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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 301

[Docket No. APHIS–2015–0016]

#### Amendment of Asian Longhorned Beetle Quarantine Areas in Massachusetts and New York

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Affirmation of interim rule as final rule.

**SUMMARY:** We are adopting as a final rule, without change, an interim rule that amended the Asian longhorned beetle (ALB) regulations by removing the boroughs of Manhattan and Staten Island in New York City, as well as the counties of Suffolk and Norfolk in the State of Massachusetts, from the list of quarantined areas for ALB. The interim rule was necessary to relieve restrictions on the movement of regulated articles from areas no longer under ALB quarantine. As a result of the interim rule, movement of such articles from areas no longer under quarantine can proceed while preventing the artificial spread of ALB from infested areas to noninfested areas of the United States.

**DATES:** Effective on November 19, 2015, we are adopting as a final rule the interim rule published at 80 FR 48001–48002 on August 11, 2015.

**FOR FURTHER INFORMATION CONTACT:** Ms. Claudia Ferguson, Senior Regulatory Policy Specialist, Regulatory Coordination and Compliance, Imports, Regulations, and Manuals, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1231; (301) 851–2352; [Claudia.Ferguson@aphis.usda.gov](mailto:Claudia.Ferguson@aphis.usda.gov).

#### SUPPLEMENTARY INFORMATION:

## Background

In an interim rule<sup>1</sup> effective and published in the **Federal Register** on August 11, 2015 (80 FR 48001–48002, Docket No. APHIS–2015–0016), we amended the Asian longhorned beetle (ALB) regulations in 7 CFR part 301 by removing the boroughs of Manhattan and Staten Island in New York City, as well as the counties of Suffolk and Norfolk in the State of Massachusetts, from the list of quarantined areas for ALB.

Comments on the interim rule were required to be received on or before September 10, 2015. We did not receive any comments. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule without change.

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12988, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived its review under Executive Order 12866.

#### List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

#### PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR part 301 and that was published at 80 FR 48001–48002 on August 11, 2015.

Done in Washington, DC, this 12th day of November 2015.

**Kevin Shea,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 2015–29542 Filed 11–18–15; 8:45 am]

**BILLING CODE 3410–34–P**

<sup>1</sup>To view the interim rule, go to <http://www.regulations.gov/#!docketDetail;D=APHIS-2015-0016>.

## FEDERAL HOUSING FINANCE BOARD

### 12 CFR Parts 914 and 917

## FEDERAL HOUSING FINANCE AGENCY

### 12 CFR Parts 1236 and 1239

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of Federal Housing Enterprise Oversight

### 12 CFR Parts 1710 and 1720

RIN 2590–AA59

#### Responsibilities of Boards of Directors, Corporate Practices and Corporate Governance Matters

**AGENCY:** Federal Housing Finance Board; Federal Housing Finance Agency; Office of Federal Housing Enterprise Oversight.

**ACTION:** Final rule.

**SUMMARY:** The Federal Housing Finance Agency (FHFA) is amending its regulations by relocating and consolidating certain regulations of its predecessor agencies—the Federal Housing Finance Board (Finance Board) and Office of Federal Housing Enterprise Oversight (OFHEO)—that pertain to the responsibilities of boards of directors, corporate practices, and corporate governance matters. The OFHEO regulations addressed corporate governance matters at the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, the Enterprises), while the Finance Board regulations addressed the powers and responsibilities of the boards of directors and management of the Federal Home Loan Banks (Banks). The final rule consolidates most of those regulations into a new FHFA regulation, parts of which will apply to both the Banks and the Enterprises (together, regulated entities), and parts of which will apply only to the Banks or only to the Enterprises. Most of the content of the new regulations has been derived from the regulations of the predecessor agencies, with such modifications as are necessary to apply the regulations to all of the regulated entities, to respond to issues raised by the commenters, or to clarify the regulatory text. The final rule

also amends the Prudential Management and Operations Standards (Prudential Standards) provisions by designating certain introductory language—which pertains to the general responsibilities of senior management and boards of directors—as a separate Prudential Standard. The final rule also repeals a provision of the OFHEO regulations that related to minimum safety and soundness requirements for the Enterprises.

**DATES:** The final rule is effective on December 21, 2015.

**FOR FURTHER INFORMATION CONTACT:** Amy Bogdon, Associate Director, Division of Federal Home Loan Bank Regulation, at [Amy.Bogdon@fhfa.gov](mailto:Amy.Bogdon@fhfa.gov) or (202) 649-3320, or Neil R. Crowley, Deputy General Counsel, Office of General Counsel, at [Neil.Crowley@fhfa.gov](mailto:Neil.Crowley@fhfa.gov) or (202) 649-3055 (not toll-free numbers), Federal Housing Finance Agency, Constitution Center, 400 7th Street SW., Washington, DC 20024. The telephone number for the Telecommunications Device for the Hearing Impaired is (800) 877-8339.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

*A. Proposed Rule*

On January 28, 2014, FHFA published a proposed rule that would relocate, revise, and consolidate into a new FHFA regulation certain of the rules of the predecessor agencies that dealt with corporate practices and governance at the Banks and the Enterprises.<sup>1</sup> The proposed rule was one phase of FHFA's ongoing project to repeal or relocate remaining OFHEO and Finance Board regulations. Both predecessor agencies had regulations addressing director responsibilities, corporate practices, and corporate governance matters. Pursuant to the Housing and Economic Recovery Act of 2008 (HERA), Public Law 110-289, 122 Stat. 2654, those regulations remain in effect until they are superseded by regulations issued by FHFA. See *id.* at sections 1302, 1312, 122 Stat. 2795, 2798. The intent of the proposed rule was to consolidate certain of those regulations into a new set of FHFA regulations that would address those same matters, and to repeal any predecessor regulations that were not adopted as FHFA regulations. The proposed rule was not intended to address conservatorship matters, but rather to address matters of corporate practice and governance that currently are addressed by OFHEO regulations, to which the Enterprises remain subject. The applicable regulations of the

predecessor agencies addressed by this rulemaking currently are located at parts 914, 917, 1710, and 1720 of title 12 of the Code of Federal Regulations. All of the relocated portions of these regulations would be codified as a new part 1239 of the FHFA regulations.

The proposed rule included a number of provisions that would apply to all of the regulated entities because they addressed matters of general applicability, but also included other provisions that would apply only to the Banks or only to the Enterprises because they addressed topics that are unique to the particular type of entity. The substance of most of the provisions of the proposed rule was unchanged from that of the predecessor regulations, except for the provision on risk management, which was new. The proposed rule would also have carried over a Finance Board regulation on regulatory reporting and applied that provision to all of the regulated entities.

In conjunction with the relocation of the predecessor regulations, the proposed rule also would have revised certain provisions of FHFA's Prudential Standards. Specifically, the proposal would have redesignated the introductory section to the Prudential Standards—which recites general concepts of corporate governance and responsibilities of the board of directors and senior management—as a separate standard. Doing so would clarify FHFA's authority to enforce those provisions in the same manner as any of the other ten enumerated standards. Lastly, the proposal would have repealed a provision of the OFHEO regulations, 12 CFR part 1720, which had established certain safety and soundness standards for the Enterprises, because many of the matters addressed by those regulations are also addressed by the Prudential Standards or by the proposed rule.

*B. Considerations of Differences Between the Banks and the Enterprises*

When promulgating regulations or taking other actions that relate to the Banks, section 1313(f) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (Safety and Soundness Act) requires the Director of FHFA (Director) to consider the differences between the Banks and the Enterprises with respect to the Banks' cooperative ownership structure; mission of providing liquidity to members; affordable housing and community development mission; capital structure; and joint and several liability. 12 U.S.C. 4513(f). In preparing the proposed and final rules, the Director has considered those

differences as they relate to the above factors and has determined that none of the statutory factors would be adversely affected by the final rule. None of the comment letters addressed this requirement.

**II. Response to Comment Letters**

In response to the proposed rule, FHFA received three substantive comment letters, one each from Fannie Mae and Freddie Mac, and a joint letter from the Banks. Each letter generally supported the proposed rule, but also recommended different ways in which FHFA should revise certain aspects of the rule. In response to these recommendations, FHFA has incorporated a number of revisions into the final rule. The following sections of this document describe the issues raised by the commenters, along with FHFA's responses, which are included as part of FHFA's descriptions of the particular provisions of the final rule for which the commenters had suggested revisions. For other provisions of the proposed rule about which the commenters raised no issues, FHFA has adopted them without change.

**III. Final Rule**

*A. Overview*

The organizational structure of the final rule is the same as that of the proposed rule, meaning that it includes one subpart for definitions and four subparts for the substantive provisions. Subpart A defines terms used within the final rule. Subpart B includes provisions relating to certain core corporate governance principles and applies to both the Banks and the Enterprises. Subpart C addresses codes of conduct for the entities, risk management, compliance programs, and regulatory reports, and also applies to all regulated entities. Subparts D and E include regulations from the predecessor agencies that address matters specific to the Banks (such as those relating to a Bank's member products policy) or to the Enterprises (such as those relating to the Enterprise boards), respectively. None of these provisions is intended to address conservatorship matters at the Enterprises. Instead, they are intended to address matters of corporate practice and governance for regulated entities that are not in conservatorship by replacing the existing OFHEO regulations on those same topics.<sup>2</sup> The

<sup>2</sup> FHFA as conservator has exercised its authority under 12 U.S.C. 4617(b)(2)(C) to provide for the Enterprises' management to be overseen by the boards of directors under their charter acts, 12 U.S.C. 1452(a), 1723(b), and those boards have been operating under the OFHEO regulations, which are being replaced by this regulation.

<sup>1</sup> See 79 FR 4414 (January 28, 2014).

following paragraphs describe the manner in which each of the subparts of the final rule differs from those of the proposed rule and, as applicable, describes the material issues raised by the commenters and FHFA's responses to them.

#### B. Subpart A—General

##### Definitions (1239.2)

The proposed rule included seventeen defined terms, most of which were derived from the predecessor agencies' regulations and were to be incorporated into the FHFA's regulations without change. The final rule revises one of the proposed definitions, deletes two proposed definitions, and adds one new definition.

The proposed rule would have defined "executive officer" to include the chairperson and vice-chairperson of an Enterprise, along with a number of other specified senior executive positions at any Bank or Enterprise. Both Enterprises commented that defining "executive officer" to include the chairperson and vice-chairperson created a conflict with another provision of the proposed rule, 12 CFR 1239.20(a)(3), which requires the chairperson of an Enterprise to be a person other than the chief executive officer, who also must be independent, as defined by the rules of the New York Stock Exchange (NYSE). The applicable NYSE rule provides that a company's chairperson is not "independent" if the person is, or has been within the past three years, an executive officer of the company. In order to resolve this conflict, FHFA agrees with the commenters and has amended the definition of "executive officer" to delete the references to an Enterprise's chairperson and vice-chairperson.

The proposed rule had used the term "risk profile" in several places within the risk management section of the rule, but did not define that term. In considering how to define that term for the final rule, FHFA determined that a similar term—"risk appetite"—as defined by the Office of the Comptroller of the Currency in its guidelines establishing heightened standards for national banks, better described the concept that FHFA had intended with its use of the term "risk profile" in the proposed rule. Accordingly, the final rule replaces the references to "risk profile" with the new term "risk appetite" and defines that term to mean the aggregate level and types of risk the board of directors and management are willing to assume to achieve the regulated entity's strategic objectives and business plan, consistent with

applicable capital, liquidity, and other regulatory requirements.

The final rule deletes the defined term "authorizing statutes" because FHFA has recently defined that term within its general definitions section, at 12 CFR 1201, which definitions apply to all of FHFA's regulations. FHFA has also deleted the definition of the Sarbanes-Oxley Act from the final rule, because that term is only used once within the regulatory text, which now refers to that act by its name, rather than the acronym.

The proposed rule defined credit risk as "the potential that a borrower or counterparty will fail to meet its financial obligations in accordance with agreed terms." Credit risk is one of the several specified risks that the rule requires a regulated entity's risk management program to address. Freddie Mac contended that the proposed definition was both too broad and too narrow and also suggested that FHFA replace "financial obligations" with "contractual obligations." Freddie Mac also suggested that FHFA define "credit risk" in terms of an actual failure of a counterparty to perform, *i.e.*, as the risk that the counterparty will fail to perform. FHFA declines to accept either of those suggestions, and notes that its definition is consistent with those of other banking regulators, which also focus on the potential that a borrower or counterparty will fail to meet its obligations.<sup>3</sup> FHFA also believes that using the term "contractual obligations" in the definition would make it overly broad, in that such language would include other types of contractual obligations that may not have any relevance to credit risk.

#### C. Subpart B—Corporate Practices and Procedures Applicable to All Regulated Entities

Subpart B of the proposed rule included three provisions that addressed certain core principles of corporate practices or governance that

<sup>3</sup> See *e.g.*, Principles for the Management of Credit Risk—Consultative Document, Bank for International Settlements, July 1999 ("Credit risk is most simply defined as the potential that a bank borrower or counterparty will fail to meet its obligations in accordance with agreed terms."). See also, Interagency Counterparty Risk Management Guidance, Board of Governors of the Federal Reserve System, SR 11–10, July 5, 2011 ("Counterparty credit risk is the risk that the counterparty to a transaction could default.") and Supervisory Policy Statement on Investment Securities and End-User Derivatives Activities, Federal Financial Institutions Examination Council, Oct. 3, 1997 (A component of credit risk is settlement and pre-settlement credit risk. "These risks are the *possibility* that a counterparty will fail to honor its obligation at or before the time of settlement." (emphasis added)).

were to apply to both the Enterprises and the Banks. Those provisions addressed choice of law for governance and indemnification matters, duties of directors, and committees of the boards of directors. Nearly all of the content of those provisions was derived from the Finance Board or OFHEO regulations.

##### Choice of Law and Indemnification (1239.3)

##### Choice of Law

Proposed § 1239.3(a) and (b) generally would have required that a regulated entity's corporate governance and indemnification practices comply with any applicable federal law, but also would have required each regulated entity to designate in its bylaws a body of law to follow with respect to those practices. The proposed rule would have allowed a regulated entity to follow: (1) The law of the jurisdiction in which the entity maintains its principal office; (2) the Delaware General Corporation Law; or (3) the Revised Model Business Corporation Act. This choice of law provision would be new only for the Banks because the OFHEO regulations had previously imposed this requirement on the Enterprises.

The Banks expressed concern that by choosing a particular body of state law to follow they could subject themselves to the jurisdiction of those states' courts and would allow their members to assert all of the rights available to stockholders of corporations organized under those state laws. Although FHFA does not believe that its regulations would cause either of those possibilities to occur, it agrees that for the sake of clarity the final rule should be revised to state explicitly that the regulation does not create any rights in the members or other third parties and that it does not otherwise cause the regulated entities to become subject to the jurisdiction of state courts on matters of corporate governance and indemnification. In addition, FHFA has determined that it would be appropriate to allow the Banks an additional period of time within which to compare the relative merits of the three bodies of law from which they may choose. Accordingly, the final rule allows the Banks a period of 90 days after the effective date of the rule by which to designate in their bylaws their chosen body of law.

The Banks also suggested that the regulation should allow them to model their bylaw provisions after certain specific state law provisions, rather than on an entire body of state corporate law. FHFA has declined to make that revision for the final rule because it

does not believe that the selective designation of various state corporate law provisions would result in an effective or uniform source of guidance for the entities.

#### Indemnification

The proposed rule would have required the regulated entities to indemnify their directors, officers, and employees under terms and conditions to be determined by the entities' boards of directors. Section 1239.3(c)(2) further would have required that each regulated entity adopt policies and procedures for indemnifying its personnel, which had to address how the board would make decisions on indemnification requests and what standards the board would use for indemnification requests, as well as for board investigations and review by outside counsel. These provisions were modeled on FHFA's regulations governing the Office of Finance, 12 CFR 1273.7(i)(3), and the OFHEO indemnification provisions at 12 CFR 1710.20.

The Banks' comment letter questioned FHFA's authority to subject the Banks to regulations relating to indemnification, citing a provision of the Federal Home Loan Bank Act (Bank Act), 12 U.S.C. 1427(k), which they believed committed matters of indemnification exclusively to the discretion of the Bank's board of directors. FHFA believes that the language of the proposed rule is fully consistent with the authority granted to the Banks' boards of directors by section 1427(k) because the rule largely restates and elaborates on the statutory requirement that the boards of directors are to determine the terms and conditions on which the regulated entities are to provide indemnification to their personnel.

The one aspect of the proposed rule that differed from the statute pertained to the provisions requiring the entities to adopt policies describing the manner in which they would exercise their indemnification authority. In effect, those provisions would have required the entities to commit to writing the decisions that their boards of directors make with respect to the circumstances under which they intend to provide indemnification to their officers and employees and the manner in which they will make those decisions. Requiring the entities to document the policies, procedures, and standards that the board of directors will use when considering requests for indemnification does not diminish the authority of the boards of directors to set the terms and conditions on which the entity will indemnify its personnel. In such cases, the boards would still decide the terms

and conditions for indemnification, and the written policies, procedures, and standards would reflect and implement those board decisions. Requiring a regulated entity to have in place procedural safeguards, such as policies, procedures, and standards for indemnification, benefits the board of directors by helping to ensure that they make their indemnification decisions on a consistent basis, which in turn increases the likelihood that the entities will make these decisions in a safe and sound manner. FHFA has explicit authority to adopt regulations to ensure that the purposes of the Bank Act are carried out.<sup>4</sup> For those reasons, FHFA has retained this requirement in the final rule.

The proposed rule also included a provision carried over from the OFHEO regulations that authorized FHFA to review an entity's indemnification policies, procedures, and practices and to limit or prohibit an entity from making indemnification payments based on FHFA's safety and soundness authority. The commenters questioned whether FHFA has the legal authority to prohibit indemnification payments based solely on its safety and soundness authority, particularly in light of a 2008 statutory amendment that explicitly authorized FHFA to prohibit indemnification payments only in cases where FHFA has initiated the action against an officer or director of a regulated entity. 12 U.S.C. 4518(e). Fannie Mae also objected to certain language in the supplementary information to the proposed rule, which described this provision as allowing FHFA to prohibit indemnification payment to "any person found to have violated any law or regulation," as going beyond the language of the regulatory text.

To address these comments, FHFA has revised § 1239.3(c)(4) of the final rule in two respects. First, the final rule no longer asserts the authority of FHFA to limit or prohibit indemnification payments based solely on safety and soundness grounds. To the extent that FHFA deems it necessary to limit or prohibit indemnification payments by a regulated entity, it will act under the authority conferred by 12 U.S.C. 4518(e), which applies only to instances in which FHFA has initiated the underlying civil or administrative action. Second, the final rule revises the regulatory language to provide that FHFA may review a regulated entity's indemnification policies, procedures, and practices to ensure that they are

consistent with law and with safety and soundness, and that they are carried out in a safe and sound manner. FHFA anticipates that this type of review could focus on issues such as whether a regulated entity has been consistent in how it acts on indemnification requests from different persons, and whether it has documented that it has made its decisions in accordance with the body of state law that the entity has chosen to follow for indemnification purposes.

Lastly, the Banks asked that FHFA clarify the circumstances in which it would exercise its statutory authority under the factors enumerated in 12 U.S.C. 4518(e)(2), which authorizes FHFA to limit or prohibit indemnification payments in connection with civil or administrative actions brought by FHFA. Because the proposed rule did not include any provisions relating to section 4518(e)(2), FHFA cannot address that provision for the first time as part of this final rule. That statutory provision is the subject of a separate rulemaking.<sup>5</sup>

#### Duties and Responsibilities of Directors (1239.4)

Proposed § 1239.4 set forth certain duties and responsibilities of directors of a regulated entity. The text of the proposed regulation consisted mostly of provisions carried over from Finance Board regulations § 917.2, § 917.10, and, to a lesser extent, OFHEO regulation § 1710.15. This section of the proposed rule generally stated that the responsibility for managing a regulated entity is vested in the board of directors. The provision also included a list of duties for the directors, which included a duty to act with the degree of care of an ordinarily prudent person, and a duty to have a working familiarity with basic finance and accounting matters. The proposed rule also included a set of director responsibilities, which included having in place policies and procedures to relating to the board's oversight of risk management, compensation, financial reporting, and regulatory reporting. Commenters raised four questions about these provisions.

The Enterprises expressed concern about the language of the proposed rule that stated that the management of a regulated entity "shall be vested in its board of directors." The Enterprises believed this language could be read as expanding the traditional role of corporate directors and imposing on them some responsibility for becoming involved in the day-to-day operations of the entity. As a general proposition, FHFA agrees that the role of the board

<sup>4</sup> Safety and Soundness Act section 1319G, 12 U.S.C. 4526.

<sup>5</sup> See 74 FR 30975 (June 29, 2009).

is one of oversight, and that it is management who is to be responsible for the day-to-day operations of the entities. The language used in the proposed rule was derived from the Bank Act and the Finance Board regulations. In order to address the concerns raised by the Enterprises about how the rule should describe the role of the board of directors, FHFA looked to Delaware corporate law for guidance. The relevant provision of the Delaware statutes provides that “the business and affairs of every corporation organized under this chapter shall be managed by or under the direction of a board of directors.” Delaware General Corporation Law, § 141(a). FHFA believes that this language accurately describes the roles of corporate directors generally, and is consistent with the language of the Bank Act, which provides that the management of the Banks is to be “vested in” the board of directors. Accordingly, FHFA has revised § 1239.4(a) of the final rule by replacing the proposed language with language stating that the management of a regulated entity is to be “by or under the direction of” its board of directors. FHFA intends this revision to make clear that the final rule should not be construed as requiring the directors of a regulated entity to become responsible for the day-to-day operational functions of the entity.

The Enterprises also expressed concern about language of § 1239.4(b)(1) of the proposed rule relating to the directors’ duty of care, which provided, in part, that a director should carry out his or her duties “with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.” Freddie Mac believed that the use of the “ordinarily prudent person” standard of care for how a director must discharge his or her duties could conflict with the body of state law that the Enterprises have chosen for corporate governance purposes, which would not use an “ordinarily prudent person” standard of care. Fannie Mae believed that the proposed language went beyond the fiduciary duties imposed on board members under Delaware law. FHFA has decided not to establish a separately defined standard of care for the directors of the regulated entities, but instead to rely on § 1239.3(b)(1) of the proposed rule, which would require each entity to designate a body of state law for its corporate governance practices. As the Enterprises noted, neither Virginia law, which Freddie Mac has designated, nor Delaware law, which Fannie Mae has

designated, uses a standard of care for corporate directors that is based on an “ordinarily prudent person” concept. Indeed, both of those states, as well as all other states, have adopted some version of the business judgment rule for corporate directors. The Delaware courts have construed that state’s business judgment rule as establishing a standard of gross negligence as the basis on which a corporate director could be held liable for breach of his or her duty of care to the corporation.<sup>6</sup> In order to ensure that the directors of the regulated entities are not held to a standard of care different from the standard likely to be applicable to directors of other financial institutions, which could affect the availability of director candidates, FHFA is amending § 1239.4(b)(1) of the final rule by deleting the reference to an “ordinarily prudent person” and replacing it with language requiring directors of a regulated entity to exercise the degree of care that is required under the Revised Model Business Corporation Act or the other body of state law that the regulated entity has chosen to follow for its corporate governance and indemnification practices. Under the revised provision, Fannie Mae and Freddie Mac could continue to look to their chosen bodies of law, Delaware and Virginia, respectively, to determine the standard of care owed by their directors to the entities. Likewise, the Banks could look to whatever body of law they choose to govern their corporate governance practices, including the standard of care for their directors.

The proposed rule would have carried over and applied to all of the regulated entities a Finance Board provision that requires directors of Banks to “administer the affairs of the regulated entity fairly and impartially.” The Enterprises contended that that provision, which is derived from the Bank Act and reflects the cooperative structure of the Banks, was not well-suited for the Enterprises because they are not cooperatives. They also contended that the proposed provision was unnecessary because general concepts of fairness are inherent in the fiduciary duties of their directors to act in the best interest of the corporation. In response to the Enterprises’ concerns, FHFA has amended the final rule so that this language will apply only to the Banks.

The proposed rule also included a provision derived from the Finance Board regulations that provided that all

directors have a duty to have a “working familiarity with basic finance and accounting practices,” so that they are able to ask substantive questions of management and the auditors. The provision would allow a director to acquire that level of knowledge either prior to becoming an entity’s director or within a reasonable time thereafter, such as through appropriate training. Both Fannie Mae and Freddie Mac expressed concern about this provision, believing that it could be read to require all directors to become “audit committee financial experts” and that it could effectively preclude them from recruiting directors who have specialized expertise outside of the realms of finance and accounting. FHFA does not believe that the language of the proposed rule, which uses the terms “working familiarity” and “basic finance and accounting” can reasonably be construed as being equivalent to requiring the same level of knowledge as is required to be an “audit committee financial expert.” The knowledge and experience required under the regulations of the Securities and Exchange Commission (SEC) to be deemed an “audit committee financial expert” are quite detailed and go far beyond concepts of basic finance and accounting. For example, an audit committee financial expert must have an understanding of generally accepted accounting principles and financial statements, the ability to assess the application of those principles, experience in preparing, auditing, or analyzing financial statements, an understanding of internal controls over financial reporting, and an understanding of audit committee functions. The expert also must have acquired those attributes through education and experience as a principal financial officer, principal accounting officer, controller, public accountant, or auditor, or by supervising persons performing those functions.<sup>7</sup> FHFA also does not believe that requiring directors of the regulated entities to have or develop an understanding of basic concepts of finance and accounting will preclude them from recruiting persons whose expertise lies in other areas. Although FHFA has not defined the terms “working familiarity” or “basic finance and accounting practices,” they should be read in the context of the remainder of the provision, which indicates that the level of understanding has to be sufficient to allow the persons to read and understand the entity’s financial statements (which the Enterprise directors already certify

<sup>6</sup> *Aronson v. Lewis*, 473 A.2d 805 (1984) (Supreme Court of Delaware).

<sup>7</sup> 17 CFR 229.407(d)(5)(iii).

when filing their Form 10-K with the SEC) and to engage in a dialogue with management and the auditors about the operations and financial condition of the entity. Moreover, the Banks, which also have a minority of their directors chosen from outside of the financial services industry, have been able to recruit and retain capable directors notwithstanding this requirement, which has applied to Bank directors since 2000. Accordingly, FHFA is adopting § 1239.4(b)(3) of the final rule with no changes from the proposed rule. Lastly, Freddie Mac objected to § 1239.4(c) of the proposed rule that required the board of directors to have in place policies and procedures to address certain matters, such as risk management, compensation programs, financial reporting, and regulatory reporting. Freddie Mac suggested that FHFA revise this provision to make clear that it does not require the board of directors to establish the required policies and procedures, which can be developed by management. Because FHFA agrees that the development and implementation of procedures is a management responsibility, the final rule removes the reference to “procedures” from this section. The final rule retains, however, the requirement that the board must have in place adequate “policies” to assure its oversight of risk management, compensation, and financial reporting. As revised, this provision allows the board of directors to delegate to management the responsibility to develop, implement, and monitor compliance with the procedures used to implement board policies, but also requires the board of directors to review and approve those policies, as appropriate, as part of its responsibility to oversee management of the regulated entity.

#### Board Committees (1239.5)

The proposed rule would have required each regulated entity to have four specified committees of the board of directors, which are to address risk management, audit, compensation, and governance. The proposal also authorized the regulated entities to establish any other committees they deemed appropriate and prohibited the entities from combining their risk management committee or the audit committee with any other committee. The proposal further required that each committee have a formal written charter and that it meet with sufficient frequency to carry out its responsibilities.

FHFA is revising this provision of the final rule in two respects, both of which

respond to comments from Freddie Mac. Apart from those revisions, FHFA is adopting this section as proposed. First, the final rule revises § 1239.5(c) to require that the full board of directors adopt a formal written charter for each committee. This replaces a provision of the proposed rule that would have allowed a committee to adopt its own charter. Second, the final rule revises § 1239.5(d) by adding language to the effect that a committee that is designed to meet only on an as-needed basis, rather than on a fixed schedule, such as an executive committee, which may meet regularly or only as necessary to address matters arising between meetings of the full board, shall meet in the manner specified in that committee’s charter, rather than “regularly,” as the proposed rule had provided.

The Banks objected to the proposed rule’s prohibition on combining the audit and risk committees with other committees, citing the need for flexibility in determining committee structure. While FHFA understands that the entities may need some flexibility when staffing their committees, FHFA also believes that the responsibilities of the audit committee and risk management committee are sufficiently important that each should be structured as a stand-alone committee, without any competing responsibilities.

#### *D. Subpart C—Other Requirements Applicable to All Regulated Entities*

Subpart C of the proposed rule included four other provisions that would have applied to all of the regulated entities. These provisions addressed: (1) Code of conduct; (2) risk management; (3) compliance programs; and (4) regulatory reports. The final rule revises portions of the provisions dealing with the code of conduct and risk management, which revisions are described below. FHFA is adopting the provisions relating to compliance programs and regulatory reports as proposed, and the discussion below also addresses suggested revisions to the compliance program, which FHFA has declined to adopt.

#### Code of Conduct and Ethics (1239.10)

Proposed § 1239.10 carried over the substance of an OFHEO regulation that required each regulated entity to establish a written code of conduct for directors, executive officers, and employees that is reasonably designed to ensure that they discharge their duties in an objective and impartial manner and that includes the standards required under section 406 of the Sarbanes-Oxley Act. Neither the OFHEO

regulation nor the proposed rule described the substance of those standards, but simply incorporated them by cross-reference. The section 406 standards pertain to promoting honest and ethical conduct, accurate financial disclosures, and compliance with applicable laws. The Banks expressed two concerns about this provision of the proposed rule. First, they believed that it was unnecessary and duplicative because, as SEC registrants, they already must disclose whether they have adopted such a code of conduct. Second, they believed that the scope of the provision was too broad because it covered all employees, not just those involved with preparing the financial statements.

FHFA agrees that the scope of the proposed rule was broader than it needed to be insofar as it would have applied to employees that are not involved in the preparation of the entity’s financial statements. To address these concerns about overbreadth, FHFA revised the final rule so that it imposes general requirements on all employees of a regulated entity and separately imposes other requirements on those officers that are responsible for preparing the financial statements. As part of that approach, the final rule no longer cross-references section 406 of the Sarbanes-Oxley Act, but instead incorporates the essential language of section 406 into the FHFA regulation. Accordingly, the final rule first provides that each entity must adopt a code of conduct that is reasonably designed to assure that its directors, officers, and employees discharge their duties in an objective and impartial manner and that promotes honest and ethical conduct, compliance with applicable laws and regulations, accountability for adhering to the code, and prompt internal reporting of violations of the code. Each of those elements is derived from section 406 of the Sarbanes-Oxley Act. The final rule separately provides that the code of conduct must include provisions that apply only to the entities’ principal executive officer, principal financial officer, and principal accounting officer or controller. Those provisions must be reasonably designed to promote full, fair, and accurate disclosures in an entity’s reports filed with the SEC and other public communications pertaining to the entity’s financial condition. Those provisions also are derived from section 406, but will not apply to the officers and employees who have no role in preparing the financial statements or other disclosures.

FHFA appreciates that the Banks, as SEC registrants, are already required to

disclose whether they have a code of conduct that satisfies the requirements of section 406 of the Sarbanes-Oxley Act. That requirement, however, is simply a disclosure requirement and does not require the Banks to actually adopt a code of ethics. Because FHFA believes that a code of conduct as described above is an important tool in assuring that the entities operate in a safe and sound manner, the final rule continues to require that the entities actually adopt the code of conduct. Accordingly, FHFA declines to adopt the Banks' suggestion that this matter be addressed solely through the existing disclosure mechanism.

#### Risk Management (1239.11)

The proposed rule contained a new risk management section that was based in large part on a recent proposal of the Federal Reserve Board relating to its supervision of large banking institutions.<sup>8</sup> The proposed risk management section included little content from the regulations of the predecessor agencies, which had become somewhat dated. Among other things, proposed § 1239.11 would have required each entity to establish an enterprise-wide risk management program and specified certain requirements for that program, as well as the responsibilities of the risk committee. The proposal also would have required each entity to appoint a chief risk officer to oversee the risk management function, and specified the responsibilities of the chief risk officer. In the final rule, FHFA retained most of the content of the proposed rule, but reorganized certain provisions of the regulatory text to improve its readability. The final rule retains the three core elements of the proposed rule, which require the establishment of an enterprise-wide risk management program, the establishment of a risk committee with specified structure and responsibilities, and the establishment of a chief risk officer with specified responsibilities. FHFA also made certain revisions to the regulatory text in

response to the comment letters. All of those revisions are described below.

#### Establishment of the Risk Management Program

Section 1239.11(a) of the proposed rule would have required the establishment of a risk management program that aligns with the entity's overall risk profile and mission objectives, while § 1239.11(c)(1) had specified several required elements for the risk management program. In the final rule, FHFA combined those provisions into a revised § 1239.11(a), which deals only with the risk management program. FHFA also revised the regulatory text, which formerly provided that the board of directors must have a risk management program "in effect at all times," to clarify that the board must approve and periodically review the risk management program, as well as having it in effect. As noted previously, the final rule also replaces all references to the term "risk profile" with the newly defined term "risk appetite." The final rule also makes some revisions to the provisions that specified the minimum requirements for the risk management program, principally to address concerns expressed by the commenters. The final rule now provides that the board of directors must ensure that the risk management program aligns with the entity's risk appetite, and it deletes a reference to this being a joint responsibility of the board and senior management. These provisions of the final rule are not intended to require that the board of directors actually develop or implement the risk management program, which tasks may be delegated to management, but the board is responsible for approving the program, as well as the entity's risk appetite, and ensuring that the two are consistent with each other. In the paragraphs describing the requirements of the risk management program, the final rule deletes certain references that the commenters believed could be read to impose management level responsibilities on the board or its committee. Thus, the final rule deletes from proposed § 1239.11(c)(ii), (iii), and (iv) references to "risk management practices and risk control structure," "procedures . . . practices, risk controls," and "control objectives," respectively.

#### Establishment and Duties of the Risk Committee

Section 1239.11(b) of the proposed rule would have required the board of each regulated entity to establish a risk committee that oversees the entity's risk

management practices, while § 1239.11(c) and (d) had addressed the risk committee structure and responsibilities, respectively. The final rule combines all of those provisions into a revised § 1239.11(b), which deals only with risk committee matters. FHFA also revised certain of these provisions in response to concerns of the commenters that the proposed rule could be read to assign management type responsibilities on the board of directors or the risk committee. Thus, the final rule has deleted language from proposed § 1239.11(b) that stated that the committee was "responsible for oversight of . . . risk management practices" and replaced it with language saying that the committee is to assist the board of directors in carrying out its duties to oversee the "risk management program," rather than the "practices" of the entity.

The final rule revises certain of the provisions relating to the qualifications of the risk committee members that had been located in § 1239.11(c)(2) of the proposed rule, also in response to suggestions from the commenters. The proposed rule would have required that the committee have at least one member with "risk management expertise" that is commensurate with the business of the regulated entity, and further that the other committee members have "experience developing and applying risk management practices and procedures measuring and identifying risks." The Banks and the Enterprises contended that such levels of expertise would likely be found only in a person who was serving, or had previously served, as a chief risk officer at a financial institution and that it would be difficult to find persons who are eligible for board positions who also have such expertise. FHFA believes that this is a valid concern and has revised the rule to require that the risk committee have at least one member with risk management "experience" rather than "expertise," and that the other committee members have, or acquire through training, a practical understanding of risk management principles and practices. FHFA also deleted in its entirety the provision of the proposed rule that would have required risk committee members to also have had experience developing and applying risk management practices and procedures. Notwithstanding those revisions, FHFA believes that it is appropriate and reasonable to retain some language in the final rule requiring that the persons charged with assisting the board in its oversight of the risk management program have had some

<sup>8</sup> See Enhanced Prudential Standards and Early Remediation Requirements for Covered Companies, Board of Governors of the Federal Reserve System, 77 FR 594 (Jan. 5, 2012). The commenters asked that to the extent that FHFA had looked to these standards for guidance, it should look to the final rule adopted by the Federal Reserve Board instead of its proposed rule, especially as it relates to distinguishing between the respective roles of directors and management. FHFA has reviewed that final rule document and made conforming revisions to this final rule, as appropriate. See Enhanced Prudential Standards and Early Remediation Requirements for Covered Companies, Board of Governors of the Federal Reserve System, 79 FR 17240 (Mar. 27, 2014).

opportunity, either through prior experience or education or other training while on the board, to gain sufficient understanding of risk management principles to meaningfully engage with management on risk management matters.

Freddie Mac objected to the requirements in proposed § 1239.11(c)(2)(v) and (d)(1) that the risk committee fully document and maintain records of its meetings, including its risk management decisions and recommendations, and that it be responsible for documenting and overseeing the entity's risk management "policies and practices." It believed that these requirements go beyond the existing obligation on board committees to prepare minutes of meetings. FHFA disagrees with the first of those suggestions and has retained the requirement that the committee document and maintain records of its meetings and decisions because risk management is a vital function and decisions of the risk committee and the justification for those actions need to be well documented. FHFA agrees with the second suggestion and removed from the final rule the language stating that that the committee is to be responsible for documenting and overseeing the risk management "policies and practices" of the entity because "practices" are more appropriately characterized as a management function than as a function for the risk committee. In its place, FHFA included an alternative provision, to be located in § 1239.111(b)(2)(i) of the final rule, providing that the risk committee must periodically review the entity's risk management program and make recommendations to the board of directors for any appropriate revisions to the program to ensure that the program remains aligned to the risks associated with the entity's business activities. The final rule also includes a parallel provision requiring the committee to periodically review the capabilities of, and the adequacy of the resources allocated to, the risk management program.

#### Chief Risk Officer

The proposed rule would require each entity to appoint a chief risk officer and described both the organizational structure of the risk management program and the responsibilities of the chief risk officer. The final rule makes some modest revisions to these provisions, stating that the chief risk officer shall "head" (rather than "oversee") an independent risk management function and be responsible for the entity's risk management function. Both the

proposed and final rules require that the head of the risk management function must be "independent." FHFA construes that term to mean that the chief risk officer may not have dual responsibilities within the organization, such as also serving as the chief financial officer or as any other senior executive officer.

#### Compliance Program (1239.12)

The proposed rule would require that regulated entities establish a compliance program to be headed by a chief compliance officer and set forth criteria for the program. Proposed § 1239.12 would require the program to be reasonably designed to ensure that the regulated entity complies with applicable laws, rules, regulations, and internal controls. In addition, the proposal would require the compliance officer to report directly to the chief executive officer, to report regularly to the board of directors (or a committee thereof) on the adequacy of the entity's compliance policies and procedures, and to make recommendations to the board for any adjustments to those policies or procedures, as appropriate. The final rule adopts this provision as it was proposed.

The Banks expressed concern that these provisions were too prescriptive and believed that oversight of the compliance program need not reside solely with a single chief compliance officer, so long as the Banks have established clear lines of responsibilities for compliance matters with other executives. The Banks also objected to requiring the compliance officer to report to the chief executive and asked that the final rule allow for reporting lines to other senior executives. The Banks also suggested replacing the words "internal controls" with "policies" in the provision that requires that the compliance program ensure compliance with "laws, rules, regulations, and internal controls." The Banks believe that internal controls themselves are designed to achieve compliance with laws, rules, regulations, and policies and therefore it did not make sense to require compliance with internal controls.

FHFA does not believe that this provision can be characterized as being overly prescriptive, as the Banks contend. The regulation is short, only three sentences, which require the establishment of a compliance program, the designation of a compliance officer, and the establishment of reporting requirements. As to the concern about reporting lines, FHFA believes that the compliance function is sufficiently important that it should be headed by a

person holding an executive level position, who would be a peer of the executives taking the business risks, and who would have direct access to the CEO. Lastly, although internal controls are designed to ensure compliance with laws, regulations, and policies, this can only be achieved if the regulated entity complies with the internal control procedures themselves. Therefore, FHFA believes that it is appropriate to retain the term "internal controls" in the first sentence of the provision.

#### Regulatory Reports (1239.13)

Proposed § 1239.13 required each regulated entity to provide FHFA with such regulatory reports as are necessary for it to evaluate the condition of a regulated entity, or compliance with applicable law, and to do so in accordance with the forms and instructions issued by FHFA from time to time. It was derived from the Finance Board regulations at 12 CFR 914.1 and 914.2. FHFA received no comments on this provision and the final rule adopts this provision as proposed.

#### *E. Subpart D—Enterprise Specific Requirements*

Subpart D of the proposed rule included two provisions that were to apply only to the Enterprises. FHFA received no comments on these provisions from the Enterprises. Accordingly, with the exception of the one matter noted below, FHFA adopted both provisions as proposed. The first provision, § 1239.20, addresses age and term limits for Enterprise directors and requires that a majority of the directors be independent, as defined under the rules of the NYSE. It also addresses the frequency of Enterprise board meetings, quorum requirements, and voting by directors. The rule carries over these provisions from the OFHEO regulation without substantive change. Proposed § 1239.20(a)(3) included a new provision that would prohibit the chief executive officer of an Enterprise from also serving as the chairperson of the board of directors.

In the final rule, FHFA also revised the language of § 1239.20(b)(5), which requires the Enterprise boards of directors annually to review the requirements of applicable laws, rules, regulations, and guidelines. FHFA has been asked whether this provision requires a board of directors to review all laws that apply to the Enterprises or only on those that have been revised during the past year. FHFA believes that going forward this provision should be read to require that the boards of directors be kept informed of any significant changes to the applicable

laws and regulations. Accordingly, the final rule revises this provision to state that at least annually the boards of the Enterprises shall be informed of any significant changes that have been made to the laws, rules, regulations, and guidelines to which the Enterprises are subject since the prior year's annual review. The second provision, § 1239.21, requires that the Enterprises pay their directors reasonable and appropriate compensation for the time required for the performance of their duties.

#### *F. Subpart E—Bank Specific Requirements*

Subpart E of the proposed rule included five provisions that were to apply only to the Banks. For three of those provisions, those relating to a Bank's member products policy (§ 1239.30), its strategic business plan (§ 1239.31), and its dividends (§ 1239.33), FHFA received no comments and the final rule adopts those provisions as proposed. The final rule deletes the proposed provision on internal controls in its entirety, for the reasons described below, and makes some modest revisions to the provision on Bank audit committees, also as described below.

#### *Internal Control System*

The proposed rule would have carried over without substantive change a Finance Board regulation dealing with Bank internal control systems. The proposed regulation set forth detailed responsibilities of senior management and the board of directors with respect to internal controls and solicited comments on whether the internal controls regulation should be expanded to apply to the Enterprises, as well as to the Banks. Freddie Mac urged FHFA not to extend the internal controls regulation to the Enterprises because they are already subject to numerous requirements related to internal controls. The Banks generally favored the adoption of a principles-based approach for the rules relating to internal controls, rather than the more prescriptive approach of the existing Finance Board regulations, and asked that FHFA revise the rule accordingly.

FHFA initially decided to adopt the Banks' suggestion and revise this provision to make it more principles-based. When making those revisions, however, FHFA determined that creating a more principles-based regulation would result in the revised regulation overlapping considerably with the provisions of FHFA's existing Prudential Standards that deal with internal controls. In order to avoid that

result, and the potential confusion that having two separate provisions addressing internal controls could cause, FHFA decided a better approach would be to delete the provision on internal controls from the final rule and rely instead on the internal controls provisions of the Prudential Standards. Accordingly, the final rule does not include a separate regulation on internal controls for the Banks. In making this change, FHFA emphasizes that a strong system of internal controls is a critical first line defense for all of the regulated entities. FHFA expects that all of the regulated entities will devote the necessary resources and attention to this area.

#### *Audit Committee (1239.32)*

The proposed rule would have carried over without substantive change Finance Board regulations that required the establishment of an audit committee and established requirements for the composition, independence, charter, duties, and meetings of Bank audit committees. FHFA requested comment on whether it should adopt a single regulation addressing the audit committees for all regulated entities, whether the independence requirements for Bank audit committees should consider the amount of Bank stock or advances held by a member that has a representative on the committee, and whether Bank audit committees should have a majority of members who are not affiliated with the Bank's members. No commenters supported any of those revisions, and FHFA has not made any such changes to the final rule.

FHFA made three revisions to § 1239.32 of the final rule in response to comments from the Banks. The Banks asked that FHFA modify the requirement relating to representation on the audit committee of directors from the various types of members and of both member directors and independent directors by providing that the committee should be required have such a balance "to the extent that it is practicable to do so." The Banks contended that the skill sets of the individual directors, particularly the member directors, will vary. As a result, there may be times when the persons whose experience is most suited to having them serve on the audit committee will not necessarily result in a committee composition that includes persons from all segments of the membership base. FHFA agrees with that statement and added the language requested by the Banks to the final rule. The Banks also asked that FHFA clarify that a reference to "independent directors" in this section refers to those

directors who are not affiliated with a member institution, as defined in the Bank Act, so as not to suggest that it relates to the "independence" requirement for audit committee members. FHFA made that revision. The final rule also revises a provision that requires the audit committee to review "the policies and procedures used by senior management" by deleting the reference to "procedures" because FHFA agrees with the Banks that the development and review of particular procedures is more properly considered a management function. The final rule also makes one conforming change by revising the language of the existing rule to state that the board of directors, not the audit committee, is responsible for amending and periodically reapproving the audit committee charter. This change conforms this provision to an earlier provision of the rule that vests in the board of directors the sole authority to adopt committee charters.

#### *G. Provisions To Be Repealed*

As was proposed, the final rule will repeal several portions of the predecessor agency regulations that are not being carried over into the FHFA regulations. No commenters objected to the proposed repeal of these provisions, which included several OFHEO regulations that essentially repeated certain statutory requirements, certain provisions of the OFHEO regulations relating to the responsibilities of boards of directors that address matters now covered by the Prudential Standards, a Finance Board regulation requiring the preparation of annual budgets, and 12 CFR part 1720 of the OFHEO regulations, which established certain safety and soundness standards for the Enterprises.

Freddie Mac sought clarification as to the effect of the repeal of these provisions on specific regulatory guidance, such as the 2006 OFHEO Corporate Governance Examination Guidance. FHFA continues to evaluate the various types of guidance issued by the predecessor agencies to determine whether to retain, revise, or repeal the guidance. Those efforts are being done independently of this rulemaking. On March 26, 2015, FHFA issued Advisory Bulletin AB 2015-03, which rescinded five examination guidance documents that had been issued by OFHEO because they have been superseded by FHFA guidance, simply restated the text of regulations, or are no longer relevant or applicable in the current environment.<sup>9</sup>

<sup>9</sup>The Advisory Bulletin rescinded the following OFHEO examination guidance documents: PG-00-

#### IV. Prudential Standards

The Prudential Standards include an introductory section, which recites general responsibilities of the boards of directors and senior management, as well as ten enumerated standards that address the topics required by statute. In the proposed rule, FHFA proposed to designate this introductory section as an additional Prudential Standard. Doing so would clarify that the introductory provisions have the same effect and could be enforced in the same manner as the ten enumerated standards. The Banks commented that this action would create some uncertainty about the role of the boards of directors because the introductory section currently includes references to the board of directors being responsible for adopting and implementing “procedures,” which the Banks contend is a management function. FHFA agrees that the development and implementation of procedures is a management responsibility, and has revised the first three paragraphs of the Prudential Standards introductory section by deleting the four references to “procedures” as responsibilities of the board of directors. FHFA received no other comments on this aspect of the proposal and the final rule otherwise adopts the final rule as proposed.

#### V. Paperwork Reduction Act

The final rule does not contain any information collection requirement that requires the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

#### VI. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to analyze a regulation’s impact on small entities if the regulation is expected to have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). FHFA has considered the impact of this final rule and determined that it is not likely to have a significant economic impact on a substantial number of small entities because it applies only to the regulated entities, which are not small entities for purposes of the Regulatory Flexibility Act.

001 (regarding minimum safety and soundness requirements); PG-00-002 (regarding non-mortgage liquidity investments); PG-06-001 (regarding corporate governance examinations); PG-06-003 (regarding accounting practices examinations); and PG-08-002 (regarding standards for use of fair value options).

#### List of Subjects

##### 12 CFR Part 914

Federal Home Loan Banks, Reporting and recordkeeping requirements.

##### 12 CFR Part 917

Federal Home Loan Banks.

##### 12 CFR Part 1236

Administrative practice and procedure, Federal Home Loan Banks, Government-Sponsored Enterprises, Reporting and recordkeeping requirements.

##### 12 CFR Part 1239

Administrative practice and procedure, Federal Home Loan Banks, Government-Sponsored Enterprises, Reporting and recordkeeping requirements.

##### 12 CFR Part 1710

Administrative practice and procedure, Mortgages.

##### 12 CFR Part 1720

Administrative practice and procedure, Mortgages.

Accordingly, for reasons stated in the Supplementary Information and under the authority of 12 U.S.C. 1426, 1427, 1432(a), 1436(a), 1440, 4511(b), 4513(a), 4513(b), and 4526, FHFA hereby amends subchapter C of chapter IX, subchapter B of chapter XII, and subchapter C of chapter XVII of title 12 of the Code of Federal Regulations as follows:

#### CHAPTER IX—FEDERAL HOUSING FINANCE BOARD

##### Subchapter C—[Removed and Reserved]

- 1. Subchapter C, consisting of parts 914 and 917 is removed and reserved.

#### CHAPTER XII—FEDERAL HOUSING FINANCE AGENCY

##### Subchapter B—Entity Regulations

#### PART 1236—PRUDENTIAL MANAGEMENT AND OPERATIONS STANDARDS

- 2. The authority citation for part 1236 continues to read as follows:

**Authority:** 12 U.S.C. 4511, 4513(a) and (f), 4513b, and 4526.

- 3. Amend § 1236.2 by revising the definition of “Standards” to read as follows:

##### § 1236.2 Definitions.

\* \* \* \* \*

*Standards* means any one or more of the prudential management and operations standards established by the Director pursuant to 12 U.S.C. 4513b(a),

as modified from time to time pursuant to § 1236.3(b), including the introductory statement of general responsibilities of boards of directors and senior management of the regulated entities.

- 4. Amend the Appendix to part 1236 as follows:

- a. By redesignating the phrase “The following provisions constitute the prudential management and operations standards established pursuant to 12 U.S.C. 4513b(a).” following paragraph 10 under “Responsibilities of the Board of Directors and Senior Management” as introductory text to the appendix; and

- b. By revising paragraphs 1., 2., and 3. under “Responsibilities of the Board of Directors and Senior Management” to read as follows:

#### Appendix to Part 1236—Prudential Management and Operations Standards

\* \* \* \* \*

Responsibilities of the Board of Directors and Senior Management

1. With respect to the subject matter addressed by each Standard, the board of directors is responsible for adopting business strategies and policies that are appropriate for the particular subject matter. The board should review all such strategies and policies periodically. It should review and approve all major strategies and policies at least annually and make any revisions that are necessary to ensure that such strategies and policies remain consistent with the entity’s overall business plan.

2. The board of directors is responsible for overseeing management of the regulated entity, which includes ensuring that management includes personnel who are appropriately trained and competent to oversee the operation of the regulated entity as it relates to the functions and requirements addressed by each Standard, and that management implements the policies set forth by the board.

3. The board of directors is responsible for remaining informed about the operations and condition of the regulated entity, including operating consistently with the Standards, and senior management’s implementation of the strategies and policies established by the board of directors.

\* \* \* \* \*

- 5. Part 1239 is added to subchapter C to read as follows:

#### PART 1239—RESPONSIBILITIES OF BOARDS OF DIRECTORS, CORPORATE PRACTICES, AND CORPORATE GOVERNANCE

##### Subpart A—General

Sec.

1239.1 Purpose.

1239.2 Definitions.

**Subpart B—Corporate Practices and Procedures Applicable to All Regulated Entities**

- 1239.3 Law applicable to corporate governance and indemnification practices.
- 1239.4 Duties and responsibilities of directors.
- 1239.5 Board committees.

**Subpart C—Other Requirements Applicable to All Regulated Entities**

- 1239.10 Code of conduct and ethics.
- 1239.11 Risk management.
- 1239.12 Compliance program.
- 1239.13 Regulatory reports.

**Subpart D—Enterprise Specific Requirements**

- 1239.20 Board of directors of the Enterprises.
- 1239.21 Compensation of Enterprise board members.

**Subpart E—Bank Specific Requirements**

- 1239.30 Bank member products policy.
- 1239.31 Strategic business plan.
- 1239.32 Audit committee.
- 1239.33 Dividends.

**Authority:** 12 U.S.C. 1426, 1427, 1432(a), 1436(a), 1440, 4511(b), 4513(a), 4513(b), and 4526.

**Subpart A—General****§ 1239.1 Purpose.**

FHFA is responsible for supervising and ensuring the safety and soundness of the regulated entities. In furtherance of those responsibilities, this part sets forth minimum standards with respect to responsibilities of boards of directors, corporate practices, and corporate governance matters of the regulated entities.

**§ 1239.2 Definitions.**

As used in this part, (unless otherwise noted):

*Board member* means a member of the board of directors of a regulated entity.

*Board of directors* means the board of directors of a regulated entity.

*Business risk* means the risk of an adverse impact on a regulated entity's profitability resulting from external factors as may occur in both the short and long run.

*Community financial institution* has the meaning set forth in § 1263.1 of this chapter.

*Compensation* means any payment of money or the provision of any other thing of current or potential value in connection with employment or in connection with service as a director.

*Credit risk* is the potential that a borrower or counterparty will fail to meet its financial obligations in accordance with agreed terms.

*Employee* means an individual, other than an executive officer, who works

part-time, full-time, or temporarily for a regulated entity.

*Executive officer* means the chief executive officer, chief financial officer, chief operating officer, president, any executive vice president, any senior vice president, and any individual with similar responsibilities, without regard to title, who is in charge of a principal business unit, division, or function, or who reports directly to the chairperson, vice chairperson, chief operating officer, or chief executive officer or president of a regulated entity.

*Immediate family member* means a parent, sibling, spouse, child, dependent, or any relative sharing the same residence.

*Internal auditor* means the individual responsible for the internal audit function at a regulated entity.

*Liquidity risk* means the risk that a regulated entity will be unable to meet its financial obligations as they come due or meet the credit needs of its members and associates in a timely and cost-efficient manner.

*Market risk* means the risk that the market value, or estimated fair value if market value is not available, of a regulated entity's portfolio will decline as a result of changes in interest rates, foreign exchange rates, or equity or commodity prices.

*NYSE* means the New York Stock Exchange.

*Operational risk* means the risk of loss resulting from inadequate or failed internal processes, people, or systems, or from external events (including legal risk but excluding strategic and reputational risk).

*Risk appetite* means the aggregate level and types of risk the board of directors and management are willing to assume to achieve the regulated entity's strategic objectives and business plan, consistent with applicable capital, liquidity, and other regulatory requirements.

*Significant deficiency* means a deficiency, or a combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance.

**Subpart B—Corporate Practices and Procedures Applicable to All Regulated Entities****§ 1239.3 Law applicable to corporate governance and indemnification practices.**

(a) *General.* The corporate governance practices and procedures of each regulated entity, and practices and procedures relating to indemnification (including advancement of expenses), shall comply with and be subject to the

applicable authorizing statutes and other Federal law, rules, and regulations, and shall be consistent with the safe and sound operations of the regulated entities.

(b) *Election and designation of body of law.* (1) To the extent not inconsistent with paragraph (a) of this section, each regulated entity shall elect to follow the corporate governance and indemnification practices and procedures set forth in one of the following:

(i) The law of the jurisdiction in which the principal office of the regulated entity is located;

(ii) The Delaware General Corporation Law (Del. Code Ann. Title 8); or

(iii) The Revised Model Business Corporation Act.

(2) Each regulated entity shall designate in its bylaws the body of law elected for its corporate governance and indemnification practices and procedures pursuant to this paragraph, and shall do so by no later than March 18, 2016.

(c) *Indemnification.* (1) Subject to paragraphs (a) and (b) of this section, to the extent applicable, a regulated entity shall indemnify (and advance the expenses of) its directors, officers, and employees under such terms and conditions as are determined by its board of directors. The regulated entity is authorized to maintain insurance for its directors and any other officer or employee.

(2) Each regulated entity shall have in place policies and procedures consistent with this section for indemnification of its directors, officers, and employees. Such policies and procedures shall address how the board of directors is to approve or deny requests for indemnification from current and former directors, officers, and employees, and shall include standards relating to indemnification, investigations by the board of directors, and review by independent counsel.

(3) Nothing in this paragraph (c) shall affect any rights to indemnification (including the advancement of expenses) that a director or any other officer or employee had with respect to any actions, omissions, transactions, or facts occurring prior to the effective date of this paragraph.

(4) FHFA has the authority under the Safety and Soundness Act to review a regulated entity's indemnification policies, procedures, and practices to ensure that they are conducted in a safe and sound manner, and that they are consistent with the body of law adopted by the board of directors under paragraph (b) of this section.

(d) *No rights created.* Nothing in this part shall create or be deemed to create any rights in any third party, including in any member of a Bank, nor shall it cause or be deemed to cause any regulated entity to become subject to the jurisdiction of any state court with respect to the entity's corporate governance or indemnification practices or procedures.

**§ 1239.4 Duties and responsibilities of directors.**

(a) *Management of a regulated entity.* The management of each regulated entity shall be by or under the direction of its board of directors. While a board of directors may delegate the execution of operational functions to officers and employees of the regulated entity, the ultimate responsibility of each entity's board of directors for that entity's oversight is non-delegable. The board of directors of a regulated entity is responsible for directing the conduct and affairs of the entity in furtherance of the safe and sound operation of the entity and shall remain reasonably informed of the condition, activities, and operations of the entity.

(b) *Duties of directors.* Each director of a regulated entity shall have the duty to:

(1) Carry out his or her duties as director in good faith, in a manner such director believes to be in the best interests of the regulated entity, and with such care, including reasonable inquiry, as is required under the Revised Model Business Corporation Act or the other body of law that the entity's board of directors has chosen to follow for its corporate governance and indemnification practices and procedures in accordance with § 1239.3(b);

(2) For Bank directors, administer the affairs of the regulated entity fairly and impartially and without discrimination in favor of or against any member institution;

(3) At the time of election, or within a reasonable time thereafter, have a working familiarity with basic finance and accounting practices, including the ability to read and understand the regulated entity's balance sheet and income statement and to ask substantive questions of management and the internal and external auditors;

(4) Direct the operations of the regulated entity in conformity with the requirements set forth in the authorizing statutes, the Safety and Soundness Act, and this chapter; and

(5) Adopt and maintain in effect at all times bylaws governing the manner in which the regulated entity administers its affairs. Such bylaws shall be

consistent with applicable laws and regulations administered by FHFA, and with the body of law designated for the entity's corporate governance practices and procedures in accordance with § 1239.3(b).

(c) *Director responsibilities.* The responsibilities of the board of directors include having in place adequate policies to assure its oversight of, among other matters, the following:

(1) The risk management and compensation programs of the regulated entity;

(2) The processes for providing accurate financial reporting and other disclosures, and communications with stockholders; and

(3) The responsiveness of executive officers in providing accurate and timely reports to FHFA and in addressing all supervisory concerns of FHFA in a timely and appropriate manner.

(d) *Authority regarding staff and outside consultants.* (1) In carrying out its duties and responsibilities under the authorizing statutes, the Safety and Soundness Act, and this chapter, each regulated entity's board of directors and all committees thereof shall have authority to retain staff and outside counsel, independent accountants, or other outside consultants at the expense of the regulated entity.

(2) The board of directors and its committees may require that staff of the regulated entity that provides services to the board or any committee under paragraph (d)(1) of this section report directly to the board or such committee, as appropriate.

**§ 1239.5 Board committees.**

(a) *General.* The board of directors may rely, in directing a regulated entity, on reports from committees of the board of directors, provided, however, that no committee of the board of directors shall have the authority of the board of directors to amend the bylaws and no committee shall operate to relieve the board of directors or any board member of a responsibility imposed by applicable law, rule, or regulation.

(b) *Required committees.* The board of directors of each regulated entity shall have committees, however styled, that address each of the following areas of responsibility: Risk management; audit; compensation; and corporate governance (in the case of the Banks, including the nomination of independent board of director candidates, and, in the case of the Enterprises, including the nomination of all board of director candidates). The risk management committee and the audit committee shall not be combined

with any other committees. The board of directors may establish any other committees that it deems necessary or useful to carrying out its responsibilities, subject to the provisions of this section. In the case of the Enterprises, board committees shall comply with the charter, independence, composition, expertise, duties, responsibilities, and other requirements set forth under rules issued by the NYSE, and the audit committees shall also comply with the requirements set forth under section 301 of the Sarbanes-Oxley Act of 2002, Public Law 107-204.

(c) *Charter.* The board of directors shall adopt a formal written charter for each committee that specifies the scope of a committee's powers and responsibilities, as well as the committee's structure, processes, and membership requirements.

(d) *Frequency of meetings.* Each committee of the board of directors shall meet regularly and with sufficient frequency to carry out its obligations and duties under applicable laws, rules, regulations, and guidelines. Committees that are structured to meet only on an as-needed basis shall meet in the manner specified by their charter. All such committees shall also meet with sufficient timeliness as necessary in light of relevant conditions and circumstances to fulfill their obligations and duties.

**Subpart C—Other Requirements Applicable to All Regulated Entities**

**§ 1239.10 Code of conduct and ethics.**

(a) *General.* A regulated entity shall establish and administer a written code of conduct and ethics that is reasonably designed to assure that its directors, officers, and employees discharge their duties and responsibilities in an objective and impartial manner that promotes honest and ethical conduct, compliance with applicable laws, rules, and regulations, accountability for adherence to the code, and prompt internal reporting of violations of the code to appropriate persons identified in the code. The code also shall include provisions applicable to the regulated entity's principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions, that are reasonably designed to promote full, fair, accurate, and understandable disclosure in reports and other documents filed with the Securities and Exchange Commission and in other public communications reporting on the entity's financial condition.

(b) *Review.* Not less often than once every three years, a regulated entity

shall review the adequacy of its code of conduct and ethics for consistency with practices appropriate to the entity and make any appropriate revisions to such code.

**§ 1239.11 Risk management.**

(a) *Risk management program*—(1) *Adoption.* Each regulated entity's board of directors shall approve, have in effect at all times, and periodically review an enterprise-wide risk management program that establishes the regulated entity's risk appetite, aligns the risk appetite with the regulated entity's strategies and objectives, addresses the regulated entity's exposure to credit risk, market risk, liquidity risk, business risk and operational risk, and complies with the requirements of this part and with all applicable FHFA regulations and policies.

(2) *Risk appetite.* The board of directors shall ensure that the risk management program aligns with the regulated entity's risk appetite.

(3) *Risk management program requirements.* The risk management program shall include:

(i) Risk limitations appropriate to each business line of the regulated entity;

(ii) Appropriate policies and procedures relating to risk management governance, risk oversight infrastructure, and processes and systems for identifying and reporting risks, including emerging risks;

(iii) Provisions for monitoring compliance with the regulated entity's risk limit structure and policies relating to risk management governance, risk oversight, and effective and timely implementation of corrective actions; and

(iv) Provisions specifying management's authority and independence to carry out risk management responsibilities, and the integration of risk management with management's goals and compensation structure.

(b) *Risk committee.* The board of each regulated entity shall establish and maintain a risk committee of the board of directors that assists the board in carrying out its duties to oversee the enterprise-wide risk management program at the regulated entity.

(1) *Committee structure.* The risk committee shall:

(i) Be chaired by a director not serving in a management capacity of the regulated entity;

(ii) Have at least one member with risk management experience that is commensurate with the regulated entity's capital structure, risk appetite,

complexity, activities, size, and other appropriate risk-related factors;

(iii) Have committee members that have, or that will acquire within a reasonable time after being elected to the committee, a practical understanding of risk management principles and practices relevant to the regulated entity;

(iv) Fully document and maintain records of its meetings, including its risk management decisions and recommendations; and

(v) Report directly to the board and not as part of, or combined with, another committee.

(2) *Committee responsibilities.* The risk committee shall:

(i) Periodically review and recommend for board approval an appropriate enterprise-wide risk management program that is commensurate with the regulated entity's capital structure, risk appetite, complexity, activities, size, and other appropriate risk-related factors;

(ii) Receive and review regular reports from the regulated entity's chief risk officer, as required under paragraph (c)(5) of this section; and

(iii) Periodically review the capabilities for, and adequacy of resources allocated to, enterprise-wide risk management.

(c) *Chief Risk Officer.*—(1) *Appointment of a chief risk officer (CRO).* Each regulated entity shall appoint a CRO to implement and maintain appropriate enterprise-wide risk management practices for the regulated entity.

(2) *Organizational structure of the risk management function.* The CRO shall head an independent enterprise-wide risk management function, or unit, and shall report directly to the risk committee and to the chief executive officer.

(3) *Responsibilities of the CRO.* The CRO shall be responsible for the enterprise-wide risk management function, including:

(i) Allocating risk limits and monitoring compliance with such limits;

(ii) Establishing appropriate policies and procedures relating to risk management governance, practices, and risk controls, and developing appropriate processes and systems for identifying and reporting risks, including emerging risks;

(iii) Monitoring risk exposures, including testing risk controls and verifying risk measures; and

(iv) Communicating within the organization about any risk management issues and/or emerging risks, and ensuring that risk management issues

are effectively resolved in a timely manner.

(4) The CRO should have risk management expertise that is commensurate with the regulated entity's capital structure, risk appetite, complexity, activities, size, and other appropriate risk related factors.

(5) The CRO shall report regularly to the risk committee and to the chief executive officer on significant risk exposures and related controls, changes to risk appetite, risk management strategies, results of risk management reviews, and emerging risks. The CRO shall also report regularly on the regulated entity's compliance with, and the adequacy of, its current risk management policies and procedures, and shall recommend any adjustments to such policies and procedures that he or she considers necessary or appropriate.

(6) The compensation of a regulated entity's CRO shall be appropriately structured to provide for an objective and independent assessment of the risks taken by the regulated entity.

**§ 1239.12 Compliance program.**

A regulated entity shall establish and maintain a compliance program that is reasonably designed to assure that the regulated entity complies with applicable laws, rules, regulations, and internal controls. The compliance program shall be headed by a compliance officer, however styled, who reports directly to the chief executive officer. The compliance officer also shall report regularly to the board of directors, or an appropriate committee thereof, on the adequacy of the entity's compliance policies and procedures, including the entity's compliance with them, and shall recommend any revisions to such policies and procedures that he or she considers necessary or appropriate.

**§ 1239.13 Regulatory reports.**

(a) *Reports.* Each regulated entity shall file Regulatory Reports with FHFA in accordance with the forms, instructions, and schedules issued by FHFA from time to time. If no regularly scheduled reporting dates are established, Regulatory Reports shall be filed as requested by FHFA.

(b) *Definition.* For purposes of this section, the term *Regulatory Report* means any report to FHFA of information or raw or summary data needed to evaluate the safe and sound condition or operations of a regulated entity, or to determine compliance with any:

(1) Provision in the Bank Act, Safety and Soundness Act, or other law, order, rule, or regulation;

(2) Condition imposed in writing by FHFA in connection with the granting of any application or other request by a regulated entity; or

(3) Written agreement entered into between FHFA and a regulated entity.

#### Subpart D—Enterprise Specific Requirements

##### § 1239.20 Board of directors of the Enterprises.

(a) *Membership*—(1) *Limits on service of board members*.—(i) *General requirement*. No board member of an Enterprise may serve on the board of directors for more than 10 years or past the age of 72, whichever comes first; provided, however, a board member may serve his or her full term if he or she has served less than 10 years or is 72 years on the date of his or her election or appointment to the board; and

(ii) *Waiver*. Upon written request of an Enterprise, the Director may waive, in his or her sole discretion and for good cause, the limits on the service of a board member under paragraph (a)(1)(i) of this section.

(2) *Independence of board members*. A majority of seated members of the board of directors of an Enterprise shall be independent board members, as defined under rules set forth by the NYSE, as amended from time to time.

(3) *Segregation of duties*. The position of chairperson of the board of directors shall be filled by a person other than the chief executive officer, who shall also be a director of the Enterprise that is independent, as defined under the rules set forth by the NYSE, as amended from time to time.

(b) *Meetings, quorum and proxies, information, and annual review*—(1) *Frequency of meetings*. The board of directors of an Enterprise shall meet at least eight times a year and no less than once a calendar quarter to carry out its obligations and duties under applicable laws, rules, regulations, and guidelines.

(2) *Non-management board member meetings*. Non-management directors of an Enterprise shall meet at regularly scheduled executive sessions without management participation.

(3) *Quorum of board of directors; proxies not permissible*. For the transaction of business, a quorum of the board of directors of an Enterprise is at least a majority of the seated board of directors and a board member may not vote by proxy.

(4) *Information*. Management of an Enterprise shall provide a board

member of the Enterprise with such adequate and appropriate information that a reasonable board member would find important to the fulfillment of his or her fiduciary duties and obligations.

(5) *Annual review*. At least annually, the board of directors of an Enterprise shall be informed of significant changes to the requirements of laws, rules, regulations, and guidelines that are applicable to its activities and duties.

##### § 1239.21 Compensation of Enterprise board members.

Each Enterprise may pay its directors reasonable and appropriate compensation for the time required of them, and their necessary and reasonable expenses, in the performance of their duties.

#### Subpart E—Bank Specific Requirements

##### § 1239.30 Bank member products policy.

(a) *Adoption and review of member products policy*—(1) *Adoption*. Each Bank's board of directors shall have in effect at all times a policy that addresses the Bank's management of products offered by the Bank to members and housing associates, including but not limited to advances, standby letters of credit, and acquired member assets, consistent with the requirements of the Bank Act, paragraph (b) of this section, and all applicable FHFA regulations and policies.

(2) *Review and compliance*. Each Bank's board of directors shall:

(i) Review the Bank's member products policy annually;

(ii) Amend the member products policy as appropriate; and

(iii) Re-adopt the member products policy, including interim amendments, not less often than every three years.

(b) *Member products policy requirements*. In addition to meeting any other requirements set forth in this chapter, each Bank's member products policy shall:

(1) Address credit underwriting criteria to be applied in evaluating applications for advances, standby letters of credit, and renewals;

(2) Address appropriate levels of collateralization, valuation of collateral and discounts applied to collateral values for advances and standby letters of credit;

(3) Address advances-related fees to be charged by each Bank, including any schedules or formulas pertaining to such fees;

(4) Address standards and criteria for pricing member products, including differential pricing of advances pursuant to § 1266.5(b)(2) of this

chapter, and criteria regarding the pricing of standby letters of credit, including any special pricing provisions for standby letters of credit that facilitate the financing of projects that are eligible for any of the Banks' CICA programs under part 1292 of this chapter;

(5) Provide that, for any draw made by a beneficiary under a standby letter of credit, the member will be charged a processing fee calculated in accordance with the requirements of § 1271.6(b) of this chapter;

(6) Address the maintenance of appropriate systems, procedures, and internal controls; and

(7) Address the maintenance of appropriate operational and personnel capacity.

##### § 1239.31 Strategic business plan.

(a) *Adoption of strategic business plan*. Each Bank's board of directors shall have in effect at all times a strategic business plan that describes how the business activities of the Bank will achieve the mission of the Bank consistent with part 1265 of this chapter. Specifically, each Bank's strategic business plan shall:

(1) Enumerate operating goals and objectives for each major business activity and for all new business activities, which must include plans for maximizing activities that further the Bank's housing finance and community lending mission, consistent with part 1265 of this chapter;

(2) Discuss how the Bank will address credit needs and market opportunities identified through ongoing market research and consultations with members, associates, and public and private organizations;

(3) Establish quantitative performance goals for Bank products related to multi-family housing, small business, small farm and small agri-business lending;

(4) Describe any proposed new business activities or enhancements of existing activities; and

(5) Be supported by appropriate and timely research and analysis of relevant market developments and member and associate demand for Bank products and services.

(b) *Review and monitoring*. Each Bank's board of directors shall:

(1) Review the Bank's strategic business plan at least annually;

(2) Re-adopt the Bank's strategic business plan, including interim amendments, not less often than every three years; and

(3) Establish management reporting requirements and monitor implementation of the strategic business plan and the operating goals and objectives contained therein.

(c) *Report to FHFA.* Each Bank shall submit to FHFA annually a report analyzing and describing the Bank's performance in achieving the goals described in paragraph (a)(3) of this section.

**§ 1239.32 Audit committee.**

(a) *Establishment.* The audit committee of each Bank established as required by § 1239.5(b) shall be consistent with the requirements set forth in this section.

(b) *Composition.* (1) The audit committee shall comprise five or more persons drawn from the Bank's board of directors, each of whom shall meet the criteria of independence set forth in paragraph (c) of this section.

(2) The audit committee shall include, to the extent practicable, a balance of representatives of:

(i) Community financial institutions and other members; and

(ii) Independent directors and member directors of the Bank, both as defined in the Bank Act.

(3) The terms of audit committee members shall be appropriately staggered so as to provide for continuity of service.

(4) At least one member of the audit committee shall have extensive accounting or related financial management experience.

(c) *Independence.* Any member of the Bank's board of directors shall be considered to be sufficiently independent to serve as a member of the audit committee if that director does not have a disqualifying relationship with the Bank or its management that would interfere with the exercise of that director's independent judgment. Such disqualifying relationships include, but are not limited to:

(1) Being employed by the Bank in the current year or any of the past five years;

(2) Accepting any compensation from the Bank other than compensation for service as a board director;

(3) Serving or having served in any of the past five years as a consultant, advisor, promoter, underwriter, or legal counsel of or to the Bank; or

(4) Being an immediate family member of an individual who is, or has been in any of the past five years, employed by the Bank as an executive officer.

(d) *Charter.* (1) The audit committee of each Bank shall review and assess the adequacy of the Bank's audit committee charter on an annual basis, and shall recommend to the board of directors any amendments that it believes to be appropriate;

(2) The board of directors of each Bank shall review and assess the

adequacy of the audit committee charter on an annual basis, shall amend the audit committee charter whenever it deems it appropriate to do so, and shall reapprove the audit committee charter not less often than every three years; and

(3) Each Bank's audit committee charter shall:

(i) Provide that the audit committee has the responsibility to select, evaluate and, where appropriate, replace the internal auditor and that the internal auditor may be removed only with the approval of the audit committee;

(ii) Provide that the internal auditor shall report directly to the audit committee on substantive matters and that the internal auditor is ultimately accountable to the audit committee and board of directors; and

(iii) Provide that both the internal auditor and the external auditor shall have unrestricted access to the audit committee without the need for any prior management knowledge or approval.

(e) *Duties.* Each Bank's audit committee shall have the duty to:

(1) Direct senior management to maintain the reliability and integrity of the accounting policies and financial reporting and disclosure practices of the Bank;

(2) Review the basis for the Bank's financial statements and the external auditor's opinion rendered with respect to such financial statements (including the nature and extent of any significant changes in accounting principles or the application thereof) and ensure that policies are in place that are reasonably designed to achieve disclosure and transparency regarding the Bank's true financial performance and governance practices;

(3) Oversee the internal audit function by:

(i) Reviewing the scope of audit services required, significant accounting policies, significant risks and exposures, audit activities, and audit findings;

(ii) Assessing the performance and determining the compensation of the internal auditor; and

(iii) Reviewing and approving the internal auditor's work plan.

(4) Oversee the external audit function by:

(i) Approving the external auditor's annual engagement letter;

(ii) Reviewing the performance of the external auditor; and

(iii) Making recommendations to the Bank's board of directors regarding the appointment, renewal, or termination of the external auditor.

(5) Provide an independent, direct channel of communication between the

Bank's board of directors and the internal and external auditors;

(6) Conduct or authorize investigations into any matters within the audit committee's scope of responsibilities;

(7) Ensure that senior management has established and is maintaining an adequate internal control system within the Bank by:

(i) Reviewing the Bank's internal control system and the resolution of identified material weaknesses and significant deficiencies in the internal control system, including the prevention or detection of management override or compromise of the internal control system; and

(ii) Reviewing the programs and policies of the Bank designed to ensure compliance with applicable laws, regulations and policies, and monitoring the results of these compliance efforts;

(8) Review the policies established by senior management to assess and monitor implementation of the Bank's strategic business plan and the operating goals and objectives contained therein; and

(9) Report periodically its findings to the Bank's board of directors.

(f) *Meetings.* The audit committee shall prepare written minutes of each audit committee meeting.

**§ 1239.33 Dividends.**

A Bank's board of directors may not declare or pay a dividend based on projected or anticipated earnings and may not declare or pay a dividend if the par value of the Bank's stock is impaired or is projected to become impaired after paying such dividend.

**CHAPTER XVII—OFFICE OF FEDERAL HOUSING ENTERPRISE OVERSIGHT, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**SUBCHAPTER C—SAFETY AND SOUNDNESS**

**PART 1710—[REMOVED]**

■ 6. Remove part 1710.

**PART 1720—[REMOVED]**

■ 7. Remove part 1720.

Dated: November 10, 2015.

**Melvin L. Watt,**

*Director, Federal Housing Finance Agency.*

[FR Doc. 2015-29367 Filed 11-18-15; 8:45 am]

**BILLING CODE 8070-01-P**

**CONSUMER PRODUCT SAFETY COMMISSION****16 CFR Parts 1109 and 1500**

[Docket No. CPSC–2011–0081]

**Amendment To Clarify When Component Part Testing Can Be Used and Which Textile Products Have Been Determined Not To Exceed the Allowable Lead Content Limits; Delay of Effective Date and Extension of Comment Period****AGENCY:** U.S. Consumer Product Safety Commission.**ACTION:** Direct final rule; delay of effective date and extension of comment period.

**SUMMARY:** The Consumer Product Safety Commission (“Commission” or “CPSC”) published a direct final rule (“DFR”) and notice of proposed rulemaking (“NPR”) in the same issue of the *Federal Register* on October 14, 2015, clarifying when component part testing can be used and clarifying which textile products have been determined not to exceed the allowable lead content limits. The DFR provided that, unless the Commission receives a significant adverse comment by November 13, 2015, the DFR would become effective on December 14, 2015. In response to a request for an extension of time for comments, the Commission is extending the comment period to December 14, 2015. The Commission is also delaying the effective date for the DFR to January 13, 2016.

**DATES:** The effective date for the direct final rule published October 14, 2015, at 80 FR 61729, is delayed from December 14, 2015, until January 13, 2016. The rule will be effective unless we receive a significant adverse comment. If we receive a significant adverse comment, we will publish notification in the *Federal Register* withdrawing this direct final rule before its effective date. The comment date is extended to December 14, 2015.

**ADDRESSES:** You may submit comments, identified by Docket No. CPSC–2011–0081, by any of the following methods:

**Electronic Submissions**

Submit electronic comments in the following way:

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments. The Commission does not accept comments submitted by electronic mail (email), except through: <http://www.regulations.gov>. The Commission encourages you to submit electronic

comments by using the Federal eRulemaking Portal, as described above.

**Written Submissions**

Submit written submissions in the following way:

Mail/Hand delivery/Courier, preferably in five copies, 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 electronically. Such information should be submitted in writing.

**Docket:** For access to the docket to read background documents or comments received, go to: <http://www.regulations.gov> and insert the Docket No. CPSC–2011–0081 into the “Search” box and follow the prompts.

**SUPPLEMENTARY INFORMATION:** On October 14, 2015, the Commission published a DFR and an NPR in the *Federal Register*, clarifying when component part testing can be used and clarifying which textile products have been determined not to exceed the allowable lead content limits. (DFR, 80 FR 61729 and NPR, 80 FR 61773). The American Apparel and Footwear Association (“AAFA”) has requested an extension of the comment period for 30 days because AAFA-member companies are currently reviewing the Commission’s proposed amendment to the rule and need additional time to submit comments.

The Commission has considered the request and is extending the comment period for an additional 30 days. Because 30-day extension date falls on a Sunday, the comment period will close on December 14, 2015. The Commission believes that this extension allows adequate time for interested persons to submit comments on the proposed rule, without significantly delaying the rulemaking. Because the Commission is extending the period for comments 30 days, the Commission is extending the effective date for the DFR 30 days, as well. Thus, unless the Commission receives a significant adverse comment by December 14,

2015, the rule will become effective on January 13, 2016.

Alberta E. Mills,

Acting Secretary, Consumer Product Safety Commission.

[FR Doc. 2015–29503 Filed 11–18–15; 8:45 am]

BILLING CODE 6355–01–P

**DEPARTMENT OF HOMELAND SECURITY****Coast Guard****33 CFR Part 138**

[Docket No. USCG–2013–1006]

RIN 1625–AC14

**Consumer Price Index Adjustments of Oil Pollution Act of 1990 Limits of Liability—Vessels, Deepwater Ports and Onshore Facilities****AGENCY:** Coast Guard, DHS.**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is issuing a final rule to increase the limits of liability for vessels, deepwater ports, and onshore facilities, under the Oil Pollution Act of 1990, as amended (OPA 90), to reflect significant increases in the Consumer Price Index (CPI). This final rule also establishes a simplified regulatory procedure for the Coast Guard to make future required periodic CPI increases to these OPA 90 limits of liability. These regulatory inflation increases to the limits of liability are required by OPA 90 and are necessary to preserve the deterrent effect and “polluter pays” principle embodied in OPA 90. In addition, this final rule clarifies applicability of the OPA 90 vessel limits of liability to edible oil cargo tank vessels and tank vessels designated as oil spill response vessels. This clarification to the prior regulatory text is needed for consistency with OPA 90. Finally, this rule makes several non-substantive clarifying and editorial revisions to the regulatory text. This rulemaking promotes the Coast Guard’s missions of maritime safety and maritime stewardship.

**DATES:** This final rule is effective December 21, 2015.

**FOR FURTHER INFORMATION CONTACT:** For information about this document call or email Benjamin White, Coast Guard; telephone 202–309–1937, email [Benjamin.H.White@uscg.mil](mailto:Benjamin.H.White@uscg.mil).

**SUPPLEMENTARY INFORMATION:****Table of Contents for Preamble**

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## I. Abbreviations

- Annual CPI-U The Annual "Consumer Price Index—All Urban Consumers, Not Seasonally Adjusted, U.S. City Average, All Items, 1982–84=100"
- BLS U.S. Department of Labor, Bureau of Labor Statistics
- BOEM The Bureau of Ocean Energy Management
- CFR Code of Federal Regulations
- COFR Certificate of Financial Responsibility
- COFR Rule The Coast Guard regulation, at 33 CFR part 138, subpart A, implementing the requirements under OPA 90 (33 U.S.C. 2716 and 2716a) and the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9608 and 9609) for responsible parties to establish and maintain evidence of financial responsibility in the event of an oil spill incident or hazardous substance release.
- CPI Consumer Price Index
- CPI-1 Rule The Coast Guard's first rulemaking amending 33 CFR part 138, subpart B, to adjust the OPA 90 limits of liability for vessels and deepwater ports for inflation, as required by 33 U.S.C. 2704(d)(4), and to establish the Coast Guard's procedure for future required inflation adjustments to the OPA 90 limits of liability (Docket No. USCG-2008-0007). See 73 FR 54997 (September 24, 2008) [CPI-1 NPRM]; 74 FR 31357 (July 1, 2009) [CPI-1 Interim Rule]; 75 FR 750 (January 6, 2010) [CPI-1 Final Rule].

- CPI-2 NPRM The NPRM for this rulemaking, published at 79 FR 49206 (August 19, 2014).
- CPI-2 Rule This rulemaking, which is the Coast Guard's second rulemaking under 33 U.S.C. 2704(d)(4) to amend 33 CFR part 138, subpart B, to adjust the OPA 90 vessel and deepwater port limits of liability for inflation, and the first rulemaking adjusting the onshore facility limit of liability for inflation (Docket No. USCG-2013-1006).
- Deepwater port A facility licensed under the Deepwater Port Act of 1974 (33 U.S.C. 1501-1524)
- DHS U.S. Department of Homeland Security
- DRPA The Delaware River Protection Act of 2006, Title VI of the Coast Guard and Maritime Transportation Act of 2006, Pub. L. 109-241, July 11, 2006, 120 Stat. 516
- E.O. Executive Order
- FR Federal Register
- Fund The Oil Spill Liability Trust Fund created by 26 U.S.C. 9509, and administered by NPFCC
- LNG Liquefied natural gas
- LOOP Louisiana Offshore Oil Port
- MARAD U.S. Department of Transportation, Maritime Administration
- MODU Mobile offshore drilling unit
- NPFCC U.S. Coast Guard, National Pollution Funds Center
- NPRM Notice of proposed rulemaking
- OMB U.S. Office of Management and Budget
- OPA 90 The Oil Pollution Act of 1990, as amended (33 U.S.C. 2701, *et seq.*)
- SBA U.S. Small Business Administration
- § Section symbol
- U.S. United States
- U.S.C. United States Code

## II. Basis and Purpose

In general, under Title I of the Oil Pollution Act of 1990, as amended (OPA 90),<sup>1</sup> the responsible parties for any vessel (other than a public vessel)<sup>2</sup> or for any facility<sup>3</sup> from which oil is discharged, or which poses a substantial threat of discharge of oil, into or upon the navigable waters or the adjoining shorelines or the exclusive economic zone of the United States, are strictly liable, jointly and severally, under 33 U.S.C. 2702 for the removal costs and damages that result from such incident ("OPA 90 removal costs and damages"). Under 33 U.S.C. 2704, however, a responsible party's OPA 90 liability

<sup>1</sup> 33 U.S.C. 2701, *et seq.*

<sup>2</sup> Public vessels are expressly excluded from OPA 90 coverage. See 33 U.S.C. 2701(29) and (37) (definitions of public vessel and vessel) and 33 U.S.C. 2702(c)(2) (public vessel exclusion).

<sup>3</sup> OPA 90 (33 U.S.C. 2701(9)) defines "facility" as "any structure, group of structures, equipment, or device (other than a vessel) which is used for one or more of the following purposes: Exploring for, drilling for, producing, storing, handling, transferring, processing, or transporting oil. This term includes any motor vehicle, rolling stock, or pipeline used for one or more of these purposes".

with respect to any one incident<sup>4</sup> is limited (with certain exceptions set forth in 33 U.S.C. 2704(c)) to a specified dollar amount.

In instances when a limit of liability applies, the Oil Spill Liability Trust Fund (Fund) is available to compensate the OPA 90 removal costs and damages incurred by the responsible party and third-party claimants in excess of the applicable limit of liability.<sup>5</sup> This Fund is managed by the Coast Guard's National Pollution Funds Center (NPFCC).

OPA 90 sets forth the statutory limits of liability for vessels and three types of facilities: Onshore facilities, deepwater ports licensed under the Deepwater Port Act of 1974 (hereinafter "deepwater ports"), and offshore facilities other than deepwater ports.<sup>6</sup> In addition, to prevent the real value of the OPA 90 statutory limits of liability from depreciating over time as a result of inflation and preserve the "polluter pays" principle embodied in OPA 90, 33 U.S.C. 2704(d)(4) requires that the OPA 90 limits of liability be adjusted by regulation "not less than every 3 years . . . to reflect significant increases in the Consumer Price Index".<sup>7</sup>

The President has delegated this regulatory authority to the Secretary of the department in which the Coast Guard is operating, in respect to the statutory limits of liability for vessels, deepwater ports, and onshore facilities. The Secretary of Homeland Security has further delegated this authority to the Commandant of the Coast Guard.<sup>8</sup>

<sup>4</sup> The term "incident" is defined in 33 U.S.C. 2701(14) as "any occurrence or series of occurrences having the same origin, involving one or more vessels, facilities, or any combination thereof, resulting in the discharge or substantial threat of discharge of oil".

<sup>5</sup> See 33 U.S.C. 2708, 2712(a)(4) and 2713; and 33 CFR part 136. A more comprehensive description of the Fund can be found in the Coast Guard's May 12, 2005, "Report on Implementation of the Oil Pollution Act of 1990", which is available in the docket.

<sup>6</sup> The term "onshore facility" is defined in 33 U.S.C. 2701(24) as "any facility (including but not limited to, motor vehicles and rolling stock) of any kind located in, on, or under, any land within the United States other than submerged land". The term "deepwater port" is defined in 33 U.S.C. 2701(6) as "a facility licensed under the Deepwater Port Act of 1974 (33 U.S.C. 1501-1524)". The term "offshore facility" is defined in 33 U.S.C. 2701(24) as "any facility of any kind located in, on, or under any of the navigable waters of the United States, and any facility of any kind which is subject to the jurisdiction of the United States and is located in, on, or under any other waters, other than a vessel or a public vessel;" Onshore facilities, deepwater ports and offshore facilities include component pipelines. See definition of "facility" in footnote 3, above.

<sup>7</sup> 33 U.S.C. 2704(d)(4).

<sup>8</sup> The regulatory authority to adjust the offshore facility limit of liability for damages has been

In this final rule we are making four changes to the Coast Guard regulations at 33 CFR part 138, subpart B. First, we are carrying out the required inflation adjustments to the OPA 90 limits of liability for vessels, deepwater ports and onshore facilities. Second, we are establishing a simplified regulatory procedure to ensure timely future required inflation adjustments to those limits of liability. Third, we are clarifying applicability of the OPA 90 vessel limits of liability to edible oil cargo tank vessels and to tank vessels designated in their certificates of inspection as oil spill response vessels.<sup>9</sup> This clarification to the regulatory text is needed for consistency with OPA 90. Fourth, we are making several non-substantive clarifying and editorial revisions to the regulatory text. These revisions include adding a cross-reference to the Code of Federal Regulations (CFR) section that sets forth the offshore facility limit of liability for damages, as adjusted for inflation by the U.S. Department of the Interior's Bureau of Ocean Energy Management (BOEM). That limit of liability can be found at 30 CFR 553.702. The regulatory text revisions made by this final rule were discussed in the notice of proposed rulemaking (NPRM), and the Coast Guard is adopting them today without substantive change.

### III. Background and Regulatory History

#### A. Creation of 33 CFR Part 138, Subpart B

In 2008, we promulgated 33 CFR part 138, subpart B, setting forth the OPA 90 limits of liability for vessels and deepwater ports. (See, Docket No. USCG-2005-21780.) This was done in anticipation of the Coast Guard periodically adjusting those limits of liability to reflect significant increases in the CPI, as required by 33 U.S.C. 2704(d)(4), and to ensure that the applicable amounts of OPA 90 financial responsibility that must be demonstrated and maintained by vessel and deepwater port responsible parties, as required by 33 U.S.C. 2716 and 33 CFR part 138, subpart A (COFR Rule), would always equal the applicable OPA 90 limits of liability as adjusted over time.

<sup>9</sup> delegated to the Secretary of the Interior. See further discussion of the delegations in Part III.C., below, under Background and Regulatory History.

<sup>9</sup> 33 U.S.C. 2704(c)(4).

#### B. Prior Regulatory Inflation Adjustments to the OPA 90 Limits of Liability for Vessels and Deepwater Ports

We published a notice of proposed rulemaking (NPRM) on September 24, 2008 (73 FR 54997) (CPI-1 NPRM), and an interim rule with request for comments on July 1, 2009 (74 FR 31357) (CPI-1 Interim Rule) adjusting the vessel and deepwater port limits of liability at 33 CFR part 138, subpart B, to reflect significant increases in the CPI.<sup>10</sup> The CPI-1 Interim Rule also established the Coast Guard's procedures and methodology for adjusting the OPA 90 limits of liability for inflation over time at § 138.240.

We received no adverse public comments on the CPI-1 Interim Rule. We, therefore, published a final rule on January 6, 2010, adopting the CPI-1 Interim Rule amendments to 33 CFR part 138, subpart B, without change (CPI-1 Final Rule, 75 FR 750).<sup>11</sup>

#### C. Clarification of the Coast Guard's Delegated Authority To Adjust the Onshore Facility Limit of Liability

The CPI-1 Rule was the Coast Guard's first set of inflation adjustments to the OPA 90 limits of liability for vessels and deepwater ports. We, however, deferred adjusting the statutory limit of liability for onshore facilities in 33 U.S.C. 2704(a)(4) at that time. This was because Executive Order (E.O.) 12777, Sec. 4, and its implementing re-delegations vested the President's responsibility to adjust the OPA 90 limits of liability in multiple agencies.

Specifically, the delegations vested the President's limit of liability adjustment authorities in the Commandant of the Coast Guard for vessels, deepwater ports and marine transportation-related onshore facilities, in the Secretary of the Department of Transportation for non-marine transportation-related onshore facilities, in the Administrator of the Environmental Protection Agency for non-transportation-related onshore

<sup>10</sup> This included adjustments to the regulatory limit of liability established for the Louisiana Offshore Oil Port (LOOP) under the OPA 90 deepwater port risk-based limit of liability adjustment authority at 33 U.S.C. 2704(d)(2), 60 FR 39849 (August 4, 1995). See the CPI-1 Rule for more background on LOOP. We promulgated the CPI-1 Rule adjustments as an interim, rather than final, rule to clarify the regulatory text in response to a late comment we received on a related 2008 rulemaking amending the COFR Rule. That comment is discussed below in Part IV.E., in response to a comment submitted on this rulemaking.

<sup>11</sup> All **Federal Register** notices, comments and other materials related to the CPI-1 Rule are available in the public docket for that rulemaking (Docket No. USCG-2008-0007).

facilities, and in the Secretary of the Interior for offshore facilities. That division of responsibilities complicated the CPI adjustment rulemaking requirement, particularly in respect to the three sub-categories of onshore facilities. Further interagency coordination was, therefore, needed to avoid inconsistent regulatory treatment.

By deferring the first onshore facility limit of liability inflation adjustment we were able to complete the required first set of inflation increases to the vessel and deepwater port limits of liability by the 2009 statutory deadline established by the Delaware River Protection Act of 2006 (DRPA).<sup>12</sup> In addition, as of that date, there had never been an onshore facility incident that exceeded the statutory onshore facility limit of liability, and there were no adverse public comments on our decision to defer the first regulatory inflation adjustment to the onshore facility limit of liability.

On March 15, 2013, the President signed E.O. 13638, restating and simplifying the delegations in E.O. 12777, Sec. 4, and vesting the authority to make CPI adjustments to the onshore facility statutory limit of liability in "the Secretary of the Department in which the Coast Guard is operating".<sup>13</sup> The restated delegations also require interagency coordination, but otherwise preserve the earlier delegations, including the authority to adjust the limits of liability for vessels and deepwater ports. On July 10, 2013, the Secretary of Homeland Security issued DHS Delegation Number 5110, Revision 01, re-delegating these authorities to the Commandant of the Coast Guard.

#### D. Overview of Changes Proposed by the NPRM for This Rulemaking (CPI-2 NPRM)

On August 19, 2014, we published an NPRM to amend 33 CFR part 138, subpart B (CPI-2 NPRM, at 79 FR 49206). The CPI-2 NPRM proposed four changes to 33 CFR part 138, subpart B. First, we proposed to carry out the second set of inflation adjustments to the vessel and deepwater port limits of liability, and the first inflation adjustment under the Commandant's newly-delegated authorities to the onshore facility statutory limit of

<sup>12</sup> Title VI of the Coast Guard and Maritime Transportation Act of 2006, Public Law 109-241, July 11, 2006, 120 Stat. 516. Section 603 of DRPA added a 2009 statutory deadline for completing the first rulemaking to increase the limits of liability for inflation to 33 U.S.C. 2704(d)(4).

<sup>13</sup> E.O. 13638, Sec. 1, 3 CFR, 2014 Comp., p.227 (also available at 78 FR 17589, March 21, 2013), amending E.O. 12777, Sec. 4, 3 CFR, 1991 Comp., p. 351, as amended by E.O. 13286, Sec. 89, 3 CFR, 2004 Comp., p. 166.

liability. Second, we proposed a simplified regulatory procedure, at new § 138.240(a), for the Coast Guard to make future required periodic CPI increases to the OPA 90 limits of liability for vessels, deepwater ports, and onshore facilities. Third, we proposed to clarify applicability of the vessel limits of liability to edible oil cargo tank vessels and oil spill response vessels for consistency with statute, and to renumber some of the subparagraphs for clarity. Fourth, we proposed a number of non-substantive clarifying and editorial revisions to the regulatory text. These revisions included: Updates to the titles for Part 138, Subpart B and § 138.240, to the list of authorities, and to the scope, applicability and definitions sections (*e.g.*, to reflect the addition of the onshore facility limit of liability); adding cross-references (*e.g.*, including a cross-reference in § 138.230(d) to the OPA 90 offshore facility limit of liability for damages as adjusted for inflation by BOEM and set forth at 30 CFR 553.702); and paragraph restructuring and plain language revisions to improve the rule's readability (*e.g.*, replacing public law citations with U.S. code citations).

We discussed the following two issues in the CPI-2 NPRM, and they are of relevance to changes we are making to the regulatory text in this final rule.

1. *Updated Annual CPI-U.* To keep the limits of liability current, the inflation adjustment methodology established by the CPI-1 Rule at § 138.240 requires that we use the Annual CPI-U that has been most recently published by the U.S. Department of Labor, Bureau of Labor Statistics (BLS) as the "current period" value. We, therefore, noted in the CPI-2 NPRM that the limits of liability shown in proposed § 138.230 were estimates, calculated using the then-available 2013 Annual CPI-U value of 232.957 as the "current period" value.<sup>14</sup> We further noted that we would calculate the limit of liability adjustments at the final rule stage using the most recently-published Annual CPI-U then available, and that the final limits of liability would therefore differ marginally from the proposed values.

2. *Previous period options.* The CPI-2 NPRM notified the public that, after considering any public comments on the proposal, we might re-calculate the inflation adjustments to the deepwater port and onshore facility statutory limit of liability (33 U.S.C. 2704(a)(4)) using the 1990 Annual CPI-U value of 130.7

as the "previous period". This would be instead of the 2008 Annual CPI-U value of 215.3 that we used to calculate the proposed deepwater port limit of liability (shown in § 138.230(b)(1) of the CPI-2 NPRM), and the 2006 Annual CPI-U "previous period" value of 201.6 that we used to calculate the proposed onshore facility limit of liability (shown in § 138.230(c) of the CPI-2 NPRM).

We discuss public comments received on these topics and how we have resolved them in Part IV, of this preamble, below.

#### IV. Discussion of Comments and Changes

##### A. Limit of Liability Adjustments

We received nine written submissions to the docket. Two submissions were from citizen advisory groups organized under OPA 90, Sec. 5002. Four submissions (including one set of comments submitted on behalf of two commenters) were from environmental advocacy organizations. One comment document was from a drilling contractor association, and two submissions were from anonymous individuals. We received no requests for public meetings, and held no public meetings for this rulemaking.

1. *General public support for the rulemaking.* Six commenters expressed general support for the proposal. In addition, one commenter expressed support for prioritizing regulations that provide environmental change. No commenter opposed the proposal. The Coast Guard appreciates this support.

2. *Issues raised by the public that are outside the scope of this rulemaking.* Two commenters stated that the OPA 90 statutory limits of liability are inadequate and should be significantly increased. Four commenters expressed the view that OPA 90 liability should not be capped. Several of these commenters stated that removing the liability limits would encourage industry best practices and be consistent with Congressional intent that polluters pay for the injuries they cause. These comments are outside the scope of this rulemaking because, as several of the commenters recognized, striking or significantly increasing the statutory limits of liability would require legislative change.

One commenter expressed the view that penalties for oil spills should not be limited. (This comment concerns civil or criminal penalty liability for oil spills, and is therefore in addition to the comments discussed above in the previous paragraph about the adequacy or need for OPA 90 limits of liability for removal costs and damages.) Another

commenter stated that independent third parties should audit clean-ups by responsible parties. Both of these comments also are outside the scope of this rulemaking. This rulemaking only concerns the inflation adjustments to the OPA 90 limits of liability for removal costs and damages that are required under 33 U.S.C. 2704(d)(4). It does not concern penalty liability or the procedures for carrying-out removal actions.

3. *Updated Annual CPI-U.* We received no comments opposing use of the Annual CPI-U that has been most recently published by the BLS, as required in § 138.240.

4. *Public comments concerning use of a 1990 "previous period".* No commenter opposed, and five commenters expressed support for, using the 1990 Annual CPI-U as the "previous period" value to adjust the statutory onshore facility and deepwater port limit of liability. Several of these commenters stated that using a 1990 "previous period" would capture the full amount of inflation since OPA 90 was enacted, thereby restoring the onshore facility and deepwater port statutory limit of liability to the amount intended by Congress. One of the commenters stated that using the 1990 "previous period" is appropriate because of the increasing risks to U.S. waters of new, more intensive methods of oil production and transportation, including Bakken crude and tar sands. The commenter expressed the view that the approach would help achieve Congress's intent of ensuring the "polluter pays," and would encourage onshore facility and deepwater port operators to conduct their operations in the safest manner possible.

5. *Final adjusted limits of liability.* As we noted above in Part III.D.1., the inflation adjustment methodology established by the CPI-1 Rule at § 138.240 requires that we use the Annual CPI-U that has been most recently published by the BLS as the "current period" value. This requirement is to keep the limits of liability current. On January 16, 2015, the BLS published the 2014 Annual CPI-U value of 236.736. This is the most recently published Annual CPI-U. We have, therefore, used the 2014 Annual CPI-U as the "current period" value to calculate the new vessel, deepwater port and offshore facility limits of liability established by this final rule.

We also agree with the public comments summarized above, in subpart A.4. of this part, that it is appropriate to use the 1990 Annual CPI-U as the "previous period" value for adjusting the onshore facility and

<sup>14</sup> See Table 24 of the BLS CPI Detailed Reports, which are made available each month at the following link: <http://www.bls.gov/cpi/tables.htm>.

deepwater port statutory limit of liability in 33 U.S.C. 2704(a)(4). This approach captures the full amount of inflation since that limit of liability was established by OPA 90 and is, therefore, consistent with congressional intent. It is also consistent with the approach recently taken by BOEM to adjust the offshore facility limit of liability. (See 79 FR 73832, December 12, 2014.) We have, therefore, recalculated the adjustments to the onshore facility and

deepwater port statutory limit of liability using the 1990 Annual CPI-U value of 130.7 as the “previous period”.<sup>15</sup>

Applying the formula set forth in § 138.240(b) for calculating the cumulative percent change in the Annual CPI-U, we have determined that the percent change in the Annual CPI-U exceeds the significance threshold specified in § 138.240(c). We have, therefore, calculated the limit of liability

adjustments using the formula set forth in § 138.240(d).

Table 1 shows the vessel, deepwater port and onshore facility limits of liability before their adjustment by this final rule (Previous Limits of Liability), the percent change in the Annual CPI-U, and the final inflation-adjusted limits of liability established by today’s final rule at § 138.230 (New Limits of Liability). These New Limits of Liability will take effect on December 21, 2015.

TABLE 1—CPI-ADJUSTED LIMITS OF LIABILITY  
[§ 138.230]

Source category	Previous limit of liability	Percent change in the annual CPI-U	New limit of liability
(a) Vessels			
(1) The OPA 90 limits of liability for tank vessels, other than edible oil tank vessels and oil spill response vessels, are—			
(i) For a single-hull tank vessel greater than 3,000 gross tons, <sup>16</sup>	the greater of \$3,200 per gross ton or \$23,496,000.	10	The greater of \$3,500 per gross ton or \$25,845,600.
(ii) For a tank vessel greater than 3,000 gross tons, other than a single-hull tank vessel,	the greater of \$2,000 per gross ton or \$17,088,000.	10	The greater of \$2,200 per gross ton or \$18,796,800.
(iii) For a single-hull tank vessel less than or equal to 3,000 gross tons,	the greater of \$3,200 per gross ton or \$6,408,000.	10	The greater of \$3,500 per gross ton or \$7,048,800.
(iv) For a tank vessel less than or equal to 3,000 gross tons, other than a single-hull tank vessel,	the greater of \$2,000 per gross ton or \$4,272,000.	10	The greater of \$2,200 per gross ton or \$4,699,200.
(2) The OPA 90 limits of liability for any vessel other than a vessel listed in subparagraph (a)(1) of § 138.230, including for any edible oil tank vessel and any oil spill response, vessel, are—	the greater of \$1,000 per gross ton or \$854,400.	10	The greater of \$1,100 per gross ton or \$939,800.
(b) Deepwater ports			
(1) The OPA 90 limit of liability for any deepwater port, including for any component pipelines, other than a deepwater port listed in subparagraph (b)(2) of § 138.230, is—	\$373,800,000 .....	81.1	\$633,850,000.
(2) The OPA 90 limits of liability for deepwater ports with limits of liability established by regulation under OPA 90 (33 U.S.C. 2704(d)(2)), including for any component pipelines, are—			
(i) For the Louisiana Offshore Oil Port (LOOP) .....	\$87,606,000 .....	10	\$96,366,600.
(ii) [Reserved] .....	N/A .....	N/A	N/A.
(c) Onshore facilities			
The OPA 90 limit of liability for onshore facilities, including, but not limited to, any motor vehicle, rolling stock or onshore pipeline, is	\$350,000,000 .....	81.1	\$633,850,000.

**B. Simplified Regulatory Procedure for Future Inflation Adjustments to the Limits**

Four commenters supported adoption of the simplified regulatory procedure

<sup>15</sup> We are not changing the approach we used in the CPI-1 Rule to adjust the vessel limits of liability for inflation, where we used the 2006 Annual CPI-U value as the “previous period.” We continue to view that approach as consistent with congressional intent, because in 2006 Congress passed DRPA revising the vessel limits of liability. Importantly, however, Congress did not revise the facility limits of liability in 2006 and has not done so since. Thus, although we used the 2006 CPI-U value in making inflation adjustments to the deepwater port limits of liability in the CPI-1 Rule, and we stated that we

would also use that same approach in adjusting the onshore facility limits of liability at some future date, we have now decided (with the benefit of public comments on the issue and for the other reasons discussed above and in the CPI-2 NPRM) to use a different approach in adjusting the limits for deepwater ports and onshore facilities. As explained, we are making inflation adjustments for these limits of liability using the 1990 Annual CPI-U value as the “previous period,” because Congress established these limits in 1990 and has not revised them since that time. In addition to being more

consistent with congressional intent and the “polluter pays” principle than our prior approach reflected in the CPI-1 Rule, our revised approach also may encourage onshore facility and deepwater port operators to conduct their operations in the safest manner possible, as a commenter suggested.

<sup>16</sup> As of January 1, 2015, tank vessels not equipped with a double hull can no longer operate on waters subject to the jurisdiction of the United States, including the Exclusive Economic Zone (EEZ), carrying oil in bulk as cargo or cargo residue; and there are no waivers or extensions of the

proposed in new § 138.240(a) for making future CPI adjustments to the limits of liability. The Coast Guard appreciates and agrees with these comments. No commenter opposed this proposal. We are, therefore, adopting the simplified regulatory procedure as proposed. This procedure, which is based on a Federal Energy Regulatory Commission fee-adjustment procedure in 18 CFR 381.104(a) and (d), will help ensure regular, timely inflation adjustments to the limits of liability, and is an appropriate and helpful efficiency measure given the mandatory and routine nature of the CPI adjustments.

### C. Inflation Adjustment Methodology

The CPI-2 NPRM did not propose any substantive changes to the § 138.240 limit of liability adjustment methodology promulgated by the CPI-1 Rule (§ 138.240(b)-(d)), and previously designated as paragraphs (a)-(c)). Two commenters, however, expressed support for the inflation significance threshold in § 138.240(c) and the adjustment methodology established by the CPI-1 Rule generally, including the annual reviews the Coast Guard will conduct if the significance threshold is not met after 3 years. We appreciate receiving that input and are today adopting those provisions of § 138.240 with no substantive change.

The only changes we have made to the regulatory text of § 138.240, as adopted by the CPI-1 Rule, are: (1) Changing the title, (2) adding the simplified regulatory procedure that was proposed as new paragraph § 138.240(a) in the CPI-2 NPRM; (3) redesignating the paragraph lettering in the provisions that follow to accommodate insertion of the simplified regulatory procedure and for clarity; and (4) an editorial amendment to § 138.240(b)(2) to more clearly cross-reference § 138.240(b)(1).

### D. Clarifying Applicability of the “Other Vessel” Limits of Liability to Edible Oil Tank Vessels and Oil Spill Response Vessels

The CPI-2 NPRM proposed to clarify the regulatory text for consistency with OPA 90 as amended by the 1995 Edible Oil Regulatory Reform Act<sup>17</sup> and the Coast Guard Authorization Act of

1998.<sup>18</sup> Those amendments to OPA 90 exclude edible oil tank vessels and oil spill response vessels from the definition of “tank vessel”. As a result, both vessel types are classified as a matter of law to the “any other vessel” category for purposes of determining the applicable OPA 90 limits of liability and evidence of financial responsibility requirements.

One commenter expressed support for our proposal to clarify applicability of the vessel limits of liability to these two vessel categories. We appreciate receiving this comment and believe that the proposed clarification will reduce regulatory uncertainty. No commenter opposed this proposal. We are therefore adopting the proposed regulatory text clarification, with minor non-substantive editorial revisions.

### E. Applicability of the Tank Vessel Limits of Liability, Including for MODUs

One commenter recommended that the Coast Guard amend the regulatory text to further clarify that a mobile offshore drilling unit (MODU) that is not “constructed or adapted to carry, or carries, oil in bulk as cargo or cargo residue” is subject to the lower tank vessel limits of liability in § 138.230(a)(1)(ii) and (iv). The commenter’s understanding of the rule is correct. We, however, already clarified this issue in the CPI-1 Rule. Resolving this issue was, indeed, the only reason we published the CPI-1 Rule initially as an interim rule, rather than a final rule, in July, 2009.

Specifically, in response to late comments we received on our separate but related 2008 COFR Rule amendments (Docket No. USCG-2005-21780), our CPI-1 Interim Rule proposed a new definition in § 138.220 for the term “single-hull”. The revision limited the term “single-hull” to a tank vessel that is “constructed or adapted to carry, or that carries, oil in bulk as cargo or cargo residue.” In addition, we added limiting language in § 138.230(a). We received no adverse public comments on those proposed CPI-1 Interim Rule revisions and, therefore, adopted the clarifications in the CPI-1 Final Rule without change.

Those regulatory text revisions made clear that any tank vessel that does not meet the regulatory definition of “single hull”—including but not limited to a MODU that is neither constructed nor adapted to carry, and that does not carry, oil in bulk as cargo or cargo residue—are excluded from the single-hull tank vessel limit of liability

categories in § 138.230(a)(1)(i) and (iii). All such vessels are instead subject to the “other than a single-hull tank vessel” limit of liability categories in § 138.230(a)(1)(ii) and (iv).

Therefore, since the same standard applies to all tank vessels (*i.e.*, a vessel either is, or is not, a vessel “constructed or adapted to carry, or that carries, oil in bulk as cargo or cargo residue”), we do not see a need to single-out specific categories of tank vessels, such as MODUs, in the regulatory text. Singling out MODUs could, moreover, create unintended ambiguity respecting applicability of the general standard to other types of tank vessels.

We note that this issue is very different from the clarifications we are adopting today in respect to the treatment of edible oil tank vessels and oil spill response vessels. We are adopting those clarifications because those two vessel categories are, as a matter of law, not “tank vessels” under OPA 90.<sup>19</sup> They are, therefore, subject to the “other vessel” limits of liability in § 138.230(a)(2), rather than any of the “tank vessel” limits of liability in § 138.230(a)(1). A MODU, by comparison, is treated in OPA 90 as a “tank vessel”.<sup>20</sup>

### F. Other Revisions To Clarify the Regulatory Text

The CPI-2 NPRM proposed a number of non-substantive clarifying and editorial changes to the regulatory text to improve its readability. These included: Updates to titles, and the list of authorities and definitions; adding cross-references, including a cross-reference in § 138.230(d) to the OPA 90 offshore facility limit of liability for damages as adjusted for inflation by BOEM; paragraph restructuring and renumbering to accommodate new regulatory text; and plain language revisions. We received no comments opposing these changes. This final rule, therefore, adopts the proposed changes and we have further clarified and edited the text for readability. The additional revisions include: Further updates to and simplification of the list of authorities citations; wording to clarify applicability of the limits of liability to motor vehicles, rolling stock and pipelines for consistency with OPA 90; simplification of the paragraph structure and introductory clauses in § 138.230 for readability and to eliminate subparagraph titles; and an editorial amendment to § 138.240(b)(2) to more clearly cross-reference § 138.240(b)(1).

deadline. See Coast Guard message DTG 221736ZDEC14. OPA 90, however, continues to specify limits of liability for single-hull tank vessels. The Coast Guard will, therefore, continue to adjust those limits of liability for inflation.

<sup>17</sup> Pub. L. 104-55, Nov. 20, 1995, 109 Stat. 546, Section 2(d) amending OPA 90 33 U.S.C. 2704(a)(1) and 33 U.S.C. 2716(a).

<sup>18</sup> Pub. L. 105-383, title IV, section 406, Nov. 13, 1998, 112 Stat. 3429.

<sup>19</sup> See 33 U.S.C. 2704(c)(4)(A) and (B).  
<sup>20</sup> 33 U.S.C. 2704(b)(1).

## V. Regulatory Analyses

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

### A. Regulatory Planning and Review

Executive Orders 13563 and 12866 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 has not been designated a “significant regulatory action,” under section 3(f) of Executive Order 12866. Accordingly, the rule has not been reviewed by the Office of Management and Budget. A final Regulatory Assessment is available in the docket, and a summary follows.

#### 1. Regulatory Costs

We have analyzed the potential costs of this rulemaking, and expect it to:

*Regulatory Cost 1:* Increase the cost of liability; and

*Regulatory Cost 2:* Increase the cost of establishing and maintaining evidence of financial responsibility.

##### a. Discussion of Regulatory Cost 1

This rule could increase the dollar amount of OPA 90 removal costs and damages the responsible party of a vessel (other than a public vessel), deepwater port, or onshore facility must pay in the event of an OPA 90 incident. This regulatory cost, however, would only be incurred by a responsible party if an incident resulted in OPA 90 removal costs and damages that exceeded the applicable vessel, deepwater port, or onshore facility Previous Limit of Liability. In any such case, assuming as we do in this analysis that the responsible party is entitled to a limit of liability (*i.e.*, that none of the exceptions in 33 U.S.C. 2704(c) apply), the difference between the Previous Limit of Liability amount and the New Limit of Liability amount is the maximum increased cost to the responsible party. The responsible party would have no legal obligation to incur incident costs above this value.

##### i. Affected Population—Vessels

This rule could affect the responsible parties of any vessel (other than a public

vessel),<sup>21</sup> involved in an OPA 90 incident.<sup>22</sup> The impact would, however, only occur if the incident resulted in OPA 90 removal costs and damages in excess of the vessel’s Previous Limit of Liability.

Coast Guard data as of May 2014 indicate that—since OPA 90 was enacted in August of 1990—67 vessel incidents (*i.e.*, an average of approximately three vessel incidents per year) resulted in OPA 90 removal costs and damages in excess of the applicable Previous Limits of Liability.<sup>23</sup> For the purpose of this analysis, we have therefore assumed that three OPA 90 vessel incidents with costs exceeding the Previous Limits of Liability would occur each year throughout the 10-year analysis period (2016–2025).

##### ii. Affected Population—Deepwater Ports

This rule could affect the responsible parties of any deepwater port (including its component pipelines) involved in an OPA 90 incident. The impact would, however, only occur if the incident resulted in OPA 90 removal costs and damages in excess of the deepwater port’s Previous Limit of Liability.

Currently there are only two licensed deepwater ports in operation—LOOP and Northeast Gateway. Northeast Gateway is a liquefied natural gas (LNG) port and, as currently designed and operated, uses less than 100 gallons of oil. Therefore, it is highly unlikely that Northeast Gateway would ever be the source of an OPA 90 incident with removal costs and damages in excess of the Previous Limit of Liability. We therefore do not include Northeast Gateway in this analysis.<sup>24</sup>

<sup>21</sup> According to Coast Guard’s MISLE database, there are over 200,000 vessels of various types in the population of vessels using U.S. waters that are not public vessels. Examples of vessel types include, but are not limited to: fish processing vessel, freight barge, freight ship, industrial vessel, mobile offshore drilling unit, offshore supply vessel, oil recovery vessel, passenger vessel, commercial fishing vessel, passenger barge, research vessel, school ship, tank barge, tank ship, and towing vessel.

<sup>22</sup> See the OPA 90 definition of “incident” in footnote 4, above.

<sup>23</sup> See United States Coast Guard Report to Congress, “Oil Pollution Act Liability Limits in 2014”, Department of Homeland Security, October 2, 2014, which is available in the docket at <http://www.regulations.gov>, Docket No. USCG–2013–1006, RIN 1625–AC14.

<sup>24</sup> Two other similarly-designed LNG deepwater ports, Gulf Gateway Energy Bridge and Port Dolphin, were mentioned in the regulatory analysis for the CPI–1 Rule. But, on June 28, 2013, the Maritime Administrator (MARAD) cleared decommissioning of the Gulf Gateway Energy Bridge, approving termination of its license; and, on August 28, 2015, Port Dolphin Energy LLC Deepwater Port surrendered its license. In addition, MARAD licensed the Neptune LNG, LLC,

To date, LOOP (the only oil deepwater port in operation) has not had an OPA 90 incident that resulted in removal costs and damages in excess of LOOP’s Previous Limit of Liability of \$87,606,000. However, the potential for such a spill exists. Therefore, for the purposes of this analysis, we show the cost of one OPA 90 incident occurring at LOOP over the 10-year analysis period (2016–2025), with OPA 90 removal costs and damages in excess of the Previous Limit of Liability for LOOP.

##### iii. Affected Population—Onshore Facilities

This rule could affect the responsible parties for any onshore facility (including onshore pipelines) involved in an OPA 90 incident. The impact would, however, only occur if the incident resulted in OPA 90 removal costs and damages in excess of the onshore facility Previous Limit of Liability.

Because of the large number and diversity of onshore facilities, it is not possible to predict which specific types or sizes of onshore facilities might be affected by this rule. Coast Guard data, however, indicate that from the enactment of OPA 90 in August, 1990, through May, 2015, only one onshore facility incident—the 2010 Enbridge Pipeline spill in Michigan—has likely resulted in OPA 90 removal costs and damages exceeding the onshore facility Previous Limit of Liability of \$350,000,000.<sup>25</sup>

The Enbridge Pipeline incident indicates that the Previous Limit of Liability for an onshore facility, although high, can still be exceeded by a low likelihood, but high consequence oil spill. Therefore, for the purposes of this analysis, we assume one onshore facility incident would occur over the 10-year analysis time period (2016–

deepwater port on March 23, 2007. But, on July 22, 2013, MARAD approved a request by Suez Energy North America, Inc., to suspend that deepwater port’s operations for five years and to amend its license. Neptune, moreover, has substantially the same design as Northeast Gateway and, therefore, also is not likely to ever have an oil pollution incident with removal costs and damages in excess of the Previous Limit of Liability. These LNG deepwater ports, therefore, also are not included in this analysis. MARAD has received applications for two other LNG deepwater ports, and we expect others will be proposed over the next ten years. If those ports are designed to use substantially the same technology as Northeast Gateway, they also would not be likely to ever have oil pollution incidents with removal costs and damages in excess of the Previous Limit of Liability.

<sup>25</sup> As of June 2015, Enbridge Energy Partners reported costs of more than \$1.2 billion resulting from the pipeline spill. [http://www.mlive.com/news/kalamazoo/index.ssf/2015/06/enbridge\\_to\\_pay\\_additional\\_4\\_m.html](http://www.mlive.com/news/kalamazoo/index.ssf/2015/06/enbridge_to_pay_additional_4_m.html).

2025) with OPA 90 removal costs and damages in excess of the onshore facility Previous Limit of Liability.

iv. Cost Summary Regulatory Cost 1

(a) Vessels

We estimate the greatest cost to a vessel responsible party entitled to a limit of liability under OPA 90, for purposes of this analysis, by assuming that the average annual cost from the historical incidents analyzed would remain constant throughout the analysis period (2016–2025). The average annual increased cost of liability was estimated first by calculating the difference between the Previous Limit of Liability and the New Limit of Liability for each of the 67 historical vessel incidents with removal costs and damages in excess of the applicable OPA 90 limit of liability. These values were then totaled<sup>26</sup> and divided by the number of years of data to estimate the average annual increased cost.

$\$60,376,000 \div 24 \text{ years} = \$2,515,700 \text{ per year (non-discounted dollars)}$

(b) Deepwater Ports

We estimate the greatest cost to a deepwater port responsible party entitled to a limit of liability under OPA 90, for purposes of this analysis, by assuming that the cost of the incident would be equal to the New Limit of Liability. As mentioned above, LOOP has never had an incident with OPA 90 removal costs and damages in excess of its Previous Limit of Liability. Therefore, given the lack of any deepwater port historical data, we have assumed that a LOOP incident with costs above its Previous Limit of Liability of \$87,606,000 would be analogous to a vessel incident with costs in excess of \$87,606,000 with respect to the duration of responsible party payments.

Specifically, relying on historical duration of payment data for vessel incidents, we assume that the LOOP responsible parties would make OPA 90 removal cost and damage payments for the one hypothetical incident over the course of 10 years after the incident date.<sup>27</sup> In addition, for the purposes of this analysis, we assume that the payments would be spread out in equal

annual amounts over the 10-year analysis period (2016–2025).<sup>28</sup> Applying these assumptions, the average annual cost resulting from the one hypothetical LOOP incident would be \$876,000 (non-discounted dollars).  $\$96,366,600 - \$87,606,000 = \$8,760,600$   
 $\$8,760,600 \div 10 \text{ years} = \$876,000 \text{ per year (non-discounted dollars)}$

(c) Onshore Facilities

We estimate the greatest cost to an onshore facility responsible party entitled to a limit of liability under OPA 90, for purposes of this analysis, by assuming that the cost of the incident would be equal to the New Limit of Liability. Based on NPFC's experience with onshore facility incidents, we assume that an onshore facility responsible party would be making OPA 90 removal cost and damage payments for the one estimated incident over the course of 10 years after the incident date.<sup>29</sup> We further assume that the payments would be spread out in equal annual amounts over the 10-year analysis period (2016–2025).<sup>30</sup> Applying these assumptions, the average annual cost resulting from the one estimated onshore facility OPA 90 incident over 10 years is estimated to be \$28,385,000 (non-discounted dollars).  $\$633,850,000 - \$350,000,000 = \$283,850,000$   
 $\$283,850,000 \div 10 \text{ years} = \$28,385,000 \text{ per year (non-discounted dollars)}$

v. Present Value of Regulatory Cost 1

The 10-year present value of Regulatory Cost 1, at a 3 percent discount rate, is estimated to be \$271.1 million. The 10-year present value of Regulatory Cost 1, at a 7 percent discount rate, is estimated to be \$223.2 million. The annualized discounted cost of Regulatory Cost 1, at a 3 percent discount rate, is estimated to be \$31.8 million. The annualized discounted cost of Regulatory Cost 1, at a 7 percent

<sup>28</sup> Based on Coast Guard subject matter expert experience, we have assumed that the payments would be spread out equally over the 10-year analysis period. This realistically models the long duration of OPA 90 removal actions (particularly in the case of an incident resulting in OPA 90 removal costs and damages exceeding the limit of liability), the time lag in billings and payments and, if applicable, associated claim submissions, claim payments and litigation.

<sup>29</sup> The per-incident duration of payments was determined by comparing the incident date and the completion date of each onshore facility incident occurring since enactment of OPA 90 with incident removal costs and damages (in 2014 dollars) greater than or equal to \$5 million. There were 21 incidents fitting these criteria: 9 are ongoing incidents and 12 are completed. The average duration for the 12 completed incidents was approximately 10 years.

<sup>30</sup> See footnote 28, above.

discount rate is estimated to be \$31.8 million.

b. Discussion of Regulatory Cost 2

OPA 90 requires that the responsible parties for certain types and sizes of vessels and for deepwater ports establish and maintain evidence of financial responsibility to ensure that they have the ability to pay for OPA 90 removal costs and damages, up to the applicable limits of liability, in the event of an OPA 90 incident.<sup>31</sup> Therefore, because the regulatory changes contemplated by this rule would increase those limits of liability, vessel and deepwater port responsible parties could incur additional costs establishing and maintaining evidence of financial responsibility as a result of this rulemaking.

As discussed above and further below, there will be no Regulatory Cost 2 impacts on deepwater ports because LOOP is the only deepwater port in operation required to provide evidence of financial responsibility, and LOOP is not expected to have any increased evidence of financial responsibility costs as a result of this rule. Therefore, only vessel responsible parties are expected to see Regulatory Cost 2 impacts.

i. Affected Population—Vessels

Vessel responsible parties who are required to establish and maintain evidence of financial responsibility, may do so using any of the following methods: Insurance, Self-Insurance, Financial Guaranty, Surety Bond, or any other method approved by the Director, NPFC.<sup>32</sup> As of April 1, 2015, the NPFC's Certificate of Financial Responsibility (COFR) database contained 19,750 vessels using Insurance, 4,199 vessels using Self-Insurance, 1,368 vessels using Financial Guaranties, and 2 vessels using Surety Bonds. This rule could affect the cost to vessel responsible parties of establishing and maintaining evidence of financial responsibility using any of these

<sup>31</sup> See 33 U.S.C. 2716(a) and (c)(2). OPA 90 also imposes financial responsibility requirements on offshore facilities. Those requirements are, however, regulated by the BOEM. (See 30 CFR part 553.) OPA 90 does not impose evidence of financial responsibility requirements on onshore facilities.

<sup>32</sup> See 33 CFR 138.80(b). The term "Insurance" is capitalized here to refer to the insurance used to comply with the requirement under OPA 90 (33 U.S.C. 2716) for responsible parties to establish and maintain evidence of financial responsibility. This use of the term "Insurance" is distinct from other types of insurance a responsible party might have (e.g., vessel hull insurance, marine pollution insurance, etc.).

<sup>26</sup> See Figure 3 in the Regulatory Assessment.

<sup>27</sup> The per-incident duration of payments was determined by comparing the incident date and the completion date for each vessel incident occurring since enactment of OPA 90 with incident removal costs and damages (in 2014 dollars) above LOOP's "Previous Limit of Liability" of \$87,606,000. There were six incidents fitting this criteria. Three are ongoing incidents, and three are completed. The average duration of payments for the three completed incidents was approximately 10 years.

methods.<sup>33</sup> The OPA 90 evidence of financial responsibility applicable amounts required under 33 CFR 138.80(f) are equal to the OPA 90 limits of liability in 33 CFR 138.230(a) and automatically update when the limits of liability are increased for inflation. Because of this relationship, the amount of financial responsibility required is also based on the type of vessel and, in the case of tank vessels, on their hull type.

ii. Affected Population—Deepwater Ports

As discussed above in respect to Cost 1, currently there are two licensed deepwater ports in operation—LOOP and Northeast Gateway. The Coast Guard, however, has not yet proposed regulations implementing OPA 90 financial responsibility requirements for deepwater ports. Therefore, although LOOP is providing evidence of financial responsibility under a procedure that was grandfathered by OPA 90, 33 U.S.C. 2716(h), there are no OPA 90 evidence of financial responsibility regulatory requirements that currently apply to deepwater ports generally, including Northeast Gateway. We have, therefore, analyzed Cost 2 impacts only in respect to LOOP.

iii. Affected Population—Onshore Facilities

None. There is no requirement in OPA 90 for onshore facility responsible parties to establish and maintain evidence of financial responsibility.

iv. Cost Summary Regulatory Cost 2

(a) Vessels

*Increases to Vessel Insurance Premiums.* The calculation of Insurance premium rates are dependent on many constantly changing factors, including: market forces, interest rates and investment opportunities for the premium income, the terms and conditions of the policy, and underwriting criteria such as vessel age, loss history, construction, classification details, and management history. As calculated above, the change in the limits of liability for vessels is 10 percent (rounded to one decimal place as required by the rule). At the NPRM stage of this rulemaking, data was requested from 9 of a possible 14 Insurance companies. Four responded with their current premium rates and

their best estimates of the increase in premium rates resulting from the proposed regulatory change. These four Insurance companies represented approximately 93 percent of vessels that use the Insurance method of financial responsibility. The data provided estimated that a 6 percent increase in premiums would occur for an increase in the limits of liability in the range of 5 percent to 10 percent. Therefore, consistent with the NPRM's Regulatory Analysis, it is assumed that a 10 percent increase in the limits of liability would cause on average a 6 percent increase in Insurance premiums charged across all vessel types.<sup>34</sup>

We estimated costs by multiplying the number of vessels by vessel category for each year of the analysis (2016–2025) by the Expected Average Increase in Premium for that particular vessel type. The annual cost associated with increased Insurance premiums is estimated to be \$6.5 million (non-discounted dollars).

*Migration of responsible parties currently using the Self-Insurance and Financial Guaranty Methods of Financial Responsibility to the Insurance market.* Based on the financial documentation received from responsible parties using the Self-Insurance or Financial Guaranty methods, the Coast Guard estimates that the responsible parties for 2 percent of the vessels that have COFRs based on those methods might need to migrate to the Insurance method of financial responsibility.

The cost estimates for responsible parties migrating to the Insurance method of financial responsibility were calculated by first multiplying the number of vessels using Self-Insurance or Financial Guaranty by vessel category for each year of the analysis period (2016–2025) by the presumed percent of impacted vessels (2 percent) and then multiplying the product by the estimated Expected Average Annual Premium for that particular vessel type.

The annual cost associated with vessel responsible parties migrating to Insurance is estimated to be \$532,100 (non-discounted dollars).

*Increased Cost to Responsible Parties using the Surety Bond Method.* Currently only one responsible party uses the Surety Bond method to

establish evidence of financial responsibility for two tank vessels. For that responsible party, additional Surety Bond coverage will be required to establish or maintain evidence of financial responsibility up to the New Limits of Liability. The responsible party would also have the option of changing the method of financial guaranty to the Insurance method, or (if the responsible party meets the financial requirements to do so) to the Self-Insurance or Financial Guaranty method.

We do not have data on the fees charged by Surety Bond providers. But, if the cost of obtaining Surety Bond coverage were higher than the cost of Insurance, we would expect the one responsible party currently relying on the Surety Bond method to use the Insurance method instead. Therefore, we assume that the cost to the responsible party of using the surety method does not exceed the Insurance premium associated with the Insurance method. In the case of the one responsible party that is using the Surety Bond method for two tank vessels under 3,000 gross tons, this would be cost of \$3,700 per vessel per year (*i.e.*, the cost of Insurance per vessel) or a total annual cost of \$7,400.

(b) Deepwater Ports

The 10 percent increase in the LOOP limit of liability resulting from this rulemaking is not expected to increase the cost to the LOOP responsible parties associated with establishing and maintaining LOOP's evidence of financial responsibility. This is because the LOOP responsible parties are already providing evidence of financial responsibility to the Coast Guard at a level that exceeds both LOOP's Previous Limit of Liability and its New Limit of Liability of \$96,366,600. The Coast Guard has historically accepted the following documentation as evidence of financial responsibility for LOOP:

- An insurance policy issued by Oil Insurance Limited (OIL) of Bermuda with coverage up to \$150 million per OPA 90 incident and a \$225 million annual aggregate,

- Documentation that LOOP operates with a net worth of at least \$50 million, and

- Documentation that the total value of the OIL policy aggregate plus LOOP's working capital does not fall below \$100 million.

The Coast Guard, therefore, does not expect this action to change the terms of the OIL policy, to result in an increased premium for the OIL policy, or to require LOOP to have higher minimum

<sup>33</sup> There currently are no vessel responsible parties using other methods of demonstrating financial responsibility approved by the Director, NPFC, and, based on historical experience, NPFC does not expect any responsible parties will use any other method during the analysis period (2016–2025).

<sup>34</sup> After we published the NPRM, several Insurance companies provided updated data indicating that, due to changing market conditions, an increase in limits of liability for vessels of 15% or less should not cause them to raise their premiums. The actual impact of Regulatory Cost 2 could therefore be less than the impact we are estimating here. This is because we rely in this analysis on the data used for the NPRM regulatory analysis.

net worth or working capital requirements.

(c) Onshore Facilities

None. There is no requirement in OPA 90 for onshore facility responsible parties to establish and maintain evidence of financial responsibility.

v. Present Value of Regulatory cost 2

The 10-year present value, at a 3 percent discount rate, is estimated to be \$60.0 million. The 10-year present value, at a 7 percent discount rate, is estimated to be \$49.3 million. The annualized discounted cost, at a 3 percent discount rate, is estimated to be \$7.0 million. The annualized discounted cost, at a 7 percent discount rate, is estimated to be \$7.0 million.

c. Present Value of Total Cost

The 10-year present value, at a 3 percent discount rate, is estimated to be \$331.0 million. The 10-year present value, at a 7 percent discount rate, is estimated to be \$272.5 million. The annualized discounted cost, at a 3 percent discount rate is estimated to be \$38.8 million. The annualized discounted cost, at a 7 percent discount rate is estimated to be \$38.8 million.

2. Regulatory Benefits

In our Regulatory Analysis, we have analyzed the regulatory benefits of this final rule qualitatively.

a. *Regulatory Benefit 1: Ensure that the OPA 90 limits of liability keep pace with inflation.*

OPA 90 (33 U.S.C. 2704(d)(4)) mandates that limits of liability be updated periodically to reflect significant increases in the CPI to account for inflation. The intent of this requirement is to ensure that the real values of the limits of liability do not decline over time. Absent CPI adjustments, a responsible party ultimately gains an advantage that is not contemplated by OPA 90 because the responsible party pays a reduced percentage of the total incident costs the responsible party would be required to pay with inflation incorporated into the determination of the applicable limit of liability. This final rule requires responsible parties to internalize inflation, thereby benefitting the public.

b. *Regulatory Benefit 2: Ensure that the responsible party is held accountable.*

By increasing the limits of liability to account for inflation, this final rule ensures that the appropriate amount of removal costs and damages are borne by the responsible party and that liability risk is not shifted away from the responsible party to the Fund. This

helps preserve the “polluter pays” principle as intended by Congress and preserves the Fund for its other authorized uses. Failing to adjust the limits of liability for inflation, by comparison, shifts those costs to the public and the Fund.

c. *Regulatory Benefit 3: Reduce and deter substandard shipping and oil handling practices.*

Increasing the limits of liability serves to reduce the number of substandard ships in U.S. waters and ports because Insurers, Surety Bond providers and Financial Guarantors are less likely to provide coverage for substandard vessels at the new levels of OPA 90 liability. Maintaining the limits of liability also helps preserve the deterrent effect of the OPA 90 liability provisions for Self Insurers.

With respect to oil handling practices, the higher the responsible parties’ limits of liability are, the greater the incentive for them to operate in the safest and most risk-averse manner possible. Conversely, the lower the limits of liability, the lower the incentive is for responsible parties to spend money on capital improvements and operation and maintenance systems that will protect against oil spills.

d. *Regulatory Benefit 4: Provide statutory consistency, regulatory certainty and administrative efficiency using the streamlined approach.*

Under the simplified regulatory procedure established by this final rule, the Director, NPFC, will publish the inflation-adjusted limits of liability in the **Federal Register** as final rule amendments to 33 CFR 138.230. The Director will also use this simplified regulatory procedure to update 33 CFR 138.230 to reflect statutory changes to the OPA 90 limits of liability. This will ensure that the limits of liability set forth in 33 CFR 138, Subpart B, remain consistent with the statutory limits of liability if they are amended. This simplified regulatory procedure will provide regulatory certainty by ensuring regular, timely inflation adjustments to the limits of liability as required by statute. The approach is also an appropriate and helpful efficiency measure given the mandatory and routine nature of the CPI adjustments. The public comments on the NPRM supported this simplified rulemaking procedure, and no commenter opposed it.

e. *Regulatory Benefit 5: Provide regulatory clarity to responsible parties for edible oil and response tank vessels.*

As discussed above, 33 U.S.C. 2704(c)(4) excludes edible oil tank vessels (*i.e.*, tank vessels on which the only oil carried as cargo is an animal fat

or vegetable oil) and oil spill response vessels from the OPA 90 tank vessel limits of liability in 33 U.S.C. 2704(a)(1). The effect of this exclusion is that edible oil tank vessels and oil spill response vessels are classified, as a matter of law, to the “any other vessel” limit of liability category in 33 U.S.C. 2704(a)(2) of OPA 90. In addition, edible oil tank vessels and oil spill response vessels are subject to the lower OPA 90 evidence of financial responsibility requirements applicable to the “any other vessel” category.

The special treatment accorded by OPA 90 to edible oil tank vessels and oil spill response vessels was not reflected in the prior regulatory text of 33 CFR part 138. The Coast Guard’s clarification to the regulatory text by this final rule will, therefore, promote consistency with OPA 90 and be helpful to industry and the public by reducing regulatory uncertainty.

B. *Small Entities*

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

We have analyzed the potential impacts of this final rule on small entities, and expect it to:<sup>35</sup>

Regulatory Cost 1. Increase the cost of liability, and

Regulatory Cost 2. Increase the cost of establishing and maintaining evidence of financial responsibility.

1. Regulatory Cost 1: Increase the Cost of Liability

As explained above in Part V.A of this preamble and in the Regulatory Analysis for this rule, Regulatory Cost 1 will only occur if there is an OPA 90 incident that has OPA 90 removal costs and damages in excess of the existing limits of liability.

a. Affected Population—Vessels

The rule could affect the responsible parties of any vessel (other than a public

<sup>35</sup> We expect the simplified regulatory procedure and the clarification of edible oil cargo tank vessels and tank vessels designated as oil spill response vessels to provide a marginal benefit to all responsible parties, including small entities.

vessel) from which oil is discharged, or which poses the substantial threat of a discharge of oil, into or upon the navigable waters or adjoining shorelines or the exclusive economic zone of the United States. This can include vessels owned, operated or demise chartered by small entities.

According to Coast Guard's MISLE database, there are over 200,000 vessels of various types in the vessel population that are not public vessels. Examples of vessel types include, but are not limited to: fish processing vessel, freight barge, freight ship, industrial vessel, mobile offshore drilling unit, offshore supply vessel, oil recovery vessel, passenger vessel, commercial fishing vessel, passenger barge, research vessel, school ship, tank barge, tank ship, and towing vessel.

Coast Guard data indicate that—from the date of enactment of OPA 90 through May 1, 2014—there were 67 OPA 90 vessel incidents (*i.e.*, an average of approximately three OPA 90 vessel incidents per year) that resulted in OPA 90 removal costs and damages in excess of the Previous Limits of Liability. For the purpose of this analysis, we have therefore assumed that three OPA 90 vessel incidents would continue to occur each year throughout the 10-year analysis period (2016–2025). In addition, although we do not have any way to predict if any of the estimated three incidents per year would involve a small entity, we have assumed that the three vessels involved are owned, operated or demise chartered by small entities.

#### b. Cost Summary—Vessels

As calculated in the Regulatory Analysis, the average cost of a vessel incident that exceeds its Previous Limit of Liability is approximately \$838,600 but could range from \$85,800 to \$11,368,500. We note that the majority of the incidents, 60 percent, would only have incurred an additional \$85,800 in OPA 90 removal costs and damages. However, in the event that a small entity had a vessel incident which resulted in OPA 90 removal costs and damages above the Previous Limit of Liability in that amount, it would likely have a significant economic impact.

#### c. Affected Population—Deepwater Ports

As discussed above in Part V.A of this preamble and in the Regulatory Analysis, the only deepwater port affected by the final rule is LOOP. LOOP, however, does not meet the Small Business Administration (SBA)

criteria to be categorized as a small entity.<sup>36</sup>

#### d. Cost Summary—Deepwater Ports

Because there are no small entity deepwater ports, there would be no Regulatory Cost 1 small entity impacts to Deepwater Ports.

#### e. Affected Population—Onshore Facilities

As discussed above in Part V.A of this preamble and in the Regulatory Analysis, the final rule could affect the responsible parties for any onshore facility.<sup>37</sup> Since the enactment of OPA 90, however, the 2010 Enbridge Pipeline spill in Michigan may well be the only onshore facility incident resulting in OPA 90 removal costs and damages exceeding the previous \$350 million onshore facility limit of liability and that onshore facility is not a small entity. Nevertheless, in the Regulatory Analysis for the rule, we assume that there will be one onshore facility OPA 90 incident occurring over the 10-year analysis period with OPA 90 removal costs and damages exceeding the existing limit of liability.

The onshore facility population encompasses dozens of NAICS codes representing diverse industries.<sup>38</sup> It, therefore, would not be practical to predict which specific type or size of onshore facility might be involved in the one hypothetical incident assumed to occur over the 10-year analysis period, or whether it would involve a small entity.

#### f. Cost Summary—Onshore Facilities

As previously stated above, there has never been a small entity onshore facility incident with OPA 90 removal costs and damage that exceeded the Previous Limit of Liability of \$350 million. However, in the event that a small entity onshore facility were to have an incident with OPA 90 removal costs and damages equal to the New Limit of Liability, that onshore facility would be responsible for an average annual additional cost of \$28,385,000.

<sup>36</sup> LOOP is a limited liability corporation (NAICS Code: 48691001) owned by three major oil companies: Marathon Oil Company, Murphy Oil Corporation, and Shell Oil Company. None of these companies are small entities.

<sup>37</sup> See the OPA 90 definitions of “facility” and “onshore facility” in footnotes 3 and 6, above.

<sup>38</sup> Examples of onshore facilities include, but are not limited to: onshore pipelines; rail; motor carriers; petroleum bulk stations and terminals; petroleum refineries; government installations; oil production facilities; electrical utility plants; electrical transmission lines; mobile facilities; marinas, marine fuel stations and related facilities; farms; residential and commercial fuel tank owners; fuel oil distribution facilities; and gasoline stations.

This would likely have a significant economic impact on the small entity.

#### 2. Regulatory Cost 2: Increase the Cost of Establishing and Maintaining Financial Responsibility

##### a. Affected Population—Vessels

Regulatory Cost 2 will only apply to vessel responsible parties required to establish and maintain OPA 90 evidence of financial responsibility under 33 U.S.C. 2716 and 33 CFR part 138, subpart A. As of July 3, 2013, there were 1,744 unique entities in the Coast Guard's COFR database that could be affected by the rulemaking. Because of the large number of entities, we determined the statistically significant sample size necessary to represent the population. The appropriate statistical sample size, at a 95 percent confidence level and a 5 percent confidence interval, for the population is 315 entities. This means we are 95 percent certain that the characteristics of the sample reflect the characteristics of the entire population within a margin of error of + or – 5 percent.

Using a random number generator, we then randomly selected the 315 entities from the population for analysis. Of the sample, 309 were businesses, 0 were not-for-profit organizations and 6 were governmental jurisdictions. For each business entity, we next determined the number of employees, annual revenue, and NAICS Code to the extent possible using public and proprietary business databases. The SBA's publication “U.S. Small Business Administration Table of Small Business Size Standards Matched to North American Industry Classification System codes effective January 22, 2014”<sup>39</sup> was then used to determine whether an entity is a small entity. For governmental jurisdictions, we determined whether they had populations of less than 50,000 as per the criteria in the RFA.

Of the sampled population, 220 would be considered small entities using SBA's criteria, 72 would not be small entities, and no data was found for the remaining 23 entities.<sup>40</sup> If we assume that entities where no revenue or employee data was found are small entities, then small entities make up 77 percent of the sample.<sup>41</sup> We can then extrapolate the entire population of entities from the sample using the following formula, where “X” is the

<sup>39</sup> [http://www.sba.gov/sites/default/files/files/Size\\_Standards\\_Table.pdf](http://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf).

<sup>40</sup> The 6 governmental jurisdictions were a subset of the 23 entities where no data was found.

<sup>41</sup> The data show that small entities are often responsible parties for multiple vessels.

number of small entities within the total entities in the population.

(X small entities in the total population ÷ 1,744 total entities in the population) = (243 small entities in the sample ÷ 315 total entities in the sample).

Solving for X, X equals 1,345 small entities within the total population of 1,744 vessel responsible parties.

**b. Cost Summary—Vessels**

As discussed above in Part V.A. and in the Regulatory Analysis, the rule could increase the cost to vessel responsible parties associated with establishing and maintaining evidence of financial responsibility in three ways:

- Responsible parties using the Insurance method of establishing and maintaining evidence of financial responsibility could incur higher Insurance premiums.

- Some responsible parties currently using the Self-Insurance or Financial Guaranty methods of establishing and maintaining evidence of financial responsibility might need to migrate to the Insurance method for their vessels. This would only be the case if the Self-Insuring responsible parties or Financial Guarantors' financial condition (working capital and net worth) no longer qualified them to establish and maintain evidence of financial responsibility.

- The one responsible party using the Surety Bond method will need to ensure that the amount of the Surety Bonds are adequate to cover OPA 90 removal costs and damages up to the New Limits of Liability. Alternatively, the responsible party could opt to switch to one of the other methods of establishing and maintaining evidence of financial responsibility.

**i. Increases to Vessel Insurance Premiums**

Based on the data in the Regulatory Analysis above, we have estimated the average annual per-vessel increase in Insurance premiums to be \$300.

$\$6,450,800 \div 19,724 \text{ vessels} = \$327 \text{ per vessel}$   
 Rounded to nearest 100 = \$300 per vessel

The estimated increased cost of establishing evidence of financial responsibility for each small entity is calculated by multiplying the number of

vessels using the Insurance method by the average increase in insurance premiums. This calculation was conducted for each small entity. The value was then divided by the annual revenue for the small entity and multiplied by 100 to determine the percent impact of the final rule on the small entities' annual revenue.

**ii. Migration of Responsible Parties Currently Using the Self-Insurance and Financial Responsibility Methods of Financial Responsibility to the Insurance Market**

Based on review of financial data of entities using the Self-Insurance or Financial Guaranty method for establishing and maintaining evidence of financial responsibility, Coast Guard subject matter experts estimate that responsible parties for 2 percent of vessels using those two methods would not have the requisite working capital and net worth necessary to qualify for these methods as a result of the rule. In those cases, we assume they will use the Insurance method to establish and maintain evidence of financial responsibility. Based on the data in Part V.A., above, and in the Regulatory Analysis, the estimated average annual cost per vessel of migrating from the Self-insurance/Financial Guaranty methods to the Insurance method is \$5,100.

$\$564,700 \div 111 \text{ vessels} = \$5,087 \text{ per vessel}$   
 Rounded to nearest 100 = \$5,100 per vessel

The increased cost of establishing and maintaining evidence of financial responsibility for each small entity is calculated by:

Multiplying the number of vessels using the Self-Insurance/Financial Guaranty methods by 2 percent and then multiplying by the Average Annual Insurance Premium (\$5,100)

For example, the cost for a small entity responsible party with 100 vessels that would not have the requisite working capital and net worth necessary to use the Self-Insurance or Financial Guaranty method for all of its vessels would be calculated as follows:

(100 vessels using Self-Insurance or Financial Guaranty method × 2 percent of vessels expected to migrate

from Self-Insurance or Financial Guaranty method to the Insurance method × \$5,100/year) = \$10,200/year

This calculation was conducted for each small entity. The value was then divided by the annual revenue for the small entity and multiplied by 100 to determine the percent impact of the rule on the small entities' annual revenue.

**iii. Increased Cost of Using the Surety Bond Method of Financial Responsibility**

As previously noted, there is one responsible party using the Surety Bond method of establishing and maintaining financial responsibility for two vessels. This responsible party is not a small entity. In addition, based on Coast Guard subject matter expertise, we do not expect any other responsible party to use the Surety Bond method during the analysis period. Because there are no small entities involved, there would be no Regulatory Cost 2 small entity impacts for these two vessels.

**c. Affected Population—Deepwater Ports**

As discussed above, the only deepwater port potentially affected by the rule is LOOP. LOOP, however, does not meet SBA's criteria to be categorized as a small entity.

**d. Cost Summary—Deepwater Ports**

Because there are no small entity deepwater ports, there would be no Regulatory Cost 2 small entity impacts to Deepwater Ports.

**e. Affected Population—Onshore Facilities**

As stated above in Part V.A. and in the Regulatory Analysis, onshore facilities are not required to establish and maintain evidence of financial responsibility under 33 U.S.C. 2716.

**f. Cost Summary—Onshore Facilities**

Because onshore facilities are not required to establish and maintain evidence of financial responsibility, there are no Regulatory Cost 2 small entity impacts to onshore facilities resulting from this rulemaking.

The figure below shows the economic impact to small entities of Regulatory Cost 2.

**ECONOMIC IMPACT TO SMALL ENTITIES—REGULATORY COST 2**

Percent of annual revenue	Extrapolated number of small entities	Percent of small entities
1% to 2%	17	1.3%
< 1%	1,328	98.7%

### 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 E.O. 13132 (“Federalism”) if it has a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this final rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in E.O. 13132. This final rule makes necessary adjustments to the OPA 90 limits of liability to reflect significant increases in the CPI, establishes a framework for such future CPI increases, and clarifies the OPA 90 limits of liability for certain vessels. Nothing in this final rule affects the preservation of State authorities under 33 U.S.C. 2718, including the authority of any State to impose additional liability or financial responsibility requirements with respect to discharges of oil within such State. Therefore, it has no implications for federalism.

The Coast Guard recognizes the key role that State and local governments may have in making regulatory determinations. Additionally, for rules with federalism implications and preemptive effect, E.O. 13132 specifically directs agencies to consult

with State and local governments during the rulemaking process. The NPRM, therefore, invited anyone who believed this rule has implications for federalism under E.O. 13132 to contact us. We received no such public comment.

### 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 does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

### M. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01, Commandant Instruction M16475.ID, and 67 FR 48243 (July 23, 2002) which guide the Coast Guard in complying with the National Environmental Policy Act of 1969, 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. A final environmental analysis checklist supporting this determination is available in the docket where indicated under the “Public Participation and Request for Comments” section of this preamble. This rule increases the OPA 90 limits of liability for vessels, deepwater ports, and onshore facilities to reflect significant increases in the CPI using the methodology established in the CPI–1 Rule. This action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment and is categorically excluded from further environmental documentation under paragraph 6(b) of 67 FR 48243 (July 23, 2002).

### List of Subjects in 33 CFR Part 138

Financial responsibility, Guarantors, Hazardous materials transportation, Insurance, Limits of liability, Oil pollution, Reporting and recordkeeping requirements, Surety bonds, Water pollution control.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 138 as follows:

**PART 138—FINANCIAL RESPONSIBILITY FOR WATER POLLUTION (VESSELS) AND OPA 90 LIMITS OF LIABILITY (VESSELS, DEEPWATER PORTS AND ONSHORE FACILITIES)**

■ 1. The authority citation for part 138 is revised to read as follows:

**Authority:** 33 U.S.C. 2704, 2716, 2716a; 42 U.S.C. 9608, 9609; 6 U.S.C. 552; E.O. 12580, Sec. 7(b), 3 CFR, 1987 Comp., p. 193; E.O. 12777, Secs. 4 and 5, 3 CFR, 1991 Comp., p. 351, as amended by E.O. 13286, Sec. 89, 3 CFR, 2004 Comp., p. 166, and by E.O. 13638, Sec. 1, 3 CFR, 2014 Comp., p.227; Department of Homeland Security Delegation Nos. 0170.1 and 5110, Revision 01. Section 138.30 also issued under the authority of 46 U.S.C. 2103 and 14302.

■ 2. Revise the heading to part 138 to read as set forth above.

■ 3. Revise Subpart B to read as follows:

**Subpart B—OPA 90 Limits of Liability (Vessels, Deepwater Ports and Onshore Facilities)**

Sec.  
138.200 Scope.  
138.210 Applicability.  
138.220 Definitions.  
138.230 Limits of liability.  
138.240 Procedure for updating limits of liability to reflect significant increases in the Consumer Price Index (Annual CPI-U) and statutory changes.

**Subpart B—OPA 90 Limits of Liability (Vessels, Deepwater Ports and Onshore Facilities)**

**§ 138.200 Scope.**

This subpart sets forth the limits of liability under Title I of the Oil Pollution Act of 1990, as amended (33 U.S.C. 2701, *et seq.*) (OPA 90), for vessels, deepwater ports, and onshore facilities, as adjusted under OPA 90 (33 U.S.C. 2704(d)). This subpart also sets forth the method and procedure the Coast Guard uses to periodically adjust the OPA 90 limits of liability by regulation under OPA 90 (33 U.S.C. 2704(d)(4)), to reflect significant increases in the Consumer Price Index (CPI), and to update the limits of liability when they are amended by statute. In addition, this subpart cross-references the U.S. Department of the Interior regulation setting forth the OPA 90 limit of liability applicable to offshore facilities, as adjusted under OPA 90 (33 U.S.C. 2704(d)(4)) to reflect significant increases in the CPI.

**§ 138.210 Applicability.**

This subpart applies to you if you are a responsible party for a vessel, a deepwater port, or an onshore facility (including, but not limited to, motor vehicles, rolling stock and onshore

pipelines), unless your liability is unlimited under OPA 90 (33 U.S.C. 2704(c)).

**§ 138.220 Definitions.**

(a) As used in this subpart, the following terms have the meanings set forth in OPA 90 (33 U.S.C. 2701): *deepwater port, facility, gross ton, liability, oil, offshore facility, onshore facility, responsible party, tank vessel, and vessel.*

(b) As used in this subpart—  
*Annual CPI-U* means the annual “Consumer Price Index—All Urban Consumers, Not Seasonally Adjusted, U.S. City Average, All items, 1982–84=100”, published by the U.S. Department of Labor, Bureau of Labor Statistics.

*Current period* means the year in which the Annual CPI-U was most recently published by the U.S. Department of Labor, Bureau of Labor Statistics.

*Director, NPFC* means the person in charge of the U.S. Coast Guard, National Pollution Funds Center (NPFC), or that person’s authorized representative.

*Edible oil tank vessel* means a tank vessel referred to in OPA 90 (33 U.S.C. 2704(c)(4)(A)).

*Oil spill response vessel* means a tank vessel referred to in OPA 90 (33 U.S.C. 2704(c)(4)(B)).

*Previous period* means the year in which the previous limit of liability was established, or last adjusted by statute or regulation, whichever is later.

*Single-hull* means the hull of a tank vessel that is constructed or adapted to carry, or that carries, oil in bulk as cargo or cargo residue, that is not a double hull as defined in 33 CFR part 157. Single-hull includes the hull of any such tank vessel that is fitted with double sides only or a double bottom only.

**§ 138.230 Limits of liability.**

(a) *Vessels.* (1) The OPA 90 limits of liability for tank vessels, other than edible oil tank vessels and oil spill response vessels, are—

(i) For a single-hull tank vessel greater than 3,000 gross tons, the greater of \$3,500 per gross ton or \$25,845,600;

(ii) For a tank vessel greater than 3,000 gross tons, other than a single-hull tank vessel, the greater of \$2,200 per gross ton or \$18,796,800;

(iii) For a single-hull tank vessel less than or equal to 3,000 gross tons, the greater of \$3,500 per gross ton or \$7,048,800; and

(iv) For a tank vessel less than or equal to 3,000 gross tons, other than a single-hull tank vessel, the greater of \$2,200 per gross ton or \$4,699,200.

(2) The OPA 90 limits of liability for any vessel other than a vessel listed in paragraph (a)(1) of this section, including for any edible oil tank vessel and any oil spill response vessel, are the greater of \$1,100 per gross ton or \$939,800.

(b) *Deepwater ports.* (1) The OPA 90 limit of liability for any deepwater port, including for any component pipelines, other than a deepwater port listed in paragraph (b)(2) of this section, is \$633,850,000;

(2) The OPA 90 limits of liability for deepwater ports with limits of liability established by regulation under OPA 90 (33 U.S.C. 2704(d)(2)), including for any component pipelines, are—

(i) For the Louisiana Offshore Oil Port (LOOP), \$96,366,600; and

(ii) [Reserved]

(c) *Onshore facilities.* The OPA 90 limit of liability for onshore facilities, including, but not limited to, motor vehicles, rolling stock and onshore pipelines, is \$633,850,000.

(d) *Offshore facilities.* The OPA 90 limit of liability for offshore facilities other than deepwater ports, including for any offshore pipelines, is set forth at 30 CFR 553.702.

**§ 138.240 Procedure for updating limits of liability to reflect significant increases in the Consumer Price Index (Annual CPI-U) and statutory changes.**

(a) *Update and publication.* The Director, NPFC, will periodically adjust the limits of liability set forth in § 138.230(a) through (c) to reflect significant increases in the Annual CPI-U, according to the procedure for calculating limit of liability inflation adjustments set forth in paragraphs (b)–(d) of this section, and will publish the inflation-adjusted limits of liability and any statutory amendments to those limits of liability in the **Federal Register** as amendments to § 138.230. Updates to the limits of liability under this paragraph are effective on the 90th day after publication in the **Federal Register** of the amendments to § 138.230, unless otherwise specified by statute (in the event of a statutory amendment to the limits of liability) or in the **Federal Register** notice amending § 138.230.

(b) *Formula for calculating a cumulative percent change in the Annual CPI-U.* (1) The Director, NPFC, calculates the cumulative percent change in the Annual CPI-U from the year the limit of liability was established, or last adjusted by statute or regulation, whichever is later (*i.e.*, the previous period), to the most recently published Annual CPI-U (*i.e.*, the current period), using the following escalation formula:

Percent change in the Annual CPI-U = [(Annual CPI-U for Current Period - Annual CPI-U for Previous Period) ÷ Annual CPI-U for Previous Period] × 100.

(2) The cumulative percent change value calculated using the formula in paragraph (b)(1) of this section is rounded to one decimal place.

(c) *Significance threshold.* Not later than every three years from the year the limits of liability were last adjusted for inflation, the Director, NPFPC, will evaluate whether the cumulative percent change in the Annual CPI-U since that date has reached a significance threshold of 3 percent or greater. For any three-year period in which the cumulative percent change in the Annual CPI-U is less than 3 percent, the Director, NPFPC, will publish a notice of no inflation adjustment to the limits of liability in the **Federal Register**. If this occurs, the Director, NPFPC, will recalculate the cumulative percent change in the Annual CPI-U since the year in which the limits of liability were last adjusted for inflation each year thereafter until the cumulative percent change equals or exceeds the threshold amount of 3 percent. Once the 3-percent threshold is reached, the Director, NPFPC, will increase the limits of liability, by regulation using the procedure set forth in paragraph (a) of this section, for all source categories (including any new limit of liability established by statute or regulation since the last time the limits of liability were adjusted for inflation) by an amount equal to the cumulative percent

change in the Annual CPI-U from the year each limit was established, or last adjusted by statute or regulation, whichever is later. Nothing in this paragraph shall prevent the Director, NPFPC, in the Director's sole discretion, from adjusting the limits of liability for inflation by regulation issued more frequently than every three years.

(d) *Formula for calculating inflation adjustments.* The Director, NPFPC, calculates adjustments to the limits of liability in § 138.230 for inflation using the following formula:

New limit of liability = Previous limit of liability + (Previous limit of liability × percent change in the Annual CPI-U calculated under paragraph (b) of this section), then rounded to the closest \$100.

Dated: November 3, 2015.

**William R. Grawe**,  
Director, U.S. Coast Guard, National Pollution Funds Center.

[FR Doc. 2015-29519 Filed 11-18-15; 8:45 am]

**BILLING CODE 9110-04-P**

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 165**

[Docket No. USCG-2015-0968]

**Safety Zones; Fireworks Events in Captain of the Port New York Zone**

**AGENCY:** Coast Guard, DHS.

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

**SUMMARY:** The Coast Guard will enforce various safety zones within the Captain of the Port New York Zone on the specified dates and times. This action is necessary to ensure the safety of vessels and spectators from hazards associated with fireworks displays. During the enforcement period, no person or vessel may enter the safety zones without permission of the Captain of the Port (COTP).

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

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this notice, call or email Petty Officer First Class Daniel Vazquez U.S. Coast Guard; telephone 718-354-4154, email [daniel.vazquez@uscg.mil](mailto:daniel.vazquez@uscg.mil).

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

TABLE 1

1. City of Poughkeepsie, Poughkeepsie, NY, Hudson River Safety Zone, 33 CFR 165.160(5.13).	<ul style="list-style-type: none"> <li>• Launch site: A barge located in approximate position 41°42'24.50" N. 073°56'44.16" W. (NAD 1983), approximately 420 yards north of the Mid Hudson Bridge. This Safety Zone is a 300-yard radius from the barge.</li> <li>• Date: October 29, 2015.</li> <li>• Time: 7:00 p.m.–08:20 p.m.</li> </ul>
2. KPMG #1, Liberty Island Safety Zone, 33 CFR 165.160(2.1) .....	<ul style="list-style-type: none"> <li>• Launch site: A barge located in approximate position 40°41'16.5" N. 074°02'23" W. (NAD 1983), located in Federal Anchorage 20-C, about 360 yards east of Liberty Island. This Safety Zone is a 360-yard radius from the barge.</li> <li>• Date: November 5, 2015.</li> <li>• Time: 9:00 p.m.–10:30 p.m.</li> </ul>
3. HKM Productions, Liberty Island Safety Zone, 33 CFR 165.160(2.1)	<ul style="list-style-type: none"> <li>• Launch site: A barge located in approximate position 40°41'16.5" N. 074°02'23" W. (NAD 1983), located in Federal Anchorage 20-C, about 360 yards east of Liberty Island. This Safety Zone is a 360-yard radius from the barge.</li> <li>• Date: November 6, 2015.</li> <li>• Rain Date: November 7, 2015.</li> <li>• Time: 9:00 p.m.–10:30 p.m.</li> </ul>
4. KPMG #2, Liberty Island Safety Zone, 33 CFR 165.160(2.1) .....	<ul style="list-style-type: none"> <li>• Launch site: A barge located in approximate position 40°41'16.5" N. 074°02'23" W. (NAD 1983), located in Federal Anchorage 20-C, about 360 yards east of Liberty Island. This Safety Zone is a 360-yard radius from the barge.</li> <li>• Date: November 19, 2015.</li> <li>• Time: 9:00 p.m.–10:30 p.m.</li> </ul>

TABLE 1—Continued

<p>5. Circle Line Sightseeing Yachts NYE, Liberty Island Safety Zone, 33 CFR 165.160(2.1).</p>	<ul style="list-style-type: none"> <li>• Launch site: A barge located in approximate position 40°41'16.5" N. 074°02'23" W. (NAD 1983), located in Federal Anchorage 20–C, about 360 yards east of Liberty Island. This Safety Zone is a 360-yard radius from the barge.</li> <li>• Date: December 31, 2015.</li> <li>• Time: 11:30 p.m.–12:40 a.m.</li> </ul>
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Under the provisions of 33 CFR 165.160, vessels may not enter the safety zones unless given permission from the COTP or a designated representative. Spectator vessels may transit outside the safety zones but may not anchor, block, loiter in, or impede the transit of other vessels. The Coast Guard may be assisted by other Federal, State, or local law enforcement agencies in enforcing this regulation.

This notice is issued under authority of 33 CFR 165.160(a) and 5 U.S.C. 552(a). In addition to this notice in the **Federal Register**, the Coast Guard will provide mariners with advanced notification of enforcement periods via the Local Notice to Mariners and marine information broadcasts. If the COTP determines that a safety zone need not be enforced for the full duration stated in this notice, a Broadcast Notice to Mariners may be used to grant general permission to enter the safety zone.

Dated: November 2, 2015.

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

[FR Doc. 2015–29604 Filed 11–18–15; 8:45 am]

**BILLING CODE 9110–04–P**

**DEPARTMENT OF DEFENSE**

**Defense Acquisition Regulations System**

**48 CFR Part 252**

**RIN 0750–A167**

**Defense Federal Acquisition Regulation Supplement: Removal of Cuba From the List of State Sponsors of Terrorism (DFARS 2015–D032)**

*Correction*

In rule document 2015–27467 appearing on pages 67252–67253 in the

issue of October 30, 2015, make the following correction:

On page 67253, in the first column, the last line, “BILLING CODE 6820–ep–P” should read “BILLING CODE 5001–06–P”.

[FR Doc. C1–2015–27467 Filed 11–18–15; 8:45 am]

**BILLING CODE 1505–01–D**

# Proposed Rules

Federal Register

Vol. 80, No. 223

Thursday, November 19, 2015

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

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Parts 26, 50, 52, 73, and 140

[NRC-2015-0070]

RIN 3150-AJ59

### Regulatory Improvements for Decommissioning Power Reactors

**AGENCY:** Nuclear Regulatory Commission.

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

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is issuing this advance notice of proposed rulemaking (ANPR) to obtain input from stakeholders on the development of a draft regulatory basis. The draft regulatory basis would support potential changes to the NRC's regulations for the decommissioning of nuclear power reactors. The NRC's goals in amending these regulations would be to provide an efficient decommissioning process, reduce the need for exemptions from existing regulations, and support the principles of good regulation, including openness, clarity, and reliability. The NRC is soliciting public comments on the contemplated action and invites stakeholders and interested persons to participate. The NRC plans to hold a public meeting to promote full understanding of the questions contained in this ANPR and facilitate public comment.

**DATES:** Submit comments by January 4, 2016. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date.

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

- *Federal rulemaking Web site:* Go to <http://www.regulations.gov> and search for Docket ID NRC-2015-0070. Address questions about NRC dockets to Carol

Gallagher; telephone: 301-415-3463; email: [Carol.Gallagher@nrc.gov](mailto:Carol.Gallagher@nrc.gov). For technical questions contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- *Email comments to:* [Rulemaking.Comments@nrc.gov](mailto:Rulemaking.Comments@nrc.gov). If you do not receive an automatic email reply confirming receipt, then contact us at 301-415-1677.

- *Fax comments to:* Secretary, U.S. Nuclear Regulatory Commission at 301-415-1101.

- *Mail comments to:* Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, ATTN: Rulemakings and Adjudications Staff.

- *Hand deliver comments to:* 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. (Eastern time) Federal workdays; telephone: 301-415-1677.

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:

Jason B. Carneal, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-1451; email: [Jason.Carneal@nrc.gov](mailto:Jason.Carneal@nrc.gov).

#### SUPPLEMENTARY INFORMATION:

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#### I. Obtaining Information and Submitting Comments

##### A. Obtaining Information

Please refer to Docket ID NRC-2015-0070 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-2015-0070.

- *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](mailto: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. For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in Section IX, "Availability of Documents," of this document.

- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

##### B. Submitting Comments

Please include Docket ID NRC-2015-0070 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. Background

### A. Regulatory Actions Related to Decommissioning Power Reactors

Significant regulations for the decommissioning of nuclear power reactors were not included in NRC rules promulgated before 1988. The NRC published a final rule in the **Federal Register** on June 27, 1988 (53 FR 24018), establishing decommissioning requirements for various types of licensees. By the early 1990s, the NRC recognized a need for more changes to the power reactor decommissioning regulations and published a proposed rule to amend its regulations for reactor decommissioning in 1995 (60 FR 37374; July 20, 1995). In 1996, the NRC amended its regulations for reactor decommissioning to clarify ambiguities, make generically applicable procedures that had been used on a case-by-case basis, and allow for greater public participation in the decommissioning process (61 FR 39278; July 29, 1996). However, as an increasing number of power reactor licensees began decommissioning their reactors, it became apparent in the late 1990s that additional rulemaking was needed on specific topics to improve the efficiency and effectiveness of the decommissioning process.

In a series of Commission papers issued between 1997 and 2001, the NRC staff provided options and recommendations to the Commission to address regulatory improvements related to power reactor decommissioning. In the Staff Requirements Memorandum (SRM) to SECY-99-168, "Improving Decommissioning Regulations for Nuclear Power Plants," dated December 21, 1999 (ADAMS Accession No. ML003752190), the Commission directed the NRC staff to proceed with a single, integrated, risk-informed decommissioning rule, addressing the areas of emergency preparedness (EP), insurance, safeguards, staffing and training, and backfit. The objective of the rulemaking was to clarify and remove certain regulations for decommissioning power reactors based on the reduction in radiological risk compared to operating reactors. At an operating reactor, the high temperature and pressure of the reactor coolant system, as well as the inventory of relatively short-lived radionuclides, contribute to both the risk and consequences of an accident. With the permanent cessation of reactor operations and the permanent removal

of the fuel from the reactor core, such accidents are no longer possible. As a result of the shutdown and removal of fuel, the reactor, reactor coolant system, and supporting systems no longer operate and, therefore, have no function. Hence, postulated accidents involving failure or malfunction of the reactor, reactor coolant system, or supporting systems are no longer applicable.

During reactor decommissioning, the principal radiological risks are associated with the storage of spent fuel onsite. Generally, a few months after the reactor has been permanently shut down, there are no possible design-basis events that could result in a radiological release exceeding the limits established by the U.S. Environmental Protection Agency's (EPA) early-phase Protective Action Guidelines of 1 roentgen equivalent man at the exclusion area boundary. The only accident that might lead to a significant radiological release at a decommissioning reactor is a zirconium fire. The zirconium fire scenario is a postulated, but highly unlikely, beyond-design-basis accident scenario that involves a major loss of water inventory from the spent fuel pool (SFP), resulting in a significant heat-up of the spent fuel, and culminating in substantial zirconium cladding oxidation and fuel damage. The analyses of spent fuel heat-up scenarios that might result in a zirconium fire are related to the decay heat of the irradiated fuel stored in the SFP. Therefore, the probability of a zirconium fire scenario continues to decrease as a function of the time that the decommissioning reactor has been permanently shut down.

On June 28, 2000, the NRC staff submitted SECY-00-0145, "Integrated Rulemaking Plan for Nuclear Power Plant Decommissioning" (ADAMS Accession No. ML003721626) to the Commission, proposing an integrated decommissioning rulemaking plan. The rulemaking plan was contingent on the completion of a zirconium fire risk study provided in NUREG-1738, "Technical Study of Spent Fuel Pool Accident Risk at Decommissioning Nuclear Power Plants" (ADAMS Accession No. ML010430066), on the accident risks at decommissioning reactor SFPs. The NUREG was issued on February 28, 2001.

Although NUREG-1738 could not completely rule out the possibility of a zirconium fire after a long spent fuel decay times, it did demonstrate that storage of spent fuel in a high-density configuration in SFPs is safe, and that the risk of accidental release of a significant amount of radioactive material to the environment is low. The

study used simplified and sometimes bounding assumptions and models to characterize the likelihood and consequences of beyond-design-basis SFP accidents. Subsequent NRC regulatory activities and studies (described in more detail below) have reaffirmed the safety and security of spent fuel stored in pools and shown that SFPs are effectively designed to prevent accidents.

Because of uncertainty in the NUREG-1738 conclusions about the risk of SFP fires, the NRC staff faced a challenge in developing a generic decommissioning rule for EP, physical security, and insurance. To seek additional Commission direction, on June 4, 2001, the NRC staff submitted to the Commission SECY-01-0100, "Policy Issues Related to Safeguards, Insurance, and Emergency Preparedness Regulations at Decommissioning Nuclear Power Plants Storing Fuel in Spent Fuel Pools" (ADAMS Accession No. ML011450420). However, based on the reactor security implications of the terrorist attacks of September 11, 2001 (9/11), and the results of NUREG-1738, the NRC redirected its rulemaking priorities to focus on programmatic regulatory changes related to safeguards and security. In a memorandum to the Commission, "Status of Regulatory Exemptions for Decommissioning Plants," dated August 16, 2002 (ADAMS Accession No. ML030550706), the NRC staff stated that no additional permanent reactor shut downs were anticipated in the foreseeable future, and that no immediate need existed to proceed with the decommissioning regulatory improvement work that was planned. Consequently, the NRC shifted resources allocated for reactor decommissioning rulemaking to other activities. The NRC staff concluded that if any additional reactors permanently shut down after the rulemaking effort was suspended, establishment of the decommissioning regulatory framework would continue to be addressed through the license amendment and exemption processes.

Between 1998 and 2013, no power reactors permanently ceased operation. Since 2013, five power reactors have permanently shut down, defueled, and are transitioning to decommissioning. For these decommissioning reactor licensees, the NRC has processed various license amendments and exemptions to establish a decommissioning regulatory framework, similar to the method used in the 1990s.

Following the 9/11 attack, the NRC took several actions to further reduce the possibility of a SFP fire. In the wake of the attacks, the NRC issued orders

that required licensees to implement additional security measures, including increased patrols, augmented security forces and capabilities, and more restrictive site-access controls to reduce the likelihood of an accident, including a SFP accident, resulting from a terrorist initiated event. The NRC's regulatory actions after the terrorist attacks of 9/11 have significantly enhanced the safety of SFPs. A comprehensive discussion of post 9/11 activities, some of which specifically address SFP safety and security, is provided in the memorandum to the Commission titled, "Documentation of Evolution of Security Requirements at Commercial Nuclear Power Plants with Respect to Mitigation Measures for Large Fires and Explosions," dated February 4, 2010 (ADAMS Accession No. ML092990438).

In addition, the NRC amended § 50.55(hh)(2) of title 10 of the *Code of Federal Regulations* (10 CFR) to require licensees to implement other mitigating measures to maintain or restore SFP cooling capability in the event of loss of large areas of the plant due to fires or explosions, which further decreases the probability of a SFP fire (74 FR 13926, March 27, 2009). The Nuclear Energy Institute (NEI) provided detailed guidance in "NEI-06-12: B.5.b Phase 2 & 3 Submittal Guideline," Revision 2, dated December 2006 (ADAMS Accession No. ML070090060). The NRC endorsed this guidance on December 22, 2006 (non-publicly available), for compliance with the § 50.54(hh)(2) requirements. Under § 50.54(hh)(2), power reactor licensees are required to implement strategies such as those provided in NEI-06-12. The NEI's guidance specifies that portable, power-independent pumping capabilities must be able to provide at least 500 gallons per minute (gpm) of bulk water makeup to the SFP, and at least 200 gpm of water spray to the SFP. Recognizing that the SFP is more susceptible to a release when the spent fuel is in a nondispersed configuration, the guidance also specifies that the portable equipment is to be capable of being deployed within 2 hours for a nondispersed configuration. The NRC found the NEI guidance to be an effective means for mitigating the potential loss of large areas due to fires or explosions.

Further, other organizations, such as Sandia National Laboratory, have confirmed the effectiveness of the additional mitigation strategies to maintain spent fuel cooling in the event the pool is drained and its initial water inventory is reduced or lost entirely. The analyses conducted by the Sandia National Laboratories (collectively, the "Sandia studies"), are sensitive security

related information and are not available to the public. The Sandia studies considered spent fuel loading patterns and other aspects of a pressurized-water reactor SFP and a boiling water reactor SFP, including the role that the circulation of air plays in the cooling of spent fuel. The Sandia studies indicated that there may be a significant amount of time between the initiating event (*i.e.*, the event that causes the SFP water level to drop) and the spent fuel assemblies becoming partially or completely uncovered. In addition, the Sandia studies indicated that for those hypothetical conditions where air cooling may not be effective in preventing a zirconium fire, there is a significant amount of time between the spent fuel becoming uncovered and the possible onset of such a zirconium fire, thereby providing a substantial opportunity for both operator and system event mitigation.

The Sandia studies, which account for relevant heat transfer and fluid flow mechanisms, also indicated that air-cooling of spent fuel would be sufficient to prevent SFP zirconium fires at a point much earlier following fuel offload from the reactor than previously considered (*e.g.*, in NUREG-1738). Thus, the fuel is more easily cooled, and the likelihood of an SFP fire is therefore reduced.

Additional mitigation strategies implemented subsequent to 9/11 enhance spent fuel coolability, and the potential to recover SFP water level and cooling prior to a potential SFP zirconium fire. The Sandia studies also confirmed the effectiveness of additional mitigation strategies to maintain spent fuel cooling in the event the pool is drained and its initial water inventory is reduced or lost entirely. Based on this more recent information, and the implementation of additional strategies following 9/11, the probability of a SFP zirconium fire initiation is expected to be less than reported in NUREG-1738 and previous studies.

The NUREG-2161, "Consequence Study of a Beyond-Design-Basis Earthquake Affecting the Spent Fuel Pool for a U.S. Mark I Boiling Water Reactor," dated September 2014 (ADAMS Accession No. ML14255A365), evaluated the potential benefits of strategies required in § 50.54(hh)(2). The NUREG-2161 found that successful implementation of mitigation strategies significantly reduces the likelihood of a release from the SFP in the event of a loss of cooling water. Additionally, NUREG-2161 found that the placement of spent fuel in a dispersed configuration in the SFP, such as the 1 x 4 pattern, would have a positive effect in promoting natural circulation, which

enhances air coolability and thereby reduces the likelihood of a release from a completely drained SFP. An information notice titled, "Potential Safety Enhancements to Spent Fuel Pool Storage," dated November 14, 2014 (ADAMS Accession No. ML14218A493), was issued to all licensees informing them of the insights from NUREG-2161. This information notice describes the benefits of storing spent fuel in more favorable loading patterns, placing spent fuel in dispersed patterns immediately after core offload, and taking action to improve mitigation strategies.

In addition, in response to the Fukushima Dai-ichi accident, the NRC is currently implementing regulatory actions to further enhance reactor and SFP safety. On March 12, 2012, the NRC issued Order EA-12-051, "Issuance of Order to Modify Licenses with Regard to Reliable Spent Fuel Pool Instrumentation," (ADAMS Accession No. ML12054A679), which requires that licensees install reliable means of remotely monitoring wide-range SFP levels to support effective prioritization of event mitigation and recovery actions in the event of a beyond-design-basis external event. Although the primary purpose of the order was to ensure that operators were not distracted by uncertainties related to SFP conditions during the accident response, the improved monitoring capabilities will help in the diagnosis and response to potential losses of SFP integrity. In addition, on March 12, 2012, the NRC issued Order EA-12-049, "Order Modifying Licenses with Regard to Requirements for Mitigation Strategies for Beyond-Design-Basis External Events," (ADAMS Accession No. ML12054A735), which requires licensees to develop, implement, and maintain guidance and strategies to maintain or restore SFP cooling capabilities, independent of alternating current power, following a beyond-design-basis external event. These requirements ensure a more reliable and robust mitigation capability is in place to address degrading conditions in SFPs.

The NRC believes that much of the information in the SFP studies that have been accomplished since NUREG-1738, as discussed previously, will contribute to the development of a regulatory basis for the current power reactor decommissioning rulemaking effort.

In the SRM to SECY-14-0118, "Request by Duke Energy Florida, Inc., for Exemptions from Certain Emergency Planning Requirements," dated December 30, 2014 (ADAMS Accession No. ML14364A111), the Commission directed the NRC staff to proceed with

rulemaking on reactor decommissioning and set an objective of early 2019 for its completion. The Commission also stated that this rulemaking should address the following:

- Issues discussed in SECY-00-0145 such as the graded approach to emergency preparedness;
- Lessons learned from the plants that have already (or are currently) going through the decommissioning process;
- The advisability of requiring a licensee's post-shutdown decommissioning activity report (PSDAR) to be approved by the NRC;
- The appropriateness of maintaining the three existing options (DECON, SAFSTOR, and ENTOMB<sup>1</sup>) for decommissioning and the timeframes associated with those options;
- The appropriate role of State and local governments and nongovernmental stakeholders in the decommissioning process; and
- Any other issues deemed relevant by the NRC staff.

In SECY-15-0014, "Anticipated Schedule and Estimated Resources for a Power Reactor Decommissioning Rulemaking," dated January 30, 2015 (ADAMS Accession No. ML15082A089—redacted), the NRC staff committed to proceed with a rulemaking on reactor decommissioning and provided an anticipated schedule and estimate of the resources required for the completion of a decommissioning rulemaking. In SECY-15-0127, "Schedule, Resource Estimates, and Impacts for the Power Reactor Decommissioning Rulemaking," dated October 7, 2015, (non-publicly available), the staff provided further

<sup>1</sup> These options were first identified in the 1988 Generic Environmental Impact Statement and defined as follows:

**DECON:** The equipment, structures, and portions of the facility and site that contain radioactive contaminants are promptly removed or decontaminated to a level that permits termination of the license shortly after cessation of operations.

**SAFSTOR:** The facility is placed in a safe, stable condition and maintained in that state (safe storage) until it is subsequently decontaminated and dismantled to levels that permit license termination. During SAFSTOR, a facility is left intact, but the fuel has been removed from the reactor vessel, and radioactive liquids have been drained from systems and components and then processed. Radioactive decay occurs during the SAFSTOR period, thus reducing the quantity of contaminated and radioactive material that must be disposed of during decontamination and dismantlement. The definition of SAFSTOR also includes the decontamination and dismantlement of the facility at the end of the storage period.

**ENTOMB:** Radioactive systems, structures, and components are encased in a structurally long-lived substance, such as concrete. The entombed structure is appropriately maintained, and continued surveillance is carried out until the radioactivity decays to a level that permits termination of the license.

information to the Commission on resource estimates and work that will be delayed or deferred in fiscal year (FY) 2016 to enable the staff to make timely progress consistent with Commission direction to have a final rule submitted to the Commission by the end of FY 2019.

#### *B. Licensing Actions Related to Decommissioning Power Reactors*

In 2013, four power reactor units permanently shut down without significant advance notice or pre-planning. These licensees and the associated shut down reactors are: Duke Energy Florida for Crystal River Unit 3 Nuclear Generation Plant; Dominion Energy Kewaunee for Kewaunee Power Station; and Southern California Edison for San Onofre Nuclear Generating Station, Units 2 and 3.

On December 29, 2014, Entergy Nuclear Operations, Inc., shut down Vermont Yankee Nuclear Power Station (VY), and on January 12, 2015, the licensee certified that VY had permanently ceased operation and removed fuel from the reactor vessel. Furthermore, Exelon Generation Company, the licensee for the Oyster Creek Nuclear Generating Station, has indicated that it is currently planning to shut down that facility in 2019.

Both the decommissioning reactor licensees and the NRC have expended substantial resources processing licensing actions for these power reactors during their transition period to a decommissioning status. Consistent with the power reactors that permanently shutdown in the 1990s, the licensees that are currently transitioning to decommissioning are establishing a long-term regulatory framework based on the low risk of an offsite radiological release posed by a decommissioning reactor. The licensees are seeking NRC approval of exemptions and amendments, to reduce requirements no longer needed or no longer relevant for permanently shutdown reactors.

The NRC has not identified any significant risks to public health and safety in the current regulatory framework for decommissioning power reactors. Consequently, the need for a power reactor decommissioning rulemaking is not based on any identified safety-driven or security-driven concerns. When compared to an operating reactor, the risk of an offsite radiological release is significantly lower, and the types of possible accidents are significantly fewer, at a nuclear power reactor that has permanently ceased operations and removed fuel from the reactor vessel. Although the need for a power reactor

decommissioning rulemaking is not based on safety concerns, the NRC understands that the decommissioning process can be improved and made more efficient and predictable by reducing its reliance on processing licensing actions to achieve a long-term regulatory framework for decommissioning. Therefore, the primary objective of the decommissioning rulemaking is to implement appropriate regulatory changes that reduce the number of licensing actions needed during decommissioning.

The NRC anticipates that a power reactor decommissioning rulemaking will require substantial interactions with all stakeholders. The information developed in SECY-00-0145 provides a historical perspective on the regulatory challenges that the NRC is facing for those licensees currently transitioning to decommissioning. In addition, SECY-00-0145 serves as a good starting point for the current reactor decommissioning rulemaking effort. However, as a result of the changes to operating reactor regulations in the areas of EP and security after September 11, 2001, and the earthquake and tsunami affecting the Fukushima Dai-ichi nuclear power station in Japan, there will likely be many differences in the current rulemaking effort as compared to the rulemaking approach proposed in SECY-00-0145. The proposed decommissioning rulemaking effort needs to be carefully scoped to ensure an efficient and timely rulemaking process. Incorporating too broad of a regulatory scope into a single rule was one of the challenges encountered during the prior rulemaking effort.

Until a new decommissioning rulemaking is complete, licensees that are considering decommissioning can use recently completed decommissioning licensing actions as a template for beginning decommissioning activities. In addition, the NRC can use these recent licensing action evaluations as a precedent when processing similar decommissioning actions. The recently completed licensing actions will also provide supporting information for the framework and context of a power reactor decommissioning rulemaking. The NRC has also completed interim staff guidance on processing EP license exemptions (NSIR/DPR-ISC-02, "Emergency Planning Exemption Requests for Decommissioning Nuclear Power Plants," ADAMS Accession No. ML13304B442), and has issued draft interim staff guidance for physical security license exemptions (NSIR/DSP-ISC-03, "Review of Security

Exemptions/License Amendment Requests for Decommissioning Nuclear Power Plants,” ADAMS Accession No. ML14294A170).

The NRC intends to work closely with all stakeholders to ensure that the decommissioning rulemaking can be achieved within a reasonable timeframe.

### III. Discussion

The NRC has determined that interaction with the public and stakeholders will help to inform the development of a regulatory basis for the power reactor decommissioning rulemaking. This ANPR is structured around questions intended to solicit information that: (1) Defines the scope of stakeholder interest in a decommissioning rulemaking, and (2) supports the development of a complete and adequate regulatory basis. Commenters should feel free to provide feedback on any aspect of power reactor decommissioning that would support this ANPR’s regulatory objective, whether or not in response to a question listed in this ANPR.

### IV. Regulatory Objectives

The NRC is developing a proposed rule that would amend the current requirements for power reactors transitioning to decommissioning. Experience has demonstrated that licensees for decommissioning power reactors seek several exemptions and license amendments per site to establish a long-term licensing basis for decommissioning. By issuing a decommissioning rule, the NRC would be able to establish regulations that would maintain safety and security at sites transitioning to decommissioning without the need to grant specific exemptions or license amendments in certain regulatory areas. Specifically, the decommissioning rulemaking would have the following goals: (1) Continue to provide reasonable assurance of adequate protection of the public health and safety and common defense and security at decommissioning power reactor sites; (2) Ensure that the requirements for decommissioning power reactors are clear and appropriate; (3) Codify those issues that are found to be generically applicable to all decommissioning power reactors and have resulted in the need for similarly-worded exemptions or license amendments; and (4) Identify, define, and resolve additional areas of concern related to the regulation of decommissioning power reactors.

#### A. Applicability to NRC Licenses and Approvals

The NRC would apply these updated requirements to power reactors permanently shut down and defueled and entered into decommissioning.

Accordingly, the NRC envisions that the requirements would apply to the following:

- Nuclear power plants currently licensed under 10 CFR part 50;
- Nuclear power plants currently being constructed under construction permits issued under 10 CFR part 50, or whose construction permits may be reinstated;
- Future nuclear power plants whose construction permits and operating licenses are issued under 10 CFR part 50; and
- Current and future nuclear power plants licensed under 10 CFR part 52.

#### B. Interim Regulatory Actions

The NRC recognizes that it will take several years to issue a final rule. If additional reactors begin decommissioning before implementation of the final rule, the NRC anticipates that licensees will continue to use existing regulatory processes (for example, exemptions and license amendments) to establish their decommissioning regulatory framework.

### V. Specific Considerations

The NRC is seeking stakeholders’ input on the following specific areas related to power reactor decommissioning regulations. The NRC asks that commenters provide the bases for their comments (*i.e.*, the underlying rationale for the position stated in the comment) to enable the NRC to have a complete understanding of commenters’ positions.

#### A. Questions Related to Emergency Preparedness Requirements for Decommissioning Power Reactor Licensees

The EP requirements of 10 CFR 50.47, “Emergency Plans,” and appendix E, “Emergency Planning and Preparedness for Production and Utilization Facilities,” to 10 CFR part 50 continue to apply to a nuclear power reactor after permanent cessation of operations and removal of fuel from the reactor vessel. Currently, there are no explicit regulatory provisions distinguishing EP requirements for a power reactor that has been shut down from those for an operating power reactor. The NRC is considering several changes to the EP requirements in 10 CFR part 50, “Domestic Licensing of Production and Utilization Facilities,” including § 50.47, “Emergency Plans;” appendix E

to 10 CFR part 50, “Emergency Planning and Preparedness for Production and Utilization Facilities;” § 50.54(s), (q), and (t), and § 50.72(a) and (b). These areas are discussed in more detail in this section. The questions on EP have been listed in this document using the acronym “EP” and sequential numbers.

EP-1: The NRC has previously approved exemptions from the emergency planning regulations in § 50.47 and appendix E to 10 CFR part 50 at permanently shut down and defueled power reactor sites based on the determination that there are no possible design-basis events at a decommissioning licensee’s facility that could result in an offsite radiological release exceeding the limits established by the EPA’s early-phase protective action guidelines of 1 rem at the exclusion area boundary. In addition, the possibility of the spent fuel in the SFP reaching the point of a beyond-design-basis zirconium fire is highly unlikely based on an analysis of the amount of time before spent fuel could reach the zirconium ignition temperature during a SFP partial drain-down event, assuming a reasonably conservative adiabatic heat-up calculation. A minimum of 10 hours is the time that was used in previously approved exemptions, which allows for onsite mitigative actions to be taken by the licensee or actions to be taken by offsite authorities in accordance with the comprehensive emergency management plans (*i.e.*, all hazards plans). For licensees that have been granted exemptions, the EP regulations, as exempted, continue to require the licensees to, among other things, maintain an onsite emergency plan addressing the classification of an emergency, notification of emergencies to licensee personnel and offsite authorities, and coordination with designated offsite government officials following an event declaration so that, if needed, offsite authorities may implement protective actions using a comprehensive emergency management (all-hazard) approach to protect public health and safety. The EP exemptions relieve the licensee from the requirement to maintain formal offsite radiological emergency preparedness, including the 10-mile emergency planning zone.

a. What specific EP requirements in § 50.47 and appendix E to 10 CFR part 50 should be evaluated for modification, including any EP requirements not addressed in previously approved exemption requests for licensees with decommissioning reactors?

b. What existing NRC EP-related guidance and other documents should

be revised to address implementation of changes to the EP requirements?

c. What new guidance would be necessary to support implementation of changes to the EP requirements?

EP-2: Rulemaking may involve a tiered approach for modifying EP requirements based on several factors, including, but not limited to, the source term after cessation of power operations, removal of fuel from the reactor vessel, elapsed time after permanent defueling, and type of long-term onsite fuel storage.

a. What tiers and associated EP requirements would be appropriate to consider for this approach?

b. What factors should be considered in establishing each tier?

c. What type of basis could be established to support each tier or factor?

d. Should the NRC consider an alternative to a tiered approach for modifying EP requirements? If so, provide a description of a proposed alternative.

EP-3: Several aspects of offsite EP, such as formal offsite radiological emergency plans, emergency planning zones, and alert and notification systems, may not be necessary at a decommissioning site when beyond-design-basis events—which could result in the need for offsite protective actions—are few in number and highly unlikely to occur.

a. Presently, licensees at decommissioning sites must maintain the following capabilities to initiate and implement emergency response actions: Classify and declare an emergency, assess releases of radioactive materials, notify licensee personnel and offsite authorities, take mitigative actions, and request offsite assistance if needed. What other aspects of onsite EP and response capabilities may be appropriate for licensees at decommissioning sites to maintain once the requirements to maintain formal offsite EP are discontinued?

b. To what extent would it be appropriate for licensees at decommissioning sites to arrange for offsite assistance to supplement onsite response capabilities? For example, licensees at decommissioning sites would maintain agreements with offsite authorities for fire, medical, and law enforcement support.

c. What corresponding changes to § 50.54(s)(2)(ii) and 50.54(s)(3) (about U.S. Federal Emergency Management Agency (FEMA)-identified offsite EP deficiencies and FEMA offsite EP findings, respectively) may be appropriate when offsite radiological

emergency plans would no longer be required?

EP-4: Under § 50.54(q), nuclear power reactor licensees are required to follow and maintain the effectiveness of emergency plans that meet the standards in § 50.47 and the requirements in appendix E to 10 CFR part 50. These licensees must submit to the NRC, for prior approval, changes that would reduce the effectiveness of their emergency plans.

a. Should § 50.54(q) be modified to recognize that nuclear power reactor licensees, once they certify under § 50.82, “Termination of License,” to have permanently ceased operation and permanently removed fuel from the reactor vessel, would no longer be required to meet all standards in § 50.47 and all requirements in appendix E? If so, describe how.

b. Should nuclear power reactor licensees, once they certify under § 50.82 to have permanently ceased operation and permanently removed fuel from the reactor vessel, be allowed to make emergency plan changes based on § 50.59, “Changes, Tests, and Experiments,” impacting EP related equipment directly associated with power operations? If so, describe how this might be addressed under § 50.54(q).

EP-5: Under § 50.54(t), nuclear power reactor licensees are required to review all EP program elements every 12 months. Some EP program elements may not apply to permanently shut down and defueled sites; for example, the adequacy of interfaces with State and local government officials when offsite radiological emergency plans may no longer be required. Should § 50.54(t) be clarified to distinguish between EP program review requirements for operating versus permanently shut down and defueled sites? If so, describe how.

EP-6: The Emergency Response Data System (ERDS) transmits key operating plant data to the NRC during an emergency. Under § 50.72(a)(4), nuclear power reactor licensees are required to activate ERDS within 1 hour after declaring an emergency at an “Alert” or higher emergency classification level. Much of the plant data, and associated instrumentation for obtaining the data, would no longer be available or needed after a reactor is permanently shut down and defueled. Section VI.2 to appendix E of 10 CFR part 50 does not require a nuclear power facility that is shut down permanently or indefinitely to have ERDS. At what point(s) in the decommissioning process should ERDS activation, ERDS equipment, and the

instrumentation for obtaining ERDS data, no longer be necessary?

EP-7: Under § 50.72(a)(1)(i), nuclear power reactor licensees are required to make an immediate notification to the NRC for the declaration of any of the emergency classes specified in the licensee’s NRC-approved emergency plan. Notification of the lowest level of a declared emergency at a permanently shut down and defueled reactor facility may no longer need to be an immediate notification (e.g., consider changing the immediate notification category for a Notification of Unusual Event emergency declaration to a 1-hour notification). What changes to § 50.72(a)(1)(i) should be considered for decommissioning sites?

EP-8: Under § 50.72(b)(3)(xiii), nuclear power reactor licensees are required to make an 8-hour report of any event that results in a major loss of emergency assessment capability, offsite response capability, or offsite communications capability (e.g., significant portion of control room indication, emergency notification system, or offsite notification system). Certain parts of this section may not apply to a permanently shut down and defueled site (e.g., a major loss of offsite response capability once offsite radiological emergency plans would no longer be required). What changes to § 50.72(b)(3)(xiii) should be considered for decommissioning sites?

#### B. Questions Related to the Physical Security Requirements for Decommissioning Power Reactor Licensees

Currently, the physical protection programs applied at decommissioning reactors are managed through security plan changes submitted to the NRC under the provisions of §§ 50.90 and 50.54(p) and exemptions submitted to the NRC for approval under § 73.5. All physical protection program requirements contained in the current § 73.55, appendix B to 10 CFR part 73, “General Criteria for Security Personnel,” and appendix C to 10 CFR part 73, “Licensee Safeguards Contingency Plans,” are applicable to operating reactors and decommissioning reactors unless otherwise modified. The questions on physical security requirements (PSR) have been listed in this document using the acronym “PSR” and sequential numbers.

PSR-1: Identify any specific security requirements in § 73.55 and appendices B and C to 10 CFR part 73 that should be considered for change to reflect differences between requirements for operating reactors and permanently shut down and defueled reactors.

PSR-2: The physical security requirements protecting the spent fuel stored in the SFP from the design basis threat (DBT) for radiological sabotage are contained in 10 CFR part 73 and would remain unchanged by this rulemaking. However:

a. Are there any suggested changes to the physical security requirements in 10 CFR part 73 or its appendices that would be generically applicable to a decommissioning power reactor while spent fuel is stored in the SFP (*e.g.*, are there circumstances where the minimum number of armed responders could be reduced at a decommissioning facility)? If so, describe them.

b. Which physical security requirements in 10 CFR part 73 should be generically applicable to spent fuel stored in a dry cask independent spent fuel storage installation?

c. Should the DBT for radiological sabotage continue to apply to decommissioning reactors? If it should cease to apply in the decommissioning process, when should it end?

PSR-3: Should the NRC develop and publish additional security-related regulatory guidance specific to decommissioning reactor physical protection requirements, or should the NRC revise current regulatory guidance documents? If so, describe them.

PSR-4: What clarifications should the NRC make to target sets in § 73.55(f) that addresses permanently shut down and defueled reactors?

PSR-5: For a decommissioning power reactor, are both the central alarm station and a secondary alarm station necessary? If not, why not? If both alarm stations are considered necessary, could the secondary alarm station be located offsite?

PSR-6: Under § 73.54, power reactor licensees are required to protect digital computer and communication systems and networks. These requirements apply to licensees licensed to operate a nuclear power plant as of November 23, 2009, including those that have subsequently shut down and entered into decommissioning.

a. Section 73.54 clearly states that the requirements for protection of digital computer and communications systems and networks apply to power reactors licensed under 10 CFR part 50 that were licensed to operate as of November 23, 2009. However, § 73.54 does not explicitly mention the applicability of these requirements to power reactors that are no longer authorized to operate and are transitioning to decommissioning. Are any changes necessary to § 73.54 to explicitly state that decommissioning power reactors

are within the scope of § 73.54? If so, describe them.

b. Should there be reduced cyber security requirements in § 73.54 for decommissioning power reactors based on the reduced risk profile during decommissioning? If so, what would be the recommended changes?

PSR-7: Under § 73.55(p)(1)(i) and (p)(1)(ii), power reactor licensees suspend security measures during certain emergency conditions or during severe weather under the condition that the suspension “must be approved as a minimum by a licensed senior operator.” Literal interpretation of these regulations would require that only a licensed senior operator could suspend certain security measures at a decommissioning reactor facility. However, for permanently shut down and defueled reactors, licensed operators are no longer required, and licensees typically eliminate these positions shortly after shut down. Decommissioning licensees create a new certified fuel handler (CFH) position (consistent with the definition in § 50.2) as the senior non-licensed operator at the plant. These positions cannot be compared directly, so licensees typically are unable to demonstrate that the CFH position meets the “as a minimum” criteria in § 73.55(p). Because the regulation does not include a provision that authorizes a CFH to approve the suspension of security measures for permanently shut down and defueled reactors (similar to § 50.54(y) authorizing the CFH to approve departures from license conditions or technical specifications), licensees have requested exemptions from § 73.55(p)(1)(i) and (p)(1)(ii) to allow CFHs to have this authority.

Based on this discussion, are there any concerns about changing the regulations to include the CFH as having the authority to suspend certain security measures during certain emergency conditions or during severe weather for permanently shut down and defueled reactor facilities? If so, describe them.

PSR-8: Regulations in § 73.55(j)(4)(ii) require continuous communications capability between security alarm stations and the control room. The intent of § 73.55(j)(4)(ii) is to ensure that effective communication between the alarm stations and operations staff with shift command function responsibility is maintained at all times. The control room at an operating reactor contains the controls and instrumentation necessary to ensure safe operation of the reactor and reactor support systems during normal, off-normal, and accident conditions and, therefore, is the location

of the shift command function.

Following certification of permanent shut down and removal of the fuel from the reactor, operation of the reactor is no longer permitted. Although the control room at a permanently shut down and defueled reactor provides a central location from where the shift command function can be conveniently performed because of existing communication equipment, office computer equipment, and access to reference material, the control room does not need to be the location of the shift command function since shift command functions are not tied to this location for safety reasons, and modern communication systems permit continuous communication capability from anywhere on the site.

The NRC is considering revising the requirements of § 73.55(j)(4)(ii) for a permanently shut down and defueled reactor. The revised requirements would be focused on maintaining a system of continuous communications between the shift manager/CFH and the security alarm stations (rather than the control room). Such a change would provide the facility’s shift manager/CFH the flexibility to leave the control room without necessitating that other operational staff remain in the control room to receive communications from the security alarm stations. Personal communications systems would permit the shift manager/CFH to perform managerial and supervisory activities throughout the plant while maintaining the command function responsibility, regardless of the supervisor’s location.

Based on the discussion above, are there any concerns related to changing the regulations in § 73.55(j)(4)(ii) to allow another communications system between the alarm stations and the shift manager/CFH in lieu of the control room at permanently shut down and defueled reactors? If so, describe them.

### C. Questions Related to Fitness for Duty (FFD) Requirements for Decommissioning Power Reactor Licensees

The NRC’s regulations at § 26.3 lists those licensees and other entities that are required to comply with designated subparts of 10 CFR part 26, “Fitness for Duty Programs.” Part 26 does not apply to power reactor licensees that have certified under § 50.82 to have permanently shut down and defueled. The questions on fitness for duty (FFD) have been listed in this document using the acronym “FFD” and sequential numbers.

FFD-1: Currently, holders of power reactor licenses issued under 10 CFR part 50 or 10 CFR part 52, “Licenses, Certifications, and Approvals for

Nuclear Power Plants,” must comply with the physical protection requirements described in § 73.55 during decommissioning. Under § 73.55, each nuclear power reactor licensee shall maintain and implement its Commission-approved security plans as long as the licensee has a 10 CFR part 50 or 52 license. Furthermore, § 73.55(b)(9) requires the licensee to establish, maintain, and implement an insider mitigation program (IMP) that contains elements from various security programs, including the FFD program described in 10 CFR part 26. Each power reactor licensee has committed within its security plan to using NEI 03–12, “Security Plan Template,” revision 7, as the framework for developing its security plans to meet the requirements of § 73.55. NEI 03–12, which was endorsed by NRC Regulatory Guide (RG) 5.76, “Physical Protection Programs at Nuclear Power Reactors (Safeguards Information (SGI)),” letter dated November 10, 2011, states that the IMP is satisfied when the licensee “implements the elements of the IMP, utilizing the guidance provided in RG 5.77, ‘Insider Mitigation Program.’” The NRC is in the process of revising RG 5.77 in order to clarify those FFD elements needed for the IMP.

a. Should the NRC pursue rulemaking to describe what provisions of 10 CFR part 26 apply to decommissioning reactor licensees or use another method of establishing clear, consistent and enforceable requirements? Describe other methods, as appropriate.

b. As an alternative to rulemaking, should the drug and alcohol testing for decommissioning reactors be described in RG 5.77, with appropriate reference to the applicable requirements in 10 CFR part 26? This option would be contingent on an NEI commitment to revise NEI 03–12 to include the most recent revision to RG 5.77 (which would include the applicable drug and alcohol testing provisions) and an industry commitment to update their security plans with the revised NEI 03–12.

c. Describe what drug and alcohol testing requirements in 10 CFR part 26 are not necessary to fulfill the IMP requirements to assure trustworthiness and reliability.

d. Should another regulatory framework be used, such as a corporate drug testing program modelled on the U.S. Department of Health and Human Services’ Mandatory Guidelines for Federal Workplace Drug Testing or the U.S. Department of Transportation’s drug and alcohol testing provisions in 49 CFR part 40? If this option is proposed, describe how (i) the laboratory auditing, quality assurance,

and reporting requirements would be met by the proposal; (ii) licensees would conduct alcohol testing; and (iii) the performance objectives of 10 CFR 26.23(a), (b), (c), and (d) would be met.

FFD–2: On March 31, 2008, the NRC published a final rule in the **Federal Register** (73 FR 16966) adding subpart I, “Managing Fatigue,” to 10 CFR part 26. The addition of subpart I in the revised rule provides reasonable assurance that the effects of fatigue and degraded alertness on an individual’s ability to safely and competently perform his or her duties are managed commensurate with maintaining public health and safety. The fatigue management provisions also reduce the potential for worker fatigue (*e.g.*, that associated with security officers, maintenance personnel, control room operators, emergency response personnel, etc.) to adversely affect the common defense and security. The 2008 rule established clear and enforceable requirements for operating nuclear power plant licensees and other entities for the management of worker fatigue. Power reactor licensees that had permanently shut down and defueled were not considered within the scope of that rulemaking effort. This is because the scope of activities at a facility undergoing decommissioning is much less likely to create a public health and safety concern due to the significantly reduced risk of a radiological event.

a. Should any of the fatigue management requirements of 10 CFR part 26, subpart I, apply to a permanently shut down and defueled reactor? If so, which ones?

b. Based on the lower risk of an offsite radiological release from a decommissioning reactor, compared to an operating reactor, should only specific classes of workers, as identified in § 26.4(a) through (c), be subject to fatigue management requirements (*e.g.*, security officers or certified fuel handlers)? Please provide what classes of workers should be subject to the requirements and a justification for their inclusion.

c. Should the fatigue management requirements of 10 CFR part 26, subpart I, continue to apply to the specific classes of workers identified in response to question b above, for a specified period of time (*e.g.*, until a specified decay heat level is reached within the SFP, or until all fuel is in dry storage)? Please provide what period of time workers would be subject to the requirements and the justification for the timing.

d. Should an alternate approach to fatigue management be developed commensurate with the plant’s lower

risk profile? Please provide a discussion of the alternate approach and how the measures would adequately manage fatigue for workers.

#### D. Questions Related to Training Requirements of Certified Fuel Handlers for Decommissioning Power Reactor Licensees

Reactor operators are licensed under 10 CFR part 55 to manipulate the controls of operating power reactors. The regulations at § 55.4 define “controls” to mean, “when used with respect to a nuclear reactor . . . apparatus and mechanisms the manipulation of which directly affects the reactivity or power level of the reactor.” “Controls” are not relevant at decommissioning reactors because the reactors are permanently shutdown and defueled and no longer authorized to load fuel into the reactor vessel. Consequently, without fuel in the reactor vessel, decommissioning reactors are in a configuration in which the reactivity or power level of the reactor is no longer meaningful and there are no conditions where the manipulation of apparatus or mechanisms can affect the reactivity or power level of the reactor. Therefore, licensed operators are not required at decommissioning reactors. The NRC regulations do not explicitly state the staffing alternative for licensed operators after a reactor has permanently shutdown and defueled under § 50.82(a)(1). When licensees permanently shut down their reactors, they must continue to meet minimum staffing requirements in technical specifications and regulatory required programs (*e.g.*, emergency response organizations, fire brigade, security, etc.). Given the reduced risk of a radiological incident once the certifications of permanent cessation of operation and permanent removal of fuel from the reactor vessel have been submitted, licensees typically transition their operating staff to a decommissioning organization. This transition includes replacing licensed operators with CFHs as the on-shift management representative responsible for supervising and directing the monitoring, storage, handling, and cooling of irradiated nuclear fuel in a manner consistent with ensuring the health and safety of the public. Regulations in § 50.2 define a CFH for a nuclear power reactor as a non-licensed operator who has qualified in accordance with a fuel handler training program approved by the Commission. The transition to the use of CFHs from licensed operators at decommissioning reactors occurs following the NRC’s

approval of a licensee's CFH training program and an amendment to the administrative and organization section of the licensee's defueled technical specifications.

However, the NRC regulations do not contain criteria for an acceptable CFH training program. Because of the reduced risks and relative simplicity of the systems needed for safe storage of the spent fuel, the Commission stated in the 1996 decommissioning final rule that "[t]he degree of regulatory oversight required for a nuclear power reactor during its decommissioning stage is considerably less than that required for the facility during its operating stage" (61 FR 39278). In the proposed rule, the Commission also provided insights as to the responsibilities of the CFH position. Specifically, the CFHs are needed at decommissioning reactors to ensure that emergency action decisions necessary to protect the public health and safety are made by an individual who has both the requisite knowledge and plant experience (60 FR 37374, 37379).

In previous evaluations of licensee CFH training programs (ADAMS Accession Nos. ML14104A046, ML13268A165), the NRC has determined that an acceptable CFH training program should ensure that the trained individual has requisite knowledge and experience in spent fuel handling and storage and reactor decommissioning, and is capable of evaluating plant conditions and exercising prudent judgment for emergency action decisions. In addition, since the CFH is defined as a non-licensed operator, the NRC staff has also evaluated the CFH training program in accordance with § 50.120, which includes a requirement in § 50.120(b)(2) that the training program must be derived from a systems approach to training as defined in § 55.4.

However, as previously noted, the specific training requirements for the CFH program are not in the regulations. In addition, § 50.120 specifies the training and qualification requirements for non-licensed reactor personnel but does not address the CFH staffing position. Because the regulations are silent on the training attributes of the CFH, regulatory uncertainty regarding the CFH training program exists. In addition, because the NRC's regulations do not address the replacement of licensed operators by CFHs, licensees also have questions regarding the transition from licensed operator training programs to CFHs' training programs. The questions on CFH have been listed in this document using the acronym "CFH" and sequential numbers.

CFH-1: Based on the NRC's experience with the review of the CFH training/retraining programs submitted by licensees that have recently permanently shutdown, the following questions are focused on areas that may need additional clarity. Specifically:

a. When should licensees that are planning to enter decommissioning submit requests for approval of CFH training/retraining programs?

b. What training and qualifications should be required for operations staff at power reactors that decommission earlier than expected and that do not have an approved CFH training/retraining program?

c. Should the NRC issue new requirements that prohibit licensees from surrendering operators' licenses before implementation of an approved CFH training/retraining program, or should other incentives or deterrents be considered? If so, what factors must be included?

d. Should the contents of a CFH training/retraining program be standardized throughout the industry? If so, how should this be implemented?

e. Should a process be implemented that requires decommissioning power reactor licensees to independently manage the specific content of their CFH training/retraining program based on the systems and processes actually used at each particular plant instead of standardization? If so, how should this work?

f. Is there any existing or developing document or program (from the Institute of Nuclear Power Operations, NEI, NRC, or other related sources) that provides relevant guidance on the content and format of a CFH training/retraining program that could be made applicable to CFH training?

g. Should the requirements for CFH training programs be incorporated into an overall decommissioning rule, or addressed using other regulatory vehicles such as associated NUREGs, regulatory guides, standard review plan chapters or sections, and inspection procedures?

#### E. Questions Related to the Current Regulatory Approach for Decommissioning Power Reactor Licensees

In the SRM to SECY-15-0014, the Commission directed the staff to determine the appropriateness of (1) maintaining the three existing options for decommissioning and the timeframes associated with those options, and (2) address the appropriate role of State and local governments and non-governmental stakeholders in the decommissioning process. Based on the

Commission's direction, the NRC staff is seeking additional information on the need for any regulatory changes concerning the use of decommissioning options, the timeframe to complete decommissioning, and the role of external stakeholders in the decommissioning process. The questions on regulatory approach (REG) have been listed in this document using the acronym "REG" and sequential numbers.

REG-1: The NRC has evaluated the environmental impacts of three general methods for decommissioning power reactor facilities, DECON, SAFSTOR, or ENTOMB, as described in Section II.A, footnote 1 of this document. The choice of the decommissioning method is left entirely to the licensee, provided that the decommissioning method can be performed in accordance with NRC's regulations. The NRC would require the licensee to re-evaluate its decision on the method of the decommissioning process that it chose if it (1) could not be completed as described, (2) could not be completed within 60 years of the permanent cessation of plant operations, (3) included activities that would endanger the health and safety of the public by being outside of the NRC's health and safety regulations, or (4) would result in a significant impact to the environment. The licensee's choice is communicated to the NRC and the public in the PSDAR. To date, most utilities have used DECON or SAFSTOR to decommission reactors. Several sites have performed some incremental decontamination and dismantlement during the storage period of SAFSTOR, a combination of SAFSTOR and DECON as personnel, money, or other factors become available. No utilities have used the ENTOMB option for a commercial nuclear power reactor.

a. Should the current options for decommissioning—DECON, SAFSTOR, and ENTOMB—be explicitly addressed and defined in the regulations instead of solely in guidance documents, and how so?

b. Should other options for decommissioning be explored? If so, what other technical or programmatic options are reasonable and what type of supporting documents would be most effective for providing guidance on these new options or requirements?

c. The NRC regulations state that decommissioning must be completed within 60 years of permanent cessation of operations. A duration of 60 years was chosen because it roughly corresponds to 10 half-lives for cobalt-60, one of the predominant isotopes remaining in the facility. By 60 years, the initial short-lived isotopes,

including cobalt-60, will have decayed to background levels. In addition, the 60-year period appears to be reasonable from the standpoint of expecting institutional controls to be maintained. Completion of decommissioning beyond 60 years will be approved by the NRC only when necessary to protect public health and safety. Should the requirements be changed so that the timeframe for decommissioning is something other than the current 60-year limit? Would this change be dependent on the method of decommissioning chosen, site specific characteristics, or some other combination of factors? If so, please describe.

REG-2: In support of decommissioning planning for a permanently shut down and defueled power reactor, the licensee submits to the NRC a PSDAR that: (1) Informs the public of the licensee's planned decommissioning activities; (2) assists in the scheduling of NRC resources necessary for the appropriate oversight activities; (3) ensures that the licensee has considered the costs of the planned decommissioning activities and has funding for the decommissioning process; and (4) ensures that the environmental impacts of the planned decommissioning activities are bounded by those considered in existing environmental impact statements. After receiving a PSDAR, the NRC publishes a notice of receipt, makes the PSDAR available for public review and comment, and holds a public meeting in the vicinity of the plant to discuss the licensee's plans and address the public's comments. Although the NRC will determine if the information is consistent with the regulations, NRC approval of the PSDAR is not required. However, should the NRC determine that the informational requirements of the regulations are not met in the PSDAR, the NRC will inform the licensee, in writing, of the deficiencies and require that they be addressed before the licensee initiates any major decommissioning activities. Any decommissioning activities that could preclude release of the site for possible unrestricted use, impact a reasonable assurance finding that adequate funds will be available for decommissioning, or potentially result in a significant environmental impact not previously reviewed, must receive prior NRC approval. Specifically, the licensee is required to submit a license amendment request for NRC review and approval, which provides an opportunity for public comment and/or a public hearing. Unless the NRC staff approves

the license amendment request, the licensee is not to conduct the requested activity. Consistent with Commission direction, the NRC staff is seeking comment on the appropriate role for the NRC in reviewing and approving the licensee's proposed decommissioning strategy and associated planning activities.

a. Is the content and level of detail currently required for the licensee's PSDAR, adequate? If not, what should be added or removed to enhance the document?

b. Should the regulations be amended to require NRC review and approval of the PSDAR before allowing any "major decommissioning activity," as that term is defined in § 50.2, to commence? What value would this add to the decommissioning process?

REG-3: The NRC's regulations currently offer the public opportunities to review and provide comments on the decommissioning process. Specifically, under the NRC's regulations in § 50.82, the NRC is required to publish a notice of the receipt of the licensee's PSDAR, make the PSDAR available for public comment, schedule separate meetings in the vicinity of the location of the licensed facility to discuss the PSDAR within 60 days of receipt, and publish a notice of the meetings in the **Federal Register** and another forum readily accessible to individuals in the vicinity of the site. For many years, the NRC has strongly recommended that licensees involved in decommissioning activities form a community committee to obtain local citizen views and concerns regarding the decommissioning process and spent fuel storage issues. It has been the NRC's view that those licensees who actively engage the community maintain better relations with the local citizens. The NRC's guidance related to creating a site-specific community advisory board can be found in NUREG-1757, "Consolidated Decommissioning Guidance," Appendix M, "Overview of the Restricted Use and Alternate Criteria Provisions of 10 CFR part 20, subpart E," Section M.6 (ADAMS Accession No. ML063000243). Appendix M does not require licensees to create a community advisory board, but only provides recommendations for methods of soliciting public advice. Nonetheless, Section M.6 contains useful guidance and suggestions for effective public involvement in the decommissioning process that could be adopted by any licensee.

a. Should the current role of the States, members of the public, or other stakeholders in the decommissioning process be expanded or enhanced, and how so?

b. Should the current role of the States, members of the public, or other stakeholders in the decommissioning process for non-radiological areas be expanded or enhanced, and how so? Currently, for all non-radiological effluents created during the decommissioning process, licensees are required to comply with EPA or State regulations related to liquid effluent discharges to bodies of water.

c. For most decommissioning sites, the State and local governments are involved in an advisory capacity, often as part of a Community Engagement Panel or other organization aimed at fostering communication and information exchange between the licensee and the public. Should the NRC's regulations mandate the formation of these advisory panels?

#### F. Questions Related to the Application of Backfitting Protection to Decommissioning Power Reactor Licensees

In the SRM to SECY-98-253, "Applicability of Plant-Specific Backfit Requirements to Plants Undergoing Decommissioning," dated February 12, 1999 (ADAMS Accession No. ML12311A689), the Commission approved development of a Backfit Rule for plants undergoing decommissioning. The Commission directed the staff to continue to apply the then-current Backfit Rule to plants undergoing decommissioning until the final rule was issued. The Commission ordered the development of a rulemaking plan, which became SECY-00-0145. In SECY-00-0145, the staff proposed amendments to § 50.109 to clearly show that the Backfit Rule applies during decommissioning and to remove factors that are not applicable to nuclear power plants in decommissioning. As explained in section II.A of this document, that rulemaking never occurred, but the Commission, in SRM-SECY-14-0118, directed the staff to proceed with a rulemaking that addresses, among other things, the issues discussed in SECY-00-0145.

The questions on backfitting protection (BFP) have been listed in this document using the acronym "BFP" and sequential numbers.

BFP-1: The protections provided by the backfitting and issue finality provisions in 10 CFR parts 50 and 52, respectively, can apply to a holder of a nuclear power reactor license when the reactor is in decommissioning. Backfitting and issue finality during decommissioning can be divided into two areas:

a. When a licensee's licensing basis for operations continues to apply during

decommissioning until: (1) The licensee changes the licensing basis, (2) the NRC's regulations set forth generic criteria delineating when changes can be made to the licensing basis, or (3) the NRC takes a facility-specific action that changes the licensee's licensing basis. Why would backfitting protection apply in this area?

b. When a licensee engages in an activity during decommissioning for which no prior NRC approval was provided. The activity could be required by an NRC regulation or new NRC approval (through an order or licensing action). Why would backfitting protection apply in this area?

BFP-2: Should the NRC propose amendments to § 50.109 consistent with the preliminary amendments proposed in SECY-00-0145 that would have created a two-section Backfit Rule: one section that would apply to nuclear power plants undergoing decommissioning and the other section that would apply to operating reactors?

#### G. Questions Related to Decommissioning Trust Funds

The questions on decommissioning trust fund (DTF) have been listed in this document using the acronym "DTF" and sequential numbers.

DTF-1: The Commission's regulation at § 50.75 includes the reporting requirements for providing reasonable assurance that sufficient funds will be available for the decommissioning process. The regulation at § 50.82 contains, in part, requirements on the use of decommissioning funds. Every 2 years each operating power reactor licensee must report to the NRC the status of the licensee's decommissioning funding to provide assurance to the NRC that the licensee will have sufficient financial resources to accomplish radiological decommissioning. After decommissioning has begun, licensees must annually submit a financial assurance status report to the NRC.

The NRC's authority is limited to assuring that licensees adequately decommission their facilities with respect to cleanup and removal of radioactive material prior to license termination. Activities that go beyond the scope of decommissioning, as defined in § 50.2, such as waste generated during operations or demolition costs for greenfield restoration, are not appropriate costs for inclusion in the decommissioning cost estimate. The collection of funds for spent fuel management is addressed in § 50.54(bb) where it indicates that licensees need to have a plan, including financing, for spent fuel management.

The NRC has not precluded the commingling of the funds in a single trust fund account to address radiological decommissioning, spent fuel management, and site restoration, as long as the licensee is able to identify and account for these specific funds. In the 1996 decommissioning rule, the Commission indicated that the rule "does not prohibit licensees from having separate subaccounts for other activities in the decommissioning trust fund if minimum amounts specified in the rule are maintained for radiological decommissioning." Similarly, in the 2002 Decommissioning Trust Provisions Rule, the Commission stated that it "appreciates the benefits that some licensees may derive from their use of a single trust fund for all of their decommissioning costs, both radiological and not; but, as stated above, a licensee must be able to identify the individual amounts contained within its single trust. Therefore, where a licensee has not separately identified and accounted for expenses related to non-radiological decommissioning in its DTF, licensees are required to request exemptions from § 50.82(a)(8)(i)(A) and either § 50.75(h)(1)(iv) or § 50.75(h)(2), to gain access to monies in the decommissioning trust fund for purposes other than decommissioning (e.g., spent fuel management). The NRC has approved exemptions from the requirements of §§ 50.82 and 50.75 allowing withdrawals to be made from decommissioning trust funds for spent fuel management in instances where the level of funding needed to complete decommissioning is not adversely affected. In each instance, the NRC found, pursuant to § 50.12, the exemptions were authorized by law, presented no undue risk to public health and safety, and were consistent with the common defense and security, and found that the application of the rules was unnecessary to achieve the underlying purpose of the rules.

In some cases, a licensee will not need an exemption. Those cases exist when a licensee can clearly show that (1) its decommissioning trust includes State-required funds and (2) the amount of radiological decommissioning funds in the trust exceeds the amount of money estimated to be needed for radiological decommissioning in the licensee's site specific decommissioning cost estimate (or if the licensee does not have a site specific decommissioning cost estimate yet, then the minimum amount necessary to provide financial assurance under § 50.75). If the licensee meets these criteria, then reasonable

assurance of adequate radiological decommissioning funding still exists after removal of the State-required funds, and the licensee does not need an exemption to use those State-required funds.

The NRC issued Regulatory Issue Summary (RIS) 2001-07, Revision 1, "10 CFR 50.75 Reporting and Recordkeeping for Decommissioning Planning," on January 8, 2009 (ADAMS Accession No. ML083440158), to clarify the need for licensees to preserve the distinction in their decommissioning trust accounts between the radiological decommissioning fund balance and amounts accumulated for other purposes, such as paying for spent fuel management and site restoration, when using the trust for commingled funds. However, based on NRC experience with the power reactors that have recently and permanently shut down and entered into decommissioning, licensees continue to report funds they have accumulated to address spent fuel management and site restoration as part of the amount of funds reported for radiological decommissioning.

Should the regulations in §§ 50.75 and 50.82 be revised to clarify the collection, reporting, and accounting of commingled funds in the decommissioning trust fund, that is in excess of the amount required for radiological decommissioning and that has been designated for other purposes, in order to preclude the need to obtain exemptions for access to the excess monies?

DTF-2: The regulation at § 50.82(a)(8)(i)(A) states that decommissioning trust funds may only be used by licensees if their withdrawals "are for expenses for legitimate decommissioning activities consistent with the definition of decommissioning in § 50.2." In accordance with § 50.2, decommissioning means to remove a nuclear facility or site safely from service and reduce residual radioactivity to a level that permits: (1) Release of the property for unrestricted use and termination of the license; or (2) release of the property under restricted conditions and termination of the NRC license. Thus, "legitimate decommissioning activities" include only those activities whose expenses are related to removing a nuclear facility or site safely from service and reducing residual radioactivity to a level that permits license termination and release of the property for restricted or unrestricted use.

While the regulations are silent with regards to what specific expenses are related to legitimate decommissioning

activities, the NRC's guidance documents identify some specific expenses that may or may not be paid from the decommissioning trust fund. For example, Regulatory Guide (RG) 1.184, Revision 1, "Decommissioning of Nuclear Power Reactors" (ADAMS Accession No. ML13144A840), states that the amount set aside for radiological decommissioning as required by § 50.75 "should not be used for: (1) The maintenance and storage of spent fuel in the spent fuel pool, (2) the design, construction, or decommissioning of spent fuel dry storage facilities directly related to permanent disposal, (3) other activities not directly related to radiological decontamination or dismantlement of the facility or site." Similarly, other NRC guidance explain that the NRC's definition of decommissioning does not include other activities related to facility deactivation and site closure, including operation of the spent fuel storage pool, construction and/or operation of an ISFSI, demolition of decontaminated structures, and/or site restoration activities after residual radioactivity has been removed. The NRC also has additional guidance that states that removing uncontaminated material, such as soil or a wall, to gain access to contamination to be removed would be a legitimate decommissioning cost. Finally, guidance also exists that provides examples of activities outside the scope of decommissioning including, "(1) the maintenance and storage of spent fuel, (2) the design and/or construction of a spent fuel dry storage facility, (3) activities that are not directly related to supporting long-term storage of the facility, or (4) any other activities not directly related to radiological decontamination of the site."

a. What changes should be considered for §§ 50.2 and 50.82(a)(8) to clarify what constitutes a legitimate decommissioning activity?

b. Regulations in § 50.82(8)(ii) states that 3 percent of the decommissioning funds may be used during the initial stages of decommissioning for decommissioning planning activities. What should be included or specifically excluded in the definition of "decommissioning planning activities?"

#### H. Questions Related to Offsite Liability Protection Insurance Requirements for Decommissioning Power Reactor Licensees

The questions on offsite liability protection insurance (LPI) have been listed in this document using the acronym "LPI" and sequential numbers.

LPI-1: The Price Anderson Act of 1957 (PAA) requires that nuclear power reactor licensees have insurance to compensate the public for damages arising from a nuclear incident, including such expenses as those for personal injury, property damage, or the legal cost associated with lawsuits. Regulations in 10 CFR part 140, "Amounts of Financial Protection for Certain Reactors," set forth the amounts of insurance each power reactor licensee must have. Specifically, § 140.11(a)(4) requires a reactor licensee to maintain \$375 million in offsite liability insurance coverage. In addition, the primary insurance is supplemented by a secondary insurance tier. In the event of an accident causing offsite damages in excess of \$375 million, each licensee would be assessed a prorated share of the excess damages, up to \$121.3 million per reactor, for a total of approximately \$13 billion.

Regulations in § 140.11(a)(4) do not distinguish between a reactor that is authorized to operate and a reactor that has permanently shut down and defueled. Most of the accident scenarios postulated for operating power reactors involve failures or malfunctions of systems that could affect the fuel in the reactor core, which in the most severe postulated accidents, would involve the release of large quantities of fission products. With the permanent cessation of reactor operations and the permanent removal of the fuel from the reactor core, such reactor accidents are no longer possible with a decommissioning reactor.

The PAA requires licensees of facilities with a rated capacity of 100,000 electrical kilowatts or more to have the primary and secondary insurance coverage described above, which the NRC establishes in 10 CFR part 140. Typically, the NRC will issue a decommissioning licensee a license amendment to remove the rated capacity of the reactor from the license. This has the effect of removing the reactor licensee from the category of licensees that are required to maintain the primary and secondary insurance amounts under the PAA and 10 CFR part 140.

Most permanently shut down and defueled power reactor licensees have requested exemptions from § 140.11(a)(4) to reduce the required amount of primary offsite liability insurance coverage from \$375 million to \$100 million and to withdraw from the secondary insurance pool. As noted above, these licensees are no longer within the category of licensees that are legally required under the PAA to have these amounts of offsite liability

insurance. The technical criteria for granting these exemptions are based on the determination that there are no possible design-basis events at a licensee's facility that could result in an offsite radiological release exceeding the limits established by the EPA's early-phase Protective Action Guidelines of 1 rem at the exclusion area boundary. In addition, the exemptions are predicated on the licensee demonstrating that the heat generated by the spent fuel in the SFP has decayed to the point where the possibility of a zirconium fire is highly unlikely. Specifically, if all coolant were drained from the SFP as the result of a highly unlikely beyond design-basis accident, the fuel assemblies would remain below a temperature of incipient cladding oxidation for zirconium based on air-cooling alone. For a postulated situation where the cooling configuration of a highly unlikely beyond design basis accident results in an unknown cooling configuration of the spent fuel, analysis should demonstrate that even with no cooling of any kind (conduction, convection, or radiative heat transfer), the spent fuel stored in the SFP would not reach the zirconium ignition temperature in fewer than 10 hours starting from the time at which the accident was initiated. The NRC has considered 10 hours sufficient time to take mitigative actions to cool the spent fuel. Based on this discussion:

a. Should the NRC codify the current conservative exemption criteria (*i.e.*, 10 hours to take mitigative actions) that have been used in granting decommissioning reactor licensees exemptions to § 140.11(a)(4)?

b. As an alternative to codifying the current conservative exemption criteria (*i.e.*, 10 hours to take mitigative actions), should the NRC codify a requirement to allow decommissioning reactor licensees to generate site specific criteria (*i.e.*, time period to take mitigative actions) based upon a site specific analysis?

c. The use of \$100 million for primary liability insurance level is based on Commission policy and precedent from the early 1990s. The amount established was a qualitative value to bound the claims from the Three Mile Island accident. Should this number be adjusted?

d. What other factors should be considered in establishing an appropriate primary insurance liability level (based on the potential for damage claims) for a decommissioning plant once the risk of any kind of offsite radiological release is highly unlikely?

### I. Questions Related to Onsite Damage Protection Insurance Requirements for Decommissioning Power Reactor Licensees

The questions on onsite damage protection insurance (ODI) have been listed in this document using the acronym "ODI" and sequential numbers.

ODI-1: The requirements of § 50.54(w)(1) call for each power reactor licensee to have insurance to provide minimum coverage for each reactor site of \$1.06 billion or whatever amount of insurance is generally available from private sources, whichever is less. The insurance would be used, in the event of an accident at the licensee's reactor, to provide financial resources to stabilize the reactor and decontaminate the reactor site, if needed.

The requirements in § 50.54(w)(1) do not distinguish between a reactor authorized to operate and a reactor that has permanently shut down and defueled. With the permanent cessation of reactor operations and the permanent removal of the fuel from the reactor core, operating reactor accidents are no longer possible. Therefore, the need for onsite insurance at a decommissioning reactor to stabilize accident conditions or decontaminate the site following an accident, should be significantly lower compared to the need for insurance at an operating reactor.

Based on NRC policy and precedent, permanently shut down and defueled reactor licensees have requested exemptions from § 50.54(w)(1). The exemption granted to a permanently shut down reactor licensee permits the licensee to reduce the required level of onsite property damage insurance from the amount established in § 50.54(w)(1) to \$50 million. The NRC has previously determined that \$50 million bounds the worst radioactive waste contamination event (caused by a liquid radioactive waste storage tank rupture) once the heat generated by the spent fuel in the SFP has decayed to the point where the possibility of a zirconium fire in any beyond design-basis accident is highly unlikely, and in any case, there is sufficient time to take mitigative actions. The technical criteria used in assessing the possibility of a zirconium fire, as discussed in question LPI-1 above, is also used for exemptions from § 50.54(w)(1). Based on this discussion:

a. Should the NRC codify the current exemption criteria that have been used in granting decommissioning reactor licensees exemptions from § 50.54(w)(1)? If so, describe why.

b. The use of \$50 million insurance level for bounding onsite radiological

damages is based on a postulated liquid radioactive waste storage tank rupture using analyses from the early 1990s. Should this number be adjusted? If so, describe

c. Is the postulated rupture of a liquid radioactive waste storage tank an appropriate bounding postulated accident at a decommissioning reactor site once the possibility of a zirconium fire has been determined to be highly unlikely?

### J. General Questions Related to Decommissioning Power Reactor Regulations

The general (GEN) questions related to decommissioning power reactor regulations have been listed in this document using the acronym "GEN" and sequential numbers.

GEN-1: Section 50.51, "Continuation of License," states in paragraph (b)(1) that all permanently shut down and defueled reactor licensees shall continue to take actions to maintain the facility, and the storage and control and maintenance of spent fuel, in a safe condition beyond the license expiration date until the Commission notifies the licensee in writing that the license is terminated. The NRC has recently focused on the licensee's maintenance of long lived, passive structures and components at decommissioning reactors. The NRC expects that many long-lived, passive structures and components may generally not have performance and condition characteristics that can be readily monitored, or could be considered inherently reliable by licensees and do not need to be monitored under § 50.65(a)(1). There may be few, if any, actual maintenance activities (*e.g.*, inspection or condition monitoring) that a licensee conducts for such structures and components. Treatment of long-lived, passive structures and components under the maintenance rule is likely to involve minimal preventive maintenance or monitoring to maintain functionality of such structures and components in the original licensing period. The NRC is interested in the need to provide reasonable assurance that certain long-lived, passive structures and components (*e.g.*, neutron absorbing materials, SFP liner) are maintained and monitored during the decommissioning period while spent fuel is in the SFP.

Based on the discussion above, what regulatory changes should be considered that address the performance or condition of certain long-lived, passive structures and components needed to provide reasonable assurance that they will remain capable of

fulfilling their intended functions during the decommissioning period?

GEN-2: Section 50.54(m) of the NRC's regulations for operating reactors specifies the minimum licensed operator staffing levels (*e.g.*, minimum staffing per shift for licensed operators and senior operators) for power reactors authorized to operate. The regulations define the duties of licensed operators as either the manipulation of controls or supervising the manipulation of controls that directly affect the reactor reactivity or power level of the reactor. A decommissioning plant is clearly not operating and no manipulation of controls that affect reactor reactivity or power can occur at a permanently defueled reactor. Therefore, the requirements in § 50.54(m) concerning licensed operator staffing levels for operating reactors are not applicable to a decommissioning plant. For a decommissioning power reactor, the senior on-shift management representative is a certified fuel handler who, as stated in § 50.2, is a non-licensed operator that has qualified in accordance with a fuel handler training program approved by the Commission. However, there are no regulatory provisions similar to § 50.54(m) concerning operator staffing levels for a power reactor licensee once it has certified that it is permanently shut down and defueled under § 50.82(a)(1). Because the decommissioning regulations are silent regarding staffing levels, licensees have sought amendments in their defueled technical specifications to specify minimum non-licensed operator staffing. Based on precedent used at most previous permanently shut down reactors, and considering the demonstrated safety performance of reactor decommissioning sites over many years, the NRC has found that an operations staff crew complement consisting of one certified fuel handler and one non-certified operator is an acceptable minimum staffing level.

Considering the discussion above, should minimum operations shift staffing at a permanently shutdown and defueled reactor be codified by regulation?

GEN-3: Related to the decommissioning plant operator staffing levels is the requirement for and the use of a control room during decommissioning. Section 50.54(m) specifies the control room staffing requirements for licensed operators at an operating reactor with a fueled reactor vessel. No such requirements exist for the location of operations staff at a permanently shutdown and defueled reactor. The control room at an

operating reactor contains the controls and instrumentation necessary for complete supervision and response needed to ensure safe operation and shutdown of the reactor and support systems during normal, off-normal, and accident conditions and, therefore, is the location of the shift command function. Following permanent shutdown and removal of fuel from the reactor, operation of the reactor is no longer permitted and the control room no longer performs all of the functions that were required for an operating reactor. There are no longer any activities at a permanently shutdown and defueled reactor that require a quick decision and response by operations staff in the control room. For most decommissioning reactors, the NRC has approved license amendments to the technical specifications that require at least one non-licensed operator to remain in a control room. This technical specification change is primarily based on precedent. However, the NRC has noted in the license amendment safety evaluations that the primary functions of the control room at a permanently shutdown reactor are monitoring, response, communications, and coordination. Specifically, the control room at a decommissioning reactor is where many plant systems and equipment parameters are monitored (for operating status and conditions, radiation levels, electrical anomalies, or fire alarms for example). Control room personnel assess plant conditions; evaluate the magnitude and potential consequences of abnormal conditions; determine preventative, mitigating and corrective actions; and perform notifications. The control room provides a central location from where the shift command function can be conveniently performed because of the availability of existing monitoring and assessment instrumentation, communication systems and equipment, office computer equipment, and ready access to reference material. The control room also provides a central location from which emergency response activities are coordinated. When activated, the emergency response organization reports to the control room.

During reactor decommissioning, the control room may be subject to extensive changes, which are evaluated by the licensee for safety implications under the § 50.59 process. There is precedent among some previous decommissioning reactor licensees to design and construct a decommissioning control room that is independent of the original operating control room. Most decommissioning

reactors can probably demonstrate that the command, communications, and monitoring functions performed in the control room could be readily performed at an alternate onsite location, based on the site-specific needs of a licensee during its decommissioning process. Consequently, several decommissioning licensees have questioned the meaning of the control room as it relates to decommissioning nuclear power plants.

Based on the discussion above, what regulatory changes should be considered for a permanently shutdown and defueled reactor to prevent ambiguities concerning the meaning of the control room for decommissioning reactors and should minimum staffing levels be specified for the control room?

GEN-4: Are there any other changes to 10 CFR Chapter I, "Nuclear Regulatory Commission," that could be clarified or amended to improve the efficiency and effectiveness of the reactor decommissioning process?

GEN-5: The NRC is attempting to gather information on the costs and benefits of the changes in the regulatory areas discussed in this document as early as possible in the rulemaking process. Given the topics discussed, please provide estimated costs and benefits of potential changes in these areas from either the perspective of a licensee or from the perspective of an external stakeholder.

a. From your perspective, which areas discussed are the most beneficial or detrimental?

b. From your perspective, assuming you believe changes are needed to the NRC's reactor decommissioning regulatory infrastructure, what are the factors that drive the need for changes in these regulatory areas? If at all possible, please provide specific examples (e.g., expected savings, expectations for efficiency, anticipated effects on safety, etc.) about how these changes will affect you.

c. Are there areas that are of particular interest to you, and for what reason?

d. Please provide any suggested changes that would further enhance benefits or reduce risks that may not have been addressed in this ANPR.

## VI. Public Meeting

The NRC will conduct a public meeting to discuss the contents of this ANPR and to answer questions from the public regarding the contents of this ANPR. The NRC will publish a notice of the location, time, and agenda of the meeting on the NRC's public meeting Web site at least 10 calendar days before the meeting. Stakeholders should monitor the NRC's public meeting Web

site for information about the public meeting at: <http://www.nrc.gov/public-involve/public-meetings/index.cfm>. In addition, the meeting information will be posted on [www.regulations.gov](http://www.regulations.gov) under Docket ID NRC-2015-0070. For instructions on how to receive alerts when changes or additions occur in a docket folder, see Section IX of this document.

## VII. Cumulative Effects of Regulation

The NRC has implemented a program to address the possible Cumulative Effects of Regulation (CER), in the development of regulatory bases for rulemakings. The CER describes the challenges that licensees, or other impacted entities (such as State partners) may face while implementing new regulatory positions, programs, and requirements (e.g., rules, generic letters, backfits, inspections). The CER is an organizational effectiveness challenge that results from a licensee or impacted entity implementing a number of complex positions, programs or requirements within a limited implementation period and with available resources (which may include limited available expertise to address a specific issue). The NRC is specifically requesting comment on the cumulative effects that may result from this potential rulemaking. In developing comments on the development of the regulatory basis for revisions to the requirements for decommissioning power reactor licensees relative to CER, consider the following questions:

(1) In light of any current or projected CER challenges, what should be a reasonable effective date, compliance date, or submittal date(s) from the time the final rule is published to the actual implementation of any new proposed requirements including changes to programs, procedures, or the facility?

(2) If current or projected CER challenges exist, what should be done to address this situation (e.g., if more time is required to implement the new requirements, what period of time would be sufficient, and why such a time frame is necessary)?

(3) Do other (NRC or other agency) regulatory actions (e.g., orders, generic communications, license amendment requests, and inspection findings of a generic nature) influence the implementation of the potential proposed requirements?

(4) Are there unintended consequences? Does the potential proposed action create conditions that would be contrary to the potential proposed action's purpose and objectives? If so, what are the

consequences and how should they be addressed?

(5) Please provide information on the costs and benefits of the potential proposed action. This information will be used to support any regulatory analysis performed by the NRC.

### VIII. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111–274) requires Federal agencies to write documents in a clear, concise, and well-organized manner. The NRC has written this document to be consistent with the Plain Writing Act as well as the Presidential Memorandum, “Plain Language in Government Writing,”

published June 10, 1998 (63 FR 31883). The NRC requests comment on this document with respect to the clarity and effectiveness of the language used.

### IX. Availability of Documents

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

Date	Document	ADAMS Accession No./ Federal Register citation
May 10, 1993	SECY–93–127, “Financial Protection Required of Licensees of Large Nuclear Power Plants during Decommissioning”.	ML12257A628.
July 20, 1995	Proposed Rule: Decommissioning of Nuclear Power Reactors	60 FR 37374.
July 29, 1996	Final Rule: Decommissioning of Nuclear Power Reactors	61 FR 39278.
December 17, 1996	SECY–96–256, “Changes to Financial Protection Requirements for Permanently Shutdown Nuclear Power Reactors, 10 CFR 50.54(w)(1) and 140.11”.	ML15062A483.
June 30, 1998	SRM to SECY–98–075, “DSI–24 Implementation: Risk-Informed, Performance-Based Concepts Applied to Decommissioning”.	ML003752383.
November 4, 1998	SECY–98–258, “DSI–24 Implementation: Decommissioning Licensing Actions and Priorities and Milestones for Addressing Rulemaking and Guidance Development”.	ML992870144.
February 24, 1999	SRM to SECY–98–258	ML003753861.
June 30, 1999	SECY–99–168, “Improving Decommissioning Regulations for Nuclear Power Plants”.	ML992800087.
December 21, 1999	SRM to SECY–99–168	ML003752190.
June 28, 2000	SECY–00–0145, “Integrated Rulemaking Plan for Nuclear Power Plant Decommissioning”.	ML003721626.
September 27, 2000	SRM to SECY–00–0145	ML003754381.
February 2001	NUREG–1738, “Technical Study of Spent Fuel Pool Accident Risk at Decommissioning Nuclear Power Plants”.	ML010430066.
June 4, 2001	SECY–01–0100, “Policy Issues Related to Safeguards, Insurance, and Emergency Preparedness Regulations at Decommissioning Nuclear Power Plants Storing Fuel in Spent Fuel Pools”.	ML011450420.
August 16, 2002	Memorandum to the Commission: Status of Regulatory Exemptions for Decommissioning Plants.	ML030550706.
September 18, 2002	SECY–02–0169, “Annual Update Status of Decommissioning Program”.	ML022120432.
February 4, 2010	Memorandum to the Commission, “Documentation of Evolution of Security Requirements at Commercial Nuclear Power Plants with Respect to Mitigation Measures for Large Fires and Explosions”.	ML092990438.
December 2006	NEI–06–12, “B.5.b. Phase 2 & 3 Submittal Guideline, Revision 2”	ML070090060.
December 22, 2006	Response to December 14, 2006 request to endorse NEI 06–12, “B.5.b Phase 2 & 3 Submittal Guideline”.	Non-publicly available.
August 8, 2008	The Attorney General of Commonwealth of Massachusetts, the Attorney General of California; Denial of Petitions for Rulemaking.	73 FR 46204.
November 12, 2013	COMSECY–13–0030, “Staff Evaluation and Recommendation for Japan Lessons-Learned Tier 3 Issue on Expedited Transfer of Fuel”.	ML13329A918.
September 2014	NUREG–2161, “Consequence Study of a Beyond-Design-Basis Earthquake Affecting the Spent Fuel Pool for a U.S. Mark I Boiling Water Reactor”.	ML14255A365.
November 14, 2014	IN–2014–14, “Potential Safety Enhancements to Spent Fuel Storage”	ML14218A493.
December 30, 2014	SRM to SECY–14–0118, “Request by Duke Energy Florida, Inc., for Exemptions from Certain Emergency Planning Requirements”.	ML14364A111.
January 30, 2015	SECY–15–0014, “Anticipated Schedule and Estimated Resources for a Power Reactor Decommissioning Rulemaking”.	ML15082A089.
December 23, 2013	NSIR/DPR–ISG–02, “Emergency Planning Exemption Requests for Decommissioning Nuclear Power Plants”.	ML13304B442.
November 25, 2014	NSIR/DSP–ISG–03, “Review of Security Exemptions/License Amendment Requests for Decommissioning Nuclear Power Plants”.	ML14294A170.
November 10, 2011	Letter Endorsing NEI 03–12, Revision 7	ML112800379.
March 2009	RG 5.77, “Insider Mitigation Program”	Non-publicly available.
March 31, 2008	Final Rule: “Fitness for Duty Programs”	73 FR 16966.
March 12, 2012	Order EA–12–051, “Issuance of Order to Modify Licenses with Regard to Reliable Spent Fuel Pool Instrumentation”.	ML12054A679.
March 12, 2012	Order EA–12–049, “Issuance of Order to Modify Licenses with Regard to Requirements for Mitigation Strategies for Beyond-Design-Basis External Events”.	ML12054A734.

Date	Document	ADAMS Accession No./ Federal Register citation
October 7, 2015 .....	SECY-15-0127, "Schedule, Resource Estimates, and Impacts for the Power Reactor Decommissioning Rulemaking".	Non-publicly available.

The NRC may post additional materials to the Federal rulemaking Web site at [www.regulations.gov](http://www.regulations.gov), under Docket NRC-2015-0070. The Federal rulemaking Web site allows you to receive alerts when changes or additions occur in a docket folder. To subscribe: (1) Navigate to the docket folder [NRC-2015Y-0070]; (2) click the "Sign up for Email Alerts" link; and (3) enter your email address and select how frequently you would like to receive emails (daily, weekly, or monthly).

#### X. Rulemaking Process

The NRC does not intend to provide detailed comment responses for information provided in response to this ANPR. The NRC will consider comments on this ANPR in the rule development process. If the NRC develops a regulatory basis sufficient to support a proposed rule, there will be an opportunity for additional public comment when the draft regulatory basis and the proposed rule are published. If supporting guidance is developed for the proposed rule, stakeholders will have an opportunity to provide feedback on the guidance as well. Alternatively, if the regulatory basis does not provide sufficient support for a proposed rule, the NRC will publish a **Federal Register** notice withdrawing this ANPR and summarizing the public comments received on this ANPR.

Dated at Rockville, Maryland, this 6th day of November 2015.

For the U.S. Nuclear Regulatory Commission.

**Frederick D. Brown,**

*Acting Executive Director for Operations.*

[FR Doc. 2015-29536 Filed 11-18-15; 8:45 am]

**BILLING CODE 7590-01-P**

#### DEPARTMENT OF ENERGY

#### 10 CFR Parts 429 and 430

[Docket No. EERE-2011-BT-CE-0077]

RIN 1904-AC68

#### Energy Conservation Program: Enforcement of Regional Standards for Central Air Conditioners

**AGENCY:** Office of Energy Efficiency and Renewable Energy, Department of Energy.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The U.S. Department of Energy (DOE) is proposing requirements related to the enforcement of regional standards for central air conditioners, as authorized by the Energy Policy and Conservation Act (EPCA) of 1975.

**DATES:** DOE will accept comments, data, and information regarding this notice of proposed rulemaking (NOPR) no later than January 4, 2016.

In compliance with the Paperwork Reduction Act, DOE is also seeking comment on a new information collection. See the Paperwork Reduction Act section under Procedural Issues and Regulatory Review, section III.C. Please submit all comments relating to information collection requirements to DOE no later than January 19, 2016. Comments to OMB are most useful if submitted within 45 days of publication.

**ADDRESSES:** Any comments submitted must identify the NOPR for Enforcement of Regional Standards for Central Air Conditioners and provide docket number EERE-2011-BT-CE-0077 and/or regulatory information number (RIN) 1904-AC68. Comments may be submitted using any of the following methods:

1. *Federal eRulemaking Portal:* [www.regulations.gov](http://www.regulations.gov). Follow the instructions for submitting comments.

2. *Email: EnforcementFunCAC-2011-CE-0077@EE.Doe.Gov* Include the docket number and/or RIN in the subject line of the message.

3. *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE-2J, 1000 Independence Avenue SW., Washington, DC 20585-0121. If possible, please submit all items on a CD. It is not necessary to include printed copies.

4. *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza SW., Suite 600, Washington, DC 20024. Telephone: (202) 586-2945. If possible, please submit all items on a CD. It is not necessary to include printed copies.

*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 [regulations.gov](http://regulations.gov). All documents in the docket are listed in the [regulations.gov](http://www.regulations.gov) index. However, some documents listed in the index, such as those containing information that is exempt from public disclosure, may not be publicly available. The docket Web page can be found at:

<http://www.regulations.gov/#!docketDetail;D=EERE-2011-BT-CE-0077>.

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](mailto:Brenda.Edwards@ee.doe.gov).

**FOR FURTHER INFORMATION CONTACT:** Ashley Armstrong, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE-5B, 1000 Independence Avenue SW., Washington, DC 20585-0121. Telephone: 202-586-6590. Email: [Ashley.Armstrong@ee.doe.gov](mailto:Ashley.Armstrong@ee.doe.gov).

Laura Barhydt, U.S. Department of Energy, Office of the General Counsel, GC-32, 1000 Independence Avenue SW., Washington, DC 20585-0121. Telephone: (202) 287-5772. Email: [Laura.Barhydt@hq.doe.gov](mailto:Laura.Barhydt@hq.doe.gov).

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## I. Authority and Background

### A. Authority

Title III of the Energy Policy and Conservation Act of 1975, as amended (“EPCA” or, in context, “the Act”) sets forth a variety of provisions designed to improve energy efficiency.<sup>1</sup> Part A of Title III (42 U.S.C. 6291–6309) establishes the “Energy Conservation Program for Consumer Products Other Than Automobiles.” These consumer products include central air conditioners, which are the subject of this rule. (42 U.S.C. 6295(d))

Under EPCA, this program consists essentially of four parts: (1) Testing; (2) labeling; (3) Federal energy conservation standards; and (4) certification and enforcement procedures. The Federal Trade Commission (FTC) is primarily responsible for labeling consumer products, and DOE implements the remainder of the program.

Pursuant to EPCA, any new or amended energy conservation standards for covered consumer products must be designed to achieve the maximum improvement in energy efficiency that are technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A)) Furthermore, the new or amended standard must result in significant conservation of energy. (42 U.S.C. 6295(o)(3)(B)) The Energy Independence and Security Act of 2007 (EISA 2007) amended EPCA to require that DOE consider regional standards for certain products if the regional standards can save significantly more energy than a national standard and are economically justified. (42 U.S.C. 6295(o)(6)(A)) Under EPCA, DOE is authorized to establish up to two additional regional standards for central air conditioners and heat pumps. (42 U.S.C. 6295(o)(6)(B)(ii)) DOE must initiate an enforcement rulemaking after DOE issues a final rule that establishes a regional standard. (42 U.S.C.

6295(o)(6)(G)(ii)(I)) DOE must also issue a final rule for enforcement after DOE issues a final rule that establishes a regional standard. (42 U.S.C. 6295(o)(6)(G)(ii)(III))

### B. Background

On June 27, 2011, DOE promulgated a Direct Final Rule (June 2011 DFR) that, among other things, established regional standards for central air conditioners. 76 FR 37408. DOE subsequently published a notice of effective date and compliance date for the June 2011 DFR on October 31, 2011, setting a standards compliance for central air conditioners and heat pumps of January 1, 2015. 76 FR 67037.

As required by EPCA, DOE initiated an enforcement rulemaking by publishing a notice of data availability (NODA) in the **Federal Register** that proposed three approaches to enforcing regional standards for central air conditioners. 76 FR 76328 (December 7, 2011). DOE received numerous comments expressing a wide range of concerns in response to this NODA. Consequently, on June 13, 2014, DOE published a notice of intent to form a working group to negotiate regulations for the enforcement of regional standards for central air conditioners and requested nominations from parties interested in serving as members of the Working Group. 79 FR 33870. On July 16, 2014, the Department published a notice of membership announcing the eighteen nominations that were selected to serve as members of the Working Group, in addition to two members from Appliance Standards and Rulemaking Federal Advisory Committee (ASRAC), and one DOE representative.<sup>2</sup> 79 FR 41456. The members of the Working Group were selected by ASRAC to ensure a broad and balanced array of stakeholder interests and expertise, and included efficiency advocates, manufacturers, utility representatives, contractors, and distributors. *Id.*

As required, the Working Group submitted a final report to ASRAC on October 24, 2014, summarizing the group’s recommendations for DOE’s rule for enforcement of regional standards for central air conditioners. Working Group Recommendations, No. 70.<sup>3</sup> The recommendations included a statement that the nongovernmental participants

conditionally approved the recommendations contingent upon the issuance of the final guidance (See No. 89 and No. 90 for the draft versions) consistent with the understanding of the Working Group as set forth in these recommendations. Working Group Recommendations, No. 70 at 37. ASRAC subsequently voted to approve these recommendations on December 1, 2014. ASRAC Meeting Transcript, No. 73 at 42–43. In this document, DOE is proposing to adopt the Working Group’s recommendations. Working Group Recommendations, No. 70.

After consideration of the comments received in response to the guidance documents, DOE determined that regulatory changes were necessary to implement the approach agreed to by the Working Group. Accordingly, DOE has proposed changes to the unit selection and testing requirements in a parallel test procedure rulemaking (CAC TP SNOPR). 80 FR 69278 (November 9, 2015). DOE reaffirms its commitment to the approach advocated by the Working Group, subject to consideration of comments received in this and the test procedure rulemaking.

## II. Discussion

Between August 13, 2014, and October 24, 2014,<sup>4</sup> the Working Group held fourteen full public meetings in Washington, DC, primarily at the DOE headquarters.<sup>5</sup> Thirty-seven interested parties, including members of the Working Group, attended the various meetings. Table II.1 lists the entities that attended the Working Group meetings and their affiliation. The Working Group’s recommendations for enforcement of the regional standards for central air conditioners are presented in this proposed rule. A more detailed discussion of the recommendations can be found in the Working Group meeting transcripts.<sup>6</sup>

<sup>4</sup> The Working Group met on August 13, 2014; August 14, 2014; August 26, 2014; August 27, 2014; August 28, 2014; September 3, 2014; September 4, 2014; September 24, 2014; September 25, 2014; October 1, 2014; October 2, 2014; October 15, 2014; October 16, 2014; and October 24, 2014.

<sup>5</sup> Due to conflicts at DOE, the August 27th meeting took place at ACEEE’s office in Washington, DC.

<sup>6</sup> Docket Folder, Energy Conservation Program: Enforcement of Regional Standards for Residential Furnaces and Central Air Conditioners and Heat Pumps, <http://www.regulations.gov/#/docketDetail;D=EERE-2011-BT-CE-0077> (last visited Aug. 26, 2015).

<sup>1</sup> All references to EPCA in this document refer to the statute as amended through the Energy Efficiency Improvement Act of 2015, Public Law 114–11 (Apr. 30, 2015).

<sup>2</sup> The list of members is published in Table II.1.

<sup>3</sup> A notation in this form provides a reference for information that is in the docket for this rulemaking (Docket No. EERE–2011–BT–CE–0077), which is maintained at [www.regulations.gov](http://www.regulations.gov). This notation indicates that the statement preceding the reference is from document number 70 in the docket.

TABLE II.1—INTERESTED PARTIES

Name	Acronym	Organization type	Working group membership (Y/N)
Air Conditioning Contractors of America .....	ACCA .....	Contractor Association .....	Y
Air Conditioning, Heating, and Refrigeration Institute.	AHRI .....	Manufacturer Trade Association .....	Y
Allied Air Enterprises .....	Allied Air .....	Manufacturer .....	Y
American Council for an Energy-Efficient Economy.	ACEEE .....	Energy Efficiency Advocacy Group .....	Y
American Public Gas Association .....	APGA .....	Utility Association .....	.....
California Energy Commission .....	CEC .....	California State Government Agency .....	Y
California Investor Owned Utilities .....	CA IOUs .....	Utility Association .....	.....
Carrier Corporation .....	Carrier .....	Manufacturer .....	Y
Daikin Corporation .....	Daikin .....	Manufacturer .....	.....
EarthJustice .....	.....	Energy Efficiency Advocacy Group .....	Y
Edison Electric Institute .....	EEl .....	Utility Association .....	.....
Emerson .....	.....	Manufacturer .....	.....
First Co. ....	.....	Manufacturer .....	.....
Goodman Global, Inc. ....	Goodman .....	Manufacturer .....	Y
Scott Harris* .....	.....	Appliance Standards and Rulemaking Federal Advisory Committee (ASRAC).	Y
Heating, Air-conditioning and Refrigeration Distributors International.	HARDI .....	Distributor Trade Association .....	.....
Ingersoll Rand .....	.....	Manufacturer .....	Y
Johnson Controls Inc .....	JCI .....	Manufacturer .....	Y
Johnstone Supply .....	.....	Distributor .....	Y
Lennox International, Inc. ....	Lennox .....	Manufacturer .....	.....
Lincoln Electric Cooperative .....	.....	Utility .....	Y
McDermott Will & Emery .....	.....	Law Firm .....	.....
Mortex Products, Inc. ....	Mortex .....	Manufacturer .....	.....
National Association of Home Builders .....	NAHB .....	Trade Association .....	.....
National Comfort Products .....	.....	Manufacturer .....	.....
National Consumer Law Center* .....	.....	Consumer Advocacy Group .....	Y
National Rural Electric Cooperative Association ..	NRECA .....	Utility Association .....	.....
Natural Resources Defense Council .....	NRDC .....	Energy Efficiency Advocacy Group .....	Y
New York State Office of Attorney General .....	.....	Government Agency .....	.....
NORDYNE Inc. ....	NORDYNE .....	Manufacturer .....	Y
Pacific Gas and Electric Company .....	PG&E .....	Utility .....	Y
Plumbing-Heating-Cooling Contractors—National Association.	PHCC .....	Contractor Association .....	Y
Pacific Northwest National Laboratory .....	PNNL .....	U.S. Government Research Laboratory .....	.....
Regal-Beloit Corporation .....	Regal-Beloit .....	Manufacturer .....	.....
Rheem Manufacturing Company .....	Rheem .....	Manufacturer .....	Y
Unico, Inc. ....	Unico .....	Manufacturer .....	.....
Xcel Energy* .....	.....	Utility Association .....	Y

\* Withdrew from working group.

A. Regional Standards

As discussed in section I.B, DOE adopted regional standards for central air conditioners in its June 2011 DFR. That rule set regional standards for split-system central air conditioners and single-package central air conditioners. 10 CFR 430.32(c). A split-system central air conditioner is a type of air conditioner that has one or more of its major assemblies separated from the others. Typically, the air conditioner has a condensing unit (“outdoor unit”) that is separate from the evaporator coil and/or blower (“indoor unit”). Accordingly, a split-system condensing unit is often sold separately from the indoor unit and may be matched with several different models of indoor units and/or blowers. For this reason, a condensing unit could achieve a 14

SEER or above if it is paired with certain indoor units and/or blowers and could perform below 14 SEER when paired with other indoor units and/or blowers. The Working Group suggested the regional standards required clarification because a particular condensing unit may have a range of efficiency ratings when paired with various indoor evaporator coils and/or blowers. The Working Group provided the following four recommendations to clarify the regional standards: that (1) the least efficient rated combination for a specified model of condensing unit must be 14 SEER for models installed in the Southeast and Southwest regions; (2) the least efficient rated combination for a specified model of condensing unit must meet the minimum EER for models installed in the Southwest region; (3) any condensing unit model that has a

certified combination that is below the regional standard(s) cannot be installed in that region; and (4) a condensing unit model certified below a regional standard by the original equipment manufacturer cannot be installed in a region subject to a regional standard(s) even with an independent coil manufacturer’s indoor coil or air handler combination that may have a certified rating meeting the applicable regional standard(s). Working Group Recommendations, No. 70 at 4. DOE is proposing to adopt these recommendations as part of this NOPR and requests comment on these recommendations. DOE notes that the test procedure supplemental notice of proposed rulemaking (CAC TP SNOPR) proposes multiple regulatory changes necessary to implement these recommendations. See the CAC TP

SNOPR for those detailed proposals. 80 FR 69278. In addition, DOE has proposed two alternatives to implement the clarification with respect to the standards. In this rulemaking, DOE proposes to specify that any condensing unit model that has a certified combination with a rating below 14 SEER cannot be installed in the Southeast and Southwest United States. To clarify responsibility with respect to split-system air conditioners, this rulemaking proposes that a condensing unit model certified below 14 SEER by the outdoor unit manufacturer cannot be installed in those regions even if an independent coil manufacturer certifies an indoor coil or air handler combination with that outdoor unit with a rating at or above 14 SEER. In contrast, in the test procedure rulemaking, DOE proposes to specify that the least efficient combination of each basic model must comply with the regional standard, but provides additional parameters regarding what combinations are permitted to be certified. See, e.g., 80 FR 69278 at 69290. The approach taken in this rulemaking relies less on some of the other regulatory changes that are necessary to implement the policies the Working Group advocated with respect to the guidance documents; the approach taken in the test procedure rulemaking would require the additional regulatory changes with respect to unit selection and testing. DOE requests comment on the two approaches, whether interested parties consider one approach to be easier to understand, and what the pros or cons may be of the two alternatives.

### B. Definitions

EPCA prohibits manufacturers from selling to “distributors, contractors, or dealers that routinely violate the regional standards.” (42 U.S.C. 6302(a)(6)) EPCA defines a distributor as a person (other than a manufacturer or retailer) to whom a consumer appliance product is delivered or sold for purposes of distribution in commerce. (42 U.S.C. 6291(14))

Because neither EPCA nor existing DOE regulations define the terms “contractor” and “dealer,” the Working Group recommended the following definitions to further clarify the prohibited act:

*Contractor* means a person<sup>7</sup> (other than the manufacturer or distributor)

<sup>7</sup>DOE defines “person” as “any individual, corporation, company, association, firm, partnership, society, trust, joint venture or joint stock company, the government, and any agency of the United States or any State or political subdivision thereof.” (10 CFR 430.2)

who sells to and/or installs for an end user a central air conditioner subject to regional standards.

*Dealer* means a type of contractor, generally with a relationship with one or more specific manufacturers.

The Working Group further requested DOE make clear that in the context of the definition of “contractor,” the term “end user” means the entity that purchases or selects for purchase the central air conditioner. Some examples of typical “end users” are homeowners, building owners, building managers, and property developers.

Additionally, the Working Group recommended that DOE define the term “installation” as:

*Installation of a central air conditioner* means the connection of the refrigerant lines and/or electrical systems to make the central air conditioner operational.

In this NOPR, DOE proposes to adopt the Working Group’s recommended definitions for these three terms and requests comments on these definitions. DOE also proposes to codify the definition of “distributor.”

The Working Group requested that DOE make explicit in this proposed rule that, depending upon their particular conduct, parties conducting internet sales may be considered a contractor or distributor under the proposed definitions. Specifically, internet sellers that sell to contractors or dealers meet the definition of a “distributor,” while internet sellers that sell directly to homeowners would qualify as “contractors.” Further, retailers who sell central air conditioners directly to homeowners would also fit within the definition of a “contractor.”

While not specifically discussed by the Working Group, it is also of note that some internet sellers will be considered manufacturers if they are the importers of the product they are selling via the internet. Pursuant to EPCA, the term “manufacturer” includes importers. (42 U.S.C. 6291(10), (12)) Those parties that import products subject to regional standards are expected to meet the regulatory obligations of manufacturers.

In their discussion of definitions, members of the Working Group also raised the point that some manufacturers distribute their own product. DOE clarified that, consistent with EPCA’s definitions of “manufacturer” and “distributor,” if a manufacturer distributes its own product, then the company (the manufacturer-owned or “factory owned” distributor) is considered to be a manufacturer rather than a distributor.

Since DOE received the recommendations of the Working Group from ASRAC, DOE has received questions about the applicability of the regional standards to private labelers. The Working Group did not address this issue. The statutory prohibited acts treat manufacturers and private labelers in the same way. (42 U.S.C. 6302(a)(6) (making it unlawful for “any manufacturer or private labeler to knowingly sell a product to a distributor, contractor, or dealer with knowledge that the entity routinely violates any regional standard applicable to the product.”)) DOE notes that, although private labelers are liable for distribution in commerce of noncompliant products generally, DOE does not require private labelers to submit certification reports unless the private labeler is also the importer. Therefore, DOE believes that it may not be necessary for exactly the same requirements to apply to private labelers. Consequently, DOE is proposing that the same requirements apply to private labelers as discussed in more detail throughout this notice. However, DOE requests comment on whether these proposed requirements should be the same or whether different requirements should apply. DOE may adopt the same requirements as proposed today or some variation for private labelers in the final rule as a result of comments received.

### C. Public Awareness

The Working Group discussed the importance of public education to a successful enforcement program for central air conditioner regional standards. The Working Group recommended DOE establish a Web page with information on regional standards for central air conditioners that could be referenced by manufacturers, distributors, contractors, and other interested parties. As recommended, DOE established a Web page about enforcement of regional standards which can be found at <http://www.energy.gov/gc/enforcement>.

The Working Group also opined on the need to deliver a consistent message to central air conditioner consumers and contractors about the regional standards. The Working Group recommended that DOE provide public educational materials that manufacturers and distributors could provide their customers. Accordingly, DOE is posting links from its Web page for regional standards to two different documents: (1) A printable trifold tailored to provide information to consumers and (2) and a printable flier to educate

contractors and answer common questions.

Beyond creating a regional standards Web page, the Working Group recommended DOE conduct a public presentation (accessible via internet as well as in-person) on regional standards for central air conditioner standards and the enforcement of such standards to educate stakeholders and the public on these regulations. The Department will issue a Notice of Public Meeting announcing its presentation on regional standards after the issuance of a final rule and will post the slides from the presentation to this docket and on the regional standards Web page.

The Working Group also recommended that all information sources—the Web page, trifold, flier, and presentation—should include information, including email links, on how to report suspected violations of the regional standards for central air conditioners.

Finally, the Working Group recommended that central air conditioner manufacturers provide training about regional standards to distributors and contractors/dealers. Distributors and contractors also agreed to conduct their own training on regional standards. The Working Group did not establish specific guidelines for the training.

#### D. Reporting

The Working Group discussed methods for facilitating the reporting of suspected regional standards violations and recommended that the Department provide multiple pathways for the public to report such information. Specifically, the Working Group recommended that DOE accept complaints regarding central air conditioners regional standards from both an email address and call-in number. As requested, the Department will accept reports of suspected violations of the regional central air conditioner standards that are received via the email address: *EnergyEfficiencyEnforcement@hq.doe.gov* or phone number: 202-287-6997. DOE committed to look into all credible complaints, meaning DOE will follow up on all complaints that provide a reasonable amount of information to the Department. The Working Group emphasized, and DOE affirmed, that the complainant will have confidentiality to the maximum extent authorized by law.

#### E. Proactive Investigation

In addition to responding to reports of noncompliance with the regional standards, the Working Group recommended that the Department

consider conducting proactive investigations. Specifically, the Working Group recommended that, if funding is available, DOE consider conducting a survey of homes in any region of the United States to determine if a central air conditioner not in compliance with the regional standards has been installed. DOE, as a member of the Working Group, agreed to consider proactive investigations if funding for such investigations is available.

#### F. Record Retention and Requests

To ensure that the Department is able to obtain sufficient information to establish a noncompliant installation and the relevant parties, the Working Group recommended that manufacturers, dealers, and contractors retain records detailing specific information about central air conditioner sales and installations. The Working Group recommended the following records retention scheme.

Beginning 30 days after the issuance of a final rule, a manufacturer must retain:

- For split-system central air conditioner condensing units: the model number, serial number, date of manufacture, date of sale, and party to whom the unit was sold (including person's name, full address, and phone number);
- For split-system central air conditioner indoor coils or air handlers (not including uncased coils sold as replacement parts): the model number, date of manufacture, date of sale, and party to whom the unit was sold (including person's name, full address, and phone number); and
- For single-package central air conditioners: the model number, serial number, date of manufacture, date of sale, and party to whom the unit was sold (including person's name, full address, and phone number).

Beginning November 30, 2015, a distributor must retain:

- For split-system central air conditioner condensing units: the manufacturer, model number, serial number, date the unit was purchased from the manufacturer, party from whom the unit was purchased (including person's name, full address, and phone number), date unit was sold to a dealer or contractor, party to whom the unit was sold (including person's name, full address, and phone number), and, if delivered to the purchaser, the delivery address; and
- For single-package central air conditioners: the manufacturer, model number, serial number, date the unit was purchased from the manufacturer, party from whom the unit was

purchased (including person's name, full address, and phone number), date unit was sold to dealer or contractor, party to whom the unit was sold (including person's name, full address, and phone number), and, if delivered to the purchaser, the delivery address.

For all installations in the Southeast and Southwest, beginning 30 days after issuance of a final rule in this rulemaking, contractors must retain:

- For split-system central air conditioner condensing units: the manufacturer name, model number, serial number, location of installation (including street address, city, state, and zip code), date of installation, and party from whom the unit was purchased (including person's name, full address, and phone number);
- For split-system central air conditioner indoor coils or air handlers (not including uncased coils sold as replacement parts): the manufacturer name, model number, location of installation (including street address, city, state, and zip code), date of installation, and party from whom the unit was purchased (including person's name, full address, and phone number); and
- For single-package central air conditioners: the manufacturer name, model number, serial number, location of installation (including street address, city, state, and zip code), date of installation, and party from whom the unit was purchased (including person's name, full address, and phone number). See 2013-BT-NOC-0005, No. 30 at 14-16.

The Working Group recommended that contractors retain records for 48 months after the date of installation, distributors retain records for 54 months after the date of sale, and manufacturers retain records for 60 months after the date of sale. The Working Group explicitly noted that retaining records allows each entity to archive records as long as they are not deleted or disposed of. The Working Group also clarified that the records retention requirements neither mandate that contractors, distributors, or manufacturers create new forms for the purpose of tracking central air conditioners nor require records to be electronic. See 2013-BT-NOC-0005, No. 30 at 17-18. DOE proposes to adopt these record retention requirements as with a few minor modifications and requests comment on these requirements.

DOE proposes two modifications to the recommendations of the Working Group. First, due to the delay issuing this notice of proposed rulemaking, DOE proposes that distributors be

required to retain records as of July 1, 2016. Second, after extensive discussion, the working group recommended that DOE refer to “indoor coils or air handlers” with respect to the record retention requirements for split-system air conditioners. DOE proposes, instead, to use the term “indoor unit” to reflect the term proposed in DOE’s recent CAC TP SNOFR. See 80 FR 69278 at 69284. At the time of the negotiation, DOE had no regulatory term that embodied the concept the Working Group sought to describe. If “indoor unit” is adopted in the test procedure final rule, then its use in the context of this rulemaking would conform to the concept the Working Group described while ensuring consistency within the DOE regulations.

Although not discussed by the Working Group, DOE recognizes that some internet sellers may perform the role of contractor or distributor, depending on who is purchasing the product. DOE proposes that those entities will have to keep records consistent with the requirements of the transaction, for the length of time required for that transaction.

To limit the potential of burden associated with producing records at the request of the Department, the Working Group recommended that DOE must have a reasonable belief a violation occurred before requesting records. DOE will determine if it has reasonable belief by assessing a variety of factors, such as:

- Whether it has an address of a suspected noncompliant installation or attempted installation;
- Whether it has identifying information for an installed unit;
- Whether it has physical evidence (e.g., a picture of a noncompliant condensing unit and its nameplate, copy of EnergyGuide label, copy of completed work order or invoice, bill of sale for equipment, copy of bid for installation, distributor prepared price book);
- Whether there have been repeat complaints about the party; or
- Whether the complainant has a history of filing complaints of violations that have been substantiated by the Department through investigation.

Once DOE determines it has a reasonable belief, then it may request records from relevant manufacturers, distributors, and contractors. Records must be produced within 30 days of a request by the Department. However, DOE may, at its discretion, grant additional time for production of records if the affected entity makes a good faith effort to produce records within 30 days. To receive this extra time, the entity, after working to gather the records within the 30 days, must

provide DOE all the records gathered and a written explanation for the need for additional time including the requested date for completing the records request.

DOE proposes to adopt the Working Group’s recommendations for records requests. The Department requests comment on the threshold for records requests and the proposed timeframe for responding to such requests.

#### *G. Violations and Routine Violations*

As mentioned above, it is unlawful for any manufacturer to knowingly sell to a distributor, contractor, or dealer with knowledge that the entity routinely violates any regional standard applicable to the product. (42 U.S.C. 6302(a)(6), 10 CFR 430.102(a)(10)) To clarify this prohibited act, the Working Group discussed what activities would constitute a violation by a distributor, contractor or dealer. For a distributor, the Working Group agreed that it would be a violation to knowingly sell a product to a contractor or dealer with knowledge that the entity will sell and/or install the product in violation of any regional standard applicable to the product. Additionally, it would be a violation for a distributor to knowingly sell a product to a contractor or dealer with knowledge that the entity routinely violates any regional standard applicable to the product. For contractors, the Working Group agreed it would be a violation to knowingly sell to and/or install for an end user a central air conditioner subject to regional standards with knowledge that such product would be installed in violation of any regional standard applicable to the product.

To further clarify what constituted an installation of a central air conditioner in violation of an applicable regional standard, the Working Group agreed that:

(1) A person cannot install a complete central air conditioner system—meaning the condensing unit and evaporator coil and/or blower—unless it has been certified as a complete system that meets the applicable standard. A previously discontinued combination may be installed as long as the combination was previously validly certified to the Department as compliant with the applicable regional standard and the combination was not discontinued because it was found to be noncompliant with the applicable standard(s);

(2) A person cannot install a replacement condensing unit unless it is certified as part of a combination that meets the applicable standard; and

(3) a person cannot install a condensing unit that has a certified combination with a rating that is less than the applicable regional standard.

To determine if a violation occurred, the Department will conduct an investigation into the alleged misconduct. In a typical investigation, DOE may discuss the installation in question with the end user or the homeowner and other relevant parties, including the alleged violator. DOE may also request records from the dealer, contractor, distributor, and/or manufacturer if the Department has reasonable belief a violation occurred.

The Working Group recommended that if no violation is found, the Department should issue a case closed letter to the party being investigated. If DOE finds that a contractor or dealer completed a noncompliant installation in one residence or an equivalent setting (e.g., one store), but the violator remediated that violation by installing a compliant unit before DOE concluded its investigation, then DOE will issue a case closed letter to the party being investigated, as long as that person has no history of prior violations. The purpose of this practice would be to incentivize parties who, on one occasion, mistakenly install one noncompliant unit to replace the product and thereby not suffer any public stigma. However, if the non-compliant installation is not remediated and a violation is found, DOE will issue a public “Notice of Violation.” The party found to be in violation can remediate the single violation and it will not count towards the finding of “routine violator” unless the party is found, in the course of a subsequent investigation, to have committed another violation. For more on remediation of a single violation, see section II.H.

In determining whether a party “routinely violates” a regional standard, the Working Group recommended that DOE consider the following factors:

- Number of violations (in both current and past investigations);
- Length of time over which the violations were committed;
- Ratio of compliant to noncompliant installations or sales;
- Percentage of employees committing violations;
- Evidence of effort or intent to commit violations;
- Evidence of training or education provided on regional standards; and
- Subsequent remedial actions.

The Working Group also agreed that DOE should consider whether the routine violation was limited to a specific contractor or distribution

location. DOE would rely on the same factors considered in determining whether a routine violation occurred.

The Working Group recommended that DOE issue a “Notice of Finding of Routine Violator” if the Department determines that a violator routinely violated a regional standard. This notice would identify the party found to be a routine violator and explain the scope of the violation. Additionally, if DOE, in its discretion, finds that the routine violation was limited to a specific location, DOE may in the Notice of Finding of Routine Violation state that the prohibition on manufacturer sales is limited to a particular contractor or distribution location. This notice would be both posted to the Department’s enforcement Web site and would be emailed to those signed up for email updates.<sup>8</sup>

If DOE makes a finding of routine violation, the violator has the right to file an administrative appeal of the finding. Any appeal of a Notice of Finding of Routine Violation would be required to be filed within 30 days of the issuance of the notice. The appeal would be reviewed by DOE’s Office of Hearings and Appeals. The appeal must present information rebutting the finding of routine violation. The appeal will be decided within 45 days of filing of the appeal. The violator may also file a Notice of Intent to Appeal with the DOE Office of Hearings and Appeals. If this notice of intent is filed within three business days of the Notice of Finding of Routine Violation, then manufacturers may continue to sell products to the routine violator during the pendency of the appeal. See section II.J for more details on sales during the pendency of an appeal.

DOE proposes to adopt the Working Group’s recommendations pertaining to violations and routine violations and requests comment on these proposals.

#### H. Remediation

As previously mentioned, the Working Group recommended that violators may be given the opportunity to remediate. The sole method of remediation would be the replacement of noncompliant unit with compliant units. If a violator is unable to replace all noncompliant units, then the Department may, in its discretion, consider the remediation complete if the violator satisfactorily demonstrates to the Department that it attempted to replace all noncompliant units. In practice, the violator would have to show that they replaced almost all of the

noncompliant units and document significant, yet refused, efforts to complete the replacement of the remaining noncompliant units. The Department would also scrutinize those “failed” attempts at replacement to ensure that there was indeed a good faith effort to complete remediation of the noncompliant unit.

The replacement of noncompliant units with compliant units would be at the cost of the violator. The violator would not be allowed to use warranty or other replacement claims to recoup the cost of the replacement from the manufacturer. To ensure that warranties or other replacement claims are not used, the violator must provide DOE with the serial numbers for the new and old units. The Department will then provide these numbers to the manufacturer(s) and distributor(s) to verify that warranties and other replacement claims were not wrongfully used. If the violator successfully remediates, then DOE will issue a public “Notice of Remediation.”

The Working Group recommended that routine violators should also be entitled to remediation. As manufacturers are prohibited from selling to routine violators, remediation would be coordinated through the Department. If the routine violator wants to remediate then it must contact the DOE Office of the General Counsel, Office of Enforcement, via the DOE point of contact listed in the Notice of Finding of Routine Violation. The routine violator must inform DOE of the distributor or manufacturer from whom it wishes to purchase compliant replacement units. Within three business days of the routine violator’s request to remediate, the Department will contact the necessary distributor(s) or manufacturer(s) and authorize sale for purposes of remediation. DOE will also provide the manufacturer(s) or distributor(s) with an official letter authorizing the sale for purposes of remediation for the seller’s records. The routine violator must provide documentation of the installation of the compliant units to DOE once the remediation is completed. DOE will also follow up with the routine violator within 30 days of the date of the official letter authorizing the sale for purposes of remediation to determine the status of the remediation. If a routine violator successfully remediates, then DOE will issue a Notice indicating the entity is no longer a routine violator no more than 30 days after DOE received documentation demonstrating the remediation is completed.

DOE proposes to adopt the Working Group’s recommendation on

remediation and requests comment on this proposal.

#### I. Labeling

The Working Group recommended, with DOE abstaining, that the FTC initiate a rulemaking to adopt a simplified label for equipment rated below the regional standards and a separate simplified label for equipment rated at or above the regional standards. The Working Group found that the simplified labels, as drafted by AHRI (a manufacturer trade association), provide better alignment with the Working Group’s proposed regional enforcement plan. The simplified labels are posted in the docket for this rulemaking. See Example Voluntary Marking, No. 91, for sample label provided by a manufacturer during the negotiation.

The Working Group also recommended, and manufacturers agreed, to add a label to the central air conditioner condensing unit to indicate where the unit can legally be installed. The label would be near to, or part of, the nameplate and ruggedized to withstand elements. For units that do not meet the EER standards applicable to the Southwest region, the label would state, “Install Prohibited in Southwest.” For units that cannot be sold in the Southeast or Southwest because their SEER value is below the minimum required in those regions, the label would state, “Install Prohibited in Southwest and Southeast.” As a result, a contractor should never install for an end user in a region a unit that bears the label indicating that installation is prohibited in that region. The manufacturers agreed they would start using the label scheme by March 1, 2015. Additionally, AHRI stated it would require all manufacturers participating in the AHRI certification program to apply these labels to split-system and single package central air conditioners with rated combinations below the minimum standard(s) required in each region as of March 1, 2015.

#### J. Manufacturer Liability

In accordance with the Department’s regulations on prohibited acts, manufacturers may be fined for “knowingly sell[ing] a product to a distributor, contractor, or dealer with knowledge that the entity routinely violates any regional standard applicable to the product.” (42 U.S.C. 6302, 10 CFR 429.102(a)(10)) The Working Group had significant discussions on the scope of the term “product” as it relates to this prohibited act. The Department explained that it interprets the term “product” to include

<sup>8</sup> DOE’s enforcement Web site is: <http://energy.gov/gc/enforcement>.

all classes of central air conditioners and heat pumps found within 10 CFR 430.32(c). Ultimately, the Working Group could not come to consensus on whether the scope of any prohibition on sales could be limited to split-system air conditioners and single-package air conditioners instead of the Department's interpretation.<sup>9</sup>

EPCA defines a "central air conditioner" as a "product . . . which . . . is a heat pump or a cooling only unit" and refers to all central air conditioners as one "product." (42 U.S.C. 6291(21)) Therefore, to be consistent with EPCA, DOE interprets the term "product" to be inclusive of all central air conditioner and heat pump product classes listed in 10 CFR 430.32(c), meaning that manufacturers may be subject to civil penalties for sales to a routine violator of any unit within the central air conditioning product classes.

If a manufacturer sells a central air conditioner (including heat pumps) to a routine violator after a Notice of Finding of Routine Violation has been issued, then the manufacturer would be liable for civil penalties. The maximum fine a manufacturer is subject to is \$200 per unit sold to a routine violator.<sup>10</sup> (10 CFR 429.120)

The Working Group recommended that DOE provide manufacturers with 3 business days from the issuance of a Notice of Finding of Routine Violation to stop all sales of central air conditioners and heat pumps to the routine violator. During this time, manufacturers would not be liable for sales to a routine violator. DOE noted that, consistent with its penalty guidance,<sup>11</sup> it would consider the manufacturer's efforts to stop any sales in determining whether (or to what extent) to assess any civil penalties for sales to a routine violator after that three day window.

If the routine violator is appealing the finding, the Working Group recommended that manufacturers be allowed to continue to sell central air

conditioners and heat pumps to the routine violator during the pendency of the appeal. In order to provide parties notice that a routine violator is appealing the determination, the routine violator must file a Notice of Intent to Appeal with the Office of Hearings and Appeals within three business days after the issuance of the Notice of Finding of Routine Violator. If the finding is ultimately upheld, then the manufacturers could face civil penalties for sale of any products rated below the regional standards to the routine violator.

The Working Group also recommended that DOE provide an incentive for manufacturers to report routine violators. The Working Group recommended that if a manufacturer has knowledge of a routine violator, then the manufacturer can be held liable for all sales made after the date such knowledge is obtained by the manufacturer. However, if the manufacturer reports such knowledge to DOE within 15 days of receipt of the knowledge, then the Department will not hold the manufacturer liable for sales to the suspected routine violator made prior to notifying DOE.

On a separate note, nothing in this rulemaking impacts DOE's ability to determine that a manufacturer has manufactured and distributed a noncompliant central air conditioner in accordance with the existing procedures at 10 CFR 429.104–429.114.

Furthermore, those processes apply to DOE's determination of a manufacturer's manufacture and distribution of a central air conditioner that fails to meet a regional standard. With respect to liability, if DOE determines that a model of condensing unit fails to meet the applicable regional standard(s) when tested in a combination certified by the same manufacturer (*i.e.*, one entity manufactures both the indoor coil and the condensing unit), the condensing unit manufacturer will be responsible for this model's noncompliance. If DOE determines that a basic model fails to meet regional standards when tested in a combination certified by a manufacturer other than the outdoor unit manufacturer (*e.g.*, an independent coil manufacturer (ICM)), the certifying manufacturer will be responsible for this combination's noncompliance. The responsible manufacturer will be liable for distribution in commerce of

noncompliant units. The responsible manufacturer can minimize liability by demonstrating on a unit-by-unit basis that the noncompliant combination was installed in a region where it would meet the standards. For example, if a 14 SEER split-system air conditioner was tested by the Department and determined to be 13.5 SEER, then the manufacturer may minimize its liability by proving only a portion of sales for this combination was installed in the Southeast and Southwest. Manufacturers represented during the course of the negotiations that the bulk of sales are of minimally compliant units and so they expect most of the products that comply with the Southeast and Southwest regional standards would be sold in those regions. Given this, DOE will presume all units of a model rated as compliant with a regional standard but determined to be noncompliant with that standard were in fact installed illegally. Manufacturers can rebut this presumption by providing evidence that a portion of the units were instead installed in a location where they would have met the applicable energy conservation standards.

DOE proposes to adopt these clarifications of manufacturer liability as recommended by the Working Group and requests comment on this proposal.

#### *K. Additional Prohibited Acts for Distributors, Contractors and Dealers*

The Working Group had significant discussions on whether to include additional prohibited acts and ultimately could not come to consensus on whether to include additional prohibited acts.<sup>12</sup>

#### *L. Summary Table*

The Working Group developed a summary table for inclusion in this document. This summary table helps explain the responsibilities for the various parties impacted by this rulemaking and does not include any proposed requirements not previously described in today's NOPR. DOE has further added columns depicting the roles and responsibilities of those making sales through the internet to this chart.

<sup>12</sup> For details on the discussions regarding additional prohibited acts see the public meeting transcript for October 16, 2014. No. 87 pp. 3–87.

<sup>9</sup> For more details regarding this discussion, see the public meeting transcript for October 24, 2014, No. 88.

<sup>10</sup> As discussed in section II.B, a manufacturer-owned distributor is considered to be a manufacturer and thus is liable for all noncompliant sales.

<sup>11</sup> The DOE civil penalty guidance is available at <http://energy.gov/gc/enforcement> under "Enforcement Guidance."

TABLE II-2—CENTRAL AIR CONDITIONER REGIONAL ENFORCEMENT SUMMARY TABLE

	Manufacturer	Importer	Manufacturer owned distributor	Independent distributor	Contractors or dealer	Internet sellers to contractors or dealers	Internet sellers to end users
Subject to civil penalties based upon committing a prohibited act.	Yes .....	Yes .....	Yes .....	No .....	No .....	No .....	No.
Can be labeled a routine violator.	No .....	No .....	No .....	Yes .....	Yes .....	Yes .....	Yes.
Considered a manufacturer under definition.	Yes .....	Yes .....	Yes .....	No .....	No .....	No .....	No.
Can remediate to get off routine violator list.	N/A .....	N/A .....	N/A .....	Yes .....	Yes .....	Yes .....	Yes.
Right to appeal finding of Routine Violation.	N/A .....	N/A .....	N/A .....	Yes .....	Yes .....	Yes .....	Yes.
Record retention Record retention start date.	60 months ..... 30 days after Final Rule.	60 months ..... 30 days after Final Rule.	60 months ..... 30 days after Final Rule.	54 months ..... Nov. 30, 2015 (DOE proposes July 1, 2016).	48 months ..... 30 days after Final Rule.	54 months ..... Nov. 30, 2015 (DOE proposes July 1, 2016).	48 months. 30 days after Final Rule.

*M. Impact of Regional Enforcement Proposal on National Impacts Analysis*

In the June 2011 DFR, DOE considered the economic impacts of amending the standards for central air conditioners and heat pumps. Included in the economic analyses was National Impacts Analysis (NIA) which estimated the energy savings and the net present value (NPV) of those energy savings that consumers would receive from the new energy efficiency standards of central air conditioners (CAC) and heat pumps (HP). This NPV was the estimated total value of future operating-cost savings during the analysis period (2015–2045),

minus the estimated increased product costs (including installation), discounted to 2011. However, DOE did not account for the financial burden on distributors and installers related to record retention requirements necessary to demonstrate compliance with the regional standards in the June 2011 DFR.

From the enforcement plan proposed in this rulemaking, DOE estimated that manufacturers, distributors, and contractors face some financial burden primarily related to the proposed record retention requirements. DOE assumed that the proposed records retention requirements would cause

manufacturers, distributors, and contractors additional labor costs from collecting and filing such records. These labor costs would be an annual burden to the market participants. At the Working Group public meetings, distributors stated that the proposed records retention requirements would cause distributors to update their enterprise resource planning (ERP) systems to track the necessary information. DOE considered this update to the ERP systems an initial conversion cost. The cost of retaining records on each market participant is summarized in Table II-3.

TABLE II-3—COST OF PROPOSED RECORDS RETENTION DUE TO REGIONAL STANDARDS ENFORCEMENT FOR CENTRAL AIR CONDITIONER AND HEAT PUMP MARKET PARTICIPANTS

	Manufacturers	Distributors	Contractors
Estimated Total Annual Burden Hours .....	574,167	287,083	359,949
Estimated Total Annual Cost .....	\$4,162,708	\$2,081,354	\$2,609,631
Estimated Initial Conversion Cost .....		\$46,340,000	

In this NOPR, DOE re-evaluated the NIA to include the cost of the proposed record retention requirements to manufacturer, distributors, and contractors. DOE conservatively estimated the consumer benefits by assuming that the annual cost from the proposed record retention requirements would be passed on to consumers and thus decreasing the NPV. However, DOE assumed that distributors would

entirely bear the initial up-front cost of updating their ERP systems, causing no impact to the NPV for that portion of the impacts. The updated NPV results are summarized in Table II-4. The impact of including the proposed record retention requirement costs on the NPV is estimated to reduce the benefit by \$0.30 billion at a 3% discount rate and \$0.16 billion at a 7% discount rate. The costs of the record retention

requirements are estimated to have no impact on national energy savings. Because the record retention requirement costs have only a small impact on NPV, ranging from a minimum of 2-percent at a discount rate of 3% and a maximum of 4-percent at a discount rate of 7%, and no impact on national energy savings, DOE's economic justification of the energy conservation standards chosen and

published in the 2011 DFR would be unaffected by the quantification and

inclusion of enforcement plan costs. Consequently, DOE is reaffirming the

2011 DFR energy conservation standards based on this analysis.

TABLE II-4—NATIONAL IMPACTS ANALYSIS RESULTS WITH COSTS FROM PROPOSED REGIONAL ENFORCEMENT PLAN FOR CENTRAL AIR CONDITIONERS AND HEAT PUMPS

	National impacts estimated from 2011 DFR for the chosen energy conservation standards	National impacts estimated from 2011 DFR for the chosen energy conservation standards with enforcement plan costs
National Energy Savings (quads) .....	3.20 to 4.22 .....	3.20 to 4.22.
NPV of Consumer Benefits at 3% discount rate (2009\$ billion) .....	14.73 to 17.55 .....	14.43 to 17.25.
NPV of Consumer Benefits at 7% discount rate (2009\$ billion) .....	3.93 to 4.21 .....	3.77 to 4.05.

DOE requests comment on its assumptions for the financial burden from the proposed record retention requirements and the resulting impact on NPV at the amended standard level.

**III. Procedural Issues and Regulatory Review**

*A. Review Under Executive Order 12866*

The Office of Management and Budget (OMB) has determined that today’s regulatory action is not a “significant regulatory action” under section 3(f) of Executive Order 12866, “Regulatory Planning and Review,” 58 FR 51735 (Oct. 4, 1993). Accordingly, this action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs (OIRA) in the OMB.

*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 (Aug. 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 DOE

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 reviewed the proposed requirements under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. As discussed in more detail below, DOE found that the entities impacted by the proposals in this NOPR (central air conditioning manufacturers, distributors, and contractors) could potentially experience a financial burden associated with these new requirements. Additionally, the majority of central air conditioning contractors and distributors are small business as defined by the Small Business Administration (SBA). DOE determined that it could not certify that the proposed rule, if promulgated, would not have a significant effect on a substantial number of small entities. Therefore, DOE has prepared an IRFA for this rulemaking. The IRFA describes potential impacts on small businesses associated with the proposed requirements.

DOE has transmitted a copy of this IRFA to the Chief Counsel for Advocacy of the Small Business Administration for review.

**1. Description and Estimated Number of Small Entities Regulated**

The SBA has set a size threshold for manufacturers, distributors, and

contractors of central air conditioning products that define those entities classified as “small businesses.” DOE used SBA’s size standards to determine whether any small businesses would be impacted by this NOPR. 65 FR 30836, 30849 (May 15, 2000), as amended at 65 FR 53533, 53545 (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/sites/default/files/files/Size\\_Standards\\_Table.pdf](http://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf). The size standards and NAICS codes relevant to this rulemaking are listed in Table III-1.

To estimate the number of companies that could be small business manufacturers, distributors, and contractors of equipment covered by this rulemaking, DOE conducted a market survey using available public information. DOE’s research involved examining industry trade association Web sites, public databases, and individual company Web sites. DOE also solicited information from industry representatives such as AHRI, HARDI, ACCA, and PHCC. DOE screened out companies that do not offer products covered by this rulemaking or are not impacted by this rulemaking, do not meet the definition of a “small business,” or are foreign owned and operated.

TABLE III-1—SMALL BUSINESS CLASSIFICATION SUMMARY TABLE

Impacted entity	NAICS Code	NAICS Definition of small business	Total number of impacted businesses	Total number of small businesses
Contractors <sup>13</sup> .....	238220	\$15 million or less in revenue .....	<sup>14</sup> 22,207	21,763
Distributors .....	423730	100 or less employees .....	<sup>15</sup> 2,317	2,000
Manufacturers .....	333415	750 or less employees .....	29	12

## 2. Description and Estimate of Regional CAC Requirements

As discussed in the preamble of this proposed rule, the Working Group recommended an enforcement plan for central air conditioners that would include public awareness efforts, records retention requirements, and voluntary efforts like remediation and labeling. The Working Group also made explicit the terms “violation” and “routine violator.” While most of the proposals in this rulemaking will not have an impact on manufacturers, distributors, and contractors that adhere to the central air conditioner regional standards, the records retention requirements may result in some financial burden.

The Working Group worked to negotiate records retention requirements that would have limited financial burden on the impacted parties—manufacturers, distributors, and contractors. The Working Group made a few general provisions regarding the records retention requirements to help mitigate some of the financial burden. The Working Group tried to reduce the impact of the records retention requirements by staggering the length of time for which records must be maintained. Manufacturers, the entities understood to have the most resources and sophistication, would have to retain records for the longest time period (60 months); distributors would have to retain records for less time (54 months); and contractors would have to retain records for the least amount of time (48 months). Additionally, in the case that records are requested, the Working Group recommended that the party from whom the records were requested should have an extended period of 30 days to produce such records. The Working Group also explicitly recommended that manufacturers, distributors, and contractors should not have to create new forms to retain such records, and that the records would not have to be retained electronically.

DOE expects central air conditioning manufacturers to be the least burdened entity of all the affected entities by the record retention requirements proposed in this document. Manufacturers have

the fewest record retention requirements. Many of the record retention requirements being proposed in this rulemaking expand on DOE’s existing certification requirements and thus should only slightly increase the recordkeeping burden. DOE does not expect manufacturers to incur any capital expenditures as a result of the proposals since the rulemaking does not impose any product-specific requirements that would require changes to existing plants, facilities, product specifications, or test procedures. Rather, this proposed rule imposes record retention requirements, which may have a slight impact on labor costs. DOE included certification and enforcement requirements associated with the regional standards for central air conditioners in the June 27, 2011 energy conservation standards final rule for central air conditioners and heat pumps.<sup>16</sup>

Based on comments at the Working Group meetings, DOE expects the record retention requirements to cause distributors the most financial burden. Distributors track equipment and sales in ERP systems and are expected to incorporate the proposed recordkeeping requirements into their ERP systems. HARDI expected that 40% of distributors currently retain the proposed records and will not need to update their ERP systems. HARDI expected 50% of distributors would need to make some changes to their ERP systems and 10% of distributors would need to make major changes to their ERP system. HARDI expected that small distributors are more likely to require major changes to their ERP systems because typically small distributors have older and more inflexible systems. HARDI estimated that changes to ERP systems to accommodate the record retention proposals may cost \$20,000 to \$100,000 depending on the type of change needed to the system. According to HARDI, the entire central air conditioner distribution industry would incur an initial conversion cost of around \$46,340,000 to modify the ERP systems. To help alleviate some of the financial burden, the Working Group recommended that DOE not require distributors to retain records for sales of central air conditioner indoor coils or air handlers, which were identified as difficult components to track for the distributors. Additionally, the Working

Group recommended that distributors should not have to start retaining records until November 30, 2015, at the earliest, which DOE is proposing in this NOPR to delay until July 1, 2016. Finally, as previously stated, DOE is not proposing to require records to be retained in electronic form and is not mandating that distributors make changes in their ERP systems to retain the information proposed in this document.

DOE believes central air conditioning contractors will experience a minimal recordkeeping burden. DOE is proposing to limit the records retention requirements on contractors to installations in the Southeast and Southwest. For all central air conditioner installations in those regions, contractors would have to keep a record of installation location, date of installation, and purchaser. Contractors would have to keep records specific to the type of units (outdoor condensing unit, indoor coil or air handler, or single-package air conditioner) installed as well. A contractor trade association remarked at the public meetings that most contractors already retain such records and the record retention requirements would have limited financial impacts. (ACCA, Public Meeting Transcript, No. 77 at 12–13) DOE estimates that any additional expense caused by the records requirements proposed in this rulemaking would be related to the time required to file these records. DOE estimates that contractors may spend an additional 10 minutes per installation to comply with the proposed records retention requirements.

## 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 proposed rule being considered today.

## 4. Significant Alternatives to the Rule

DOE could mitigate the potential impacts on small manufacturers, distributors, or contractors by reducing or eliminating the proposed types of information to be maintained. However, these requirements were negotiated as an acceptable compromise among the participants in the Working Group. While there may be some financial burden, the Working Group unanimously agreed to the record retention requirements for manufacturers, distributors, and contractors. Furthermore, DOE believes that the record retention requirements are the least burdensome requirements possible to provide DOE sufficient

<sup>13</sup> The number of impacted contractors and small contractors is based on the number of contractors installing in the Southwest and Southeast regions.

<sup>14</sup> Chapter 18: Regional Standards Impacts on Market Participants. Technical Support Document: Energy Efficiency Program for Consumer Products: Residential Central Air Conditioners, Heat Pumps, and Furnaces. <http://www.regulations.gov/#!documentDetail;D=EERE-2011-BT-STD-0011-0012>.

<sup>15</sup> “Statistics of U.S. Businesses: 2008; NAICS 423730—HVAC equip. merchant wholesalers United States.” U.S. Census Bureau. <http://www.census.gov/epcd/susb/2008/us/us423730.htm>.

<sup>16</sup> Chapter 12: Manufacturer Impact Analysis. Technical Support Document: Energy Efficiency Program for Consumer Products: Residential Central Air Conditioners, Heat Pumps, and Furnaces. <http://www.regulations.gov/#!documentDetail;D=EERE-2011-BT-STD-0011-0012>.

information to determine whether manufacturers, distributors and contractors are complying with regulatory requirements. Thus, DOE rejected the alternative of reducing or eliminating the record retention requirements and is proposing these record retention requirements for the aforementioned parties. DOE continues to seek input from businesses that would be affected by this rulemaking and will consider comments received in the development of any final rule.

### C. Review Under the Paperwork Reduction Act of 1995

#### 1. Description of the Requirements

In this document, DOE proposed record retention requirements for central air conditioner manufacturers, distributors, and contractors. DOE is requesting approval for a new information collection associated with these requirements. These requirements were developed as part of a negotiated rulemaking effort for regional central air conditioner enforcement. These requirements are described in detail in section II.F.

#### 2. Information Collection Request Title: Enforcement of Regional Standards.

##### 3. Type of Request: New.

4. Purpose: Generally, DOE is proposing that manufacturers retain records of the model number and serial number for all split system and single-package air conditioners, when these units were manufactured, when these units were sold, and to whom the units were sold. DOE proposed that manufacturers would retain these records for 60 months. DOE proposed that distributors would retain the manufacturer, model number and serial number for all their split system outdoor condensing units and single-package units. In addition, distributors must keep track of when and from whom each of these types of units was purchased, and when and to whom each of these units was sold. Distributors would retain these records for 54 months. Contractors must retain records of all split system and single-package air conditioner installations in the Southeast and Southwest region. These records would be required to include what was installed (e.g. manufacturer and model number), date of sale, and the party to whom the unit was sold. Contractors would retain these records for 48 months.

This proposed rule primarily requires central air conditioner manufacturers, distributors, and contractors to retain records for CAC installations. If DOE has a "reasonable belief" that an

installation in violation of regional standards occurred, then it may request records specific to an ongoing investigation from the relevant manufacturer(s), distributor(s), and/or contractor(s). The Working Group recommended that DOE determine if it has a "reasonable belief" of a CAC violation based on the factors described in section II.F. Once DOE establishes reasonable belief and requests records from the relevant parties, then the entity from whom DOE requested records has 30 days to produce those records. The party from whom DOE requested records may ask for additional time with a written explanation of the circumstances.

The following are DOE estimates of the total annual recordkeeping burden imposed on manufacturers, distributors, and contractors of central air conditioners. These estimates take into account the time necessary collect, organized and store the record required by this notice of proposed rulemaking.

#### Manufacturers

Estimated Number of Impacted Manufacturers: 29.

Estimated Time per Record: 10 minutes.

Estimated Total Annual Burden Hours: 574,167 hours.

Estimated Total Annual Cost to the Manufacturers: \$4,162,708.

#### Distributors

Estimated Number of Impacted Distributors: 2,317.

Estimated Time per Record: 5 minutes.

Estimated Total Annual Burden Hours: 287,083 hours.

Estimated Total Annual Cost to the Distributors: \$2,081,354.

#### Contractors

Estimated Number of Impacted Contractors: 22,207.

Estimated Time per Record: 10 minutes per installation.

Estimated Total Annual Burden Hours: 359,949 hours.

Estimated Total Annual Cost to the Contractors: \$2,609,631.

5. Annual Estimated Number of Respondents: 24,553.

6. Annual Estimated Number of Total Responses: 24,553.

7. Annual Estimated Number of Burden Hours: 1,221,199.

8. Annual Estimated Reporting and Recordkeeping Cost Burden: \$8,853,693.

### D. Review Under the National Environmental Policy Act of 1969

DOE has determined that this proposed rule falls into a class of

actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and DOE's implementing regulations at 10 CFR part 1021. Specifically, this proposed rule would adopt changes to the manner in which regional standards for central air conditioners are enforced, which would not affect the amount, quality or distribution of energy usage, and, therefore, would not result in any environmental impacts. Thus, this rulemaking is covered by Categorical Exclusion A6 under 10 CFR part 1021, subpart D. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

### E. Review Under Executive Order 13132

Executive Order 13132, "Federalism," 64 FR 43255 (August 4, 1999) imposes certain requirements on 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 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 today's 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(d)) No further action is required by Executive Order 13132.

### F. Review Under Executive Order 12988

Regarding the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (Feb. 7, 1996), 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. 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 sections 3(a) and 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, the 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 small governments. On March 18, 1997, DOE published a statement of policy on its process for

intergovernmental consultation under UMRA. 62 FR 12820; also available at <http://energy.gov/gc/office-general-counsel>. DOE examined this proposed rule according to UMRA and its statement of policy and determined that the rule contains neither an intergovernmental mandate, nor a mandate that may result in the expenditure of \$100 million or more in any year, so these requirements do not apply.

#### *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 proposed 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*

DOE has determined, under Executive Order 12630, "Governmental Actions and Interference with Constitutionally Protected Property Rights" 53 FR 8859 (March 18, 1988), 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 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 agencies to review most disseminations of information to the public under 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 proposed rule 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 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 promulgated 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.

Today's proposal to adopt a regional standards enforcement plan for central air conditioners is not a significant regulatory action under Executive Order 12866. Moreover, it would not have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as a significant energy action by the Administrator of OIRA. Therefore, it is not a significant energy action, and, accordingly, DOE has not prepared a Statement of Energy Effects.

#### *L. Review Under Section 32 of the Federal Energy Administration Act of 1974*

Under section 301 of the Department of Energy Organization Act (Pub. L. 95-91; 42 U.S.C. 7101), DOE must comply with section 32 of the Federal Energy Administration Act of 1974, as amended by the Federal Energy Administration Authorization Act of 1977. (15 U.S.C. 788; FEAA) Section 32 essentially provides in relevant part that, where a proposed rule authorizes or requires use of commercial standards, the notice of proposed rulemaking must inform the public of the use and background of such standards. In addition, section 32(c) requires DOE to consult with the Attorney General and the Chairman of the Federal Trade Commission (FTC) concerning the impact of the commercial or industry standards on competition. Today's proposed rule does not require use of any commercial standards.

## **IV. Public Participation**

### *A. Submission of Comments*

DOE will accept comments, data, and information regarding this proposed rule no later than the date provided in the **DATES** section at the beginning of this proposed rule. Interested parties may submit comments using any of the methods described in the **ADDRESSES** section at the beginning of this NOPR.

*Submitting comments via regulations.gov.* The regulations.gov Web page will require you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to 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 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.

DOE processes submissions made through 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 regulations.gov provides after you have successfully uploaded your comment.

*Submitting comments via email, hand delivery, or mail.* Comments and documents submitted via email, hand delivery, or mail also will be posted to regulations.gov. If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information on a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover

letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. If you submit via mail or hand delivery, please provide all items on a CD, if feasible. It is not necessary to submit printed copies. No facsimiles (faxes) will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, written in English and free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

*Campaign form letters.* Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

*Confidential Business Information.* According to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email, postal mail, or hand delivery two well-marked copies: One copy of the document marked confidential including all the information believed to be confidential, and one copy of the document marked non-confidential with the information believed to be confidential deleted. Submit these documents via email or on a CD, if feasible. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include: (1) A description of the items; (2) whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known by or available from other sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person which would result from public disclosure; (6) when such information might lose its confidential character due to the passage of time; and (7) why disclosure of the information would be contrary to the public interest.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

#### *B. 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 comments on the four clarifications to the regional standards discussed in section II.A.

2. DOE requests comments on its proposed definitions for contractor, dealer, and installation of a central air conditioner.

3. DOE requests comments on its proposed records retention requirements for manufacturers, distributors, and contractors. The Department is specifically interested in any financial burden imposed but these proposed requirements.

4. DOE requests comments on the threshold for records request and the proposed timeframe for responding to such requests.

5. DOE requests comments on the proposed violations for distributors, contractors, and dealers.

6. DOE requests comments on the factors used to determine if a violation is routine.

7. DOE requests comments on the proposed concept for remediation.

8. DOE requests comments on the proposed scheme for manufacturer liability.

#### **V. Approval of the Office of the Secretary**

The Secretary of Energy has approved publication of this proposed rule.

#### **List of Subjects**

##### *10 CFR Part 429*

Administrative practice and procedure, Confidential business information, Energy conservation, Reporting and recordkeeping requirements.

##### *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 November 12, 2015.

**Kathleen B. Hogan,**

*Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.*

For the reasons stated in the preamble, DOE is proposing to amend parts 429 and 430 of Chapter II, subchapter D, of Title 10, Code of Federal Regulations as set forth below:

**PART 429—CERTIFICATION, COMPLIANCE AND ENFORCEMENT FOR CONSUMER PRODUCTS AND COMMERCIAL AND INDUSTRIAL EQUIPMENT**

■ 1. The authority citation for part 429 continues to read as follows:

**Authority:** 42 U.S.C. 6291–6317.

■ 2. Amend § 429.102 to add paragraph (c) to read as follows:

**§ 429.102 Prohibited acts subjecting persons to enforcement action.**

\* \* \* \* \*

(c) Violations of regional standards:

(1) It is a violation for a distributor to knowingly sell a product to a contractor or dealer with knowledge that the entity will sell and/or install the product in violation of any regional standard applicable to the product.

(2) It is a violation for a distributor to knowingly sell a product to a contractor or dealer with knowledge that the entity routinely violates any regional standard applicable to the product.

(3) It is a violation for a contractor or dealer to knowingly sell to and/or install for an end user a central air conditioner subject to regional standards with the knowledge that such product will be installed in violation of any regional standard applicable to the product.

(4) A “product installed in violation” includes:

(i) A complete central air conditioning system that is not certified as a complete system that meets the applicable standard. Combinations that were previously validly certified may be installed after the manufacturer has discontinued the combination, provided the combination meets the currently applicable standard.

(ii) An outdoor unit with no match (*i.e.*, that is not offered for sale with an indoor unit) that is not certified as part of a combination that meets the applicable standard.

(iii) An outdoor unit that is part of a certified combination rated less than the standard applicable in the region in which it is installed.

■ 3. Add an undesignated center heading and § 429.140 in subpart C to read as follows:

**Regional Standards Enforcement Procedures**

**§ 429.140 Regional standards enforcement procedures.**

Sections 429.140 through 429.158 provide enforcement procedures specific to the violations enumerated in § 429.102(c). These provisions explain the responsibilities of manufacturers, private labelers, distributors, contractors and dealers with respect to central air conditioners subject to regional standards; however, these provisions do not limit the responsibilities of parties otherwise subject to 10 CFR parts 429 and 430.

■ 4. Add § 429.142 to subpart C to read as follows:

**§ 429.142 Records retention.**

(a) *Record retention.* The following records shall be maintained by the specified entities.

(1) *Contractors and dealers.*

(i) For installations of a central air conditioner in the states of Alabama, Arizona, Arkansas, California, Delaware, Florida, Georgia, Hawaii, Kentucky, Louisiana, Maryland, Mississippi, Nevada, New Mexico, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, or Virginia or in the District of Columbia, contractors and dealers must retain the following records for at least 48 months from the date of installation.

*A. For split-system central air conditioner outdoor units:* The manufacturer name, model number, serial number, location of installation (including street address, city, state, and zip code), date of installation, and party from whom the unit was purchased (including person’s name, full address, and phone number); and

*B. For split-system central air conditioner indoor units:* The manufacturer name, model number, location of installation (including street address, city, state, and zip code), date of installation, and party from whom the unit was purchased (including person’s name, full address, and phone number).

(ii) For installations of a central air conditioner in the states of Arizona, California, Nevada, and New Mexico, contractors and dealers must retain the following, additional records for at least 48 months from the date of installation.

*A. For single-package central air conditioners:* The manufacturer name, model number, serial number, location of installation (including street address, city, state, and zip code), date of installation, and party from whom the

unit was purchased (including person’s name, full address, and phone number).

B. [Reserved]

(2) *Distributors.* Beginning November 30, 2015, all distributors must retain the following records for no less than 54 months from the date of sale.

(i) *For split-system central air conditioner outdoor units:* The outdoor unit manufacturer, outdoor unit model number, outdoor unit serial number, date unit was purchased from manufacturer, party from whom the unit was purchased (including company or individual’s name, full address, and phone number), date unit was sold to contractor or dealer, party to whom the unit was sold (including company or individual’s name, full address, and phone number), and, if delivered, delivery address.

(ii) *For single-package air conditioners:* The manufacturer, model number, serial number, date unit was purchased from manufacturer, party from whom the unit was purchased (including company or individual’s name, full address, and phone number), date unit was sold to a contractor or dealer, party to whom the unit was sold (including company or individual’s name, full address, and phone number), and, if delivered, delivery address.

(3) *Manufacturers and Private Labelers.* All manufacturers and private labelers must retain the following records for no less than 60 months from the date of sale.

(i) *For split-system central air conditioner outdoor units:* The model number, serial number, date of manufacture, date of sale, and party to whom the unit was sold (including person’s name, full address, and phone number);

(ii) *For split-system central air conditioner indoor units:* The model number, date of manufacture, date of sale, and party to whom the unit was sold (including person’s name, full address, and phone number); and

(iii) *For single-package central air conditioners:* The model number, serial number, date of manufacture, date of sale, and party to whom the unit was sold (including person’s name, full address, and phone number).

■ 5. Add § 429.144 to subpart C to read as follows:

**§ 429.144 Records request.**

(a) DOE must have reasonable belief a violation has occurred to request records specific to an on-going investigation of a violation of central air conditioner regional standards.

(b) Upon request, the manufacturer, private labeler, distributor, dealer, or contractor must provide to DOE the

relevant records within 30 calendar days of the request.

(1) DOE, at its discretion, may grant additional time for records production if the party from whom records have been requested has made a good faith effort to produce records.

(2) To request additional time, the party from whom records have been requested must produce all records gathered in 30 days and provide to DOE a written explanation of the need for additional time with the requested date for completing the production of records.

■ 6. Add § 429.146 to subpart C to read as follows:

**§ 429.146 Notice of violation.**

(a) If DOE determines a party has committed a violation of regional standards, DOE will issue a Notice of Violation advising that party of DOE's determination.

(b) If, however, DOE determines a noncompliant installation occurred in only one instance, the noncompliant installation is remediated prior to DOE issuing a Notice of Violation, and the party has no history of prior violations, DOE will not issue such notice.

(c) If DOE does not find a violation of regional standards, DOE will notify the party under investigation.

■ 7. Add § 429.148 to subpart C to read as follows:

**§ 429.148 Routine violator.**

(a) DOE will consider, *inter alia*, the following factors in determining if a person is a routine violator: Number of violations in current and past cases, length of time over which violations occurred, ratio of compliant to noncompliant installations or sales, percentage of employees committing violations, evidence of intent, evidence of training or education provided, and subsequent remedial actions.

(b) In the event that DOE determines a person to be a routine violator, DOE will issue a Notice of Finding of Routine Violation.

(c) In making a finding of Routine Violation, DOE will consider whether the Routine Violation was limited to a specific location. If DOE finds that the routine violation was so limited, DOE may, in its discretion, in the Notice of Finding of Routine Violation limit the prohibition on manufacturer and/or private labeler sales to a particular contractor or distribution location.

■ 8. Add § 429.150 to subpart C to read as follows:

**§ 429.150 Appealing a finding of routine violation.**

(a) Any person found to be a routine violator may, within 30 calendar days

after the date of Notice of Finding of Routine Violation, request an administrative appeal to the Office of Hearings and Appeals.

(b) The appeal must present information rebutting the finding of violation(s).

(c) The Office of Hearings and Appeal will issue a decision on the appeal within 45 days of receipt of the appeal.

(d) A routine violator must file a Notice of Intent to Appeal with the Office of Hearings and Appeals within three business days of the date of the Notice of Finding of Routine Violation, serving a copy on the GC Office of Enforcement to retain the ability to buy central air conditioners during the pendency of the appeal.

■ 9. Add § 429.152 to subpart C to read as follows:

**§ 429.152 Removal of finding of "routine violator".**

(a) A routine violator may be removed from DOE's list of routine violators through completion of remediation in accordance with the requirements in § 429.154 of this subpart.

(b) A routine violator that wants to remediate must contact DOE Office of Enforcement via the point of contact listed in the Notice of Finding of Routine Violation and identify the distributor(s), manufacturer(s), or private labeler(s) from whom it wishes to buy compliant replacement product.

(c) DOE will contact the distributor(s), manufacturer(s), or private labeler(s) and authorize sale of central air conditioner units to the routine violator for purposes of remediation within 3 business days of receipt of the request for remediation. DOE will provide the manufacturer(s), distributor(s), and/or private labeler(s) with an official letter authorizing the sale of units for purposes of remediation.

(d) DOE will contact routine violators that requested units for remediation within 30 days of sending the official letter to the manufacturer(s), distributor(s), and/or private labeler(s) to determine the status of the remediation.

(e) If remediation is successfully completed, DOE will issue a Notice indicating a person is no longer considered to be a routine violator. The Notice will be issued no more than 30 days after DOE has received documentation demonstrating that remediation is complete.

■ 10. Add § 429.154 to subpart C to read as follows:

**§ 429.154 Remediation.**

(a) Any party found to be in violation of the regional standards may remediate

by replacing the noncompliant unit at cost to the violator; the end user cannot be charged for any costs of remediation.

(1) If a violator is unable to replace all noncompliant installations, then the Department may, in its discretion, consider the remediation complete if the violator satisfactorily demonstrates to the Department that it attempted to replace all noncompliant installations.

(2) The Department will scrutinize any "failed" attempts at replacement to ensure that there was indeed a good faith effort to complete remediation of the noncompliant unit.

(b) The violator must provide to DOE the serial number of any outdoor unit and/or indoor unit installed not in compliance with the applicable regional standard as well as the serial number(s) of the replacement unit(s) to be checked by the Department against warranty and other replacement claims.

(c) If the remediation is approved by the Department, then DOE will issue a Notice of Remediation and the violation will not count towards a finding of "routine violator".

■ 11. Add § 429.156 to subpart C to read as follows:

**§ 429.156 Manufacturer and private labeler liability.**

(a) In accordance with § 429.102(c), manufacturers and private labelers are prohibited from selling central air conditioners and heat pumps to a routine violator.

(1) To avoid financial penalties, manufacturers and/or private labelers must cease sales to a routine violator within 3 business days from the date of issuance of a Notice of Finding of Routine Violation.

(2) If a Routine Violator files a Notice of Intent to Appeal pursuant to § 429.150, then a manufacturer and/or private labeler may assume the risk of selling central air conditioners to the Routine Violator during the pendency of the appeal.

(3) If the appeal of the Finding of Routine Violator is denied, then the manufacturer and/or private labeler may be fined in accordance with § 429.120, for sale of any units to a routine violator during the pendency of the appeal that do not meet the applicable regional standard.

(b) If a manufacturer and/or private labeler has knowledge of routine violation, then the manufacturer can be held liable for all sales that occurred after the date the manufacturer had knowledge of the routine violation. However, if the manufacturer and/or private labeler reports its suspicion of a routine violation to DOE within 15 days of receipt of such knowledge, then it

will not be liable for product sold to the suspected routine violator prior to reporting the routine violation to DOE.  
 ■ 12. Add § 429.158 to subpart C to read as follows:

**§ 429.158 Product determined noncompliant with regional standards.**

(a) If DOE determines a model of outdoor unit fails to meet the applicable regional standard(s) when tested in a combination certified by the same manufacturer, then the outdoor unit basic model will be deemed noncompliant with the regional standard(s). In accordance with § 429.102(c), the outdoor unit manufacturer and/or private labeler is liable for distribution of noncompliant units in commerce.

(b) If DOE determines a combination fails to meet the applicable regional standard(s) when tested in a combination certified by a manufacturer other than the outdoor unit manufacturer (e.g., ICM), then that combination is deemed noncompliant with the regional standard(s). In accordance with § 429.102(c), the certifying manufacturer is liable for distribution of noncompliant units in commerce.

(c) All such units manufactured and distributed in commerce are presumed to have been installed in a region where they would not comply with the applicable energy conservation standard; however, a manufacturer and/

or private labeler may demonstrate through installer records that individual units were installed in a region where the unit is compliant with the applicable standards.

**PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS**

■ 13. The authority citation for part 430 continues to read as follows:

**Authority:** 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

■ 14. Amend § 430.2 by adding, in alphabetical order, new definitions for “contractor,” “dealer,” “distributor,” and “installation of a central air conditioner” to read as follows:

**§ 430.2 Definitions.**

*Contractor* means a person (other than the manufacturer or distributor) who sells to and/or installs for an end user a central air conditioner subject to regional standards. The term “end user” means the entity that purchases or selects for purchase the central air conditioner. Some examples of typical “end users” are homeowners, building owners, building managers, and property developers.

*Dealer* means a type of contractor, generally with a relationship with one or more specific manufacturers.

*Distributor* means a person (other than a manufacturer or retailer) to whom a consumer appliance product is delivered or sold for purposes of distribution in commerce.

*Installation of a central air conditioner* means the connection of the refrigerant lines and/or electrical systems to make the central air conditioner operational.

■ 15. Amend § 430.32, by revising paragraph (c) to read as follows:

**§ 430.32 Energy and water conservation standards and their compliance dates.**

(c) *Central air conditioners and heat pumps.* The energy conservation standards defined in terms of the heating seasonal performance factor are based on Region IV, the minimum standardized design heating requirement, and the provisions of 10 CFR 429.16 of this chapter.

(1) Each basic model of single-package central air conditioners and central air conditioning heat pumps and each individual combination of split-system central air conditioners and central air conditioning heat pumps manufactured on or after January 1, 2015, shall have a Seasonal Energy Efficiency Ratio and Heating Seasonal Performance Factor not less than:

Product class	Seasonal energy efficiency ratio (SEER)	Heating seasonal performance factor (HSPF)
(i) Split-system air conditioners	13	.....
(ii) Split-system heat pumps	14	8.2
(iii) Single-package air conditioners	14	.....
(iv) Single-package heat pumps	14	8.0
(v) Small-duct, high-velocity systems	12	7.2
(vi)(A) Space-constrained products—air conditioners	12	.....
(vi)(B) Space-constrained products—heat pumps	12	7.4

(2) In addition to meeting the applicable requirements in paragraph (c)(1) of this section, products in product class (i) of that paragraph (i.e., split-system air conditioners) that are installed on or after January 1, 2015, in the States of Alabama, Arkansas, Delaware, Florida, Georgia, Hawaii, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, or Virginia, or in the District of Columbia, shall have a Seasonal Energy Efficiency Ratio not less than 14. The least efficient combination of each basic model must comply with this standard.

(3) In addition to meeting the applicable requirements in paragraph (c)(1) of this section, split-system air conditioners that are installed on or after January 1, 2015, in the States of Alabama, Arkansas, Delaware, Florida, Georgia, Hawaii, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, or Virginia, or in the District of Columbia, must have a Seasonal Energy Efficiency Ratio of 14 or higher. Any outdoor unit model that has a certified combination with a rating below 14 SEER cannot be installed in these States. An outdoor unit model certified below

14 SEER by the outdoor unit manufacturer cannot be installed in this region even with an independent coil manufacturer's indoor unit that may have a certified rating at or above 14 SEER.

(4) In addition to meeting the applicable requirements in paragraph (c)(1) of this section, split-system air conditioners and single-package air conditioners that are installed on or after January 1, 2015, in the States of Arizona, California, Nevada, or New Mexico must have a Seasonal Energy Efficiency Ratio of 14 or higher and have an Energy Efficiency Ratio (at a

standard rating of 95 °F dry bulb outdoor temperature) not less than the following:

Product class	Energy efficiency ratio (EER)
(i) Split-system rated cooling capacity less than 45,000 Btu/hr .....	12.2
(ii) Split-system rated cooling capacity equal to or greater than 45,000 Btu/hr .....	11.7
(iii) Single-package systems	11.0

Any outdoor unit model that has a certified combination with a rating below 14 SEER or the applicable EER cannot be installed in this region. An outdoor unit model certified below 14 SEER or the applicable EER by the outdoor unit manufacturer cannot be installed in this region even with an independent coil manufacturer's indoor unit that may have a certified rating at or above 14 SEER and the applicable EER.

(5) Each basic model of single-package central air conditioners and central air conditioning heat pumps and each individual combination of split-system central air conditioners and central air conditioning heat pumps manufactured on or after January 1, 2015, shall have an average off mode electrical power consumption not more than the following:

Product class	Average off mode power consumption P <sub>W,OFF</sub> (watts)
(i) Split-system air conditioners .....	30
(ii) Split-system heat pumps	33
(iii) Single-package air conditioners .....	30
(iv) Single-package heat pumps .....	33
(v) Small-duct, high-velocity systems .....	30
(vi) Space-constrained air conditioners .....	30
(vii) Space-constrained heat pumps .....	33

\* \* \* \* \*

[FR Doc. 2015-29435 Filed 11-18-15; 8:45 am]

BILLING CODE 6450-01-P

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

[Docket No. FAA-2015-5914; Directorate Identifier 2014-SW-056-AD]

RIN 2120-AA64

**Airworthiness Directives; Airbus Helicopters (Formerly Eurocopter France) Helicopters**

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to adopt a new airworthiness directive (AD) for Airbus Helicopters Model SA341G and SA342J helicopters. This proposed AD would require repetitive inspections of a certain part-numbered main rotor hub torsion bar (torsion bar). This proposed AD is prompted by several cases of corrosion in the metal strands of the torsion bar. The proposed actions are intended to detect corrosion and prevent failure of the torsion bar, loss of a main rotor blade, and subsequent loss of control of the helicopter.

**DATES:** We must receive comments on this proposed AD by January 19, 2016.

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

- *Federal eRulemaking Docket:* Go to <http://www.regulations.gov>. Follow the online instructions for sending your comments electronically.
- *Fax:* 202-493-2251.
- *Mail:* Send comments to the U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590-0001.

• *Hand Delivery:* Deliver to the "Mail" address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

*Examining the AD Docket*

You may examine the AD docket on the Internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2015-5914; or in person at the Docket Operations Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the European Aviation Safety Agency (EASA) AD, the economic 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 service information identified in this proposed AD, contact Airbus Helicopters, 2701 N. Forum Drive, Grand Prairie, TX 75052; telephone (972) 641-0000 or (800) 232-0323; fax (972) 641-3775; or at <http://www.airbushelicopters.com/techpub>. You may review the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy, Room 6N-321, Fort Worth, TX 76177.

**FOR FURTHER INFORMATION CONTACT:** Robert Grant, Aviation Safety Engineer, Safety Management Group, FAA, 10101 Hillwood Pkwy, Fort Worth, Texas 76177; telephone (817) 222-5110; email [robert.grant@faa.gov](mailto:robert.grant@faa.gov).

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

We invite you to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time.

We will file in the docket all comments that we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

**Discussion**

EASA, which is the Technical Agent for the Member States of the European Union, issued EASA AD No. 2014-0216, dated September 24, 2014, to correct an unsafe condition for Airbus Helicopters Model SA341G and SA342J helicopters. EASA advises that several cases of cracks were found on the polyurethane (PU) coating of part-numbered 704A33633274 torsion bars installed on military Model SA341 helicopters. EASA states that these parts can also be

installed on civilian Model SA341 and SA342 helicopters. According to EASA, analysis of the cracked torsion bars showed small areas of superficial corrosion on the strands inside the bars can also develop during the manufacturing process. EASA states that cracking of the PU coating near these areas and the associated penetration of water can lead to further and deeper development of the corrosion. EASA advises that this condition, if not detected and corrected, allows water to penetrate into the torsion bar causing corrosion and failure of the metal strands inside the bar. Failure of the metal strands could lead to torsion bar failure, resulting in an in-flight loss of a main rotor blade and consequent loss of control of the helicopter.

#### FAA's Determination

These helicopters have been approved by the aviation authority of France and are approved for operation in the United States. Pursuant to our bilateral agreement with France, EASA, its technical representative, has notified us of the unsafe condition described in its AD. We are proposing this AD because we evaluated all known relevant information and determined that an unsafe condition is likely to exist or develop on other products of the same type design.

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

We reviewed Airbus Helicopters Gazelle work card 65.12.607, dated August 2008. This service information describes inspecting the torsion bars for a crack in the PU coating and for corrosion and thickness of the bushings.

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the ADDRESSES section of this NPRM.

#### Other Related Service Information

Airbus Helicopters has issued Alert Service Bulletin No. SA341/SA342-05.40, Revision 0, dated April 28, 2014 (ASB), for Model SA341G and SA342J helicopters certificated by the FAA, and military Model SA341B, C, D, E, F, and H and SA342K, L, L1, M, M1, and Ma helicopters. The ASB specifies repetitively inspecting the torsion bars in accordance with certain work cards, including work card 65.12.07. These inspections are part of Airbus Helicopters' current maintenance program, and the ASB revises the compliance time interval for the inspections.

#### Proposed AD Requirements

This proposed AD would require removing and performing repetitive inspections of each torsion bar for a crack in the PU coating, the dimension of the angle between the bushings, corrosion on the inside diameter of each bushing, the thickness of each bushing, the size of the inside diameter of each bushing, and missing varnish on the two faces of each bushing. This proposed AD would require replacing the torsion bar before further flight if there is a crack in the PU coating of a torsion bar that matches or exceeds the damage criteria, if the angle of the torsion bar is 7 degrees or more, if any corrosion on a bushing cannot be removed by rubbing it with an abrasive pad, if the thickness of a bushing is less than 37.520 mm (1.477 in), or if the diameter of a bushing is larger than 21,040 mm (.828 in). If varnish is missing from more than 15 percent of the surface area from a face of a bushing, this proposed AD would require removing all varnish, finishing with an abrasive pad, and applying a coat of paint to the face of the bushing.

#### Differences Between This Proposed AD and the EASA AD

This proposed AD would require you to replace a torsion bar instead of returning it to the manufacturer for examination.

#### Interim Action

We consider this proposed AD to be an interim action. If final action is later identified, we might consider further rulemaking.

#### Costs of Compliance

We estimate that this proposed AD would affect 33 helicopters of U.S. Registry.

We estimate that operators may incur the following costs in order to comply with this AD. We estimate \$85 per work hour for labor. We estimate 8 work hours to inspect each helicopter at an estimated cost of \$680 per helicopter and \$22,440 for the fleet per inspection cycle. Replacing a torsion bar would cost \$7,020 for required parts; no additional labor would be necessary.

#### 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, 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 to the extent that it justifies making a regulatory distinction; 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.

We prepared an economic evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

#### 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 Helicopters (formerly Eurocopter France):** Docket No. FAA-2015-5914; Directorate Identifier 2014-SW-056-AD.

**(a) Applicability**

This AD applies to Model SA341G and SA342J helicopters with a main rotor head torsion bar (torsion bar) part number 704A33633274 installed, certificated in any category.

**(b) Unsafe Condition**

This AD defines the unsafe condition as a crack in the coating of the torsion bar resulting in corrosion. This condition could result in failure of a torsion bar, loss of a main rotor blade, and subsequent loss of control of the helicopter.

**(c) Comments Due Date**

We must receive comments by January 19, 2016.

**(d) Compliance**

You are responsible for performing each action required by this AD within the specified compliance time unless it has already been accomplished prior to that time.

**(e) Required Actions**

(1) For each torsion bar with less than 5 years since the first date of installation on any helicopter, within the compliance time shown in Table 1 to paragraph (e)(1) of this AD:

(i) Remove the torsion bar and, using a magnifying glass with a maximum magnification level of 10X, visually inspect for a crack in the polyurethane (PU) coating of the torsion bar as depicted in Figure 1 of Airbus Helicopters Gazelle work card 65.12.607, dated August 2008 (work card). Consider two cracks that are less than 5 mm (.196 in) apart as a single crack. If there is a crack in the PU coating that is more than 5 mm (.196 in), replace the torsion bar before further flight. Do not rework the PU coating of the torsion bar in any way.

(ii) Inspect the angle, dimension alpha, as depicted in View on Arrow F of Figure 1 of the work card. If the angle is 7 or more degrees, replace the torsion bar before further flight.

(iii) Inspect each bushing for corrosion on the inside diameter. If any corrosion cannot be removed by rubbing it with an abrasive pad, replace the torsion bar before further flight.

(iv) Using an outside micrometer, measure the thickness, dimension a, of each bushing as depicted in Detail AA of Figure 1 of the work card. If the thickness is less than 37.520 mm (1.477 in), replace the torsion bar before further flight.

(v) Using an inside micrometer, measure the inside diameter, dimension b, of each bushing as depicted in Detail AA of Figure 1 of the work card. If the diameter is larger than 21.040 mm (.828 in), replace the torsion bar before further flight.

(vi) Inspect the two faces of each bushing for missing varnish. If varnish is missing from more than 15% of the surface area on a face of a bushing, before further flight, remove all varnish using 400-grit abrasive paper. Finish with an abrasive pad and apply a coat of P05 paint to the face of the bushing.

TABLE 1 TO PARAGRAPH (e)(1)

Time accumulated on torsion bar	Compliance time
(i) Less than 320 hours time-in-service (TIS) since new and has never been inspected in accordance with Airbus Helicopters 341G–342J Airworthiness Limitations, Revision 18, dated June 2014 (limitations inspection).	Before accumulating 420 hours TIS since new or within 24 months since the date of first installation on any helicopter, whichever occurs first.
(ii) 320 or more hours TIS since new and has never had a limitations inspection.	Within 100 hours TIS, or before accumulating 600 hours TIS since new, or within 24 months since the date of first installation on any helicopter, whichever occurs first.
(iii) Less than 320 hours TIS since the last limitations inspection .....	Before accumulating 420 hours TIS since the last limitations inspection or within 24 months since the last limitations inspection, whichever occurs first.
(iv) 320 or more hours TIS since the last limitations inspection .....	Within 100 hours TIS, or before accumulating 600 hours TIS since the last limitations inspection, or within 24 months since the last limitations inspection, whichever occurs first.

(2) For each torsion bar with 5 or more years since the first date of installation on

any helicopter, within the compliance time shown in Table 2 to paragraph (e)(2) of this

AD, do the inspections required by paragraphs (e)(1)(i) through (vi) of this AD.

TABLE 2 TO PARAGRAPH (e)(2)

Time accumulated on torsion bar	Compliance time
(i) Less than 320 hours TIS since new, and less than 6 months since the date of first installation on any helicopter, and has never had a limitations inspection.	Before accumulating 420 hours TIS since new or within 12 months since the date of first installation on any helicopter, whichever occurs first.
(ii) 320 or more hours TIS since new or more than 6 months since the date of first installation on any helicopter, and has never had a limitations inspection.	Within 100 hours TIS, or within 6 months, or before accumulating 600 hours TIS since new, or within 24 months since the date of first installation on any helicopter, whichever occurs first.
(iii) Less than 320 hours TIS since last limitations inspection and less than 6 months since the last limitations inspection.	Before accumulating 420 hours TIS since last limitations inspection or 12 months since last limitations inspection, whichever occurs first.
(iv) 320 or more hours TIS since last limitations inspection or 6 or more months since the last limitations inspection.	Within 100 hours TIS, or within 6 months, or before accumulating 600 hours TIS since the last limitations inspection, or within 24 months since the last limitations inspection, whichever occurs first.

(3) Repeat the inspections required by paragraphs (e)(1)(i) through (vi) of this AD as follows:

(i) For torsion bars with less than 6 years since the date of installation on any helicopter, at intervals not to exceed 420 hours TIS or 24 months, whichever occurs first.

(ii) For torsion bars with 6 or more years since the date of installation on any

helicopter, at intervals not to exceed 420 hours TIS or 12 months, whichever comes first.

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

(1) The Manager, Safety Management Group, FAA, may approve AMOCs for this AD. Send your proposal to: Robert Grant, Aviation Safety Engineer, Safety Management

Group, FAA, 10101 Hillwood Pkwy, Fort Worth, TX 76177; telephone (817) 222-5110; email 9-ASW-FTW-AMOC-Requests@faa.gov.

(2) For operations conducted under a 14 CFR part 119 operating certificate or under 14 CFR part 91, subpart K, we suggest that you notify your principal inspector, or lacking a principal inspector, the manager of the local flight standards district office or certificate holding district office before

operating any aircraft complying with this AD through an AMOC.

**(g) Additional Information**

(1) Airbus Helicopters Alert Service Bulletin ASB No. SA341/SA342-05.40, Revision 0, dated April 28, 2014, which is not incorporated by reference, contains additional information about the subject of this AD. For service information identified in this AD, contact Airbus Helicopters, 2701 N. Forum Drive, Grand Prairie, TX 75052; telephone (972) 641-0000 or (800) 232-0323; fax (972) 641-3775; or at <http://www.airbushelicopters.com/techpub>. You may review the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N-321, Fort Worth, TX 76177.

(2) The subject of this AD is addressed in European Aviation Safety Agency (EASA) AD No. 2014-0216, dated September 24, 2014. You may view the EASA AD on the Internet at <http://www.regulations.gov> in the AD Docket.

**(h) Subject**

Joint Aircraft Service Component (JASC) Code: 6700 Main Rotor.

Issued in Fort Worth, Texas, on November 9, 2015.

**Lance T. Gant,**

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2015-29402 Filed 11-18-15; 8:45 am]

**BILLING CODE 4910-13-P**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

[Docket No. FAA-2015-5808; Directorate Identifier 2015-NM-111-AD]

**RIN 2120-AA64**

**Airworthiness Directives; The Boeing Company 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 The Boeing Company Model 787-8 airplanes. This proposed AD was prompted by reports of water leakage from the potable water system due to improperly installed waterline couplings, and water leaking into the electronics equipment (EE) bays from above the floor in the main cabin, resulting in water on the equipment in the EE bays. This proposed AD would require replacing the potable waterline couplings above the forward and aft EE bays with new, improved couplings.

This proposed AD would also require sealing the main cabin floor areas above the aft EE bay, installing drip shields and foam blocks, and rerouting the wire bundles near the drip shields above the equipment in the aft EE bay. We are proposing this AD to prevent a water leak from an improperly installed potable water system coupling, or main cabin water source, which could cause the equipment in the EE bays to become wet, resulting in an electrical short and potential loss of system functions essential for safe flight.

**DATES:** We must receive comments on this proposed AD by January 4, 2016.

**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 Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H-65, Seattle, WA 98124-2207; telephone 206-544-5000, extension 1; fax 206-766-5680; Internet <https://www.myboeingfleet.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. It is also available on the Internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2015-5808.

*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-2015-5808; 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:**

Susan L. Monroe, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM-150S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057-3356; phone: 425-917-6457; fax: 425-917-6590; email: [susan.l.monroe@faa.gov](mailto:susan.l.monroe@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-2015-5808; Directorate Identifier 2015-NM-111-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 reports of water leakage from the potable water system due to improperly installed waterline couplings, and water leaking into the EE bays from above the floor in the main cabin, resulting in water on the equipment in the EE bays. Such leakage could result in an electrical short and potential loss of system functions essential for safe flight.

**Related Service Information Under 14 CFR Part 51**

We reviewed the following service information:

- Boeing Alert Service Bulletin B787-81205-SB380009-00, Issue 001, dated March 26, 2015.
- Boeing Alert Service Bulletin B787-81205-SB530029-00, Issue 001, dated March 26, 2015.
- Boeing Alert Service Bulletin B787-81205-SB530031-00, Issue 001, dated March 26, 2015.

This service information describes procedures for replacing the potable waterline couplings above the forward and aft EE bays with new, improved couplings; sealing the floors, seat tracks, and lavatories above the aft EE bay; installing drip shields and foam blocks; and rerouting the wire bundles adjacent to the drip shields above the aft EE bay.

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section of this NPRM.

**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, except as discussed under “Difference Between this Proposed AD and the Service Information.” Refer to this service information for details on the procedures and compliance times.

**Difference Between This Proposed AD and the Service Information**

Although Boeing Alert Service Bulletin B787–81205–SB530029–00, Issue 001, dated March 26, 2015; and Boeing Alert Service Bulletin B787–81205–SB530031–00, Issue 001, dated

March 26, 2015, recommend accomplishing the sealing of the floors and seat tracks, installing drip shields, and rerouting adjacent wiring within 24 months; this proposed AD would require accomplishing those actions within 60 months. We have determined that a 60-month compliance time for accomplishing these actions would address the unsafe condition in a timely manner.

This compliance time has been coordinated with Boeing.

**Explanation of “RC” Steps in Service Information**

The FAA worked in conjunction with industry, under the Airworthiness Directive Implementation Aviation Rulemaking Committee (ARC), to enhance the AD system. One enhancement was a new process for annotating which steps in the service information are required for compliance with an AD. Differentiating these steps from other tasks in the service information is expected to improve an owner’s/operator’s understanding of crucial AD requirements and help provide consistent judgment in AD compliance. The steps identified as RC (required for compliance) in any service

information identified previously have a direct effect on detecting, preventing, resolving, or eliminating an identified unsafe condition.

For service information that contains steps that are labeled as Required for Compliance (RC), the following provisions apply: (1) The steps labeled as RC, including substeps under an RC step and any figures identified in an RC step, must be done to comply with the AD, and an alternative method of compliance (AMOC) is required for any deviations to RC steps, including substeps and identified figures; and (2) steps not labeled as RC may be deviated from using accepted methods in accordance with the operator’s maintenance or inspection program without obtaining approval of an AMOC, provided the RC steps, including substeps and identified figures, can still be done as specified, and the airplane can be put back in an airworthy condition.

**Costs of Compliance**

We estimate that this proposed AD affects 17 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
Replace waterline couplings .....	Up to 24 work-hours × \$85 per hour = up to \$2,040.	\$3,195	Up to \$5,235	Up to \$88,995
Seal floors and seat tracks .....	Up to 108 work-hours × \$85 per hour = up to \$9,180.	137	Up to 9,317	Up to 158,389
Install drip shields and reroute wiring .....	Up to 42 work-hours × \$85 per hour = up to \$3,570.	34,594	Up to 38,164	Up to 648,788

**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):

**The Boeing Company:** Docket No. FAA–2015–5808; Directorate Identifier 2015–NM–111–AD.

**(a) Comments Due Date**

We must receive comments by January 4, 2016.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to The Boeing Company Model 787–8 series airplanes, certificated in any category, as identified in the service information specified in paragraphs (c)(1), (c)(2), and (c)(3) of this AD.

(1) Boeing Alert Service Bulletin B787–81205–SB380009–00, Issue 001, dated March 26, 2015.

(2) Boeing Alert Service Bulletin B787–81205–SB530029–00, Issue 001, dated March 26, 2015.

(3) Boeing Alert Service Bulletin B787–81205–SB530031–00, Issue 001, dated March 26, 2015.

**(d) Subject**

Air Transport Association (ATA) of America Code 38, Water/Waste; and Code 53, Fuselage.

**(e) Unsafe Condition**

This proposed AD was prompted by reports of water leakage from the potable water system due to improperly installed waterline couplings, and water leaking into the electronics equipment (EE) bays from above the floor in the main cabin, resulting in water on the equipment in the EE bays. We are issuing this AD to prevent a water leak from an improperly installed potable water system coupling, or main cabin water source, which could cause the equipment in the EE bays to become wet, resulting in an electrical short and potential loss of system functions essential for safe flight.

**(f) Compliance**

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

**(g) Replace Potable Waterline Couplings**

Within 24 months after the effective date of this AD: Replace the existing potable waterline couplings located above the forward and aft EE bays with new, improved couplings, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin B787–81205–SB380009–00, Issue 001, dated March 26, 2015. Before further flight after doing the replacement, do a potable water system leak test and repair any leaks found before further flight, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin B787–81205–SB380009–00, Issue 001, dated March 26, 2015.

**(h) Seal Floor Panels and Seat Tracks/Install Drip Shields and Reroute Wiring**

Within 60 months after the effective date of this AD: Do the actions specified in paragraphs (h)(1) and (h)(2) of this AD.

(1) Apply sealant to the main cabin floor areas located above the aft EE bay, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin B787–81205–SB530029–00, Issue 001, dated March 26, 2015.

(2) Install drip shields and foam blocks, and reroute the wire bundles above the equipment in the aft EE bay, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin B787–81205–SB530031–00, Issue 001, dated March 26, 2015.

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

(1) The Manager, Seattle 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 (j)(1) of this AD. Information may be emailed to: [9-ANM-Seattle-ACO-AMOC-Requests@faa.gov](mailto:9-ANM-Seattle-ACO-AMOC-Requests@faa.gov).

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair, alteration, or modification required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO to make those findings. For a repair method to be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(4) For service information that contains steps that are labeled as Required for Compliance (RC), the provisions of paragraphs (i)(4)(i) and (i)(4)(ii) apply.

(i) The steps labeled as RC, including substeps under an RC step and any figures identified in an RC step, must be done to comply with the AD. An AMOC is required for any deviations to RC steps, including substeps and identified figures.

(ii) Steps not labeled as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the RC steps, including substeps and identified figures, can still be done as specified, and the airplane can be put back in an airworthy condition.

**(j) Related Information**

(1) For more information about this AD, contact Susan L. Monroe, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle

Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6457; fax: 425–917–6590; email: [susan.l.monroe@faa.gov](mailto:susan.l.monroe@faa.gov).

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet <https://www.myboeingfleet.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.

Issued in Renton, Washington, on November 9, 2015.

**Michael Kaszycki,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2015–29441 Filed 11–18–15; 8:45 am]

**BILLING CODE 4910–13–P**

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

**[Docket No. FAA–2015–4817; Directorate Identifier 2014–NM–115–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) 95–18–08, for all Airbus Model A300–600 series airplanes. AD 95–18–08 currently requires repetitive inspections to detect cracks in the bottom skin of the wing in the area of the cut out for the pylon rear attachment fitting, and repair if necessary. Since we issued AD 95–18–08, we received a report that updated fatigue and damage tolerance analyses and a fleet survey found that certain inspection thresholds and intervals must be reduced to allow more timely findings of cracking. This proposed AD would, for certain airplanes, reduce the compliance times for the inspections. We are proposing this AD to detect and correct such fatigue-related cracking, which could result in reduced structural integrity of the wing.

**DATES:** We must receive comments on this proposed AD by January 4, 2016.

**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](mailto: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-2015-4817; 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-2015-4817; Directorate Identifier 2014-NM-115-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 August 29, 1995, we issued AD 95-18-08, Amendment 39-9355 (60 FR 47677, September 14, 1995). AD 95-18-08 requires actions intended to address an unsafe condition on all Airbus Model A300-600 series airplanes (which includes Airbus Model A300 C4-605R Variant F airplanes, Model A300 B4-622 airplanes, and Model A300 F4-622R airplanes that were added to the U.S. Type Certificate Data Sheet since issuance of AD 95-18-08).

Since we issued AD 95-18-08, Amendment 39-9355 (60 FR 47677, September 14, 1995), we received a report that updated fatigue and damage tolerance analyses and a fleet survey done to support a second extended service goal for Model A300-600 series airplanes found that certain inspection thresholds and intervals must be reduced to allow more timely findings of cracking.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2014-0119, dated May 13, 2014 (referred to after this as the Mandatory Continuing Airworthiness Information, or “the MCAI”), to correct an unsafe condition on all Airbus 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). The MCAI states:

Full-scale fatigue tests carried out on the A300-600 test specimen by Airbus revealed crack initiation in the bottom skin adjacent to the aft pylon attachment fitting.

This condition, if not detected and corrected, could affect the structural integrity of the aeroplane.

To address this unsafe condition, DGAC [Direction Générale de l’Aviation Civile] France issued AD 94-069-158(B) ([http://ad.easa.europa.eu/blob/1994069158tb\\_superseded.pdf/AD\\_F-1994-069-158\\_2](http://ad.easa.europa.eu/blob/1994069158tb_superseded.pdf/AD_F-1994-069-158_2)) [which corresponds to FAA AD 95-18-08, Amendment 39-9355 (60 FR 47677, September 14, 1995)] to require repetitive detailed visual inspections (DVI) of the wing bottom skin in the area of the cut-out for the pylon rear attachment fitting on Left Hand (LH) and Right Hand (RH) wings [to detect cracks, and repair if necessary].

Since that [DGAC] AD was issued, a fleet survey and updated Fatigue and Damage Tolerance analyses have been performed in order to substantiate the second A300-600 Extended Service Goal (ESG2) exercise. As a

result, it was revealed that the inspection threshold and interval must be reduced to allow timely detection of cracks and the accomplishment of an applicable corrective action. Prompted by these findings, Airbus issued Revision 07 of Service Bulletin (SB) A300-57-6028.

For the reasons described above, this [EASA] AD retains the requirements of DGAC France AD 94-069-158(B), which is superseded, but reduces the inspection thresholds and intervals [e.g., compliance times].

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-2015-4817.

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

We reviewed Airbus Service Bulletin A300-57-6028, Revision 07, dated June 6, 2011. The service information describes procedures for inspections to detect cracks in the bottom skin of the wing in the area of the cut out for the pylon rear attachment fitting, and repair. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the ADDRESSES section of this NPRM.

#### FAA’s Determination and Requirements of This Proposed AD

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

#### Costs of Compliance

We estimate that this proposed AD affects 124 airplanes of U.S. registry.

The actions that are required by AD 95-18-08, Amendment 39-9355 (60 FR 47677, September 14, 1995), and retained in this proposed AD take about 6 work-hours per product, at an average labor rate of \$85 per work-hour. Based on these figures, the estimated cost of the actions that are required by AD 95-18-08 is \$510 per product.

In addition, we estimate that any necessary follow-on actions would take about 15 work-hours and require parts costing \$10,000, for a cost of \$11,275 per product. We have no way of

determining the number of aircraft that might need these actions.

The new requirements of this proposed AD add no additional economic burden.

#### 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) 95–18–08, Amendment 39–9355 (60 FR 47677, September 14, 1995), and adding the following new AD:

**Airbus:** Docket No. FAA–2015–4817; Directorate Identifier 2014–NM–115–AD.

#### (a) Comments Due Date

We must receive comments by January 4, 2016.

#### (b) Affected ADs

This AD replaces AD 95–18–08, Amendment 39–9355 (60 FR 47677, September 14, 1995).

#### (c) Applicability

This AD applies to the airplanes identified in paragraphs (c)(1) through (c)(4) of this AD, certificated in any category, all manufacturer serial numbers.

(1) Airbus Model A300 B4–601, B4–603, B4–620, and B4–622 airplanes.

(2) Airbus Model A300 B4–605R and B4–622R airplanes.

(3) Airbus Model A300 F4–605R and F4–622R airplanes.

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

#### (d) Subject

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

#### (e) Reason

This AD was prompted by a report that updated fatigue and damage tolerance analyses and a fleet survey found that certain inspection thresholds and intervals must be reduced to allow more timely findings of cracking. We are issuing this AD to detect and correct such fatigue-related cracking, which could result in reduced structural integrity of the wing.

#### (f) Compliance

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

#### (g) Retained Inspection and Corrective Action With Additional Repair Information

This paragraph restates the requirements of paragraph (a) of AD 95–18–08, Amendment 39–9355 (60 FR 47677, September 14, 1995), with additional repair contact information. Prior to the accumulation of 24,000 total flight cycles since date of manufacture of the airplane, or within 750 flight cycles after October 16, 1995 (the effective date of AD 95–18–08), whichever occurs later, perform a detailed visual inspection to detect cracks in the bottom skin of the wing in the area of the cut out for the pylon rear attachment fitting, in accordance with Airbus Service Bulletin A300–57–6028, Revision 3, dated September

13, 1994. Repeat the inspection thereafter at intervals not to exceed 9,000 flight cycles. If any crack is detected, prior to further flight, repair the wing bottom skin in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, or 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). Accomplishing any inspection required by paragraph (h) of this AD terminates the inspections required by this paragraph.

#### (h) New Requirement of This AD: Revised Inspection Thresholds and Intervals

Within the applicable compliance times required in paragraphs (h)(1) and (h)(2) of this AD, do a detailed visual inspection of the wing bottom skin in the area of the cut-out for the pylon rear attachment fitting on left-hand and right-hand wings, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–57–6028, Revision 07, dated June 6, 2011. Repeat the inspections thereafter at the applicable intervals required in paragraphs (h)(3) and (h)(4) of this AD. Accomplishing any inspection required by this paragraph terminates the inspections required by paragraph (g) of this AD.

(1) For "normal range operations" airplanes having an average flight time of 1.5 flight hours or more: Do the inspection at the applicable time required in paragraphs (h)(1)(i) and (h)(1)(ii) of this AD.

(i) For Model A300 F4–605R and F4–622R airplanes: Do the inspection at the later of the times specified in paragraphs (h)(1)(i)(A) and (h)(1)(i)(B) of this AD.

(A) Within 24,000 flight cycles or 51,800 flight hours after first flight of the airplane, whichever occurs first.

(B) Within 2,000 flight cycles or 4,300 flight hours after the effective date of this AD, whichever occurs first.

(ii) For Model A300 B4–600, B4–600R, and Model A300 C4–605R Variant F airplanes: Do the inspection at the later of the times specified in paragraphs (h)(1)(ii)(A) and (h)(1)(ii)(B) of this AD.

(A) Within 19,100 flight cycles or 41,200 flight hours after first flight of the airplane, whichever occurs first.

(B) Within 1,500 flight cycles or 3,200 flight hours after the effective date of this AD, whichever occurs first.

(2) For "short range operations" airplanes having an average flight time of less than 1.5 flight hours: Do the inspection at the applicable time required in paragraphs (h)(2)(i) and (h)(2)(ii) of this AD.

(i) For Model A300 F4–605R and F4–622R airplanes: Do the inspection at the later of the times specified in paragraphs (h)(2)(i)(A) and (h)(2)(i)(B) of this AD.

(A) Within 25,900 flight cycles or 38,800 flight hours after first flight of the airplane, whichever occurs first.

(B) Within 2,100 flight cycles or 3,200 flight hours after the effective date of this AD, whichever occurs first.

(ii) For Model A300 B4–600, B4–600R, and Model A300 C4–605R Variant F airplanes: Do

the inspection at the later of the times specified in paragraphs (h)(2)(ii)(A) and (h)(2)(ii)(B) of this AD.

(A) Within 20,600 flight cycles or 30,900 flight hours after first flight of the airplane, whichever occurs first.

(B) Within 1,600 flight cycles or 2,400 flight hours after the effective date of this AD, whichever occurs first.

(3) For "normal range operations" airplanes having an average flight time of 1.5 flight hours or more: Repeat the inspection at the applicable time required in paragraphs (h)(3)(i) and (h)(3)(ii) of this AD.

(i) For Model A300 F4-605R and F4-622R airplanes: Repeat the inspection thereafter at intervals not to exceed 9,000 flight cycles or 19,400 flight hours, whichever occurs first.

(ii) For Model A300 B4-600, B4-600R, and Model A300 C4-605R Variant F airplanes: Repeat the inspection thereafter at intervals not to exceed 7,100 flight cycles or 15,300 flight hours, whichever occurs first.

(4) For "short range operations" airplanes having an average flight time of less than 1.5 flight hours: Repeat the inspection at the applicable time required in paragraphs (h)(4)(i) and (h)(4)(ii) of this AD.

(i) For Model A300 F4-605R and F4-622R airplanes: Repeat the inspection thereafter at intervals not to exceed 9,700 flight cycles or 14,500 flight hours, whichever occurs first.

(ii) For Model A300 B4-600, B4-600R, and Model A300 C4-605R Variant F airplanes: Repeat the inspection thereafter at intervals not to exceed 7,600 flight cycles or 11,500 flight hours, whichever occurs first.

#### (i) Definition of Average Flight Time for Paragraph (h) of This AD

For the purpose of paragraph (h) of this AD, the Average Flight Time must be established as follows:

(1) For the initial inspection, the average flight time is the total accumulated flight hours, counted from take-off to touch-down, divided by the total accumulated flight cycles at the effective date of this AD.

(2) For the first repeated inspection interval, the average flight time is the total accumulated flight hours divided by the total accumulated flight cycles at the time of the inspection threshold.

(3) For all inspection intervals onwards, the average flight time is the flight hours divided by the flight cycles accumulated between the last two inspections.

#### (j) New Requirement of This AD: Corrective Action for Any Cracking Found

If any crack is found during any inspection required by paragraph (h) of this AD: Before further flight, repair using a method approved by the Manager, International Branch, ANM-116, Transport Airplane Directorate, FAA; or EASA; or Airbus's EASA DOA. Accomplishing a repair does not constitute terminating action for the repetitive inspections required by paragraph (h) of this AD.

#### (k) Credit for Previous Actions

This paragraph provides credit for inspections required by paragraph (h) of this AD, if those actions were performed before the effective date of this AD using any of the service information identified in paragraphs

(k)(1), (k)(2), and (k)(3) of this AD, which are not incorporated by reference in this AD.

(1) Airbus Service Bulletin A300-57-6028, Revision 04, dated October 25, 1999.

(2) Airbus Service Bulletin A300-57-6028, Revision 05, dated January 11, 2002.

(3) Airbus Service Bulletin A300-57-6028, Revision 06, dated May 17, 2006.

#### (l) 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](mailto:9-ANM-116-AMOC-REQUESTS@faa.gov).

(i) 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.

(ii) AMOCs approved previously for AD 95-18-08, Amendment 39-9355 (60 FR 47677, September 14, 1995), are approved as AMOCs for the corresponding provisions of paragraph (g) of 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.

#### (m) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) European Aviation Safety Agency Airworthiness Directive 2014-0119, dated May 13, 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-2015-4817.

(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](mailto: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 November 11, 2015.

**Michael Kaszycki,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2015-29443 Filed 11-18-15; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2015-4815; Directorate Identifier 2015-NM-112-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) 2015-03-06, for all Airbus Model A330-200, A330-200 Freighter, A330-300, A340-200, A340-300, A340-500, and A340-600 series airplanes. AD 2015-03-06 currently requires repetitive inspections of the left-hand and right-hand wing main landing gear (MLG) rib 6 aft bearing lugs (forward and aft) to detect any cracks on the two lugs, and replacement if necessary. Since we issued AD 2015-03-06, we have received reports of additional cracking of the MLG rib 6 aft bearing lugs. This proposed AD would reduce certain compliance times. We are proposing this AD to detect and correct cracking of the MLG rib 6 aft bearing lugs, which could result in collapse of the MLG upon landing.

**DATES:** We must receive comments on this proposed AD by January 4, 2016.

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

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Fax:* 202-493-2251.

- *Mail:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590.

- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Airbus SAS,

Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email [airworthiness.A330-A340@airbus.com](mailto: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-2015-4815; 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-2015-4815; Directorate Identifier 2015-NM-112-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 February 2, 2015, we issued AD 2015-03-06, Amendment 39-18102 (80 FR 8511, February 18, 2015). AD 2015-03-06 requires actions intended to address an unsafe condition on all Airbus Model A330-200, A330-300,

Freighter, A330-300, A340-200, A340-300, A340-500, and A340-600 series airplanes.

Since we issued AD 2015-03-06, Amendment 39-18102 (80 FR 8511, February 18, 2015), we have determined that it is necessary to introduce a more restrictive initial inspection threshold and a grace period for airplanes that have already exceeded the new threshold.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2015-0120, dated June 26, 2015 (referred to after this as the Mandatory Continuing Airworthiness Information, or “the MCAI”), to correct an unsafe condition for all Airbus Model A330-200, A330-200 Freighter, A330-300, A340-200, A340-300, A340-500, and A340-600 series airplanes. The MCAI states:

During Main Landing Gear (MLG) lubrication, a crack was visually found in the MLG rib 6 aft bearing forward lug on one A330 in-service aeroplane. The crack had extended through the entire thickness of the forward lug at approximately the 4 o'clock position (when looking forward). It has been determined that a similar type of crack can develop on other aeroplane types that are listed in the Applicability paragraph.

This condition, if not detected and corrected, could affect the structural integrity of the MLG attachment.

To address this situation, Airbus issued inspection Service Bulletin (SB) A330-57-3096, SB A340-57-4104 and SB A340-57-5009 to provide instructions for repetitive inspections of the gear rib lugs.

Prompted by these findings, EASA issued Emergency AD 2006-0364-E to require repetitive detailed visual inspections of the Left Hand (LH) and Right Hand (RH) wing MLG rib 6 aft bearing lugs.

Later, EASA issued AD 2007-0247-E, which superseded [EASA] AD 2006-0364-E, to:

- expand the Applicability to all A330 and A340 aeroplanes, because the interference fit bushes cannot be considered as a terminating action, owing to unknown root cause; and
- add a second parameter quoted in flight hours (FH) to the inspection interval in order to reflect the aeroplane utilisation in service.

EASA AD 2007-0247-E was revised to correct a typographical error.

Since the first crack finding and issuance of the inspection SBs and related ADs, six further cracks were reported.

Consequently, EASA issued AD 2013-0271 [which corresponds to FAA AD 2015-03-06, Amendment 39-18102 (80 FR 8511, February 18, 2015)], which retained the requirements of [EASA] AD 2007-0247R1-E, which was superseded, and expanded the Applicability of the [EASA] AD to the newly certified models A330-223F and A330-243F. That AD also reduced the inspection threshold(s) to reflect the updated risk assessment and in-service experience.

Since this [EASA] AD was issued, a new occurrence of crack finding was reported. Further analysis resulted in the need to reduce the threshold of the initial inspection.

Prompted by this finding, Airbus issued SB A330-57-3096 Revision 06 to introduce a more restrictive initial inspection threshold and a grace period for aeroplanes which have already passed the new threshold.

For the reasons described above, this [EASA] AD partially retains the requirements of EASA AD 2013-0271, which is superseded, and introduces reduced initial inspection thresholds.

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-2015-4815.

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

Airbus has issued Service Bulletin A330-57-3096, Revision 06, dated May 29, 2015. The service information describes procedures for detailed inspections to detect any cracking on the forward and aft lugs of the Left Hand (LH) and Right Hand (RH) wing MLG Rib 6. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section of this NPRM.

#### FAA's Determination and Requirements of This Proposed AD

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

#### Explanation of “RC” Procedures and Tests in Service Information

The FAA worked in conjunction with industry, under the Airworthiness Directive Implementation Aviation Rulemaking Committee (ARC), to enhance the AD system. One enhancement was a new process for annotating which procedures and tests in the service information are required for compliance with an AD. Differentiating these procedures and tests from other tasks in the service information is expected to improve an owner's/operator's understanding of crucial AD requirements and help provide consistent judgment in AD

compliance. The procedures and tests identified as Required for Compliance (RC) in any service information have a direct effect on detecting, preventing, resolving, or eliminating an identified unsafe condition.

As specified in a Note under the Accomplishment Instructions of the specified service information, procedures and tests that are identified as RC in any service information must be done to comply with the proposed AD. However, procedures and tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an alternative method of compliance (AMOC), provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC will require approval of an AMOC.

#### Costs of Compliance

We estimate that this proposed AD affects 101 airplanes of U.S. registry.

The actions required by AD 2015-03-06, Amendment 39-18102 (80 FR 8511, February 18, 2015), and retained in this proposed AD take about 2 work-hours per product, at an average labor rate of \$85 per work-hour. Based on these figures, the estimated cost of the actions that are required by AD 2015-03-06 is \$170 per product.

This proposed AD reduces the initial compliance time but adds no new actions.

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

#### Authority for This Rulemaking

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

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority

because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

#### Regulatory Findings

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

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

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

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

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

#### The Proposed Amendment

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

#### PART 39—AIRWORTHINESS DIRECTIVES

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

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

#### § 39.13 [Amended]

- 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2015-03-06, Amendment 39-18102 (80 FR 8511, February 18, 2015), and adding the following new AD:

**Airbus:** Docket No. FAA-2015-4815; Directorate Identifier 2015-NM-112-AD.

#### (a) Comments Due Date

We must receive comments by January 4, 2016.

#### (b) Affected ADs

This AD replaces AD 2015-03-06, Amendment 39-18102 (80 FR 8511, February 18, 2015).

#### (c) Applicability

This AD applies to Airbus Model A330-201, -202, -203, -223, -223F, -243, -243F-301, -302, -303, -321, -322, -323, -341,

-342, and -343 airplanes; and Model A340-211, -212, -213 -311, -312, -313, -541, and -642 airplanes; certificated in any category; all manufacturer serial numbers.

#### (d) Subject

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

#### (e) Reason

This AD was prompted by reports of cracking of the main landing gear (MLG) rib 6 aft bearing forward lug. We are issuing this AD to detect and correct cracking of the MLG rib 6 aft bearing lugs, which could result in collapse of the MLG upon landing.

#### (f) Compliance

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

#### (g) Inspections

At the later of the times specified in paragraphs (g)(1) and (g)(2) of this AD: Do a detailed inspection for cracking of the left-hand and right-hand wing MLG rib 6 aft bearing lugs (forward and aft), in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330-57-3096, Revision 06, dated May 29, 2015 (for Model A330-201, -202, -203, -223, -223F, -243, -243F, -301, -302, -303, -321, -322, -323, -341, -342, and -343 airplanes); A340-57-4104, Revision 04, dated October 17, 2013 (for Model A340-211, -212, -213, -311, -312, -313 airplanes); or A340-57-5009, Revision 03, dated October 17, 2013 (for Model A340-541 and -642 airplanes); as applicable.

(1) Within 24 months or 2,000 flight cycles, whichever occurs first since airplane first flight or since the last MLG support rib replacement, as applicable.

(2) Within 30 days after the effective date of this AD.

#### (h) Repetitive Inspections

Repeat the inspection required by paragraph (g) of this AD thereafter at the time specified in paragraphs (h)(1) through (h)(7) of this AD, as applicable.

(1) For Model A330-201, -202, -203, -223, and -243 airplanes: Repeat the inspections at intervals not to exceed 300 flight cycles or 1,500 flight hours, whichever occurs first.

(2) For Model A330-223F and -243F airplanes: Repeat the inspections at intervals not to exceed 300 flight cycles or 900 flight hours, whichever occurs first.

(3) For Model A330-301, -302, -303, -321, -322, -323, -341, -342, and -343 airplanes: Repeat the inspections at intervals not to exceed 300 flight cycles or 900 flight hours, whichever occurs first.

(4) For Model A340-211, -212, and -213 airplanes: Repeat the inspections at intervals not to exceed 200 flight cycles or 800 flight hours, whichever occurs first.

(5) For Model A340-311 and -312 airplanes; and Model A340-313 airplanes (except weight variant (WV) 27): Repeat the inspections at intervals not to exceed 200 flight cycles or 800 flight hours, whichever occurs first.

(6) For Model A340-313 (only WV27) airplanes: Repeat the inspections at intervals

not to exceed 200 flight cycles or 400 flight hours, whichever occurs first.

(7) For Model A340–541 and –642 airplanes: Repeat the inspections at intervals not to exceed 100 flight cycles or 500 flight hours, whichever occurs first.

#### (i) Corrective Action

If any crack is found during any inspection required by paragraphs (g) or (h) of this AD: Before further flight, replace the cracked MLG support rib 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). Replacement of an MLG support rib does not terminate the repetitive inspections required by paragraph (h) of this AD.

#### (j) Credit for Previous Actions

This paragraph provides credit for actions required by paragraphs (g) and (h) of this AD, if those actions were performed before the effective date of this AD using the applicable service information identified in paragraphs (j)(1) through (j)(15) of this AD.

(1) Airbus Service Bulletin A330–57A3096, dated December 5, 2006, which was incorporated by reference in AD 2007–03–04, Amendment 39–14915 (74 FR 4416, January 31, 2007).

(2) Airbus Service Bulletin A330–57A3096, Revision 01, dated April 18, 2007, which is not incorporated by reference by this AD.

(3) Airbus Service Bulletin A330–57–3096, Revision 02, dated August 13, 2007, which was incorporated by reference in AD 2007–22–10, Amendment 39–15246 (72 FR 61796, November 1, 2007; corrected November 16, 2007 (72 FR 64532)).

(4) Airbus Service Bulletin A330–57–3096, Revision 03, dated October 24, 2012, which is not incorporated by reference by this AD.

(5) Airbus Service Bulletin A330–57–3096, Revision 04, dated February 6, 2013, which is not incorporated by reference in this AD.

(6) Airbus Service Bulletin A330–57–3096, Revision 05, dated October 17, 2013, which was incorporated by reference in AD 2015–03–06, Amendment 39–18102 (80 FR 8511, February 18, 2015).

(7) Airbus Service Bulletin A340–57A4104, dated December 5, 2006, which was incorporated by reference in AD 2007–03–04, Amendment 39–14915 (72 FR 4416, January 31, 2007).

(8) Airbus Service Bulletin A340–57–4104, Revision 01, dated August 13, 2007, which is not incorporated by reference in this AD.

(9) Airbus Service Bulletin A340–57–4104, Revision 02, dated September 5, 2007, which was incorporated by reference in AD 2007–22–10, Amendment 39–15246 (72 FR 61796, November 1, 2007; corrected November 16, 2007 (72 FR 64532)).

(10) Airbus Service Bulletin A340–57–4104, Revision 03, dated October 24, 2012, which is not incorporated by reference in this AD.

(11) Airbus Service Bulletin A340–57A5009, dated December 5, 2006, which was incorporated by reference in AD 2007–03–04, Amendment 39–14915 (72 FR 4416, January 31, 2007).

(12) Airbus Service Bulletin A340–57–5009, Revision 01, dated August 13, 2007, which was incorporated by reference in AD 2007–22–10, Amendment 39–15246 (72 FR 61796, November 1, 2007; corrected November 16, 2007 (72 FR 64532)).

(13) Airbus Service Bulletin A340–57–5009, Revision 02, dated October 24, 2012, which is not incorporated by reference in this AD.

(14) Airbus Alert Operators Transmission A57L005–14, dated July 15, 2014, which is not incorporated by reference in this AD.

(15) Airbus Alert Operators Transmission A57L005–14, Revision 01, dated August 15, 2014, which is not incorporated by reference in this AD.

#### (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*: 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 EASA; or Airbus's EASA DOA. If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Required for Compliance (RC)*: If any service information contains procedures or tests that are identified as RC, those procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

#### (l) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2015–0120, dated

June 26, 2015, 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–2015–4815.

(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](mailto: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 November 11, 2015.

**Michael Kaszycki,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2015–29442 Filed 11–18–15; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA–2015–4816; Directorate Identifier 2014–NM–238–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 A319, A320, and A321 series airplanes. This proposed AD was prompted by investigations that revealed that the cover seal of the brake dual distribution valve (BDDV) was damaged and did not ensure efficient sealing. This proposed AD would require modifying the BDDV having certain part numbers; modifying the drain hose of the BDDV; checking for the presence of water, ice, and hydraulic fluid; and re-identifying the BDDV; and related investigative and corrective actions if necessary. We are proposing this AD to prevent damage to the BDDV, which could lead to water ingestion in the BDDV and freezing of the BDDV in flight, possibly resulting in loss of braking system function after landing.

**DATES:** We must receive comments on this proposed AD by January 4, 2016.

**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, Airworthiness Office—EIAS, 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](mailto: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-2015-4816; 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-2015-4816; Directorate Identifier 2014-NM-238-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 2014-0251R1, dated December 17, 2014 (referred to after this as the Mandatory Continuing Airworthiness Information, or “the MCAI”), to correct an unsafe condition for certain Airbus Model A319, A320, and A321 series airplanes. The MCAI states:

In 1998, an operator experienced a dual loss of braking systems. Investigation results revealed that the cover seal of the Brake Dual Distribution Valve (BDDV) was damaged and did not ensure the sealing efficiency.

This condition, if not corrected, could lead to water ingestion in the BDDV and freezing of the BDDV in flight, possibly resulting in loss of braking system function after landing.

[The Directorate General for Civil Aviation] (DGAC) France issued AD 2000-258-146 [[http://ad.easa.europa.eu/blob/20002580tb\\_superseded.pdf/AD\\_F-2000-258-146\\_1](http://ad.easa.europa.eu/blob/20002580tb_superseded.pdf/AD_F-2000-258-146_1)] [which corresponds to certain actions in FAA AD 2001-15-10, Amendment 39-12344 (66 FR 39413, July 31, 2001)] to require modification of the BDDV with a new cover and installation of a draining tube with a cap.

Since that French AD was issued, following a new event, Airbus developed a modification of the BDDV drain tube which will leave it open, ensuring continuous drainage of any ingested water, thereby preventing freezing of the brake system.

For the reasons described above, EASA issued [another AD] \* \* \*, to require modification of the BDDV drain tube.

Since that [EASA] AD was issued, comments were received that indicated a need for correction and clarification. Consequently, this [EASA] AD is revised to add a Note to Table 1 and to amend paragraph (3).

The modification includes a check for the presence of water, ice, and hydraulic fluid, and related investigative and corrective actions if necessary. Related investigative actions include an inspection for corrosion. Corrective actions include replacing the BDDV. 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-2015-4816.

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

Airbus has issued Service Bulletin A320-32-1415, dated September 2, 2014. The service information describes procedures for modifying the BDDV having certain part numbers; and modifying the drain hose of the BDDV; the modification includes a check for the presence of water, ice, and hydraulic fluid; and re-identifying the BDDV; and related investigative and corrective actions if necessary. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section of this NPRM.

#### 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.

#### Explanation of “RC” Procedures and Tests in Service Information

The FAA worked in conjunction with industry, under the Airworthiness Directive Implementation Aviation Rulemaking Committee (ARC), to enhance the AD system. One enhancement was a new process for annotating which procedures and tests in the service information are required for compliance with an AD. Differentiating these procedures and tests from other tasks in the service information is expected to improve an owner’s/operator’s understanding of crucial AD requirements and help provide consistent judgment in AD compliance. The procedures and tests identified as RC (required for compliance) in any service information have a direct effect on detecting, preventing, resolving, or eliminating an identified unsafe condition.

As specified in a NOTE under the Accomplishment Instructions of the specified service information, procedures and tests that are identified as RC in any service information must be done to comply with the proposed AD. However, procedures and tests that are not identified as RC are recommended. Those procedures and

tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an alternative method of compliance (AMOC), provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC will require approval of an AMOC.

### Costs of Compliance

We estimate that this proposed AD affects 953 airplanes of U.S. registry.

We also estimate that it would take about 6 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 \$421 per product. Based on these figures, we estimate the cost of this proposed AD on U.S. operators to be \$887,243, or \$931 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 adding the following new airworthiness directive (AD):

**Airbus:** Docket No. FAA-2015-4816; Directorate Identifier 2014-NM-238-AD.

#### (a) Comments Due Date

We must receive comments by January 4, 2016.

#### (b) Affected ADs

None.

#### (c) Applicability

This AD applies to the airplanes identified in paragraphs (c)(1) through (c)(3) of this AD, certificated in any category, all manufacturer serial numbers, except those on which Airbus Modification 26925 has been embodied in production.

(1) Airbus Model A319-111, -112, -113, -114, -115, -131, -132, and -133 airplanes.

(2) Airbus Model A320-211, -212, -214, -231, -232, and -233 airplanes.

(3) Airbus Model A321-111, -112, -131, -211, -212, -213, -231, and -232 airplanes.

#### (d) Subject

Air Transport Association (ATA) of America Code 32, Landing Gear.

#### (e) Reason

This AD was prompted by investigations that revealed that the cover seal of the BDDV was damaged and did not ensure efficient sealing. We are issuing this AD to prevent damage to the BDDV, which could lead to water ingestion in the BDDV and freezing of the BDDV in flight, possibly resulting in loss of braking system function after landing.

#### (f) Compliance

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

#### (g) Modification and Re-Identification

Within 24 months after the effective date of this AD, modify the BDDV having a part number listed in the column "Old Part Number" in table 1 to paragraph (g) of this AD; modify the drain hose of the affected BDDV; check for the presence of water, ice, and hydraulic fluid; and re-identify the BDDV to the corresponding part number, as applicable, as listed as "New Part Number" in table 1 to paragraph (g) of this AD; and do all applicable related investigative and corrective actions; in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320-32-1415, dated September 2, 2014. Do all applicable related investigative and corrective actions before further flight.

TABLE 1 TO PARAGRAPH (g) OF THIS AD—BDDV PART NUMBER RE-IDENTIFICATION

Old part number	New part number
A25434006-3 .....	A25434006-3000.
A25434005-101 .....	A25434005-1010.
A25434005-201 .....	A25434005-2010.
A25434005-301 .....	A25434005-3010.
A25434005-401 .....	A25434005-4010.
A25434006-101 .....	A25434006-1010.

**Note 2 to table 1 to paragraph (g) of this AD:** The part number listed in table 1 to paragraph (g) of this AD can have an "A" or "B" suffix, which is an indication of the amendment level of the BDDV. This does not affect compliance with this AD.

#### (h) Parts Installation Limitations

As of the applicable time specified in paragraph (h)(1) or (h)(2) of this AD, no person may install a BDDV having a part number listed as "Old Part Number" in table 1 to paragraph (g) of this AD, on any airplane.

(1) For any airplane that, on the effective date of this AD, has a BDDV installed with a part number listed as "Old Part Number" in table 1 to paragraph (g) of this AD: After modification of the airplane, as required by paragraph (g) of this AD.

(2) For any airplane that, on the effective date of this AD, has a BDDV installed with a part number listed as "New Part Number" in table 1 to paragraph (g) of this AD, or has a BDDV installed with a part number not listed in table 1 to paragraph (g) of this AD: As of the effective date of this AD.

#### (i) 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](mailto:9-ANM-116-AMOC-REQUESTS@faa.gov). Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

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

(3) *Required for Compliance (RC):* If any service information contains procedures or tests that are identified as RC, those procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

#### (j) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2014-0251R1, dated December 17, 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-2015-4816.

(2) For service information identified in this AD, contact Airbus, Airworthiness Office—EIAS, 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](mailto: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 November 10, 2015.

**Michael Kaszycki,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2015-29444 Filed 11-18-15; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 147

[Docket No.: FAA-2015-3901; Notice No. 15-10]

RIN 2120-AK48

#### Aviation Maintenance Technician Schools

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

**ACTION:** Notice of proposed rulemaking (NPRM); extension of comment period.

**SUMMARY:** This action extends the comment period for an NPRM published on October 2, 2015. In that document, the FAA proposes to amend the regulations governing the curriculum and operations of FAA-certificated Aviation Maintenance Technician Schools. These amendments would modernize and reorganize the required curriculum subjects in the appendices of the current regulations. They would also remove the course content items currently located in the appendices and require that they be placed in each school's operations specifications so they could more easily be amended when necessary. The amendments are needed because the existing curriculums are outdated, do not meet current industry needs, and can be changed only through notice and comment rulemaking. These amendments would ensure that aviation maintenance technician students receive up-to-date foundational training to meet the demanding and consistently changing needs of the aviation industry. This extension is a result of a joint request from Aviation Technical Education Council (ATEC), Aeronautical Repair Station Association (ARSA), Aircraft Owners and Pilots Association (AOPA), Airlines for America (A4A), Aviation Suppliers Association (ASA), Helicopter Association International (HAI), Modification And Replacement Parts Association (MARPA), National Air Carrier Association (NACA), National Air Transport Association (NATA), Regional Airline Association, STEM Education Coalition (STEM), and University Aviation Association (UAA) (collectively, the "Petitioners").

**DATES:** The comment period for the notice of proposed rulemaking published on October 2, 2015 (80 FR 59674), is extended. Send comments on or before February 1, 2016.

**ADDRESSES:** Send comments identified by docket number FAA-2015-3901 using any of the following methods:

- *Federal Rulemaking Portal:* Go to <http://www.regulations.gov> and follow the online instructions for sending your comments electronically.

- *Mail:* Send comments to Docket Operations, M-30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12-140, West Building Ground Floor, Washington, DC 20590-0001.

- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

- *Fax:* Fax comments to Docket Operations at 202-493-2251.

*Privacy:* In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to [www.regulations.gov](http://www.regulations.gov), as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at [www.dot.gov/privacy](http://www.dot.gov/privacy).

*Docket:* Background documents or comments received may be read at <http://www.regulations.gov> at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** For technical questions concerning this action, contact Robert Warren, Aircraft Maintenance Division, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-1711; email [robert.w.warren@faa.gov](mailto:robert.w.warren@faa.gov). For legal questions concerning this action, contact Edmund Averman, Office of the Chief Counsel (AGC-210), Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-3147; email [Ed.Averman@faa.gov](mailto:Ed.Averman@faa.gov).

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

The FAA continues to invite interested persons to take part in this rulemaking by submitting written comments, data, or views about the NPRM we issued on October 2, 2015 (part 147, Aviation Maintenance Technician Schools (80 FR 59674)(October 2, 2015). The most

helpful comments will reference a specific portion of the NPRM, explain the reason for any recommended change, and include supporting data.

### Background

On October 2, 2015, the Federal Aviation Administration (FAA) issued Notice No. 15–10, Aviation Maintenance Technician Schools (80 FR 59674) (October 2, 2015) (“NPRM”). The comment period for the NPRM ends on December 31, 2015.

By letter dated October 26, 2015, the Petitioners jointly asked the FAA to extend the NPRM’s comment period by 90 days. The Petitioners believe that, with the additional time requested, the aviation industry and its partners in technical education will help the FAA develop a rule that supports schools, aids students at the beginning of a rewarding career, and serves an important growing industry.

The FAA recognizes the NPRM’s contents are significant and complex and that a ninety-day comment period may not be sufficient. However, the FAA believes that a 90 day extension, for a total of 180 days, is excessive. We have determined that an additional 30 days will be enough for potential commenters to collect the cost and operational data necessary to provide meaningful comments to the NPRM (for a total of 120 days from October 2, 2015). Absent unusual circumstances, the FAA does not anticipate any further extension of the comment period for this rulemaking.

### Extension of Comment Period

In accordance with 14 CFR 11.47(c), the FAA has reviewed the petition submitted by the Petitioners for an extension of the comment period to the NPRM. The FAA finds that the petitioners have a substantive interest in the proposed rule, and that an extension of the comment period for Notice No. 15–10 is consistent with the public interest, and that good cause exists for granting this extension.

Accordingly, the comment period for Notice No. 15–10 is extended until February 1, 2016.

Issued in Washington, DC, on November 16, 2015.

**Lirio Liu,**

*Director, Office of Rulemaking.*

[FR Doc. 2015–29505 Filed 11–18–15; 8:45 am]

**BILLING CODE 4910–13–P**

## CONSUMER PRODUCT SAFETY COMMISSION

### 16 CFR Parts 1109 and 1500

[Docket No. CPSC–2011–0081]

#### Amendment To Clarify When Component Part Testing Can Be Used and Which Textile Products Have Been Determined Not To Exceed the Allowable Lead Content Limits; Notice of Reopening of Comment Period

**AGENCY:** U.S. Consumer Product Safety Commission.

**ACTION:** Notice of proposed rulemaking; reopening of comment period.

**SUMMARY:** The Consumer Product Safety Commission (“Commission” or “CPSC”) published a direct final rule (“DFR”) and notice of proposed rulemaking (“NPR”) in the same issue of the **Federal Register** on October 14, 2015, clarifying when component part testing can be used and clarifying which textile products have been determined not to exceed the allowable lead content limits. The DFR and the NPR invited the public to submit written comments by November 13, 2015. In response to a request for an extension, the Commission is reopening the comment period on the NPR to December 14, 2015.

**DATES:** The comment period for the notice of proposed rulemaking published on October 14, 2015 (80 FR 61773), is reopened. Submit comments by December 14, 2015.

**ADDRESSES:** You may submit comments, identified by Docket No. CPSC–2011–0081, by any of the following methods:

#### Electronic Submissions

*Submit electronic comments in the following way:*

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

#### Written Submissions

*Submit written submissions in the following way:*

Mail/Hand delivery/Courier, preferably in five copies, 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 electronically. Such information should be submitted in writing.

*Docket:* For access to the docket to read background documents or comments received, go to: <http://www.regulations.gov> and insert the Docket No. CPSC–2011–0081 into the “Search” box and follow the prompts.

#### FOR FURTHER INFORMATION CONTACT:

Kristina Hatlelid, Ph.D., M.P.H., Directorate for Health Sciences, U.S. Consumer Product Safety Commission, 5 Research Place, Rockville, MD 20850; (301) 987–2558; email: [khatlelid@cpsc.gov](mailto:khatlelid@cpsc.gov).

**SUPPLEMENTARY INFORMATION:** On October 14, 2015, the Commission published a DFR and an NPR in the **Federal Register**, clarifying when component part testing can be used and clarifying which textile products have been determined not to exceed the allowable lead content limits. (DFR, 80 FR 61729 and NPR, 80 FR 61773). The American Apparel and Footwear Association (“AAFA”) has requested an extension of the comment period for 30 days because AAFA-member companies are currently reviewing the Commission’s proposed amendment to the rule and need additional time to submit comments.

The Commission has considered the request and is reopening the comment period for an additional 30 days. Because the 30-day extension date falls on a Sunday, the comment period will close on December 14, 2015. The Commission believes that this extension allows adequate time for interested persons to submit comments on the proposed rule, without significantly delaying the rulemaking.

**Alberta E. Mills,**

*Acting Secretary, Consumer Product Safety Commission.*

[FR Doc. 2015–29504 Filed 11–18–15; 8:45 am]

**BILLING CODE 6355–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R03-OAR-2015-0666; FRL-9937-17-Region 3]

### Approval and Promulgation of Air Quality Implementation Plans; District of Columbia; Regulation To Limit Nitrogen Oxides Emissions From Large Non-Electric Generating Units

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the District of Columbia Department of Energy and Environment (DOEE). This revision caps emissions of nitrogen oxides (NO<sub>x</sub>) from large non-electric generating units (non-EGUs) to meet the requirements of EPA's NO<sub>x</sub> SIP Call. This action is being taken under the Clean Air Act (CAA).

**DATES:** Written comments must be received on or before December 21, 2015.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA-R03-OAR-2015-0666 by one of the following methods:

A. *www.regulations.gov*. Follow the on-line instructions for submitting comments.

B. *Email: fernandez.cristina@epa.gov*.

C. *Mail: EPA-R03-OAR-2015-0666, Cristina Fernandez, Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.*

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA-R03-OAR-2015-0666. 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 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 avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in *www.regulations.gov* or may be viewed during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the District of Columbia Department of Energy and Environment, Air Quality Division, 1200 1st Street NE., 5th Floor, Washington, DC 20002.

**FOR FURTHER INFORMATION CONTACT:** Marilyn Powers, (215) 814-2308, or by email at *powers.marilyn@epa.gov*.

**SUPPLEMENTARY INFORMATION:** On June 19, 2015, DOEE submitted, as a revision to its SIP, a regulation to limit NO<sub>x</sub> emissions from the non-EGUs in the District that are subject to EPA's NO<sub>x</sub> SIP call.

### I. Background

On October 27, 1998 (63 FR 57356), EPA issued a finding that required 22 states and the District of Columbia to submit SIPs to address the regional transport of ground level ozone that was significantly contributing to nonattainment or interfering with maintenance for the 1-hour and 8-hour ozone NAAQS in downwind areas, known as the NO<sub>x</sub> SIP Call. The October 27, 1998 rulemaking action established

a model trading rule under 40 CFR part 96 that states could adopt to comply with the reduction requirements of the NO<sub>x</sub> SIP Call, commonly referred to as the NO<sub>x</sub> Budget Trading Program (NBTP). The NBTP established under the NO<sub>x</sub> SIP Call applied to electric generating units (EGUs) greater than 25 megawatts electric (25 MWe) and non-EGUs (large industrial boilers and turbines) with a maximum rated heat input capacity greater than 250 million British thermal units per hour (mmbtu/hr). To comply with the NO<sub>x</sub> SIP Call, the District submitted a SIP revision that incorporated by reference the 40 CFR part 96 model trading rule. On November 1, 2001 (66 FR 55099), the revision was approved into the District of Columbia SIP.

On May 12, 2005 (70 FR 25162), EPA promulgated the Clean Air Interstate Rule (CAIR), which required 28 states and the District of Columbia to reduce NO<sub>x</sub> and sulfur dioxide (SO<sub>2</sub>) emissions that were significantly contributing to downwind nonattainment and interfering with maintenance of the 1997 8-hour ozone standard and the 1997 fine particulate matter (PM<sub>2.5</sub>) annual standard. The May 12, 2005 rulemaking established model trading rules for EGUs that states could adopt to comply with their reduction obligations under CAIR. The NO<sub>x</sub> SIP Call requirements continued to apply, and the CAIR model trading rules included a CAIR NO<sub>x</sub> ozone season trading program that was coordinated with the NO<sub>x</sub> SIP Call, replacing the NBTP as it applied to EGUs for those states that chose to participate in the CAIR trading program. In addition, as part of their CAIR SIP, states had the option of expanding the applicability provisions of the CAIR NO<sub>x</sub> ozone season trading program to include the non-EGUs that were trading under the NBTP. Thus, a state that elected to have non-EGUs participate in the CAIR NO<sub>x</sub> ozone season trading program would meet its NO<sub>x</sub> SIP Call obligations for both the EGUs and non-EGUs that were formerly trading under the NBTP through the CAIR trading program.

On April 28, 2006 (71 FR 25328), EPA promulgated Federal implementation plans (FIPs) for all States covered by CAIR in order to ensure that the emission reductions required by CAIR were achieved on schedule. The CAIR FIPs, which applied only to EGUs, required participation in the CAIR trading programs. The CAIR FIP trading programs imposed essentially the same requirements as, and were integrated with, the respective CAIR SIP trading programs. Thus a state subject to the CAIR FIP would be meeting its NO<sub>x</sub> SIP

Call requirements with respect to its EGUs. Upon approval of a SIP revision implementing CAIR, a state's CAIR FIP would be withdrawn.

Subsequently, EPA discontinued the NBTP in 2008. The District of Columbia, however, did not submit a CAIR SIP. Therefore it became subject to the CAIR FIP in January 2009, and its NO<sub>x</sub> SIP Call reductions for EGUs that were trading in the NBTP were met by the CAIR NO<sub>x</sub> ozone season trading program under the FIP.<sup>1</sup> However, because the CAIR FIP did not have an option for inclusion of non-EGUs as trading participants, the District was required to submit a SIP revision to demonstrate compliance with its NO<sub>x</sub> SIP Call state budget for non-EGUs, in accordance with 40 CFR part 51.121.

## II. Summary of SIP Revision

On June 19, 2015, DOEE submitted a SIP revision that addresses NO<sub>x</sub> reductions from its non-EGUs to meet its obligations under the NO<sub>x</sub> SIP Call. The submission removes, from the District's SIP, regulation Title 20 DCMR Chapter 10—Nitrogen Oxides Emissions Budget Program. Sections 1000 through 1013 of 20 DCMR Chapter 10 comprised the District's Ozone Transport Commission (OTC) NO<sub>x</sub> Budget Program, which preceded the NO<sub>x</sub> SIP Call trading program, and section 1014 incorporated by reference the NBTP. This submission replaces this regulation with revised Chapter 10—Air Quality—Non-EGU Limits on Nitrogen Oxides Emissions. The revised Chapter 10 regulation establishes a 25 ton ozone season NO<sub>x</sub> emissions cap on applicable non-EGUs<sup>2</sup> in the District, and allocates the cap to the non-EGUs located at the U.S. General Services Administration Central (GSA) Heating and Refrigeration Plant, with a reallocation required whenever a new non-EGU in the District

becomes subject to the NO<sub>x</sub> SIP Call. The regulation also requires continuous emissions monitoring (CEMs) of NO<sub>x</sub> emissions, recordkeeping and reporting pursuant to 40 CFR part 75 to ensure compliance with the District's non-EGU emissions cap. The submission includes a revision to an associated definition and an abbreviation in the District's regulations to ensure consistency with NO<sub>x</sub> SIP Call requirements. The submission also removes the obsolete requirements in 20 DCMR Chapter 10 for the OTC NO<sub>x</sub> Budget Program because the program ended in 2003 upon the start of the EPA NBTP under the NO<sub>x</sub> SIP Call.

Under section 110(l) of the CAA, EPA may not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable requirement under section 110 of the CAA. EPA finds the proposed removal of the regulations for the discontinued OTC and NO<sub>x</sub> SIP Call trading programs from the District's SIP will not interfere with attainment or reasonable further progress of any NAAQS nor interfere with any other applicable CAA requirement. First, the revision to the SIP merely removes outdated provisions from the SIP (*i.e.*, the NBTP and OTC program) which are no longer effective. Second, the District's emissions budget under the NO<sub>x</sub> SIP Call was more stringent than the budget under the OTC NO<sub>x</sub> Budget Program thus providing for greater NO<sub>x</sub> reductions and protection of the NAAQS so removal of the OTC program has no effect on the NAAQS. Likewise, the CAIR NO<sub>x</sub> Ozone Season trading program budget was designed to replace the NBTP for EGUs and was more stringent than the NO<sub>x</sub> SIP Call budget, thus providing greater NO<sub>x</sub> reductions and protection of the NAAQS than the NBTP. As the District no longer has any EGUs subject to the NO<sub>x</sub> SIP Call nor to CSAPR which replaced CAIR, removal of the NBTP from the SIP has no effect on NO<sub>x</sub> emissions in the District. Finally, approval of this proposed SIP revision will maintain the NO<sub>x</sub> emission reduction requirements of the NO<sub>x</sub> SIP Call for the District's non-EGUs and allow the District to meet its remaining NO<sub>x</sub> SIP Call emissions budget. As the District no longer has any EGUs, the District has no further obligations under CSAPR, CAIR or the NO<sub>x</sub> SIP Call regarding EGUs. Therefore, removal of the previous trading programs from the District's SIP does not interfere with attainment or reasonable further progress on any NAAQS nor interfere

with any applicable requirement under section 110 of the CAA.

## III. Proposed Action

EPA's review of this material indicates that the submittal is adequate to address the emission reduction requirements of the non-EGUs under the NO<sub>x</sub> SIP Call and is in accordance with requirements in CAA section 110 and its implementing regulations. EPA is proposing to approve the District of Columbia SIP revision, submitted on June 19, 2015, that establishes a 25 ton ozone season NO<sub>x</sub> emissions cap for non-EGUs in the District. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

## IV. Incorporation by Reference

In this proposed rulemaking action, EPA is proposing to include in a final EPA rule, regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference revised District of Columbia regulation Title 20 DCMR, Environment, Chapter 10—Air Quality—Non-EGU Limits on Nitrogen Oxides Emissions, and the revised definition of "Fossil fuel-fired" in Chapter 1, General Rules. The EPA has made, and will continue to make, these documents generally available electronically through [www.regulations.gov](http://www.regulations.gov) and/or may be viewed at the appropriate EPA office (see the **ADDRESSES** section of this preamble for more information).

## V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

<sup>1</sup> On January 1, 2015, the trading programs under the Cross-State Air Pollution Rule (CSAPR) replaced the trading programs under CAIR. EPA had promulgated CSAPR to replace CAIR after the D.C. Circuit remanded CAIR to EPA in 2008. *See North Carolina v. EPA*, 550 F.3d 1176 (D.C. Cir. 2008). *See also* 76 FR 48208 (August 8, 2011) (promulgating CSAPR). After litigation on the merits of CSAPR, EPA began implementing CSAPR in 2015. *See EPA v. EME Homer City Generation, L.P.*, 134 S. Ct. 1584 (2014). *See also* 79 FR 71663 (December 3, 2014) (interim final rulemaking adjusting CSAPR's implementation dates). CSAPR does not apply to the District of Columbia. The District has no EGUs meeting the applicability criteria under CSAPR since the only EGU in the District permanently shut down in 2012. With this shut down, the District therefore also no longer has any EGU obligations under the NO<sub>x</sub> SIP Call.

<sup>2</sup> Applicable non-EGUs are the non-EGUs that were subject to the NO<sub>x</sub> SIP Call, including large industrial boilers and turbines with a maximum rated heat input capacity greater than 250 mmbtu/hr.

- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this action proposing approval of the District of Columbia regulation to limit NO<sub>x</sub> emissions from non-EGUs subject to the NO<sub>x</sub> SIP Call and approval of a related definition and abbreviation, does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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

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

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

Dated: November 6, 2015.

**Shawn M. Garvin,**

*Regional Administrator, Region III.*

[FR Doc. 2015–29369 Filed 11–18–15; 8:45 am]

**BILLING CODE 6560–50–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 151027997–5997–01]

RIN 0648–BF48

#### Control Date for the Trawl Limited Access Fishery for Yellowfin Sole in the Bering Sea and Aleutian Islands

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

**ACTION:** Advance notice of proposed rulemaking (ANPR); control date.

**SUMMARY:** At the request of the North Pacific Fishery Management Council (Council), this document announces a control date of October 13, 2015, that may be used as a reference date for a future management action to limit future access to the offshore sector of the Bering Sea and Aleutian Islands (BSAI) trawl limited access fishery for yellowfin sole. This date corresponds to the date the Council announced its intent to evaluate participation and effort in response to a public request to consider further limits on access to the offshore sector of the BSAI trawl limited access fishery for yellowfin sole. This document is intended to promote awareness of possible rulemaking and provide notice to the public that any participation in the offshore sector of the BSAI trawl limited access fishery for yellowfin sole after the control date may not ensure continued access to that fishery under a future management action. This document is also intended to discourage speculative entry into the fishery while the Council considers whether and how access to the fishery may be further limited under a future management action.

**DATES:** October 13, 2015, shall be known as the control date for the offshore sector of the BSAI trawl limited access fishery for yellowfin sole and may be used as a reference for participation in a future management action that is consistent with the Council's objectives and applicable Federal laws.

**FOR FURTHER INFORMATION CONTACT:** Rachel Baker: 907–586–7228 or [rachel.baker@noaa.gov](mailto:rachel.baker@noaa.gov).

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fisheries in the U.S. exclusive economic zone (EEZ) of the BSAI under the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP). The Council

prepared, and NMFS approved, the FMP under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.* Regulations governing U.S. fisheries and implementing the FMP appear at 50 CFR parts 600 and 679.

This advance notice of proposed rulemaking would apply to owners and operators of vessels that participate in the Federal fishery for yellowfin sole with trawl gear in the offshore sector of the BSAI. The BSAI is defined at § 679.2 and shown in Figure 1 to 50 CFR part 679.

Vessels that participate in the offshore sector of the BSAI trawl limited access fishery for yellowfin sole include catcher vessels, catcher/processors, and motherships. Catcher vessels participate in the offshore sector by delivering yellowfin sole to catcher/processors or motherships for processing. Catcher/processors participate in the offshore sector by catching and processing yellowfin sole or by receiving and processing deliveries of yellowfin sole from catcher vessels. Motherships participate in the offshore sector by receiving and processing deliveries of yellowfin sole from catcher vessels. This advance notice of proposed rulemaking would not apply to owners and operators of trawl catcher vessels that participate in the inshore sector of the BSAI trawl limited access fishery for yellowfin sole, *i.e.*, vessels that deliver yellowfin sole to shoreside processors rather than to catcher/processors or motherships.

The Council and NMFS annually establish biological thresholds and annual total allowable catch limits for groundfish species, such as yellowfin sole, to sustainably manage the groundfish fisheries in the BSAI. To achieve these objectives, NMFS requires vessel operators participating in BSAI groundfish fisheries to comply with various regulatory restrictions, such as fishery closures, to maintain catch within specified total allowable catch limits. The BSAI groundfish fishery restrictions also include prohibited species catch (PSC) limits for Pacific halibut that generally require halibut to be discarded when harvested. When harvest of halibut PSC reaches the specified halibut PSC limit for that fishery, NMFS closes directed fishing for the target groundfish species, even if the total allowable catch limit for that species has not been harvested. The Council and NMFS have long sought to control fishing effort in the North Pacific Ocean to ensure that fisheries are conservatively managed and do not exceed established biological

thresholds. One of the measures used by the Council and NMFS is the license limitation program (LLP) which limits access to the groundfish, crab, and scallop fisheries in the BSAI and the Gulf of Alaska. The LLP is intended to limit entry into federally managed fisheries. For groundfish, the LLP requires that persons hold and assign a license to each vessel that is used to fish in federally managed fisheries, with some limited exemptions. The preamble to the final rule implementing the groundfish LLP provides a more detailed explanation of the rationale for specific provisions in the LLP (October 1, 1998; 63 FR 52642).

On October 13, 2015, the Council received public testimony from participants in the offshore sector of the BSAI trawl limited access fishery for yellowfin sole. These participants indicated that several new vessels entered the fishery during 2015. The testimony indicated that this new entry may negatively impact the ability of historical participants to maintain yellowfin sole harvests and may increase halibut PSC in the fishery.

After considering this public testimony, the Council stated its intent to evaluate participation and effort in the BSAI trawl limited access fishery for

yellowfin sole in response to a potential need to limit entry in the offshore sector of that fishery. To dampen the effect of speculative entry into the offshore sector of the BSAI trawl limited access fishery for yellowfin sole in anticipation of potential future action to further limit access to the fishery, the Council announced a control date of October 13, 2015. The control date may be used as a reference date for a future management action to further limit access to the offshore trawl limited access fishery for yellowfin sole in the BSAI. The Council clarified that the control date would not obligate the Council to use this control date in any future management action. Further, the control date would not obligate the Council to take any action or prevent the Council from selecting another control date. Accordingly, this document is intended to promote awareness that the Council may develop a future management action to achieve its objectives for the offshore sector of the BSAI trawl limited access fishery for yellowfin sole; to provide notice to the public that any current or future access to the offshore sector of the BSAI trawl limited access fishery for yellowfin sole may be affected or restricted; and to discourage speculative participation and

behavior in the fishery while the Council considers whether to initiate a management action to further limit access to the fishery. Any measures the Council considers may require changes to the FMP. Such measures may be adopted in a future amendment to the FMP, which would include opportunity for further public participation and comment.

NMFS encourages public participation in the Council's consideration of a management action to further limit access to the offshore sector of the BSAI trawl limited access fishery for yellowfin sole. Please consult the Council's Web site at <http://www.npfmc.org/> for information on public participation in the Council's decision-making process.

This notification and control date do not impose any legal obligations, requirements, or expectations.

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

Dated: November 16, 2015.

**Samuel D. Rauch III,**

*Deputy Assistant Administrator for  
Regulatory Programs, National Marine  
Fisheries Service.*

[FR Doc. 2015-29535 Filed 11-18-15; 8:45 am]

**BILLING CODE 3510-22-P**

# Notices

Federal Register

Vol. 80, No. 223

Thursday, November 19, 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

### Office of the Under Secretary, Research, Education, and Economics; Notice of the Advisory Committee on Biotechnology and 21st Century Agriculture Meeting

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

**ACTION:** Notice of public meeting.

**SUMMARY:** Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. 2, the United States Department of Agriculture (USDA) announces a meeting of the Advisory Committee on Biotechnology and 21st Century Agriculture (AC21). The committee is being convened to update committee members on USDA activities to support coexistence among different agricultural production systems, consistent with AC21 recommendations contained in the committee's previous report; and to discuss a new task related to coexistence for committee deliberations and develop a plan for addressing it.

**DATES:** The meeting will be held on Monday-Tuesday, December 14–15, 2015, 8:30 a.m. to 5:00 p.m. each day. This meeting is open to the public. On December 14, 2015, if time permits, reasonable provision will be made for oral presentations of no more than five minutes each in duration, starting at 3:30 p.m. Members of the public who wish to make oral statements should also inform Dr. Michael Schechtman in writing or via email at the indicated addresses below at least three business days before the meeting.

**ADDRESSES:** U.S. Access Board Conference Room, 1331 F Street NW., Suite 800, Washington, DC 20004–1111.

**FOR FURTHER INFORMATION CONTACT:** General information about the committee can also be found at: [http://www.usda.gov/wps/portal/usda/usdahome?navid=BIOTECH\\_AC21&navtype=RT&parentnav=BIO TECH](http://www.usda.gov/wps/portal/usda/usdahome?navid=BIOTECH_AC21&navtype=RT&parentnav=BIO TECH). However, Dr. Michael

Schechtman, Designated Federal Official, Office of the Deputy Secretary, USDA, Jamie L. Whitten Building, Room 202B, 1400 Independence Avenue SW., Washington, DC 20250; Telephone (202) 720–3817; Fax (202) 690–4265; Email [AC21@ars.usda.gov](mailto:AC21@ars.usda.gov) may be contacted for specific questions about the committee or this meeting.

**SUPPLEMENTARY INFORMATION:** The AC21 has been established to provide information and advice to the Secretary of Agriculture on the broad array of issues related to the expanding dimensions and importance of agricultural biotechnology. The committee is charged with examining the long-term impacts of biotechnology on the U.S. food and agriculture system and USDA, and providing guidance to USDA on pressing individual issues, identified by the Office of the Secretary, related to the application of biotechnology in agriculture. In recent years, the work of the AC21 has centered on the issue of coexistence among different types of agricultural production systems. The AC21 consists of members representing the biotechnology industry, the organic food industry, farming communities, the seed industry, food manufacturers, state government, consumer and community development groups, as well as academic researchers and a medical doctor. In addition, representatives from the Department of Commerce, the Department of Health and Human Services, the Department of State, the Environmental Protection Agency, the Council on Environmental Quality, and the Office of the United States Trade Representative may serve as “ex officio” members. The objectives for the meeting are:

- To review the AC21 purpose, history, and operational process, and member responsibilities;
  - To update committee members on regulatory developments and initiatives on biotechnology-derived agricultural products;
  - To update committee members on USDA activities to support coexistence consistent with AC21 recommendations contained in the committee's previous report; and
  - To outline the new task for committee deliberations and develop a plan for addressing it.
- Background information regarding the work and membership of the AC21 is

available on the USDA Web site at: <http://www.usda.gov/wps/portal/usda/usdahome?contentid=AC21Main.xml&contentidonly=true>.

**Register for the Meeting:** The public is asked to pre-register for the meeting at least 10 business days prior to the meeting. Your pre-registration must state: the names of each person in your group; organization or interest represented; the number of people planning to give oral comments, if any; and whether anyone in your group requires special accommodations. Submit registrations to Ms. Dianne Fowler at (202) 720–4074 or by email at [Dianne.fowler@ars.usda.gov](mailto:Dianne.fowler@ars.usda.gov) by December 4, 2015. The Agricultural Research Service will also accept walk-in registrations. Members of the public who request to give oral comments to the Committee, must arrive by 8:45 a.m. on December 14, 2015 and will be given their allotted time limit and turn at the check-in table.

**Public Comments:** Written public comments may be mailed to Dr. Michael Schechtman, Designated Federal Official, Office of the Deputy Secretary, USDA, Jamie L. Whitten Building, Room 202B, 1400 Independence Avenue SW., Washington, DC 20250; via fax to (202) 690–4265 or email to [AC21@ars.usda.gov](mailto:AC21@ars.usda.gov). All written comments must arrive by December 10, 2015. Oral comments are also accepted. To request to give oral comments, see instructions under “Register for the Meeting” above.

**Availability of Materials for the Meeting:** All written public comments will be compiled into a binder and available for review at the meeting. Duplicate comments from multiple individuals will appear as one comment, with a notation that multiple copies of the comment were received. Please visit the Web site listed above to learn more about the agenda for or reports resulting from this meeting.

**Meeting Accommodations:** USDA is committed to ensuring that all employees are included in our work environment, programs, and events. If you are a person with a disability and request reasonable accommodations to participate in this meeting, please note the request in your registration. All reasonable accommodation requests are managed on a case by case basis.

Issued at Washington, DC, this 13th day of November 2015.

**Catherine E. Woteki,**

*Under Secretary, Research, Education, and Economics.*

[FR Doc. 2015-29540 Filed 11-18-15; 8:45 am]

**BILLING CODE 3410-03-P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

#### Notice of New Fee Site; Federal Lands Recreation Enhancement Act

**AGENCY:** Deschutes National Forest, Crescent Ranger District, Forest Service, USDA.

**ACTION:** Notice of new fee site—Crescent Lake Guard Station.

**SUMMARY:** The Deschutes National Forest is proposing to charge \$120 fee for the overnight rental of Crescent Lake Guard Station. This cabin has not been available for recreation use prior to this date. Rentals of other guard stations and lookouts on the Deschutes National Forest have shown that people appreciate and enjoy the availability of historic rental cabins. Funds from the rental will be used for the continued operation and maintenance of Crescent Lake Guard Station. This fee is only proposed and will be determined upon further analysis and public comment. Crescent Lake Guard Station was built in the early 1930's as a one bedroom one bath cabin on the eastern shore of Crescent Lake in Klamath County, Oregon. It has been refurbished utilizing grant dollars and boasts a full kitchen, running water and gas heat. The guard station will comfortably sleep 1-4 people and has beautiful views of the Cascades.

**DATES:** Send any comments about this fee proposal by December 30, 2015 so comments can be compiled, analyzed and shared with a Recreation Resource Advisory Committee. Crescent Lake Guard Station is intended to become available for recreation rental July 2016.

**ADDRESSES:** John Allen, Forest Supervisor, Deschutes National Forest, 63095 Deschutes Market Road, Bend, OR 97701.

**FOR FURTHER INFORMATION CONTACT:** Robert Gentry, Recreation and Lands Team Leader, Crescent Ranger District, [rgentry@fs.fed.us](mailto:rgentry@fs.fed.us), 541-433-3205.

**SUPPLEMENTARY INFORMATION:** The Federal Recreation Lands Enhancement Act (Title VII, Pub. L. 108-447) directed the Secretary of Agriculture to publish a six month advance notice in the **Federal Register** whenever new recreation fee areas are established. This

new fee will be reviewed by a Recreation Resource Advisory Committee prior to a final decision and implementation.

The Deschutes National Forest currently has two other recreation rental opportunities. These rentals are often fully booked throughout their rental season. A market analysis indicates that the \$120/per night fee is both reasonable and acceptable for this sort of unique recreation experience.

Once approved this rental opportunity will be available through the National Recreation Reservation Service, at [www.recreation.gov](http://www.recreation.gov), or by calling 1-877-444-6777. The National Recreation Reservation Service charges a \$9 fee for reservations.

Dated: November 9, 2015.

**A. Shane Jeffries,**

*Deschutes National Forest, Deputy Forest Supervisor.*

[FR Doc. 2015-28925 Filed 11-18-15; 8:45 am]

**BILLING CODE 3411-15-M**

## COMMISSION ON CIVIL RIGHTS

#### Notice of Public Meeting of the Oklahoma Advisory Committee To Discuss Findings and Recommendations Resulting From Its Inquiry Into the Civil Rights Impact of School Disciplinary Policies That May Contribute to High Rates of Juvenile Incarceration in Oklahoma

**AGENCY:** U.S. Commission on Civil Rights.

**ACTION:** Announcement of meeting.

**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 Oklahoma Advisory Committee (Committee) will hold a meeting on Thursday, December 3, 2015, from 10:00-11:00 a.m. CST for the purpose of discussing and findings and recommendations related to its inquiry regarding the civil rights impact of the "school to prison pipeline" in Oklahoma.

Members of the public may listen to the discussion. This meeting is available to the public through the following toll-free call-in number: 888-329-8862, conference ID: 6368974. Any interested member of the public may call this number and listen to the meeting. The conference call operator will ask callers to identify themselves, the organization they are affiliated with (if any), and an email address prior to placing callers into the conference room. Callers can expect to incur regular charges for calls

they initiate over wireless lines according to their wireless plan, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1-800-977-8339 and providing the Service with the conference call number and conference ID number.

Member of the public are also invited and welcomed to make statements at the end of the conference call. In addition, members of the public may submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be mailed to the Regional Programs Unit, U.S. Commission on Civil Rights, 55 W. Monroe St., Suite 410, Chicago, IL 60615. They may also be faxed to the Commission at (312) 353-8324, or emailed to Administrative Assistant, Corrine Sanders at [csanders@usccr.gov](mailto:csanders@usccr.gov). Persons who desire additional information may contact the Regional Programs Unit at (312) 353-8311.

Records and documents discussed during the meeting will be available for public viewing prior to and after the meeting at: <https://database.faca.gov/committee/meetings.aspx?cid=269> and clicking on the "Meeting Details" and "Documents" links. Records generated from this meeting may also be inspected and reproduced at the Regional Programs Unit, as they become available, both before and after the meeting. Persons interested in the work of this Committee are directed to the Commission's Web site, <http://www.usccr.gov>, or may contact the Regional Programs Unit at the above email or street address.

#### Agenda

Welcome and Roll Call  
Discussion of findings and recommendations regarding "Civil Rights and the School to Prison Pipeline in Oklahoma"

Open Comment  
Adjournment

**DATES:** The meeting will be held on Thursday, December 03, 2015, from 10:00-11:00 a.m. CST.

*Public Call Information:*

Dial: 888-329-8862

Conference ID: 6368974

**FOR FURTHER INFORMATION CONTACT:** Melissa Wojnarowski, DFO, at 312-353-8311 or [mwojnarowski@usccr.gov](mailto:mwojnarowski@usccr.gov).

*Exceptional Circumstance:* Pursuant to 41 CFR 102-3.150, the notice for this

meeting is published less than 15 days prior to the meeting because of the exceptional circumstance of the technological issues.

Dated: November 16, 2015.

**David Mussatt,**

*Chief, Regional Programs Unit.*

[FR Doc. 2015-29522 Filed 11-18-15; 8:45 am]

**BILLING CODE 6335-01-P**

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

[S-125-2015]

#### Approval of Expansion of Subzone 77E; Cummins, Inc.; Memphis, Tennessee

On August 28, 2015, the Executive Secretary of the Foreign-Trade Zones (FTZ) Board docketed an application submitted by the City of Memphis, grantee of FTZ 77, requesting to expand Subzone 77E subject to the existing activation limit of FTZ 77, on behalf of Cummins, Inc. in Memphis, Tennessee.

The application was processed in accordance with the FTZ Act and Regulations, including notice in the **Federal Register** inviting public comment (80 FR 54520-54521, September 10, 2015). The FTZ staff examiner reviewed the application and determined that it meets the criteria for approval. Pursuant to the authority delegated to the FTZ Board's Executive Secretary (15 CFR Sec. 400.36(f)), the application to expand Subzone 77E is approved, subject to the FTZ Act and the Board's regulations, including Section 400.13, and further subject to FTZ 77's 2,000-acre activation limit.

Dated: November 13, 2015.

**Elizabeth Whiteman,**

*Acting Executive Secretary.*

[FR Doc. 2015-29581 Filed 11-18-15; 8:45 am]

**BILLING CODE 3510-DS-P**

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

[B-77-2015]

#### Foreign-Trade Zone 78—Nashville, Tennessee; Application for Expansion of Subzone 78A Nissan North America, Inc. Smyrna, Tennessee

An application has been submitted to the Foreign-Trade Zones (FTZ) Board by the Metropolitan Government of Nashville and Davidson County, grantee of FTZ 78, requesting to expand Subzone 78A—Site 1 at the facility of Nissan North America, Inc., located in

Smyrna, Tennessee. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the FTZ Board (15 CFR part 400). It was formally docketed on November 12, 2015.

Subzone 78A was approved on April 2, 1982 (Board Order 190, 47 FR 16191, April 15, 1982) and expanded on March 18, 1993 (Board Order 632, 58 FR 18850, March 30, 1993). The subzone currently consists of two sites: Site 1 (1,004 acres) located at 983 Nissan Drive, Smyrna; and, Site 2 (958 acres) located at 520 Nissan Powertrain Drive, Decherd.

The applicant is requesting authority to expand Site 1 of the subzone to include 22 additional acres adjacent to the present Site 1. No authorization for additional production activity has been requested at this time.

In accordance with the FTZ Board's regulations, Kathleen Boyce of the FTZ Staff is designated examiner to review the application and make recommendations to the Executive Secretary.

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 December 29, 2015. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to January 13, 2016.

A copy of the application 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](http://www.trade.gov/ftz).

For further information, contact Kathleen Boyce at [Kathleen.Boyce@trade.gov](mailto:Kathleen.Boyce@trade.gov) or (202) 482-1346.

Dated: November 12, 2015.

**Elizabeth Whiteman,**

*Acting Executive Secretary.*

[FR Doc. 2015-29481 Filed 11-18-15; 8:45 am]

**BILLING CODE 3510-DS-P**

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

[B-78-2015]

#### Foreign-Trade Zone (FTZ) 45—Portland, Oregon; Notification of Proposed Production Activity; Lam Research Corporation; Subzone 45H; (Semiconductor Production Equipment, Subassemblies and Related Parts) Tualatin and Sherwood, Oregon

The Port of Portland, grantee of FTZ 45, submitted a notification of proposed production activity to the FTZ Board on behalf of Lam Research Corporation (Lam), operator of Subzone 45H, at sites in Tualatin and Sherwood, Oregon. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on November 6, 2015.

The facilities are used for the production of semiconductor production equipment, subassemblies and related parts. Pursuant to 15 CFR 400.14(b), FTZ activity would be limited to the specific foreign-status materials and components and specific finished products described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt Lam from customs duty payments on the foreign-status components used in export production. On its domestic sales, Lam would be able to choose the duty rate during customs entry procedures that applies to semiconductor production equipment, subassemblies and related parts (duty free) for the foreign-status inputs noted below. Customs duties also could possibly be deferred or reduced on foreign-status production equipment.

The components and materials sourced from abroad include: Clean room grease and lubricants; caulking compounds; petroleum-based greases and similar lubricants; polymer-based adhesives; wafers and partial-wafers principally of silicon or germanium intended for testing purposes and not for commercial production of semiconductors; PH buffer solutions and litmus paper; fluorinated and other polyether-based lubricants; polyethylene tubes, pipes and hoses; polypropylene tubing; PVC tubing; plastic tubing; flexible tubes, pipes and hoses of plastics; flexible plastic tubing with/without fittings; plastic tube fittings; foam tapes; scotch tapes, packing tapes, and similar tapes; electrical tapes; reflective tapes; plastic labels; plastic signs and similar plates of

polymer plastics; polycarbonate windows; shims of polyester plastics; Teflon wraps and pads; protection and insulation pads of polyurethane plastics; wipes of polyurethane plastics; plastic templates for facilities layout; plastic film sheets and foam strips for packaging; plastic boxes and crates; reservoirs and tanks of plastics principally in the form of polypropylenes and fluoropolymers; plastic caps; plastic packing materials; plastic o-rings, gaskets, washers, seals, and timing belts; plastic clips and similar attaching devices; plastic tinting lenses; plastic bushings; plastic hole plugs; plastic screws, pins, and similar fasteners; plastic brackets and mounts; plastic wafer clamps; plastic parts not otherwise identified in the HTSUS\*; unreinforced rubber tubing with fittings; reinforced rubber tubing with/without fittings; transmission belts; rubber gaskets, washers and seals; rubber caps; rubber sheets, grommets, bladders, collars and parts not otherwise identified in the HTSUS\*; wooden crates for packing; paper labels; gaskets, washers and other seals of paper; technical manuals, procedures, and work instructions; certificates, brochures, other work documents other than manuals; duct tape; nonelectrical components and accessories of graphite and carbon fiber made predominantly in the form of fiber plate disks or grafoil liner “choke” rings\*; porcelain or china ceramic machinery components, rings, disks, RF “window” disks, plates, liners, shields, guards, end effectors, plugs, screws, components and accessories\*; ceramic components, rings, RF “window” disks, plates, guards, end effectors, plugs, and screws\*; quartz reactor tubes; fused silica and fused quartz components, disks, windows, liners, rings, tubes, holders, and funnels\*; sapphire pins, balls, shims, windows/viewports, liners, tubes, components and accessories\*; steel pipes; cast steel fittings; stainless flanges; stainless steel pipes- sleeves; stainless steel pipes- elbows; stainless steel, not cast, fittings for tubes and pipes; other steel fittings; steel roller chains; steel link chains; steel chain links; steel screws- springs; steel socket head screws; steel grub screws; steel nuts; other threaded steel fasteners; steel spring washers; iron or steel washers other than spring washers; steel retaining rings; steel fasteners without threads; steel springs; steel gas springs, wave springs, and plunger springs; compression springs; belts and inserts of steel wire; steel parts, bushings, collars, blocks, rings, seals, and plates\*; bus bars, ground bars, and rods of copper;

copper tubing; copper alloy for tubes and pipes; copper washers; small brass screws; copper threaded fittings; copper parts, straps, anodes, sleeves, shields, gaskets, pins, and screens\*; nickel screws, shims, orifices, washers, straps, anodes, sleeves, shields, gaskets, pins, springs, nuts, and screens; nameplates; rods and rails of aluminum; aluminum tubing; aluminum alloy tubing; aluminum fittings for tubes and pipes; aluminum screws; aluminum fasteners; aluminum covers, spinners, sleeves and screens\*; zinc fittings, screws, fasteners, and backshells; titanium pins, screws, washers, bolts, nuts, inserts, and plates; saw blades; pliers; knockout punches and hose cutters; hand-operated adjustable-flat spanners and torque wrenches; hand-operated adjustable spanners and wrenches—other; socket wrenches; drills; screwdrivers; other hand tools, extraction tools, debar tools, and epoxy removal tips, and install tools; grease guns; metal clamps; manual drills; drill bits; padlocks; locks other than padlocks; keys; hinges and parts; casters; metal fittings of a type for buildings; metal fittings of a type for furniture; iron/steel/aluminum/zinc mountings, fittings, straps, clamps, brackets, levelers, struts and valves; base metal brackets; braided steel tubing and hoses; braided metal tubing; air cylinders and other pneumatic power engines; pneumatic power engines other than linear acting; shock absorbers; parts for pneumatic engines; diaphragm pumps for liquids and gases; centrifugal pumps for liquids and gases; syringe and other pumps; parts of centrifugal pumps; vacuum pumps; fans; parts of fans- metal wires, pump actuators; heat exchange units; evaporators for use in semi-conductor manufacturing equipment; heaters for use in semi-conductor manufacturing equipment; parts of heat exchange units; parts of heaters; water filters; liquid filtration devices; air and other gas filtration devices; filter parts; chemical applicators; nozzles and orifices; lift and handling fixtures; housing bearings and plain shaft bearings; computer laptops; computers; keyboards and computer peripherals; hard disk drives and optical drives; hubs; interface and input/output cards and similar interface articles; “dongles”: Peripheral pieces of hardware intended to interface with a computer to enable additional functions such as copy protection or authentication; optical readers; printed circuit assemblies; teaching pendants and terminals; valves (pressure reducing, air flow control, check valves, safety, solenoid, liquid control, electric, pneumatic, bellows, butterfly, ball and

vacuum); other manual valves of steel; vacuum and other manual valves of fluorocarbons, polyethers, and polyvinyl chloride; valve parts; bearings (ball, roller, bearing rings, transmission shaft, roller, housing, and plain shaft); fixed, multiple and variable ration speed changers, ball or roller screws; pulleys; shaft couplings; gear parts made of steel; mechanical gaskets; mechanical seals; gaskets sets; machines for the production of semiconductors; tools and process modules for chemical vapor deposition/physical vapor deposition/plasma dry etch/stripping of photo resist/ultraviolet thermal processing/wafer cleaning for semiconductor production; conductor material deposition process modules and machines for wafer packaging; transport modules; wafer transport robots; baffles, bellows, bezels, wafer chucks and related parts designed specifically for semiconductor manufacturing equipment; complex elements in the form of tubing for distribution of gases and fluids and pneumatic harnesses, designed specifically for semiconductor manufacturing equipment; radio frequency and high frequency electrodes and related parts; drive units for process modules gap management; structural elements designed specifically for semiconductor manufacturing equipment and transport modules; fluid and gas distribution modules and assemblies and structural parts and components designed for these modules; printed circuit board assemblies and control assemblies for system management or signal interface and distribution; metal and plastic (including silicon) parts designed for semiconductor manufacturing equipment and transport modules; plasma sources for semiconductor manufacturing equipment; silicon rings; radio frequency and high frequency coils and electrodes and related parts designed specifically for semiconductor manufacturing equipment for plasma generation; radio frequency generators and related structural components designed specifically for semiconductor manufacturing equipment; radio frequency matching networks and related structural; metal and plastic (including silicon) parts designed for semiconductor transport equipment; fluid management tanks; mechanical brakes; electric motors; universal AC/DC motors; lamp ballasts; electrical transformers; power suppliers; static converters; inductors; parts of power supplies; magnets; magnetic brakes; manganese dioxide batteries; lithium batteries; portable electric lamps;

resistive heating elements; network equipment; training videos on tape; unrecorded magnetic media; software on CD-ROM or similar optical storage units; video cameras; LCD computer; general use motors; LED indicators; electric sound or visual signaling apparatus; tantalum fixed capacitors; single layer ceramic dielectric fixed capacitors; multi-layer ceramic dielectric fixed capacitors; fixed electrical capacitors; variable or adjustable capacitors; composition or film type fixed carbon resistors and attenuators; other resistors; other fixed carbon resistors and attenuators; potentiometers; electrical variable resistors other than other potentiometers; raw circuit boards; ion bars; fuses made of glass and other materials with both high and low amps; circuit breakers; electromechanical relays; switches; lamp holders and contactors; terminals and connectors; connectors—semblies, converters, receptacle panels, interlock converters, electrical ducts and lock-outs; electrical terminals and terminal blocks; conduit assemblies, backshells, buses, and similar connectors; control apparatus—semblies, couplers, cards, valve cards, drivers, load ports, terminal boards, programmable controllers, and motion controllers; connector sockets; tungsten lamps; fluorescent lamps; arc lamps; ultra violet lamps; parts of electrical filament or discharge lamps; magnetrons and magnetron tubes; diodes; transistors; LED lamps, oscillators, photo sensors and fiber optic sensors; processor and logic controller integrated circuits; memory cards; integrated circuit amplifiers; other non-processor, non-memory integrated circuits; equipment for performing electrolysis; insulated electrical cable wire; coax cables; USB, ethernet, and similar cables with connectors; cables with connectors; insulated wire cable without connectors; fiber optic cables; ceramic insulators; electrical insulators; insulating fittings—ceramic; insulating fittings of plastic; quartz rings; electric filter devices; dollies; optic fibers; optical lenses and mirrors; optical filters and windows; mounted windows and lenses; prisms; flat panel displays; optical amplifiers; non-electric levels; calipers and linear gauges; hand instruments for measuring length; linear gauge clamps and heads; caliper clamps and heads; face shields with respirators; electrical temperature, thermocouples and temperature gauges; flow meters, level gauges and similar fluid measurement equipment; electrical pressure checking and measurement equipment; mechanical pressure

checking and measurement equipment; leak sensors; interferometers and hydrogen sensors; gas analysis systems; spectrometers; optical temperature sensors; PH analysis sensors, controllers, probes and complete systems; parts of gas analysis systems; speedometers and tachometers; power analyzers principally in the form of voltage detectors, probes, monitors and measurement cards; test fixtures and similar electrical analysis systems; wafer measurement equipment; leak detectors; parts of equipment used for checking electrical quantities; equipment for inspecting semiconductor wafers; optical inspection equipment; measuring equipment associated with semiconductor production; panels, frames, boards, blocks, doors, jigs, shafts, sides, and structural bases for test fixtures and electrical analysis systems; automatic thermostats and temperature control equipment; automatic manostats; vapor on demand injectors; process control equipment, (temperature controllers, pressure controllers, liquid controllers, mass flow controllers, pump controllers, and similar process control equipment); temperature controller parts; time switches, time relays and other timers; carts and racks for servers; and brushes (duty rates range from free to 10.7%). (\*See Lam's production notification for additional descriptions of these products.)

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 December 29, 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](http://www.trade.gov/ftz).

For further information, contact Diane Finver at [Diane.Finver@trade.gov](mailto:Diane.Finver@trade.gov) or (202) 482-1367.

Dated: November 13, 2015.

**Elizabeth Whiteman,**  
*Acting Executive Secretary.*

[FR Doc. 2015-29580 Filed 11-18-15; 8:45 am]

**BILLING CODE 3510-DS-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

RIN 0648-XE324

#### Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

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

**ACTION:** Notice of a public meeting.

**SUMMARY:** The Mid-Atlantic Fishery Management Council (Council) will hold a four-day meeting.

**DATES:** The meeting will be held on Monday, Tuesday, Wednesday, and Thursday, December 7-10, 2015, starting at 9:30 a.m. on Monday, 8:30 a.m. on Tuesday, 9 a.m. on Wednesday, and 8 a.m. on Thursday.

**ADDRESSES:** On Monday, December 7, the meeting will be held at O'Callaghan Hotel, 174 West Street, Annapolis, MD 21401; telephone: (410) 263-7700 and on Tuesday, Wednesday, and Thursday, December 8-10 at the Westin Annapolis, 100 Westgate Circle, Annapolis, MD 21401; telephone: (410) 972-4300.

*Council address:* Mid-Atlantic Fishery Management Council, 800 N. State Street, Suite 201, Dover, DE 19901; telephone: (302) 674-2331 or on their Web site at [www.mafmc.org](http://www.mafmc.org).

**FOR FURTHER INFORMATION CONTACT:** Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council; telephone: (302) 526-5255.

#### SUPPLEMENTARY INFORMATION:

##### Agenda

*Monday, December 7, 2015*

In the morning session the Executive Committee will meet in closed session to review nominees for the Ricks E Savage Award and other awards. The Council will review and approve the Comprehensive 5-year Research Priority Plan. The Council will also review and approve policies regarding non-fishing activities that impact fish habitat.

During the afternoon session, Golden Tilefish Framework 2 will be discussed. The Council will review the public hearing document for Blueline Tilefish. The Council will review the findings from the Scientific and Statistical Committee and adjust specification recommendations for Spiny Dogfish Committee Meeting as a committee of the whole.

Tuesday, December 8, 2015

The Council will receive a report on the Pacific Fishery Management Council's experience with management of forage-species. The Council will then review and approve the list of species for inclusion in the public hearing document and approve management alternatives for National Environmental Policy Act (NEPA) analysis and public hearing document for unmanaged forage fish. The Council will discuss and adopt alternatives related the Scup GRA (Gear Restricted Areas) Framework.

During the afternoon session, the Fisheries Forum will hold a Summer Flounder Goals and Objectives Workshop to review feedback, discuss priorities for the revised FMP (fishery management plan) goals and objectives, and identity draft goals and objectives for the Summer Flounder Amendment.

Wednesday, December 9, 2015

The Demersal Committee Meeting will meet as a Committee of the Whole with the Atlantic States Marine Fisheries Commission's (ASMFC) Summer Flounder, Scup, and Black Sea Bass Board. They will discuss the Monitoring and Technical Committees recommendations on 2016 Summer Flounder, Scup, and Black Sea Bass commercial management measures and recommend any changes to the commercial management measures. There will be a Board Action regarding an ASMFC Addendum for summer flounder. The Council will review recommendations from the Monitoring Committee and Advisory Panel then adopt recommendations for the 2016 Summer Flounder recreational management measures. The Council will discuss the timeline and give an update on the progress for the Summer Flounder Amendment. There will be a Board Action regarding an ASMFC Addendum for black sea bass. The Council will review recommendations from the Monitoring Committee and Advisory Panel then adopt recommendations for the 2016 Black Sea Bass and Scup recreational management measures.

Thursday, December 10, 2015

The Council will receive a presentation regarding the Greater Atlantic Regional Fisheries Office (GARFO) Recreational Implementation Plan and receive a report from the Northeast Fisheries Science Center (NEFSC) regarding the NEFSC Strategic Plan. The Council will review and approve their 2016 Implementation Plan. The day will conclude with brief reports from the National Marine

Fisheries Service's GARFO and the Northeast Fisheries Science Center, NOAA's Office of General Counsel and Office of Law Enforcement, the U.S. Coast Guard, the ASMFC, the New England and South Atlantic Fishery Council's liaisons and the Regional Planning Body Report. The Council will also receive the Council's Executive Director's Report, the Science Report, and Committee Reports for the Executive Committee, Collaborative Research Committee, and the River Herring/Shad Committee, and discuss any continuing and/or new business.

Although other non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subjects of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens act, provided that 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 M. Jan Saunders, (302) 526-5251, at least 5 days prior to the meeting date.

Dated: November 16, 2015.

**Tracey L. Thompson,**

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

[FR Doc. 2015-29547 Filed 11-18-15; 8:45 am]

**BILLING CODE 3510-22-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### Final Notice of Fee Calculations for Special Use Permits

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

**ACTION:** Notice.

**SUMMARY:** In accordance with a requirement of Public Law 106-513 (16 U.S.C. 1441(b)), NOAA hereby gives public notice of the methods, formulas and rationale for the calculations it will use in order to assess fees associated with special use permits (SUPs).

**DATES:** This notice is effective November 19, 2015.

**FOR FURTHER INFORMATION CONTACT:** Matt Nichols, Office of National Marine Sanctuaries, 1305 East West Highway (N/NMS2), Silver Spring, MD 20910, telephone (301) 713-7262, email [Matt.Nichols@noaa.gov](mailto:Matt.Nichols@noaa.gov).

**SUPPLEMENTARY INFORMATION:** This Federal Register document is also accessible via the Internet at [<http://www.gpo.gov>].

#### I. Background

Congress first granted NOAA the authority to issue SUPs for conducting specific activities in national marine sanctuaries in the 1988 Amendments to the National Marine Sanctuaries Act ("NMSA") (16 U.S.C. 1431 *et seq.*) (Pub. L. 100-627). The NMSA allows NOAA to establish categories of activities that may be subject to an SUP. The list of applicable categories of activities was last updated in 2013 (78 FR 25957). SUPs may be issued for the placement and recovery of objects on the seabed related to public or private events, or commercial filming; the continued presence of commercial submarine cables; the disposal of cremated human remains; recreational diving near the *USS Monitor*; the deployment of fireworks displays; or the operation of aircraft below the minimum altitude in restricted zones of national marine sanctuaries. Congress also gave NOAA the discretion to assess an SUP fee and laid out the basic components of an SUP fee (16 U.S.C. 1441 (d)). The NMSA states:

(d) Fees—

(1) Assessment and Collection—The Secretary may assess and collect fees for the conduct of any activity under a permit issued under this section.

(2) Amount—The amount of the fee under this subsection shall be the equal to the sum of—

(A) Costs incurred, or expected to be incurred, by the Secretary in issuing the permit;

(B) Costs incurred, or expected to be incurred, by the Secretary as a direct result of the conduct of the activity for which the permit is issued, including costs of monitoring the conduct of the activity; and

(C) An amount which represents the fair market value of the use of the sanctuary resource.

(3) Use of Fees—Amounts collected by the Secretary in the form of fees under this section may be used by the Secretary—

(A) For issuing and administering permits under this section; and

(B) For expenses of managing national marine sanctuaries.

(4) Waiver or Reduction of Fees—The Secretary may accept in-kind contributions in lieu of a fee under paragraph (2)(C), or waive or reduce any fee assessed under this subsection for any activity that does not derive profit from the access to or use of sanctuary resources.

With this notice, NOAA establishes standard procedures for assessing fee components associated with the application for and issuance of an SUP. SUPs are generally a small portion of the total number of permits issued by ONMS. However, with the addition of new SUP categories in 2013 and the current and potential expansion of the National Marine Sanctuary System, ONMS may see a rise in the number of applications submitted annually as well as an increase in the complexity of the proposed projects.

**II. Summary of Fee Calculations**

When an SUP is applied for by an interested party, and ultimately issued by ONMS, the total fee assessed to the applicant will be the sum of the three categories of fees provided for in section 310(d)(2) of the NMSA: Administrative costs, implementation and monitoring costs, and fair market value.

*A. Administrative Costs per 16 U.S.C. 1441(d)(2)(A)*

NOAA will assess a non-refundable \$50 application fee for each SUP application submitted. Administrative costs spent reviewing the permit for sufficiency and suitability will be calculated by multiplying a regional labor rate, derived from the pay rates of ONMS permitting staff and averaged across ONMS regions, by the time spent by staff reviewing each permit application. NOAA will update the rate

every year to account for staff changes as well as inflation. Such administrative costs could also include, but are not necessarily limited to, any environmental analyses and consultations associated with evaluating the permit application and issuing the permit; and equipment used in permit review and issuance (e.g., vessels, dive equipment, vehicles, and general overhead). Equipment includes but is not limited to autonomous underwater vehicles, remotely operated underwater vehicles, and sampling equipment. If equipment is acquired specifically to monitor the permit, the actual cost of the acquisition will be included.

*B. Implementation and Monitoring Costs per 16 U.S.C. 1441(d)(2)(B)*

NOAA may also charge a fee for costs associated with the implementation and monitoring of a permitted activity. Such costs will include staff time (calculated similarly to the labor rate described above), equipment use (including vessels or aircraft to oversee permit implementation), the expenses of monitoring the impacts of a permitted activity, and compliance with the terms and conditions of the permit.

*C. Fair Market Value per 16 U.S.C. 1441(d)(2)(C)*

To date, ONMS has assessed fair market value (FMV) fees assessed for an SUP on a case-by-case basis. The SUP category for continued operation and

maintenance of submarine cables is the only category that has an established protocol for determining FMV (Aug. 28, 2002; 67 FR 55201). Conducting in-depth economic valuation studies for each SUP application are normally overly burdensome for NOAA and the permit applicant relative to the scope and effects of proposed SUP projects. In establishing standard FMV fees for all SUP categories, NOAA has examined the fees assessed for past SUPs as well as comparable fees assessed by other federal, state, and local agencies for similar activities. NOAA now adopts the following standard FMV fee structure for the following seven SUP categories:

1. The placement and recovery of objects associated with public or private events on non-living substrate of the submerged lands of any national marine sanctuary. The FMV for this activity is \$200 per event, based on fee values historically applied at national marine sanctuaries for this activity.

2. The placement and recovery of objects related to commercial filming. With this notice, NOAA adopts the fee structure below from the National Park Service (NPS), which shares a similar mandate with ONMS to protect natural spaces of national importance. ONMS has determined NPS's broad evaluation methods to be sound and within the intent of ONMS SUPs for commercial filming.

**FMV FEE TABLE FOR PLACEMENT AND RECOVERY OF OBJECTS ASSOCIATED WITH COMMERCIAL FILMING EVENTS**

Number of people	Motion pictures/videos	Number of people	Still photography
1–10 .....	\$150/day .....	1–10 .....	\$50/day.
11–30 .....	\$250/day .....	11–30 .....	\$150/day.
31–49 .....	\$500/day .....	Over 30 .....	\$250/day.
Over 50 .....	\$750/day.		

The number of people refers to the cast and/or crew on location within the sanctuary for the commercial filming event, including pre- and post-production.

3. The continued presence of commercial submarine cables on or within the submerged lands of any national marine sanctuary. NOAA assesses FMV for submarine cables in national marine sanctuaries based on the findings of its 2002 study entitled "Fair Market Value Analysis for a Fiber Optic Cable Permit in National Marine Sanctuaries"(67 FR 55201). For most SUPs, FMV for cables is assessed annually and adjusted according to the consumer price index. NOAA will continue using this methodology for assessing FMV fees for the continued

presence of commercial submarine cables.

4. The disposal of cremated human remains ("cremains") within or into any national marine sanctuary. NOAA will waive all fees, including the FMV fee, for private individuals disposing of cremains. NOAA will assess a \$50 per disposal FMV fee for commercial operators. This value is based on similar practices of state governments, such as the State of Washington, which assesses a \$70 flat fee for a Cremated Human Remains Disposition Permit for disposal of cremains by airplane, boat, or other disposal methods for businesses.

5. Recreational diving near the USS Monitor. NOAA will waive the FMV fee for any SUP issued for recreational diving within Monitor National Marine

Sanctuary, given that (1) individual recreational divers do not derive profits from their use of the sanctuary; and (2) permits for commercial recreational divers further the sanctuary's objectives by educating the public about the sanctuary and the historical significance of the *U.S.S. Monitor*.

6. Fireworks displays. The FMV for fireworks will be a tiered structure based on the number of fireworks events conducted per calendar year. The fee schedule will be as follows: 1 event per calendar year—\$100; 2–5 events per calendar year—\$300; 6–10 events per calendar year—\$500; 11–20 events per calendar year—\$700.

7. The operation of aircraft below the minimum altitude in restricted zones of national marine sanctuaries. The FMV

will be \$500 per site/per day. This is an existing value that has been applied historically at national marine sanctuaries for this activity.

### III. Waiver or Reduction of Fees

NOAA may accept in-kind contributions in lieu of a fee, or waive or reduce any fee assessed for any activity that does not derive profit from the access to or use of sanctuary resources. NOAA may consider the benefits of the activity to support the goals and objectives of the sanctuary as an in-kind contribution in lieu of a fee.

### IV. Response to Comments

*Comment:* One commenter supported NOAA's intent to assess and collect fees associated with special use permits and proposed that NOAA should require a larger range of for-profit operators to pay fees for the use of sanctuary resources.

*Response:* While NOAA appreciates the public support for the use of this authority in protecting sanctuary resources, the suggestion to collect fees for activities which currently do not require a special use permit is not within the scope of this action.

### V. Classification

#### A. National Environmental Policy Act

NOAA has concluded that this action will not have a significant effect, individually or cumulatively, on the human environment. This action is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement in accordance with Section 6.03c3(i) of NOAA Administrative Order 216-6. Specifically, this action is a notice of an administrative and legal nature. Furthermore, individual permit actions by NOAA will be subject to additional case-by-case analysis, as required under NEPA, which will be completed as new permit applications are submitted for specific projects and activities.

NOAA also expects that many of these individual actions will also meet the criteria of one or more of the categorical exclusions described in NOAA Administrative Order 216-6 because SUPs cannot be issued for activities that are expected to result in any destruction of, injury to, or loss of any sanctuary resource. However, the SUP authority may at times be used to allow activities that may meet the Council on Environmental Quality's definition of the term "significant" despite the lack of apparent environmental impacts. In addition, NOAA may, in certain circumstances, combine its SUP authority with other regulatory

authorities to allow activities not described above that may result in environmental impacts and thus require the preparation of an environmental assessment or environmental impact statement. In these situations NOAA will ensure that the appropriate NEPA documentation is prepared prior to taking final action on a permit or making any irretrievable or irreversible commitment of agency resources.

#### B. Paperwork Reduction Act

Notwithstanding any other provisions of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, unless that collection of information displays a currently valid Office of Management and Budget (OMB) control number. Applications for the SUPs discussed in this notice involve a collection-of-information requirement subject to the requirements of the PRA. OMB has approved this collection-of-information requirement under OMB control number 0648-0141.

Dated: November 12, 2015.

**John Armor,**

*Acting Director, Office of National Marine Sanctuaries.*

[FR Doc. 2015-29524 Filed 11-18-15; 8:45 am]

**BILLING CODE 3510-NK-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648-XE318**

#### North Pacific Fishery Management Council; Public Meetings

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

**ACTION:** Notice of public meetings.

**SUMMARY:** The North Pacific Fishery Management Council (Council) and its advisory committees will meet December 7, 2015 through December 15, 2015.

**DATES:** The Council will begin its plenary session at 8 a.m. in the Denali Room on Wednesday, December 9, continuing through Tuesday, December 15, 2015.

**ADDRESSES:** The meeting will be held at the Anchorage Hilton Hotel, 500 W. 3rd Ave., Anchorage, AK 99501.

*Council address:* North Pacific Fishery Management Council, 605 W.

4th Ave., Suite 306, Anchorage, AK 99501-2252; telephone: (907) 271-2809.

**FOR FURTHER INFORMATION CONTACT:** David Witherell, Council staff; telephone: (907) 271-2809.

**SUPPLEMENTARY INFORMATION:** The Scientific and Statistical Committee (SSC) will begin at 8 a.m. in the King Salmon/Iliamna Room on Monday December 7 and continue through Wednesday December 9, 2015. The Council's Advisory Panel (AP) will begin at 8 a.m. in the Dillingham/Katmai Room on Tuesday December 8, and continue through Saturday, December 12, 2015. The Recreational Quota Entity Committee (RQE) will meet on Monday, December 7, 2015, from 1 p.m. to 4 p.m. (room to be determined). The Enforcement Committee will meet on Tuesday, December 8, 2015, from 1 p.m. to 4 p.m. (room to be determined). The Charter Implementation Committee will meet on Tuesday, December 8, 2015, from 1 p.m. to 4 p.m. (room to be determined). The Individual Fishing Quota Committee will meet on Tuesday, December 8, 2015, from 4 p.m. to 7:30 p.m. (room to be determined).

### Agenda

*Monday, December 7, 2015 Through Tuesday, December 15, 2015*

Council Plenary Session: The agenda for the Council's plenary session will include the following issues. The Council may take appropriate action on any of the issues identified.

- (1) Executive Director's Report (Quintillion Fiber Optic Cable Presentation (T))
- (2) NMFS Management Report (Report on Final 2016 Observer Annual Deployment Plan)
- (3) ADF&G Report
- (4) NOAA Enforcement Report
- (5) USCG Report
- (6) USFWS Report
- (7) Protected Species Report
- (8) Amendment 80 Coop Reports on 2016 Halibut PSC Management Plans
- (9) BSAI Groundfish Harvest Specifications—Final Action
- (10) GOA Groundfish Harvest Specifications and Halibut DMRS—Final Action
- (11) GOA Chinook Salmon PSC Reapportionment—Final Action
- (12) Bering Sea Fishery Ecosystem Plan—Discussion Paper
- (13) Charter Halibut Measures for 2016—Final Action
- (14) Charter Halibut RQE Program—Initial Review
- (15) Halibut Management Framework—Review

- (16) Biomass-based BSAI Halibut PSC Limits—Discussion Paper
- (17) GOA Trawl Bycatch Management Workplan—Review
- (18) Halibut Retention in Pots—Discussion Paper
- (19) Area 4 Halibut Leasing Options for CDQ Vessels—Discussion Paper
- (20) Halibut/Sablefish IFQ Program Review—Review Outline
- (21) AFA Program Review—Review Workplan
- (22) Enforcement Precepts—Enforcement Committee Report
- (23) Bristol Bay Red King Crab Savings Area Exempted Fishing Permit—Review

The Advisory Panel will address most of the same agenda issues as the Council except B reports.

The SSC agenda will include the following issues:

- (1) BSAI Groundfish Harvest Specifications—Final Action
- (2) GOA Groundfish Harvest Specifications and Halibut DMRS—Final Action
- (3) Bristol Bay Red King Crab Savings Area Exempted Fishing Permit—Review
- (4) GOA Chinook Salmon PSC Reapportionment—Final Action
- (5) Charter Halibut RQE Program—Initial Review

In addition to providing ongoing scientific advice for fishery management decisions, the SSC functions as the Councils primary peer review panel for scientific information as described by the Magnuson-Stevens Act section 302(g)(1)(e), and the National Standard 2 guidelines (78 FR 43066). The peer review process is also deemed to satisfy the requirements of the Information Quality Act, including the OMB Peer Review Bulletin guidelines.

The Agenda is subject to change, and the latest version will be posted at <http://www.npfmc.org/>.

Although non-emergency issues not contained in this agenda may come before these groups for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during these meetings. Actions 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 Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

### Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Shannon Gleason at (907) 271-2809 at least 7 working days prior to the meeting date.

Dated: November 16, 2015.

#### Tracey L. Thompson,

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

[FR Doc. 2015-29546 Filed 11-18-15; 8:45 am]

**BILLING CODE 3510-22-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648-XE313**

#### New England Fishery Management Council; Public Meeting; Addendum

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

**ACTION:** Notice of public meeting, additional agenda item.

**SUMMARY:** The New England Fishery Management Council (Council, NEFMC) will hold a three-day meeting to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

**DATES:** The meeting will be held on Tuesday, Wednesday and Thursday, December 1-3, 2015, starting at 9 a.m. on December 1, at 8:30 a.m. on December 2, and at 8:15 a.m. December 3.

**ADDRESSES:** The meeting will be held at the Holiday Inn by the Bay, 88 Spring Street, Portland, ME 04101; telephone: (207) 775.2311, fax: (207) 761.8224, or online at [www.innbythebay.com/](http://www.innbythebay.com/).

*Council address:* New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950; telephone: (978) 465-0492.

**FOR FURTHER INFORMATION CONTACT:** Thomas A. Nies, Executive Director, New England Fishery Management Council; (978) 465-0492, ext. 113.

**SUPPLEMENTARY INFORMATION:** The original notice published in the **Federal Register** on November 13, 2015 (80 FR 70188). This notice includes an additional agenda item to be added to the meeting on December 3, 2015.

### Agenda

*Thursday, December 3, 2015*

On Thursday, December 3, the final day of New England Fishery Management Council's last meeting in 2015, the NEFMC will hold a brief closed session at 8:15 a.m. At that time, Council members will review the roster of applicants for open seats on its Scientific and Statistical Committee and appoint members for 2016-18.

Although other non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subject of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided that 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.

Dated: November 16, 2015.

#### Tracey L. Thompson,

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

[FR Doc. 2015-29545 Filed 11-18-15; 8:45 am]

**BILLING CODE 3510-22-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648-XE319**

#### South Atlantic Fishery Management Council; Public Meeting

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

**ACTION:** Meeting of the South Atlantic Fishery Management Council (SAFMC).

**SUMMARY:** The South Atlantic Fishery Management Council (Council) will hold meetings of the: Personnel Committee (Closed Session); Southeast Data, Assessment and Review (SEDAR) Committee; Habitat Protection and Ecosystem-Based Management Committee; Snapper Grouper Committee; Scientific and Statistical Committee (SSC) Selection Committee (Closed Session); Information and

Education Committee; King and Spanish Mackerel Committee; Data Collection Committee; Dolphin Wahoo Committee; Spiny Lobster Committee; Protected Resources Committee; Executive Finance Committee; and a meeting of the Full Council. The Council will also hold a Council Member Visioning Workshop for the Snapper Grouper Fishery. The Council will take action as necessary. The Council will also hold a formal public comment session.

**DATES:** The Council meeting will be held from 8 a.m. on Monday, December 7, 2015 until 3:30 p.m. on Friday, December 11, 2015.

**ADDRESSES:**

*Meeting address:* The meeting will be held at the Doubletree by Hilton, 2717 W. Fort Macon Road, Atlantic Beach, NC 28512; phone: 800/222-8733 or 252/240-1155; fax 252/222-4065.

*Council address:* South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N. Charleston, SC 29405.

**FOR FURTHER INFORMATION CONTACT:** Kim Iverson, Public Information Officer, SAFMC; phone: (843) 571-4366 or toll free: (866) SAFMC-10; fax: (843) 769-4520; email: [kim.iverson@safmc.net](mailto:kim.iverson@safmc.net).

**SUPPLEMENTARY INFORMATION:**

The items of discussion in the individual meeting agendas are as follows:

*Council Member Visioning Workshop, Monday, December 7, 2015, 8 a.m. until 10:15 a.m.*

Council members will receive a recap of the October 2015 Council Visioning Workshop, review and approve the Vision Blueprint for the snapper grouper fishery, review the Evaluation Plan for the Vision Blueprint, and review/develop approaches for applying the blueprint.

*Personnel Committee, Monday, December 7, 2015, 10:15 a.m. until 6 p.m. (Closed Session)*

The Committee will conduct interviews and provide recommendations for hiring a new Executive Director for the Council. Note: all Council members will participate in this Committee meeting.

*SEDAR Committee, Tuesday, December 8, 2015, 8 a.m. until 9:30 a.m.*

1. The Committee will receive updates on SEDAR activities, review the SEDAR Steering Committee report and provide guidance as appropriate.

2. The Committee will receive a presentation on NOAA Fisheries Assessment Prioritization, and discuss and provide guidance for application to Council stocks and SEDAR.

*Habitat Protection and Ecosystem-Based Management Committee,*

*Tuesday, December 8, 2015, 9:30 a.m. until 12 p.m.*

1. The Committee will receive a report from the Habitat Advisory Panel and an overview of the redrafted Essential Fish Habitat (EFH) Policy on Energy Exploration, Development and Transportation and provide recommendations as appropriate.

2. The Committee will receive an overview of the Fishery Ecosystem Plan II Development, EFH Updates and Regional Ecosystem Coordination, a presentation on Lenfest Fisheries Ecosystem Task Force Activities and provide recommendations as appropriate.

*Snapper Grouper Committee, Tuesday, December 8, 2015, 1:30 p.m. until 5:30 p.m. and Wednesday, December 9, 2015 from 8:30 a.m. until 5:30 p.m.*

1. The Committee will receive an update on the status of commercial and recreational catches versus quota for species under Annual Catch Limits (ACLs) and an update of actions currently under formal review by NOAA Fisheries.

2. The Committee will receive a report from the Council's Scientific and Statistical Committee (SSC) and the Snapper Grouper Advisory Panel.

3. The Committee will receive an overview of Snapper Grouper Regulatory Amendment 16 addressing modifications of the current seasonal closure of the commercial black sea bass pot fishery, modify the document as appropriate and provide recommendations for approving the amendment for Secretarial Review.

4. The Committee will review Snapper Grouper Amendment 37 addressing measures for hogfish, discuss and modify the document as appropriate, select preferred management alternatives, and recommend approval for public hearing.

5. The Committee will receive a report on a study on blueline tilefish stock identification, discuss management options and provide direction to staff.

6. The Committee will review Snapper Grouper Regulatory Amendment 25 addressing management measures for blueline tilefish, yellowtail snapper, and black sea bass, consider public hearing input, modify the document as appropriate, select preferred alternatives, and provide recommendations for approval for Secretarial Review.

7. The Committee will review Snapper Grouper Amendment 41 addressing management measures for mutton snapper, modify the document as appropriate and provide

recommendations for approval of the draft amendment for public scoping.

8. The Committee will review Snapper Grouper Amendment 36 to establish Spawning Special Management Zones (SMZs), modify the document as necessary, select remaining preferred alternatives and approve all actions.

9. The Committee will receive an overview of the System Management Plan for Deepwater Marine Protected Areas established in Snapper Grouper Amendment 14, modify the document as necessary and provide recommendations for approval.

10. The Committee will receive an overview of management for red snapper, discuss management approaches and timing for addressing red snapper and provide direction to staff. The Committee will also discuss approaches to monitor recreational harvest of deepwater species and provide direction to staff.

*Formal Public Comment, Wednesday, December 9, 2015, 5:30 p.m.*—Public comment will first be accepted on items before the Council for final action: Snapper Grouper Regulatory Amendment 16 (removal of the black sea bass pot closure) and Snapper Grouper Regulatory Amendment 25 (blueline tilefish, yellowtail snapper and black sea bass). Public comment will then be accepted on any other items on the Council agenda. The Council Chair, based on the number of individuals wishing to comment, will determine the amount of time provided to each commenter.

*SSC Selection Committee, Thursday, December 10, 2015, 8 a.m. until 8:30 a.m. (Closed Session)*

The Committee will review applications and provide recommendations for appointment, and consider designating Social and Economic Scientist specific seats on the SSC.

*Information and Education Committee, Thursday, December 10, 2015, 8:30 a.m. until 9 a.m.*

The Committee will receive a report from the Information and Education Advisory Panel and provide recommendations as appropriate.

*King and Spanish Mackerel Committee, Thursday, December 10, 2015, 9 a.m. until 10:30 a.m.*

1. The Committee will receive updates on the status of recreational and commercial catches versus ACLs.

2. The Committee will receive an overview of the decision document for Amendment 26 to the Coastal Migratory Pelagics Fishery Management Plan, modify the document as appropriate, select preferred alternatives and provide

recommendations for approval for public hearings.

*Data Collection Committee, Thursday, December 10, 2015, 10:30 a.m. until 12 p.m.*

1. The Committee will receive an update on the Commercial Logbook Pilot Study and the Implementation Plan for Commercial Logbook Reporting, discuss and take action as appropriate.

2. The Committee will receive an overview of the South Atlantic For-Hire Reporting Amendment Decision Document, modify as appropriate, select preferred alternatives and provide recommendations for approval for public hearings. The Committee will also receive an update on the agenda for the upcoming Citizen Science Workshop, discuss, and take action as appropriate.

*Dolphin Wahoo Committee, Thursday, December 10, 2015, 1:30 p.m. until 3 p.m.*

1. The Committee will receive updates on the status of recreational and commercial catches versus ACLs for dolphin and wahoo.

2. The Committee will receive an update on the status of amendments under review and an overview of Regulatory Amendment 1 to the Dolphin Wahoo FMP to establish a commercial trip limit for the dolphin fishery in federal waters off the Atlantic coast. The Committee will review the document as appropriate, select preferred alternatives and provide recommendations as appropriate.

3. The Committee will discuss actions to include in draft Amendment 10 to the Dolphin Wahoo FMP and provide direction to staff.

*Spiny Lobster Committee, Thursday, December 10, 2015, 3 p.m. until 4 p.m.*

1. The Committee will receive updates on the status of recreational and commercial catches versus ACLs for spiny lobster.

2. The Committee will review spiny lobster landings for 2014–2015, a notification from NOAA Fisheries regarding spiny lobster landings, and landings from previous years, discuss landings and take action as necessary. The Committee will also discuss the need for a joint meeting of the Spiny Lobster Advisory Panels from both the South Atlantic and Gulf of Mexico Fishery Management Councils and provide direction to staff.

*Protected Resources Committee, Thursday, December 10, 2015, 4 p.m. until 5 p.m.*

1. The Committee will receive updates on protected resources related issues from NOAA Fisheries

2. The Committee will review the compliance policy for turtle excluder

devices in the Southeast shrimp fishery, the status of the Endangered Species Act/Magnuson-Stevens Fishery Conservation and Management Act Integration Agreement, and receive an update from the U.S. Fish & Wildlife Service on protected resources related issues.

*Executive Finance Committee, Thursday, December 10, 2015, 5 p.m. until 6 p.m.*

1. The Committee will review the Calendar Year 2015 budget expenditures, Council Activities and Accomplishments during 2015, review the Council Follow-up and priorities, and provide recommendations as appropriate.

2. The Committee will discuss standards and procedures for participating in Council webinar meetings, the concept of participating with the other Regional Fishery Management Councils in supporting a representative to look out for Council interests and to keep the Council informed, and address other issues as appropriate.

*Council Session: Friday, December 11, 2015 8 a.m. until 3:30 p.m.*

8–8:15 a.m.: Call the meeting to order, adopt the agenda, and approve the September 2015 meeting minutes.

8:15–9:15 a.m.: The Council will receive a report from the Snapper Grouper Committee, and approve/disapprove Snapper Grouper Regulatory Amendment 16 (removal of the black sea bass pots season) for formal Secretarial Review; approve/disapprove Snapper Grouper Regulatory Amendment 25 (blueline tilefish, yellowtail snapper and black sea bass) for formal Secretarial Review; approve/disapprove all actions in Snapper Grouper Amendment 36 (Spawning SMZs); approve/disapprove Snapper Grouper Amendment 37 (hogfish) for public hearing; and approve/disapprove Snapper Grouper Amendment 41 (mutton snapper) for public scoping. The Council will consider other recommendations and take action as appropriate.

9:15–9:30 a.m.: The Council will receive a report from the Mackerel Committee, approve/disapprove Amendment 26 to the Coastal Migratory Pelagics FMP for public hearings, consider other Committee recommendations, and take action as appropriate.

9:30–9:45 a.m.: The Council will receive a Council Member Visioning Workshop report, approve/disapprove the Vision Blueprint for the Snapper Grouper Fishery, approve/disapprove the Evaluation Plan for the Vision Blueprint, consider other Committee

recommendations, and take action as appropriate.

9:45–10 a.m.: The Council will receive a report from the Habitat Protection and Ecosystem-Based Management Committee, consider committee recommendations, and take action as appropriate.

10–10:15 a.m.: The Council will receive a report from the Protected Resources Committee, consider recommendations and take action as appropriate.

10:15–10:45 a.m.: The Council will receive a report from the SEDAR Committee, consider Committee recommendations and take action as appropriate.

10:45–11 a.m.: The Council will receive a report from the Executive Finance Committee, approve the Council Follow-Up and Priorities, consider other Committee recommendations and take action as appropriate.

11–11:15 a.m.: The Council will receive a report from the Dolphin Wahoo Committee, consider committee recommendations and take action as appropriate.

11:15–11:30 a.m.: The Council will receive a report from the Data Collection Committee, approve/disapprove the South Atlantic For-Hire Reporting Amendment for public hearings, consider other Committee recommendations and take action as appropriate.

11:30 a.m.–11:45 a.m.: The Council will receive a report from the Spiny Lobster Committee, consider Committee recommendations and take action as appropriate.

11:45–12 p.m.: The Council will receive a report from the SSC Selection Committee, consider Committee recommendations and take action as appropriate.

1:30–1:45 p.m.: The Council will receive a report from the Information and Education Committee, consider Committee recommendations and take action as appropriate.

1:45–3:30 p.m.: The Council will receive status reports from NOAA Fisheries Southeast Regional Office and the Southeast Fisheries Science Center; review and develop recommendations on Experimental Fishing Permits as necessary; receive agency and liaison reports; and discuss other business and upcoming meetings.

Documents regarding these issues are available from the Council office (*see ADDRESSES*).

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal

action during these meetings. Action will be restricted to those issues specifically 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

These meetings are physically accessible to people with disabilities. Requests for auxiliary aids should be directed to the council office (*see ADDRESSES*) 3 days prior to the meeting.

**Note:** The times and sequence specified in this agenda are subject to change.

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

Dated: November 16, 2015.

**Tracey L. Thompson,**

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

[FR Doc. 2015-29560 Filed 11-18-15; 8:45 am]

**BILLING CODE 3510-22-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### Marine Protected Areas Federal Advisory Committee; Public Meeting

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

**ACTION:** Notice of open meeting.

**SUMMARY:** Notice is hereby given of a meeting via web conference call of the Marine Protected Areas Federal Advisory Committee (Committee). The web conference calls are open to the public, and participants can dial in to the calls. Participants who choose to use the web conferencing feature in addition to the audio will be able to view the presentations as they are being given.

**DATES:** Members of the public wishing to participate in the meeting are asked to register in advance by Wednesday, December 16, 2015.

The meeting will be held Thursday, December 17, from 1:00 to 3:00 p.m. EDT. These times and the agenda topics described below are subject to change. Refer to the Web page listed below for the most up-to-date meeting agenda.

**ADDRESSES:** The meeting will be held via web conference call. Register by contacting Gonzalo Cid at [gonzalo.cid@noaa.gov](mailto:gonzalo.cid@noaa.gov) or 301-713-7278. Webinar

and teleconference capacity may be limited.

#### FOR FURTHER INFORMATION CONTACT:

Lauren Wenzel, Acting Designated Federal Officer, MPA FAC, National Marine Protected Areas Center, 1305 East West Highway, Silver Spring, Maryland 20910. (Phone: 301-713-7265, Fax: 301-713-3110); email: [lauren.wenzel@noaa.gov](mailto:lauren.wenzel@noaa.gov); or visit the National MPA Center Web site at <http://www.marineprotectedareas.noaa.gov>.

**SUPPLEMENTARY INFORMATION:** The Committee, composed of external, knowledgeable representatives of stakeholder groups, was established by the Department of Commerce (DOC) to provide advice to the Secretaries of Commerce and the Interior on implementation of Section 4 of Executive Order 13158, on marine protected areas.

**Matters To Be Considered:** The focus of the Committee's meeting is an update from the Subcommittees and Working Groups on their progress in addressing the Committee charge, and Committee discussion. Reports will include: Ecological Connectivity; External Financing for MPAs; and working toward an Arctic Marine Protected Areas Network. The Committee will also hear updates from the National Oceanic and Atmospheric Administration and the Department of the Interior. The agenda is subject to change. The latest version will be posted at <http://www.marineprotectedareas.noaa.gov>.

Dated: November 12, 2015.

**John Armor,**

*Acting Director, Office of National Marine Sanctuaries, National Ocean Service, National Oceanic and Atmospheric Administration.*

[FR Doc. 2015-29521 Filed 11-18-15; 8:45 am]

**BILLING CODE 3510-NK-P**

## DEPARTMENT OF COMMERCE

### Patent and Trademark Office

#### Submission for OMB Review; Comment Request; "Madrid Protocol"

The United States Patent and Trademark Office (USPTO) will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

**Agency:** United States Patent and Trademark Office, Commerce.

**Title:** Madrid Protocol.

**OMB Control Number:** 0651-0051.

**Form Number(s):**

- PTO-2131
- PTO-2132

- PTO-2133
- PTO-1663
- PTO-1683
- TEAS Global Form

**Type of Request:** Regular.

**Number of Respondents:** 16,557.

**Average Hours per Response:** The responses in this collection should take an average of 17.8 minutes to complete, with response times ranging from 17 minutes to 75 minutes depending upon the instrument used.

**Burden Hours:** 4,918.45 hours annually.

**Cost Burden:** \$2,175,480.36.

**Needs and Uses:** The Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks ("Madrid Protocol") is an international treaty that allows a trademark owner to seek registration in any of the participating countries by filing a single international application. An international application submitted through the USPTO must be based on an active U.S. application or registration and must be filed by the owner of the application or registration. The public uses this collection to submit applications for international registration and related requests to the USPTO under the Madrid Protocol.

**Affected Public:** Individuals or households; businesses or other for-profits; and not-for-profit institutions.

**Frequency:** On occasion.

**Respondent's Obligation:** Required to obtain or retain benefits.

**OMB Desk Officer:** Nicholas A. Fraser, email: [Nicholas\\_A\\_Fraser@omb.eop.gov](mailto:Nicholas_A_Fraser@omb.eop.gov).

Once submitted, the request will be publicly available in electronic format through [reginfo.gov](http://reginfo.gov). Follow the instructions to view Department of Commerce collections currently under review by OMB.

Further information may be requested by:

- **Email:** [InformationCollection@uspto.gov](mailto:InformationCollection@uspto.gov). Include "0651-0051 copy request" in the subject line of the message.

- **Mail:** Marcie Lovett, Records Management Division Director, Office of the Chief Information Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450.

Written comments and recommendations for the proposed information collection should be sent on or before December 21, 2015 to Nicholas A. Fraser, OMB Desk Officer, via email to [Nicholas\\_A\\_Fraser@omb.eop.gov](mailto:Nicholas_A_Fraser@omb.eop.gov), or by fax to 202-395-5167, marked to the attention of Nicholas A. Fraser.

Dated: November 13, 2015.

**Rhonda Foltz,**

*Director, Office of Information Management Services, USPTO, Office of the Chief Information Officer.*

[FR Doc. 2015-29525 Filed 11-18-15; 8:45 am]

**BILLING CODE 3510-16-P**

## DEPARTMENT OF DEFENSE

### Department of the Air Force

#### U.S. Air Force Academy Board of Visitors: Notice of Meeting

**AGENCY:** U.S. Air Force Academy Board of Visitors, Department of the Air Force, DoD.

**ACTION:** Meeting notice.

**SUMMARY:** In accordance with 10 U.S.C. Section 9355, the U.S. Air Force Academy (USAFA) Board of Visitors (BoV) will hold a meeting at the Rayburn House Office Building, Gold Room 2168, Washington, DC on December 10, 2015. The meeting will begin at 8:30 a.m. The meeting is scheduled to close to the public from 11:15 a.m.–12:15 p.m. The purpose of this meeting is to review morale and discipline, social climate, curriculum, instruction, infrastructure, fiscal affairs, academic methods, and other matters relating to the Academy. Specific topics for this meeting include a Superintendent's Update; Legislative Calendar Update; Future Budget; Culture and Climate Update; and an annual USAFA Battle Rhythm Review. In accordance with 5 U.S.C. Section 552b, as amended, and 41 CFR Section 102-3.155, one session of this meeting shall be closed to the public because it involves matters covered by subsection (c)(6) of 5 U.S.C. Section 552b. Public attendance at the open portions of this USAFA BoV meeting shall be accommodated on a first-come, first-served basis up to the reasonable and safe capacity of the meeting room. In addition, any member of the public wishing to provide input to the USAFA BoV should submit a written statement in accordance with 41 CFR Section 102-3.140(c) and section 10(a)(3) of the Federal Advisory Committee Act and the procedures described in this paragraph. Written statements must address the following details: The issue, discussion, and a recommended course of action. Supporting documentation may also be included as needed to establish the appropriate historical context and provide any necessary background information. Written statements can be submitted to the Designated Federal Officer (DFO) at the

Air Force address detailed below at any time. However, if a written statement is not received at least 10 calendar days before the first day of the meeting which is the subject of this notice, then it may not be provided to or considered by the BoV until its next open meeting. The DFO will review all timely submissions with the BoV Chairman and ensure they are provided to members of the BoV before the meeting that is the subject of this notice. If after review of timely submitted written comments and the BoV Chairman and DFO deem appropriate, they may choose to invite the submitter of the written comments to orally present the issue during an open portion of the BoV meeting that is the subject of this notice. Members of the BoV may also petition the Chairman to allow specific personnel to make oral presentations before the BoV. In accordance with 41 CFR Section 102-3.140(d), any oral presentations before the BoV shall be in accordance with agency guidelines provided pursuant to a written invitation and this paragraph. Direct questioning of BoV members or meeting participants by the public is not permitted except with the approval of the DFO and Chairman. For the benefit of the public, rosters that list the names of BoV members and any releasable materials presented during the open portions of this BoV meeting shall be made available upon request.

**FOR FURTHER INFORMATION CONTACT:** For additional information or to attend this BoV meeting, contact Maj Jen Hubal, Chief, Commissioning Programs, AF/A1PT, 1040 Air Force Pentagon, Washington, DC 20330, (703) 695-4066, [Jennifer.m.hubal.mil@mail.mil](mailto:Jennifer.m.hubal.mil@mail.mil).

**Henry Williams,**

*CIV, DAF, Acting Air Force Federal Liaison Officer.*

[FR Doc. 2015-29470 Filed 11-18-15; 8:45 am]

**BILLING CODE 5001-10-P**

## DEPARTMENT OF DEFENSE

### Department of the Navy

#### Notice of Availability of Government-Owned Inventions; Available for Licensing

**AGENCY:** Department of the Navy, DoD.

**ACTION:** Notice.

**SUMMARY:** The inventions listed below are assigned to the United States Government, as represented by the Secretary of the Navy, and are available for domestic and foreign licensing by the Department of the Navy.

The following patents are available for licensing: Patent No. 9,180,528:

EXTRACTION DEVICE AND METHOD //Patent No. 9,182,435: METHOD AND SOFTWARE FOR SPATIAL PATTERN ANALYSIS//Patent No. 9,184,805: FRACTAL DIPOLE ANTENNA COMMUNICATION SYSTEMS AND RELATED METHODS AND USE//Patent No. 9,184,822: MEDICAL APPARATUS AND METHODS INCLUDING AN ARRAY SYSTEM FOR SEGMENTING SIGNALS AND GENERATING A COMPLEX WAVEFORM AT A FOCAL POINT USING RECOMBINATION OF SEGMENTED SIGNALS.

**ADDRESSES:** Requests for copies of the patents cited should be directed to Naval Surface Warfare Center, Crane Div, Code OOL, Bldg 2, 300 Highway 361, Crane, IN 47522-5001.

**FOR FURTHER INFORMATION CONTACT:** Mr. Christopher Monsey, Naval Surface Warfare Center, Crane Div, Code OOL, Bldg 2, 300 Highway 361, Crane, IN 47522-5001, Email [Christopher.Monsey@navy.mil](mailto:Christopher.Monsey@navy.mil), telephone 812-854-4100.

**Authority:** 35 U.S.C. 207, 37 CFR part 404

Dated: November 12, 2015.

**N.A. Hagerty-Ford,**

*Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.*

[FR Doc. 2015-29529 Filed 11-18-15; 8:45 am]

**BILLING CODE 3810-FF-P**

## DEPARTMENT OF EDUCATION

### Eligibility Designations and Applications for Waiver of Eligibility Requirements; Programs Under Parts A and F of Title III of the Higher Education Act of 1965, as Amended (HEA), and Programs Under Title V of the HEA

**AGENCY:** Office of Postsecondary Education, Department of Education (Department).

**ACTION:** Notice.

### Overview Information

Notice announcing process for designation of eligible institutions, and inviting applications for waiver of eligibility requirements, for fiscal year (FY) 2016.

This notice applies to the following programs:

1. Programs authorized under Part A, Title III of the HEA: Strengthening Institutions Program (Part A SIP), Alaska Native and Native Hawaiian-Serving Institutions (Part A ANNH), Predominantly Black Institutions (Part A PBI), Native American-Serving Nontribal Institutions (Part A NASNTI), and Asian American and Native

American Pacific Islander-Serving Institutions (Part A AANAPISI).

2. Programs authorized under Part F, Title III of the HEA: Hispanic-Serving Institutions STEM and Articulation (Part F, HSI STEM and Articulation), Predominantly Black Institutions (Part F PBI), Alaska Native and Native Hawaiian-Serving Institutions (Part F ANNH), Native American-Serving Nontribal Institutions (Part F NASNTI) and Asian American and Native American Pacific Islander-Serving Institutions (Part F AANAPISI).

3. Programs authorized under Title V of the HEA: Developing Hispanic-Serving Institutions (HSI) and Promoting Postbaccalaureate Opportunities for Hispanic Americans (PPOHA).

*Dates:*

*Applications Available:* December 1, 2015.

*Deadline for Transmittal of Applications:* January 4, 2016.

This year, the Department has instituted a process known as the Eligibility Matrix (EM), under which we will use information submitted by institutions of higher education (IHEs or institutions) to the National Center for Education Statistics (NCES) Integrated Postsecondary Education Data System (IPEDS) to determine which institutions meet the basic eligibility requirements for the programs authorized by Title III or Title V of the HEA listed above. We will use enrollment and fiscal data for the 2013–2014 academic year submitted by institutions to IPEDS to make eligibility determinations for FY 2016. Beginning December 1, 2015, an institution will be able to review the Department's decision on whether it is eligible for Title III or Title V grant programs through this process by examining its entry in the EM linked through the Department's Institutional Service Eligibility Web site at: <http://www2.ed.gov/about/offices/list/ope/ldues/eligibility.html>.

The EM is a read-only worksheet that lists all potentially eligible postsecondary institutions, as determined by the Department using the data described above. If the entry for your institution in the EM shows that your institution is eligible to apply for a grant for a particular program, and you plan to submit an application for a grant in that program, you will not need to apply for eligibility or for a waiver through the process described in this notice. Rather, you may print out the eligibility certification directly. However, if the EM does not show that your institution is eligible for a program in which you plan to apply for a grant,

you must submit a waiver request as discussed in this notice.

You may search the EM by institution name, IPEDS unit ID number, or OPE ID number. If you are inquiring about general eligibility, look up your institution's name under the SIP column. If you are inquiring about specific program eligibility, look under that program's column.

If the EM does not show that your institution is eligible for a program, or if your institution does not appear in the EM, or if you disagree with the eligibility determination in the EM, you can apply for a waiver or reconsideration through the process described in this notice. The waiver application process is the same as in previous years; you will choose the waiver option on the Web site at <http://opeweb.ed.gov/title3and5/> and submit your institution's waiver request.

## Full Text of Announcement

### I. Funding Opportunity Description

#### *Purpose of Programs*

The Part A SIP, Part A ANNH, Part A PBI, Part A NASNTI, and Part A AANAPISI programs are authorized under Title III, Part A, of the HEA. The HSI and PPOHA programs are authorized under Title V of the HEA. The Part F, HSI STEM and Articulation, Part F PBI, Part F AANAPISI, Part F ANNH, and Part F NASNTI programs are authorized under Title III, Part F of the HEA. Please note that certain programs in this notice have the same or similar names as other programs that are authorized under a different statutory authority. For this reason, we specify the statutory authority as part of the acronym for certain programs.

Under the programs discussed above, institutions are eligible to apply for grants if they meet specific statutory and regulatory eligibility requirements. An IHE that is designated as an eligible institution may also receive a waiver of certain non-Federal cost-sharing requirements for one year under the Federal Supplemental Educational Opportunity Grant (FSEOG) program authorized by Part A, Title IV of the HEA and the Federal Work-Study (FWS) program authorized by section 443 of the HEA. Qualified institutions may receive the FSEOG and FWS waivers for one year even if they do not receive a grant under the Title III or Title V programs. An applicant that receives a grant from the Student Support Services (SSS) program that is authorized under section 402D of the HEA, 20 U.S.C. 1070a–14, may receive a waiver of the required non-Federal cost share for institutions for the duration of the grant.

An applicant that receives a grant from the Undergraduate International Studies and Foreign Language (UISFL) program that is authorized under section 604 of the HEA, 20 U.S.C. 1124, may receive a waiver or reduction of the required non-Federal cost share for institutions for the duration of the grant.

**Note:** To qualify as an eligible institution under the grant programs listed in this notice, your institution must satisfy several criteria. For most of these programs, these criteria include those that relate to the enrollment of needy students and to core expenses (Core Expenses) per full-time equivalent student count (FTE) for a specified base year. The most recent data available for Core Expenses per FTE are for base year 2013–2014. In order to award FY 2016 grants in a timely manner, we will use this data to evaluate eligibility.

Accordingly, all institutions interested in applying for a new grant under the Title III or Title V programs addressed in this notice or in requesting a waiver of the non-Federal cost share, must be designated as an eligible institution for FY 2016 before applying for a grant. Under the HEA, any IHE interested in applying for a grant under any of these programs must first be designated as an eligible institution. (34 CFR 606.5 and 607.5).

#### *Eligible Applicants*

The eligibility requirements for the programs authorized under Part A of Title III of the HEA are in Sections 312 and 317–320 of the HEA (20 U.S.C. 1058, 1059d–1059g) and in the Department's implementing regulations at 34 CFR 607.2 through 607.5. The regulations may be accessed at: [www.gpo.gov/fdsys/pkg/CFR-2001-title34-vol3/xml/CFR-2001-title34-vol3-part607.xml](http://www.gpo.gov/fdsys/pkg/CFR-2001-title34-vol3/xml/CFR-2001-title34-vol3-part607.xml).

The eligibility requirements for the programs authorized by Part F of Title III of the HEA are in Section 371 of the HEA (20 U.S.C. 1067q). There are currently no specific program regulations for these programs.

The eligibility requirements for the Title V HSI program are in Part A of Title V of the HEA and in 34 CFR 606.2 through 34 CFR 606.5. The regulations may be accessed at: [www.gpo.gov/fdsys/pkg/CFR-2001-title34-vol3/xml/CFR-2001-title34-vol3-part606.xml](http://www.gpo.gov/fdsys/pkg/CFR-2001-title34-vol3/xml/CFR-2001-title34-vol3-part606.xml).

The requirements for the PPOHA program are in Part B of Title V of the HEA and in the notice of final requirements published in the **Federal Register** on July 27, 2010 (75 FR 44055), and in 34 CFR 606.2(a) and (b), and 606.3 through 606.5.

**Note:** Section 312 of the HEA and 34 CFR 607.2–607.5 include most of the basic eligibility requirements for grant programs

authorized under Titles III and V of the HEA. Section 312(b)(1)(B) of the HEA provides that, to be eligible for these programs, an institution's average "educational and general expenditures" (E&G) per FTE undergraduate student must be less than the average E&G expenditures per FTE undergraduate student of institutions that offer similar instruction in that year.

Since 2004, NCES has calculated Core Expenses per FTE of postsecondary institutions, a statistic similar to E&G per FTE. Both E&G per FTE and Core Expenses per FTE are based on regular operational expenditures of postsecondary institutions (excluding auxiliary enterprises, independent operations, and hospital expenses). They differ only in that E&G per FTE is based on fall undergraduate enrollment, while Core Expenses per FTE is based on 12-month undergraduate enrollment for the academic year.

To avoid inconsistency in the data submitted to and produced by the Department, for the purpose of section 312(b)(1)(B) of the HEA, E&G per FTE will now be calculated using the same methodology as Core Expenses per FTE. Accordingly, with regard to this and future notices inviting applications, to calculate E&G per FTE for the purpose of determining institutional eligibility for programs under Part A and Part F of Title III and Title V of the HEA, the Department will apply the NCES methodology for calculating Core Expenses per FTE. Institutions requesting an eligibility waiver determination must use the Core Expenses per FTE data reported to IPEDS for the most currently available academic year, in this case academic year 2013–2014.

*Enrollment of Needy Students:* For the Title III and V programs (excluding the PBI programs), an institution is considered to have an enrollment of needy students if: (1) At least 50 percent

of its degree students received financial assistance under the Federal Pell Grant, FSEOG, FWS, or the Federal Perkins Loan programs; or (2) the percentage of its undergraduate degree students who were enrolled on at least a half-time basis and received Federal Pell Grants exceeded the median percentage of undergraduate degree students who were enrolled on at least a half-time basis and received Federal Pell Grants at comparable institutions that offer similar instruction.

To qualify under this latter criterion, an institution's Federal Pell Grant percentage for base year 2013–2014 must be more than the median for its category of comparable institutions provided in the 2013–2014 Median Pell Grant and Core Expenses per FTE Student table in this notice. If your institution qualifies under the first criterion, where at least 50 percent of its degree students received financial assistance under one of several Federal student aid programs (the Federal Pell Grant, FSEOG, FWS, or the Federal Perkins Loan programs), but not the second criterion, where an institution's Federal Pell Grant percentage for base year 2013–2014 must be more than the median for its category of comparable institutions provided in the 2013–2014 Median Pell Grant and Core Expenses per FTE Student table in this notice, you must submit a waiver request including the requested data, which is not available in IPEDS.

For the definition of "Enrollment of Needy Students" for purposes of the Part A PBI program, see section 318(b)(2) of the HEA, and for purposes of the Part F PBI program see section 371(c)(9) of the HEA.

*Core Expenses per FTE Student:* For the Title III, Part A SIP; Part A ANNH; Part A PBI; Part A NASNTI; Part A AANAPISI; Title III, Part F HSI STEM and Articulation; Part F PBI; Part F

AANAPISI; Part F ANNH; Part F NASNTI; HSI and PPOHA programs, an institution should compare its base year 2013–2014 Core Expenses per FTE student to the average Core Expenses per FTE student for its category of comparable institutions in the base year 2013–2014 Median Pell Grant and Average Core Expenses per FTE Student Table in this notice. The institution meets this eligibility requirement under these programs if its Core Expenses for the 2013–2014 base year are less than the average for its category of comparable institutions.

Core Expenses are defined as the total expenses for the essential education activities of the institution. Core Expenses for public institutions reporting under the Governmental Accounting Standards Board (GASB) requirements include expenses for instruction, research, public service, academic support, student services, institutional support, operation and maintenance of plant, depreciation, scholarships and fellowships, interest, and other operating and non-operating expenses. Core Expenses for institutions reporting under the Financial Accounting Standards Board (FASB) standards (primarily private, not-for-profit, and for-profit) include expenses for instruction, research, public service, academic support, student services, institutional support, net grant aid to students, and other expenses. For both FASB and GASB institutions, core expenses exclude expenses for auxiliary enterprises (e.g., bookstores, dormitories), hospitals, and independent operations. The following table identifies the relevant median Federal Pell Grant percentages for the base year 2013–2014 and the relevant Core Expenses per FTE student for the base year 2013–2014 for the four categories of comparable institutions:

Type of institution	Base year 2013–2014 median pell grant percentage	Base year 2013–2014 average core expenses per FTE Student
Two-year Public Institutions .....	41	\$11,768
Two-year Non-profit Private Institutions .....	60	16,169
Four-year Public Institutions .....	38	28,501
Four-year Non-profit Private Institutions .....	38	35,543

*Waiver Information:* IHEs that do not meet the needy student enrollment requirement or the Core Expenses per FTE requirement may apply to the Secretary for a waiver of these requirements, as described in sections 392 and 522 of the HEA, and the

implementing regulations at 34 CFR 606.3(b), 606.4(c) and (d), 607.3(b), and 607.4(c) and (d).

IHEs requesting a waiver of the needy student enrollment requirement or the Core Expenses per FTE requirement must include in their application detailed information supporting the

waiver request, as described in the instructions for completing the application.

The regulations governing the Secretary's authority to waive the needy student requirement, 34 CFR 606.3(b)(2) and (3) and 607.3(b)(2) and (3), refer to "low-income" students or families. The

regulations at 34 CFR 606.3(c) and 607.3(c) define “low-income” as an amount that does not exceed 150 percent of the amount equal to the

poverty level, as established by the U.S. Census Bureau.

For the purposes of this waiver provision, the following table sets forth

the low-income levels for various sizes of families:

#### 2014 ANNUAL LOW-INCOME LEVELS

Size of family unit	Family income for the 48 contiguous States, DC, and outlying jurisdictions	Family income for Alaska	Family income for Hawaii
1 .....	\$11,670	\$14,580	\$13,420
2 .....	15,730	19,660	18,090
3 .....	19,790	24,740	22,760
4 .....	23,850	29,820	27,430
5 .....	27,910	34,900	32,100
6 .....	31,970	39,980	36,770
7 .....	36,030	45,060	41,440
8 .....	40,090	50,140	46,110

**Note:** We use the 2014 annual low-income levels because those are the amounts that apply to the family income reported by students enrolled for the fall 2013 semester. For family units with more than eight members, add the following amount for each additional family member: \$4,060 for the contiguous 48 States, the District of Columbia, and outlying jurisdictions; \$5,080 for Alaska; and \$4,670 for Hawaii.

The figures shown under family income represent amounts equal to 150 percent of the family income levels established by the U.S. Census Bureau for determining poverty status. The poverty guidelines were published by the U.S. Department of Health and Human Services in the **Federal Register** on January 24, 2014 (79 FR 3593). Information about “metropolitan statistical areas” referenced in 34 CFR 606.3(b)(4) and 607.3(b)(4) may be obtained at: [www.census.gov/prod/2010pubs/10smadb/appendixc.pdf](http://www.census.gov/prod/2010pubs/10smadb/appendixc.pdf) and [www.census.gov/prod/2008pubs/07ccdb/appd.pdf](http://www.census.gov/prod/2008pubs/07ccdb/appd.pdf).

#### Electronic Submission of Waiver Applications

If your institution does not appear in the EM as one that is eligible for the program under which you plan to apply for a grant, you must submit an application for a waiver of the eligibility requirements. To request a waiver, you must upload a waiver narrative at: <http://opeweb.ed.gov/title3and5/>.

**Exception to the Electronic Submission Requirement:** You qualify for an exception to the electronic submission requirement, and may submit your application in paper format if you are unable to submit an application electronically because—

- You do not have access to the Internet; or
- You do not have the capacity to upload documents to the Web site; and

- No later than two weeks before the waiver application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevents you from using the Internet to submit your application. If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Mail or fax your statement to: Don Crews, U.S. Department of Education, 1990 K Street NW., Room 6032, Washington, DC 20006–8513. Fax: (202) 502–7861.

Your paper waiver application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

#### Submission of Paper Applications by Mail

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: Don Crews, U.S. Department of Education, 1990 K Street NW., Room 6032, Washington, DC 20006–8513.

You must show proof of mailing consisting of one of the following:

- (1) A legibly dated U.S. Postal Service postmark.

- (2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

- (3) A dated shipping label, invoice, or receipt from a commercial carrier.

- (4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

- (1) A private metered postmark.
- (2) A mail receipt that is not dated by the U.S. Postal Service.

**Note:** The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office. We will not consider waiver applications postmarked after the application deadline date.

#### Submission of Paper Applications by Hand Delivery

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the application, on or before the application deadline date, to the Department at the following address: Don Crews, U.S. Department of Education, 1990 K Street NW., Room 6032, Washington, DC 20006–8513.

Hand delivered applications will be accepted daily between 8:00 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

**Applicable Regulations:** (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 82, 84, 86, 97, 98, and 99. (b) The OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR 180, as adopted and amended as regulations of the Department in 2 CFR

part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted in 2 CFR part 3474. (d) The regulations for the Title III programs in 34 CFR part 607, and for the HSI program in 34 CFR part 606. (e) The notice of final requirements for the PPOHA program, published in the **Federal Register** on July 27, 2010 (75 FR 44055).

**Note:** There are no program-specific regulations for the Part A AANAPISI, Part A NASNTI, and Part A PBI programs or any of the Part F, Title III programs. Also, there have been amendments to the HEA since the Department last issued regulations for the programs established under Titles III and V of the statute. Accordingly, we encourage each potential applicant to read the applicable sections of the HEA in order to fully understand the eligibility requirements for the program for which they are applying.

**Note:** The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

**Note:** The regulations in 34 CFR part 86 apply to IHEs only.

#### *For Applications and Further Information Contact*

Christopher Smith or Jeffrey Hartman, Institutional Service, U.S. Department of Education, 1990 K Street NW., Room 6134, Request for Eligibility Designation, Washington, DC 20006-8513.

You can contact these individuals at the following email addresses or phone numbers: *Christopher.Smith@ed.gov*, 202-219-7012, *Jeffrey.Hartman@ed.gov*, 202-502-7607.

If you use a telecommunications device for the deaf or a text telephone, call the Federal Relay Service, toll free, at 1-800-877-8339.

Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audio tape, or compact disc) on request to one of the contact persons listed in this section.

**Electronic Access to This Document:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys*. At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov*. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

**Delegation of Authority:** The Secretary of Education has delegated authority to Jamiene S. Studley, Deputy Under Secretary, to perform the functions and duties of the Assistant Secretary for Postsecondary Education.

Dated: November 16, 2015.

**Jamiene S. Studley,**

*Deputy Under Secretary.*

[FR Doc. 2015-29527 Filed 11-18-15; 8:45 am]

**BILLING CODE 4000-01-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:* EC16-34-000.

*Applicants:* C.P. Crane LLC, Raven Power Marketing LLC.

*Description:* Joint Application of C.P. Crane LLC and Raven Power Marketing LLC for Authorization under Section 203 of the FPA, and Requests for Shortened Comment Period, Expedited Action, Waivers of Filing Requirements and Confidential Treatment.

*Filed Date:* 11/13/15.

*Accession Number:* 20151113-5197.

*Comments Due:* 5 p.m. ET 12/4/15.

Take notice that the Commission received the following exempt wholesale generator filings:

*Docket Numbers:* EG16-20-000.

*Applicants:* Black Oak Wind, LLC.

*Description:* Self-Certification of EWG status of Black Oak Wind, LLC.

*Filed Date:* 11/13/15.

*Accession Number:* 20151113-5133.

*Comments Due:* 5 p.m. ET 12/4/15.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER16-319-000.

*Applicants:* PJM Interconnection, L.L.C.

*Description:* Section 205(d) Rate Filing: Revisions to OATT Schedule 12 Appdx A—RTEP Approved by the PJM Board Oct 2015 to be effective 2/11/2016.

*Filed Date:* 11/13/15.

*Accession Number:* 20151113-5135.

*Comments Due:* 5 p.m. ET 12/4/15.

*Docket Numbers:* ER16-320-000.

*Applicants:* Midcontinent Independent System Operator, Inc., Wolverine Power Supply Cooperative, Inc., Michigan Electric Transmission Company, LLC.

*Description:* Section 205(d) Rate Filing: 2015-11-13 SA 2818 METC-Wolverine Amended E&P (J392) to be effective 11/14/2015.

*Filed Date:* 11/13/15.

*Accession Number:* 20151113-5147.

*Comments Due:* 5 p.m. ET 12/4/15.

*Docket Numbers:* ER16-321-000.

*Applicants:* Evergreen Wind Power II, LLC.

*Description:* Section 205(d) Rate Filing: Revised Market-Based Rate Tariff to be effective 1/12/2016.

*Filed Date:* 11/13/15.

*Accession Number:* 20151113-5149.

*Comments Due:* 5 p.m. ET 12/4/15.

*Docket Numbers:* ER16-322-000.

*Applicants:* Blue Sky West, LLC.

*Description:* Section 205(d) Rate Filing: Revised Market-Based Rate Tariff to be effective 1/12/2016.

*Filed Date:* 11/13/15.

*Accession Number:* 20151113-5150.

*Comments Due:* 5 p.m. ET 12/4/15.

*Docket Numbers:* ER16-323-000.  
*Applicants:* Ohio Valley Electric Corporation.

*Description:* Compliance filing: Application for MBR to be effective 1/12/2016.

*Filed Date:* 11/13/15.

*Accession Number:* 20151113-5179.

*Comments Due:* 5 p.m. ET 12/4/15.

*Docket Numbers:* ER16-324-000.

*Applicants:* Midcontinent Independent System Operator, Inc.

*Description:* Section 205(d) Rate Filing: 2015-11-13 SA 2864 Consumers-Wolverine E&P Agreement (J392) to be effective 11/14/2015.

*Filed Date:* 11/13/15.

*Accession Number:* 20151113-5190.

*Comments Due:* 5 p.m. ET 12/4/15.

*Docket Numbers:* ER16-325-000.

*Applicants:* EDF Energy Services, LLC.

*Description:* Section 205(d) Rate Filing: Compliance 2015 to be effective 11/16/2015.

*Filed Date:* 11/13/15.

*Accession Number:* 20151113-5209.

*Comments Due:* 5 p.m. ET 12/4/15.

*Docket Numbers:* ER16-326-000.

*Applicants:* EDF Industrial Power Services (CA), LLC.

*Description:* Section 205(d) Rate Filing: Compliance 2015 to be effective 11/16/2015.

*Filed Date:* 11/13/15.

*Accession Number:* 20151113-5210.

*Comments Due:* 5 p.m. ET 12/4/15.

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: November 13, 2015.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2015-29511 Filed 11-18-15; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Project No. 2192-022]

#### Consolidated Water Power Company; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Change in Land Rights and Non-Project Use of Project Lands and Waters.

b. *Project No:* 2192-022.

c. *Date Filed:* July 8, 2014 and supplemented September 30, 2015.

d. *Applicant:* Consolidated Water Power Company.

e. *Name of Project:* Biron Hydroelectric Project.

f. *Location:* Wisconsin River in Wood and Portage counties, Wisconsin.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a-825r.

h. *Applicant Contact:* Thomas J. Witt, 610 High Street, P.O. Box 8050, Wisconsin Rapids, WI 54495-8050, (715) 422-3927.

i. *FERC Contact:* Jon Cofrancesco at (202) 502-8951, or email: [jon.cofrancesco@ferc.gov](mailto:jon.cofrancesco@ferc.gov).

j. *Deadline for filing comments, motions to intervene, and protests:* December 15, 2015.

The Commission strongly encourages electronic filing. Please file motions to intervene, protests, comments, or recommendations using the Commission's eFiling system at <http://www.ferc.gov/docs-filing/efiling.asp>. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <http://www.ferc.gov/docs-filing/ecomment.asp>. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), (866) 208-3676 (toll free), or (202) 502-8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P-2192-022.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Request:* By orders issued November 17, 2006 and September 8, 2008, the Commission approved a proposed land exchange involving specific lands within the project boundary and required Consolidated Water Power Company (licensee) to fulfill certain conditions related to the land exchange, such as measures to provide for specific public benefits (*i.e.*, increased public recreational and access opportunities and a 100-foot-wide, approximately 3,000 linear foot shoreline buffer). In its amendment application, the licensee proposes changes to some of these conditions, including, among other things: (1) Specific modifications and additions to various required recreation and public access improvements, (2) a shoreline buffer plan that would allow additional development within the buffer, including several multi-slip boat docks and pedestrian paths, and (3) a reduction in the width of the 100-foot-wide buffer to 50 feet wide for 300 feet to accommodate existing restaurant improvements.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE., Room 2A, Washington, DC 20426, or by calling

(202) 502-8371. This filing may also be viewed on the Commission's Web site at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field (P-2192) to access the document. You may also register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1-866-208-3676 or email [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), for TTY, call (202) 502-8659. A copy is also available for inspection and reproduction at the address in item (h) above. Agencies may obtain copies of the application directly from the applicant.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Documents:* Any filing must (1) bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE" as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Dated: November 13, 2015.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2015-29515 Filed 11-18-15; 8:45 am]

**BILLING CODE 6717-01-P**

**DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission**

[ Docket No. ER16-287-000]

**BIF III Holtwood LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization**

This is a supplemental notice in the above-referenced proceeding BIF III Holtwood LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is December 2, 2015.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email

[FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Dated: November 12, 2015.

**Nathaniel J. Davis, Sr.,***Deputy Secretary.*

[FR Doc. 2015-29507 Filed 11-18-15; 8:45 am]

BILLING CODE 6717-01-P

**DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission**

[Project No. 308-007]

**PacifiCorp Energy; Notice of Availability of Draft Environmental Assessment**

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380, the Office of Energy Projects has reviewed the application for subsequent license for the Wallowa Falls Hydroelectric Project, located on Royal Purple Creek and the East and West Forks of the Wallowa River in Wallowa County, Oregon, and has prepared a Draft Environmental Assessment (DEA) for the project. The project occupies 12 acres of federal lands administered by the United States Department of Agriculture, Forest Service.

The DEA contains the staff's analysis of the potential environmental effects of the project and concludes that relicensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the DEA is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), (866) 208-3676 (toll free), or (202) 502-8659 (TTY).

You may also register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Any comments should be filed within 45 days from the date of this notice.

The Commission strongly encourages electronic filing. Please file comments

using the Commission's eFiling system at <http://www.ferc.gov/docs-filing/efiling.asp>. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <http://www.ferc.gov/docs-filing/ecomment.asp>. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support. In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P-308-007.

For further information, contact Matt Cutlip at (503) 552-2762.

Dated: November 13, 2015.

**Nathaniel J. Davis, Sr.,***Deputy Secretary.*

[FR Doc. 2015-29514 Filed 11-18-15; 8:45 am]

BILLING CODE 6717-01-P

**DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission****Combined Notice of Filings #1**

Take notice that the Commission received the following electric corporate filings:

*Docket Numbers:* EC15-213-000.

*Applicants:* Public Service Company of New Mexico, PNMR Development and Management Corporation.

*Description:* Supplement to September 25, 2015 Application for Authorization Pursuant to Section 203 of the Federal Power Act for Acquisition of Jurisdictional Facilities, et. al of Public Service Company of New Mexico, et al.

*Filed Date:* 11/12/15.

*Accession Number:* 20151112-5388.

*Comments Due:* 5 p.m. ET 11/24/15.

*Docket Numbers:* EC16-15-000.

*Applicants:* Michigan Power Limited Partnership.

*Description:* Supplement to October 19, 2015 Application for Authorization Pursuant to Section 203 of the Federal Power Act of Michigan Power Limited Partnership.

*Filed Date:* 11/12/15.

*Accession Number:* 20151112-5377.

*Comments Due:* 5 p.m. ET 11/27/15.

*Docket Numbers:* EC16-33-000.

*Applicants:* Coram California Development, L.P.

*Description:* Application of Coram California Development, L.P. for Authorization under Section 203 of Federal Power Act and Request for

Expedited Consideration and Confidential Treatment.

*Filed Date:* 11/12/15.

*Accession Number:* 20151112–5378.

*Comments Due:* 5 p.m. ET 12/3/15.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER10–2130–012.

*Applicants:* Forward Energy LLC.

*Description:* Supplement to June 30, 2015 Triennial Report for Central Region of Forward Energy LLC.

*Filed Date:* 11/13/15.

*Accession Number:* 20151113–5082.

*Comments Due:* 5 p.m. ET 12/4/15.

*Docket Numbers:* ER10–2136–010.

*Applicants:* Invenergy Cannon Falls LLC.

*Description:* Supplement to June 30, 2015 Triennial Report for Central Region of Invenergy Cannon Falls LLC.

*Filed Date:* 11/13/15.

*Accession Number:* 20151113–5083.

*Comments Due:* 5 p.m. ET 12/4/15.

*Docket Numbers:* ER11–4044–013.

*Applicants:* Gratiot County Wind LLC.

*Description:* Supplement to June 30, 2015 Triennial Report for Central Region of Gratiot County Wind LLC.

*Filed Date:* 11/13/15.

*Accession Number:* 20151113–5080.

*Comments Due:* 5 p.m. ET 12/4/15.

*Docket Numbers:* ER11–4046–012.

*Applicants:* Gratiot County Wind II LLC.

*Description:* Supplement to June 30, 2015 Triennial Report for Central Region of Gratiot County Wind II LLC.

*Filed Date:* 11/13/15.

*Accession Number:* 20151113–5079.

*Comments Due:* 5 p.m. ET 12/4/15.

*Docket Numbers:* ER12–164–011.

*Applicants:* Bishop Hill Energy III LLC.

*Description:* Supplement to June 30, 2015 Triennial Report for Central Region of Bishop Hill Energy III LLC.

*Filed Date:* 11/13/15.

*Accession Number:* 20151113–5077.

*Comments Due:* 5 p.m. ET 12/4/15.

*Docket Numbers:* ER12–645–013.

*Applicants:* California Ridge Wind Energy LLC.

*Description:* Supplement to June 30, 2015 Triennial Report for Central Region of California Ridge Wind Hill Energy LLC.

*Filed Date:* 11/13/15.

*Accession Number:* 20151113–5078.

*Comments Due:* 5 p.m. ET 12/4/15.

*Docket Numbers:* ER15–2742–001.

*Applicants:* Panda Patriot LLC.

*Description:* Tariff Amendment: Amended Market-Based Rate Tariff, FERC Electric Tariff, Volume No. 1 to be effective 11/13/2015.

*Filed Date:* 11/12/15.

*Accession Number:* 20151112–5286.

*Comments Due:* 5 p.m. ET 11/23/15.

*Docket Numbers:* ER16–89–001.

*Applicants:* Jether Energy Research, LTD.

*Description:* Tariff Amendment: Amended MBR Application to be effective 12/14/2015.

*Filed Date:* 11/13/15.

*Accession Number:* 20151113–5081.

*Comments Due:* 5 p.m. ET 12/4/15.

*Docket Numbers:* ER16–315–000.

*Applicants:* PJM Interconnection, L.L.C., West Penn Power Company, Duquesne Light Company.

*Description:* § 205(d) Rate Filing: West Penn & Duquesne submit Interconnection Agreement No. 2532 to be effective 1/11/2016.

*Filed Date:* 11/12/15.

*Accession Number:* 20151112–5285.

*Comments Due:* 5 p.m. ET 12/3/15.

*Docket Numbers:* ER16–316–000.

*Applicants:* PJM Interconnection, L.L.C.

*Description:* § 205(d) Rate Filing: Ministerial Clean-Up due to Overlapping Filings RE Capacity Performance to be effective 4/1/2015.

*Filed Date:* 11/12/15.

*Accession Number:* 20151112–5296.

*Comments Due:* 5 p.m. ET 12/3/15.

*Docket Numbers:* ER16–317–000.

*Applicants:* Arizona Public Service Company.

*Description:* § 205(d) Rate Filing: Service Agreement No. 348—Non-conforming A–1 with Navopache to be effective 1/1/2016.

*Filed Date:* 11/12/15.

*Accession Number:* 20151112–5297.

*Comments Due:* 5 p.m. ET 12/3/15.

*Docket Numbers:* ER16–318–000.

*Applicants:* AES Huntington Beach, L.L.C., California Independent System Operator Corporation.

*Description:* § 205(d) Rate Filing: Rate Change to be effective 1/1/2016.

*Filed Date:* 11/12/15.

*Accession Number:* 20151112–5372.

*Comments Due:* 5 p.m. ET 12/3/15.

Take notice that the Commission received the following PURPA 210(m)(3) filings:

*Docket Numbers:* QM15–3–000.

*Applicants:* Arkansas Electric Cooperative Corp.

*Description:* Response to July 14, 2015 Deficiency Letter [Question No. 4] of Arkansas Electric Cooperative Corporation.

*Filed Date:* 11/12/15.

*Accession Number:* 20151112–5375.

*Comments Due:* 5 p.m. ET 12/10/15.

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: November 13, 2015.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2015–29510 Filed 11–18–15; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Project No. 77–275]

#### Pacific Gas and Electric Company; Notice of Application Accepted for Filing, Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Application for Temporary Variance of Minimum Flow Requirement.

b. *Project No.:* 77–275.

c. *Date Filed:* November 10, 2015.

d. *Applicant:* Pacific Gas and Electric Company (licensee).

e. *Name of Project:* Potter Valley Project.

f. *Location:* Eel River and East Fork Russian River in Lake and Mendocino Counties, California.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Ms. Elizabeth Rossi, License Coordinator, Pacific Gas and Electric Company, Mail Code: N13E, P.O. Box 770000, San Francisco, CA 94177, (415) 973–2032.

i. *FERC Contact:* Mr. John Aedo, (415) 369–3335, or [john.aedo@ferc.gov](mailto:john.aedo@ferc.gov).

j. Deadline for filing comments, motions to intervene, protests, and recommendations is November 27, 2015. The Commission strongly encourages electronic filing. Please file

motions to intervene, protests, comments, or recommendations using the Commission's eFiling system at <http://www.ferc.gov/docs-filing/efiling.asp>. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <http://www.ferc.gov/docs-filing/ecomment.asp>. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), (866) 208-3676 (toll free), or (202) 502-8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. Please include the project number (P-77-275) on any comments, motions to intervene, protests, or recommendations filed.

k. *Description of Request:* The licensee requests an extension of a previous temporary variance of the minimum flow requirements in the Eel River and East Branch Russian River. On June 18, 2015, the Commission issued an order approving a temporary variance of the minimum flow requirements in the Eel River below Scott Dam (gage E-2), the Eel River below Cape Horn Dam (gage E-11), and East Branch Russian River (gage E-16). Specifically, the order granted the licensee's request to operate under a dry water year scenario through December 1, 2015, in order to preserve limited water resources during the current drought. In its November 10, 2015 request, the licensee states that the project reservoir (Lake Pillsbury) is projected to drain by mid-January. Consequently, the licensee requests Commission approval to operate as low as the critically dry year minimum flow requirements in the Eel River below Scott Dam (20 cubic feet per second (cfs) release) and the East Branch Russian River (5 cfs release) and the exceptionally low minimum flow requirements in the Eel River below Cape Horn Dam (9 cfs release) in order to preserve water storage. In addition, the licensee requests Commission approval for a modified minimum flow compliance criteria of a 24-hour average, rather than an instantaneous requirement. The licensee requests the temporary variance through January 31, 2016, or when storage in Lake Pillsbury reaches 27,000 acre-feet, whichever comes first.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE., Room

2A, Washington, DC 20426, or by calling (202) 502-8371. This filing may also be viewed on the Commission's Web site at <http://www.ferc.gov/docs-filing/elibrary.asp>. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1-866-208-3676 or email [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), for TTY, call (202) 502-8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filing must (1) bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE" as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All comments, motions to intervene, or protests should relate to project works which are the subject of the license surrender. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. If an intervener files comments or documents with the Commission relating to the merits of an

issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Dated: November 13, 2015.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2015-29513 Filed 11-18-15; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER15-1345-002.

*Applicants:* Midcontinent Independent System Operator, Inc.

*Description:* Compliance filing: 2015-11-12\_SMEPA Compliance Amendment to be effective 6/1/2015.

*Filed Date:* 11/12/15.

*Accession Number:* 20151112-5253.

*Comments Due:* 5 p.m. ET 12/3/15.

*Docket Numbers:* ER15-2239-001.

*Applicants:* NextEra Energy Transmission West, LLC.

*Description:* Tariff Amendment: NextEra Energy Transmission West, LLC Response to Deficiency Letter to be effective 10/20/2015.

*Filed Date:* 11/10/15.

*Accession Number:* 20151110-5163.

*Comments Due:* 5 p.m. ET 12/1/15.

*Docket Numbers:* ER15-2679-000.

*Applicants:* Latigo Wind Park, LLC.  
*Description:* Latigo Wind Park, LLC submits tariff filing per 35.12: Latigo Wind Park, LLC MBR Tariff to be effective 11/15/2015 Replaces 20150921-5134).

*Filed Date:* 10/22/15.

*Accession Number:* 20151022-5049.

*Comments Due:* 5 p.m. ET 12/3/15.

*Docket Numbers:* ER16-36-001.

*Applicants:* Public Service Company of Colorado.

*Description:* Tariff Amendment: 2015-11-12\_PSC-WAPA-Con Fac Agrmt-359-0.0.1-Amend to be effective 12/8/2015.

*Filed Date:* 11/12/15.

*Accession Number:* 20151112-5199.

*Comments Due:* 5 p.m. ET 12/3/15.

*Docket Numbers:* ER16-305-000.

*Applicants:* California Independent System Operator Corporation.  
*Description:* § 205(d) Rate Filing: 2015–11–10 Filing to Maintain Default Loss Allocation Provisions Effectiveness to be effective 2/11/2016.

*Filed Date:* 11/10/15.

*Accession Number:* 20151110–5165.

*Comments Due:* 5 p.m. ET 12/1/15.

*Docket Numbers:* ER16–306–000.

*Applicants:* Midcontinent Independent System Operator, Inc.

*Description:* § 205(d) Rate Filing: 2015–11–11 SA 2865 ITC Transmission-Michigan Wind 3 E&P Agreement (J321) to be effective 11/12/2015.

*Filed Date:* 11/12/15.

*Accession Number:* 20151112–5008.

*Comments Due:* 5 p.m. ET 12/3/15.

*Docket Numbers:* ER16–307–000.

*Applicants:* ISO New England Inc.

*Description:* ISO New England Inc. submits Installed Capacity Requirement, Hydro Quebec Interconnection Capability Credits and Related Values for the 2019/2020 Capacity Commitment Period.

*Filed Date:* 11/10/15.

*Accession Number:* 20151110–5193.

*Comments Due:* 5 p.m. ET 12/1/15.

*Docket Numbers:* ER16–308–000.

*Applicants:* ISO New England Inc.

*Description:* ISO New England Inc. submits Informational filing for Qualification in the Forward Capacity Market.

*Filed Date:* 11/10/15.

*Accession Number:* 20151110–5195.

*Comments Due:* 5 p.m. ET 11/25/15.

*Docket Numbers:* ER16–309–000.

*Applicants:* PJM Interconnection, L.L.C.

*Description:* Tariff Cancellation: Notice of Cancellation of ISA No. 4076, Queue No. Z1–098 to be effective 1/5/2016.

*Filed Date:* 11/12/15.

*Accession Number:* 20151112–5143.

*Comments Due:* 5 p.m. ET 12/3/15.

*Docket Numbers:* ER16–310–000.

*Applicants:* PJM Interconnection, L.L.C.

*Description:* § 205(d) Rate Filing: Amendment to Oregon Clean Energy ISA No. 3876, Queue No. Y1–069 to be effective 5/9/2014.

*Filed Date:* 11/12/15.

*Accession Number:* 20151112–5153.

*Comments Due:* 5 p.m. ET 12/3/15.

*Docket Numbers:* ER16–311–000.

*Applicants:* PJM Interconnection, L.L.C.

*Description:* § 205(d) Rate Filing: ice Agreement No. 4299; Queue No. AA2–072 to be effective 10/13/2015.

*Filed Date:* 11/12/15.

*Accession Number:* 20151112–5204.

*Comments Due:* 5 p.m. ET 12/3/15.

*Docket Numbers:* ER16–312–000.

*Applicants:* Parrey, LLC.

*Description:* Baseline eTariff Filing: Shared Facilities Agreement, FERC Electric Rate Schedule No. 1 to be effective 1/12/2016.

*Filed Date:* 11/12/15.

*Accession Number:* 20151112–5251.

*Comments Due:* 5 p.m. ET 12/3/15.

*Docket Numbers:* ER16–313–000.

*Applicants:* Java Solar, LLC.

*Description:* Baseline eTariff Filing: Shared Facilities Agreement, FERC Electric Rate Schedule No. 1 to be effective 1/12/2016.

*Filed Date:* 11/12/15.

*Accession Number:* 20151112–5252.

*Comments Due:* 5 p.m. ET 12/3/15.

*Docket Numbers:* ER16–314–000.

*Applicants:* Midcontinent Independent System Operator, Inc., South Mississippi Electric Power Association.

*Description:* § 205(d) Rate Filing: 2015–11–12\_SMEPA Protocol Filing to be effective 6/1/2015.

*Filed Date:* 11/12/15.

*Accession Number:* 20151112–5255.

*Comments Due:* 5 p.m. ET 12/3/15.

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: November 12, 2015.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2015–29506 Filed 11–18–15; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Project No. 6623–011]

#### Idarado Mining Company, Newmont Mining Corporation; Notice of Transfer of Exemption

1. By letter filed December 12, 2010, Idarado Mining Company and Newmont Mining Corporation informed the Commission that the exemption from licensing for the Bridal Veil Falls Project No. 6623, originally issued August 3, 1989,<sup>1</sup> has been transferred to Newmont Mining Corporation. The project is located on Bridal Veil Creek in San Miguel County, Colorado. The transfer of an exemption does not require Commission approval.

2. Newmont Mining Corporation is now the exemptee of the Bridal Veil Falls Project, No. 6623. All correspondence should be forwarded to: Mr. Lawrence E. Fiske, Newmont Mining Corporation, 6363 South Fiddler's Green Circle, Suite 800, Greenwood Village, CO 80111.

Dated: November 12, 2015.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2015–29508 Filed 11–18–15; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket Nos. CP14–347–000 CP14–511–000]

#### Magnolia LNG, LLC, Kinder Morgan Louisiana Pipeline LLC; Notice of Availability of The Final Environmental Impact Statement for the Proposed Magnolia LNG and Lake Charles Expansion Projects

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared a final environmental impact statement (EIS) for the Magnolia LNG Project proposed by Magnolia LNG, LLC (Magnolia) and the Lake Charles Expansion Project proposed by Kinder Morgan Louisiana Pipeline LLC (Kinder Morgan) in the above-referenced dockets. The Magnolia LNG Project would include construction and operation of a liquefied natural gas (LNG) terminal that would include various liquefaction, LNG distribution, and appurtenant facilities. The Lake

<sup>1</sup> Order Accepting Settlement Agreement and Granting Exemption from Licensing (5MW or less), (48 FERC ¶ 61,188).

Charles Expansion Project would include reconfiguration of Kinder Morgan's existing pipeline system in order to accommodate Magnolia's request for natural gas service at the LNG terminal site. The projects would provide an LNG export capacity of 1.08 billion cubic feet per day of natural gas.

The final EIS assesses the potential environmental effects of construction and operation of the Magnolia LNG and Lake Charles Expansion Projects in accordance with the requirements of the National Environmental Policy Act (NEPA). The FERC staff concludes that approval of the proposed projects would result in adverse environmental impacts; however, these impacts would be reduced to less-than-significant levels with the implementation of Magnolia's and Kinder Morgan's proposed mitigation and the additional measures recommended in the final EIS.

The U.S. Army Corps of Engineers, U.S. Coast Guard, U.S. Department of Energy, U.S. Department of Transportation, and U.S. Environmental Protection Agency participated as cooperating agencies in the preparation of the final EIS. Cooperating agencies have jurisdiction by law or special expertise with respect to resources potentially affected by a proposal and participate in the NEPA analysis. Although the cooperating agencies provided input on the conclusions and recommendations presented in the final EIS, the agencies will present their own conclusions and recommendations in their respective records of decision or determinations for the projects.

The final EIS addresses the potential environmental effects of the construction, modification, and operation of the following facilities associated with the two projects:

- A new LNG terminal that includes four liquefaction trains, two LNG storage tanks, liquefaction and refrigerant units, safety and control systems, and associated infrastructure;
  - LNG truck loading facilities;
  - LNG carrier and barge loading facilities;
  - one new meter station;
  - one new 32,000 horsepower compressor station;
  - approximately 40 feet of 36-inch-diameter feed gas line to supply natural gas to the LNG terminal from Kinder Morgan's existing natural gas transmission pipeline;
  - a new 1.2-mile-long, 36-inch-diameter low pressure natural gas header pipeline;
  - a new 700-foot-long, 24-inch-diameter high pressure natural gas header pipeline;

- modifications at six existing meter stations; and

- construction of miscellaneous auxiliary and appurtenant facilities.

The FERC staff mailed copies of the final EIS to federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American tribes; potentially affected landowners; other interested individuals and non-governmental organizations; newspapers and libraries in the project areas; and parties to these proceedings. Paper copy versions of this EIS were mailed to those specifically requesting them; all others received a compact disk version. In addition, the final EIS is available for public viewing on the FERC's Web site ([www.ferc.gov](http://www.ferc.gov)) using the eLibrary link. A limited number of hardcopies are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference Room, 888 First Street NE., Room 2A, Washington, DC 20426, (202) 502-8371.

Additional information about the projects is available from the Commission's Office of External Affairs, at (866) 208-FERC, or on the FERC Web site ([www.ferc.gov](http://www.ferc.gov)) using the eLibrary link. Click on the eLibrary link, click on "General Search," and enter the docket number(s) excluding the last three digits in the Docket Number field (*i.e.*, CP14-347 and CP14-511). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at [FercOnlineSupport@ferc.gov](mailto:FercOnlineSupport@ferc.gov) or toll free at (866) 208-3676; for TTY, contact (202) 502-8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription that allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to [www.ferc.gov/docs-filing/esubscription.asp](http://www.ferc.gov/docs-filing/esubscription.asp).

Dated: November 13, 2015.

**Nathaniel J. Davis, Sr.,**  
Deputy Secretary.

[FR Doc. 2015-29512 Filed 11-18-15; 8:45 am]

**BILLING CODE 6717-01-P**

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-9937-20-ORD]

### Office of Research and Development; Ambient Air Monitoring Reference and Equivalent Methods: Designation of One New Reference Method and One New Equivalent Method

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

**ACTION:** Notice of the designation of one new reference method and one new equivalent method for monitoring ambient air quality.

**SUMMARY:** Notice is hereby given that the Environmental Protection Agency (EPA) has designated, in accordance with 40 CFR part 53, one new reference method for measuring concentrations of carbon monoxide (CO) and one new equivalent method for measuring concentrations of ozone (O<sub>3</sub>) in the ambient air.

**FOR FURTHER INFORMATION CONTACT:** Robert Vanderpool, Human Exposure and Atmospheric Sciences Division (MD-D205-03), National Exposure Research Laboratory, U.S. EPA, Research Triangle Park, North Carolina 27711. Email: [Vanderpool.Robert@epa.gov](mailto:Vanderpool.Robert@epa.gov).

**SUPPLEMENTARY INFORMATION:** In accordance with regulations at 40 CFR part 53, the EPA evaluates various methods for monitoring the concentrations of those ambient air pollutants for which EPA has established National Ambient Air Quality Standards (NAAQSs) as set forth in 40 CFR part 50. Monitoring methods that are determined to meet specific requirements for adequacy are designated by the EPA as either reference or equivalent methods (as applicable), thereby permitting their use under 40 CFR part 58 by States and other agencies for determining compliance with the NAAQSs. A list of all reference or equivalent methods that have been previously designated by EPA may be found at <http://www.epa.gov/ttn/amt/criteria.html>.

The EPA hereby announces the designation of one new reference method for measuring concentrations of carbon monoxide (CO) in the ambient air and one new equivalent method for measuring concentrations of ozone (O<sub>3</sub>) in the ambient air. These designations are made under the provisions of 40 CFR part 53, as amended on August 31, 2011 (76 FR 54326-54341).

The new reference method for CO is an automated method (analyzer) utilizing a measurement principle based

on infrared absorption spectroscopy and is identified as follows:

RFCA-0915-228, "Environnement S.A. Model CO12e Carbon Monoxide Analyzer", an infrared absorption spectroscopy technique operated on a full scale range of 0–50 ppm, at any temperature in the range of 10 °C to 35 °C, with a teflon sample particulate filter with the following software settings: Automatic response time ON; Automatic "ZERO-REF" cycle either ON or OFF and with or without the following options: ESTEL Analog Input/Output Board, LCD color touch screen and Carbon Dioxide CO<sub>2</sub> sensor.

This application for a reference method determination for this CO method was received by the Office of Research and Development on July 20, 2015. This analyzer is commercially available from the applicant, Environnement S.A., 111, Boulevard Robespierre, 78300 Poissy France.

The new equivalent method for O<sub>3</sub> is an automated method that utilizes a measurement principle based on non-dispersive ultraviolet absorption photometry. The newly designated equivalent method for O<sub>3</sub> is identified as follows:

EQOA-1015-229, "Teledyne Advanced Pollution Instrumentation, Model 430 Ozone Analyzer", operated with a full scale range between 0–500 ppb, at any operating temperature from 5 °C to 40 °C, with a sample particulate filter, with a 100–240V AC to DC power adapter or a 12V DC source capable of providing 9 watts of power, in accordance with the associated instrument manual, and with or without any of the following options: Internal long-life pump, external long-life pump, external portable battery pack, external communication and data monitoring interfaces.

The application for an equivalent method determination for this candidate method was received by the Office of Research and Development on August 27, 2015. The analyzer is commercially available from the applicant, Teledyne Advanced Pollution Instrumentation, Inc., 9480 Carroll Park Drive, San Diego, CA 92121-2251.

Representative test analyzers have been tested in accordance with the applicable test procedures specified in 40 CFR part 53, as amended on August 31, 2011. After reviewing the results of those tests and other information submitted by the applicant, EPA has determined, in accordance with part 53, that these methods should be designated as a reference or equivalent method.

As a designated reference or equivalent method, these methods are acceptable for use by states and other air monitoring agencies under the requirements of 40 CFR part 58, Ambient Air Quality Surveillance. For such purposes, each method must be

used in strict accordance with the operation or instruction manual associated with the method and subject to any specifications and limitations (e.g., configuration or operational settings) specified in the designated method description (see the identification of the method above).

Use of the method also should be in general accordance with the guidance and recommendations of applicable sections of the "Quality Assurance Handbook for Air Pollution Measurement Systems, Volume I," EPA/600/R-94/038a and "Quality Assurance Handbook for Air Pollution Measurement Systems, Volume II, Ambient Air Quality Monitoring Program," EPA-454/B-13-003, (both available at <http://www.epa.gov/ttn/amtic/qalist.html>). Provisions concerning modification of such methods by users are specified under Section 2.8 (Modifications of Methods by Users) of Appendix C to 40 CFR part 58.

Consistent or repeated noncompliance with any of these conditions should be reported to: Director, Human Exposure and Atmospheric Sciences Division (MD-E205-01), National Exposure Research Laboratory, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

Designation of these reference and equivalent methods is intended to assist the States in establishing and operating their air quality surveillance systems under 40 CFR part 58. Questions concerning the commercial availability or technical aspects of the method should be directed to the applicant.

Dated: November 6, 2015.

**Jennifer Orme-Zavaleta,**  
*Director, National Exposure Research Laboratory.*

[FR Doc. 2015-29492 Filed 11-18-15; 8:45 am]

**BILLING CODE 6560-50-P**

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## FEDERAL DEPOSIT INSURANCE CORPORATION

### Notice of Termination; 10454 The Royal Palm Bank of Florida, Naples, FL

The Federal Deposit Insurance Corporation (FDIC), as Receiver for 10454 The Royal Palm Bank of Florida, Naples, FL (Receiver) has been authorized to take all actions necessary to terminate the receivership estate of The Royal Palm Bank of Florida (Receivership Estate); The Receiver has made all dividend distributions required by law.

The Receiver has further irrevocably authorized and appointed FDIC-

Corporate as its attorney-in-fact to execute and file any and all documents that may be required to be executed by the Receiver which FDIC-Corporate, in its sole discretion, deems necessary; including but not limited to releases, discharges, satisfactions, endorsements, assignments and deeds.

Effective November 1, 2015 the Receivership Estate has been terminated, the Receiver discharged, and the Receivership Estate has ceased to exist as a legal entity.

Dated: November 16, 2015.  
Federal Deposit Insurance Corporation.

**Robert E. Feldman,**  
*Executive Secretary.*

[FR Doc. 2015-29541 Filed 11-18-15; 8:45 am]

**BILLING CODE 6714-01-P**

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## FEDERAL DEPOSIT INSURANCE CORPORATION

### Notice of Termination, 10472 Gold Canyon Bank, Gold Canyon, Arizona

The Federal Deposit Insurance Corporation (FDIC), as Receiver for 10472 Gild Canyon Bank, Gold Canyon, Arizona (Receiver) has been authorized to take all actions necessary to terminate the receivership estate of Gold Canyon Bank (Receivership Estate); The Receiver has made all dividend distributions required by law.

The Receiver has further irrevocably authorized and appointed FDIC-Corporate as its attorney-in-fact to execute and file any and all documents that may be required to be executed by the Receiver which FDIC-Corporate, in its sole discretion, deems necessary; including but not limited to releases, discharges, satisfactions, endorsements, assignments and deeds.

Effective November 01, 2015 the Receivership Estate has been terminated, the Receiver discharged, and the Receivership Estate has ceased to exist as a legal entity.

Dated: November 16, 2015.  
Federal Deposit Insurance Corporation.

**Robert E. Feldman,**  
*Executive Secretary.*

[FR Doc. 2015-29526 Filed 11-18-15; 8:45 am]

**BILLING CODE 6714-01-P**

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## FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

### Sunshine Act Meeting

November 17, 2015.

**TIME AND DATE:** 10:00 a.m., Thursday, December 3, 2015.

**PLACE:** The Richard V. Backley Hearing Room, Room 511N, 1331 Pennsylvania Avenue NW., Washington, DC 20004 (enter from F Street entrance).

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** The Commission will consider and act upon the following in open session: *Secretary of Labor v. Rex Coal Company, Inc.*, Docket Nos. KENT 2010–956, *et al.* (Issues include whether the Judge erred in upholding a citation alleging that the operator failed to provide immediate notification that an accident had occurred.)

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and § 2706.160(d).

**CONTACT PERSON FOR MORE INFO:**

Emogene Johnson (202) 434–9935/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

**Sarah L. Stewart,**

*Deputy General Counsel.*

[FR Doc. 2015–29675 Filed 11–17–15; 4:15 pm]

**BILLING CODE 6735–01–P**

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise

noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 14, 2015.

A. Federal Reserve Bank of Atlanta (Chapelle Davis, Assistant Vice President) 1000 Peachtree Street NE., Atlanta, Georgia 30309:

1. *Sabal Palm Bancorp, Inc.*, Sarasota, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of Sabal Palm Bank, Sarasota, Florida.

B. Federal Reserve Bank of San Francisco (Gerald C. Tsai, Director, Applications and Enforcement) 101 Market Street, San Francisco, California 94105–1579:

1. *HomeStreet, Inc.*, Seattle, Washington, to become a bank holding company upon the conversion of HomeStreet Bank, Seattle, Washington, to a commercial bank.

In connection with this application, Applicant also has applied to retain HomeStreet Capital Corporation, Seattle, Washington, and engage in originating, selling, and servicing multi-family mortgage loans, pursuant to sections 225.28(b)(1) and (b)(2)(vi).

Board of Governors of the Federal Reserve System, November 16, 2015.

**Michele Taylor Fennell,**

*Assistant Secretary of the Board.*

[FR Doc. 2015–29530 Filed 11–18–15; 8:45 am]

**BILLING CODE 6210–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

#### Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 80 FR 5874, dated September 29, 2015) is amended to reflect the reorganization of the Office for State, Tribal, Local and Territorial Support, Centers for Disease Control and Prevention.

Section C–B, Organization and Functions, is hereby amended as follows:

Revise the functional statement for the *Office of the Director (CQA)*, as follows:

After item (22), insert the following item: (23) conducts periodic assessments of field staff and project officer needs; (24) assists in the coordination of CDC and OSTLTS Director site visits to State, Tribal, Local and Territorial agencies (STLT).

Delete in its entirety the title and mission for the *Field Services Office (CQA4)* and insert the following:

*Public Health Associate Program Office (CQA4)*. (1) Provides cross-agency support for the monitoring and reporting of CDC field staff embedded within external public health agencies; and (2) manages the Public Health Associates Program and provides direct oversight and supervision for the Associates.

Revise the functional statement for the *Office of the Director (CQB1)*, *Division of Public Health Performance Improvement (CQB)* as follows:

After item (4), insert the following item: (5) Conducts periodic assessments of field staff and project officer needs; (6) supports grants management optimization efforts to improve STLT health agencies; (7) provides agency-wide leadership and coordination in the identification, assessment, and development of solutions to improve CDC technical assistance and service delivery around Health Systems Transformation.

**James Seligman,**

*Acting Chief Operating Officer, Centers for Disease Control and Prevention.*

[FR Doc. 2015–29485 Filed 11–18–15; 8:45 am]

**BILLING CODE 4160–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

[60Day–16–0217; Docket No. CDC–2015–0105]

#### Proposed Data Collection Submitted for Public Comment and Recommendations

**AGENCY:** Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

**ACTION:** Notice with comment period.

**SUMMARY:** The Centers for Disease Control and Prevention (CDC), as part of its continuing efforts to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies to take this opportunity to

comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. This notice invites comment on the proposed revision of the NCHS Vital Statistics Training Application. The NCHS Registration Methods Program assists in achieving the comparability needed for combining data from all States into national statistics, by conducting a training program for State and local vital statistics staff to assist in developing expertise in all aspects of vital registration and vital statistics.

**DATES:** Written comments must be received on or before January 19, 2016.

**ADDRESSES:** You may submit comments, identified by Docket No. CDC-2015-0105 by any of the following methods:

- *Federal eRulemaking Portal:*

Regulation.gov. Follow the instructions for submitting comments.

- *Mail:* Leroy A. Richardson, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE., MS-D74, Atlanta, Georgia 30329.

**Instructions:** All submissions received must include the agency name and Docket Number. All relevant comments received will be posted without change to Regulations.gov, including any personal information provided. For access to the docket to read background documents or comments received, go to Regulations.gov.

**FOR FURTHER INFORMATION CONTACT:** To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact the Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE., MS-D74, Atlanta, Georgia 30329; phone: 404-639-7570; Email: [omb@cdc.gov](mailto:omb@cdc.gov).

**SUPPLEMENTARY INFORMATION:** Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501-3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register**

concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information.

**Proposed Project**

Vital Statistics Training Application (OMB Control No. 0920-0217, exp. 5/31/2016)—Revision—National Center for Health Statistics NCHS), Centers for Disease Control and Prevention (CDC).

*Background and Brief Description*

In the United States, legal authority for the registration of vital events, *i.e.*, births, deaths, marriages, divorces, fetal deaths, and induced terminations of pregnancy, resides individually with the States (as well as cities in the case of New York City and Washington, DC) and Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands. These governmental entities are the full legal proprietors of vital records and the information contained therein. As a result of this State authority, the collection of registration-based vital statistics at the national level, referred to as the U.S. National Vital Statistics System (NVSS), depends on a cooperative relationship between the States and the Federal government. This data collection, authorized by 42 U.S.C. 242k, has been carried out by NCHS since it was created in 1960.

NCHS assists in achieving the comparability needed for combining data from all States into national statistics, by conducting a training program for State and local vital statistics staff to assist in developing expertise in all aspects of vital registration and vital statistics. The training offered under this program includes courses for registration staff, statisticians, and coding specialists, all designed to bring about a high degree of uniformity and quality in the data provided by the States. This training program is authorized by 42 U.S.C. 242b, section 304(a). NCHS notifies State and local vital registration officials, as well as Canadian counterparts, about upcoming training. Individual candidates for training then submit an application form including name, address, occupation, and other relevant information.

In this revision, the application for the Vital Statistics Training is being updated to capture additional logistical information. NCHS is requesting a three-year clearance to collect information using these training application forms. There is no cost to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
State, Local Health department And vital health Employees.	Annual Survey Training Needs .....	60	1	15/60	15
State, Local Health department And vital health Employees.	NCHS Vital Statistics Training Application.	60	1	15/60	15
Total .....	.....	.....	.....	.....	30

**Leroy A. Richardson,**  
*Chief, Information Collection Review Office,  
 Office of Scientific Integrity, Office of the  
 Associate Director for Science, Office of the  
 Director, Centers for Disease Control and  
 Prevention.*

[FR Doc. 2015-29500 Filed 11-18-15; 8:45 am]

BILLING CODE 4163-18-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

[30Day-15-15AGK]

#### Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The notice for the proposed information collection is published to obtain comments from the public and affected agencies.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address any of the following: (a) 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; (b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) Enhance the quality, utility, and clarity of the information to be collected; (d) 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; and (e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639-7570 or

send an email to [omb@cdc.gov](mailto:omb@cdc.gov). Written comments and/or suggestions regarding the items contained in this notice should be directed to the Attention: CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395-5806. Written comments should be received within 30 days of this notice.

#### Proposed Project

Understanding Barriers and Facilitators to HIV prevention for Men Who Have Sex with Men (MSM)—Pulse Study—New—National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC)

#### Background and Brief Description

The National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention (NCHHSTP)/Division of HIV/AIDS Prevention (DHAP) is requesting a one-year approval for a study-related data collection entitled, “Understanding Barriers and Facilitators to HIV prevention for Men Who Have Sex with Men (MSM).” The purpose of this study is to conduct primarily qualitative research with most at risk HIV-negative MSM.

There are four goals to this study: (1) Understand issues surrounding HIV risk for MSM; (2) learn more about how gay community or peer norms, and community identification influence risk behaviors; (3) understand individual HIV risk management, such as having an HIV-positive partner with suppressed viral load, barriers and facilitators for use of biomedical interventions (*i.e.*, pre-exposure prophylaxis (PrEP), non-occupational post-exposure prophylaxis (nPEP); and (4) understand factors that promote resiliency among HIV-negative MSM.

The present research will be conducted in the top five Southern metropolitan areas in the United States with the highest HIV diagnoses for MSM—Atlanta, Georgia; Jackson, Mississippi; Miami, Florida; and New Orleans and Baton Rouge, Louisiana. These cities rank among those in the South with the highest prevalence and incidence of HIV and STIs among black/African American and Hispanic/Latino MSM.

The study population will consist of black/African-American and Hispanic/

Latino (1) male adolescents who are attracted to men and report they are HIV negative or have not been tested and (2) adult MSM who are recently tested and verified as HIV-negative. All study participants will be 13 years of age or older. Participants will be recruited in the selected cities through referrals from Health Departments, clinics and community based organizations (CBOs).

For the purposes of this study, we will use a primarily qualitative research design and will include a brief quantitative survey to reduce participant burden where possible (for example, when we do not need to know an in-depth answer for socio-demographics, HIV testing history, housing status, health insurance status). The first portion of the interview instrument consists of brief structured demographic questions to characterize the respondents. The second portion of the instrument consists of open-ended in-depth qualitative questions. This research design was chosen based on the exploratory nature of our study purpose. All interviews will be conducted by trained personnel. The data collection will take place at a time and place that is convenient to the respondent. Locations will be private. Data collection may be audio-recorded and transcribed with the consent of the respondent.

Recruitment will consist of health departments and CBOs who conduct testing to give HIV negative males who meet the recruiting eligibility criteria the study flyer following post-result counseling.

We estimate one minute for the flyer distribution. We anticipate screening a total of 300 respondents, at various locations, and anticipate the screening process to take five minutes per respondent for a total of 26 burden hours. Of the 300 respondents screened, we anticipate a 50% response rate. We anticipate that recording a participant's contact information to take one minute per respondent for a total of three burden hours for the 150 participants.

We will conduct a one-hour in depth interview for HIV-negative MSM (minors and adults) that will take a total of 150 burden hours for all 150 study participants.

The total number of burden hours is 184.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
State Health dept. and CBO .....	Recruitment (flyer hand out) .....	300	1	1/60
General Public—Adults and Minors .....	HIV-negative MSM Screener—English .....	210	1	5/60
General Public—Adults and Minors .....	HIV-negative MSM Screener—Spanish .....	90	1	5/60
General Public—Adults and Minors .....	HIV-negative MSM Contact Information Form—English.	105	1	1/60
General Public—Adults and Minors .....	HIV-negative MSM Contact Information Form—Spanish.	45	1	1/60
General Public—Adults .....	HIV-negative MSM In-Depth Interview Guide—English.	95	1	1
General Public—Minors .....	HIV-negative MSM In-Depth Interview Guide—English.	10	1	1
General Public—Adults .....	HIV-negative In-Depth Interview Guide—Spanish.	35	1	1
General Public—Minors .....	HIV-negative In-Depth Interview Guide—Spanish.	10	1	1

**Leroy A. Richardson,**  
*Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.*

[FR Doc. 2015–29517 Filed 11–18–15; 8:45 am]

BILLING CODE 4163–18–P

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Health Resources and Services Administration**

**Advisory Committee on Interdisciplinary, Community-Based Linkages; Notice for Request for Nominations**

**SUMMARY:** The Health Resources and Services Administration (HRSA) is requesting nominations to fill vacancies on the Advisory Committee on Interdisciplinary, Community-Based Linkages (ACICBL). The ACICBL is authorized by 42 U.S.C. 294f, section 757 of the Public Health Service (PHS) Act, as amended by the Patient Protection and Affordable Care Act. The Advisory Committee is governed by the Federal Advisory Act, Public Law (Pub. L.) 92–463, as amended (5 U.S.C. Appendix 2) which sets forth standards for the formation and use of advisory committees.

**DATES:** The agency will receive nominations on a continuous basis.

**ADDRESSES:** All nominations should be submitted to Regina Wilson, Advisory Council Operations, Bureau of Health Workforce, HRSA, 11w45c, 5600 Fishers Lane, Rockville, Maryland 20857. Mail delivery should be addressed to Regina Wilson, Advisory Council Operations, Bureau of Health Workforce, HRSA, at

the above address, or via email to: [RWilson@hrsa.gov](mailto:RWilson@hrsa.gov).

**FOR FURTHER INFORMATION CONTACT:** Joan Weiss, Ph.D., RN, CRNP, FAAN, Designated Federal Official, ACICBL at 301–443–0430 or email at [jweiss@hrsa.gov](mailto:jweiss@hrsa.gov). A copy of the current committee membership, charter and reports can be obtained by accessing the <http://www.hrsa.gov/advisorycommittees/bhpradvisory/acicbl/index.html>.

**SUPPLEMENTARY INFORMATION:** The ACICBL provides advice and recommendations to the Secretary of Health and Human Services (Secretary) concerning policy, program development and other matters of significance related to interdisciplinary, community-based training grant programs authorized under sections 750–759, title VII, part D of the PHS Act, as amended. The ACICBL prepares an annual report describing the activities conducted during the fiscal year, identifying findings and developing recommendations to enhance these title VII, part D programs. The annual report is submitted to the Secretary and ranking members of the Senate Committee on Health, Education, Labor and Pensions, and the House of Representatives Committee on Energy and Commerce. The ACICBL also develops, publishes, and implements performance measures for programs under this part; develops and publishes guidelines for longitudinal evaluations (as described in section 761(d)(2)) for programs under this part; and recommends appropriation levels for programs under this part.

Specifically, HRSA is requesting nominations for voting members of the ACICBL representing: Area Health Education Centers, Education and

Training Relating to Geriatrics, Rural Interdisciplinary Training, Allied Health, Podiatry, Chiropractic, Psychology, and Social Work.

The Department of Health and Human Services (HHS) will consider nominations of all qualified individuals with the areas of subject matter expertise noted above. Individuals may nominate themselves or other individuals, and professional associations and organizations may nominate one or more qualified persons for membership. Nominations shall state that the nominee is willing to serve as a member of the ACICBL and appears to have no conflict of interest that would preclude the ACICBL membership. Potential candidates will be asked to provide detailed information concerning financial interests, consultancies, research grants, and/or contracts that might be affected by recommendations of the ACICBL to permit evaluation of possible sources of conflicts of interest.

A nomination package should include the following information for each nominee: (1) A letter of nomination from an employer, a colleague, or a professional organization stating the name, affiliation, and contact information for the nominee, the basis for the nomination (*i.e.*, what specific attributes, perspectives, and/or skills does the individual possess that would benefit the workings of ACICBL, and the nominee’s field(s) of expertise); (2) a letter of self-interest stating the reasons the nominee would like to serve on the ACICBL; (3) a biographical sketch of the nominee and a copy of his/her curriculum vitae; and (4) the name, address, daytime telephone number, and email address at which the nominator can be contacted. Nominations will be considered as

vacancies occur on the ACICBL. Nominations should be updated and resubmitted every three years to continue to be considered for committee vacancies.

HHS strives to ensure that the membership of HHS federal advisory committees is balanced in terms of points of view represented and the committee's function. Every effort is made to ensure that the views of women, all ethnic and racial groups, and people with disabilities are represented on HHS Federal advisory committees. The Department also encourages geographic diversity in the composition of the committee. The Department encourages nominations of qualified candidates from all groups and locations. Appointment to the ACIBL shall be made without discrimination on the basis of age, race, ethnicity, gender, sexual orientation, disability, and cultural, religious, or socioeconomic status.

**Jackie Painter,**

*Director, Division of the Executive Secretariat.*

[FR Doc. 2015-29550 Filed 11-18-15; 8:45 am]

**BILLING CODE 4165-15-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Health Resources and Services Administration**

**Advisory Commission on Childhood Vaccines; Notice of Meeting**

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given of the following meeting:

*Name:* Advisory Commission on Childhood Vaccines (ACCV)

*Date and Time:* December 3, 2015, 10:00 a.m. to 4:00 p.m. EDT.

*Place:* Audio Conference Call and Adobe Connect Pro.

The ACCV will meet on Thursday, December 3, 2015, from 10:00 a.m. to 4:00 p.m. (EDT). The public can join the meeting by:

1. (Audio Portion) Calling the conference phone number 877-917-4913 and providing the following information:

Leader's Name: Dr. A. Melissa Houston  
Password: ACCV

2. (Visual Portion) Connecting to the ACCV Adobe Connect Pro Meeting using the following URL: <https://hrsa.connectsolutions.com/accv/> (copy and paste the link into your browser if it does not work directly, and enter as a guest). Participants should call and connect 15 minutes prior to the meeting

in order for logistics to be set up. If you have never attended an Adobe Connect meeting, please test your connection using the following URL:

[https://hrsa.connectsolutions.com/common/help/en/support/meeting\\_test.htm](https://hrsa.connectsolutions.com/common/help/en/support/meeting_test.htm)

and get a quick overview by following URL:

<http://www.adobe.com/go/connectprooverview>. Call (301) 443-6634 or send an email to [ahertzog@hrsa.gov](mailto:ahertzog@hrsa.gov) if you are having trouble connecting to the meeting site.

*Agenda:* The agenda items for the December 2015 meeting will include, but are not limited to: Updates from ACCV Adult Immunization Workgroup, the Division of Injury Compensation Programs (DICP), Department of Justice (DOJ), National Vaccine Program Office (NVPO), Immunization Safety Office (Centers for Disease Control and Prevention), National Institute of Allergy and Infectious Diseases (National Institutes of Health) and Center for Biologics, Evaluation and Research (Food and Drug Administration). A draft agenda and additional meeting materials will be posted on the ACCV Web site (<http://www.hrsa.gov/vaccinecompensation/accv.htm>) prior to the meeting. Agenda items are subject to change as priorities dictate.

*Public Comment:* Persons interested in providing an oral presentation should submit a written request, along with a copy of their presentation to: Annie Herzog, DICP, Healthcare Systems Bureau (HSB), Health Resources and Services Administration (HRSA), Room 8N146B, 5600 Fishers Lane, Rockville, MD 20857 or email: [ahertzog@hrsa.gov](mailto:ahertzog@hrsa.gov). Requests should contain the name, address, telephone number, email address, and any business or professional affiliation of the person desiring to make an oral presentation. Groups having similar interests are requested to combine their comments and present them through a single representative. The allocation of time may be adjusted to accommodate the level of expressed interest. DICP will notify each presenter by email, mail, or telephone of their assigned presentation time. Persons who do not file an advance request for a presentation, but desire to make an oral statement, may announce it at the time of the public comment period. Public participation and ability to comment will be limited to space and time as it permits.

**FOR FURTHER INFORMATION CONTACT:**

Anyone requiring information regarding the ACCV should contact Annie Herzog, DICP, HSB, HRSA, Room 8N146B, 5600

Fishers Lane, Rockville, MD 20857; telephone (301) 443-6593, or email: [ahertzog@hrsa.gov](mailto:ahertzog@hrsa.gov).

**Jackie Painter,**

*Director, Division of the Executive Secretariat.*

[FR Doc. 2015-29520 Filed 11-18-15; 8:45 am]

**BILLING CODE 4165-15-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Health Resources and Services Administration**

**Council on Graduate Medical Education, Notice for Request for Nominations**

**SUMMARY:** The Health Resources and Services Administration (HRSA) is requesting nominations to fill vacancies on the Council on Graduate Medical Education (COGME). The COGME is authorized by 42 U.S.C. 2940, section 762 of the Public Health Service (PHS) Act, as amended. The Advisory Committee is governed by the Federal Advisory Act, Public Law (Pub. L.) 92-463, as amended (5 U.S.C. Appendix 2) which sets forth standards for the formation and use of advisory committees.

**DATES:** The agency will receive nominations on a continuous basis.

**ADDRESSES:** All nominations should be submitted to Regina Wilson, Advisory Council Operations, Bureau of Health Workforce, HRSA, 11w45c, 5600 Fishers Lane, Rockville, Maryland 20857. Mail delivery should be addressed to Regina Wilson, Advisory Council Operations, Bureau of Health Workforce, HRSA, at the above address, or via email to: [RWilson@hrsa.gov](mailto:RWilson@hrsa.gov).

**FOR FURTHER INFORMATION CONTACT:** Joan Weiss, Ph.D., RN, CRNP, FAAN, Designated Federal Official, COGME at 301-443-0430 or email at [jweiss@hrsa.gov](mailto:jweiss@hrsa.gov). A copy of the current committee membership, charter and reports can be obtained by accessing the <http://www.hrsa.gov/advisorycommittees/bhpradvisory/COGME/index.html>

**SUPPLEMENTARY INFORMATION:** The COGME provides advice and makes policy recommendations to the Secretary of the U.S. Department of Health and Human Services (Secretary) and ranking members of the Senate Committee on Health, Education, Labor and Pensions, and the House of Representatives Committee on Energy and Commerce on matters under section 762 of part E of title VII concerning the supply and distribution of physicians in the United States, physician workforce

trends, training issues and financing policies. Meetings are held twice a year. The COGME prepares reports concerning the activities under section 762 of part E of title VII. Reports are submitted to the Secretary and ranking members of the Senate Committee on Health, Education, Labor and Pensions, and the House of Representatives Committee on Energy and Commerce.

Specifically, HRSA is requesting nominations for voting members of the COGME representing: Primary care physicians, national and specialty physician organizations, international medical graduates, medical student and house staff associations, schools of medicine, schools of osteopathic medicine, public and private teaching hospitals, health insurers, business, and labor. Among these nominations, students, residents, and/or fellows from these programs are encouraged to apply.

The Department of Health and Human Services (HHS) will consider nominations of all qualified individuals with the areas of subject matter expertise noted above. Individuals may nominate themselves or other individuals, and professional associations and organizations may nominate one or more qualified persons for membership. Nominations shall state that the nominee is willing to serve as a member of the COGME and appears to have no conflict of interest that would preclude the COGME membership. Potential candidates will be asked to provide detailed information concerning financial interests, consultancies, research grants, and/or contracts that might be affected by recommendations of the COGME to permit evaluation of possible sources of conflicts of interest.

A nomination package should include the following information for each nominee:

(1) A letter of nomination from an employer, a colleague, or a professional organization stating the name, affiliation, and contact information for the nominee, the basis for the nomination (*i.e.*, what specific attributes, perspectives, and/or skills does the individual possess that would benefit the workings of COGME, and the nominee's field(s) of expertise); (2) a letter of self-interest stating the reasons the nominee would like to serve on the Council, (3) a biographical sketch of the nominee and a copy of his/her curriculum vitae; and (4) the name, address, daytime telephone number, and email address at which the nominator can be contacted. Nominations will be considered as vacancies occur on the COGME. Nominations should be updated and

resubmitted every 3 years to continue to be considered for committee vacancies.

HHS strives to ensure that the membership of HHS federal advisory committees is balanced in terms of points of view represented and the committee's function. Every effort is made to ensure that the views of women, all ethnic and racial groups, and people with disabilities are represented on HHS federal advisory committees. The Department also encourages geographic diversity in the composition of the committee. The Department encourages nominations of qualified candidates from all groups and locations. Appointment to the COGME shall be made without discrimination on the basis of age, race, ethnicity, gender, sexual orientation, disability, and cultural, religious, or socioeconomic status.

**Jackie Painter,**

*Director, Division of the Executive Secretariat.*

[FR Doc. 2015-29548 Filed 11-18-15; 8:45 am]

**BILLING CODE 4165-15-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

#### Advisory Committee on Training in Primary Care Medicine and Dentistry; Notice for Request for Nominations

**SUMMARY:** The Health Resources and Services Administration (HRSA) is requesting nominations to fill vacancies on the Advisory Committee on Training in Primary Care Medicine and Dentistry (ACTPCMD). The ACTPCMD is authorized by 42 U.S.C. 217a, section 222 and 42 U.S.C. 293l, section 749 of the Public Health Service (PHS) Act, as amended by section 5103(d) and redesignated by section 5303 of the Affordable Care Act. The Advisory Committee is governed by provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C. Appendix 2), as amended, which sets forth standards for the formation and use of advisory committees.

**DATES:** The agency will receive nominations on a continuous basis.

**ADDRESSES:** All nominations should be submitted to Regina Wilson, Advisory Council Operations, Bureau of Health Workforce, HRSA, 11w45c, 5600 Fishers Lane, Rockville, Maryland 20857. Mail delivery should be addressed to Regina Wilson, Advisory Council Operations, Bureau of Health Workforce, HRSA, at the above address, or via email to: [RWilson@hrsa.gov](mailto:RWilson@hrsa.gov).

**FOR FURTHER INFORMATION CONTACT:** Joan Weiss, Ph.D., RN, CRNP, FAAN, Designated Federal Official, ACTPCMD at 301-443-0430 or email at [jweiss@hrsa.gov](mailto:jweiss@hrsa.gov). A copy of the current committee membership, charter and reports can be obtained by accessing the <http://www.hrsa.gov/advisorycommittees/bhpradvisory/actpcmd/>.

**SUPPLEMENTARY INFORMATION:** The ACTPCMD provides advice and recommendations to the Secretary of the U.S. Department of Health and Human Services (Secretary) on policy, program development and other matters of significance concerning the activities under sections 747 and 748, part C of title VII of the PHS act. The ACTPCMD prepares an annual report describing the activities conducted during the fiscal year, identifying findings and developing recommendations to enhance these title VII, part C, section 747 and 748 programs. The annual report is submitted to the Secretary and ranking members of the Senate Committee on Health, Education, Labor and Pensions, and the House of Representatives Committee on Energy and Commerce. The ACTPCMD also develops, publishes, and implements performance measures for programs under this part; develops and publishes guidelines for longitudinal evaluations (as described in section 761(d)(2)) for programs under this part; and recommends appropriation levels for programs under this part. Meetings are held twice a year.

Specifically, HRSA is requesting nominations for voting members of the ACTPCMD representing: Family medicine, general internal medicine, general pediatrics, physician assistant, general dentistry, pediatric dentistry, public health dentistry, and dental hygiene programs. Among these nominations, students, residents, and/or fellows from these programs are encouraged to apply.

The Department of Health and Human Services (HHS) will consider nominations of all qualified individuals with the areas of subject matter expertise noted above. Individuals may nominate themselves or other individuals, and professional associations and organizations may nominate one or more qualified persons for membership. Nominations shall state that the nominee is willing to serve as a member of the ACTPCMD and appears to have no conflict of interest that would preclude the ACTPCMD membership. Potential candidates will be asked to provide detailed information concerning financial interests,

consultancies, research grants, and/or contracts that might be affected by recommendations of the ACTPCMD to permit evaluation of possible sources of conflicts of interest.

A nomination package should include the following information for each nominee: (1) A letter of nomination stating the name, affiliation, and contact information for the nominee, the basis for the nomination (*i.e.*, what specific attributes, perspectives, and/or skills does the individual possess that would benefit the workings of ACTPCMD, and the nominee's field(s) of expertise); (2) a letter of self-interest stating the reasons the nominee would like to serve on the ACTPCMD; (3) a biographical sketch of the nominee and a copy of his/her curriculum vitae; and (4) the name, address, daytime telephone number, and email address at which the nominator can be contacted. Nominations will be considered as vacancies occur on the ACTPCMD. Nominations should be updated and resubmitted every 3 years to continue to be considered for committee vacancies.

HHS strives to ensure that the membership of HHS federal advisory committees is balanced in terms of points of view represented and the committee's function. Every effort is made to ensure that the views of women, all ethnic and racial groups, and people with disabilities are represented on HHS federal advisory committees. The Department also encourages geographic diversity in the composition of the committee. The Department encourages nominations of qualified candidates from all groups and locations. Appointment to the ACTPCMD shall be made without discrimination on the basis of age, race, ethnicity, gender, sexual orientation,

disability, and cultural, religious, or socioeconomic status.

**Jackie Painter,**  
*Director, Division of the Executive Secretariat.*  
 [FR Doc. 2015-29549 Filed 11-18-15; 8:45 am]

**BILLING CODE 4165-15-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Substance Abuse and Mental Health Services Administration**

**Agency Information Collection Activities: Submission for OMB Review; Comment Request**

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276-1243.

*Project:* Treatment Episode Data Set (TEDS) (OMB No. 0930-0335)—Revision

The Substance Abuse and Mental Health Services Administration (SAMHSA) is requesting a revision of the Treatment Episode Data Set (TEDS) data collection (OMB No. 0930-0335), which expires on January 31, 2016. TEDS is a compilation of client-level substance abuse treatment admission and discharge data submitted by states on clients treated in facilities that receive state funds. SAMHSA is requesting the addition of client-level mental health admission and update/discharge data (MH-TEDS/CLD) submitted by states on clients treated in facilities that receive state funds. These mental health data have been previously collected in support of the Community Mental Health Services Block Grant (MHBG) and Substance Abuse and Prevention Treatment Block Grant

(SABG) Application Guidance and Instructions (OMB No. 0930-0168).

TEDS/MH-TEDS/CLD data are collected to obtain information on the number of admissions and updates/discharges at publicly-funded substance abuse treatment and mental health services facilities and on the characteristics of clients receiving services at those facilities. TEDS/MH-TEDS/CLD also monitors trends in the demographic, substance use, and mental health characteristics of admissions. In addition, several of the data elements used to calculate performance measures for the Substance Abuse Block Grant (SABG) and Mental Health Block Grant (MHBG) applications are collected in TEDS/MH-TEDS/CLD.

This request includes:

- Continuation of collection of TEDS (substance abuse) client-level admissions and discharge data;
- Continuation of collection of MH-TEDS client-level admissions and update/discharge data of mental health clients beyond the pilot phase; and
- Addition of collection of MHCLD client-level admissions and update/discharge data (transferred from OMB No. 0930-0168).

Most states collect the TEDS/MH-TEDS/CLD data elements from their treatment providers for their own administrative purposes and are able to submit a cross-walked extract of their data to TEDS/MH-TEDS/CLD. No changes are expected in the (substance abuse) TEDS collection. No changes are expected in the (mental health) MH-CLD collection (other than recording the MH-TEDS/CLD burden hours separately from the Substance Abuse Block Grant (SABG) and Mental Health Block Grant (MHBG) application approval instructions (OMB No. 0930-0168) and the addition of MH-TEDS beyond the pilot phase. No data element changes for TEDS/MH-TEDS/CLD are expected.

The estimated annual burden for the separate TEDS/MH-TEDS/CLD activities is as follows:

Type of activity	Number of respondents (states/jurisdictions)	Responses per respondent	Total responses	Hours per response	Total burden hours
TEDS Admission Data .....	52	4	208	6.25	1,300
TEDS Discharge Data .....	52	4	208	8.25	1,716
TEDS Crosswalks .....	5	1	5	10	50
MH-CLD BCI Data .....	30	1	30	30	900
MH-CLD SHR Data .....	30	1	30	5	150
MH-TEDS Admissions Data .....	29	4	116	6.25	725
MH-TEDS Update/Discharge Data .....	29	4	116	8.25	957
MH-TEDS Crosswalks .....	.....	1	10	10	100
<b>State Total .....</b>	<b>59</b>	<b>.....</b>	<b>723</b>	<b>.....</b>	<b>5,898</b>

Written comments and recommendations concerning the proposed information collection should be sent by December 21, 2015 to the SAMHSA Desk Officer at the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). To ensure timely receipt of comments, and to avoid potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, commenters are encouraged to submit their comments to OMB via email to: [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov). Although commenters are encouraged to send their comments via email, commenters may also fax their comments to: 202-395-7285. Commenters may also mail them to: Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building, Room 10102, Washington, DC 20503.

**Summer King,**  
Statistician.

[FR Doc. 2015-29523 Filed 11-18-15; 8:45 am]

BILLING CODE 4162-20-P

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

[Docket No. USCG-2015-0473]

#### Collection of Information Under Review by Office of Management and Budget; OMB Control Number: 1625-0046

**AGENCY:** Coast Guard, DHS.

**ACTION:** Thirty-day notice requesting comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 the U.S. Coast Guard is forwarding an Information Collection Request (ICR), abstracted below, to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting an extension of its approval for the following collection of information: 1625-0046, Certificates of Financial Responsibility under the Oil Pollution Act of 1990 without change. Our ICR describe the information we seek to collect from the public. Review and comments by OIRA ensure we only impose paperwork burdens commensurate with our performance of duties.

**DATES:** Comments must reach the Coast Guard and OIRA on or before December 21, 2015.

**ADDRESSES:** You may submit comments identified by Coast Guard docket number [USCG-2015-0473] to the Coast

Guard using the Federal eRulemaking Portal at <http://www.regulations.gov>. Alternatively, you may submit comments to OIRA using one of the following means:

(1) *Email:* [OIRA-submission@omb.eop.gov](mailto:OIRA-submission@omb.eop.gov).

(2) *Mail:* OIRA, 725 17th Street NW., Washington, DC 20503, attention Desk Officer for the Coast Guard.

(3) *Fax:* 202-395-6566. To ensure your comments are received in a timely manner, mark the fax, attention Desk Officer for the Coast Guard.

A copy of the ICR is available through the docket on the Internet at <http://www.regulations.gov>. Additionally, copies are available from: COMMANDANT (CG-612), ATTN: PAPERWORK REDUCTION ACT MANAGER, U.S. COAST GUARD, 2100 2ND STREET SW., STOP 7710, WASHINGTON, DC 20593-7710.

#### FOR FURTHER INFORMATION CONTACT:

Contact Mr. Anthony Smith, Office of Information Management, telephone 202-475-3532, or fax 202-372-8405, for questions on these documents.

#### SUPPLEMENTARY INFORMATION:

#### Public Participation and Request for Comments

This Notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection. The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. These comments will help OIRA determine whether to approve the ICR referred to in this Notice.

We encourage you to respond to this request by submitting comments and related materials. Comments to Coast

Guard or OIRA must contain the OMB Control Number of the ICR. They must also contain the docket number of this request, [USCG-2015-0473], and must be received by December 21, 2015.

#### Submitting Comments

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at <http://www.regulations.gov> and can be viewed by following that Web site's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

We accept anonymous comments. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

OIRA posts its decisions on ICRs online at <http://www.reginfo.gov/public/do/PRAMain> after the comment period for each ICR. An OMB Notice of Action on each ICR will become available via a hyperlink in the OMB Control Number: 1625-0046.

#### Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard has published the 60-day notice (80 FR 45667, July 31, 2015) required by 44 U.S.C. 3506(c)(2). That Notice elicited no comments. Accordingly, no changes have been made to the Collections.

#### Information Collection Request

1. *Title:* Certificates of Financial Responsibility under the Oil Pollution Act of 1990.

*OMB Control Number:* 1625-0046.

*Summary:* The information collection requirements described in this supporting statement are necessary to provide evidence of a respondent's ability to pay for removal costs and damages associated with discharges or substantial threats of discharges of hazardous material or oil into the navigable waters, adjoining shorelines or the exclusive economic zone of the United States. The requirements are

imposed generally on operators and financial guarantors of vessels over 300 gross tons.

*Need:* If the requested information is not collected, the Coast Guard will be unable to comply with the provisions of OPA and CERCLA to ensure that responsible parties have the ability to pay for cleanup costs and damages when there is an oil or hazardous material spill or threat of a spill.

*Legal authority:* Section 1002 of OPA 90, as limited by section 1004(a), or section 107(a)(1) of CERCLA.

*Forms:* CG–5585, Application for Vessel Certificate of Financial Responsibility (Water Pollution); CG–5586, Insurance Guaranty; CG–5586–1, Master Insurance Guaranty; CG–5586–2, Surety Bond Guaranty; CG–5586–3, Financial Guaranty; and CG–5586–4, Master Financial Guaranty.

*Respondents:* Vessel operators and approved insurers. Respondents are estimated at 3,300.

*Frequency:* Annually, to include collection of information on a three year cycle.

*Hour Burden Estimate:* The estimated annual burden remains 3,400 hours a year.

*Authority:* The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended.

Dated: November 10, 2015.

**Thomas P. Michelli,**

*U.S. Coast Guard, Deputy Chief Information Officer.*

[FR Doc. 2015–29579 Filed 11–18–15; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

[Docket No. USCG–2015–0908]

#### Information Collection Request to Office of Management and Budget; OMB Control Number: 1625–0042

**AGENCY:** Coast Guard, DHS.

**ACTION:** Sixty-day notice requesting comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to submit an Information Collection Request (ICR) to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting approval for reinstatement, with change, of the following collection of information: 1625–0042, Requirements for Lightering of Oil and Hazardous Material Cargoes. Our ICR describe the information we seek to collect from the

public. Before submitting this ICR to OIRA, the Coast Guard is inviting comments as described below.

**DATES:** Comments must reach the Coast Guard on or before January 19, 2016.

**ADDRESSES:** You may submit comments identified by Coast Guard docket number [USCG–2015–0908] to the Coast Guard using the Federal eRulemaking Portal at <http://www.regulations.gov>. See the “Public participation and request for comments” portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

A copy of the ICR is available through the docket on the Internet at <http://www.regulations.gov>. Additionally, copies are available from: COMMANDANT (CG–612), ATTN: PAPERWORK REDUCTION ACT MANAGER, U.S. COAST GUARD, 2100 2ND STREET SW., STOP 7710, WASHINGTON, DC 20593–7710.

**FOR FURTHER INFORMATION CONTACT:** Mr. Anthony Smith, Office of Information Management, telephone 202–475–3532, or fax 202–475–8405, for questions on these documents.

#### **SUPPLEMENTARY INFORMATION:**

#### **Public Participation and Request for Comments**

This Notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection’s purpose, the Collection’s likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. In response to your comments, we may revise this ICR or decide not to seek reinstatement of the Collection. We will consider all

comments and material received during the comment period.

We encourage you to respond to this request by submitting comments and related materials. Comments must contain the OMB Control Number of the ICR and the docket number of this request, [USCG–2015–0908], and must be received by January 19, 2016.

#### **Submitting Comments**

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at <http://www.regulations.gov> and can be viewed by following that Web site’s instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

We accept anonymous comments. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

#### **Information Collection Request**

1. *Title:* Requirements for Lightering of Oil and Hazardous Material Cargoes. *OMB Control Number:* 1625–0042.

*Summary:* The information for this report allows the U.S. Coast Guard to provide timely response to an emergency and minimize the environmental damage from an oil or hazardous material spill. The information also allows the Coast Guard to control the location and procedures for lightering activities.

*Need:* Section 3715 of title 46 U.S.C. authorizes the Coast Guard to establish lightering regulations. Title 33 CFR 156.200 to 156.300 prescribes the Coast Guard regulations for lightering, including pre-arrival notice, reporting of incidents and operating conditions.

*Forms:* None.

*Respondents:* Owners, masters and agents of lightering vessels.

*Frequency:* On occasion.

*Hour Burden Estimate:* The estimated burden has increased from 217 hours to 372 hours a year due to an increase in the estimated annual number of responses.

**Authority:** The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended.

Dated: November 10, 2015.

**Thomas P. Michelli,**

*Deputy Chief Information Officer, U.S. Coast Guard.*

[FR Doc. 2015-29571 Filed 11-18-15; 8:45 am]

BILLING CODE 9110-04-P

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

[Docket No. USCG-2015-0378]

#### Collection of Information Under Review by Office of Management and Budget; OMB Control Number: 1625-0010

**AGENCY:** Coast Guard, DHS.

**ACTION:** Thirty-day notice requesting comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 the U.S. Coast Guard is forwarding an Information Collection Request (ICR), abstracted below, to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting approval of a revision to the following collection of information: 1625-0010, Defect/Noncompliance Report and Campaign Update Report. Our ICR describes the information we seek to collect from the public. Review and comments by OIRA ensure we only impose paperwork burdens commensurate with our performance of duties.

**DATES:** Comments must reach the Coast Guard and OIRA on or before December 21, 2015.

**ADDRESSES:** You may submit comments identified by Coast Guard docket number [USCG-2015-0378] to the Coast Guard using the Federal eRulemaking Portal at <http://www.regulations.gov>. Alternatively, you may submit comments to OIRA using one of the following means:

(1) *Email:* [OIRA-submission@omb.eop.gov](mailto:OIRA-submission@omb.eop.gov).

(2) *Mail:* OIRA, 725 17th Street NW., Washington, DC 20503, attention Desk Officer for the Coast Guard.

(3) *Fax:* 202-395-6566. To ensure your comments are received in a timely manner, mark the fax, attention Desk Officer for the Coast Guard.

A copy of the ICR is available through the docket on the Internet at <http://www.regulations.gov>. Additionally, copies are available from: Commandant (CG-612), Attn: Paperwork Reduction Act Manager, U.S. Coast Guard, 2703

Martin Luther King Jr Ave. SE., Stop 7710, Washington, DC 20593-7710.

#### FOR FURTHER INFORMATION CONTACT:

Contact Mr. Anthony Smith, Office of Information Management, telephone 202-475-3531, or fax 202-372-8405, for questions on these documents.

#### SUPPLEMENTARY INFORMATION:

#### Public Participation and Request for Comments

This Notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection. The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. These comments will help OIRA determine whether to approve the ICR referred to in this Notice.

We encourage you to respond to this request by submitting comments and related materials. Comments to Coast Guard or OIRA must contain the OMB Control Number of the ICR. They must also contain the docket number of this request, [USCG-2015-0378], and must be received by December 21, 2015.

#### Submitting Comments

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at <http://www.regulations.gov> and can be viewed by following that Web site's instructions. Additionally, if you go to

the online docket and sign up for email alerts, you will be notified when comments are posted.

We accept anonymous comments. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

OIRA posts its decisions on ICRs online at <http://www.reginfo.gov/public/do/PRAMain> after the comment period for each ICR. An OMB Notice of Action on each ICR will become available via a hyperlink in the OMB Control Number: 1625-0010.

#### Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard published the 60-day notice (80 FR 42509, July 17, 2015) required by 44 U.S.C. 3506(c)(2). That Notice elicited no comments. Accordingly, no changes have been made to the Collection.

#### Information Collection Request

1. *Title:* Defect/Noncompliance Report and Campaign Update Report.

*OMB Control Number:* 1625-0010.

*Summary:* Manufacturers whose products contain defects that create a substantial risk of personal injury to the public or fail to comply with an applicable Coast Guard safety standard are required to conduct defect notification and recall campaigns in accordance with 46 U.S.C. 4310. Regulations in 33 CFR 179 require manufacturers to submit certain reports to the Coast Guard concerning progress made in notifying owners and making repairs.

*Need:* Under 46 U.S.C. 4310(d) and (e); and 33 CFR 179.13 and 179.15, the manufacturer shall provide the Commandant of the Coast Guard with an initial report consisting of certain information about the defect notification and recall campaign being conducted and follow up reports describing progress. Upon receipt of information from a manufacturer indicating the initiation of a recall, the Recreational Boating Product Assurance Branch assigns a recall campaign number, and sends the manufacturer CG Forms CG-4917 and CG-4918 for supplying the information.

*Forms:* CG-4917, Defect/Noncompliance Report and CG-4918, Campaign Update Report.

*Respondents:* Manufacturers of boats and certain items of “designated” associated equipment (inboard engines, outboard motors, sterndrive engines or an inflatable personal flotation device approved under 46 CFR 160.076).

*Frequency:* This Information Collection has recordkeeping requirements. The frequency for reporting is Quarterly.

*Hour Burden Estimate:* The estimated burden has decreased from 252 hours to 207 hours annually. The number of campaigns has decreased due to the proactive nature of the Coast Guard factory inspectors who detect and correct recreational boat deficiencies before a watercraft is placed in the market for sale.

**Authority:** The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended.

Dated: November 10, 2015.

**Thomas P. Michelli,**

*U.S. Coast Guard, Deputy Chief Information Officer.*

[FR Doc. 2015-29611 Filed 11-18-15; 8:45 am]

**BILLING CODE 9110-04-P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

[Docket No. USCG-2015-0690]

#### Collection of Information Under Review by Office of Management and Budget; OMB Control Number: 1625-0015

**AGENCY:** Coast Guard, DHS.

**ACTION:** Thirty-day notice requesting comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 the U.S. Coast Guard is forwarding an Information Collection Request (ICR), abstracted below, to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting an extension of its approval for the following collection of information: 1625-0015, Bridge Permit Application Guide (BPAG). Our ICR describes the information we seek to collect from the public. Review and comments by OIRA ensure we only impose paperwork burdens commensurate with our performance of duties.

**DATES:** Comments must reach the Coast Guard and OIRA on or before December 21, 2015.

**ADDRESSES:** You may submit comments identified by Coast Guard docket number [USCG-2015-0690] to the Coast Guard using the Federal eRulemaking

Portal at <http://www.regulations.gov>. Alternatively, you may submit comments to OIRA using one of the following means:

(1) *Email:* [OIRA-submission@omb.eop.gov](mailto:OIRA-submission@omb.eop.gov).

(2) *Mail:* OIRA, 725 17th Street NW., Washington, DC 20503, attention Desk Officer for the Coast Guard.

(3) *Fax:* 202-395-6566. To ensure your comments are received in a timely manner, mark the fax, attention Desk Officer for the Coast Guard.

A copy of the ICR is available through the docket on the Internet at <http://www.regulations.gov>. Additionally, copies are available from: Commandant (CG-612), Attn: Paperwork Reduction Act Manager, U.S. Coast Guard, 2703 Martin Luther King Jr. Ave. SE., STOP 7710, Washington, DC 20593-7710.

**FOR FURTHER INFORMATION CONTACT:** Mr. Anthony Smith, Office of Information Management, telephone 202-475-3532, or fax 202-372-8405, for questions on these documents.

#### SUPPLEMENTARY INFORMATION:

#### Public Participation and Request for Comments

This Notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection. The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. These comments will help OIRA determine whether to approve the ICR referred to in this Notice.

We encourage you to respond to this request by submitting comments and related materials. Comments to Coast Guard or OIRA must contain the OMB Control Number of the ICR. They must

also contain the docket number of this request, [USCG-2015-0690], and must be received by December 21, 2015.

#### Submitting Comments

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at <http://www.regulations.gov> and can be viewed by following that Web site's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

We accept anonymous comments. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

OIRA posts its decisions on ICRs online at <http://www.reginfo.gov/public/do/PRAMain> after the comment period for each ICR. An OMB Notice of Action on each ICR will become available via a hyperlink in the OMB Control Number: 1625-0015.

#### Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard published the 60-day notice (80 FR 51291, August 24, 2015) required by 44 U.S.C. 3506(c)(2). That Notice elicited no comments. Accordingly, no changes have been made to the Collections.

#### Information Collection Request

1. *Title:* Bridge Permit Application Guide (BPAG).

*OMB Control Number:* 1625-0015.

*Summary:* This collection of information is a request for a bridge permit submitted as an application for approval by the Coast Guard of any proposed bridge project. An applicant must submit to the Coast Guard a letter of application along with letter-size drawing (plans) and maps showing the proposed project and its location.

*Need:* 33 U.S.C. 401, 491, and 525 authorize the Coast Guard to approve plans and locations for all bridges and causeways that go over navigable waters of the United States.

*Forms:* N/A.

*Respondents:* Public and private owners of bridges over navigable waters of the United States.

*Frequency:* On occasion. There are no recordkeeping requirements for this information collection.

*Hour Burden Estimate:* The estimated burden has increased from 10,760 hours to 12,354 hours a year due to an increase in the estimated annual number of respondents.

**Authority:** The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended.

Dated: November 10, 2015.

**Thomas P. Michelli,**

*U.S. Coast Guard, Deputy Chief Information Officer.*

[FR Doc. 2015-29612 Filed 11-18-15; 8:45 am]

BILLING CODE 9110-04-P

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

[Docket No. USCG-2015-0691]

#### Collection of Information Under Review by Office of Management and Budget; OMB Control Number: 1625-0099

**AGENCY:** Coast Guard, DHS.

**ACTION:** Thirty-day notice requesting comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 the U.S. Coast Guard is forwarding an Information Collection Request (ICR), abstracted below, to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting approval of a revision to the following collection of information: 1625-0099, Requirements for the Use of Liquefied Petroleum Gas and Compressed Natural Gas as Cooking Fuel on Passenger Vessels. Our ICR describes the information we seek to collect from the public. Review and comments by OIRA ensure we only impose paperwork burdens commensurate with our performance of duties.

**DATES:** Comments must reach the Coast Guard and OIRA on or before December 21, 2015.

**ADDRESSES:** You may submit comments identified by Coast Guard docket number [USCG-2015-0691] to the Coast Guard using the Federal eRulemaking Portal at <http://www.regulations.gov>. Alternatively, you may submit comments to OIRA using one of the following means:

(1) *Email:* [OIRA-submission@omb.eop.gov](mailto:OIRA-submission@omb.eop.gov).

(2) *Mail:* OIRA, 725 17th Street NW., Washington, DC 20503, attention Desk Officer for the Coast Guard.

(3) *Fax:* 202-395-6566. To ensure your comments are received in a timely manner, mark the fax, attention Desk Officer for the Coast Guard.

A copy of the ICR is available through the docket on the Internet at <http://www.regulations.gov>. Additionally, copies are available from: COMMANDANT (CG-612), ATTN: PAPERWORK REDUCTION ACT MANAGER, U.S. COAST GUARD, 2703 MARTIN LUTHER KING JR. AVE SE., STOP 7710, WASHINGTON, DC 20593-7710.

**FOR FURTHER INFORMATION CONTACT:** Mr. Anthony Smith, Office of Information Management, telephone 202-475-3532, or fax 202-372-8405, for questions on these documents.

#### SUPPLEMENTARY INFORMATION:

#### Public Participation and Request for Comments

This Notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection. The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. These comments will help OIRA determine whether to approve the ICR referred to in this Notice.

We encourage you to respond to this request by submitting comments and related materials. Comments to Coast Guard or OIRA must contain the OMB Control Number of the ICR. They must also contain the docket number of this request, [USCG-2015-0691], and must be received by December 21, 2015.

#### Submitting Comments

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at <http://www.regulations.gov> and can be viewed by following that Web site's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

We accept anonymous comments. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

OIRA posts its decisions on ICRs online at <http://www.reginfo.gov/public/do/PRAMain> after the comment period for each ICR. An OMB Notice of Action on each ICR will become available via a hyperlink in the OMB Control Number: 1625-0099.

#### Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard published the 60-day notice (80 FR 48555, August 13, 2015) required by 44 U.S.C. 3506(c)(2). That Notice elicited no comments. Accordingly, no changes have been made to the Collection.

#### Information Collection Request

1. *Title:* Requirements for the Use of Liquefied Petroleum Gas and Compressed Natural Gas as Cooking Fuel on Passenger Vessels.

*OMB Control Number:* 1625-0099.

*Summary:* The collection of information requires passenger vessels to post two placards that contain safety and operating instructions on the use of cooking appliances that use liquefied gas or compressed natural gas.

*Need:* Title 46 U.S.C. 3306(a)(5) authorizes the Coast Guard to prescribe regulations for the use of vessel stores of a dangerous nature. These regulations are prescribed in both uninspected and inspected passenger vessel regulations.

*Forms:* None.

*Respondents:* Owners and operators of passenger vessels. The annual

number of respondents is estimated at 6,429.

*Frequency:* On occasion.

*Hour Burden Estimate:* The estimated burden has increased from 5,948 hours to 6,429 hours a year due to an increase in the estimated number of respondents.

**Authority:** The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended.

Dated: November 10, 2015.

**Thomas P. Michelli,**

*U.S. Coast Guard, Deputy Chief Information Officer.*

[FR Doc. 2015-29574 Filed 11-18-15; 8:45 am]

**BILLING CODE 9110-04-P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

[Docket No. USCG-2015-0757]

#### Information Collection Request to Office of Management and Budget; OMB Control Number: 1625-0041

**AGENCY:** Coast Guard, DHS.

**ACTION:** Sixty-day notice requesting comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to submit an Information Collection Request (ICR) to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting approval for reinstatement, with change, of the following collection of information: 1625-0041, Various International Agreement Pollution Prevention Certificates and Documents, and Equivalency Certificates. Our ICR describe the information we seek to collect from the public. Before submitting this ICR to OIRA, the Coast Guard is inviting comments as described below.

**DATES:** Comments must reach the Coast Guard on or before January 19, 2016.

**ADDRESSES:** You may submit comments identified by Coast Guard docket number [USCG-2015-0757] to the Coast Guard using the Federal eRulemaking Portal at <http://www.regulations.gov>. See the "Public participation and request for comments" portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

A copy of the ICR is available through the docket on the Internet at <http://www.regulations.gov>. Additionally, copies are available from: Commandant (CG-612), Attn: Paperwork Reduction Act Manager, U.S. Coast Guard, 2100

2nd Street SW., Stop 7710, Washington, DC 20593-7710.

**FOR FURTHER INFORMATION CONTACT:** Mr. Anthony Smith, Office of Information Management, telephone 202-475-3532, or fax 202-372-8405, for questions on these documents.

#### **SUPPLEMENTARY INFORMATION:**

#### **Public Participation and Request for Comments**

This Notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. In response to your comments, we may revise this ICR or decide not to seek reinstatement of the Collection. We will consider all comments and material received during the comment period.

We encourage you to respond to this request by submitting comments and related materials. Comments must contain the OMB Control Number of the ICR and the docket number of this request, [USCG-2015-0757], and must be received by January 19, 2016.

#### **Submitting Comments**

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at <http://www.regulations.gov> and can be

viewed by following that Web site's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

We accept anonymous comments. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

#### **Information Collection Request**

1. *Title:* Various International Agreement Pollution Prevention Certificates and Documents, and Equivalency Certificates.

*Omb Control Number:* 1625-0041.

*Summary:* Required by the adoption of the International Convention for the Prevention of Pollution from Ships (MARPOL 73/78) and other international treaties, these certificates and documents are evidence of compliance for U.S. vessels on international voyages. Without the proper certificates or documents, a U.S. vessel could be detained in a foreign port.

*Need:* Compliance with treaty requirements aids in the prevention of pollution from ships.

*Forms:* CG-5352, International Oil Pollution Prevention Certificate; CG-5352A, Supplement to the International Oil Pollution Prevention Certificate (IOPP Certificate); CG-5352B, Supplement to the International Oil Pollution Prevention Certificate (IOPP Certificate); CG-6047, International Sewage Pollution Prevention Equivalency Certificate; CG-6047A, Statement of Voluntary Compliance for sewage Pollution Prevention; CG-6056, International Air Pollution Prevention Certificate; CG-6056A, Supplement to International Air Pollution Prevention Certificate (IAPP Certificate); CG-6056B, Statement of Voluntary Compliance for ANNEX VI of MARPOL 73/78; CG-6056C, Supplement to Statement of Voluntary Compliance for ANNEX VI of MARPOL 73/78; CG-6057, Statement of Voluntary Compliance; CG-6059, International Anti-Fouling Systems Certificate; CG-6059A, Record of Anti-Fouling Systems; CG-6060, International Energy Efficiency (IEE Certificate); and CG-6060A, Supplement to the International Energy Efficiency Certificate (IEE Certificate).

*Respondents:* Owners, operators, or masters of vessels.

*Frequency:* On occasion.

*Hour Burden Estimate:* The estimated burden has increased from 2,738 hours to 73,900 hours a year due to an increase in the estimated annual number of response.

**Authority:** The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended.

Dated: November 10, 2015.

**Thomas P. Michelli,**

*Deputy Chief Information Officer, U.S. Coast Guard.*

[FR Doc. 2015-29614 Filed 11-18-15; 8:45 am]

**BILLING CODE 9110-04-P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

[Docket No. USCG-2015-0636]

#### Collection of Information Under Review by Office of Management and Budget; OMB Control Number: 1625-0088

**AGENCY:** Coast Guard, DHS.

**ACTION:** Thirty-day notice requesting comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 the U.S. Coast Guard is forwarding an Information Collection Request (ICR), abstracted below, to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting approval of a revision to the following collection of information: 1625-0088, Voyage Planning for Tank Barge Transits in the Northeast United States. Our ICR describes the information we seek to collect from the public. Review and comments by OIRA ensure we only impose paperwork burdens commensurate with our performance of duties.

**DATES:** Comments must reach the Coast Guard and OIRA on or before December 21, 2015.

**ADDRESSES:** You may submit comments identified by Coast Guard docket number [USCG-2015-0636] to the Coast Guard using the Federal eRulemaking Portal at <http://www.regulations.gov>. Alternatively, you may submit comments to OIRA using one of the following means:

(1) *Email:* [OIRA-submission@omb.eop.gov](mailto:OIRA-submission@omb.eop.gov).

(2) *Mail:* OIRA, 725 17th Street NW., Washington, DC 20503, attention Desk Officer for the Coast Guard.

(3) *Fax:* 202-395-6566. To ensure your comments are received in a timely manner, mark the fax, attention Desk Officer for the Coast Guard.

A copy of the ICR is available through the docket on the Internet at <http://www.regulations.gov>. Additionally, copies are available from: COMMANDANT (CG-612), ATTN: PAPERWORK REDUCTION ACT MANAGER, U.S. COAST GUARD, 2703 MARTIN LUTHER KING JR. AVE. SE., STOP 7710, WASHINGTON, DC 20593-7710.

**FOR FURTHER INFORMATION CONTACT:** Mr. Anthony Smith, Office of Information Management, telephone 202-475-3532, or fax 202-372-8405, for questions on these documents.

#### SUPPLEMENTARY INFORMATION:

##### Public Participation and Request for Comments

This Notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection. The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. These comments will help OIRA determine whether to approve the ICR referred to in this Notice.

We encourage you to respond to this request by submitting comments and related materials. Comments to Coast Guard or OIRA must contain the OMB Control Number of the ICR. They must also contain the docket number of this request, [USCG-2015-0636], and must be received by December 21, 2015.

##### Submitting Comments

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact the person

in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at <http://www.regulations.gov> and can be viewed by following that Web site's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

We accept anonymous comments. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

OIRA posts its decisions on ICRs online at <http://www.reginfo.gov/public/do/PRAMain> after the comment period for each ICR. An OMB Notice of Action on each ICR will become available via a hyperlink in the OMB Control Number: 1625-0088.

##### Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard has published the 60-day notice (80 FR 48552, August 13, 2015) required by 44 U.S.C. 3506(c)(2). That Notice elicited no comments. Accordingly, no changes have been made to the Collection.

##### Information Collection Request

1. *Title:* Voyage Planning for Tank Barge Transits in the Northeast United States.

*OMB Control Number:* 1625-0088.

*Summary:* The information collection requirement for a voyage plan serves as a preventive measure and assists in ensuring the successful execution and completion of a voyage in the First Coast Guard District. This rule (33 CFR 165.100) applies to primary towing vessels engaged in towing tank barges carrying petroleum oil in bulk as cargo.

*Need:* Section 311 of the Coast Guard Authorization Act of 1998, Pub. L. 105-383, 33 U.S.C. 1231, and 46 U.S.C. 3719 authorize the Coast Guard to promulgate regulations for towing vessel and barge safety for the waters of the Northeast subject to the jurisdiction of the First Coast Guard District. This regulation is contained in 33 CFR 165.100. The information for a voyage plan will provide a mechanism for assisting vessels towing tank barges to identify those specific risks, potential equipment, failures, or human errors that may lead to accidents.

*Forms:* None.

*Respondents:* Owners and operators of towing vessels. The annual number of respondents is estimated at 1,759.

*Frequency:* On occasion.

*Hour Burden Estimate:* The estimated burden has decreased from 1,116 hours to 880 hours a year due to a decrease in the estimated annual number of responses.

**Authority:** The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended.

Dated: November 10, 2015.

**Thomas P. Michelli,**

*U.S. Coast Guard, Deputy Chief Information Officer.*

[FR Doc. 2015-29576 Filed 11-18-15; 8:45 am]

BILLING CODE 9110-04-P

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

[Docket No. USCG-2015-0692]

#### Collection of Information Under Review by Office of Management and Budget; OMB Control Number: 1625-0103

**AGENCY:** Coast Guard, DHS.

**ACTION:** Thirty-day notice requesting comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 the U.S. Coast Guard is forwarding an Information Collection Request (ICR), abstracted below, to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting approval of a revision to the following collection of information: 1625-0103, Mandatory Ship Reporting System for the Northeast and Southeast Coasts of the United States. Our ICR describes the information we seek to collect from the public. Review and comments by OIRA ensure we only impose paperwork burdens commensurate with our performance of duties.

**DATES:** Comments must reach the Coast Guard and OIRA on or before December 21, 2015.

**ADDRESSES:** You may submit comments identified by Coast Guard docket number [USCG-2015-0692] to the Coast Guard using the Federal eRulemaking Portal at <http://www.regulations.gov>. Alternatively, you may submit comments to OIRA using one of the following means:

(1) *Email:* [OIRA-submission@omb.eop.gov](mailto:OIRA-submission@omb.eop.gov).

(2) *Mail:* OIRA, 725 17th Street NW., Washington, DC 20503, attention Desk Officer for the Coast Guard.

(3) *Fax:* 202-395-6566. To ensure your comments are received in a timely manner, mark the fax, attention Desk Officer for the Coast Guard.

A copy of the ICR is available through the docket on the Internet at <http://www.regulations.gov>. Additionally, copies are available from: COMMANDANT (CG-612), ATTN: PAPERWORK REDUCTION ACT MANAGER, U.S. COAST GUARD, 2703 MARTIN LUTHER KING JR. AVE SE., STOP 7710, WASHINGTON, DC 20593-7710.

**FOR FURTHER INFORMATION CONTACT:** Mr. Anthony Smith, Office of Information Management, telephone 202-475-3532, or fax 202-372-8405, for questions on these documents.

#### SUPPLEMENTARY INFORMATION:

##### Public Participation and Request for Comments

This Notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection. The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. These comments will help OIRA determine whether to approve the ICR referred to in this Notice.

We encourage you to respond to this request by submitting comments and related materials. Comments to Coast Guard or OIRA must contain the OMB Control Number of the ICR. They must also contain the docket number of this request, [USCG-2015-0692], and must be received by December 21, 2015.

##### Submitting Comments

We encourage you to submit comments through the Federal

eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at <http://www.regulations.gov> and can be viewed by following that Web site's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

We accept anonymous comments. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

OIRA posts its decisions on ICRs online at <http://www.reginfo.gov/public/do/PRAMain> after the comment period for each ICR. An OMB Notice of Action on each ICR will become available via a hyperlink in the OMB Control Number: 1625-0103.

##### Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard published the 60-day notice (80 FR 48554, August 13, 2015) required by 44 U.S.C. 3506(c)(2). That Notice elicited no comments. Accordingly, no changes have been made to the Collection.

##### Information Collection Request

1. *Title:* Mandatory Ship Reporting System for the Northeast and Southeast Coasts of the United States.

*OMB Control Number:* 1625-0103.

*Summary:* The information is needed to reduce the number of ship collisions with endangered northern right whales. Coast Guard rules at 33 CFR part 169 establish two mandatory ship-reporting systems off the northeast and southeast coasts of the United States.

*Need:* The collection involves ships' reporting by radio to a shore-based authority when entering the area covered by the reporting system. The ship will receive, in return, information to reduce the likelihood of collisions between themselves and northern right whales—an endangered species—in the areas established with critical-habitat designation.

*Forms:* N/A.

**Respondents:** Operators of certain vessels. The estimated annual number of respondents is 1,773.

**Frequency:** On occasion. There are no recordkeeping requirements for this information collection.

**Hour Burden Estimate:** The estimated burden has decreased from 200 hours to 188 hours a year due to a decrease in the estimated annual number of responses.

**Authority:** The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended.

Dated: November 10, 2015.

**Thomas P. Michelli,**

*U.S. Coast Guard, Deputy Chief Information Officer.*

[FR Doc. 2015-29572 Filed 11-18-15; 8:45 am]

BILLING CODE 9110-04-P

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

[Docket No. USCG-2015-0689]

#### Collection of Information Under Review by Office of Management and Budget; OMB Control Number: 1625-0070

**AGENCY:** Coast Guard, DHS.

**ACTION:** Thirty-day notice requesting comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 the U.S. Coast Guard is forwarding an Information Collection Request (ICR), abstracted below, to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting approval of a revision to the following collection of information: 1625-0070, Vessel Identification System. Our ICR describes the information we seek to collect from the public. Review and comments by OIRA ensure we only impose paperwork burdens commensurate with our performance of duties.

**DATES:** Comments must reach the Coast Guard and OIRA on or before December 30, 2015.

**ADDRESSES:** You may submit comments identified by Coast Guard docket number [USCG-2015-0689] to the Coast Guard using the Federal eRulemaking Portal at <http://www.regulations.gov>. Alternatively, you may submit comments to OIRA using one of the following means:

(1) *Email:* [OIRA-submission@omb.eop.gov](mailto:OIRA-submission@omb.eop.gov).

(2) *Mail:* OIRA, 725 17th Street NW., Washington, DC 20503, attention Desk Officer for the Coast Guard.

(3) *Fax:* 202-395-6566. To ensure your comments are received in a timely

manner, mark the fax, attention Desk Officer for the Coast Guard.

A copy of the ICR is available through the docket on the Internet at <http://www.regulations.gov>. Additionally, copies are available from: Commandant (CG-612), Attn: Paperwork Reduction Act Manager, U.S. Coast Guard, 2703 Martin Luther King Jr. Ave. SE., Stop 7710, Washington, DC 20593-7710.

**FOR FURTHER INFORMATION CONTACT:** Mr. Anthony Smith, Office of Information Management, telephone 202-475-3532, or fax 202-372-8405, for questions on these documents.

#### SUPPLEMENTARY INFORMATION:

#### Public Participation and Request for Comments

This Notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. These comments will help OIRA determine whether to approve the ICR referred to in this Notice.

We encourage you to respond to this request by submitting comments and related materials. Comments to Coast Guard or OIRA must contain the OMB Control Number of the ICR. They must also contain the docket number of this request, [USCG-2015-0689], and must be received by December 30, 2015.

#### Submitting Comments

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using [http://](http://www.regulations.gov)

[www.regulations.gov](http://www.regulations.gov), contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at <http://www.regulations.gov> and can be viewed by following that Web site's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

We accept anonymous comments. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

OIRA posts its decisions on ICRs online at <http://www.reginfo.gov/public/do/PRAMain> after the comment period for each ICR. An OMB Notice of Action on each ICR will become available via a hyperlink in the OMB Control Number: 1625-0070.

#### Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard published the 60-day notice (80 FR 48550, August 13, 2015) required by 44 U.S.C. 3506(c)(2). That Notice elicited no comments. Accordingly, no changes have been made to the Collection.

#### Information Collection Request

1. *Title:* Vessel Identification System. *OMB Control Number:* 1625-0070.

*Summary:* The Coast Guard established a nationwide vessel identification system (VIS) and centralized certain vessel documentation function. VIS provides participating States and Territories with access to data on vessels numbered by States and Territories. Participation in VIS is voluntary.

*Need:* Title 46 U.S.C. 12501 mandates the establishment of a VIS. Title 33 CFR part 187 prescribes the requirements of VIS.

*Forms:* N/A.

*Respondents:* Governments of States and Territories. The estimated number of respondents annually is 34.

*Frequency:* Daily.

*Hour Burden Estimate:* The estimated burden has decreased from 5,456 hours to 5,164 hours a year due to a decrease in the estimated annual number of responses.

**Authority:** The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended.

Dated: November 10, 2015.

**Thomas P. Michelli,**

*Deputy Chief Information Officer, U.S. Coast Guard.*

[FR Doc. 2015-29610 Filed 11-18-15; 8:45 am]

BILLING CODE 9110-04-P

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

[Docket No. USCG-2015-0382]

#### Collection of Information Under Review by Office of Management and Budget; OMB Control Number: 1625-0067

**AGENCY:** Coast Guard, DHS.

**ACTION:** Thirty-day notice requesting comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 the U.S. Coast Guard is forwarding an Information Collection Request (ICR), abstracted below, to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting approval for reinstatement, with change, of the following collection of information 1625-0067, Claims under the Oil Pollution Act of 1990. Our ICR describe the information we seek to collect from the public. Review and comments by OIRA ensure we only impose paperwork burdens commensurate with our performance of duties.

**DATES:** Comments must reach the Coast Guard and OIRA on or before December 21, 2015.

**ADDRESSES:** You may submit comments identified by Coast Guard docket number [USCG-2015-0382] to the Coast Guard using the Federal eRulemaking Portal at <http://www.regulations.gov>. Alternatively, you may submit comments to OIRA using one of the following means:

(1) *Email:* OIRA-submission@omb.eop.gov.

(2) *Mail:* OIRA, 725 17th Street NW., Washington, DC 20503, attention Desk Officer for the Coast Guard.

(3) *Fax:* 202-395-6566. To ensure your comments are received in a timely manner, mark the fax, attention Desk Officer for the Coast Guard.

A copy of the ICR is available through the docket on the Internet at <http://www.regulations.gov>. Additionally, copies are available from:

COMMANDANT (CG-612), ATTN: PAPERWORK REDUCTION ACT MANAGER, U.S. COAST GUARD, 2100 2ND STREET SW., STOP 7710, WASHINGTON, DC 20593-7710.

**FOR FURTHER INFORMATION CONTACT:** Mr. Anthony Smith, Office of Information Management, telephone 202-475-3532, or fax 202-372-8405, for questions on these documents.

#### SUPPLEMENTARY INFORMATION:

##### Public Participation and Request for Comments

This Notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection. The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. These comments will help OIRA determine whether to approve the ICR referred to in this Notice.

We encourage you to respond to this request by submitting comments and related materials. Comments to Coast Guard or OIRA must contain the OMB Control Number of the ICR. They must also contain the docket number of this request, [USCG-2015-0382], and must be received by December 21, 2015.

##### Submitting Comments

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at <http://www.regulations.gov> and can be viewed by following that Web site's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

We accept anonymous comments. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

OIRA posts its decisions on ICRs online at <http://www.reginfo.gov/public/do/PRAMain> after the comment period for each ICR. An OMB Notice of Action on each ICR will become available via a hyperlink in the OMB Control Number: 1625-0067

##### Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard has published the 60-day notice (80 FR 35386, June 19, 2015) required by 44 U.S.C. 3506(c)(2). That Notice elicited no comments. Accordingly, no changes have been made to the Collection.

##### Information Collection Request

1. *Title:* Claims under the Oil Pollution Act of 1990.1625-0067.

*Summary:* This information collection provides the means to develop and submit a claim to the National Pollution Funds Center to seek compensation for removal costs and damages incurred resulting from an oil discharge or substantial threat of discharge. This collection also provides the requirements for a responsible party to advertise where claims may be sent after an incident occurs.

*Need:* This information collection is required by 33 CFR part 136, for implementing 33 U.S.C. 2713(e) and 33 U.S.C. 2714(b).

*Forms:* None.

*Respondents:* Claimants and responsible parties of oil spills.

*Frequency:* On occasion.

*Hour Burden Estimate:* The estimated burden has increased from 8,267 hours to 9,370 hours a year due to an increase in the estimated number of annual respondents.

**Authority:** The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended.

Dated: November 10, 2015.

Sincerely,

**Thomas P. Michelli,**

*U.S. Coast Guard, Deputy Chief Information Officer.*

[FR Doc. 2015-29575 Filed 11-18-15; 8:45 am]

BILLING CODE 9110-04-P

**DEPARTMENT OF HOMELAND SECURITY****Coast Guard**

[Docket No. USCG–2015–0756]

**Information Collection Request to Office of Management and Budget; OMB Control Number: 1625–0009****AGENCY:** Coast Guard, DHS.**ACTION:** Sixty-day notice requesting comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to submit an Information Collection Request (ICR) to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting approval for reinstatement, with change, of the following collection of information: 1625–0009, Oil Record Book for Ships. Our ICR describe the information we seek to collect from the public. Before submitting this ICR to OIRA, the Coast Guard is inviting comments as described below.

**DATES:** Comments must reach the Coast Guard on or before January 19, 2016.

**ADDRESSES:** You may submit comments identified by Coast Guard docket number [USCG–2015–0756] to the Coast Guard using the Federal eRulemaking Portal at <http://www.regulations.gov>. See the “Public participation and request for comments” portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

A copy of the ICR is available through the docket on the Internet at <http://www.regulations.gov>. Additionally, copies are available from: Commandant (CG–612), Attn: Paperwork Reduction Act Manager, U.S. Coast Guard, 2100 2nd Street SW., Stop 7101, Washington, DC 20593–7710.

**FOR FURTHER INFORMATION CONTACT:** Mr. Anthony Smith, Office of Information Management, telephone 202–475–3532, or fax 202–372–8405, for questions on these documents.

**SUPPLEMENTARY INFORMATION:****Public Participation and Request for Comments**

This Notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection’s purpose, the Collection’s likely burden on the affected public, an explanation of

the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. In response to your comments, we may revise this ICR or decide not to seek reinstatement of the Collection. We will consider all comments and material received during the comment period.

We encourage you to respond to this request by submitting comments and related materials. Comments must contain the OMB Control Number of the ICR and the docket number of this request, [USCG–2015–0756], and must be received by January 19, 2016.

**Submitting Comments**

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at <http://www.regulations.gov> and can be viewed by following that Web site’s instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

We accept anonymous comments. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

**Information Collection Request**

1. *Title:* Oil Record Book for Ships. *Omb Control Number:* 1625–0009. *Summary:* The Act to Prevent Pollution from Ships (APPS) and the

International Convention for Prevention of Pollution from Ships, 1973, as modified by the 1978 Protocol relating thereto (MARPOL 73/78), requires that information about oil cargo or fuel operations be entered into an Oil Record Book (CG–4602A). The requirement is contained in 33 CFR 151.25.

*Need:* This information is used to verify sightings of actual violations of the APPS to determine the level of compliance with MARPOL 73/78 and as a means of reinforcing the discharge provisions.

*Forms:* CG–4602A; Oil Record Book for Ships.

*Respondents:* Operators of vessels.

*Frequency:* On occasion.

*Hour Burden Estimate:* The estimated burden has increased from 20,221 hours to 28,536 hours a year due to an increase in the estimated annual number of responses.

*Authority:* The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended.

Dated: November 10, 2015.

**Thomas P. Michelli**,  
Deputy Chief Information Officer, U.S. Coast Guard.

[FR Doc. 2015–29573 Filed 11–18–15; 8:45 am]

**BILLING CODE 9110–04–P**

**DEPARTMENT OF HOMELAND SECURITY****U.S. Immigration and Customs Enforcement**

[Docket No. ICEB–2015–0004]

**Advisory Committee on Family Residential Centers Meeting****AGENCY:** ICE, DHS.**ACTION:** Notice of Federal Advisory Committee Meeting.

**SUMMARY:** The U.S. Immigration and Customs Enforcement (ICE) Advisory Committee on Family Residential Centers (ACFRC) will hold its inaugural meeting in Washington, DC to discuss specific challenges within ICE family residential centers and areas of focus for its initial work. This meeting will be open to the public. Individuals who wish to attend the meeting in person are required to register online at [www.ice.gov/acfrc](http://www.ice.gov/acfrc) by December 7, 2015, to allow for security screening. Due to limited seating, the public portion of this meeting may be attended via teleconference.

**DATES:** The Advisory Committee on Family Residential Centers will meet on Monday, December 14, 2015, from 9:00 a.m. to 3:00 p.m. Please note that these

meetings may conclude early if the Committee has completed all business.

**ADDRESSES:** The meeting will be held in the Julie Myers Conference Center at ICE Headquarters, 500 12th St. SW., Washington, DC 20536.

For information on facilities, services for individuals with disabilities, or to request special assistance at the meeting, contact Mr. John Amaya, Designated Federal Officer, at [ICE\\_ACFRC@ice.dhs.gov](mailto:ICE_ACFRC@ice.dhs.gov).

**FOR FURTHER INFORMATION CONTACT:** Mr. John Amaya, Designated Federal Officer for the Advisory Committee on Family Residential Centers, at [ICE\\_ACFRC@ice.dhs.gov](mailto:ICE_ACFRC@ice.dhs.gov).

**SUPPLEMENTARY INFORMATION:** Notice of this meeting is given under the *Federal Advisory Committee Act*, (title 5, United States Code Appendix). Written statements may be submitted to the ACFRC Designated Federal Officer (DFO) (see **FOR FURTHER INFORMATION CONTACT**). Statements should be no longer than two type-written pages and address the following details: The issue, discussion, and recommended course of action. Additional information, including the agenda, electronic registration, and teleconference details are available on the ACFRC Web site at [www.ice.gov/acfrc](http://www.ice.gov/acfrc).

#### Meeting Agenda

The agenda for the Advisory Committee on Family Residential Centers meeting is as follows:

*Monday, December 14, 2015*

- (1) Ethics Training
- (2) FACIA 101
- (3) Welcome and Opening Remarks
- (4) Official Swearing-in of Members
- (5) Meeting Norms and Overview of Agenda
- (6) Role of the Advisory Committee
- (7) American Immigration Lawyers Association Presentation: Concerns & Challenges at Family Residential Centers
- (8) ICE State of Play
- (9) Overview of Committee Norms and Approach for Developing Consensus Recommendations
- (10) Public Comment
- (11) Closing Remarks
- (12) Adjourn

The meeting agenda and all meeting documentation will be made available online at: [www.ice.gov/acfrc](http://www.ice.gov/acfrc). Alternatively, you may contact Mr. John Amaya as noted in the **FOR FURTHER INFORMATION CONTACT** section above.

A public oral comment period will be held at the end of the day. Speakers are requested to limit their comments to 2 minutes. Please note that the public

comment period may end before the time indicated, following the last call for comments.

Dated: November 16, 2015.

**Margaret Stubbs,**

*Regulatory Coordinator, U.S. Immigration and Customs Enforcement.*

[FR Doc. 2015-29534 Filed 11-18-15; 8:45 am]

**BILLING CODE 9110-28-P**

## DEPARTMENT OF JUSTICE

### Office of Justice Programs

[OJP (OJP) Docket No. 1700]

#### Meeting of the Office of Justice Programs' Science Advisory Board

**AGENCY:** Office of Justice Programs (OJP), Justice.

**ACTION:** Notice of meeting.

**SUMMARY:** This notice announces a forthcoming meeting of OJP's Science Advisory Board ("the Board"). General Function of the Board: The Board is chartered to provide OJP, a component of the Department of Justice, with valuable advice in the areas of science and statistics for the purpose of enhancing the overall impact and performance of its programs and activities in criminal and juvenile justice.

**DATES:** The meeting will take place on Friday, January 22, 2016, from approximately 9 a.m. to 4 p.m., with a break for lunch at approximately 12:00 p.m.

**ADDRESSES:** The meeting will take place in the Main Conference Room on the third floor of the Office of Justice Programs, 810 7th Street Northwest, Washington, DC 20531.

**FOR FURTHER INFORMATION CONTACT:** Katherine Darke Schmitt, Designated Federal Officer (DFO), Office of the Assistant Attorney General, Office of Justice Programs, 810 7th Street Northwest, Washington, DC 20531; Phone: (202) 616-7373 [Note: This is not a toll-free number]; Email: [katherine.darke@usdoj.gov](mailto:katherine.darke@usdoj.gov).

**SUPPLEMENTARY INFORMATION:** This meeting is being convened to brief the OJP Assistant Attorney General and the Board members on the progress of the subcommittees, discuss any recommendations they may have for consideration by the full Board, and brief the Board on various OJP-related projects and activities. The final agenda is subject to adjustment, but the meeting will likely include briefings of the subcommittees' activities and discussion of future Board actions and

priorities. This meeting is open to the public. Members of the public who wish to attend this meeting must register with Katherine Darke Schmitt at the above address at least seven (7) calendar days in advance of the meeting. Registrations will be accepted on a space available basis. Access to the meeting will not be allowed without registration. Persons interested in communicating with the Board should submit their written comments to the DFO, as the time available will not allow the public to directly address the Board at the meeting. Anyone requiring special accommodations should notify Ms. Darke Schmitt at least seven (7) calendar days in advance of the meeting.

**Katherine Darke Schmitt,**

*Policy Advisor and SAB DFO, Office of the Assistant Attorney General, Office of Justice Programs.*

[FR Doc. 2015-29499 Filed 11-18-15; 8:45 am]

**BILLING CODE 4410-18-P**

## NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-456 and 50-457; NRC-2013-0169]

### Exelon Generating Company, LLC; Braidwood Station, Units 1 and 2

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Supplemental environmental impact statement; issuance.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is issuing a final plant-specific supplement, Supplement 55, to NUREG-1437, "Generic Environmental Impact Statement for License Renewal of Nuclear Plants" (GEIS), regarding the renewal of Exelon Generating Company, LLC (Exelon) operating licenses NPF-72 and NPF-77 for Braidwood Station, Units 1 and 2 (Braidwood), respectively, for an additional 20 years of operation.

**DATES:** The final Supplement 55 to the GEIS is available as of November 19, 2015.

**ADDRESSES:** Please refer to Docket ID NRC-2013-0169 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-2013-0169. Address questions about NRC dockets to Carol Gallagher; telephone: 301-415-3463; email: [Carol.Gallagher@nrc.gov](mailto: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](mailto:pdr.resource@nrc.gov). The final Supplement 55 to the GEIS is in ADAMS under Accession No. ML15314A814.

- 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:** Richard Baum, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-0018; email: [Richard.Baum@nrc.gov](mailto:Richard.Baum@nrc.gov).

**SUPPLEMENTARY INFORMATION:** In accordance with § 51.118 of title 10 of the *Code of Federal Regulations*, the NRC is making available final Supplement 55 to the GEIS regarding the renewal of Exelon operating licenses NPF-72 and NPF-77 for an additional 20 years of operation for Braidwood. Draft Supplement 55 to the GEIS was noticed by the NRC in the **Federal Register** on March 25, 2015 (80 FR 15827), and noticed by the Environmental Protection Agency on March 27, 2015 (80 FR 16384). The public comment period on draft Supplement 55 to the GEIS ended on May 12, 2015, and the comments received are addressed in final Supplement 55 to the GEIS. Final Supplement 55 to the GEIS is available as indicated in the **ADDRESSES** section of this document.

As discussed in Chapter 5 of the final Supplement 55 to the GEIS, the NRC determined that the adverse environmental impacts of license renewal for Braidwood are not so great that preserving the option of license renewal for energy-planning decision makers would be unreasonable. This recommendation is based on: (1) The analysis and findings in the GEIS; (2) information provided in the environmental report and other documents submitted by Exelon; (3) consultation with Federal, State, local,

and Tribal agencies; (4) the NRC staff's independent environmental review; and (5) consideration of public comments received during the scoping process and on the draft Supplement 55 to the GEIS.

Dated at Rockville, Maryland, this 13 day of November 2015.

For the Nuclear Regulatory Commission.

**James G. Danna,**

Chief, Projects Branch 2, Division of License Renewal, Office of Nuclear Reactor Regulation.

[FR Doc. 2015-29538 Filed 11-18-15; 8:45 am]

**BILLING CODE 7590-01-P**

## NUCLEAR REGULATORY COMMISSION

[NRC-2015-0116]

### Information Collection: NRC Form 244, Registration Certificate—Use of Depleted Uranium Under General License

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of submission to the Office of Management and Budget; request for comment.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) has recently submitted a request for renewal of an existing collection of information to the Office of Management and Budget (OMB) for review. The information collection is entitled, "NRC Form 244, Registration Certificate—Use of Depleted Uranium Under General License."

**DATES:** Submit comments by December 21, 2015.

**ADDRESSES:** Submit comments directly to the OMB reviewer at: Vlad Dorjets, Desk Officer, Office of Information and Regulatory Affairs (3150-0031), NEOB-10202, Office of Management and Budget, Washington, DC 20503; telephone: 202-395-7315, email: [oira\\_submission@omb.eop.gov](mailto:oira_submission@omb.eop.gov).

**FOR FURTHER INFORMATION CONTACT:** Tremaine Donnell, NRC Clearance Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-6258; email: [INFOCOLLECTS.Resource@nrc.gov](mailto:INFOCOLLECTS.Resource@nrc.gov).

#### SUPPLEMENTARY INFORMATION:

#### I. Obtaining Information and Submitting Comments

##### A. Obtaining Information

Please refer to Docket ID NRC-2015-0116 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-2015-0116. A copy of the collection of information and related instructions may be obtained without charge by accessing Docket ID NRC-2015-0116 on this Web site.

- **NRC's Agencywide Documents Access and Management System (ADAMS):** You may obtain publicly-available documents online in the ADAMS Public Documents collection at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "ADAMS Public Documents" and then select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by email to [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov). A copy of the collection of information and related instructions may be obtained without charge by accessing ADAMS Accession No. ML15251A575 (Form 244). In addition, the supporting statement is available in ADAMS under Accession No. ML15251A571.

- **NRC's PDR:** You may examine and purchase copies of public documents at the NRC's PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

- **NRC's Clearance Officer:** A copy of the collection of information and related instructions may be obtained without charge by contacting the NRC's Clearance Officer, Tremaine Donnell, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-6258; email: [INFOCOLLECTS.Resource@NRC.GOV](mailto:INFOCOLLECTS.Resource@NRC.GOV).

##### B. Submitting Comments

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. All comment submissions are posted at <http://www.regulations.gov> and entered into ADAMS. Comment submissions are not routinely edited to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the OMB, 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 comment submissions are not routinely edited to remove such information before making the comment

submissions available to the public or entering the comment into ADAMS.

## II. Background

Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the NRC recently submitted a request for renewal of an existing collection of information to OMB for review entitled, "NRC Form 244, Registration Certificate—Use of Depleted Uranium Under General License." The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The NRC published a **Federal Register** notice with a 60-day comment period on this information collection on June 16, 2015 (80 FR 34466).

1. *The title of the information collection:* NRC Form 244, "Registration Certificate—Use of Depleted Uranium Under General License."

2. *OMB approval number:* 3150–0031.

3. *Type of submission:* Extension.

4. *The form number if applicable:* NRC Form 244.

5. *How often the collection is required or requested:* Within 30 days after the first receipt or acquisition of depleted uranium. Any changes in information furnished by the registrant in the NRC Form 244 shall be reported in writing to the Director, Office of Nuclear Material Safety and Safeguards, with a copy to the Regional Administrator of the appropriate U.S. Nuclear Regulatory Commission Regional Office listed in appendix D of part 20 of title 10 of the *Code of Federal Regulations* (10 CFR); this report shall be submitted within 30 days after the effective date of such change.

6. *Who will be required or asked to respond:* Persons who receive, acquire, possess, or use depleted uranium pursuant to the general license established in 10 CFR 40.25(a).

7. *The estimated number of annual responses:* 9.4 responses (1.3 NRC licensee responses and 8.1 Agreement State licensee responses).

8. *The estimated number of annual respondents:* 7.2 respondents (1 NRC licensee and 6.2 Agreement State licensees).

9. *An estimate of the total number of hours needed annually to comply with the information collection requirement or request:* 9.4 hours (1.3 NRC licensee hours and 8.1 Agreement State licensee hours).

10. *Abstract:* Part 40 of 10 CFR establishes requirements for the receipt, possession, use, and transfer of

radioactive source and byproduct materials. Section 40.25 established a general license authorizing the use of depleted uranium contained in industrial products or devices for the purpose of providing a concentrated mass in a small volume of the product or device. The NRC Form 244 is used to report the receipt and transfer of depleted uranium, as required by § 40.25. The registration information required by the NRC Form 244 enables the NRC to make a determination on whether the possession, use, or transfer of depleted uranium source and byproduct material is in conformance with the NRC's regulations for the protection of public health and safety.

Dated at Rockville, Maryland, this 16th day of November 2015.

For the Nuclear Regulatory Commission.

**Tremaine Donnell,**

*NRC Clearance Officer, Office of the Chief Information Officer.*

[FR Doc. 2015–29561 Filed 11–18–15; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

[NRC–2011–0267]

### In the Matter of All Operating Reactor Licensees With Mark I and Mark II Containments

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Director's decision under 10 CFR 2.206; issuance.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) has issued a director's decision with regard to a petition dated July 29, 2011, filed by Mr. David Lochbaum, Director for Nuclear Safety Project of Union of Concerned Scientists (the petitioner), requesting that the NRC take action with regard to all operating General Electric (GE) boiling-water reactor (BWR) licensees with Mark I and Mark II primary containment designs (referred hereafter as the licensees).

**ADDRESSES:** Please refer to Docket ID NRC–2011–0267 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–2011–0267. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: [Carol.Gallagher@nrc.gov](mailto: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](mailto:pdr.resource@nrc.gov). The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that a document is referenced.

- *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:** John G. Lamb, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001; telephone: 301–415–3100, email: [John.Lamb@nrc.gov](mailto:John.Lamb@nrc.gov).

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, has issued a director's decision (ADAMS Accession No. ML15132A625) on a petition filed by the petitioner on July 29, 2011 (ADAMS Accession No. ML12123A030).

The petitioner requested that the NRC issue a demand for information (DFI) of the operating licenses of all GE BWRs that utilize the Mark I and Mark II primary containment designs.

The NRC sent a copy of the proposed director's decision to the petitioner and the licensees for comment on April 17, 2015 (ADAMS Accession No. ML12215A283). The petitioner and the licensees were asked to provide comments within 30 days on any part of the proposed director's decision that was considered to be erroneous or any issues in the petition that were not addressed. The NRC staff received comments on the proposed director's decision from the petitioner by letter dated May 8, 2015 (ADAMS Accession No. ML15128A388). The NRC staff responses to the comments are attached to the director's decision.

The Director of the Office of Nuclear Reactor Regulation denies the petition because the NRC staff has reasonable assurance that the design and operation of SFP cooling systems for BWRs with Mark I and II containment designs provide adequate assurance of public

health and safety and satisfy current regulations. The concern associated with development of harsh environmental conditions following a beyond-design-basis event that induces a sustained loss of spent fuel pool forced cooling was resolved through the issuance of orders and implementing guidance associated with the lesson-learned as a result of the Fukushima Dai-ichi accident. The reasons for this decision are explained in the director's decision (DD-15-11) pursuant to section 2.206 of title 10 of the *Code of Federal Regulations* (10 CFR), of the Commission's regulations.

The NRC will file a copy of the director's decision with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206. As provided by this regulation, the director's decision will constitute the final action of the Commission 25 days after the date of the decision unless the Commission, on its own motion, institutes a review of the director's decision in that time.

Dated at Rockville, Maryland, this 2nd day of November 2015.

For the Nuclear Regulatory Commission  
**William M. Dean,**  
*Director, Office of Nuclear Reactor Regulation.*

[FR Doc. 2015-29537 Filed 11-18-15; 8:45 am]

**BILLING CODE 7590-01-P**

## OFFICE OF PERSONNEL MANAGEMENT

### Privacy Act of 1974, as Amended: New System of Records

**AGENCY:** U.S. Office of Personnel Management (OPM).

**ACTION:** Notice of a new system of records.

**SUMMARY:** Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, and Office of Management and Budget (OMB), Circular No. A-130, notice is given that the U.S. Office of Personnel Management (OPM) proposes to establish a new agency-wide system of records entitled "Correspondence Management for the U.S. Office of Personnel Management," Internal-21. The purpose of this agency-wide notice is to increase administrative efficiency and to centralize and simplify for the public the process of obtaining information and making requests. This system notice does not supersede systems of records covered by separately-noticed systems.

**DATES:** Please submit any comments by December 21, 2015. The routine uses for

releasing records from this system will be effective without further notice on December 21, 2015 unless comments are received that would result in a contrary determination.

**ADDRESSES:** Send written comments to the Office of Personnel Management, ATTN: Jozetta Robinson, U.S. Office of Personnel Management, 1900 E Street NW., Room 5450, Washington, DC 20415. Written comments can also be sent by email to [recordsmanagement@opm.gov](mailto:recordsmanagement@opm.gov).

**FOR FURTHER INFORMATION CONTACT:** Jozetta Robinson by telephone at 202-606-1000, or by email at [OPMExecSec@opm.gov](mailto:OPMExecSec@opm.gov).

**SUPPLEMENTARY INFORMATION:** In accordance with 5 U.S.C. 552a(e)(4) and (11), the public is given a 30-day period in which to submit written comments. Therefore, please submit any comments by December 21, 2015. A description of the new system of records is provided below. In accordance with 5 U.S.C. 552a(r), the agency has provided a report to OMB and the Congress.

U.S. Office of Personnel Management.

**Beth F. Cobert,**  
*Acting Director.*

#### SYSTEM NAME:

Correspondence Management for the U.S. Office of Personnel Management, Internal-21

#### SYSTEM LOCATION:

U.S. Office of Personnel Management, 1900 E Street NW., Washington, DC 20415 and other U.S. Office of Personnel Management locations throughout the United States and the rest of the world.

#### CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals originating, receiving, or named in correspondence (including attachments) to or from OPM or whose correspondence is referred to OPM, or persons communicating electronically, by mail, or by telephone with OPM regarding official business of OPM, including Members of Congress, other government officials, individuals, and their representatives; individuals originating, receiving, or named in internal memoranda (including attachments) within OPM, including OPM employees, contractors, and individuals relating to investigations, policy decisions, or administrative matters of significance to OPM.

#### CATEGORIES OF RECORDS IN THE SYSTEM:

The categories of records within the system vary according to the wide scope of the responsibilities of OPM.

Categories of records may include correspondence identification (e.g., correspondent's name, address, title, organization, control number, date of correspondence, date received, subject), status of response within OPM, the original correspondence, OPM's response, office or staff member assigned to handle the matter, referral letters, name and identification of person referring the correspondence, copies of any enclosures, and related materials. Some internal memoranda, email correspondence, and logs/notes of official telephone calls to/by OPM staff may also be tracked. This system does not cover systems of records covered by separately-noticed systems.

#### AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301 and 44 U.S.C. 3101.

#### PURPOSE(S):

The system controls and tracks correspondence received or originated by OPM or referred to OPM, and action taken by OPM in response to correspondence received, as well as some internal memoranda, action items, email correspondence, and logs/notes of official telephone calls. It also serves as a reference source for inquiries and response thereto.

#### ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures otherwise permitted under 5 U.S.C. 552a(b), all or a portion of the records or information contained in this system may be disclosed outside of OPM, for a routine use under 5 U.S.C. 552a(b)(3) as follows:

a. For Law Enforcement Purposes—To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where OPM becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

b. For Certain Disclosures to Other Federal Agencies—To disclose information to a Federal agency, in response to its request in connection with the hiring or retention of an employee, the issuance of a security clearance, the conducting of a suitability or security investigation of an individual, the classifying of jobs, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

c. For Congressional Inquiry—To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

d. For Judicial/Administrative Proceedings—To disclose information to another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, when the Government is a party to the judicial or administrative proceeding. In those cases where the Government is not a party to the proceeding, records may be disclosed if a subpoena has been signed by a judge.

e. For National Archives and Records Administration—To disclose information to the National Archives and Records Administration for use in records management inspections.

f. Within OPM for Statistical/Analytical Studies—By OPM in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related workforce studies. While published studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

g. For Litigation—To disclose information to the Department of Justice, or in a proceeding before a court, adjudicative body, or other administrative body before which OPM is authorized to appear, when: (1) OPM, or any component thereof; or (2) any employee of OPM in his or her official capacity; or (3) Any employee of OPM in his or her individual capacity where the Department of Justice or OPM has agreed to represent the employee; or (4) the United States, when OPM determines that litigation is likely to affect OPM or any of its components; is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or OPM is deemed by OPM to be relevant and necessary to the litigation provided, however, that the disclosure is compatible with the purpose for which records were collected.

h. For the Merit Systems Protection Board—To disclose information to officials of the Merit Systems Protection Board or the Office of the Special Counsel, when requested in connection with appeals, special studies of the civil service and other merit systems, review of OPM rules and regulations, investigations of alleged or possible prohibited personnel practices, and

such other functions, *e.g.*, as promulgated in 5 U.S.C. 1205 and 1206, or as may be authorized by law.

i. For the Equal Employment Opportunity Commission—To disclose information to the Equal Employment Opportunity Commission when requested in connection with investigations into alleged or possible discrimination practices in the Federal sector, compliance by Federal agencies with the Uniform Guidelines on Employee Selection Procedures or other functions vested in the Commission and to otherwise ensure compliance with the provisions of 5 U.S.C. 7201.

j. For the Federal Labor Relations Authority—To disclose information to the Federal Labor Relations Authority or its General Counsel when requested in connection with investigations of allegations of unfair labor practices or matters before the Federal Service Impasses Panel.

k. For Non-Federal Personnel—To disclose information to contractors, grantees, or volunteers performing or working on a contract, service, grant, cooperative agreement, or job for the Federal Government.

l. To appropriate agencies, entities, and persons when (1) OPM suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the agency has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by OPM or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with OPM's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Records are stored in electronic form and on paper.

**RETRIEVABILITY:**

Information can be retrieved by name of individual; subject matter of topic; or in some cases, by other identifying search term employed.

**SAFEGUARDS:**

Information in this system is safeguarded in accordance with

applicable rules and policies, including OPM's Information Security & Privacy Policy. In general, records and technical equipment are maintained in buildings with restricted access. The required use of password protection identification features and other system protection methods also restrict access. Access is limited to those who have an official need for access to perform their official duties.

**RETENTION AND DISPOSAL:**

Records are retained and disposed of in accordance with the OPM records schedules approved by the National Archives and Records Administration and/or pursuant to the General Records Schedule.

**SYSTEM MANAGER(S) AND ADDRESS(ES):**

The system manager is Director, Office of the Executive Secretariat, U.S. Office of Personnel Management, 1900 E Street NW., Room 5450, Washington, DC 20415.

**NOTIFICATION AND RECORD ACCESS PROCEDURE:**

Individuals wishing to determine whether this system of records contains information about them may do so by writing to the FOIA/PA Requester Service Center, U.S. Office of Personnel Management, 1900 E Street NW., Room 5415, Washington, DC 20415, or by emailing [foia@opm.gov](mailto:foia@opm.gov). Individuals must furnish the following information:

1. Full name, former name, and any other names used.
2. Date and place of birth.
3. Social Security Number.
4. Signature.
5. Description of the information sought.
6. The reason why the individual believes the system contains information on them.

Individuals requesting access must also comply with OPM's Privacy Act regulations regarding verification of identity and access to records (5 CFR part 297). In addition, requesters must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

- If executed outside the United States: "I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on [date]. [signature]."

- If executed within the United States, its territories, possessions, or commonwealths: "I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on [date]. [signature]."

Attorneys or other persons acting on behalf of an individual must provide

written authorization from that individual for the representative to act on their behalf. The written authorization must also include an original notarized statement or an unsworn declaration, as described above.

#### AMENDMENT PROCEDURES:

Individuals wishing to amend information maintained in the system should direct their requests to the FOIA/PA Requester Service Center, U.S. Office of Personnel Management, 1900 E Street NW., Room 5415, Washington, DC 20415, or by emailing [foia@opm.gov](mailto:foia@opm.gov), stating clearly and concisely what information the individuals seek to amend, the reasons for seeking amendment, and the proposed amendments. Some information is not subject to amendment. A determination whether a record may be amended will be made at the time a request is received. Individuals must furnish the following information in writing for their records to be located:

1. Full name, former name, and any other names used.
2. Date and place of birth.
3. Social Security Number.
4. Signature.
5. Information the individual seeks to amend, the reasons for seeking amendment, and the proposed amendments.

Individuals requesting access must also comply with OPM's Privacy Act regulations regarding verification of identity and access to records (5 CFR part 297). In addition, requestors must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

- If executed outside the United States: "I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on [date]. [signature]."
- If executed within the United States, its territories, possessions, or commonwealths: "I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on [date]. [signature]."

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for the representative to act on their behalf. The written authorization must also include an original notarized statement or an unsworn declaration, as described above.

#### RECORD SOURCE CATEGORIES:

The information contained in this system is derived from incoming and

outgoing correspondence and internal memoranda. Sources include individuals; state, local, tribal, and foreign government agencies as appropriate; the executive and legislative branches of the Federal Government; the Judiciary; and interested third parties.

#### SYSTEMS EXEMPT FROM CERTAIN PROVISIONS OF THE ACT:

A determination as to exemption shall be made at the time a request for access or amendment is received. OPM has promulgated rules in 5 CFR 297.501(c) reserving the right to assert exemptions for these records when received from another agency that could properly claim such exemptions in responding to a request, and reserving the right to refuse access to information compiled in reasonable anticipation of a civil action or litigation.

[FR Doc. 2015-29583 Filed 11-18-15; 8:45 am]

BILLING CODE 6325-47-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-76439; File No. SR-NYSEARCA-2015-112]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the NYSE Arca Options Fee Schedule Effective December 1, 2015

November 13, 2015.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on November 9, 2015, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE Arca Options Fee Schedule ("Fee Schedule"). The Exchange proposes to implement the fee changes effective December 1, 2015. The text of the proposed rule change is available on the

Exchange's Web site at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission's Public Reference Room.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The purpose of this filing is to amend the Fee Schedule, effective December 1, 2015. Specifically, the Exchange proposes to decrease certain fees charged to Market Makers, Lead Market Makers, Firms and Broker Dealers, and Professional Customers (collectively, "Non-Customers") for Taking Liquidity in Penny Pilot Issues ("Take Fees"). Last month the Exchange increased the Take Fees charged to Non-Customers from \$0.50 to \$0.52 per contract for electronic executions.<sup>4</sup> The Exchange now proposes to reduce the Take Fees charged to Non-Customers back to \$0.50 per contract after having considered the competitive landscape.<sup>5</sup>

###### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>6</sup> in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,<sup>7</sup> in particular, because it provides for the equitable allocation of reasonable dues, fees, and

<sup>4</sup> See File No. SR-NYSEArca-2015-108 (November 2, 2015).

<sup>5</sup> See e.g., NASDAQ Options Market—Fees and Rebates, available at: <http://www.nasdaqtrader.com/Micro.aspx?id=optionsPricing> (charging non-customers take fees of \$0.50 per contract in penny pilot issues other than in certain select symbols, for which the take fee is \$0.55). See also MIAX fee schedule, available here: [https://www.miaxoptions.com/sites/default/files/MIAX\\_Options\\_Fee\\_Schedule\\_10012015C.pdf](https://www.miaxoptions.com/sites/default/files/MIAX_Options_Fee_Schedule_10012015C.pdf) (charging non-customers take fees of \$0.47 per contract in penny pilot issues other than in certain select symbols, for which the take fee is \$0.55). The Commission notes that the \$0.55 take fee applies only to certain categories of non-customers (i.e. away market makers).

<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that the proposed Take Fees for Non-Customers reasonable, equitable and not unfairly discriminatory because they are competitive with fees charged by other exchanges and are designed to attract (and compete for) order flow to the Exchange, which provides a greater opportunity for trading by all market participants.<sup>8</sup> Moreover, the Exchange believes the proposed change does not unfairly discriminate because it applies equally to all Non-Customers who are removing liquidity.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

In accordance with Section 6(b)(8) of the Act,<sup>9</sup> 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.

Instead, the Exchange believes that the proposed change would continue to encourage competition and make the Exchange a more competitive venue for, among other things, order execution and price discovery. In addition, the proposed change would impact all affected order types (*i.e.*, Professional Customers, Firm, Broker Dealers) in issues at the same rate. The Exchange does not believe that the proposed change will impair the ability of any market participants or competing order execution venues to maintain their competitive standing in the financial markets.

The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

#### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)<sup>10</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>11</sup> thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)<sup>12</sup> of the Act to determine whether the proposed rule change should be approved or disapproved.

#### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEARCA-2015-112 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-NYSEARCA-2015-112. 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 Section, 100 F Street NE., Washington, DC 20549-1090. Copies of the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet Web site at [www.nyse.com](http://www.nyse.com). All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEARCA-2015-112 and should be submitted on or before December 10, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

**Brent J. Fields,**  
*Secretary.*

[FR Doc. 2015-29491 Filed 11-18-15; 8:45 am]

**BILLING CODE 8011-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-76437; File No. SR-ICC-2015-018]**

### **Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Revise ICC End-of-Day Price Discovery Policies and Procedures**

November 13, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on November 5, 2015, ICE Clear Credit LLC ("ICC") 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 ICC. ICC filed the proposed rule change pursuant to Section 19(b)(3)(A) of the

<sup>8</sup> See *supra* n. 5.

<sup>9</sup> 15 U.S.C. 78f(b)(8).

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(2).

<sup>12</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>13</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

Act,<sup>3</sup> and Rule 19b-4(f)(4)(i)<sup>4</sup> thereunder, so that the proposal 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 revise the ICC End-of-Day Price Discovery Policies and Procedures to accommodate industry changes regarding the reduction of the frequency for which Single Name ("SN") credit default swap ("CDS") contracts roll to the new on-the-run-contract. These revisions do not require any changes to the ICC Clearing Rules.

### **II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, ICC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received regarding the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. ICC 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*

##### **1. Purpose**

ICC proposes revising the ICC End-of-Day Price Discovery Policies and Procedures to accommodate industry changes regarding the reduction of the frequency for which SN CDS contracts roll to the new on-the-run-contract. The changes affect the labeling convention for cleared SN CDS contracts for price reporting purposes, but will not alter the terms of the contracts or the range of tenors of SN CDS contracts currently cleared by ICC.

ICC believes such revisions will facilitate the prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts, and transactions cleared by ICC. The proposed revisions are described in detail as follows.

As part of ICC's end-of-day price discovery process, ICC Clearing Participants ("CPs") are required to

submit end-of-day prices for specific instruments related to their open interest at ICC, in accordance with Rule 404(b) and ICC Procedures. These end-of-day price submissions are used by ICC in its calculation of settlement prices.

ICC refers to a group of SN instruments with the same risk sub-factor and coupon as a "curve." Each point, or tenor, along the curve is labeled with a tenor name. Currently for SN instruments, the market convention is to describe tenors based on the period remaining until the scheduled termination date of the contract. Under this convention, the nearest-to-expiring contract is referred to as the 0M tenor, the next nearest to expiring is referred to as the three month (3M) tenor, and so on (with scheduled termination dates spaced at 3 month intervals), up to ten years (10Y). ICC supports the clearing of all 41 SN tenors from 0M to 10Y. As such, ICC also calculates settlement prices for the 41 SN tenors on the curve. However, ICC defines a subset of the 41 tenors as "benchmark-tenors", which are tenors for which CPs provide submissions in the end-of-day price discovery process. The nine benchmark tenors are 0M, 6M, 1Y, 2Y, 3Y, 4Y, 5Y, 7Y, and 10Y, which correspond to so-called "on-the-run" contracts.

Currently, as a matter of CDS market practice, the "on-the-run" contract for a particular tenor is the contract expiring on the next following quarterly International Money Market ("IMM") dates (*i.e.*, March 20, June 20, September 20 and December 20) for the relevant year. For example, the SN CDS contract expiring December 20, 2020 will be considered the five-year "on-the-run" contract until December 20, 2015, from which time the contract expiring March 20, 2021 will be viewed as the 5Y "on-the-run" contract, until the next quarterly roll date, etc. Accordingly, market participants seeking to maintain exposure at a particular CDS tenor will typically "roll" SN CDS contracts into the new "on-the-run" contract (*i.e.*, terminate positions in the old on-the-run contract and establish positions in the new on-the-run contract) on a quarterly basis on the IMM dates. To account for this practice, at each quarterly roll date, ICC re-labeled the 41 SN tenors to reflect the rolling and expiration of contracts.

The CDS industry has proposed reducing the frequency at which SN CDS contracts roll to the new on-the-run contract. Specifically, the CDS industry has proposed moving from quarterly roll dates to semi-annual roll dates for SN CDS contracts. Under the revised approach, market participants are

expected to roll SN CDS contracts only on the March 20 and September 20 IMM dates, and the "on-the-run" contracts will be determined based on the next following June 20 and December 20 expiration dates. As a result, a particular contract tenor will generally remain the on-the-run contract for six months, rather than three.

ICC proposes changes to its End-of-Day Price Discovery Policies and Procedures to accommodate the change in roll frequency for on-the-run contracts. Under the revised policy, ICC will re-label scheduled termination dates with benchmark tenor names every six months, on the March 20 and September 20 IMM dates for CDS contracts (*i.e.*, the on-the-run roll dates). The re-labeling is based on the remaining time to maturity that will apply to a given scheduled termination date on the next quarterly IMM date (*i.e.* the next December 20 or June 20 standard maturity date). Upon the semi-annual re-labeling, the nearest to maturity contract is referred to as the 0M tenor, and the tenor label for each longer-date contract is based on that contract's time to maturity relative to the scheduled termination date labeled as the 0M tenor.

The new nine benchmark tenors will be the 0/3M, 6M, 1Y, 2Y, 3Y, 4Y, 5Y, 7Y and 10Y, which correspond to the on-the-run contracts for those tenors. Eight of the nine benchmark tenors remain constant and refer to individual scheduled termination dates that are fixed for the six-month periods between semi-annual re-labeling, specifically the 6M, 1Y, 2Y, 3Y, 4Y, 5Y, 7Y, and 10Y. However, the 0M tenor matures three months after a semi-annual labeling, and ICC defines the first (shortest-dated) benchmark tenor as the 0M tenor from a semi-annual re-labeling until the maturity of that tenor, and defines the first benchmark tenor as the 3M tenor from the maturity of the 0M tenor through the next semi-annual re-labeling. The label 0/3M tenor refers to this re-mapping of the first benchmark tenor to different IMM dates on a quarterly basis. Throughout the policy, references to the 0M SN tenor has been updated to 0/3M to reflect this change.

Consistent with the approach being taken throughout the CDS market, the changes to accommodate the change in SN roll frequency will take effect with the December 20, 2015 roll.

##### **2. Statutory Basis**

Section 17A(b)(3)(F) of the Act<sup>5</sup> requires, among other things, that the

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(4)(i).

<sup>5</sup> 15 U.S.C. 78q-1(b)(3)(F).

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 and to comply with the provisions of the Act and the rules and regulations thereunder. ICC believes that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to ICC, in particular, to Section 17(A)(b)(3)(F).<sup>6</sup> The proposed rule changes will facilitate the prompt and accurate clearance and settlement of securities transactions and derivatives agreements, contracts, and transactions, as the proposed revisions accommodate industry changes regarding the reduction of the frequency for which SN CDS contracts roll to the new on-the-run contract. The proposed amendments to the End-of-Day Price Discovery Policies and Procedures will thus enable ICC to appropriately complete its end of day price discovery process in light of such industry changes. The completion of ICC's end of day price discovery process allows ICC to provide reliable, market-driven prices for its CDS instruments. As such, the proposed changes are designed to promote the prompt and accurate clearance and settlement of securities transactions, derivatives agreements, contracts, and transactions within the meaning of Section 17A(b)(3)(F)<sup>7</sup> of the Act.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

ICC does not believe the proposed rule changes would have any impact, or impose any burden, on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed changes are designed to accommodate industry changes regarding the reduction of the frequency for which SN CDS contracts roll to the new on-the-run-contract, and will apply uniformly across all market participants. ICC is not changing the products or tenors of SN CDS offered, and does not believe that the amendments will adversely affect access to clearing or the cost of clearing for CPs or other market participants. Therefore, ICC does not believe the proposed rule changes impose any burden on competition that is inappropriate 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. ICC will notify the Commission of any written comments received by ICC.

#### **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)<sup>8</sup> of the Act and Rule 19b-4(f)(4)(i) thereunder, as the amendments effect a change in an existing service of a registered clearing agency that does not adversely affect the safeguarding of securities or funds in the custody or control of the clearing agency or for which it is responsible and does not significantly affect the respective rights or obligations of the clearing agency or persons using the service, within the meaning of Rule 19b-4(f)(4)(i). 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](mailto:rule-comments@sec.gov). Please include File Number SR-ICC-2015-018 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-ICC-2015-018. 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 Credit and on ICE Clear Credit's Web site at <https://www.theice.com/clear-credit/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-ICC-2015-018 and should be submitted on or before December 10, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

**Brent J. Fields,**  
*Secretary.*

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**BILLING CODE 8011-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-76436; File No. SR-NYSE-2015-35]

### **Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Amendment Nos. 3 and 5 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment Nos. 1, 3 and 5, Amending Exchange Disciplinary Rules To Facilitate the Reintegration of Certain Regulatory Functions From Financial Industry Regulatory Authority, Inc.**

November 13, 2015.

#### **I. Introduction**

On August 5, 2015, New York Stock Exchange LLC ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") pursuant

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 200.30-3(a)(12).

to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change amending its disciplinary rules to facilitate the reintegration of certain regulatory functions from Financial Industry Regulatory Authority, Inc. (“FINRA”). On August 14, 2015, the Exchange filed Amendment No. 1 to the proposed rule change, which amended and replaced the proposed rule change in its entirety. The proposed rule change, as modified by Amendment No. 1, was published in the **Federal Register** on August 24, 2015.<sup>3</sup> On October 6, 2015, the Exchange filed Amendment No. 2 to the proposal.<sup>4</sup> On October 7, 2015, the Commission extended the time period in which to either approve the proposal, disapprove the proposal, or institute proceedings to determine whether to approve or disapprove the proposal, to November 22, 2015.<sup>5</sup> On October 8, 2015, the Exchange filed Amendment No. 3 to the proposed rule change, which amended and replaced Amendment No. 2 in its entirety.<sup>6</sup> On

October 28, 2015 and November 6, 2015, the Exchange filed Amendment Nos. 4<sup>7</sup> and 5,<sup>8</sup> respectively, to the proposed rule change. Amendment No. 5 superseded Amendment No. 4 in its entirety. The Commission received no comments on the proposed rule change. The Commission is publishing this notice to solicit comment on this filing as amended by Amendment Nos. 3 and 5 from interested persons, and is approving the proposed rule change, as modified by Amendment Nos. 1, 3 and 5, on an accelerated basis.

## II. Description of the Proposal<sup>9</sup>

The Exchange proposes to amend its disciplinary rules to permit the reintegration of certain regulatory functions from FINRA as of January 1, 2016.

### A. Background of the Proposed Rule Change

On June 14, 2010, the NYSE, NYSE Regulation and FINRA entered into a Regulatory Services Agreement (“RSA”), whereby FINRA was retained to perform the market surveillance and enforcement functions that had previously been performed by NYSE,

Panel or Extended Hearing Panel, (ii) made a technical change to its rule text to harmonize its Exhibits 4 and 5, and (iii) amended proposed NYSE Rule 9310(a) to reflect rule text recently approved in NYSE-2015-27. *See* Securities Exchange Act Release No. 75991 (September 28, 2015), 80 FR 59837 (October 2, 2015) (“NYSE ROC Filing”). The Commission recently approved the Exchange’s filing to, among other things, establish a Regulatory Oversight Committee (“ROC”); terminate the agreement delegating regulatory functions to NYSE Regulation, Inc. (“NYSE Regulation”); and establish a CFR modeled on the current NYSE Regulation Board committee as a subcommittee of the ROC.

<sup>7</sup> In Amendment No. 4, the Exchange clarified the call for review process between January 1, 2016, when the proposed amendments to Rule 9216, 9270, and 9310 would be effective, if approved, and the termination of the delegation agreement and creation of the NYSE’s ROC and CFR. The Exchange represented that the NYSE ROC and CFR would be created and the delegation agreement terminated no later than June 1, 2016. The Exchange further represented that it would be able to operate consistent with its proposed call for review process in proposed Rule 9310. Prior to the termination of the delegation agreement, a member of NYSE Regulation’s CFR could call a matter for review. A matter called for review would be heard by the current NYSE Regulation’s CFR and would be considered final action of the Exchange and could not be appealed to the Exchange Board. After the termination of the delegation agreement, a member of NYSE’s CFR would have the authority to call a matter for review.

<sup>8</sup> In Amendment No. 5, the Exchange substantially restated Amendment No. 4, but further clarified that prior to the termination of the delegation agreement, the NYSE Regulation’s CFR would be acting on behalf of the Exchange’s Board of Directors and any decision would be considered final action of the Exchange. The Exchange also deleted the final sentence of Amendment No. 4.

<sup>9</sup> A full description of the proposed rule change may be found in the Notice, *supra* note 3.

through its wholly-owned subsidiary NYSE Regulation. Pursuant to the RSA, FINRA has been performing Exchange enforcement-related regulatory services, including investigating and bringing enforcement actions for violations of Exchange rules, and conducting disciplinary proceedings arising out of such enforcement actions, including those relating to NYSE-only rules and against dual members and non-FINRA members. To facilitate FINRA’s performance of these functions, the Exchange amended its rules to provide that Exchange rules that refer to NYSE Regulation or its staff, Exchange staff, and Exchange departments should be understood to also refer to FINRA staff and FINRA departments acting on behalf of the Exchange pursuant to the RSA.<sup>10</sup>

In 2013, the Exchange adopted new disciplinary rules that are, with certain exceptions, substantially the same as the FINRA Rule 8000 Series and Rule 9000 Series, which set forth rules for conducting investigations and enforcement actions.<sup>11</sup> Those rules were implemented on July 1, 2013,<sup>12</sup> and, among other things, the rules: (i) Identify FINRA’s Department of Enforcement and Department of Market Regulation as the departments permitted to commence disciplinary proceedings, when authorized by FINRA’s Office of Disciplinary Affairs (“ODA”); (ii) identify ODA as the office permitted to accept or reject an AWC or minor rule violation plan letter on behalf of the Board; and (iii) identify ODA as the office permitted to accept or reject an offer of settlement if not opposed by FINRA’s Department of Enforcement or Department of Market Regulation. Those rules do not, however, specify whether Exchange staff or departments may perform the functions described in the rules.

In October 2014, the Exchange announced that, upon expiration of the current RSA on December 31, 2015, certain market surveillance, investigation and enforcement functions performed by FINRA on behalf of the Exchange would be reintegrated.<sup>13</sup>

<sup>10</sup> *See* NYSE Rule 0. References to NYSE Regulation and its staff were removed from NYSE Rule 0 as part of the NYSE ROC Filing. *See* NYSE ROC Filing, *supra* note 6.

<sup>11</sup> *See* Securities Exchange Act Release Nos. 68678 (January 16, 2013), 78 FR 5213 (January 24, 2013) (SR-NYSE-2013-02), 69045 (March 5, 2013), 78 FR 15394 (March 11, 2013) (SR-NYSE-2013-02), and 69963 (July 10, 2013), 78 FR 42573 (July 16, 2013) (SR-NYSE-2013-49).

<sup>12</sup> *See* NYSE Information Memorandum 13-8 (May 24, 2013).

<sup>13</sup> According to the Exchange, it anticipates that FINRA, under a new RSA currently being

<sup>1</sup> 15 U.S.C. 19s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> *See* Securities Exchange Act Release No. 75721 (August 18, 2015), 80 FR 51334 (“Notice”).

<sup>4</sup> In Amendment No. 2, the Exchange revised proposed NYSE Rules 9216, 9270 and 9310 to allow any Director or member of the Committee for Review (“CFR”) to require a review by the Board of any determination or penalty, or both, imposed in connection with an Acceptance, Waiver, and Consent (“AWC”) letter or offer of settlement determined to be uncontested before a hearing on the merits has begun pursuant to Rules 9216 and 9270, respectively. The Exchange also amended its proposed rules to permit any party to require review by the Board of any rejection by the Chief Regulatory Officer (“CRO”) of an AWC letter or offer of settlement determined to be uncontested before a hearing on the merits has begun. The Exchange further amended Rule 9310(a)(2) to provide that the transmission of the record of a disciplinary proceeding applied only to review of determinations made or penalties imposed by a Hearing Panel or Extended Hearing Panel, and not to determination made or penalties imposed pursuant to an AWC letter or an offer of settlement determined to be uncontested before a hearing on the merits has begun as no hearing record would exist. Finally, the Exchange also amended proposed Rule 9120(t), Interested Staff, to reflect that the terms “Regulatory Staff” and “Exchange Staff” have the same meaning for purposes of the 8000 and 9000 series as defined in proposed Rule 9120(x), Regulatory Staff. The amendment makes clear that “Interested Staff” encompasses any staff of the Exchange or FINRA that directly or indirectly participated in any proceeding brought under the Code of Procedure, not just Regulatory Staff. The Exchange further represented that the proposed definition of “Interested Staff” is not intended to substantively amend the rule and would encompass all staff referenced in and covered by the current definition.

<sup>5</sup> *See* Securities Exchange Act Release No. 76088, 80 FR 61857 (October 14, 2015).

<sup>6</sup> In Amendment No. 3, the Exchange restated Amendment No. 2 and made the following changes: (i) Clarified in its discussion that proposed NYSE Rule 9310(a)(2) would apply to a review of a determination or penalty imposed by a Hearing

Therefore, effective January 1, 2016, the Exchange would perform certain of the market surveillance, investigation and enforcement functions FINRA was retained to perform in 2010. According to the Exchange, the proposed changes to the disciplinary rules in the present filing are necessary to permit the Exchange to perform these functions.

### B. Proposal

The Exchange proposes the following changes to facilitate the reintegration of certain regulatory functions from FINRA by providing that investigative and enforcement functions of the Exchange under the Rule 8000 and 9000 Series would be performed by personnel and departments reporting to the CRO of the Exchange<sup>14</sup> or by FINRA personnel and departments. These changes would be operative on January 1, 2016.

#### 1. Replacement of References to Exchange and FINRA Departments and Personnel With References to Enforcement and Regulatory Staff

NYSE Rule 9210 sets forth the definitions applicable to the disciplinary code. The Exchange proposes to add definitions of "Enforcement," referring to any department reporting to the CRO of the Exchange with responsibility for investigating or imposing sanctions on a member organization or covered person, in addition to FINRA's Departments of Enforcement and Market Regulation;<sup>15</sup> and "Regulatory Staff," referring to any officer or employee reporting, directly or indirectly, to the CRO of the Exchange, in addition to FINRA staff acting on behalf of the Exchange in connection with the Rule 8000 and 9000 Series.<sup>16</sup> According to the Exchange, the proposed amendments would allow disciplinary actions to be investigated and prosecuted on the Exchange's behalf by officers or employees reporting to the CRO beginning on January 1, 2016, while still enabling

negotiated, would continue to conduct, *inter alia*, the registration, testing and examination of broker-dealer members of the Exchange, and certain cross-market surveillance and related investigation and enforcement activities. See Notice, *supra* note 3, at n.9.

<sup>14</sup> Prior to the NYSE ROC Filing, NYSE Regulation staff reported to the Chief Executive Officer of NYSE Regulation, who was also the CRO of the Exchange.

<sup>15</sup> See Proposed Rule 9120(m).

<sup>16</sup> See Proposed Rule 9210(x). Certain rules in the Rule 8000 and 9000 Series currently refer to "Exchange staff." The proposed definition of "Regulatory Staff" also provides that for purposes of the Rule 8000 Series and Rule 9000 Series (except for Rule 9557), the term "Exchange staff" would have the same meaning as "Regulatory Staff." The Commission notes that Exchange Rule 9557 already defines "Exchange staff" for purposes of that Rule. See NYSE Rule 9557(h).

FINRA staff to continue to perform investigative and disciplinary activities that FINRA is authorized to perform on the Exchange's behalf. Accordingly, the Exchange proposes to amend Rules 9120, 9131, 9146, 9211, 9212, 9213, 9215, 9216, 9251, 9253, 9264, 9269, 9270, 9551, 9552, 9554, 9556, 9810, 9820 and 9830 to replace references to Exchange and FINRA departments and personnel<sup>17</sup> with references to the defined terms "Enforcement" and "Regulatory Staff."

The Exchange further proposes to streamline the definition of "Interested Staff" (Rule 9120(u)) to eliminate references to Exchange and FINRA departments and staff, and provide that "Interested Staff" under any proceeding brought under the Code of Procedure ("Code") means Regulatory Staff or staff<sup>18</sup> who (i) report, directly or indirectly, to any Enforcement employee, or to the head of any department or office that issues a notice or decision or is designated as a Party under the Rule 9000 Series, (ii) directly participated in the authorization or initiation of a complaint or proceeding, (iii) directly participated in the proceeding, or (iv) directly participated in an examination, investigation, prosecution, or litigation related to a proceeding, as well as any person(s) who supervises such staff. Thus, according to the Exchange, as in the current definition, the new definition of "Interested Staff" in a particular matter encompasses supervisory personnel up to the most senior level, including the CRO, when staff reporting to such supervisory personnel directly participated in the matter.

#### 2. Independence of the CRO and Staff in the Disciplinary Process

The Exchange proposes to amend Rules 8210 and 9110 to add rule text providing that in performing functions under the Code, as well as in performing the functions necessary to an

<sup>17</sup> The Exchange also proposes to delete the definitions of "Head of Enforcement" (Rule 9120(q)) and "Head of Market Regulation" (Rule 9120(r)), which refer to the FINRA department heads. The Commission notes that these defined terms only appear in the 8000 and 9000 series in the definition of "Interested Staff," which the Exchange is also proposing to amend. The Exchange also proposes to delete the definition of ODA (Rule 9120(v)) and replace all references to ODA in the Exchange's rules with CRO, for the reasons discussed in "Substitution of CRO for ODA in Rules 9211, 9216 and 9270," *infra*. The remaining definitions in Rule 9120 would be renumbered.

<sup>18</sup> See Amendment No. 3, *supra* note 6 (replacing the term "Exchange staff" with "staff" in proposed Rule 9120(t)). The Exchange has represented that the proposed definition is not intended to substantively amend the rule and would encompass all staff referenced in and covered by the current definition. *Id.*

investigation, developing a complaint, examination, or proceeding authorized by Exchange rules, the CRO and Regulatory Staff would function independently of the commercial interests of the Exchange and the commercial interests of the member organizations.

#### 3. One Year Revolving Door Restriction and Prohibition on Serving as Expert Witness

The Exchange proposes to amend Rules 9141 and 9242 to prohibit former Regulatory Staff from appearing on behalf of any other person in a proceeding under the Rule 9000 Series and from providing expert testimony on behalf of any other person in a proceeding under the Rule 9000 Series within one year of termination of employment with the Exchange or FINRA, respectively. However, Regulatory Staff would be permitted to testify as a witness on behalf of the Exchange or FINRA.

#### 4. Substitution of CRO for ODA in Rules 9211, 9216 and 9270

The Exchange proposes to amend Rules 9211, 9216 and 9270 to provide that the CRO would be responsible for (i) authorizing Enforcement to issue a complaint; (ii) accepting or rejecting AWC letters and minor rule violation plan letters; and (iii) accepting or rejecting uncontested offers of settlement before a hearing on the merits has begun, rather than FINRA's ODA.<sup>19</sup>

#### 5. Call for Review Process<sup>20</sup>

The Exchange proposes to amend Rules 9216, 9270 and 9310 to permit a Director and any member of the CFR to require a review by the Board of any AWC letter under Rule 9216 and any offer of settlement under Rule 9270. The Exchange also proposes to permit any party to require a review by the Board of any rejection by the CRO or Hearing Panel or Extended Hearing Panel of an AWC letter or uncontested offer of settlement.

<sup>19</sup> After a hearing on the merits has begun, an uncontested offer of settlement would continue to be considered by a Hearing Panel or Extended Hearing Panel as provided for under the current rule. See Proposed Rule 9270(f). The Exchange has represented that, because the Exchange does not have sanction guidelines, the CRO, Hearing Panel, or Extended Hearing Panel, as applicable, would consider Exchange precedent or such other precedent as it deemed appropriate in determining whether or not to accept a settlement offer under Rule 9270. See Notice, *supra* note 3, at n.19.

<sup>20</sup> See Amendment No. 3, *supra* note 6.

a. Call for Review of AWC Letters and Offers of Settlement

The Exchange proposes to add subparagraph (B)(i) to Rule 9310(a)(1), providing that any Director and any member of the CFR may require a review by the Board of any determination or penalty, or both, imposed in connection with an AWC letter under Rule 9216 or an offer of settlement determined to be uncontested before a hearing on the merits has begun under Rule 9270(f), except that none of those persons could request Board review of a determination or penalty concerning an Exchange member or member organization that is an affiliate of the Exchange. Under current Rule 9310(a)(1), the call for review process encompasses only determinations or penalties imposed by a Hearing Panel or Extended Hearing Panel, and thus is not available with respect to AWC letters and offers of settlement determined to be uncontested before a hearing on the merits has begun. The Exchange further proposes that a request for review would be made by filing with the Secretary of the Exchange a written request stating the basis and reasons for such review, within 25 days after an AWC letter or an offer of settlement has been sent to each Director and each member of the CFR pursuant to Rule 9216(a)(4) or Rule 9270(f)(3).<sup>21</sup> The Exchange proposes that the Secretary of the Exchange would give notice of any such request for review to the parties.

b. Call for Review of Rejected AWC Letters and Offers of Settlement

In addition to broadening the types of settlements with respect to which a Director or member of the CFR may require Board review, the Exchange proposes that any party could require a review by the Exchange Board of Directors of any rejection by the CRO of an AWC letter under Rule 9216 or an offer of settlement determined to be uncontested before a hearing on the merits has begun under Rule 9270(f), except that no party could request Board review of a rejection of an AWC letter or offer of settlement concerning an Exchange member or member organization that is an affiliate of the Exchange. Thus, while current Rule 9310(a)(1) permits parties to request Board review of a determination by a Hearing Panel or Extended Hearing

<sup>21</sup> Conforming changes would be made to Rule 9216(a)(3) and (4) and Rule 9270(f)(3) and (g). Rule 9216(a)(3) would be further amended to provide that if an AWC letter is rejected by the CRO, the member organization or covered person who executed the letter would be notified in writing and the letter deemed withdrawn.

Panel to reject an uncontested offer of settlement, the proposed rule change would also allow parties to request Board review of any rejection of an AWC letter or uncontested offer of settlement by the CRO. Under subparagraph (B)(ii) of proposed Rule 9310(a)(1), such a request for review would be made by filing with the Secretary of the Exchange a written request therefor, which states the basis and reasons for such review, within 25 days after notification pursuant to Rule 9216(a)(3) or Rule 9270(h) that an AWC letter or uncontested offer of settlement or order of acceptance is not accepted by the CRO. The Exchange proposes that the Secretary of the Exchange would give notice of any such request for review to the parties.

6. Miscellaneous Amendments to Rules 476, 8120, 9001, 9110, 9217, 9232, 9310 and 9810

The Exchange also proposes amending Rules 476, 8120, 9001, 9110, 9217, 9232, 9310 and 9810 to make certain technical changes and correct a typographical error in Exchange Rule 9217. Specifically, the Exchange proposes to (i) include a reference to the 8000 series in Rule 476(a) and Exchange Rule 9001, (ii) delete obsolete text in Rule 476 and 9110, (iii) cross-reference the term “Regulatory Staff” in Rule 8120, (iv) revise Rule 9232 to provide that the Board shall from time to time appoint a Hearing Board in lieu of the Chairman of the Board subject to the Board’s approval, (v) revise the title of Rule 9810(a) from “Department of Enforcement or Department of Regulation” to “Enforcement; Service and Filing of Notice,” and (vi) amend Rule 9310 to provide that none of the persons referenced in the Rule, *i.e.*, Board Directors, members of the Committee for Review, and the parties, may request Board review of a decision concerning an Exchange member organization that is an affiliate. Under the current Rule, only the parties are prohibited from requesting Board review of a decision in such circumstances.

### III. Discussion and Commission Findings

The Commission believes that the proposed rule change, as modified by Amendment Nos. 1, 3 and 5, is consistent with Section 6 of the Act,<sup>22</sup> and the rules and regulations thereunder applicable to a national securities exchange.<sup>23</sup> Specifically, the

<sup>22</sup> 15 U.S.C. 78f(b).

<sup>23</sup> In approving the proposed rule change, as modified by Amendment Nos. 1, 3 and 5, the

Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>24</sup> which requires among other things, that the Exchange’s rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. In addition, the Commission finds that the proposed rule change is consistent with Section 6(b)(7) of the Act,<sup>25</sup> which requires in part, that the rules of the Exchange provide fair procedures for the disciplining of members and persons associated with members, the denial of membership to any person seeking membership therein, the barring of any person from becoming associated with a member thereof, and the prohibition or limitation by the Exchange of any person with respect to access to services offered by the Exchange or a member thereof.

The Commission believes that (i) eliminating specific references to FINRA departments and replacing them with “Enforcement,” which would include departments reporting to the CRO of the Exchange with responsibility for investigating or sanctioning member organizations or covered persons, as well as FINRA’s Departments of Enforcement and Market Regulation, and (ii) using the term “Regulatory Staff,” which would include both Exchange employees, including officers, reporting directly or indirectly to the CRO and FINRA staff acting on behalf of the Exchange in connection with the 8000 and 9000 series, should enable the Exchange to perform the functions described in the rules after it resumes certain regulatory functions next year. In addition, the proposed rule change would continue to allow FINRA to perform certain functions, such as cross-market surveillance and related investigation and enforcement activities, on behalf of the Exchange.<sup>26</sup> According to the Exchange, the substance of the rules would remain unchanged.<sup>27</sup>

Commission notes that it has considered the proposed rule’s impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

<sup>24</sup> 15 U.S.C. 78f(b)(5).

<sup>25</sup> 15 U.S.C. 78f(b)(7).

<sup>26</sup> *See supra* note 13.

<sup>27</sup> *See Notice, supra* note 3, at 51339. The Exchange is also proposing to streamline its definition of “Interested Staff” under proposed Rule 9120(t). While specific references to the heads of

The Commission also believes that making the CRO responsible for authorizing complaints and approving AWC letters, minor rule violation plan letters and offers of settlement determined to be uncontested prior to a hearing on the merits, in place of FINRA's ODA is consistent with the Act. These changes are similar to the rules of other self-regulatory organizations.<sup>28</sup> Moreover, as part of the proposed rule change, the Exchange proposes codifying the requirement that the CRO and Regulatory Staff function independently of the commercial interests of the Exchange and member organizations in performing their functions under the 8000 and 9000 series. These provisions recognize the importance of maintaining the integrity and independence of the disciplinary process and should help to ensure that the Exchange acts in an independent and impartial manner in performing its regulatory functions.<sup>29</sup> The call for review process proposed in Rule 9310(a)<sup>30</sup> should provide additional oversight of the AWC and settlement process and further help to ensure impartial results.<sup>31</sup> These changes are consistent with the statutory requirement to provide a fair procedure for disciplining members.

The Commission also believes that it is consistent with the Act for the Exchange to have a rule prohibiting former Regulatory Staff from representing respondents and providing

departments have been deleted, the Exchange has represented that it is not substantively amending the rule and it would encompass all staff referenced in and covered by the current definition. See Amendment No. 3, *supra* note 6.

<sup>28</sup> For example, the International Securities Exchange ("ISE") requires its CRO to approve the statement of charges. See ISE Rule 1604. The ISE also requires offers of settlement to be approved by its CRO if a panel has not yet been appointed. However, letters of consent must be found acceptable by the CRO and then approved by its business conduct committee. See ISE Rules 1603 and 1609. BATS Exchange, Inc. ("BATS") Rule 8.3, however, allows its CRO to accept letters of consent; BATS Rule 8.8 permits its CRO to accept or reject settlement agreements, subject to a call for review by its Board pursuant to BATS Rule 8.10(c).

<sup>29</sup> See Proposed rules 8210(a) and 9110(a). The Commission expects the Exchange to affirmatively monitor and enforce compliance with these proposed rules, as it does with the other rules of the Exchange and consistent with its statutory obligations.

<sup>30</sup> See Amendment No. 3, *supra* note 6.

<sup>31</sup> Furthermore, the Commission notes that the Exchange has represented that, because the Exchange does not have sanction guidelines, the CRO, Hearing Panel, or Extended Hearing Panel, as applicable, would consider Exchange precedent or such other precedent as it deemed appropriate in determining whether or not to accept a settlement offer under Rule 9270. See Notice, *supra* note 3, at n.19. The Commission would also expect the Exchange to consider precedent in determining whether to accept or reject an AWC letter under Rule 9216.

expert testimony in Exchange disciplinary matters within one year of termination of employment with either FINRA or the Exchange. These provisions are substantially similar to FINRA Rules 9141(c) and 9242(b),<sup>32</sup> which the Exchange did not adopt in 2013 when the Exchange adopted its 8000 and 9000 series based on FINRA's rules. At the time, the Exchange believed such provisions were unnecessary as its employees were not generally involved in the regulatory and disciplinary functions which were carried out by FINRA on behalf of the Exchange. As such, their appearance would not have created the same type of conflict of interest.<sup>33</sup> Given that the Exchange now proposes to perform functions under the 8000 and 9000 series, in addition to FINRA, the Commission believes that it is appropriate for the Exchange to adopt similar provisions.

Finally, with respect to the Exchange's proposed miscellaneous changes to Rules 476, 8120, 9001, 9110, 9217, 9232, 9310 and 9810, the Commission notes that most of these changes, such as deleting obsolete text, correcting a typographical error, adding cross-references, and amending the title of a rule to better reflect the rule, are merely technical in nature. With respect to the Exchange's proposed change to Rule 9232, which would require the Board to appoint a Hearing Board in lieu of the Chairman of the Board, subject to the Board's approval, the Commission believes that as the Board is currently required to approve the appointment of the Hearing Board, it is unnecessary to require the Chairman to appoint the Hearing Board as an initial matter. Also, with respect to the Exchange's proposed changes to Rule 9310(a), the Commission notes that some of the changes to this filing are necessary to reflect recently approved rule text.<sup>34</sup> Moreover, the Exchange's proposed change to prohibit any party, Director, or CFR member from appealing a decision concerning an affiliate of the Exchange to the Exchange Board is consistent with the Exchange's current Rule 9268(e), which states that a

<sup>32</sup> FINRA's rules only apply to officers of FINRA and termination of employment with FINRA, while the Exchange's proposed rules would apply to all Regulatory Staff and termination of employment with FINRA or the Exchange.

<sup>33</sup> See Securities Exchange Act Release No. 69045, *supra* note 11, at n.14 and 21. The Commission notes that the Exchange, similar to FINRA, would permit a former Regulatory Staff member to testify as a witness on behalf of the Exchange or FINRA. See Proposed Rule 9242(b). The Commission does not believe that this poses the same potential conflict of interest.

<sup>34</sup> See Amendment No. 3, *supra* note 6.

majority decision of the Hearing Panel or Extended Hearing Panel with respect to an affiliate of the Exchange is final disciplinary action of the Exchange that may not be reviewed under Rule 9310.

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment Nos. 1, 3, and 5, is consistent with Sections 6(b)(5) and 6(b)(7) of the Act<sup>35</sup> and the rules and regulations thereunder applicable to a national securities exchange.

#### IV. Accelerated Approval of the Proposed Rule Change as Modified by Amendment Nos. 1, 3 and 5

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act, to approve the proposal, as modified by Amendment Nos. 1, 3, and 5, prior to the 30th day after publication of Amendment Nos. 3 and 5 in the **Federal Register**. Currently, the Exchange's call for review process under Rule 9310(a) only applies to determinations or penalties imposed by a Hearing Panel or Extended Hearing Panel under the 9200 series. Amendment No. 3 would allow a call for review in a broader array of contexts, including when a CRO accepts or rejects an AWC letter or an offer of settlement determined to be uncontested before a hearing on the merits has begun, unless the determination applies to an affiliate. The Commission notes that NYSE's proposed call for review process is substantially similar to the current call for review process under Rule 9310(a)(1) and NYSE Rule 476(g) and therefore, does not raise any novel issues.<sup>36</sup> Further, in Amendment No. 5, the Exchange merely clarified the application of the call for review process after the effective date of the proposed rules, if approved, and prior to the termination of the delegation agreement and confirmed that the Exchange would operate consistent with its rules in permitting calls for review during that time. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>37</sup> to

<sup>35</sup> 15 U.S.C. 78f(b)(5) and (7).

<sup>36</sup> The Commission notes that the other changes made in Amendment No. 3 are merely technical changes to the Exchange's rule text to (i) incorporate changes recently approved in the NYSE ROC Filing, (ii) reflect that the terms "Regulatory Staff" and "Exchange Staff" have the same meaning for purposes of the 8000 and 9000 series as defined in proposed Rule 9120(x), Regulatory Staff, and (iii) clarify that the transmission of the record of a disciplinary proceeding only applies to reviews of determinations made or penalties imposed by a Hearing Panel or Extended Hearing Panel as a hearing record would not exist under the circumstances provided for under Rule 9310(a)(1)(B).

<sup>37</sup> 15 U.S.C. 78s(b)(2).

approve the proposed rule change, as modified by Amendment Nos. 1, 3 and 5, on an accelerated basis.

#### V. Solicitation of Comments on Amendment Nos. 3 and 5

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether this filing, as modified by Amendment Nos. 3 and 5, 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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2015-35 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-NYSE-2015-35. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal 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-NYSE-2015-35, and should be submitted on or before December 10, 2015.

#### VI. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>38</sup> that the proposed rule change, as modified by Amendment Nos. 1, 3 and 5 (NYSE-2015-35) be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>39</sup>

**Brent J. Fields,**  
*Secretary.*

[FR Doc. 2015-29488 Filed 11-18-15; 8:45 am]

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-76438; File No. SR-NYSEARCA-2015-108]

#### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the NYSE Arca Options Fee Schedule

November 13, 2015.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on November 2, 2015, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE Arca Options Fee Schedule ("Fee Schedule"). The Exchange proposes to implement the fee changes effective November 2, 2015. The text of the proposed rule change is available on the Exchange's Web site at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission's Public Reference Room.

<sup>38</sup> 15 U.S.C. 78s(b)(2).

<sup>39</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The purpose of this filing is to amend the Fee Schedule in a number of different ways, effective November 2, 2015. Specifically, the Exchange proposes to increase certain Take Liquidity Fees charged; to introduce new posting credits; and to modify the Take Fee Discount Qualification, as described below.

###### Transaction Fees for Taking Liquidity in Penny Pilot Issues

The Exchange proposes to modify the fees paid by Market Makers, Lead Market Makers, Firms and Broker Dealers, and Professional Customers (collectively, "Non-Customers") for Taking Liquidity in Penny Pilot Issues ("Take Fees"). Currently, Non-Customers pay Take Fees of \$0.50 per contract for electronic executions. The Exchange proposes to raise that fee to \$0.52 per contract, which is within the range of fees charged by competing option exchanges.<sup>4</sup>

###### Customer Monthly Posting Credit Tiers for Penny Pilot Issues

The Exchange is proposing to add a new tier to the Customer Monthly Posting Credit Tiers for Penny Pilot Issues ("Posting Credit Tiers," each a "Tier"), which currently has six Tiers.

<sup>4</sup> For example, MIAx charges \$0.55 for executions [sic] in the following penny pilot options: EEM, GLD, IWM, QQQ and SPY. See MIAx fee schedule, available here, [https://www.miaxoptions.com/sites/default/files/MIAx\\_Options\\_Fee\\_Schedule\\_10012015C.pdf](https://www.miaxoptions.com/sites/default/files/MIAx_Options_Fee_Schedule_10012015C.pdf). BOX assesses fees greater than \$0.55 to Non-customers [sic] for executions in penny pilot options. See BOX Options fee schedule, available here, [http://boxexchange.com/assets/BOX\\_Fee\\_Schedule.pdf](http://boxexchange.com/assets/BOX_Fee_Schedule.pdf). In addition, NOM recently proposed to charge non-NOM Market Makers \$0.55 for executions in the following penny pilot options: EEM, GLD, IWM, QQQ, and SPY; and charge all other account types \$0.50 for removing liquidity in these symbols. See File SR-NASDAQ-2015 [sic].

The Exchange currently offers incremental Posting Credit Tiers for Posted Electronic Customer and Professional Customer Executions in Penny Pilot Issues based on escalating levels of business executed on the Exchange and also on the NYSE Arca Equity Market. The Exchange proposes to add a new Tier that will replace Tier 6; current Tier 6 will have the same posting requirements, but will become Tier 7.

To qualify for proposed Tier 6, Order Flow Providers (“OFPs”) must achieve at least 0.50% of Total Industry Customer equity and ETF option Average Daily Volume (“ADV”) from Customer and Professional Customer Posted Orders in all Issues Plus Executed ADV of 0.70% of U.S. Equity Market Share Posted and Executed on NYSE Arca Equity Market.<sup>5</sup> OFPs that meet the qualifications for Tier 6 would receive a credit of \$0.48 per contract applied to posted electronic Customer and Professional Customer executions in Penny Pilot issues. The Exchange believes this proposed change would provide additional incentive to direct Customer (and Professional Customer) order flow to the Exchange, which benefits all market participants through increased liquidity and enhanced price discovery. The Exchange also notes that cross-asset incentives are not new or novel, as the Exchange currently offers them (*see, e.g.*, Tier 4), and proposed Tier 6 offers incentives similar to those recently introduced on a competing option exchange.<sup>6</sup>

#### Customer and Professional Customer Incentive Program

The Exchange is proposing two modifications to the Customer and Professional Customer Incentive Program, which provides four alternatives to earn credits. Currently, if an OTP Holder or OTP Firm (each an “OTP”) executes at least 0.75% of Total Industry Customer equity and ETF option ADV from Customer and

Professional Customer Posted Orders in both Penny Pilot and non-Penny Pilot Issues, of which at least 0.25% of Total Industry Customer equity and ETF option ADV is from Customer and Professional Customer Posted Orders in non-Penny Pilot Issues, that OFP qualifies for an additional \$0.03 Credit on Customer and Professional Customer Posting Credits. The Exchange proposes to increase the 0.75% minimum volume requirement to 1.00% and to increase the applicable additional credit to \$0.04.

The Exchange also proposes a fifth alternative to qualify for additional credits under the Customer and Professional Customer Incentive Program. The Exchange proposes that an OTP that has an executed ADV of 0.70% of U.S. equity market share posted and executed on NYSE Arca Equity Market<sup>7</sup> would qualify for an additional \$0.03 credit on Customer and Professional Customer posting credits.

#### Take Liquidity Discount for Certain Market Participants

Lastly, the Exchange proposes modifications to the Discount in Take Liquidity Fees for Professional Customer, Market Maker, Firm and Broker Dealer Liquidity Removing Orders (the “Take Fee Discount”) for OTPs. Currently, the Take Fee Discount is applied if the OTP meets both qualifications of at least 1.00% of Total Industry Customer equity and ETF option ADV from Customer and Professional Customer Posted Orders in all Issues AND at least 2.00% of Total Industry Customer equity and ETF option ADV from Professional Customer, Market Maker, Firm, and Broker Dealer Liquidity Removing Orders in all Issues. The Take Fee Discount applied to orders meeting both qualifications is \$0.02 in Penny Pilot issues, and \$0.06 in non-Penny Pilot issues.

The Exchange proposes to modify the qualifications such that meeting either qualification (rather than both) would enable an OTP to receive the discount, which would make the Discount easier to achieve. The Exchange also proposes to increase the Take Fee Discount for applicable orders in Penny Pilot Issues from \$0.02 to \$0.04, and to discontinue the Take Fee Discount applied to executions in non-Penny Pilot issues. Thus, as proposed, a discount of \$0.04 in Penny Pilot issues would be applied if the OTP executes at least 1.00% of Total Industry Customer equity and ETF option ADV from Customer and Professional Customer Posted Orders in all Issues, OR executes at least 2.00% of

Total Industry Customer equity and ETF option ADV from Professional Customer, Market Maker, Firm, and Broker Dealer Liquidity Removing Orders in all Issues.

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>8</sup> in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,<sup>9</sup> in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that the proposed Take Fees for Non-Customers reasonable, equitable and not unfairly discriminatory because they are competitive with fees charged by other exchanges and are designed to attract (and compete for) order flow to the Exchange, which provides a greater opportunity for trading by all market participants.<sup>10</sup> In addition, the increased Take Fees are reasonable because the fees would generate revenue that would help to support the credits offered for posting liquidity, which are available to all market participants. Moreover, the Exchange believes the proposed change does not unfairly discriminate because it applies equally to all Non-Customers who are removing liquidity.

The Exchange believes the introduction of a new Tier in the Customer and Professional Customer Monthly Posting Credit Tiers and Qualifications for Executions in Penny Pilot Issues is reasonable, equitable and not unfairly discriminatory because it is designed to attract additional Customer (and Professional Customer) electronic equity and ETF option volume to the Exchange, which additional liquidity would benefit all participants by offering greater price discovery, increased transparency, and an increased opportunity to trade on the Exchange. Additionally, the Exchange believes the proposed credits available on this new Tier are reasonable because they would incent OTPs to submit Customer (and Professional Customer) electronic equity and ETF option orders to the Exchange and would result in credits that are reasonably related to the Exchange’s market quality that is associated with higher volumes. The Exchange also notes that cross-asset

<sup>5</sup> The qualification level of U.S. Equity Market Share Posted and Executed on NYSE Arca Equity Market corresponds to Tier 1 on the NYSE Arca Equities Inc., Schedule of Fees and Charges for Exchange Services, available here, [https://www.nyse.com/publicdocs/nyse/markets/nyse-arca/NYSE\\_Arca\\_Marketplace\\_Fees.pdf](https://www.nyse.com/publicdocs/nyse/markets/nyse-arca/NYSE_Arca_Marketplace_Fees.pdf).

<sup>6</sup> Specifically, NOM recently added a new tier that is eligible for a \$0.51 per contract rebate provided that “Participant (1) adds Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non-Penny Pilot Options above 0.85% of total industry customer equity and ETF option ADV contracts per day in a month and (2) the Participant has added liquidity in all securities through one or more of its Nasdaq Market Center MPIDs that represent 1.00% or more of Consolidated Volume during the month.” See File No. SR-NASDAQ-2015-115.

<sup>7</sup> See *supra* n. 5.

<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>10</sup> See *supra* n. 4.

incentives are not new or novel, as the Exchange currently offers them (*see, e.g.,* Tier 4), and proposed Tier 6 offers incentives similar to those recently introduced on a competing option exchange.<sup>11</sup>

The Exchange believes the proposed modifications to the Customer and Professional Customer Incentive Program are reasonable, equitable and not unfairly discriminatory because they are designed to attract additional Customer (and Professional Customer) electronic equity and ETF option volume to the Exchange, which additional liquidity would benefit all participants by offering greater price discovery, increased transparency, and an increased opportunity to trade on the Exchange. Additionally, the Exchange believes the proposed credits available in the new (fifth) alternative would provide additional incentive to OTPs to submit Customer (and Professional Customer) electronic equity and ETF option orders to the Exchange and would result in credits that are reasonably related to the Exchange's market quality that is associated with higher volumes. In addition, the proposed fifth alternative would attract additional posted order flow to NYSE Arca Equities, so as to provide additional opportunities for all ETP Holders to trade on NYSE Arca Equities.

The Exchange believes the changes to the take Fee Discount for Non-Customers are reasonable, equitable and non-discriminatory because it makes the Discount easier to achieve which would incentivize OTPs to execute large volumes of orders on the Exchange, which benefits all market participants through increased liquidity and enhanced price discovery. The Exchange believes the elimination of the Discount for Non-Penny Issues encourages OTPs to bring more business to the Exchange in Penny Pilot issues, which are generally the most active issues, to the benefit of Customers and Non-Customers alike. The Exchange believes the Take Fee Discount is reasonable, equitable, and not unfairly discriminatory because it continues to apply to all participants other than Customers, who pay a much lower Take Liquidity Fee, and because it is available to all firms that provide Customer and Professional Customer orders. The Exchange also notes that the proposed Take Fee discount is consistent with those offered on competing options exchanges.<sup>12</sup>

For these reasons, the Exchange believes that the proposal is consistent with the Act.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

In accordance with Section 6(b)(8) of the Act,<sup>13</sup> 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. Instead, the Exchange believes that the proposed incentive will continued [sic] to encourage competition, including by attracting additional liquidity and a wider variety of business to the Exchange, which would continue to make the Exchange a more competitive venue for, among other things, order execution and price discovery. The also [sic] Exchange believes the proposed fee modifications do not impose an undue burden on competition because the changes offset an increase in fees for some transactions with a variety of means to achieve credits and discounts. The Exchange does not believe that the proposed changes would impair the ability of any market participants or competing order execution venues to maintain their competitive standing in the financial markets.

The increases in Take Liquidity fees will impact all affected order types (*i.e.,* Professional Customers, Firm, Broker Dealers) in issues at the same rate. The proposed changes to the Customer Monthly Posting Credit Tiers, and the proposed modification to the Customer Incentives are designed to attract additional volume, in particular posted electronic Customer (and Professional Customer) executions, to the Exchange, which would promote price discovery and transparency in the securities markets thereby benefitting competition in the industry. As stated above, the Exchange believes that the proposed change would impact all similarly situated OTPs that post electronic Customer (and Professional Customer) executions on the Exchange equally, and as such, the proposed change would not impose a disparate burden on competition either among or between classes of market participants.

The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. For

the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)<sup>14</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>15</sup> thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)<sup>16</sup> of the Act to determine whether the proposed rule change should be approved or disapproved.

### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

#### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEARCA-2015-108 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-NYSEARCA-2015-108. This file number should be included on

<sup>11</sup> See *supra* n. 6.

<sup>12</sup> See, e.g., BATS Options Exchange fee schedule (Non-Customer Penny Pilot Take Volume Tiers),

available here, [http://www.batsoptions.com/support/fee\\_schedule/](http://www.batsoptions.com/support/fee_schedule/).

<sup>13</sup> 15 U.S.C. 78f(b)(8).

<sup>14</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>15</sup> 17 CFR 240.19b-4(f)(2).

<sup>16</sup> 15 U.S.C. 78s(b)(2)(B).

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 Section, 100 F Street NE., Washington, DC 20549-1090. Copies of the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet Web site at [www.nyse.com](http://www.nyse.com). All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEARCA-2015-108 and should be submitted on or before December 10, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

**Brent J. Fields,**  
Secretary.

[FR Doc. 2015-29490 Filed 11-18-15; 8:45 am]

**BILLING CODE 8011-01-P**

**SOCIAL SECURITY ADMINISTRATION**

[Docket No SSA-2015-0068]

**Agency Information Collection Activities: Proposed Request and Comment Request**

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104-13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes revisions and an extension of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, email, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses or fax numbers. (OMB) Office of Management and Budget, Attn: Desk Officer for SSA, Fax: 202-395-6974, Email address: [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov).

(SSA) Social Security Administration, OLCA, Attn: Reports Clearance Director, 3100 West High Rise, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410-966-2830, Email address: [OR.Reports.Clearance@ssa.gov](mailto:OR.Reports.Clearance@ssa.gov).

Or you may submit your comments online through [www.regulations.gov](http://www.regulations.gov),

referencing Docket ID Number [SSA-2015-0068].

I. The information collections below are pending at SSA. SSA will submit them to OMB within 60 days from the date of this notice. To be sure we consider your comments, we must receive them no later than January 19, 2016. Individuals can obtain copies of the collection instruments by writing to the above email address.

1. Privacy and Disclosure of Official Records and Information; Availability of Information and Records to the Public—20 CFR 401.40(b)&(c), 401.55(b), 401.100(a), 402.130, 402.185—0960-0566. SSA established methods for the public to: (1) Access their SSA records; (2) allow SSA to disclose records; (3) correct or amend their SSA records; (4) consent to release of their records; (5) request records under the Freedom of Information Act (FOIA); (6) request SSA waive or reduce fees normally charges for release of FOIA; and (7) request access to an extract of their SSN record. SSA often collects the necessary information for these requests through a written letter, with the exception of the consent for release of records, for which we use Form SSA-3288. The respondents are individuals requesting access to, correction of, or disclosure of SSA records.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of responses	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
Access to Records .....	10,000	1	11	1,833
Designating a Representative for Disclosure of Records .....	3,000	1	120	6,000
Amendment of Records .....	100	1	10	17
Consent of Release of Records .....	3,000,000	1	3	150,000
FOIA Requests for Records .....	15,000	1	5	1,250
Waiver/Reduction of Fees .....	400	1	5	33
Respondents who request access to an extract of their SSN record .....	10	1	8.5	1
<b>Totals .....</b>	<b>3,028,510</b>	<b>.....</b>	<b>.....</b>	<b>159,134</b>

2. International Direct Deposit—31 CFR 210—0960-0686. SSA's International Direct Deposit (IDD) Program allows beneficiaries living abroad to receive their payments via direct deposit to an account at a financial institution outside the United

States. SSA uses Form SSA-1199-(Country) to enroll Title II beneficiaries residing abroad in IDD, and to obtain the direct deposit information for foreign accounts. Routing account number information varies slightly for each foreign country, so we use a

variation of the Treasury Department's Form SF-1199A for each country. The respondents are Social Security beneficiaries residing abroad who want SSA to deposit their Title II benefit payments directly to a foreign financial institution.

<sup>17</sup> 17 CFR 200.30-3(a)(12).

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA-1199-(Country) .....	12,500	1	5	1,042

II. SSA submitted the information collections below to OMB for clearance. Your comments regarding the information collections would be most useful if OMB and SSA receive them 30 days from the date of this publication. To be sure we consider your comments, we must receive them no later than December 21, 2015. Individuals can obtain copies of the OMB clearance packages by writing to *OR.Reports.Clearance@ssa.gov*.

1. Farm Self-Employment Questionnaire—20 CFR 404.1082(c) & 404.1095—0960-0061. SSA collects the

information on Form SSA-7156 on a voluntary and as-needed basis to determine the existence of an agriculture trade or business, which may affect the monthly benefit, or insured status of the applicant. SSA requires the existence of a trade or business before determining if an individual or partnership may have net earnings from self-employment. When an applicant indicates self-employment as a farmer, SSA uses the SSA-7165 to obtain the information we need to determine the existence of an

agricultural trade or business, and subsequent covered earnings for Social Security entitlement purposes. As part of the application process, we conduct a personal interview, either face-to-face or via telephone, and document the interview using Form SSA-7165. The respondents are applicants for Social Security benefits, whose entitlement depends on workers having covered earnings from self-employment as farmers.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of responses	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA-7156 .....	47,500	1	10	7,917

2. Pain Report Child—20 CFR 404.1512 and 416.912—0960-0540. Before SSA can make a disability determination for a child, we require evidence from Supplemental Security Income (SSI) applicants or claimants to prove their disability. Form SSA-3371-BK provides disability interviewers, and

SSI applicants or claimants in self-help situations, with a convenient way to record information about claimants' pain or other symptoms. The State disability determination services adjudicators and administrative law judges then use the information from Form SSA-3371-BK to assess the effects

of symptoms on function for purposes of determining disability under the Act. The respondents are applicants for, or claimants of, SSI payments.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of responses	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA-3371 .....	250,000	1	15	62,500

3. Internet Request for Replacement of Forms SSA-1099/SSA-1042S—20 CFR 401.45—0960-0583. Title II beneficiaries use Forms SSA-1099 and SSA-1042S, Social Security Benefit Statement, to determine if their Social Security benefits are taxable, and the amount they need to report to the Internal Revenue Service. In cases where the original forms are unavailable (e.g., lost, stolen, mutilated), an

individual may use SSA's automated telephone application to request a replacement SSA-1099 and SSA-1042S. SSA uses the information from the automated telephone requests to verify the identity of the requestor and to provide replacement copies of the forms. The automated telephone options reduce requests to the National 800 Number Network (N8NN) and visits to local Social Security field offices (FO).

The respondents are title II beneficiaries who wish to request a replacement SSA-1099 or SSA-1042S via telephone.

**Note:** This is a correction notice. SSA published this information collection as a revision on September 16, 2015 at 80 FR 55705. Since we are not revising the Privacy Act Statement, this is now an extension of an OMB-approved information collection.

Type of Request: Extension of an OMB-approved information collection.

Modality of completion	Number of responses	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
Automated Telephone Requestors .....	206,424	1	2	6,881
N8NN .....	483,021	1	3	24,151

Modality of completion	Number of responses	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
Calls to local FOs .....	810,448	1	3	40,522
Other (program service centers) .....	78,375	1	3	3,919
Totals .....	1,578,268	.....	.....	75,473

Dated: November 16, 2015.  
**Naomi R. Sipple**,  
*Reports Clearance Officer, Social Security Administration.*  
 [FR Doc. 2015-29570 Filed 11-18-15; 8:45 am]  
**BILLING CODE 4191-02-P**

**DEPARTMENT OF STATE**

[Delegation of Authority No. 389]

**Delegation to the Assistant Secretary for International Security and Nonproliferation of Authority Under Section 1322(a) of the Fiscal Year 2015 National Defense Authorization Act (Pub. L. 113-291)**

By the virtue of the authority vested in the Secretary of State, including Section 1 of the State Department Basic Authorities Act, as amended (22 U.S.C. 2651a), and by Section 1322(a) of the Fiscal Year 2015 National Defense Authorization Act, Public Law 113-291 (the NDAA), I hereby delegate to the Assistant Secretary of State for International Security and Nonproliferation, to the extent authorized by law, the authority to provide concurrence on proposed assistance by the Department of Defense pursuant to Section 1322(a) of the NDAA when such concurrence is required by Section 1322(c).

Any act, executive order, regulation, or procedure subject to, or affected by, this delegation shall be deemed to be such act, executive order, regulation, or procedure as amended from time to time.

Notwithstanding this delegation of authority, the Secretary, the Deputy Secretary, the Deputy Secretary for Management and Resources, or the Under Secretary for Arms Control and International Security may at any time exercise any authority or function delegated by this delegation of authority.

This delegation of authority shall be published in the **Federal Register**.

Dated: October 15, 2015.  
**John F. Kerry**,  
*Secretary of State.*  
 [FR Doc. 2015-29616 Filed 11-18-15; 8:45 am]  
**BILLING CODE 4710-27-P**

**DEPARTMENT OF STATE**

[Delegation of Authority No. 310-1]

**Delegation of Authority Under Section 306 of the Enhanced Border Security and Visa Entry Reform Act of 2002 to the Under Secretary for Political Affairs and the Assistant Secretary for Consular Affairs**

By virtue of the authority vested in the Secretary of State, including Section 1 of the State Department Basic Authorities Act, as amended (22 U.S.C. 2651a), I hereby delegate to the Under Secretary for Political Affairs and to the Assistant Secretary for Consular Affairs, to the extent authorized by law, the authority under Section 306 of the Enhanced Border Security and Visa Entry Reform Act of 2002 (codified at 8 U.S.C. 1735) to determine, in consultation with the Secretary of Homeland Security and the heads of other appropriate United States agencies, that an alien who is a national of a designated state sponsor of international terrorism does not pose a threat to the safety or national security of the United States, under standards and procedures developed in consultation with the Secretary of Homeland Security and the heads of other appropriate United States agencies. This delegation of authority may be re-delegated.

Notwithstanding this delegation of authority, the Secretary, the Deputy Secretary, the Deputy Secretary for Management and Resources, and the Under Secretary for Management may exercise any function or authority delegated by this delegation of authority.

Delegation of Authority 310, dated March 14, 2008, is hereby revoked.

This Delegation of Authority will be published in the **Federal Register**.

Dated: October 7, 2015.  
**John F. Kerry**,  
*Secretary of State.*  
 [FR Doc. 2015-29619 Filed 11-18-15; 8:45 am]  
**BILLING CODE 4710-06-P**

**DEPARTMENT OF STATE**

[Public Notice 9349]

**In the Matter of the Designation of Nasir al-Wahishi as a Specially Designated Global Terrorist Pursuant to Section 1(b) of Executive Order 13224, as Amended**

In accordance with section 1(b) of Executive Order 13224 of September 23, 2001, as amended (“the Order”), I hereby determine that the individual known as Nasir al-Wahishi, also known as other aliases and transliterations, no longer meets the criteria for designation under the Order, and therefore I hereby revoke the designation of the aforementioned individual as a Specially Designated Global Terrorist pursuant to section 1(b) of the Order.

This notice shall be published in the **Federal Register**.

Dated: November 3, 2015.  
**John F. Kerry**,  
*Secretary of State.*  
 [FR Doc. 2015-29620 Filed 11-18-15; 8:45 am]  
**BILLING CODE 4710-AD-P**

**TENNESSEE VALLEY AUTHORITY**

**Sunshine Act Meeting; Meeting No. 15-04**

The TVA Board of Directors will hold a public meeting on November 20, 2015, at the Knicely Conference Center, 2355 Nashville Road, Bowling Green, Kentucky, on the campus of Western Kentucky University. The public may comment on any agenda item or subject at a *public listening session* which begins at 9 a.m. (CT). Following the end of the public listening session, the meeting will be called to order to consider the agenda items listed below. On-site registration will be available until 15 minutes before the public listening session begins at 9 a.m. (CT). Preregistered speakers will address the Board first. TVA management will answer questions from the news media following the Board meeting.

Status: Open.

**Agenda**

Chair’s Welcome

*Old Business*

Approval of minutes of the August 21, 2015, Board Meeting

*New Business*

1. Report from President and CEO
2. Report of the Finance, Rates, and Portfolio Committee
  - A. Financial Performance Update
  - B. Section 13 Tax Equivalent Payments
  - C. Modifications to TVA's Imbalance Transmission Rate
3. Report of the People and Performance Committee
  - A. Fiscal Year 2015 Performance and Compensation
  - B. CEO Compensation for Fiscal Year 2016
4. Report of the Audit, Risk, and Regulation Committee
5. Report of the Nuclear Oversight Committee
  - A. Charter Renewal
6. Report of the External Relations Committee
  - A. Regional Resource Stewardship Committee Charter Renewal
7. Recognition of Departing Director
8. Information Item
  - A. Settlement Agreement Regarding Transmission Matters

For more information: Please call TVA Media Relations at (865) 632-6000, Knoxville, Tennessee. People who plan to attend the meeting and have special needs should call (865) 632-6000. Anyone who wishes to comment on any of the agenda in writing may send their comments to: TVA Board of Directors, Board Agenda Comments, 400 West Summit Hill Drive, Knoxville, Tennessee 37902.

Dated: November 13, 2015.

**Sherry A. Quirk,**  
General Counsel.

[FR Doc. 2015-29673 Filed 11-17-15; 4:15 pm]

**BILLING CODE 8120-08-P**

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**OFFICE OF THE UNITED STATES  
TRADE REPRESENTATIVE**

[Dispute No. WTO/DS491]

**WTO Dispute Settlement Proceeding  
Regarding United States—Anti-  
Dumping and Countervailing Measures  
on Certain Coated Paper From  
Indonesia**

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Notice; request for comments.

**SUMMARY:** The Office of the United States Trade Representative (“USTR”) is providing notice that the Republic of

Indonesia has requested the establishment of a dispute settlement panel under the *Marrakesh Agreement Establishing the World Trade Organization* and the *Understanding on Rules and Procedures Governing the Settlement of Disputes* (“DSU”). That request may be found at [www.wto.org](http://www.wto.org) contained in a document designated as WT/DS491/3. USTR invites written comments from the public concerning the issues raised in this dispute.

**DATES:** Although USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before December 18, 2015, to be assured of timely consideration by USTR.

**ADDRESSES:** Public comments should be submitted electronically to [www.regulations.gov](http://www.regulations.gov), docket number USTR-2015-0005. If you are unable to provide submissions by [www.regulations.gov](http://www.regulations.gov), please contact Sandy McKinzy at (202) 395-9483 to arrange for an alternative method of transmission.

If (as explained below) the comment contains confidential information, then the comment should be submitted by fax only to Sandy McKinzy at (202) 395-3640.

**FOR FURTHER INFORMATION CONTACT:** Micah Myers, Associate General Counsel, or Juli Schwartz, Assistant General Counsel, Office of the United States Trade Representative, 600 17th Street NW., Washington, DC 20508, (202) 395-3150.

**SUPPLEMENTARY INFORMATION:** Section 127(b) of the Uruguay Round Agreements Act (“URAA”) (19 U.S.C. 3537(b)(1)) requires that notice and opportunity for comment be provided after the United States submits or receives a request for the establishment of a WTO dispute settlement panel. Consistent with this obligation, USTR is providing notice that the establishment of a dispute settlement panel has been requested pursuant to the DSU. The panel will hold its meetings in Geneva, Switzerland.

**Major Issues Raised by Indonesia**

On November 17, 2010, the U.S. Department of Commerce (“DOC”) published antidumping (“AD”) and countervailing duty (“CVD”) orders (75 FR 70205; 75 FR 70206) on certain coated paper from Indonesia. On March 13, 2015, Indonesia requested WTO dispute settlement consultations regarding some of DOC’s determinations in the CVD investigation, as well as the U.S. International Trade Commission’s (“ITC”) threat of material injury determinations in both the AD and CVD

proceedings. Indonesia and the United States held consultations in Geneva on June 25, 2015.

Indonesia filed a request for the establishment of a WTO dispute settlement panel in this matter on July 9, 2015. USTR notified, and solicited comments from, the public in connection with that request on August 11, 2015 (*see* 80 FR 48,134). Subsequently, on August 20, 2015, Indonesia filed a new request for the establishment of a WTO dispute settlement panel in this matter. The WTO Dispute Settlement Body established a panel on September 28, 2015.

In its panel request, Indonesia contends that the DOC’s findings of countervailable subsidies with respect to a number of government practices in the logging and paper industries are inconsistent with Article VI of the *General Agreement on Tariffs And Trade 1994* (“GATT 1994”) and the *Agreement on Subsidies and Countervailing Measures* (“SCM Agreement”). Indonesia also contends that the ITC’s affirmative threat determinations in both the AD and CVD investigations breach Article VI of the GATT 1994, the *Agreement on Implementation of Article VI of the General Agreement on Tariffs And Trade 1994* (“AD Agreement”), and the SCM Agreement. In addition, Indonesia raises an “as such” challenge to the statutory tie-vote provision set out in Section 771(11)(B) of the Tariff Act of 1930 (*codified at* 19 U.S.C. 1677(11)(B)), claiming that this provision breaches Article VI of the GATT 1994, Articles 1 and 3.8 of the AD Agreement, and Articles 10 and 15.8 of the SCM Agreement.

Indonesia also lists in its panel request the following items as part of its challenge: “The determinations by the [DOC] and [ITC] to initiate certain anti-dumping duty and countervailing duty investigations, the conduct of those investigations, any preliminary or final anti-dumping duty and countervailing duty determinations issued in those investigations, any definitive anti-dumping duties and countervailing duties imposed as a result of those investigations, including any notices, annexes, orders, decision memoranda, or other instruments issued by the United States in connection with the anti-dumping duty and countervailing duty measures.”

Indonesia contends DOC’s determination that Indonesia provided standing timber for less than adequate remuneration breaches Article 2.1 of the SCM Agreement because DOC failed to properly examine whether the

enterprise . . . within the jurisdiction of the granting authority” and did not cite to evidence establishing the existence of a “plan or scheme sufficient to constitute a ‘subsidy programme.’”

Indonesia also alleges DOC breached Article 14(d) of the SCM Agreement because it failed to determine the adequacy of remuneration “in relation to prevailing market conditions for the good . . . in question in the country of provision.” Indonesia alleges that these provisions were also breached through DOC’s determinations that Indonesia’s log export ban and debt forgiveness practices each conferred a benefit which constitutes a countervailable subsidy. With respect to debt forgiveness, Indonesia alleges that DOC improperly applied adverse facts available “without examining information Indonesia provided, and without examining whether Indonesia ‘refuse[d] access to, or otherwise [did] not provide’” the information, in breach of Article 12.7 of the SCM Agreement.

Indonesia alleges that the ITC’s threat determinations in the investigations at issue breach Article 3.5 of the AD Agreement and Article 15.5 of the SCM Agreement because the ITC did not demonstrate “the existence of a causal relationship between the imports and the purported threat of injury to the domestic industry” and failed to “sufficiently examine known factors other than the allegedly dumped and subsidized imports which at the same time were in fact injuring the domestic injury.” In addition, Indonesia alleges the ITC’s threat determinations breach Article 3.7 of the AD Agreement and Article 15.7 of the SCM Agreement because the threat findings were based on “allegation, conjecture [and] remote possibility”; were not supported by record evidence; and did not indicate a change in circumstances that was “clearly foreseen and imminent.” Further, Indonesia alleges the ITC’s threat determinations breach Article 3.7 of the AD Agreement and Article 15.7 of the SCM Agreement because the ITC failed to demonstrate that the “totality of the factors considered lead to the conclusion that material injury would have occurred unless protective action was taken.” Indonesia alleges the ITC did not apply or consider “special care” in its threat of injury determinations, in contravention of Article 3.8 of the AD Agreement and Article 15.8 of the SCM Agreement.

Indonesia also claims the “requirement contained in 19 U.S.C. 1677(11)(B) that a tie vote in a threat of injury determination must be treated as an affirmative . . . [ITC] determination,” is, “as such,”

inconsistent with Article 3.8 of the AD Agreement and Article 15.8 of the SCM Agreement “because the requirement does not consider or exercise special care.”

Finally, Indonesia alleges that these actions are inconsistent with Article 1 of the AD Agreement, Article 10 of the SCM Agreement, and Article VI of the GATT 1994.

#### Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in this dispute. Persons may submit public comments electronically to [www.regulations.gov](http://www.regulations.gov) docket number USTR–2015–0005. If you are unable to provide submissions by [www.regulations.gov](http://www.regulations.gov), please contact Sandy McKinzy at (202) 395–9483 to arrange for an alternative method of transmission.

To submit comments via [www.regulations.gov](http://www.regulations.gov), enter docket number USTR–2015–0005 on the home page and click “search.” The site will provide a search-results page listing all documents associated with this docket. Find a reference to this notice by selecting “Notice” under “Document Type” on the left side of the search-results page, and click on the link entitled “Comment Now!” (For further information on using the [www.regulations.gov](http://www.regulations.gov) Web site, please consult the resources provided on the Web site by clicking on “How to Use This Site” on the left side of the home page.)

The [www.regulations.gov](http://www.regulations.gov) Web site allows users to provide comments by filling in a “Type Comments” field, or by attaching a document using an “Upload File” field. It is expected that most comments will be provided in an attached document. If a document is attached, it is sufficient to type “See attached” in the “Type Comments” field.

A person requesting that information contained in a comment that he/she submitted, be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitter. Confidential business information must be clearly designated as such and the submission must be marked “BUSINESS CONFIDENTIAL” at the top and bottom of the cover page and each succeeding page. Any comment containing business confidential information must be submitted by fax to Sandy McKinzy at (202) 395–3640. A non-confidential summary of the confidential

information must be submitted to [www.regulations.gov](http://www.regulations.gov). The non-confidential summary will be placed in the docket and will be open to public inspection.

USTR may determine that information or advice contained in a comment submitted, other than business confidential information, is confidential in accordance with Section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitter believes that information or advice may qualify as such, the submitter:

(1) Must clearly so designate the information or advice;

(2) Must clearly mark the material as “SUBMITTED IN CONFIDENCE” at the top and bottom of the cover page and each succeeding page; and

(3) Must provide a non-confidential summary of the information or advice.

Any comment containing confidential information must be submitted by fax. A non-confidential summary of the confidential information must be submitted to [www.regulations.gov](http://www.regulations.gov). The non-confidential summary will be placed in the docket and will be open to public inspection.

Pursuant to section 127(e) of the Uruguay Round Agreements Act (19 U.S.C. 3537(e)), USTR will maintain a docket on this dispute settlement proceeding, docket number USTR–2015–0005, accessible to the public at [www.regulations.gov](http://www.regulations.gov).

The public file will include non-confidential comments received by USTR from the public regarding the dispute. If a dispute settlement panel is convened, or in the event of an appeal from such a panel, the following documents will be made available to the public at [www.ustr.gov](http://www.ustr.gov): The United States’ submissions, any non-confidential submissions received from other participants in the dispute, and any non-confidential summaries of submissions received from other participants in the dispute. In the event that a dispute settlement panel is convened, or in the event of an appeal from such a panel, the panel report and, if applicable, the report of the Appellate Body, will also be available on the Web site of the World Trade Organization, at [www.wto.org](http://www.wto.org). Comments open to public inspection may be viewed at [www.regulations.gov](http://www.regulations.gov).

**Juan Millan,**

*Acting Assistant United States Trade Representative for Monitoring and Enforcement.*

[FR Doc. 2015–29543 Filed 11–18–15; 8:45 am]

**BILLING CODE 3290–F6–P**

**DEPARTMENT OF TRANSPORTATION****Federal Highway Administration****[FHWA Docket No. FHWA–2015–0017]****Surface Transportation Project Delivery Program; TxDOT Audit Report****AGENCY:** Federal Highway Administration (FHWA), DOT.**ACTION:** Notice.

**SUMMARY:** Section 1313 of the Moving Ahead for Progress in the 21st Century Act (MAP–21) established the permanent Surface Transportation Project Delivery Program that allows a State to assume FHWA's environmental responsibilities for review, consultation, and compliance for Federal highway projects. This section mandates semiannual audits during each of the first 2 years of State participation to ensure compliance by each State participating in the Program. When a State assumes these Federal responsibilities, the State becomes solely responsible and liable for carrying out the responsibilities it has assumed, in lieu of FHWA. This permanent program follows a pilot program established by Section 6005 of Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), where the State of California assumed FHWA's environmental responsibilities (from June 29, 2007). This notice presents the findings of the first audit report for the Texas Department of Transportation (TxDOT).

**FOR FURTHER INFORMATION CONTACT:** Dr. Owen Lindauer, Office of Project Development and Environmental Review, (202) 366–2655, [owen.lindauer@dot.gov](mailto:owen.lindauer@dot.gov), or Mr. Jomar Maldonado, Office of the Chief Counsel, (202) 366–1373, [jomar.maldonado@dot.gov](mailto:jomar.maldonado@dot.gov), Federal Highway Administration, Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590. Office hours are from 8:00 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:****Electronic Access**

An electronic copy of this notice may be downloaded from the specific docket page at [www.regulations.gov](http://www.regulations.gov),

**Background**

Congress proposed and the President signed into law, MAP–21 Section 1313, establishing the Surface Transportation Project Delivery Program that allows a State to assume FHWA's environmental

responsibilities for review, consultation, and compliance for Federal highway projects. This provision has been codified at 23 U.S.C. 327. When a State assumes these Federal responsibilities, the State becomes solely responsible and liable for carrying out the responsibilities it has assumed, in lieu of FHWA. This permanent program follows a pilot program established by Section 6005 of SAFETEA–LU, where the State of California assumed FHWA's environmental responsibilities (from June 29, 2007). The TxDOT published its application for assumption under the National Environmental Policy Act (NEPA) Assignment Program on March 14, 2014, at Texas Register 39(11): 1992, and made it available for public comment for 30 days. After considering public comments, TxDOT submitted its application to FHWA on May 29, 2014. The application served as the basis for developing the Memorandum of Understanding (MOU) that identifies the responsibilities and obligations TxDOT would assume. The FHWA published a notice of the draft of the MOU in the **Federal Register** on October 10, 2014, at 79 FR 61370 with a 30-day comment period to solicit the views of the public and Federal agencies. After the close of the comment period FHWA and TxDOT considered comments and proceeded to execute the MOU. Since December 16, 2014, TxDOT has assumed FHWA's responsibilities under NEPA, and the responsibilities for the NEPA-related Federal environmental laws. Section 327(g) of Title 23, United States Code, requires the Secretary to conduct semiannual audits during each of the first 2 years of State participation, and annual audits during each subsequent year of State participation to ensure compliance by each State participating in the Program. The results of each audit must be presented in the form of an audit report and be made available for public comment. The FHWA published a notice in the **Federal Register** on August 21, 2015, to solicit the views of the public and Federal agencies. The FHWA received no comments as a result of the public notice of the draft report. This notice provides the final draft of the first FHWA audit report for TxDOT.

**Authority:** Section 1313 of Pub. L. 112–141; Section 6005 of Pub. L. 109–59; 23 U.S.C. 327; 49 CFR 1.48.

Issued on: November 12, 2015.

**Gregory G. Nadeau,***Administrator, Federal Highway Administration.***Surface Transportation Project Delivery Program—FHWA Audit of the Texas Department of Transportation for the Period Between December 16, 2014, and June 16, 2015****Executive Summary**

This is the first audit conducted by a team of Federal Highway Administration (FHWA) staff of the performance of the Texas Department of Transportation (TxDOT) regarding responsibilities and obligations it has been assigned under a memorandum of understanding (MOU) whose term began on December 16, 2014. From that date, TxDOT assumed FHWA's National Environmental Policy Act (NEPA) responsibilities and liabilities for the Federal-aid highway program funded projects in Texas (NEPA Assignment Program) and FHWA's environmental role is now limited to program oversight and review. The FHWA audit team (team) was formed in January 2015 and met regularly to prepare for conducting the audit. Prior to the on-site visit, the team performed reviews of TxDOT project file NEPA documentation in the Environmental Compliance Oversight System (ECOS, TxDOT's official project filing system), examined the TxDOT pre-audit information response and developed interview questions. The on-site portion of this audit, when all TxDOT and other agency interviews were performed, was conducted between April 13 and 17, 2015.

As part of its review responsibilities specified in 23 U.S.C. 327, the team planned and conducted an audit of TxDOT's responsibilities assumed under the MOU. The TxDOT is still in the transition of preparing and implementing procedures and processes required for the NEPA Assignment. It was evident that TxDOT has made reasonable progress in implementing the start-up phase of the NEPA Assignment Program and that overall the team found evidence that TxDOT is committed to establishing a successful program. This report provides the team's assessment of the current status of several aspects of the NEPA Assignment Program, including successful practices and 16 observations that represent opportunities for TxDOT to improve their program. The team identified two non-compliance observations that TxDOT will need to address as corrective actions in their self-assessment report.

The TxDOT has carried out the responsibilities it has assumed in keeping with the intent of the MOU and the application. The team finds TxDOT to be in substantial compliance with the provisions of the MOU. By addressing the observations in this report, TxDOT will continue to move the program toward success.

### Background

Congress proposed and the President signed into law, the Moving Ahead for Progress in the 21st Century Act Section 327, that established the Surface Transportation Project Delivery Program that allows a State to assume FHWA's environmental responsibilities for review, consultation, and compliance for Federal highway projects. When a State assumes these Federal responsibilities, the State becomes solely responsible and liable for carrying out the responsibilities it has assumed, in lieu of FHWA. This permanent program follows a pilot program established by Section 6005 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, where the State of California assumed FHWA's environmental responsibilities (from June 29, 2007).

The TxDOT published its application for assumption under the NEPA Assignment Program on March 14, 2014, and made it available for public comment for 30 days. After considering public comments, TxDOT submitted its application to FHWA on May 29, 2014. The application served as the basis for developing the MOU that identifies the responsibilities and obligations TxDOT would assume. The FHWA published a notice of the draft of the MOU in the **Federal Register** on October 10, 2014, at 79 FR 61370, with a 30-day comment period to solicit the views of the public and Federal agencies. After the close of the comment period FHWA and TxDOT considered comments and proceeded to execute the MOU. Since December 16, 2014, TxDOT has assumed FHWA's responsibilities under NEPA, and the responsibilities for the NEPA-related Federal environmental laws. These are responsibilities for (among a list of other regulatory interactions) the Endangered Species Act, Section 7 consultations with the U.S. Fish and Wildlife Service (USFWS) and the National Oceanic and Atmospheric Administration National Marine Fisheries Service, and Section 106 consultations regarding impacts to historic properties. Two Federal responsibilities were not assigned to TxDOT and remain with FHWA: (1) Making project-level conformity determinations under the Federal Clean

Air Act, and (2) conducting government to government consultation with federally recognized Indian tribes.

Under the NEPA Assignment Program, the State of Texas was assigned the legal responsibility for making project NEPA decisions. In enacting Texas Transportation Code, § 201.6035, the State has waived its sovereign immunity under 11th Amendment of the U.S. Constitution and consents to Federal court jurisdiction for actions brought by its citizens for projects it has approved under the NEPA Assignment Program.

As part of FHWA's oversight responsibility for the NEPA Assignment Program, FHWA is directed [in 23 U.S.C. 327(g)] to conduct semiannual audits during each of the first 2 years of State participation in the program; and audits annually for 2 subsequent years. The purpose of the audits is to assess a State's compliance with the provisions of the MOU as well as all applicable Federal laws and policies. The FHWA's review and oversight obligation entails the need to collect information to evaluate the success of the Project Delivery Program; to evaluate a State's progress toward achieving its performance measures as specified in the MOU; and to collect information for the administration of the NEPA Assignment Program. This report summarizes the results of the first audit.

### Scope and Methodology

The overall scope of this audit review is defined both in statute (23 U.S.C. 327) and the MOU (Part 11). An audit generally is defined as an official and careful examination and verification of accounts and records, especially of financial accounts, by an independent unbiased body. With regard to accounts or financial records, audits may follow a prescribed process or methodology and be conducted by "auditors" who have special training in those processes or methods. The FHWA considers this review to meet the definition of an audit because it is an unbiased, independent, official and careful examination and verification of records and information about TxDOT's assumption of environmental responsibilities.

The diverse composition of the team, the process of developing the review report, and publishing it in the **Federal Register** help define this audit as unbiased and an official action taken by FHWA. To ensure a level of diversity and guard against unintended bias, the team consisted of NEPA subject matter experts from the FHWA Texas Division Office, as well as FHWA offices in Washington, DC, Atlanta, GA, Columbus, OH, and Baltimore, MD. All

of these experts received training specific to evaluation of implementation of the NEPA Assignment Program. Aside from the NEPA experts, the team included a trainee from the Texas Division office and two individuals from FHWA's Program Management Improvement Team who provided technical assistance in conducting reviews. This audit team conducted a careful examination of highway project files and verified information on the TxDOT NEPA Assignment Program through inspection of other records and through interviews of TxDOT and other staff.

Audits, as stated in the MOU (Parts 11.1.1 and 11.1.5), are the primary mechanism used by FHWA to oversee TxDOT's compliance with the MOU, ensure compliance with applicable Federal laws and policies, evaluate TxDOT's progress toward achieving the performance measures identified in the MOU (Part 10.2), and collect information needed for the Secretary's annual report to Congress. These audits also must be designed and conducted to evaluate TxDOT's technical competency and organizational capacity, adequacy of the financial resources committed by TxDOT to administer the responsibilities assumed, quality assurance/quality control process, attainment of performance measures, compliance with the MOU requirements, and compliance with applicable laws and policies in administering the responsibilities assumed. The four performance measures identified in the MOU are (1) compliance with NEPA and other Federal environmental statutes and regulations, (2) quality control and quality assurance for NEPA decisions, (3) relationships with agencies and the general public, and (4) increased efficiency and timeliness and completion of the NEPA process.

The scope of this audit included reviewing the processes and procedures used by TxDOT to reach and document project decisions. The intent of the review was to check that TxDOT has the proper procedures in place to implement the MOU responsibilities assumed, ensure that the staff is aware of those procedures, and that the procedures are working appropriately to achieve NEPA compliance. The review is not intended to evaluate project-specific decisions as good or bad, or to second guess those decisions, as these decisions are the sole responsibility of TxDOT.

The team gathered information that served as the basis for this audit from three primary sources: (1) TxDOT's response to a pre-audit information

request, (2) a review of a random sample of project files with approval dates subsequent to the execution of the MOU, and (3) interviews with TxDOT, the Texas Historical Commission, and the USFWS staff. The pre-audit information request consisted of questions and requests for information focused on the following six topics: Program management, documentation and records management, quality assurance/quality control, legal sufficiency review, performance measurement, and training. The team subdivided into working groups that focused on five of these topics. The legal sufficiency review was limited to consideration of material in TxDOT's response to the pre-audit information request.

The team defined the timeframe for highway project environmental approvals subject to this first audit to be between December 2014 and February 2015. This initial focus on the first 3–4 months of TxDOT's assumption of NEPA responsibilities was intended to: (1) Assist TxDOT in start-up issues in the transition period where they assumed NEPA responsibilities for all highway projects, (2) follow an August 2014 Categorical Exclusion (CE) monitoring review that generated expected corrective actions, and (3) allow the first audit report to be completed 6 months after the execution of the MOU. Based on monthly reports from TxDOT, the universe of projects subject to review consisted of 357 projects approved as CE's, 9 approvals to circulate an Environmental Assessment (EA), 4 findings of no significant impacts (FONSI), 3 re-evaluations of EAs, 2 Section 4(f) decisions, and 1 approval of a draft environmental impact statement (EIS) project. The team selected a random sample of 57 CE projects sufficient to provide a 90 percent confidence interval and reviewed project files for all 19 approvals that were other than CEs (for a total of 76 files reviewed). Regarding interviews, the team's focus was on leadership in TxDOT's Environmental Affairs Division (ENV) Headquarters in Austin. Due to logistical challenges, the team could only interview a sample of environmental and leadership staff from TxDOT Districts focusing for this first audit on face-to-face interviews in Austin, Waco, and San Antonio and conference call interviews with Corpus Christi, Laredo, and Fort Worth Districts. The team plans to interview staff from at least 18 TxDOT District offices by completion of the third audit. There are a total of 25 TxDOT Districts

and the team anticipates covering all over the 5-year term of this MOU.

### Overall Audit Opinion

The team recognizes that TxDOT is still in the beginning stages of the NEPA Assignment Program and that its programs, policies, and procedures are in transition. The TxDOT's efforts are appropriately focused on establishing and refining policies and procedures; training staff; assigning and clarifying changed roles and responsibilities; and monitoring its compliance with assumed responsibilities. The team has determined that TxDOT has made reasonable progress in implementing the start-up phase of NEPA Assignment operations and believes TxDOT is committed to establishing a successful program. Our analysis of project file documentation and interview information found two non-compliance observations, several other observations, and noted ample evidence of good practice. The TxDOT has carried out the responsibilities it has assumed in keeping with the intent of the MOU and the Application and as such the team finds TxDOT to be in substantial compliance with the provisions of the MOU.

The TxDOT's staff and management expressed a desire to receive constructive feedback from the team. By considering and acting upon the observations contained in this report, TxDOT should continue to improve upon carrying out its assigned responsibilities and ensure the success of its NEPA Assignment Program.

### Non-Compliance Observations

Non-compliance observations are instances of being out of compliance with a Federal regulation, statute, guidance, policy, TxDOT procedure, or the MOU. The FHWA expects TxDOT to develop and implement corrective actions to address all non-compliance observations. The TxDOT may consider implementing any recommendations made by FHWA to address non-compliance and other observations. The team acknowledges that TxDOT has already taken corrective actions to address these observations. The FHWA will conduct follow up reviews of the non-compliance observations as part of Audit #2, and if necessary, future audits.

The MOU (Part 3.1.1) states "pursuant to 23 U.S.C. 327(a)(2)(A), on the Effective Date, FHWA assigns, and TxDOT assumes, subject to the terms and conditions set forth in 23 U.S.C. 327 and this MOU, all of the U.S. Department of Transportation (DOT) Secretary's responsibilities for

compliance with NEPA, 42 U.S.C. 4321 *et seq.* with respect to the highway projects specified under subpart 3.3. This includes statutory provisions, regulations, policies, and guidance related to the implementation of NEPA for Federal highway projects such as 23 U.S.C. 139, 40 CFR parts 1500–1508, DOT Order 5610.1C, and 23 CFR part 771 as applicable."

### Non-Compliance Observation #1

The first non-compliance observation, in 1 of the 76 projects reviewed, pertained to FHWA policy in 23 CFR 771.105(d) that (1) "measures necessary to mitigate adverse impacts be incorporated into the action," and (2) "the Administration will consider, among other factors, the extent to which the proposed measures would assist in complying with a federal statute, Executive Order, or Administration regulation or policy." The team identified a project whose description indicated that its purpose was to mitigate impacts of a larger project by constructing a noise abatement barrier. Classifying this project as a CE [23 CFR 771.117(c)(6)], that specifies the action as a separate noise abatement barrier mitigation project, does not comply with FHWA approved TxDOT 2011 Noise Guidelines. The TxDOT must have a program for Type II noise abatement projects in order to allow for the construction of a noise abatement barrier as a separate project (23 CFR 772.5). The TxDOT does not currently have such a program and, therefore, could not approve the noise abatement barrier as a separate project. Before approving any NEPA decision document, TxDOT should be knowledgeable of, and must apply, all applicable provisions of FHWA policy and regulation.

### Non-Compliance Observation #2

The second non-compliance observation is a project approved by TxDOT staff before all environmental requirements had been satisfied. Before TxDOT's approval, the project required a project-level air quality conformity determination pursuant to 40 CFR 93.121 and be consistent with the State Transportation Improvement Program (STIP). The TxDOT staff made a conditional NEPA approval (CE determination) on a project that, according to records, was not correctly listed in the STIP. The TxDOT then reported the approval to FHWA. The FHWA's policy in 23 CFR 771.105 is to coordinate compliance with all environmental requirements as a single process under NEPA. Conditional approvals do not comply with the

FHWA NEPA policy because they have the effect of allowing a project to move to the next step of project development without satisfying all environmental requirements. Also, there is no authority in the MOU for TxDOT to make conditional approvals. There is a specific MOU requirement in Part 3.3.1 for a project to be consistent with the STIP. The team found evidence in ECOS that this project required a project-level air quality conformity determination. The responsibility for this determination was not assigned to TxDOT under the NEPA Assignment MOU, and FHWA subsequently made this determination. The team acknowledges this project was somewhat unusual as there was uncertainty at the Department as to whether the project was adding capacity requiring a Division Office conformity determination. Since that time, the Division Office has confirmed that such projects do add capacity and are subject to individual project level conformity. Where required, TxDOT must coordinate with the FHWA Texas Division Office staff to obtain a project-level air quality conformity determination before making a NEPA approval decision for a project.

### Observations and Successful Practices

This section summarizes the team's observations about issues or practices that TxDOT may want to consider as areas to improve as well as practices the team believes are successful that TxDOT may want to continue or expand in some manner. All six topic areas identified in FHWA's pre-audit information request are addressed here as separate discussions. Our report on legal sufficiency reviews is a description of TxDOT's current status as described in their response to the pre-audit information request. The team will examine TxDOT's legal sufficiency reviews by project file inspection and through interviews in future audits.

The team lists 16 observations below that we urge TxDOT to act upon to make improvements through one or more of the following: corrective action, targeted training, revising procedures, continued self-assessment, or by some other means. The team acknowledges that by sharing this draft audit report with TxDOT, they have already implemented actions to address the observations to improve their program. The FHWA will consider the status of these observations as part of the scope of Audit #2. We will also include a summary discussion that describes progress since the last audit in the Audit #2 report.

### Program Management

The team recognized four successful program management practices. First, it was evident through interviews that TxDOT has employed highly qualified staff for its program. Second, the team saw evidence of strong communication between TxDOT's ENV and District staff explaining roles and responsibilities associated with implementation of the MOU for NEPA Assignment. Third, based on the response to the pre-audit information request and from interviews, the team recognized efforts to create procedures, guidance, and tools to assist Districts in meeting requirements of the MOU. And finally, District staff understands and takes pride in ownership when making CE determinations. The ENV likewise takes pride in the responsibility for EA and EIS decisionmaking as well as oversight for the NEPA Assignment Program.

The team found evidence of successful practices in information provided by TxDOT and through interviews. They learned of specific incidences where TxDOT has intentionally hired new personnel and reorganized existing staff to achieve a successful NEPA Assignment Program. The TxDOT hired a Self-Assessment Branch (SAB) manager, a staff development manager (training coordinator), and an additional attorney to assist with NEPA Assignment responsibilities. The audit team recognizes the TxDOT "Core Team" concept (which provides joint ENV and District peer reviews for EAs and EISs only) as a good example of TxDOT utilizing their existing staff to analyze NEPA documents and correct compliance issues before finalization. Many Districts appreciate the efforts of the Core Team and credit them for assuring their projects are compliant. The "NEPA Chat" is another great example of TxDOT's intentional effort to achieve a compliant NEPA Assignment Program with enhanced communication among TxDOT environmental staff statewide. The NEPA Chat, led by ENV, provides a platform for complex issues to be discussed openly, and for Districts to learn about statewide NEPA Assignment Program issues. To date, the NEPA Chat has proven to be an effective vehicle to disseminate relevant NEPA information quickly and selectively to the TxDOT District Environmental Coordinators. Lastly, based on interviews and the response to the pre-audit information request, almost all the ENV and District staff feels there is sufficient staff to deliver a successful NEPA Assignment program. This is further supported by ENV's willingness

to shift responsibilities to better align with the needs of the NEPA Assignment program. After interviewing the various Districts, they indicated that ENV is available to assist the Districts when they need help.

The SAB fosters regular and productive communication with District staff. Based on reviews of project documentation, the SAB staff prepares and transmits a summary of their results, both positive and negative, and follows up via telephone with the District Environmental Coordinator responsible for the project. They provided this feedback within 2 weeks of their review, which results in early awareness of issues and corrective action, where necessary; as well as positive feedback when the project files appear to be in order. The creation of the pilot "Risk Assessment" tool (a "smart pdf form") for environmental documents is a successful, but optional procedure. When used, it helps Districts understand the resources to be considered, what resources should receive further analysis and documents District decisions. Even though this tool is not currently integrated within ECOS, it can be uploaded when used. The TxDOT noted that it had recently developed a Quality Assurance/Quality Control (QA/QC) Procedures for Environmental Documents Handbook (March 2015), and it is used by the Core Team to develop EA and EIS documents. Through its response to pre-audit questions and through interviews with various staff, TxDOT has demonstrated that it has provided a good base of tools, guidance, and procedures to assist in meeting the terms of the MOU and takes pride in exercising its assumed responsibilities.

The team considers three observations as sufficiently important to urge TxDOT to consider improvements or corrective actions to project management in their NEPA Assignment Program.

#### Observation #1

The CE review completed in August resulted in expectations to implement important updates to ECOS. The team found, however, that TxDOT has been slow to implement updates to ECOS. These improvements would ensure that TxDOT's project records are complete and correct, utilizing the appropriate terms as cited in the MOU, law, regulation, or executive order. The team's ECOS related observations for improvement come from information provided by TxDOT and through interviews. Beginning with the monitoring review of CE projects completed in August 2014 the team identified the many accomplishments

made by TxDOT to ensure ECOS meets the needs of users of this information. However, we also noted areas where necessary ECOS improvement had not yet happened. The team was told that due to outsourcing of many of TxDOT's IT services, the State was unable to complete improvements, due to other perceived priorities in the Department. The TxDOT interviewees indicated that a contract will soon be executed to accomplish needed changes, based on the CE monitoring report. Given the importance of ECOS as TxDOT's official file of record (for projects under implementation of the MOU) for the NEPA Assignment Program, and since obtaining IT contracting resources appears to be a challenge, the team urges TxDOT leadership to support timely and necessary updates to the ECOS system. The team recommends that the statement of work for the IT contract be sufficiently broad to implement all the required and necessary changes identified in both reviews.

#### *Observation #2*

The team would like to draw the attention of TxDOT to issues and concerns arising from interaction with resource and regulatory agencies, especially in ways for TxDOT to address possible disputes and conflicts early and effectively. During interviews with both the TxDOT staff and resource agency staff, the team learned that there have been no conflicts between TxDOT and agencies. Despite no reported conflicts, agency staff reported issues of concern that they believed TxDOT was not addressing. Examples include: being kept in the loop on the decisions made by TxDOT, occasional quality concerns for information provided by TxDOT, and occasionally feeling rushed to review and process TxDOT projects. The team recognizes that good communication is a shared responsibility among the parties and suggests TxDOT consider ways to recognize and address disputes, issues, and concerns before they become conflicts.

#### *Observation #3*

The team found indications from interviews that local public agency (LPA) projects do not receive the same scrutiny as TxDOT projects, despite TxDOT's project development and review process applying uniformly to all highway projects. Several District staff confirmed that LPA projects were reviewed no differently from TxDOT projects; others did not, which means TxDOT may need to consider ways to ensure its procedures are consistently

applied, regardless of project sponsor. The team found the approach to developing and providing training for LPA sponsored projects to be a lower priority than for TxDOT projects.

#### **Documentation and Records Management**

The team relied completely on information in ECOS, TxDOT's official file of record, to evaluate project documentation and records management. The ECOS is a tool for information recordation, management, and curation, as well as for disclosure within TxDOT District Offices and between Districts and ENV. The strength of ECOS is its potential for adaptability and flexibility. The challenge for TxDOT is to maintain and update the ECOS operating protocols (for consistency of use and document/data location) and to educate its users on updates in a timely manner.

Based on examination of the 76 files reviewed, the team identified 4 general observations (#4, #5, #6, and #7) about TxDOT record keeping and documentation that could be improved or clarified. The team used a documentation checklist to verify and review the files of the 76 sampled projects.

#### *Observation #4*

The team was unable to confirm in 11 of the projects where environmental commitments may have needed to be recorded in an Environmental Permits Issues and Commitments (EPIC) plan sheet, that the commitments were addressed. All environmental commitments need to be recorded and incorporated in the project development process so they are documented and implemented when necessary. If required environmental commitments are not recorded in an EPIC, those commitments would not be implemented. The TxDOT should evaluate whether its procedures to ensure that environmental commitments are both recorded and implemented is appropriate.

#### *Observation #5*

The team found 7 of the 57 CE projects reviewed to lack sufficient project description detail to demonstrate that the category of CE action and any related conditions or constraints were met, in order to make a CE approval. The team performing the CE monitoring review completed in August 2014 made a similar observation where TxDOT indicated it would take corrective action. The particular project files included actions that could not be determined to be limited to the existing

operational right-of-way (CE c22), or an action that utilizes less than \$5 million of Federal funds (CE c23) or an action that met six environmental impact constraints before it could be applied (CEs c26, c27, c28). The documented compliance with environmental requirements prepared by TxDOT needs to support the CE action proposed and that any conditions or constraints have been met. The TxDOT should evaluate whether changes in ECOS and/or their procedures are necessary to ensure that project descriptions are recorded in sufficient detail to verify the appropriate CE action was approved.

#### *Observation #6*

The team at times encountered difficulty finding information and found outdated terms in project files. Several project files included CE labels that are no longer valid (blanket categorical exclusion, BCE), but approvals for those project identified the appropriate CE action. Other files indicated that certain coordination had been completed, but the details of the letters or approvals themselves could not be located. In reviewing project records, the team occasionally encountered difficulty finding uploaded files because information occurred in different tabs within ECOS. Another source of confusion for the team was inconsistency in file naming (or an absence of a file naming convention) for uploaded files. Because of these difficulties the team could not determine whether a project file was incomplete or not. The audit team urges TxDOT to seek ways to establish procedures and organize ECOS to promote project records where information may be identified and assessed more easily.

#### *Observation #7*

The team notes that most ECOS project records are for CEs, which may be difficult to disclose to the public. Based on interviews with TxDOT staff the team wondered how TxDOT would disseminate information, such as technical reports, from ECOS as part of Public Involvement procedures. The ENV management has since explained that information will be provided upon request or at public meetings/hearings for a project.

#### **Quality Assurance/Quality Control**

The team considers the QA/QC program to be generally in compliance with the provisions of TxDOT's QA/QC Plan. However, TxDOT has yet to apply the SAB program-level review for EA and EIS projects and the lack of data from these types of projects means the

team at this time cannot fully evaluate the effectiveness of the program for these types of projects. The team learned that TxDOT's SAB is still developing standards and training for implementation.

The team recognized four areas of successful practices in TxDOT's approach to QA/QC. First, TxDOT's use of a Core Team and its development and usage of QA/QC checklists and toolkits are effective and appear to result in a more standardized internal review process. The TxDOT QA/QC Plan states that a Core Team, composed of a District Environmental Coordinator and one individual from ENV, will be formed for every EA and EIS project. The QA/QC Plan states that Toolkits, Administrative Completeness Reviews and Determinations, Review for Readiness, and Certification forms will be utilized to ensure quality documents and compliance with NEPA laws and regulations.

Second, the team learned through interviews that TxDOT's SAB review process has resulted in very timely and helpful feedback to District staff. The team was told that feedback from SAB team reviews is generally communicated within 2 weeks of the NEPA documentation completion date. District staff said that they appreciate the feedback that helps to ensure they are following procedures and guidelines. The TxDOT also established a "Corrective Action Team" (CAT) that aids in the SAB team's effectiveness. The CAT is responsible for determining if findings from SAB reviews are systematic or confined to a certain area or individual. The CAT is in place to ensure issues found by SAB review are resolved.

Third, the team was told that some District staff developed their own QA/QC tools and processes for CE projects (*i.e.* smart PDF forms, peer reviews, and a two signature approval process) that have led to fewer errors.

Fourth, TxDOT's SAB and CAT recently implemented peer reviews for forms, guidance, and handbooks that should lead to the reduction of improper documentation and need for revisions. The SAB and CAT team work together with ENV subject matter experts to update forms, guidance, and handbooks in three locations (ENV internal server, internal ENV Web page, and external TxDOT Web site). The ENV has strongly encouraged the Districts to go to the appropriate location before starting a new document to ensure they are using the most up to date version of all forms. The end result of the form peer review process should result in

fewer errors and more consistency in NEPA documentation.

The team considers three observations as sufficiently important to urge TxDOT to consider improvements or corrective actions to their approach to QA/QC.

#### *Observation #8*

The team learned through interviews that no EA or EIS projects had been reviewed by the SAB and there was no agreed upon timeline for the completion of SAB guidelines or standards. This is due to the standards for SAB reviews of EA and EIS documents not yet being established, and to the fact only four FONSI's were made on EAs at the time of the team's ECOS project file review. The team acknowledges that TxDOT conducts QA/QC for EA and EIS projects and urges TxDOT to complete and apply their SAB approach in a timely manner.

#### *Observation #9*

The team learned through interviews that there is no established project sampling methodology for self-assessing TxDOT's effectiveness of their standards and guidance. While TxDOT employs sampling, the team could not find information that described how TxDOT assessed that they evaluated a sufficient number of projects. Through our interviews with SAB staff the team learned that there have been several approaches to conducting reviews of the CEs completed since the NEPA Assignment Program. Before the NEPA Assignment Program began, the SAB team reviewed 100 percent of CE files. Then between December 2014, and February 2015, SAB reviews were a grab sample of 11 files each week. Eight were partial project reviews that focused on certain project types. The remaining three reviews were of complete project files for new CE categories (c22 and c23's). Since February 2015, the SAB team has reviewed only the CE Documentation Form in project files. The team was unable to determine whether TxDOT staff had a basis to assert that its process was working as intended and that they could adequately identify areas needing improvement. The TxDOT needs to better assess the effectiveness of its QA/QC approach (a performance measure that it must report on) by clarifying its review approach, recording justifications for decisions TxDOT makes on how often project records are evaluated, and what specifically is reviewed.

#### *Observation #10*

The team learned that TxDOT District staff does not have a clear and consistent understanding of what

distinguishes "quality assurance" and "quality control" and "self-assessment" with regards to expectations for reviews necessary to reach a NEPA decision versus feedback once a decision was made. From interviews with District and ENV staff, the team found staff was unclear about the role and responsibility of the SAB and the CAT. Several District managers said that they had not seen the QA/QC feedback on projects in their District and were not sure if their staff had received comments from the SAB or the CAT. The TxDOT should evaluate whether they need to clarify expectations for receiving review comments before and after NEPA decisionmaking to District staff.

#### **Legal Sufficiency Review**

During this audit period FHWA attorneys delivered a legal sufficiency training for the benefit of the TxDOT attorneys. The team did not perform analyses of this topic area during this audit. However, the team noted that TxDOT developed a set of Standard Operating Procedures for Legal Sufficiency Review. The process is also described in ENV's Project Delivery Manual, an internal document of processes and procedures used by project delivery staff. The TxDOT's Office of General Counsel tracks legal review requests and their status by keeping a log.

According to TxDOT's project delivery manual, four attorneys are available for legal reviews. Additional legal assistance may be requested by TxDOT to the Transportation Division of the Office of the Texas Attorney General. These attorneys would, as part of their review responsibilities, provide written comments and suggestions (when necessary) to TxDOT ENV to help ensure a document's legal sufficiency. They would also be available to discuss questions or issues. Once the reviewing attorney is satisfied that staff has addressed his or her comments/suggestions to the maximum extent reasonably practicable, the reviewing attorney will provide TxDOT ENV with written documentation that the legal sufficiency review is complete.

The TxDOT ENV has indicated it will not finalize a Final EIS, individual Section 4(f) evaluation, Notice of Intent, or 139(l) Notice before receiving written documentation that the legal sufficiency review is complete. The team was informed that, at the discretion of TxDOT ENV, EAs may be reviewed for legal sufficiency. If additional reviews are needed, the type and scope of an additional review would be determined by TxDOT ENV on a case-by-case basis.

## Performance Measurement

The purpose of performance measures is explained in the MOU (Part 10). Four performance measures were mutually agreed upon by FHWA and TxDOT so that FHWA can take them into account in its evaluation of TxDOT's administration of the responsibilities it has assumed under the MOU. These measures provide an overall indication of TxDOT's discharge of its MOU responsibilities. In collecting data related to the reporting on the performance measures, TxDOT monitors its overall progress in meeting the targets of those measures and includes this data in self-assessments provided under the MOU (Part 8.2.5). The four performance measures are: (1) Compliance with NEPA and other Federal environmental statutes and regulations, (2) quality control and assurance for NEPA decisions, (3) relationships with agencies and the general public, and (4) increased efficiency and timeliness in completion of the NEPA process.

The TxDOT is gathering performance baseline data and testing data collection techniques designed to inform the performance measure metrics that will be reported. The TxDOT intends, according to information provided in their response to pre-audit information questions, to begin reporting on performance measures with the submittal of the next self-assessment summary report. This report is expected in September 2015.

Developing baseline measures is an important part of establishing a performance measure program. The team learned in interviews that TxDOT's QA/QC process includes procedures to ensure that each performance measure has begun with the careful vetting (by following up with individuals in Districts) of data used to develop the baseline measures for performance timeliness. This process should contribute to the validity of the measures. The TxDOT staff explained in interviews that the primary sources of information for overall performance measure baselines are District records and ECOS records.

The TxDOT staff stated that they are considering a variety of performance measurements in addition to measures identified in their response to the pre-audit information request. The audit team recognizes that developing meaningful measures for this program is difficult. However, the audit team encourages TxDOT staff to continue to explore innovative ways to measure performance. (For example, one interviewee described statistical and

visual methods to report the performance measure of timeliness this way: "We will calculate all the statistical numbers. We will look at median and look at cluster around the median. It will likely result in a visual analysis of the data (box plot with outliers, measures of central tendency).")

### Observation #11

The TxDOT reports in their response to the pre-audit information request that the QA/QC measure for NEPA decisions focuses only on EA and EIS projects, but not decisions related to CEs and other specific NEPA-related issues. Many decisions are tied to NEPA including important ones such as decisions on Section 4f (identification of properties, consideration of use, consideration of prudent and feasible avoidance alternatives) and re-evaluations (whether the outcome was adequately supported and is still valid). In applying this performance measure, the team urges TxDOT consider evaluating a broader range of decisions.

### Observation #12

The team recognizes that TxDOT is still in the very early stages of applying its performance measures. Based on information gained in the pre-audit request and through interviews, more information on performance measures and their verification may need to be presented before the utility of such measures can be evaluated for audit purposes. The performance measure for compliance with NEPA and other Federal requirements for EA and EIS projects have yet to be fully defined. The performance measurement plan indicated that TxDOT would conduct agency polls to determine the measure for relationships with agencies and the general public, but little detail was provided as to what polls would be conducted and verified. The team also was concerned that the measure for the TxDOT relationship with the public may be too limited by focusing on the number of complaints. Such "negative confirmation" monitoring tends to be used when the underlying system or process under evaluation is known to have low levels of errors or problems. Given that NEPA assumption is new to TxDOT, such practice does not appear to be appropriate for gauging effectiveness at this time.

## Training Program

The team reviewed TxDOT's initial training plan provided in the response to the pre-audit information request and evaluated its contents and adequacy through interviews of ENV and District

staff. Based on information gained, TxDOT staff should consider the following issues and questions in preparing the annual update of their training plan, as required in the MOU. The team found the training plan compliant.

The team recognizes two successful practices. First, FHWA recognizes that TxDOT's largest venue for training is its annual environmental conference. This annual gathering of Federal, State, and local agency employees as well as consultants, in a context of fellowship (400+ attendees), addresses a wide array of environmental topics that reinforce existing and new environmental policies and procedures. The presentations at the conference are usually no longer than 1 hour per topic, but on some occasions does provide more in depth training. The team encourages the continuation of the conference.

Second, the "NEPA Chat" is a monthly ENV-led web-based learning/exchange opportunity for TxDOT environmental employees statewide. It is a venue for them to receive updated news and announcements, exchange ideas and is a forum for routine communication among Districts and ENV. This informal training venue is versatile, flexible, and responsive to the need to communicate information that should improve the consistency of statewide NEPA Assignment practices.

The team considers four observations as sufficiently important to urge TxDOT to consider improvements or corrective actions to their approach to the training program. The FHWA recognizes that TxDOT's assumption of Federal environmental responsibilities and liabilities is new and involves tasks not previously performed or familiar to its staff. This is the reason why training is a component of a State's qualifications and readiness to assume FHWA's responsibilities and is addressed in a separate section in the MOU (Part 12).

### Observation #13

The team identified a concern about TxDOT's approach to training and its training plan. Information gained in interviews indicated that the initial TxDOT training plan relied heavily on a training model employed by the California Department of Transportation (Caltrans), because Caltrans is the only State that has assumed NEPA responsibilities for the entire highway program. The FHWA does not believe the Caltrans training model can replicate its current form to meet the needs of TxDOT, because TxDOT has fewer NEPA staff, State environmental laws that differ in scope, and a different

business “culture.” There are other States (Idaho, Michigan, North Dakota, Ohio, and Wyoming) that have established training plans that TxDOT could draw upon as examples. These examples may benefit TxDOT and TxDOT should consider evaluating components of these State’s training plans in their future annual updates of their own training plan.

#### Observation #14

The team found evidence that some aspects of training tasks were either unattended and/or appear to have been forgotten based on the training plan information provided to the team. The TxDOT has a section of their Web site devoted to training, that the team learned from interviews, is out of date. Some courses are no longer taught and several classes are in need of updating, all of which provided for training of non-TxDOT staff (*i.e.* local governments and consultants). The team urges TxDOT to assess whether the proposed training approach for non-TxDOT staff (relying heavily upon the annual environmental conference) is adequate and responsive enough to address a need to quickly disseminate newly developed procedures and policy.

#### Observation #15

The TxDOT training plan is currently silent on whether certain subjects and topics are mandatory or required for certain job responsibilities. The TxDOT staff told the team they would be developing a “progressive training plan” that will identify the range of training necessary for each job classification. District Environmental Coordinators, and particularly District managers who allocated training resources, indicated in interviews that they needed to know which training was required for various TxDOT job categories, to set budgeting priorities. The team recognized the important connection between getting District staff trained and a clear statement whether training was required for a certain job. Due to the connection potentially being tenuous, this may explain the inconsistency the team heard in interview responses to questions on training commitments from District managers. The team suggests that the progressive training plan clearly identify training required for each job classification.

#### Observation #16

From the perspective of the MOU, training planning and implementation is a partnership effort amongst TxDOT, FHWA, and other agencies. Training should be an ongoing task that follows

an up-to-date and mid-to-long range training plan. The current training plan includes mostly TxDOT self-identified training needs and addresses those needs. The MOU (Part 12.2) allows for 3 months after the MOU is executed, to develop a training plan in consultation with FHWA and other agencies. The TxDOT has committed in the MOU to consider the recommendations of agencies in determining training needs, and to determine with FHWA, the required training in the training plan MOU (Part 12.2). The TxDOT considered and will address the specific comments from the U.S. Army Corps of Engineers in the current training plan. However, the team learned through interviews that individuals responsible for training planning were unaware of the coordination between TxDOT subject matter experts and other agencies related to training. It may be useful for the TxDOT training coordinator to be fully involved and aware of the range of coordination other TxDOT staff performs so that the training plan benefits from this coordination.

#### Finalization of Report

The FHWA received no comments during the 30-day comment period for the draft audit report. The FHWA has finalized the draft Audit #1 report previously published in the **Federal Register** without substantive changes.

[FR Doc. 2015–29518 Filed 11–18–15; 8:45 am]

**BILLING CODE 4910–22–P**

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

[Docket No. NHTSA–2015–0111]

#### Notice of Buy America Waiver

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

**ACTION:** Notice of Buy America waiver.

**SUMMARY:** This notice provides NHTSA’s finding with respect to a request to waive the requirements of Buy America from the North Carolina Governor’s Highway Safety Program (GHSP). NHTSA finds that a non-availability waiver of the Buy America requirement is appropriate for the purchase of a Nikon prismless total station using Federal highway traffic safety grant funds because there are no suitable products produced in the United States.

**DATES:** The effective date of this waiver is December 4, 2015. Written comments

regarding this notice may be submitted to NHTSA and must be received on or before: December 4, 2015.

**ADDRESSES:** Written comments may be submitted using any one of the following methods:

- **Mail:** Docket Management Facility, M–30, U.S. Department of Transportation, West Building, Ground Floor, Rm. W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

- **Fax:** Written comments may be faxed to (202) 493–2251.

- **Internet:** To submit comments electronically, go to the Federal regulations Web site at <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- **Hand Delivery:** West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., between 9 a.m. and 5 p.m. Eastern Time, Monday through Friday, except Federal holidays.

**Instructions:** All comments submitted in relation to this waiver must include the agency name and docket number. Please note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. You may also call the Docket at 202–366–9324.

**FOR FURTHER INFORMATION CONTACT:** For program issues, contact Barbara Sauers, Office of Regional Operations and Program Delivery, NHTSA (phone: 202–366–0144). For legal issues, contact Andrew DiMarsico, Office of Chief Counsel, NHTSA (phone: 202–366–5263). You may send mail to these officials at the National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590.

**SUPPLEMENTARY INFORMATION:** This notice provides NHTSA’s finding that a waiver of the Buy America requirement, 23 U.S.C. 313, is appropriate for North Carolina’s GHSP to purchase a Nikon Nivo 5M Plus and its accessories for \$8,995 using grant funds authorized under 23 U.S.C. 402. Section 402 funds are available for use by state highway safety programs that, among other things, reduce or prevent injuries and deaths resulting from speeding motor vehicles, driving while impaired by alcohol and or drugs, motorcycle accidents, school bus accidents, and unsafe driving behavior. 23 U.S.C. 402(a). Section 402 funds are also available to state programs that encourage the proper use of occupant protection devices and improve law enforcement services in motor vehicle accident prevention, traffic supervision, and post-accident procedures. *Id.*

Buy America provides that NHTSA “shall not obligate any funds authorized

to be appropriated to carry out the Surface Transportation Assistance Act of 1982 (96 Stat. 2097) or [Title 23] and administered by the Department of Transportation, unless steel, iron, and manufactured products used in such project are produced in the United States.” 23 U.S.C. 313. However, NHTSA may waive those requirements if “(1) their application would be inconsistent with the public interest; (2) such materials and products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or (3) the inclusion of domestic material will increase the cost of the overall project contract by more than 25 percent.” 23 U.S.C. 313(b).

Recently, NHTSA published its finding that a public interest waiver of the Buy America requirements is appropriate for a manufactured product whose purchase price is \$5,000 or less, excluding a motor vehicle, when such product is purchased using Federal grant funds administered under Chapter 4 of Title 23 of the United States Code. See 80 FR 37359 (June 30, 2015). Under the public interest waiver, therefore, states are no longer required to submit a waiver of Buy America to NHTSA for items costing \$5,000 or less, except for motor vehicles, when they purchase the item with Federal grant funds.

In this instance, the North Carolina’s GHSP seeks a waiver to purchase one (1) Nikon Nivo 5M Plus Reflectorless Total Station equipment<sup>1</sup> for its subgrantee, the Raleigh Police Department, using Federal grant funds, at a cost of \$8,995.<sup>2</sup> A total station is an electronic/optical instrument used in modern surveying and accident reconstruction. Specifically, a total station is an electronic theodolite integrated with an electronic distance meter to read slope distances from the instrument to a particular point. According to North Carolina’s GHSP, the total station provides law enforcement with the equipment necessary to provide accurate and detailed crash reconstruction to aid in improving highway safety and for use with the enforcement of traffic safety laws. North Carolina’s GHSP states that the total

station reduces the time officers need to stand in the roadway with a prism to mark evidence at crash scenes. In addition, the State notes that, with a total station, evidence can be plotted from the side of the road after a roadway has been opened to traffic.

In support of its waiver request, North Carolina’s GHSP states that there are no total station models that are manufactured or assembled in the United States. The state contacted total station equipment manufacturers to learn of the origin of their equipment. While several domestic corporations offer total station equipment for sale, North Carolina states its research revealed that all total stations are manufactured overseas. It discovered that CT Berger (China), Leica (Switzerland) Nikon (Japan), Spectra Precision (Japan), Northwest Instruments (China), Topcon (Japan), and Trimble (Sweden) total station equipment are all foreign made.

NHTSA agrees that the total stations advance the purpose of section 402 to improve law enforcement services in motor vehicle accident prevention and post-accident reconstruction and enforcement. A total station is an on-scene reconstruction tool that assists in the determination of the cause of the crash and can support crash investigations. It is an electronic/optical instrument that specializes in surveying with tools to provide precise measurements for diagramming crash scenes, including a laser range finder and a computer to assist law enforcement to determine post-accident reconstruction. The total station system is designed to gather evidence of the events leading up to, during and following a crash. These tools are used to gather evidence to determine such facts as minimum speed at the time of a crash, the critical speed of a roadway curve, the distance a vehicle may have traveled when out of control and other factors that involve a crash investigation. In some instances, the facts collected through the use of a total station are used to form a basis of a criminal charge or evidence in a criminal prosecution.

NHTSA conducted similar assessments<sup>3</sup> to those conducted by North Carolina’s GHSP. NHTSA was unable to locate domestic manufacturers of total stations with the specifications that North Carolina’s GHSP required. In

addition to the manufacturers researched by North Carolina’s GHSP, and confirmed by the agency’s research, NHTSA identified the following total station manufacturers and their production locations: Hi-Target Instrument Surveying Co. Ltd. (China); geo-Fennel GmbH (Germany); Hilti (Liechtenstein); North Surveying (Spain); South Precision Instrument (China); Ruide Surveying Instrument Co. (China); Pentax (Japan/China); and Topcon (Japan, China and Thailand). Based upon NHTSA’s market analysis, it is unaware of any total station equipment that is manufactured domestically. Since a total station is unavailable from a domestic manufacturer and the equipment would assist in post-accident reconstruction and enforcement to advance the purpose of 23 U.S.C. 402, a Buy America waiver is appropriate. NHTSA invites public comment on this conclusion.

In light of the above discussion, and pursuant to 23 U.S.C. 313(b)(2), NHTSA finds that it is appropriate to grant a waiver from the Buy America requirements to North Carolina’s GHSP in order to purchase the Nikon Nivo 5M Plus Reflectorless Total Station equipment. This waiver applies to North Carolina and all other states seeking to use section 402 funds to purchase Nikon Nivo 5m Plus Reflectorless total stations for the purposes mentioned herein. This waiver is effective through fiscal year 2016 and expires at the conclusion of that fiscal year (September 30, 2016). In accordance with the provisions of Section 117 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy of Users Technical Corrections Act of 2008 (Pub. L. 110–244, 122 Stat. 1572), NHTSA is providing this notice as its finding that a waiver of the Buy America requirements is appropriate for the Nikon Nivo 5m Plus Reflectorless total station.

Written comments on this finding may be submitted through any of the methods discussed above. NHTSA may reconsider this finding if, through comment, it learns additional relevant information regarding its decision to grant the North Carolina’s GHSP waiver request.

This finding should not be construed as an endorsement or approval of any products by NHTSA or the U.S. Department of Transportation. The United States Government does not endorse products or manufacturers.

<sup>1</sup> The Nikon Nivo 5M Plus Reflectorless total station has integrated Bluetooth technology, and includes battery packs, a dual charger, lens cap, CD manual, hard carrying case, tripod, prism kit, prism pole, prism pole bag, strobe prism with tilting mount, carrying bag and data cable.

<sup>2</sup> As part of its waiver request, GHSP submitted a sales quote for the Nikon total station that included seven (7) additional items costing less than \$5,000. Because these additional items are under the \$5,000 threshold of NHTSA’s public interest waiver, NHTSA did not conduct a market analysis for these items.

<sup>3</sup> NHTSA conducted internet searches and reviewed several Web sites that catalog domestic made products ([www.usaonly.us](http://www.usaonly.us); [www.americansworking.com](http://www.americansworking.com); [www.madeinamericaforever.com](http://www.madeinamericaforever.com); and [www.madeinusa.org](http://www.madeinusa.org)) to locate domestically made Total Station equipment.

Authority: 23 U.S.C. 313; Pub. L. 110–161.

Paul A. Hemmersbaugh,  
Chief Counsel.

[FR Doc. 2015–29528 Filed 11–18–15; 8:45 am]

BILLING CODE 4910–59–P

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

[Docket No. NHTSA–2015–0066; Notice 2]

#### Mitsubishi Motors North America, Inc., Grant of Petition for Decision of Inconsequential Noncompliance

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

**ACTION:** Grant of petition.

**SUMMARY:** Mitsubishi Motors North America, Inc. (MMNA), has determined that certain model year (MY) 2015 Mitsubishi Outlander Sport multipurpose passenger vehicles (MPV) do not fully comply with paragraph S6 of Federal Motor Vehicle Safety Standard (FMVSS) No. 205, *Glazing Materials*. MMNA has filed an appropriate report dated June 4, 2015, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports*.

**ADDRESSES:** For further information on this decision contact Luis Figueroa, Office of Vehicle Safety Compliance, the National Highway Traffic Safety Administration (NHTSA), telephone (202) 366–5298, facsimile (202) 366–3081.

#### SUPPLEMENTARY INFORMATION:

*I. Overview:* Pursuant to 49 U.S.C. 30118(d) and 30120(h) (see implementing rule at 49 CFR part 556), MMNA submitted a petition for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

Notice of receipt of the petition was published, with a 30-day public comment period, on September 8, 2015 in the **Federal Register** (80 FR 53911). No comments were received. To view the petition, and all supporting documents log onto the Federal Docket Management System (FDMS) Web site at: <http://www.regulations.gov/>. Then follow the online search instructions to locate docket number “NHTSA–2015–0066.”

*II. Vehicles Involved:* Affected are approximately 300 MY 2015 Mitsubishi Outlander Sport multipurpose passenger vehicles manufactured

between December 8, 2014 and December 22, 2014.

*III. Noncompliance:* MMNA explains that the quarter panel window glazing installed in the subject vehicles was labeled with the manufacturer’s model number “M–66,” indicating a tempered glass construction and “AS2,” incorrectly indicating the glass has light transmission properties of at least 70%. The correct manufacturer’s model number, which should have been affixed to the quarter panel glass window, is “M–131” (which corresponds to a tempered “privacy” glass construction and a light transmission of 25%) and the correct item of glazing number should have been “AS–3” (which corresponds to glazing with less than 70% light transmittance).

*IV. Rule Text:* Paragraph S6 of FMVSS No. 205 requires in pertinent part:

S6. *Certification and marking.*

...  
S6.2 A prime glazing manufacturer certifies its glazing by adding to the marks required by section 7 of ANSI/SAE Z26.1–1996, . . .

[Note that ANSI Z26.1–1996 and other industry standards are incorporated by reference in paragraph S5.1 of FMVSS No. 205. Specifically, Section 7 (Marking of Safety Glazing Materials) of ANSI Z26.1–1996 requires that:

“In addition, to any other markings required by law, ordinance, or regulation, all safety glazing materials manufactured for use in accordance with this standard shall be legibly and permanently marked . . . with the words American National Standard or the characters AS, in addition with a model number<sup>38</sup> that will identify the type of construction of the glazing material. They shall also be marked with . . .

<sup>38</sup> The model number shall be assigned by the manufacturer of the safety glazing material and shall be related by the manufacturer to a detailed description of a specific glazing material.”]

*V. Summary of MMNA’s Arguments:* MMNA stated its belief that the subject noncompliance is inconsequential to motor vehicle safety for the following reasons:

(A) MMNA stated that the quarter panel glass windows otherwise meet all other marking and performance requirements of FMVSS No. 205.

(B) MMNA believes that because the affected glazing fully meets all of the applicable performance requirements, the absence of the correct “M” number in their monogram has no effect upon the degree of driver visibility or the possibility of occupants being thrown through the vehicle windows in a collision.

(C) MMNA stated its belief that NHTSA has previously granted inconsequential noncompliance

petitions regarding what it believes are similar noncompliances.

(D) MMNA is not aware of any crashes, injuries, customer complaints or field reports associated with this condition.

In summation, MMNA believes that the described FMVSS No. 205 noncompliance of the subject vehicles is inconsequential to motor vehicle safety, and that its petition, to exempt MMNA from providing recall notification of noncompliance as required by 49 U.S.C. 30118 and remedying the recall noncompliance as required by 49 U.S.C. 30120 should be granted.

#### NHTSA’s Decision

*NHTSA’s Analysis:* MMNA indicated that as many as 142<sup>1</sup> incorrectly labeled quarter panel windows were mounted on the subject 300 vehicles during production of those vehicles. MMNA also stated that the installed windows meet or exceed all other labeling and performance requirements of FMVSS No. 205, and the remaining noncompliant windows produced by its supplier Pilkington North America, Inc., have been destroyed or exported.

NHTSA therefore believes there is no effect of the noncompliance on the operational safety of the subject vehicles and that none of the subject noncompliant windows will be installed on any additional new production vehicles or delivered as replacement parts for existing vehicles.

*NHTSA’s Decision:* In consideration of the foregoing, NHTSA has decided that MMNA has met its burden of persuasion that the FMVSS No. 205 noncompliance is inconsequential to motor vehicle safety. Accordingly, MMNA’s petition is hereby granted and MMNA is exempted from the obligation of providing notification of, and a remedy for, that noncompliance under 49 U.S.C. 30118 and 30120.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, this

<sup>1</sup> Pilkington North America (PNA) determined that they had manufactured 8927 quarter panel glass windows with the incorrect model number and item of glazing number (AS). Of these 8927 windows, PNA scrapped all but 1139 windows that had been shipped to MMNA. MMNA retrieved and returned to PNA 997 noncomplying windows, but 142 were installed in a suspect population of 349 vehicles that were shipped to the USA (300 vehicles) and to Mexico and Canada (49 vehicles).

decision only applies to the subject vehicles that MMNA no longer controlled at the time it determined that the noncompliance existed. However, the granting of this petition does not relieve vehicle distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant vehicles under their control after MMNA notified them that the subject noncompliance existed.

**Authority:** (49 U.S.C. 30118, 30120; Delegations of authority at 49 CFR 1.95 and 501.8).

**Jeffrey M. Giuseppe,**

*Director, Office of Vehicle Safety Compliance.*

[FR Doc. 2015-29472 Filed 11-18-15; 8:45 am]

**BILLING CODE 4910-59-P**

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

[Docket No. NHTSA-2015-0103; Notice 1]

#### Michelin North America, Inc., Receipt of Petition for Decision of Inconsequential Noncompliance

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

**ACTION:** Receipt of petition.

**SUMMARY:** Michelin North America, Inc. (MNA), has determined that certain Michelin heavy truck tires do not fully comply with paragraphs S6.5(a) and (j) of Federal Motor Vehicle Safety Standard (FMVSS) No. 119, *New Pneumatic Tires for Motor Vehicles With a GVWR of More than 4,536 kilograms (10,000 pounds) and Motorcycles*. MNA has filed an appropriate report dated September 18, 2015, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports*.

**DATES:** The closing date for comments on the petition is December 21, 2015.

**ADDRESSES:** Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited at the beginning of this notice and submitted by any of the following methods:

- **Mail:** Send comments by mail addressed to: U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- **Hand Deliver:** Deliver comments by hand to: U.S. Department of Transportation, Docket Operations, M-

30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except Federal Holidays.

- **Electronically:** Submit comments electronically by: Logging onto the Federal Docket Management System (FDMS) Web site at <http://www.regulations.gov/>. Follow the online instructions for submitting comments. Comments may also be faxed to (202) 493-2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that your comments were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to [http://www.regulations.gov](http://www.regulations.gov/), including any personal information provided.

Documents submitted to a docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the Internet at [http://www.regulations.gov](http://www.regulations.gov/) by following the online instructions for accessing the dockets. DOT's complete Privacy Act Statement is available for review in the **Federal Register** published on April 11, 2000, (65 FR 19477-78).

The petition, supporting materials, and all comments received before the close of business on the closing date indicated above will be filed and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice of the decision will be published in the **Federal Register** pursuant to the authority indicated below.

#### SUPPLEMENTARY INFORMATION:

**I. Overview:** Pursuant to 49 U.S.C. 30118(d) and 30120(h) (see implementing rule at 49 CFR part 556), MNA submitted a petition for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of MNA's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

**II. Tires Involved:** Affected are approximately 247 Michelin X Works

XZY size 315/80R22.5 156/150K heavy truck tires that were manufactured between January 1, 2011 and July 31, 2015.

**III. Noncompliance:** MNA describes the noncompliance's as the inadvertent omission from the tires sidewall of the letter marking that designates the tire load range as required by paragraph S6.5(j) and the symbol "DOT" confirming certification as required by paragraph S6.5(a) of FMVSS No. 119.

**IV. Rule Text:** Paragraph S6.5 of FMVSS No. 119 requires in pertinent part:

S6.5 **Tire Markings.** Except as specified in this paragraph, each tire shall be marked on each sidewall with the information specified in paragraphs (a) through (j) of this section. . . .

(a) The symbol DOT, which shall constitute a certification that the tire conforms to applicable Federal Motor Vehicle Safety standards. This symbol may be marked on only one sidewall.

(j) The letter designating the tire Load Range.

**V. Summary of MNA's Petition:** MNA believes that while it did not intend to release the subject tires for sale in the U.S. market, and therefore did not mark the tires accordingly, it believes that the subject noncompliance is inconsequential to motor vehicle safety for the following reasons:

(1) **Maximum Load Rating:** The subject tires are marked on both sidewalls with the European Tyre and Rim Technical Organization (ETRTO) published load capacities in pounds and kilograms for single and dual application in the format specified by FMVSS No. 119. MNA believes that this marking provides sufficient information to ensure the proper application of the tire.

(2) **Load Index:** The subject tire is marked with the [International Organization for Standardization] ISO load indices for single and dual application as specified by the ETRTO standard. MNA believes that ISO load indices are widely recognized within the industry and thus provide additional information to ensure the proper application of the tire.

(3) **Other Markings:** All other markings specified by FMVSS No. 119 are present on the tire including the full tire identification number (TIN).

(4) **Performance:** The subject tire meets all performance requirements of FMVSS No. 119. MNA believes that the subject noncompliances have no impact on the load carrying capacity of the tire on a motor vehicle, nor on motor vehicle safety itself.

(5) Vehicle Fitment: Paragraph S6 of FMVSS No. 119 requires that the marking should contain load capacity values in pounds and kilograms as well as a letter designating the load range. This information is used by vehicle owners to ensure adequate tire load capacity for the specific vehicle configuration. Although the subject tire lacks the letter designating the load range, MNA believes that the ETRTO standard load capacity values and ISO load indices for single and dual application which are widely recognized in the industry are present to ensure proper application.

MNA has additionally informed NHTSA that it has corrected its internal systems error to prevent similar tires from being released for sale in the U.S. market in the future.

In summation, MNA believes that the described noncompliances of the subject tires is inconsequential to motor vehicle safety, and that its petition, to exempt MNA from providing recall notification of noncompliances as required by 49 U.S.C. 30118 and remedying the recall noncompliance as required by 49 U.S.C. 30120 should be granted.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the

defect or noncompliance. Therefore, any decision on this petition only applies to the subject tires that MNA no longer controlled at the time it determined that the noncompliance existed. However, any decision on this petition does not relieve equipment distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant tires under their control after MNA notified them that the subject noncompliance existed.

**Authority:** (49 U.S.C. 30118, 30120; Delegations of authority at 49 CFR 1.95 and 501.8)

**Jeffrey M. Giuseppe,**  
Director, Office of Vehicle Safety Compliance.

[FR Doc. 2015-29473 Filed 11-18-15; 8:45 am]

**BILLING CODE 4910-59-P**

**DEPARTMENT OF TRANSPORTATION**

**National Highway Traffic Safety Administration**

[Docket No. NHTSA-2013-0139; Notice 2]

**Aston Martin Lagonda Limited, Grant of Petition for Decision of Inconsequential Noncompliance**

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

**ACTION:** Grant of petition.

**SUMMARY:** Aston Martin Lagonda Limited (AML) has determined that

certain model year (MY) 2009-2013 Aston Martin passenger cars do not fully comply with paragraph S4.4(c)(2), of Federal Motor Vehicle Safety Standard (FMVSS) No. 138, *Tire Pressure Monitoring Systems*. AML has filed an appropriate report dated November 4, 2013, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports*.

**ADDRESSES:** For further information on this decision contact Kerrin Bressant, Office of Vehicles Safety Compliance, the National Highway Traffic Safety Administration (NHTSA), telephone (202) 366-1110, facsimile (202) 366-3081.

**SUPPLEMENTARY INFORMATION:**

*I. Overview:* Pursuant to 49 U.S.C. 30118(d) and 30120(h) and the rule implementing those provisions at 49 CFR part 556, AML submitted a petition for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of AML's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

*II. Vehicles Involved:* Affected are approximately 3,282 of the following AML model passenger cars manufactured from September 2009 through October 2013:

Model	Registered amlna fleet	Dealer un-registered	Build [date] range
DB9 Coupe .....	211	41	10/09-10/13
DB9 Volante .....	225	53	10/09-10/13
DBS Coupe .....	153	1	10/09-08/12
DBS Volante .....	147	1	10/09-08/12
Virage Coupe .....	120	0	12/10-08/12
Virage Volante .....	156	0	12/10-08/12
V8 Vantage Coupe .....	385	54	10/09-10/13
V8 Vantage Roadster .....	279	56	10/09-10/13
V8 Vantage S Coupe .....	170	9	06/10-10/13
V8 Vantage S Roadster .....	122	12	06/10-10/13
Rapide .....	671	0	09/09-02/13
Rapide S .....	74	65	01/13-10/13
Vanquish Coupe .....	197	80	09/12-10/13
<b>Total .....</b>	<b>2910</b>	<b>372</b>	<b>N/A</b>

*III. Noncompliance:* AML explains that during testing of the tire pressure monitoring system (TPMS) it was noted that the fitment of an incompatible wheel and tire unit was correctly detected and the malfunction indicator telltale illuminated as required by FMVSS No. 138. However, when the vehicle ignition was deactivated and

then reactivated after a five minute period, there was no immediate re-illumination of the malfunction indicator telltale as required when the malfunction still exists. Although the malfunction indicator telltale does not re-illuminate immediately after the vehicle ignition is reactivated, it does

illuminate within 40 seconds after the vehicle accelerates above 23 mph.

*IV. Rule Text:* Paragraph S4.4(c)(2) of FMVSS No. 138 requires in pertinent part:

S4.4 TPMS Malfunction.  
...

(c) *Combination low tire pressure/TPMS malfunction telltale.* The vehicle meets the

requirements of S4.4(a) when equipped with a combined Low Tire Pressure/TPMS malfunction telltale that:

(2) Flashes for a period of at least 60 seconds but no longer than 90 seconds upon detection of any condition specified in S4.4(a) after the ignition locking system is activated to the “On” (“Run”) position. After each period of prescribed flashing, the telltale must remain continuously illuminated as long as a malfunction exists and the ignition locking system is in the “On” (“Run”) position. This flashing and illumination sequence must be repeated each time the ignition locking system is placed in the “On” (“Run”) position until the situation causing the malfunction has been corrected.

*V. Summary of AML’s Analyses:* AML stated its belief that the subject noncompliance is inconsequential to motor vehicle safety for the following reasons:

(A) AML stated that although the TPMS malfunction indicator telltale will not illuminate immediately after the vehicle is restarted, it generally will illuminate shortly thereafter and in any event it will illuminate in no more than 40 seconds after the vehicle accelerates above 23 mph. AML further explained that once the vehicle has accelerated above 23 mph for a period of 15 seconds, the TPMS will seek to confirm the sensors fitted to the vehicle, and in the case a sensor is not fitted, the TPMS will detect this condition within 25 additional seconds and activate the malfunction indicator telltale.

(B) AML explained that if the TPMS fails to detect the wheel sensors, the TPMS monitor will display on the TPMS pressures screen “—” warning the driver that the status of the wheel sensor is unconfirmed. Once the vehicle starts moving, the system will then accurately determine if a sensor is present or not.

(C) AML said that the noncompliance (a software design omission) is confined to one particular aspect of the functionality of the otherwise compliant TPMS malfunction indicator telltale. All other aspects of the low-pressure monitoring system functionality are fully compliant with the requirements of FMVSS No. 138.

(D) AML stated that it is not aware of any customer complaints, field communications, incidents or injuries related to this condition.

(E) AML said it has fixed all unsold vehicles in its custody and control so that they are fully compliant with FMVSS No. 138.

(F) AML argued that differences exist between the MBUSA TPMS inconsequential petition that the agency denied and their petition that should be granted.

In summation, AML believes that the described noncompliance of the subject vehicles is inconsequential to motor vehicle safety, and that its petition, to exempt AML from providing recall notification of noncompliance as required by 49 U.S.C. 30118 and remedying the recall noncompliance as required by 49 U.S.C. 30120 should be granted.

#### NHTSA Decision

*NHTSA Analysis:* NHTSA has reviewed AML’s justification for an inconsequential noncompliance determination and agrees with AML that the described noncompliance in the subject vehicles is inconsequential to motor vehicle safety.

AML explained that although the malfunction indicator telltale does not re-illuminate immediately after the vehicle is restarted, it will illuminate shortly thereafter—within 40 seconds after the vehicle speed exceeds 23 mph.

NHTSA agrees with AML that the malfunction indicator telltale will not illuminate as required only during very short periods of time when the vehicle is traveling at low speeds and thus poses little risk to vehicle safety. Under normal driving conditions, a driver will begin a trip by accelerating moderately beyond 23 mph, and as explained by AML, once the vehicle accelerates above 23 mph, the malfunction indicator telltale re-illuminates and then remains illuminated for the entire ignition cycle, regardless of vehicle speed. The telltale fails to re-illuminate only in the very rare case when the driver begins a trip and never exceeds the 23 mph threshold, the speed required to re-activate the malfunction indicator telltale. No real safety risk exists because at such low speeds there is little risk of the driver losing control of the vehicle due to underinflated tires. Furthermore, the possibility that the vehicle will experience both a low inflation pressure condition and a malfunction simultaneously is highly unlikely.

AML stated that if the TPMS fails to detect the wheel sensors, a supplemental TPMS monitor provides the driver with a warning on the vehicle’s TPMS pressures screen, indicating the status of the wheel sensor is not confirmed.

The agency evaluated the displays AML uses in the noncompliant vehicles. In addition to the combination malfunction and low inflation pressure telltale indicator lamp, the subject vehicles are equipped with a “plan view” icon which displays the pressures for all four wheels individually. If any wheel has a malfunctioning pressure

sensor the indicator for that wheel displays several dashes “—” indicating there is a problem with that respective wheel. The additional information is not required by the safety standard, but can be used as an aid to the driver to determine the status of a vehicle’s tires.

AML discussed that the noncompliance only involves one specific TPMS functionality requirement and that it believes that the primary functions of the TPMS, the identification of all other required malfunctions as well as the identification of low tire inflation pressure scenarios, is not affected.

The agency agrees with AML that the primary function of the TPMS is to identify low inflation pressure conditions which AML’s system appears to do as required by FMVSS No. 138. Also, there are a variety of other malfunctions that can occur in addition to the incompatible tire malfunction identified in this petition. We understand from AML that its TPMS will perform as required during all other system malfunctions.

AML also mentioned that they have not received or are aware of any consumer complaints, field communications, incidences or injuries related to this noncompliance. In addition to the analysis done by AML that looked at customer complaints, field communications, incidents or injuries related to this condition, the agency conducted additional checks of its Office of Defects Investigations consumer complaint database and found no related complaints.

AML stated that unsold vehicles had the software correction administered and are now fully compliant with FMVSS 138. NHTSA agrees and concurs with AML’s action to mitigate vehicles in its possession as of the date that the noncompliance was acknowledged.

AML pointed out that there are differences between the Mercedes-Benz TPMS related inconsequential noncompliance petition<sup>1</sup> that the agency recently denied and AML’s subject inconsequential noncompliance petition. NHTSA agrees with AML that the noncompliance circumstances are substantially different between the two petitions. The Mercedes-Benz TPMS would initially display a malfunction warning, but would not display the warning on subsequent ignition cycles as required by S4.4(b)(3) of FMVSS No. 138. In the AML vehicles, the TPMS malfunction warning lamp will illuminate each time the vehicle is

<sup>1</sup> 79 FR 47718 (August 14, 2014).

operated, and it will do so very shortly after the vehicle begins to move.

**NHTSA Decision:** In consideration of the foregoing analysis, NHTSA has decided that AML has met its burden of demonstrating that the FMVSS No. 138 noncompliance is inconsequential to motor vehicle safety. Accordingly, AML's petition is hereby granted and AML is exempted from the obligation of providing notification of, and a remedy for, that noncompliance under 49 U.S.C. 30118 and 30120.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, any decision on this petition only applies to the subject vehicles that AML no longer controlled at the time it determined that the noncompliance existed. However, any decision on this petition does not relieve vehicle distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant vehicles under their control after AML notified them that the subject noncompliance existed.

**Authority:** (49 U.S.C. 30118, 30120; Delegations of authority at 49 CFR 1.95 and 501.8)

**Jeffrey M. Giuseppe,**

*Director, Office of Vehicle Safety Compliance.*

[FR Doc. 2015-29474 Filed 11-18-15; 8:45 am]

**BILLING CODE 4910-59-P**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

[Docket No. FD 35974]

#### Union Pacific Railroad Company— Temporary Trackage Rights Exemption—BNSF Railway Company

BNSF Railway Company (BNSF) and Union Pacific Railroad Company (UP) have agreed to enter into a written trackage rights agreement,<sup>1</sup> under which BNSF will grant temporary overhead trackage rights to UP between milepost 579.3 near Mill Creek, Okla., on BNSF's Creek Subdivision and milepost 631.0 near Joe Junction, Tex., on BNSF's

Madill Subdivision, a distance of approximately 51.7 miles.

The transaction may be consummated on or after December 3, 2015, the effective date of the exemption (30 days after the verified notice of exemption was filed).

The purpose of the transaction is to allow UP to move loaded and empty unit ballast trains to be used for UP maintenance of way projects. UP states that, under the terms of the agreement, the trackage rights are temporary in nature and will be effective from January 1, 2016, until December 31, 2018.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk & Western Railway—Trackage Rights—Burlington Northern, Inc.*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Railway—Lease & Operate—California Western Railroad*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7).<sup>2</sup> If the notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than November 25, 2015 (at least seven days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35974, must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on Jeremy M. Berman, Union Pacific Railroad Company, 1400 Douglas Street, STOP 1580, Omaha, NE 68179.

Board decisions and notices are available on our Web site at “[WWW.STB.DOT.GOV](http://WWW.STB.DOT.GOV).”

Decided: November 16, 2015.

By the Board, Rachel D. Campbell,  
Director, Office of Proceedings.

**Kenyatta Clay,**

*Clearance Clerk.*

[FR Doc. 2015-29544 Filed 11-18-15; 8:45 am]

**BILLING CODE 4915-01-P**

<sup>2</sup> Because the trackage rights covered by the notice of exemption are longer than one year in duration, the Board's class exemption for temporary trackage rights under 49 CFR 1180.2(d)(8) does not apply. Instead, UP has filed under the trackage rights class exemption at 1180.2(d)(7) and concurrently has filed, in Docket No. FD 35974 (Sub-No. 1), a petition for partial revocation of this exemption to permit these proposed trackage rights to expire on December 31, 2018, as provided in the parties' agreement. The Board will address that petition in a separate decision.

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### Proposed Collection; Comment Request for Regulation Project

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing rulings and determination letters.

**DATES:** Written comments should be received on or before January 19, 2016 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Michael Joplin, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the regulations should be directed to Kerry Dennis at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at [Kerry.Dennis@irs.gov](mailto:Kerry.Dennis@irs.gov).

#### SUPPLEMENTARY INFORMATION:

*Title:* Rulings and Determination Letters.

*OMB Number:* 1545-1522.

*Revenue Procedure:* RP 2012-1.

*Abstract:* This revenue procedure explains how the Service provides advice to taxpayers on issues under the jurisdiction of the Associate Chief Counsel (Corporate), the Associate Chief Counsel (Financial Institutions and Products), the Associate Chief Counsel (Income Tax and Accounting), the Associate Chief Counsel (International), the Associate Chief Counsel (Passthroughs and Special Industries), the Associate Chief Counsel (Procedure and Administration), and the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). It explains the forms of advice and the manner in which advice is requested by taxpayers and provided by the Service. The agency needs this information in order to use resources more efficiently and to provide more guidance to individual corporate taxpayers and their shareholders.

<sup>1</sup> A copy of the temporary trackage rights agreement was filed with the notice of exemption.

*Current Actions:* There is no change to this existing revenue procedure.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations.

*Estimated Number of Respondents:* 3,825.

*Estimated Time per Respondent:* 80 hours.

*Estimated Total Annual Burden Hours:* 305,540.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 12, 2015.

**Michael Joplin,**

*IRS Reports Clearance Officer.*

[FR Doc. 2015-29565 Filed 11-18-15; 8:45 am]

BILLING CODE 4830-01-P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### Proposed Collection; Comment Request for Regulation Project

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning floor stocks credits or refunds and consumer credits or refunds with respect to certain tax-repealed articles; excise tax on heavy trucks, and excise tax on heavy trucks, truck trailers, semitrailers, and tractors; reporting and recordkeeping requirements.

**DATES:** Written comments should be received on or before January 19, 2016 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Michael Joplin, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the regulation should be directed to Kerry Dennis, at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet, at [Kerry.Dennis@irs.gov](mailto:Kerry.Dennis@irs.gov).

#### SUPPLEMENTARY INFORMATION:

*Title:* Floor Stocks Credits or Refunds and Consumer Credits or Refunds With Respect to Certain Tax-Repealed Articles; Excise Tax on Heavy Trucks, and Excise Tax on Heavy Trucks, Truck Trailers, Semitrailers, and Tractors; Reporting and Recordkeeping Requirements.

*OMB Number:* 1545-0745.

*Regulation Project Number:* TD 7882 and TD 8050.

*Abstract:* TD 7882, Floor Stocks Credits or Refunds and Consumer Credits or Refunds With Respect to Certain Tax-Repealed Articles; Excise Tax on Heavy Trucks, requires sellers of trucks, trailers and semitrailers, and tractors to maintain records of the gross vehicle weights of articles sold to verify taxability. TD 8050, Excise Tax on Heavy Trucks, Truck Trailers, Semitrailers, and Tractors; Reporting and Recordkeeping Requirements, requires that if the sale is to be treated as exempt, the seller and the purchaser must be registered and the purchaser must give the seller a resale certificate.

*Current Actions:* There are no changes being made to the regulations at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations and individuals.

*Estimated Number of Respondents:* 4,100.

*Estimated Time per Respondent:* 1 hour, 4 minutes.

*Estimated Total Annual Burden Hours:* 4,140.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 10, 2015.

**Michael Joplin,**

*IRS Reports Clearance Officer.*

[FR Doc. 2015-29562 Filed 11-18-15; 8:45 am]

BILLING CODE 4830-01-P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### Proposed Collection; Comment Request for 13768, Electronic Tax Administration Advisory Committee Membership Application

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 13768, Electronic Tax Administration Advisory Committee Membership Application.

**DATES:** Written comments should be received on or before January 19, 2016 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Michael Joplin, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the collection tools should be directed to Kerry Dennis, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at [Kerry.Dennis@irs.gov](mailto:Kerry.Dennis@irs.gov).

**SUPPLEMENTARY INFORMATION:**

*Title:* Electronic Tax Administration Advisory Committee Membership Application.

*OMB Number:* 1545–2231.

*Form Number:* Form 13768.

*Abstract:* The Internal Revenue Service Restructuring and Reform Act of 1998 (RRA 98) authorized the creation of the Electronic Tax Administration Advisory Committee (ETAAC). ETAAC has a primary duty of providing input to the Internal Revenue Service (IRS) on its strategic plan for electronic tax administration. Accordingly, ETAAC's responsibilities involve researching, analyzing and making recommendations on a wide range of electronic tax administration issues. ETAAC members convey the public's perception of the IRS electronic tax administration activities, offer constructive observations about current or proposed policies, programs, and procedures, and suggest improvements.

*Current Actions:* There is no change in the paperwork burden previously approved by OMB.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Businesses and other for-profit organizations.

*Estimated Number of Respondents:* 500.

*Estimated Time per Respondent:* 1 hour.

*Estimated Total Annual Burden Hours:* 500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 12, 2015.

**Michael Joplin,**

*IRS Reports Clearance Officer.*

[FR Doc. 2015–29566 Filed 11–18–15; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### Proposed Collection; Comment Request for Regulation Project

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is

soliciting comments concerning taxation of gain or loss from certain nonfunctional currency transactions.

**DATES:** Written comments should be received on or before January 19, 2016 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Michael Joplin, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the regulation should be directed to Kerry Dennis, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at [Kerry.Dennis@irs.gov](mailto:Kerry.Dennis@irs.gov).

**SUPPLEMENTARY INFORMATION:**

*Title:* Taxation of Gain or Loss from Certain Nonfunctional Currency Transactions (Section 988 Transactions).

*OMB Number:* 1545–1131.

*Regulation:* INTL–485–89.

*Abstract:* Internal Revenue Code sections 988(c)(1)(D) and (E) allow taxpayers to make elections concerning the taxation of exchange gain or loss on certain foreign currency denominated transactions. In addition, Code sections 988(a)(1)(B) and 988(d) require taxpayers to identify transactions which generate capital gain or loss or which are hedges of other transactions. This regulation provides guidance on making the elections and complying with the identification rules.

*Current Actions:* There are no changes to the previously approved burden of this existing collection.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Individuals or households and business or other for-profit organizations.

*Estimated Number of Respondents:* 5,000.

*Estimated Time per Respondent:* 40 min.

*Estimated Total Annual Burden Hours:* 3,333.

The following paragraph applies to all of the collections of information covered by this notice.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will

be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

- 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;
- the accuracy of the agency's estimate of the burden of the collection of information;
- ways to enhance the quality, utility, and clarity of the information to be collected;
- ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and
- estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 13, 2015.

**Michael Joplin,**

*IRS Reports Clearance Officer.*

[FR Doc. 2015-29567 Filed 11-18-15; 8:45 am]

**BILLING CODE 4830-01-P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### Proposed Collection; Comment Request for Form 8874

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8874, New Markets Credit.

**DATES:** Written comments should be received on or before January 19, 2016 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Michael Joplin, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Kerry Dennis, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at [Kerry.Dennis@irs.gov](mailto:Kerry.Dennis@irs.gov).

#### SUPPLEMENTARY INFORMATION:

*Title:* New Markets Credit.

*OMB Number:* 1545-1804.

*Form Number:* Form 8874.

*Abstract:* Investors to claim a credit for equity investments made in Qualified Community Development Entities use Form 8874.

*Current Actions:* There is no change in the paperwork burden previously approved by OMB. This form is being submitted for renewal purposes only.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Individuals or households, and business or other for-profit organizations.

*Estimated Number of Respondents:* 6,666.

*Estimated Time per Respondent:* 4 hours, 52 minutes.

*Estimated Total Annual Burden Hours:* 32,464.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

- 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;
- the accuracy of the agency's estimate of the burden of the collection of information;
- ways to enhance the quality, utility, and clarity of the information to be collected;
- ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and
- estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: November 12, 2015.

**Michael Joplin,**

*IRS Reports Clearance Officer.*

[FR Doc. 2015-29568 Filed 11-18-15; 8:45 am]

**BILLING CODE 4830-01-P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### Proposed Collection; Comment Request for Form 8900

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8900, Qualified Railroad Track Maintenance Credit.

**DATES:** Written comments should be received on or before January 19, 2016 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Michael Joplin, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Kerry Dennis, at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet at [Kerry.Dennis@irs.gov](mailto:Kerry.Dennis@irs.gov).

#### SUPPLEMENTARY INFORMATION:

*Title:* Qualified Railroad Track Maintenance Credit.

*OMB Number:* 1545-1983.

*Form Number:* 8900.

*Abstract:* Form 8900 Qualified Railroad Track Maintenance Credit, was developed to carry out the provisions of Code section 45G. This section was added by section 245 of the American Jobs Creation Act of 2004 (Pub. L. 108-357). Form 8900 provides a means for the eligible taxpayer to compute the amount of credit.

*Current Actions:* There are no changes in the paperwork burden previously approved by OMB. This form is being submitted for renewal purposes only.

*Type of Review:* Extension of a current OMB approval.

*Affected Public:* Business or other for-profit organizations and farms.

*Estimated Number of Respondents:* 333.

*Estimated Time per Respondent:* 5 hours, 58 minutes.

*Estimated Total Annual Burden Hours:* 1,985.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 13, 2015.

**Michael Joplin,**

*IRS Reports Clearance Officer.*

[FR Doc. 2015-29564 Filed 11-18-15; 8:45 am]

**BILLING CODE 4830-01-P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### Proposed Collection; Comment Request for Form 5213.

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 5213, Election to Postpone Determination as To Whether the Presumption Applies That an Activity Is Engaged in for Profit.

**DATES:** Written comments should be received on or before January 19, 2016 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Michael Joplin, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Kerry Dennis, at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet, at [Kerry.Dennis@irs.gov](mailto:Kerry.Dennis@irs.gov).

**SUPPLEMENTARY INFORMATION:**

*Title:* Election To Postpone Determination as To Whether the Presumption Applies That an Activity Is Engaged in for Profit.

*OMB Number:* 1545-0195.

*Form Number:* 5213.

*Abstract:* Section 183 of the Internal Revenue Code allows taxpayers to elect to postpone a determination as to whether an activity is entered into for profit or is in the nature of a nondeductible hobby. The election is made on Form 5213 and allows taxpayers 5 years (7 years for breeding, training, showing, or racing horses) to show a profit from an activity.

*Current Actions:* There are no changes being made to the form at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations and individuals.

*Estimated Number of Respondents:* 3,541.

*Estimated Time per Respondent:* 47 minutes.

*Estimated Total Annual Burden Hours:* 2,762.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 10, 2015.

**Michael Joplin,**

*IRS Reports Clearance Officer.*

[FR Doc. 2015-29563 Filed 11-18-15; 8:45 am]

**BILLING CODE 4830-01-P**



# FEDERAL REGISTER

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Part II

Department of the Interior

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Bureau of Indian Affairs

25 CFR Part 169

Rights-of-Way on Indian Land; Final Rule

**DEPARTMENT OF THE INTERIOR****Bureau of Indian Affairs****25 CFR Part 169**[156A2100DD/AAKC001030/  
AOA501010.999900 253G]

RIN 1076-AF20

**Rights-of-Way on Indian Land****AGENCY:** Bureau of Indian Affairs, Interior.**ACTION:** Final rule.

**SUMMARY:** This final rule comprehensively updates and streamlines the process for obtaining Bureau of Indian Affairs (BIA) grants of rights-of-way on Indian land, while supporting tribal self-determination and self-governance. This final rule further implements the policy decisions and approaches established in the leasing regulations, which BIA finalized in December 2012, by applying them to the rights-of-way context where applicable. The rule also applies to BIA land.

**DATES:** This rule is effective on December 21, 2015.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Appel, Director, Office of Regulatory Affairs & Collaborative Action, (202) 273-4680; [elizabeth.appel@bia.gov](mailto:elizabeth.appel@bia.gov).

**SUPPLEMENTARY INFORMATION:****I. Executive Summary of Rule**

The Department of the Interior (Department) published a proposed rule in the **Federal Register** to comprehensively update and streamline the process for obtaining BIA grants of rights-of-way on Indian land (individually owned Indian land and/or tribal land) and BIA land (tracts owned and administered by BIA) on June 17, 2014 (79 FR 34455) with a comment deadline of August 18, 2014. The Department then extended the comment deadline to October 2, 2014, then to November 3, 2014, and finally to November 28, 2014. See 79 FR 47402, 60794, and 65360.

The current regulations were promulgated in 1968, and last updated in 1980. In December 2012, the Department issued final regulations comprehensively reforming residential, business, and wind and solar leasing on Indian land and streamlining the leasing process. Given the supportive response to the leasing regulatory revisions, we are updating 25 CFR part 169 (Rights-of-Way) to mirror those revisions to the extent applicable in the rights-of-way context and otherwise modernize requirements for obtaining a right-of-

way over or across Indian land and BIA land. The final rule reflects additional changes made in response to comments received during the public comment period. Highlights of this final rule include:

- Simplifying requirements by relying on general statutory authority to grant rights-of-way and eliminating outdated requirements that apply to specific types of rights-of-way;
- Clarifying processes for BIA review of right-of-way documents;
- Streamlining the process for obtaining a right-of-way on Indian land by:
  - Eliminating the need to obtain BIA consent for surveying in preparation for applying for a right-of-way;
  - Establishing timelines for BIA review of rights-of-way requests;
    - Adding certainty to applicants by allowing BIA disapproval only where there is a stated compelling reason;
    - Providing Indian landowners with notice of actions affecting their land;
    - Deferring to individual Indian landowner decisions subject to an analysis of whether the decision is in their best interest;
    - Promoting tribal self-determination and self-governance by providing greater deference to Tribes on decisions affecting tribal land;
    - Clarifying tribal jurisdiction over lands subject to a right-of-way; and
    - Incorporating tribal land policies in processing a request for a right-of-way.

The general approach to the final rule is to provide a uniform system for granting rights-of-way over Indian land by relying primarily on a single statutory authority, 25 U.S.C. 323–328, and to allow Indian landowners as much flexibility and control as possible over rights-of-way on their land. The rule requires that owners of a majority of the interests in a tract must consent to the right-of-way, in accordance with the statutory requirement in 25 U.S.C. 324, and specifies that tribes and individual Indian landowners may negotiate the terms of their consent, which ultimately become the terms of the grant. The rule clarifies that landowners may negotiate the terms to ensure the right-of-way is best suited to their needs. Landowners currently have this option, but are often presented with a “take-it-or-leave-it” offer by the potential grantee, and fail to negotiate. To provide efficiencies in standardization, the Department will develop a template grant form with placeholders for conditions and restrictions agreed to by landowners. The rule also affords landowners as much notice as possible regarding rights-of-way on their land, giving tribes

and individual Indian landowners actual notice (as opposed to constructive notice) of every right-of-way affecting their land, including any land in which the tribe owns a fractional interest.

The rule addresses tribally owned land differently than individually owned land because, although the U.S. has a trust responsibility to all beneficial owners, it has a government-to-government relationship with tribes and seeks to promote tribal self-governance. The final rule also provides tribes with as much deference as possible, within the bounds of the Department’s trust responsibilities, to determine which rights-of-way to grant, for how much compensation, and with identified enforcement provisions. The rule also provides that the BIA will defer to individual Indian landowners in their determinations, to the extent it is possible to coordinate with multiple individual Indian landowners.

Consistent with 25 U.S.C. 325, the general trust relationship between the United States and the Indian tribes and individual Indians, and deference to tribal sovereignty, the final rule requires that the compensation granted to Indian landowners is just. The final rule does not establish any ceiling on compensation; to do so would unduly restrict landowners’ ability to get the maximum compensation for their land interest. The Department’s role is to ensure that the compensation is “just” for the Indian landowners.

Together, these revisions modernize the rights-of-way approval process while better supporting Tribal self-determination. This rule also updates the regulations to be in a question-and-answer format, in compliance with “plain language” requirements.

**II. Response to Comments**

The Department published a proposed rule with the above revisions on June 17, 2014. See 79 FR 34455. The Department extended the initial public comment deadline of August 18, 2014 to October 2, 2014, then November 3, 2014, and finally to November 28, 2014. See 79 FR 47402 (August 13, 2014), 79 FR 60794 (October 8, 2014); and 79 FR 65360 (November 4, 2014). We received 176 written comment submissions prior to the final deadline of November 28, 2014. Of these, 70 were from Indian tribes, 19 were from tribal associations and tribal members, 7 were from State government entities, and 5 were from county or city government entities. These submissions also included significant input from the energy sector, including 15 from electric cooperatives, and 25 from gas and oil companies and

associations, pipeline companies, and power and water utilities combined. We also received 3 written submissions from telecommunications companies and 2 from railroad companies. In addition, we reviewed comments at tribal consultation sessions held in Bismarck, North Dakota; Phoenix, Arizona; Atlanta, Georgia; and by teleconference. The following is a summary of the substantive comments we received and our responses. The designation “PR” refers to the section from the proposed rule; the designation “FR” refers to the designation in the final rule.

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### A. General

*Comment:* Several commenters, such as the Northern Natural Gas Company, stated that the rule would have the opposite effect of streamlining the right-of-way process, creating a slower, less efficient, and “in many ways unfair” right-of-way process because they provide parties with the opportunity to negotiate with each other, which will slow the issuance of rights-of-way, particularly on individual Indian tracts.

One energy company commenter stated that the right-of-way process is burdensome and often takes years to complete before it can provide service to the customer, but that the proposed rule offers a middle ground that accommodates tribal consent and allows utilities to provide service to customers in a timely manner. At least one commenter stated that the rule bolsters tribal self-governance by allowing tribes to dictate the extent of rights-of-way.

*Response:* Although negotiations between the parties may slow down the process of obtaining landowner consent by giving the parties time to negotiate, this clarification is necessary to promote Indian landowner control over their trust or restricted land, and allows ordinary market forces to work. To provide efficiencies in standardization, BIA will develop a template grant form that provides flexibility by incorporating conditions and restrictions agreed to by landowners.

*Comment:* Several commented on the proposed rule’s statement that BIA will rely on the broad authority under the 1948 Act, rather than the limited authorities under specific statutes. Some commenters pointed out that Congress did not repeal, override, supersede, or alter the other statutes and that the specific statutory authorities and requirements are still applicable to the Department. One commenter stated that the 1948 Act was intended as “cleanup legislation” to address Indian land not already covered by the “hodge podge of statutes” and that the 1948 Act affirmed the earlier statutes by filling gaps in coverage by the other statutes.

Several tribal commenters strongly supported consolidating approval of all rights-of-way in a single location under 25 U.S.C. 323–328, noting that the process of approving different types of rights-of-way under different authorities and standards was antiquated and increased the burden on tribes to manage rights-of-way.

*Response:* The final rule consolidates approval of all types of rights-of-way across Indian land under one set of regulations, implementing the general statutory authority at 25 U.S.C. 323–328, just as was proposed. The Department is not attempting to repeal any limited authorities under specific statutes; rather, it is making the policy decision to review and approve rights-of-way under the 1948 Act (25 U.S.C. 323–328). The 1948 Act offers maximum flexibility in rights-of-way, whereas the limited authorities under specific statutes impose various non-uniform restrictions. Legislative history indicates that Congress intended a transition from grants under the specific statutory

provisions to a uniform system based on 25 U.S.C. 323–328. See Senate Report No. 823 (80th Congress, 2d session) (Jan. 14, 1948), p. 4. The intent of Congress in enacting the broader 1948 statute, while leaving the others in place, was to afford tribes and the Department a choice and the Department does not exceed its authority by enacting regulations choosing one statutory scheme over the other. *Blackfeet Indian Tribe v. Montana Power Co.*, 838 F.2d 1055, 1059 (9th Cir. Mont. 1988).

The rule also lists the Indian Land Consolidation Act (ILCA), as amended by the American Indian Probate Reform Act, 25 U.S.C. 2201 *et seq.*, as statutory authority because the rule relies on this statute as supplemental authority. Given the intent of Congress in the 1948 Act to facilitate right-of-way transactions, and the intent behind ILCA not to disturb specific standards for the percentage of ownership interest that must approve an agreement, we continue to apply the percentage requirements of the 1948 Act (*i.e.*, consent of a majority of interests) rather than the “sliding scale” consent requirements of 25 U.S.C. 2218 (which may require consent of owners of more than a majority interest, for example where there are five or fewer owners of the tract). See Senate Report No. 823 (80th Congress, 2d session) (Jan. 14, 1948), p. 4; 25 U.S.C. 2218(f).

*Comment:* A commenter suggested including in the final rule the industry-specific standards and guidelines for oil and gas pipelines that have been in place for decades, at current section 169.25(f).

*Response:* The final rule provides landowners and grantees the freedom to negotiate for whatever standards and guidelines are appropriate for incorporating into the right-of-way grant. The final rule does not prevent a grantee from following the industry-specific guidelines and standards for oil and gas pipelines.

*Comment:* Several commenters pointed to the U.S. Supreme Court decision in *Strate* as establishing that a grant of right-of-way essentially transforms Indian land into fee land. See *Strate v. A-1 Contractors*, 520 U.S. 438, 451–52 (1997). Specifically, these commenters stated that when a landowner grants a right-of-way, they reserve no right to the exclusive dominion or control over the right-of-way, and the land underlying the right-of-way is removed from tribal jurisdiction. These commenters asserted that the *Strate* holding means there can be no “seamless consistency” between the right-of-way regulations and leasing regulations, because this precedent

treats land subject to a right-of-way differently from leased land.

*Response:* The circumstances in *Strate* are limited to the facts presented in that case. In *Strate*, neither the Federal Government nor the tribe expressly reserved jurisdiction over the land in the grant of the right-of-way. 520 U.S. at 455. This lack of reservation of a “gatekeeping right” led the Supreme Court to consider the right-of-way as aligned, for purposes of jurisdiction, with land alienated to non-Indians. *Id.* In these regulations, as grantor, the United States is preserving the tribes’ jurisdictions in all right-of-way grants issued under these regulations and is requiring that such grants expressly reserve tribal jurisdiction. Therefore, grants of rights-of-way under these regulations, consistent with the Court’s reasoning in *Strate*, would not be equivalent to fee land, but would retain the jurisdictional status of the underlying land.

*Comment:* A few commenters stated that the regulation is a violation of the trust responsibility, claiming it subjects individual Indian landowners to an additional layer of bureaucracy without protections for Indian land rights.

*Response:* The regulations retain protections for Indian land rights and promote landowners’ control over and notification of rights-of-way over and across their land. Landowners are free to negotiate for terms acceptable to them in negotiating with right-of-way applicants, subject to BIA review and approval, as required by statute.

*Comment:* Several commenters, including both tribal and industry representatives, submitted petitions and comments calling on BIA to cancel the rulemaking and start over. Some suggested gathering a workgroup of tribes and allottees to rewrite the regulations. Several tribal commenters requested additional consultation and others requested additional opportunity for public input. A few tribal commenters supported the regulatory efforts to add transparency and certainty to the right-of-way process.

*Response:* The Department complied with the applicable Administrative Procedure Act requirements for public notice and comment and consulted with tribes in updating these regulations, consistent with the Executive Orders and Departmental policy on consultation with tribes. Both public and tribal input on the proposed rule was robust, touching upon nearly every section of the proposed rule. The Department considered each comment in drafting the final rule and has incorporated suggested changes, balancing the Department’s trust

responsibility to landowners, support for tribal self-determination and self-governance, and promotion of productive use of Indian land.

*Comment:* A tribe requested that the rule better reflect that the tribe has ongoing sovereign interests in right-of-way lands, through consenting to renewals, consenting to changes to the right-of-way document after it is granted, and investigating activities and conditions on the land and its improvements to determine compliance with tribal laws or with the terms and conditions of the right-of-way document.

*Response:* The final rule includes a new section FR 169.010 to clarify that the grant of a right-of-way has no effect on tribal jurisdiction. In response to this comment, the final rule also includes a provision (FR 169.402(b)) recognizing the right of the tribe to investigate compliance with the grant, and imposes other tribal approval and notification requirements throughout the right-of-way process.

## B. Subpart A—General Provisions

### 1. Purpose of Regulations (PR 169.001)

*Comment:* We received suggestions for several line edits to PR 169.001. One commenter requested we clarify that the rules govern how BIA will consider a request for a right-of-way, and another suggested we add a statement regarding the applicability of tribal law. Another commenter requested that PR 169.001(d) be clarified to state that the special acts of Congress authorizing rights-of-way without BIA’s approval are only those specifically authorizing rights-of-way across tribal land, to preclude the assertion of a right under general Federal statutes to obtain or condemn a right-of-way without BIA approval.

*Response:* We incorporated these suggestions.

*Comment:* One commenter suggested adding a separate subsection on the “interplay and application of tribal law and policy.”

*Response:* A separate subsection on tribal law is unnecessary because other sections of the rule address the applicability of tribal law; however, the final rule adds a sentence to § 169.001(a) to clarify that the regulation is intended to support tribal self-determination and self-governance by acknowledging and incorporating tribal law and policies in processing requests for rights-of-way across tribal lands.

*Comment:* One tribal commenter stated that the proposed rule appeared to grant the Secretary authority to grant rights-of-way under the Federal Power Act without the tribe’s consent. This

commenter stated that the rule should clarify whether it applies to Federal Power Act power lines and apply only to those Federal power projects that produce electricity from hydroelectric generators. Another commenter stated that the regulations should cover rights-of-way for Federal Power Act transmission lines.

*Response:* The proposed and final rules both include the same language as the current rule on the Federal Power Act. This is governed by statute, and the rule does not affect it. The regulations do not cover rights-of-way for Federal Power Act transmission lines, but do cover other transmission lines.

## 2. Definitions (PR 169.002) & Applicability (PR 169.003(a))

*Comment—Several definitions’ reference to “surface estate”:* Several commenters suggested that definitions such as “Government land,” “Indian land,” “individually owned Indian land,” and “tribal land” should include the subsurface estate, as well as the surface estate.

*Response:* The definitions refer to the surface estate only because these regulations address only the surface estate and BIA distinguishes only between the surface estate and the mineral estate. The surface estate includes everything other than mineral estate, such that any buried lines or other infrastructure affect the surface estate and require a right-of-way. As such, the surface estate includes what some of the commenters are calling the “subsurface estate,” which includes the soil and any other non-mineral material below the surface. To address these comments, the final rule includes an introductory sentence in PR 169.002, clarifying that these definitions apply only for the purposes of rights-of-way regulations.

*Comment—“Abandonment”:* A few commenters supported the definition of the term “abandonment” as helpful to distinguish relinquishment of a right-of-way through non-use versus affirmative relinquishment. One commenter asked whether the grantee must file a document to affirmatively relinquish the right-of-way. Another commenter suggested criteria for “abandonment in fact” to establish when the grantee relinquished the right-of-way without a formal declaration of relinquishment. A few commenters suggested that the definition be expanded to include not just affirmative relinquishment by the grantee, but to also include an act that shows the grantee gave up its rights and does not intend to return to exercise the rights.

*Response:* The proposed rule and final rule, at § 169.408, provide that enforcement may occur for “non-use,” which is what the commenter calls “abandonment in fact,” and establish the criteria for the non-use. The final rule expands the definition of “abandonment” as requested to include acts by the grantee to allow BIA to imply abandonment based on an analysis of the circumstances. See FR 169.2. To affirmatively relinquish a right-of-way, the grantee need not necessarily file a document. Because the definition cannot enumerate all of the ways in which a grantee could communicate relinquishment, BIA will determine on a case-by-case basis whether affirmative relinquishment has occurred.

*Comment—“BIA”:* One commenter suggested defining “BIA” to include the United States generally, to address an issue with an interagency agreement being recorded. Some commenters expressed confusion about defining “BIA” to include tribes that contract or compact to carry out BIA services, saying that it would appear to be an unlawful delegation of authority.

*Response:* The final rule retains the proposed definition of “BIA.” The definition of “trust or restricted status” already establishes that the United States rather than BIA specifically holds title in trust or imposes restricted status. Tribes are statutorily authorized to carry out BIA realty services that are not inherently Federal functions, as long as certain procedures are followed.

*Comment—“Cancellation”:* A few tribal commenters requested definitions for “cancellation” and “termination.”

*Response:* The final rule adds these definitions.

*Comment—“Compensation” and “Market Value”:* A few commenters suggested revising definitions for “compensation” and “market value” to impose a requirement that the Secretary determine the amount is “just” under 25 U.S.C. 325, regardless of whether the amount meets fair market value.

*Response:* The final rule does not incorporate these suggested changes because detailed provisions for determining compensation are addressed elsewhere in the regulations.

*Comment—“Consent”:* Several commenters requested a definition for “consent.”

*Response:* The final rule adds a definition for this term that is consistent with the definition in the leasing regulations (25 CFR part 162).

*Comment—“Constructive Notice” and “Notice”:* A few commenters requested a definition of “notice, notify and notification” to mean informing the

parties by certified or registered mail or commercial mail service that tracks delivery or email. Other commenters suggested adding more specifications for constructive notice on how long and where the notice will be posted.

*Response:* With regard to notice generally, and the allowable forms of notice, PR 169.010 and FR 169.12 address these issues. See the discussion of comments on that section, below, for information about the forms of notice. Constructive notice is required only for notification to landowners of certain enforcement actions BIA takes against the grantee, so no definition has been added.

*Comment—“Easement”:* One commenter stated that the definition of “easement” should reflect that title remains vested in the owner.

*Response:* The final rule clarifies that an easement is simply a right to use, but that title remains vested with the owner.

*Comment—“Eminent domain”:* One commenter requested a definition for “eminent domain.”

*Response:* The final rule does not include the term “eminent domain” or address eminent domain, so this definition was not added. Statutory authority exists in 25 U.S.C. 357 for condemnation under certain circumstances, but these regulations do not address or implement that authority.

*Comment—“Fractional interest”:* One commenter suggested a revision to exclude application to tribal land.

*Response:* No change to the rule is necessary. Tribal land includes land in which the tribe and others own fractional interests.

*Comment—“Government land”:* Some commenters suggested narrowing the definition to refer to land administered by the BIA, rather than all Federal Government lands because other Federal agencies are responsible for granting rights-of-way on lands under their statutory and regulatory jurisdictions.

*Response:* The final rule changes the term from “Government land” to “BIA land” and specifies that the BIA owns and administers the land.

*Comment—“Grantee”:* One commenter suggested including assignees in the definition of “grantee.”

*Response:* The final rule clarifies that once an assignment becomes effective, the assignee becomes the grantee.

*Comment—“Immediate family”:* A commenter stated that the definition of “immediate family” should track the definition in 25 CFR part 152.

*Response:* The final rule’s definition of “immediate family” tracks the definition in the leasing regulations, and consistent with our support for tribal

self-determination and self-governance, defers to the definition of “immediate family” under applicable tribal law.

*Comment—“Indian land”:* A few commenters stated that the definition should better track the definition of “tribal land” to address that Indian land may be owned by more than one tribe, more than one individual Indian, or a combination of both. One commenter requested clarification that “Indian land” does not include anything beyond individually owned Indian land and tribal land. Several commenters stated that “trust and restricted land” should be used instead, to eliminate the need to cross-reference multiple other defined terms (*i.e.*, “tribal land,” “individually owned Indian land,” “trust or restricted status”). One commenter stated that the definition appeared to also apply to land owned in fee.

*Response:* The final rule incorporates the clarification that the land may be owned by multiple landowners and that “Indian land” includes only individually owned Indian land and tribal land. The final rule does not make any revision in response to the comment that the definition appears to apply to fee land, because the definition already states that it includes only land held in trust or restricted status.

*Comment—“Indian landowner”:* A commenter stated that the definition should clarify that “an interest in Indian land” means a trust or restricted interest. One commenter suggested excluding from the definition anyone who has only a right from the tribe to use land and the tribe has reserved the right to consent to easements or rights-of-way.

*Response:* The final rule does not revise the definition to refer to trust or restricted interests because it refers to “Indian land” which is defined to mean trust or restricted interests. The final rule does not exclude tribal land assignments from the definition of “Indian landowner,” but in a case in which a person has only a tribal land assignment, the tribe would still be considered the “Indian landowner” under this definition.

*Comment—“Indian tribe”:* One commenter suggested that the definition of “Indian tribe” should include only tribes organized under the Indian Reorganization Act (IRA), in accordance with a strict reading of the statutory authority for rights-of-way on Indian land. This change would require the consent only of IRA tribes for any rights-of-way and not for non-IRA tribes.

*Response:* The final rule does not narrow the definition of “Indian tribe” as suggested because BIA has

consistently required consent from all tribes, in furtherance of tribal self-determination.

*Comment—“Indian”:* Several commenters commented on this definition. Some questioned including individuals who are “eligible to become a member of any Indian tribe.” At least one commented that the statutory definition discriminates against co-owners of allotments outside of California.

*Response:* As a result of the American Indian Probate Reform Act amendments to the Indian Land Consolidation Act, the definition of “Indian” includes those who are “eligible to become a member of any Indian tribe.”

*Comment—“Individually owned Indian land”:* A commenter suggested this definition should exclude tribal land assignments. Another commenter suggested revising the definition to clarify that the tract may be owned by multiple individuals. One commenter asked whether a tract in which both a tribe and an individual own interests would be considered “individually owned Indian land” or “tribal land.”

*Response:* The definition of individually owned Indian land does not include tribal land assignments; no change is necessary. The final rule clarifies that individually owned Indian land may be owned by multiple individuals, as suggested. A tract in which both a tribe and an individual own interests would be considered “tribal land” for the purposes of requirements applicable to tribal land and would be considered “individually owned Indian land” for the purposes of the interests owned by individuals.

*Comment—“Legal Description”:* One commenter stated that the definition should not refer to a portion of the document.

*Response:* BIA has deleted this definition in response to the comment because “legal description” is a generally understood term.

*Comment—“Life estate”:* One commenter suggested adding a definition for “life estate.”

*Response:* The final rule defines “life estate” consistent with the leasing regulations.

*Comment—“Map of definite location”:* One commenter suggested adding that the boundaries of each right-of-way should be specified as precisely as possible. Others suggested additional requirements for the distance between the surveyed land and right-of-way and allowances for GPS and satellite technologies.

*Response:* The proposed and final regulations at § 169.102(b)(1) refer to the statutory provisions governing maps of definite location, which are

implemented by the Department’s Manual of Surveying Instructions and other Departmental requirements. These require an accurate description of boundaries and impose distance requirements for references to public surveys, and allow for GPS and satellite technologies.

*Comment—“Market value”:* A few commenters suggested using the term “fair market value” rather than “market value” to maintain consistency in terminology with the current regulations and because the term is more widely used in industry parlance. One commenter suggested adding that it should state that it is the most probable price the property would bring in a competitive and open market “under all conditions requisite to a fair sale.” Another suggested clarifying that the market value should be based on the use of the limited portion for the right-of-way, rather than sale of the land.

*Response:* The final rule uses the term “fair market value” in lieu of the proposed “market value” in response to these comments. The final rule does not add “under all conditions requisite to a fair sale” because this concept is already captured in “competitive and open market.” The final rule does not add that the market value is based on the limited portion for the right-of-way because this is understood.

*Comment—“Nonprofit rural utility”:* One commenter suggested adding a definition for this term to mean “a member-owned cooperative nonprofit corporation organized under State law for the primary purpose of supplying electric power and energy and promoting and extending the use of electricity in rural areas and Indian lands.”

*Response:* The final rule adds a definition for “utility cooperatives” to include member-owned utility cooperatives. Later provisions of the rule provide for waivers of compensation requirements and bonding requirements for utility cooperatives and tribal utilities under certain conditions.

*Comment—“Parties”:* A few commenters suggested a definition of “parties.”

*Response:* The final rule does not include a definition for “parties” because it is clear from context where this term is used who it includes.

*Comment—“Right-of-Way”:* A few commenters suggested edits to this definition to clarify that easements are a type of right-of-way. Other commenters suggested adding “in, over, under, through, on, or to” to capture all possible types of rights-of-way. Some commenters stated that a right-of-way

should reflect that they are transfers of real property interests to grantees; others stated that the right-of-way should reflect they are not transfers, and that title remains vested in the landowner. Some commenters suggested clarifying in the definition that rights-of-way do not include service lines.

*Response:* The final rule clarifies that rights-of-way include easements and uses the statutory language “over and across” rather than “cross.” The final rule also establishes that right-of-way grants are not transfers of real property interests (see discussion below), but rather that the landowner retains title to the property. The final rule clarifies that rights-of-way do not include service lines.

*Comment—“Service Lines”:* See the discussion of service lines, below.

*Comment—“Secretary”:* A commenter suggested clarifying who is an “authorized representative” of the Secretary.

*Response:* Authorized representatives are those acting within their scope of duties through delegated authority by the Secretary.

*Comment—“Section 17 corporation”:* A commenter noted that this term is defined but not used in the regulation.

*Response:* The final rule deletes this definition.

*Comment—“Trespass”:* One commenter requested narrowing the definition of “trespass” to exclude unintentional instances of trespass and encompass only those instances of willful, purposeful, reckless, or negligent trespass. Another commenter suggested expanding the definition to include listed examples of trespass. The commenter also stated that trespass to airspace and subsoil should be included.

*Response:* The final rule does not add any requirement for intent to trespass because the unauthorized occupancy is a trespass under Federal law regardless of intent (see discussion of trespass, below). The final rule does not list examples of trespass; examples listed by the commenter would meet the definition of “trespass” including, but not limited to, holdover occupancy without consent, affixing unauthorized improvements, adding uses or areas, entry without authorization. The definition does not specify trespasses to airspace and subsoil because these regulations address only the surface estate.

*Comment—“Tribal authorization”:* One commenter requested further specification of when a tribal authorization is “duly adopted.” Another commenter suggested adding a

tribal government division to the definition.

*Response:* The regulations do not add further specification of what constitutes a duly adopted tribal authorization because the procedures vary with each individual tribe. The definition of “tribal authorization” includes a document duly adopted by a tribal government division which reflect that the document is an “appropriate tribal document authorizing the specified action.”

*Comment—“Tribal Land”:* A tribal commenter asked whether a tract is considered tribal land, even if fractional interests are owned by both the tribe and individual Indians. Another commenter suggested defining “tribal land” to include only land that is not individually owned. A commenter suggested limiting tribal land to those tracts in which the tribe holds a majority interest.

*Response:* Under the proposed definition and final definition, a tract is considered “tribal land” if any interest, fractional or whole, is owned by the tribe. A tract in which both a tribe and individual Indians own fractional interest is considered tribal land for the purposes of regulations applicable to tribal land. If the tribe owns any interest in a tract, it is considered “tribal land” and the tribe’s consent for rights-of-way on the tract is required under 25 U.S.C. 323 and 324.

*Comment—“Trust or restricted status”:* One commenter suggested revising the definition to reflect that individual tracts may be owned by a combination of both tribal and individual owners.

*Response:* The final rule clarifies that land may be owned by a combination of both tribal and individual owners by changing “or” to “and/or.”

*Comment: New definition of “utility”:* One commenter suggested adding definitions distinguishing between “commercial” and “public” utilities, such that later provisions can provide more lenient requirements to public utilities.

*Response:* The final rule defines “utility cooperatives” and “tribal utilities” because the regulations provide more lenient requirements for these categories of utilities. “Utility cooperatives” are defined to be those cooperatives that are member-owned, while “tribal utility” is defined to be those utilities that are tribally owned and controlled (*i.e.*, in which tribes own at least 51 percent, receive a majority of the earnings, and control the management and daily operations). The more lenient requirements (nominal compensation, no bonding

requirements) are appropriate for utility cooperatives because cooperatives are established for the purpose of providing service to their members and benefiting their members rather than making a profit. The more lenient requirements are appropriate for tribal utilities, whether for profit or not for profit, because such utilities have a governmental interest in providing service to those within their jurisdictions. The final rule holds other not-for-profit and for-profit utilities to the standard requirements for compensation and bonding because an independent analysis of whether the right-of-way is in the best interest of the landowners is appropriate in those circumstances.

*Comment—Other definitions:* A few commenters suggested defining terms such as “allotted land.”

*Response:* The term “allotted land” is not defined because it is not used in the regulation.

*Comment:* A few commenters had questions about or expressed confusion about PR 169.003(a), specifying that BIA will not condition its grant of a right-of-way on the applicant having obtained a right-of-way from the owners of any fee interests, and that BIA will not take any action on a right-of-way across fee, State or Federal land not under BIA’s jurisdiction.

*Response:* BIA grants rights-of-way only with respect to trust or restricted interests and examines only the trust or restricted interests when determining whether the owners of the majority of the interests consent. It is the applicant’s responsibility to obtain the permission of the owners of the fee interests; BIA is not involved in that process. BIA will not condition its grant of a right-of-way on the applicant having obtained a right-of-way from the owners of any fee interests. The rule requires notice to and consent from owners of trust or restricted interests, as opposed to fee interests. The final definition of “BIA land” clarifies that land not under BIA’s jurisdiction is not included.

*3. Life Estates (PR 169.003(b)/FR 169.109, FR 169.112, FR 169.121, FR 169.122, FR 169.415)*

*Comment:* A commenter stated that the provisions on life estates are “extremely confusing” and should be rewritten. Another commenter stated that the provisions on life estates should be in their own section, rather than as a part of § 169.3.

*Response:* The final rule addresses these comments by redrafting life estate provisions and placing them in new,

separate sections addressing only life estates.

*Comment:* One commenter asserted that the entire section should be deleted because it violates the rules of co-tenancy. This commenter also stated that title vests in the remaindermen under a will as of the date of the death, title passes from the decedent to the remaindermen at that time, and the remaindermen take ownership subject to the life estate. This commenter stated that the estates are concurrent, and that the perspective that there is first a life estate and then a remainder is legally incorrect and would create a hole in the chain of title, rendering it unmarketable. The commenter further stated that the proposed provision stating that BIA will not join in a right-of-way granted by life tenants is an announcement that the Department intends to violate 25 U.S.C. 348, which requires Secretarial approval of all contracts affecting allotted land.

*Response:* This comment is based on a provision in the proposed rule that would have allowed a life tenant to grant a right-of-way without consent of the remaindermen or approval of the BIA. That provision has been deleted in the final rule.

*Comment:* Several commenters, including tribal commenters, stated that the life estate provisions should distinguish between Indian and non-Indian life tenants to provide protection to Indian life tenants. The commenters stated that the rule does not explain how BIA will balance the interests of an Indian life tenant and Indian remaindermen. One commenter stated that BIA owes a trust responsibility to everyone with an interest in trust property, including a life tenant. These commenters assert that the rule establishes that BIA will actively breach its trust responsibility to Indian life tenants. For example, the provision saying that BIA will not enforce or consent to a right-of-way where the life tenant holds all the trust or restricted interests in the tract, assumes the life tenant is non-Indian when, in fact, most are Indians to which BIA owes a trust responsibility.

*Response:* The final rule does not distinguish between Indian and non-Indian life tenants because BIA's trust responsibility is not based on whether someone is Indian, but rather stems from the interest in trust or restricted (Indian) land. BIA is responsible for enforcing the terms of the right-of-way only on behalf of the remaindermen because BIA's trust responsibility is to the remaindermen because they are the beneficial owners of the Indian land, rather than the life tenants.

#### a. Life Estates—Protection of Land

*Comment:* A tribal commenter stated that the rule should clarify whether BIA owes a trust responsibility to the co-owners of the holder of the life estate, because it states that it does not owe rights to other parties but leaves this category of parties vague.

*Response:* Where the life estate covers only a fractional interest in the property, the other co-owners are owners of the trust or restricted property to which BIA owes any trust responsibility.

*Comment:* A tribal commenter stated that BIA approval should be required regardless of whether the life estate is over the entire parcel of Indian land or not, because BIA's approval is required to protect the remainder interests and ensure no permanent injury to the Indian land, in either case.

*Response:* The final rule requires BIA approval regardless of whether the life estate covers the entire parcel of Indian land or not.

*Comment:* A tribal commenter stated that provisions saying that the BIA “may monitor the use of the land” should instead provide that the BIA “shall monitor the use of the land.”

*Response:* The final rule continues to provide that BIA “may” monitor use of the land to account for any situations in which BIA determines monitoring is not necessary.

*Comment:* A tribal commenter stated that the rule does not provide for a process for the landowner to appeal to BIA for intervention as trustee to prevent “permanent injury” to the land that may occur through the life tenant granting the right-of-way. Another commenter stated that the term “permanent injury” should be explained, to avoid cases where a pipeline abandoned in place is considered a “permanent injury.”

*Response:* Owners may contact BIA to express concerns regarding the potential for permanent injury either formally or informally. In order to maintain flexibility, the final rule does not establish a specific process for this communication. The determination of whether a “permanent injury” has occurred is made on a case-by-case basis.

#### b. Life Estates—Consent

*Comment:* A commenter requested clarification that the life tenant “consent” to, rather than “grant,” the right-of-way.

*Response:* The final rule clarifies that the life tenant “consents” to the right-of-way.

*Comment:* A few commenters requested clarification that consent is

required from the owners of a majority interest, rather than from a majority of the owners.

*Response:* The final rule clarifies that consent is required from the owners of a majority interest.

*Comment:* One commenter stated that the provisions are consistent with the Interior Board of Indian Appeals (IBIA) decision in *Adakai v. Acting Navajo Regional Director, BIA*, 56 IBIA 104 (2013), requiring a consent of the majority of the remaindermen, but recommended the intent be clarified by adding after the first sentence of paragraph (b): “Except as provided in clauses 1(v) and (3), we will not grant or approve a right-of-way for land subject to a life estate. A life tenant, however, may grant a right-of-way as provided in this paragraph (b).”

*Response:* The final rule requires the consent of both the life tenants and remaindermen, in order to ensure protection of the Indian land for the remaindermen.

*Comment:* A few commenters suggested, as a simpler approach, allowing the life tenant to consent for the full term of the right-of-way, regardless of the duration of the life estate or number of future, unknown remaindermen, and requiring the grantee to pay full compensation for the right-of-way to the life tenant. These commenters asserted that no consent of the remaindermen is required and that the life tenants should have the ability to consent and bind the remaindermen, although one commenter stated that this approach presents “enormous administrative hurdles” when a tract of land held by a life tenant is part of a right-of-way project encompassing other tracts where consent, monitoring, and enforcement are required. In contrast, a tribal commenter stated that the Indian landowner should be required to consent, regardless of whether there is a life estate on the land. One commenter stated that the IBIA's previous determination that rights-of-way must be consented to by both life tenants and remaindermen was based on the silence in the current regulations, and asserted that the new regulations should allow life tenants to consent to issuance of a right-of-way that may exceed the duration of the life estate.

*Response:* BIA may not, by regulation, allow a life tenant to grant an interest that is greater than what the life tenant holds (*i.e.*, an interest for longer than the duration of the life tenant's life); therefore, the life tenant may not consent to the full term of the right-of-way, and may consent only to the term of his or her life. The final rule simplifies the approach by requiring the

consent of the remaindermen as well, for the full term of the right-of-way.

*Comment:* One commenter stated that the rule allows life tenants to encumber land with a right-of-way that may be permanent and impossible to undo.

*Response:* The final rule requires the consent of remaindermen identifiable at the time of the application; with this consent, the right-of-way grant continues even when the life estate ends (assuming the overall term of the life estate has not expired).

*Comment:* A tribal commenter requested clarification in paragraph (b)(2) as to whether the applicant must obtain the consent of a majority of the co-owners including or excluding the life tenant's consent in the calculation. The commenter suggested that the life tenant's consent should be included in the calculation.

*Response:* The life tenant's consent is required in addition to the consent of the owners of a majority of the remainder interests.

*Comment:* A commenter stated that if the life tenant's consent was not needed to meet the majority consent, then the right-of-way should not terminate upon the end of the life estate.

*Response:* Because the final rule requires consent of both the life tenant and remaindermen, this comment is no longer applicable.

#### c. Termination of Life Estates

*Comment:* Several commenters noted the administrative difficulties, uncertainties, and increased costs caused by a right-of-way ending when the life estate ends. Several commenters suggested providing that upon the end of the life estate, the right-of-way continues and the remaindermen receive compensation established for allottees in the original grant, but prorated for the remainder of the right-of-way term.

*Response:* The final rule requires the consent of remaindermen identifiable at the time of the application; with this consent, the right-of-way grant continues even when the life estate ends (assuming the overall term of the life estate has not expired). The final rule addresses the allocation of compensation between the life tenant and remaindermen in § 169.121. Generally this section provides that if a will established the life estate, the terms of the will establishing the allocation will govern. If there is no will provision that controls the allocation, the life tenant and remaindermen may enter into an agreement regarding the allocation. Otherwise, the terms of 25 CFR part 179 apply.

*Comment:* A commenter noted that there may be instances in which the life tenant has rights to encumber the property beyond his or her life, such as when a landowner conveys the property to a third party but retains a life estate and the ability to encumber the property beyond his or her life. In that case, the granting instrument's terms would control and the life tenant may consent to a term beyond his or her life.

*Response:* The final rule covers the overwhelming majority of life estates. If such a situation arises, the BIA will address it on a case-by-case basis, using, if necessary the flexibility in 25 CFR 1.2 to waive the regulations in this Chapter.

#### d. Life Estates—Other Comments

*Comment:* A commenter expressed confusion that the rule requires direct payments to life tenants, but otherwise limits direct payments to landowners, and requested clarification on whether this is intended to apply where the life tenant is non-Indian. Other commenters stated that life tenants should have the option of having the funds deposited in their IIM accounts, if they have one, because otherwise the funds could be subject to levies or garnishment.

*Response:* The final rule requires direct payment to life tenants regardless of whether they are Indian.

*Comment:* A few commenters suggested stating “will or other conveyance document” or “legal instrument” creating the life estate because sometimes a deed creates a life estate.

*Response:* No change is made to the final rule because a deed is considered a conveyance document.

#### 4. When a Right-of-Way Is Needed (PR 169.004)

*Comment:* A few tribal commenters requested clarification that a tribe owning all the interests in a tract need not obtain a right-of-way for that tract.

*Response:* The proposed and final § 169.4(b)(1) state that an Indian landowner that owns 100 percent of the interests in a tract need not obtain a right-of-way grant. No clarification to the rule is necessary, as the definition of “Indian landowner” encompasses tribes.

*Comment:* A tribal commenter requested clarification that an Indian tribe or tribally owned entity that does not own a majority of interests in the tract must obtain a right-of-way with consent of the owners of a majority interest for the tract.

*Response:* The final rule incorporates this clarification. If the tribe already owns the majority of the interests, it need not obtain the consent of the other

fractional owners, but it must notify them of the right-of-way.

*Comment:* A few tribal commenters stated that if a tribe owns a separate legal entity, then the entity should not have to obtain a right-of-way across tribal land under the regulations. These commenters suggested adding an exemption for such legal entities or recognizing the authority of the tribe's governing body to adopt a resolution or other appropriate enactment to allow the tribe and tribally owned and controlled entities to use tribal land without a BIA-approved right-of-way.

*Response:* The final rule allows an entity that is wholly owned and operated by the tribe to use the tribe's tribal land without BIA approval where the tribe submits a resolution authorizing the right-of-way and describing the land across which the right-of-way will cross. This submission is necessary for the Bureau to keep track of authorized users of the Indian land. The Bureau will maintain a copy of the resolution and description in our records.

*Comment:* A tribal commenter requested more specificity as to what “an independent legal entity owned and operated by a tribe” is, noting that it has several enterprises and entities organized through different legal instruments and asking whether these entities must comply with part 169.

*Response:* Whether an enterprise or entity qualifies as “an independent legal entity owned and operated by a tribe” will be evaluated on a case-by-case basis.

*Comment:* One commenter requested adding tribally approved land use agreements, such as tribal land assignments, to the list of those exempted from the regulations. Another commenter requested clarification on what the term “land use agreements” includes.

*Response:* The final rule clarifies at FR 169.4(b) that land use agreements that are exempted from these regulations include tribal land assignments. Such land use agreements may also include permits granted by the Indian landowner for a revocable, non-possessionary right of access for a very short term, for limited use of the land.

*Comment:* A tribal commenter stated that, to encourage development, the rule should allow permitting for utility service to homesites without BIA approval.

*Response:* Generally, a right-of-way or filing of a service line agreement would be required to provide utility service to homesites. Nevertheless, Indian landowners may grant permits to allow a revocable, non-possessionary right of

access for a very short term, for limited use, where there will be no ground disturbance or risk of environmental damage. Examples include allowing a right of access for a cultural ceremony. BIA approval is not necessary for such permits and BIA will not administer or enforce permits on Indian land; the rule does not address permits because permits are appropriate only in very limited circumstances for a very limited term. Any use that requires more certainty in term (*i.e.*, not unilaterally revocable by the landowner) or requires a longer term, as utility infrastructure would, requires a right-of-way or service line agreement or other authorization under § 169.4. BIA may grant permits for use of BIA land, and part 169 will apply to those permits as appropriate. See Section C for more on terms.

*Comment:* Some tribal commenters expressed support for the proposed rule's provision that the right-of-way regulations do not apply to other authorizations to cross Indian land, such as a federally approved lease. The commenter stated that this provision protects a tribe's choice to use the leasing statutes for energy, telecommunication and transportation corridors.

*Response:* The final rule retains these provisions.

*Comment:* One commenter stated that the regulation should exempt anyone travelling on an established State or county road across Indian land from obtaining a right-of-way.

*Response:* A person travelling across Indian land on a road is not obtaining a legal interest in the property, and therefore does not need a right-of-way grant. To the extent the commenter means to ask whether a State or county needs a right-of-way to place a road across Indian land, the road would require the transfer of a legal interest, thus requiring a right-of-way grant.

*Comment:* Several tribal commenters noted that the provision regarding compliance with statute, judicial order, or common law, where access is allowed by such statute, judicial order, or common law, could be misinterpreted to allow for prescriptive easements. Another tribal commenter requested clarification that prescriptive easements or adverse possession through common law, or otherwise, are not permitted on trust land.

*Response:* The final rule replaces "statute, judicial order, or common law" with "law" to address the commenter's concern. No interest in trust land may be acquired by adverse possession. See *Cohen's Handbook on Federal Indian Law* section 15.09[4], at 1604 (2012 ed.). Except as required for access to a

mineral estate or specific authorization from Congress, prescriptive easements are not available on trust land, because trust land generally cannot be divested. See *e.g.*, *Del Rio Drilling Programs v. United States*, 35 Fed. Cl. 186 (1996) (mineral estate remains dominant, and a subsurface owner has a right of reasonable access to the minerals below). This is not specified in the final rule because it does not directly relate to rights-of-way.

*Comment:* One commenter asked whether a right-of-way grant is required for general ingress and egress by a lessee.

*Response:* A right-of-way grant is generally needed if an interest in the Indian land is being transferred. The leasing regulations provide that a lease may address access to the leased premises by roads or other infrastructure, and such roads and infrastructure must comply with 25 CFR part 169, unless otherwise stated in the lease. Roads and other infrastructure within the leased premises are covered by the lease. See 25 CFR 162.019.

*Comment:* A commenter requested clarification on whether "as-built" rights-of-way to correct unauthorized uses of Indian lands could be issued without a land use agreement authorizing use of the Indian land.

*Response:* The intent of the exemption for land use agreements is not to allow what would otherwise require BIA approval to bypass 25 CFR part 169 requirements by calling it a "land use agreement." The intent is to allow for land use agreements such as those authorized by 25 CFR part 84. "As built" rights-of-way would be authorized under 25 CFR part 169.

*Comment:* A tribal commenter suggested the regulations include a provision under which a tribe could elect to dedicate a portion of tribal land for the construction, operation, and maintenance of tribally owned public transportation facilities, such as roads, bridges, and highways, and record that dedication in the appropriate land title and records office. A few tribal commenters suggested adding a new section recognizing that tribes may dedicate their own trust or restricted lands for public transportation, without having to obtain rights-of-way.

*Response:* These regulations do not affect a tribe's ability to dedicate tribal land for certain uses but granting interests in Indian land to third parties would require a right-of-way.

*Comment:* One commenter expressed concern that, by deleting the various types of rights-of-way listed in current § 169.23 (railroad station buildings, depots, machine shops, side tracks,

etc.), one could argue that such uses are no longer covered by the regulation.

*Response:* The final rule covers all uses that fall within final § 169.5, whether listed or not.

*Comment:* A commenter requested excluding "customary and traditional dirt roads" used to access homesites from the need to obtain a right-of-way grant.

*Response:* Customary and traditional dirt roads to access homesites may be addressed in the homesite lease, rather than requiring a separate right-of-way grant.

#### 5. Types of Uses for Rights-of-Way (PR 169.005)

*Comment:* A commenter requested clarification of whether the provision in PR 169.005(a)(4) for "service roads and trails essential to any other right-of-way purpose" is intended to address access across only the same allotment or access across adjacent or nearby Indian land. Another commenter requested that "appurtenant to" replace "essential to" to avoid disputes over what types of service roads and trails are "essential."

*Response:* The question of whether a right-of-way is required for service roads and trails is required is determined on a case-by-case basis. The final rule replaces "essential to" with "appurtenant to" as requested by the commenter.

*Comment:* Commenters requested additions to the list of rights-of-way types part 169 is intended to cover, including: oil and gas facilities such as well pads and associated service roads; pump stations, meter stations and other appurtenant facilities to oil and gas pipelines; and power projects (power plants, substations and receiving stations). A commenter also requested specifying that "oil and gas" includes hydrocarbons, refined products, natural gas liquids and other oil and gas products. One commenter stated that radio, television, and other communication facilities should be added to the list of examples.

*Response:* The final rule adds pump stations, meter stations and other appurtenant facilities to the oil and gas pipeline item. Appurtenant facilities may also include well pads. Whether such facilities will be addressed in the grant depends upon the specific circumstances. The facilities may be included in the overall mineral lease, and therefore addressed in separate mineral leasing regulations. If the facilities are associated with a mineral lease on a split estate (in which the mineral estate and the surface estate are not owned by the same person or entity), then it may be appropriate for

the grant of right-of-way to address the facilities.

The final rule does not add examples of oil and gas products because the term “oil and gas” is broad enough to encompass each of the examples. The final rule does not add power plants, substations and receiving stations to the list of examples because these items may be more appropriately governed by the leasing regulations at 25 CFR part 162 than these rights-of-way regulations. The list of examples includes “telecommunications” lines, which is intended to cover computer, television, radio, and other types of lines for technology used for communication over distances.

*Comment:* One commenter requested an exception from part 169 for temporary access for mineral exploration.

*Response:* The mineral regulations, rather than part 169, address temporary access for mineral exploration and geological and geophysical permits. See 25 CFR parts 211 and 212.

*Comment:* One commenter requested a catch-all provision for the list of examples of rights-of-way such as “any other right-of-way that comes to be recognized as such” to capture any new types of rights-of-way that will arise in the future.

*Response:* The final rule adds a catch-all provision as requested at FR 169.5(a)(13).

*Comment:* One commenter requested that the final rule delete the examples of right-of-way uses and instead stated that the part covers rights-of-way for all linear and non-linear surface uses.

*Response:* The final rule retains the list of examples for guidance.

*Comment:* One power administration commenter requested clarification that a right-of-way includes the right to manage vegetation and conduct emergency and routine maintenance as necessary to maintain safe and reliable electric transmission service. The commenter also requested an appendix to the rule setting out specifically which equipment is included in a transmission system right-of-way and allow for inspection, maintenance, repair, operations, upgrade and replacement of the equipment. The commenter also asked that the description be more specific with regard to electric transmission systems.

*Response:* The final rule adds a new paragraph (b) to § 169.5 to clarify that a right-of-way includes access necessary to manage vegetation and maintain and repair equipment. The final rule does not include an appendix, because the text of the rule specifies that poles, towers, and appurtenant facilities are

included in a transmission right-of-way use, and the new paragraph (b) specifies that inspection, maintenance, and repair are included in the use. With regard to operations, upgrade, and replacement of the equipment, generally these activities would be allowed, but if they expand or change the use of the right-of-way then an amendment to the existing grant or a new right-of-way grant would be required. The final rule adds more specificity to § 169.5(a)'s description of electric transmission, as requested by the commenter.

*Comment:* One commenter stated that any questions as to a right-of-way's validity should be decided in tribal court.

*Response:* Because the rights-of-way are issued by the Federal Government, the proper forum for disputes related to their validity is the Federal administrative agency (Bureau of Indian Affairs, with the possibility for appeal to the Interior Board of Indian Appeals). Appeals from federal administrative decisions are heard in the United States District Courts.

*Comment:* A few commenters read proposed 169.005(b) (now FR 169.6) as allowing prior unperfected and unapproved rights-of-way to be recognized as valid and legal rights-of-way.

*Response:* This provision does not validate or approve existing, unapproved rights-of-way. Any unauthorized use remains unauthorized.

*Comment:* A commenter asked that proposed 169.005(b) (now FR 169.6) state that BIA will act on requests, rather than “grant,” to clarify that the grant of a right-of-way is not automatic.

*Response:* The final rule clarifies at final § 169.6 that BIA will act on requests.

#### 6. Applicability to Existing Rights-of-Way and Applications (PR 169.006/FR 169.7)

*Comment:* A commenter requested that the new regulations not apply to any applications that are pending BIA approval, because applying the new regulations would create legal uncertainty as to the enforceability and effectiveness of those applications. This commenter was particularly concerned that the applicant would be penalized for BIA's delay in approval by being forced to obtain new consents from landowners and resubmit information.

*Response:* Applicants who have already submitted a right-of-way application under the pre-existing regulations, prior to the effective date of the new regulation, would not have to obtain any new consents or resubmit materials for the application as a result

of the new regulations. BIA will review the application under the regulations existing at the time of submission, unless the applicant chooses to have the new regulations apply by withdrawing and resubmitting the application.

*Comment:* Several commenters requested that the rule expressly state that it does not and will not impose any new burdens, limitations, restrictions, or responsibilities on preexisting right-of-way grants issued through other statutory authorities. A commenter requested clarification that the regulations do not apply to railroad rights-of-way granted in perpetuity under specific statutes enacted by Congress in the late 19th century.

*Response:* Rights-of-way under statutes other than 25 U.S.C. 323 exist. Only new grants of rights-of-way must comply with part 169's new provisions for obtaining a right-of-way. Existing approved rights-of-way remain valid under the new regulations. The new provisions of part 169 do not affect the authority of those specific railroad statutes; however, the procedural requirements of the new part 169 will apply to the extent that they do not conflict with the authorizing statute or explicit provisions in the grant. For rights-of-way granted under specific statutory provisions, rather than the general authority in 25 U.S.C. 323, BIA will read the existing statutory requirements and grant provisions in a manner that promotes consistency with the new regulations.

*Comment:* Many commenters opposed the proposed provision stating that the new regulations apply retroactively to existing right-of-way grants except where they “conflict” with the express terms of those grants, and stated that rights-of-way approved prior to the new rule's effective date should not be subject to the new rule. These commenters pointed out that most pre-existing grants are silent on the requirements imposed by the new regulations. For example, a right-of-way grant without a specific provision waiving BIA approval or consent, as was the common practice (because express language was never before required), would now require BIA approval and landowner consent for certain actions (assignments, e.g.). A few commenters asserted that existing rights-of-way grants are property rights. Commenters also stated that BIA cannot legally modify or insert new material terms into existing grants, but must honor the terms as written and the parties' expectations as of the time the grant was issued. These commenters stated that exempting the existing rights-of-way would preserve the integrity of existing

contracts and avoid legal issues for breach of contract, breach of implied duty of good faith and fair dealings, or takings.

With regard to assignments, specifically, several tribal commenters requested that consent and approval always be required because there have been numerous instances in which a right-of-way was assigned with no notification to, or consent of, the tribe, meaning that neither the landowner nor BIA may have record of the authorized user of the Indian land.

*Response:* The new regulations are not intended to replace the original grant or statutory provisions, but the procedural requirements of these new regulations apply to the extent they do not conflict with the original grant or statutory provisions.

In addition, in response to tribal commenters' concerns that, in the past, rights-of-way were assigned without any notification to BIA or the tribe, the final rule establishes a new requirement for the assignee to notify BIA of past assignments to ensure BIA is aware of the identity of the legal occupant of the Indian land in furtherance of meeting its trust responsibilities to protect the Indian land from, for example, trespass. From the perspective of the assignee, this recordation requirement is simply a good business practice to ensure the Department has documentation of the assignee's right to occupy Indian land. The final rule establishes a target deadline of 120 days after the effective date of the regulations for assignees to either provide BIA with documentation of their assignment, or to request an extension of time to provide BIA with such documentation. This requirement is not included in the previous version of the regulations but is imperative to BIA's ability to fulfill its trust responsibilities.

For any right-of-way grant application submitted but not yet approved by the effective date of the regulations, the grantee may withdraw the application and resubmit under the new rule. Otherwise, BIA will review the application under the regulations in existence at the time of submission, but once the right-of-way is granted, procedural provisions of the new rule apply. For example, if the grantee or assignee wants to assign, amend, or mortgage the right-of-way after the effective date of these regulations, the grantee or assignee will have to follow the procedures in this regulation, to the extent that such new processes and requirements do not change the terms of the pre-existing grant or statutory authority. In other words, if the preexisting grant or statutory authority

is silent on a particular procedural requirement, such as an assignment or amendment, the new regulatory provisions concerning that procedure would apply.

Examples of procedural provisions that apply include procedures for obtaining amendments, assignments, mortgages, renewals, and complying with and enforcing rights-of-way grants. However, many current grants include language granting to the grantee and the grantee's assignees; in that case, the grant would contain explicit language allowing the grant to be freely assigned without landowner consent or BIA approval, and that explicit grant language would govern. An example of a non-procedural provision is a regulatory statement of what jurisdiction applies.

The question of whether tribal law or taxes apply to preexisting right-of-way grants after the effective date of the new regulations is not before the Department at this point, but to the extent any preexisting right-of-way is assigned or amended, the provisions of the new regulations govern.

*Comment:* A few commenters stated that the rule should allow for renewals of rights-of-way grants existing prior to these regulations without the need to obtain consent because those older grants may not have addressed the possibility of renewal. Commenters further stated that this new requirement should not be applied retroactively, and that otherwise, this rule will effectively prevent renewal of existing rights-of-way, even when there is no change in use, requiring a survey and full application process.

*Response:* If the original right-of-way was granted prior to the effective date of these regulations and is silent on whether renewals are permitted and under what conditions, then these regulations apply, and the grantee must follow the procedural requirements of these new regulations to obtain a renewal. See Section C for more on renewals.

*Comment:* A few commenters stated that the review and adjustment requirements should not be applied retroactively. The commenters note that the current regulations provide no requirement for review or adjustment.

*Response:* The review and adjustment requirements do not apply retroactively to grants that pre-date these regulations because they are non-procedural (*i.e.*, substantive) provisions that would affect compensation, a core term of the grant; those grants were issued based on the compensation established when they were negotiated and approved.

#### 7. Administration of Regulations by Tribes on BIA's Behalf (PR 169.007/FR 169.8)

*Comment:* One tribal commenter requested that, throughout the regulations, "BIA," "BIA office," and "we" should be revised to clarify that it refers to the tribe in those cases in which the tribe administers real estate services under a Public Law 93-638 contract.

*Response:* The term "BIA" is defined to include tribes acting on behalf of the Secretary or BIA under Indian Self-Determination and Education Assistance Act contracts or compacts.

*Comment:* One commenter stated that tribes do not gain any substantive authority to administer rights-of-way under the new rules because the new rules do not allow tribes to grant, approve, or disapprove a right-of-way document or waiver, cancellation or appeal.

*Response:* The new rules make no change to the scope of functions a tribe may compact or contract for, but does specify which functions may not be contracted or compacted because they are "inherently Federal."

*Comment:* One commenter asked that this section specify that a tribe may require that the applicant negotiate with it as a condition of obtaining tribal consent for the right-of-way.

*Response:* When tribal consent for a right-of-way provision is required, the tribe may require that the applicant negotiate the terms of consent.

*Comment:* One commenter stated that the rule should be clearer on whether BIA or the tribe administers the functions.

*Response:* The final rule clarifies that applicants may check with either the BIA office or the tribal office to determine whether the tribe has compacted or contracted to administer realty functions.

*Comment:* One commenter asserted that tribes are not authorized to compact or contract to administer BIA functions with regard to pipeline rights-of-way because the Indian Self-Determination and Education Assistance Act (ISDEAA) does not specify that program.

*Response:* Realty functions, including administration of rights-of-way, may be compacted or contracted under the ISDEAA. See 25 U.S.C. 450f(a)(1)(A)-(E).

*Comment:* A commenter stated that the term "tribal organization" in this section is unclear as to whether it includes entities such as the telephone authority. Another commenter requested clarification on which officer or entity in the tribe is authorized to

make decisions in administering the compacted or contracted functions.

*Response:* The ISDEAA governs the meaning of “tribal organization” in this section. Tribal law governs which officer or entity is authorized to make decisions on behalf of a tribe.

**8. Laws Applicable to Rights-of-Way Approved Under These Regulations (PR 169.008/FR 169.9)**

*Comment:* A commenter stated that the rule should specify that a right-of-way “use” is interpreted consistently with general common law principles of easements and rights-of-way, and that Federal common law applies except that State law may apply where it is not hostile or aberrant to Federal policy or otherwise frustrates Federal policy.

*Response:* Final § 169.9 clarifies that rights-of-way are generally subject to Federal and tribal law, but not State law.

*Comment:* A commenter noted that the structure of the proposed section is disjointed and causes confusion. Other commenters stated that the section should be deleted because of the risk that the regulations could cause confusion regarding what the law is and is unnecessary.

*Response:* The final rule redrafts this section to address concerns as to its disjointed and confusing nature and also divides the section into two separate sections, one addressing law (FR 169.9), and one addressing jurisdiction (FR 169.10).

**a. State Jurisdiction/State Law**

*Comment:* Several commenters opposed the proposed provision allowing parties to consent to the applicability of State law, stating that it is a waiver of sovereign immunity and that landowners may inadvertently choose State law by signing a document without full knowledge of the consequences.

*Response:* Proposed paragraph (c) was a choice of law provision that was intended to clarify that where a vacuum of applicable Federal and tribal law exists, the landowners may choose to apply State law. The final rule deletes this provision due to commenters’ opposition.

*Comment:* Several commenters opposed the proposed provision indicating that State law applies if the tribe, Congress, or a Federal court has made it expressly applicable. Several commenters stated that this provision invites a broad reading, allowing State law to apply in nearly every circumstance. One commenter stated that the *Kennerly* case forecloses the application of State jurisdiction over

Indian land subject to a right-of-way, whether by a tribal member or a tribe absent a statute conferring jurisdiction. One commenter suggested the provision instead state that rights-of-way are not subject to State law “except to the extent allowable under Federal law and consistent with Indian treaty rights and tribal sovereignty.”

*Response:* To address the comments, the final rule deletes the specifics on when State or local law may apply and instead provides that “generally” State and local law do not apply. The provision allowing landowners to agree to the application of State law was intended for situations in which neither the tribe nor Federal law address a specific topic, and the tribe chooses State law to fill the vacancy (*e.g.*, if a tribe chooses to apply State law regarding cable access). The proposed provision regarding Congress was included because there are Federal statutes conferring jurisdiction over Indian land subject to a right-of-way (*e.g.*, Maine Indian Claims Settlement Agreement of 1980 or Pub. L. 83–280). If State law is made applicable by Federal or tribal law, these instances are covered by the other provisions establishing the applicability of Federal and tribal law.

*Comment:* Some commenters stated that the new regulation conflicts with established law (in *Strate*) because tribal law and jurisdiction does not presently apply to lands subject to a right-of-way.

*Response:* The new regulation provides that future rights-of-way will explicitly state that the grant does not diminish the tribe’s jurisdiction.

*Commenter:* Some commenters stated that this section truncates State jurisdiction over Indian lands, violating the Federalism executive order.

*Response:* The Federalism executive order addresses the balance of authority between the Federal government and States; it is inapplicable here because this rule addresses the balance of authority between tribal and State law.

**b. Tribal Law**

*Comment:* A few commenters stated that proposed paragraph (a) is erroneous in stating that rights-of-way are subject to tribal law because Congress preempted any application of tribal law to transportation by rail and State laws apply to utility service on tribal lands. A commenter also noted that some tribes have relinquished jurisdiction by treaty.

*Response:* Paragraph (a), as well as other paragraphs in this section, do not expand the applicability of tribal law; rather it clarifies that the grant of a

right-of-way will not limit any existing applicability in any way.

*Comment:* Several tribal commenters stated that the proposed paragraph (a)(2) should simply say that rights-of-way are subject to tribal law “except to the extent that tribal law is inconsistent with applicable Federal laws” and delete the provisions in proposed paragraph (b) allowing for tribal law to modify the regulations under certain circumstances. Tribal commenters stated that the provisions are too restrictive and disrespect tribal sovereignty. Additionally, non-tribal commenters expressed concerns that tribal regulations may change without any notice or consent of the right-of-way grantee. Another stated that if the provision is not removed, it should at least clarify that the tribal law will not be effective if it conflicts with other binding Federal laws. One tribal commenter stated that allowing the tribal law to supersede unless the tribe’s law would “conflict with our general trust responsibility” provides no guidance. Some tribal commenters stated that the regulation should provide that tribal law “presumptively applies.” A few commenters stated that tribal laws should apply to all land within the reservation (both tribal and allotted); otherwise, an individual could consent to a right-of-way that is in violation of tribal law.

Some commenters opposed the applicability of tribal law under any circumstance because a grantee that needs to obtain rights-of-way across several tribes’ lands could be subjected to multiple, and possibly conflicting requirements, undermining the purpose of the rule to streamline the process. A tribal commenter also suggested deleting the requirement that the tribe provide BIA with notice that the law supersedes because this could become a technical glitch that would hinder application of tribal laws that would otherwise be applicable.

*Response:* In response to these comments regarding the uncertainty of whether tribal law would supersede or modify Federal law, the final rule simplifies this provision to state that rights-of-way are subject to tribal law except to the extent that the tribal law is inconsistent with applicable Federal law. Tribes are sovereigns with the inherent power to make laws. It is the responsibility of anyone doing business within a particular jurisdiction to know the law of that jurisdiction.

*Comment:* One commenter stated that the phrase “except to the extent that those tribal laws are inconsistent with these regulations or other applicable Federal law” should be deleted because

it is too confusing, and is unnecessary given that it has already been established that Federal law applies.

*Response:* The final rule retains this necessary provision because there may be circumstances in which tribal law would apply but for the fact that the tribal law is inconsistent with Federal law.

### c. Tribal Jurisdiction

*Comment:* A few tribal commenters suggested line edits to this section to clarify that the tribe has jurisdiction over persons, as well as activities, and to change “not inconsistent with” to “within” the right-of-way. Commenters also stated that people and activities should be included in the scope of things over which the tribe’s jurisdiction remains unaffected.

A few other commenters requested the rule instead expressly describe circumstances in which the tribe’s jurisdiction does not extend to lands subject to a right-of-way, such as taxation of non-tribal members on fee land within a reservation. Another commenter stated that the rule should reflect that tribes have “virtually no authority over non-member conduct.”

*Response:* The final rule does not grant or add any jurisdiction to tribes, but establishes that the grant of right-of-way does not diminish the tribe’s jurisdiction. The final rule also clarifies that the grant of right-of-way does not affect the tribe’s jurisdiction over people and activities, in addition to land. A grant of right-of-way is merely a grant of a specific use of the land for a specified period of time within the confines of the grant document. The grant does not in any way diminish tribal sovereignty over those lands.

*Comment:* A commenter suggested deleting the introduction to proposed paragraph (e) because it suggested a tribe might cede tribal jurisdiction in its consent to a right-of-way, while *Kennerly* established that this can be done only through an Act of Congress.

*Response:* The final rule deletes the identified provision because, as the commenter points out, the U.S. Supreme Court has determined that a tribe may not cede jurisdiction without an Act of Congress. See *Kennerly v. District Court*, 400 U.S. 423 (1971).

*Comment:* One tribal commenter stated that the regulations should remind the public of the basic principle of Indian law that tribes may negotiate a right-of-way without including State regulatory bodies.

*Response:* While the commenter is correct, it is not necessary to state so in the regulation.

*Comment:* A commenter stated that proposed paragraph (e)’s language that the tribe has jurisdiction over those “who enter into consensual relationships” does not apply in the context of right-of-way grants because case law has established that grantees are not in a “consensual relationship” with the tribe by virtue of the right-of-way grant. Other commenters suggested that the provision stating that the regulation does not limit the tribe’s inherent sovereign power to exercise civil jurisdiction over non-members “who enter into consensual relationships” with the tribes improperly limits the tribes’ sovereign power by implying that the *Montana* analysis extends beyond fee land.

*Response:* The proposed language regarding a consensual relationship was derived from the decision in *Montana v. United States*, 450 U.S. 544, 565 (1981). As commenters pointed out, *Montana*’s general rule limiting tribal authority over nonmembers’ activities and its two exceptions, including the consensual relationship exception, is limited to non-Indian fee land. 450 U.S. at 557. See also *Strate v. A-1 Contractors*, 520 U.S. at 453 (describing *Montana*’s “main-rule and exceptions” as “[r]egarding activity on non-Indian fee land”); *Atkinson Trading Co. v. Shirley*, 532 U.S. 645, 654 (2001) (referring to “*Montana*’s general rule that Indian tribes lack civil authority over nonmembers on non-Indian fee land”); *Water Wheel Camp Recreational Area, Inc. v. LaRance*, 642 F.3d 802, 813 (9th Cir. 2011) (noting that “*Montana* ordinarily applies only to non-Indian Land”). The *Montana* court recognized that a tribe may regulate nonmembers’ activities “on land belonging to the [tribe] or held by the United States in trust for the [tribe].” 450 U.S. at 557. For this reason, the final rule eliminates the “consensual relationship” language and instead states simply that the regulations do not limit the tribe’s inherent sovereign power to exercise civil jurisdiction over non-members on Indian land. *Plains Commerce Bank v. Loving Family Land & Cattle Co.*, 554 U.S. 316, 327–28 (2008). This statement confirms that the grant of right-of-way preserves any pre-existing tribal authority.

Even if *Montana*’s rule and exceptions do apply, we disagree with the commenters that a tribe is not in a consensual relationship with a right-of-way grantee on tribal trust or restricted land. Under *Montana*, an Indian tribe “may regulate, through taxation, licensing, or other means, the activities of nonmembers who enter consensual relationships with the tribe or its

members, through commercial dealing, contracts, leases, or other arrangements.” 450 U.S. at 565. As explained above, and required by the 1948 Act, tribal consent is required for the right-of-way. Therefore, the consensual relationship exception applies.

*Comment:* Several commenters asserted that the tribe has no jurisdiction over right-of-way land or over non-Indians, pointing to the decision in *Strate* for the premise that land subject to a right-of-way is the equivalent of fee land.

*Response:* As described above, the fact pattern, and, therefore, the cited holding, in *Strate* does not apply to rights-of-way granted under these regulations because the regulations and grants establish continued tribal jurisdiction over the granted land. *Strate* does confirm, however that “where tribes possess authority to regulate the activities of nonmembers, civil jurisdiction over disputes arising out of such activities presumptively lies in the tribal courts.” 520 U.S., at 453 (brackets and internal quotation marks omitted).

*Commenter:* One commenter suggested that proposed paragraph (e)(5), regarding the character of the land as Indian country under 18 U.S.C. 1151, should add “as interpreted and supplemented by Federal case law.”

*Response:* The final rule does not add this modifier because it is unnecessary. Whether land is “Indian country” is a legal question.

*Comment:* One commenter stated their opposition to the tribe regulating allotted lands, and asserted that, under *Strate*, allotted or other land subject to a right-of-way grant is not subject to the tribe’s jurisdiction.

*Response:* The right-of-way grant does not affect the tribe’s jurisdiction over the land. If the land is within the boundaries of the tribe’s reservation, then the tribe has jurisdiction, regardless of whether a right-of-way has been granted. See *Cohen’s Handbook on Federal Indian Law* section 4.01[2][c], at 216–218 (2012 ed.).

*Comment:* A few commenters noted that proposed paragraph (e)(2) seems to assert that the tribe has the power to tax trust land, and instead should be limited to allowing the tribe to tax improvements and activities.

*Response:* This section is simply clarifying that the regulations do not affect any pre-existing jurisdiction that the tribe may have. See *Merrion v. Jicarilla*, 455 U.S. 130 (1982); *Cohen’s Handbook on Federal Indian Law* section 8.01[1], at 676 (2012 ed.) (“Indian tribes have the power to law and collect taxes, subject to certain

exceptions with respect to non-Indians”).

*9. Taxes Applicable to Rights-of-Way Approved Under These Regulations (PR 169.9/FR 169.11)*

*Comment:* Several commenters supported the proposed rule’s affirmation of tribes’ exclusive and continuing sovereign authority to tax improvements and activities on lands subject to rights-of-way. These commenters suggested the final rule require that the right-of-way applications and documents include references to this section and describe the basis for this section to reinforce the Department’s position. One commenter recommended that the regulations prohibit State taxation of any compensation the tribe receives for its right-of-way and any pass-through to the tribe or tribal members. This commenter noted that if a State requires a tribe to pay back any of the compensation it receives for a right-of-way, the State is effectively circumventing the compensation requirement, benefitting, for example, a rural electric cooperative at the expense of the tribal beneficiaries. One commenter stated that the U.S. Supreme Court has ruled that certain State taxes may apply to utilities that operate within Indian rights-of-way, pointing to *Wagon v. Prairie Band of Potawatomi Nation*, 546 U.S. 95 (2005).

*Response:* The final rule at § 169.125(c) adds requirements for the right-of-way documents to include references to the regulatory section on taxation. Tribes have inherent plenary and exclusive power over their citizens and territory, which has been subject to limitations imposed by Federal law, including but not limited to Supreme Court decisions, but otherwise may not be transferred except by the tribe affirmatively granting such power. See *Cohen’s Handbook of Federal Indian Law*, 2012 Edition, section 4.01[1][b]. The U.S. Constitution, as well as treaties between the United States and Indian tribes, executive orders, statutes, and other Federal laws recognize tribes’ inherent authority and power of self-government. See *Worcester v. Georgia*, 31 U.S. 515 (1832); *U.S. v. Winans*, 198 U.S. 371, 381 (1905) (“[T]he treaty was not a grant of rights to the Indians, but a grant of rights from them—a reservation of those not granted.”); *Cohen’s Handbook of Federal Indian Law*, 2012 Edition, section 4.01[1][c] (“Illustrative statutes . . . include [but are not limited to] the Indian Civil Rights Act of 1968, the Indian Financing Act of 1974, the Indian Self-Determination and Education Assistance Act of 1975 . . . [and] the

Tribe Self-Governance Act . . . In addition, congressional recognition of tribal authority is [also] reflected in statutes requiring that various administrative acts of . . . the Department of the Interior be carried out only with the consent of the Indian tribe, its head of government, or its council.”); *Id.* (“Every recent president has affirmed the governmental status of Indian nations and their special relationship to the United States”).

Section 5 of the Indian Reorganization Act, 25 U.S.C. 465, preempts State and local taxation of permanent improvements on trust land. See *Confederated Tribes of the Chehalis Reservation v. Thurston County*, 724 F.3d 1153, 1157 (9th Cir. 2013) (citing *Mescalero Apache Tribe v. Jones*, 411 U.S. 145, 158 (1973) (“use of permanent improvements upon the land is so intimately connected with use of the land itself that an explicit provision relieving the latter of state tax burdens [25 U.S.C. 465] must be construed to encompass an exemption for the former”). Similarly, section 465 preempts state taxation of rent payments by a lessee for leased trust lands, because “tax on the payment of rent is indistinguishable from an impermissible tax on the land.” See *Seminole Tribe of Florida v. Stranburg*, No. 14–14524, \*13–\*17, n.8 (11th Cir. 2015).

In addition, with a backdrop of “traditional notions of Indian self-government,” Federal courts have applied a balancing test to determine whether State taxation of non-Indians engaging in activity or owning property on the reservation is preempted. *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 143 (1980). The *Bracker* balancing test requires a particularized examination of the relevant State, Federal, and tribal interests. In the case of rights-of-way on Indian lands, the Federal and tribal interests are very strong. *Confederated Tribes of the Chehalis Reservation v. Thurston County*, 724 F.3d at 1157; see also *Michigan v. Bay Mills Indian Community*, 134 S. Ct. 2024, 2043 (2014) (Sotomayor, J., concurring) (determining that “[a] key goal of the Federal Government is to render Tribes more self-sufficient, and better positioned to fund their own sovereign functions, rather than relying on Federal funding”).

The Federal statutes and regulations governing rights-of-way on Indian lands occupy and preempt the field of Indian rights-of-way. The Federal statutory scheme for rights-of-way on Indian land is comprehensive, and accordingly precludes State taxation. State taxation would undermine careful work of

Federal actors analyzing the best interests of tribal beneficiaries under the trust responsibility.

The Federal regulatory scheme is pervasive and leaves no room for State law. Federal regulations cover all aspects of rights-of-way: Whether a party needs a right-of-way grant to authorize possession of Indian land; how to obtain a right-of-way grant; how a prospective grantee identifies and contacts Indian landowners to survey and negotiate for a right-of-way grant; consent requirements for a right-of-way and who is authorized to consent; what laws apply to rights-of-way; employment preference for tribal members; combining tracts with different Indian landowners in a single right-of-way grant; trespass; emergency action by us if Indian land is threatened; appeals; documentation required in approving, administering, and enforcing rights-of-way; right-of-way grant duration; mandatory grant provisions; construction, ownership, and removal of permanent improvements, and plans of development; legal descriptions of the land subject to a right-of-way; amount, time, form, and recipient of compensation (including non-monetary rent) for rights-of-way; valuations; bond and insurance requirements; Secretarial approval process, including timelines, and criteria for granting rights-of-way; recordation; consent requirements, Secretarial approval process, criteria for approval, and effective date for grant amendments, assignments, subleases, and mortgages; investigation of compliance with the terms of a right-of-way grant; negotiated remedies; late payment charges or special fees for delinquent payments; allocation of insurance and other payment rights; Secretarial cancellation of a grant for violations; and abandonment of the premises subject to a right-of-way grant.

Right-of-way grants allow Indian landowners to use their land profitably for economic development, ultimately contributing to tribal well-being and self-government. Assessment of State and local taxes would obstruct Federal policies supporting tribal economic development, self-determination, and strong tribal governments. State and local taxation also threatens substantial tribal interests in effective tribal government, economic self-sufficiency, and territorial autonomy. It is unequivocally the policy of the United States to attract economic development to Indian lands. State taxation can undermine the economic attractiveness of a right-of-way across Indian land. It can also effectively undermine the ability of a tribe, as a practical matter, to impose its own taxation. Consenting

to rights-of-way on trust or restricted land is one of several tools, including entering into leases, that animate “the traditional notions of sovereignty and [ ] the federal policy of encouraging tribal independence.” *Bracker*, 448 U.S. at 145 (citing *McClanahan v. Arizona State Tax Comm’n*, 411 U.S. 164, 174–75 (1973)). The granting of rights-of-way on trust or restricted lands facilitates the implementation of the policy objectives of tribal governments through vital residential, economic, and governmental services. Tribal sovereignty and self-government are substantially promoted by rights-of-way under these regulations, which require significant deference, to the maximum extent possible, to tribal determinations that a grant provision or requirement is in its best interest. See Joseph P. Kalt and Joseph William Singer, *The Native Nations Institute for Leadership, Management, and Policy & The Harvard Project on American Indian Economic Development*, Joint Occasional Papers on Native Affairs, *Myths and Realities of Tribal Sovereignty: The Law and Economics of Indian Self-Rule*, No. 2004–03 (2004) (“economically and culturally, sovereignty is a key lever that provides American Indian communities with institutions and practices that can protect and promote their citizens interests and well-being [and] [w]ithout that lever, the social, cultural, and economic viability of American Indian communities and, perhaps, even identities is untenable over the long run”).

Another important aspect of tribal sovereignty and self-governance is taxation. Permanent improvements and activities on the premises subject to a right-of-way and the interest itself may be subject to taxation by the Indian tribe with jurisdiction over the leased property. The Supreme Court has recognized that “[t]he power to tax is an essential attribute of Indian sovereignty because it is a necessary instrument of self-government and territorial management.” *Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130, 137 (1982). State and local taxation of grantee-owned improvements, activities conducted by the grantee, and the right-of-way interest also has the potential to increase project costs for the grantee and decrease the funds available to the grantee to compensate the Indian landowner. Increased project costs can impede a tribe’s ability to attract non-Indian investment to Indian lands where such investment and participation are critical to the vitality of tribal economies. An increase in project costs is especially damaging to

economic development on Indian lands given the difficulty Indian tribes and individuals face in securing access to capital. A 2001 study by the U.S. Department of the Treasury found that Indians’ lack of access to capital and financial services is a key barrier to economic advancement. U.S. Dept. of the Treasury, Community Development and Financial Institutions Fund, *The Report of the Native American Lending Study at 2* (Nov. 2001). According to the report, 66 percent of survey respondents stated that private equity is difficult or impossible to obtain for Indian business owners. *Id.*

Tribes may contractually agree to reimburse the non-Indian grantee for the expense of the tax, resulting in the economic burden of the tax ultimately being borne directly by the tribe. Accordingly, the very possibility of an additional State or local tax has a chilling effect on potential grantees as well as the tribe that, as a result, might refrain from exercising its own sovereign right to impose a tribal tax to support its infrastructure needs. Such dual taxation can make some projects less economically attractive, further discouraging development in Indian country. Economic development on Indian lands is critical to improving the dire economic conditions faced by American Indians and Alaska Natives. The U.S. Census Report entitled *We the People: American Indians and Alaska Natives in the United States*, issued February 2006, documented that a higher ratio of American Indians and Alaska Natives live in poverty compared to the total population, that participation in the labor force by American Indians and Alaska Natives was lower than the total population, and that those who worked full-time earned less than the general population. See also U.S. Census American Community Survey Brief: *Poverty Rates for Selected Detailed Race and Hispanic Groups by State and Place: 2007–2011* (Issued February 2013).

In addition, Congress specifically allowed for State taxation of rights-of-way on Indian land in other instances, such as at 25 U.S.C. 319. The fact that Congress did not specifically authorize State taxation at 25 U.S.C. 323 evidences that it did not intend for rights-of-way granted under that authority to be taxable by the State. Indeed, to the extent that the lack of a specific authorization for State taxation creates an ambiguity, the Department expressly determines, for all the reasons stated above, that State taxation is not authorized under 25 U.S.C. 323 and would substantially undermine the statutory scheme.

*Comment:* One State commenter stated that it addresses the dual taxation issue by entering into intergovernmental agreements with the tribes, whereby the State collects the tax and shares the revenue with the tribes. The State expressed its concern that if the rule removes State jurisdiction to tax projects in rights-of-way, then tribes will have to undertake the expensive auditing and tax collection functions, and the uniformity of intergovernmental agreements would be lost.

*Response:* Nothing in these regulations precludes tribes, States, and local governments from entering into cooperative agreements to address taxation and regulatory issues. The Department encourages such cooperative agreements.

*Comment:* One commenter requested clarification that State or local governments may not assess a tax, fee, assessment, etc., on materials used or services performed in constructing improvements in rights-of-way.

*Response:* The final rule’s term “activities” is intended to include, among other things, materials used or services performed in constructing improvements in the right-of-way.

*Comment:* A few commenters stated that certain individuals or entities should not be subject to taxation, such as when a State, county, city, other tax-exempt entity, or allottee is making the improvements, participating in the activities, or holding the possessory interest.

*Response:* The final rule does not change the scope of individuals and entities that a tribe may tax, but merely recognizes explicitly this authority where it exists.

*Comment:* One commenter noted that “possessory interest” should instead be “right-of-way interest.”

*Response:* The final rule replaces “possessory interest” with “right-of-way interest” in response to this comment.

*Comment:* One commenter stated that by prohibiting State taxation on rights-of-way on Indian land, the rule does not guarantee that tribes commensurately gain taxing authority, but rather opens a jurisdictional vacuum. The commenter stated that a vacuum would be detrimental to the public as a whole and tribal members who live near rights-of-way.

*Response:* The rule does not create a jurisdictional vacuum, as tribes may tax within their jurisdiction; it is up to the tribe whether to exercise that taxing jurisdiction.

*Comment:* A few commenters stated that the proposed provisions regarding improvements being subject to taxation by tribes are unnecessary and should be

deleted, because they could be read to expand tribes' taxing authority rather than just preserve taxing authority where it already exists.

*Response:* The final rule combines the proposed provisions into one comprehensive provision at paragraph (b) addressing tribal taxation of improvements. The final rule does not change the substance of the proposed rule. The commenters are correct that this provision is intended to preserve tribal taxation authority. The Department has determined that no change is necessary to the proposed language, that improvements "may be subject to taxation by the Indian tribe," because this language states that such authority may exist without providing independent authority for taxation.

*Comment:* A few commenters stated that proposed § 169.009's use of the phrase "subject only to Federal law" is ambiguous. One said it could be read to exclude tribal law. Another commenter asked specifically whether any "fee, tax, assessment" under this section would include State and local income taxes, gross receipt taxes, payroll taxes, and personal property taxes. A few commenters stated that there are Federal court decisions upholding State taxes on interests or activities in a right-of-way, including *Agua Caliente Band of Mission Indians v. Riverside County*, 442 F.2d 1184 (9th Cir. 1971) and *Fort Mojave Tribe v. San Bernardino County*, 543 F.2d 1253 (9th Cir. 1976). One commenter stated that the rule should clarify that Federal court decisions' precedential weight should be limited to rights-of-way granted before the effective date of the revised regulations.

*Response:* To clarify, the phrase "subject to" in final rule § 169.11 (and PR 169.009) means that State or political subdivisions of States may not propose fees, taxes, assessments, etc., unless Federal law provides otherwise. Federal law includes, but is not limited to, Federal statutes, Federal regulations, treaty provisions, Executive orders, or Federal case law. Each fee, tax, and assessment is subject to an analysis under Federal law, including any applicable Federal case law precedent. The Department agrees that Federal case law issued prior to these regulations may have limited precedential weight because they did not have the benefit of the Department's analysis under *Bracker*.

*Comment:* One commenter stated that there is already extensive Federal regulation over the national power grid, and to the extent the rule's provisions could authorize new taxes on electric transmission services, it could interfere with national energy policy by adding

costs to ratepayers. Another commenter stated that the rule extends beyond the Department' authority by unnecessarily complicating jurisdictional issues on Indian land. These and other commenters stated that the rule is contrary to current practices in which utilities pay county property taxes for facilities located on Indian lands. One commenter asked whether the county would be subject to enforcement under this rule for imposing taxes.

*Response:* The final rule does not authorize taxation by tribes, States or political subdivisions of States, but preserves the tribe's ability to tax and states the Federal position in the *Bracker* balancing test on State taxation. While electric transmission may be subject to taxation by the tribe, a utility need not pay county property taxes for facilities that are outside the county's jurisdiction (*i.e.*, on Indian land). A county that imposes taxes on a utility within a right-of-way on Indian land is not subject to enforcement under this rule because it is not a party to the right-of-way.

*Comment:* A few commenters stated that a tribe's imposition of taxes upon non-members' interests or activities in a right-of-way is presumptively invalid, citing *Atkinson Trading Co. v. Shirley*, 532 U.S. 645, 659 (2001).

*Response:* The case cited by the commenter for this proposition related to fee land. As described above, trust or restricted land that is subject to a right-of-way remains trust or restricted land and it does not become fee land if the tribe reserves its jurisdiction over the land.

*Comment:* One commenter suggested revising this section to state simply that taxes may be assessed if permitted by applicable law on land, improvements, and activities.

*Response:* The final rule retains the substance of the proposed provisions on taxation, rather than taking the commenter's suggestion, in order to explain the strong Federal and tribal interests against State and local taxation.

*Comment:* One commenter stated that, if the rule intends to alter the balance under the *Bracker* test, then it will impact the abilities of State and tribal governments to impose taxes, which is contrary to the statement in the Federalism section stating that the rule has no substantial direct effect on the States, the relationship between the national government and the States, or distribution of power. Another commenter stated that the Department should notify and consult with affected States before issuing a final regulation if it preempts State taxing authority.

*Response:* The Federalism analysis addresses the balance of power between the Federal government and States. The balance of power between tribal governments and States is outside the scope of Federalism. As noted above, States commented on the proposed rule, including on this provision.

*Comment:* One commenter questioned how any structure within a right-of-way for a term less than an indefinite term could be considered a "permanent improvement."

*Response:* The final rule adds a definition for permanent improvement to clarify its meaning; it is not necessary that the improvement be actually permanent, but that it be attached to (or in) the land.

*Comment:* One commenter stated that the tribe cannot tax the land because trust and restricted lands are not subject to taxation.

*Response:* The regulation addresses taxation of activities and interests, rather than taxation of the land itself.

#### 10. Notice of Rights-of-Way (PR 169.010/FR 169.12)

*Comment:* One commenter stated that the term "affecting" for Indian land is ambiguous and could be interpreted in an overly broad manner in this section to require notice of actions on non-Indian lands.

*Response:* The final rule changes "affecting" to "over or across" to clarify that the notice to Indian landowners is triggered for rights-of-way actions on or across their Indian land. The final rule also replaces the term "affecting" and "on or across" in other sections throughout the rule in response to this comment.

*Comment:* Several commenters opposed notifying individual Indian landowners by constructive notice. These commenters stated that every landowner is entitled to actual notice of actions involving their land, no matter how numerous the landowners are. A few commenters stated that the Department should provide direct notification by certified letter to individual Indian landowners of any determination. Other commenters stated that providing notice to every individual owner is too expensive and supported constructive notice and one suggested providing no notice to landowners.

*Response:* The final rule deletes the allowance for "constructive notice" for grants of rights-of-way and instead requires the Department to provide actual notice to the individual Indian landowners by mail or, upon the landowner's request, by email. This approach ensures that each beneficial

owner receives written notice of a right-of-way on his or her land. The final rule does not require certified letters because of the additional expense associated with such letters. The rule provides for constructive notice of certain enforcement actions.

*Comment:* A commenter suggested that applicants should also be permitted to provide constructive notice to individual Indian landowners.

*Response:* Applicants must directly contact individual Indian landowners, and may not use constructive notice, both to ensure that the landowners are aware of the potential application for a right-of-way and to obtain the consent of the individual owners of the requisite majority interests.

*Comment:* A few commenters suggested allowing the Department to notify the applicant and tribe by email.

*Response:* The final rule allows the Department to notify the applicant and tribe by email of any status updates or determinations where the applicant or tribe requests. The final rule also allows individual Indian landowners to request to receive their notices by email.

*Comment:* Several tribes requested that they be notified of rights-of-way on land within their jurisdiction, even if the tribe is not an owner of the land. The commenters note that such notice would allow the tribe to better plan for development within the tribe's jurisdiction.

*Response:* The final rule incorporates a provision to notify the tribe of rights-of-way in its jurisdiction.

*Comment:* A few commenters stated that the rules increase the Department's ability to make decisions on behalf of tribes and individual on actions impacting their lands.

*Response:* The rule does not increase the Department's ability to make decisions on behalf of Indian landowners without notice. In fact, the rule provides that the Department will defer to the tribe's decision for tribal land. The rule increases the notice that is provided to the tribe to include notice of right-of-way decisions on any land within its jurisdiction, and formalizes notice requirements for individual Indian landowners.

#### 11. Appeals of Right-of-Way Decisions (PR 169.011/FR 169.13)

*Comment:* A few commenters suggested that the proposed rule could be construed broadly to allow any Indian landowner to appeal a right-of-way denial, regardless of whether the landowner owns land over which the right-of-way would cross.

*Response:* The final rule clarifies that an Indian landowner may appeal a

denial of a right-of-way under 25 CFR part 2 only if the right-of-way would have been over or across land owned by that Indian landowner.

*Comment:* Several commenters objected to limiting the right of appeal to Indian landowners if BIA disapproves a right-of-way application. These commenters reasoned that anyone with a "legitimate interest" should have the right to administrative appeal and the applicant is uniquely situated because it invested time and money applying for the right-of-way. These commenters also stated that denying the applicant the opportunity to appeal administratively would limit the applicant to challenging the denial in Federal district court, rather than a more cost-effective administrative appeal and eliminate the Department's ability to defend on a failure to exhaust administrative remedies. One commenter pointed out that allowing only the Indian landowner to appeal a denial of a right-of-way application puts the burden on the landowner to expend the resources to appeal. A few commenters suggested deleting this section and instead referring to 25 CFR part 2 (Appeals from Administrative Actions).

*Response:* The final rule allows both applicants and Indian landowners to appeal the Department's decision to deny an initial right-of-way application or any other right-of-way grant document. This approach is more closely aligned to that taken in the generally applicable administrative appeals provisions at 25 CFR part 2, which allows an appeal by any person (including corporations, tribes, or organizations) whose interests could be adversely affected by a decision. While this is different from the approach taken in the leasing regulations, it is appropriate with regard to rights-of-way because the applicants have a greater interest in a particular location for rights-of-way, given that rights-of-way often cross several tracts.

*Comment:* A few commenters disagreed with the proposal to limit who qualifies as an interested party to only those "whose own direct economic interest is adversely affected by an action or decision." These commenters note that this definition is narrower than the current, generally applicable definition at 25 CFR part 2, which allows anyone whose interests may be adversely affected to appeal. One commenter stated that if a right-of-way for a power line is subject to renewal, anyone who would have been served by the power line should be entitled to appeal the Department's denial of the renewal. One commenter suggested further limiting who qualifies by adding

that the person must also be located adjacent to or in close proximity to the right-of-way.

*Response:* The final rule retains the proposed limitations on who is considered an "interested party" for the purposes of rights-of-way because those without a direct economic interest are only tangentially affected and should not have the right to appeal. In response to the comment about further limiting who qualifies as an "interested party," the final rule adds that an interested party is any person whose land is subject to the right-of-way or located adjacent to or in close proximity to the right-of-way whose own direct economic interest is adversely affected by an action or decision. This addition reinforces that the economic interest must be "direct" both in cause and effect and in proximity.

### C. Subpart B—Obtaining a Right-of-Way

#### 1. Consent

*Comment:* One commenter stated that BIA should provide notice to 100 percent of the Indian landowners and obtain 100 percent consent before granting a right-of-way.

*Response:* The final rule clarifies that all landowners must be notified. Under the proposed and final rule, BIA generally requires the applicant to obtain the consent of the Indian landowners to obtain access to the land to survey (at PR and FR 169.101(b)) and BIA requires record of the requisite landowner consent for a right-of-way (at PR and FR 169.107). The applicant must also obtain the consent of the owners of a majority of the interests in the tract to obtain the right-of-way. Consent of the owners of 100 percent of the interests in a tract is not required because the governing statute requires only a majority (25 U.S.C. 324).

*Comment:* One commenter questioned why the applicant must provide notice to 100 percent of the landowners, when consent is required of only the owners of a majority interest. A commenter also stated that the notice and consent provisions were not feasible.

*Response:* Each landowner has the right to know of important actions potentially occurring on land in which he or she owns an interest. The final rule requires notification consistent with the Department's trust responsibility to individual Indian landowners.

*Comment:* A tribal commenter stated that while the revisions modernize the regulations in support of economic development, there are challenges in servicing thousands of landowners for

basic infrastructure needs and the rigors of providing notice and obtaining consent can cause considerable delay.

*Response:* The Department recognizes that, while providing notice and obtaining consent is time- and resource-intensive, as trustee of landowners, it must demand that such notice is provided and the required level of consent is obtained (as required by statute), regardless of whether the right-of-way is for economic development or basic infrastructure. The final rule does provide relief for utility cooperatives and tribal utilities with regard to compensation and bonding, as described below, to encourage rights-of-way to provide infrastructure.

*Comment:* A few commenters stated that tribal consent should be required for a right-of-way over any tribal land; one noted that it has been longstanding practice to require tribal consent over any tract in which a tribe owns a fractional interest. Others stated that the rule should not require tribal consent where the tribe owns only a fractional interest because a tribe could unilaterally stop other individual Indian landowners who have a majority interest from granting the right-of-way. These commenters pointed to statutory authority at 25 U.S.C. 2218 for granting rights-of-way without tribal consent in tracts where the tribe owns less than a majority interest. A few commenters stated that there are specific statutes that allow granting and renewal of rights-of-way without tribal consent that the Department should rely upon to grant rights-of-way without tribal consent.

*Response:* The proposed and final rules require tribal consent. See PR 169.102(b)(4), FR 169.107(a). Tribal consent for a right-of-way is required by statute at 25 U.S.C. 324. Because the regulations rely primarily on 25 U.S.C. 323–328, and not 25 U.S.C. 2218 or other statutes authorizing the granting of rights-of-way, tribal consent is required for any tract in which the tribe owns an interest, regardless of whether the tribal interest is less than a majority. Requiring tribal consent restores a measure of tribal sovereignty over Indian lands and is consistent with principles of tribal self-governance that animate modern Federal Indian policy.

*Comment:* One commenter suggested clarifying that a tribe may require a more formal agreement with the right-of-way applicant than just providing consent.

*Response:* The final rule clarifies in § 169.107 that the tribe may require a more formal agreement with the grantee than just providing consent.

*Comment:* A commenter stated that rights-of-way even on individually owned Indian land should require tribal consultation because the right-of-way use may interfere with, or otherwise impact, the tribe's zoning and land use laws.

*Response:* Tribes, as sovereigns, have inherent authority to regulate zoning and land use on Indian trust and restricted land within their jurisdiction, and the regulations require compliance with tribal laws relating to land use. See § 169.9. In addition, the final rule clarifies at § 169.102(b)(9) that the applicant must certify compliance with the tribe's land use laws.

*Comment:* One commenter stated that § 169.107 should state that remaindermen are bound by the consent of life tenants as successors in interest.

*Response:* The provision at FR 169.107(b)(3) does not apply to life tenants and remaindermen because remaindermen are not successors in interest to life tenants.

*Comment:* One commenter stated that applicants should not be required to obtain consent from landowners who have not lived on their lands in two or more years.

*Response:* Landowners have the right to notice and consent regardless of whether they live on the land.

*Comment:* A commenter asked that the rule clarify what qualifies as proof of consent.

*Response:* The final rule clarifies that landowners' consent must be written.

*Comment:* One commenter stated that the rule fails to define how a tribe provides consent.

*Response:* Tribes provide consent through a tribal authorization in accordance with tribal law.

*Comment:* A tribal commenter asserted that there may be a joint BIA-applicant effort to establish a right-of-way, and stated that this joint effort is facilitated by provisions allowing BIA to grant the right-of-way without individual Indian landowner consent (where the owners are "so numerous that it would be impracticable to obtain consent"), and to rely on an appraisal paid for by the applicant.

*Response:* The final rule reflects that BIA is the trustee of the individual Indian landowners by establishing several factors that BIA must consider prior to granting a right-of-way without landowner consent and by establishing that third-party appraisals must meet certain requirements. See FR 169.107(b) and FR 169.114(c). In all circumstances, BIA will examine whether the grant of the right-of-way is in the best interest of the Indian landowners, and while BIA will defer, to the maximum extent

possible, to the Indian landowners' determination that the right-of-way is in their best interest, BIA may withhold the grant for a compelling reason, in order to protect the best interests of the Indian landowners. See FR 169.124.

#### a. Consent To Survey

*Comment:* One tribal commenter stated that the omission of a requirement to obtain tribal consent to survey tribal land is significant. One commenter noted the difficulty in obtaining consent on highly fractionated lands and stated that eliminating the requirement to obtain prior BIA approval for survey work will expedite planning for projects on these lands.

*Response:* The proposed and final rules require landowner consent for surveys, including tribal consent for surveys of tribal land at § 169.101(b). In certain situations BIA may grant access to the land. See § 169.101(c). However, no BIA approval is necessary for access to survey.

*Comment:* A commenter stated that the rule should allow applicants to survey without landowners' permission if landowners are too numerous and BIA provides notice.

*Response:* The final rule generally states that applicants must obtain consent from Indian landowners for access to survey; the statutory provisions regarding consent for rights-of-way do not apply because the applicant is seeking access that does not rise to the level of a legal interest in Indian land. Applicants should work directly with Indian landowners for permission to access their land to survey.

#### b. "So Numerous"

*Comment:* Several commenters opposed the provision allowing BIA to issue a right-of-way without the consent of the individual Indian owners if the owners would be so numerous that it would be impracticable to obtain consent. One commenter stated that the provision amounts to "administrative condemnation."

Regarding the thresholds the proposed rule provides on how many landowners add up to "so numerous" (i.e., 50 to 100 landowners where no one landowner owns greater than 10 percent, or 100 landowners), one commenter stated that there is no reason to define a threshold. One commenter suggested instead of identifying the number of landowners, that the rule should provide that it is impracticable to obtain consent when the tribe determines the project is vital to the tribe's interests. Other commenters stated that the proposed rule sets the

baseline too low and said it would allow “steamrolling” by companies over individual trust allotments. A few commenters supported the proposed threshold for “so numerous.” One noted that the provision could be helpful in overcoming the challenges of significant land fractionation in the right-of-way context. Another stated that the threshold strikes an appropriate balance between the rights of the landowner and rights of the applicant. A few commenters stated that the proposed thresholds were too high. A few recommended lowering the threshold to 20 or 25 to 50 landowners, where none owns an interest over 10 percent, or 50 landowners and above otherwise. Another stated that the high threshold creates undue hardship and challenges to individual Indian landowners and tribes in granting rights-of-way on highly fractionated tracts.

*Response:* The provision allowing BIA to issue a right-of-way where the landowners are “so numerous that it would be impracticable to obtain consent” is established by statute at 25 U.S.C. 324 and is permitted under the current regulations at § 169.3(c)(5). The proposed and final rules provide guidance by defining the baseline for what is “so numerous.” The Department believes that defining the baseline promotes transparency, clarity and certainty, and more closely meets Congress’s intent than a determination that obtaining consent is impracticable where the tribe determines it should be. The final rule establishes the baseline at 50 owners, as a simplified approach to what Congress defined as highly fractionated land in 25 U.S.C. 2218. The final rule attempts to balance the burdensome, yet vitally important, process of obtaining landowner consent with the Department’s duty to landowners as established by Congress. As noted above, the final rule clarifies that all landowners will receive notice of the proposed right-of-way. This notice will also include a request for consent. If landowners object to the right-of-way, in response to the notice, the Bureau will consider those objections in its review of “substantial injury.” See the next response.

*Comment:* A few commenters suggested clarifying what constitutes “substantial injury” in PR 169.107(b) and in PR 169.108(c). One commenter suggested replacing this phrase with a determination of what constitutes the Indian landowner’s best interest.

*Response:* The rule clarifies in both sections that the Department will look at the term, amount of acreage, disturbance to the land, type of activity, potential for environmental or safety impacts, and

objections by the landowners in determining whether the grant will cause “substantial injury” to the land or any landowner. The rule does not replace “no substantial injury” with a best interest determination because “no substantial injury” is statutorily required. See FR 169.107(b) and in FR 169.108(c).

*Comment:* A commenter stated that the section should require BIA to make an effort to obtain owner consent and wait a specified period of time for owner response, and only then make the factual finding that it is impracticable to obtain consent. One stated that allottees should be entitled to 60 days or longer after receipt of a notice to object, another stated that 30 days is appropriate. A few commenters noted that the provision allowing BIA to issue a right-of-way without the consent of the individual Indian owners where the owners would be so numerous that it would be impracticable to obtain consent requires BIA to provide notice of the intent to grant the right-of-way to all owners at least 30 days prior to the date of the grant, using the procedures in PR 169.010 (FR 169.12).

*Response:* The final rule now requires that the notice of intent be sent 60 days in advance and allow landowners 30 days to object to the grant. The notice must be sent by mail. Constructive notice is not adequate, even though constructive notice is less expensive, because each landowner is entitled to the opportunity to object to the future grant. See FR 169.107(b)(1)(ii).

*Comment:* Another owner suggested the rule clarify that applicants may include in the initial notification that BIA intends to issue a grant within 30 days if consent is not obtained.

*Response:* An applicant may, in its initial notice and request for consent, state that BIA may grant the right-of-way under FR 169.107(b) if consent is not obtained; however, BIA must send its own, separate notice if it determines that a grant without consent is appropriate under FR 169.107(b). In that case, BIA will send a notice of intent to grant the right of way 30 days prior to the grant.

*Comment:* One commenter stated that requiring BIA to provide a 30-day notice to all landowners will delay grant of the right-of-way beyond the specified 60-day period.

*Response:* The final rule clarifies that if the applicant is relying on § 169.107(b) in lieu of providing a record of consent, it must include in its application a request for a grant without consent. See FR 169.102(b)(5). This allows BIA 30 days to review before providing the 30-day notice.

*Comment:* One commenter stated that the rule should require the applicant to provide the right-of-way application and conditions and terms to the landowners, allow for the landowners’ review for several days, and then provide proof that it was given to the landowners.

*Response:* The process suggested by the commenter is essentially what is required to obtain landowner consent. The rule requires proof of consent, but it is each individual’s responsibility to ask for time to review, if needed, and review the document to determine whether to provide consent.

*Comment:* A few commenters stated that the rule should require the Department to grant a right-of-way if the necessary consents are obtained or if the conditions for a grant without consent (where landowners are “so numerous”) are met.

*Response:* The rule keeps intact the Secretary’s discretion to grant a right-of-way, rather than making it mandatory where consent is obtained because there are other factors (compensation, *e.g.*) that affect the Secretary’s decision to grant or not.

#### c. Non-Consenting Tribe (PR 169.107(d))

*Comment:* Several commenters opposed the language in PR 169.107(d) stating that a right-of-way will not bind a non-consenting tribe. These commenters stated that the provision is contrary to other provisions of the rule and undermines tribal self-governments.

*Response:* The final rule removes paragraph (d) because tribal consent for a right-of-way is always required under 25 U.S.C. 324.

*Comment:* A telephone authority commenter stated that further clarification is required as to whether BIA gives permission for access or whether the allottee himself can give permission for a right-of-way.

*Response:* In all cases, the Indian landowner may consent to access or grant a right-of-way across their land; however, notice to landowners is always required and landowners may seek the assistance of BIA. In certain limited circumstances, BIA may consent on behalf of a landowner, or grant a right-of-way without landowner consent

#### d. Who Is Authorized To Consent (PR 169.108/FR 169.108)

*Comment:* A commenter suggested restricting PR 169.108 to allow BIA consent only on behalf of the owners of minority interests.

*Response:* The final rule does not restrict BIA consent to minority interests because this authority, exercised on a landowner-by-landowner basis, is separate and distinct from the

authority of BIA in FR 169.107(b) to grant a right-of-way where the landowners are so numerous.

*Comment:* A commenter suggested adding a provision allowing BIA to consent on behalf of individual owners following a 90-day notice, as provided for in the leasing regulations.

*Response:* The final rule does not add the requested provision because the provision in the leasing regulations is based in statutory authority applicable to leasing, rather than rights-of-way.

*Comment:* One commenter requested an addition to allow tribes to consent on behalf of Indian landowners.

*Response:* The final rule does not add the requested provision because the Department has not identified any legal authority for such a provision.

*Comment:* A commenter stated that an attorney should never be authorized to consent on behalf of a landowner unless the attorney is operating under a power of attorney document.

*Response:* The proposed and final rules state that the attorney must have been retained by the landowner “for this purpose,” meaning the landowner retained the attorney to provide consent.

*Comment:* One commenter stated that PR 169.108(b)(5)(iii) could be interpreted to require specific language on providing consent to a right-of-way in the power of attorney document, and suggested the rule clarify that language such as “generally convey or encumber interests in trust land” or similar language would be acceptable.

*Response:* The final rule adds this clarification.

*Comment:* A few commenters suggested clarifying that the provisions in PR 169.108 apply to “individual Indian landowners.”

*Response:* The final rule clarifies these provisions.

*Comment:* One commenter stated that PR 169.107 and PR 169.108 allow BIA broad authority to assume control of an individual Indian landowner’s property interests as they pertain to rights-of-way and forego providing notice to that person.

*Response:* The final rule implements statutory authority to consent on behalf of landowners, while providing limitations on when BIA may exercise that authority. The final rule also establishes that BIA will send notice to all individual Indian landowners of a right-of-way on their land.

*Comment:* One commenter requested detail on what a “reasonable attempt to locate” in PR 169.108(c)(2) means. Another suggested the whereabouts of any landowner that does not respond to constructive notice within 60 days should be considered unknown.

*Response:* BIA will determine whether efforts qualify as a “reasonable attempt to locate” an individual Indian landowner as part of its determination as to whether the landowner’s whereabouts are unknown. These determinations are made on a case-by-case basis.

*Comment:* A commenter stated that BIA should not have the right to consent on behalf of adults under a legal disability because the individual’s guardian should have responsibility for consent.

*Response:* The provision allowing BIA the right to consent on behalf of individuals under a legal disability applies only where the person does not have a legal guardian. See 25 CFR 115.002, definition of “legal disability.”

*Comment:* A commenter stated that, while the rule supports the autonomy of landowners, some landowners such as the elderly, disabled, and emancipated minors, may require additional assistance beyond mere consent.

*Response:* In response to this comment, the final rule adds a new provision, at FR 169.106(c), that specifies that BIA will assist individual Indian landowners, upon their request, in negotiations with the applicant for a right-of-way.

*Comment:* A commenter opposed BIA consenting on behalf of landowners, stating that the landowners should be entitled to make the decision but BIA has an obligation to ensure that the landowner’s decision is informed.

*Response:* Overall, the rule implements statutory authority for BIA to grant a right-of-way with the consent of the landowners of a majority of the interests in a tract (*i.e.*, without the consent of the landowners of a minority of the interests in the tract). See FR 169.107(b). This rule also allows BIA to consent to a right-of-way on behalf of individual Indian landowners only in limited circumstances, such as where an individual Indian landowner is under a legal disability. See FR 169.108(c). BIA may also grant a right-of-way without consent if the landowners are so numerous, and certain procedures are followed. See FR 169.107(b). These requirements all exist in the current rule, and are carried forward in the final rule.

## 2. Compensation

*Comment:* Many commenters asserted that the rule should address the upper bounds of what tribes and individual Indian landowners can demand for compensation for a right-of-way. Several commenters stated their belief that compensation for rights-of-way on Indian land should be limited to fair

market value, and no more. A few commenters requested that the rule require BIA to grant the right-of-way for an applicant that agrees to pay fair market value. Some commenters wanted compensation schedules, similar to those used for Bureau of Land Management (BLM) and U.S. Forest Service lands.

*Response:* The statutory authority merely states that the Secretary must determine the compensation to be just. Indian landowners have the right to demand as much compensation as they deem appropriate, just as other private landowners do. As such, neither the proposed nor final rule limit the Indian landowners to fair market value, through a compensation schedule or otherwise. See the discussion below.

*Comment:* One commenter stated that the rule should require that the right-of-way document state the amount of compensation.

*Response:* The final rule does not add this as a requirement because, while the grant will normally reflect that the landowners received consideration, there may be circumstances in which it is not appropriate for the grant document to state the amount.

### a. Compensation—Electric Cooperatives and Utilities

*Comment:* Several commenters, in New Mexico, especially, stated that the rule changes will have a significant impact by increasing already high easement costs, especially for those who receive their utilities from nonprofit electric cooperatives. Several electric cooperatives and others (Eastern Navajo Land Commission) requested that the requirement for compensation be waived for all rights-of-way for public infrastructure projects that serve the tribe or tribal members, including service lines. One suggested that nominal compensation should be approved because the cooperatives have a “special relationship” under PR 169.110(b)(2)(iii). These commenters reason that:

- Through the act of joining a cooperative, the member typically agrees to provide access for the cooperative to build the necessary infrastructure at no cost; and
- Cooperatives have no ability to absorb costs, but must pass them directly to consumers, such that higher compensation costs will translate to higher electricity costs for members. These commenters further stated that providing an exemption or otherwise limiting the compensation electric cooperatives must pay would ensure that the cooperatives can afford to continue providing service to

cooperative members, including tribal members, and ensure that members are provided with electric power at an affordable price.

One tribal commenter stated that exempting utility companies from compensation would conflict with tribal self-determination and self-governance.

Public service commenters stated that they have an obligation to customers to ensure rates are fair and reasonable to all, that using projected income as the basis for valuation is cumbersome and unreasonable, and that the regulations should instead provide a certain and fair approach for all parties.

One commenter stated that rights-of-way that serve tribal people should be different from those that serve non-tribal people and that right-of-way costs should be minimized to encourage the sustainability and expansion of telecommunications services to tribes.

*Response:* The final rule provides for more flexibility in compensation for rights-of-way over and across individually owned Indian land. Specifically, the rule provides an exemption from the requirement to pay compensation on individually owned land if all the landowners agree, but does not provide the exemption for tribal land. The rule does not provide an exemption for compensation to tribes, but instead defers to the tribe if the tribe is willing to accept nominal compensation, no compensation, or alternative compensation. The rule also adds a specific exemption for utility cooperatives and tribal utilities on individually owned Indian land to encourage the provision of utility services on individually owned Indian land. Tribes may also allow for such an exemption on tribal land, on a case-by-case basis, but are not required to do so. See FR 169.112(b)(3)(iii).

b. Compensation/Fair Market Value for Rights-of-Way (PR 169.109/FR 169.110 and PR 169.111/FR 169.112)

*Comment:* Several commenters stated that the regulations should limit compensation to no more than fair market value, as determined by an appraisal or other valuation, to prevent “unrealistic” charges. One commenter stated that the proposed rule’s approach of allowing the tribe to determine compensation and waive valuation is “huge to industry.” Some of these commenters stated that the rule gives “unfettered, lopsided bargaining power” to tribes. They state that this is contrary to Federal law because the 1948 Act requires the Secretary to determine just compensation and that it could not have been Congress’s intent to allow tribes to demand compensation beyond “just

compensation.” One suggested imposing an upper limit on compensation of no more than 110 percent of the fair market value. Senator Tom Udall from New Mexico provided a petition stating that the absence of an upper limit for tribal governments to charge has resulted in more than \$36M in easement fees for Jemez Mountains Electric Cooperative, Inc. (JMEC) members, and that both tribal and non-tribal JMEC members will experience more than a 40 percent increase in their electric bills.

Several commenters point to potential negative consequences of allowing tribes to negotiate for compensation beyond fair market value such as increased costs for customers and discouragement of future development on tribal lands. According to these commenters, it should be BIA’s role to ensure the certainty and reasonableness of compensation.

Several tribal commenters supported the proposed rule’s provisions that require BIA to defer to tribally negotiated compensation amounts and valuation waivers. These commenters stated that these provisions are important to the sovereignty of tribal nations and their self-determination, streamline unnecessary appraisal processes, and recognize that the tribe consenting to the right-of-way is uniquely situated to assess the value of the compensation it is receiving. Some of these commenters stated that providing for non-monetary or alternative types of compensation, such as in-kind consideration, enables tribes to craft unique compensation agreements, and that allowing the form of compensation to change at different stages of development helps tribes achieve maximum benefits over the life of the grant, allowing tribes to negotiate amounts that serve best interests. As one tribal commenter pointed out, there may be circumstances in which a tribe values some other form of consideration more than fair market value, and that the rule’s provisions respect tribes’ ability to make those decisions.

*Response:* Consistent with 25 U.S.C. 325, the United States’ general trust relationship with Indian tribes and individual Indians, and deference to tribal sovereignty, the final rule requires that the compensation granted to Indian landowners is just. The current regulations, at § 169.12, state that compensation is “not limited to” the fair market value, allowing tribes to negotiate for higher compensation. The final rule provides that BIA will defer to the tribe’s determination that compensation is in its best interest. Tribes have the right, through self-

governance and self-determination, to charge more than fair market value for their land. History has taught us that some tribal values are not readily measured or estimated by market valuations. BIA will defer to the tribe’s negotiated compensation amount, which may be an amount mutually agreed to with the applicant. Not only is it not BIA’s role to ensure that the compensation is predictable and reasonable for the applicant, BIA does not have the legal authority to limit the amount that Indian landowners charge for a right-of-way.

The statute requires that the right-of-way be made with the payment of “such compensation as the Secretary of the Interior shall determine to be just.” 25 U.S.C. 325. This statute was enacted for the benefit of Indians, and as such, Interior is interpreting this language in favor of the Indians, to allow the Secretary to defer to tribes to determine that compensation beyond fair market value is “just.” *Ramah Navajo School Board v. Bureau of Revenue*, 458 U.S. 832, 846 (1982) (“We have consistently admonished that Federal statutes and regulations relating to tribes and tribal activities must be construed generously in order to comport with . . . traditional notions of [Indian] sovereignty and with the Federal policy of encouraging tribal independence.”)

*Comment:* A tribal commenter stated that the rule should allow tribal governments to enter into operating agreements with utility companies to cover a “market area” of the company for a cooperative work relationship.

*Response:* Tribal governments are free to enter into agreements with utility service providers.

*Comment:* One commenter, the Village of Hobart, Wisconsin, stated that the municipality does not impose many of these requirements on tribal governments for rights-of-way across Village land, and suggested that the rule should add a “fair and equitable process for co-located governments to obtain right-of-way easements” without complications.

*Response:* Municipalities and others who are co-located with tribal governments are free to negotiate with those tribal governments on compensation for rights-of-way on tribally owned land.

*Comment:* A few commenters suggested that the rule either require compensation based on an objective valuation methodology, provide a procedure for the applicant to appeal to BIA for an administrative adjudication of value if the applicant and tribe cannot agree, or obligate the tribe to accept the fair market value determined

by the valuation if the applicant and tribe cannot agree.

*Response:* Tribal law may address situations in which the tribe and applicant cannot agree. BIA may not grant the right-of-way without tribal consent. Where individual Indian landowners and the applicant cannot agree, existing mechanisms can address the situation.

*Comment:* Several commenters opposed the proposed change to the current compensation standard (“fair market value of the rights granted plus severance damages, if any, to the remaining estate”) to a compensation standard that includes market value and may include additional fees, such as throughput fees, franchise fees, avoidance value, bonuses, or other factors. According to the commenters, this may create unwarranted expectations for individual Indian landowners, which could lead to a failure of landowners to agree with applicants on rights-of-way and could then lead to an increase in applicants’ use of eminent domain to acquire the right-of-way. The commenters note that this would be directly contrary to the goal of streamlining the right-of-way process. Others said all of these concepts are already incorporated in “market value” and identifying them individually suggests they should be added above fair market value. Others said that these hypothetical valuation methodologies are unfitting for land valuations.

*Response:* The proposed and final rules clarify that Indian landowners may take into account additional fees when negotiating compensation. This rule does not address or impact the availability (or unavailability) of eminent domain. The Department does not agree that providing individual Indian landowners with a list of additional fees that may be considered in negotiating compensation, beyond fair market value, will lead to “unwarranted expectations” and ultimately increase the use of eminent domain; rather it helps ensure parity in negotiations between landowners and applicants, providing better information to improve the functioning of the market.

#### c. Different Compensation Approaches for Tribal Land Than for Individually Owned Indian Land

*Comment:* Several commenters advocated for requiring the same compensation on tribal land as on individually owned Indian land. A few commenters stated that “tribal land” should not include land in which the tribe owns a fractional interest, for the

purposes of PR 169.109, because otherwise, different compensation amounts could be required for different interests in the same tract. One commenter noted that this question is especially pertinent because there will be increased fractional tracts owned by tribes as a result of the Land Buy Back Program for Tribal Nations under the settlement in *Cobell v. Salazar*. A commenter stated that requiring tribes to accept the same terms of service that apply to the non-tribal areas does not deprive them of sovereign rights. Several commenters suggested the rule should allow BIA to defer to individual Indian landowners’ determination completely, just as the rule allows BIA to defer to tribes’ determinations. Another commenter stated that BIA oversight is necessary to prevent an Indian landowner from holding hostage an entity seeking to make improvements by demanding an unreasonable sum.

*Response:* Consistent with 25 U.S.C. 324 and 325 and the United States’ general trust relationship with Indian tribes and individual Indians, the final rule treats tribal and individual Indian landowners differently, providing more deference to tribal landowners in the approval process and in the enforcement process. It is consistent with BIA’s trust responsibility to allow for different compensation amounts, as long as both the tribe and the individual Indian landowner receive compensation that is just. It is possible that different owners in the same tract could negotiate different compensation amounts; this is within the landowners’ rights and is possible even under the current rule. Requiring tribes to accept the same terms that apply to individual Indian landowners would undermine tribal self-determination and self-governance.

*Comment:* A commenter stated that the proposed rule is paternalistic in that it would allow BIA to require fair market value even if all the landowners agree to waive it, if BIA determines it is in their best interest.

*Response:* Even if all Indian landowners agree to waive fair market value, BIA will evaluate rights-of-way applications to determine whether the waiver is in their best interest in accordance with 25 U.S.C. 324. Consistent with the statute and the United States’ general trust relationship with Indian tribes and individual Indians, BIA will defer to the maximum extent possible to the landowners’ determination that the right-of-way, including any waiver, is in their best interest. See FR 169.124(b).

*Comment:* One commenter suggested only the owners of a majority interest should be required to waive both

valuation and just compensation, and questioned why the consent of all landowners is necessary.

*Response:* We have determined that all non-consenting landowners are entitled to fair market value, as our trust responsibility is to all landowners, not just to those who have consented to the right-of-way.

*Comment:* Several tribal commenters stated that PR 169.110 should specify that BIA may approve “alternative compensation” for individually owned land.

*Response:* Alternative compensation is provided for in FR 169.118.

#### d. Valuation (PR 169.111/FR 169.114)

*Comment:* A few tribal commenters stated their support for not requiring a valuation if the tribe submits a tribal authorization, and deferring to the tribe’s decision as to whether to use the valuation or negotiate another amount. One commenter suggested allowing the applicant to request a valuation, even where the tribe does not.

*Response:* The Department’s trust responsibility is to the Indian landowners; for this reason, BIA will obtain a valuation only at the tribe’s request.

*Comment:* One commenter stated that BIA has not traditionally required the applicant to obtain the valuation, but proposed § 169.109 does.

*Response:* Final § 169.114 applies only if the tribe does not submit a tribal authorization waiving the valuation and does not request a valuation in writing. Under these circumstances, a valuation must be completed to establish fair market value. The current regulations require that a valuation be submitted with the right-of-way application. In practice, BIA or the applicant may complete the application. Final § 169.110(c) clarifies that it does not require the applicant to provide the valuation, but simply requires that the applicant pay fair market value based on a valuation.

*Comment:* A few commenters requested that the rule require BIA to prepare the valuations within 30 days of receiving the request.

*Response:* The Office of the Special Trustee for American Indians (OST), rather than BIA, prepares valuations. OST is governed by a separate set of regulations and policies.

*Comment:* A few commenters suggested that the applicant be required to deposit funds to be used for a valuation or otherwise pay for the valuation.

*Response:* It is not feasible at this time for the Department to maintain accounts for applicants’ payment for valuations.

*Comment:* Several tribal commenters pointed out that Indian land is often undervalued or appraised at a low market value due to rural location, undeveloped condition, and the lack of a “real market” for land in Indian country. These commenters suggested accounting in the valuation of the land with the right-of-way, assuming the right-of-way enhances or will enhance the land’s value. One commenter pointed out that even land that has been subject to a right-of-way for a pipeline crossing is appraised as though the use has not been present, imposing an artificial restraint on the compensation owed to landowners.

Other commenters stated that it is a fundamental precept of landowner compensation regimes that fair market value measures the economic impact of the right-of-way on the affected land, rather than compensating for economic benefit enjoyed by the right-of-way grantee. One commenter stated that market value should be based on the value of the land that is the subject of the transaction, and not on speculation regarding the potential future value of the pipeline.

Likewise, tribal commenters supported listing potential adjustments to market value, such as a percentage of gross income, and additional fees, such as throughput fees, severance damages, franchise fees, avoidance value, bonuses, or other factors.

*Response:* The final rule provides flexibility in two ways: (1) By allowing for any type of valuation of fair market value, as long as it meets Uniform Standards of Professional Appraisal Practice (USPAP) standards and Departmental policies; and (2) by listing factors that Indian landowners may wish to consider in negotiating for compensation either by ensuring they are included in the estimate of fair market value or by requesting that they be added. *See* FR 169.114(c). Identifying them individually does not necessarily suggest that they “should” be added above fair market value, but instead provides Indian landowners, our trust beneficiaries, with examples for types of fees might be included in compensation. Providing information to landowners improves the fairness of any negotiations.

*Comment:* Several commenters requested changing “fair market value before any adjustments” to simply “fair market value” in PR 169.110, and deleting the provisions regarding adjustments “based on a fixed amount, a percentage of the projected income, or some other method” based on their concern that there is no legal standard on BIA’s calculation of payments owed.

*Response:* Final § 169.112(a) deletes reference to “adjustments” but includes the list of examples of fees that landowners may wish to seek in compensation negotiations. This provision also clarifies that compensation may be based on a fixed amount or another method. These provisions provide flexibility to negotiate for compensation and a formula for reaching that amount.

*Comment:* A few commenters suggested the valuation should be based on the amount of land encumbered and the extent of encumbrance or acreage disturbed.

*Response:* The amount of land encumbered, extent of the encumbrance, and acreage disturbed are all factors that the landowners may consider in negotiating compensation.

#### e. Who Conducts Valuation

*Comment:* Several tribal commenters opposed the proposal to allow applicants to hire their own appraisers because of concerns that the appraisers would have a conflict of interest and would undervalue the property. Some suggested requiring a separate, independent appraisal, landowner approval of the appraisal, or landowners’ own appraisal. One commenter expressed concern that the rule could allow an applicant to provide a valuation if BIA fails to provide one, but that doing so could undermine the landowners’ negotiations.

*Response:* The rule requires that the valuation comply with USPAP and Departmental policies to ensure that the valuation meets independent quality standards. For example, the Departmental policies on valuations require that the person conducting the valuation meet certain qualifications and requirements. *See* 602 DM 1.6. Additionally, Departmental policies require anyone who wishes to rely on a third-party appraisal to first consult with the Department (in this case, BIA, who will refer the person to the OST Office of Valuation Services), to select a qualified certified general appraiser, and that OVS make all the appraisal assignment instructions. 602 DM 1.7C. BIA must approve the appraisal.

*Comment:* One tribal commenter stated that if the tribe asks BIA to determine fair market value, the tribe should have the opportunity to choose the appraiser and the valuation method.

*Response:* The tribe is not bound by the valuation conducted by BIA and may choose to obtain its own valuation through a different method.

*Comment:* A few commenters stated that valuations from other Federal agencies should not be accepted because

they could result in an entirely different valuation than would be found by BIA, BIA would not know whether the appraisal is adequate unless it understands the context in which the valuation was conducted, and BIA would possess broad and unchecked discretion in approving or rejecting.

*Response:* BIA will continue to review valuations conducted by other Federal agencies before approving their use to ensure sure the valuations are adequate for the rights-of-way context. If parties disagree with BIA’s reliance on a valuation, they may appeal a decision to grant a right-of-way under 25 CFR part 2.

#### f. Method of Valuation

*Comment:* Several commenters stated that the rule should limit valuation methods to standard practices, such as USPAP, to provide a consistent methodology that would better streamline the rule. A few commenters stated that the proposal to allow BIA to rely on any “other appropriate valuation method” provides BIA too much discretion, and is too ambiguous and broad to provide guidance or the ability to challenge BIA’s determination of “market value.”

*Response:* The rule allows for market analyses and other valuation methods in order to provide flexibility to the parties to obtain a valuation as quickly as possible and to employ the method they deem appropriate for their negotiations. The rule balances this flexibility with requirements that the chosen method must comply with USPAP and Departmental policies to ensure that the valuation meets independent quality standards and that the person conducting the valuation meet certain qualifications and requirements. *See, e.g.,* 602 DM 1.6.

*Comment:* A commenter suggested the rule should require BIA to disclose to the applicant the valuation method that was used to determine fair market value. Another commenter suggested the rule should require BIA to provide the landowners with a copy of the valuation method within 10 days of receipt of a written request.

*Response:* BIA will notify the applicant of the fair market value established by the valuation and will provide the landowner with the valuation for the purpose of assisting in negotiations.

#### g. Alternative Compensation

*Comment:* A few commenters stated that allowing for alternative valuation methodologies inserts uncertainty into the right-of-way process. One noted that this approach could result in each party

completing and submitting valuations that are vastly different, but equally valid under the proposed rule. These commenters advocated for requiring a consistent approach for valuations to determine fair market value to streamline the process, and suggested revisions to state that BIA will only use a valuation in accordance with USPAP standards.

*Response:* The final rule allows for the use of alternative valuation methods as long as they have been prepared in accordance with USPAP (or a valuation method developed by the Secretary under 25 U.S.C. 2214) and complies with Departmental policies regarding appraisals, or has been prepared by another Federal agency. *See* § 169.114(c). This provision allows Indian landowners more flexibility in negotiating for compensation, while still requiring that the valuation meet USPAP standards and Departmental policies.

*Comment:* One commenter stated that no method of valuation for reservation-wide or systemic use should be used until the Department provides prior actual notice to landowners, publication of notice in the **Federal Register**, and in media outlets.

*Response:* The rule allows for reservation-wide valuations if the valuations meet the requirements of § 169.114(c). If landowners disagree with this type of valuation or any valuation that BIA relies upon, the landowners may appeal BIA's decision on the right-of-way under 25 CFR part 2.

#### h. Compensation for Renewals

*Comment:* Some commenters stated that the rule should impose compensation limits for renewals of rights-of-way. The commenters state that rising renewal charges burden all utility customers, including reservation customers, and bear no relation to property values. One commenter stated that in its experience over the last 10 years, its rights-of-way have been assessed based on the appraised fair market value of the Indian lands over which the rights-of-way are located, rather than the value of the right-of-way itself, and that the assessed renewal fees were 10 times the appraised fair market value. Several electric cooperative commenters expressed concern that they will have to renew rights-of-way and will have to pay amounts in excess of fair market value, creating a conflict for members off the reservation.

*Response:* The terms of the existing right-of-way govern renewals. The new rule encourages parties negotiating for a

right-of-way to also negotiate terms for a renewal.

#### 3. Payment (PR 169.112/FR 169.115)

*Comment:* A few energy company commenters advocated for lengthening the time frame for requiring payment of the right-of-way from 10 days after the right-of-way is granted to 30 days. These commenters stated that more time may be needed to process significant payments. Other commenters suggested using the grantee's receipt of the grant as the starting point for the time period because the grantee may not even know the right-of-way has been granted before the 10 days expires. A few commenters stated that payment should be made at the time the application is filed. Another stated that payments should not be made until the right-of-way is determined to be valid.

*Response:* The final rule adds that the grant may establish a different payment schedule; this allows the parties to negotiate for a payment schedule that works for their circumstances. *See* § 169.115(a). This approach retains the default, to strike a balance between those wanting payment at the time the application is filed and those wanting a longer period of time, to ensure prompt payment where a different payment schedule is not negotiated. Rights-of-way go into effect, and are valid, with the BIA's grant. The final rule changes the default due date to be the date of the grant because BIA is bound by the 60-day deadline for issuing a decision on the right-of-way. Once the applicant receives confirmation that BIA has received a complete application, the grantee will have up to 60 days to provide payment.

*Comment:* Several commented on payment structures. A tribal commenter recommended allowing each landowner to select how he or she wishes to receive compensation, whether in lump sum or annual payments or another payment structure. The commenter notes that BIA currently requires all landowners to be paid in the same manner, and that some landowners may prefer different structures. Another tribal commenter stated that the rules will add complexity by allowing different payment structures, adjustments, etc.

*Response:* The rule adds flexibility by allowing for different payment structures, to allow the parties to use the structure that best meets their needs; however, the rule does not allow different payment structures for different landowner interests in the same tract because determining and tracking payments would be overly burdensome.

*Comment:* One commenter opposed the provision prohibiting payments more often than quarterly, stating that tribes with direct pay should be able to set any payment schedule without such a restriction. A commenter stated that an applicant should not be allowed to pay quarterly or even yearly, and rights-of-way should not be treated the same as payments for leases.

*Response:* The final rule retains the possibility for quarterly or yearly payments, to allow landowners the flexibility to negotiate for a frequency of payments that meets their needs. The final rule, at § 169.115(b), limits the frequency of payments to no more frequent than quarterly, but only if the payments are made to BIA. This allows payments made by direct pay to be made more frequently, if appropriate.

#### 4. Direct Pay (PR 169.113/FR 169.116)

*Comment:* Several energy companies and electric cooperatives objected to allowing for direct pay, saying that it shifts BIA's responsibility to the grantees, and that it may be difficult in practice, could be burdensome to grantees, would slow the payment process, and would be less secure. Two tribal commenters also expressed concern with allowing direct payments to landowners and stated they should go through BIA for better tracking. A few other commenters also expressed concern that direct pay would expose the landowner's revenue to liens and garnishments. One commenter stated that it would require grantees to issue IRS forms to all landowners. One commenter stated that owners throughout the life of the right-of-way may be different, so direct pay authorization should be renewed every five years.

Some commenters supported direct pay and stated that the grantee should have the option of paying BIA instead of directly paying the landowners. A few stated there should be no limit on the number of owners for direct pay and that it should be an option for each landowner. One commenter suggested direct pay should be available to tribes only.

A few commenters asked why the accounts must be "encumbered."

*Response:* The final rule corrects a typographical error in the proposed rule, to clarify that direct pay is available only if the account is "unencumbered" rather than "encumbered." Otherwise, the final rule retains the provisions for direct pay, making it available to both tribes and individual Indian landowners. The final rule establishes that Indian tribes may choose direct pay, but direct pay is

available to individual Indian landowners only under limited circumstances, such as circumstances in which there are 10 or fewer owners. This approach promotes self-determination and self-governance for tribes and allows some flexibility for individual Indian landowners, while minimizing the burden on grantees.

*Comment:* BIA should be required to assist landowners in the event of non-payment beyond the issuance of a letter, to better fulfill fiduciary duties.

*Response:* If the grantee does not cure the violation in time, following the notice of violation, BIA may take the enforcement actions in FR 169.405.

#### 5. Method of Payment (PR 169.114/FR 169.117)

*Comment:* A few commenters suggested clarifying that this section applies only where payments are made to BIA, but that tribes may negotiate other methods of payment.

*Response:* The final rule clarifies that § 169.117 applies only where payments are made to BIA and adds that, if payments are made by direct pay, the grant will specify the method.

#### 6. Non-Monetary and Varying Types of Compensation (PR 169.115/FR 169.118)

*Comment:* Several electric cooperatives requested that the service they provide be considered the compensation.

*Response:* The final rule adds an exemption from compensation requirements for utility cooperatives, establishing a presumption that the service or infrastructure the cooperatives provide to their members is “just” compensation if it directly benefits the Indian land.

*Comment:* A tribal commenter supported the provisions allowing for non-monetary or other types of compensation, stating that the provisions are important to allow landowners to negotiate. Some commenters opposed allowing alternative forms of compensation because, they claim, it unnecessarily complicates negotiations and payment calculations, and suggests forms that are not appropriate in competitive right-of-way markets. One commenter stated that in-kind compensation should not be allowed for individual landowners because of the potential for abuse.

*Response:* These provisions, as well as other compensation provisions, are intended to increase flexibility for Indian landowners to negotiate for terms that best work for their needs.

*Comment:* A few tribal commenters suggested requiring a tribal authorization, rather than a signed

certification, to establish that it will accept varying types of compensation at PR 169.115.

*Response:* Tribes may choose to provide a tribal authorization (meaning a tribal resolution or other document approved by the tribal governing body), but BIA will require only a certification (meaning a statement signed by the appropriate tribal official or officials). This is intended to reduce any delays that may be associated with passing a tribal authorization.

*Comment:* A few tribal commenters requested clarifying that the types of compensation are examples, rather than a limited list. The commenter also suggested adding “payments adjusted by a fixed amount and payments tied to an index” to the list of varying types of compensation available at specific stages of the right-of-way. Another commenter requested clarifying whether access to broadband services would be considered in-kind compensation.

*Response:* The final rule states that the types of compensation include, but are not limited to, the examples listed. The examples listed are not exhaustive and may include payments adjusted by a fixed amount and payments tied to an index. In-kind compensation may include the provision of broadband services.

*Comment:* A commenter requested simplifying this section to read simply that all forms of compensation and varying types of compensation are allowable.

*Response:* While the regulation would be simpler in stating that all forms of compensation and varying types are allowable, the final rule continues to provide examples to assist Indian landowners in identifying potential options.

#### 7. Issuance of Invoices (PR 169.116/FR 169.119)

*Comment:* One commenter stated that BIA should be required to issue invoices.

*Response:* BIA may issue invoices at the request of Indian landowners, but the payment is due at the times specified in the grant, whether there is an invoice or not.

#### 8. Compensation Reviews or Adjustments (PR 169.117/FR 169.111 and FR 169.113)

*Comment:* One commenter stated that the process for review and adjustment of compensation is unclear. A few tribal commenters supported reviews less frequently than every 5 years, especially if the compensation exceeds the fair market value of the right-of-way. Another tribal commenter stated that 5

years is appropriate so that tribes can adjust rent consistent with economic conditions of the time period.

Some commenters stated that no periodic review or adjustment should be required unless the Indian landowners negotiate for such reviews or adjustments. Commenters also requested exceptions to the review requirements when the grant provides for payment greater than market value or the adjustment results in additional compensation to the landowner.

*Response:* The rule provides that tribes may negotiate for reviews and adjustments at any frequency. See FR 169.111. For individually owned Indian land, the rule establishes a default requiring reviews every 5 years, but provides several exceptions to allow the parties to avoid the reviews if appropriate. For example, if payment for the right-of-way is in a lump sum, then no review is required. See FR 169.113(a). The Department has determined that including a default requirement for compensation reviews and adjustments is necessary, especially in the context of rights-of-way for extended periods, to ensure the trust beneficiaries continue to receive compensation that is just. Even if the Secretary initially determines that the established periodic compensation is just, circumstances and market conditions may change, requiring an adjustment to the compensation.

*Comment:* Several commenters expressed concern that the same project could have different review processes if it crosses both tribal land and individually owned land, frustrating the goal of “streamlining” the regulations. These commenters stated that the rule for periodic review and adjustment should be the same for tribal land as for individually owned land.

*Response:* The approaches to tribal land and individually owned Indian land are necessarily different because of the requirements of the statute and because the Department must provide greater deference to tribes in support of tribal self-determination and self-governance. Tribal governments may have broader interests than ordinary individual landowners.

*Comment:* One commenter asked why the grantee’s consent is not required, but the landowner’s consent is required, for an adjustment. A few commenters stated that requiring landowner consent to an adjustment would be burdensome and unnecessary.

*Response:* The statute, at 25 U.S.C. 324, imposes upon Interior no responsibilities to the right-of-way grantee. For this reason, consistent with the statute and the United States’

general responsibility to Indian tribes and individual Indians, the default rule is that only the landowner's consent is required for adjustments. However, the rule allows the parties to negotiate for the grant to provide an approach different from the default approach for reviews and adjustments, including an approach in which landowner consent would not be required for certain adjustments (e.g., if the adjustment results in increased compensation).

#### 9. Other Payments Required (PR 169.118/FR 169.120)

*Comment:* A commenter suggested qualifying the statement in this section saying the grantee must pay these amounts to the appropriate office by adding "if applicable" to address that the grantee will not be in violation of the grant pending any challenge on whether the grantee owes the additional fees.

*Response:* The final rule adds the suggested phrase "if applicable." BIA will consider the status of the challenge of any such payments in determining how to address a violation of the grant under FR 169.404.

*Comment:* A few tribal commenters suggested adding that the tribe may charge additional fees with the application for use of the land. Another tribal commenter suggested clarifying that such fees may include, but are not limited to, tribal taxes and other fees and payments required under tribal law, and excluding charges imposed by the State or political subdivision of a State.

*Response:* The final rule clarifies that fees may also be associated with the application for use of the land at FR 169.120(a). Taxes and fees required under tribal law, and charges imposed by the State or political subdivision of the State are addressed in FR 169.011.

*Comment:* Several commenters stated that grantees should not be required to pay damages associated with the survey, construction, and maintenance of the facility in addition to compensation because the fair market value would account for any damage, and the right-of-way grant includes provisions for reclamation and restoration as a condition negotiated by the parties. The commenter stated that if the "damages" refers to those beyond customary and reasonable damages for the authorized activity, the rule should so clarify. A few commenters suggested deleting this section. One stated it raises questions as to what happens if the grantee refuses to pay and who will calculate the damages. Another stated that it could significantly increase the cost of acquiring rights-of-way on Indian land

and may, ultimately, impede further development.

*Response:* Final § 169.120 clarifies that, in addition to or as part of the compensation, the grantee will be required to pay for damages incident to the survey of the right-of-way or incident to the construction or maintenance of the facility for which the right-of-way is granted. The grantee may choose to negotiate this as part of compensation or bonding or alternative form of security. This section affords the parties the flexibility to account for damages in the manner they choose—as part of the base compensation or additional fees—but reinforce that it is the grantee's responsibility to pay for damages.

#### 10. Condemnation

*Comment:* A few commenters requested provisions regarding when Indian land may be condemned for a right-of-way and noted that the current § 169.21, regarding condemnation, was not included in the proposed rule.

*Response:* These regulations implement the Department's statutory authority for granting rights-of-way across Indian land. The current rule's condemnation section required reporting of facts relating to condemnation to BIA, to safeguard the interests of the Indians. The proposed rule deleted this section because it is not directly related to the rights-of-way approval process. The current rule does not provide guidance for condemnation of Indian land. The statutory provisions at 25 U.S.C. 357 govern this process.

#### 11. Process for Grant of Right-of-Way

##### a. Deadlines for BIA Decisions

*Comment:* A few tribal commenters supported the new deadlines for BIA to issue decisions on rights-of-way, stating that they are important to eliminate delays and promote economic development, will help speed the processing of applications, and provide applicants with more predictable timeframes.

A few tribal commenters stated that the option for BIA to extend the timeframe for an additional 30 days should be deleted, because it may become the norm, making the timeframe a 90-day, rather than 60-day, period. Other tribal commenters requested reducing the timeframe to 30 or 20 days, stating that 60 days appears excessive for rights-of-way. A tribal utility authority requested a special expedited path in which the applicant or tribe pays a reasonable fee that would reduce the decision timeframe to 30 days. One commenter requested increasing the

deadline to 120 days following receipt of the complete package, but specifying that only one 30-day extension is permitted. Others stated that the extension period should be shortened.

*Response:* The final rule continues to require a BIA decision on the right-of-way within 60 days, with the option for a 30-day extension. We did not make any changes to the timeline in response to comments because these timelines are intended to be the outer bounds of the time it will take for BIA review of rights-of-way and are intended to cover all rights-of-way, from the simplest to the most complex.

*Comment:* Several tribal commenters requested that rights-of-way be deemed approved if BIA fails to take action within 60 days because existing remedies for inaction can be expensive and time-consuming and may delay critical tribal projects for which rights-of-way are needed. Other commenters, such as the Western Energy Alliance, also requested that applications be deemed approved, but suggested a timeframe of 120 days.

*Response:* The final rule does not incorporate a "deemed approved" approach for new rights-of-way because BIA is statutorily required to review and issue a determination of whether to grant rights-of-way over and across Indian land.

*Comment:* Several commenters requested that a fixed deadline be inserted rather than requiring BIA to "promptly" notify an applicant whether the application is complete at PR 169.119(b) (FR 169.123(b)). These commenters noted that the timeline for BIA review of the application does not begin until after BIA confirms receipt of the complete application.

*Response:* The final rule retains the term "promptly" in order to allow the necessary flexibility for BIA personnel, while conveying that such notification should occur as soon as feasible.

*Comment:* A few tribal commenters requested that the rule require tribal consent be provided before the clock starts for approval of the right-of-way.

*Response:* The rule specifies that the application must include the record of consent. See proposed and final § 169.102(b)(5).

##### b. Process for Granting Right-of-Way (PR 169.119/FR 169.123)

*Comment:* A tribal commenter stated that PR 169.119(a) should include a reference to cultural protection requirements.

*Response:* Final § 169.123(a)(2) adds a reference to cultural protection requirements as well as historic preservation requirements.

*Comment:* A few tribal commenters requested that PR 169.119 require the application package to include a completed tribal application and/or agreement with the tribe. One commenter stated that the applicant should be required to provide the tribe with a copy of the application upon filing.

*Response:* The tribe may require its own application or agreement to determine whether to grant consent. Likewise, the tribe may require a copy of the application as a condition of its consent. Record of consent is a required component of the application under the final rule, so the final rule does not separately require a tribal application.

*Comment:* A commenter requested changes to PR169.119 to delete the provision saying grantees must satisfy tribal “land use” measures and mitigation (citing *Brendale v. Confederated Yakima Indian Nation*, 492 U.S. 408 (1989)).

*Response:* The final rule retains the provision saying BIA may require modifications or mitigation measures necessary to satisfy tribal land use requirements. The case cited by the commenter is inapplicable because it applies to fee land, whereas these regulations apply to trust or restricted land.

*Comment:* A few commenters requested clarification of PR 169.119(d) regarding who receives copies of grants and of denials. One commenter stated that BIA should be required to provide the grant within 10 days of the request.

*Response:* The final rule addresses a typographical error to clarify that only the denial of an application is automatically provided to all parties. The final rule does not establish a timeframe in which BIA must provide a copy of the grant, though it is expected that BIA will respond within 10 days.

*Comment:* A tribal commenter recommended a process similar to the one contained in the leasing regulations to allow approval timelines to proceed while NEPA compliance processes are underway. Another commenter requested more clarity about how the process for approval is integrated with the schedule for BIA compliance with NEPA and other environmental requirements.

*Response:* Information necessary to facilitate BIA’s compliance with NEPA must be included in the application. The final rule does not add the provision set forth in the leasing regulations providing for a formal “acknowledgment review” but BIA may provide a review of documentation pending preparation of NEPA documentation and any valuation to

provide greater certainty as to the viability of a right-of-way project pending completion of the application.

#### c. BIA Decision To Grant a Right-of-Way (PR 169.120/FR 169.124)

*Comment:* A commenter stated that the description of when BIA will grant a right-of-way should be more specific. Another commenter stated that this section has the potential to create problems for applicants because, as a general rule, a right-of-way is in the best interest of the applicant versus the landowner. A commenter stated that this section should give special consideration for rights-of-way for landowners who otherwise would have no viable option for obtaining critical utility service.

*Response:* The section establishing the criteria BIA will consider in determining whether to approve a grant is necessarily general to ensure applicability to all types and circumstances surrounding right-of-way applications. While the right-of-way will likely benefit the applicant because the applicant has some need for the right-of-way, BIA will look to compensation and other factors to determine whether the grant is also in the best interest of the Indian landowner. The final rule provides special consideration if the right-of-way provides utility service, as explained above.

*Comment:* A few commenters stated that the BIA should be required to defer to the tribe’s determination fully, rather than “to the maximum extent.” One tribe supported the language that BIA will defer to the tribe absent a “compelling reason” not to defer, and stated that this is a clear improvement over the existing rule. Other commenters stated that BIA should not restrict itself in denials, and that the language implies that denials are institutionally disfavored. A few commenters suggested listing conditions or events that could serve as a basis for not deferring to Indian landowners’ determination that a grant is in their best interest or that could serve as the basis for denial. One tribal commenter suggested a separate provision stating that the deference requirement applies to all aspects of the right-of-way process unless deference clearly violates Federal law.

*Response:* Under this rule, BIA will generally defer to the tribe’s determination. The phrase “to the maximum extent” is included to allow for those exceedingly rare situations in which BIA cannot accord full deference while meeting its trust responsibility. The language attempts to provide

greater certainty to applicants that, if they comply with legal and regulatory requirements, including obtaining landowner consent, BIA will generally approve the grant (absent a “compelling reason” or finding that the grant is not in the best interest of the Indian landowners). Compliance with legal and regulatory requirements is a prerequisite to BIA approval. The final rule does not list conditions or events that could serve as the basis for disapproval because the “compelling reason” and “best interest” determinations are fact-specific.

*Comment:* A few tribal commenters stated that the rule should require the tribe to concur in a BIA determination regarding an Indian landowner’s best interest, because the tribe should determine the best interests of its members.

*Response:* The rule does not require tribal concurrence in BIA’s best interest determination for individual Indian landowners. The tribe’s relationship with its members is beyond the scope of this regulation.

*Comment:* A commenter requested deletion of the provision in PR 169.120(d) allowing BIA to issue separate grants for one or more tracts traversed by the right-of-way because separate grants would result in cumbersome management, impact bonding requirements, and complicate compliance with other regulatory requirements. This commenter stated that one right-of-way grant should be issued for all tracts traversed by the right-of-way.

*Response:* BIA currently has the discretion to grant either one right-of-way for all of the tracts traversed by the right-of-way, or issue separate grants. This provision merely makes explicit that BIA has this discretion because there may be circumstances in which it would be less burdensome for BIA to issue separate grants.

#### d. Contents of the Grant (PR 169.121/FR 169.125)

*Comment:* A few tribal landowners suggested requiring the grant to incorporate conditions and restrictions not just in consents, but also in any tribal application and agreement between the tribe and the applicant.

*Response:* The tribe is free to include any conditions it wishes in its consent, which may incorporate conditions and restrictions in its tribal application and agreement.

*Comment:* Several tribal commenters stated that PR 169.121 should clarify that tribal jurisdiction is preserved and that the grant itself should specify that tribal authority is preserved. A commenter stated that the grant should

include a statement that the tribe will have reasonable access to the subject lands to verify grantee's compliance with any of the tribe's conditions of consent and to protect public health and safety.

*Response:* The final rule includes the suggested provisions at FR 169.125(a) and (c)(1).

*Comment:* A tribal organization suggested the rule should state that the landowners reserve all uses of a right-of-way for any purpose other than the purpose stated in the grant and that the landowners may consent to future grants for those uses if they do not unreasonably interfere with the grantee's authorized use of the right-of-way.

*Response:* The landowner necessarily reserves all uses and rights that it does not convey. The landowner may consent to rights-of-way or agree to leases for such uses that meet the requirements in FR 169.127 or 25 CFR part 162, respectively.

*Comment:* Several commenters stated that the requirement to "restore" the land to the original condition at PR 169.121(b)(3)(iii) and (ix) is difficult, if not impossible, and that reclamation of the land is a more reasonable standard consistent with other regulatory schemes. A tribal commenter stated that it has difficulty obtaining the agreement of grantees to restore. Several commenters stated that the restoration should not be "as nearly as may be possible" but instead should require use of "best efforts." Another commenter stated that the provision requiring restoration "as much as reasonably possible" should instead read "as much as possible" and should be consistent with the earlier provision requiring restoration.

*Response:* The current regulation requires that the applicant stipulate that it will "restore the lands as nearly as possible to their original condition upon completion of construction the extent compatible with the purpose for which the right-of-way was granted" and "that upon revocation or termination of the right-of-way, the applicant shall, so far as is reasonably possible, restore the land to its original condition." Current § 169.5(d) and (i). The proposed rule included substantively the same provisions, requiring the grantee to "restore the land as nearly as may be possible to its original condition, upon the completion of construction, to the extent compatible with the purpose for which the right-of-way was granted," and "restore [the] land to its original condition, as much as reasonably possible, upon revocation or termination of the right-of-way." PR

169.121(b)(3)(iii) and (ix). The final rule retains the requirement for restoration as the default but allows the parties to negotiate for reclamation or some variation of the standard for restoration provided in the regulations, if appropriate, in order to address comments that restoration to the land's original condition may not be possible in all circumstances.

*Comment:* An energy company commenter stated that the regulation should allow for abandoning natural gas pipelines in place where doing so would be less expensive and create less risk of damage to resources.

*Response:* As discussed in the prior response, the parties may negotiate for alternatives to restoration of the land to its original condition, if appropriate.

*Comment:* A tribal commenter stated that PR 169.121(b)(3) should state that the grant must require the grantee to perform soil conservation and weed control, and prevention and suppression of fires, as required by current 169.5.

*Response:* The final rule encompasses soil conservation in its requirement to "not commit waste" and encompasses weed control, and prevention and suppression of fires in its requirement to "clear and keep clear" the land within the right-of-way.

*Comment:* A few tribal commenters requested that the grantee be required to notify the tribe, in addition to BIA, of the grantee's address at all times.

*Response:* The final rule adds at § 169.125 a requirement for the grantee to notify the tribe, for grants on tribal land, of the grantee's address.

*Comment:* Several tribal commenters requested adding a requirement for the grantee to inform BIA and the tribe of any filing of bankruptcy or receivership and require the grantee to demonstrate its financial capacity to carry out the responsibilities under the right-of-way grant.

*Response:* The final rule adds a requirement that the grantee inform the BIA and tribe, for tribal land, if it files for bankruptcy or is placed in receivership. Tribes may also ask for additional documents to demonstrate financial capacity, as a condition of consent.

*Comment:* One commenter stated that the tribe should evaluate and approve any ground-disturbing activity because, in the past, significant events such as oil spills have left landowners with no authority to impose corrective action.

*Response:* The tribe may enact a law requiring tribal approval of any ground-disturbing activity outside of the BIA approval process for rights-of-way.

*Comment:* One commenter noted that PR 169.121, stating that the grantee has

no right to any of the products or resources of the land, may conflict with some existing grants issued under legislation other than 25 U.S.C. 323–328.

*Response:* The provisions will be included in all new grants issued. If there is an existing grant under legislation other than 25 U.S.C. 323–328, FR 169.125 will not apply unless and until a new grant is issued.

*Comment:* Tribal commenters stated that PR 169.121 should be expanded to include cultural items and resources and to include a statement requiring activity under the grant to cease if historic properties, archaeological resources, human remains, or other cultural items are encountered.

*Response:* The rule includes a provision to address cultural items and resources. See FR 169.125(c)(4). Any archaeological resources, human remains, or other cultural items recovered on Indian land are the property of the Indian landowner or tribe. 43 CFR 7.13; 43 CFR 10.6.

*Comment:* A tribal commenter requested that the rule specify that tribes can initiate enforcement actions for violations of tribal law.

*Response:* The final rule, by clarifying that the tribe retains jurisdiction over the land subject to the right-of-way, indicates that the tribe may initiate enforcement actions for violations of tribal law.

#### e. Preference for Employment of Tribal Members

*Comment:* Several tribal commenters stated their support for the provision at PR 169.122, allowing grants to include the tribe's preference for employment of tribal workers, as provided by tribal law. One of these commenters noted this affirmation of tribal employment preference laws helps increase tribal employment and eradicate discrimination. A few tribal commenters noted that tribal law may require a preference even if the grant does not specify it, and therefore requested that the regulation note that failure to specifically reference the requirement does not excuse compliance. Another tribal commenter requested identifying specific areas in which the preference is permitted, such as preference in employment, subcontracting and use of the right-of-way.

Several non-tribal commenters stated their objections to this provision as an "unreasonable interference in hiring practices" and "unrelated to easement tasks." Others stated their concerns with this provision's interplay with applicable labor laws and agreements (e.g., requirements to use unionized

labor, contract bidding requirements). Some asked for more specification (e.g., what percentage would be required, what qualifications are required) and exclusions (e.g., for part-time positions, for grants over tribal land only). A few of these commenters requested edits to allow for preference to Indians generally.

*Response:* Each tribe may establish requirements for employment preferences for tribal members; applicants should refer to tribal law to identify percentages and other information such as Tribal Employment Rights Ordinances. Tribe-specific employment preferences as provided in these regulations are based on political classification, not based on race or national origin. They run to members of a particular federally-recognized tribe or tribes whose trust or restricted lands are at issue and with whom the United States holds a political relationship. These preferences are rationally connected to the fulfillment of the Federal Government's trust relationship with the tribe that holds equitable or restricted title to the land at issue. These preferences also further the United States' political relationship with Indian tribes. Tribes have a sovereign interest in achieving and maintaining economic self-sufficiency, and the Federal Government has an established policy of encouraging tribal self-governance and tribal economic self-sufficiency. A tribe-specific preference in accord with tribal law ensures that the economic development of a tribe's land inures to the tribe and its members. Tribal sovereign authority, which carries with it the right to exclude non-members, allows the tribe to regulate economic relationships on its reservation between itself and non-members. See, generally, *Equal Employment Opportunity Commission v. Peabody Western Coal Company*, 773 F.3d 977 (9th Cir. 2014) (upholding tribal preferences in leases of coal held in trust for the Navajo Nation and Hopi Tribe, but also citing with approval the use of such preferences in business leases). These regulations implement the established policy of encouraging tribal self-governance and tribal economic self-sufficiency by explicitly allowing for tribal employment preferences. If there is a reason that the applicant is not able to comply with tribal laws regarding employment preferences, the applicant may negotiate with the tribe on this matter when negotiating for the tribe's consent.

*12. Process for Rights of Way Applications Within or Overlapping Existing Rights of Way, or "Piggybacking" (PR 169.123/FR 169.127, 169.128)*

*Comment:* Several tribal commenters supported the proposed provision clarifying whether a new right-of-way is required for use within or overlapping an existing right-of-way. Many of these noted that there have historically been many unauthorized uses of rights-of-way, through unlawful "piggybacking," on Indian land. Examples they provided included utilities using a right-of-way established for one utility use (e.g., a water line) for a different utility use (gas pipeline). Some suggested strengthening this section to include criteria allowing piggybacking only where it directly benefits and serves the tribal community. A few suggested allowing only uses specified in the grant, and deleting the allowance for "uses within the same scope" as too broad and having the potential to be exploited by grantees. Some of these tribal commenters stated that the default should prohibit piggybacking, unless the Indian landowners choose to include uses within the same scope in a particular grant. Several commenters argued that this provision should be deleted in its entirety.

Those opposed to the provision requiring a new right-of-way stated that it "immensely and unnecessarily burdens applicants whose rights-of-way would not impede the existing facilities and existing right-of-way, amounts to double and triple charging for the same right-of-way, and should not be required if the new use is permitted by applicable law.

A few tribal commenters stated that the provision should specify that a new right-of-way is required to enlarge or expand the right-of-way, such as when a different type of service will be installed or there is a substantial change in the nature and use, such as replacing a 14kV distribution line with a 69kV transmission line. Commenters disagreed, even in given examples, on whether certain piggybacking should require a new right-of-way. For example, a tribal commenter stated that siting utilities within road and railroad rights-of-way without compensating the landowners for the additional use should be prohibited. In contrast, a city commenter stated that the rule should clarify that utility lines located in a right-of-way established for a road should be considered an incidental use of the right-of-way not requiring consent or compensation where the consumer is using and paying for the utility service.

*Response:* The final rule maintains the proposed requirement that a use not specified or stated within the scope of an existing right-of-way requires new consent and approval for the new use. The language "within the same scope" is intended to provide flexibility with regard to uses that are not foreseeable but are comparable (for example, a grant for an underground telephone line that is later used for an underground fiber optic line). Examples of uses that would not be within the same scope are a grant for a railroad being used for telecommunications, a grant for a road being used for utility lines, or a grant for an above-ground electrical wire being used for buried electrical wires. The final rule does not add a review of whether the new use will benefit the landowners because the BIA and the landowners consider this factor when issuing the original grant, so any use within that scope should likewise benefit the landowners. The Department has determined that maintaining this proposed section is important to specify that a right-of-way grant is not *carte blanche* to do whatever the grantee desires with the land, but rather is a grant for certain uses. Uses outside the scope of those specified uses constitute trespass.

*Comment:* A few tribal commenters suggested clarifying that grantees must obtain an amendment to allow third parties to use the right-of-way, if the right-of-way does not clearly contemplate use by third parties, even if the third party will be using the right-of-way for the purposes stated in the right-of-way.

*Response:* The final rule clarifies that, even when the use is the one specified in the grant or within the same scope, certain procedures must be followed if the grantee wishes to allow a third party unauthorized by the grant to use the right-of-way. The final rule clarifies that the grantee must obtain an assignment to allow someone other than the grantee to use the right-of-way for the use specified or within the same scope of the use specified in the grant.

*Comment:* A commenter stated that this provision is silent on whether additional compensation is required.

*Response:* Where piggybacking requires a new right-of-way, compensation is generally required. Where piggybacking requires an amendment or assignment to the right-of-way, the landowners may demand compensation as a condition of their consent.

*Comment:* A commenter requested that the current 169.05 language requiring that the application identify the "specific use" be reinserted.

*Response:* Final § 169.125 requires that the grant specify the use(s) it is authorizing.

*Comment:* One commenter stated that BIA appears to be trying to sidestep *United States v. Oklahoma Gas & Electric*, 318 U.S. 206 (1943). This commenter also questioned whether the phrase “before the effective date of this part” is intended to state that the Supreme Court’s decision will no longer be applicable.

*Response:* The case cited by this commenter does not apply because it is interpreting statutes other than the 1948 Act (25 U.S.C. 323–328). Those other statutes explicitly referred to State law, which the 1948 Act does not. These regulations rely on and interpret the 1948 Act.

*Comment:* A commenter stated that piggybacking should be disallowed without limitation, regardless of whether it is allowed by State law. Other commenters stated that BIA has for years taken the position that the 1948 Act supersedes the 1901 Act.

*Response:* The final rule does not disallow piggybacking entirely, because there may be circumstances in which piggybacking is in the best interest of the Indian landowners. The provision that the commenters are referring to, with regard to the 1901 Act, is deleted in the final rule because a new grant issued within or overlapping an existing grant would be issued under the 1948 Act, rather than the 1901 Act.

*Comment:* One commenter expressed concern about allowing a new use in a right-of-way for electric transmission systems, and suggested requiring the consent of the current grantee to determine whether the use will interfere with the existing use. A few commenters suggested deleting PR 169.123(b)(2), which would require that the new use not interfere with the existing use or requires the grantee’s consent, because if the use is not within the scope of the existing right-of-way, then the existing grantee has no authority to authorize or refuse the use. These commenters claim the right-of-way is not a possessory interest.

*Response:* The final rule requires the grantee’s consent at FR 169.128 to ensure that the new use does not interfere with the existing grantee’s right-of-way. While the interest in the right-of-way is not a possessory interest, the grantee has the right to use the right-of-way for the specified purpose without interference.

### 13. Location in Application and Grant Differ From Construction Location (PR 169.124/FR 169.129)

*Comment:* A tribal commenter supported PR 169.124, saying it is a practical and reasonable approach that would have helped past situations in which the tribe attempted to correct an inaccurate legal description. Other commenters stated that the applicant should be required to obtain a new right-of-way grant if there is a change in location.

*Response:* This provision is included in the final rule to address unforeseen circumstances before construction. The commenters’ assertion that the applicant should be required to obtain a new right-of-way grant whenever there is a change in location indicates a concern that this section could be abused. For this reason, the final rule adds that the BIA and the tribe, for tribal land, must determine that the change in location is only a minor deviation, and that, if it is not, then the grantee must seek a new or amended right-of-way grant.

*Comment:* One commenter suggested streamlining the process by requiring an amendment rather than an entirely new right-of-way, allowing BIA to consent on behalf of landowners if BIA consented to the initial grant, and allowing for a recalculation of compensation rather than requiring a new valuation.

*Response:* The final rule allows an option for an amendment to the existing right-of-way in appropriate circumstances. Provisions for BIA consent on behalf of landowners are provided in the regulatory sections governing consent. The final rule also allows for a recalculation of compensation with landowner consent.

*Comment:* A tribal commenter stated that any change in location should require landowner consent, and may require additional compensation, a change in bonding, and other conditions. Another tribal commenter stated that a change in location that will require construction outside an approved corridor should require prior tribal consent. A commenter expressed concern about whether the section excuses negligence when a grantee fails to stay within the boundaries identified in the grant and allows potentially major errors to be corrected with landowner consent and other requirements only in BIA’s discretion. Other commenters stated that consent should be required only if the change in location is material and significant and that requiring consent to minor changes could bring operations to a standstill if the landowner declines to grant consent.

*Response:* As explained above, the final rule clarifies that this provision applies to minor deviations in location, and that any other changes in location would require a new or amended right-of-way grant. Whether a change in location is a “minor deviation” is a matter of judgment. An example of a “minor deviation” would be a change in location of a few feet in an expanse of undeveloped land whereas a change in location of a 10 or more feet, or even a few feet, in a highly developed area may not be considered a minor deviation.

*Comment:* A few commenters suggested including a requirement to provide notice to the tribe or to all Indian landowners. Other commenters suggested adding that revisions may also be subject to additional bonding and NEPA compliance requirements.

*Response:* FR 169.129 provides that BIA will work with the tribe, for tribal land, to determine what the change in location requires and adds that additional actions may be necessary to comply with applicable laws.

*Comment:* A few commenters had questions about this section, such as whether grantees must notify BIA even if the survey accounts for the discrepancy in location.

*Response:* If a survey is inaccurate, the grantee must notify the BIA to determine whether the change in location is a minor deviation.

*Comment:* One commenter claimed to have received grants that contain incorrect information in the past, and suggested the rule should provide the grantee the opportunity to review the document before it is officially issued.

*Response:* The final rule does not specify that the grantee may review the document before it is issued, but grantees are welcome to maintain an open line of communication with BIA, and BIA may, in its discretion, provide grantees with the opportunity to review.

### 14. Bonding (PR 169.103/FR 169.103)

*Comment:* Several commenters suggested adding flexibility to the bonding provisions to allow for nationwide bonding and self-insurance. Others requested specifically adding an insurance requirement or bonding requirement to cover contaminants and explosives. At least one tribal commenter stated that tribes should have the option to determine whether bonding or insurance is more appropriate to address potential environmental damage. A few commenters opposed the requirement for bonding, stating that the tribal landowner may end up paying the costs, and suggested allowing for a waiver. One commenter supported the

provisions allowing for bonding, while others stated that the provisions raise more questions than they answer.

*Response:* The final rule retains the requirement for bonding but adds flexibility allowing for insurance or bonding to cover contaminants and includes a provision allowing for waiver of bonding and security requirements.

*Comment:* A commenter noted that this section requires a surety to provide notice to BIA before cancelling a bond or surety, but does not require notice to the tribe, and stated that the rule should require notice to the tribe.

*Response:* The final rule requires the surety to also provide notice to the tribe for bonds or sureties for rights-of-way on tribal land.

### Subpart C—Terms, Renewals, Amendments, Assignments, Mortgages

#### 1. Term (Duration)

*Comment:* Several commenters, including tribal commenters, supported having BIA defer to the tribe on the reasonableness of the term (duration) of the right-of-way. A few tribes suggested that the rule should establish default terms that apply, as in the current part 169, which limits oil and gas pipelines to 20 years and electric power lines to 50 years. Some suggested the default terms should apply whenever the tribe has not determined that a longer term is necessary or the right-of-way use does not provide significant service to the reservation. Commenters supportive of limiting the duration of grants pointed out that economic, technological, environmental, and other factors change what might have been an appropriate term for a right-of-way when originally granted, and limiting the term will ensure a reexamination consistent with tribal rights and interests.

Several commenters suggested different uses for the proposed table showing terms for each right-of-way use. One tribal commenter suggested clarifying that the terms in the table are maximum term lengths, not minimum or recommended term lengths. A tribal commenter suggested adding general criteria for granting terms longer than those specified in the table (e.g., infrastructure or service benefits to landowners, projects that will benefit all landowners).

*Response:* Tribes are free to rely on the terms provided as guidelines for individually owned Indian land, but the rule does not require those terms; instead, the rule provides that BIA will defer to any term the tribe deems appropriate.

*Comment:* Many commented on the terms proposed for rights-of-way over or

across individually owned Indian land, as summarized here:

- Oil and gas pipelines—A few commenters stated that the proposed 20-year term for gas and oil pipelines is appropriate, but most other commenters stated that 20 years is unrealistic and too short, suggesting at least 40 or 50 years.

- Electric distribution lines—Some commenters stated that electric distribution lines should be permitted in perpetuity; one suggested 50 years, and others stated that 50 years is too long.

- Utilities, in general—Commenters who are providers of utilities stated that the grants should be in perpetuity (see discussion below); one suggested commercial utilities should have terms of 40 years. An electric cooperative suggested a 50-year right-of-way for electric cooperatives providing service to the tribe.

- Telecommunications and broadband or fiber optic lines—A commenter suggested the term for telecommunications and fiber optic lines should be commensurate with that of other utilities; another suggested 50 years; others suggested 10 years.

- Railroads—Some commenters stated that terms for railroads and roads should be limited to 75 years, rather than in perpetuity.

- Conservation easements—A tribal commenter stated that conservation easements are usually in perpetuity, even though the table says “consistent with use.”

- Other—Several commenters stated that most rights-of-way should be limited to 20 years.

*Response:* The final rule recommends a maximum term of 50 years for all rights-of-way other than oil and gas and conservation easements. The final rule retains the recommended maximum duration of 20 years for gas pipelines as a baseline; however, if longer durations are appropriate in certain circumstances, BIA will review the request to determine if the longer duration is in the best interest of the Indian landowners. For conservation easements, the final rule retains the recommendation for duration consistent with use. The Department determined these terms are appropriate as guidelines. The final rule also specifies that there may be circumstances in which a different term may be appropriate, for example, if a Federal agency requires a different term.

*Comment:* Several commenters, including several tribal commenters, stated that the rule should eliminate “in perpetuity” terms for rights-of-way on Indian land. These commenters asserted

that allowing a perpetual right-of-way violates the trust responsibility, fails to preserve the ability to change the grant in changed circumstances, fails to account for future generations, is not appropriate in the context of the history of Indian landowners not being fairly compensated for rights-of-way, and erodes tribal jurisdiction. One commenter stated that the maximum term should be the shortest period that provides sufficient certainty and/or opportunity for the grantee to recover costs. One commenter stated that perpetuity may be appropriate if it will forever benefit the landowners.

A few electric cooperatives (e.g., NM Rural Electric Cooperative Association) stated that allowing a grant in perpetuity would reduce the impact of substantial fees that tribes assess on the cooperatives, benefiting all cooperative members, including tribal members, and eliminating the uncertainty in planning for affordable rates by eliminating the prospect of having to renew at prices that have no ceiling. One electric cooperative stated that the line should be in perpetuity if it serves the tribal community, in contrast to transmission lines that go over and across tribal lands.

Likewise, public utilities argued that public utility transmission and distribution lines and appurtenant facilities should have a perpetual term because shorter terms could undermine the utility’s ability to provide affordable, essential utility service to the public. The utilities argued that they may be forced to choose a more expensive route, where a perpetual grant is ensured, rather than face the prospect of having to relocate the line at some point in the future when the grant expires. A city commenter stated that the rule should require BIA to grant easements in perpetuity if a professional engineer provides a map certifying certain circumstances, including that the water and sewer system serve the entire community with the consent of landowners.

One commenter suggested that, instead of allowing “in perpetuity,” the grant should state that if the right-of-way is abandoned for its original purpose, then it reverts to the landowners.

*Response:* The final rule does not recommend “in perpetuity” for any type of right-of-way because the underlying parcel is trust property for which the Department owes an ongoing trust responsibility that is undermined if the Department abandons the ability forever to review the grant in certain intervals to address changed circumstances. While it is possible that under some

circumstances BIA could determine that a perpetual term is in the best interest of the individual Indian landowners, BIA expects those circumstances would be rare.

*Comment:* A commenter stated that the rule should clarify when, how and under what criteria the BIA will decide the overall term of the right-of-way and whether the term complies with applicable legal authorities. Another commenter stated it is unclear how closely the BIA will conform to the table of guidelines when examining terms on individually owned Indian land.

*Response:* The proposed and final rules provide for flexibility in establishing the term (duration) of a right-of-way by providing that BIA will defer to the tribe's determination that a term is reasonable, and by providing guidelines for reasonable terms for individual Indian landowners. See FR 169.201.

*Comment:* A power administration commenter noted that it has existing rights-of-way in perpetuity and asked how the grant would be impacted if the new rule requires a shorter term.

*Response:* The rule provides a guideline for determining whether a term is reasonable in light of the purpose of a right-of-way for individually owned Indian land. It does not affect any existing grant terms.

*Comment:* NorthWestern Energy requested treating all natural gas lines as utility gas lines and treating pipelines carrying oil and other petroleum products separately. A few tribal commenters suggested the opposite, clarifying that "utility gas lines" mean natural gas lines serving a tribal member or the tribe, and not transmission lines of a natural gas utility company.

*Response:* Proposed and final § 169.201 treat utility gas lines (a term of 50 years) separately from other gas pipelines (with a term of 20 years). Whether a natural gas line is treated as a utility gas line generally depends upon whether it is carrying processed gas ready for use by the consumer or unprocessed gas from the wellhead.

*Comment:* Several commenters requested clarifications on different uses specified in the proposed table of terms.

*Response:* The final rule deletes the table of terms based on specific rights-of-way uses.

*Comment:* A few commenters advocated for applying the same terms to both tribal and individually owned land to provide certainty to enable the applicant to justify the capital investment in the necessary improvements. One urged the Department to rethink the distinction and allow individual landowners the

same latitude to reach agreement on appropriate terms, in the same manner as for a tribal right-of-way, alleviates confusion regarding how terms should be applied to fractionated parcels with both tribal and individual owners, and provides greater flexibility to address specific factual circumstances. A few commenters suggested deleting the table and simply providing that the BIA will defer to the landowners' determination that the term is reasonable. A few commenters stated that BIA should consult with the tribe on what a reasonable term will be for rights-of-way that will cross both individually owned Indian land and tribal land.

*Response:* The final rule explicitly provides that the BIA will consider the duration negotiated by the tribe for tribal land when reviewing rights-of-way that also cross individually owned Indian land (or are located on fractionated land with both tribal and individual ownership). BIA encourages tribes and individual Indian landowners to consult with one another on reasonable terms for rights-of-way affecting both their interests.

## 2. Holdovers

*Comment:* A commenter stated that holdovers should be allowed if the landowner consents to the grantee's continued use for a period of less than 7 years and the grantee has submitted an application for a renewal or a new right-of-way. Several commenters suggested adding that a grantee may temporarily maintain the right-of-way pursuant to an agreement with the tribe or majority of landowners during good faith negotiations concerning renewal, and that the grantee will not be considered to be in trespass if it has filed an application for renewal.

*Response:* The final rule addresses holdovers exclusively in FR 169.410, which states that while holdovers are not permitted, BIA will not enforce against holdover grantees if they are engaged in good faith negotiations.

## 3. Renewals (PR 169.201–169.202/FR 169.202)

*Comment:* Several commenters stated that there is no need for a renewal of a right-of-way, and instead the grantee should be required to submit a new application because conditions may have changed. Several commenters supported the language in PR 169.202 on renewals. Several other commenters opposed the requirement that the original grant allow for renewal and specify any compensation. A commenter stated the current approach, of allowing renewals regardless of

whether the original grant authorizes renewals, should be retained.

*Response:* The final rule allows for renewal where the grant explicitly allows for an automatic renewal or option to renew and certain other conditions are met. See FR 169.202.

*Comment:* A few commenters asked whether the terms outlined in § 169.201 include only the initial term or are inclusive of the renewal term.

*Response:* The final rule clarifies that guidelines for maximum terms are intended to apply to the entire duration of the grant, inclusive of the initial term and any renewals.

*Comment:* A commenter stated that the rule should not allow renewal without tribal notice or consultation.

*Response:* The proposed and final rules require landowner consent for renewals, unless the landowners agreed not to require consent for renewals in the original grant as provided for in § 169.202(b). The final rule requires notice to landowners for those circumstances in which the original grant allows for renewals without consent.

*Comment:* One commenter supported provisions allowing the original grant to provide for renewals without landowner consent. A few commenters requested clarification that the original grant must specify that consent is not needed for renewal; otherwise, grantees could argue that silence in the original grant allows for renewal without consent. Several tribal commenters stated that landowner consent should always be required for renewals, rather than allowing the original grant to allow for renewal without consent, because some landowners may be taken advantage of and not realize that they can oppose this type of provision. Another commenter expressed concern about having landowners bind future landowners by allowing for renewals without consent.

*Response:* Final § 169.202(b) specifies that the original grant must explicitly allow for renewal without consent. If the original grant is silent as to whether consent is required for renewals, then consent for the renewal is required.

*Comment:* Several commenters suggested adding a requirement that the grantee demonstrate that the right-of-way was neither abandoned nor in violation of any conditions in the grant. A commenter suggested amending paragraph (a)(1) to add that the grantee must comply with renewal requirements in the grant.

*Response:* The final rule adds a provision requiring that the grantee be in compliance with the grant and regulations as a condition of renewal.

*Comment:* We received several comments on whether the renewal should allow for any changes to the original grant's terms. A few commenters stated that the rule should provide flexibility to allow for minor changes to size, type, location, or duration of the right-of-way through an amendment, rather than through an entirely new application. A tribal commenter suggested that renewals should be allowed if there is no "material change." One commenter stated that requiring a new right-of-way application for every change, no matter how small, will lead to inefficiencies and detrimentally affect the modernization of energy infrastructure.

*Response:* The final rule allows for renewals only if there is no change; otherwise, the new right-of-way does not qualify as a "renewal." A grantee seeking to renew may do so and then separately request an amendment if there is a need to change the grant.

*Comment:* A tribal commenter stated that rights-of-way should be renewed only if the renewal includes additional compensation.

*Response:* The final rule requires additional compensation for renewals.

*Comment:* A commenter requested that no map be required for a renewal if there is no material change to the map that was filed with the original application. Another commenter stated that requiring certified surveys for renewals would be a significant cost.

*Response:* The final rule does not require a map or survey if the grantee attests that there is no change.

#### 4. Multiple Renewals (PR 169.203/FR 169.203)

*Comment:* Several commenters stated that this section should clarify that the multiple renewals are subject to the requirements of § 169.202. One tribal commenter suggested deleting this provision because it tends to provide for perpetual easements if the grants are automatically renewed.

*Response:* The final rule clarifies that the provisions of § 169.202 apply to each renewal. To address the concern regarding perpetual easements, the final rule provides that BIA will review the initial term and any renewal terms and determine whether, together, they are reasonable.

*Comment:* A commenter stated that this section should prohibit multiple renewals if the grant prohibits them.

*Response:* The final rule states that renewals must be explicitly authorized in the grant.

*Comment:* A commenter stated that the rule should retain the current § 169.25 for oil and gas pipelines

because the new rule will make renewals, amendments, assignments, and mortgages more difficult and time consuming.

*Response:* Current § 169.25 does not address the process for amendments, assignments, and mortgages for oil and gas pipelines. The Department has determined that establishing procedures for amendments, assignments, and mortgages for new rights-of-way is necessary to protect the landowner's right to obtain value from the trust resource. To the extent it addresses renewals, the current rule allows an initial term of 20 years and specifies a renewal period of 20 years. The Department will defer to tribes for right-of-way terms and renewals on tribal land. For rights-of-way on individually owned Indian land, BIA will use the guideline of 20 years as a maximum for a reasonable term for oil and gas pipelines to ensure a reexamination of the circumstances upon application for a new right-of-way at the end of that 20-year term, rather than an automatic renewal, to ensure protection of the landowner's right to obtain value from the trust resource.

#### 5. Amendments

*Comment:* A commenter stated that amendments should not be required for changes to accommodate a change in the location of permanent improvements to previously unimproved land within the right-of-way corridor, and that, instead, the rule should add that amendments are not required for "other administrative modifications." The commenter states that this term is used in part 150 and in IBIA decisions, establishing precedent.

Other commenters were concerned that allowing corrections to legal descriptions or other technical corrections without meeting consent requirements could encourage grantees to couch significant changes as "technical corrections." These commenters stated that there should be no exceptions to the consent requirements, and that the final clause of § 169.204(a) should be deleted.

A few tribal commenters stated that the prior notification to landowners should be required if BIA will be amending a grant to correct a legal description or make another technical correction without meeting consent requirements.

*Response:* The final rule adopts the suggested terminology and allows BIA to make "administrative modifications" upon request without landowner consent. BIA will review each request for an administrative modification and determine whether it is a more

significant change, requiring an amendment with landowner consent and BIA approval. The final rule requires that the grantee notify landowners of the administrative modification, but does not require prior notification because the administrative modification is, by its nature, a technical correction.

For other changes to the grant that are more significant than administrative modifications, the final rule provides that the grantee must obtain landowner consent and BIA approval. Administrative modifications are intended to capture the category of changes that are clerical in nature and do not affect vested property rights or involve questions of due process. The final rule also states that if the change to the grant is material, BIA may require the grantee to obtain a new grant rather than merely amend the existing grant. An example of a material change to a grant would be changing the right-of-way use from a two-lane road to a six-lane highway. BIA will review each amendment request to determine whether it is a material change requiring a new right-of-way.

*Comment:* A commenter expressed concern with using the terms "permanent improvement" and "unimproved land" in PR 169.204(b) because they are not defined and are not used in the current rule. Another commenter opposed PR 169.204(b) because the grantees obtain rights to use the land encompassed by the right-of-way, and those rights include the right to amend the location of the improvements within the right-of-way without consent or approval. The commenter points out that it would be extremely time consuming and costly to require grantees to again secure consent and approval, adding hurdles. This commenter suggested instead only requiring the grantee to provide notice to BIA, for recording in the LTR0.

*Response:* The provision regarding moving permanent improvements to unimproved land has been deleted and replaced with a new standard for determining whether an amendment is required: whether the change is "material." Nevertheless, amendments are generally required for changing the location of permanent improvements because it is necessary for BIA to know the exact location of permanent improvements for its analysis under the National Environmental Policy Act and the National Historic Preservation Act.

*Comment:* One commenter asked how PR 169.204 works with PR 169.123 (new uses within or overlapping existing grants) where a grantee proposes to adjust its use within the same right of

way. This commenter stated that the grantee should be able to accomplish a minor change in use without having to request an entirely new right-of-way.

*Response:* The final rule updates PR 169.123 (FR 169.127) to clarify that a grantee that seeks to adjust its use within the same right-of-way may request an amendment of the right-of-way, while a grantee that seeks to use a right-of-way held by another individual or entity must obtain an assignment (if the use is within the same scope) or seek an entirely new right-of-way (if the use is not within the same scope).

*Comment:* A commenter suggested requiring notification of the date of BIA's receipt of a request for amendment and any BIA request for additional review time only to the amendment applicant, and not the landowners.

*Response:* The Department's trust obligation is to the landowners, rather than to the parties in general; therefore, the final rule requires notification to the landowners as well.

*Comment:* A few commenters suggested that an amendment should be deemed approved if BIA fails to take action within the required timeframe. A tribal commenter opposed allowing BIA to extend the timeframe unilaterally for review of amendments, and that the timeframe should instead be tolled if additional information or revision is necessary.

*Response:* The final rule does not allow amendments to be "deemed approved" because BIA must review the amendment to determine whether it requires a new right-of-way or triggers other Federal review. The final rule incorporates a process whereby the amendment will be elevated within BIA if BIA fails to take action within the required timeframe. This ensures accountability within BIA on meeting timelines.

*Comment:* A commenter stated that it is unclear when BIA approval of an amendment would not be required, and suggested either clarifying or deleting the phrase "if our approval is required" in PR 169.205(a).

*Response:* The provision cited by the commenter is deleted from the final rule. See FR 169.205.

*Comment:* A commenter stated that consent in PR 169.206 should refer back to PR 169.107 and PR 169.108, so that if BIA granted consent for the original right-of-way, it may consent for the amendment.

*Response:* The final rule adds the appropriate cross-references. See FR 169.206.

*Comment:* A commenter suggested limiting consent of grantee's sureties to only those securities that require consent of the surety for amendments to rights-of-way or similar documents.

*Response:* The final rule does not incorporate this limitation because BIA is not in the business of determining which surety's consent is required. The final rule does, however, clarify that the grantee's surety refers to the surety for the bonds or other security, rather than other sureties.

*Comment:* A commenter sought explanation of what would constitute a "compelling reason."

*Response:* The final rule does not define "compelling reason" because this phrase is intended to capture fact-specific circumstances that may not be foreseeable.

#### 6. Assignments

*Comment:* A few tribal commenters stated that the rule should allow for assignment of rights-of-way to other individuals or entities without BIA approval only where the original grant "expressly" allows for assignment. Otherwise, silence in the grant could be construed as allowing for assignments. Several other commenters (Western Energy Alliance, Enterplus Resources Corporation) stated that the rule should provide that rights-of-way are freely assignable without consent or approval, unless the grant states otherwise. One commenter stated that taking away the grantee's ability to sell, assign, or transfer its rights in a right-of-way significantly decreases the value to the grantee, potentially amounting to a "taking." Another commenter stated that the requirements for consent and approval erect new and time-consuming barriers to assignments where none currently exist, undermining the goal of "streamlining" the regulations. One commenter stated that, to the extent BIA approval of an assignment is necessary, it should be limited to ensuring the assignee has financial and technical capability to maintain the right-of-way. This commenter stated that the default should be to allow assignments, unless otherwise provided in the grant.

*Response:* The final rule states that landowner consent for assignments is generally required in all cases. This includes tribal consent for assignments of rights-of-way on tribal land. The final rule allows for assignment without BIA approval if the original grant allows for assignment without approval. An assignment is a conveyance of interest in Indian land, so the law generally requires BIA approval. While the current regulations are not clear on the process for assigning rights-of-way, the

final rule establishes a process in the interest of protecting the landowners' interests and in transparency. These requirements are parallel to the leasing regulations at part 162.

*Comment:* A few commenters, including energy companies, suggested clarifying when approval of and consent for an assignment is not required, and suggested that no approval or consent should be required when a grantee is fully acquired by a new entity, the grantee's name changes, the grantee changes as a result of a corporate merger, acquisition, transfer by operation of law, or assignment to affiliated entities or companies.

*Response:* The final rule incorporates the energy companies' suggestion that assignments that are the result of a corporate merger, acquisition, or transfer by operation of law not require consent and approval, because such "assignments" are not actually a conveyance of an interest in the Indian land. Record of these assignments must be submitted to BIA for recording, but no consent or approval is required. All other assignments, including assignments to affiliated entities or companies, require consent and approval (unless exempted under FR 169.207(b)).

*Comment:* A tribal commenter stated that it has been the practice in the energy industry for companies to obtain rights-of-way and then "flip" them at a large profit. Several other commenters pointed out that grants are currently freely assignable and stated that free assignability should continue because obtaining consent will be time-consuming, costly, and will significantly deter acquisition of rights-of-way on Indian land. A commenter stated that rights-of-way are negotiated with the understanding that the grantee may assign rights to other entities or mortgagors, and that the availability of this operational and financial opportunity is partially what makes the process of seeking a right-of-way worthwhile.

*Response:* The final rule provides that a grantee may assign a right-of-way only with consent and approval, unless other conditions apply, including that the grant expressly allows for assignments without further consent or approval. These procedures are necessary for all rights-of-way granted after the effective date of these regulations in order to ensure BIA is aware of authorized users of Indian land. If assignability is important to the grantee, the grantee should negotiate and pay for this right.

*Comment:* One commenter stated that the rule should allow the parties to waive consent to assignments and

mortgages, in addition to waiving BIA approval.

*Response:* The final rule allows the landowners to negotiate for a grant that expressly allows for assignments and mortgages without further consent.

*Comment:* A commenter suggested ensuring BIA is kept informed by providing that if the assignee fails to provide to BIA the assignment with supporting documentation within a month of finalizing the assignment, then the assignment is subject to cancellation.

*Response:* If BIA approval of the assignment is required, BIA will have documentation of the assignment. The final rule adds, for those circumstances in which BIA approval is not required, that the assignee and grantee must provide BIA with the documentation within 30 days of the assignment.

*Comment:* A tribal commenter suggested adding that the assignee must certify that its use of the right-of-way will remain the same as under the original right-of-way.

*Response:* The additional suggested language is unnecessary because the assignee will be bound by the terms of the original grant regardless of whether the grantee provides a certification.

*Comment:* A few commenters suggested requiring notice to landowners of any proposed assignment so they may negotiate an assignment fee.

*Response:* The rule requires consent for assignments in almost all instances; this provides landowners with the opportunity to negotiate for any additional compensation or assignment fee.

*Comment:* A commenter requested reducing the timeframe for BIA approval from 30 days to 20 days. Several tribal commenters stated that an assignment should be “deemed approved” if the BIA fails to act within the required timeframe.

*Response:* Assignments may not be deemed approved because they are, as a matter of law, equivalent to a new grant. The final rule retains the time for BIA approval at 30 days because the timeframes are intended to be outer bounds.

*Comment:* A few tribal commenters stated that any assignment that would reduce the coverage of the bond should be a ground for disapproving an assignment. A few other tribal commenters suggested adding that BIA may disapprove an assignment if it determines the assignee is not capable of performing the terms and conditions of the right-of-way.

*Response:* The regulations impose certain requirements for bonding. If the assignee cannot meet those

requirements, that failure could subject the grant to cancellation. The assignee must agree to be bound by the terms of the grant, which would include bonding requirements. BIA has discretion to deny an assignment if it determines that the assignee is not capable of performing the terms and conditions of the right-of-way and if that amounts to a compelling reason to deny the assignment.

#### 7. Mortgages

*Comment:* A few commenters stated that mortgaging of rights-of-way should not be permitted because they are not possessory interests. A tribal commenter stated that mortgaging a right-of-way interest is a new concept. One stated that mortgaging should be authorized only if there is “compelling empirical evidence” that such mortgages are necessary for Indian landowners to benefit economically. A few tribal commenters noted that the regulations are silent on issues of default, sale, or foreclosure on approved mortgages and expressed concern about what consequences foreclosure on the right-of-way interest may have on the Indian landowners. This tribal commenter stated that the requirement to obtain landowner consent for a mortgage is impracticable.

Several commenters stated that mortgaging of the rights-of-way should be permitted without consent or BIA approval, unless the grant includes language to the contrary, because this is the current approach and that providing otherwise would be an “unworkable limitation.” These commenters state that requiring landowner consent and BIA approval add unnecessary burdens, and that when a grant is issued, it is with the understanding that the grantee may transfer rights to mortgagors and the availability of these operational and financial opportunities is what makes the process of seeking a grant worthwhile. One commenter stated, for example, that public utility mortgaging usually includes all facilities and interests owned by the utility, and this regulation would interfere with such financing. A commenter stated that the consent and approval requirements will “materially restrict development on Indian lands” because pipeline companies and others will be unable to obtain the borrowing base mortgages that are standard in the industry for financing and hedging against price volatility. These commenters point out that since the mortgage encumbers only the grantee’s interest, and not the interest of the Indian landowner, consent and approval are unnecessary.

*Response:* The mortgage of a right-of-way grant is a mortgage of the grantee’s right, it is not mortgaging the underlying Indian land. Mortgages of rights-of-way is not a new concept; such arrangements already exist. If a foreclosure of the mortgage were to occur, then an assignment of the grant would be necessary to reflect the name of the new grantee. While the mortgage does not directly impact the Indian land, it does potentially indirectly impact that land because it represents a conveyance of the interest in the right-of-way grant. As such, it requires BIA approval.

*Comment:* Several tribal commenters recommended that a mortgage be deemed approved if BIA fails to act on the request to mortgage within the timeframe. A tribe stated that this is necessary to prevent avoidable delays from affecting tribal economic development and community planning.

*Response:* The final rule does not incorporate a requirement that mortgages be deemed approved if BIA fails to act within the established timeframes because affirmative BIA approval is often required by mortgagees and lenders even if the regulations were to provide for a deemed approved process.

*Comment:* One tribal commenter stated that this section should refer to tribal laws that may apply to mortgages.

*Response:* The general section at FR 169.009 establishes that tribal law applies.

*Comment:* A commenter stated that consent of “grantee’s sureties” should be required only where the security document requires the surety to approve a mortgage transaction.

*Response:* The final rule clarifies that BIA must review only whether the sureties for the bonds required for the right-of-way have consented.

*Comment:* A commenter opposed the provision allowing BIA to consider the purpose of the use of the mortgage proceeds in making its decision to approve the mortgage. The commenter stated that it seems far-reaching to require the grantee to disclose this information.

*Response:* The final rule retains this provision to protect the interests of Indian landowners.

*Comment:* A few tribal commenters suggested changing the approval sections to state that BIA may approve a right-of-way unless the listed circumstances exist.

*Response:* The proposed and final rules state that BIA may disapprove the right of way only if the listed circumstances exist in order to provide certainty and predictability to applicants.

*Comment:* A commenter suggested adding to the list of factors for disapproval that the mortgage “would reduce the coverage of the performance bond or alternative form of security.”

*Response:* The final rule clarifies that the consent of the sureties for the bond is required.

#### Subpart D—Effectiveness

*Comment:* A few commenters (including the Western Energy Alliance) stated that the right-of-way document should be effective 30 days after the date it is granted rather than immediately and that, if an administrative appeal is filed, the effectiveness of the grant should be stayed because of the potential issues if an immediately effective right-of-way is later determined not to be effective. These commenters stated that the grantee may expend significant capital in improvements in the right-of-way only to learn, years later, that it does not have the right-of-way.

*Response:* The final rule does not adopt the proposed approach, making the grant effective immediately to provide certainty and promote economic productivity of Indian land. Otherwise, frivolous appeals may tie up the land’s productivity. Grantees may weigh any potential issues if the grant is later determined not to be effective in their decision on whether to invest while the appeal is pending and whether to file for an injunction.

*Comment:* One commenter stated that the effective date should be the date of execution, with the approval having a retroactive effect.

*Response:* The right-of-way is not effective until BIA grants it.

*Comment:* Several tribal commenters stated that PR 169.302 should allow for recording of a memorandum of right-of-way, rather than the right-of-way grant, where the parties wish to keep the details of the grant confidential.

*Response:* This is a broader issue regarding title records, which is governed by another regulation, 25 CFR 150.11. That provision will continue to govern this issue.

*Comment:* A tribal commenter requested an editorial change because the LTRO does not necessarily possess jurisdiction, requesting instead that the LTRO office be the one “that administers land transactions for the Indian land which is the subject of the right-of-way.”

*Response:* The terminology generally used refers to LTRO “jurisdiction” to refer to the geographical area, rather than to indicate any decision-making authority over the area. See 25 CFR 150.4.

*Comment:* A tribal commenter objected to having to record grants in the LTRO for tribal utilities that are not separate entities, because where the tribe itself provides the utility on tribal land, there is no right-of-way involved.

*Response:* The final rule retains the requirement to record grants in the LTRO, even for tribal utilities that are not separate entities, to ensure that there is a record of who is validly on the land.

*Comment:* A tribal commenter stated that the regulations should allow for recordation in tribally operated title record systems. A county commenter stated that rights-of-way should be recorded in the county recorder’s office, in addition to the LTRO.

*Response:* Parties may record documents in tribally operated record systems and/or county recorder’s offices, but the final rule requires recording in the LTRO because the LTRO is the official record of title for land held in trust or restricted status by the United States.

*Comment:* A commenter requested clarification on the ramifications of failing to record a document in the LTRO. The commenter requested adding to the regulations that BIA’s failure or neglect to timely record instruments with the LTRO shall not affect the validity of the grant or other instrument.

*Response:* The right-of-way is effective when granted; recording does not affect the right-of-way grant’s validity.

#### 1. Appeal Rights

*Comment:* Several commenters stated that applicants should have the right to appeal all decisions, and should receive notice of the right to appeal.

*Response:* In response to these comments, the final rule allows applicants to appeal denials of right-of-way grants and right-of-way documents. The leasing regulations limit the opportunity to appeal a denial of a lease to the landowners only, but rights-of-way are fundamentally different in that they could impact a number of landowners across several tracts, and here several commented that right-of-way applicants should be entitled to appeal, so the final rule allows for applicant appeals.

#### 2. Compelling BIA Action (PR 169.304/FR 169.304)

*Comment:* A commenter requested that the rule impose a timeframe on BIA to notify the applicant of receipt of a complete application, because the timeframes do not begin to run until the application is complete. This commenter also expressed concern about whether BIA, and compacting/

contracting tribes, could meet the timelines. Other commenters requested removing discretionary timeframes for BIA actions, providing no more than 60 or 120 days for BIA to act, and allowing any party to compel action. Several commenters suggested this section would be streamlined by allowing BIA 120 days to act and deeming the document approved if the BIA fails to act within the given timeframe.

*Response:* Based on our past experience, the timelines are reasonable, and provide certainty to applicants as to when a decision will be issued. The final rule does not incorporate a “deemed approved” approach for new rights-of-way because BIA is statutorily required to review and issue a determination of whether to grant rights-of-way over and across Indian land.

*Comment:* A tribal utility commenter suggested adding that BIA will be responsible for any losses that accrue due to a delay in approval of a right-of-way.

*Response:* The regulations provide a mechanism to compel BIA action if BIA does not meet the deadline for issuing a decision. Rather than making the agency responsible for losses resulting from a delay, the new rule adds certainty to timelines to allow applicants to better plan and avoid losses associated with timing.

*Comment:* One tribal commenter and a few other commenters suggested adding a “not to exceed” timeframe in the BIA Director’s order establishing a timeframe for the Regional Director or Superintendent to issue a decision.

*Response:* The final rule does not add a “not to exceed” timeframe because the rule maintains the BIA Director’s flexibility and discretion to manage priorities.

*Comment:* A few commenters suggested revising paragraph (c) to provide that “either party” may file a written notice to compel action, rather than requiring both parties to file a notice.

*Response:* The final rule incorporates this requested change.

*Comment:* A commenter asked for clarification as to whether the BIA Director would be making a decision or merely compelling BIA to make a decision.

*Response:* The rule allows for the BIA Director to do either, as appropriate.

*Comment:* A commenter stated that PR 169.304(g) should be deleted because there is no reason to prevent a party from availing itself of the process in 25 CFR 2.8 to compel action.

*Response:* This rule provides an alternative process intended to supplant

25 CFR 2.8 entirely, so a party is not required to submit a § 2.8 demand letter giving the official a certain time period to act before allowing an appeal. We acknowledge that the formal adjudication process before the Interior Board of Indian Appeals may not be the most appropriate or expeditious process when a BIA official fails to meet regulatory deadlines. Our hope is that inserting a supervisory official, the BIA Director, into the process will obviate the need for any further relief; and we may consult with tribes on the Board's role with respect to instances of BIA inaction in the future.

### 3. Appeal Bond

*Comment:* A commenter stated that the landowners should always be required to post an appeal bond because the right-of-way decision is not stayed, and that the provision stating that a bond is not required if the tribe waives it should be deleted.

*Response:* The final rule does not require landowners to post appeal bonds because the Department's trust obligation is to the landowner. Further, the rule allows for the opportunity for more front-end negotiations, which may result in fewer appeals.

*Comment:* A commenter requested an additional provision establishing a 60-day timeframe for BIA to issue a decision on an appeal of a right-of-way decision, similar to 25 CFR 162.473.

*Response:* The final rule adds this provision at FR 169.412.

### Subpart E—Compliance and Enforcement

*Comment:* One tribal commenter stated its strong opposition to deletion of the affidavit of completion requirement, stating that the requirement serves a useful purpose of notifying tribes and BIA when construction work is complete, facilitating tribes' and BIA's ability to inspect the completed right-of-way construction to ensure it complies with the grant.

*Response:* The final rule removes this provision, but tribes are free to negotiate with applicants to require filing notice of completion of construction work for any particular grant and tribal inspection of the completed right-of-way.

*Comment:* A commenter questioned whether multiple sections throughout the regulation that require compliance with tribal law will mean that the grantee is in violation of the grant if it challenges the authority of the tribe's jurisdiction to impose certain laws.

*Response:* The grantee may be in violation of a grant if it challenges the

authority of the tribe's jurisdiction to impose certain laws, depending upon the circumstances.

*Comment:* A commenter said that the rule contains unworkable deadlines for a grantee to vacate the property after cancellation of a grant.

*Response:* The order to vacate may be stayed if the grantee files an appeal.

*Comment:* A commenter requested recognition in the rule or preamble that electric transmission system providers have vegetative management obligations under Federal reliability standards that may require them to act outside the right-of-way boundaries to remove vegetation in specific incidences, and that these actions should not be subject to enforcement action for trespass.

*Response:* Reasonable and appropriate actions taken by grantees, such as utility providers, outside the boundaries of the right-of-way to comply with Federal requirements for vegetative management will not be considered trespass.

*Comment:* A commenter suggested deleting "unauthorized new construction" and instead stating that any changes in use not permitted in the grant may result in enforcement action.

*Response:* FR 169.401 specifies that any changes in use not permitted in the grant are subject to enforcement.

*Comment:* A tribal commenter requested broadening § 169.401 to apply to the violation of the "terms and conditions of a right-of-way document" rather than just a grant.

*Response:* The final rule specifies "right-of-way document."

*Comment:* The commenter requested clarification to confirm that the rule does not limit any existing property rights or causes of action.

*Response:* We agree that the rule does not limit any existing property rights or causes of action; moreover, FR 169.413 states that Indian landowners may pursue any available remedies under applicable law.

*Comment:* Several tribal commenters stated that the rule should clarify that the tribe with jurisdiction may investigate non-compliance in the same manner and to the same extent as the BIA, within the tribe's inherent sovereign rights. These commenters stated that the rule should explicitly provide for this right no matter how the noncompliance comes to light (not just upon the complaint of the landowner).

*Response:* The final rule adds that the tribe may investigate compliance consistent with tribal law. The rule does not impose an obligation on the tribe to investigate.

*Comment:* A commenter suggested stating only "applicable law" for notice

requirements, rather than "applicable tribal law."

*Response:* The final rule retains "tribal law" for specificity.

*Comment:* A commenter stated that the rule should define the term "reasonable notice" for entry onto the right-of-way, particularly for rights-of-way used by the oil and gas industry, because entry without significant advanced notice could pose health and safety risks. Several commenters stated that landowners should always have the right to enter their own land to inspect and protect, without prior notice or approval.

*Response:* Reasonable notice varies based on the circumstances. Landowners generally have the right to enter and inspect and protect without prior notice or approval so long as it is consistent with the terms and the conditions of the grant and does not interfere with grantee's efforts to carry out the purpose of the grant. Nevertheless, we encourage landowners to provide notice prior to entry for safety reasons.

*Comment:* Several tribal commenters suggested adding a definite timeframe, such as 30 days, rather than "promptly" for BIA to initiate an investigation when notified of an issue.

*Response:* Because BIA's ability to investigate potential violations varies with the availability of resources, the final rule does not add a specific timeframe.

#### 1. Abandonment

*Comment:* A tribal commenter stated that an investigation at PR 169.402 does not seem appropriate if the grantee voluntarily relinquishes or abandons his interest.

*Response:* The final rule clarifies that "abandonment" includes an act indicating an intent to give up and never regain possession of the right-of-way. Investigation may be appropriate to determine whether an act has occurred demonstrating an intent to give up and never regain possession of the right-of-way.

*Comment:* An electric transmission commenter stated that there are instances in which it needs to acquire rights-of-way but not use them for several years, e.g., in advance of construction or planned use while budgetary or environmental processes are undertaken. The commenter requested allowing the grantee to avoid cancellation for non-use by submitting written notice to the BIA that continued availability is essential and there is no intent to abandon the right-of-way.

*Response:* The grantee and landowner may negotiate such terms in the grant.

## 2. Negotiated Remedies (PR 169.403/FR 169.403)

*Comment:* A few tribal commenters supported the provision allowing the parties to establish negotiated remedies. One tribal commenter suggested that the rule should allow for negotiated remedies even for pre-existing grants that are silent on the issue.

*Response:* Adding negotiated remedies to a pre-existing grant that is silent on the issue would require an amendment to the grant.

*Comment:* A few commenters expressed concern with PR 169.403(e), which allows violations to be addressed by a tribe or resolved in tribal court but noted that many tribal agreements already incorporate these requirements. A tribal commenter stated strong support for allowing violations and disputes to be resolved by tribal court or through alternative dispute resolution.

*Response:* The rule lists this forum as an option for the grantee and landowners to consider when negotiating a grant.

*Comment:* An energy industry commenter stated that landowners may not legally “terminate” a Federal grant because the landowners are not a party to the grant. Likewise, this commenter stated that BIA does not have authority to permit landowners to pursue remedies under tribal law for violations of federally granted interests.

*Response:* The termination is, in essence, a withdrawal of the landowners’ continued consent, which is required by statute. Further, because the Secretary grants rights-of-way subject to such conditions as he may prescribe, the Secretary may approve of a grant with a condition allowing a tribe unilaterally to terminate a grant.

*Comment:* A few commenters suggested that the rule provide that the grantee negotiate solely with BIA regarding negotiated remedies, for efficiency and consistency, in situations involving multiple landowners.

*Response:* The remedies are negotiated between the grantee and the landowner because the landowner is the beneficial owner of the land.

*Comment:* A tribal commenter stated that PR 169.403 should add that the BIA will accept the tribal government’s decision on enforcement. Several commenters suggested adding that BIA will accept the decision of the other forums unless it violates the trust responsibility. A few commenters questioned how BIA will determine whether to defer to ongoing actions or proceedings.

*Response:* If the parties are addressing a compliance issue in tribal court or

other court of competent jurisdiction, through a tribal governing body or an alternative dispute resolution method, BIA generally will wait for those proceedings to close and defer to the outcome.

*Comment:* Several tribal commenters noted that the negotiated remedies must be stated in the “tribe’s consent,” but that the phrase is an undefined term, beyond the requirement that it be in the form of a tribal authorization. The tribe notes that the negotiated remedies would be in the tribal right-of-way agreement, rather than in the tribal resolution, and therefore requests clarifying “right-of-way agreement.”

*Response:* The final rule clarifies that the consent may include a written agreement. See FR 169.107.

*Comment:* Several commenters stated that a notification to sureties or mortgagees is a private matter determined by agreement between the party and surety or mortgagee and should not be addressed in the rule.

*Response:* The surety must be notified because it is the holder of the security, which ultimately protects the trust land. The final rule deletes “mortgagee.”

*Comment:* A tribal commenter requested that PR 169.403(d) clarify that the remedies are in addition to BIA’s cancellation remedy by stating “unless otherwise agreed to by the Indian landowners in their consents.”

*Response:* The right-of-way grant will incorporate any conditions in the consent of the Indian landowners.

## 3. BIA Enforcement (PR 169.404–169.405/FR 169.404–405)

*Comment:* A tribal commenter stated that PR169.404 should require consultation with the impacted tribe during the determination of whether there has been a violation and how the violation can be cured. A commenter stated that BIA should be required to consult with the grantee, rather than just the landowners, before taking enforcement actions.

*Response:* The final rule adds that the Department will communicate with the Indian landowners in determining whether a violation occurred. The final rule does not accept the suggestion to require BIA to consult with the grantee because the Department’s trust responsibility is to the landowners.

*Comment:* A commenter stated that individual Indian landowners should receive actual, rather than constructive, notice of the violations. A few commenters stated that the compliance and enforcement provisions throughout should require actual notice, rather than constructive notice to individual Indian landowners.

*Response:* The final rule adds that BIA will provide actual notice of cancellations to the landowners. Only the grantee receives notices of violation because the violation may be cured and have no impact on the grant or landowner.

*Comment:* Several tribal commenters requested the inclusion of deadlines for BIA to determine if there has been a violation (within 90 days of initiating the investigation) and to send the notice of violation to the grantee. The commenters stated that BIA should be required to adhere to strict timeframes when notified of right-of-way issues to fulfill its trust responsibility, especially given that right-of-way violations have been a historical and ongoing problem in Indian country. A few commenters stated that the rule should impose concrete requirements for BIA enforcement, rather than affording it latitude and discretion in determining what enforcement actions to take.

*Response:* Timeframes for investigation and enforcement depend upon the nature of the violation. Some violations will take more time to investigate than others; however, the final rule adds a section clarifying that BIA may take emergency action if there is a threat to Indian land.

*Comment:* A commenter requested that PR 169.404 allow grantees 30 days, rather than 10 days, to cure any deficiencies because BIA has always allowed 30 days in the past, 10 days is “unrealistic,” and a potential violation in a remote location may require logistical coordination not easily accomplished within 10 days.

*Response:* The grantee may request additional time to cure. See FR 169.404(b)(2)(iii).

*Comment:* A tribal commenter stated that the rule should allow tribes to acknowledge and address violations concurrently with BIA in the absence of negotiated remedies.

*Response:* Tribes may pursue any available remedies under tribal law or negotiated remedies.

*Comment:* A few commenters stated that this subpart should address violations by a tribe or individual Indian landowner.

*Response:* The right-of-way grant governs only the grantee’s actions; therefore, no enforcement process against landowners is needed.

*Comment:* A commenter suggested deleting PR 169.404(b) stating that the notice of violation may order the grantee to cease operations, because the grantee must first be afforded the opportunity to cure.

*Response:* In certain circumstances, it may be appropriate for the notice of

violation to require immediate cessation of operations. This provision gives BIA the discretion to determine whether the circumstances warrant immediate cessation, or cessation within another timeframe, as necessary to protect the trust resource. In FR 169.404(b)(2)(i), the notice provides the opportunity to cure.

*Comment:* A few commenters stated that PR 169.405(c)(4) should clarify that the time to vacate the property may be extended to accommodate the removal of infrastructure or instead provide that removal must occur within a “reasonable time.”

*Response:* The final rule retains 31 days as the default, but provides that parties may include different time periods in the grant and that longer time periods may be provided in extraordinary circumstances.

*Comment:* A commenter pointed out that PR 169.404(d) states that the grantee will be responsible for obligations in the grant until the grant expires, or is terminated, or is canceled, but there may be reclamation obligations that survive the end of the grant. The commenter stated that BIA should clarify that the grantee will be entitled to access the right-of-way to fulfill these ongoing obligations.

*Response:* FR 169.404(d) clarifies that there may be outstanding obligations that survive the end of the grant. FR 169.410 clarifies that the grantee may access the land to perform outstanding obligations.

*Comment:* A tribal commenter suggested revising PR 169.405 to provide that the right-of-way documents negotiated by the tribe and grantee are included in the term “grant” for the purpose of establishing the required time period to cure and establish available remedies.

*Response:* The final rule clarifies the definition of “grant” to include any changes made by right-of-way documents.

*Comment:* A commenter stated that the interest rate at § 169.406 is “unusually high.”

*Response:* The interest rate in 169.406 is the rate established by the Department of Treasury under the Debt Collection Act.

#### 4. Late Payment Charges (PR 169.407/FR 169.407)

*Comment:* One commenter asked whether life tenants are entitled to a portion of the proceeds under PR 169.407.

*Response:* Life tenants are free to negotiate if they wish to be entitled to a portion of the proceeds.

*Comment:* Several commenters requested amending PR 169.407 to

provide that only landowners are entitled to late payment proceeds or trespass damages because the grantee may pursue a separate action for damage to personal property if necessary.

*Response:* The final rule deletes “grantee” to provide that the landowners will receive proceeds if not specified in the applicable document.

#### 5. Cancellation for Non-Use or Abandonment (PR 169.408/FR 169.408)

*Comment:* A commenter stated that the rules should provide tribes authority to trigger cancellation for abandoned rights-of-way in accordance with self-governance.

*Response:* Under FR 169.402(a), the landowner may notify BIA of non-use or an abandonment to trigger investigation and ultimately cancellation.

*Comment:* A commenter stated that this section should require a right-of-way to be automatically terminated, rather than saying “BIA may cancel” if it is abandoned. A few tribal commenters stated that the *Brandt* decision of the U.S. Supreme Court (*Marvin M. Brandt Revocable Trust v. U.S.*, 134 S.Ct. 1257 (2014)) requires forfeiture, rather than just forfeiture in the case of abandonment. Several tribal commenters suggested adding that non-use or abandonment cannot be cured.

*Response:* The final rule retains BIA discretion in cancellation because additional steps are required for due process before the cancellation is effective. The *Brandt* case applies to abandonment of rights-of-way granted through public (not Indian) land under the General Right-of-Way Act of 1875, 43 U.S.C. 934. It is therefore inapplicable to rights-of-way under these regulations.

*Comment:* A commenter suggested adding that cancellation may occur if the grantee fails to respond to the notice. The commenter also stated that the notice should notify the grantee of the right to appeal under part 2, including the right to appeal the appeal bond, if required.

*Response:* The final rule states that failure to correct the basis for the cancellation includes a failure to respond, but adds a provision stating that the cancellation notice will include a notice of right to appeal under part 2. There are no appeals of appeal bonds.

*Comment:* A tribal commenter suggested separating non-use from abandonment in PR 169.408 to clarify the difference between the two processes (*i.e.*, if a grantee expressly abandons the right-of-way, BIA need not give 30 days written notice).

*Response:* The final rule redrafts this section to distinguish between

abandonment and non-use of the right-of-way and sets forth different processes for each.

*Comment:* A commenter questioned why 30 days is permitted to respond to a notice of non-use, while only 10 days is permitted for response to a notice of violation.

*Response:* The response period for notices of violation is 10 business days (FR 169.404), but is followed up with a cancellation letter (FR 169.405) that provides that cancellation will not be effective for 31 days. The 30-day period in the case of non-use or abandonment is immediately prior to cancellation.

*Comment:* A few tribal commenters stated that a 2-year non-use period is excessive, and suggested 6 months instead.

*Response:* The 2-year period affords sufficient time to establish that there is, in fact, non-use rather than a seasonal fluctuation in activity.

*Comment:* A commenter requested explicitly describing unauthorized uses to include piggybacking, overburdening, holdovers, and other unallowable uses that qualify as trespass.

*Response:* The final rule clarifies what piggybacking is unallowable, including overburdening (*see* FR 169.217), and when holdovers will be subject to enforcement for trespass (*see* FR 169.410). The definition of “trespass” addresses all remaining situations.

*Comment:* A tribal commenter requested a mandatory mechanism for grantees to return roads or highways to a tribal landowner upon the written request of the tribe.

*Response:* The final rule provides that the grant may address the disposition of permanent improvements the grantee constructs; this allows the Indian landowners and applicant to negotiate as to how permanent improvements should be handled.

#### 6. BIA Enforcement Against Holdovers (PR 169.410/FR 169.410)

*Comment:* A commenter stated that because its existing right-of-way grants are silent on the extension of the easement by holdover, the rule increases the risk that holdover grantees will be deemed to be in trespass, even where they are engaged in negotiations with the Indian landowners. Several commenters suggested stating that the grantee will not be considered to be in trespass while BIA is considering its application for a right-of-way, when the decision is on appeal, or the grantee has notified BIA that they are engaged in good faith negotiations. One commenter stated that, under 5 U.S.C. 558(c), the rule must allow for a holdover period while a renewal application is under

consideration by BIA. A tribal commenter suggested clarifying that grantees who are unauthorized holdovers are trespassers.

*Response:* The final rule states that while holdovers are not permitted, BIA will not enforce against holdover grantees if the parties notify BIA that they are in good faith negotiation. To ensure that the parties do not take advantage of that negotiation time to extend what would have otherwise been a more limited term, the negotiation time during which the grant is held over is counted against any new grant term.

*Comment:* A tribal commenter stated that it may be more helpful to clearly define what happens if a grantee remains in possession after expiration of a right-of-way term and clarify that the renewal will be effective on the approval date and will not relate back to the date of expiration.

*Response:* The grant is effective when BIA issues it, and the effective date does not relate back, but if a grant is ultimately renewed, then BIA generally will not pursue trespass for the time of negotiations.

#### 7. Trespass (PR 169.412/FR 169.413)

*Comment:* A commenter requested that only willful trespass be subject to enforcement action and that BIA consult with the grantee and landowners prior to initiating enforcement actions for any accidental or incidental trespass.

*Response:* The proposed rule and final rule definition of “trespass” is consistent with the definition of trespass on Indian land in leasing, forestry, and agricultural contexts. See *e.g.*, 25 CFR 166.801. No compelling reason exists to differentiate between intentional and unintentional trespass in the right-of-way context.

*Comment:* A commenter requested clarification on whether the available remedies under applicable law referred to in PR 169.413 (trespass) are in addition to the remedies in PR 169.403 (negotiated remedies).

*Response:* The provision at FR 169.413 addresses the absence of a grant, so there is no document in which negotiated remedies would be set out.

*Comment:* A tribal commenter requested that the rule acknowledge that tribal governments may enforce tribal laws against trespass and collect damages, and that BIA will assist the tribal governments in enforcing the law.

*Response:* The final rule adds to 169.413 “including applicable tribal law” in response to this comment.

*Comment:* A commenter requested clarifying that one who refuses to obtain a right-of-way but uses the Indian land is in trespass.

*Response:* The provision at FR 169.413 addresses situations in which someone refuses to obtain a right-of-way.

*Comment:* A tribal commenter requested that the rule provide for BIA involvement in resolving disputes between tribes and applicants that have been occupying tribal land without authorization. The commenter stated that methods of determining past amounts due are often an insurmountable sticking point without BIA involvement.

*Response:* BIA will offer technical assistance to an Indian landowner upon request.

*Comment:* A commenter asked whether the rule could enforce a prohibition against ground-disturbing activities that disturb cultural sites.

*Response:* FR 169.125(c)(4) provides that if historic properties, archaeological resources, human remains, or other cultural items not previously reported are encountered during the course of any activity associated with this grant, all activity in the immediate vicinity of the properties, resources, remains, or items will cease and the grantee will contact BIA and the tribe with jurisdiction over the land to determine how to proceed and appropriate disposition.

*Comment:* A commenter stated that the regulations should protect tribes who oppose energy development chemicals being used in the right-of-way. Another suggested clarifying that trespass may include pollution or environmental spills.

*Response:* FR 169.125(c)(6) provides for indemnification. Pollution and environmental spills are violations of the grant and any applicable law. Pollution or environmental spills may constitute trespass if the pollutants or contaminants enter other Indian land not covered by the right-of-way grant.

#### **Subpart F—Service Line Agreements (PR Subpart F (169.501–169.504)/Final Subpart B (169.51–169.57))**

*Comment:* Several commenters suggested changes to the definition of “service line.” Several electric cooperative commenters strongly disagreed with deleting the language restricting service lines to a certain voltage because of their concern that it would consolidate local electric distribution cooperatives with electric transmission power providers. Some suggested retaining the current limits of 14.5 kv and 34.5 kv and many in the electric industry suggested a limitation to 100 kv. One tribal commenter also opposed deleting the voltage limitation because of a concern that it creates a

loophole and makes enforcement more difficult.

While some suggested a more limited definition, several suggested an expansive definition that would apply to any distribution facilities on the reservation that provide service only to customers on the reservation, or any facility connected to a main line or other line necessary for providing utility service to customers. One suggested it be defined as uses that are not a “general expansion of the system by the provider.” Many of these comments were aimed at providing relief to tribal members requesting utility services and/or to non-profit, member-owned distribution cooperatives that provide utility service to tribal members. One commenter asserted that the definition of “service line” should include distribution lines, so that utilities would not be required to pay Indian landowners for rights-of-way and State utility commissions would not be required to allocate right-of-way costs associated with local distribution.

Many commenters requested more clarification on what qualifies as a distribution line requiring a right-of-way and what qualifies as a service line. Some stated that if a line is an extension of service to a certain property, it should be considered a service line, regardless of whether it is a water line, sanitary and storm sewer line, electric line or telecommunication line. A few commenters suggested deleting the word “home” to clarify that utility service may also be provided to non-residential buildings, while another suggested limiting to those lines that provide service to an individual building.

*Response:* The final rule clarifies the definition of service line in a new subpart B, which is relocated from proposed subpart F with changes. The final rule moves the provisions regarding service line agreements from subpart F to subpart B to reflect that sequentially, the determination of whether a service line agreement or right-of-way is appropriate occurs earlier. The current definition of “service line” includes a restriction of 13.5 kV and 34.5 kV, depending on the type of power line. The proposed definition would have eliminated the voltage restriction, in order to base the definition instead on the purpose of the line (used only for supplying owners or authorized occupants or users of land with telephone, water, electricity, gas, internet service, or other home utility service). See proposed § 169.002. The final rule reinserts the kV restriction to ensure that service line agreements are not used for power lines for which a

right-of-way grant would be more appropriate. The expansive definitions suggested by commenters are not appropriate because excluding nearly all lines from the requirement for just compensation would undermine Congress's intent. The final rule adopts a narrow interpretation of "service line" to restrict "service lines" to those lines that directly provide utility service to a house, business, or other structure, rather than lines that are distribution lines, from which single service lines may branch off. Once a service line serves multiple structures, it exceeds its scope, and becomes a distribution line for the purposes of the right-of-way regulations. The final rule does not incorporate the suggested language about general expansion of the system, because each service line itself could be considered an expansion of the system. To provide relief to those in need of electric service and those providing electric service, the rule instead provides a new, streamlined separate process for non-profit electric cooperatives and tribal utilities. An extension of service to a certain property would be a service line as long as the extension of service is from a main line, transmission line, or distribution line to a single property. This is consistent with past practice and the 2006 BIA Right-of-Way Handbook.

*Comment:* Several tribal commenters stated that the rule should remove the requirement to record service line agreements with the LTRO because it imposes additional burdens, and instead require that they be filed with BIA. A tribal commenter stated that the recordation requirement is counterintuitive to the purpose of service line agreements, intended to be simple agreements between a single utility provider and an authorized occupant.

*Response:* The LTRO is the official title of record for Indian land and recording in the LTRO is necessary to provide notice of activities on the land. This is consistent with past practice and mirrors guidance provided in the 2006 Handbook.

*Comment:* Several electric cooperatives stated that prohibiting a service line from being extended from an existing service line, resulting in the need to obtain a new right-of-way, has on numerous occasions, created hardship for families who cannot construct a home nearby family members because they cannot bring power to the home without a new right-of-way.

*Response:* The final rule is consistent with the BIA Handbook. A service line can serve only one structure. A new

service line could be constructed branching from a right-of-way without requiring a new right-of-way if the new service line serves one structure. If more than one structure is served by a service line, then a right-of-way is required.

*Comment:* Several electric cooperatives stated that they should be exempt from provisions requiring consent for service lines.

*Response:* A service line agreement is executed by the owner(s) or authorized user(s) and the applicant; this is sufficient to show consent.

*Comment:* One commenter stated that service lines may serve an entire customer base, rather than just individuals.

*Response:* A customer base that is located in one building or structure may be served by a single service line, subject to the voltage limitations.

*Comment:* A commenter stated that requiring compensation for placement of service lines needed to provide utilities is not appropriate.

*Response:* The proposed and final rules do not require compensation but the owners or authorized users may negotiate for compensation as part of the service line agreement or agree that the service itself is compensation.

*Comment:* A commenter stated that service lines should expressly include rights-of-way among the authorized users, e.g., a right-of-way for a pipeline requiring electric service for cathodic protection units through a simple electric distribution line. That line should not require a full right-of-way application.

*Response:* See the discussion on "piggybacking," above.

*Comment:* A tribal commenter requested more specification on service line agreements and their allowable duration, how they must state the dimensions of the service line, whether sub-agreements are possible, what maintenance requirements are necessary, etc.

*Response:* The landowners (or authorized occupants or users) may negotiate these items in the service line agreement.

*Comment:* A commenter stated that the term "applicant" is misplaced because usually the tribe will request the agreement.

*Response:* The final rule replaces the term "applicant" with "utility provider."

*Comment:* A tribal commenter noted that many utility service lines have been constructed without agreements, and suggested the rule add language to require noncompliant utilities and other entities to enter into agreements with the tribal landowners.

*Response:* Unauthorized users or occupants of Indian land are encouraged to enter into agreements with landowners as they are otherwise subject to enforcement for trespass.

*Comment:* Several commenters stated that public utilities should be considered service lines because they are best able to provide affordable electrical and utility service to landowners under the service line agreement rather than the more onerous right-of-way procedures.

*Response:* The final rule allows utility cooperatives certain advantages (see above), but requires that they undergo the process for obtaining a right-of-way if they do not otherwise meet the definition of a "service line."

*Comment:* One tribal commenter requested clarification that a right-of-way is not required or allowed for service lines.

*Response:* The proposed and final rules clarify the requirements for service lines.

### III. Procedural Requirements

#### A. Regulatory Planning and Review (E.O. 12866 and 13563)

Executive Order (E.O.) 12866 provides that the Office of Information and Regulatory Affairs (OIRA) at the Office of Management and Budget (OMB) will review all significant rules. OIRA has determined that this rule is significant because it may raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in E.O. 12866.

E.O. 13563 reaffirms the principles of E.O. 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 E.O. 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. E.O. 13563 emphasizes further that 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. We have developed this rule in a manner consistent with these requirements. This rule is also part of the Department's commitment under the Executive Order to reduce the number and burden of regulations and provide greater notice and clarity to the public.

### B. Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). There is no defined universe of small entities that may be affected by this rule because there are a myriad of reasons why an entity may seek a right-of-way over or across Indian land; however, we received comments on the proposed rule from the following entities, so we considered that some may qualify as small entities: State and local governments, electric cooperatives, gas and oil companies and associations, pipeline companies, power and water utilities, telecommunications companies and railroad companies. It is possible that some of these are small entities and that have or may seek a right-of-way over or across Indian land for a variety of purposes, but this rule does not impose any requirements in obtaining or complying with a right-of-way that would have a significant economic effect on those entities. This rule clarifies the processes and requirements for landowner consent and BIA approval and, to the extent the rule imposes requirements that were not explicitly required before, the rule allows the parties to negotiate otherwise in the grant. For example, many grants allow assignments without landowner consent or BIA approval. The final rule establishes, as a default, that consent and approval are required, but allows parties to agree otherwise and state otherwise in the right-of-way grant. (Additionally, the final rule includes a blanket exemption for assignments that are the result of a corporate merger, acquisition, or transfer by operation of law.) Further, the rule minimizes BIA interference with the market by providing that BIA will defer to tribes' negotiated compensation values, allowing more flexibility in allowing for non-monetary compensation, eliminating the need for BIA approval of surveys, and requiring only filing of service line agreements. The rule also relaxes requirements for utility cooperatives, some of which may qualify as small entities, to encourage them to develop Indian land; for example, by providing for waivers of compensation requirements and bonding requirements under certain conditions.

### C. Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. It

will not result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of \$100 million or more in any one year. The rule's requirements will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. Nor will this rule have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of the U.S.-based enterprises to compete with foreign-based enterprises because the rule is limited to rights-of-way on Indian land.

### D. Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than \$100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

### E. Takings (E.O. 12630)

Under the criteria in Executive Order 12630, this rule does not affect individual property rights protected by the Fifth Amendment nor does it involve a compensable "taking." A takings implication assessment is therefore not required.

### F. Federalism (E.O. 13132)

Under the criteria in Executive Order 13132, this rule has no 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. This rule only concerns BIA's grant of rights-of-way on Indian land.

### G. Civil Justice Reform (E.O. 12988)

This rule complies with the requirements of Executive Order 12988. Specifically, this rule has been reviewed to eliminate errors and ambiguity and written to minimize litigation; and is written in clear language and contains clear legal standards.

### H. Consultation With Indian Tribes (E.O. 13175)

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments," Executive Order 13175 (59 FR 22951, November 6, 2000), and 512 DM 2, we have evaluated the potential effects on federally recognized

Indian tribes and Indian trust assets. During the public comment period on the proposed rule from June to November 2014, we held several consultation sessions with federally recognized Indian tribes and received written input from 70 tribes. We have considered and addressed this tribal input in development of the final rule.

### I. Paperwork Reduction Act

The Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, prohibits a Federal agency from conducting or sponsoring a collection of information that requires OMB approval, unless such approval has been obtained and the collection request displays a currently valid OMB control number. Nor is any person required to respond to an information collection request that has not complied with the PRA. In accordance with 44 U.S.C. 3507(d), BIA submitted the information collection and recordkeeping requirements of the proposed rule to OMB for review and approval and provided the public with the opportunity to submit comments on the information collection. BIA received no comments addressing the information collection requirements and made no revisions to those provisions in the final rule, but did add a new information collection requirement (filing past assignments) in response to comments. OMB has reviewed and approved the information collections in the final rule, which are described below.

*OMB Control Number:* 1076-0181.

*Title:* 25 CFR 169, Rights-of-Way on Indian Land.

*Brief Description of Collection:* This information collection requires applicants for, and recipients of, right-of-way grants to cross Indian land to submit information to the Bureau of Indian Affairs.

*Type of Review:* Existing collection in use without OMB control number.

*Respondents:* Individuals and entities.

*Number of Respondents:* 1,550 on average (each year).

*Number of Annual Responses (On Average):* 2,200 (for applications); 50 (for responses to notices of violation); 50 (for responses to trespass notices of violations); 1,000 (for filing service line agreements); and 1,000 (for filing past assignments).

*Frequency of Response:* On occasion.

*Estimated Time per Response:* 1 hour (for applications); 0.5 hours (for responses to notices of violation); 0.5 hours (for responses to trespass notices of violations); 0.25 hours (for filing service line agreements); and 0.25 hours (for filing past assignments).

*Estimated Total Annual Hour Burden:* 2,750 hours.

*Estimated Total Non-Hour Cost:* \$2,200,000.

#### *J. National Environmental Policy Act*

This rule does not constitute a major Federal action significantly affecting the quality of the human environment because these are “regulations . . . whose environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will later be subject to the NEPA process, either collectively or case-by-case.” 43 CFR 46.210(j). No extraordinary circumstances exist that would require greater NEPA review. This rule does not require BIA approval of any new types of major Federal actions, nor does it eliminate BIA approval of any types of major Federal actions.

#### *K. Effects on the Energy Supply (E.O. 13211)*

This rule is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required.

#### **List of Subjects in 25 CFR Part 169**

Indians-lands, Reporting and recordkeeping requirements, Rights-of-way.

■ For the reasons stated in the preamble, the Department of the Interior, Bureau of Indian Affairs, revises 25 CFR part 169 to read as follows:

### **PART 169—RIGHTS-OF-WAY OVER INDIAN LAND**

#### **Subpart A—Purpose, Definitions, General Provisions**

Sec.

- 169.1 What is the purpose of this part?  
 169.2 What terms do I need to know?  
 169.3 To what land does this part apply?  
 169.4 When do I need a right-of-way to authorize possession over or across Indian land?  
 169.5 What types of rights-of-way does this part cover?  
 169.6 What statutory authority will BIA use to act on requests for rights-of-way under this part?  
 169.7 Does this part apply to right-of-way grants submitted for approval before December 21, 2015?  
 169.8 May tribes administer this part on BIA's behalf?  
 169.9 What laws apply to rights-of-way approved under this part?  
 169.10 What is the effect of a right-of-way on a tribe's jurisdiction over the underlying parcel?  
 169.11 What taxes apply to rights-of-way approved under this part?  
 169.12 How does BIA provide notice to the parties to a right-of-way?

- 169.13 May decisions under this part be appealed?  
 169.14 How does the Paperwork Reduction Act affect this part?

#### **Subpart B—Service Line Agreements**

- 169.51 Is a right-of-way required for service lines?  
 169.52 What is a service line agreement?  
 169.53 What should a service line agreement address?  
 169.54 What are the consent requirements for service line agreements?  
 169.55 Is a valuation required for service line agreements?  
 169.56 Must I file service line agreements with the BIA?

#### **Subpart C—Obtaining a Right-of-Way**

##### **Application**

- 169.101 How do I obtain a right-of-way across tribal or individually owned Indian land or BIA land?  
 169.102 What must an application for a right-of-way include?  
 169.103 What bonds, insurance, or other security must accompany the application?  
 169.104 What is the release process for a bond or alternate form of security?  
 169.105 What requirements for due diligence must a right-of-way grant include?

##### **Consent Requirements**

- 169.106 How does an applicant identify and contact individual Indian landowners to negotiate a right-of-way?  
 169.107 Must I obtain tribal or individual Indian landowner consent for a right-of-way across Indian land?  
 169.108 Who is authorized to consent to a right-of-way?  
 169.109 Whose consent do I need for a right-of-way when there is a life estate on the tract?

##### **Compensation Requirements**

- 169.110 How much monetary compensation must be paid for a right-of-way over or across tribal land?  
 169.111 Must a right-of-way grant for tribal land provide for compensation reviews or adjustments?  
 169.112 How much monetary compensation must be paid for a right-of-way over or across individually owned Indian land?  
 169.113 Must a right-of-way grant for individually owned Indian land provide for compensation reviews or adjustments?  
 169.114 How will BIA determine fair market value for a right-of-way?  
 169.115 When are monetary compensation payments due under a right-of-way?  
 169.116 Must a right-of-way specify who receives monetary compensation payments?  
 169.117 What form of monetary compensation is acceptable under a right-of-way?  
 169.118 May the right-of-way provide for non-monetary or varying types of compensation?  
 169.119 Will BIA notify a grantee when a payment is due for a right-of-way?

- 169.120 What other types of payments are required for a right-of-way?  
 169.121 How will compensation be distributed among the life tenants and owners of the remainder interests?  
 169.122 Who does the grantee pay if there is a life estate on the tract?

#### **Grants of Rights-of-Way**

- 169.123 What is the process for BIA to grant a right-of-way?  
 169.124 How will BIA determine whether to grant a right-of-way?  
 169.125 What will the grant of right-of-way contain?  
 169.126 May a right-of-way contain a preference consistent with tribal law for employment of tribal members?  
 169.127 Is a new right-of-way grant required for a new use within or overlapping an existing right-of-way?  
 169.128 When will BIA grant a right-of-way for a new use within or overlapping an existing right-of-way?  
 169.129 What is required if the location described in the original application and grant differs from the construction location?  
 169.130 Must a right-of-way grant address ownership of permanent improvements?

#### **Subpart D—Duration, Renewals, Amendments, Assignments, Mortgages**

##### **Duration & Renewals**

- 169.201 How long may the duration of a right-of-way grant be?  
 169.202 Under what circumstances will a grant of right-of-way be renewed?  
 169.203 May a right-of-way be renewed multiple times?

##### **Amendments**

- 169.204 May a grantee amend a right-of-way?  
 169.205 What is the approval process for an amendment of a right-of-way?  
 169.206 How will BIA decide whether to approve an amendment of a right-of-way?

##### **Assignments**

- 169.207 May a grantee assign a right-of-way?  
 169.208 What is the approval process for an assignment of a right-of-way?  
 169.209 How will BIA decide whether to approve an assignment of a right-of-way?

##### **Mortgages**

- 169.210 May a grantee mortgage a right-of-way?  
 169.211 What is the approval process for a mortgage of a right-of-way?  
 169.212 How will BIA decide whether to approve a mortgage of a right-of-way?

#### **Subpart E—Effectiveness**

- 169.301 When will a right-of-way document be effective?  
 169.302 Must a right-of-way be recorded?  
 169.303 What happens if BIA denies a right-of-way document?  
 169.304 What happens if BIA does not meet a deadline for issuing a decision on a right-of-way document?

169.305 Will BIA require an appeal bond for an appeal of a decision on a right-of-way document?

#### Subpart F—Compliance and Enforcement

- 169.401 What is the purpose and scope of this subpart?
- 169.402 Who may investigate compliance with a right-of-way?
- 169.403 May a right-of-way provide for negotiated remedies?
- 169.404 What will BIA do about a violation of a right-of-way grant?
- 169.405 What will BIA do if the grantee does not cure a violation of a right-of-way grant on time?
- 169.406 Will late payment charges, penalties, or special fees apply to delinquent payments due under a right-of-way grant?
- 169.407 How will payment rights relating to a right-of-way grant be allocated?
- 169.408 What is the process for cancelling a right-of-way for non-use or abandonment?
- 169.409 When will a cancellation of a right-of-way grant be effective?
- 169.410 What will BIA do if a grantee remains in possession after a right-of-way expires or is terminated or cancelled?
- 169.411 Will BIA appeal bond regulations apply to cancellation decisions involving right-of-way grants?
- 169.412 When will BIA issue a decision on an appeal from a right-of-way decision?
- 169.413 What if an individual or entity takes possession of or uses Indian land or BIA land without a right-of-way or other proper authorization?
- 169.414 May BIA take emergency action if Indian land is threatened?
- 169.415 How will BIA conduct compliance and enforcement when there is a life estate on the tract?

**Authority:** 5 U.S.C. 301; 25 U.S.C. 323–328; 25 U.S.C. 2201 *et seq.*

#### Subpart A—Purpose, Definitions, General Provisions

##### § 169.1 What is the purpose of this part?

(a) This part is intended to streamline the procedures and conditions under which BIA will consider a request to approve (*i.e.*, grant) rights-of-way over and across tribal lands, individually owned Indian lands, and BIA lands, by providing for the use of the broad authority under 25 U.S.C. 323–328, rather than the limited authorities under other statutes. This part is also intended to support tribal self-determination and self-governance by acknowledging and incorporating tribal law and policies in processing a request for a right-of-way across tribal lands and defer to the maximum extent possible to Indian landowner decisions regarding their Indian land.

(b) This part specifies:

(1) Conditions and authorities under which we will consider a request to

approve rights-of-way over or across Indian land;

(2) How to obtain a right-of-way;

(3) Terms and conditions required in rights-of-way;

(4) How we administer and enforce rights-of-ways;

(5) How to renew, amend, assign, and mortgage rights-of-way; and

(6) Whether rights-of-way are required for service line agreements.

(c) This part does not cover rights-of-way over or across tribal lands within a reservation for the purpose of Federal Power Act projects, such as constructing, operating, or maintaining dams, water conduits, reservoirs, powerhouses, transmission lines, or other works which must constitute a part of any project for which a license is required by the Federal Power Act.

(1) The Federal Power Act provides that any license that must be issued to use tribal lands within a reservation must be subject to and contain such conditions as the Secretary deems necessary for the adequate protection and utilization of such lands (16 U.S.C. 797(e)).

(2) In the case of tribal lands belonging to a tribe organized under the Indian Reorganization Act of 1934 (25 U.S.C. 476), the Federal Power Act requires that annual charges for the use of such tribal lands under any license issued by the Federal Energy Regulatory Commission must be subject to the approval of the tribe (16 U.S.C. 803(e)).

(d) This part does not apply to grants of rights-of-way on tribal land under a special act of Congress specifically authorizing rights-of-way on tribal land without our approval.

##### § 169.2 What terms do I need to know?

The following terms apply to this part:

**Abandonment** means the grantee has affirmatively relinquished a right-of-way (as opposed to relinquishing through non-use) either by notifying the BIA of the abandonment or by performing an act indicating an intent to give up and never regain possession of the right-of-way.

**Assignment** means an agreement between a grantee and an assignee, whereby the assignee acquires all or part of the grantee's rights, and assumes all of the grantee's obligations under a grant.

**Avigation hazard easement** means the right, acquired by government through purchase or condemnation from the owner of land adjacent to an airport, to the use of the air space above a specific height for the flight of aircraft.

**BIA** means the Secretary of the Interior or the Bureau of Indian Affairs

within the Department of the Interior and any tribe acting on behalf of the Secretary or BIA under § 169.008.

**BIA land** means any tract, or interest therein, in which the surface estate is owned and administered by the BIA, not including Indian land.

**Cancellation** means BIA action to end a right-of-way grant.

**Compensation** means something bargained for that is fair and reasonable under the circumstances of the agreement.

**Consent** means written authorization by an Indian landowner to a specified action.

**Easement** means an interest, consisting of the right to use or control, for a specific limited purpose, land owned by another person, or an area above or below it, while title remains vested in the landowner.

**Encumbered account** means a trust account where some portion of the proceeds are obligated to another party.

**Fair market value** means the amount of compensation that a right-of-way would most probably command in an open and competitive market.

**Fractional interest** means an undivided interest in Indian land owned as tenancy in common by individual Indian or tribal landowners and/or fee owners.

**Grant** means the formal transfer of a right-of-way interest by the Secretary's approval or the document evidencing the formal transfer, including any changes made by a right-of-way document.

**Grantee** means a person or entity to whom the Secretary grants a right-of-way or to whom the right-of-way has been assigned once the assignment is effective.

**Immediate family** means, in the absence of a definition under applicable tribal law, a spouse, brother, sister, aunt, uncle, niece, nephew, first cousin, lineal ancestor, lineal descendant, or member of the household.

**Indian** means:

(1) Any person who is a member of any Indian tribe, is eligible to become a member of any Indian tribe, or is an owner as of October 27, 2004, of a trust or restricted interest in land;

(2) Any person meeting the definition of Indian under the Indian Reorganization Act (25 U.S.C. 479) and the regulations promulgated thereunder; and

(3) With respect to the inheritance and ownership of trust or restricted land in the State of California under 25 U.S.C. 2206, any person described in paragraph (1) or (2) of this definition or any person who owns a trust or

restricted interest in a parcel of such land in that State.

*Indian land* means individually owned Indian land and/or tribal land.

*Indian landowner* means a tribe or individual Indian who owns an interest in Indian land.

*Indian tribe* or *tribe* means an Indian tribe under section 102 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 479a).

*Individually owned Indian land* means any tract in which the surface estate, or an undivided interest in the surface estate, is owned by one or more individual Indians in trust or restricted status.

*In-kind compensation* means payment is in goods or services rather than money.

*Life estate* means an interest in property held only for the duration of a designated person(s)' life. A life estate may be created by a conveyance document or by operation of law.

*LTRO* means the Land Titles and Records Office of BIA.

*Map of definite location* means a survey plat signed by a professional surveyor or engineer showing the location, size, and extent of the right-of-way and other related parcels, with respect to each affected parcel of individually owned land, tribal land, or BIA land and with reference to the public surveys under 25 U.S.C. 176, 43 U.S.C. 2 and 1764, and showing existing facilities adjacent to the proposed project.

*Permanent improvement* means pipelines, roads, structures, and other infrastructure attached to the land subject to the right-of-way.

*Right-of-way* means an easement or a legal right to go over or across tribal land, individually owned Indian land, or BIA land for a specific purpose, including but not limited to building and operating a line or road. This term may also refer to the land subject to the grant of right-of-way; however, in all cases, title to the land remains vested in

the landowner. This term does not include service lines.

*Right-of-way document* means a right-of-way grant, renewal, amendment, assignment, or mortgage of a right-of-way.

*Secretary* means the Secretary of the Interior or an authorized representative.

*Termination* means action by Indian landowners to end a right-of-way.

*Trespass* means any unauthorized occupancy, use of, or action on tribal or individually owned Indian land or BIA land.

*Tribal authorization* means a duly adopted tribal resolution, tribal ordinance, or other appropriate tribal document authorizing the specified action.

*Tribal land* means any tract in which the surface estate, or an undivided interest in the surface estate, is owned by one or more tribes in trust or restricted status. The term also includes the surface estate of lands held in trust for a tribe but reserved for BIA administrative purposes and includes the surface estate of lands held in trust for an Indian corporation chartered under section 17 of the Indian Reorganization Act of 1934 (25 U.S.C. 477).

*Tribal utility* means a utility owned by one or more tribes that is established for the purpose of providing utility service, and that is certified by the tribe to meet the following requirements:

- (1) The combined Indian tribe ownership constitutes not less than 51 percent of the utility;
- (2) The Indian tribes, together, receive at least a majority of the earnings; and
- (3) The management and daily business operations of the utility are controlled by one or more representatives of the tribe.

*Trust account* means a tribal account or Individual Indian Money (IIM) account for trust funds maintained by the Secretary.

*Trust or restricted status* means:

- (1) That the United States holds title to the tract or interest in trust for the

benefit of one or more tribes and/or individual Indians; or

(2) That one or more tribes and/or individual Indians holds title to the tract or interest, but can alienate or encumber it only with the approval of the United States because of limitations in the conveyance instrument under Federal law or limitations in Federal law.

*Uniform Standards of Professional Appraisal Practice (USPAP)* means the standards promulgated by the Appraisal Standards Board of the Appraisal Foundation to establish requirements and procedures for professional real property appraisal practice.

*Us/we/our* means the BIA.

*Utility cooperative* means a cooperative that provides public utilities to its members and either reinvests profits for infrastructure or distributes profits to members of the cooperative.

**§ 169.3 To what land does this part apply?**

- (a) This part applies to Indian land and BIA land.
- (b) We will not take any action on a right-of-way across fee land or collect compensation on behalf of fee interest owners. We will not condition our grant of a right-of-way across Indian land or BIA land on the applicant having obtained a right-of-way from the owners of any fee interests. The applicant will be responsible for negotiating directly with and making any payments directly to the owners of any fee interests that may exist in the property on which the right-of-way is granted.
- (c) We will not include the fee interests in a tract in calculating the applicable percentage of interests required for consent to a right-of-way.

**§ 169.4 When do I need a right-of-way to authorize possession over or across Indian land?**

- (a) You need an approved right-of-way under this part before crossing Indian land if you meet one of the criteria in the following table:

If you are . . .	then you must obtain a right-of-way under this part . . .
(1) A person or legal entity (including a Federal, State, or local governmental entity) who is not an owner of the Indian land.	from us, with the consent of the owners of the majority interest in the land, and the tribe for tribal land, before crossing the land or any portion thereof.
(2) An individual Indian landowner who owns a fractional interest in the land (even if the individual Indian landowner owns a majority of the fractional interests).	from us, with the consent of the owners of other trust and restricted interests in the land, totaling at least a majority interest in the tract, and with the consent of the tribe for tribal land. You do not need to obtain a right-of-way from us if all of the owners (including the tribe, for tribal land) have given you permission to cross without a right-of-way.

If you are . . .	then you must obtain a right-of-way under this part . . .
(3) An Indian tribe, agency or instrumentality of the tribe, or an independent legal entity wholly owned and operated by the tribe who owns only a fractional interest in the land (even if the tribe, agency, instrumentality or legal entity owns a majority of the fractional interests).	from us, with the consent of the owners of other trust and restricted interests in the land, totaling at least a majority interest in the tract, unless all of the owners have given you permission to cross without a right-of-way.

- (b) You do not need a right-of-way to cross Indian land if:
- (1) You are an Indian landowner who owns 100 percent of the trust or restricted interests in the land; or
  - (2) You are authorized by:
    - (i) A lease under 25 CFR part 162, 211, 212, or 225 or permit under 25 CFR part 166;
    - (ii) A tribal land assignment or similar instrument authorizing use of the tribal land without Secretarial approval; or
    - (iii) Other, tribe-specific authority authorizing use of the tribal land without Secretarial approval; or
    - (iv) Another land use agreement not subject to this part (e.g., under 25 CFR part 84); or
    - (3) You meet any of the criteria in the following table:

You do not need a right-of-way if you are . . .	but the following conditions apply . . .
(i) A parent or guardian of a minor child who owns 100 percent of the trust or restricted interests in the land.	We may require you to provide evidence of a direct benefit to the minor child and when the child is no longer a minor, you must obtain a right-of-way to authorize continued possession.
(ii) Authorized by a service line agreement to cross the land .....	You must file the agreement with us under § 169.56.
(iii) An independent legal entity wholly owned and operated by the tribe that owns 100 percent of the trust or restricted interests in the land.	The tribal governing body must pass a tribal authorization authorizing access without BIA approval and including a legal description, and you must submit both documents to BIA for our records.
(iv) Otherwise authorized by law .....	You must comply with the requirements of the applicable law.

**§ 169.5 What types of rights-of-way does this part cover?**

(a) This part covers rights-of-way over and across Indian or BIA land, for uses including but not limited to the following:

- (1) Railroads;
- (2) Public roads and highways;
- (3) Access roads;
- (4) Service roads and trails, even where they are appurtenant to any other right-of-way purpose;
- (5) Public and community water lines (including pumping stations and appurtenant facilities);
- (6) Public sanitary and storm sewer lines (including sewage disposal and treatment plant lines);
- (7) Water control and use projects (including but not limited to, flowage easements, irrigation ditches and canals, and water treatment plant lines);
- (8) Oil and gas pipelines (including pump stations, meter stations, and other appurtenant facilities);
- (9) Electric transmission and distribution systems (including lines, poles, towers, telecommunication, protection, measurement and data acquisition equipment, other items necessary to operate and maintain the system, and appurtenant facilities);
- (10) Telecommunications, broadband, fiber optic lines;
- (11) Avigation hazard easements;
- (12) Conservation easements not covered by 25 CFR part 84, Encumbrances of Tribal Land—Contract Approvals, or 25 CFR part 162, Leases and Permits; or

(13) Any other new use for which a right-of-way is appropriate but which is unforeseeable as of the effective date of these regulations.

(b) Each of the uses listed above includes the right to access the right-of-way to manage vegetation, inspect, maintain and repair equipment, and conduct other activities that are necessary to maintain the right-of-way use.

**§ 169.6 What statutory authority will BIA use to act on requests for rights-of-way under this part?**

BIA will act on requests for rights-of-way using the authority in 25 U.S.C. 323–328, and relying on supplementary authority such as 25 U.S.C. 2218, where appropriate.

**§ 169.7 Does this part apply to right-of-way grants submitted for approval before December 21, 2015?**

(a) If your right-of-way grant is issued on or after December 21, 2015, this part applies.

(b) If we granted your right-of-way before December 21, 2015, the procedural provisions of this part apply except that if the procedural provisions of this part conflict with the explicit provisions of the right-of-way grant or statute authorizing the right-of-way document, then the provisions of the right-of-way grant or authorizing statute apply instead. Non-procedural provisions of this part do not apply.

(c) If you submitted an application for a right-of-way but we did not grant the

right-of-way before December 21, 2015, then:

(1) You may choose to withdraw the document and resubmit after December 21, 2015, in which case this part will apply to that document; or

(2) You may choose to proceed without withdrawing, in which case:

(i) We will review the application under the regulations in effect at the time of your submission; and

(ii) Once we grant the right-of-way, the procedural provisions of this part apply except that if the procedural provisions of this part conflict with the explicit provisions of the right-of-way grant or statute authorizing the right-of-way document, then the provisions of the right-of-way grant or authorizing statute apply instead. Non-procedural provisions of this part do not apply.

(d) For any assignments completed before December 21, 2015, the current assignee must, by April 18, 2016, provide BIA with documentation of any past assignments or notify BIA that it needs an extension and explain the reason for the extension.

(e) To the maximum extent possible, BIA will interpret any ambiguous language in the right-of-way document or statute to be consistent with these regulations.

**§ 169.8 May tribes administer this part on BIA's behalf?**

A tribe or tribal organization may contract or compact under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450f *et seq.*)

to administer on BIA's behalf any portion of this part that is not a grant, approval, or disapproval of a right-of-way document, waiver of a requirement for right-of-way grant or approval (including but not limited to waivers of fair market value and valuation), cancellation of a right-of-way, or an appeal. Applicants may inquire at either the BIA office or the tribal office to determine whether the tribe has compacted or contracted to administer realty functions.

**§ 169.9 What laws apply to rights-of-way approved under this part?**

In addition to the regulations in this part, rights-of-way approved under this part:

- (a) Are subject to all applicable Federal laws;
- (b) Are subject to tribal law; except to the extent that those tribal laws are inconsistent with applicable Federal law; and
- (c) Are generally not subject to State law or the law of a political subdivision thereof.

**§ 169.10 What is the effect of a right-of-way on a tribe's jurisdiction over the underlying parcel?**

A right-of-way is a non-possessory interest in land, and title does not pass to the grantee. The Secretary's grant of a right-of-way will clarify that it does not diminish to any extent:

- (a) The Indian tribe's jurisdiction over the land subject to, and any person or activity within, the right-of-way;
- (b) The power of the Indian tribe to tax the land, any improvements on the land, or any person or activity within, the right-of-way;
- (c) The Indian tribe's authority to enforce tribal law of general or particular application on the land subject to and within the right-of-way, as if there were no grant of right-of-way;
- (d) The Indian tribe's inherent sovereign power to exercise civil jurisdiction over non-members on Indian land; or
- (e) The character of the land subject to the right-of-way as Indian country under 18 U.S.C. 1151.

**§ 169.11 What taxes apply to rights-of-way approved under this part?**

- (a) Subject only to applicable Federal law:
  - (1) Permanent improvements in a right-of-way, without regard to ownership of those improvements, are not subject to any fee, tax, assessment, levy, or other charge imposed by any State or political subdivision of a State;
  - (2) Activities under a right-of-way grant are not subject to any fee, tax, assessment, levy, or other charge (*e.g.*,

business use, privilege, public utility, excise, gross revenue taxes) imposed by any State or political subdivision of a State; and

(3) The right-of-way interest is not subject to any fee, tax, assessment, levy, or other charge imposed by any State or political subdivision of a State.

(b) Improvements, activities, and right-of-way interests may be subject to taxation by the Indian tribe with jurisdiction.

**§ 169.12 How does BIA provide notice to the parties to a right-of-way?**

When this part requires BIA to notify the parties of our intent to grant a right-of-way under § 169.107(b) or our determination to approve or disapprove a right-of-way document, and to provide any right of appeal:

- (a) For rights-of-way over or across tribal land, we will notify the applicant and the tribe by first class U.S. mail or, upon request, electronic mail; and
- (b) For rights-of-way over or across individually owned Indian land, we will notify the applicant and individual Indian landowners by first class U.S. mail or, upon request, electronic mail. If the individually owned land is located within a tribe's jurisdiction, we will also notify the tribe by first class U.S. mail or, upon request, electronic mail.

**§ 169.13 May decisions under this part be appealed?**

(a) Appeals from BIA decisions under this part may be taken under part 2 of this chapter, except our decision to disapprove a right-of-way grant or any other right-of-way document may be appealed only by the applicant or an Indian landowner of the tract over or across which the right-of-way was proposed.

(b) For purposes of appeals from BIA decisions under this part, "interested party" is defined as any person whose land is subject to the right-of-way or located adjacent to or in close proximity to the right-of-way whose own direct economic interest is adversely affected by an action or decision.

**§ 169.14 How does the Paperwork Reduction Act affect this part?**

The collections of information in this part have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned OMB Control Number 1076-0181. Response is required to obtain a benefit. A Federal agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB Control Number.

**Subpart B—Service Line Agreements**

**§ 169.51 Is a right-of-way required for service lines?**

Service lines generally branch off from facilities for which a right-of-way must be obtained. A service line is a utility line running from a main line, transmission line, or distribution line that is used only for supplying telephone, water, electricity, gas, internet service, or other utility service to a house, business, or other structure. In the case of a power line, a service line is limited to a voltage of 14.5 kv or less, or a voltage of 34.5 kv or less if serving irrigation pumps and commercial and industrial uses. To obtain access to Indian land for service lines, the right-of-way grantee must file a service line agreement meeting the requirements of this subpart with BIA.

**§ 169.52 What is a service line agreement?**

Service line agreements are agreements signed by a utility provider and landowners for the purpose of providing limited access to supply the owners (or authorized occupants or users) of one tract of tribal or individually owned Indian land with utilities for use by such owners (or occupants or users) on the premises.

**§ 169.53 What should a service line agreement address?**

A service line agreement should address what utility services the provider will supply, to whom, and other appropriate details. The service line agreement should also address the mitigation of any damages incurred during construction and the restoration (or reclamation, if agreed to by the owners or authorized occupants or users) of the premises at the termination of the agreement.

**§ 169.54 What are the consent requirements for service line agreements?**

(a) Before the utility provider may begin any work to construct service lines across tribal land, the utility provider and the tribe (or the legally authorized occupants or users of the tribal land and upon request, the tribe) must execute a service line agreement.

(b) Before the utility provider may begin any work to construct service lines across individually owned land, the utility provider and the owners (or the legally authorized occupants or users) must execute a service line agreement.

**§ 169.55 Is a valuation required for service line agreements?**

We do not require a valuation for service line agreements.

**§ 169.56 Must I file service line agreements with the BIA?**

The parties must file an executed copy of service line agreements, together with a plat or diagram, with us within 30 days after the date of execution for recording in the LTR0. The plat or diagram must show the boundary of the ownership parcel and point of connection of the service line with the distribution line. When the plat or diagram is placed on a separate sheet it must include the signatures of the parties.

**Subpart C—Obtaining a Right-of-Way Application****§ 169.101 How do I obtain a right-of-way across tribal or individually owned Indian land or BIA land?**

(a) To obtain a right-of-way across tribal or individually owned Indian land or BIA land, you must submit a complete application to the BIA office with jurisdiction over the land covered by the right-of-way.

(b) If you must obtain access to Indian land to prepare information required by the application (*e.g.*, to survey), you must obtain the consent of the Indian landowners, but our approval to access is not required. Upon written request, we will provide you with the names, addresses, and percentage of ownership of individual Indian landowners, to allow you to obtain the landowners' consent to survey.

(c) If the BIA will be granting the right-of-way across Indian land under § 169.107(b), then the BIA may grant permission to access the land.

**§ 169.102 What must an application for a right-of-way include?**

(a) An application for a right-of-way must identify:

- (1) The applicant;
- (2) The tract(s) or parcel(s) affected by the right-of-way;
- (3) The general location of the right-of-way;
- (4) The purpose of the right-of-way;
- (5) The duration of the right-of-way; and

(6) The ownership of permanent improvements associated with the right-of-way and the responsibility for constructing, operating, maintaining, and managing permanent improvements under § 169.105.

(b) The following must be submitted with the application:

- (1) An accurate legal description of the right-of-way, its boundaries, and parcels associated with the right-of-way;
- (2) A map of definite location of the right-of-way (this requirement does not apply to easements covering the entire tract of land);

(3) Bond(s), insurance, and/or other security meeting the requirements of § 169.103;

(4) Record that notice of the right-of-way was provided to all Indian landowners;

(5) Record of consent for the right-of-way meeting the requirements of § 169.107, or a statement requesting a right-of-way without consent under § 169.107(b);

(6) If applicable, a valuation meeting the requirements of § 169.114;

(7) If the applicant is a corporation, limited liability company, partnership, joint venture, or other legal entity, except a tribal entity, information such as organizational documents, certificates, filing records, and resolutions, demonstrating that:

(i) The representative has authority to execute the application;

(ii) The right-of-way will be enforceable against the applicant; and

(iii) The legal entity is in good standing and authorized to conduct business in the jurisdiction where the land is located;

(8) Environmental and archaeological reports, surveys, and site assessments, as needed to facilitate compliance with applicable Federal and tribal environmental and land use requirements; and

(9) A statement from the appropriate tribal authority that the proposed use is in conformance with applicable tribal law, if required by the tribe.

(c) There is no standard application form.

**§ 169.103 What bonds, insurance, or other security must accompany the application?**

(a) You must include payment of bonds, insurance, or alternative forms of security with your application for a right-of-way in amounts that cover:

- (1) The highest annual rental specified in the grant, unless compensation is a one-time payment;
- (2) The estimated damages resulting from the construction of any permanent improvements;

(3) The estimated damages and remediation costs from any potential release of contaminants, explosives, hazardous material or waste;

(4) The operation and maintenance charges for any land located within an irrigation project;

(5) The restoration of the premises to their condition at the start of the right-of-way or reclamation to some other specified condition if agreed to by the landowners.

(b) The bond or other security must be deposited with us and made payable only to us, and may not be modified without our approval, except for tribal

land in which case the bond or security may be deposited with and made payable to the tribe, and may not be modified without the approval of the tribe. Any insurance must identify both the Indian landowners and the United States as additional insured parties.

(c) The grant will specify the conditions under which we may adjust the bond, insurance, or security requirements to reflect changing conditions, including consultation with the tribal landowner for tribal land before the adjustment.

(d) We may require that the surety provide any supporting documents needed to show that the bond, insurance, or alternative form of security will be enforceable, and that the surety will be able to perform the guaranteed obligations.

(e) The bond, insurance, or other security instrument must require the surety to provide notice to us, and the tribe for tribal land, at least 60 days before canceling a bond, insurance, or other security. This will allow us to notify the grantee of its obligation to provide a substitute bond, insurance, or other security before the cancellation date. Failure to provide a substitute bond, insurance or security is a violation of the right-of-way.

(f) We may waive the requirement for a bond, insurance, or alternative form of security:

(1) For individually owned Indian land, if the Indian landowners of the majority of the interests request it and we determine, in writing, that a waiver is in the Indian landowners' best interest considering the purpose of and risks associated with the right-of-way, or if the grantee is a utility cooperative and is providing a direct benefit to the Indian land or is a tribal utility.

(2) For tribal land, deferring, to the maximum extent possible, to the tribe's determination that a waiver of a bond, insurance or alternative form of security is in its best interest.

(g) We will accept a bond only in one of the following forms:

(1) Certificates of deposit issued by a federally insured financial institution authorized to do business in the United States;

(2) Irrevocable letters of credit issued by a federally insured financial institution authorized to do business in the United States;

(3) Negotiable Treasury securities; or

(4) Surety bonds issued by a company approved by the U.S. Department of the Treasury.

(h) We may accept an alternative form of security approved by us that provides adequate protection for the Indian landowners and us, including but not

limited to an escrow agreement or an assigned savings account.

(i) All forms of bonds or alternative security must, if applicable:

(1) State on their face that BIA approval is required for redemption;

(2) Be accompanied by a statement granting full authority to BIA to make an immediate claim upon or sell them if the grantee violates the terms of the right-of-way grant;

(3) Be irrevocable during the term of the bond or alternative security; and

(4) Be automatically renewable during the term of the right-of-way.

(j) We will not accept cash bonds.

**§ 169.104 What is the release process for a bond or alternative form of security?**

Upon satisfaction of the requirements for which the bond was security, or upon expiration, termination, or cancellation of the right-of-way, the grantee may ask BIA in writing to release all or part of the bond or alternative form of security and release the grantee from the obligation to maintain insurance. Upon receiving the grantee's request, BIA will:

(a) Confirm with the tribe, for tribal land or, where feasible, with the Indian landowners for individually owned Indian land, that the grantee has complied with all applicable grant obligations; and

(b) Release all or part of the bond or alternative form of security to the grantee, unless we determine that the bond or security must be redeemed to fulfill the contractual obligations.

**§ 169.105 What requirements for due diligence must a right-of-way grant include?**

(a) If permanent improvements are to be constructed, the right-of-way grant must include due diligence requirements that require the grantee to complete construction of any permanent improvements within the schedule specified in the right-of-way grant or general schedule of construction, and a process for changing the schedule by mutual consent of the parties. If construction does not occur, or is not expected to be completed, within the time period specified in the grant, the grantee must provide the Indian landowners and BIA with an explanation of good cause as to the nature of any delay, the anticipated date of construction of facilities, and evidence of progress toward commencement of construction.

(b) Failure of the grantee to comply with the due diligence requirements of the grant is a violation of the grant and may lead to cancellation of the right-of-way under § 169.405 or § 169.408.

(c) BIA may waive the requirements in this section if we determine, in

writing, that a waiver is in the best interest of the Indian landowners.

**Consent Requirements**

**§ 169.106 How does an applicant identify and contact individual Indian landowners to negotiate a right-of-way?**

(a) Applicants may submit a written request to us to obtain the following information. The request must specify that it is for the purpose of negotiating a right-of-way:

(1) Names and addresses of the individual Indian landowners or their representatives;

(2) Information on the location of the parcel; and

(3) The percentage of undivided interest owned by each individual Indian landowner.

(b) We may assist applicants in contacting the individual Indian landowners or their representatives for the purpose of negotiating a right-of-way, upon request.

(c) We will attempt to assist individual Indian landowners in right-of-way negotiations, upon their request.

**§ 169.107 Must I obtain tribal or individual Indian landowner consent for a right-of-way across Indian land?**

(a) For a right-of-way across tribal land, the applicant must obtain tribal consent, in the form of a tribal authorization and a written agreement with the tribe, if the tribe so requires, to a grant of right-of-way across tribal land. The consent document may impose restrictions or conditions; any restrictions or conditions automatically become conditions and restrictions in the grant.

(b) For a right-of-way across individually owned Indian land, the applicant must notify all individual Indian landowners and, except as provided in paragraph (b)(1) of this section, must obtain written consent from the owners of the majority interest in each tract affected by the grant of right-of-way.

(1) We may issue the grant of right-of-way without the consent of any of the individual Indian owners if all of the following conditions are met:

(i) The owners of interests in the land are so numerous that it would be impracticable to obtain consent as defined in paragraph (c) of this section;

(ii) We determine the grant will cause no substantial injury to the land or any landowner, based on factors including, but not limited to, the reasonableness of the term of the grant, the amount of acreage involved in the grant, the disturbance to land that will result from the grant, the type of activity to be conducted under the grant, the potential

for environmental or safety impacts resulting from the grant, and any objections raised by landowners;

(iii) We determine that all of the landowners will be adequately compensated for consideration and any damages that may arise from a grant of right-of-way; and

(iv) We provide notice of our intent to issue the grant of right-of-way to all of the owners at least 60 days prior to the date of the grant using the procedures in § 169.12, and provide landowners with 30 days to object.

(2) For the purposes of this section, the owners of interests in the land are so numerous that it would be impracticable to obtain consent, if there are 50 or more co-owners of undivided trust or restricted interests.

(3) Successors are bound by consent granted by their predecessors-in-interest.

(c) We will determine the number of owners of, and undivided interests in, a fractionated tract of Indian land, for the purposes of calculating the requisite consent based on our records on the date on which the application is submitted to us.

**§ 169.108 Who is authorized to consent to a right-of-way?**

(a) Indian tribes, adult Indian landowners, and emancipated minors, may consent to a right-of-way over or across their land, including undivided interests in fractionated tracts.

(b) The following individuals or entities may consent on behalf of an individual Indian landowner:

(1) An adult with legal custody acting on behalf of his or her minor children;

(2) A guardian, conservator, or other fiduciary appointed by a court of competent jurisdiction to act on behalf of an individual Indian landowner;

(3) Any person who is authorized to practice before the Department of the Interior under 43 CFR 1.3(b) and has been retained by the Indian landowner for this purpose;

(4) BIA, under the circumstances in paragraph (c) of this section; or

(5) An adult or legal entity who has been given a written power of attorney that:

(i) Meets all of the formal requirements of any applicable law under § 169.9;

(ii) Identifies the attorney-in-fact; and

(iii) Describes the scope of the powers granted, to include granting rights-of-way on land or generally conveying or encumbering interests in Indian land, and any limits on those powers.

(c) BIA may give written consent to a right-of-way on behalf of an individual Indian landowner, as long as we

determine that the grant will cause no substantial injury to the land or any landowner, based on factors including, but not limited to, the amount of acreage involved in the grant, the disturbance to land that will result from the grant, the type of activity to be conducted under the grant, the potential for environmental or safety impacts resulting from the grant, and any objections raised by landowners. BIA's consent must be counted in the majority interest under § 169.107, on behalf of:

(1) An individual Indian landowner, if the owner is deceased, and the heirs to, or devisees of, the interest of the deceased owner have not been determined;

(2) An individual Indian landowner whose whereabouts are unknown to us, after we make a reasonable attempt to locate the individual;

(3) An individual Indian landowner who is found to be non compos mentis or determined to be an adult in need of assistance who does not have a guardian duly appointed by a court of competent jurisdiction, or an individual under legal disability as defined in part 115 of this chapter;

(4) An individual Indian landowner who is an orphaned minor and who does not have a guardian duly appointed by a court of competent jurisdiction; and

(5) An individual Indian landowner who has given us a written power of attorney to consent to a right-of-way over or across their land.

**§ 169.109 Whose consent do I need for a right-of-way when there is a life estate on the tract?**

If there is a life estate on the tract that would be subject to the right-of-way, the applicant must get the consent of both the life tenant and the owners of the majority of the remainder interest known at the time of the application.

**Compensation Requirements**

**§ 169.110 How much monetary compensation must be paid for a right-of-way over or across tribal land?**

(a) A right-of-way over or across tribal land may allow for any payment amount negotiated by the tribe, and we will defer to the tribe and not require a valuation if the tribe submits a tribal authorization expressly stating that it:

(1) Has agreed upon compensation satisfactory to the tribe;

(2) Waives valuation; and

(3) Has determined that accepting such agreed-upon compensation and waiving valuation is in its best interest.

(b) The tribe may request, in writing, that we determine fair market value, in which case we will use a valuation in

accordance with § 169.114. After providing the tribe with the fair market value, we will defer to a tribe's decision to allow for any compensation negotiated by the tribe.

(c) If the conditions in paragraph (a) or (b) of this section are not met, we will require that the grantee pay fair market value based on a valuation in accordance with § 169.114.

**§ 169.111 Must a right-of-way grant for tribal land provide for compensation reviews or adjustments?**

For a right-of-way grant over or across tribal land, no periodic review of the adequacy of compensation or adjustment is required, unless the tribe negotiates for reviews or adjustments.

**§ 169.112 How much monetary compensation must be paid for a right-of-way over or across individually owned Indian land?**

(a) A right-of-way over or across individually owned Indian land must require compensation of not less than fair market value, unless paragraph (b) or (c) of this section permit a lesser amount. Compensation may also include additional fees, including but not limited to throughput fees, severance damages, franchise fees, avoidance value, bonuses, or other factors. Compensation may be based on a fixed amount, a percentage of the projected income, or some other method. The grant must establish how the fixed amount, percentage, or combination will be calculated and the frequency at which the payments will be made.

(b) We may approve a right-of-way over or across individually owned Indian land that provides for nominal compensation, or compensation less than a fair market value, if:

(1) The grantee is a utility cooperative and is providing a direct benefit to the Indian land; or

(2) The grantee is a tribal utility; or  
(3) The individual Indian landowners execute a written waiver of the right to receive fair market value and we determine it is in the individual Indian landowners' best interest, based on factors including, but not limited to:

(i) The grantee is a member of the immediate family, as defined in § 169.2, of an individual Indian landowner;

(ii) The grantee is a co-owner in the affected tract;

(iii) A special relationship or circumstances exist that we believe warrant approval of the right-of-way; or

(iv) We have waived the requirement for a valuation under paragraph (d) of this section.

(c) We will require a valuation to determine fair market value, unless:

(1) 100 percent of the individual Indian landowners submit to us a written request to waive the valuation requirement; or

(2) We waive the requirement under paragraph (d) of this section.

(d) The grant must provide that the non-consenting individual Indian landowners, and those on whose behalf we have consented under § 169.108(c), or granted the right-of-way without consent under § 169.107(b), receive fair market value, as determined by a valuation, unless:

(1) The grantee is a utility cooperative and is providing a direct benefit to the Indian land; or

(2) The grantee is a tribal utility; or

(3) We waive the requirement because the tribe or grantee will construct infrastructure improvements benefitting the individual Indian landowners, and we determine in writing that the waiver is in the best interest of all the landowners.

**§ 169.113 Must a right-of-way grant for individually owned Indian land provide for compensation reviews or adjustments?**

(a) For a right-of-way grant of individually owned Indian land, a review of the adequacy of compensation must occur at least every fifth year, in the manner specified in the grant unless:

(1) Payment is a one-time lump sum;

(2) The term of the right-of-way grant is 5 years or less;

(3) The grant provides for automatic adjustments; or

(4) We determine it is in the best interest of the Indian landowners not to require a review or automatic adjustment based on circumstances including, but not limited to, the following:

(i) The right-of-way grant provides for payment of less than fair market value;

(ii) The right-of-way grant provides for most or all of the compensation to be paid during the first 5 years of the grant term or before the date the review would be conducted; or

(iii) The right-of-way grant provides for graduated rent or non-monetary or varying types of compensation.

(b) The grant must specify:

(1) When adjustments take effect;

(2) Who can make adjustments;

(3) What the adjustments are based on; and

(4) How to resolve disputes arising from the adjustments.

(c) When a review results in the need for adjustment of compensation, the Indian landowners must consent to the adjustment in accordance with § 169.107, unless the grant provides otherwise.

**§ 169.114 How will BIA determine fair market value for a right-of-way?**

(a) We will use a market analysis, appraisal, or other appropriate valuation method to determine the fair market value before we grant a right-of-way over or across individually owned Indian land. We will also use a market analysis, appraisal, or other appropriate valuation method to determine, at the request of the tribe, the fair market value of tribal land.

(b) We will either:

(1) Prepare, or have prepared, a market analysis, appraisal, or other appropriate valuation method; or

(2) Approve use of a market analysis, appraisal, or other appropriate valuation method from the Indian landowners or grantee.

(c) We will use or approve use of a market analysis, appraisal, or other appropriate valuation method only if it:

(1) Has been prepared in accordance with USPAP or a valuation method developed by the Secretary under 25 U.S.C. 2214 and complies with Departmental policies regarding appraisals, including third-party appraisals; or

(2) Has been prepared by another Federal agency.

**§ 169.115 When are monetary compensation payments due under a right-of-way?**

Compensation for a right-of-way may be a one-time, lump sum payment, or may be paid in increments (for example, annually).

(a) If compensation is a one-time, lump sum payment, the grantee must make the payment by the date we grant the right-of-way, unless stated otherwise in the grant.

(b) If compensation is to be paid in increments, the right-of-way grant must specify the dates on which all payments are due. Payments are due at the time specified in the grant, regardless of whether the grantee receives an advance billing or other notice that a payment is due. Increments may not be more frequent than quarterly if payments are made to us on the Indian landowners' behalf.

**§ 169.116 Must a right-of-way specify who receives monetary compensation payments?**

(a) A right-of-way grant must specify whether the grantee will make payments directly to the Indian landowners (direct pay) or to us on their behalf.

(b) The grantee may make payments directly to the tribe if the tribe so chooses. The grantee may make payments directly to the Indian landowners if:

(1) The Indian landowners' trust accounts are unencumbered accounts;

(2) There are 10 or fewer beneficial owners; and

(3) One hundred percent of the beneficial owners (including those on whose behalf we have consented) agree to receive payment directly from the grantee at the start of the right-of-way.

(c) If the right-of-way document provides that the grantee will directly pay the Indian landowners, then:

(1) The right-of-way document must include provisions for proof of payment upon our request.

(2) When we consent on behalf of an Indian landowner, the grantee must make payment to us on behalf of that landowner.

(3) The grantee must send direct payments to the parties and addresses specified in the right-of-way, unless the grantee receives notice of a change of ownership or address.

(4) Unless the right-of-way document provides otherwise, payments may not be made payable directly to anyone other than the Indian landowners.

(5) Direct payments must continue through the duration of the right-of-way, except that:

(i) The grantee must make all Indian landowners' payments to us if 100 percent of the Indian landowners agree to suspend direct pay and provide us with documentation of their agreement; and

(ii) The grantee must make an individual Indian landowner's payment to us if that individual Indian landowner dies, is declared non compos mentis, owes a debt resulting in an encumbered account, or his or her whereabouts become unknown.

**§ 169.117 What form of monetary compensation is acceptable under a right-of-way?**

(a) If payments are made to us on behalf of the Indian landowners, our preferred method of payment is electronic funds transfer payments. We will also accept:

- (1) Money orders;
- (2) Personal checks;
- (3) Certified checks; or
- (4) Cashier's checks.

(b) We will not accept cash or foreign currency.

(c) We will accept third-party checks only from financial institutions or Federal agencies.

(d) The grant of right-of-way will specify the payment method if payments are made by direct pay.

**§ 169.118 May the right-of-way provide for non-monetary or varying types of compensation?**

(a) A right-of-way grant may provide for alternative forms of compensation

and varying types of compensation, subject to the conditions in paragraphs (b) and (c) of this section:

(1) Alternative forms of compensation may include but are not limited to, in-kind consideration and payments based on throughput or percentage of income; or

(2) Varying types of compensation may include but are not limited to different types of payments at specific stages during the life of the right-of-way grant, such as fixed annual payments during construction, payments based on income during an operational period, and bonuses.

(b) For tribal land, we will defer to the tribe's determination that the compensation under paragraph (a) of this section is in its best interest, if the tribe submits a signed certification or tribal authorization stating that it has determined the alternative form of compensation or varying type of compensation to be in its best interest.

(c) For individually owned land, we may grant a right-of-way that provides for an alternative form of compensation or varying type of compensation if we determine that it is in the best interest of the Indian landowners.

**§ 169.119 Will BIA notify a grantee when a payment is due for a right-of-way?**

Upon request of the Indian landowners, we may issue invoices to a grantee in advance of the dates on which payments are due under the right-of-way. The grantee's obligation to make these payments in a timely manner will not be excused if invoices are not issued, delivered, or received.

**§ 169.120 What other types of payments are required for a right-of-way?**

(a) The grantee may be required to pay additional fees, taxes, and assessments associated with the application for use of the land or use of the land, as determined by entities having jurisdiction, except as provided in § 169.11. The grantee must pay these amounts to the appropriate office, as applicable.

(b) In addition to, or as part of, the compensation for a right-of-way under §§ 169.110 and 169.112 and the payments provided for in paragraph (a) of this section, the applicant for a right-of-way will be required to pay for all damages to the land, such as those incident to the construction or maintenance of the facility for which the right-of-way is granted.

**§ 169.121 How will compensation be distributed among the life tenants and owners of the remainder interests?**

If a will created the life estate and specifies how the compensation will be

distributed among the life tenants and owners of the remainder interests, those terms will establish the distribution. Otherwise:

(a) The owners of the remainder interests and the life tenant may enter into a right-of-way or other written agreement approved by the Secretary providing for the distribution of rent monies under the right-of-way; or

(b) If the owners of the remainder interests and life tenant did not enter into an agreement for distribution, the life tenant will receive payment in accordance with the distribution and calculation scheme set forth in part 179 of this chapter.

**§ 169.122 Who does the grantee pay if there is a life estate on the tract?**

The grantee must pay compensation directly to the life tenant under the terms of the right-of-way unless the whereabouts of the life tenant are unknown, in which case we may collect compensation on behalf of the life tenant.

**Grants of Rights-of-Way**

**§ 169.123 What is the process for BIA to grant a right-of-way?**

(a) Before we grant a right-of-way, we must determine that the right-of-way is in the best interest of the Indian landowners. In making that determination, we will:

(1) Review the right-of-way application and supporting documents;

(2) Identify potential environmental impacts and adverse impacts, and ensure compliance with all applicable Federal environmental, land use, historic preservation, and cultural resource laws and ordinances; and

(3) Require any modifications or mitigation measures necessary to satisfy any requirements including any other Federal or tribal land use requirements.

(b) Upon receiving a right-of-way application, we will promptly notify the applicant whether the package is complete. A complete package includes all of the information and supporting documents required under this subpart, including but not limited to, an accurate legal description for each affected tract, documentation of landowner consent, NEPA review documentation and valuation documentation, where applicable.

(1) If the right-of-way application package is not complete, our letter will identify the missing information or documents required for a complete package. If we do not respond to the submission of an application package, the parties may take action under § 169.304.

(2) If the right-of-way application package is complete, we will notify the applicant of the date of our receipt of the complete package. Within 60 days of our receipt of a complete package, we will grant or deny the right-of-way, return the package for revision, or inform the applicant in writing that we need additional review time. If we inform the applicant in writing that we need additional time, then:

(i) Our letter informing the applicant that we need additional review time must identify our initial concerns and invite the applicant to respond within 15 days of the date of the letter; and

(ii) We will issue a written determination granting or denying the right-of-way within 30 days from sending the letter informing the applicant that we need additional time.

(c) If we do not meet the deadlines in this section, then the applicant may take appropriate action under § 169.304.

(d) We will provide any right-of-way denial and the basis for the determination, along with notification of any appeal rights under part 2 of this chapter to the parties to the right-of-way. If the right-of-way is granted, we will provide a copy of the right-of-way to the tribal landowner and, upon written request, make copies available to the individual Indian landowners, and provide notice under § 169.12.

**§ 169.124 How will BIA determine whether to grant a right-of-way?**

Our decision to grant or deny a right-of-way will be in writing.

(a) We will grant a right-of-way unless:

(1) The requirements of this subpart have not been met, such as if the required landowner consent has not been obtained under § 169.107; or

(2) We find a compelling reason to withhold the grant in order to protect the best interests of the Indian landowners.

(b) We will defer, to the maximum extent possible, to the Indian landowners' determination that the right-of-way is in their best interest.

(c) We may not unreasonably withhold our grant of a right-of-way.

(d) We may grant one right-of-way for all of the tracts traversed by the right-of-way, or we may issue separate grants for one or more tracts traversed by the right-of-way.

**§ 169.125 What will the grant of right-of-way contain?**

(a) The grant will incorporate the conditions or restrictions set out in the Indian landowners' consents.

(b) The grant will address:

(1) The use(s) the grant is authorizing;

(2) Whether assignment of the right-of-way is permitted and, if so, whether additional consent is required for the assignment and whether any additional compensation is owed to the landowners;

(3) Whether mortgaging of the right-of-way is permitted and, if so, whether additional consent is required for the mortgage and whether any additional compensation is owed to the landowners; and

(4) Ownership of permanent improvements under § 169.130.

(c) The grant will state that:

(1) The tribe maintains its existing jurisdiction over the land, activities, and persons within the right-of-way under § 169.10 and reserves the right of the tribe to reasonable access to the lands subject to the grant to determine grantee's compliance with consent conditions or to protect public health and safety;

(2) The grantee has no right to any of the products or resources of the land, including but not limited to, timber, forage, mineral, and animal resources, unless otherwise provided for in the grant;

(3) BIA may treat any provision of a grant that violates Federal law as a violation of the grant; and

(4) If historic properties, archeological resources, human remains, or other cultural items not previously reported are encountered during the course of any activity associated with this grant, all activity in the immediate vicinity of the properties, resources, remains, or items will cease and the grantee will contact BIA and the tribe with jurisdiction over the land to determine how to proceed and appropriate disposition.

(5) The grantee must:

(i) Construct and maintain improvements within the right-of-way in a professional manner consistent with industry standards;

(ii) Pay promptly all damages and compensation, in addition to bond or alternative form of security made pursuant to § 169.103, determined by the BIA to be due the landowners and authorized users and occupants of land as a result of the granting, construction, and maintenance of the right-of-way;

(iii) Restore the land as nearly as may be possible to its original condition, upon the completion of construction, to the extent compatible with the purpose for which the right-of-way was granted, or reclaim the land if agreed to by the landowners;

(iv) Clear and keep clear the land within the right-of-way, to the extent compatible with the purpose of the right-of-way, and dispose of all

vegetative and other material cut, uprooted, or otherwise accumulated during the construction and maintenance of the project;

(v) Comply with all applicable laws and obtain all required permits;

(vi) Not commit waste;

(vii) Operate, repair and maintain improvements consistent with the right-of-way grant;

(viii) Build and maintain necessary and suitable crossings for all roads and trails that intersect the improvements constructed, maintained, or operated under the right-of-way;

(ix) Restore the land to its original condition, to the maximum extent reasonably possible, upon cancellation or termination of the right-of-way, or reclaim the land if agreed to by the landowners;

(x) At all times keep the BIA, and the tribe for tribal land, informed of the grantee's address;

(xi) Refrain from interfering with the landowner's use of the land, provided that the landowner's use of the land is not inconsistent with the right-of-way;

(xii) Comply with due diligence requirements under § 169.105; and

(xiii) Notify the BIA, and the tribe for tribal land, if it files for bankruptcy or is placed in receivership.

(6) Unless the grantee would be prohibited by law from doing so, the grantee must also:

(i) Hold the United States and the Indian landowners harmless from any loss, liability, or damages resulting from the applicant's use or occupation of the premises; and

(ii) Indemnify the United States and the Indian landowners against all liabilities or costs relating to the use, handling, treatment, removal, storage, transportation, or disposal of hazardous materials, or release or discharge of any hazardous material from the premises that occurs during the term of the grant, regardless of fault, with the exception that the applicant is not required to indemnify the Indian landowners for liability or cost arising from the Indian landowners' negligence or willful misconduct.

(d) The grant must attach or include by reference maps of definite location.

**§ 169.126 May a right-of-way contain a preference consistent with tribal law for employment of tribal members?**

A grant of right-of-way over or across Indian land may include a provision, consistent with tribal law, requiring the grantee to give a preference to qualified tribal members, based on their political affiliation with the tribe.

**§ 169.127 Is a new right-of-way grant required for a new use within or overlapping an existing right-of-way?**

(a) If you are the grantee, you may use all or a portion of an existing right-of-way for a use not specified in the original grant of the existing right-of-way only if it is within the same scope of the use specified in the original grant of the existing right-of-way.

(1) If you propose to use all or a portion of an existing right-of-way for a use not specified in the original grant of the existing right-of-way and not within the same scope of the use specified in the original grant of the existing right-of-way, and the new use will not require any ground disturbance, you must request an amendment to the existing right-of-way grant.

(2) If you propose to use all or a portion of an existing right-of-way for a use not specified in the original grant of the existing right-of-way and not within the same scope of the use specified in the original grant of the existing right-of-way, and the new use requires ground disturbance, you must request a new right-of-way.

(b) If you are not the grantee:

(1) You may use all or a portion of an existing right-of-way for a use specified in the original grant of the existing right-of-way or a use within the same scope of the use specified in the original grant of the existing right-of-way if the grantee obtains an assignment to authorize the new user; or

(2) You may use all or a portion of an existing right-of-way for a use not specified in the original grant of the existing right-of-way and not within the same scope of use specified in the original grant of the existing right-of-way if you request a new right-of-way within or overlapping the existing right-of-way for the new use.

(c) An example of a use within the same scope is a right-of-way for underground telephone line being used for an underground fiber optic line, and an example of a use that is not within the same scope is a right-of-way for a pipeline being used for a road or railroad.

**§ 169.128 When will BIA grant a right-of-way for a new use within or overlapping an existing right-of-way?**

We may grant a new right-of-way within or overlapping an existing right-of-way if it meets the following conditions:

(a) The applicant follows the procedures and requirements in this part to obtain a new right-of-way.

(b) The new right-of-way does not interfere with the use or purpose of the existing right-of-way and the applicant

has obtained the consent of the existing right-of-way grantee. The existing right-of-way grantee may not unreasonably withhold consent.

**§ 169.129 What is required if the location described in the original application and grant differs from the construction location?**

(a) If engineering or other complications prevented construction within the location identified in the original application and grant, and required a minor deviation from the location identified in the original application and grant, then we and the tribe, for tribal land, will determine whether the change in location requires one or more of the following:

(1) An amended map of definite location;

(2) Landowner consent;

(3) A valuation or, with landowner consent, a recalculation of compensation;

(4) Additional compensation or security; or

(5) Other actions required to comply with applicable laws.

(b) If BIA and the tribe, for tribal land, determine it is not a minor deviation in location, we may require a new right-of-way grant or amendment to the right-of-way grant.

(c) If we grant a right-of-way for the new route or location, the applicant must execute instruments to extinguish, or amend, as appropriate, the right-of-way at the original location identified in the application.

(d) We will transmit the instruments to extinguish or amend the right-of-way to the LTRO for recording.

**§ 169.130 Must a right-of-way grant address ownership of permanent improvements?**

(a) A right-of-way grant must specify who will own any permanent improvements the grantee constructs during the grant term and may specify under what conditions, if any, permanent improvements the grantee constructs may be conveyed to the Indian landowners during the grant term. In addition, the grant may indicate whether each specific permanent improvement the grantee constructs will:

(1) Remain on the premises, upon the expiration, cancellation, or termination of the grant, in a condition satisfactory to the Indian landowners, and become the property of the Indian landowners;

(2) Be removed within a time period specified in the grant, at the grantee's expense, with the premises to be restored as closely as possible to their condition before construction of the permanent improvements; or

(3) Be disposed of by other specified means.

(b) A grant that requires the grantee to remove the permanent improvements must also provide the Indian landowners with an option to take possession of and title to the permanent improvements if the improvements are not removed within the specified time period.

#### **Subpart D—Duration, Renewals, Amendments, Assignments, Mortgages**

##### **Duration & Renewals**

##### **§ 169.201 How long may the duration of a right-of-way grant be?**

(a) All rights-of-way granted under this part are limited to the time periods stated in the grant.

(b) For tribal land, we will defer to the tribe's determination that the right-of-way term is reasonable.

(c) For individually owned Indian land, we will review the right-of-way duration to ensure that it is reasonable, given the purpose of the right-of-way. We will generally consider a maximum duration of 20 years to be reasonable for the initial term for rights-of-way for oil and gas purposes and a maximum of 50 years, inclusive of the initial term and any renewals, to be reasonable for rights-of-way for all other purposes. We will consider a duration consistent with use to be reasonable for rights-of-way for conservation easements. We will consider durations different from these guidelines if a different duration would benefit the Indian landowners, is required by another Federal agency, or the tribe has negotiated for a different duration and the right-of-way crosses tribal land.

##### **§ 169.202 Under what circumstances will a grant of right-of-way be renewed?**

A renewal is an extension of term of an existing right-of-way without any other change.

(a) The grantee may request a renewal of an existing right-of-way grant and we will renew the grant as long as:

(1) The initial term and renewal terms, together, do not exceed the maximum term determined to be reasonable under § 169.201;

(2) The existing right-of-way grant explicitly allows for automatic renewal or an option to renew and specifies compensation owed to the landowners upon renewal or how compensation will be determined;

(3) The grantee provides us with a signed affidavit that there is no change in size, type, or location, of the right-of-way;

(4) The initial term has not yet ended;

(5) No uncured violation exists regarding the regulations in this part or the grant's conditions or restrictions; and

(6) The grantee provides confirmation that landowner consent has been obtained, or if consent is not required because the original right-of-way grant explicitly allows for renewal without the owners' consent, the grantee provides notice to the landowners of the renewal.

(b) We will record any renewal of a right-of-way grant in the LTRO.

(c) If the proposed renewal involves any change to the original grant or the original grant was silent as to renewals, the grantee must reapply for a new right-of-way, in accordance with § 169.101, and we will handle the application for renewal as an original application for a right-of-way.

##### **§ 169.203 May a right-of-way be renewed multiple times?**

There is no prohibition on renewing a right-of-way multiple times, unless the grant expressly prohibits multiple renewals, and subject to the duration limitations for individually owned land in § 169.201. The provisions of § 169.202 apply to each renewal.

##### **Amendments**

##### **§ 169.204 May a grantee amend a right-of-way?**

(a) An amendment is required to change any provisions of a right-of-way grant. If the change is a material change to the grant, we may require application for a new right-of-way instead.

(b) A grantee may request that we amend a right-of-way to make an administrative modification (*i.e.*, a modification that is clerical in nature, for example to correct the legal description) without meeting consent requirements, as long as the grantee provides landowners with written notice. For all other amendments, the grantee must meet the consent requirements in § 169.107 and obtain our approval.

##### **§ 169.205 What is the approval process for an amendment of a right-of-way?**

(a) When we receive an amendment for our approval, we will notify the grantee of the date we receive it. We have 30 days from receipt of the executed amendment, proof of required consents, and required documentation (including but not limited to a corrected legal description, if any, and NEPA compliance) to approve or disapprove the amendment. Our determination whether to approve the amendment will be in writing and will state the basis for our approval or disapproval.

(b) If we need additional time to review, our letter informing the parties that we need additional time for review must identify our initial concerns and invite the parties to respond within 15 days of the date of the letter. We have 30 days from sending the letter informing the parties that we need additional time to approve or disapprove the amendment.

(c) If we do not meet the deadline in paragraph (a) of this section, or paragraph (b) of this section if applicable, the grantee or Indian landowners may take appropriate action under § 169.304.

##### **§ 169.206 How will BIA decide whether to approve an amendment of a right-of-way?**

(a) We may disapprove a request for an amendment of a right-of-way only if at least one of the following is true:

(1) The Indian landowners have not consented to the amendment under § 169.107 and we have not consented on their behalf under § 169.108;

(2) The grantee's sureties for the bonds or alternative securities have not consented;

(3) The grantee is in violation of the right-of-way grant;

(4) The requirements of this subpart have not been met; or

(5) We find a compelling reason to withhold approval in order to protect the best interests of the Indian landowners.

(b) We will defer, to the maximum extent possible, to the Indian landowners' determination that the amendment is in their best interest.

(c) We may not unreasonably withhold approval of an amendment.

##### **Assignments**

##### **§ 169.207 May a grantee assign a right-of-way?**

(a) A grantee may assign a right-of-way by:

(1) Meeting the consent requirements in § 169.107, unless the grant expressly allows for assignments without further consent; and

(2) Either obtaining our approval, or meeting the conditions in paragraph (b) of this section.

(b) A grantee may assign a right-of-way without BIA approval only if:

(1) The original right-of-way grant expressly allows for assignment without BIA approval; and

(2) The assignee and grantee provide a copy of the assignment and supporting documentation to BIA for recording in the LTRO within 30 days of the assignment.

(c) Assignments that are the result of a corporate merger, acquisition, or transfer by operation of law are

excluded from these requirements, except for the requirement to provide a copy of the assignment and supporting documentation to BIA for recording in the LTRO within 30 days and to the tribe for tribal land.

**§ 169.208 What is the approval process for an assignment of a right-of-way?**

(a) When we receive an assignment for our approval, we will notify the grantee of the date we receive it. If our approval is required, we have 30 days from receipt of the executed assignment, proof of any required consents, and any required documentation to approve or disapprove the assignment. Our determination whether to approve the assignment will be in writing and will state the basis for our approval or disapproval.

(b) If we do not meet the deadline in this section, the grantee or Indian landowners may take appropriate action under § 169.304.

**§ 169.209 How will BIA decide whether to approve an assignment of a right-of-way?**

(a) We may disapprove an assignment of a right-of-way only if at least one of the following is true:

- (1) The Indian landowners have not consented to the assignment under § 169.107 and their consent is required;
- (2) Sufficient bonding and/or insurance are not in place;
- (3) The grantee is in violation of the right-of-way grant;
- (4) The assignee does not agree to be bound by the terms of the right-of-way grant;
- (5) The requirements of this subpart have not been met; or
- (6) We find a compelling reason to withhold approval in order to protect the best interests of the Indian landowners.

(b) We will defer, to the maximum extent possible, to the Indian landowners' determination that the assignment is in their best interest.

(c) We may not unreasonably withhold approval of an assignment.

**Mortgages**

**§ 169.210 May a grantee mortgage a right-of-way?**

A grantee may mortgage a right-of-way, if the grant expressly allows mortgaging. The grantee must meet the consent requirements in § 169.107, unless the grant expressly allows for mortgaging without consent, and must obtain our approval for the mortgage.

**§ 169.211 What is the approval process for a mortgage of a right-of-way?**

(a) When we receive a right-of-way mortgage for our approval, we will

notify the grantee of the date we receive it. We have 30 days from receipt of the executed mortgage, proof of required consents, and required documentation to approve or disapprove the mortgage. Our determination whether to approve the mortgage will be in writing and will state the basis for our approval or disapproval.

(b) If we do not meet the deadline in this section, the grantee or Indian landowners may take appropriate action under § 169.304.

**§ 169.212 How will BIA decide whether to approve a mortgage of a right-of-way?**

(a) We may disapprove a right-of-way mortgage only if at least one of the following is true:

- (1) The Indian landowners have not consented;
- (2) The grantee's sureties for the bonds have not consented;
- (3) The requirements of this subpart have not been met; or
- (4) We find a compelling reason to withhold approval in order to protect the best interests of the Indian landowners.

(b) In making the finding required by paragraph (a)(4) of this section, we may consider whether:

- (1) The mortgage proceeds would be used for purposes unrelated to the right-of-way purpose; and
- (2) The mortgage is limited to the right-of-way.

(c) We will defer, to the maximum extent possible, to the Indian landowners' determination that the mortgage is in their best interest.

(d) We may not unreasonably withhold approval of a right-of-way mortgage.

**Subpart E—Effectiveness**

**§ 169.301 When will a right-of-way document be effective?**

(a) A right-of-way document will be effective on the date we approve the right-of-way document, even if an appeal is filed under part 2 of this chapter.

(b) The right-of-way document may specify a date on which the grantee's obligations are triggered. Such date may be before or after the approval date under paragraph (a) of this section.

**§ 169.302 Must a right-of-way be recorded?**

(a) Any right-of-way document must be recorded in our LTRO with jurisdiction over the affected Indian land.

(1) We will record the right-of-way document immediately following our approval or granting.

(2) In the case of assignments that do not require our approval under

§ 169.207(b), the parties must provide us with a copy of the assignment and we will record the assignment in the LTRO with jurisdiction over the affected Indian land.

(b) The tribe must record right-of-way documents for the following types of rights-of-way in the LTRO with jurisdiction over the affected Indian lands, even though BIA approval is not required:

(1) Grants on tribal land for a tribal utility under § 169.4;

(2) Grants on tribal land under a special act of Congress authorizing grants without our approval under certain conditions.

**§ 169.303 What happens if BIA denies a right-of-way document?**

If we deny the right-of-way grant, renewal, amendment, assignment, or mortgage, we will notify the parties immediately and advise the landowners and the applicant of their right to appeal the decision under part 2 of this chapter.

**§ 169.304 What happens if BIA does not meet a deadline for issuing a decision on a right-of-way document?**

(a) If a Superintendent does not meet a deadline for granting or denying a right-of-way, renewal, amendment, assignment, or mortgage, the parties may file a written notice to compel action with the appropriate Regional Director.

(b) The Regional Director has 15 days from receiving the notice to:

- (1) Grant or deny the right-of-way; or
- (2) Order the Superintendent to grant or deny the right-of-way within the time set out in the order.

(c) Either party may file a written notice to compel action with the BIA Director if:

(1) The Regional Director does not meet the deadline in paragraph (b) of this section;

(2) The Superintendent does not grant or deny the right-of-way within the time set by the Regional Director under paragraph (b)(2) of this section; or

(3) The initial decision on the right-of-way, renewal, amendment, assignment, or mortgage is with the Regional Director, and he or she does not meet the deadline for such decision.

(d) The BIA Director has 15 days from receiving the notice to:

- (1) Grant or deny the right-of-way; or
- (2) Order the Regional Director or Superintendent to grant or deny the right-of-way within the time set out in the order.

(e) If the Regional Director or Superintendent does not grant or deny the right-of-way within the time set out

in the order under paragraph (d)(2) of this section, then the BIA Director must issue a decision within 15 days from the expiration of the time set out in the order.

(f) The parties may file an appeal from our inaction to the Interior Board of Indian Appeals if the BIA Director does not meet the deadline in paragraph (d) or (e) of this section.

(g) The provisions of 25 CFR 2.8 do not apply to the inaction of BIA officials with respect to a granting or denying a right-of-way, renewal, amendment, assignment, or mortgage under this subpart.

**§ 169.305 Will BIA require an appeal bond for an appeal of a decision on a right-of-way document?**

(a) If a party appeals our decision on a right-of-way document, then the official to whom the appeal is made may require the appellant to post an appeal bond in accordance with part 2 of this chapter. We will not require an appeal bond if the tribe is a party to the appeal and requests a waiver of the appeal bond.

(b) The appellant may not appeal the appeal bond decision. The appellant may, however, request that the official to whom the appeal is made reconsider the bond decision, based on extraordinary circumstances. Any reconsideration decision is final for the Department.

**Subpart F—Compliance and Enforcement**

**§ 169.401 What is the purpose and scope of this subpart?**

This subpart describes the procedures we use to address compliance and enforcement related to rights-of-way on Indian land. Any abandonment, non-use, or violation of the right-of-way grant or right-of-way document, including but not limited to encroachments beyond the defined boundaries, accidental, willful, and/or incidental trespass, unauthorized new construction, changes in use not permitted in the grant, and late or insufficient payment may result in enforcement actions including, but not limited to, cancellation of the grant.

**§ 169.402 Who may investigate compliance with a right-of-way?**

(a) BIA may investigate compliance with a right-of-way.

(1) If an Indian landowner notifies us that a specific abandonment, non-use, or violation has occurred, we will promptly initiate an appropriate investigation.

(2) We may enter the Indian land subject to a right-of-way at any

reasonable time, upon reasonable notice, and consistent with any notice requirements under applicable tribal law and applicable grant documents, to protect the interests of the Indian landowners and to determine if the grantee is in compliance with the requirements of the right-of-way.

(b) The tribe with jurisdiction may investigate compliance consistent with tribal law.

**§ 169.403 May a right-of-way provide for negotiated remedies?**

(a) The tribe and the grantee on tribal land may negotiate remedies for a violation, abandonment, or non-use. The negotiated remedies must be stated in the tribe's consent to the right-of-way grant, which BIA will then incorporate into the grant itself. The negotiated remedies may include, but are not limited to, the power to terminate the right-of-way grant. If the negotiated remedies provide one or both parties with the power to terminate the grant:

(1) BIA approval of the termination is not required;

(2) The termination is effective without BIA cancellation; and

(3) The tribe must provide us with written notice of the termination so that we may record it in the LTRO.

(b) The Indian landowners and the grantee to a right-of-way grant on individually owned Indian land may negotiate remedies, so long as the consent also specifies the manner in which those remedies may be exercised by or on behalf of the Indian landowners of the majority interest under § 169.107. If the negotiated remedies provide one or both parties with the power to terminate the grant:

(1) BIA concurrence with the termination is required to ensure that the Indian landowners of the applicable percentage of interests have consented; and

(2) BIA will record the termination in the LTRO.

(c) The parties must notify any surety of any violation that may result in termination and the termination of a right-of-way.

(d) Negotiated remedies may apply in addition to, or instead of, the cancellation remedy available to us, as specified in the right-of-way grant. The landowners may request our assistance in enforcing negotiated remedies.

(e) A right-of-way grant may provide that violations will be addressed by a tribe, and that disputes will be resolved by a tribal court, any other court of competent jurisdiction, or by a tribal governing body in the absence of a tribal court, or through an alternative dispute resolution method. We may not be

bound by decisions made in such forums, but we will defer to ongoing actions or proceedings, as appropriate, in deciding whether to exercise any of the remedies available to us.

**§ 169.404 What will BIA do about a violation of a right-of-way grant?**

(a) In the absence of actions or proceedings described in § 169.403 (negotiated remedies), or if it is not appropriate for us to defer to the actions or proceedings, we will follow the procedures in paragraphs (b) and (c) of this section. We will consult with the tribe for tribal land or, where feasible, communicate with Indian landowners for individually owned Indian land, and determine whether a violation has occurred.

(b) If we determine there has been a violation of the conditions of a grant, other than a violation of payment provisions covered by paragraph (c) of this section, we will promptly send the grantee a written notice of violation.

(1) We will send a copy of the notice of violation to the tribe for tribal land, or provide constructive notice to Indian landowners for individually owned Indian land.

(2) The notice of violation will advise the grantee that, within 10 business days of the receipt of a notice of violation, the grantee must:

(i) Cure the violation and notify us, and the tribe for tribal land, in writing that the violation has been cured;

(ii) Dispute our determination that a violation has occurred; or

(iii) Request additional time to cure the violation.

(3) The notice of violation may order the grantee to cease operations under the right-of-way grant.

(c) A grantee's failure to pay compensation in the time and manner required by a right-of-way grant is a violation, and we will issue a notice of violation in accordance with this paragraph.

(1) We will send the grantees a written notice of violation promptly following the date on which the payment was due.

(2) We will send a copy of the notice of violation to the tribe for tribal land, or provide constructive notice to the Indian landowners for individually owned Indian land.

(3) The notice of violation will require the grantee to provide adequate proof of payment.

(d) The grantee will continue to be responsible for the obligations in the grant until the grant expires, or is terminated or cancelled, as well as any reclamation or other obligations that survive the end of the grant.

**§ 169.405 What will BIA do if the grantee does not cure a violation of a right-of-way grant on time?**

(a) If the grantee does not cure a violation of a right-of-way grant within the required time period, or provide adequate proof of payment as required in the notice of violation, we will consult with the tribe for tribal land or, where feasible, communicate with Indian landowners for individually owned Indian land, and determine whether:

- (1) We should cancel the grant;
- (2) The Indian landowners wish to invoke any remedies available to them under the grant;
- (3) We should invoke other remedies available under the grant or applicable law, including collection on any available bond or, for failure to pay compensation, referral of the debt to the Department of the Treasury for collection; or
- (4) The grantee should be granted additional time in which to cure the violation.

(b) Following consultation with the tribe for tribal land or, where feasible, communication with Indian landowners for individually owned Indian land, we may take action to recover unpaid compensation and any associated late payment charges.

- (1) We need not cancel the grant or give any further notice to the grantee before taking action to recover unpaid compensation.
- (2) We may take action to recover any unpaid compensation even though we cancel the grant.
- (c) If we decide to cancel the grant, we will send the grantee a cancellation letter by certified mail, return receipt requested, within 5 business days of our decision. We will send a copy of the cancellation letter to the tribe for tribal land, and will provide Indian landowners for individually owned Indian land with actual notice of the cancellation. The cancellation letter will:

- (1) Explain the grounds for cancellation;
- (2) If applicable, notify the grantee of the amount of any unpaid compensation or late payment charges due under the grant;
- (3) Notify the grantee of the grantee's right to appeal under part 2 of this chapter, including the possibility that the official to whom the appeal is made may require the grantee to post an appeal bond;
- (4) Order the grantee to vacate the property within the timeframe reflected in the termination terms of the grant, or within 31 days of the date of receipt of the cancellation letter, or within such

longer period of time in extraordinary circumstances considering the protection of trust resources and the best interest of the Indian landowners, if an appeal is not filed by that time; and

(5) Order the grantee to take any other action BIA deems necessary to protect the Indian land.

(d) We may invoke any other remedies available to us under the grant, including collecting on any available bond, and the Indian landowners may pursue any available remedies under tribal law.

(e) We will issue an appropriate instrument cancelling the right-of-way and transmit it to the LTRO pursuant to 25 CFR part 150 for recording and filing.

**§ 169.406 Will late payment charges, penalties, or special fees apply to delinquent payments due under a right-of-way grant?**

(a) Late payment charges and penalties will apply as specified in the grant. The failure to pay these amounts will be treated as a violation.

(b) We may assess the following special fees to cover administrative costs incurred by the United States in the collection of the debt, if compensation is not paid in the time and manner required, in addition to the late payment charges that must be paid to the Indian landowners under the grant:

The grantee will pay . . . .	For . . . .
(1) \$50.00 .....	Any dishonored check.
(2) \$15.00 .....	Processing of each notice or demand letter.
(3) 18 percent of balance due.	Treasury processing following referral for collection of delinquent debt.

**§ 169.407 How will payment rights relating to a right-of-way grant be allocated?**

The right-of-way grant may allocate rights to payment for any proceeds, trespass damages, condemnation awards, settlement funds, and other payments between the Indian landowners and the grantee. If not specified in the grant, applicable policy, order, award, judgment, or other document, the Indian landowners will be entitled to receive these payments.

**§ 169.408 What is the process for cancelling a right-of-way for non-use or abandonment?**

(a) We may cancel, in whole or in part, any rights-of-way granted under this part 30 days after mailing written notice to the grantee at its latest address, for a nonuse of the right-of-way for a

consecutive 2-year period for the purpose for which it was granted. If the grantee fails to correct the basis for cancellation by the 30th day after we mailed the notice, we will issue an appropriate instrument cancelling the right-of-way and transmit it to the LTRO pursuant to part 150 of this chapter for recording and filing.

(b) We may cancel, in whole or in part, any rights-of-way granted under this part immediately upon abandonment of the right-of-way by the grantee. We will issue an appropriate instrument cancelling the right-of-way and transmit it to the LTRO pursuant to part 150 of this chapter for recording and filing.

(c) The cancellation notice will notify the grantee of the grantee's right to appeal under part 2 of this chapter, including the possibility of that the official to whom the appeal is made will require the grantee to post an appeal bond.

**§ 169.409 When will a cancellation of a right-of-way grant be effective?**

(a) A cancellation involving a right-of-way grant will not be effective until 31 days after the grantee receives a cancellation letter from us, or 41 days from the date we mailed the letter, whichever is earlier.

(b) The cancellation decision will not be effective if an appeal is filed unless the cancellation is made immediately effective under part 2 of this chapter. When a cancellation decision is not immediately effective, the grantee must continue to pay compensation and comply with the other terms of the grant.

**§ 169.410 What will BIA do if a grantee remains in possession after a right-of-way expires or is terminated or cancelled?**

If a grantee remains in possession after the expiration, termination, or cancellation of a right-of-way, and is not accessing the land to perform reclamation or other remaining grant obligations, we may treat the unauthorized possession as a trespass under applicable law and will communicate with the Indian landowners in making the determination whether to treat the unauthorized possession as a trespass. Unless the parties have notified us in writing that they are engaged in good faith negotiations to renew or obtain a new right-of-way, we may take action to recover possession on behalf of the Indian landowners, and pursue any additional remedies available under applicable law, such as a forcible entry and detainer action. The holdover time will be charged against the new term.

**§ 169.411 Will BIA appeal bond regulations apply to cancellation decisions involving right-of-way grants?**

(a) Except as provided in paragraph (b) of this section, the appeal bond provisions in part 2 of this chapter will govern appeals from right-of-way cancellation decisions.

(b) The grantee may not appeal the appeal bond decision. The grantee may, however, request that the official to whom the appeal is made reconsider the appeal bond decision, based on extraordinary circumstances. Any reconsideration decision is final for the Department.

**§ 169.412 When will BIA issue a decision on an appeal from a right-of-way decision?**

BIA will issue a decision on an appeal from a right-of-way decision within 60 days of receipt of all pleadings.

**§ 169.413 What if an individual or entity takes possession of or uses Indian land or BIA land without a right-of-way or other proper authorization?**

If an individual or entity takes possession of, or uses, Indian land or

BIA land without a right-of-way and a right-of-way is required, the unauthorized possession or use is a trespass. An unauthorized use within an existing right-of-way is also a trespass. We may take action to recover possession, including eviction, on behalf of the Indian landowners and pursue any additional remedies available under applicable law. The Indian landowners may pursue any available remedies under applicable law, including applicable tribal law.

**§ 169.414 May BIA take emergency action if Indian land is threatened?**

(a) We may take appropriate emergency action if there is a natural disaster or if an individual or entity causes or threatens to cause immediate and significant harm to Indian land or BIA land. Emergency action may include judicial action seeking immediate cessation of the activity resulting in or threatening the harm.

(b) We will make reasonable efforts to notify the individual Indian landowners before and after taking emergency action

on Indian land. In all cases, we will notify the Indian landowners after taking emergency action on Indian land. We will provide written notification of our action to the Indian tribe exercising jurisdiction over the Indian land before and after taking emergency action on Indian land.

**§ 169.415 How will BIA conduct compliance and enforcement when there is a life estate on the tract?**

(a) We may monitor the use of the land, as appropriate, and will enforce the terms of the right-of-way on behalf of the owners of the remainder interests, but will not be responsible for enforcing the right-of-way on behalf of the life tenant.

(b) The life tenant may not cause or allow permanent injury to the land.

Dated: November 3, 2015.

**Kevin K. Washburn,**

*Assistant Secretary—Indian Affairs.*

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# FEDERAL REGISTER

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Part III

The President

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Proclamation 9369—Honoring the Victims of the Attack in Paris, France



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**Presidential Documents**

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**Title 3—****Proclamation 9369 of November 15, 2015****The President****Honoring the Victims of the Attack in Paris, France****By the President of the United States of America****A Proclamation**

The American people stand with the people of France. Friday's terror attacks were not just an attack on Paris; they were an attack on all humanity and the universal values we share, including the bonds of *liberté, égalité, and fraternité*. These values will endure far beyond any terrorists or their hateful vision. The United States and our allies do not give in to fear, nor will we be divided, nor will anyone change our way of life. We will do whatever it takes, working with nations and peoples around the world, to bring the perpetrators of these attacks to justice, and to go after terrorists who threaten our people.

As a mark of respect for the victims of the senseless acts of violence perpetrated on November 13, 2015, in Paris, France, by the authority vested in me as President of the United States by the Constitution and the laws of the United States of America, I hereby order that the flag of the United States shall be flown at half-staff at the White House and upon all public buildings and grounds, at all military posts and naval stations, and on all naval vessels of the Federal Government in the District of Columbia and throughout the United States and its Territories and possessions until sunset, November 19, 2015. I also direct that the flag shall be flown at half-staff for the same length of time at all United States embassies, legations, consular offices, and other facilities abroad, including all military facilities and naval vessels and stations.

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of November, in the year of our Lord two thousand fifteen, and of the Independence of the United States of America the two hundred and fortieth.



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