. 1–2) HTP stated that the safety and installation cost implications of operating at efficiencies between 82-percent and 90-percent AFUE should be seriously considered. (HTP, No. 31 at p. 1)

For the NOPR, DOE included additional venting cost associated with stainless steel venting for a fraction of installations between 82-percent AFUE and 86-percent AFUE that require such venting. Such inclusion addresses potential safety concerns by preventing the corrosive impacts of condensation in the venting system. Because use of an inducer or forced draft fan creates conditions under which stainless steel venting is necessary to avoid condensation in some cases, DOE based the fraction requiring stainless steel venting on the percentage of models with inducer or forced draft fans and manufacturer literature.[44] The fraction of stainless steel venting installations ranged from 11 percent for the baseline efficiency models to 32 percent for the 85-percent AFUE models. See appendix 8D of the NOPR TSD for more details.

2. Inputs to Operating Costs

The primary inputs for calculating the operating costs are product energy consumption, product efficiency, energy prices and forecasts, maintenance and repair costs, product lifetime, and discount rates. DOE uses discount rates to determine the present value of lifetime operating expenses. The discount rate used in the LCC analysis represents the rate from an individual consumer's perspective. Much of the data used for determining consumer discount rates comes from the Federal Reserve Board's triennial Survey of Consumer Finances.[45]

a. Energy Consumption

The product energy consumption is the site energy use associated with providing space heating (and water heating in some cases) to the building. DOE utilized the methodology described in section IV.E to establish product energy use.

DOE considered whether boiler energy use would likely be impacted by a direct rebound effect, which occurs when a product that is made more efficient is used more intensively, such that the expected energy savings from the efficiency improvement may not fully materialize. For the NODA, DOE conducted a review of information that included a 2009 study examining empirical estimates of the rebound effect for various energy-using products.[46] Based on this review, DOE tentatively concluded that the inclusion of a rebound effect of 20 percent for residential boilers is warranted.

The Joint Commenters stated that a 20-percent rebound effect is too high. The Joint Commenters stated that a 2012 ACEEE paper concluded that the most widely applicable estimates of rebound rates in the studies reviewed by Sorrell (referenced above) range from 1–12 percent. The Joint Commenters stated that a similar range is provided in a 2013 paper by Thomas and Azevedo which lists five space-heating studies with rebound rates ranging from 1–15 percent. (Joint Commenters, No. 27 at p. 4)

For the NOPR, DOE reviewed the 2012 ACEEE paper[47] and the article by Thomas and Azevedo.[48] Both of these publications examined the same studies that were reviewed by Sorrell, as well as by Greening *et al,*[49] and identified methodological problems with some of the studies. The studies believed to be most reliable by Thomas and Azevedo show a direct rebound effect for heating products in the 1-percent to 15-percent range, while Nadel concludes that a more likely range is 1 to 12 percent, with rebound effects sometimes higher than this range for low-income households who could not afford to adequately heat their homes prior to weatherization. These assessments are described in further detail in chapter 10 of the NOPR TSD. Based on DOE's review of these recent assessments, DOE reduced the rebound effect for residential boilers to 15 percent for the NOPR. Although a lower value might be warranted, DOE prefers to be conservative and not risk understating the rebound effect.

AHRI recommended that the LCC and PBP analysis should incorporate the energy savings reduction attributable to the rebound effect. AHRI stated that the TSD does not provide information to explain what the increase in the consumer's utility is that offsets the 20-percent rebound effect identified in the analysis. Additionally, AHRI stated that the consumer's utility is not a quantifiable, monetary value, and it does not affect the cost of operation of the boiler. (AHRI, No. 22 at p. 5)

In response, the most likely reason for a direct rebound effect associated with higher-efficiency boilers is that the consumer would maintain a higher indoor temperature than before, or extend the heating season for longer periods. It is reasonable to presume that such a consumer receives greater indoor comfort than before. The increased comfort has a cost that is equal to the monetary value of the higher energy use. DOE could reduce the energy cost savings to account for the rebound effect, but then it would have to add the value of increased comfort in order to conduct a proper economic analysis. The approach that DOE uses—not reducing the energy cost savings to account for the rebound effect and not adding the value of increased comfort—assumes that the value of increased comfort is equal to the monetary value of the higher energy use. Although DOE cannot measure the actual value to the consumers of increased comfort, the monetary value of the higher energy use represents a lower bound for this quantity.

b. Energy Prices

Using the most current data from the Energy Information Administration[50] [51] [52] (described in chapter 8 of the NOPR TSD), DOE

[44] DOE did not consider any efficiency levels above 86-percent AFUE and below 90-percent AFUE.

[45] Available at *www.federalreserve.gov/econresdata/scf/scfindex.htm.*

[46] S. Sorrell, J. D., and M. Sommerville, ''Empirical estimates of the direct rebound effect: a review,'' *Energy Policy* (2009) 37: pp. 1356–71.

[47] Steven Nadel, ''The Rebound Effect: Large or Small?'' ACEEE White Paper (August 2012) (Available at: *http://www.aceee.org/white-paper/rebound-effect-large-or-small*).

[48] Brinda Thomas and Ines Azevedo, ''Estimating direct and indirect rebound effects for U.S. households with input–output analysis Part 1: Theoretical framework,'' *Ecological Economics* Vol. 86, pp. 199–201 (Feb. 2013) (Available at: *http://www.sciencedirect.com/science/article/pii/S0921800912004764*).

[49] Greening, L.A., Greene, D.L., Difiglio, C., Energy efficiency and consumption—the rebound effect—a survey, (2002) *Energy Policy* 28(6–7), 389–401.

[50] U.S. Department of Energy—Energy Information Administration, *Form EIA–826 Database Monthly Electric Utility Sales and Revenue Data* (2013) (Available at: *http://www.eia.doe.gov/cneaf/electricity/page/eia826.html*).

[51] U.S. Department of Energy—Energy Information Administration, *Natural Gas Navigator* (2013) (Available at: *http://tonto.eia.doe.gov/dnav/ng/ng_pri_sum_dcu_nus_m.htm*).

[52] U.S. Department of Energy—Energy Information Administration, *2012 State Energy Consumption, Price, and Expenditure Estimates (SEDS)* (2013) (Available at: *http://www.eia.doe.gov/emeu/states/_seds.html*).

assigned an appropriate energy price to each household or commercial building in the sample, depending on its location. For future prices, DOE used the projected annual changes in average residential and commercial natural gas, LPG, electricity, and fuel oil prices in the Reference case projection in *AEO 2013*.[53]

AGA and APGA contended that the Department should use a marginal price analysis, which reflects the incremental gas costs most closely associated with changes in the amount of gas consumed by appliances of different efficiencies, when evaluating the impact of natural gas prices on the life-cycle-cost savings associated with standards. (AGA, APGA, No. 21 at p. 5) In response, in the analyses performed for the NODA and for the NOPR, average electricity and natural gas prices from the EIA data were adjusted using seasonal marginal price factors to derive monthly marginal electricity and natural gas prices. For a detailed discussion of the development of marginal energy price factors, see appendix 8C of the NOPR TSD.

c. Maintenance and Repair Costs

The maintenance cost is the routine annual cost to the consumer of general maintenance for product operation. The frequency with which the maintenance occurs was derived from a consumer survey[54] that provided the frequency with which owners of different types of boilers perform maintenance. For oil-fired boilers, the high quantity of sulfur in the fuel in States without regulation of sulfur content results in frequent cleaning of the heat exchanger, which DOE included in its analysis.

The repair cost is the cost to the consumer for replacing or repairing components in the boiler that have failed. DOE estimated repair costs at each considered efficiency level using a variety of sources, including 2013 RS Means Facility Repair and Maintenance Data,[55] manufacturer literature, and information from expert consultants.

Weil McLain, Crown Boiler, U.S. Boiler, and New Yorker Boiler stated that condensing boilers generally cost more to maintain and repair than non-condensing boilers because condensing boilers have more complex and costly component parts that need more frequent service, adjustment, and repair. (Weil McLain, No. 20–1 at p. 3; Crown Boiler, No. 24 at p. 2; U.S. Boiler, No. 25 at p. 2; New Yorker Boiler, No. 26 at p. 2) In response, DOE's analysis does account for additional maintenance and repair costs for condensing boilers. Maintenance costs include checking the condensate withdrawal system, replacing the neutralizer filter, and flushing the secondary heat exchanger for condensing oil boilers in high-sulfur oil-fuel regions. In addition, higher repair costs for ignition, controls, gas valve, and inducer fan are included. For more details on DOE's methodology for calculating maintenance and repair costs, see appendix 8E of the NOPR TSD.

d. Product Lifetime

Product lifetime is the age at which an appliance is retired from service. DOE conducted an analysis of boiler lifetimes using a combination of historical boiler shipments (see section IV.G), American Housing Survey data on historical stock of boilers,[56] and RECS data[57] on the age of the boilers in homes. The data allowed DOE to develop a Weibull lifetime distribution function, which results in a lifetime ranging from 2 to 55 years. The resulting average and median lifetimes for the NOPR analysis are 25 years for all boiler product classes. In addition, DOE reviewed a number of sources to validate the derived boiler lifetime, including research studies (from the U.S. and Europe) and field data reports (see appendix 8F of the NOPR TSD for details).

A number of commenters stated that condensing boilers generally have a shorter lifespan than non-condensing boilers. Weil McLain stated that condensing boilers generally have a shorter lifespan than non-condensing boilers because the condensing boilers are exposed to the corrosive effects of condensation, and because there are many more component parts to wear out. (Weil McLain, No. 20–1 at p. 3) Crown Boiler, U.S. Boiler, and New Yorker Boiler believe that there is a significant difference between expected lifetimes for non-condensing and condensing boilers, with the latter typically lasting less than 15 years. (Crown Boiler, No. 24 at p. 2; U.S. Boiler, No. 25 at p. 2; New Yorker Boiler, No. 26 at p. 2) Weil McLain, Crown Boiler, U.S. Boiler, and New Yorker Boiler stated that manufacturers generally offer shorter warranties for condensing boilers than for non-condensing boilers, indicating that manufacturers have found that condensing boilers have a shorter life expectancy than non-condensing boilers. (Weil McLain, No. 20–1 at pp. 4; Crown Boiler, No. 24 at p. 2; U.S. Boiler, No. 25 at p. 2; New Yorker Boiler, No. 26 at p. 2) AHRI stated that the 22-year median lifetime used for all boilers in the analysis is an invalid assumption for condensing gas boilers. AHRI stated that deriving lifetimes from a combination of shipment data, boiler stock, and RECS data assumes that there is an established population of units in the field that reflect the full range of lifetimes that apply to the product. AHRI stated that this is not the case, as condensing gas hot water boilers were just beginning to be introduced 22 years ago. AHRI stated that it is not possible to conclude from field data that condensing gas boilers have a median lifetime of 22 years when the number of such units installed 22 years ago likely accounts for 1 percent or less of all residential gas boilers currently in use. (AHRI, No. 22 at p. 2)

In response, DOE notes that in developing Boilers Specification Version 3.0 for the ENERGY STAR program in 2013, the Environmental Protection Agency (EPA) held numerous discussions with manufacturers and technical experts to explore the concern that condensing boilers may have a shorter lifetime. In the absence of data showing otherwise, EPA concluded that if condensing boilers are properly installed and maintained, the life expectancy should be similar to non-condensing boilers.[58] EPA also discussed boiler life expectancy with the Department for Environment, Food & Rural Affairs (DEFRA) in the UK, and stated that DEFRA has no data which contradict EPA's conclusion that with proper maintenance, condensing and non-condensing modern boilers have similar life expectancy.[59] The commenters provided no data to support their opinion regarding a lower condensing boiler lifetime vis-à-vis non-

[53] DOE plans to use *AEO 2014* when it becomes available.

[54] Decision Analysts, *2008 American Home Comfort Study: Online Database Tool* (2009) (Available at: <*http://www.decisionanalyst.com/Syndicated/HomeComfort.dai*>).

[55] RS Means Company Inc., *RS Means Facilities Maintenance & Repair Cost Data* (2013) (Available at *http://www.rsmeans.com/*).

[56] U.S. Census Bureau: Housing and Household Economic Statistics Division, American Housing Survey, Multiple Years (1974, 1975, 1976, 1977, 1978, 1979, 1980, 1981, 1983, 1985, 1987, 1989, 1991, 1993, 1995, 1997, 1999, 2001, 2003, 2005, 2007, 2009, and 2011). (Available at: *www.census.gov/programs-surveys/ahs/*) (Last accessed January, 2014).

[57] U.S. Department of Energy: Energy Information Administration, *Residential Energy Consumption Survey: 2009 RECS Survey Data* (2013) (Available at: <*http://www.eia.gov/consumption/residential/data/2009/*>) (Last accessed March, 2013).

[58] See: *http://www.energystar.gov/products/specs/sites/products/files/Stakeholder%20Comment%20Response%20Summary%20Boilers%20Draft%201%20Version%203%200_0.pdf.*

[59] Energy Efficiency Best Practice in Housing, Domestic Condensing Boilers—'The Benefits and the Myths' (2003) (Available at: *http://www.west-norfolk.gov.uk/pdf/CE52.pdf*) (Last accessed April 16, 2014).

condensing boilers. Therefore, for the NOPR, DOE did not apply different lifetimes for non-condensing and condensing boilers. However, DOE did conduct a sensitivity analysis to investigate the impact of different lifetime values on consumer impacts. For more details on how DOE derived the boiler lifetime and on the lifetime sensitivity analysis, see appendix 8F of the NOPR TSD.

e. Base-Case Efficiency

To estimate the share of consumers affected by a potential energy conservation standard at a particular efficiency level, DOE's LCC and PBP analysis considers the projected distribution (*i.e.,* market shares) of product efficiencies that consumers will purchase in the first compliance year under the base case (*i.e.,* the case without amended energy conservation standards).

For residential boilers, DOE first developed data on the current share of models in each product class that are of the different efficiencies based on the latest AHRI certification directory.[60] To estimate shares in 2020, DOE took into account the potential impacts of the ENERGY STAR program, which is working on new performance criteria: 90-percent AFUE for gas-fired boilers and 87-percent AFUE for oil-fired boilers.[61]

For the boiler standby mode and off mode, DOE assumed that 50 percent of shipments would be at the baseline efficiency level and 50 percent would be at the max-tech efficiency level (EL 3) for all product classes, based on characteristics of available models.[62]

No comments were received on the base-case efficiency distributions, and DOE retained the same approach for the NOPR.

G. Shipments Analysis

DOE uses forecasts of product shipments to calculate the national impacts of potential amended energy conservation standards on energy use, NPV, and future manufacturer cash flows. DOE develops shipment projections based on historical data and an analysis of key market drivers for each product. DOE estimated boiler shipments by projecting shipments in three market segments: (1) Replacements; (2) new housing; and (3) new owners in buildings that did not previously have a boiler. DOE also considered whether standards that require more-efficient boilers would have an impact on boiler shipments.

To project boiler replacement shipments, DOE developed retirement functions from the boiler lifetime estimates and applied them to the existing products in the housing stock. The existing stock of products is tracked by vintage and developed from historical shipments data.[63] [64] The shipments analysis uses a distribution of residential boiler lifetimes to estimate boiler replacement shipments.

To project shipments to the new housing market, DOE utilized a forecast of new housing construction and historic saturation rates of various boiler product types in new housing. DOE used *AEO 2013* for forecasts of new housing. Boiler saturation rates in new housing were estimated based on a weighted-average of values in 1990–2013 presented in the U.S. Census Bureau's *Characteristics of New Housing.*[65]

To estimate future shipments to new owners, DOE determined the fraction of residential boiler shipments that are to new owners with no previous boiler, based on a proprietary consumer survey.[66] The new owners primarily consist of households that during a major remodel add hydronic heating using a gas-fired hot water boiler and households that choose to install a boiler for a hydronic air handler to replace a gas furnace. New owners also include households switching between different boiler product classes (*i.e.,* from the steam to hot water boiler product classes and from the oil-fired to gas-fired boiler product classes).

Commenting on the NODA, AHRI stated that DOE's estimate that 80 percent of all gas-fired hot water boiler installations are replacements may be too low. (AHRI, No. 22 at p. 4) Based on this comment, DOE reexamined the available shipments data, and for the NOPR, DOE estimated that 93 percent of gas-fired hot water boiler installations are replacements or new owners, with the remaining 7 percent installed in new homes.

To estimate the impact of the projected price increase for the considered efficiency levels, DOE used a relative price elasticity approach. This approach gives some weight to the operating cost savings from higher-efficiency products. As is typical, the impact of higher boiler prices (at higher efficiency levels) is expressed as a percentage drop in market share for each year during the analysis period.

Weil McLain stated that a typical homeowner facing the prospect of installing a condensing high-efficiency boiler at a much higher product and installation cost (plus the cost of upgrading the heat distribution system) may decide to repair an older system instead. (Weil McLain, No. 20–1 at p. 5) In response, DOE acknowledges that if the amended standard were to require purchase of a condensing boiler, some consumers would choose to repair and thereby extend the life of their existing system. Because the proposed standards would not require the use of a condensing boiler, DOE concludes that any incremental shift towards repair instead of replacement would be minimal. DOE applied a relative price elasticity in the shipments model to estimate the change in shipments under potential amended standards at different efficiency (and installed cost) levels.

AGA and APGA stated that the Department should include a fuel switching analysis as part of the process of evaluating possible amended standards for residential boilers to help ensure that when evaluating different levels of efficiency for gas-fired hot water boilers, fuel switching to other energy sources that produce higher emissions and use more overall energy is not encouraged. (AGA, APGA, No. 21 at p. 5)

For the NOPR, DOE evaluated the potential for switching from gas-fired hot water boilers to other heating systems. Incentive for such switching would only exist if the amended standards were to require efficiency for gas-fired hot water boilers that would entail a significantly higher installed cost than the other heating options. Because DOE is not proposing an amended standard that would require condensing technology, DOE has tentatively concluded that consumer switching from gas-fired hot water boilers would be rare. Even if DOE were to adopt an amended standard that

[60] Air Conditioning, Heating, and Refrigeration Institute, Consumer's Directory of Certified Efficiency Ratings for Heating and Water Heating Equipment (AHRI Directory) (September 2013) (Available at: *http://www.ahridirectory.org/ahridirectory/pages/home.aspx*) (Last accessed September, 2013).

[61] Energy Star, Boiler Specification Version 3.0 (Last accessed September, 2013) (Available at: *https://www.energystar.gov/products/specs/boilers_specification_version_3_0_pd*).

[62] Air Conditioning, Heating, and Refrigeration Institute, Consumer's Directory of Certified Efficiency Ratings for Heating and Water Heating Equipment (AHRI Directory) (September 2013) (Available at: *http://www.ahridirectory.org/ahridirectory/pages/home.aspx*) (Last accessed September, 2013).

[63] U.S. Appliance Industry Statistical Review, *Appliance Magazine,* various years.

[64] Air-Conditioning, Heating, and Refrigeration Institute (AHRI), Confidential Shipment data for 2003–2012.

[65] Available at: *http://www.census.gov/const/www/charindex.html.*

[66] Decision Analysts, *2008 American Home Comfort Study: Online Database Tool* (2009) (Available at: *http://www.decisionanalyst.com/Syndicated/HomeComfort.dai*>).

would require condensing technology for gas-fired hot water boilers, it is likely that switching would be minimal for the following reasons. First, although electric boilers may have a much lower product cost, they would be expected to have far higher operating costs (especially in the Northeast). Moreover, electric boiler installation would require upgrading the electrical system in the house. Finally, switching from a hydronic heating system using a gas-fired boiler to an air-distribution heating system using a furnace would be expensive, and would likely only be done as part of a major renovation.

The details and results of the shipments analysis can be found in chapter 9 of the NOPR TSD.

H. National Impact Analysis

The NIA assesses the national energy savings (NES) and the net present value (NPV) from a national perspective of total consumer costs and savings expected to result from new or amended energy conservation standards at specific efficiency levels. DOE determined the NPV and NES for the potential standard levels considered for the residential boiler product classes analyzed.

To make the analysis more accessible and transparent to all interested parties, DOE used a computer spreadsheet model (as opposed to probability distributions) to calculate the energy savings and the national consumer costs and savings at each TSL.[67] The NIA calculations are based on the annual energy consumption and total installed cost data from the energy use analysis and the LCC analysis. To assess the effect of input uncertainty on NES and NPV results, DOE developed its spreadsheet model to conduct sensitivity analyses by running scenarios on specific input variables. In the NIA, DOE forecasted the lifetime energy savings, energy cost savings, product costs, and NPV of consumer benefits for each product class over the lifetime of products sold from 2020 through 2049.

To develop the NES, DOE calculates annual energy consumption for the base case and the standards cases. DOE calculates the annual energy consumption using per-unit annual energy use data multiplied by projected shipments. As explained in section IV.E, DOE incorporated a rebound effect for residential boilers, which is implemented by reducing the NES in each year.

To develop the national NPV of consumer benefits from potential energy conservation standards, DOE calculates annual energy expenditures and annual product expenditures for the base case and the standards cases. DOE calculates annual energy expenditures from annual energy consumption by incorporating forecasted energy prices, using shipment projections and average energy efficiency projections. DOE calculates annual product expenditures by multiplying the price per unit times the projected shipments. The aggregate difference each year between energy bill savings and increased product expenditures is the net savings or net costs. As discussed in section IV.F, DOE chose to not apply a trend to the manufacturer selling price (in real dollars) of residential boilers. For the NIA, DOE developed a sensitivity analysis that considered one scenario with a lower rate of price decline than the reference case and one scenario with a higher rate of price decline than the reference case. These scenarios are described in appendix 10C of the NOPR TSD.

A key component of the NIA is the energy efficiency forecasted over time for the base case (without new standards) and each of the standards cases. As discussed in section IV.F, DOE developed a distribution of efficiencies in the base case for 2020 (the year of anticipated compliance with an amended standard) for each residential boiler product class. Regarding the efficiency trend in the years after compliance, for the base case, DOE estimated that the overall market share of condensing gas-fired hot water boilers would grow from 44 percent to 63 percent by 2049, and the overall market share of condensing oil-fired hot water boilers would grow from 7 percent to 13 percent. DOE estimated that the base-case market shares of condensing gas-fired and oil-fired steam boilers will be negligible during the period of analysis. DOE assumed similar trends for the standards cases (albeit starting from a higher point). Details on how these efficiency trends were developed are provided in appendix 8H of the NOPR TSD.

To estimate the impact that amended energy conservation standards may have in the year compliance becomes required, DOE uses ''roll-up'' or ''shift'' scenarios in its standards rulemakings. Under the ''roll-up'' scenario, DOE assumes: (1) Product efficiencies in the base case that do not meet the new or amended standard level under consideration would ''roll up'' to meet that standard level; and (2) products at efficiencies above the standard level under consideration would not be affected. Under the ''shift'' scenario, DOE retains the pattern of the base-case efficiency distribution but re-orients the distribution at and above the new or amended minimum energy conservation standard. Because there is no reason to expect a shift, DOE used the ''roll-up'' scenario for the standards cases.

1. National Energy Savings Analysis

The national energy savings analysis involves a comparison of national energy consumption of the considered products in each potential standards case (TSL) with consumption in the base case with no new or amended energy conservation standards. DOE calculated the national energy consumption by multiplying the number of units (stock) of each product (by vintage or age) by the unit energy consumption (also by vintage). Vintage represents the age of the product. DOE calculated annual NES based on the difference in national energy consumption for the base case (without amended efficiency standards) and for each higher efficiency standard. DOE estimated energy consumption and savings based on site energy and converted the electricity consumption and savings to primary energy using annual conversion factors derived from the *AEO 2013* version of NEMS. Cumulative energy savings are the sum of the NES for each year over the timeframe of the analysis.

a. Full-Fuel-Cycle Energy Savings

DOE has historically presented NES in terms of primary energy savings. In the case of electricity use and savings, this quantity includes the energy consumed by power plants to generate delivered (site) electricity.

In response to the recommendations of a committee on ''Point-of-Use and Full-Fuel-Cycle Measurement Approaches to Energy Efficiency Standards'' appointed by the National Academy of Sciences, DOE announced its intention to use full-fuel-cycle (FFC) measures of energy use and greenhouse gas and other emissions in the national impact analyses and emissions analyses included in future energy conservation standards rulemakings. 76 FR 51281 (August 18, 2011). After evaluating the approaches discussed in the August 18, 2011 notice, DOE published a statement of amended policy in the **Federal Register** in which DOE explained its determination that NEMS is the most appropriate tool for its FFC analysis and

[67] DOE's use of spreadsheet models provides interested parties with access to the models within a familiar context. In addition, the TSD and other documentation that DOE provides during the rulemaking help explain the models and how to use them, and interested parties can review DOE's analyses by changing various input quantities within the spreadsheet.

its intention to use NEMS for that purpose. 77 FR 49701 (August 17, 2012).

AGA and APGA stated that it is not clear if the NEMS-based methodology provides the most complete and accurate methodology for incorporating the full-fuel-cycle analysis in energy conservation standards because all the assumptions used in the program are not fully disclosed. AGA and APGA urged the Department to hold a public workshop to provide all stakeholders the opportunity to review and discuss the assumptions and analyses included in the model, and to make the model publically available for anyone who wishes to run the analysis. (AGA, APGA, No. 21 at p. 4)

In response, DOE notes that its Notice of Policy Amendment Regarding Full-Fuel-Cycle Analyses explains in some detail the reasoning for DOE's determination that NEMS is the most appropriate tool to calculate FFC measures of energy use and greenhouse gas and other emissions. 77 FR 49701 (August 17, 2012). The method and assumptions used to develop the FFC analysis are described in appendix 10B of the NOPR TSD, and are discussed in detail in the report referenced in that appendix. DOE does not have a separate FFC model, as it utilizes NEMS to derive multipliers that allow estimation of the FFC impacts of the energy savings identified for a given product. The methods and assumptions used in NEMS are fully described in the documentation provided by EIA.[68] DOE has used the FFC measures in several recent rulemakings, thereby providing interested parties with opportunities to review the approach and the associated documentation. Furthermore, the August 17, 2012 notice stated that the public is free to send in comments on this policy amendment at any time. 77 FR 49701, 49702 (August 17, 2012).

In the case of natural gas, the FFC measure includes losses in transmission and distribution, as well as energy use and losses (including methane leakage) in natural gas production.

AHRI stated that the FFC NES values do not seem to reflect the greater FFC consumption of electricity because the primary and FFC energy savings in standby mode, which only uses electricity, are nearly the same. (AHRI, No. 22 at p. 5) In response, the primary energy savings for site use of electricity include the primary energy consumption by the electric generation sector. The FFC measure adds in energy that is used ''upstream'' in the production and transport of the primary fuels. This quantity, expressed as a percentage of the primary energy consumption, is relatively small. Hence, the FFC energy savings are only slightly larger than the primary energy savings.

2. Net Present Value Analysis

The inputs for determining NPV are: (1) Total annual installed cost; (2) total annual savings in operating costs; (3) a discount factor to calculate the present value of costs and savings; (4) present value of costs; and (5) present value of savings. DOE calculated net savings each year as the difference between the base case and each standards case in terms of total savings in operating costs versus total increases in installed costs. DOE calculated savings over the lifetime of products shipped in the forecast period. DOE calculated NPV as the difference between the present value of operating cost savings and the present value of total installed costs. DOE used a discount factor based on real discount rates of 3 percent and 7 percent to discount future costs and savings to present values.

For the NPV analysis, DOE calculates increases in total installed costs as the difference in total installed cost between the base case and standards case (*i.e.,* once the new or amended standards take effect).

DOE expresses savings in operating costs as decreases associated with the lower energy consumption of products bought in the standards case compared to the base efficiency case. Total savings in operating costs are the product of savings per unit and the number of units of each vintage that survive in a given year.

a. Discount Rates for Net Present Value

DOE estimates the NPV of consumer benefits using both a 3-percent and a 7-percent real discount rate. DOE uses these discount rates in accordance with guidance provided by the Office of Management and Budget (OMB) to Federal agencies on the development of regulatory analysis.[69]

The Joint Commenters stated that in recent rulemakings for other products, it appears that DOE has placed significant emphasis on NPV at a 7-percent discount rate. They stated that DOE must consider NPV at both 3 percent and 7 percent as directed in OMB guidance, and it should weigh the NPV at a 3-percent discount rate more heavily. As noted in the Joint Comment, NRDC has explained why a 3-percent discount rate is more appropriate to use when considering national economic benefits in comments on previous rulemakings. NRDC stated in a previous comment that investments in energy efficiency reduce overall societal risk, and that the average rate of return on all investments is far below 7 percent.[70] (Joint Commenters, No. 27 at pp. 3–4)

OMB Circular A–4 states that the 7-percent discount rate is an estimate of the average before-tax rate of return to private capital in the U.S. economy. It approximates the opportunity cost of capital, and it is the appropriate discount rate whenever the main effect of a regulation is to displace or alter the use of capital in the private sector. Circular A–4 also states that when regulation primarily and directly affects private consumption, a lower discount rate is appropriate. The alternative most often used is sometimes called the ''social rate of time preference,'' which means the rate at which ''society'' discounts future consumption flows to their present value. If one takes the rate that the average saver uses to discount future consumption as a measure of the social rate of time preference, then the real rate of return on long-term government debt may provide a fair approximation. Over the last thirty years, this rate has averaged around 3 percent in real terms on a pre-tax basis. Energy conservation standards for appliances and equipment affect both the use of capital and private consumption. Accordingly, DOE believes that it would be inappropriate to weight the NPV at either discount rate more heavily than the other.

I. Consumer Subgroup Analysis

In the NOPR stage of a rulemaking, DOE conducts a consumer subgroup analysis. A consumer subgroup comprises a subset of the population that may be affected disproportionately by new or revised energy conservation standards (*e.g.,* low-income consumers, seniors). The purpose of a subgroup analysis is to determine the extent of any such disproportional impacts.

For today's NOPR, DOE evaluated impacts of potential standards on two subgroups: (1) Senior-only households and (2) low-income households. DOE identified these households in the RECS sample and used the LCC and PBP spreadsheet model to estimate the impacts of the considered efficiency levels on these subgroups. To the extent possible, it utilized inputs appropriate for these subgroups. The consumer subgroup results for the residential boilers TSLs are presented in section

[68] See *http://www.eia.gov/oiaf/aeo/overview/.*

[69] OMB Circular A–4 (Sept. 17, 2003), section E, ''Identifying and Measuring Benefits and Costs.''

[70] See comment submitted by NRDC to docket EE–RM/STD–01–350 on January 15, 2007, Comment 131, pp. 16–17.

V.B.1.b of this notice and chapter 11 of the NOPR TSD.

J. Manufacturer Impact Analysis

1. Overview

DOE performed an MIA to determine the financial impact of amended energy conservation standards on manufacturers of residential boilers and to estimate the potential impact of such standards on employment and manufacturing capacity. The MIA has both quantitative and qualitative aspects. The quantitative part of the MIA primarily relies on the Government Regulatory Impact Model (GRIM), an industry cash-flow model with inputs specific to this rulemaking. The key GRIM inputs are industry cost structure data, shipment data, product costs, and assumptions about markups and conversion costs. The key output is the industry net present value (INPV). DOE used the GRIM to calculate cash flows using standard accounting principles and to compare changes in INPV between a base case and various TSLs (the standards case). The difference in INPV between the base case and standards cases represents the financial impact of amended energy conservation standards on residential boiler manufacturers. DOE used different sets of assumptions (markup scenarios) to represent the uncertainty surrounding potential impacts on prices and manufacturer profitability as a result of amended standards. These different assumptions produce a range of INPV results. The qualitative part of the MIA addresses the proposed standard's potential impacts on manufacturing capacity and industry competition, as well as any differential impacts the proposed standard may have on any particular sub-group of manufacturers. The qualitative aspect of the analysis also addresses product characteristics, as well as any significant market or product trends. The complete MIA is outlined in chapter 12 of the NOPR TSD.

DOE conducted the MIA for this rulemaking in three phases. In the first phase of the MIA, DOE prepared an industry characterization based on the market and technology assessment, preliminary manufacturer interviews, and publicly available information. As part of its profile of the residential boilers industry, DOE also conducted a top-down cost analysis of manufacturers in order to derive preliminary financial inputs for the GRIM (*e.g.,* sales, general, and administration (SG&A) expenses; research and development (R&D) expenses; and tax rates). DOE used public sources of information, including company SEC 10–K filings,[71] corporate annual reports, the U.S. Census Bureau's Economic Census,[72] and Hoover's reports [73] to conduct this analysis.

In the second phase of the MIA, DOE prepared an industry cash-flow analysis to quantify the potential impacts of amended energy conservation standards. In general, energy conservation standards can affect manufacturer cash flow in three distinct ways. These include: (1) Creating a need for increased investment; (2) raising production costs per unit; and (3) altering revenue due to higher per-unit prices and possible changes in sales volumes. DOE estimated industry cash flows in the GRIM at various potential standard levels using industry financial parameters derived in the first phase and the shipment scenario used in the NIA. The GRIM modeled both impacts from the AFUE energy conservation standards and impacts from standby mode and off mode energy conservation standards (*i.e.,* standards based on standby mode and off mode wattage). The GRIM results from the two standards were evaluated independent of one another.

In the third phase of the MIA, DOE conducted structured, detailed interviews with a variety of manufacturers that represent approximately 46 percent of domestic residential boiler sales covered by this rulemaking. During these interviews, DOE discussed engineering, manufacturing, procurement, and financial topics to validate assumptions used in the GRIM. DOE also solicited information about manufacturers' views of the industry as a whole and their key concerns regarding this rulemaking. See section IV.J.3 for a description of the key issues manufacturers raised during the interviews.

Additionally, in the third phase, DOE also evaluated subgroups of manufacturers that may be disproportionately impacted by amended standards or that may not be accurately represented by the average cost assumptions used to develop the industry cash-flow analysis. For example, small manufacturers, niche players, or manufacturers exhibiting a cost structure that largely differs from the industry average could be more negatively affected by amended energy conservation standards. DOE identified one subgroup (small manufacturers) for a separate impact analysis.

To identify small businesses for this analysis, DOE applied the small business size standards published by the Small Business Administration (SBA) to determine whether a company is considered a small business. 65 FR 30836, 30848 (May 15, 2000), as amended at 65 FR 53533, 53544 (Sept. 5, 2000) and codified at 13 CFR part 121. To be categorized as a small business under North American Industry Classification System (NAICS) code 333414, ''Heating Equipment (except Warm Air Furnaces) Manufacturing,'' a residential boiler manufacturer and its affiliates may employ a maximum of 500 employees. The 500-employee threshold includes all employees in a business's parent company and any other subsidiaries. Based on this classification, DOE identified at least 13 residential boiler companies that qualify as small businesses. The residential boiler small manufacturer subgroup is discussed in section VI.B of this notice and in chapter 12 of the NOPR TSD.

2. Government Regulatory Impact Model

DOE uses the GRIM to quantify the potential changes in cash flow due to amended standards that result in a higher or lower industry value. The GRIM was designed to conduct an annual cash-flow analysis using standard accounting principles that incorporates manufacturer costs, markups, shipments, and industry financial information as inputs. DOE thereby calculated a series of annual cash flows, beginning in 2014 (the base year of the analysis) and continuing to 2049. DOE summed the stream of annual discounted cash flows during this period to calculate INPVs at each TSL. For residential boiler manufacturers, DOE used a real discount rate of 8.0 percent, which was derived from industry financial information and then modified according to feedback received during manufacturer interviews. DOE also used the GRIM to model changes in costs, shipments, investments, and manufacturer margins that could result from amended energy conservation standards.

After calculating industry cash flows and INPV, DOE compared changes in INPV between the base case and each standards case. The difference in INPV between the base case and a standards case represents the financial impact of the amended energy conservation

[71] U.S. Securities and Exchange Commission, Annual 10–K Reports (Various Years) (Available at: *http://www.sec.gov/edgar/searchedgar/companysearch.html*).

[72] U.S. Census Bureau, Annual Survey of Manufacturers: General Statistics: Statistics for Industry Groups and Industries (2011) (Available at: *http://factfinder2.census.gov/faces/nav/jsf/pages/searchresults.xhtml?refresh=t*).

[73] Hoovers Inc. Company Profiles, Various Companies (Available at: *http://www.hoovers.com*).

standard on manufacturers at a particular TSL. As discussed previously, DOE collected this information on GRIM inputs from a number of sources, including publicly-available data and confidential interviews with a number of manufacturers. GRIM inputs are discussed in more detail in the next section. The GRIM results are discussed in section V.B.2. Additional details about the GRIM, the discount rate, and other financial parameters can be found in chapter 12 of the NOPR TSD.

For consideration of standby mode and off mode regulations, DOE modeled the impacts of the technology options for reducing electricity usage discussed in the engineering analysis (chapter 5 of the TSD). The GRIM analysis incorporates the incremental additions to the MPC of standby mode and off mode features and the resulting impacts on markups.

Due to the small cost of standby mode and off mode components relative to the overall cost of a residential boiler, DOE assumes that standards regarding standby mode and off mode features alone would not impact product shipment numbers. Additionally, DOE has tentatively concluded that the incremental cost of standby mode and off mode features would not have a differentiated impact on manufacturers of different product classes. Consequently, DOE models the impact of standby mode and off mode for the industry as a whole.

The electric boiler product classes were not analyzed in the GRIM for AFUE energy conservation standards. As a result, quantitative numbers for those product classes are not available in the GRIM analyzing standby mode and off mode standards. However, the standby mode and off mode technology options considered for electric boilers are identical to the technology options for all other residential boiler product classes. As a result, DOE expects the standby mode and off mode impacts on electric boilers to be of the same order of magnitude as the impacts on all other residential boiler product classes.

a. Government Regulatory Impact Model Key Inputs

Manufacturer Production Costs

Manufacturing a higher-efficiency product is typically more expensive than manufacturing a baseline product due to the use of more complex components, which are typically more costly than baseline components. The changes in the MPCs of the analyzed products can affect the revenues, gross margins, and cash flow of the industry, making these product cost data key GRIM inputs for DOE's analysis.

In the MIA, DOE used the MPCs for each considered efficiency level calculated in the engineering analysis, as described in section IV.C and further detailed in chapter 5 of the NOPR TSD. In addition, DOE used information from its teardown analysis (described in chapter 5 of the TSD) to disaggregate the MPCs into material, labor, and overhead costs. To calculate the MPCs for products at and above the baseline, DOE performed teardowns and cost modeling that allowed DOE to estimate the incremental material, labor, and overhead costs for products above the baseline. These cost breakdowns and product markups were validated and revised with input from manufacturers during manufacturer interviews.

Shipments Forecast

The GRIM estimates manufacturer revenues based on total unit shipment forecasts and the distribution of these values by efficiency level. Changes in sales volumes and efficiency mix over time can significantly affect manufacturer finances. For this analysis, the GRIM uses the NIA's annual shipment forecasts derived from the shipments analysis from 2014 (the base year) to 2049 (the end year of the analysis period). The shipments model divides the shipments of residential boilers into specific market segments. The model starts from a historical base year and calculates retirements and shipments by market segment for each year of the analysis period. This approach produces an estimate of the total product stock, broken down by age or vintage, in each year of the analysis period. In addition, the product stock efficiency distribution is calculated for the base case and for each standards case for each product class. The NIA shipments forecasts are, in part, based on a roll-up scenario. The forecast assumes that a product in the base case that does not meet the standard under consideration would ''roll up'' to meet the amended standard beginning in the compliance year of 2020. See section IV.G and chapter 9 of the NOPR TSD for additional details.

Product and Capital Conversion Costs

Amended energy conservation standards would cause manufacturers to incur one-time conversion costs to bring their production facilities and product designs into compliance. DOE evaluated the level of conversion-related expenditures that would be needed to comply with each considered efficiency level in each product class. For the MIA, DOE classified these conversion costs into two major groups: (1) Capital conversion costs; and (2) product conversion costs. Capital conversion costs are one-time investments in property, plant, and equipment necessary to adapt or change existing production facilities such that new compliant product designs can be fabricated and assembled. Product conversion costs are one-time investments in research, development, testing, marketing, and other non-capitalized costs necessary to make product designs comply with amended energy conservation standards.

To evaluate the level of capital conversion expenditures manufacturers would likely incur to comply with amended energy conservation standards, DOE used manufacturer interviews to gather data on the anticipated level of capital investment that would be required at each efficiency level. Based on manufacturer feedback, DOE developed a market-share-weighted manufacturer average capital expenditure which it then applied to the entire industry. DOE also made assumptions about which manufacturers would develop their own condensing heat exchanger production lines, in the event that efficiency levels using condensing technology were proposed. DOE supplemented manufacturer comments and tailored its analyses with estimates of capital expenditure requirements derived from the product teardown analysis and engineering analysis described in chapter 5 of the TSD.

DOE assessed the product conversion costs at each considered efficiency level by integrating data from quantitative and qualitative sources. DOE considered market-share-weighted feedback regarding the potential costs of each efficiency level from multiple manufacturers to estimate product conversion costs (*e.g.,* R&D expenditures, certification costs) and validated those numbers against engineering estimates of redesign efforts. DOE combined this information with product listings to estimate how much manufacturers would have to spend on product development and product testing at each efficiency level. Manufacturer data were aggregated to better reflect the industry as a whole and to protect confidential information.

In general, DOE assumes that all conversion-related investments occur between the year of publication of the final rule and the year by which manufacturers must comply with the amended standards. The conversion cost figures used in the GRIM can be found in section V.B.2.a of this notice. For additional information on the

estimated product and capital conversion costs, see chapter 12 of the NOPR TSD.

b. Government Regulatory Impact Model Scenarios

Markup Scenarios

As discussed in the previous section, MSPs include direct manufacturing production costs (*i.e.,* labor, materials, and overhead estimated in DOE's MPCs) and all non-production costs (*i.e.,* SG&A, R&D, and interest), along with profit. To calculate the MSPs in the GRIM, DOE applied non-production cost markups to the MPCs estimated in the engineering analysis for each product class and efficiency level. Modifying these markups in the standards case yields different sets of impacts on manufacturers. For the MIA, DOE modeled two standards-case markup scenarios to represent the uncertainty regarding the potential impacts on prices and profitability for manufacturers following the implementation of amended energy conservation standards: (1) A preservation of gross margin percentage markup scenario; and (2) a preservation of per-unit operating profit markup scenario. These scenarios lead to different markup values that, when applied to the inputted MPCs, result in varying revenue and cash-flow impacts.

Under the preservation of gross margin percentage markup scenario, DOE applied a single uniform ''gross margin percentage'' markup across all efficiency levels, which assumes that following amended standards, manufacturers would be able to maintain the same amount of profit as a percentage of revenue at all efficiency levels within a product class. As production costs increase with efficiency, this scenario implies that the absolute dollar markup will increase as well. Based on publicly-available financial information for manufacturers of residential boilers, as well as comments from manufacturer interviews, DOE assumed the average non-production cost markup—which includes SG&A expenses, R&D expenses, interest, and profit—to be 1.41 for all product classes. This markup scenario represents the upper bound of the residential boiler industry's profitability in the standards case because manufacturers are able to fully pass through additional costs due to standards to consumers.

DOE decided to include the preservation of per-unit operating profit scenario in its analysis because manufacturers stated that they do not expect to be able to mark up the full cost of production in the standards case, given the highly competitive nature of the residential boiler market. In this scenario, manufacturer markups are set so that operating profit one year after the compliance date of amended energy conservation standards is the same as in the base case on a per-unit basis. In other words, manufacturers are not able to garner additional operating profit from the higher production costs and the investments that are required to comply with the amended standards; however, they are able to maintain the same operating profit in the standards case that was earned in the base case. Therefore, operating margin in percentage terms is reduced between the base case and standards case. DOE adjusted the manufacturer markups in the GRIM at each TSL to yield approximately the same earnings before interest and taxes in the standards case as in the base case. The preservation of per-unit operating profit markup scenario represents the lower bound of industry profitability in the standards case. This is because manufacturers are not able to fully pass through to consumers the additional costs necessitated by residential boiler standards, as they are able to do in the preservation of gross margin percentage markup scenario.

3. Manufacturer Interviews

DOE interviewed manufacturers representing approximately 55 percent of the residential boiler market by revenue. DOE contractors endeavor to conduct interviews with a representative cross section of manufacturers (including large and small manufacturers, covering all equipment classes and product offerings). DOE contractors reached out to all the small business manufacturers that were identified as part of the analysis, as well as larger manufacturers that have significant market share in the residential boilers market. These interviews were in addition to those DOE conducted as part of the engineering analysis. The information gathered during these interviews enabled DOE to tailor the GRIM to reflect the unique financial characteristics of the residential boiler industry. The information gathered during these interviews enabled DOE to tailor the GRIM to reflect the unique financial characteristics of the residential boiler industry. All interviews provided information that DOE used to evaluate the impacts of potential amended energy conservation standards on manufacturer cash flows, manufacturing capacities, and employment levels.

In interviews, DOE asked manufacturers to describe their major concerns with potential standards arising from a rulemaking involving residential boilers. Manufacturer interviews are conducted under non-disclosure agreements (NDAs), so DOE does not document these discussions in the same way that it does public comments in the comment summaries and DOE's responses throughout the rest of this notice. The following sections highlight the most significant of manufacturers' statements that helped shape DOE's understanding of potential impacts of an amended standard on the industry. Manufacturers raised a range of general issues for DOE to consider, including a diminished ability to serve the replacement market, concerns that condensing boilers may not perform as rated without heating system modifications, and concerns about reduced product durability. (DOE also considered all other concerns expressed by manufacturers in this analysis.) Below, DOE summarizes these issues, which were raised in manufacturer interviews, in order to obtain public comment and related data.

Diminished Ability To Serve the Replacement Market

In interviews, several manufacturers pointed out that over 90 percent of residential boiler sales are transacted in the replacement channel, rather than the new construction channel. They stated that the current residential boiler market is structured around the legacy venting infrastructures that exist in the vast majority of homes and that any regulation that eliminated 82 to 83-percent efficient products would be very disruptive to the market. Manufacturers argued that under this scenario, consumers would face much higher installation costs, as well as complex challenges in changing the layout of the boiler room and upgrading their venting and heat distribution systems. Manufacturers argued that these considerations may induce consumers to explore other HVAC options and may cause them to leave the boiler market entirely. Manufacturers also asserted that the elimination of 82 to 83-percent efficient products could be disruptive to the market because several manufacturers would have to eliminate commodity products that generate a majority of their sales and be forced to sell products for which they are less vertically integrated, which may cause them to exit the market entirely. Some manufacturers speculated that if this scenario were to play out, it could result in the loss of a substantial number of American manufacturing jobs.

Accordingly, DOE has considered this feedback when developing its analysis of installation costs (see section IV.F.1), shipments analysis (see section IV.G), and employment impacts analysis (see section (V.B.2.b).

Condensing Boilers May Not Perform As Rated Without System Improvements

Several manufacturers argued out that condensing boilers may have overstated efficiencies in terms of actual results in the field if they are installed as replacements in legacy distribution systems that were designed to maintain hot water supply temperatures of 180–200 °F. Manufacturers stated that in these systems, return water temperatures will often be too high for condensing boilers to operate in condensing mode, thereby causing the boiler to be less efficient than its express rating. Manufacturers also stated that because condensing boilers are designed for lower maximum supply water temperatures, the heat distribution output of the heating system as a whole is often reduced, and the boiler may not be able to meet heat distribution requirements. This may require the implementation of additional heat distribution equipment within a particular system. Some manufacturers pointed out that reducing the supply water temperature also reduces the radiation component of some heat distribution units, which is essential for comfort and allows consumers to maintain a lower thermostat setting. Reducing the radiation component may require a higher thermostat setting to maintain comfort, thereby reducing overall system efficiency.

DOE recognizes this issue and considered it in the energy use analysis for residential boilers. See chapter 7 of the NOPR TSD for additional details.

Reduced Product Durability and Reliability

Several manufacturers commented that higher-efficiency condensing boilers on the market have not demonstrated the same level of durability and reliability as lower-efficiency products. Manufacturers stated that condensing products require more upkeep and maintenance and generally do not last as long as non-condensing products. Several manufacturers pointed out that they generally incur large after-sale costs with their condensing products because of additional warranty claims. Maintenance calls for these boilers require more skilled technicians and occur more frequently than they do with non-condensing boilers.

DOE considered these comments when developing its estimates of repair and maintenance costs for residential boilers (see section IV.F.2.c) and product lifetime (IV.F.2.d).

K. Emissions Analysis

In the emissions analysis, DOE estimated the reduction in power sector emissions of carbon dioxide (CO_2), nitrogen oxides (NO_X), sulfur dioxide (SO_2), and mercury (Hg) from potential amended energy conservation standards for residential boilers. In addition to estimating impacts of standards on power sector emissions, DOE estimated emissions impacts in production activities (extracting, processing, and transporting fuels) that provide the energy inputs to power plants. These are referred to as ''upstream'' emissions. Together, these emissions account for the full-fuel-cycle (FFC). In accordance with DOE's FFC Statement of Policy (76 FR 51281 (Aug. 18, 2011) as amended at 77 FR 49701 (August 17, 2012)), the FFC analysis also includes impacts on emissions of methane (CH_4) and nitrous oxide (N_2O), both of which are recognized as greenhouse gases. The combustion emissions factors and the method that DOE used to derive upstream emissions factors are described in chapter 13 of the NOPR TSD. The cumulative emissions reduction estimated for residential boilers is presented in section V.B.6.

Today's proposed standards would reduce use of fuel at the site and slightly reduce electricity use, thereby reducing power sector emissions. However, the highest efficiency levels (*i.e.,* the max-tech levels) considered for residential boilers would increase the use of electricity by the furnace. For the considered TSLs, DOE estimated the change in power sector and upstream emissions of CO_2, NO_X, SO_2, and Hg.[74]

DOE primarily conducted the emissions analysis using emissions factors for CO_2 and most of the other gases derived from data in *AEO 2013.* Combustion emissions of CH_4 and N_2O were estimated using emissions intensity factors published by the Environmental Protection Agency (EPA) in its GHG Emissions Factors Hub.[75] Site emissions of CO_2 and NO_X were estimated using emissions intensity factors from a separate EPA publication.[76] DOE developed separate emissions factors for power sector emissions and upstream emissions. The method that DOE used to derive emissions factors is described in chapter 13 of the NOPR TSD.

For CH_4 and N_2O, DOE calculated emissions reduction in tons and also in terms of units of carbon dioxide equivalent (CO_2eq). Gases are converted to CO_2eq by multiplying each ton of the greenhouse gas by the gas's global warming potential (GWP) over a 100-year time horizon. Based on the Fifth Assessment Report of the Intergovernmental Panel on Climate Change,[77] DOE used GWP values of 28 for CH_4 and 265 for N_2O.

EIA prepares the *Annual Energy Outlook* using the National Energy Modeling System (NEMS). Each annual version of NEMS incorporates the projected impacts of existing air quality regulations on emissions. *AEO 2013* generally represents current legislation and environmental regulations, including recent government actions, for which implementing regulations were available as of December 31, 2012.

Because the on-site operation of residential boilers requires use of fossil fuels and results in emissions of CO_2, NO_X, and SO_2 at the sites where these appliances are used, DOE also accounted for the reduction in these site emissions and the associated upstream emissions due to potential standards.

SO_2 emissions from affected electric generating units (EGUs) are subject to nationwide and regional emissions cap-and-trade programs. Title IV of the Clean Air Act sets an annual emissions cap on SO_2 for affected EGUs in the 48 contiguous States and the District of Columbia (DC). (42 U.S.C. 7651 *et seq.*) SO_2 emissions from 28 eastern States and DC were also limited under the Clean Air Interstate Rule (CAIR; 70 FR 25162 (May 12, 2005)), which created an allowance-based trading program that operates along with the Title IV program. CAIR was remanded to the U.S. Environmental Protection Agency (EPA) by the U.S. Court of Appeals for the District of Columbia Circuit, but it remained in effect.[78] In 2011, EPA

[74] Note that in these cases, the reduction in site emissions of CO_2, NO_X, and SO_2 is larger than the increase in power sector emissions.

[75] See *http://www.epa.gov/climateleadership/inventory/ghg-emissions.html.*

[76] U.S. Environmental Protection Agency, Compilation of Air Pollutant Emission Factors, AP–42, Fifth Edition, Volume I: Stationary Point and Area Sources (1998) (Available at: *http://www.epa.gov/ttn/chief/ap42/index.html*).

[77] IPCC, 2013: *Climate Change 2013: The Physical Science Basis. Contribution of Working Group I to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change* [Stocker, T.F., D. Qin, G.-K. Plattner, M. Tignor, S.K. Allen, J. Boschung, A. Nauels, Y. Xia, V. Bex and P.M. Midgley (eds.)]. Cambridge University Press, Cambridge, United Kingdom and New York, NY, USA. Chapter 8.

[78] See *North Carolina* v. *EPA,* 550 F.3d 1176 (D.C. Cir. 2008); *North Carolina* v. *EPA,* 531 F.3d 896 (D.C. Cir. 2008).

issued a replacement for CAIR, the Cross-State Air Pollution Rule (CSAPR). 76 FR 48208 (August 8, 2011). On August 21, 2012, the D.C. Circuit issued a decision to vacate CSAPR.[79] The court ordered EPA to continue administering CAIR. The emissions factors used for today's NOPR, which are based on *AEO 2013,* assume that CAIR remains a binding regulation through 2040.[80]

The attainment of emissions caps is typically flexible among EGUs and is enforced through the use of emissions allowances and tradable permits. Beginning in 2016, however, SO_2 emissions will decline significantly as a result of the Mercury and Air Toxics Standards (MATS) for power plants. 77 FR 9304 (Feb. 16, 2012). In the final MATS rule, EPA established a standard for hydrogen chloride as a surrogate for acid gas hazardous air pollutants (HAP), and also established a standard for SO_2 (a non-HAP acid gas) as an alternative equivalent surrogate standard for acid gas HAP. The same controls are used to reduce HAP and non-HAP acid gas; thus, SO_2 emissions will be reduced as a result of the control technologies installed on coal-fired power plants to comply with the MATS requirements for acid gas. *AEO 2013* assumes that, in order to continue operating, coal plants must have either flue gas desulfurization or dry sorbent injection systems installed by 2016. Both technologies, which are used to reduce acid gas emissions, also reduce SO_2 emissions. Under the MATS, emissions will be far below the cap established by CAIR, so it is likely that the increase in electricity demand associated with the highest residential boiler efficiency levels would increase SO_2 emissions.

CAIR established a cap on NO_X emissions in 28 eastern States and the District of Columbia.[81] Thus, it is unlikely that the increase in electricity demand associated with the highest residential boiler efficiency levels would increase NO_X emissions in those States covered by CAIR. However, these levels would be expected to increase NO_X emissions in the States not affected by the caps, so DOE estimated NO_X emissions increases for these States.

The MATS limit mercury emissions from power plants, but they do not include emissions caps and, as such, the increase in electricity demand associated with the highest residential boiler efficiency levels would be expected to increase Hg emissions. DOE estimated mercury emissions using emissions factors based on *AEO 2013,* which incorporates the MATS.

L. Monetizing Carbon Dioxide and Other Emissions Impacts

As part of the development of this proposed rule, DOE considered the estimated monetary benefits from the reduced emissions of CO_2 and NO_X that are expected to result from each of the TSLs considered. In order to make this calculation similar to the calculation of the NPV of consumer benefit, DOE considered the reduced emissions expected to result over the lifetime of products shipped in the forecast period for each TSL. This section summarizes the basis for the monetary values used for each of these emissions and presents the values considered in this rulemaking.

For today's NOPR, DOE is relying on a set of values for the social cost of carbon (SCC) that was developed by a Federal interagency process. A summary of the basis for these values is provided below, and a more detailed description of the methodologies used is provided as an appendix to chapter 14 of the NOPR TSD.

1. Social Cost of Carbon

The SCC is an estimate of the monetized damages associated with an incremental increase in carbon emissions in a given year. It is intended to include (but is not limited to) changes in net agricultural productivity, human health, property damages from increased flood risk, and the value of ecosystem services. Estimates of the SCC are provided in dollars per metric ton of carbon dioxide. A domestic SCC value is meant to reflect the value of damages in the United States resulting from a unit change in carbon dioxide emissions, while a global SCC value is meant to reflect the value of damages worldwide.

Under section 1(b)(6) of Executive Order 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (Oct. 4, 1993), agencies must, to the extent permitted by law, ''assess both the costs and the benefits of the intended regulation and, recognizing that some costs and benefits are difficult to quantify, propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs.'' The purpose of the SCC estimates presented here is to allow agencies to incorporate the monetized social benefits of reducing CO_2 emissions into cost-benefit analyses of regulatory actions. The estimates are presented with an acknowledgement of the many uncertainties involved and with a clear understanding that they should be updated over time to reflect increasing knowledge of the science and economics of climate impacts.

As part of the interagency process that developed the SCC estimates, technical experts from numerous agencies met on a regular basis to consider public comments, explore the technical literature in relevant fields, and discuss key model inputs and assumptions. The main objective of this process was to develop a range of SCC values using a defensible set of input assumptions grounded in the existing scientific and economic literatures. In this way, key uncertainties and model differences transparently and consistently inform the range of SCC estimates used in the rulemaking process.

a. Monetizing Carbon Dioxide Emissions

When attempting to assess the incremental economic impacts of carbon dioxide emissions, the analyst faces a number of challenges. A recent report from the National Research Council[82] points out that any assessment will suffer from uncertainty, speculation, and lack of information about: (1) Future emissions of greenhouse gases; (2) the effects of past and future emissions on the climate system; (3) the impact of changes in climate on the physical and biological environment; and (4) the translation of these environmental impacts into economic damages. As a result, any effort to quantify and monetize the harms associated with climate change will raise questions of science, economics, and ethics and should be viewed as provisional.

[79] See *EME Homer City Generation, LP* v. *EPA,* 696 F.3d 7, 38 (D.C. Cir. 2012), *cert. granted,* 81 U.S.L.W. 3567, 81 U.S.L.W. 3696, 81 U.S.L.W. 3702 (U.S. June 24, 2013) (No. 12–1182).

[80] On April 29, 2014, the U.S. Supreme Court reversed the judgment of the D.C. Circuit and remanded the case for further proceedings consistent with the Supreme Court's opinion. The Supreme Court held in part that EPA's methodology for quantifying emissions that must be eliminated in certain States due to their impacts in other downwind States was based on a permissible, workable, and equitable interpretation of the Clean Air Act provision that provides statutory authority for CSAPR. See *EPA* v. *EME Homer City Generation,* No 12–1182, slip op. at 32 (U.S. April 29, 2014). Because DOE is using emissions factors based on *AEO 2013* for today's NOPR, the NOPR assumes that CAIR, not CSAPR, is the regulation in force. The difference between CAIR and CSAPR is not relevant for the purpose of DOE's analysis of SO_2 emissions.

[81] CSAPR also applies to NO_X, and it would supersede the regulation of NO_X under CAIR. As stated previously, the current analysis assumes that CAIR, not CSAPR, is the regulation in force. The difference between CAIR and CSAPR with regard to DOE's analysis of NO_X is slight.

[82] National Research Council. *Hidden Costs of Energy: Unpriced Consequences of Energy Production and Use.* National Academies Press: Washington, DC (2009).

Despite the limits of both quantification and monetization, SCC estimates can be useful in estimating the social benefits of reducing carbon dioxide emissions. The agency can estimate the benefits from reduced (or costs from increased) emissions in any future year by multiplying the change in emissions in that year by the SCC value appropriate for that year. The net present value of the benefits can then be calculated by multiplying each of these future benefits by an appropriate discount factor and summing across all affected years.

It is important to emphasize that the interagency process is committed to updating these estimates as the science and economic understanding of climate change and its impacts on society improves over time. In the meantime, the interagency group will continue to explore the issues raised by this analysis and consider public comments as part of the ongoing interagency process.

b. Development of Social Cost of Carbon Values

In 2009, an interagency process was initiated to offer a preliminary assessment of how best to quantify the benefits from reducing carbon dioxide emissions. To ensure consistency in how benefits are evaluated across agencies, the Administration sought to develop a transparent and defensible method, specifically designed for the rulemaking process, to quantify avoided climate change damages from reduced CO_2 emissions. The interagency group did not undertake any original analysis. Instead, it combined SCC estimates from the existing literature to use as interim values until a more comprehensive analysis could be conducted. The outcome of the preliminary assessment by the interagency group was a set of five interim values: global SCC estimates for 2007 (in 2006$) of $55, $33, $19, $10, and $5 per metric ton of CO_2. These interim values represented the first sustained interagency effort within the U.S. government to develop an SCC for use in regulatory analysis. The results of this preliminary effort were presented in several proposed and final rules.

c. Current Approach and Key Assumptions

After the release of the interim values, the interagency group reconvened on a regular basis to generate improved SCC estimates. Specifically, the group considered public comments and further explored the technical literature in relevant fields. The interagency group relied on three integrated assessment models commonly used to estimate the SCC: the FUND, DICE, and PAGE models. These models are frequently cited in the peer-reviewed literature and were used in the last assessment of the Intergovernmental Panel on Climate Change (IPCC). Each model was given equal weight in the SCC values that were developed.

Each model takes a slightly different approach to model how changes in emissions result in changes in economic damages. A key objective of the interagency process was to enable a consistent exploration of the three models, while respecting the different approaches to quantifying damages taken by the key modelers in the field. An extensive review of the literature was conducted to select three sets of input parameters for these models: Climate sensitivity, socio-economic and emissions trajectories, and discount rates. A probability distribution for climate sensitivity was specified as an input into all three models. In addition, the interagency group used a range of scenarios for the socio-economic parameters and a range of values for the discount rate. All other model features were left unchanged, relying on the model developers' best estimates and judgments.

In 2010, the interagency group selected four sets of SCC values for use in regulatory analyses. Three sets of values are based on the average SCC from three integrated assessment models, at discount rates of 2.5 percent, 3 percent, and 5 percent. The fourth set, which represents the 95th-percentile SCC estimate across all three models at a 3-percent discount rate, is included to represent higher-than-expected impacts from climate change further out in the tails of the SCC distribution. The values grow in real terms over time. Additionally, the interagency group determined that a range of values from 7 percent to 23 percent should be used to adjust the global SCC to calculate domestic effects, although preference is given to consideration of the global benefits of reducing CO_2 emissions.[83] Table IV.24 presents the values in the 2010 interagency group report,[84] which is reproduced in appendix 14A of the NOPR TSD.

TABLE IV.24—ANNUAL SCC VALUES FROM 2010 INTERAGENCY REPORT, 2010–2050

[In 2007 dollars per metric ton CO_2]

Year	Discount rate			
	5%	3%	2.5%	3%
	Average	Average	Average	95th percentile
2010	4.7	21.4	35.1	64.9
2015	5.7	23.8	38.4	72.8
2020	6.8	26.3	41.7	80.7
2025	8.2	29.6	45.9	90.4
2030	9.7	32.8	50.0	100.0
2035	11.2	36.0	54.2	109.7
2040	12.7	39.2	58.4	119.3
2045	14.2	42.1	61.7	127.8
2050	15.7	44.9	65.0	136.2

[83] It is recognized that this calculation for domestic values is approximate, provisional, and highly speculative. There is no *a priori* reason why domestic benefits should be a constant fraction of net global damages over time.

[84] *Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866.* Interagency Working Group on Social Cost of Carbon, United States Government (February 2010) (Available at: *http://www.whitehouse.gov/sites/default/files/omb/inforeg/for-agencies/Social-Cost-of-Carbon-for-RIA.pdf*).

The SCC values used for today's notice were generated using the most recent versions of the three integrated assessment models that have been published in the peer-reviewed literature. Table IV.25 shows the updated sets of SCC estimates from the 2013 interagency update [85] in five-year increments from 2010 to 2050. Appendix 14B of the NOPR TSD provides the full set of values. The central value that emerges is the average SCC across models at a 3-percent discount rate. However, for purposes of capturing the uncertainties involved in regulatory impact analysis, the interagency group emphasizes the importance of including all four sets of SCC values.

TABLE IV.25—ANNUAL SCC VALUES FROM 2013 INTERAGENCY UPDATE, 2010–2050

[In 2007 dollars per metric ton CO_2]

Year	Discount rate			
	5%	3%	2.5%	3%
	Average	Average	Average	95th percentile
2010	11	32	51	89
2015	11	37	57	109
2020	12	43	64	128
2025	14	47	69	143
2030	16	52	75	159
2035	19	56	80	175
2040	21	61	86	191
2045	24	66	92	206
2050	26	71	97	220

It is important to recognize that a number of key uncertainties remain, and that current SCC estimates should be treated as provisional and revisable since they will evolve with improved scientific and economic understanding. The interagency group also recognizes that the existing models are imperfect and incomplete. The National Research Council report mentioned above points out that there is tension between the goal of producing quantified estimates of the economic damages from an incremental ton of carbon and the limits of existing efforts to model these effects. There are a number of analytical challenges that are being addressed by the research community, including research programs housed in many of the Federal agencies participating in the interagency process to estimate the SCC. The interagency group intends to periodically review and reconsider those estimates to reflect increasing knowledge of the science and economics of climate impacts, as well as improvements in modeling.

In summary, in considering the potential global benefits resulting from reduced CO_2 emissions, DOE used the values from the 2013 interagency report, adjusted to 2013$ using the Gross Domestic Product price deflator. For each of the four SCC cases specified, the values used for emissions in 2015 were $12.0, $40.5, $62.4, and $119 per metric ton avoided (values expressed in 2013$). DOE derived values after 2050 using the relevant growth rates for the 2040–2050 period in the interagency update.

DOE multiplied the CO_2 emissions reduction estimated for each year by the SCC value for that year in each of the four cases. To calculate a present value of the stream of monetary values, DOE discounted the values in each of the four cases using the specific discount rate that had been used to obtain the SCC values in each case.

2. Valuation of Other Emissions Reductions

As noted above, DOE has taken into account how amended energy conservation standards would reduce site NO_X emissions nationwide and increase power sector NO_X emissions in those 22 States not affected by the CAIR. DOE estimated the monetized value of net NO_X emissions reductions resulting from each of the TSLs considered for today's NOPR based on estimates found in the relevant scientific literature. Estimates of monetary value for reducing NO_X from stationary sources range from $476 to $4,893 per ton in 2013$.[86] DOE calculated monetary benefits using a medium value for NO_X emissions of $2,684 per short ton (in 2013$), and real discount rates of 3 percent and 7 percent.

DOE is evaluating appropriate monetization of avoided SO_2 and Hg emissions in energy conservation standards rulemakings. DOE has not included monetization of those emissions in the current analysis.

M. Utility Impact Analysis

The utility impact analysis estimates several effects on the power generation industry that would result from the adoption of new or amended energy conservation standards. In the utility impact analysis, DOE analyzes the changes in installed electrical capacity and generation that would result for each trial standard level. The utility impact analysis uses a variant of NEMS,[87] which is a public domain, multi-sectored, partial equilibrium model of the U.S. energy sector. DOE uses a variant of this model, referred to as NEMS–BT,[88] to account for selected utility impacts of new or amended

[85] *Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866. Interagency Working Group on Social Cost of Carbon, United States Government (May 2013; revised November 2013) (Available at: http://www.whitehouse.gov/sites/default/files/omb/assets/inforeg/technical-update-social-cost-of-carbon-for-regulator-impact-analysis.pdf).*

[86] U.S. Office of Management and Budget, Office of Information and Regulatory Affairs, *2006 Report to Congress on the Costs and Benefits of Federal Regulations and Unfunded Mandates on State, Local, and Tribal Entities* (2006) (Available at: *http://www.whitehouse.gov/sites/default/files/omb/assets/omb/inforeg/2006_cb/2006_cb_final_report.pdf*).

[87] For more information on NEMS, refer to the U.S. Department of Energy, Energy Information Administration documentation. A useful summary is *National Energy Modeling System: An Overview 2003,* DOE/EIA–0581 (2003) (March 2003).

[88] DOE/EIA approves use of the name NEMS to describe only an official version of the model without any modification to code or data. Because this analysis entails some minor code modifications and the model is run under various policy scenarios that are variations on DOE/EIA assumptions, DOE refers to it by the name ''NEMS–BT'' (''BT'' is DOE's Building Technologies Program, under whose aegis this work has been performed).

energy conservation standards. DOE's analysis consists of a comparison between model results for the most recent *AEO* Reference Case and for cases in which energy use is decremented to reflect the impact of potential standards. The energy savings inputs associated with each TSL come from the NIA. Chapter 15 of the NOPR TSD describes the utility impact analysis in further detail.

N. Employment Impact Analysis

Employment impacts from new or amended energy conservation standards include direct and indirect impacts. Direct employment impacts are any changes in the number of employees of manufacturers of the products subject to standards; the MIA addresses those impacts. Indirect employment impacts are changes in national employment that occur due to the shift in expenditures and capital investment caused by the purchase and operation of more-efficient appliances. Indirect employment impacts from standards consist of the jobs created or eliminated in the national economy, other than in the manufacturing sector being regulated, due to: (1) Reduced spending by end users on energy; (2) reduced spending on new energy supply by the utility industry; (3) increased consumer spending on the purchase of new products; and (4) the effects of those three factors throughout the economy.

One method for assessing the possible effects on the demand for labor of such shifts in economic activity is to compare sector employment statistics developed by the Labor Department's Bureau of Labor Statistics (BLS). BLS regularly publishes its estimates of the number of jobs per million dollars of economic activity in different sectors of the economy, as well as the jobs created elsewhere in the economy by this same economic activity. Data from BLS indicate that expenditures in the utility sector generally create fewer jobs (both directly and indirectly) than expenditures in other sectors of the economy.[89] There are many reasons for these differences, including wage differences and the fact that the utility sector is more capital-intensive and less labor-intensive than other sectors. Energy conservation standards have the effect of reducing consumer utility bills. Because reduced consumer expenditures for energy likely lead to increased expenditures in other sectors of the economy, the general effect of efficiency standards is to shift economic activity from a less labor-intensive sector (*i.e.,* the utility sector) to more labor-intensive sectors (*e.g.,* the retail and service sectors). Thus, based on the BLS data alone, DOE believes net national employment may increase because of shifts in economic activity resulting from amended standards for residential boilers.

For the amended standard levels considered in this NOPR, DOE estimated indirect national employment impacts using an input/output model of the U.S. economy called Impact of Sector Energy Technologies, Version 3.1.1 (ImSET).[90] ImSET is a special-purpose version of the ''U.S. Benchmark National Input-Output'' (I–O) model, which was designed to estimate the national employment and income effects of energy-saving technologies. The ImSET software includes a computer-based I–O model having structural coefficients that characterize economic flows among the 187 sectors. ImSET's national economic I–O structure is based on a 2002 U.S. benchmark table, specially aggregated to the 187 sectors most relevant to industrial, commercial, and residential building energy use. DOE notes that ImSET is not a general equilibrium forecasting model, and understands the uncertainties involved in projecting employment impacts, especially changes in the later years of the analysis. Because ImSET does not incorporate price changes, the employment effects predicted by ImSET may over-estimate actual job impacts over the long run. For the NOPR, DOE used ImSET only to estimate short-term (through 2023) employment impacts.

For more details on the employment impact analysis, see chapter 16 of the NOPR TSD.

O. General Comments on Residential Boiler Standards

Fire & Ice, Weil McLain, and Weil McLain *et al.* stated that amended energy conservation standards for residential boilers would not achieve significant additional conservation of energy, would not be technologically feasible, and would not be economically justified. (Fire & Ice, No. 18 at p. 1; Weil McLain, No. 20–1 at pp. 1–2; Weil McLain *et al.,* No. 20–2 at p. 1) Crown Boiler, U.S. Boiler, and New Yorker Boiler do not believe that DOE can economically justify a minimum efficiency level for gas-fired hot water boilers any higher than the current 82-percent AFUE level. (Crown Boiler, No. 24 at p. 3; U.S. Boiler, No. 25 at p. 2; New Yorker Boiler, No. 26 at p. 2) Fire & Ice and Weil McLain *et al.* stated that amending the standards would reduce the choices available to consumers that will properly operate in the field. (Fire & Ice, No. 18 at pp. 1–2; Weil McLain *et al.,* No. 20–2 at pp. 1–2) Weil McLain stated that for replacement installations where a condensing boiler would not present an economically and technologically feasible method of actually achieving greater energy conservation, the non-condensing boilers allowed under the current standards can achieve significant energy savings when older, low-efficiency boilers are replaced. (Weil McLain, No. 20–1 at p. 5)

HTP stated that it does not support an incremental increase in the allowable minimum efficiency of residential boilers, because appliances which operate at efficiencies between 82-percent and 90-percent AFUE are very likely to experience cyclic condensation within their venting and periods of high vent temperatures. (HTP, No. 31 at p. 1) Condensation in the venting system causes corrosion that may lead to safety concerns.

The Joint Commenters urged DOE to strongly consider condensing-level standards for both gas-fired and oil-fired hot water boilers, as the analysis found that such standards would yield positive average LCC savings for consumers. The Joint Commenters stated that the LCC savings for consumers at condensing levels may be higher than indicated in the analysis for the NODA, in part because of lower installation costs due to the introduction of advanced venting systems and declining equipment costs. (Joint Commenters, No. 27 at p. 1) Belyea Bros. stated that all furnaces sold and installed in Canada must have an AFUE of 90 or above, and it is illogical to not treat boilers the same as furnaces. (Belyea Bros., No. 17 at p. 1)

DOE examined the impacts of condensing-level standards for both gas-fired and oil-fired hot water boilers. Its analysis accounted for applicable venting system technology and expected product costs for condensing boilers. Although condensing-level standards would save a substantial amount of energy, DOE concluded that such standards are likely not economically justified. DOE has tentatively concluded that, at the TSLs that include condensing efficiency levels (TSL 4 and TSL 5), the benefits would be outweighed by the large reduction in

[89] *See* Bureau of Economic Analysis, ''Regional Multipliers: A Handbook for the Regional Input-Output Modeling System (RIMS II),'' U.S. Department of Commerce (1992).

[90] M.J. Scott, O.V. Livingston, P.J. Balducci, J.M. Roop, and R.W. Schultz, *ImSET 3.1: Impact of Sector Energy Technologies,* PNNL–18412, Pacific Northwest National Laboratory (2009) (Available at: *www.pnl.gov/main/publications/external/technical_reports/PNNL-18412.pdf*).

industry value and the high number of consumers experiencing a net LCC cost for gas-fired hot water boilers and oil-fired hot water boilers, as well as the negative NPV at a 7-percent discount rate (TSL 5 only). See section V.C for further details.

A number of parties stated that much greater savings than indicated with AFUE or combustion efficiency tests are seen when replacing conventional heating equipment with integrated heat and hot water systems. (Breda, No. 29 at p. 1; Hlavaty Plumb Heat Cool, No. 29 at p. 1; Maritime Energy, No. 29 at p. 1; OSI Comfort Specialists, No. 29 at p. 1; Petro Heating & Air Conditioning Services, No. 29 at p. 1; Sunshine Fuels & Energy Services, No. 29 at p. 1; Aiello Home Services, No. 29 at p. 1; Lombardi Oil, No. 29 at p. 1; Soundview Heating and Air Conditioning, No. 29 at p. 1; Stocker Home Energy Services, No. 29 at p. 1) DOE agrees that integrated heat and hot water systems can provide significant overall energy savings compared to use of separate heat and hot water systems, but DOE does not have authority to adopt standards that would require the use of integrated heat and hot water systems.

V. Analytical Results and Conclusions

A. Trial Standard Levels

DOE developed trial standard levels (TSLs) that combine efficiency levels for each product class of residential boilers. The following section addresses the trial standard levels examined by DOE, the projected impacts of each of these levels if adopted as energy conservation standards for residential boilers, and the standards levels that DOE is proposing in today's NOPR. Additional details regarding the analyses conducted by DOE are contained in the publicly-available NOPR TSD supporting this notice.

1. TSLs for Energy Efficiency

Table V.1 presents the efficiency levels for each product class in each TSL that DOE has identified for residential boilers. TSL 5 consists of the max-tech efficiency levels. TSL 4 consists of those efficiency levels that provide the maximum NES with an NPV greater than zero at a 7-percent discount rate (see section V.B.3 for NPV results). TSL 3 consists of the efficiency levels that provide the highest NPV using a 7-percent discount rate, and that also result in a higher percentage of consumers that receive an LCC benefit than experience an LCC loss (see section V.B.1 for LCC results). TSL 2 consists of the intermediate efficiency levels. TSL 1 consists of the most common efficiency levels in the current market. Table V.1 and Table V.2 present the TSLs and the corresponding product class efficiency levels and AFUE levels that DOE considered for residential boilers.

TABLE V.1—TRIAL STANDARD LEVELS FOR RESIDENTIAL BOILERS BY EFFICIENCY LEVEL

Product class *	Trial standard levels				
	1	2	3	4	5
Gas-Fired Hot Water Boiler	1	2	3	5	6
Gas-Fired Steam Boiler	1	1	1	1	2
Oil-Fired Hot Water Boiler	1	2	2	3	3
Oil-Fired Steam Boiler	1	3	3	3	3

* As discussed in section IV.A.1, although electric hot water and electric steam boilers are in the scope of this rulemaking, these products were not analyzed for AFUE energy conservation standards and accordingly are not shown in this table.

TABLE V.2—TRIAL STANDARD LEVELS FOR RESIDENTIAL BOILERS BY AFUE

Product class *	Trial standard levels				
	1 (%)	2 (%)	3 (%)	4 (%)	5 (%)
Gas-Fired Hot Water Boiler	83	84	85	92	96
Gas-Fired Steam Boiler	82	82	82	82	83
Oil-Fired Hot Water Boiler	85	86	86	91	91
Oil-Fired Steam Boiler	84	86	86	86	86

* As discussed in section IV.A.1, electric hot water and electric steam boilers were not analyzed for AFUE energy conservation standards and accordingly are not shown in this table.

2. TSLs for Standby Mode and Off Mode

Table V.3 presents the TSLs and the corresponding product class efficiency levels (by efficiency level) that DOE considered for boiler standby mode and off mode power consumption. Table V.4 presents the TSLs and the corresponding product class efficiency levels (expressed in watts) that DOE considered for boiler standby mode and off mode power consumption. For boiler product classes, DOE considered three efficiency levels.

TABLE V.3—STANDBY MODE AND OFF MODE TRIAL STANDARD LEVELS FOR RESIDENTIAL BOILERS BY EFFICIENCY LEVEL

Product class	Trial standard levels		
	1	2	3
Gas-Fired Hot Water Boiler	1	2	3
Gas-Fired Steam Boiler	1	2	3
Oil-Fired Hot Water Boiler	1	2	3
Oil-Fired Steam Boiler	1	2	3
Electric Hot Water Boiler	1	2	3
Electric Steam Boiler	1	2	3

TABLE V.4—STANDBY MODE AND OFF MODE TRIAL STANDARD LEVELS FOR RESIDENTIAL BOILERS BY WATTS

Product class	Trial standard levels		
	1	2	3
Gas-Fired Hot Water Boiler	10.0	9.7	9.0
Gas-Fired Steam Boiler	9.0	8.7	8.0
Oil-Fired Hot Water Boiler	12.0	11.7	11.0
Oil-Fired Steam Boiler	12.0	11.7	11.0
Electric Hot Water Boiler	9.0	8.7	8.0

TABLE V.4—STANDBY MODE AND OFF MODE TRIAL STANDARD LEVELS FOR RESIDENTIAL BOILERS BY WATTS—Continued

Product class	Trial standard levels		
	1	2	3
Electric Steam Boiler	9.0	8.7	8.0

B. Economic Justification and Energy Savings

1. Economic Impacts on Individual Consumers

DOE analyzed the economic impacts on residential boilers consumers by looking at the effects potential amended standards would have on the LCC and PBP. DOE also examined the impacts of potential standards on consumer subgroups. These analyses are discussed below.

a. Life-Cycle Cost and Payback Period

To evaluate the net economic impact of potential amended energy conservation standards on consumers of residential boilers, DOE conducted LCC and PBP analyses for each TSL. In general, higher-efficiency products would affect consumers in two ways: (1) annual operating expense would decrease, and (2) purchase price would increase. Inputs used for calculating the LCC and PBP include total installed costs (*i.e.,* product price plus installation costs), operating costs (*i.e.,* annual energy use, energy prices, energy price trends, repair costs, and maintenance costs), product lifetime, and discount rates.

The key outputs of the LCC analysis are a mean LCC savings (or cost) and a median PBP relative to the base-case efficiency distribution for each product class of residential boilers, as well as the percentage of consumers for whom the LCC under an amended standard would decrease (net benefit), increase (net cost), or exhibit no change (no impact). No impacts occur when the base-case efficiency of the boiler of a particular household equals or exceeds the efficiency at a given TSL.

DOE also performed a PBP analysis as part of the consumer impact analysis. The PBP is the number of years it would take for the consumer to recover the increased costs of higher-efficiency product as a result of energy savings based on the operating cost savings. The PBP is an economic benefit-cost measure that uses benefits and costs without discounting. Chapter 8 of the NOPR TSD provides detailed information on the LCC and PBP analyses.

DOE's LCC and PBP analyses provide five key outputs for each efficiency level above the baseline, as reported in Table V.5 through Table V.8 for the considered AFUE TSLs. (Results for all efficiency levels are reported in chapter 8 of the NOPR TSD.) These outputs include the proportion of residential boiler purchases in which the purchase of a boiler compliant with the amended energy conservation standard creates a net LCC increase, no impact, or a net LCC savings for the consumer. Another output is the average LCC savings from standard-compliant products, as well as the median PBP for the consumer investment in standards-compliant products. Savings are measured relative to the base-case efficiency distribution (see section IV.F.2), not the baseline efficiency level.

TABLE V.5—SUMMARY AFUE LIFE-CYCLE COST AND PAYBACK PERIOD RESULTS FOR GAS-FIRED HOT WATER RESIDENTIAL BOILERS

Trial standard level	AFUE (%)	Life-cycle cost (2013$)			Life-cycle cost savings				Payback period (years)
		Total installed cost	Discounted operating cost	LCC	Average savings (2013$)	% of consumers that experience *			
						Net cost (%)	No impact (%)	Net benefit (%)	Median
1	83	$5,447	$21,837	$27,284	$35	4	79	18	1.6
2	84	5,461	21,616	27,077	100	3	68	29	1.6
3	85	5,585	21,431	27,016	123	13	57	30	7.7
4	92	6,768	20,022	26,790	201	38	29	33	18.8
5	96	7,523	19,338	26,860	134	57	7	36	22.1

* Rounding may cause some items to not total 100 percent.

TABLE V.6—SUMMARY AFUE LIFE-CYCLE COST AND PAYBACK PERIOD RESULTS FOR GAS-FIRED STEAM RESIDENTIAL BOILERS

Trial standard level	AFUE (%)	Life-cycle cost (2013$)			Life-cycle cost savings				Payback period (years)
		Total installed cost	Discounted operating cost	LCC	Average savings (2013$)	% of consumers that experience *			
						Net cost (%)	No impact (%)	Net benefit (%)	Median
1	82	$5,621	$21,472	$27,093	$61	1	86	14	1.3
2	82	5,621	21,472	27,093	61	1	86	14	1.3
3	82	5,621	21,472	27,093	61	1	86	14	1.3
4	82	5,621	21,472	27,093	61	1	86	14	1.3
5	83	5,928	21,287	27,215	250	28	11	61	11.6

* Rounding may cause some items to not total 100 percent.

TABLE V.7—SUMMARY AFUE LIFE-CYCLE COST AND PAYBACK PERIOD RESULTS FOR OIL-FIRED HOT WATER RESIDENTIAL BOILERS

Trial standard level	AFUE (%)	Life-cycle cost (2013$)			Life-cycle cost savings				Payback period (years)
		Total installed cost	Discounted operating cost	LCC	Average savings (2013$)	% of consumers that experience *			
						Net cost (%)	No impact (%)	Net benefit (%)	Median
1	85	$7,332	$49,200	$56,532	$72	4	81	15	8.3
2	86	7,527	48,648	56,175	257	9	49	42	7.6
3	86	7,527	48,648	56,175	257	9	49	42	7.6
4	91	9,555	46,600	56,155	273	54	8	38	21.4
5	91	9,555	46,600	56,155	273	54	8	38	21.4

* Rounding may cause some items to not total 100 percent.

TABLE V.8—SUMMARY AFUE LIFE-CYCLE COST AND PAYBACK PERIOD RESULTS FOR OIL-FIRED STEAM RESIDENTIAL BOILERS

Trial standard level	AFUE (%)	Life-cycle cost (2013$)			Life-cycle cost savings				Payback period (years)
		Total installed cost	Discounted operating cost	LCC	Average savings (2013$)	% of consumers that experience *			
						Net cost (%)	No impact (%)	Net benefit (%)	Median
1	84	$7,422	$48,429	$55,850	$259	3	71	27	6.3
2	86	7,873	47,345	55,218	723	23	10	67	10.5
3	86	7,873	47,345	55,218	723	23	10	67	10.5
4	86	7,873	47,345	55,218	723	23	10	67	10.5
5	86	7,873	47,345	55,218	723	23	10	67	10.5

* Rounding may cause some items to not total 100 percent.

Table V.9 through Table V.14 show the key LCC and PBP results for each product class for standby mode and off mode.

TABLE V.9—SUMMARY STANDBY MODE AND OFF MODE LIFE-CYCLE COST AND PAYBACK PERIOD RESULTS FOR GAS-FIRED HOT WATER RESIDENTIAL BOILERS

Trial standard level	Efficiency level	Life-cycle cost (2013$)			Life-cycle cost savings				Payback period (years)
		Total installed cost	Discounted operating cost	LCC	Average savings (2013$)	% of consumers that experience *			
						Net cost (%)	No impact (%)	Net benefit (%)	Median
1	1	$2	$196	$198	$14	0	51	49	1.1
2	2	22	190	212	7	11	51	38	10.4
3	3	23	176	199	14	6	51	44	7.8

* Rounding may cause some items to not total 100 percent.

TABLE V.10—SUMMARY STANDBY MODE AND OFF MODE LIFE-CYCLE COST AND PAYBACK PERIOD RESULTS FOR GAS-FIRED STEAM RESIDENTIAL BOILERS

Trial standard level	Efficiency level	Life-cycle cost (2013$)			Life-cycle cost savings				Payback period (years)
		Total installed cost	Discounted operating cost	LCC	Average savings (2013$)	% of consumers that experience *			
						Net cost (%)	No impact (%)	Net benefit (%)	Median
1	1	$2	$187	$189	$15	0	51	49	1.1
2	2	21	181	202	9	9	51	41	10.3
3	3	23	166	188	15	4	51	45	7.4

* Rounding may cause some items to not total 100 percent.

TABLE V.11—SUMMARY STANDBY MODE AND OFF MODE LIFE-CYCLE COST AND PAYBACK PERIOD RESULTS FOR OIL-FIRED HOT WATER RESIDENTIAL BOILERS

Trial standard level	Efficiency level	Life-cycle cost (2013$)			Life-cycle cost savings				Payback period (years)
		Total installed cost	Discounted operating cost	LCC	Average savings (2013$)	% of consumers that experience *			Median
						Net cost (%)	No impact (%)	Net benefit (%)	
1	1	$2	$253	$255	$15	0	51	49	1.0
2	2	21	247	268	9	9	51	41	10.2
3	3	22	232	254	15	4	51	45	7.4

* Rounding may cause some items to not total 100 percent.

TABLE V.12—SUMMARY STANDBY MODE AND OFF MODE LIFE-CYCLE COST AND PAYBACK PERIOD RESULTS FOR OIL-FIRED STEAM RESIDENTIAL BOILERS

Trial standard level	Efficiency level	Life-cycle cost (2013$)			Life-cycle cost savings				Payback period (years)
		Total installed cost	Discounted operating cost	LCC	Average savings (2013$)	% of consumers that experience *			Median
						Net cost (%)	No impact (%)	Net benefit (%)	
1	1	$2	$247	$249	$14	0	51	49	1.3
2	2	21	241	262	8	9	51	41	10.7
3	3	22	226	249	15	4	51	45	8.4

* Rounding may cause some items to not total 100 percent.

TABLE V.13—SUMMARY STANDBY MODE AND OFF MODE LIFE-CYCLE COST AND PAYBACK PERIOD RESULTS FOR ELECTRIC HOT WATER RESIDENTIAL BOILERS

Trial standard level	Efficiency level	Life-cycle cost (2013$)			Life-cycle cost savings				Payback period (years)
		Total installed cost	Discounted operating cost	LCC	Average savings (2013$)	% of consumers that experience *			Median
						Net cost (%)	No impact (%)	Net benefit (%)	
1	1	$2	$141	$143	$11	0	51	49	2.0
2	2	21	136	158	3	19	51	30	17.7
3	3	23	126	148	8	11	51	38	11.0

* Rounding may cause some items to not total 100 percent.

TABLE V.14—SUMMARY STANDBY MODE AND OFF MODE LIFE-CYCLE COST AND PAYBACK PERIOD RESULTS FOR ELECTRIC STEAM RESIDENTIAL BOILERS

Trial standard level	Efficiency level	Life-cycle cost (2013$)			Life-cycle cost savings				Payback period (years)
		Total installed cost	Discounted operating cost	LCC	Average savings (2013$)	% of consumers that experience *			Median
						Net cost (%)	No impact (%)	Net benefit (%)	
1	1	$2	$144	$146	$11	0	51	49	2.0
2	2	21	139	161	4	19	51	31	10.5
3	3	23	128	151	9	11	51	38	10.9

* Rounding may cause some items to not total 100 percent.

b. Consumer Subgroup Analysis

In the consumer subgroup analysis, DOE estimated the impacts of the considered AFUE TSLs on low-income and senior-only households. The average LCC savings and median payback periods for low-income and senior-only households are shown in Table V.15. Chapter 11 of the NOPR TSD presents detailed results of the consumer subgroup analysis.

TABLE V.15—COMPARISON OF IMPACTS FOR CONSUMER SUBGROUPS WITH ALL CONSUMERS, GAS-FIRED HOT WATER BOILERS

[AFUE TSLs]

TSL	AFUE (%)	Average life-cycle cost savings (2013$)			Median payback period (years)		
		Senior-only	Low-income	All consumers	Senior-only	Low-income	All consumers
1	83	$27	$24	$35	1.8	1.5	1.6
2	84	76	79	100	1.9	1.5	1.6
3	85	73	82	123	9.9	9.1	7.7
4	92	(34)	(128)	201	20.6	22.3	18.8
5	96	(202)	(294)	134	24.5	23.7	22.1

Note: Parentheses indicate negative values.

TABLE V.16—COMPARISON OF IMPACTS FOR CONSUMER SUBGROUPS WITH ALL CONSUMERS, GAS-FIRED STEAM BOILERS

[AFUE TSLs]

TSL	AFUE (%)	Average life-cycle cost savings (2013$)			Median payback period (years)		
		Senior-only	Low-income	All consumers	Senior-only	Low-income	All consumers
1	82	$50	$53	$61	1.7	1.3	1.3
2	82	50	53	61	1.7	1.3	1.3
3	82	50	53	61	1.7	1.3	1.3
4	82	50	53	61	1.7	1.3	1.3
5	83	160	180	250	13.0	11.1	11.6

TABLE V.17—COMPARISON OF IMPACTS FOR CONSUMER SUBGROUPS WITH ALL CONSUMERS, OIL-FIRED HOT WATER BOILERS

[AFUE TSLs]

TSL	AFUE (%)	Average life-cycle cost savings (2013$)			Median payback period (years)		
		Senior-only	Low-income	All consumers	Senior-only	Low-income	All consumers
1	85	$58	$25	$72	7.9	9.8	8.3
2	86	234	103	257	6.3	10.9	7.6
3	86	234	103	257	6.3	10.9	7.6
4	91	75	(1,019)	273	19.8	47.5	21.4
5	91	75	(1,019)	273	19.8	47.5	21.4

Note: Parentheses indicate negative values.

TABLE V.18—COMPARISON OF IMPACTS FOR CONSUMER SUBGROUPS WITH ALL CONSUMERS, OIL-FIRED STEAM BOILERS

[AFUE TSLs]

TSL	AFUE (%)	Average life-cycle cost savings (2013$)			Median payback period (years)		
		Senior-only	Low-income	All consumers	Senior-only	Low-income	All consumers
1	84	$8	$120	$259	1.0	9.5	6.3
2	86	13	247	723	1.0	15.7	10.5
3	86	13	247	723	1.0	15.7	10.5
4	86	13	247	723	1.0	15.7	10.5
5	86	13	247	723	1.0	15.7	10.5

c. Rebuttable Presumption Payback Period

As discussed in section III.E.2, EPCA establishes a rebuttable presumption that an energy conservation standard is economically justified if the increased purchase cost for a product that meets the standard is less than three times the value of the first-year energy savings resulting from the standard. Accordingly, DOE calculated a rebuttable-presumption PBP for each TSL for residential boilers based on average usage profiles. As a result, DOE calculated a single rebuttable-presumption payback value, and not a distribution of PBPs, for each TSL. However, DOE routinely conducts an economic analysis that considers the full range of impacts to the consumer, manufacturer, Nation, and environment, as required by EPCA under 42 U.S.C. 6295(o)(2)(B)(i). The results of that analysis serve as the basis for DOE to

definitively evaluate the economic justification for a potential standard level, thereby supporting or rebutting the results of any preliminary determination of economic justification.

Table V.19 shows the rebuttable-presumption PBPs for the considered AFUE TSLs for the residential boilers product classes. Table V.20 shows the rebuttable-presumption PBPs for the considered TSLs for standby mode and off mode for the residential boilers product classes.

TABLE V.19—REBUTTABLE-PRESUMPTION PAYBACK PERIODS (YEARS) FOR RESIDENTIAL BOILERS FOR ANALYSIS OF AFUE STANDARDS

Product class	Rebuttable presumption payback (years)				
	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
Gas-fired hot water boilers	6.1	3.4	6.1	10.6	12.5
Gas-fired steam boilers	1.8	1.8	1.8	1.8	8.4
Oil-fired hot water boilers	7.3	5.9	5.9	9.4	9.4
Oil-fired steam boilers	3.4	4.8	4.8	4.8	4.8

TABLE V.20—STANDBY MODE AND OFF MODE REBUTTABLE-PRESUMPTION PAYBACK PERIODS (YEARS) FOR RESIDENTIAL BOILERS

Product class	Rebuttable presumption payback (years)		
	TSL 1	TSL 2	TSL 3
Gas-fired hot water boilers	1.7	15.0	11.4
Gas-fired steam boilers	1.5	12.9	9.9
Oil-fired hot water boilers	1.5	12.7	9.7
Oil-fired steam boilers	1.5	12.8	9.8
Electric hot water boilers	1.3	11.7	8.9
Electric steam boilers	1.3	11.7	8.9

2. Economic Impacts on Manufacturers

As noted previously, DOE performed an MIA to estimate the impact of amended energy conservation standards on manufacturers of residential boilers. The following section describes the expected impacts on manufacturers at each considered TSL. DOE first discusses the impacts of potential AFUE standards and then turns to the impacts of potential standby mode and off mode standards. Chapter 12 of the NOPR TSD explains the analysis in further detail.

a. Industry Cash-Flow Analysis Results

Cash-Flow Analysis Results for Residential Boilers AFUE Standards

Table V.21 and Table V.22 depict the estimated financial impacts (represented by changes in INPV) of amended energy conservation standards on manufacturers of residential boilers, as well as the conversion costs that DOE expects manufacturers would incur for all product classes at each TSL. To evaluate the range of cash-flow impacts on the residential boiler industry, DOE modeled two different markup scenarios using different assumptions that correspond to the range of anticipated market responses to amended energy conservation standards: (1) The preservation of gross margin percentage scenario; and (2) the preservation of per-unit operating profit scenario. Each of these scenarios is discussed immediately below.

To assess the lower (less severe) end of the range of potential impacts, DOE modeled a preservation of gross margin percentage markup scenario, in which a uniform ''gross margin percentage'' markup is applied across all potential efficiency levels. In this scenario, DOE assumed that a manufacturer's absolute dollar markup would increase as production costs increase in the standards case.

To assess the higher (more severe) end of the range of potential impacts, DOE modeled the preservation of per-unit operating profit markup scenario, which assumes that manufacturers would not be able to generate greater operating profit on a per-unit basis in the standards case as compared to the base case. Rather, as manufacturers make the necessary investments required to convert their facilities to produce new standards-compliant products and incur higher costs of goods sold, their percentage markup decreases. Operating profit does not change in absolute dollars and decreases as a percentage of revenue.

As noted in the MIA methodology discussion (see IV.J.2), in addition to markup scenarios, the MPC, shipments, and conversion cost assumptions also affect INPV results.

The results in Table V.21 and Table V.22 show potential INPV impacts for residential boiler manufacturers; Table V.21 reflects the lower bound of impacts, and Table V.22 represents the upper bound.

Each of the modeled scenarios in the AFUE standards analysis results in a unique set of cash flows and corresponding industry values at each TSL. In the following discussion, the INPV results refer to the difference in industry value between the base case and each standards case that results from the sum of discounted cash flows from the base year 2014 through 2049, the end of the analysis period.

To provide perspective on the short-run cash flow impact, DOE discusses the change in free cash flow between the base case and the standards case at each TSL in the year before new standards would take effect. These figures provide an understanding of the magnitude of the required conversion costs at each TSL relative to the cash flow generated by the industry in the base case.

TABLE V.21—MANUFACTURER IMPACT ANALYSIS FOR RESIDENTIAL BOILERS FOR AFUE STANDARDS—PRESERVATION OF GROSS MARGIN PERCENTAGE MARKUP SCENARIO *

	Units	Base case	Trial standard level				
			1	2	3	4	5
INPV	2013$ millions	380.96	380.91	383.35	381.73	369.87	380.46
Change in INPV	2013$ millions	.....	(0.04)	2.39	0.77	(11.08)	(0.50)
	%	.....	(0.01)	0.63	0.20	(2.91)	(0.13)
Product Conversion Costs	2013$ millions	.....	1.32	1.69	3.38	25.04	36.59
Capital Conversion Costs	2013$ millions	.....	.....	0.90	0.90	60.13	68.41
Total Conversion Costs	2013$ millions	.....	1.32	2.59	4.28	85.16	105.00
Free Cash Flow (base case = 2019)	2013$ millions	25.83	25.44	24.92	24.41	(8.73)	(15.92)
Change in Free Cash Flow (change from base case).	2013$ millions	.....	(0.40)	(0.90)	(1.40)	(34.60)	(41.80)
	%	.....	(1.53)	(3.54)	(5.49)	(133.80)	(161.64)

* Parentheses indicate negative values.

TABLE V.22—MANUFACTURER IMPACT ANALYSIS FOR RESIDENTIAL BOILERS FOR AFUE STANDARDS—PRESERVATION OF PER-UNIT OPERATING PROFIT MARKUP SCENARIO *

	Units	Base case	Trial standard level				
			1	2	3	4	5
INPV	2013$ millions	380.96	379.17	378.31	372.97	284.75	241.69
Change in INPV	2013$ millions	.....	(1.79)	(2.65)	(7.99)	(96.21)	(139.26)
	%	.....	(0.47)	(0.70)	(2.10)	(25.25)	(36.56)
Product Conversion Costs	2013$ millions	.....	1.32	1.69	3.38	25.04	36.59
Capital Conversion Costs	2013$ millions	.....	.....	0.90	0.90	60.13	68.41
Total Conversion Costs	2013$ millions	.....	1.32	2.59	4.28	85.16	105.00
Free Cash Flow (base case = 2019)	2013$ millions	25.83	25.44	24.92	24.41	(8.73)	(15.92)
Change in Free Cash Flow (change from the base case).	2013$ millions	.....	(0.40)	(0.90)	(1.40)	(34.60)	(41.80)
	%	.....	(1.53)	(3.54)	(5.49)	(133.80)	(161.64)

* Parentheses indicate negative values.

TSL 1 represents EL 1 for all product classes. At TSL 1, DOE estimates impacts on INPV for residential boiler manufacturers to range from -0.47 percent to -0.01 percent, or a change in INPV of -$1.79 million to -$0.04 million. At this potential standard level, industry free cash flow would be estimated to decrease by approximately 1.53 percent to $25.44 million, compared to the base-case value of $25.83 million in 2019, the year before the compliance date.

At TSL 1, DOE does not anticipate manufacturers would lose a significant portion of their INPV. This is largely due to the fact that the vast majority of shipments would already meet or exceed the efficiency levels prescribed at TSL 1. DOE projects that in 2020, the expected year of compliance, approximately 80 percent of residential boiler shipments would meet or exceed the efficiency levels at TSL 1. As a result, only a small percentage of residential boiler shipments would need to be converted at TSL 1, so DOE expects low conversion costs at this TSL. DOE expects residential boiler manufacturers to incur $1.32 million in product conversion costs for boiler redesign and testing. DOE does not expect the modest efficiency gains at this TSL to require any major product upgrades or capital investments.

At TSL 1, under the preservation of gross margin percentage scenario, the shipment-weighted average MPC increases by approximately 1 percent relative to the base-case MPC. Manufacturers are able to fully pass on this cost increase to consumers by design in this markup scenario. This slight price increase would not mitigate the $1.32 million in conversion costs estimated at TSL 1, resulting in slightly negative INPV impacts at TSL 1 under the this scenario.

Under the preservation of per-unit operating profit markup scenario, manufacturers earn the same operating profit as would be earned in the base case, but do not earn additional profit from their investments. The 1-percent MPC increase is outweighed by a slightly lower average markup and $1.32 million in conversion costs, resulting in small negative impacts at TSL 1.

TSL 2 sets the efficiency level at EL 1 for one product class (gas-fired steam boilers), EL 2 for two product classes (gas-fired hot water boilers and oil-fired hot water boilers) and EL 3 for one product class (oil-fired steam boilers). At TSL 2, DOE estimates impacts on INPV for residential boilers manufacturers to range from -0.70 percent to 0.63 percent, or a change in INPV of -$2.65 million to $2.39 million. At this potential standard level, industry free cash flow would be estimated to decrease by approximately 3.54 percent to $24.92 million, compared to the base-case value of $25.83 million in 2019, the year before the compliance date.

DOE does not anticipate manufacturers would lose a substantial portion of their INPV, because a large percentage of shipments would still meet or exceed the efficiency levels prescribed at this TSL. At TSL 2, DOE estimates that in 2020, 63 percent of residential boiler shipments would meet or exceed the efficiency levels analyzed. The drop in the percentage of compliant products is largely due to the fact that the oil-fired hot water product class would move to EL 2 and the oil-fired steam product class would move to EL 3. At these efficiency levels, DOE projects only 41 percent and 10 percent of shipments of hot water and steam oil-fired boilers, respectively, would meet

or exceed the levels at TSL 2 in 2020, the year of compliance. These figures do not have a large impact on INPV, however, because oil-fired boilers would only comprise approximately 30 percent of residential boiler shipments in 2020 according to DOE projections, while gas-fired boilers would comprise over 70 percent of shipments.

DOE expects conversion costs would increase, but would still remain small compared to total industry value, as most manufacturers have gas-fired boilers at the prescribed efficiency levels on the market and would only have to make minor changes to their production processes. While the percentage of oil-fired boilers at these efficiency levels on the market is lower, manufacturers did not cite any major investments that would have to be made to reach the efficiency levels at EL 2 for hot water products and EL 3 for steam products. Manufacturers also pointed out that gas-fired boiler shipments vastly out-pace oil-fired boiler shipments and that the market is continuing to trend towards gas-fired products. Overall, DOE estimates manufacturers would incur $1.69 million in product conversion costs for product redesign and testing and $0.90 million in capital conversion costs to make minor changes to their production lines.

At TSL 2, under the preservation of gross margin percentage scenario, the shipment-weighted average MPC increases by 2 percent relative to the base-case MPC. In this scenario, INPV impacts are slightly positive because of manufacturers' ability to pass the higher production costs to consumers outweighs the $2.59 million in conversion costs. Under the preservation of per-unit operating profit markup scenario, the 2-percent MPC increase is outweighed by a slightly lower average markup and $2.59 million in total conversion costs, resulting in minimally negative impacts at TSL 2.

TSL 3 represents EL 1 for one product class (gas-fired steam boilers), EL 2 for one product class (oil-fired hot water boilers), and EL 3 for two product classes (gas-fired hot water boilers and oil-fired steam boilers). At TSL 3, DOE estimates impacts on INPV for residential boiler manufacturers to range from -2.10 percent to 0.20 percent, or a change in INPV of -$7.99 million to $0.77 million. At this potential standard level, industry free cash flow would be estimated to decrease by approximately 5.49 percent in 2019, the year before compliance, to $24.41 million compared to the base-case value of $25.83 million.

While more significant than the impacts at TSL 2, the impacts on INPV at TSL 3 would still be relatively minor compared to the total industry value. Percentage impacts on INPV would be slightly positive to slightly negative at TSL 3. DOE does not anticipate that manufacturers would lose a significant portion of their INPV at this TSL. While less than the previous TSLs, DOE projects that in 2020, over half of total shipments would already meet or exceed the efficiency levels prescribed at TSL 3. DOE expects conversion costs to remain small at TSL 3 compared to the total industry value. DOE estimates that product conversion costs would increase as manufacturers would have to redesign a larger percentage of their offerings and may have to design new products to replace lower-efficiency commodity products. At this TSL, DOE estimates that residential boiler manufacturers would incur $3.38 million in product conversion costs. Manufacturers, however, did not cite any major changes that would need to be made to production equipment to achieve the efficiency levels at this TSL. DOE, therefore, estimates that capital conversion costs would remain at $0.90 million for the industry.

At TSL 3, under the preservation of gross margin percentage markup scenario, the shipment-weighted average MPC increases by 4 percent relative to the base-case MPC. In this scenario, INPV impacts are slightly positive because manufacturers' ability to pass the higher production costs to consumers outweighs the $4.28 million in total conversion costs. Under the preservation of per-unit operating profit markup scenario, the 4 percent MPC increase is slightly outweighed by a slightly lower average markup and $4.28 million in total conversion costs, resulting in minimally negative impacts at TSL 3.

TSL 4 represents EL 1 for one product class (gas-fired steam boilers), EL 3 for two product classes (oil-fired hot water boilers and oil-fired steam boilers), and EL 5 for one product class (gas-fired hot water boilers). At TSL 4, DOE estimates impacts on INPV for residential boiler manufacturers to range from −25.25 percent to −2.91 percent, or a change in INPV of −$96.21 million to −$11.08 million. At this potential standard level, industry free cash flow would be estimated to decrease by approximately 133.8 percent in the year before compliance (2019) to −$8.73 million relative to the base-case value of $25.83 million.

Percentage impacts on INPV are moderately to significantly negative at TSL 4. DOE projects that in 2020, only 28 percent of residential boiler shipments would meet or exceed the efficacy levels at TSL 4. DOE expects that conversion costs would increase significantly at this TSL due to the fact that manufacturers would meet these efficiency levels by using condensing heat exchangers in their gas-fired and oil-fired hot water boiler products.[91] Currently, the majority of gas-fired hot water boilers on the market is made from cast iron, carbon steel, or copper and contains noncondensing heat exchangers, because if these boilers were designed to condense, the acidic condensate from the flue gas would corrode these metals and cause the boiler to fail prematurely. If standards were set where manufacturers of gas-fired hot water boiler products could only meet the efficiency levels with condensing technology, companies that produce their own cast iron sections or their own carbon steel or copper heat exchangers would have to eliminate many of their commodity products, close foundries and casting facilities, and restructure their businesses. Domestic manufacturers who currently offer condensing products import their condensing heat exchangers (constructed from either stainless steel or aluminum) from Europe. DOE believes that if standards were set where manufacturers of gas-fired hot water boiler products could only meet the efficiency levels with condensing technology, some manufacturers may choose to develop their own condensing heat exchanger production capacity in order to gain a cost advantage and remain vertically integrated. This would require large capital investments in higher-tech, more-automated production lines and new equipment to handle the different metals that are required. Companies that are currently heavily invested in lower-efficiency products may not be able to make these investments and may choose to exit the market. As noted above, these companies also may choose to source condensing heat exchangers and assemble a product designed around the sourced part, rather than invest in their own heat exchanger production capacity. This strategy would remove a significant piece of the value chain for these companies.

While condensing products and condensing technology are not entirely unfamiliar to the companies that already make condensing products domestically, most manufacturers in the residential boiler industry have

[91] At these efficiency levels, manufacturers would also use a condensing heat exchanger for oil-fired hot water boiler products; however, these models are much less common, and DOE believes that the majority of the conversion costs at this TSL would be driven by gas-fired hot water boiler products.

relatively little experience in manufacturing the heat exchanger itself. If manufacturers choose to develop their own heat exchanger production capacity, a great deal of testing, prototyping, design, and manufacturing engineering resources will be required to design the heat exchanger and the more advanced control systems found in more-efficient products.

These capital and production conversion expenses lead to the large reduction in cash flow in the years preceding the standard. DOE believes that only a few domestic manufacturers have the resources for this undertaking and believes that some large manufacturers and many smaller manufacturers would continue to source their heat exchangers. Ultimately, DOE estimates that manufacturers would incur $25.04 million in product conversion costs, as some manufacturers would be expected to attempt to add production capacity for condensing heat exchangers and others would have to design baseline products around a sourced condensing heat exchanger. In addition, DOE estimates that manufacturers would incur $60.13 million in capital conversion costs, which would be driven by capital investments in heat exchanger production lines.

At TSL 4, under the preservation of gross margin percentage markup scenario, the shipment-weighted average MPC increases by 37 percent relative to the base-case MPC. In this scenario, INPV impacts are slightly negative because manufacturers' ability to pass the higher production costs to consumers is slightly outweighed the $85.16 million in total conversion costs. Under the preservation of per-unit operating profit markup scenario, the 37-percent MPC increase is outweighed by a lower average markup of 1.37 (compared to 1.41 in the preservation of gross margin percentage markup scenario) and $85.16 million in total conversion costs, resulting in significantly negative impacts at TSL 4.

TSL 5 represents EL 2 for one product class (gas-fired steam boilers), EL 3 for two product classes (oil-fired hot water boilers and oil-fired steam boilers), and EL 6 for one product class (gas-fired hot water boilers). TSL 5 represents max-tech for all product classes. At TSL 5, DOE estimates impacts on INPV for residential boiler manufacturers to range from −36.59 percent to −0.13 percent, or a change in INPV of −$139.26 million to −$0.50 million. At this potential standard level, industry free cash flow would be estimated to decrease by approximately 161.64 percent in the year before compliance (2019) to −$15.92 million relative to the base-case value of $25.83 million.

At TSL 5, percentage impacts on INPV range from slightly negative to significantly negative. DOE estimates that in 2020, only 7 percent of residential boiler shipments would already meet or exceed the efficiency levels prescribed at TSL 5. DOE expects conversion costs to continue to increase at TSL 5, as almost all products on the market would have to be redesigned and new products would have to be developed. As with TSL 4, DOE believes that at these efficiency levels, some manufacturers would choose to develop their own condensing heat exchanger production, rather than continuing to source these components. DOE estimates that product conversion costs would increase to $36.59 million as manufacturers would have to redesign a larger percentage of their offerings, implement complex control systems, and meet max-tech for all product classes. DOE estimates that manufacturers would incur $68.41 million in capital conversion costs due to some manufacturers choosing to develop their own heat exchanger production and others having to increase the throughput of their existing condensing boiler production lines.

At TSL 5, under the preservation of gross margin percentage markup scenario, the shipment-weighted average MPC increases by 58 percent relative to the base-case MPC. In this scenario, INPV impacts are negative because manufacturers' ability to pass the higher production costs to consumers is outweighed by the $105.0 million in total conversion costs. Under the preservation of per-unit operating profit markup scenario, the 58-percent MPC increase is outweighed by a lower average markup of 1.36 and $105.0 million in total conversion costs, resulting in significantly negative impacts at TSL 5.

Cash-Flow Analysis Results for Residential Boilers in Standby Mode and Off Mode

Standby mode and off mode standards results are presented in Table V.23 and Table V.24. The impacts of standby mode and off mode features were analyzed for the same product classes as the amended AFUE standards, but at different efficiency levels, which correspond to a different set of technology options for reducing standby mode and off mode energy consumption. Therefore, the TSLs in the standby mode and off mode analysis do not correspond to the TSLs in the AFUE analysis. Also, the electric boiler product classes were not analyzed in the GRIM for AFUE standards. As a result, quantitative numbers are also not available for the GRIM analyzing standby mode and off mode standards. However, the standby mode and off mode technology options considered for electric boilers are identical to the technology options for all other residential boiler product classes. Consequently, DOE expects the standby mode and off mode impacts on electric boilers to be of the same order of magnitude as the impacts on all other boiler product classes.

The impacts of standby mode and off mode features were analyzed for the same two markup scenarios to represent the upper and lower bounds of industry impacts for residential boilers that were used in the AFUE analysis: (1) A preservation of gross margin percentage scenario; and (2) a preservation of per-unit operating profit scenario. As with the AFUE analysis, the preservation of gross margin percentage represents the lower bound of impacts, while the preservation of per-unit operating profit scenario represents the upper bound of impacts.

Each of the modeled scenarios in the standby mode and off mode analyses results in a unique set of cash flows and corresponding industry values at each TSL. In the following discussion, the INPV results refer to the difference in industry value between the base case and each standards case that results from the sum of discounted cash flows from the base year 2014 through 2049, the end of the analysis period.

To provide perspective on the short-run cash flow impact, DOE discusses the change in free cash flow between the base case and the standards case at each TSL in the year before new standards would take effect. These figures provide an understanding of the magnitude of the required conversion costs at each TSL relative to the cash flow generated by the industry in the base case.

TABLE V.23—MANUFACTURER IMPACT ANALYSIS FOR RESIDENTIAL BOILERS FOR STANDBY MODE AND OFF MODE STANDARDS—PRESERVATION OF GROSS MARGIN PERCENTAGE MARKUP SCENARIO *

	Units	Base case	Trial standard level		
			1	2	3
INPV	2013$ millions	380.96	380.88	381.16	381.17
Change in INPV	2013$ millions		(0.07)	0.20	0.22
	%		(0.02)	0.05	0.06
Product Conversion Costs	2013$ millions		0.21	0.21	0.21
Capital Conversion Costs	2013$ millions				
Total Conversion Costs	2013$ millions		0.21	0.21	0.21
Free Cash Flow (base case = 2019)	2013$ millions	25.83	25.77	25.77	25.77
Change in Free Cash Flow (change from base case)	2013$ millions		(0.06)	(0.06)	(0.06)
	%		(0.24)	(0.24)	(0.24)

* Parentheses indicate negative values.

TABLE V.24—MANUFACTURER IMPACT ANALYSIS FOR RESIDENTIAL BOILERS FOR STANDBY MODE AND OFF MODE STANDARDS—PRESERVATION OF PER-UNIT OPERATING PROFIT MARKUP SCENARIO *

	Units	Base case	Trial standard level		
			1	2	3
INPV	2013$ millions	380.96	380.77	379.94	379.88
Change in INPV	2013$ millions		(0.19)	(1.02)	(1.08)
	%		(0.05)	(0.27)	(0.28)
Product Conversion Costs	2013$ millions		0.21	0.21	0.21
Capital Conversion Costs	2013$ millions				
Total Conversion Costs	2013$ millions		0.21	0.21	0.21
Free Cash Flow (base case = 2019)	2013$ millions	25.83	25.77	25.77	25.77
Decrease in Free Cash Flow (change from base case)	2013$ millions		(0.06)	(0.06)	(0.06)
	%		(0.24)	(0.24)	(0.24)

* Parentheses indicate negative values.

TSL 1 represents EL 1 for all product classes. At TSL 1, DOE estimates impacts on INPV for residential boiler manufacturers to decrease by less than one tenth of a percent in both markup scenarios, which corresponds to a change in INPV of −$0.19 million to −$0.07 million. At this potential standard level, industry free cash flow is estimated to decrease by approximately 0.24 percent to $25.77 million, compared to the base-case value of $25.83 million in 2019, the year before the compliance date.

At TSL 1, DOE does not anticipate that manufacturers would lose a significant portion of their INPV. This is largely due to the small incremental costs of standby mode and off mode components relative to the overall costs of residential boiler products. DOE expects residential boiler manufacturers to incur $0.21 million in product conversion costs at TSL 1, primarily for testing. DOE does not expect that manufacturers would incur any capital conversion costs, as the product upgrades will only involve integrating a purchase-part.

TSL 2 sets the efficiency level at EL 2 for all product classes. At TSL 2, DOE estimates impacts on INPV for residential boilers manufacturers to range from −0.27 percent to 0.05 percent, or a change in INPV of −$1.02 million to $0.20 million. At this potential standard level, industry free cash flow is estimated to decrease by approximately 0.24 percent to $25.77 million, compared to the base-case value of $25.83 million in 2019, the year before the compliance date.

At TSL 2, DOE does not anticipate that manufacturers would lose a significant portion of their INPV. This is largely due to the small incremental costs of standby mode and off mode components relative to the overall costs of residential boiler products. DOE expects residential boiler manufacturers to incur $0.21 million in product conversion costs at TSL 2, primarily for testing. DOE does not expect that manufacturers would incur any capital conversion costs, as the product upgrades will only involve integrating a purchase-part.

TSL 3 represents EL 3 for all product classes. At TSL 3, DOE estimates impacts on INPV for residential boiler manufacturers to range from −0.28 percent to 0.06 percent, or a change in INPV of −$1.08 million to $0.22 million. At this potential standard level, industry free cash flow is estimated to decrease by approximately 0.24 percent in the year before compliance to $25.77 million compared to the base case value of $25.83 million.

At TSL 3, DOE does not anticipate that manufacturers would lose a significant portion of their INPV. As with TSLs 1 and 2, this is largely due to the small incremental costs of standby mode and off mode components relative to the overall costs of residential boiler products. DOE expects residential boiler manufacturers to incur $0.21 million in product conversion costs at TSL 3, primarily for testing. DOE does not expect that manufacturers would incur any capital conversion costs, as the product upgrades will only involve integrating a purchase-part.

Combining Cash-Flow Analysis Results for Residential Boilers (AFUE Standard and in Standby Mode and Off Mode Standard)

As noted in section III.B, DOE analyzed the AFUE standard and the standby and off mode standard independently. The AFUE metric accounts for the fuel use consumption whereas the standby and off mode metric accounts for the electrical energy use in standby and off mode. There are five trial standard levels under consideration for the AFUE standard

and three trial stand levels under consideration for the standby and off mode standard.

Both the AFUE standard and the standby and off mode standard could necessitate changes in manufacturer production costs, as well as conversion cost investments. The assumed design changes for the two standards in the engineering analysis are independent, therefore changes in manufacturing production costs and the conversion costs are additive. DOE expects that the costs to manufacturers would be mathematically the same regardless of whether or not the stand-by and off mode standards were combined or analyzed separately. However, DOE requests comment on whether an analysis that considers the cumulative costs of both standards when making technology choices would be more reflective of manufacturer decision making.

Using the current approach that considers AFUE and standby and off mode standards separately, the range of potential impacts of combined standards on INPV is determined by summing the range of potential changes in INPV from the AFUE standard and from the standby and off mode standard. Similarly, to estimate the combined conversion costs, DOE sums the estimated conversion costs from the two standards. DOE does not present the combined impacts of all possible combinations of AFUE and standby and off mode TSLs in this notice. However, DOE expects the combined impact of the TSLs proposed for AFUE and standby and off mode electrical consumption in this NOPR to range from −2.38 to 0.26 percent, which is approximately equivalent to a reduction of $9.07 million to an increase of $0.99 million.

b. Impacts on Direct Employment

To quantitatively assess the impacts of energy conservation standards on direct employment in the residential boiler industry, DOE used the GRIM to estimate the domestic labor expenditures and number of employees in the base case and at each TSL in 2020. DOE used statistical data from the U.S. Census Bureau's 2011 Annual Survey of Manufacturers (ASM),[92] the results of the engineering analysis, and interviews with manufacturers to determine the inputs necessary to calculate industry-wide labor expenditures and domestic employment levels. Labor expenditures related to manufacturing of the product are a function of the labor intensity of the product, the sales volume, and an assumption that wages remain fixed in real terms over time. The total labor expenditures in each year are calculated by multiplying the MPCs by the labor percentage of MPCs.

The total labor expenditures in the GRIM are converted to domestic production employment levels by dividing production labor expenditures by the annual payment per production worker (production worker hours times the labor rate found in the U.S. Census Bureau's 2011 ASM). The estimates of production workers in this section cover workers, including line-supervisors who are directly involved in fabricating and assembling a product within the manufacturing facility. Workers performing services that are closely associated with production operations, such as materials handling tasks using forklifts, are also included as production labor. DOE's estimates only account for production workers who manufacture the specific products covered by this rulemaking. The total direct employment impacts calculated in the GRIM are the sum of the changes in the number of production workers resulting from the amended energy conservation standards for residential boilers, as compared to the base case. In general, more-efficient boilers are more complex and more labor intensive and require specialized knowledge about control systems, electronics, and the different metals needed for the heat exchanger. Per-unit labor requirements and production time requirements increase with higher energy conservation standards. As a result, the total labor calculations described in this paragraph (which are generated by the GRIM) are considered an upper bound to direct employment forecasts.

On the other hand, some manufacturers may choose not to make the necessary investments to meet the amended standards for all product classes. Alternatively, they may choose to relocate production facilities where conversion costs and production costs are lower. To establish a lower bound to negative employment impacts, DOE estimated the maximum potential job loss due to manufacturers either leaving the industry or moving production to foreign locations as a result of amended standards. In the case of residential boilers, most manufacturers agreed that higher standards would probably not push their production overseas due to shipping considerations. Rather, high enough standards could force manufacturers to rethink their business models. Instead of vertically integrated manufacturers, they would become assemblers and would source most of their components from overseas. This would mean any workers involved in casting metals that would be corroded in a condensing product would likely lose their jobs. These lower bound estimates were based on GRIM results, conversion cost estimates, and content from manufacturers interviews. The lower bound of employment is presented in Table V.25 below.

DOE estimates that in the absence of amended energy conservation standards, there would be 785 domestic production workers in the residential boiler industry in 2020, the year of compliance. DOE estimates that 90 percent of residential boilers sold in the United States are manufactured domestically. Table V.25 shows the range of the impacts of potential amended energy conservation standards on U.S. production workers of residential boilers.

TABLE V.25—POTENTIAL CHANGES IN THE TOTAL NUMBER OF RESIDENTIAL BOILERS PRODUCTION WORKERS IN 2020

	Trial standard level *					
	Base case	1	2	3	4	5
Total Number of Domestic Production Workers in 2020 (without changes in production locations).	785	785 to 793	777 to 801	769 to 821	393 to 1,024	196 to 1,035.

[92] U.S. Census Bureau, Annual Survey of Manufacturers: General Statistics: Statistics for Industry Groups and Industries (2011) (Available at: *http://factfinder2.census.gov/faces/nav/jsf/pages/searchresults.xhtml?refresh=t*).

TABLE V.25—POTENTIAL CHANGES IN THE TOTAL NUMBER OF RESIDENTIAL BOILERS PRODUCTION WORKERS IN 2020—Continued

	Trial standard level *					
	Base case	1	2	3	4	5
Potential Changes in Domestic Production Workers in 2020*.	.....	0 to 8	(8) to 16	(16) to 36	(392) to 239	(589) to 250.

* DOE presents a range of potential employment impacts. Numbers in parentheses indicate negative numbers.

At the upper end of the range, all examined TSLs show positive impacts on domestic employment levels. Producing more-efficient boilers tends to require more labor, and DOE estimates that if residential boiler manufacturers chose to keep their current production in the U.S., domestic employment could increase at each TSL. In interviews, several manufacturers who produce high-efficiency boiler products stated that a standard that went to condensing levels could cause them to hire more employees to increase their production capacity. Others stated that a condensing standard would require additional engineers to redesign production processes, as well as metallurgy experts and other workers with experience working with higher-efficiency products. DOE, however, acknowledges that particularly at higher standard levels, manufacturers may not keep their production in the U.S. and also may choose to restructure their businesses or exit the market entirely.

DOE does not expect any significant changes in domestic employment at TSL 1 or TSL 2. Most manufactures agreed that these efficiency levels would require minimal changes to their production processes and most employees would be retained. DOE estimates that there could be a small loss of domestic employment at TSL 3 due to the fact that some manufacturers would have to drop their 82 to 83-percent-efficient products, which several commented were their commodity products and drove a high percentage of their sales. Several manufacturers expressed that they could lose a significant number of employees at TSL 4 and TSL 5, due to the fact that these TSLs contain condensing efficiency levels for the gas-fired hot water boiler product class. These manufacturers have employees who work on production lines that produce cast iron sections and carbon steel or copper heat exchangers for lower to mid-efficiency products. If amended energy conservation standards were to require condensing efficiency levels, these employees would no longer be needed for that function, and manufacturers would have to decide whether to develop their own condensing heat exchanger production, source heat exchangers from Asia or Europe and assemble higher-efficiency products, or leave the market entirely.

DOE notes that its estimates of the impacts on direct employment are based on the analysis of amended AFUE energy efficiency standards only. Standby mode and off mode technology options considered in the engineering analysis would result in component swaps, which would not make the product significantly more complex and would not be difficult to implement. While some product development effort would be required, DOE does not expect the standby mode and off mode standard to meaningfully affect the amount of labor required in production. Consequently, DOE does not anticipate that the proposed standby mode and off mode standards will have a significant impact on direct employment.

DOE notes that the employment impacts discussed here are independent of the indirect employment impacts to the broader U.S. economy, which are documented in chapter 15 of the NOPR TSD.

c. Impacts on Manufacturing Capacity

Most residential boiler manufacturers stated that their current production is only running at 50-percent to 70-percent capacity and that any standard that does not propose efficiency levels where manufacturers would use condensing technology for hot water boilers would not have a large effect on capacity. The impacts of a potential condensing standard on manufacturer capacity are difficult to quantify. Some manufacturers who are already making condensing products with a sourced heat exchanger said they would likely be able to increase production using the equipment they already have by utilizing a second shift. Others said a condensing standard would idle a large portion of their business, causing stranded assets and decreased capacity. These manufactures would have to determine how to best increase their condensing boiler production capacity. DOE believes that some larger domestic manufacturers may choose to add production capacity for a condensing heat exchanger production line.

Manufacturers stated that in a scenario where a potential standard would require efficiency levels at which manufacturers would use condensing technology, there is concern about the level of technical resources required to redesign and test all products. The engineering analysis shows that increasingly complex components and control strategies are required as standard levels increase. Manufacturers commented in interviews that the industry would need to add electrical engineering and control systems engineering talent beyond current staffing to meet the redesign requirements of higher TSLs. Additional training might be needed for manufacturing engineers, laboratory technicians, and service personnel if condensing products were broadly adopted. However, because TSL 3 (the proposed level) would not require condensing standards, DOE does not expect manufacturers to face long-term capacity constraints due to the standard levels proposed in this notice.

d. Impacts on Subgroups of Manufacturers

Small manufacturers, niche equipment manufacturers, and manufacturers exhibiting a cost structure substantially different from the industry average could be affected disproportionately. Using average cost assumptions developed for an industry cash-flow estimate is inadequate to assess differential impacts among manufacturer subgroups.

For the residential boiler industry, DOE identified and evaluated the impact of amended energy conservation standards on one subgroup—small manufacturers. The SBA defines a ''small business'' as having 500 employees or less for NAICS 333414, ''Heating Equipment (except Warm Air Furnaces) Manufacturing.'' Based on this definition, DOE identified 13 manufacturers in the residential boiler industry that qualify as small businesses. For a discussion of the impacts on the small manufacturer subgroup, see the regulatory flexibility

analysis in section VI.B of this notice and chapter 12 of the NOPR TSD.

e. Cumulative Regulatory Burden

While any one regulation may not impose a significant burden on manufacturers, the combined effects of recent or impending regulations may have serious consequences for some manufacturers, groups of manufacturers, or an entire industry. Assessing the impact of a single regulation may overlook this cumulative regulatory burden. In addition to energy conservation standards, other regulations can significantly affect manufacturers' financial operations. Multiple regulations affecting the same manufacturer can strain profits and lead companies to abandon product lines or markets with lower expected future returns than competing products. For these reasons, DOE conducts an analysis of cumulative regulatory burden as part of its rulemakings pertaining to appliance efficiency.

For the cumulative regulatory burden analysis, DOE looks at other regulations that could affect residential boiler manufacturers that will take effect approximately three years before or after the 2020 compliance date of amended energy conservation standards for these products. In interviews, manufacturers cited Federal regulations on equipment other than residential boilers that contribute to their cumulative regulatory burden. The compliance years and expected industry conversion costs of relevant amended energy conservation standards are indicated in the Table V.26. DOE has included certain Federal regulations in the Table V.26 that have compliance dates beyond the three-year range of DOE's analysis, because those regulations were cited multiple times by manufacturers in interviews and written comments; they are included here for reference.

TABLE V.26—COMPLIANCE DATES AND EXPECTED CONVERSION EXPENSES OF FEDERAL ENERGY CONSERVATION STANDARDS AFFECTING RESIDENTIAL BOILERS MANUFACTURERS

Federal energy conservation standards	Approximate compliance date	Estimated total industry conversion expense
2007 Residential Furnaces & Boilers, 72 FR 65136 (Nov. 19, 2007)	2015	* $88M (2006$)
2011 Residential Furnaces, 76 FR 37408 (June 27, 2011); 76 FR 67037 (Oct. 31, 2011)	2015	** $2.5M (2009$)
Commercial Refrigeration Equipment	2017	$184.0M (2012$)
Dishwashers ***	2018	TBD
Commercial Packaged Air Conditioners and Heat Pumps ***	2018	TBD
Commercial Warm-Air Furnaces ***	2018	TBD
Furnace Fans	2019	$40.6M (2013$)
Miscellaneous Residential Refrigeration ***	2019	TBD
Single Package Vertical Air Conditioners and Heat Pumps ***	2019	TBD
Commercial Water Heaters ***	2019	TBD
Packaged Terminal Air Conditioners and Heat Pumps ***	2019	TBD
Kitchen Ranges and Ovens ***	2020	TBD
Commercial Packaged Boilers ***	2020	TBD
Non-weatherized Gas-fired Furnaces and Mobile Home Furnaces ***	2021	TBD
Direct Heating Equipment/Pool Heaters ***	2021	TBD
Residential Water Heaters ***	2021	TBD
Clothes Dryers ***	2022	TBD
Central Air Conditioners ***	2022	TBD
Residential Refrigerators and Freezers ***	2022	TBD
Room Air Conditioners ***	2022	TBD
Commercial Packaged Air Conditioning and Heating Equipment (Evaporatively and Water Cooled) ***	2023	TBD
Residential Clothes Washers ***	2023	TBD

* Conversion expenses for manufacturers of oil-fired furnaces and gas-fired and oil-fired boilers associated with the November 2007 final rule for residential furnaces and boilers are excluded from this figure. The 2011 direct final rule for residential furnaces sets a higher standard and earlier compliance date for oil furnaces than the 2007 final rule. As a result, manufacturers will be required design to the 2011 direct final rule standard. The conversion costs associated with the 2011 direct final rule are listed separately in this table. EISA 2007 legislated higher standards and earlier compliance dates for residential boilers than were in the November 2007 final rule. As a result, gas-fired and oil-fired boiler manufacturers were required to design to the EISA 2007 standard beginning in 2012. The conversion costs listed for residential gas-fired and oil-fired boilers in the November 2007 residential furnaces and boilers final rule analysis are not included in this figure.

** Estimated industry conversion expenses and approximate compliance date reflect a court-ordered April 24, 2014 remand of the residential non-weatherized and mobile home gas furnaces standards set in the 2011 Energy Conservation Standards for Residential Furnaces and Residential Central Air Conditioners and Heat Pumps. The costs associated with this rule reflect implementation of the amended standards for the remaining furnace product classes (*i.e.,* oil-fired furnaces).

*** The NOPR and final rule for this energy conservation standard have not been published. The compliance date and analysis of conversion costs are estimates and have not been finalized at this time.

In addition to Federal energy conservation standards, DOE identified other regulatory burdens that would affect manufacturers of residential boilers:

Revised DOE Test Procedure for Residential Boilers

DOE is currently considering revisions to its test procedure for residential furnaces and boilers, and it is expected that a revised test procedure would increase testing burden for manufacturers. On July 28, 2008, DOE published a technical amendment to the 2007 furnaces and boilers final rule, whose purpose was to add design requirements established in the Energy Independence and Security Act of 2007 (EISA 2007). 73 FR 43611. These requirements prohibit constant-burning pilot lights for gas-fired hot water boilers and gas-fired steam boilers, and require an automatic means for adjusting the water temperature for gas-fired hot water boilers, oil-fired hot water boilers, and electric hot water boilers. The test procedure is expected to be revised to include two test methods to verify the functionality of

the automatic means of adjusting the water temperature, which would increase the testing burden for residential boiler manufacturers and thereby the cumulative regulatory burden.

3. National Impact Analysis

a. Significance of Energy Savings

For each TSL, DOE projected energy savings for residential boilers purchased in the 30-year period that begins in the year of anticipated compliance with amended standards (2020–2049). The savings are measured over the entire lifetime of product purchased in the 30-year period. DOE quantified the energy savings attributable to each TSL as the difference in energy consumption between each standards case and the base case. Table V.27 presents the estimated primary energy savings for each considered TSL for AFUE standards, and Table V.28 presents the estimated FFC energy savings for each TSL for AFUE standards. Table V.29 presents the estimated primary energy savings for each considered TSL for standby mode and off mode, and Table V.30 presents the estimated FFC energy savings for each TSL for standby mode and off mode. The approach for estimating national energy savings is further described in section IV.H.

TABLE V.27—CUMULATIVE NATIONAL PRIMARY ENERGY SAVINGS FOR RESIDENTIAL BOILER AFUE TRIAL STANDARD LEVELS FOR UNITS SOLD IN 2020–2049

Product class	Trial standard level (quads)				
	1	2	3	4	5
Gas-fired hot water boilers	0.030	0.076	0.134	0.735	1.231
Gas-fired steam boilers	0.006	0.006	0.006	0.006	0.023
Oil-fired hot water boilers	0.012	0.043	0.043	0.274	0.274
Oil-fired steam boilers	0.003	0.009	0.009	0.009	0.009
Total—All Classes *	0.05	0.13	0.19	1.02	1.54

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

TABLE V.28—CUMULATIVE NATIONAL FULL-FUEL-CYCLE ENERGY SAVINGS FOR RESIDENTIAL BOILER AFUE TRIAL STANDARD LEVELS FOR UNITS SOLD IN 2020–2049

Product class	Trial standard level (quads)				
	1	2	3	4	5
Gas-fired hot water boilers	0.033	0.084	0.148	0.812	1.357
Gas-fired steam boilers	0.006	0.006	0.006	0.006	0.025
Oil-fired hot water boilers	0.014	0.050	0.050	0.321	0.321
Oil-fired steam boilers	0.003	0.011	0.011	0.011	0.011
Total—All Classes *	0.06	0.15	0.21	1.15	1.71

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

TABLE V.29—CUMULATIVE NATIONAL PRIMARY ENERGY SAVINGS FOR RESIDENTIAL BOILER STANDBY MODE AND OFF MODE TRIAL STANDARD LEVELS FOR UNITS SOLD IN 2020–2049

Product class	Trial standard level (quads)		
	1	2	3
Gas-Fired Hot Water Boilers	0.020	0.024	0.033
Gas-Fired Steam Boilers	0.0023	0.0027	0.0027
Oil-Fired Hot Water Boilers	0.0071	0.0071	0.0071
Oil-Fired Steam Boilers	0.0005	0.0005	0.0005
Electric Hot Water Boilers	0.0006	0.0006	0.0006
Electric Steam Boilers	0.0001	0.0001	0.0001
Total—All Classes *	0.020	0.024	0.033

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

TABLE V.30—CUMULATIVE NATIONAL FULL-FUEL-CYCLE ENERGY SAVINGS FOR RESIDENTIAL BOILER STANDBY MODE AND OFF MODE TRIAL STANDARD LEVELS FOR UNITS SOLD IN 2020–2049

Product class	Trial standard level (quads)		
	1	2	3
Gas-Fired Hot Water Boilers	0.020	0.024	0.034

TABLE V.30—CUMULATIVE NATIONAL FULL-FUEL-CYCLE ENERGY SAVINGS FOR RESIDENTIAL BOILER STANDBY MODE AND OFF MODE TRIAL STANDARD LEVELS FOR UNITS SOLD IN 2020–2049—Continued

Product class	Trial standard level (quads)		
	1	2	3
Gas-Fired Steam Boilers	0.0023	0.0028	0.0028
Oil-Fired Hot Water Boilers	0.0072	0.0072	0.0072
Oil-Fired Steam Boilers	0.0005	0.0005	0.0005
Electric Hot Water Boilers	0.0006	0.0006	0.0006
Electric Steam Boilers	0.0001	0.0001	0.0001
Total—All Classes *	0.031	0.035	0.045

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

OMB Circular A–4 [93] requires agencies to present analytical results, including separate schedules of the monetized benefits and costs that show the type and timing of benefits and costs. Circular A–4 also directs agencies to consider the variability of key elements underlying the estimates of benefits and costs. For this rulemaking, DOE undertook a sensitivity analysis using nine, rather than 30, years of product shipments. The choice of a nine-year period is a proxy for the timeline in EPCA for the review of certain energy conservation standards and potential revision of and compliance with such revised standards.[94] The review timeframe established in EPCA is generally not synchronized with the product lifetime, product manufacturing cycles, or other factors specific to residential boilers. Thus, such results are presented for informational purposes only and are not indicative of any change in DOE's analytical methodology. The NES results based on a nine-year analytical period are presented for the AFUE TSLs in Table V.31.[95] The impacts are counted over the lifetime of residential boilers purchased in 2020–2028.

TABLE V.31—CUMULATIVE NATIONAL FFC ENERGY SAVINGS FOR TRIAL STANDARD LEVELS FOR RESIDENTIAL BOILERS SOLD IN 2020–2028, AFUE STANDARDS

Product class	Trial standard level (quads)				
	1	2	3	4	5
Gas-fired hot water boilers	0.012	0.030	0.054	0.301	0.381
Gas-fired steam boilers	0.002	0.002	0.002	0.002	0.008
Oil-fired hot water boilers	0.006	0.021	0.021	0.146	0.123
Oil-fired steam boilers	0.001	0.005	0.005	0.005	0.004
Total—All Classes *	0.02	0.06	0.08	0.45	0.52

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

b. Net Present Value of Consumer Costs and Benefits

DOE estimated the cumulative NPV of the total costs and savings for consumers that would result from the TSLs considered for residential boilers. In accordance with OMB's guidelines on regulatory analysis,[96] DOE calculated the NPV using both a 7-percent and a 3-percent real discount rate.

Table V.32 shows the consumer NPV results for each AFUE TSL considered for residential boilers. In each case, the impacts cover the lifetime of products purchased in 2020–2049.

TABLE V.32—CUMULATIVE NET PRESENT VALUE OF CONSUMER BENEFITS FOR TRIAL STANDARD LEVELS FOR RESIDENTIAL BOILERS SOLD IN 2020–2049, AFUE STANDARDS

Product class	Discount rate (%)	Trial standard level (billion 2013$ **)				
		1	2	3	4	5
Gas-fired hot water boiler		0.17	0.48	0.65	1.86	2.33
Gas-fired steam boiler		0.03	0.03	0.03	0.03	0.01

[93] U.S. Office of Management and Budget, ''Circular A–4: Regulatory Analysis'' (Sept. 17, 2003) (Available at: *http://www.whitehouse.gov/omb/circulars_a004_a-4/*)

[94] Section 325(m) of EPCA requires DOE to review its standards at least once every 6 years, and requires, for certain products, a 3-year period after any new standard is promulgated before compliance is required, except that in no case may any new standards be required within 6 years of the compliance date of the previous standards. While adding a 6-year review to the 3-year compliance period adds up to 9 years, DOE notes that it may undertake reviews at any time within the 6 year period and that the 3-year compliance date may yield to the 6-year backstop. A 9-year analysis period may not be appropriate given the variability that occurs in the timing of standards reviews and the fact that for some consumer products, the compliance period is 5 years rather than 3 years.

[95] DOE presents results based on a nine-year analytical period only for the AFUE TSLs, because the corresponding impacts for the standby mode and off mode TSLs are very small.

[96] OMB Circular A–4, section E (Sept. 17, 2003) (Available at: *http://www.whitehouse.gov/omb/circulars_a004_a-4*).

TABLE V.32—CUMULATIVE NET PRESENT VALUE OF CONSUMER BENEFITS FOR TRIAL STANDARD LEVELS FOR RESIDENTIAL BOILERS SOLD IN 2020–2049, AFUE STANDARDS—Continued

Product class	Discount rate (%)	Trial standard level (billion 2013$ **)				
		1	2	3	4	5
Oil-fired hot water boiler	3	0.13	0.49	0.49	1.42	1.42
Oil-fired steam boiler		0.03	0.11	0.11	0.11	0.11
Total—All Classes *		0.37	1.12	1.28	3.42	3.87
Gas-fired hot water boiler	7	0.05	0.16	0.18	0.12	(0.24)
Gas-fired steam boiler		0.01	0.01	0.01	0.01	(0.02)
Oil-fired hot water boiler		0.04	0.14	0.14	0.02	0.02
Oil-fired steam boiler		0.01	0.03	0.03	0.03	0.03
Total—All Classes *		0.11	0.34	0.36	0.19	(0.20)

* **Note:** Components may not sum due to rounding.
** Parentheses indicate negative values.

The NPV results based on the aforementioned nine-year analytical period are presented in Table V.33 for AFUE standards. The impacts are counted over the lifetime of products purchased in 2020–2028. As mentioned previously, such results are presented for informational purposes only and is not indicative of any change in DOE's analytical methodology or decision criteria.

TABLE V.33—CUMULATIVE NET PRESENT VALUE OF CONSUMER BENEFITS FOR TRIAL STANDARD LEVELS FOR RESIDENTIAL BOILERS SOLD IN 2020–2028, AFUE STANDARDS

Product class	Discount rate (%)	Trial standard level (billion 2013$ **)				
		1	2	3	4	5
Gas-fired hot water boiler	3	0.07	0.19	0.26	0.84	1.11
Gas-fired steam boiler		0.01	0.01	0.01	0.01	0.01
Oil-fired hot water boiler		0.06	0.24	0.24	1.00	1.00
Oil-fired steam boiler		0.02	0.06	0.06	0.06	0.06
Total—All Classes *		0.16	0.50	0.57	1.90	2.18
Gas-fired hot water boiler	7	0.03	0.08	0.09	0.12	0.00
Gas-fired steam boiler		0.01	0.01	0.01	0.01	(0.01)
Oil-fired hot water boiler		0.02	0.09	0.09	0.18	0.18
Oil-fired steam boiler		0.01	0.02	0.02	0.02	0.02
Total—All Classes *		0.06	0.20	0.21	0.33	0.20

* **Note:** Components may not sum due to rounding.
** Parentheses indicate negative values.

The above results reflect the use of a flat trend to estimate the change in price for residential boilers over the analysis period (see section IV.H). DOE also conducted a sensitivity analysis that considered one scenario with a lower rate of price decline than the reference case and one scenario with a higher rate of price decline than the reference case. The results of these alternative cases are presented in appendix 10C of the NOPR TSD.

Table V.34 shows the consumer NPV results for each standby mode and off mode TSL considered for residential boilers. In each case, the impacts cover the lifetime of products purchased in 2020–2049.

TABLE V.34—CUMULATIVE NET PRESENT VALUE OF CONSUMER BENEFITS FOR TRIAL STANDARD LEVELS FOR RESIDENTIAL BOILERS SOLD IN 2020–2049, STANDBY MODE AND OFF MODE STANDARDS

Product class	Discount rate %	Trial standard level (billion 2013$)		
		1	2	3
Gas-Fired Hot Water Boiler	3	0.25	0.21	0.33
Gas-Fired Steam Boiler		0.031	0.027	0.027
Oil-Fired Hot Water Boiler		0.104	0.073	0.071
Oil-Fired Steam Boiler		0.008	0.006	0.006
Electric Hot Water Boiler		0.006	0.003	0.003
Electric Steam Boiler		0.0006	0.0005	0.0005

TABLE V.34—CUMULATIVE NET PRESENT VALUE OF CONSUMER BENEFITS FOR TRIAL STANDARD LEVELS FOR RESIDENTIAL BOILERS SOLD IN 2020–2049, STANDBY MODE AND OFF MODE STANDARDS—Continued

Product class	Discount rate %	Trial standard level (billion 2013$)		
		1	2	3
Total—All Classes *		0.401	0.325	0.437
Gas-Fired Hot Water Boiler	7	0.10	0.08	0.13
Gas-Fired Steam Boiler		0.013	0.010	0.010
Oil-Fired Hot Water Boiler		0.044	0.027	0.026
Oil-Fired Steam Boiler		0.003	0.002	0.002
Electric Hot Water Boiler		0.002	0.001	0.001
Electric Steam Boiler		0.0003	0.0002	0.0002
Total—All classes *		0.167	0.121	0.167

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

c. Indirect Impacts on Employment

DOE expects that amended energy conservation standards for residential boilers would reduce energy costs for consumers, with the resulting net savings being redirected to other forms of economic activity. Those shifts in spending and economic activity could affect the demand for labor. As described in section IV.N, DOE used an input/output model of the U.S. economy to estimate indirect employment impacts of the TSLs that DOE considered in this rulemaking. DOE understands that there are uncertainties involved in projecting employment impacts, especially changes in the later years of the analysis. Therefore, DOE generated results for near-term time frames (2020 to 2025), where these uncertainties are reduced.

The results suggest that the proposed standards would be likely to have a negligible impact on the net demand for labor in the economy. The net change in jobs is so small that it would be imperceptible in national labor statistics and might be offset by other, unanticipated effects on employment. Chapter 16 of the NOPR TSD presents detailed results regarding anticipated indirect employment impacts.

4. Impact on Product Utility or Performance

DOE has tentatively concluded that the amended standards it is proposing in this NOPR would not lessen the utility or performance of residential boilers.

5. Impact of Any Lessening of Competition

DOE considered any lessening of competition that is likely to result from new or amended standards. The Attorney General determines the impact, if any, of any lessening of competition likely to result from a proposed standard, and transmits such determination in writing to the Secretary, together with an analysis of the nature and extent of such impact.

To assist the Attorney General in making such determination, DOE has provided DOJ with copies of this NOPR and the TSD for review. DOE will consider DOJ's comments on the proposed rule in preparing the final rule, and DOE will publish and respond to DOJ's comments in that document.

6. Need of the Nation To Conserve Energy

Enhanced energy efficiency, where economically justified, improves the Nation's energy security, strengthens the economy, and reduces the environmental impacts (costs) of energy production. Energy savings from amended standards for the residential boilers covered in this NOPR could also produce environmental benefits in the form of reduced emissions of air pollutants and greenhouse gases associated with electricity production. Table V.35 provides DOE's estimate of cumulative emissions reductions projected to result from the AFUE TSLs considered. Table V.36 provides DOE's estimate of cumulative emissions reductions projected to result from the TSLs considered in this rulemaking for standby mode and off mode boiler efficiency. The tables include both power sector emissions and upstream emissions. The emissions were calculated using the multipliers discussed in section IV.K. DOE reports annual emissions reductions for each TSL in chapter 13 of the NOPR TSD.

TABLE V.35—CUMULATIVE EMISSIONS REDUCTION ESTIMATED FOR RESIDENTIAL BOILER TRIAL STANDARD LEVELS FOR AFUE STANDARDS

	Trial standard level				
	1	2	3	4	5
Site and Power Sector Emissions *					
CO_2 (million metric tons)	3.04	8.31	11.4	61.8	88.8
SO_2 (thousand tons)	0.088	0.600	0.165	(0.297)	0.193
NO_X (thousand tons)	2.73	7.35	10.3	57.2	80.5
Hg (tons)	0.000	0.000	(0.001)	(0.006)	(0.005)
CH_4 (thousand tons)	0.069	0.224	0.243	1.18	1.79
N_2O (thousand tons)	0.026	0.093	0.090	0.488	0.555
Upstream Emissions					
CO_2 (million metric tons)	0.404	1.12	1.52	8.34	11.6
SO_2 (thousand tons)	0.042	0.151	0.147	0.852	0.873

TABLE V.35—CUMULATIVE EMISSIONS REDUCTION ESTIMATED FOR RESIDENTIAL BOILER TRIAL STANDARD LEVELS FOR AFUE STANDARDS—Continued

	Trial standard level				
	1	2	3	4	5
NO_X (thousand tons)	5.77	15.6	21.7	119	169
Hg (tons)	0.000	0.000	0.000	0.000	0.000
CH_4 (thousand tons)	28.5	66.3	110	584	938
N_2O (thousand tons)	0.002	0.007	0.007	0.041	0.047
Total FFC Emissions					
CO_2 (million metric tons)	3.45	9.43	12.9	70.2	100
SO_2 (thousand tons)	0.130	0.751	0.312	0.555	1.07
NO_X (thousand tons)	8.50	23.0	32.1	176	250
Hg (tons)	0.000	0.000	(0.001)	(0.005)	(0.004)
CH_4 (thousand tons)	28.6	66.5	110	585	940
CH_4 (thousand tons CO_2eq) **	800	1,863	3,084	16,381	26,325
N_2O (thousand tons)	0.028	0.100	0.097	0.529	0.602
N_2O (thousand tons CO_2eq) **	7.35	26.4	25.7	140	160

* Primarily site emissions. Values include the increase in power sector emissions from higher electricity use at TSLs 4 and 5.
** CO_2eq is the quantity of CO_2 that would have the same global warming potential (GWP).
Note: Parentheses indicate negative values.

TABLE V.36—CUMULATIVE EMISSIONS REDUCTION ESTIMATED FOR RESIDENTIAL BOILER TRIAL STANDARD LEVELS FOR STANDBY MODE AND OFF MODE STANDARDS

	Trial standard level		
	1	2	3
Power Sector Emissions			
CO_2 (million metric tons)	1.32	1.51	1.92
SO_2 (thousand tons)	1.49	1.71	2.16
NO_X (thousand tons)	0.016	0.018	0.021
Hg (tons)	0.002	0.003	0.003
CH_4 (thousand tons)	0.203	0.232	0.294
N_2O (thousand tons)	0.040	0.046	0.059
Upstream Emissions			
CO_2 (million metric tons)	0.09	0.11	0.14
SO_2 (thousand tons)	0.020	0.023	0.029
NO_X (thousand tons)	1.300	1.490	1.886
Hg (tons)	0.0001	0.0001	0.0001
CH_4 (thousand tons)	7.91	9.06	11.47
N_2O (thousand tons)	0.001	0.001	0.001
Total FFC Emissions			
CO_2 (million metric tons)	1.42	1.62	2.05
SO_2 (thousand tons)	1.51	1.73	2.19
NO_X (thousand tons)	1.32	1.51	1.91
Hg (tons)	0.002	0.003	0.004
CH_4 (thousand tons)	8.1	9.3	11.8
CH_4 (thousand tons CO_2eq) *	227.1	260.2	329.4
N_2O (thousand tons)	0.041	0.047	0.060
N_2O (thousand tons CO_2eq) *	11.0	12.6	15.9

* CO_2eq is the quantity of CO_2 that would have the same global warming potential (GWP).

As part of the analysis for this proposed rule, DOE estimated monetary benefits likely to result from the reduced emissions of CO_2 and NO_X that DOE estimated for each of the TSLs considered for residential boilers. As discussed in section IV.L, for CO_2, DOE used the most recent values for the SCC developed by an interagency process. The four sets of SCC values for CO_2 emissions reductions in 2015 resulting from that process (expressed in 2013$) are represented by $12.0/metric ton (the average value from a distribution that uses a 5-percent discount rate), $40.5/metric ton (the average value from a distribution that uses a 3-percent discount rate), $62.4/metric ton (the average value from a distribution that uses a 2.5-percent discount rate), and $119/metric ton (the 95th-percentile value from a distribution that uses a 3-percent discount rate). The values for later years are higher due to increasing damages (emissions-related costs) as the projected magnitude of climate change increases.

Table V.37 presents the global value of CO_2 emissions reductions at each TSL for AFUE standards. Table V.38 presents the global value of CO_2 emissions reductions at each TSL for standby and off mode. For each of the four cases, DOE calculated a present value of the stream of annual values using the same discount rate as was used in the studies upon which the dollar-per-ton values are based. DOE calculated domestic values as a range from 7 percent to 23 percent of the global values, and these results are presented in chapter 14 of the NOPR TSD.

TABLE V.37—ESTIMATES OF GLOBAL PRESENT VALUE OF CO_2 EMISSIONS REDUCTION UNDER RESIDENTIAL BOILER AFUE TRIAL STANDARD LEVELS

TSL	SCC Case* (million 2013$)			
	5% Discount rate, average	3% Discount rate, average	2.5% Discount rate, average	3% Discount rate, 95th percentile
Site and Power Sector Emissions**				
1	17.4	86.9	140	269
2	47.8	238	384	736
3	65.4	326	525	1,008
4	356	1,770	2,853	5,477
5	507	2,530	4,082	7,831
Upstream Emissions				
1	2.32	11.5	18.6	35.8
2	6.44	32.1	51.7	99.3
3	8.69	43.3	69.9	134
4	48.0	239	385	739
5	66.3	331	534	1,024
Total FFC Emissions				
1	19.7	98.4	159	305
2	54.3	270	435	836
3	74.1	369	595	1,142
4	404	2,009	3,238	6,216
5	573	2,861	4,616	8,855

* For each of the four cases, the corresponding SCC value for emissions in 2015 is $12.0, $40.5, $62.4, and $119 per metric ton (2013$). The values are for CO_2 only (*i.e.,* not CO_{2eq} of other greenhouse gases).

** Includes the increase in power sector emissions from higher electricity use at TSLs 4 and 5.

TABLE V.38—ESTIMATES OF GLOBAL PRESENT VALUE OF CO_2 EMISSIONS REDUCTION UNDER RESIDENTIAL BOILER STANDBY MODE AND OFF MODE TRIAL STANDARD LEVELS

TSL	SCC Case* (million 2013$)			
	5% Discount rate, average	3% Discount rate, average	2.5% Discount rate, average	3% Discount rate, 95th percentile
Power Sector Emissions				
1	7.5	37.6	60.7	116.3
2	8.6	43.0	69.5	133.2
3	10.9	54.4	87.7	168.1
Upstream Emissions				
1	0.52	2.6	4.3	8.1
2	0.59	3.0	4.9	9.3
3	0.75	3.8	6.2	11.8
Total FFC Emissions				
1	8.1	40.2	64.9	124.5
2	9.2	46.1	74.3	142.5
3	11.6	58.2	93.9	179.9

* For each of the four cases, the corresponding SCC value for emissions in 2015 is $12.0, $40.5, $62.4, and $119 per metric ton (2013$). The values are for CO_2 only (*i.e.,* not CO_{2eq} of other greenhouse gases).

DOE is well aware that scientific and economic knowledge about the contribution of CO_2 and other greenhouse gas (GHG) emissions to changes in the future global climate and the potential resulting damages to the world economy continues to evolve rapidly. Thus, any value placed on reducing CO_2 emissions in this rulemaking is subject to change. DOE, together with other Federal agencies, will continue to review various methodologies for estimating the monetary value of reductions in CO_2 and other GHG emissions. This ongoing review will consider the comments on this subject that are part of the public record for this and other rulemakings, as well as other methodological assumptions and issues. However, consistent with DOE's legal obligations, and taking into account the uncertainty involved with this particular issue, DOE has included in this proposed rule the most recent values and analyses resulting from the interagency review process.

DOE also estimated a range for the cumulative monetary value of the economic benefits associated with NO_X emissions reductions anticipated to result from amended standards for the residential boiler products that are the subject of this NOPR. The dollar-per-ton values that DOE used are discussed in section IV.L. Table V.39 presents the cumulative present values for NO_X emissions reductions for each AFUE TSL calculated using the average dollar-per-ton values and seven-percent and three-percent discount rates. Table V.40 presents the cumulative present values for NO_X emissions reductions for each standby mode and off mode TSL calculated using the average dollar-per-ton values and seven-percent and three-percent discount rates.

TABLE V.39—ESTIMATES OF PRESENT VALUE OF NO_X EMISSIONS REDUCTION UNDER RESIDENTIAL BOILER AFUE TRIAL STANDARD LEVELS

TSL	Million 2013$	
	3% Discount rate	7% Discount rate
Site and Power Sector Emissions*		
1	3.03	1.15
2	8.17	3.13
3	11.4	4.36
4	63.7	24.5
5	88.8	33.8
Upstream Emissions		
1	6.38	2.42
2	17.3	6.60
3	24.0	9.15
4	132	51.0
5	186	71.0
Total FFC Emissions**		
1	9.40	3.58
2	25.5	9.73
3	35.5	13.5
4	196	75.6
5	275	105

* Includes the increase in power sector emissions from higher electricity use at TSLs 4 and 5.

** Components may not sum to total due to rounding.

TABLE V.40—ESTIMATES OF PRESENT VALUE OF NO_X EMISSIONS REDUCTION UNDER RESIDENTIAL BOILER STANDBY MODE AND OFF MODE TRIAL STANDARD LEVELS

TSL	Million 2013$	
	3% Discount rate	7% Discount rate
Power Sector Emissions		
1	0.08	0.07
2	0.09	0.08
3	0.11	0.10
Upstream Emissions		
1	1.37	0.49
2	1.56	0.56
3	1.97	0.70

TABLE V.40—ESTIMATES OF PRESENT VALUE OF NO_X EMISSIONS REDUCTION UNDER RESIDENTIAL BOILER STANDBY MODE AND OFF MODE TRIAL STANDARD LEVELS—Continued

TSL	Million 2013$	
	3% Discount rate	7% Discount rate
Total FFC Emissions**		
1	1.44	0.56
2	1.65	0.64
3	2.08	0.80

** Components may not sum to total due to rounding.

7. Other Factors

The Secretary of Energy, in determining whether a standard is economically justified, may consider any other factors that the Secretary deems to be relevant. (42 U.S.C. 6295(o)(2)(B)(i)(VI)) No other factors were considered in this analysis.

8. Summary of National Economic Impacts

The NPV of the monetized benefits associated with emissions reductions can be viewed as a complement to the NPV of the consumer savings calculated for each TSL considered in this rulemaking. Table V.41 presents the NPV values that result from adding the estimates of the potential economic benefits resulting from reduced CO_2 and NO_X emissions in each of four valuation scenarios to the NPV of consumer savings calculated for each AFUE TSL for residential boilers considered in this rulemaking, at both a seven-percent and three-percent discount rate. Table V.42 presents the NPV values that result from adding the estimates of the potential economic benefits resulting from reduced CO_2 and NO_X emissions in each of four valuation scenarios to the NPV of consumer savings calculated for each standby mode and off mode TSL for residential boilers considered in this rulemaking, at both a seven-percent and three-percent discount rate. The CO_2 values used in the columns of each table correspond to the four sets of SCC values discussed above.

TABLE V.41—RESIDENTIAL BOILER TSLS (AFUE): NET PRESENT VALUE OF CONSUMER SAVINGS COMBINED WITH PRESENT VALUE OF MONETIZED BENEFITS FROM CO_2 AND NO_X EMISSIONS REDUCTIONS

TSL	Consumer NPV at 3% discount rate added with:			
	SCC Case $12.0/metric ton CO_2* and medium value for NO_X	SCC Case $40.5/metric ton CO_2* and medium value for NO_X	SCC Case $62.4/metric ton CO_2* and medium value for NO_X	SCC Case $119/metric ton CO_2* and medium value for NO_X
	Billion 2013$			
1	0.4	0.5	0.5	0.7
2	1.2	1.4	1.6	2.0
3	1.4	1.7	1.9	2.5
4	4.0	5.6	6.9	9.8
5	4.7	7.0	8.8	13.0
TSL	Consumer NPV at 7% discount rate added with:			
	SCC Case $12.0/metric ton CO_2*	SCC Case $40.5/metric ton CO_2*	SCC Case $62.4/metric ton CO_2*	SCC Case $119/metric ton CO_2*
	Billion 2013$			
1	0.1	0.2	0.3	0.4
2	0.4	0.6	0.8	1.2
3	0.4	0.7	1.0	1.5
4	0.7	2.3	3.5	6.5
5	0.5	2.8	4.5	8.8

*These label values represent the global SCC in 2015, in 2013$. For NO_X emissions, each case uses the medium value, which corresponds to $2,684 per ton.

TABLE V.42—TABLE RESIDENTIAL BOILER TSLS (STANDBY MODE AND OFF MODE): NET PRESENT VALUE OF CONSUMER SAVINGS COMBINED WITH PRESENT VALUE OF MONETIZED BENEFITS FROM CO_2 AND NO_X EMISSIONS REDUCTIONS

TSL	Consumer NPV at 3% discount rate added with:			
	SCC Case $12.0/metric ton CO_2* and medium value for NO_X	SCC Case $40.5/metric ton CO_2* and medium value for NO_X	SCC Case $62.4/metric ton CO_2* and medium value for NO_X	SCC Case $119/metric ton CO_2* and medium value for NO_X
	Billion 2013$			
1	0.41	0.44	0.47	0.53
2	0.34	0.37	0.40	0.47
3	0.45	0.50	0.53	0.62
TSL	Consumer NPV at 7% discount rate added with:			
	SCC Case $12.0/metric ton CO_2*	SCC Case $40.5/metric ton CO_2*	SCC Case $62.4/metric ton CO_2*	SCC Case $119/metric ton CO_2*
	Billion 2013$			
1	0.18	0.21	0.23	0.29
2	0.13	0.17	0.20	0.26
3	0.18	0.23	0.26	0.35

*These label values represent the global SCC in 2015, in 2013$. For NO_X emissions, each case uses the medium value, which corresponds to $2,684 per ton.

Although adding the value of consumer savings to the values of emission reductions provides a valuable perspective, two issues should be considered. First, the national operating cost savings are domestic U.S. consumer monetary savings that occur as a result of market transactions, while the value of CO_2 reductions is based on a global value. Second, the assessments of operating cost savings and the SCC are performed with different methods that use different time frames for analysis. The national operating cost savings is measured for the lifetime of products shipped in 2020–2049. The SCC values, on the other hand, reflect the present value of future climate-related impacts resulting from the emission of one metric ton of CO_2 in each year; these impacts continue well beyond 2100.

C. Proposed Standards

When considering proposed standards, the new or amended energy

conservation standards that DOE adopts for any type (or class) of covered product, including residential boilers, shall be designed to achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A)) As discussed previously, in determining whether a standard is economically justified, the Secretary must determine whether the benefits of the standard exceed its burdens by, to the greatest extent practicable, considering the seven statutory factors discussed previously. (42 U.S.C. 6295(o)(2)(B)(i)) The new or amended standard must also ''result in significant conservation of energy.'' (42 U.S.C. 6295(o)(3)(B))

For this NOPR, DOE considered the impacts of amended standards for residential boilers at each TSL, beginning with the maximum technologically feasible level, to determine whether that level was economically justified. Where the max-tech level was not justified, DOE then considered the next most efficient level and undertook the same evaluation until it reached the highest efficiency level that is both technologically feasible and economically justified and saves a significant amount of energy.

To aid the reader in understanding the benefits and/or burdens of each TSL, tables in this section summarize the quantitative analytical results for each TSL, based on the assumptions and methodology discussed herein. The efficiency levels contained in each TSL are described in section V.A. In addition to the quantitative results presented in the tables, DOE also considers other burdens and benefits that affect economic justification. These include the impacts on identifiable subgroups of consumer who may be disproportionately affected by a national standard (see section V.B.1.b), and impacts on employment. DOE discusses the impacts on direct employment in residential boiler manufacturing in section V.B.2.b, and discusses the indirect employment impacts in section V.B.3.c.

DOE also notes that the economics literature provides a wide-ranging discussion of how consumers trade off upfront costs and energy savings in the absence of government intervention. Much of this literature attempts to explain why consumers appear to undervalue energy efficiency improvements. There is evidence that consumers undervalue future energy savings as a result of: (1) A lack of information; (2) a lack of sufficient salience of the long-term or aggregate benefits; (3) a lack of sufficient savings to warrant delaying or altering purchases; (4) excessive focus on the short term, in the form of inconsistent weighting of future energy cost savings relative to available returns on other investments; (5) computational or other difficulties associated with the evaluation of relevant tradeoffs; and (6) a divergence in incentives (for example, renter versus owner or builder versus purchaser). Other literature indicates that with less than perfect foresight and a high degree of uncertainty about the future, consumers may trade off at a higher than expected rate between current consumption and uncertain future energy cost savings. This undervaluation suggests that regulation that promotes energy efficiency can produce significant net private gains (as well as producing social gains by, for example, reducing pollution).

In DOE's current regulatory analysis, potential changes in the benefits and costs of a regulation due to changes in consumer purchase decisions are included in two ways. First, if consumers forego a purchase of a product in the standards case, this decreases sales for product manufacturers and the cost to manufacturers is included in the MIA. Second, DOE accounts for energy savings attributable only to products actually used by consumers in the standards case; if a standard decreases the number of products purchased by consumers, this decreases the potential energy savings from an energy conservation standard. DOE provides estimates of changes in the volume of product purchases in chapter 9 of the NOPR TSD. DOE's current analysis does not explicitly control for heterogeneity in consumer preferences, preferences across subcategories of products or specific features, or consumer price sensitivity variation according to household income.[97]

While DOE is not prepared at present to provide a fuller quantifiable framework for estimating the benefits and costs of changes in consumer purchase decisions due to an energy conservation standard, DOE is committed to developing a framework that can support empirical quantitative tools for improved assessment of the consumer welfare impacts of appliance standards. DOE has posted a paper that discusses the issue of consumer welfare impacts of appliance standards, and potential enhancements to the methodology by which these impacts are defined and estimated in the regulatory process.[98] DOE welcomes comments on how to more fully assess the potential impact of energy conservation standards on consumer choice and how to quantify this impact in its regulatory analysis.

1. Benefits and Burdens of Trial Standard Levels Considered for Residential Boilers for AFUE Standards

Table V.43 and Table V.44 summarize the quantitative impacts estimated for each AFUE TSL for residential boilers. The national impacts are measured over the lifetime of residential boilers purchased in the 30-year period that begins in the year of compliance with amended standards (2020–2049). The energy savings, emissions reductions, and value of emissions reductions refer to full-fuel-cycle results. The efficiency levels contained in each TSL are described in section IV.A.

TABLE V.43—SUMMARY OF ANALYTICAL RESULTS FOR RESIDENTIAL BOILERS AFUE TSLS: NATIONAL IMPACTS

Category	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
National FFC Energy Savings (quads)					
	0.06	0.15	0.21	1.15	1.71
NPV of Consumer Benefits (2013$ billion)					
3% discount rate	0.37	1.12	1.28	3.42	3.87
7% discount rate	0.11	0.34	0.36	0.19	(0.20)

[97] P.C. Reiss and M.W. White, Household Electricity Demand, Revisited, *Review of Economic Studies* (2005) 72, 853–883.

[98] Alan Sanstad, Notes on the Economics of Household Energy Consumption and Technology Choice. Lawrence Berkeley National Laboratory (2010) (Available at: *http://www1.eere.energy.gov/buildings/appliance_standards/pdfs/consumer_ee_theory.pdf* (Last accessed May 3, 2013).

TABLE V.43—SUMMARY OF ANALYTICAL RESULTS FOR RESIDENTIAL BOILERS AFUE TSLS: NATIONAL IMPACTS—Continued

Category	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
	0.06	0.15	0.21	1.15	1.71
Cumulative Emissions Reduction (Total FFC Emissions)*					
CO_2 (*million metric tons*)	3.45	9.43	12.9	70.2	100
SO_2 (*thousand tons*)	0.130	0.751	0.312	0.555	1.07
NO_X (*thousand tons*)	8.50	23.0	32.1	176	250
Hg (*tons*)	0.000	0.000	(0.001)	(0.005)	(0.004)
N_2O (thousand tons)	0.028	0.100	0.097	0.529	0.602
N_2O (thousand tons CO_2eq)	7.35	26.4	25.7	140	160
CH_4 (thousand tons)	28.6	66.5	110	585	940
CH_4 (thousand tons CO_2eq)**	800	1,863	3,084	16,381	26,325
Value of Emissions Reduction (Total FFC Emissions)					
CO_2 (*2013$ billion*)†	0.020 to 0.30	0.054 to 0.84	0.074 to 1.14	0.404 to 6.22	0.573 to 8.86
NO_X—3% discount rate (*2013$ million*)	9.4	25.5	35.5	196	275
NO_X—7% discount rate (*2013$ million*)	3.58	9.73	13.5	75.6	105

* Includes the increase in power sector emissions from higher electricity use at TSLs 4 and 5.
** CO_2eq is the quantity of CO_2 that would have the same global warming potential (GWP).
† Range of the economic value of CO_2 reductions is based on estimates of the global benefit of reduced CO_2 emissions.
Note: Parentheses indicate negative values.

TABLE V.44—SUMMARY OF ANALYTICAL RESULTS FOR RESIDENTIAL BOILERS AFUE TSLS: MANUFACTURER AND CONSUMER IMPACTS

Category	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
Manufacturer Impacts					
Industry NPV (2013$ million)	379.17 to 380.91	378.31 to 383.35	372.97 to 381.73	284.75 to 369.87	241.69 to 380.46
Base Case = 380.96					
Change in Industry NPV (*2013$ million*)	(1.79) to (0.04)	(2.65) to 2.39	(7.99) to 0.77	(96.21) to (11.08)	(139.26) to (0.50)
Change in Industry NPV (%)†	(0.47) to (0.01)	(0.70) to 0.63	(2.1) to 0.20	(25.25) to (2.91)	(36.56) to (0.13)
Consumer Mean LCC Savings (2013$)					
Gas-fired hot water boilers	35	100	123	201	134
Gas-fired steam boilers	61	61	61	61	250
Oil-fired hot water boilers	72	257	257	273	273
Oil-fired steam boilers	259	723	723	723	723
Shipment-Weighted Average**	52	155	169	221	195
Consumer Median PBP (years)					
Gas-fired hot water boilers	1.58	1.58	7.72	18.77	22.13
Gas-fired steam boilers	1.32	1.32	1.32	1.32	11.58
Oil-fired hot water boilers	8.34	7.59	7.59	21.36	21.36
Oil-fired steam boilers	6.31	10.51	10.51	10.51	10.51
Shipment-Weighted Average**	3.54	3.43	7.23	17.88	20.79
Distribution of Consumer LCC Impacts					
Gas-fired hot water boilers*					
Consumers with Net Cost (%)	4	3	13	38	57
Consumers with Net Benefit (%)	18	29	30	33	36
Consumers with No Impact (%)	79	68	57	29	7
Gas-fired steam boilers*					
Consumers with Net Cost (%)	1	1	1	1	28
Consumers with Net Benefit (%)	14	14	14	14	61
Consumers with No Impact (%)	86	86	86	86	11
Oil-fired hot water boilers*					
Consumers with Net Cost (%)	4	9	9	54	54
Consumers with Net Benefit (%)	15	42	42	38	38
Consumers with No Impact (%)	81	49	49	8	8
Oil-fired steam boilers*					
Consumers with Net Cost (%)	3	23	23	23	23
Consumers with Net Benefit (%)	27	67	67	67	67
Consumers with No Impact (%)	71	10	10	10	10

* Rounding may cause some items to not total 100 percent.
† **Note:** Parentheses indicate negative values.
** Weighted by shares of each product class in total projected shipments in 2020.
† **Note:** Parentheses indicate negative values.

First, DOE considered TSL 5, the most efficient level (max-tech), which would save an estimated total of 1.71 quads of energy, an amount DOE considers significant. TSL 5 has an estimated NPV of consumer benefit of -$0.2 billion using a 7-percent discount rate, and $3.87 billion using a 3-percent discount rate.

The cumulative emissions reductions at TSL 5 are 100 million metric tons of CO_2, 250 thousand tons of NO_X, 1.07 thousand tons of SO_2, 0.602 thousand tons of N_2O, 940 thousand tons of CH_4, and −0.004 tons of Hg.[99] The estimated monetary value of the CO_2 emissions reductions at TSL 5 ranges from $0.57 billion to $8.86 billion.

At TSL 5, the average LCC savings are $134 for gas-fired hot water boilers, $250 for gas-fired steam boilers, $273 for oil-fired hot water boilers, and $723 for oil-fired steam boilers. The median PBP is 22.1 years for gas-fired hot water boilers, 11.6 years gas-fired steam boilers, 21.4 years for oil-fired hot water boilers, and 10.5 years for oil-fired steam boilers. The share of consumers experiencing a net LCC benefit is 36 percent for gas-fired hot water boilers, 61 percent for gas-fired steam boilers, 38 percent for oil-fired hot water boilers, and 67 percent for oil-fired steam boilers, while the share of consumers experiencing a net LCC cost is 57 percent for gas-fired hot water boilers, 28 percent for gas-fired steam boilers, 54 percent for oil-fired hot water boilers, and 23 percent for oil-fired steam boilers.

At TSL 5, the projected change in INPV ranges from a decrease of $139.26 million to a decrease of $0.5 million. If the decrease of $139.26 million were to occur, TSL 5 could result in a net loss of 36.56 percent in INPV to manufacturers of covered residential boilers.

The Secretary tentatively concludes that, at TSL 5 for residential boilers, the benefits of energy savings, positive NPV of total consumer benefits at a 3-percent discount rate, average consumer LCC savings, emission reductions, and the estimated monetary value of the emissions reductions would be outweighed by the large reduction in industry value at TSL 5, the negative NPV of total consumer benefits at a 7-percent discount rate, and the high number of consumers experiencing a net LCC cost for gas-fired hot water boilers and oil-fired hot water boilers. Consequently, DOE has concluded that TSL 5 is not economically justified.

Next, DOE considered TSL 4, which would save an estimated total of 1.15 quads of energy, an amount DOE considers significant. TSL 4 has an estimated NPV of consumer benefit of $0.19 billion using a 7-percent discount rate, and $3.42 billion using a 3-percent discount rate.

The cumulative emissions reductions at TSL 4 are 70.2 million metric tons of CO_2, 176.12 thousand tons of NO_X, 0.55 thousand tons of SO_2, 0.529 thousand tons of N_2O, 585 thousand tons of CH_4, and −0.005 tons of Hg.[100] The estimated monetary value of the CO_2 emissions reductions at TSL 4 ranges from $0.40 billion to $6.22 billion.

At TSL 4, the average LCC savings are $201 for gas-fired hot water boilers, $61 for gas-fired steam boilers, $273 for oil-fired hot water boilers, and $723 for oil-fired steam boilers. The median PBP is 18.8 years for gas-fired hot water boilers, 1.3 years gas-fired steam boilers, 21.4 years for oil-fired hot water boilers, and 10.5 years for oil-fired steam boilers. The share of consumers experiencing a net LCC benefit is 33 percent for gas-fired hot water boilers, 14 percent for gas-fired steam boilers, 38 percent for oil-fired hot water boilers, and 67 percent for oil-fired steam boilers, while the share of consumers experiencing a net LCC cost is 38 percent for gas-fired hot water boilers, 1 percent for gas-fired steam boilers, 54 percent for oil-fired hot water boilers, and 23 percent for oil-fired steam boilers.

At TSL 4, the projected change in INPV ranges from a decrease of $96.21 million to a decrease of $11.08 million. If the decrease of $96.21 million were to occur, TSL 4 could result in a net loss of 25.25 percent in INPV to manufacturers of covered residential boilers.

DOE strongly considered TSL 4, but based on the information available, the Secretary tentatively concludes that, at TSL 4 for residential boilers, the benefits of energy savings, positive NPV of total consumer benefits, average consumer LCC savings, emission reductions, and the estimated monetary value of the emissions reductions would be outweighed by the large reduction in industry value at TSL 4 and the high number of consumers experiencing a net LCC cost for gas-fired hot water boilers and oil-fired hot water boilers. Consequently, DOE has tentatively concluded that TSL 4 is not economically justified. However, DOE requests comments and data from interested parties that would assist DOE in making a final decision on the weighting of benefits and burdens for TSL 4, and DOE intends to reconsider adoption of TSL 4 in the final rule in light of any comments received.

Next, DOE considered TSL 3, which would save an estimated total of 0.21 quads of energy, an amount DOE considers significant. TSL 3 has an estimated NPV of consumer benefit of $0.36 billion using a 7-percent discount rate, and $1.28 billion using a 3-percent discount rate.

The cumulative emissions reductions at TSL 3 are 12.9 million metric tons of CO_2, 32.1 thousand tons of NO_X, 0.31 thousand tons of SO_2, 0.097 thousand tons of N_2O, 110 thousand tons of CH_4, and −0.001 tons of Hg.[101] The estimated monetary value of the CO_2 emissions reductions at TSL 3 ranges from $0.07 billion to $1.14 billion.

At TSL 3, the average LCC savings are $123 for gas-fired hot water boilers, $61 for gas-fired steam boilers, $257 for oil-fired hot water boilers, and $723 for oil-fired steam boilers. The median PBP is 7.7 years for gas-fired hot water boilers, 1.3 years gas-fired steam boilers, 7.6 years for oil-fired hot water boilers, and 10.5 years for oil-fired steam boilers. The share of consumers experiencing a net LCC benefit is 30 percent for gas-fired hot water boilers, 14 percent for gas-fired steam boilers, 42 percent for oil-fired hot water boilers, and 67 percent for oil-fired steam boilers, while the share of consumers experiencing a net LCC cost is 13 percent for gas-fired hot water boilers, 1 percent for gas-fired steam boilers, 9 percent for oil-fired hot water boilers, and 23 percent for oil-fired steam boilers.

At TSL 3, the projected change in INPV ranges from a decrease of $7.99 million to an increase of $0.77 million. If the decrease of $7.99 million were to occur, TSL 3 could result in a net loss of 2.1 percent in INPV to manufacturers of covered residential boilers.

After considering the analysis and weighing the benefits and the burdens, DOE has tentatively concluded that at TSL 3 for residential boilers, the benefits of energy savings, positive NPV of consumer benefit, positive impacts on consumers (as indicated by positive average LCC savings, favorable PBPs, and a higher percentage of consumers who would experience LCC benefits as opposed to costs), emission reductions, and the estimated monetary value of the emissions reductions would outweigh the potential reductions in INPV for manufacturers. Accordingly, the

[99] TSL 5 is estimated to cause a very slight increase in mercury emissions due to associated increase in boiler electricity use.

[100] TSL 4 is estimated to cause a very slight increase in mercury emissions due to associated increase in boiler electricity use.

[101] TSL 3 is estimated to cause a very slight increase in mercury emissions due to the associated increase in boiler electricity use.

Secretary of Energy has tentatively concluded that TSL 3 would save a significant amount of energy and is technologically feasible and economically justified. However, as noted above, based on comments received, DOE plans to reconsider TSL 4 in the final rule. Because DOE has not yet reached a final conclusion regarding the weighting of benefits and burdens at TSL 4, it seeks a more complete understanding of the benefits and burdens of moving forward at both TSL 3 and 4, as well as any implementation problems that might be reasonably foreseen.

Based on the above considerations, DOE today proposes to adopt the AFUE energy conservation standards for residential boilers at TSL 3. Table V.45 presents the proposed energy conservation standards for residential boilers.

TABLE V.45—PROPOSED AMENDED AFUE ENERGY CONSERVATION STANDARDS FOR RESIDENTIAL BOILERS

Product class	Proposed standard: AFUE %	Design requirement
Gas-fired hot water boiler.	85	Constant-burning pilot not permitted. Automatic means for adjusting water temperature required (except for boilers equipped with tankless domestic water heating coils).
Gas-fired steam boiler ..	82	Constant-burning pilot not permitted.
Oil-fired hot water boiler	86	Automatic means for adjusting temperature required (except for boilers equipped with tankless domestic water heating coils).
Oil-fired steam boiler	86	None.
Electric hot water boiler	None	Automatic means for adjusting temperature required (except for boilers equipped with tankless domestic water heating coils).
Electric steam boiler	None	None.

2. Benefits and Burdens of Trial Standard Levels Considered for Residential Boilers for Standby Mode and Off Mode

Table V.46 through Table V.47 summarize the quantitative impacts estimated for each TSL considered for residential boiler standby mode and off mode power. The national impacts are measured over the lifetime of residential boilers purchased in the 30-year period that begins in the year of compliance with amended standards (2020–2049). The energy savings, emissions reductions, and value of emissions reductions refer to full-fuel-cycle results. The efficiency levels contained in each TSL are described in section V.A.

TABLE V.46—SUMMARY OF ANALYTICAL RESULTS FOR RESIDENTIAL BOILER STANDBY MODE AND OFF MODE TSLS: NATIONAL IMPACTS

Category	TSL 1	TSL 2	TSL 3
National FFC Energy Savings (quads)			
	0.031	0.035	0.045.
NPV of Consumer Benefits (2013$ billion)			
3% discount rate	0.401	0.325	0.437.
7% discount rate	0.167	0.121	0.167.
Cumulative Emissions Reduction (Total FFC Emissions)*			
CO_2 *(million metric tons)*	1.42	1.62	2.05.
SO_2 *(thousand tons)*	1.51	1.73	2.19.
NO_X *(thousand tons)*	1.32	1.51	1.91.
Hg *(tons)*	0.002	0.003	0.004.
CH_4 (thousand tons)	8.1	9.3	11.8.
CH_4 (thousand tons CO_2eq)	227.1	260.2	329.4.
N_2O (thousand tons)	0.041	0.047	0.060.
N_2O (thousand tons CO_2eq)	11.0	12.6	15.9.
Value of Emissions Reduction (Total FFC Emissions)			
CO_2 (2013$ billion)*	0.008 to 0.124	0.009 to 0.142	0.012 to 0.180.
NO_X—3% discount rate *(2013$ million)*	1.44	1.65	2.08.
NO_X—7% discount rate *(2013$ million)*	0.56	0.64	0.80.

* Range of the value of CO_2 reductions is based on estimates of the global benefit of reduced CO_2 emissions.

TABLE V.47—SUMMARY OF ANALYTICAL RESULTS FOR RESIDENTIAL BOILER STANDBY MODE AND OFF MODE TSLS: MANUFACTURER AND CONSUMER IMPACTS

Category	TSL 1	TSL 2	TSL 3
Manufacturer Impacts			
Industry NPV (2013$ million) Base Case = 380.96	380.77 to 380.88	379.94 to 381.16	379.88 to 381.17.

TABLE V.47—SUMMARY OF ANALYTICAL RESULTS FOR RESIDENTIAL BOILER STANDBY MODE AND OFF MODE TSLS: MANUFACTURER AND CONSUMER IMPACTS—Continued

Category	TSL 1	TSL 2	TSL 3
Change in Industry NPV (2013$ million) †	(0.19) to (0.07)	(1.02) to 0.20	(1.08) to 0.22.
Changes in Industry NPV (%) †	(0.05) to (0.02)	(0.27) to 0.05	(0.28) to 0.06.
Consumer Mean LCC Savings (2013$)			
Gas-Fired Hot Water Boilers	14	7	14.
Gas-Fired Steam Boilers	15	9	15.
Oil-Fired Hot Water Boilers	15	9	15.
Oil-Fired Steam Boilers	14	8	15.
Electric Hot Water Boilers	11	3	8.
Electric Steam Boilers	11	4	9.
Shipment-Weighted Average **	14	8	14.
Consumer Median PBP (years)			
Gas-Fired Hot Water Boilers	1.06	10.43	7.83.
Gas-Fired Steam Boilers	1.06	10.30	7.39.
Oil-Fired Hot Water Boilers	1.04	10.24	7.39.
Oil-Fired Steam Boilers	1.31	10.71	8.35.
Electric Hot Water Boilers	1.97	17.65	10.98.
Electric Steam Boilers	1.96	10.54	10.88.
Shipment-Weighted Average **	1.08	10.52	7.74.
Distribution of Consumer LCC Impacts			
Gas-fired hot water boilers *			
Consumers with Net Cost *(%)*	0	11	6.
Consumers with Net Benefit *(%)*	49	38	44.
Consumers with No Impact *(%)*	51	51	51.
Gas-fired steam boilers *			
Consumers with Net Cost *(%)*	0	9	4.
Consumers with Net Benefit *(%)*	49	41	45.
Consumers with No Impact *(%)*	51	51	51.
Oil-fired hot water boilers*			
Consumers with Net Cost (%)	0	9	4.
Consumers with Net Benefit (%)	49	41	45.
Consumers with No Impact (%)	51	51	51.
Oil-fired steam boilers *			
Consumers with Net Cost *(%)*	0	9	4.
Consumers with Net Benefit *(%)*	49	41	45.
Consumers with No Impact *(%)*	51	51	51.
Electric hot water boilers *			
Consumers with Net Cost (%)	0	19	11.
Consumers with Net Benefit (%)	49	30	38.
Consumers with No Impact (%)	51	51	51.
Electric steam boilers *			
Consumers with Net Cost (%)	0	19	11.
Consumers with Net Benefit (%)	49	31	38.
Consumers with No Impact (%)	51	51	51.

* Rounding may cause some items not to total 100 percent.
** Weighted by shares of each product class in total projected shipments in 2020.
† Parentheses indicate negative (−) values.

First, DOE considered TSL 3, the most efficient level (max-tech), which would save an estimated total of 0.045 quads of energy, an amount DOE considers significant. TSL 3 has an estimated NPV of consumer benefit of $0.167 billion using a 7-percent discount rate, and $0.437 billion using a 3-percent discount rate.

The cumulative emissions reductions at TSL 3 are 2.05 million metric tons of CO_2, 1.91 thousand tons of NO_X, 2.19 thousand tons of SO_2, and 0.004 tons of Hg, 0.060 thousand tons of N_2O, and 11.8 thousand tons of CH_4. The estimated monetary value of the CO_2 emissions reductions at TSL 3 ranges from $0.012 billion to $0.180 billion.

At TSL 3, the average LCC savings are $14 for gas-fired hot water boilers, $15 for gas-fired steam boilers, $15 for oil-fired hot water boilers, $15 for oil-fired steam boilers, $8 for electric hot water boilers, and $9 for electric steam boilers. The median PBP is 7.83 years for gas-fired hot water boilers, 7.39 years gas-fired steam boilers, 7.39 years for oil-fired hot water boilers, 8.35 years for oil-fired steam boilers, 10.98 years for electric hot water boilers, and 10.88 years for electric steam boilers. The share of consumers experiencing a net LCC benefit is 44 percent for gas-fired hot water boilers, 45 percent for gas-fired steam boilers, 38 percent for oil-fired hot water boilers, 45 percent for oil-fired steam boilers, 45 percent for electric hot water boilers, and 38 percent for electric steam boilers, while the share of consumers experiencing a net LCC cost is 6 percent for gas-fired hot water boilers, 4 percent for gas-fired

steam boilers, 4 percent for oil-fired hot water boilers, 4 percent for oil-fired steam boilers, 11 percent for electric hot water boilers, and 11 percent for electric steam boilers.

At TSL 3, the projected change in INPV ranges from a decrease of $1.08 million to an increase of $0.22 million, depending on the manufacturer markup scenario. If the larger decrease is realized, TSL 3 could result in a net loss of 0.28 percent in INPV to manufacturers of covered residential boilers.

Accordingly, the Secretary tentatively concludes that at TSL 3 for residential boiler standby mode and off mode power, the benefits of energy savings, positive NPV of consumer benefits at both 7-percent and 3-percent discount rates, positive impacts on consumers (as indicated by positive average LCC savings, favorable PBPs, and a higher percentage of consumers who would experience LCC benefits as opposed to costs), emission reductions, and the estimated monetary value of the CO_2 emissions reductions would outweigh the economic burden on a small fraction of consumers due to the increases in product cost. After considering the analysis and the benefits and burdens of TSL 3, the Secretary has tentatively concluded that this trial standard level offers the maximum improvement in energy efficiency that is technologically feasible and economically justified, and will result in the significant conservation of energy. Therefore, DOE proposes to adopt TSL 3 for residential boiler standby mode and off mode. The proposed energy conservation standards for standby mode and off mode, expressed as maximum power in watts, are shown in Table V.48.

TABLE V.48—PROPOSED ENERGY CONSERVATION STANDARDS FOR RESIDENTIAL BOILER STANDBY MODE AND OFF MODE

Product class	$P_{W,SB}$ (watts)	$P_{W,OFF}$ (watts)
Gas-fired hot water	9	9
Gas-fired steam	8	8
Oil-fired hot water	11	11
Oil-fired steam	11	11
Electric hot water	8	8
Electric steam	8	8

3. Summary of Benefits and Costs (Annualized) of the Proposed Standards

The benefits and costs of today's proposed standards can also be expressed in terms of annualized values. The annualized monetary values are the sum of: (1) The annualized national economic value (expressed in 2013$) of the benefits from operating products that meet the proposed standards (consisting primarily of operating cost savings from using less energy, minus increases in product purchase costs, which is another way of representing consumer NPV), and (2) the annualized monetary value of the benefits of emission reductions, including CO_2 emission reductions.[102] The value of CO_2 reductions, otherwise known as the Social Cost of Carbon (SCC), is calculated using a range of values per metric ton of CO_2 developed by a recent interagency process.

Although combining the values of operating savings and CO_2 emission reductions provides a useful perspective, two issues should be considered. First, the national operating savings are domestic U.S. consumer monetary savings that occur as a result of market transactions, while the value of CO_2 reductions is based on a global value. Second, the assessments of operating cost savings and CO_2 savings are performed with different methods that use different time frames for analysis. The national operating cost savings is measured for the lifetime of residential boiler products shipped in 2020–2049. The SCC values, on the other hand, reflect the present value of some future climate-related impacts resulting from the emission of one metric ton of carbon dioxide in each year; these impacts continue well beyond 2100.

Estimates of annualized benefits and costs of the proposed standards for residential boilers are shown in Table V.49. The results under the primary estimate are as follows. Using a 7-percent discount rate for benefits and costs other than CO_2 reduction (for which DOE used a 3-percent discount rate along with the average SCC series that uses a 3-percent discount rate), the estimated cost of the residential boiler standards proposed in today's rule is $32 million per year in increased equipment costs, while the estimated benefits are $73 million per year in reduced equipment operating costs, $22 million per year in CO_2 reductions, and $1.53 million per year in reduced NO_X emissions. In this case, the net benefit would amount to $64 million per year.

Using a 3-percent discount rate for all benefits and costs and the average SCC series, the estimated cost of the residential boiler standards proposed in today's rule is $32 million per year in increased equipment costs, while the estimated benefits are $108 million per year in reduced equipment operating costs, $22 million per year in CO_2 reductions, and $2.10 million per year in reduced NO_X emissions. In this case, the net benefit would amount to $100 million per year.

TABLE V.49—ANNUALIZED BENEFITS AND COSTS OF PROPOSED AFUE STANDARDS (TSL 3) FOR RESIDENTIAL BOILERS *

	Discount rate (%)	(Million 2013$/year)		
		Primary estimate	Low net benefits estimate	High net benefits estimate
Benefits				
Consumer Operating Cost Savings	7	73	71	75.
	3	108	105	112.
CO_2 Reduction Monetized Value ($12.0/t case) **.	5	6.1	6.1	6.2.
CO_2 Reduction Monetized Value ($40.5/t case) **.	3	21.8	21.6	22.0.

[102] DOE used a two-step calculation process to convert the time-series of costs and benefits into annualized values. First, DOE calculated a present value in 2013, the year used for discounting the NPV of total consumer costs and savings, for the time-series of costs and benefits using discount rates of three and seven percent for all costs and benefits except for the value of CO_2 reductions. For the latter, DOE used a range of discount rates. From the present value, DOE then calculated the fixed annual payment over a 30-year period (2018 through 2047) that yields the same present value. The fixed annual payment is the annualized value. Although DOE calculated annualized values, this does not imply that the time-series of costs and benefits from which the annualized values were determined is a steady stream of payments.

TABLE V.49—ANNUALIZED BENEFITS AND COSTS OF PROPOSED AFUE STANDARDS (TSL 3) FOR RESIDENTIAL BOILERS *—Continued

	Discount rate (%)	(Million 2013$/year)		
		Primary estimate	Low net benefits estimate	High net benefits estimate
CO_2 Reduction Monetized Value ($62.4/t case) **.	2.5	32.2	31.9	32.5.
CO_2 Reduction Monetized Value ($119/t case) **.	3	67.6	66.9	68.2.
NO_X Reduction Monetized Value (at $2,684/ton) **.	7	1.53.	1.52	1.53
	3	2.10	2.08	2.12.
Total Benefits †	7 plus CO_2 range	80 to 142	79 to 140	83 to 145.
	7	96	94	99.
	3 plus CO_2 range	116 to 177	113 to 174	121 to 183.
	3	132	128	136.
Costs				
Consumer Incremental Equipment Costs.	7	32.3	38.7	26.8.
	3	31.7	38.9	25.6.
Net Benefits/Costs				
Total †	7 plus CO_2 range	48 to 110	40 to 101	56 to 118.
	7	64	56	72.
	3 plus CO_2 range	84 to 146	74 to 135	95 to 157.
	3	100	89	111.

* This table presents the annualized costs and benefits associated with residential boilers shipped in 2020–2049. These results include benefits to consumers which accrue after 2049 from the products purchased in 2020–2049. The results account for the incremental variable and fixed costs incurred by manufacturers due to the standard, some of which may be incurred in preparation for the rule. The Primary, Low Benefits, and High Benefits Estimates utilize projections of energy prices from the *AEO 2013* Reference case, Low Economic Growth case, and High Economic Growth case, respectively. In addition, incremental product costs reflect a medium decline rate for projected product price trends in the Primary Estimate, a low decline rate for projected product price trends in the Low Benefits Estimate, and a high decline rate for projected product price trends in the High Benefits Estimate. The methods used to derive projected price trends are explained in section IV.F.1.

** The interagency group selected four sets of SCC values for use in regulatory analyses. Three sets of values are based on the average SCC from the three integrated assessment models, at discount rates of 2.5, 3, and 5 percent. The fourth set, which represents the 95th percentile SCC estimate across all three models at a 3-percent discount rate, is included to represent higher-than-expected impacts from temperature change further out in the tails of the SCC distribution. The values in parentheses represent the SCC in 2015. The SCC time series incorporate an escalation factor. The value for NO_X is the average of the low and high values used in DOE's analysis.

† Total benefits for both the 3-percent and 7-percent cases are derived using the series corresponding to average SCC with a 3-percent discount rate ($40.5/t in 2015). In the rows labeled "7% plus CO_2 range" and "3% plus CO_2 range," the operating cost and NO_X benefits are calculated using the labeled discount rate, and those values are added to the full range of CO_2 values.

Estimates of annualized benefits and costs of the proposed standards for residential boiler standby mode and off mode power are shown in Table V.50. The results under the primary estimate are as follows. Using a 7-percent discount rate for benefits and costs other than CO_2 reduction (for which DOE used a 3-percent discount rate along with the average SCC series that uses a 3-percent discount rate), the estimated cost of the residential boiler standards proposed in today's rule is $9.31 million per year in increased equipment costs, while the estimated benefits are $28 million per year in reduced equipment operating costs, $3 million per year in CO_2 reductions, and $0.09 million per year in reduced NO_X emissions. In this case, the net benefit would amount to $22 million per year.

Using a 3-percent discount rate for all benefits and costs and the average SCC series, the estimated cost of the residential boiler standards proposed in today's rule is $9.35 million per year in increased equipment costs, while the estimated benefits are $35 million per year in reduced equipment operating costs, $3 million per year in CO_2 reductions, and $0.12 million per year in reduced NO_X emissions. In this case, the net benefit would amount to $29 million per year.

TABLE V.50—ANNUALIZED BENEFITS AND COSTS OF PROPOSED STANDBY MODE AND OFF MODE STANDARDS (TSL 3) FOR RESIDENTIAL BOILERS *

	Discount rate (%)	(Million 2013$/year)		
		Primary estimate	Low net benefits estimate	High net benefits estimate
Benefits				
Consumer Operating Cost Savings	7	28	27	29
	3	35	34	36
CO_2 Reduction Monetized Value ($12.0/t case) **.	5	1	1	1.

TABLE V.50—ANNUALIZED BENEFITS AND COSTS OF PROPOSED STANDBY MODE AND OFF MODE STANDARDS (TSL 3) FOR RESIDENTIAL BOILERS *—Continued

	Discount rate (%)	(Million 2013$/year)		
		Primary estimate	Low net benefits estimate	High net benefits estimate
CO_2 Reduction Monetized Value ($40.5/t case) **.	3	3	3	4.
CO_2 Reduction Monetized Value ($62.4/t case) **.	2.5	5	5	5.
CO_2 Reduction Monetized Value ($119/t case) **.	3	11	10	11.
NO_X Reduction Monetized Value (at $2,684/ton) **.	7	0.09	0.09	0.09.
	3	0.12	0.12	0.13.
Total Benefits †	7 plus CO_2 range	29 to 39	28 to 38	30 to 40.
	7	32	30	33.
	3 plus CO_2 range	36 to 46	35 to 44	38 to 47.
	3	39	37	40.
Costs				
Consumer Incremental Equipment Costs.	7	9.31	9.48	9.13.
	3	9.35	9.55	9.15.
Net Benefits/Costs				
Total †	7 plus CO_2 range	20 to 30	19 to 28	21 to 31.
	7	22	21	24.
	3 plus CO_2 range	27 to 37	25 to 35	28 to 38.
	3	29	28	31.

* This table presents the annualized costs and benefits associated with residential boilers shipped in 2020 – 2049. These results include benefits to consumers which accrue after 2049 from the products purchased in 2020 – 2049. The results account for the incremental variable and fixed costs incurred by manufacturers due to the standard, some of which may be incurred in preparation for the rule. The Primary, Low Benefits, and High Benefits Estimates utilize projections of energy prices from the *AEO 2013* Reference case, Low Economic Growth case, and High Economic Growth case, respectively.

** The interagency group selected four sets of SCC values for use in regulatory analyses. Three sets of values are based on the average SCC from the three integrated assessment models, at discount rates of 2.5, 3, and 5 percent. The fourth set, which represents the 95th percentile SCC estimate across all three models at a 3-percent discount rate, is included to represent higher-than-expected impacts from temperature change further out in the tails of the SCC distribution. The values in parentheses represent the SCC in 2015. The SCC time series incorporate an escalation factor. The value for NO_X is the average of the low and high values used in DOE's analysis.

† Total benefits for both the 3-percent and 7-percent cases are derived using the series corresponding to average SCC with a 3-percent discount rate ($40.5/t in 2015). In the rows labeled "7% plus CO_2 range" and "3% plus CO_2 range," the operating cost and NO_X benefits are calculated using the labeled discount rate, and those values are added to the full range of CO_2 values.

Estimates of the combined annualized benefits and costs of the proposed AFUE and standby mode and off mode standards are shown in Table V.51. The results under the primary estimate are as follows. Using a 7-percent discount rate for benefits and costs other than CO_2 reduction, for which DOE used a 3-percent discount rate along with the average SCC series that uses a 3-percent discount rate ($40.5/t in 2015), the estimated cost of the residential boilers AFUE and standby mode and off mode standards proposed in this rule is $41.7 million per year in increased equipment costs, while the estimated benefits are $101 million per year in reduced equipment operating costs, $25.3 million per year in CO_2 reductions, and $1.62 million per year in reduced NO_X emissions. In this case, the net benefit would amount to $86.3 million per year.

Using a 3-percent discount rate for all benefits and costs and the average SCC series that uses a 3-percent discount rate ($40.5/t in 2015), the estimated cost of the residential boilers AFUE and standby mode and off mode standards proposed in this rule is $41.0 million per year in increased equipment costs, while the estimated benefits are $143 million per year in reduced equipment operating costs, $25.3 million per year in CO_2 reductions, and $2.22 million per year in reduced NO_X emissions. In this case, the net benefit would amount to $129 million per year.

TABLE V.51—ANNUALIZED BENEFITS AND COSTS OF PROPOSED AFUE AND STANDBY MODE AND OFF MODE ENERGY CONSERVATION STANDARDS FOR RESIDENTIAL BOILERS (TSL 3)

	Discount rate (%)	(Million 2013$/year)		
		Primary estimate *	Low net benefits estimate *	High net benefits estimate *
Benefits				
Consumer Operating Cost Savings	7	101	98	104.
	3	143	138	149.

TABLE V.51—ANNUALIZED BENEFITS AND COSTS OF PROPOSED AFUE AND STANDBY MODE AND OFF MODE ENERGY CONSERVATION STANDARDS FOR RESIDENTIAL BOILERS (TSL 3)—Continued

	Discount rate (%)	(Million 2013$/year)		
		Primary estimate *	Low net benefits estimate *	High net benefits estimate *
CO_2 Reduction Monetized Value ($12.0/t case) *.	5	7.11	7.04	7.18.
CO_2 Reduction Monetized Value ($40.5/t case) *.	3	25.3	25.0	25.6.
CO_2 Reduction Monetized Value ($62.4/t case) *.	2.5	37.3	36.8	37.7.
CO_2 Reduction Monetized Value ($119/t case) *.	3	78.2	77.3	79.1.
NO_X Reduction Monetized Value (at $2,684/ton) **.	7	1.62	1.61	1.63.
	3	2.22	2.20	2.24.
Total Benefits †	7 plus CO_2 range	110 to 181	107 to 177	113 to 185.
	7	128	125	131.
	3 plus CO_2 range	152 to 223	148 to 218	158 to 230.
	3	170	165	177.
Costs				
Consumer Incremental Installed Costs.	7	41.7	48.2	35.9.
	3	41.0	48.5	34.8.
Net Benefits				
Total †	7 plus CO_2 range	68.1 to 139	58.8 to 129	77.0 to 149.
	7	86.3	76.7	95.4.
	3 plus CO_2 range	111 to 182	99 to 169	123 to 195.
	3	129	117	142.

* This table presents the annualized costs and benefits associated with residential boilers shipped in 2020 – 2049. These results include benefits to consumers which accrue after 2049 from the products purchased in 2020 – 2049. The results account for the incremental variable and fixed costs incurred by manufacturers due to the standard, some of which may be incurred in preparation for the rule. The Primary, Low Benefits, and High Benefits Estimates utilize projections of energy prices from the *AEO 2013* Reference case, Low Estimate, and High Estimate, respectively.

** The CO_2 values represent global monetized values of the SCC, in 2013$, in 2015 under several scenarios of the updated SCC values. The first three cases use the averages of SCC distributions calculated using 5%, 3%, and 2.5% discount rates, respectively. The fourth case represents the 95th percentile of the SCC distribution calculated using a 3% discount rate. The SCC time series used by DOE incorporate an escalation factor. The value for NO_X is the average of the low and high values used in DOE's analysis.

† Total Benefits for both the 3% and 7% cases are derived using the series corresponding to the average SCC with a 3-percent discount rate ($40.5/t in 2015). In the rows labeled "7% plus CO_2 range" and "3% plus CO_2 range," the operating cost and NO_X benefits are calculated using the labeled discount rate, and those values are added to the full range of CO_2 values.

VI. Procedural Issues and Regulatory Review

A. Review Under Executive Orders 12866 and 13563

Section 1(b)(1) of Executive Order 12866, "Regulatory Planning and Review," 58 FR 51735 (Oct. 4, 1993), requires each agency to identify the problem that it intends to address, including, where applicable, the failures of private markets or public institutions that warrant new agency action, as well as to assess the significance of that problem. The problems these proposed standards address are as follows:

(1) There is a lack of consumer information and/or information processing capability about energy efficiency opportunities in the home appliance market.

(2) There is asymmetric information (one party to a transaction has more and better information than the other) and/or high transactions costs (costs of gathering information and effecting exchanges of goods and services).

(3) There are external benefits resulting from improved energy efficiency of residential boilers that are not captured by the users of such equipment. These benefits include externalities related to environmental protection and energy security that are not reflected in energy prices, such as reduced emissions of greenhouse gases.

In addition, this regulatory action is an "economically significant regulatory action" under section 3(f)(1) of Executive Order 12866. Accordingly, section 6(a)(3) of the Executive Order requires that DOE prepare a regulatory impact analysis (RIA) on this rule and that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) review this rule. DOE presented to OIRA for review the draft rule and other documents prepared for this rulemaking, including the RIA, and has included these documents in the rulemaking record. The assessments prepared pursuant to Executive Order 12866 can be found in the technical support document for this rulemaking.

DOE has also reviewed this regulation pursuant to Executive Order 13563, issued on January 18, 2011 (76 FR 3281 (Jan. 21, 2011)). Executive Order 13563 is supplemental to and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, agencies are required by Executive Order 13563 to: (1) Propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of

cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public.

DOE emphasizes as well that Executive Order 13563 requires agencies to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible. In its guidance, the Office of Information and Regulatory Affairs has emphasized that such techniques may include identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes. For the reasons stated in the preamble, DOE believes that this NOPR is consistent with these principles, including the requirement that, to the extent permitted by law, benefits justify costs and that net benefits are maximized.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis (IRFA) for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's Web site (*http://energy.gov/gc/office-general-counsel*). DOE has prepared the following IRFA for the products that are the subject of this rulemaking.

For manufacturers of residential boilers, the Small Business Administration (SBA) has set a size threshold, which defines those entities classified as ''small businesses'' for the purposes of the statute. DOE used the SBA's small business size standards to determine whether any small entities would be subject to the requirements of the rule. 65 FR 30836, 30848 (May 15, 2000), as amended at 65 FR 53533, 53544 (Sept. 5, 2000) and codified at 13 CFR part 121. The size standards are listed by North American Industry Classification System (NAICS) code and industry description and are available at *http://www.sba.gov/category/navigation-structure/contracting/contracting-officials/small-business-size-standards*. Manufacturing of residential boilers is classified under NAICS 333414, ''Heating Equipment (except Warm Air Furnaces) Manufacturing.'' The SBA sets a threshold of 500 employees or less for an entity to be considered as a small business for this category.

1. Description and Estimated Number of Small Entities Regulated

To estimate the number of companies that could be small business manufacturers of products covered by this rulemaking, DOE conducted a market survey using publically-available information to identify potential small manufacturers. DOE's research involved industry trade association membership directories (including AHRI), public databases (*e.g.,* AHRI Directory,[103] the California Energy Commission Appliance Efficiency Database [104]), individual company Web sites, and market research tools (*e.g.,* Hoovers reports) to create a list of companies that manufacture or sell products covered by this rulemaking. DOE also asked stakeholders and industry representatives if they were aware of any other small manufacturers during manufacturer interviews and at DOE public meetings. DOE reviewed publicly-available data and contacted select companies on its list, as necessary, to determine whether they met the SBA's definition of a small business manufacturer of covered residential boilers. DOE screened out companies that do not offer products covered by this rulemaking, do not meet the definition of a ''small business,'' or are foreign owned and operated.

DOE initially identified 36 potential manufacturers of residential boilers sold in the U.S. DOE then determined that 23 are large manufacturers, manufacturers that are foreign owned and operated, or manufacturers that do not produce products covered by this rulemaking. DOE was able to determine that 13 manufacturers meet the SBA's definition of a ''small business.'' Of these 13 small businesses, nine manufacture boilers covered by this rulemaking, while the other four rebrand imported products or products manufactured by other small companies.

Before issuing this NOPR, DOE attempted to contact all the small business manufacturers of residential boilers it had identified. Two of the small businesses agreed to take part in an MIA interview. DOE also obtained information about small business impacts while interviewing large manufacturers.

DOE estimates that small manufacturers control approximately 17 percent of the residential boiler market. Based on DOE's research, three small businesses manufacture all four product classes of boilers domestically; four small businesses primarily produce condensing boiler products (most of which source heat exchangers from Europe or Asia); and two manufacturers primarily produce oil-fired hot water boiler products. The remaining four small businesses wholesale or rebrand products that are imported from Europe or Asia, or design products and source manufacturing to a domestic firm.

2. Description and Estimate of Compliance Requirements

The proposed standards for residential boilers could cause small manufacturers to be at a disadvantage relative to large manufacturers. For example, small manufacturers may be disproportionately affected by product conversion costs. Product redesign, testing, and certification costs tend to be fixed and do not scale with sales volume. When confronted with new or amended energy conservation standards, small businesses must make investments in research and development to redesign their products, but because they have lower sales volumes, they must spread these costs across fewer units. Moreover, smaller manufacturers may experience higher testing costs relative to larger manufacturers, as they may not possess their own test facilities and, therefore, must outsource all testing at a higher per-unit cost. In general, the three small manufacturers that offer all four product classes have product lines that are similar to those of larger competitors with similar market share. However, because these small manufacturers have fewer engineers and product development resources, they may have greater difficulty bringing their portfolio of products into compliance with

[103] See *www.ahridirectory.org/ahriDirectory/pages/home.aspx*.

[104] See *http://www.energy.ca.gov/appliances/*.

amended energy conservation standards within the allotted timeframe. They also may have to divert engineering resources from customer and new product initiatives for a longer period of time. These considerations would also apply to the four manufacturers that only produce one or two product classes and small businesses that rebrand boilers that do their own design work.

Smaller manufacturers also may lack the purchasing power of larger manufacturers. For example, suppliers of bulk purchase parts and components (such as gas valves) give boiler manufacturers discounts based on the quantities purchased. Therefore, larger manufacturers may have a pricing advantage because they have higher volume purchases. This purchasing power differential between high-volume and low-volume orders applies to other residential boiler components as well, such as ignition systems and inducer fan assemblies.

In order to meet the proposed standard, manufacturers may have to seek outside capital to cover expenses related to testing and product design equipment. Smaller firms typically have a higher cost of borrowing due to higher perceived risk on the part of investors, largely attributed to lower cash flows and lower per-unit profitability. In these cases, small manufacturers may observe higher costs of debt than larger manufacturers.

While DOE does not expect high capital conversion costs at TSL 3, DOE does expect smaller businesses would have to make significant product conversion investments relative to larger manufacturers. As previously noted, some of these smaller manufacturers are heavily weighted toward baseline products and other products below the efficiency levels proposed in today's notice. As Table VI.1 illustrates, smaller manufacturers would have to increase their R&D spending to bring products into compliance and to develop new products at TSL 3, the proposed level.

TABLE VI.1—IMPACTS OF CONVERSION COSTS ON A SMALL MANUFACTURER

	Capital conversion cost as a percentage of annual capital expenditures	Product conversion cost as a percentage of annual R&D expense	Total conversion cost as a percentage of annual revenue	Total conversion cost as a percentage of annual EBIT *
Average Large Manufacturer	5	21	0	6
Average Small Manufacturer	23	145	3	38

* EBIT means earnings before interest and taxes.

At TSL 3, the level proposed in this notice, DOE estimates capital conversion costs of $0.02 million and product conversion costs of $0.09 million for an average small manufacturer. DOE estimates that an average large manufacturer will incur capital conversion costs of $0.03 million and product conversion costs of $0.09 million. Based on the results in Table VI.1, DOE recognizes that small manufacturers will generally face a relatively higher conversion cost burden than larger competitors.

Manufacturers that have the majority of their products and sales at efficiency levels above today's standard may have lower conversion costs than those listed in Table VI.1. In particular, the four small manufacturers that primarily sell condensing products are unlikely to be affected by the efficiency levels at TSL 3, as all of their products are already above the efficiency levels proposed.

Furthermore, DOE recognizes that small manufacturers that primarily sell low-efficiency products today will face a greater burden relative to the small manufacturers that primarily sell high-efficiency products. At TSL 3, the level proposed in this notice, DOE believes that the three manufacturers that manufacture across all four product classes would have higher conversion costs because the majority of their products do not meet the standard proposed in today's notice and would require redesign. DOE estimates that 63 percent of these companies' product offerings do not meet the standard levels at TSL 3. Consequently, these manufacturers would have to expend funds to redesign their commodity products, or develop a new, higher-efficiency baseline product.

The two companies that primarily produce oil-fired hot water boilers could also be impacted, as they are generally much smaller than the small businesses that produce all product classes, have fewer shipments and smaller revenues, and are likely to have limited R&D resources. Both of these companies, however, do have oil-fired hot water boiler product listings that meet the proposed efficiency standards in this notice.

DOE estimates that one of the four companies that rebrands imported or sourced products does its own design work, while the other three import high-efficiency products from Europe or Asia. It is possible that the company that designs its own products could be affected by product conversion costs at TSL 3, while it is unlikely that the other three would be greatly impacted.

Based on this analysis, DOE notes that on average, small businesses will experience total conversion costs on the order of $0.11 million. However, some companies will fall below the average. In particular, DOE has identified 6 small manufacturers that could experience greater conversion costs burdens than indicated by the average.

DOE seeks further information and data regarding the sales volume and annual revenues for small businesses so the agency can be better informed concerning the potential impacts to small business manufacturers of the proposed energy conservation standards, and would consider any such additional information when formulating and selecting standard levels for the final rule.

3. Duplication, Overlap, and Conflict With Other Rules and Regulations

DOE is not aware of any rules or regulations that duplicate, overlap, or conflict with the rule being proposed today.

4. Significant Alternatives to the Rule

The discussion above analyzes impacts on small businesses that would result from DOE's proposed rule. In addition to the other TSLs being considered, the proposed rulemaking TSD includes a regulatory impact analysis (RIA) in chapter 17. For residential boilers, the RIA discusses the following policy alternatives: (1) No change in standard; (2) consumer rebates; (3) consumer tax credits; (4) manufacturer tax credits; (5) voluntary energy efficiency targets; and (6) bulk government purchases. While these alternatives may mitigate to some varying extent the economic impacts on small entities compared to the proposed standards, DOE does not intend to consider these alternatives further

because in several cases, they would not be feasible to implement without authority and funding from Congress, and in all cases, DOE has determined that the primary energy savings of these alternatives are significantly smaller than those that would be expected to result from adoption of the proposed standard levels (ranging from approximately 0.5 percent to 30.5 percent of the primary energy savings from the proposed standards). Accordingly, DOE is declining to adopt any of these alternatives and is proposing the standards set forth in this rulemaking. (See chapter 17 of the NOPR TSD for further detail on the policy alternatives DOE considered.)

Additional compliance flexibilities may be available through other means. For example, individual manufacturers may petition for a waiver of the applicable test procedure. (See 10 CFR 431.401.) Further, EPCA provides that a manufacturer whose annual gross revenue from all of its operations does not exceed $8,000,000 may apply for an exemption from all or part of an energy conservation standard for a period not longer than 24 months after the effective date of a final rule establishing the standard. Additionally, Section 504 of the Department of Energy Organization Act, 42 U.S.C. 7194, provides authority for the Secretary to adjust a rule issued under EPCA in order to prevent ''special hardship, inequity, or unfair distribution of burdens'' that may be imposed on that manufacturer as a result of such rule. Manufacturers should refer to 10 CFR part 430, subpart E, and part 1003 for additional details.

C. Review Under the Paperwork Reduction Act of 1995

Manufacturers of residential boilers must certify to DOE that their products comply with any applicable energy conservation standards. In certifying compliance, manufacturers must test their products according to the DOE test procedures for residential boilers, including any amendments adopted for those test procedures. DOE has established regulations for the certification and recordkeeping requirements for all covered consumer products and commercial equipment, including residential boilers. 76 FR 12422 (March 7, 2011). The collection-of-information requirement for the certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been approved by OMB under OMB control number 1910–1400. Public reporting burden for the certification is estimated to average 20 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

D. Review Under the National Environmental Policy Act of 1969

Pursuant to the National Environmental Policy Act (NEPA) of 1969, DOE has determined that the proposed rule fits within the category of actions included in Categorical Exclusion (CX) B5.1 and otherwise meets the requirements for application of a CX. See 10 CFR part 1021, App. B, B5.1(b); 1021.410(b) and Appendix B, B(1)–(5). The proposed rule fits within the category of actions because it is a rulemaking that establishes energy conservation standards for consumer products or industrial equipment, and for which none of the exceptions identified in CX B5.1(b) apply. Therefore, DOE has made a CX determination for this rulemaking, and DOE does not need to prepare an Environmental Assessment or Environmental Impact Statement for this proposed rule. DOE's CX determination for this proposed rule is available at *http://cxnepa.energy.gov/.*

E. Review Under Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (Aug. 10, 1999), imposes certain requirements on Federal agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE has examined this proposed rule and has tentatively determined that it 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. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of this proposed rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297) Therefore, no further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; (3) provide a clear legal standard for affected conduct rather than a general standard; and (4) promote simplification and burden reduction. 61 FR 4729 (Feb. 7, 1996). Regarding the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this proposed rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104–4, sec. 201 (codified at 2 U.S.C. 1531). For a proposed regulatory action likely to result in a rule that may cause the

expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect them. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820. DOE's policy statement is also available at *http://energy.gov/gc/office-general-counsel.*

This proposed rule, which proposes amended energy conservation standards for residential boilers, does not contain a Federal intergovernmental mandate, and it does not require expenditures of $100 million or more by the private sector. Specifically, the proposed rule would likely result in a final rule that could require expenditures estimated to range from $$26 to $39 million per year (See Table I.7). Including: (1) Investment in research and development and in capital expenditures by residential boilers manufacturers in the years between the final rule and the compliance date for the new standards, and (2) incremental additional expenditures by consumers to purchase higher-efficiency residential boilers, starting at the compliance date for the applicable standard.

Section 202 of UMRA authorizes a Federal agency to respond to the content requirements of UMRA in any other statement or analysis that accompanies the proposed rule. (2 U.S.C. 1532(c)) The content requirements of section 202(b) of UMRA relevant to a private sector mandate substantially overlap the economic analysis requirements that apply under section 325(o) of EPCA and Executive Order 12866. The **SUPPLEMENTARY INFORMATION** section of the NOPR and the ''Regulatory Impact Analysis'' section of the TSD for this proposed rule respond to those requirements.

Under section 205 of UMRA, the Department is obligated to identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a written statement under section 202 is required. (2 U.S.C. 1535(a)) DOE is required to select from those alternatives the most cost-effective and least burdensome alternative that achieves the objectives of the proposed rule unless DOE publishes an explanation for doing otherwise, or the selection of such an alternative is inconsistent with law. As required by 42 U.S.C. 6295(f) and (o), this proposed rule would establish amended energy conservation standards for residential boilers that are designed to achieve the maximum improvement in energy efficiency that DOE has determined to be both technologically feasible and economically justified. A full discussion of the alternatives considered by DOE is presented in the ''Regulatory Impact Analysis'' section of the TSD for this proposed rule.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

Pursuant to Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights,'' 53 FR 8859 (March 15, 1988), DOE has determined that this proposed rule would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under the Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for Federal agencies to review most disseminations of information to the public under information quality guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). DOE has reviewed this NOPR under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OIRA at OMB, a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

DOE has tentatively concluded that this regulatory action, which sets forth amended energy conservation standards for residential boilers, is not a significant energy action because the proposed standards are not likely to have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as such by the Administrator at OIRA. Accordingly, DOE has not prepared a Statement of Energy Effects on this proposed rule.

L. Review Under the Information Quality Bulletin for Peer Review

On December 16, 2004, OMB, in consultation with the Office of Science and Technology Policy (OSTP), issued its Final Information Quality Bulletin for Peer Review (the Bulletin). 70 FR 2664 (Jan. 14, 2005). The Bulletin establishes that certain scientific information shall be peer reviewed by qualified specialists before it is disseminated by the Federal Government, including influential scientific information related to agency regulatory actions. The purpose of the bulletin is to enhance the quality and credibility of the Government's scientific information. Under the Bulletin, the energy conservation standards rulemaking analyses are ''influential scientific information,'' which the Bulletin defines as ''scientific information the agency reasonably can determine will have or does have a clear and substantial impact on important public policies or private sector decisions.'' *Id.* at 2667.

In response to OMB's Bulletin, DOE conducted formal in-progress peer reviews of the energy conservation standards development process and analyses and has prepared a Peer Review Report pertaining to the energy conservation standards rulemaking analyses. Generation of this report involved a rigorous, formal, and documented evaluation using objective criteria and qualified and independent reviewers to make a judgment as to the technical/scientific/business merit, the actual or anticipated results, and the productivity and management effectiveness of programs and/or projects. The ''Energy Conservation Standards Rulemaking Peer Review Report,'' dated February 2007, has been disseminated and is available at the following Web site: *www1.eere.energy.gov/buildings/appliance_standards/peer_review.html.*

VII. Public Participation

A. Attendance at the Public Meeting

The time, date, and location of the public meeting are listed in the **DATES** and **ADDRESSES** sections at the beginning of this notice. If you plan to attend the public meeting, please notify Ms. Brenda Edwards at (202) 586–2945 or *Brenda.Edwards@ee.doe.gov.* As explained in the **ADDRESSES** section, foreign nationals visiting DOE Headquarters are subject to advance security screening procedures. Any foreign national wishing to participate in the meeting should advise DOE of this fact as soon as possible by contacting Ms. Brenda Edwards to initiate the necessary procedures.

In addition, you can attend the public meeting via webinar. Webinar registration information, participant instructions, and information about the capabilities available to webinar participants will be published on DOE's Web site at: *http://www1.eere.energy.gov/buildings/appliance_standards/rulemaking.aspx?ruleid=112*. Participants are responsible for ensuring their systems are compatible with the webinar software.

B. Procedure for Submitting Requests To Speak and Prepared General Statements for Distribution

Any person who has an interest in the topics addressed in this notice, or who is representative of a group or class of persons that has an interest in these issues, may request an opportunity to make an oral presentation at the public meeting. Such persons may hand-deliver requests to speak to the address shown in the **ADDRESSES** section at the beginning of this NOPR between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays. Requests may also be sent by mail or email to: Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Office, Mailstop EE–5B, 1000 Independence Avenue SW., Washington, DC 20585–0121, or *Brenda.Edwards@ee.doe.gov.* Persons who wish to speak should include with their request a computer diskette or CD–ROM in WordPerfect, Microsoft Word, PDF, or text (ASCII) file format that briefly describes the nature of their interest in this rulemaking and the topics they wish to discuss. Such persons should also provide a daytime telephone number where they can be reached.

DOE requests persons scheduled to make an oral presentation to submit an advance copy of their statements at least one week before the public meeting. DOE may permit persons who cannot supply an advance copy of their statement to participate, if those persons have made advance alternative arrangements with the Building Technologies Program. As necessary, requests to give an oral presentation should ask for such alternative arrangements.

C. Conduct of the Public Meeting

DOE will designate a DOE official to preside at the public meeting and may also use a professional facilitator to aid discussion. The meeting will not be a judicial or evidentiary-type public hearing, but DOE will conduct it in accordance with section 336 of EPCA (42 U.S.C. 6306). A court reporter will be present to record the proceedings and prepare a transcript. DOE reserves the right to schedule the order of presentations and to establish the procedures governing the conduct of the public meeting. There shall not be discussion of proprietary information, costs or prices, market share, or other commercial matters regulated by U.S. anti-trust laws. After the public meeting, interested parties may submit further comments on the proceedings, as well as on any aspect of the rulemaking, until the end of the comment period.

The public meeting will be conducted in an informal, conference style. DOE will present summaries of comments received before the public meeting, allow time for prepared general statements by participants, and encourage all interested parties to share their views on issues affecting this rulemaking. Each participant will be allowed to make a general statement (within time limits determined by DOE), before the discussion of specific topics. DOE will allow, as time permits, other participants to comment briefly on any general statements.

At the end of all prepared statements on a topic, DOE will permit participants to clarify their statements briefly and comment on statements made by others. Participants should be prepared to answer questions by DOE and by other participants concerning these issues. DOE representatives may also ask questions of participants concerning other matters relevant to this rulemaking. The official conducting the public meeting will accept additional comments or questions from those attending, as time permits. The presiding official will announce any further procedural rules or modification of the above procedures that may be needed for the proper conduct of the public meeting.

A transcript of the public meeting will be included in the docket, which can be viewed as described in the *Docket* section at the beginning of this notice and will be accessible on the DOE Web site. In addition, any person may buy a copy of the transcript from the transcribing reporter.

D. Submission of Comments

DOE will accept comments, data, and information regarding this proposed rule before or after the public meeting, but no later than the date provided in the **DATES** section at the beginning of this proposed rule. Interested parties may submit comments, data, and other information using any of the methods described in the **ADDRESSES** section at the beginning of this proposed rule.

Submitting comments via www.regulations.gov. The *www.regulations.gov* Web page will require you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment itself or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment.

Otherwise, persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to *www.regulations.gov* information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (CBI)). Comments submitted through *www.regulations.gov* cannot be claimed as CBI. Comments received through the Web site will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section below.

DOE processes submissions made through *www.regulations.gov* before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that *www.regulations.gov* provides after you have successfully uploaded your comment.

Submitting comments via email, hand delivery/courier, or mail. Comments and documents submitted via email, hand delivery, or mail also will be posted to *www.regulations.gov.* If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information in a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. If you submit via mail or hand delivery/courier, please provide all items on a CD, if feasible, in which case, it is not necessary to submit printed copies. No facsimiles (faxes) will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, that are written in English, and that are free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

Campaign form letters. Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

Confidential Business Information. Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email, postal mail, or hand delivery/courier two well-marked copies: One copy of the document marked ''confidential'' including all the information believed to be confidential, and one copy of the document marked ''non-confidential'' with the information believed to be confidential deleted. Submit these documents via email or on a CD, if feasible. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include: (1) A description of the items; (2) whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known by or available from other sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person which would result from public disclosure; (6) when such information might lose its confidential character due to the passage of time; and (7) why disclosure of the information would be contrary to the public interest.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

E. Issues on Which DOE Seeks Comment

Although DOE welcomes comments on any aspect of this proposal, DOE is particularly interested in receiving comments and views of interested parties concerning the following issues:

1. DOE requests further comment from interested parties regarding whether there are any technologies which have passed the screening analysis that should be screened out based on the four screening criteria. (*i.e.,* technological feasibility; practicability to manufacture, install, and service; impacts on product utility or product availability; and adverse impacts on health or safety). (See section IV.B.2 and chapter 3 of the NOPR TSD.)

2. DOE seeks comment from interested parties regarding the typical technological change associated with each efficiency level. (See section IV.C.1.b and chapter 5 in the NOPR TSD.)

3. DOE does not expect manufacturers will need to use condensing technology in order to meet the proposed standard. However, DOE requests further comment from interested parties regarding AFUE levels above 82 percent whether non-condensing boilers can exceed that level and to what extent and for which applications. DOE requests information on any additional costs (*e.g.* repair, maintenance, installation) ad information on other potential impacts to product performance or features (*e.g.* lifetime) associated with any non-condensing boiliers achieving AFUE levels above 82 percent. DOE requests comment on the the appropriateness of considering AFUE levels above 82 percent for non-condensing boilers for amended energy conservation standards for residential boilers and any potential trade-offs that should be considered when compared to employing condensing boilers at these efficiency levels(. (See section IV.C.1.b.)

4. DOE requests comment on the efficiency levels analyzed for standby mode and off mode, and on the assumption that standby mode and off mode energy consumption (as defined by DOE) would be equal. (See section IV.C.1.b.)

5. DOE requests comments regarding how the mix of residential boilers with and without inducers would change under amended energy conservation standards, and how to best estimate and account for such changes in this analysis. (See section IV.C.1.b.)

6. DOE's approach seeks to account for the energy performance of residential boilers installed in the field by considering automatic means, jacket losses, and return water temperatures. DOE requests comments on the reasonableness of its assumptions regarding these factors. (See section IV.E.1.)

7. DOE makes the assumption that most consumers are unlikely to set their boilers to the off mode during the non-heating season. Specifically, DOE requests comments on its estimate that 25 percent of consumers shut the boiler off during the non-heating season, as well as any information that might support a different estimate. (See section IV.E.2 and chapter 7 in the NOPR TSD.)

8. DOE requests comment on residential boiler lifetimes, particularly the lifetime of condensing boilers, whether the lifetimes assumed in the analysis are reflective of residential boiler equipment covered by this rule. In addition, the agency is seeking comment on whether the energy efficiency standards would be expected to affect the lifetime of the products covered by the proposed standards and any information supporting this affect. (See section IV.F.2.d and appendix 8–F of the NOPR TSD.)

9. DOE requests comment on the fraction of residential boilers:

a. That are used for domestic water heating (see section IV.E);

b. that are used in commercial applications (see section IV.E);

c. that are used in low-temperature vs. high-temperature applications (see section IV.E);

d. at each standby efficiency level (see section IV.E);

e. that use polypropylene, PVC, or chlorinated polyvinyl chloride (CPVC) venting (see section IV.F.1);

f. that require stainless steel venting (by efficiency level) (see section IV.F.1); and

g. that require a draft inducer (by efficiency level) (see section IV.F.1).

10. DOE requests comment on installation costs for condensing boilers. (See section IV.F.1 and chapter 8 of the NOPR TSD.)

11. DOE requests comment on the fraction of oil-fired hot water boiler shipments that would be expected to switch to gas-fired hot water boiler shipments due to the proposed standards. (See section IV.G and chapter 9 of the NOPR TSD.)

12. DOE requests comment on its projections of the market share of high-efficiency (condensing) boilers in 2020 in the absence of amended energy conservation standards, as well as the long-term market penetration of higher-efficiency residential boilers. (See section IV.H and appendix 8–H of the NOPR TSD.)

13. DOE requests comment on the reasonableness of its assumption to not apply a trend to the manufacturer selling price (in real dollars) of residential boilers, as well as any information that would support the use of alternative assumptions. (See section IV.H and appendix 10–C of the NOPR TSD.)

14. DOE requests data that would allow for use of different price trend projections for condensing and non-condensing boilers. (See section IV.F.1.)

15. DOE requests comment on DOE's methodology and data sources used for projecting the future shipments of residential boilers in the absence of amended energy conservation standards. (See section IV.G.)

16. To estimate the impact on shipments of the price increase for the considered efficiency levels, DOE used a relative price elasticity approach. DOE welcomes stakeholder input on the effect of amended standards on future residential boiler shipments. (See section IV.G.)

17. DOE requests comment on the potential impacts on product shipments related to fuel and equipment switching. (See section IV.G.)

18. DOE requests comment on the reasonableness of the revised values that DOE used to characterize the rebound effect with higher-efficiency residential boilers. Specifically, the agency lowered the assumed rebound affect in this proposed rule to 15 percent compared to the NODA in which the agency assumed a 20 percent rebound effect. (See section IV.F.2.a.)

19. DOE requests comment on the approach for conducting the emissions analysis for residential boilers. (See section IV.K.)

20. DOE requests comment on DOE's approach for estimating monetary benefits associated with emissions reductions. (See section IV.L.)

21. DOE requests comment on the technical feasibility of the proposed standards and whether any proprietary technology that would be a unique pathway to achieving any of these efficiency levels would be required. (See section IV.B.)

22. DOE seeks comment regarding any potential impacts on small business manufacturers from the proposed standards. In particular, DOE seeks further information and data regarding the sales volume and annual revenues for small businesses so the agency can be better informed concerning the potential impacts to small business manufacturers of the proposed energy conservation standards, and would consider any such additional information when formulating and selecting AFUE and standby/off-mode electrical energy conservation standards for the final rule and whether any feasible compliance flexibilities that the agency may consider. (See section IV.J.)

23. DOE seeks further information in order to balance the benefits and burdens of adopting TSL4 rather than TSL3 in the final rule. (See section V.C.1.)

24. DOE requests comment on whether manufacturers make their engineering design decisions for the two standards (*i.e.* standby and active mode) independently, therefore changes in manufacturing production costs and the conversion costs are additive. DOE requests comment on whether their engineering design decisions are integrated for the two standards and if an incremental analysis that simultaneously considers the manufacturing production costs and conversion costs would be more reflective of manufacturer decision making.

VIII. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of today's notice of proposed rulemaking.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Intergovernmental relations, Small businesses.

Issued in Washington, DC, on March 13, 2015.

David T. Danielson,

Assistant Secretary, Energy Efficiency and Renewable Energy.

For the reasons set forth in the preamble, DOE proposes to amend part 430 of chapter II, subchapter D, of title 10 of the Code of Federal Regulations, as set forth below:

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

■ 1. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

■ 2. Appendix N to subpart B of part 430 is amended by revising the note after the heading to read as follows:

Appendix N to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Furnaces and Boilers

Note: The procedures and calculations that refer to standby mode and off mode energy consumption (*i.e.,* sections 8.6 and 10.11 of this appendix N) need not be performed to determine compliance with energy conservation standards for furnaces and boilers until required as specified below. However, any representation related to standby mode and off mode energy consumption of these products made after July 1, 2013 must be based upon results generated under this test procedure, consistent with the requirements of 42 U.S.C. 6293(c)(2). For furnaces, the statute requires that after July 1, 2010, any adopted energy conservation standard shall address standby mode and off mode energy consumption for these products, and upon the compliance date for such standards, compliance with the

applicable provisions of this test procedure will be required. For boilers manufactured on and after (*compliance date of final rule*), compliance with the applicable provisions of this test procedure is required in order to determine compliance with energy conservation standards.

* * * * *

■ 3. Section 430.32 is amended by:

■ a. Adding in paragraph (e)(2)(ii), the words ''and before (*compliance date of final rule*),'' after ''2012,'';

■ b. Redesignating paragraphs (e)(2)(iii) and (e)(2)(iv) as paragraphs (e)(2)(iv) and (e)(2)(v), respectively;

■ c. Adding a new paragraph (e)(2)(iii) to read as follows:

§ 430.32 Energy and water conservation standards and their compliance dates.

* * * * *

(e) * * *

(2) * * *

(iii)(A) Except as provided in paragraph (e)(2)(v) of this section, the AFUE of residential boilers, manufactured on and after (*compliance date of final rule*), shall not be less than the following and must comply with the design requirements as follows:

Product class	AFUE [1] (percent)	Design requirements
(1) Gas-fired hot water boiler.	85	Constant-burning pilot not permitted. Automatic means for adjusting water temperature required (except for boilers equipped with tankless domestic water heating coils).
(2) Gas-fired steam boiler	82	Constant-burning pilot not permitted.
(3) Oil-fired hot water boiler.	86	Automatic means for adjusting temperature required (except for boilers equipped with tankless domestic water heating coils).
(4) Oil-fired steam boiler ..	86	None.
(5) Electric hot water boiler.	None	Automatic means for adjusting temperature required (except for boilers equipped with tankless domestic water heating coils).
(6) Electric steam boiler ...	None	None.

[1] Annual Fuel Utilization Efficiency, as determined in § 430.23(n)(2) of this part.

(B) Except as provided in paragraph (e)(2)(v) of this section, the standby mode power consumption ($P_{W,SB}$) and off mode power consumption ($P_{W,OFF}$) of residential boilers, manufactured on and after (*compliance date of final rule*), shall not be more than the following:

Product class	$P_{W,SB}$ (watts)	$P_{W,OFF}$ (watts)
(1) Gas-fired hot water boiler	9	9
(2) Gas-fired steam boiler	8	8
(3) Oil-fired hot water boiler	11	11
(4) Oil-fired steam boiler	11	11
(5) Electric hot water boiler	8	8
(6) Electric steam boiler	8	8

* * * * *

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